

## **MARKET INVESTIGATION INTO THE SUPPLY OF PRIVATELY-FUNDED HEALTHCARE SERVICES IN THE UNITED KINGDOM**

### **Interim Undertakings given by HCA International Limited under section 157 of the Enterprise Act 2002**

1. On 4 April 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Act) concerning the supply of privately-funded healthcare services in the UK.
2. The successor body to the CC, the Competition and Markets Authority (CMA), published its report titled *Private healthcare market investigation* on 2 April 2014 (the report).
3. In the report, the CC concluded that:
  - (a) there are features of the markets for privately-funded healthcare services which each (and, in certain circumstances, in combination) prevent, restrict or distort competition, and thereby have an adverse effect on competition (AEC);
  - (b) the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them;
  - (c) and to that end Undertakings should be given to give effect to the CC's decision on the divestiture remedy specified in the report; and
  - (d) pending final determination of the market investigation the CMA will accept interim undertakings from HCA International Limited (HCA) for the purpose of preventing pre-emptive action,
4. And the CMA wishes to prevent action being taken which might impede the taking of any action by the CMA under section 138(2) of the Act in relation to the reference.
5. The reference has not been finally determined in accordance with section 183(3) of the Act.
6. Now HCA gives the CMA the following undertakings pursuant to section 157 of the Act.

## **1. The preservation and sale of the Protected Hospitals**

- 1.1 HCA undertakes that it will not, and will procure that its subsidiaries will not, divest:
  - 1.1.1 all or any part of the share capital, business, property or other assets of any of the Protected Hospitals; or
  - 1.1.2 any assets or property including any licences, permissions, or supplier contracts owned by HCA or its subsidiaries and which are required in connection with the businesses carried on at the Protected Hospitals; other than:
    - 1.1.3 in the Ordinary Course of Business; or
    - 1.1.4 where HCA has received prior Notice of consent from the CMA.
- 1.2 HCA undertakes that it will not take any action which would prejudice the implementation of the CMA's divestiture remedy in accordance with the CMA's report, including any action which would impair the ability of the Protected Hospitals to compete independently subsequent to their divestiture in accordance with the decisions contained in the report, except where HCA has received prior Notice of consent from the CMA.
- 1.3 Further and without prejudice to the generality of paragraph 1.2, and except where HCA has received prior Notice of consent from the CMA, HCA will ensure that:
  - 1.3.1 except in the Ordinary Course of Business the assets of the Protected Hospitals are maintained and preserved, including equipment, facilities and goodwill;
  - 1.3.2 HCA will make no changes to key staff and no substantive changes to the organisational structure of the Protected Hospitals or to the management responsibilities within the Protected Hospitals;
  - 1.3.3 HCA will take all steps it would reasonably be expected to take in the ordinary course of business to encourage all consultants, and key nursing and technical staff to remain with the Protected Hospitals;
  - 1.3.4 HCA will not make any substantive changes to the nature, description, range and quality of services currently supplied by the Protected Hospitals;

1.3.5 HCA does not offer to any consultant any inducement or incentive, which may cause that consultant to give preference to those facilities of HCA which are not located at the Protected Hospitals;

1.3.6 HCA does not operate any scheme, whether contractual or otherwise, which provides an inducement to, or places an obligation on, any consultant to give preference to those facilities of HCA which are not located at the Protected Hospitals.

## **2. The Monitoring Trustee**

2.1 HCA undertakes:

2.1.1 to appoint Baker Tilly Corporate Finance LLP as Monitoring Trustee for the purpose of monitoring the divestiture of the Protected Hospitals; and

2.1.2 to make that appointment:

(a) on the terms set out in Appendix A of these undertakings or as varied in accordance with these terms; and

(b) as soon as is reasonably practicable, and in any event within the period of two business days after the day on which the CMA notifies HCA of the acceptance of these undertakings.

