

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 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, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, and having revised the Decision and Order in certain respects, now in further conformity with Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Mars is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 6885 Elm Street, McLean, Virginia, 22101.
2. Respondent VCA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 12401 West Olympic Boulevard, Los Angeles, California, 90064.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply and all other definitions used in the Hold Separate Order, shall apply:

- A. “Mars” means Mars Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Mars, including Banfield Pet Hospital, BluePearl and Pet Partners, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the date the Acquisition is completed, “Mars” includes VCA.
- B. “VCA” means VCA Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by VCA, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquirer” means each Person approved by the Commission to acquire the Divestiture Assets pursuant to this Order.

- D. “Acquisition” means the acquisition by Mars of VCA, as described in, and contemplated by, the Agreement and Plan of Merger dated January 7, 2017.
- E. “Acquisition Date” means the date on which the Acquisition is consummated.
- F. “Business Records” means all information, books and records, documents, files, correspondence, manuals, computer printouts, databases, and other documents, including all hard copies and electronic records wherever stored, including without limitation, client and customer lists, patient and payor information, referral sources, research and development reports, production reports, service and warranty records, maintenance logs, equipment logs, operating guides and manuals, documents relating to policies and procedures, financial and accounting records and documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists and contracts, salaries and benefits information, physician lists and contracts, supplier lists and contracts, and, subject to legal requirements, copies of all personnel files.
- G. “Clinic Assets” means all of Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with the Emergency Veterinary Clinic or Specialty Veterinary Clinic of the Divestiture Clinics, including, without limitation, all:
1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), wherever located, including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. Tangible Personal Property, including, without limitation, any Tangible Personal Property removed from and not replaced at the Divestiture Clinics, if such property was used by or in connection with the provision of Specialty Veterinarian services at the Divestiture Clinics on or after June 1, 2017;
 3. Rights under any and all contracts and agreements (e.g., leases, service agreements such as supply agreements, procurement contracts), including, but not limited to, contracts and agreements with physicians and other veterinary health care providers and support staff, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consigners, and consignees;

4. Rights and title in and to use the name or part of the name of the Divestiture Clinic on a permanent and exclusive basis (even as to Respondents); *PROVIDED, HOWEVER*, that Acquirer shall not have the right to use Mars and VCA trademarks, trade names, or logos; *PROVIDED, FURTHER, HOWEVER*, that the Acquirer of the BluePearl Hope Advanced Veterinary Center, located at 140 Park Street, SE, Vienna, VA 22180, shall have the exclusive right as to the Respondents to use, after a transition period, “Hope” in any veterinary clinic name – specialty or otherwise – in the Relevant Notice Area that includes the BluePearl Hope Advanced Veterinary Center in Vienna, VA.
5. Intellectual Property;
6. Intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telecopy and telephone numbers, domain names, listings, and web sites, *PROVIDED, HOWEVER*, intangible rights do not include domain names, and web sites;
7. Approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
8. All consumable or disposable inventory kept in the normal course of business, including, but not limited to, janitorial, office, and medical supplies, and pharmaceuticals;
9. Accounts receivable;
10. Rights under warranties and guarantees, express or implied; and
11. Business Records.

PROVIDED, HOWEVER, that Respondents may retain a copy of Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

- H. “Closing Date” means the date on which each divestiture required by this Order is completed.
- I. “Commission” means the Federal Trade Commission.
- J. “Confidential Business Information” means information not in the public domain that is related to or used in connection with the Divestiture Clinics, except for any information that was or becomes generally available to the public other than as a

result of disclosure by Respondents, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor information, commercial information, management system information, business processes and practices, bidding practices and information, procurement practices and information, supplier qualification and approval practices and information, and training practices.

