

# Exhibit G

**AMERICAN ARBITRATION ASSOCIATION**

<b>UNITED HEALTHCARE SERVICES, INC.</b>	)	
<b>and UNITEDHEALTH GROUP INCORPORATED,</b>	)	
	)	
<b>Claimants,</b>	)	
	)	
<b>v.</b>	)	<b>No. 01-23-0001-9735</b>
	)	
<b>JONATHAN HAMDORF,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND INTERIM AWARD GRANTING TEMPORARY INJUNCTIVE RELIEF**

In this arbitration, United Healthcare Services, Inc. (“United Healthcare”) and UnitedHealth Group Incorporated (“UHG”) (collectively, “Claimants”) assert claims against Jonathan J. Hamdorf (“Hamdorf” or “Respondent”) to enforce various restrictive covenants contained in Stock Agreements executed during Respondent’s employment with United Healthcare. The claims are set for a Final Evidentiary Hearing beginning November 6, 2023.

This matter is before the undersigned Arbitrator, Angela D. Gupta (the “Arbitrator”), on Claimants’ Motion for Interim Measures Under AAA Employment Rule 32 seeking preliminary injunctive relief (“Motion Seeking Preliminary Injunctive Relief”). On August 1, 2023, the Arbitrator held a virtual evidentiary hearing during which the parties presented documentary evidence and the testimony of two witnesses: Kevin Sparks, President and Chief Executive Officer of the United Community Plan of Kansas; and Respondent, Jonathan Hamdorf. Following the hearing, the parties submitted proposed findings of fact and conclusions of law, and response briefing, in accordance with the Arbitrator’s order. After due consideration of the evidence and

the parties' submissions, the Arbitrator now issues Findings of Facts, Conclusions of Law, and an Interim Award Granting Temporary Injunctive relief, as set forth below.<sup>1</sup>

## **FINDINGS OF FACT**

### **UHG and United Healthcare**

1. UHG is a diversified health care company that offers health care coverage and benefits, as well as other health-related services, through a family of closely related affiliate companies. Stipulation, ¶ 1, Ex. 1A. UHG is a publicly-traded holding company with no employees. Declaration of Julie Hendricks, ¶ 3.

2. United Healthcare, a wholly-owned subsidiary of UHG, offers health care benefits for individuals, employers, and Medicare and Medicaid beneficiaries. Declaration of Julie Hendricks, ¶ 3; Stipulation, ¶ 2.

3. United Healthcare is one of three companies, or managed care organizations ("MCOs"), that currently provide Medicaid insurance plans to eligible Kansans under KanCare 2.0, the state's Medicaid program. The other MCOs are Sunflower Health and Aetna. Tr. 27:1-4. The three MCOs were awarded the KanCare 2.0 contracts under the state's request for proposals ("RFP") process in 2018. Tr. 337:25-338:1. The KanCare 2.0 contracts are currently scheduled to expire on December 31, 2024. Stipulation, ¶ 4; Tr. 48:12-23.

### **Jonathan Hamdorf**

4. In July of 2017, Jonathan Hamdorf began working as the Director of Policy for the State of Kansas. Shortly thereafter, in the fall of 2017, Hamdorf became the Kansas Medicaid

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<sup>1</sup> Any finding of fact that is actually a conclusion of law should be treated as such. Any conclusion of law that is actually a finding of fact should be treated as such.

Director. In this position, Hamdorf was responsible for the Kansas Medicaid program and all of its functions. Ex. 39, ¶ 11. Additionally, Hamdorf oversaw the state's RFP procurement process in 2018 for KanCare 2.0, which awarded contracts for three . Hamdorf Decl., ¶¶ 14-16, Ex. 39.

5. In January of 2019, Hamdorf resigned from his position as Kansas Medicaid Director. Thereafter, Hamdorf formed a consulting group and provided consulting services for United Healthcare and others. Hamdorf Decl., ¶ 24. Additionally, Hamdorf served as Executive Director of the Kansas Association of Medicaid Health Plans, which consisted of the three MCOs that currently serve the Medicaid population under KanCare 2.0, *i.e.* United Healthcare, Sunflower, and Aetna. Hamdorf Decl., ¶ 24; Tr. 330:10-331:20.

6. Around July 13, 2020, Hamdorf began working for United Healthcare as Director of Health Plan Operations for the Kansas division of Community and State, which is United Healthcare's Medicaid line of business in Kansas. Stipulation, ¶ 5, Ex. 1A. Outwardly, both Hamdorf and United Healthcare referred to Hamdorf as the Chief Operating Officer ("COO") of United Healthcare's Kansas Medicaid Health Plan. Stipulation, ¶ 8, Ex. 1A. Hamdorf's starting base salary was \$195,000. Offer of Employment, Ex 1.

#### United Healthcare's Medicaid Business in Kansas

7. Since 2013, United Healthcare has contracted with the State of Kansas to serve Medicaid consumers through its United Community Plan of Kansas. Stipulation, ¶ 4. United Healthcare's current contract is under KanCare 2.0, the state's managed care program. Stipulation, ¶ 3. This contract brings in over \$1 billion dollars in revenue annually to United Healthcare, resulting in employment for hundreds of people. Transcript of Hearing on August 1, 2023 ("Tr.") at 27:20-25.

8. Kansas announced that, in the fall of 2023, it will be issuing another RFP to determine who will obtain contracts to provide Medicaid plans beginning in 2025 under KanCare 3.0. The most recent indication is that the target release date for this RFP will be around September 29, 2023. Stipulation, ¶ 9, Ex. 1A.

9. The Kansas RFP process is a highly competitive, time-consuming, and expensive process. Tr. 108:9 to 117:22. All information that is submitted in the RFP remains confidential until the end of the process; even after the contracts are awarded, certain pricing information is not released to the public. Tr. 113:8-24.

10. A healthcare company's preparation for the Kansas RFP process is highly confidential; it is a highly competitive process that requires differentiation, *i.e.* the ability to synthesize business operations and craft responses based on all available information. Tr. 111:12 to 112:5, 115:5-8.

United Healthcare's Business Strategies for Kansas Medicaid

11. United Healthcare is a high-performing plan; it scores high in industry standard measurements on member satisfaction and member services. Tr. 27:12-19, Tr. 315:1-5.

12. United Healthcare utilizes a combination of public and private information to develop Medicaid business strategies in an attempt to differentiate its health plan from its competitors. Tr. 76:2-77:8.

13. For instance, as a result of the way that KanCare members are assigned to health care plans, the participating MCOs implement different strategies to try to increase the number of members who will choose their plans. The most successful strategies work with providers that serve the underinsured or noninsured, as these providers tend to help patients enroll in Medicaid and may recommend one MCO over another to the new enrollees. Tr. 316:6-16.

14. Under KanCare 2.0, upon enrollment, Kansas Medicaid members have an option to choose among the three MCO's health plans. Tr. 121:3-6. Approximately 40 percent of KanCare members exercise the option to choose their own plan. Of these members, roughly 40 to 50 percent choose United Healthcare's plan, which is the highest member selection rate among the three MCOs. Tr. 121:9-15. The remaining Kansas Medicaid members who do not opt to select a plan are automatically assigned to a plan by an algorithm that seeks to balance membership among the three plans. Tr. 314:16-22.

15. Additionally, the KanCare 2.0 contracts have multi-million-dollar claw-back clauses under which the state can take money back from an MCO that does not meet qualifications of the pay-for-performance program. Tr. 53:16 to 54:1. Essentially, this entails 10 to 12 performance measures under which United Healthcare consistently outperforms the other two MCOs each year. Tr. 54:5-9. For instance, last year, United Healthcare had an attainment rate of 80 percent, whereas its competitors were somewhere between 20 to 30 percent. Tr. 54:10-12. This reflects the plan's actual financial performance, which includes the capabilities, or healthcare quality initiatives, that are necessary to be successful under the pay-for-performance program. Tr. 54:13-18.

