



not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. DaVita Inc. is a Delaware corporation, with its office and principal place of business located at 2000 16<sup>th</sup> Street, Denver, CO 80202.
2. Respondent Renal Ventures Management, LLC is a limited liability company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office located at 1626 Cole Boulevard, Suite 100, Lakewood, Colorado 80401.
3. Respondent Renal Ventures Limited, LLC is a limited liability company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office located at 1626 Cole Boulevard, Suite 100, Lakewood, Colorado 80401.
4. Respondent Renal Ventures Partners, LLC is a limited liability company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office located at 1626 Cole Boulevard, Suite 100, Lakewood, Colorado 80401.
5. Respondent RV Management Corp. is a Delaware corporation, with its office and principal place of business located at 1626 Cole Boulevard, Suite 100, Lakewood, Colorado 80401.
6. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

**ORDER**

**I.**

**IT IS ORDERED**

- I. “Acquisition Date” means the date on which the Acquisition is consummated.
- J. “DaVita Joint Venture Equity Interests” means the joint venture equity interest owned by DaVita in (1) DaVita Denton Dialysis, located at 3305 Unicorn Lake Blvd., Denton, TX 76210-0102; and (2) DaVita Lawrenceville Dialysis, located at 1840 Princeton Avenue, Lawrenceville, NJ 08648.
- K. “Brick, NJ Area” means the area in and around Brick, NJ, consisting of the zip codes and areas described in Appendix B to this Order.
- L. “Clifton, NJ Area” means the area in and around Clifton, NJ, consisting of zip codes and areas described in Appendix B to this Order.
- M. “Clinic” means a facility that provides hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.
- N. “Clinic’s Physician Contracts” means all agreements to provide the services of a Physician to a Clinic, regardless of whether any of the agreements are with a Physician or with a medical group, including, but not limited to, agreements for the services of a medical director for the Clinic and “joinder” agreements with Physicians in the same medical practice as a medical director of the Clinic.
- O. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain, owned by or pertaining to, a Person or a Person’s business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, policies and procedures, processes, or other trade secrets.
- P. “Contract Services” means services performed pursuant to any Clinic’s Physician Contract.
- Q. “DaVita Clinics” or “DaVita Clinic” means any one, or all of following:
1. DaVita Frisco Dialysis, located at 6116 Sports Village Road, Frisco, TX 75033;
  2. DaVita Hackettstown Dialysis, located at 657 Willow Grove St., 1<sup>st</sup> Floor West Wing, Suite 202, Hackettstown, NJ 07840; and
  3. DaVita Joint Venture Equity Interests.
- R. “DaVita Clinic Assets” and “Renal Ventures Clinic Assets” mean the following assets Relating To the Operation Of A DaVita Clinic or the Operation of a Renal Ventures Clinic, respectively:
1. all rights under the Clinic’s Physician Contracts;

2. leases for the Real Property of the Clinics;
3. consumable or disposable inventory consistent with the ordinary course of business at the Clinics including, but not limited to, janitorial, office, medical supplies, dialysis supplies, and pharmaceuticals including, but not limited to, erythropoietin;
4. all rights, title, and interest in any tangible property (except for consumable or disposable inventory) that has been on the premises of the Clinic at any time since June 1, 2016, including, but not limited to, all equipment, furnishings, fixtures, improvements, and appurtenances, other than items that have been discarded or replaced in the Ordinary Course of Business;
5. all books, records, files, correspondence, manuals, computer printouts, databases, and other documents Relating To the Operation Of A DaVita Clinic and the Operation of A Renal Ventures Clinic located on the premises of the DaVita Clinic or the Renal Ventures Clinic or in the possession of a regional manager (or the equivalent) or other executive specifically overseeing or responsible for such Clinic (or copies thereof where Respondents have a legal obligation to maintain the original document) including, but not limited to:
  - a. documents containing information Relating To patients (to the extent transferable under applicable law), including, but not limited to, medical records,
  - b. financial records,
  - c. personnel files and information Relating To Designated Employees,
  - d. physician lists and other records of the clinic's dealings with physicians,
  - e. maintenance records,
  - f. documents Relating To DaVita Policies and Procedures and Renal Ventures Policies and Procedures,
  - g. documents Relating To quality control,
  - h. documents Relating To Payors,
  - i. documents Relating To suppliers,
  - j. documents Relating To the Clinics that are also related to the Operation Of Clinics other than the DaVita Clinics or the Renal Ventures Clinics, *PROVIDED, HOWEVER*, if such documents are located other than on the premises of the DaVita Clinics or the Renal Ventures Clinics,