- K. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transitional Services. “Direct Cost” to an Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.
- L. “Divestiture Clinics” means the following Emergency Veterinary Clinics or Specialty Veterinary Clinics owned and operated by Respondents:
1. VCA Mission Animal Referral and Emergency Center, located at 5914 Johnson Drive, Mission, KS 66202;
 2. BluePearl Emergency Animal Clinic, located at 86 West Juniper Avenue, Gilbert, AZ 85233;
 3. VCA Animal Specialty Center, located at 9 Odell Plaza, Yonkers, NY 10101;
 4. VCA Veterinary Referral Associates, located at 500 Perry Parkway, Gaithersburg, MD 20877;
 5. BluePearl Hope Advanced Veterinary Center, located at 140 Park Street, SE, Vienna, VA 22180;
 6. BluePearl Columbia River Veterinary Specialist, located at 6607 NE 84th Street, Suite 109, Vancouver, WA 98665;
 7. BluePearl Cascade Veterinary Referral Center, located at 11140 SW 68th Parkway, Tigard, OR 97223;
 8. BluePearl Emergency Pet Clinic, located at 1502 Airline Road, #220, Corpus Christi, TX 78412;
 9. Blue-Pearl Emergency Pet Center, located at 8503 Broadway Street, #105, San Antonio, TX 78217;
 10. BluePearl Emergency Pet Hospital, located at 1050 Bonaventura Drive, Elk Grove Village, IL 60007;

11. VCA Veterinary Specialty Center of Seattle, located at 20115 44th Avenue W, Lynwood, WA 98036; and
 12. VCA Alpine Animal Hospital, located at 888 NW Sammamish Road, Issaquah, WA 98027.
- M. “Divestiture Package A” means the following Divestiture Clinics owned and operated by Respondents:
1. VCA Mission Animal Referral and Emergency Center, located at 5914 Johnson Drive, Mission, KS 66202;
 2. BluePearl Emergency Animal Clinic, located at 86 West Juniper Avenue, Gilbert, AZ 85233; and
 3. VCA Animal Specialty Center, New York, located at 9 Odell Plaza, Yonkers, NY 10101.
- N. “Divestiture Package B” means the following Divestiture Clinics owned and operated by Respondents:
1. VCA Veterinary Referral Associates, located at 500 Perry Parkway, Gaithersburg, MD 20877;
 2. BluePearl Hope Advanced Veterinary Center, located at 140 Park Street, SE, Vienna, VA 22180;
 3. BluePearl Columbia River Veterinary Specialist, located at 6607 NE 84th Street, Suite 109, Vancouver, WA 98665; and
 4. BluePearl Cascade Veterinary Referral Center, located at 11140 SW 68th Parkway, Tigard, OR 97223.
- O. “Divestiture Package C” means the following Divestiture Clinics owned and operated by Respondents:
1. BluePearl Emergency Pet Clinic, located at 1502 Airline Road, #220, Corpus Christi, TX 78412;
 2. Blue-Pearl Emergency Pet Center, located at 8503 Broadway Street, #105, San Antonio, TX 78217;
 3. BluePearl Emergency Pet Hospital, located at 1050 Bonaventura Drive, Elk Grove Village, IL 60007;

4. VCA Veterinary Specialty Center of Seattle, located at 20115 44th Avenue W, Lynwood, WA 98036; and
 5. VCA Alpine Animal Hospital, located at 888 NW Sammamish Road, Issaquah, WA 98027.
- P. “Divestiture Trustee” means the person appointed pursuant to Paragraph VI of this Order.
- Q. “Emergency Veterinary Clinic” means a veterinary clinic that offers 24-hour or overnight service with the primary function of receiving, treating, and monitoring of emergency patients during its specified hours of operation. A veterinarian is in attendance at all hours of operation and sufficient staff is available to provide timely and appropriate care. Veterinarians, support staff, instrumentation, medications, and supplies must be sufficient to provide an appropriate level of emergency care.
- R. “Government Approvals” means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.
- S. “Intellectual Property” means, without limitation, all:
1. Patents, patent applications, and inventions and discoveries that may be patentable;
 2. Know-how, trade secrets, software, technical information, data, registrations, applications for Governmental Approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information;
 3. Confidential or proprietary information, commercial information, management systems, business processes and practices, customer lists, customer information, customer records and files, customer communications, procurement practices and information, supplier qualification and approval practices and information, training materials, sales and marketing materials, customer support materials, advertising and promotional materials; and
 4. Rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.

PROVIDED, HOWEVER, that Intellectual Property shall not include Mars and VCA trademarks, trade names, or logos.