2.2 HCA undertakes that it will, and will procure that its subsidiaries will, provide any assistance which the Monitoring Trustee may reasonably require and not hinder the discharge by the Monitoring Trustee of its responsibilities as set out in Appendix A or as they may be varied from time to time.

## **3. Consent**

3.1 HCA undertakes that where the Undertakings or any one of them require the consent or approval of the CMA (however that requirement is expressed in these Undertakings) it will seek the consent or approval in writing.

3.2 HCA undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter that as far as HCA is aware is relevant to the CMA's decision.

3.3 HCA recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CMA.

- 3.4 In the event that HCA discovers that an application for consent or approval has been made without full disclosure and is therefore incomplete HCA undertakes to:
- 3.4.1 inform the CMA in writing identifying the particulars in which the application for consent is incomplete within seven days of becoming aware that the application is incomplete; and
  - 3.4.2 at the same time or as soon as possible thereafter provide to the CMA an application for consent that is complete.
- 3.5 HCA undertakes to use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five working days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Undertakings.
- 3.6 HCA recognises that the CMA shall not be required to use more than its reasonable endeavours to grant or refuse any consent or approval within the five-working-day period referred to in paragraph 3.5 save that the CMA shall use its best endeavours to grant or refuse any consent or approval within this time period relating to paragraph 1.3.2 above.

#### **4. Compliance statements**

- 4.1 HCA will provide the CMA such information or statement of compliance as the CMA may from time to time reasonably require for the purposes of monitoring compliance by HCA and its subsidiaries with these undertakings. In particular, the CEO of HCA International, of the Wellington Hospital, of London Bridge Hospital and of the Princess Grace Hospital each undertakes to provide on 27 May 2014 and subsequently on the 25<sup>th</sup> day of each month (or, where the 25<sup>th</sup> does not fall on a working day, the first working day thereafter) a monthly statement to the CMA on behalf of HCA confirming as far as they are aware compliance with these undertakings in the form set out in Appendix B to these undertakings, unless otherwise agreed with CMA.

#### **5. Directions**

- 5.1 HCA undertakes, in so far as it is able, to comply with such written directions as the CMA may from time to time reasonably give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

## **6. Commencement**

6.1 These undertakings come into force on the Commencement Day.

## **7. Termination**

7.1 These undertakings remain in force until final determination of the reference or such earlier time as the CMA and HCA shall agree.

7.2 The variation, termination, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights arising prior to such variation, termination, release or supersession.

## **8. Effect of invalidity**

8.1 HCA undertakes that should any provision of these undertakings be held by any court or tribunal to be contrary to law or invalid for any reason it will continue to observe the remaining provisions.

8.2 HCA undertakes that it shall not rely on any default or want of authority on the part of HCA or any officer or employee thereof in the execution of these undertakings unless directed to do so by the CMA.

## **9. Interpretation**

9.1 Words and expressions defined in the recitals to these undertakings have the same meaning in these undertakings.

9.2 These undertakings are to be interpreted and applied so as to give effect to the conclusions of the CMA as to the need for interim measures stated in Section 11 of the report, and shall be interpreted consistently with the findings of the CMA's report.

9.3 In these undertakings a company is a subsidiary of another company, if that other company:

9.3.1 holds a majority of the voting rights in it; or

9.3.2 is a member of it and has the right to appoint or remove a majority of its board or directors; or

9.3.3 is a member of it and controls alone a majority of the voting rights in it; or

9.3.4 if it is a subsidiary of a company that is itself a subsidiary of that other company.

9.4 A notification under these undertakings may be given to the CMA by giving it to Inquiry Manager, Private Healthcare Inquiry, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD.

9.5 A notification under these undertakings may be given to HCA by giving it to Jasy Loyal, Executive Director/VP of Legal Services, HCA International Limited, 242 Marylebone Road, London NW1 6JL.

