

COMPLETED ACQUISITION BY UNIVERSAL HEALTH SERVICES, INC. (THROUGH CYGNET HEALTH CARE LIMITED) OF THE CAMBIAN ADULT SERVICES BUSINESS

Final Undertakings given by Universal Health Services, Inc., Cambian Adult Services and Cygnet Health Care Limited to the Competition and Markets Authority pursuant to Section 82 of the Enterprise Act 2002

1. Background

- 1.1. On 28 December 2016, Universal Health Services, Inc. (UHS) through Cygnet Health Care Limited (Cygnet) acquired from Cambian Group and its subsidiary Cambian Educational Services, the entire issued share capital of Care Aspirations Developments Limited, Cambian Healthcare Limited and Cambian Care Services Limited and their respective subsidiaries (together known as Cambian Adult Services (CAS)) (the Merger).
- 1.2. On 3 May 2017, the Merger was referred by the Competition and Markets Authority (CMA) for a phase 2 investigation pursuant to section 22 of the Act (the Reference) to determine pursuant to section 35 of the Act:
 - a) whether a relevant merger situation has been created; and
 - b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition in any market or markets in the United Kingdom (UK) for goods or services.
- 1.3. On 17 May 2017, the CMA made an Interim Order (the 17 May Interim Order) pursuant to section 81 of the Enterprise Act for the purposes of preventing pre-emptive action prior to the Reference being finally determined and issued a direction for the appointment of a Monitoring Trustee to monitor compliance with the Interim Order.

1.4. On 16 October 2017, the CMA published a report (the Final Report) concluding that:

- (i) the completed acquisition by UHS of CAS has resulted in the creation of a relevant merger situation;
- (ii) the creation of that situation may be expected to give rise to a substantial lessening of competition (SLC) within the market for the provision of hospital-based inpatient rehabilitation services (rehabilitation services) for male long term mental health (LTMH) patients in the East Midlands, which may be expected to lead to adverse effects for customers and patients in terms of prices being higher than they would otherwise be and quality being lower than it would otherwise be;
- (iii) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (iv) undertakings should be given to the CMA or where undertakings are not agreed an order made to give effect to the remedy identified by the CMA in chapter 14 of the Final Report (the Remedy) namely the divestment of any one of the following: The Limes, Storthfield House, Sherwood House or Derby.

1.5. On 17 October, the CMA made an Interim Order (17 October Interim Order) pursuant to Section 81 of the Enterprise Act replacing the 17 May Interim Order and reflecting the decision in the Final Report for the purposes of preventing pre-emptive action prior to the Reference being finally determined and issued a direction for the appointment of a Monitoring Trustee to monitor compliance with the 17 October Interim Order.

1.6. The implementation of the Remedy will be subject to the following safeguards:

- a) The Vendors will be subject to regular reporting requirements;
- b) The progress of the implementation of the Remedy will be monitored by an independent Monitoring Trustee;

- c) The CMA will need to satisfy itself of the suitability of the potential purchaser of the Divestiture Package (see Annex 4);
 - d) These Final Undertakings include provision enabling the CMA to direct the appointment of a Divestiture Trustee should the Vendors fail to achieve Final Disposal or Completion (see paragraphs 11-13).
- 1.7. The 17 October Interim Order ceases to be in force on the date of acceptance by the CMA of these Final Undertakings pursuant to section 82 of the Act.
- 1.8. Now UHS, Cygnet and CAS hereby give to the CMA on behalf of themselves and their subsidiaries the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying the SLC identified in the Final Report and any adverse effects resulting from it.

2. Interpretation

- 2.1. The Annexes form part of these Final Undertakings.
- 2.2. The purpose of these Final Undertakings is to give effect to the Remedy in the Final Report and they shall be construed accordingly.
- 2.3. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Final Report (as appropriate).
- 2.4. In these Final Undertakings, the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5. The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 2.6. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 2.7. References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to these Final Undertakings unless otherwise stated.

2.8. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.

2.9. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.

