

MONITOR AGREEMENT

This Monitor Agreement (the "Agreement"), dated as of November 29, 2018, between Fresenius Medical Care Holdings, Inc. ("Respondent"), and Richard A. Shermer of R. Shermer & Company, P.O. Box 294199, Lewisville, Texas 75029 ("Monitor"), provides as follows:

PRELIMINARY STATEMENTS

WHEREAS the Federal Trade Commission (the "Commission"), in the Matter of Fresenius Medical Care Holdings, Inc. and NxStage Medical, Inc., has accepted or will shortly accept for public comment an Agreement Containing Consent Order with Respondent, incorporating a Decision and Order (the "Order"), which provides, among other things, that Respondent divest the Hemodialysis Bloodline Assets, enter into agreements – if necessary – providing the Acquirer with transition services, and engage a monitor to monitor Respondent's compliance with its obligations under the Order;

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Order and appoint Monitor pursuant to the Order to monitor Respondent's compliance with the terms of the Order, and Monitor has consented to such appointment;

WHEREAS, the Order further provides that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Order;

WHEREAS, this Agreement, although executed by Monitor and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or Monitor under the Order, except for those obligations under the confidentiality provisions herein, until the Order has been approved by the Commission;

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

All capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Order.

ARTICLE I

1.1 Powers of Monitor. Monitor shall have the rights, duties, powers and authority conferred upon Monitor by the Order that are necessary for Monitor to monitor Respondent's compliance with the Order. No later than one day after the Order becomes final, Respondent hereby transfers to Monitor all rights, powers, and authorities necessary to permit Monitor to perform its duties and responsibilities consistent with the purposes of the Order. Any

descriptions thereof contained in this Agreement in no way modify Monitor's powers and authority or Respondent's obligations under the Order.

1.2 Monitor's Duties. Monitor shall monitor Respondent's compliance with the Order, including, but not limited to:

- a. Assuring that Respondent complies with all of the obligations, and performs all of the responsibilities, of Respondent as required by the Order in this matter;
- b. Monitoring Relevant Agreements; and
- c. Assuring that Confidential Business Information is not received or used by Respondent or Acquirer, except as allowed in the Order in this matter.

1.3 Duration of Monitor's Authority. Monitor shall have all powers and duties described above and consistent with the Order for the term set forth in the Order.

1.4 Confidential and Proprietary Information. Monitor shall enter into a confidentiality agreement, in substantially the form attached hereto as Exhibit A, agreeing to be bound by the terms and conditions of the Order. Monitor must retain and maintain all Material Confidential Information (as defined in the confidentiality agreement) it receives from either Respondent or Acquirer on a confidential basis, except as is permitted by the Order. Monitor may disclose confidential information only to persons employed by or working with Monitor under this Agreement to the extent reasonably required to allow Monitor to discharge its duties hereunder, to persons employed at the Commission, and as permitted by Respondent or Acquirer with respect to information they provided Monitor. Monitor shall use confidential information solely for the purpose of discharging Monitor's duties hereunder. Monitor shall require any person retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which Monitor must adhere under this Agreement. Monitor shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of its duties under this Agreement, shall use such information solely for the purpose of discharging Monitor's duties hereunder, and shall not disclose any confidential information relating thereto.

1.5 Restrictions. Monitor shall not be involved in any way in the ownership, management, production, supply and trading, sales, marketing, and financial operations of the competing products of Respondent.

1.6 Reports. Monitor shall report to the Commission in compliance with the terms of the Order and as otherwise requested by the Commission staff.

1.7 Access to Records, Documents and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to Respondent's personnel, to include those employees to whom the acquirer may make offers, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondent's compliance

with the obligations of Respondent under the Order in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent shall cooperate with any reasonable request of Monitor and shall take no action to interfere with or impede Monitor's ability to monitor Respondent's compliance with the Order. Monitor shall give Respondent reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondent's operations.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of Respondent, and with the consent of Respondent, which consent shall not be unreasonably withheld, such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out Monitor's duties and responsibilities as allowed pursuant to the Order.