- T. “Monitor” means the person appointed as Monitor in this Order.
- U. “NVA” means National Veterinary Associates, Inc., a Delaware corporation, with its office and principal place of business located at 29229 Canwood Street #100, Agoura Hills, CA 91301.
- V. “NVA Divestiture Agreements” means the Divestiture Agreements by and among VCA, BluePearl, Animal Care Specialists, and NVA, dated July 21, 2017, and July 24, 2017, and all attachments and exhibits, thereto, attached as Non-Public Appendix D to this Order.
- W. “Pathway” means Pathway Partners Vet Management Company, LLC, a Delaware limited liability company, with its office and principal place of business located at 4225 Guadalupe St, Austin, TX 78751.
- X. “Pathway Divestiture Agreement” means the Divestiture Agreement by and among VCA, BluePearl, and Pathway, dated July 24, 2017, and all attachments and exhibits, thereto, attached as Non-Public Appendix E to this Order.
- Y. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- Z. “PetVet” means PetVet Care Centers, a Delaware limited liability company, with its main office and principal place of business located at One Gorham Island, Westport, CT, 06880.
- AA. “PetVet Divestiture Agreement” means the Divestiture Agreement by and among VCA, BluePearl, and PetVet, dated July 22, 2017, and all attachments and exhibits, thereto, attached as Non-Public Appendix F to this Order.
- BB. “Relevant Notice Area” means the areas identified in Non-Public Appendix A to this Order.
- CC. “Relevant Employees” means any and all full-time employees, part-time employees, or contract employees, who work or worked at the Divestiture Clinics at any time during the ninety (90) days preceding the date the Acquisition is completed or at any time after the date the Acquisition is completed, and whose duties relate or related to the Divestiture Clinic.

- DD. “Remedial Agreement” means the following:
1. The NVA Divestiture Agreements;
 2. The PetVet Divestiture Agreement;
 3. The Pathway Divestiture Agreement; and
 4. Any agreement between a Respondent and an Acquirer, including all amendments, exhibits, attachments, and schedules thereto, relating to a Divestiture Clinic or Clinic Assets, that has been approved by the Commission to accomplish the requirements of this Order.
- EE. “Respondents” means Mars and VCA, collectively or individually.
- FF. “Specialty Veterinarian” means a veterinarian who (i) legally holds himself or herself out as a specialist in veterinary medicine, and (ii) has board certification, in one, or more, of the following specialties: cardiology, emergency and critical care, internal medicine, neurology, oncology, ophthalmology, or surgery.
- GG. “Specialty Veterinary Clinic” means a clinic where Specialty Veterinarians practice, including the Clinic Assets.
- HH. “Tangible Personal Property” means all machinery, equipment, spare parts, tools and tooling, fixtures, vehicles, furniture, inventories, office equipment, computer hardware, supplies and materials, and all other items of tangible personal property of every kind owned or leased by Respondents, wherever located, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- II. “Third Parties” means Persons other than Respondents or the Acquirer(s).
- JJ. “Transitional Administrative Services” means administrative assistance with respect to the Divestiture Clinics, including, but not limited to, assistance relating to billing, accounting, governmental regulation, human resources management, information systems, and purchasing, as well as providing assistance in acquiring and obtaining access to all software used in the provision of such services.
- KK. “Transitional Clinical Services” means clinical assistance and support services with respect to the Divestiture Clinics.
- LL. “Transitional Services” means Transitional Administrative Services and Transitional Clinical Services.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall, within ten (10) business days after the Acquisition Date, absolutely, and in good faith, divest (i) Divestiture Package A to NVA, including all Clinic Assets related to those clinics pursuant to and in accordance with the NVA Divestiture Agreements; (ii) Divestiture Package B to PetVet, including all Clinic Assets related to those clinics pursuant to and in accordance with the PetVet Divestiture Agreement; and (iii) Divestiture Package C to Pathway, including all Clinic Assets related to those clinics pursuant to and in accordance with the Pathway Divestiture Agreement, absolutely, and in good faith, as on-going businesses. Any failure by Respondents to comply with a Remedial Agreement shall constitute a failure to comply with this Order. The Remedial Agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of an Acquirer, or any obligations of Respondents, under the Remedial Agreements.