16. Another Medicaid business strategy involves the development of value-added benefits wherein, each year, an MCO comes up with its own benefits to try to attract members to its plan. Tr. 71:22 to 73:4. Although the end result is publicly available online, the behind-the-scenes development of these benefits involves metrics and strategies that are not publicly available. Tr. 72:8 to 73:4.

17. United Healthcare keeps a private metric called the net promoter score (“NPS”), which is based on a survey designed to measure how it is doing with its membership. Tr. 73:21 to 75:15. This information is not publicly available. Tr. 74:8-13.

18. One of United Healthcare’s key differentiation strategies was called the “Provider Top 25,” which aimed to gain membership in the competitive Medicaid environment. Tr. 37:1-24. Under this strategy, United Healthcare aimed to improve its relationship with, service to, and support of its top providers in hopes that the providers would be more likely to recommend United Healthcare to potential new Medicaid members. Tr. 38:5-24. The Top 25 strategy fell under Hamdorf’s purview, and he was involved in driving that strategy with his direct reports. Tr. 86:19-23. Development and implementation of the strategy involved non-public information including the business value of United Healthcare’s provider relationships, how it derived membership, and financial information regarding the benefit-cost ratio relating to how many members United Healthcare had with a particular provider. Tr. 87:4 to 88:13.

19. United Healthcare’s relationship with providers is one of its key differentiating strategies in Kansas. Tr. 41:10-21. United Healthcare is continually working on strategies regarding provider relations; provider products and services; and providers’ thoughts on United Healthcare. Tr. 41:10-21. For example, United Healthcare looks at the providers’ cost and quality metrics and medical loss ratio to help providers ascertain strategies to improve their quality of services. Tr. 42:14 to 44:7.

20. Additionally, the way in which United Healthcare compensates providers is an important element of its provider strategy. Tr. 45:19-22. In this regard, United Healthcare’s strategy is to initially pay providers at the Medicaid fee schedule and reward them at the back end

if they meet certain performance criteria. Tr. 45:23 to 46:9. The details of this strategy are not publicly available. Tr. 46:10-13, 179:3-24.

21. Although the list of United Healthcare’s providers is publicly available, its business strategies with regard to provider services are not. Tr. 40:9-21.

22. Writing about how a healthcare plan distinguishes providers and addresses providers’ concerns is important in the Kansas Medicaid RFP process. Tr. 39:4-8.

23. Because the RFP process is so competitive and transparent, every little edge by which an MCO can differentiate itself can impact the RFP. Tr. 263:11-24.

24. United Healthcare is continually trying to differentiate itself in its business strategies from potential competitors in the Kansas Medicaid market. Tr. 49:19-23. Some of this information, particularly with respect to a provider’s financial performance, is not publicly available. Tr. 44-46:13.

#### Hamdorf’s Employment with United Healthcare

25. Nearly everything Hamdorf did in his role for United Healthcare was related to operations and management of its Medicaid contract with the State of Kansas. Hamdorf Decl., ¶ 34. This included contract compliance and working on state audits; managing the day-to-day operations for claims payment; policy implementation; reporting and analytics; quality and pay-for-performance achievement; provider escalations and issue resolution; vendor management; and serving as the health plan’s escalation point to the national matrix teams. Hamdorf Decl., ¶ 34. Hamdorf also oversaw efforts to grow United Healthcare’s Home- and Community-Based Services (“HCBS”) network; approved so-called “single-case agreements,” *i.e.* paying providers individualized rates for certain member services; and oversaw United Healthcare’s efforts to



maintain positive relationships with its top Medicaid providers in Kansas. Hamdorf Decl., ¶¶ 34-36. Approximately 60 employees reported to Hamdorf. Hamdorf Decl., ¶ 39(a).

26. In addition to his responsibilities over core operations, Hamdorf was a member of United Healthcare's senior leadership team. Tr. 36:10-16. In this capacity, Hamdorf was involved with, and contributed to, the leadership team's development and evaluation of strategies to differentiate and improve the quality of United Healthcare's Medicaid services in Kansas. Tr. 6:13-25. Topics addressed in provider growth strategy meetings included information regarding finances, members, cost, quality, and performance. Tr. 78:14-22. Hamdorf also participated in senior leadership meetings regarding business operations, financial performance, and state relationships. Tr. 80:4-22. Additionally, Hamdorf handled communications with the state on behalf of United Healthcare. Tr. 80:21-22.

27. As a member of senior management, Hamdorf participated in annual strategic planning meetings designed to assess the company's strengths and weaknesses in order to develop strategies as to what the plan needed to work on to remain competitive. Tr. 82:20 to 83:25.

28. Hamdorf testified that he would consider almost everything that he touched at United Healthcare to be confidential. Tr. 383:20-22.

29. Hamdorf oversaw the area responsible for healthcare quality initiatives. Tr. 54:15-19. Hamdorf was privy to United Healthcare's financial information, performance measures, and strategies for success. Tr. 54:20 to 55:7. As part of the management team, Hamdorf contributed to and led strategies in this regard. Tr. 54:20 to 55:7. Hamdorf's knowledge of this information would be helpful to a competitor in writing an RFP for Kansas Medicaid. Tr. 55:2-9.

30. Hamdorf was personally involved in creating a strategy to streamline the single case agreement process, *i.e.* to standardize base rates for individualized services designed to keep

a person with special needs at home. Tr. 56:5 to 59:2. Hamdorf worked with the medical economics team to try to come up with a uniform rate. Tr. 91:11-20. Although the strategy he created ultimately was not adopted, Hamdorf's knowledge and experience from working at United Healthcare in this area would be useful to a competitor in writing an RFP for Kansas Medicaid. Tr. 59:12 to 61:10, 91:20 to 92:7.

31. The KanCare 2.0 contracts were initially slated to terminate at the end of 2023, which would have entailed holding an RFP process in the fall of 2022 for healthcare plans to compete for future Medicaid business in Kansas. Tr. 48:15-18.

32. In late 2021 or early 2022, United Healthcare began taking steps to prepare for an RFP process to occur in the fall of 2022. Tr. 48:15 to 49:1.

33. In January of 2022, Hamdorf participated in a four-hour strategy session to plan for the anticipated upcoming RFP process in the fall of 2022.<sup>2</sup> Tr. 123:20-128:19, 290:20-25.

34. On May 13, 2022 Hamdorf sent an email asking certain individuals to provide feedback on an email he had drafted regarding, *inter alia*, "the challenges we are having with [provider] credentialing and contracting and how that could negatively affect our upcoming RFP bid." Ex. 30, Tr. 292:11 to 295:1.

35. On the same date, Hamdorf sent an email to his team providing a recap of a semiannual business review ("SABR") meeting. In the email, Hamdorf listed one of the main take-aways of the meeting as follows:

We are ready to respond to the upcoming RFP. Joe specifically commented on how we don't need corporate support to come up with programs to try to make our health plan look good for the RFP because we are already doing really impressive things. We need to focus on our writing/communicating what we do and holding our corporate partners to the standard that Kansas demands.

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<sup>2</sup> As noted, the KanCare 2.0 contracts were initially slated to terminate at the end of 2023, which would have entailed holding an RFP process in the fall of 2022 for healthcare plans to compete for future Medicaid business in Kansas. Tr. 48:15-18.

Ex. 31 (emphasis in original), Tr. 295:2 to 296:19. In the email, Hamdorf listed highlights from the meeting that included the following: “We wrapped up with Kim Crawford presenting on our **strategy on how we will be approaching the KanCare 3.0 RFP.**” Ex. 31 (emphasis in original), Tr. 297:8-18.

36. In May of 2022, United Healthcare learned that the Kansas legislature passed a bill that extended KanCare 2.0 for an additional year, resulting in a push back of the next RFP process to the fall of 2023. Tr. 48:19-23, 130:16-17.