2.2 Monitor Compensation. Monitor shall be compensated by Respondent for its services under this Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit B for time spent in connection with the discharge of its duties under this Agreement and the Order. In addition, Respondent will pay: (a) out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the orders; and (b) fees and disbursements reasonably incurred by any advisor appointed by Monitor pursuant to Paragraph 2.1. At its own expense, Respondent may retain an independent auditor to verify such invoices. Monitor shall provide Respondent with monthly invoices for time and expenses that include details by timekeeper, time and activity, and an explanation of all matters for which Monitor submits an invoice to Respondent. Respondent shall pay such invoices within thirty (30) days of receipt. Monitor and Respondent shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

2.3 To the extent available, Respondent will provide Monitor with temporary workspace and access to office equipment owned or used by Respondent at sites Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor agrees to comply with all of Respondent's safety and security regulations, instructions and procedures while at Respondent's sites.

ARTICLE III

3.1 Monitor's Liabilities and Indemnification. Respondent shall indemnify Monitor and hold Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor'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 material breach, gross negligence, willful or wanton acts, or bad faith by Monitor. Monitor's maximum liability to Respondent relating to services

rendered in accordance with this Agreement (regardless of form of action, whether in contract, statutory law, or tort) shall be limited to an amount equal to the total sum of the fees paid to Monitor by Respondent. Any claim arising from this Agreement that Respondent may have against Monitor must be brought no later than one (1) year following the termination or expiration of this Agreement. In the performance of its duties under this Agreement, Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of its own business affairs. Monitor shall not be liable for any delays or other failures to perform resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority. Monitor warrants that it will perform its obligations hereunder in good faith. R. Shermer & Company disclaims other warranties, expressed or implied, other than those expressly agreed to in writing between the Parties.

3.2 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by the substantive laws of Massachusetts, including all matters of construction, validity and performance. The Order shall govern this Agreement, and any provisions herein which conflict with or are inconsistent with the Order may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

3.3 Monitor's Removal. If the Commission determines that Monitor ceases to act or fail to act diligently and consistent with the purpose of the Order, Respondent is authorized to and shall, upon written request of the Commission, terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Order.

3.4 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the confidentiality provisions herein.

3.5 Termination. This Agreement shall terminate the earlier of: (a) thirty (30) days following the termination date set forth in the applicable Order; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of Monitor; or (d) when Respondent's last obligation under the Order and the Relevant Agreements that pertains to Monitor's service has been fully performed; provided, however, that the Commission may require that Respondent extend this Agreement or enter into an additional agreement with Monitor as may be necessary or appropriate to accomplish the purposes of the Order. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

3.6 Conflicts of Interest. If Monitor becomes aware during the term of this Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by Monitor of any of its duties under this Agreement, Monitor shall promptly inform Respondent and the Commission of any such conflict.

3.7 Disputes. In the event of a disagreement or dispute between Respondent and Monitor concerning Respondent's obligations under the Order, and in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the individual in charge of the Compliance Division of the Commission's Bureau of Competition, whose determination shall be final with respect to all such matters.

3.8 Disclosure of Information. Nothing in this Agreement shall require Respondent to disclose any material or information that is subject to a legally-recognized privilege or that Respondent is prohibited from disclosing by reason of law or an agreement with a third party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR:

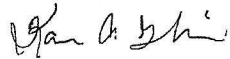
R. SHERMER & COMPANY



Richard A. Shermer
President

RESPONDENT:

FRESENIUS MEDICAL CARE HOLDINGS, INC.



Karen A. Gledhill
Senior Vice President and General Counsel

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this "Agreement") is made this 29th day of November, 2018, by and between FRESENIUS MEDICAL CARE HOLDINGS, INC., a New York corporation ("FMCH"), and RICHARD A. SHERMER of R. SHERMER & COMPANY ("Monitor") for the purpose of maintaining the Material Confidential Information (as defined below) of FMCH which the Monitor receives, prior to and from time to time after, the date of this Agreement from FMCH in connection with the Monitor's performance of its obligations under the Monitor Agreement (as defined below). Acknowledging the receipt of good and adequate consideration and intending to be legally bound, the parties agree as follows:

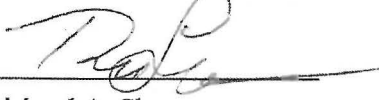
1. Definitions.
 - a. "Material Confidential Information" means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to FMCH or FMCH's business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, processes, or other trade secrets.
 - b. "Monitor Agreement" means the Monitor Agreement, dated as of November 29, 2018, by and between FMCH and the Monitor.
 - c. Capitalized terms used but not defined herein have the meanings given in the Monitor Agreement.
2. The Monitor acknowledges that it has been informed of the confidential and proprietary nature of FMCH's Material Confidential Information. The Monitor agrees to be bound by the terms and conditions of the Order that are related to Material Confidential Information, and to retain and maintain all Material Confidential Information it receives, directly or indirectly, from FMCH (including from any of its consultants, accountants, attorneys and other representatives) on a confidential basis, except as is permitted or required by the Order. The Monitor may disclose Material Confidential Information only to persons employed by or working with the Monitor under the Monitor Agreement who have a need to know (subject to the following sentence) and to persons employed at the Commission, in each case in connection with the Monitor's performance of its obligations under the Monitor Agreement, and as otherwise permitted by FMCH in writing. The Monitor shall require any person employed by or working with the Monitor under the Monitor Agreement to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which the Monitor must adhere under this Agreement. Without limiting the generality of the foregoing, the Monitor shall not disclose the Material Confidential Information it receives directly or indirectly from FMCH to the Acquirer. The Monitor shall use the same degree of care as it uses to protect the confidentiality of its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Material Confidential Information of FMCH. The Monitor shall store the Material Confidential Information separate from the confidential information of any other Persons (including the Acquirer) and implement processes and procedures to ensure that the Material

Confidential Information is not accessible by any other Persons, except as otherwise expressly contemplated by this Section 2. The Monitor shall be entitled to provide reports containing Material Confidential Information to persons employed at the Commission, which reports may be shared between and among persons employed at the Commission.

3. The Monitor shall use Material Confidential Information solely as necessary to perform its obligations under the Monitor Agreement. Material Confidential Information of FMCH may not be copied, reproduced or translated into another format or language, or decompiled, reverse engineered or transmitted without FMCH's prior written consent, except in connection with the performance by the Monitor of its obligations under the Monitor Agreement.
4. Material Confidential Information shall not include any information that:
 - (i) is at the time of disclosure, or thereafter becomes, through a source other than the Monitor, publicly known;
 - (ii) is subsequently learned from a third party (other than the Acquirer) that does not impose an obligation of confidentiality on the Monitor;
 - (iii) was known to the Monitor at the time of disclosure; or
 - (iv) is developed independently by the Monitor.
5. The nondisclosure obligations set forth herein shall survive for a period of five (5) years after the termination of the Monitor Agreement.
6. The Monitor acknowledges and agrees that the Material Confidential Information received from FMCH is and shall remain, *vis-a-vis* the Monitor, the sole and exclusive property of FMCH.
7. The Monitor acknowledges that monetary remedies will be inadequate to protect Material Confidential Information and that injunctive relief will be appropriate to protect such rights. The Monitor acknowledges that FMCH will be irreparably damaged to the extent that any of the terms of this Agreement are violated and agrees that such terms shall be enforceable through (i) issuance of an injunction restraining the unauthorized copying, duplication, use, dissemination or disclosure of any Material Confidential Information, or (ii) any other legal or equitable remedies, which shall be cumulative with and not exclusive of any other remedy or remedies.
8. All Material Confidential Information transmitted hereunder, and, except as otherwise required by the Commission, all copies thereof, shall be promptly returned to FMCH upon written request, or destroyed at FMCH's option, except that the Monitor may upon written notice to FMCH retain a single complete copy of the Material Confidential Information solely for use in connection with the prosecution or defense of any dispute between FMCH and the Monitor arising from this Agreement.

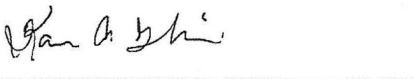
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

R. SHERMER & COMPANY



Richard A. Shermer
President

FRESENIUS MEDICAL CARE HOLDINGS, INC.



Karen A. Gledhill
Senior Vice President and General Counsel