Respondents may divest a copy of the document with the portions not Relating To the DaVita Clinics or the Renal Ventures Clinics redacted, and

- k. copies of contracts with Payors and Suppliers, unless such contracts cannot, according to their terms, be disclosed to third parties even with the permission of Respondents to make such disclosure.
- 6. Respondents' Medicare and Medicaid provider numbers, to the extent transferable;
- 7. all permits and licenses, to the extent transferable;
- 8. DaVita Policies and Procedures and Renal Ventures Policies and Procedures, if such Policies and Procedures are used exclusively in the DaVita Clinics or Renal Ventures Clinics, respectively;
- 9. Intangible Property relating exclusively to the Operation Of A DaVita Clinic or the Operation of a Renal Ventures Clinic; and
- 10. Any other assets that are used in, or necessary for, the Operation Of A Clinic.

*PROVIDED, HOWEVER*, that "assets Relating To the Operation Of A DaVita Clinic or the Operation of a Renal Ventures Clinic" does not include Excluded Assets.

- S. "DaVita Medical Protocols" means medical protocols promulgated by DaVita, whether in hard copy or electronic copy, that have been in effect at a DaVita Clinic at any time since January 1, 2016, *PROVIDED, HOWEVER*, "DaVita Medical Protocols" does not mean medical protocols adopted or promulgated, at any time, by any Physician or by any Acquirer, even if such medical protocols are identical, in whole or in part, to medical protocols promulgated by DaVita.
- T. "DaVita Policies and Procedures" means the dialysis policies and procedures manual promulgated by DaVita, whether in hard copy or electronic copy, that have been in effect at a DaVita Clinic, at any time since January 1, 2016.
- U. "Denton, TX Area" means the area in and around Denton, TX, consisting of the zip codes and areas described in Appendix B to this Order.
- V. "Designated Employee" means (1) an Employee Of A DaVita Clinic, (2) an Employee Of A Renal Ventures Clinic, and (3) any of the additional DaVita, Renal Ventures Management, or Renal Ventures Limited employees or persons who occupy the job descriptions listed in Non-Public Appendix C to this Order.
- W. "Divestiture Trustee" means the person appointed to act as Trustee by the Commission pursuant to Paragraph II.A or Paragraph V of this Order.

- X. “Employee Of A DaVita Clinic” and “Employee Of The DaVita Clinic” mean any individual (including, but not limited to, a clinic director, manager, nurse, technician, clerk, dietician, or social worker) who is employed by DaVita, by an Acquirer, or by another manager or owner of such DaVita Clinic, and who has worked part-time or full-time on the premises of such DaVita Clinic at any time since January 1, 2016, regardless of whether the individual has also worked on the premises of any other Clinic.
  
- Y. “Employee Of A Renal Ventures Clinic” and “Employee Of The Renal Ventures Clinic” mean any individual (including, but not limited to, a clinic director, manager, nurse, technician, clerk, dietician, or social worker) who is employed by Renal Ventures Management or Renal Ventures Limited, by an Acquirer, or by another manager or owner of such Renal Ventures Clinic, and who has worked part-time or full-time on the premises of such Renal Ventures Clinic at any time since January 1, 2016, regardless of whether the individual has also worked on the premises of any other Clinic.
  
- Z. “Excluded Assets” means: 4-5 0 T2((c)-4( 1 Tw06 Tw s{(m)1nv)en)1(al);l0 sD0(.).gc 0 Teugc 0 Teugc 0

12. telecommunication systems equipment and applications, and information systems equipment including, but not limited to, computer hardware not physically located at a DaVita Clinic or Renal Ventures Clinic but shared with the DaVita Clinic or Renal Ventures Clinic, respectively, through local and/or wide area networking systems;
13. computer hardware used in the Operation Of A DaVita Clinic or the Operation Of A Renal Ventures Clinic that is (a) not located at the Clinic, and (b) not otherwise to be divested pursuant to a Remedial Agreement;
14. all DaVita or Renal Ventures proprietary software;
15. e-mail addresses with the DaVita or Renal Ventures domain names;
16. all Supplier or provider numbers issued to Respondents by a Supplier or Payor with respect to any DaVita Clinic or Renal Ventures Clinic, except for Respondents' Medicare and Medicaid provider numbers for each DaVita Clinic or Renal Ventures Clinic;
17. rights under agreements with Payors that do not relate exclusively to the DaVita Clinics or Renal Ventures Clinics, or that are not assignable even if Respondents approve such assignment;
- 18.