#### Hamdorf’s Resignation from United Healthcare

37. On September 17, 2022, Hamdorf voluntarily resigned from his position at United Healthcare. Hamdorf Decl., ¶ 42.

38. Thereafter, Hamdorf was approached by Aetna and other entities with respect to employment opportunities within those organizations. Hamdorf Decl., ¶ 43. Because those entities were existing MCOs in Kansas or otherwise affiliated with Kansas Medicaid, Hamdorf declined to explore the opportunities because he did not want to violate any of the restrictive covenants that he had entered into during his employment with United Healthcare (discussed below). Hamdorf Decl., ¶ 43, Tr. 279:5-13.

39. In the fall of 2022, Hamdorf began working for Insemna, a market access company based in Georgia. Hamdorf Decl., ¶ 42.

Hamdorf's Employment with UCare

40. UCare is a Minnesota not-for-profit that currently offers Medicaid health coverage exclusively in Minnesota. Hamdorf Decl., ¶ 47. UCare currently has no Medicaid business in any other state. Hamdorf Decl., ¶ 47.

41. UCare has decided to explore opportunities in other states because, last year, the Minnesota legislature waived the provision that allowed only nonprofits to bid on Medicaid RFPs. Tr. 362:23 to 363:8. As a result, UCare is now facing more competition in the Minnesota Medicaid market. Tr. 363:9-21

42. In December of 2022, Hamdorf met with a representative of UCare Minnesota ("UCare") and discussed opportunities with UCare regarding its potential expansion into Kansas and other states. Hamdorf Decl., ¶ 44.

43. On February 27, 2023, Hamdorf began working for UCare as its Market President for Kansas. Hamdorf Decl., ¶¶ 46, 49. In this role, Hamdorf is UCare's subject matter expert on Medicaid, both in Kansas and nationally. Hamdorf Decl., ¶ 47. Hamdorf serves as UCare's field level representative in Kansas to meet with providers, members, state staff and stakeholders to educate them about UCare's beliefs, principles, culture, and experience, and also to get an understanding of the needs of the state and communities. Hamdorf Decl., ¶ 47. Hamdorf also attends national conferences for UCare and speaks as its representative at national events. Tr. 364:16-19.

44. UCare hired Hamdorf to help build its brand and make UCare recognizable. Tr. 364:10-13. Hamdorf currently works in Kansas and two other markets to evaluate the market and build the UCare brand. Tr. 364:14-25. Hamdorf also speaks at national conferences to promote the brand of UCare and its understanding of Medicaid. Tr. 364:14-22. About 80 to 85 percent of

Hamdorf's time at UCare is devoted to meeting with Kansas stakeholders and providers. Tr. 365:11-14.

45. In early March of 2023, UCare sent a communication thanking a Kansas healthcare provider for the opportunity "to initially discuss where you see opportunities to strengthen the KanCare program for the upcoming RFP and help [UCare] better understand some of the current pain points." Message to J.M. Williams, Ex. 36. The message further stated:

Based on [our] conversation and hearing from the community how Kansas is really a unique program with a diverse population, we decided to hire a market president who had experience in both Kansas Medicaid and in working for an existing health plan in Kansas. Jon Hamdorf has come on board (starting just this week!) to be our Market President in Kansas and we are very excited about having him on our team. We feel he possesses a unique perspective on Kansas with his experience and reputation of listening to providers and stakeholders and working towards mutually beneficial outcomes.

*Id.*

46. In his position at UCare, Hamdorf has met with various Kansas providers who have provider relationships with all three existing Kansas Medicaid MCOs – United Healthcare, Sunflower, and Aetna. Hamdorf Decl., ¶ 50. The purpose of these meetings has been to introduce UCare to the providers and to listen to the providers regarding aspects of KanCare 2.0 with which they are satisfied, aspects with which they are not satisfied, and changes that they would like to see made in KanCare 3.0. Hamdorf Decl., ¶ 50, Tr. 365:1-10. The goal of these meetings is to assist UCare in its evaluation of whether to seek entry into the Kansas Medicaid market and, if so, how to tailor a program to meet the needs of Kansas's providers and members. Hamdorf Decl., ¶ 50.

47. As of June 2023, Hamdorf has met with over 100 providers in Kansas, asking each how they would like UCare to work with them. Hamdorf Decl., ¶ 50.

48. In order for UCare to be competitive in the Kansas RFP process, it will need to be able to show that it will be able to form a home- and community-based service agreement and hospital network to serve Medicaid members. Tr. 112:10 to 113:7.

49. Hamdorf's role is to be the "brand ambassador" for UCare and to use his network to introduce who UCare is, because it currently has no brand in Kansas. Tr. 298:25 to 299:10.

50. On June 28, 2023, UCare issued a press release announcing that it had hired Hamdorf to leverage "more than a decade of public health plan leadership experience in Kansas to drive UCare's bid for a 2025 Kansas Medicaid contract." Ex. 35. The press release was titled "UCare Hires Former KanCare Director of Market Expansion" with a subtitle stating, "Jon Hamdorf leads nonprofit health plan's bid for KanCare Medicaid contract." *Id.* The article contains the following quote by Hamdorf: "I'm thrilled to lead the UCare team in Kansas and help fulfill our health plan's mission of improving health through innovative services and partnerships across communities." *Id.*

51. UCare has applied for and is in the process of obtaining a license to sell insurance in Kansas. Tr. 322:15-18.

52. UCare is currently laying the groundwork to submit a contract proposal in the 2023 Kansas Medicaid RFP, although its Board of Directors has not yet formally approved it to move forward with the RFP. Tr. 298:14-22.

53. If Hamdorf assists UCare in the Kansas RFP process, his knowledge of United Healthcare's strengths and weaknesses and how it synthesizes business operations information would be extremely helpful to UCare in writing an RFP and competing with United Healthcare to obtain Kansas Medicaid business. Tr. 115:10-12, 119:7-21.

54. If Hamdorf assists UCare in the Kansas RFP process, his knowledge and insights regarding United Healthcare's confidential and strategic information would necessarily inform UCare on ways that it could differentiate itself from United Healthcare in the RFP process, including decisions as to what information to include and not include in its RFP. Tr. 119:7-25. Tr. 119:22-25.

55. The Kansas RFP process typically requires a responding company to provide the photos and biographical summaries of staff members who will be working on its programs. Tr. 115:16-23. In light of Hamdorf's extensive experience with Kansas Medicaid, including his experience working at United Healthcare, UCare's ability to list Hamdorf in its RFP would be helpful in a bid seeking Kansas Medicaid business. Tr. 116:2-7.

#### Hamdorf's Alleged Solicitation of a United Healthcare Employee

56. Sparks testified that Wade Hapgood, a United Healthcare employee in external affairs, reported that Hamdorf told him that, if UCare won the KanCare 3.0 contract, it would hire him at double the salary that United Healthcare was paying him. Tr. 139:3-22. Sparks further stated that, around the same time, UCare posted a job opening for an external affairs position. Tr. 139:8-22.

57. Hamdorf testified that he and Hapgood are good friends, and the conversation happened in the context of them getting together socially and Hapgood expressing concern about feeling stressed financially in light of the uncertainty regarding whether United Healthcare would be successful in the upcoming RFP for KanCare 3.0. Tr. 370:15 to 372:4. Hamdorf stated that, the next day, he called Hapgood and said that, if UCare were to win the RFP and United were to lose, Hamdorf would vouch that Hapgood would make "a really good public affairs employee" for UCare. Tr. 372:5-12.

58. Hamdorf testified that, at the time of his conversation with Hapgood, Hamdorf was contemplating that any job for Hapgood would not begin until after September of 2024 (*i.e.* after two years would be up under Hamdorf’s restrictive covenants), and he believed the possibility of UCare winning the bid was a long shot. Tr. 373:3-17.

59. Hamdorf stated that the job posting was for a governmental relations position, which is different than a public affairs employee. Tr. 372:13-19. Hamdorf stated the governmental relations position was not filled and the posting was taken down about a month later. Tr. 372:20-24.