9.6 For the purposes of these undertakings:

**'Approved Purchaser'** means a person who has been given Notice by the CMA that: (i) it has satisfied the criteria stated in paragraph 11.62 of the report; and (ii) that its undertaking concerning the matters stated in paragraph 11.62 of the report has been accepted by the CMA;

**'business day'** means any day other than a Saturday or Sunday on which banks are open for business in England;

**'CC'** means the Competition Commission;

**'CMA'** means the Competition and Markets Authority;

**'Commencement Day'** means the day on which these undertakings are accepted by the CMA;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise or activity;

**'to divest'** means to sell, transfer, convey, or agree to sell transfer or convey, or grant any right or interest legal or equitable in or over, or otherwise in whole or part to dispose of or relinquish control over;

**'Notice'** means a written communication sent by post, fax, personal delivery, or with the prior approval of the CMA, email;

**'Notification Day'** means the day on which acceptance of these undertakings is notified to HCA;

**'The Ordinary Course of Business'** means matters connected to the day-to-day supply of privately-funded healthcare services by HCA. For the sake of clarity it does not include matters involving significant changes to the strategy, capital expenditure commitments or organisational structure of the Protected Hospitals;

**‘Protected Hospitals’** means the hospital sites subject to the divestment remedy as set out in the CMA’s Report, ie the London Bridge hospital; the Princess Grace hospital; and the Wellington hospital including the Wellington Hospital Platinum Medical Centre;

**‘Purchaser’** means any person to whom a divestiture of a Protected Hospital is made in accordance with paragraph 1 of these Interim Undertakings; it does not include purchasers, lessees or operators in transactions conducted in the Ordinary Course of Business;

**‘Report’** means the report published by the CMA on 2 April 2014 and titled *Private healthcare market investigation*;

**‘Transitional Arrangements’** means transitional services agreements, and other agreements, covenants or arrangements in accordance with which HCA continues to provide facilities, goods or services to the Protected Hospitals subsequent to divestiture;

unless the context requires otherwise, the singular shall include the plural and vice versa.

**Signed by duly authorised signatories:**

FOR AND ON BEHALF OF HCA

Michael Neeb  
President and CEO, HCA International

..... Signature

Neil Buckley  
CEO, The Wellington Hospital

..... Signature

John Reay  
CEO, London Bridge Hospital

..... Signature

Charlotte Tempest  
CEO, The Princess Grace Hospital

..... Signature

## **Market investigation into the supply of privately-funded healthcare services in the UK**

### **MONITORING TRUSTEE MANDATE**

#### **BETWEEN:**

1. **HCA International Limited**, a company incorporated under the laws of England, which has its registered office at 242 Marylebone Road, London NW1 6JL (**'HCA'**),

#### **AND**

2. **Baker Tilly Corporate Finance LLP**, which has its registered office at 25 Farringdon Street, London EC4A 4AB (**the 'Monitoring Trustee'**),

hereafter referred to collectively as the **'Mandate Parties'**.

#### **WHEREAS**

Under Interim Undertakings accepted by the CMA on [ ] 2014 in its investigation into the supply of privately-funded healthcare services in the UK ('the private healthcare market investigation'), HCA undertook to appoint a Monitoring Trustee for the purposes of monitoring its divestiture of the Protected Hospitals. HCA hereby engages the Monitoring Trustee and this agreement together with the Monitoring Trustee Engagement Letter of even date ('Engagement Letter'), forms the mandate (hereafter the 'Mandate').

THE MANDATE PARTIES HAVE AGREED AS FOLLOWS:



## SECTION A

### DEFINITIONS

For the purpose of this Mandate, the following terms shall have the following meanings:

**Monitoring Trustee Partner Firms:** Baker Tilly UK Holdings Limited and persons, bodies corporate or partnerships controlled by it.

**Monitoring Trustee Team:** the key persons responsible for carrying out the tasks assigned by the Mandate and identified in the Engagement Letter.