- 23. strategic planning documents that:
  - a. relate to the Operation Of A Clinic other than a DaVita Clinic or a Renal Ventures Clinic, and
  - b. are not located on the premises of a DaVita Clinic or Renal Ventures Clinic.
  
- AA. “Frisco, TX Area” means the area in and around Frisco, TX, consisting of the zip codes and areas described in Appendix B to this Order.
  
- BB. “Governmental Approvals” means any permissions or sanctions issued by any

1. attracting patients to such Clinic for dialysis services, providing dialysis services to patients of such Clinic, and dealing with their Physicians, including, but not limited to, services Relating To hemodialysis and peritoneal dialysis;
2. providing medical products to patients of such Clinic;
3. maintaining the equipment on the premises of such Clinic, including, but not limited to, the equipment used in providing dialysis services to patients;
4. purchasing supplies and equipment for such Clinic;
5. negotiating leases for the premises of such Clinic;
6. providing counseling and support services to patients receiving products or services from such Clinic;
7. contracting for the services of medical directors for such Clinic;
8. dealing with Payors, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and
9. dealing with Governmental Approvals Relating To such Clinic or that otherwise regulate the Clinic.

HH. “Ordinary Course of Business” means actions taken by any Person in the ordinary course of the normal day-to-day Operation Of A Clinic that is consistent with past practices of such Person in the Operation Of A Clinic, including, but not limited to past practice with respect to amount, timing, and frequency.

II. “Payor” means any Person that purchases, reimburses for, or TJ 0( t)-1(h)e1(r)-0.w(t)3(i0.002g(s)-1()-1

LL. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).

MM.

- SS. “DaVita-PDA Divestiture Agreement” means the following agreements, attached as Non-Public Appendix A to this Order including, but not limited to, the Amended and Restated Asset Purchase Agreement dated February 27, 2017, by and among DaVita and PDA, and all attachments and exhibits, thereto, and the Transition Services Agreement, which is an exhibit to the Asset Purchase Agreement, by and between DaVita and PDA, and all attachments and exhibits, thereto.
- TT. “Softwarepu-1(d t)-2(4(t)- )8(e)od( A)2(s).

*PROVIDED FURTHER, HOWEVER*, that if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which any of the divestitures accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture including, but not limited to, entering into additional agreements or arrangements, as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. DaVita shall not acquire Respondent Renal Ventures Management until it has obtained for all the DaVita Clinics and Renal Ventures Clinics:
1. all approvals for the assignment to the Acquirer of the rights, title, and interest to each lease for Real Property of each DaVita Clinic and each Renal Ventures Clinic;
  2. all approvals for the assignment to the Acquirer of the DaVita Clinics' Physician Contracts and the Renal Ventures Clinics' Physician Contracts; and
  3. all Governmental Approvals.
- C. With respect to DaVita's Medical Protocols, DaVita shall:
1. Grant to Acquirer, absolutely, and in good faith, a worldwide, royalty-free, license (without the right to transfer or sublicense such protocols, exclusively or nonexclusively, to others by any means) for the use of the DaVita Medical Protocols at any dialysis clinic owned by Acquirer, for a period of six (6) months from the Acquisition Date;
  2. If any Acquirer requests in writing to DaVita within six (6) months of the Time of Divestiture that DaVita extend the license for the DaVita Medical Protocols to that Acquirer, DaVita shall, within five (5) business days of such request, grant to that Acquirer a perpetual, worldwide, royalty-free, license (without the right to transfer or sublicense such protocols, exclusively or nonexclusively, to others by any means), for the use of DaVita's Medical Protocols *PROVIDED, HOWEVER*, that any time after six (6) months from the Time of Divestiture, if the Acquirer is sold, or if any of the Acquirer's clinics are sold, the Acquirer may transfer or sublicense the DaVita Medical Protocols as part of such transaction or transactions; and
  3. DaVita shall create no disincentive for any Acquirer to make such a request for a license extension for DaVita's Medical Protocols, and shall not enter into any