#### Hamdorf’s Restrictive Covenants

60. On March 10, 2021, Hamdorf signed two stock-related agreements with UHG (collectively, “2021 Stock Awards”). The first was a Non-Qualified Stock Option Award granting him an option to purchase 322 shares of UHG common stock. Ex. 9. The second was a Restricted Stock Award granting him the right to receive 69 shares of UHG common stock. Ex. 10. As set forth below, under the 2021 Stock Awards, Hamdorf agreed to certain restrictive covenants, including nondisclosure of confidential information learned during the course of employment; non-solicitation of competitive business; and non-competition with respect to certain activities, products, and services.

61. The 2021 Stock Awards contain virtually identical language with respect to, *inter alia*, the provisions discussed below. Both Awards state that, subject to the terms and conditions stated therein, the stock-related awards are granted by UHG, which is defined as the “Company,” to Hamdorf, who is defined as the “Participant.” Exs. 9 and 10. The Awards define an “Affiliate” to mean: “(i) any entity that, directly or indirectly through one or more intermediaries, is controlled



by the Company and (ii) any entity in which the Company has a significant equity interest as defined by the Committee.”<sup>3</sup> Ex. 9, ¶ 10(a); Ex. 10, ¶ 3(a).

62. The 2021 Stock Awards further provide that, “[i]n consideration for the terms of this Award certificate and the Company’s sharing of Confidential Information with the Participant, . . . the Participant agrees to Restrictive Covenants [regarding non-disclosure, non-solicitation, and non-competition].” Ex. 9, ¶ 4; Ex. 10, ¶ 8. The Awards provide that the Participant’s obligations under the restrictive covenants “shall apply on a nationwide basis anywhere in the United States.” Ex. 9, ¶ 4(d); Ex. 10, ¶ 8(d).

63. Regarding non-disclosure, the 2021 Stock Awards state as follows:

Participant has or will be given access to and provided with sensitive, confidential, proprietary and/or trade secret information (collectively, “Confidential Information”) in the course of Participant’s employment. Examples of Confidential Information include inventions, new product or marketing plans, business strategies and plans, merger and acquisition targets, financial and pricing information, computer programs, source codes, models and data bases, analytical models, customer lists and information, and supplier and vendor lists and other information which is not generally available to the public. Participant shall not disclose or use Confidential Information, either during or after Participant’s employment with the Company, except (i) as necessary to perform Participant’s duties, (ii) as the Company may consent in writing, or (iii) as permitted [under the Award].

Ex. 9, ¶ 4(a); Ex. 10, ¶ 8(a).

64. Regarding non-solicitation, the 2021 Stock Awards state as follows:

During Participant’s employment and for two years after . . . the termination of Participant’s employment with the Company . . . Participant shall not, without the Company’s prior written consent, directly or indirectly, for Participant or for any other person or entity, as agent, employee, officer, director, consultant, owner, principal, partner, shareholder, or in any other individual or representative capacity:

- (i) Solicit or conduct business with any business competitive with the Company from any person or entity: (A) who was a Company provider or

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<sup>3</sup> The “Committee” refers the Compensation and Human Resources Committee of UHG’s Board of Directors. Ex. 9 at 1; Ex. 10 at 1.

customer within the 12 months before Participant's employment termination and with whom Participant had contact regarding the Company's activity, products or services, or for whom Participant provided services or supervised employees who provided those services, or about whom Participant learned Confidential Information during employment related to the Company's provision of products and services to such person or entity, or (B) was a prospective provider or customer the Company solicited within the 12 months before Participant's employment termination and with whom Participant had contact for the purposes of soliciting the person or entity to become a provider or customer of the Company, or supervised employees who had those contacts, or about whom Participant learned Confidential Information during employment related to the Company's provision of products and services to such person or entity;

(ii) Raid, hire, employ, recruit or solicit any Company employee or consultant who possesses Confidential Information of the Company to leave the Company;

(iii) Induce or influence any Company employee, consultant, or provider who possesses Confidential Information of the Company to terminate his, her or its employment or other relationship with the Company; or

(iv) Assist anyone in any of the activities listed above.

Ex. 9, ¶ 4(b); Ex. 10, ¶ 8(b).<sup>4</sup>

65. Regarding non-competition, the 2021 Stock Awards state as follows:

During Participant's employment and for one year after the later of (i) the termination of Participant's employment with the Company . . . Participant shall not, without the Company's prior written consent, directly or indirectly, for Participant or for any other person or entity, as agent, employee, officer, director, consultant, owner, principal, partner, shareholder, or in any other individual or representative capacity:

(i) Engage in or participate in any activity that competes, directly or indirectly, with any Company activity, product or service that Participant engaged in, participated in, or had Confidential Information about during Participant's last 36 months of employment with the Company; or

(ii) Assist anyone in any of the activities listed above.

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<sup>4</sup> The 2021 Stock Awards provide alternative time periods for the duration of the non-solicitation and non-competition restrictions that are tied to the last vesting dates under the award certificates. *See* Ex. 9, ¶ 4(b) and (c); Ex. 10, ¶ 8(b) and (c). However, Claimants seek to enforce the Awards only with respect to time periods based on Hamdorf's termination of employment.

Ex. 9, ¶ 4(c); Ex. 10, ¶ 8(c).

66. Under other provisions in the documents, the 2021 Stock Awards link the Participant's right to vest and/or exercise options under the Awards to the Participant's continued employment with "the Company or any Affiliate." For instance, the Non-Qualified Stock Option Award provides that the option shares shall become exercisable over the course of four years. *See* Ex. 9 at 1. But the options shall terminate, subject to certain exceptions, "if the Participant ceases to be employed by the Company or any Affiliate." Ex. 9, ¶ 2. Similarly, the Restricted Stock Award provides vesting rights over the course of four years from the grant date "if Participant remains continuously employed by the Company or any Affiliate until the respective vesting dates," and further provides for early vesting, under certain conditions, when "the Participant ceases to be an employee of the Company or any Affiliate." Ex. 10, ¶¶ 2, 3.

67. On March 9, 2022, Hamdorf signed two additional stock-related agreements (collectively, "2022 Stock Awards") providing substantially similar benefits and terms and conditions as the 2021 Stock Awards. *See* Ex. 11 (awarding 174 option shares) and Ex. 12 (awarding 43 restricted units, or shares).

68. Regarding the Company's ability to obtain injunctive relief, the 2022 Stock Awards contain additional tolling provisions that state as follows:

[I]f unvested [Option Shares or Restricted Stock Units] continue to vest [under certain Sections of the Agreements] following the termination of Participant's employment with the Company or any Affiliate, then, with respect to the Restrictive Covenants [regarding Non-Solicitation or Non-Competition], the maximum period of time to which Company shall be entitled to injunctive relief is a total of two (2) years following the termination of Participant's employment with the Company or any Affiliate, not counting any time period that Participant is in violation of the Restrictive Covenants [regarding Non-Solicitation or Non-Competition] and during which time the running of the time periods for the restrictions set forth [regarding Non-Solicitation or Non-Competition] shall be tolled as permitted by applicable law such that the running of the two (2) year time period shall commence only once Participant is in compliance with the Restrictive Covenants.

Ex. 11, ¶ 3(b); Ex. 11, ¶ 7(b).

69. Hamdorf voluntarily signed the 2021 and 2022 Stock Awards and received valuable consideration thereunder. Tr. 277:4-288:24.

70. As discussed, in September of 2022, Hamdorf resigned from his position at United Healthcare. At that time, or shortly thereafter, United Healthcare understood that Hamdorf was going to work for a company outside of the Kansas area. Ex. 37, Sparks Declaration, ¶ 13.

71. In March of 2023, United Healthcare learned that Hamdorf was working for UCare to contact providers in Kansas with respect to developing potential Kansas Medicaid business. Ex. 36, March 2, 2023 email; Tr. at 136:8–137:12

72. On March 14, 2023, United Healthcare sent a letter to Hamdorf informing him that it believed his employment with UCare may violate his Restrictive Covenants. Ex. 15.