## **SECTION B**

### **APPOINTMENT OF MONITORING TRUSTEE**

1. HCA hereby appoints the Monitoring Trustee to act as its exclusive trustee for fulfilling the tasks of a Monitoring Trustee according to this Mandate. The Monitoring Trustee hereby accepts the said appointment in accordance with the terms of this Mandate.
2. The appointment and this Mandate shall become effective on the date of this Mandate, and terminate in accordance with Section G.
3. The Monitoring Trustee Team consists of the key persons set out in the Engagement Letter. The key persons shall be supplemented where appropriate with junior executives.

## **SECTION C**

### **GENERAL DUTIES AND OBLIGATIONS OF THE MONITORING TRUSTEE**

4. The Monitoring Trustee shall act in consultation with the CMA to monitor matters material to the divestiture of the Protected Hospitals. The Monitoring Trustee shall carry out its duties in accordance with this Mandate, as well as revisions of this Mandate approved by the CMA.
5. The Monitoring Trustee shall propose to HCA such measures as the Monitoring Trustee considers reasonably necessary to discharge its duties under this Mandate, and the Monitoring Trustee shall propose measures it considers reasonably necessary to the CMA in the event that HCA does not comply with the Monitoring Trustee' proposals within a reasonable time frame.

## SECTION D

### OBLIGATIONS OF THE MONITORING TRUSTEE

6. The Monitoring Trustee shall carry out the duties described in this Section D until the Mandate is terminated in accordance with Section G.
7. The Monitoring Trustee's primary function (the 'Primary Function') shall be to monitor for the purposes of ensuring compliance with these Undertakings:
  - 7.1 whether the Protected Hospitals are preserved as a viable, competitive and marketable business and that no action is taken by HCA that would frustrate or prejudice a sale to a suitable purchaser and the ability of that purchaser to properly and competitively operate the Protected Hospitals;
  - 7.2 the financial performance of the business of each of the Protected Hospitals;
  - 7.3 whether the fabric of the buildings of the Protected Hospitals is properly maintained in accordance with budgeted spend, whether hospital equipment is serviced and replaced in accordance with normal usage, and whether hospital equipment is moved in or out of the Protected Hospitals;
  - 7.4 whether HCA is continuing to maintain the relevant licences and permits necessary to continue the operation of the Protected Hospitals;
  - 7.5 whether patients, staff and consultants at the Protected Hospitals continue to be given access on materially the same terms as they currently enjoy to facilities, such as consulting rooms, treatment rooms, diagnostic facilities and relevant services, including laboratory services, which are owned by HCA and are used in conjunction with the Protected Hospitals, but are not part of the Protected Hospitals;
  - 7.6 key staff retention rates, reasons for key staff departures, progress made in filling vacancies and any changes to the terms and conditions of key staff working at the Protected Hospitals;
  - 7.7 any changes in the attendance patterns of key consultants at the Protected Hospitals, in particular, any reduction in attendance of key consultants, and the reasons for any such reduction in attendance;

- 7.8 any changes in the specialist services HCA provides at the Protected Hospitals, or the category of patient (outpatient, day case or inpatient) for whom HCA provides healthcare services at the Protected Hospitals;
- 7.9 any announcements or presentations made between HCA and/or the management of the Protected Hospitals and:
- (a) corporate clients;
  - (b) embassies or equivalent clients;
  - (c) consultants and general practitioners;
  - (d) private medical insurers.
8. The Monitoring Trustee shall take such steps as it reasonably considers necessary in order to carry out its Primary Function effectively. Those steps may include, but shall not be limited to:
- 8.1 Requesting that HCA takes any reasonable steps which the Monitoring Trustee considers would be necessary to assist in carrying out its Primary Functions. Such requests may include requests for HCA to provide the Monitoring Trustee with access, within its Mandate, to books, records, documents, management or other personnel, facilities, sites, IT/computer systems and/or technical information (and any assistance in searching for or understanding information, documents or other material) of the Protected Hospitals and the HCA retained hospitals as the Monitoring Trustee may consider reasonably necessary, other than any information or documents which HCA would be entitled to withhold on grounds of legal privilege.
9. All communications between the Monitoring Trustee and the CMA (excluding the statements and reports of the Monitoring Trustee referred to in paragraph 10, as set out below) shall be confidential and not disclosed to third parties, save with the express written permission of the CMA.
10. On the 11<sup>th</sup> of each month following the end of the month of its appointment, the Monitoring Trustee shall provide a report to the CMA and a non-confidential version of that report to HCA which shall set out in detail:
- 10.1 an overview of the key assets, staff and consultants at the Protected Hospitals, and of any recent disposals of assets or departures of key staff or consultants;
  - 10.2 the recent operating performance of the Protected Hospitals used for monitoring the preservation of the business of the Protected Hospitals;