- D. With respect to the Renal Ventures Medical Protocols, DaVita shall grant to the Acquirer royalty-free, worldwide non-exclusive licenses for the use, without any limitation, of the Renal Ventures Medical Protocols (including the right to transfer or sublicense, exclusively or nonexclusively, to others by any means).
- E. With respect to Renal Ventures Policies and Procedures and the DaVita Policies and Procedures not used exclusively at Renal Ventures Clinics or DaVita Clinics, respectively, DaVita shall grant to the Acquirer a royalty-free, perpetual, worldwide, non-exclusive, non-transferable (unless PDA is sold or any PDA Clinic is sold) and non-sublicensable license to use, without any limitation, such Policies and Procedures.
- F. With respect to Intangible Property not exclusively Relating To the Operation Of A DaVita Clinic or the Operation Of A Renal Ventures Clinic, DaVita shall grant to the Acquirer a royalty-free, perpetual, worldwide, non-exclusive, non-transferable (unless PDA is sold or any PDA Clinic is sold) and non-sublicensable, license to use, without any limitation, all Intangible Property.
- G. Respondents shall:
  - 1. Place no restrictions on the use by any Acquirer of any of the DaVita Clinic Assets or Renal Ventures Clinic Assets to be divested to such Acquirer, or interfere with any Acquirer's ability to use or interfere with any Acquirer's ability to use

- i. such third party approval and in assigning the contract to the Acquirer, or
- ii. a new contract.

H. Respondents shall:

1. at the Time of Divestiture of each DaVita Clinic and Renal Ventures Clinic, provide to the Acquirer of such Clinic contact information about Payors and Suppliers for the Clinic, and
2. not object to the sharing of Payor and Supplier contract terms Relating To the DaVita Clinics and the Renal Ventures Clinics: (a) if the Payor or Supplier consents in writing to such disclosure upon a request by the Acquirer, and (b) if the Acquirer enters into a confidentiality agreement with Respondents not to disclose the information to any third party.

I. Respondents shall:

1. If requested by an Acquirer, facilitate interviews between each Designated Employee and the Acquirer, and shall not discourage such employees from participating in such interviews;
2. not interfere in employment negotiations between each Designated Employee and an Acquirer;
3. not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict the Designated Employee from being employed by an Acquirer, and shall not offer any incentive to the Designated Employee to decline employment with an Acquirer;
4. cooperate with an Acquirer of a DaVita Clinic or a Renal Ventures Clinic in effecting tran

Respondents shall comply with the terms of this Paragraph II.I. from the time Respondents sign the Agreement Containing Consent Order until sixty (60) days after the Time of Divestiture of each DaVita Clinic and each Renal Ventures Clinic for the employees who are Designated Employees.

*PROVIDED, HOWEVER,* that if, at any time after the



2. For a period of three (3) years following the Time of Divestiture of each DaVita Clinic and Renal Ventures Clinic, DaVita shall not contract for the services of the Contract Physician, the Contract Physician's practice group, or other members of the Contract Physician's practice group for the provision of Contract Services to be performed in the area listed in Appendix B of this Order that corresponds to such DaVita Clinic or Renal Ventures Clinic at which the Contract Physician provided Contract Services. *PROVIDED, HOWEVER*, if the Contract Physician, or the Contract Physician's practice group, or other members of the Contract Physician's practice group were providing services to a Clinic, other than at any of the DaVita Clinics or the Renal Ventures Clinics, pursuant to a contract with Respondents in effect as of June 1, 2016, then DaVita may contract with such Contract Physicians, or the Contract Physician's practice group, or other members of the Contract Physician's practice group for services to be provided to that particular Clinic.

L. Respondents shall:

1. not disclose Confidential Business Information relating exclusively to any of the DaVita Clinics or Renal Ventures Clinics to any Person other than the Acquirer of such Clinic; and
2. after the Time of Divestiture of such Clinic:
  - a. shall not use Confidential Business Information relating exclusively to any of the DaVita Clinics or the Renal Ventures Clinics for any purpose other than complying with the terms of this Order, with any law, or purposes of billing and collections, quality incentive program performance management, patient outcomes, peer review and physician credentialing activities, or responding to any inquiry or action from a third party required by law; and
  - b. shall destroy all records of Confidential Business Information relating exclusively to any of the DaVita Clinics and Renal Ventures Clinics, except to the extent that: (i) Respondents are required by law to retain such information, and (ii) DaVita's and Renal Ventures' inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of DaVita or Renal Ventures, respectively.