73. On March 20, 2023, Hamdorf responded and asserted that he was not in violation of the Restrictive Covenants. Ex. 13.

74. Between March 29, 2023, and April 10, 2023, the parties and/or their attorneys exchanged letters and emails regarding Hamdorf and his potential breach of the Restrictive Covenants. Exs. 14, 16-19. These communications did not resolve the dispute.

75. On May 1, 2023, United Healthcare and UHG filed their Demand for Arbitration and Statement of Claims, along with their Motion Seeking Preliminary Injunctive Relief. In the Motion, Claimants seek an Interim Award temporarily enjoining Hamdorf from: “(1) soliciting United employees, customers, and providers in violation of his non-solicitation obligations to United; (2) being employed in his role at UCare with responsibilities in Kansas for UCare’s potential Medicaid business; and (3) using or disclosing United’s confidential information.” Motion Seeking Preliminary Injunctive Relief at 1.

76. On July 14, 2023, Respondent submitted his Brief in Opposition to Claimants’ Motion for Interim Measures and Motion to Strike Claimants’ Claims (“Motion to Strike”). In addition to opposing the Claimants’ request for preliminary injunctive relief, Respondent asks the Arbitrator to strike the claims asserted in this arbitration based on the Kansas Public Speech Protection Act, K.S.A. § 60-5320, also known as the Kansas anti-SLAPP<sup>5</sup> statute. *Id.* at 3-4.

### **CONCLUSIONS OF LAW**

#### **Applicable Law**

77. Pursuant to the parties’ agreement, Minnesota law applies to the claims at issue in this matter. *See* Scheduling Order, ¶ I.A (dated July 1, 2023).

78. Under the parties’ arbitration agreement and AAA Employment Rule 32, the Arbitrator is vested with broad authority to grant interim measures, including preliminary injunctive relief. *See* Order Regarding Arbitrability of Claims and Authority to Issue Preliminary Injunctive Relief at 4-5 (dated July 18, 2023).

#### **Respondent’s Motion to Strike Claims Under Kansas Anti-SLAPP Statute**

79. Respondent seeks dismissal of Claimants’ claims based on the Kansas anti-SLAPP statute, K.S.A. § 60-5320. As noted, the parties agree that Minnesota law applies to the claims asserted in this arbitration. The parties have not briefed whether the Kansas statute applies in the arbitration in light of the choice of law provision. Regardless, even if the Kansas statute applies, the Arbitrator finds it does not preclude the claims asserted in this arbitration.

80. The stated purpose of the Kansas anti-SLAPP statute is “to encourage and safeguard the constitutional rights of a person to petition, and speak freely and associate freely, in

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<sup>5</sup> SLAPP stands for Strategic Lawsuits Against Public Participation.

connection with a public issue or issue of public interest to the maximum extent permitted by law while, at the same time, protecting the rights of a person to file meritorious lawsuits for demonstrable injury.” K.S.A. § 60-5320(a).

81. Subsection (d) provides the following procedure for bringing a motion to strike claims that may be subject to the statute:

A party may bring a motion to strike the claim if a claim is based on, relates to or is in response to a party’s exercise of the right of free speech, right to petition or right of association. A party bringing the motion to strike has the initial burden of making a prima facie case showing the claim against which the motion is based concerns a party’s exercise of the right of free speech, right to petition or right of association. If the moving party meets the burden, the burden shifts to the responding party to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a prima facie case. If the responding party meets the burden, the court shall deny the motion.

K.S.A. § 60-5320(d).

82. On this record, Respondent has failed to show that the claims asserted in this arbitration implicate his constitutional rights to freedom of speech, petition or association. Respondent argues that Claimants are seeking to prevent him from exercising First Amendment rights to speak, petition, and associate with respect to his activities in contacting providers and others with regard to the State of Kansas’s upcoming RFP for KanCare 3.0, which is a matter of public interest. *See* Motion to Strike at 3-4. However, the activities at issue arise from Respondent’s employment with UCare and its business efforts to market itself in the State of Kansas in preparation to submit a proposal in the KanCare 3.0 RFP, *i.e.* to obtain a contract and expand its business to provide health care benefits to Kansas Medicaid recipients.

83. Subsection (h)(2) of the anti-SLAPP statute excludes business or commercial activities as follows:

This section does not apply to . . . a claim brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out

of the sale or lease of goods, services or an insurance product, insurances services or a commercial transaction in which the intended audience is an actual or potential buyer or customer[.]

K.S.A. § 60-5320(h)(2).

84. Because the conduct at issue here involves Hamdorf’s speech with respect to business activities, *i.e.* UCare’s efforts to expand its business into the Kansas Medicaid market, the claims are exempted under K.S.A. § 60-5320(h)(2). Moreover, as set forth below, Claimants have shown a likelihood of prevailing on the merits of their claims, *i.e.* that Hamdorf’s activities on behalf of UCare are in breach of his restrictive covenants with Claimants. Accordingly, on this record, the Arbitrator concludes that the Kansas’ anti-SLAPP statute does not preclude the claims asserted in this arbitration. Respondent’s Motion to Strike is therefore denied.

85. Claimants ask the Arbitrator to award their reasonable attorneys’ fees and costs associated with responding to the Motion to Strike. *See* Claimants’ Reply in Support of Preliminary Injunctive Relief and Response to Motion to Strike at 6-7 (dated July 20, 2023). Subsection (g) of the anti-SLAPP statute states, in part, as follows: “If the court finds that the motion to strike is frivolous or solely intended to cause delay, the court shall award to the responding party reasonable attorney fees and costs related to the motion.” K.S.A. § 60-5320(g).

86. Here, the Arbitrator finds no evidence to support a conclusion that Respondent’s Motion to Strike was “solely intended to cause delay.” Although the Arbitrator has denied the Motion to Strike, it appears that Respondent asserted a good faith argument that a Texas court ruling provided persuasive reasoning as to why the Kansas statute’s commercial speech exemption should not apply. *See* Motion to Strike at 5-6 (citing *Abatecola v. 2 Savages Concrete Pumping, LLC*, No. 14-17-00678-CV, 2018 WL 3118601 (Tex. App. June 26, 2018)).

87. On this record, the Arbitrator declines to award reasonable attorneys’ fees and costs to Claimants.

### **Claimants' Motion for Preliminary Injunctive Relief**

88. Under Minnesota law, in determining whether to issue a preliminary or temporary injunction,<sup>6</sup> courts consider the following five factors: (1) the relationship between the parties before the dispute; (2) the relative harms to each party if the injunction is granted or not granted; (3) the likelihood of success on the merits; (4) considerations of public policy; and (5) the administrative burdens in supervising and enforcing the decree. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965); *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 163 (Minn. Ct. App. 1993). A temporary injunction may be granted if Claimants establish that “there is no adequate remedy at law and that denial of the injunction will result in irreparable injury.” *Sanborn Mfg.*, 500 N.W.2d at 163 (citation omitted).

89. The issuance of a temporary injunction is “an extraordinary equitable remedy.” *Metro Sports Facilities Comm’n v. Minnesota Twins P’ship*, 638 N.W.2d 214, 220 (Minn. App. 2002) (citing *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn.1982)). Its purpose is “to preserve the status quo until a trial can be held on the merits.” *Sanborn Mfg.*, 500 N.W.2d at 163 (citation omitted). In other words, the Arbitrator may issue a temporary injunction to preserve the facts and circumstances as they existed immediately before the challenged actions. *See Workers’ Comp. Recovery, Inc. v. Marvin*, No. A03-1549, 2004 WL 124404 (Minn. Ct. App. June 8, 2004).

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<sup>6</sup> It appears that Minnesota courts primarily use the term “temporary injunction” to describe what is often referred to as a “preliminary injunction.” In this ruling and Interim Award, the Arbitrator uses the terms “temporary injunction” and “preliminary injunction” interchangeably.