10.3 an upcoming work and event plan covering the next month.

11. At any time, the Monitoring Trustee may provide, in consultation with the CMA, a written or oral report on matters falling within the Monitoring Trustee's Mandate.
12. From time to time the Monitoring Trustee in conjunction with the CMA may determine that certain communications may be more appropriately kept confidential between the Monitoring Trustee and the CMA. HCA acknowledges that in such circumstances it will not receive copies of the relevant reports.
13. The Monitoring Trustee should notify the CMA immediately if it considers that it is not in a position effectively to carry out its Primary Functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach relevant supporting evidence (so far as it is permitted by paragraph 14).

## SECTION E

### DUTIES AND OBLIGATIONS OF HCA

14. Subject to paragraph 13 above, HCA shall provide, the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require in order to discharge its Primary Functions.
15. For the purpose of enabling the Monitoring Trustee to discharge its Primary Functions, HCA's cooperation shall include but shall not be limited to the following:
  - 15.1 HCA shall provide such facilities as are reasonably necessary to enable the Monitoring Trustee to carry out its Primary Function including provision of an office with a desk, telephone and Internet access and access to a facsimile machine; and
  - 15.2 HCA shall provide full and complete access to all personnel, books, records, documents, including but not limited to written and electronic communications, facilities and information within the business of HCA as the Monitoring Trustee may consider reasonably necessary (other than information or documents which HCA would be entitled to withhold on grounds of legal privilege).
  - 15.3 HCA shall provide the Monitoring Trustee with advance notice of any meetings of the UK management responsible for the business of the Protected Hospitals, and will allow the Monitoring Trustee to attend any such meeting. Such notice shall be provided at the earliest possible opportunity and in any event adequately in advance of a meeting for the Monitoring Trustee to be in a position to attend that meeting.
  - 15.4 HCA shall notify the Monitoring Trustee immediately of: (i) any changes made to the organisational structure of the business of the Protected Hospitals or the management responsibilities within the business of the Protected Hospitals; (ii) the disposal of any operating assets above £[~~500k~~]; (iii) the creation, transfer or disposal of any interests in the assets of the Protected Hospitals; (iv) any key nursing or technical staff who leave or announce their intention to leave or any consultants who reduce significantly the volume of activity at the Protected Hospitals to below that seen in the previous three-month period. Subject to the monetary limit in 16.4 (ii), HCA shall notify the Monitoring Trustee of any such events regardless of whether or not HCA considers them to be 'substantial' or to have been carried out 'in the ordinary course of business'.

15.5 References to HCA in paragraph 16 shall be taken to refer to all staff, officers, directors, advisers and consultants of HCA. References to HCA in paragraph 17 shall be taken to refer to all staff, officers, directors, advisers and consultants of HCA.