2.10. Further, in these Final Undertakings:

‘17 May Interim Order’ means the Interim Order made by the CMA under section 81 of the Act on 17 May 2017;

‘17 October Interim Order’ means the Interim Order made by the CMA under section 81 of the Act on 17 October 2017;

‘the Act’ means the Enterprise Act 2002;

‘Affiliate’ means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;

‘Approved Agreement’ means a binding agreement or agreements between the Vendors and an Approved Purchaser which provides for the transfer to the Approved Purchaser of all relevant key assets and rights as specified in the Divestiture Package and which brings about Final Disposal and Completion;

‘Approved Purchaser’ means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 1;

‘Approved Timetable’; has the meaning given in paragraph 9.1;

‘Asset Maintenance Undertakings’ means those undertakings set out in paragraph 5;

‘Associated Person’ means a person who is an associated person within the meaning of section 127 of the Act;

‘business’ has the meaning given by section 129(1) and

(3) of the Act;

‘Cambian Adult Services’	means the former Cambian Adult Services division of Cambian Group plc (registered number 08929371), being held and operated by Care Aspirations Developments Limited (registered number 07047184), Cambian Healthcare Limited (registered number 03977299) and Cambian Care Services Limited (registered number 02683377);
‘CAS’	means Cambian Adult Services;
‘the CAS Divestiture Sites’	means the sites listed in Part A of Annex 2;
‘the CAS business’	means the business of CAS and its subsidiaries carried on at the CAS East Midlands Sites as at the Commencement Date;
‘the CAS East Midlands Sites’	means the sites listed in Part A of Annex 3;
‘the CMA’	means the Competition and Markets Authority;
‘Commencement Date’	means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;
‘Completion’	means completion of the Final Disposal following receipt of all relevant regulatory approvals;
‘Completion Period’	means a period of [X] beginning on the Commencement Date or such longer period as the CMA may approve on request;
‘confidential information’	means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary and non-public nature relating to the business of UHS or

	Cygnnet or CAS businesses in the UK;
‘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;
‘CQC’	means Care Quality Commission;
‘Cygnnet ‘	means Cygnnet Healthcare Limited;
‘the Cygnnet businesses’	means the business of Cygnnet and its subsidiaries carried on as at the Commencement Date including at the Cygnnet Divestiture Site;
‘the Cygnnet Divestiture Site’	means the site listed in Part B of Annex 2;
‘the Cygnnet East Midlands Sites’	means the sites listed in Part B of Annex 3;
‘Direction’	means written directions given to the Vendors by the CMA as set out in paragraph 10.1;
‘the Divestiture Site’	means one of the CAS Divestiture Sites or the Cygnnet Divestiture Site nominated by the Vendors for divestiture or by the Divestiture Trustee pursuant to paragraph 13 of these Final Undertakings;
‘Divestiture Package’	means the Divestiture Site and elements outlined in Annex 4;
‘Divestiture Period’	means a period of [X] beginning on the Commencement Date or such longer period as the CMA may approve on request;
‘Divestiture Trustee’	means a person appointed in accordance with paragraph 12;
‘East Midlands’	means the local overlap area in the East Midlands, as explained in section 9 of the Final Report;

'Final Disposal'	means the conclusion of an Approved Agreement with an Approved Purchaser, with completion being conditional only on any outstanding regulatory approvals;
'Final Undertakings'	means these undertakings, including the Annexes, accepted by the CMA pursuant to section 82 of the Act;
'Group of Interconnected Bodies Corporate'	means a group of interconnected bodies within the meaning of section 129(2) of the Act, as constituted from time to time;
'Heads of Terms'	means an agreement in principle to acquire the Divestiture Package and which sets out the terms of the disposal, and that is expressed by all parties to be final (1) subject to contract (2) on all the issues that in the reasonable opinion of the parties will form the basis of a subsequent binding agreement;
'IEO'	means the Initial Enforcement Order made by the CMA on 29 December 2016;
'key staff'	means staff who are in positions of executive or managerial responsibility and/or whose performance affect the viability of the relevant business;
'Monitoring Trustee'	means a person appointed in accordance with paragraph 8;
'ordinary course of business'	means a party's customary commercial transactions and practices in the day-to-day supply of its services;
'Purchaser Approval Criteria'	means the criteria set out in Annex 1;
'Related Person'	means any Subsidiary, Affiliate or Associated Person;
'SLC'	means a substantial lessening of competition pursuant to section 22 of the Act;

‘specified period’	means the period beginning on the Commencement Date and terminating with the Completion;
‘subsidiary’	unless otherwise expressly stated, has the meaning given by section 1159 of the Companies Act 2006;
‘Trustee Divestiture Period’	means a period of up to [8] (or such longer period as the CMA may direct) for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee;
‘Trustee Obligation’	means bringing about the Final Disposal and Completion, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal and Completion promptly and in any event within the Trustee Divestiture Period;
‘The Vendors’	means UHS, Cygnet and CAS;
‘Working Day’	means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Final Undertakings to ‘days’ means calendar days; and
‘written consent’	shall include consent given by email.