M. At the Time of Divestiture, Respondents shall not disclose Confidential Business Information to any third party, except as required by law.

1. divested to the Acquirer pursuant to this Order, or
  2. in the possession of the Acquirer, and previously used by Respondents in the Operation Of A DaVita Clinic or the Operation Of A Renal Ventures Clinic.
- N. For two (2) years following the Time of Divestiture of each DaVita Clinic and each Renal Ventures Clinic, DaVita shall not solicit the business of any patient who received any goods or services from such Clinic between July 1, 2016, and the date of such divestiture,

### III.

**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order is issued, DaVita shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:
1. acquire any assets of or financial interest in any Clinic located in the Brick, NJ Area, Clifton, NJ Area, Denton, TX Area, Frisco, TX Area, Hackettstown, NJ Area, Lawrenceville, NJ Area, and Somerville, NJ Area; or
  2. enter into any contract to participate in the management or Operation Of A Clinic located in the areas listed in Paragraph III.A.1., above, except to the extent that the contract relates exclusively to:
    - a. off-site lab services or social worker support materials; or
    - b. billing services, collection services, bookkeeping services, accounting services, supply purchasing and logistics services, or the preparation of financial reports and accounts receivable reports (collectively “Such Services”), where appropriate firewalls and confidentiality agreements are implemented to prevent Confidential Business Information of the Clinic from being disclosed to anyone participating in any way in the operation or management of any Clinic owned by DaVita or any Clinic other than the Clinic to which Such Services are being provided.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) document wkdocnr



- c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirers, except as allowed in this Order.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order, and the Remedial Agreements.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the Ordinary Course Of Business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under this Order, and the Remedial Agreements. Respondents



- B. The Commission shall select the Trustee, subject to the consent of DaVita, which consent shall not be unreasonably withheld. The Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If DaVita has not opposed, in writing, including the reasons for opposing, the selection of any proposed Trustee within ten (10) days after receipt of notice by the staff of the Commission to DaVita of the identity of any proposed Trustee, DaVita shall be deemed to have consented to the selection of the proposed Trustee.
- C. Within ten (10) days after the appointment of a Trustee, DaVita shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the divestitures required by this Order.
- D. If a Trustee is appointed by the Commission or a court pursuant to this Order, DaVita shall consent to the following terms and conditions regarding the Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Trustee shall have the exclusive power and authority to divest any of the DaVita Clinic Assets and the Renal Ventures Clinic Assets that have not been divested pursuant to Paragraph II of this Order.
  2. The Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Trustee has submitted a divestiture plan or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
  3. Subject to any demonstrated legally recognized privilege, the Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Trustee may request. DaVita shall develop such financial or other information as the Trustee may request and shall cooperate with the Trustee. DaVita shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture. Any delays in divestiture caused by DaVita shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Trustee, by the court.

4. The Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to DaVita's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner that receives the prior approval of the Commission and to an Acquirer or Acquirers that receive the prior approval of the Commission, as required by this Order; *PROVIDED, HOWEVER*, if the Trustee receives bona fide offers for particular assets from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such assets, the Trustee shall divest the assets to the acquiring entity selected by DaVita from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that DaVita shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Trustee shall serve, without bond or other security, at the cost and expense of DaVita, on such reasonable and customary terms and conditions as the Commission or a court may set. The Trustee shall have the authority to employ, at the cost and expense of DaVita, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Trustee's duties and responsibilities. The Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Trustee, by the court, of the account of the Trustee, including fees for the Trustee's services, all remaining monies shall be paid at the direction of DaVita, and the Trustee's power shall be terminated. The compensation of the Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. DaVita shall indemnify the Trustee and hold the Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Trustee.
7. The Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Trustee shall report in writing to DaVita and to the Commission every sixty (60) days concerning the Trustee's efforts to accomplish the divestiture.