## SECTION F

### MONITORING TRUSTEE RELATED PROVISIONS

#### Conflict of Interests

16. The Monitoring Trustee confirms that, as of the date of this Mandate, the Monitoring Trustee and each member of the Monitoring Trustee Team is independent of HCA and its respective subsidiaries, and has no conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Mandate ('Conflict of Interest').
17. The Monitoring Trustee undertakes not to create a Conflict of Interest during the term of the Mandate. The Monitoring Trustee, members of the Monitoring Trustee Team and the Monitoring Trustee Partner Firms may therefore not during the term of this Mandate:
  - 17.1 have or accept any employment by or be or accept any appointment as Member of the Board or member of other management bodies of HCA or its subsidiaries other than appointments pertaining to the establishment and performance of the Mandate;
  - 17.2 have or accept any assignments or other business relationships with or financial interests in HCA or its subsidiaries that might lead to a Conflict of Interest.
  - 17.3 This affects neither assignments or other business relationships between the Monitoring Trustee or Monitoring Trustee Partner Firms and HCA or its respective subsidiaries nor investments by the Monitoring Trustee or Monitoring Trustee Partner Firms in the stock or securities of HCA or its subsidiaries if such assignments, business relationships or investments are in the normal course of business and are material neither to the Monitoring Trustee or the Monitoring Trustee Partner Firms nor to the undertaking concerned.
  - 17.4 Should the Monitoring Trustee, the Monitoring Trustee Partner Firms or members of the Monitoring Trustee Team wish to undertake an assignment, business relationship or investment, such a person must seek the prior approval of the CMA. Should the Monitoring Trustee become aware of a Conflict of Interest, the Monitoring Trustee shall promptly inform HCA and the CMA of such Conflict of Interest. In the event that HCA becomes aware that the Monitoring Trustee or the Monitoring Trustee Partner Firms have or may have a Conflict of Interest, HCA shall promptly notify the Monitoring Trustee and the CMA

of such Conflict of Interest. Where a Conflict of Interest occurs during the term of this Mandate, the Monitoring Trustee undertakes to resolve it immediately. In the event that the Conflict of Interest cannot be resolved or is not resolved by the Monitoring Trustee in a timely manner, the Mandate may be terminated in accordance with Section G below.

18. The Monitoring Trustee undertakes that, during the term of the Mandate and for a period of one year following termination of the Mandate, members of the Monitoring Trustee Team shall not provide services to HCA or its respective subsidiaries without first obtaining the CMA's prior approval. In particular:
  - 18.1 access to confidential information shall be limited to the Monitoring Trustee Team; and
  - 18.2 the Monitoring Trustee Team shall be prohibited from communicating any information relating to this Mandate to any other of the Monitoring Trustee's personnel, except for communication with the Monitoring Trustee Partner Firms' senior management and compliance personnel which is permitted, except for information of a general nature (eg Trustee's appointment, fees, etc), and except for information whose disclosure is required by law.

### **Remuneration**

19. The remuneration of the Monitoring Trustee is set out in the engagement letter:

### **Indemnity**

20. The indemnity is set out in the Engagement Letter.

### **Confidentiality**

21. The Monitoring Trustee's confidentiality obligations are set out in the Engagement Letter.

### **Miscellaneous**

22. This clause is set out in the Engagement Letter.

## **SECTION G**

### **TERMINATION OF THE MANDATE**

23. The Mandate may only be terminated in accordance with this Section G.
24. If the Monitoring Trustee ceases to perform its functions under the Mandate or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
  - 24.1 The CMA may, after hearing the Monitoring Trustee, require HCA to replace the Monitoring Trustee; or
  - 24.2 HCA may, after consultation with the CMA, terminate this engagement provided that 14 days' written notice is given to the Monitoring Trustee and all outstanding fees are settled on or before the termination date.

#### **Termination of the Mandate by the Monitoring Trustee**

25. The Monitoring Trustee may only terminate the Mandate for good cause by giving written notice to HCA and the CMA.

#### **Surviving provisions**

26. Paragraphs 20 and 21 to 24 of this Mandate shall survive the termination of the Mandate.

## **SECTION H**

### **ADDITIONAL PROVISIONS**

#### **Amendments to the Mandate**

27. Except as provided for in paragraph 29, the Mandate may only be amended in writing and with the CMA's prior approval. In considering a request to amend this Mandate the CMA shall have regard to the views of HCA and the Monitoring Trustee.
28. The CMA may direct an amendment to this Mandate, after consultation with the Monitoring Trustee and HCA.