### Relationship of the Parties

90. As discussed in the factual findings above, Hamdorf was a high-level management employee for United Healthcare. His daily duties dealt with confidential information regarding the operations and management of its Medicaid health plan in Kansas, as well the development of confidential policies and business strategies to differentiate and improve the quality of United Healthcare's Medicaid services in Kansas – both in regard to its performance under its current KanCare 2.0 contract and in anticipation and preparation for competing for a renewed contract under the upcoming KanCare 3.0 RFP process. Hamdorf served in this role for over two years, and he voluntarily signed the restrictive covenants in exchange for benefits that he received under the 2021 and 2022 Stock Awards.

91. Based on these facts, the Arbitrator finds the nature of the relationship between the parties weighs in favor of granting preliminary injunctive relief. *See Cook Sign Co. v. Combs*, No. A07-1907, 2008 WL 3898267 (Minn. App. 2008) (finding the nature of the parties' relationship weighed in favor of granting a temporary injunction where the employee, who had worked for the company for five months, was valuable employee in a specialized business who had access to the company's confidential, proprietary, and trade-secret information); *Medtronic, Inc. v. Adv. Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001) (finding the parties' prior relationship weighed in favor of granting injunctive relief where, *inter alia*, the employee signed the non-compete agreement "of his own free will").

### Balancing of Harm

92. The balancing of harm factor focuses on the harm that Claimants may suffer if injunctive relief is denied, as compared to the harm that Respondent will suffer if injunctive relief is granted. *See Adv. Bionics Corp.*, 630 N.W.2d at 451.

93. A party seeking a temporary injunction must show that its legal remedies are inadequate and that an injunction is necessary to prevent irreparable harm. *Adv. Bionics Corp.*, 630 N.W.2d at 451. Generally, a party's failure to show that it is likely to suffer irreparable harm is a sufficient ground for denying a temporary injunction. *Id.*

94. Where, as here, there has been no showing of actual injury, Claimants must show that the threatened injury is "likely" and not just "possible." *United Healthcare Servs., Inc. v. Stodola*, No. 27-CV-21-8609, 2021 WL 6496607, at \*11 (Minn. D. Ct. Dec. 17, 2021). Mere breach of a covenant not to compete, or mere fear of a possible disclosure, standing alone, is not sufficient. *See St. Jude Med., Inc. v. Carter*, 913 N.W.2d, 678, 684-85 (Minn. 2018).

95. Under Minnesota law, a court may infer irreparable harm under certain circumstances, such as where customer good will is at stake or when a former employee is potentially sharing confidential information with a direct competitor. *See id.*; *QBE Ams., Inc. v. McDermott*, No. 14-5020, 2015 WL 138082, at \*6 (D. Minn. Jan. 9, 2015); *see also Medtronic, Inc. v. Camp*, Civ. No. 02-285 (PAM/JGL), 2002 WL 207116, at \*2 (D. Minn. Feb. 6, 2002) ("[W]hen a former employee violates a valid covenant not to compete, the Court may infer irreparable harm on the employer.").

96. Here, the Arbitrator finds that allowing Hamdorf to assist UCare in its efforts to obtain Kansas Medicaid business, both in contacting Kansas providers and in performing other types of "field work" in Kansas to promote UCare's brand – and in assisting UCare to prepare and/or submit a contract proposal in the KanCare 3.0 RFP – will likely result in irreparable harm

to Claimants. Although there is no evidence suggesting that Hamdorf has or would intentionally disclose United Healthcare's confidential information, the Arbitrator finds that his intimate knowledge and involvement in managing the operations of United Healthcare's Kansas Medicaid plan, and evaluating and developing confidential strategies to differentiate and improve the quality of its services thereunder, would necessarily inform and provide an unfair advantage to UCare's efforts to promote and differentiate itself to potentially expand its Medicaid business into the State of Kansas. *See, e.g., Stodola*, 2021 WL 6496607, at \*12 (noting that, if the former employee was working for the new employer on similar initiatives in the same region as with his previous employer, "it would be difficult if not impossible for him not to inadvertently disclose some information on how to proceed [with regard to cost cutting strategies]") (denying a preliminary injunction because the employee's new job involved a different region); *see also Wachovia Ins. Servs., Inc. v. Hinds*, No. CIV WDQ-07-2114, 2007 WL 6624661, at \*3-4 (D. Md. Aug. 30, 2007) (finding that employee's work in aiding her new employer's competing bid in response to the State of Delaware's RFP for consulting work sufficiently demonstrated a probability of irreparable harm where the employee had access to and knowledge of confidential pricing information that could irreparably harm her former employer in the RFP process) (granting a preliminary injunction).

97. Further, in addition to the likely disclosure of confidential information, the Arbitrator concludes that, without the issuance of temporary injunctive relief, United Healthcare is likely to suffer irreparable harm in the form of loss of fair competition in the KanCare 3.0 RFP process. *See United HealthCare Servs., Inc. v. Corzine*, No. 2:21-CV-319, 2021 WL 961217 (S.D. Ohio Mar. 15, 2021) (the loss of fair competition resulting from the breach of a non-compete covenant is likely to irreparably harm an employer) (citations omitted).

98. As noted, the stakes for competition in the KanCare 3.0 RFP process are extremely high. It would be difficult, if not impossible, to quantify the impact that Hamdorf's breach of the restrictive covenants would have on the final awards of Kansas Medicaid contracts under the upcoming RFP.

99. Hamdorf, on the other hand, willingly signed the Stock Agreements and voluntarily resigned from his employment with United Healthcare, knowing that the restrictive covenants would prevent him from competing with United Healthcare in the Kansas Medicaid market. In fact, Hamdorf testified that he turned down other jobs that were in competition with United Healthcare's Medicaid business in Kansas.

100. In weighing these facts, the Arbitrator concludes that the likelihood of irreparable harm to Claimants vastly outweighs the potential harm caused to Respondent by the inability to work on UCare's Medicaid expansion efforts in Kansas pending the Final Evidentiary Hearing and a determination of the claims asserted in this arbitration. *See, e.g., Cook Sign*, 2008 WL 3898267 (affirming the district court's determination that the potential harm to a company could be detrimental if an insider's knowledge of its business were shared with a competitor in a highly competitive marketplace).

101. In reaching this conclusion, the Arbitrator does not take lightly the prospect of barring Hamdorf from working in his chosen area of expertise. While granting the preliminary injunction may cause harm to Hamdorf, the Arbitrator finds that the harm will not be so substantial as to outweigh the other factors that weigh in favor of granting temporary injunctive relief. Hamdorf testified that, while most of his time at UCare is currently focused on Kansas, he is also working on UCare's expansion efforts in two other states, and speaking to promote the UCare brand nationally. There is no indication in the record that Hamdorf cannot continue working for

UCare in these efforts in other areas pending a final determination in this arbitration. Moreover, based on his previous employment history, including the jobs he has held before and after working for United Healthcare, it appears likely that Hamdorf would have opportunities to work as a consultant and/or with respect to market access outside of the Kansas Medicaid arena.

#### Likelihood of Success on the Merits

102. Respondent asserts that Claimants cannot prevail on their claims because: (1) the language in the restrictive covenants restricts him from competing only with *UHG's* activities and not with *United Healthcare's* activities; (2) the scope of the restrictive covenants is too broad and therefore unreasonable; (3) United Healthcare does not have a legitimate, protectable interest in its relationship with Kansas providers or in obtaining a contract under KanCare 3.0; (4) Claimants have not shown that Hamdorf has disclosed any confidential information; and (5) Hamdorf has not violated the non-compete or non-solicitation agreements. As set forth below, the Arbitrator disagrees with Respondent's arguments and concludes that Claimants have shown they are likely to succeed on the merits of their claims.