3. Commencement

- 3.1. These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

4. Divestiture Undertakings

- 4.1. The Vendors give the following undertakings:

- 4.1.1 To implement the Final Disposal within the Divestiture Period having due regard to the findings in the Final Report.

4.1.2 To comply with any Directions given by the CMA under these Final Undertakings, in particular the appointment of a Divestiture Trustee, in the event that:

4.1.2.1 Final Disposal does not take place within the Divestiture Period; or

4.1.2.2 Completion does not take place within the Completion Period; or

4.1.2.3 the CMA otherwise directs.

4.1.3 To procure that any Related Person or any member of any Group of Interconnected Bodies Corporate to which they belong will not for a period of ten years from the date of Completion bring under common ownership or control (as defined in section 26 of the Act) in whole or in part the Divestiture Package or any asset of the Divestiture Package without the prior written consent of the CMA.

4.2 Subject to paragraph 13.2.2 the Parties will be able to choose the Divestiture Site from the CAS Divestiture Sites or the Cygnet Divestiture Site.

4.3 Subject to complying with the requirements of Annex 4, the precise configuration of the Divestiture Package shall be agreed between the Vendors and any Approved Purchaser, and then approved by the CMA before the Final Disposal (such approval not to be unreasonably withheld).

5. Asset Maintenance Undertakings

5.1 Except with the prior written consent of the CMA (which, for the avoidance of doubt includes the previous derogations granted by the CMA under the IEO; the 17 May Interim Order; or the 17 October Interim Order, which will remain applicable during the specified period), the Vendors shall not, during the specified period, take any action which might prejudice the Final Disposal or Completion, including any action which might:

- a) lead to the integration of the CAS East Midlands Sites with the Cygnet businesses (including but not limited to the Cygnet East Midlands Sites) or with any other business controlled by UHS;
- b) lead to the integration of the Cygnet East Midlands Sites with the CAS business;
- c) transfer the ownership or control of the CAS East Midlands Sites or the Cygnet East Midlands Sites; or

- d) otherwise impair the ability of the CAS business or the Cygnet business at the Cygnet East Midlands Sites to compete independently in any of the markets affected by the Merger.

5.2 Further and without prejudice to the generality of paragraph 5.1, the Vendors shall at all times during the specified period procure that, except with the prior written consent of the CMA (which includes any previously granted derogations under the IEO; the 17 May Interim Order; or the 17 October Interim Order):

- a) the physical facilities and other necessary supplies (for example medications, catering, cleaning and office supplies) at the CAS East Midlands Sites and the Cygnet East Midlands Sites are maintained at sufficient levels;
- b) training schedules for staff at the CAS East Midlands Sites and the Cygnet East Midlands Sites are maintained;
- c) no action is taken to solicit the transfer of customers or staff from the CAS East Midlands Sites and the Cygnet East Midlands Sites to any other of the Vendors' sites;
- d) the CAS business is carried on separately from the Cygnet business at the Cygnet East Midlands Sites and the separate sales or brand identity of the CAS business is maintained;
- e) both the CAS business and the Cygnet business at the Cygnet East Midlands Sites are maintained as going concerns and sufficient resources are made available for the development of the CAS business and the Cygnet business at the Cygnet East Midlands Sites, on the basis of their respective pre-merger business plans;
- f) no action is taken which might otherwise impair the ability of the CAS business and Cygnet business at the Cygnet East Midlands Sites to compete independently or that may significantly impact on their operations;
- g) except in the ordinary course of business, no substantive changes are made to the operating policies, organisational structure of, or the management responsibilities within, the CAS business or the Cygnet business at the Cygnet East Midlands Sites;
- h) the nature, description, range and quality of services supplied in the UK by each of the CAS business and the Cygnet business at the Cygnet East Midlands Sites are maintained and preserved;