9. DaVita may require the Trustee and each of the Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Trustee from providing any information to the Commission.
- E. If the Commission determines that a Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Trustee in the same manner as provided in this Paragraph V.
- F. The Commission or, in the case of a court-appointed Trustee, the court, may on its own initiative or at the request of the Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Trustee appointed pursuant to this Paragraph may be the same Person appointed as the Monitor pursuant to the relevant provisions of this Order.

## VI.

### **IT IS FURTHER ORDERED** that:

- A. From the date Respondents sign the Consent Agreement until the Time of Divestiture, Respondents shall:
  1. Maintain each of the DaVita Clinics, the DaVita Clinic Assets, the Renal Ventures Clinics, and the Renal Ventures Clinic Assets in substantially the same condition (except for normal wear and tear) as they existed at the time Respondents sign the Consent Agreement;
  2. Take such actions that are consistent with the past practices of Respondents Renal Ventures Management and Renal Ventures Limited in connection with each Renal Ventures Clinic and all the Renal Ventures Clinic Assets, and that are taken in the Ordinary Course of Business and in the normal day-to-day operations of the Renal Ventures Clinics;
  3. Keep available the services of the current officers, employees, and agents of Respondents Renal Ventures Management and Renal Ventures Limited; and maintain the relations and goodwill with suppliers, Payors, physicians, landlords, patients, employees, agents, and others having business relations with the Renal Ventures Clinics and the Renal Ventures Clinic Assets;
  4. Preserve the DaVita Clinics, the DaVita Clinic Assets, the Renal Ventures

5. Not object to sharing with the Acquirer the Payor and Supplier contract terms Relating To the DaVita Clinics, the DaVita

- C. Any other change in DaVita that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in DaVita.

**IX.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

**X.**

**IT IS FURTHER ORDERED** that this Order shall terminate on May 19, 2027.

By the Commission.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: May 19, 2017



# **Appendix B**

## **Zip Codes and Areas**

## APPENDIX B

### AREA DEFINITIONS

- Five digit numbers refer to zip codes.
- Geographic areas bounded by roads include all properties abutting the referenced road (*i.e.*, properties on both sides of the road).
- Zip codes or other areas fully surrounded by areas included in the area definition shall be considered part of the area definition.
- Area definitions are based on maps submitted to the Commission staff by DaVita.

	<b>Divested Clinics (Medicare Provider Numbers)</b>	<b>Corresponding Area Definition</b>
1	RVM Brick	The area in and/or near Brick, New Jersey, consisting of: 07731, the portion of 08527 that lies to the south and east of Aldrich Road, Bennetts Mills Road, and West Veterans Highway, the portion of 08533 that lies to the east of Hawkin Road and to the south of West Veterans Highway, 08701, 08720, 08723, 08724, 08732, the portion of 08733 that lies to the east of Hawkin Road and Route 539, 08735, 08738, 08742, 08751, 08753, 08755, 08757, and the portion of 08759 that lies to the east of Route 539 and north of Route 530.
2	RVM Clifton	The area in and/or near Clifton, New Jersey, consisting of: 07011, 07012, 07013, 07014, 07055, 07424, 07501, 07503, 07504, 07505, 07513, 07514, and 07524.
3	DVA Hackettstown	The area in and/or near Hackettstown, New Jersey, consisting of: 07821, 07825, 07828, 07836, 07838, 07840, 07847, 07850, 07852, 07853, 07856, 07857, 07863, 07865, 07876, 07874, and 07930.
4	DVA Lawrenceville	The area in and/or near Lawrence Township, New Jersey, consisting of: 08608, 08609, 08610, 08611, 08618, 08619, the portion of 08620 that lies to the west of Interstate 95, 08628, 08629, 08638, 08648, 08690, and the portion of 08691 that lies to the west of Interstate 95.

5 RVM Somerville

The area in and/or near Somerville, New Jersey, consisting of: 07059, the portion of 07920 that lies to the south of Interstate 78, 07921, 08805, 08807, 08812, 08835, 08836, 08844, 08846, 08853, 08854, 08869, the portion of 08873 that lies north of Amwell Road and west of Demott Lane, 08876, and 08880.

***Non-Public Appendix C***



***Appendix D***  
***Monitor Agreement***

***Non-Public Appendix E***  
***Monitor Compensation***

***[Redacted From the Public Record Version, But Incorporated By Reference]***