#### *Language in Restrictive Covenants Applies to United Healthcare's Activities*

103. Respondent asserts that Claimants cannot prevail on their claims because the restrictive covenants only prohibit him from soliciting or conducting business or competing with *UHG's* activities, and *UHG* does not provide Kansas Medicaid services. Essentially, Respondent advocates for a strict reading of select provisions in the Stock Agreements to reach a conclusion that the covenants do not restrict him from competing with or soliciting business or customers related to *United Healthcare's* activities. See Respondent's Proposed Findings of Fact and Conclusions of Law, ¶¶ 92-101. More specifically, Respondent asserts that the plain language in

the non-solicitation and non-competition provisions refers only to the “Company,” which is defined as UHG, whereas other provisions in the agreements refer specifically to the “Company or any Affiliate,” which would include United Healthcare. *Id.* Respondent also points out that, in other cases involving Claimants, the applicable agreements used language that included both the Company *and* its Affiliates. *Id.*, ¶¶ 96-98.

104. When reviewing a contract for ambiguity under Minnesota law, the following principles of contract interpretation apply: “(1) language must be given its plain and ordinary meaning; (2) a contract term must be read in the context of the entire contract so as not to lead to a ‘harsh and absurd result’; and (3) a contract should be interpreted to give meaning to all its provisions.” *Bestrom-Drori v. Drori*, No. A03-1691, 2004 WL 1049217, at \*1 (Minn. Ct. App. May 11, 2004) (citing *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998)).

105. Applying these principles here, the Arbitrator concludes that the restrictive covenants apply to activities related to Hamdorf’s employment with United Healthcare. Respondent’s proposed construction of the Stock Awards would render the restrictive covenants meaningless and lead to a “harsh and absurd result.” *Id.* As noted, UHG is strictly a holding company with no employees. In order to give meaning to the non-compete and non-solicitation provisions, they must be read broadly to include the business activities of the subsidiary company that employed the participant and gave rise to the benefits he received thereunder. Indeed, the participant’s right to vest and/or exercise options under the Stock Awards are tied to his continued employment with “the Company or any Affiliate,” demonstrating that Hamdorf’s rights and obligations under the Stock Awards are linked to his employment with United Healthcare. Accordingly, the Arbitrator concludes that references to the “Company” in the non-solicitation and

non-competition provisions include the business activities of the subsidiary company in which the participant was employed, *i.e.*, in this case, United Healthcare.

106. This reading is consistent with the intent and understanding of both parties. As noted, Hamdorf testified that he declined to explore employment opportunities with companies that were affiliated with Kansas Medicaid, because he did not want to violate the restrictive covenants that he had entered into during his employment with United Healthcare.

*Reasonable Enforcement of Restrictive Covenants to Protect Legitimate Interests*

107. Respondent asserts that, even if the restrictive covenants apply, they are not enforceable because they are overly broad and do not protect United Healthcare's legitimate interests. Under Minnesota law, a restrictive covenant is enforceable if it is "reasonable and supported by adequate consideration." *Boston Sci. Corp. v. Duberg*, 754 F. Supp. 2d 1033, 1039 (D. Minn. 2010). Here, the parties do not dispute that adequate consideration exists. To determine if a restrictive covenant is reasonable, courts consider: "(1) whether the restraint is necessary for the protection of the business or goodwill of the employer; (2) whether the restraint is greater than necessary to adequately protect the employer's legitimate interests; (3) how long the restriction lasts; and (4) the geographic scope of the restriction." *Id.*

108. As an initial matter, contrary to Respondent's assertion, the Arbitrator finds that Claimants' clearly have a legitimate economic interest in protecting United Healthcare's confidential and competitive information relating to its business strategies and operations regarding its Medicaid business in Kansas. The fact that United Healthcare is not guaranteed to obtain another contract under KanCare 3.0 does not negate its legitimate interest in protecting its confidential information in an attempt to gain or retain a competitive edge in the RFP process. *See Corzine*, 2021 WL 961217; *see also United Healthcare v. Louro*, No. 20-2696 (JRT/ECW), 2021

WL 533680 (D. Minn. Feb. 12, 2021) (“United has a clear legitimate interest in protecting its confidential and proprietary strategic information and maintaining its market position.”).

109. Moreover, the fact that Hamdorf may not have consciously or affirmatively disclosed United Healthcare’s confidential information does not eliminate its interest in protecting that information through enforcement of the non-competition and non-solicitation agreements. *See Corzine*, 2021 WL 961217. As noted, through his work in an executive leadership position for United Healthcare, Hamdorf participated in strategy meetings and had intimate knowledge and experience relating to the company’s strengths and weakness and confidential business strategies and practices with respect to its Kansas Medicaid services. Whether consciously or not, it appears that Hamdorf’s knowledge of this information would necessarily inform the way in which he would help UCare compete for the same Medicaid business in Kansas. In other words, it would likely be impossible for Hamdorf to “lock away” his knowledge of United Healthcare’s confidential information and the insights that he gained from participating in United Healthcare’s strategy meetings, and only draw upon his other previous experiences, while assisting UCare to compete with United Healthcare for Kansas Medicaid business. *Id*; *see also Stodola*, 2021 WL 6496607, at \*12.

110. Here, Claimants seek to enforce the non-compete and non-solicitation restrictions only with respect to Hamdorf’s Medicaid-related work in Kansas, and only with respect to reasonable time limitations tied to the termination of Hamdorf’s employment, *i.e.* one year from September 17, 2022 for non-competition, and two years from that date for non-solicitation. With these limitations, the Arbitrator finds that enforcement of the restrictive covenants is sufficiently narrowly tailored to adequately protect the employer’s legitimate interests. *See Corzine*, 2021 WL 961217 (finding one-year non-competition and two-year non-solicitation agreements were



reasonable as applied to the Ohio Medicaid market); *Stodola*, 2021 WL 6496607, at \*14-15 (finding that, under Minnesota's blue pencil doctrine, the court could reasonably restrict the non-compete to the region in which the employee had previously worked; however, it was unnecessary because the new employment agreement already contained such a restriction).

111. Respondent urges the Arbitrator to follow the holdings in *Louro* and *Stodola*, where the courts denied granting preliminary injunctive relief in cases that involved similar non-compete agreements with United Healthcare. The facts of those cases are distinguishable. In particular, in those cases, the courts found that the previous employer was not likely to succeed on the merits because it sought to enforce the restraints too broadly. In *Louro*, the employer sought to preclude the employee from performing work in a different business segment involving local accounts, whereas his previous job involved national accounts. The court found that to apply the restrictive covenant so broadly would render it unreasonable and, therefore, unenforceable. *See Louro*, 2021 WL 533680. Similarly, in *Stodola*, the former employer sought to preclude the employee from performing services nationwide, whereas his previous position involved only states in the Central Region. Notably, the *Stodola* court found that it would have been reasonable to restrict the employee from performing the same work in the Central Region; however, the new employer had already imposed that restriction, so a preliminary injunction was unnecessary. *See Stodola*, 2021 WL 6496607, at \*15.

112. On the facts presented here, the Arbitrator finds the court's reasoning in *Corzine* is persuasive. *Corzine* also involved similar anti-competition and anti-solicitation agreements with United Healthcare. In that case, the former employee worked as the Chief Operating Officer, and then in a strategic marketing role, for United Healthcare's Ohio Medicaid plan. Subsequently, the employee assisted his new employer in submitting an application in the State of Ohio's Medicaid

contract procurement process, which was highly competitive and confidential until the awards were announced. On those facts, the court found that a preliminary injunction was warranted to enjoin the former employee from working for his new employer with respect to any role related to its Ohio Medicaid business. In reaching this result, the court found that United Healthcare had a legitimate interest in enforcing its restrictive covenants to preclude the former employee from assisting a competitor in soliciting Ohio's Medicaid business. *See Corzine*, 2021 WL 961217. For similar reasons, the Arbitrator finds that United Healthcare has a legitimate interest in precluding Hamdorf from assisting UCare in developing, soliciting, and competing for Medicaid business in Kansas.