PROVIDED, HOWEVER, if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that NVA, PetVet, or Pathway is not an acceptable Acquirer then, after receipt of such written notification: (1) Respondents shall immediately notify the unacceptable Acquirer of the notice received from the Commission and shall as soon as practicable, but no later than within five (5) business days, effect the rescission of the relevant Divestiture Agreement; and (2) Respondents shall, within six (6) months of the date Respondents receive notice of such determination from the Commission, divest the unacceptable Divestiture Clinics and Clinic Assets, as applicable, absolutely and in good faith, at no minimum price, as on-going businesses to an Acquirer or Acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

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. Respondent Mars shall not acquire Respondent VCA until it has obtained for all the Divestiture Clinics:
1. All approvals for the assignment to each Acquirer of the rights, title, and interest to each lease for real property of each Divestiture Clinic; and
 2. Any and all Governmental Approvals necessary for each Acquirer to operate each Divestiture Clinic as of the Closing Date of such Divestiture Clinic in substantially the same manner as the applicable Respondent operated such Divestiture Clinic immediately prior to such closing.
- C. Respondents:
1. Shall not disclose Confidential Business Information relating exclusively to any of the Divestiture Clinics to any Person other than the Acquirer of such Divestiture Clinic; and
 2. After the Closing Date of such Divestiture Clinic:
 - a. Shall not use Confidential Business Information relating exclusively to any of the Divestiture Clinics for any purpose other than for complying with the terms of this Order, for complying with any law, or for the 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 Divestiture Clinics, except to the extent that: (i) Respondents are required by law to retain such information, and (ii) Respondents' inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of Mars or VCA, respectively.
- D. From the date Respondents sign the Consent Agreement until the Closing Date, Respondents shall:
1. Maintain each of the Divestiture Clinics and all 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 in connection with each Divestiture Clinic and all the Clinic Assets, and that are taken in the ordinary course of business and in the normal day-to-day operations of the Divestiture Clinics;

3. Keep available the services of the current officers, employees, and agents of Respondents; and maintain the relations and goodwill with suppliers, veterinarians, landlords, patients, employees, agents, and others having business relations with the Divestiture Clinics and the Clinic Assets; and
 4. Preserve the Divestiture Clinics and Clinic Assets as ongoing businesses and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, and marketability of the Divestiture Clinics and Clinic Assets would be diminished.
 5. The purposes of this Paragraph II.D. are to: (1) preserve the Divestiture Clinics as viable, competitive, and ongoing businesses until the Closing Date, (2) prevent interim harm to competition pending the relevant divestitures and other relief, and (3) help remedy any anticompetitive effects of the Acquisition as alleged in the Commission's Complaint.
- E. The purpose of the divestiture is to ensure the continuation of the Divestiture Clinics as ongoing viable businesses engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

III.

IT IS FURTHER ORDERED that Respondents:

- A. Shall, no later than ten (10) days after a request from an Acquirer, provide the Acquirer with the following information for each Relevant Employee, and, to the extent known and applicable, each independent contractor who has worked at a Divestiture Clinic since January 1, 2017, as and to the extent permitted by law (unless such information has already been provided):
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Shall, within a reasonable time after a request from an Acquirer, provide to the Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees.
- C. Shall not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Acquirer; *PROVIDED, HOWEVER*, that Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *PROVIDED FURTHER, HOWEVER*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.
- D. Shall remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with an Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by an Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from an Acquirer; *PROVIDED, HOWEVER*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

E. Shall provide reasonable financial incentives for Relevant Employees, as identified by Respondents and any Acquirer, to continue in their positions. Such incentives may include, but are not limited to, guaranteeing a retention bonus for the Specialty Veterinarians at the Divestiture Clinics to assure their continued employment at such clinic, a continuation of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by Respondents.

F. Shall not, for a period of one (1) year following the Closing Date of the particular Divestiture Clinic, hire a Specialty Veterinarian to work at any of Respondent Mars' veterinary clinics in the Relevant Notice Areas of that Divestiture Clinic. This paragraph applies to any Specialty Veterinarian who was, has been, or is working at the particular Divestiture Clinic since the date the Order was issued.

PROVIDED HOWEVER, Respondent Mars may offer part-time contract hours to a Specialty Veterinarian at a Divestiture Clinic who has been working as a part-time contract Specialty Veterinarian for Respondent Mars or VCA in the Relevant Notice Areas of that Divestiture Clinic, if the part-time contract hours offered by Respondent Mars would not, in any way, interfere with the Specialty Veterinarian's ability to fulfill his or her employment responsibilities to the Acquirer.