#### **Governing law and dispute resolution**

29. This Mandate shall be governed by, and construed in accordance with, the laws of England.
30. In the event that a dispute arises concerning the Mandate Parties' obligations under the Mandate, such dispute shall be submitted to the non-exclusive jurisdiction of the English courts.

#### **Severability**

31. If any provision of this Mandate is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the validity or enforceability of any of its other provisions or affect the validity or enforceability of such or any other provision in any other jurisdiction. The illegal, invalid or unenforceable provisions shall be replaced by new provisions reflecting the purpose of this Mandate and the initial intention of the Mandate Parties.

#### **Notices**

32. All notices sent under this Mandate shall be made in writing and be deemed to have been duly given if served by personal delivery upon the party for whom it is intended or the CMA, or delivered by registered or certified mail (return receipt requested), or if sent by fax, upon receipt of oral confirmation that such transmission has been received, to the person at the address set forth below:

If to HCA, addressed as follows:

Jasy Loyal  
HCA International  
242 Marylebone Road  
London  
NW1 6JL

If to the Monitoring Trustee, addressed as follows:

Paul Elliot, Jason Stone  
Baker Tilly Corporate Finance LLP  
25 Farringdon Street  
London  
EC4A 4AB

If to the CMA, addressed as follows:

Inquiry Manager, Private Healthcare Market Investigation  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD

Or to any such other address or person as the relevant party may from time to time advise by notice in writing given pursuant to this paragraph 34 of this Mandate. The date of receipt of any such notice, request, consent, agreement or approval shall be deemed to be the date of delivery thereof.

**SIGNATURE PAGE**

FOR HCA:

.....

Name:

Title:

Date:

Place:

FOR THE MONITORING TRUSTEE:

.....

Name:

Title:

Date:

Place:

## COMPLIANCE STATEMENT

I, [XXX] confirm on behalf of [HCA/Hospital] that as far as I am aware and save as disclosed in the form attached:

- (a) [HCA/Hospital] and their subsidiaries have complied with the interim undertakings given by them and accepted by the CMA on [date] ('the Interim Undertakings') in the period from [insert date] to [insert date].
- (b) Except in accordance with the Interim Undertakings no action has been taken by [HCA/Hospital or their subsidiaries in the period from [insert date] to [insert date] that will prejudice the implementation of the CMA's divestiture remedy in accordance with the CMA's decisions in the Report.
- (c) Except in accordance with the Interim Undertakings, HCA has not made any substantive changes to the nature, description, range and quality of services currently supplied by the Protected Hospitals.

### **Assets – including facilities and goodwill**

- (d) Except in accordance with the Interim Undertakings, the assets of the Protected Hospitals are maintained and preserved, including facilities and goodwill.
- (e) Except in accordance with the Interim Undertakings, none of all or any part of the share capital, business, property or other assets of any of the Protected Hospitals has been disposed of.
- (f) Except in accordance with the Interim Undertakings, no assets or property owned by HCA or its subsidiaries which is required in connection with the businesses carried on at the Protected Hospitals has been disposed of.

### **Staff and consultants**

- (g) Except in accordance with the Interim Undertakings HCA has made no changes to key nursing or technical staff, no consultants have left as a result of their practising privileges being either withdrawn or terminated, and has made no substantive changes to the organisational structure of the Protected Hospitals or to the management responsibilities within the Protected Hospitals.

**Interpretation**

(h) Words used in this Compliance Statement have the meaning given by the Interim Undertakings.

FOR AND ON BEHALF OF [HCA/Hospital]

Signature: .....

Name: .....

Title: .....

Date: .....