*Breach of Non-Competition Agreements*

113. As discussed, the non-compete provisions prohibit Hamdorf from directly or indirectly engaging or participating in “any activity that competes, directly or indirectly, with any Company activity, product or service that Participant engaged in, participated in, or had Confidential Information about during Participant’s last 36 months of employment with the Company.” Ex. 9, ¶ 4(c); Ex. 10, ¶ 8(c).

114. During his employment with United Healthcare, Hamdorf engaged in, participated in, and had confidential information about its Medicaid business in Kansas. Hamdorf’s subsequent efforts, on behalf to UCare, to meet with Kansas providers to build the UCare brand and assist UCare in tailoring and formulating a plan “to drive UCare’s bid for a 2025 Kansas Medicaid contract” are clearly activities that directly or indirectly compete with United Healthcare’s activities and services regarding its Medicaid business. As such, it appears that Hamdorf’s activities on behalf of UCare are in direct violation of his non-compete obligations to United Healthcare.

115. The non-compete agreements extend for one year from time that Hamdorf's employment ended with United Healthcare. Hamdorf resigned on September 17, 2022. Thus, by their terms, the non-compete covenants would expire on September 17, 2023. However, the 2022 Stock Awards contain tolling provisions that appear likely to toll the time for which United Healthcare may obtain injunctive relief to include the period of time during which Hamdorf has been in violation of the restrictive covenants. *See* Ex. 11, ¶ 3(b); Ex. 11, ¶ 7(b).

116. Based on the findings of facts set forth above, it appears that Hamdorf has been meeting with Kansas providers to develop potential Medicaid business for UCare since March of 2023. Under the tolling provisions in the 2022 Stock Agreements, the time that Hamdorf has been in breach (*i.e.* from March of 2023 to the date of this Interim Award) would add approximately five months – or until February 17, 2024 – to the time for which Claimants would be entitled to obtain injunctive relief. Accordingly, the Arbitrator finds that any interim injunctive relief based on violation of the non-compete agreements is appropriate until February 17, 2024, at the latest. In light of the fact that the Final Evidentiary Hearing is set for November 6, 2023, it appears likely that a final determination will be issued in the arbitration before then.

#### *Breach of Non-Solicitation Agreements*

117. Under the non-solicitation agreements, Hamdorf may not “[s]olicit or conduct business with any business competitive with the Company from any person or entity: (A) who was a Company provider or customer within the 12 months before Participant’s employment termination and with whom Participant had contact regarding the Company’s activity, products or services, or for whom Participant provided services or supervised employees who provided those services, or about whom Participant learned Confidential Information during employment related

to the Company's provision of products and services to such person or entity." Ex. 9, ¶ 4(b); Ex. 10, ¶ 8(b).

118. As noted, Hamdorf managed United Healthcare's Kansas Medicaid plan and supervised approximately 60 employees who provided services thereunder. Both Hamdorf and the employees who he supervised had contact with the company's providers and its customer (*i.e.* the State of Kansas) under the KanCare 2.0 contract.

119. UCare has publicly announced that it hired Hamdorf to "drive [its] bid for a 2025 Kansas Medicaid contract," and Hamdorf testified that he has been meeting with Kansas providers to assist UCare in determining how to best tailor a Medicaid program for the upcoming KanCare RFP. To the extent Hamdorf is directly or indirectly assisting UCare in strategizing, planning for, or submitting a Request for Proposal ("RFP") to the State of Kansas for a Medicaid contract, including recruiting providers to be part of UCare's network for Kansas Medicaid services, it appears that such conduct is likely in violation of his obligations under the non-solicitation agreements.

120. On this record, it appears that Hamdorf has already solicited providers on behalf of UCare, in violation of the non-solicitation agreements, and that he is preparing to assist UCare in submitting a bid in the upcoming Kansas RFP process. The Arbitrator therefore finds that interim injunctive relief is appropriate with regard to the non-solicitation covenants.

121. The non-solicitation agreements extend for two years from the date of termination of Hamdorf's employment, *i.e.* until September 17, 2024. As noted, a final determination in the arbitration will likely be issued well before then.

### Public Policy

122. Respondent contends that public policy weighs against granting injunctive relief because: (1) Minnesota law disfavors non-competition agreements; and (2) the Minnesota legislature recently passed legislation that prospectively renders unenforceable non-compete agreements entered into after July 1, 2023. As a preliminary matter, the Arbitrator notes the legislature did not make the new law retroactive; thus, the fact of the new legislation is neutral in this case.

123. “Minnesota courts do not favor noncompetition agreements because they are partial restraints on trade.” *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 456 (Minn. Ct. App. 2001). However, Minnesota law also recognizes that the public has an interest “in preserving the ability of parties freely to enter contracts and to seek judicial enforcement of such contracts and in providing judicial remedies for breaches of fiduciary duties imposed by law . . . .” *Cherne Indus.*, 278 N.W.2d at 94. Thus, under Minnesota law, restrictive covenants are enforced to the extent they are “reasonably necessary to protect legitimate business interests.” *Advanced Bionics*, 630 N.W. 2d at 456.

124. Here, the Arbitrator concludes that public policy favors awarding the requested interim injunctive relief in a manner that is narrowly tailored to protect United Healthcare’s legitimate business interests. *See, e.g., Advanced Bionics*, 630 N.W.2d at 456 (Minnesota has a strong interest in having contracts executed and enforced in accordance with the parties’ expectations); *Cook Sign*, 2008 WL 3898267 (public policy favored enforcing reasonable non-competition agreement that was negotiated and agreed to in good faith).

Administrative Burdens

125. The Arbitrator finds that granting the requested injunctive relief would create no undue administrative burdens. Accordingly, the Arbitrator concludes this factor is neutral and does not preclude issuing an interim award granting temporary injunctive relief. *See, e.g., Advanced Bionics*, 630 N.W.2d at 456; *Cook Sign*, 2008 WL 3898267.

Conclusion

126. On this record, the Arbitrator concludes the balance of relevant factors weighs strongly in favor of granting temporary injunctive relief, as set forth below. Claimants have not shown that any further or additional injunctive relief is warranted at this time.

**INTERIM AWARD**  
**GRANTING TEMPORARY INJUNCTIVE RELIEF**

Based on the findings of fact and conclusions of law set forth above, I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated July 5, 2020, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby issue this INTERIM AWARD, as follows:

Beginning immediately from the date of this Interim Award, Respondent Jonathan J. Hamdorf is immediately enjoined from engaging, participating, or assisting UCare, in any manner, in strategizing, planning for, or submitting a Request for Proposal (“RFP”) by UCare to the State of Kansas for a Medicaid contract, including but not limited to identifying or including Mr. Hamdorf on or within any RFP response on behalf of UCare.

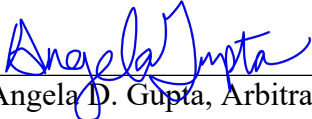
Further, Mr. Hamdorf is immediately enjoined from engaging, participating, or assisting in any other activity on behalf of UCare that competes, directly or indirectly, with United Healthcare's activities, products, or services with respect to providing Medicaid to residents of the State of Kansas. This injunction includes prohibiting Hamdorf from promoting UCare to providers in Kansas with respect to Medicaid services or otherwise performing field research, marketing, or otherwise aiding UCare in any way with respect to potentially expanding its business into the Kansas Medicaid market.

This injunction does not preclude Hamdorf from working for UCare with respect to business efforts directed outside of the Kansas Medicaid market.

Pursuant to the parties' Agreements, the posting of a bond is not required. *See* Exs. 9 and 11, § 11(d); Ex. 10 and 12, § 11(f).

This Interim Award shall remain in full force and effect until otherwise ordered by the Arbitrator or until such time as a Final Award is rendered in this arbitration.

Dated: August 30, 2023

  
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Angela D. Gupta, Arbitrator