G. Shall not, for a period of two (2) years following the Closing Date of any Divestiture Clinic, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with an Acquirer to terminate his or her employment with the Acquirer; *PROVIDED, HOWEVER*, that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *PROVIDED FURTHER, HOWEVER*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if an Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

IV.

IT IS FURTHER ORDERED that, at the request of an Acquirer, for a period not to exceed twelve (12) months, or as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:

- A. Respondents shall provide Transitional Services to the Acquirer or Acquirers sufficient to enable the Acquirer or Acquirers to operate the Divestiture Clinics, and to provide Specialty Veterinary services at the Divestiture Clinic in substantially the same manner that Respondents have operated such facility and provided such services at such Clinic; and
- B. Respondents shall provide the Transitional Services required by this Paragraph at substantially the same level and quality as such services are provided by Respondents at the Divestiture Clinics.

PROVIDED, HOWEVER, that Respondents shall not (i) require any Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance unless Respondents are unable to provide such services due to such material breach.

V.

IT IS FURTHER ORDERED that:

- A. Thomas Carpenter shall be appointed Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order.
- B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, attached as Appendix B and Non-Public Appendix C (Compensation) to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Mars, which consent shall not be unreasonably withheld. If Mars has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Mars of the identity of any proposed Monitor, Mars shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Mars shall execute

an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order and the Remedial Agreements in a manner consistent with the purposes of this Order.

- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order and the Remedial Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all obligations and perform all responsibilities as required by this Order, and the Remedial Agreements;
 - b. Monitoring any transition services agreements; and
 - 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 shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order and the Remedial Agreements.
 5. The Monitor shall serve, without bond or other security, at the expense of Mars on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Mars, such consultants, accountants, attorneys and other

representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.

6. Mars shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 Monitor.
 7. Mars shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Mars, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under this Order and the Remedial Agreements.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order, and the Remedial Agreements.
 9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
 - G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Remedial Agreements.

- H. A Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations imposed by Paragraphs II of this Order, the Commission may appoint a Divestiture Trustee to divest any remaining Divestiture Clinics, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture 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 Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an Acquirer as required by this Order; *PROVIDED, HOWEVER*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *PROVIDED FURTHER, HOWEVER*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by

the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture 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. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.
- E. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

VII.

IT IS FURTHER ORDERED that:

- A. No Remedial Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreements.
- B. Each Remedial Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of each Remedial Agreement, and any breach by Respondents of any term of any Remedial Agreement shall constitute a failure to comply with this Order. If any term of any Remedial Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order is issued, Respondent Mars shall not, without providing advance written notification to the Commission in the manner described in this Paragraph:
 - 1. Acquire any assets of, or financial interest in, any of the particular Specialty Veterinary Clinics, any of the particular Emergency Veterinary Clinics, or other clinics identified in the Relevant Notice Areas; or
 - 2. Enter into any contract to participate in the management, operation, or control of any of the particular Specialty Veterinary Clinics, any of the particular Emergency Veterinary Clinics, or other clinics identified in the Relevant Notice Areas.
- B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to

consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *PROVIDED, HOWEVER*, that prior notification shall not be required by this Paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

IX.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after this Order is issued, and every thirty (30) days thereafter until Respondents have complied with their obligations in Paragraph II of this Order (or Paragraph VI of this Order, if applicable), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraph II of this Order (or Paragraph VI of this Order, if applicable). Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of this Order (or Paragraph VI of this Order, if applicable), including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communication to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.
- B. One (1) year after this Order is issued, annually for the next nine (9) years on the anniversary of that date, and at other times as the Commission may require, Respondent Mars shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

X.

IT IS FURTHER ORDERED that Respondent Mars shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent Mars;
- B. Any proposed acquisition, merger, or consolidation of Respondent Mars; and

- C. Any other change in Respondent Mars including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to its principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent 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 such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on November 30, 2027.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: November 30, 2017

NON-PUBLIC APPENDIX A
Relevant Notice Areas

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

APPENDIX B
Monitor Agreement

NON-PUBLIC APPENDIX C
Monitor Compensation

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

NON-PUBLIC APPENDIX D
NVA Divestiture Agreements

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

NON-PUBLIC APPENDIX E
Pathway Divestiture Agreements

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

NON-PUBLIC APPENDIX F
PetVet Divestiture Agreements

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