- i)* except in the ordinary course of business for the separate operation of the CAS business and the Cygnet business at the Cygnet East Midlands Sites:
 - (i)* all of the assets of the CAS business and the Cygnet business at the Cygnet East Midlands Sites are maintained and preserved, including facilities and goodwill;
 - (ii)* none of the assets of the CAS business or the Cygnet business at the Cygnet East Midlands Sites are disposed of; and
 - (iii)* no interest in the assets of the CAS business or the Cygnet business at the Cygnet East Midlands Sites is created or disposed of;
- j)* there is no integration of the information technology of the CAS business and Cygnet businesses, and the software and hardware platforms of the CAS business shall remain essentially unchanged, except for routine changes and maintenance;
- k)* the customer and supplier lists of the CAS business and the Cygnet business at the Cygnet East Midlands Sites shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the CAS business will be carried out by the CAS business alone and for the avoidance of doubt the Cygnet businesses will not negotiate on behalf of the CAS business (and vice versa) or enter into any joint agreements with the CAS business (and vice versa);
- l)* all existing contracts of the CAS business and the Cygnet business at the Cygnet East Midlands Sites continue to be serviced by the business to which they were awarded;
- m)* no changes are made to key staff of the CAS business or Cygnet business at the Cygnet East Midlands Sites;
- n)* no key staff are transferred between the CAS business and the Cygnet business at the Cygnet East Midlands Sites;
- o)* all reasonable steps are taken to encourage all key staff to remain with the CAS business and the Cygnet business at the Cygnet East Midlands Sites; and
- p)* no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the CAS business or the Cygnet

business at the Cygnet East Midlands Sites shall pass, directly or indirectly,

- (i) from the CAS business (or any of its employees, directors, agents or affiliates) to the Cygnet businesses (or any of its employees, directors, agents or affiliates), or
- (ii) from the Cygnet business at the Cygnet East Midlands Sites (or any of its employees, directors, agents or affiliates) to the CAS business (or any of its employees, directors, agents or affiliates),

except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations).

5.3 The Vendors shall actively inform their respective existing and potential customers that the CAS business and the Cygnet business at the Cygnet East Midlands Sites are operating independently of each other.

5.4 Notwithstanding the provisions of paragraph 6 (Procedure for consent and notification), the Vendors will ensure that, subject to derogations granted to the IEO, the 17 May Interim Order, or the 17 October Interim Order:

5.4.1 they will continue to provide necessary transitional support services to the CAS business and the Cygnet business at the Cygnet East Midlands Sites for the specified period, as are provided at the time that these Final Undertakings are accepted by the CMA, on the basis that:

5.4.1.1 any of the Vendors' employees with access to confidential information shall execute non-disclosure agreements in respect of any confidential information received by the CAS business and the Cygnet business at the Cygnet East Midlands Sites in connection with the provision of such services;

5.4.1.2 the Vendors maintain sufficient working capital and any additional capital required to meet the pre-merger business plans of the CAS business and the Cygnet business at the Cygnet East Midlands Sites;

5.4.1.3 the CAS business and the Cygnet business at the Cygnet East Midlands Sites continue to operate under the same brand name as prior to the Merger; and

- 5.4.1.4 the CAS business and the Cygnet business at the Cygnet East Midlands Sites can use any other intellectual property which belongs to the Vendors which they used prior to the Merger.
- 5.5 The Vendors undertake that until Completion, they will keep the CMA informed of any material developments (and with the consent of the CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 7.9 of these Undertakings) relating to the CAS business and the Cygnet business at the Cygnet East Midlands sites, which include but are not limited to:
- 5.5.1 details of key staff who leave or join the CAS business or the Cygnet business at the Cygnet East Midlands Sites;
- 5.5.2 any interruption of the CAS business or the Cygnet business at the Cygnet East Midlands Sites (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
- 5.5.3 all substantial customer volumes won or lost or substantial changes to the customer contracts for any of the CAS East Midlands Sites or any of the Cygnet East Midlands Sites including any substantial changes in customers' demand; and
- 5.5.4 substantial changes in contractual arrangements or relationships with key suppliers at the CAS East Midlands Sites or Cygnet East Midlands Sites.
- 5.6 The Vendors undertake that within a period of five Working Days from the Commencement Date, they will provide a written statement to the CMA confirming their compliance with these Asset Maintenance Undertakings (subject to any granted derogations) and setting out any details of material developments for the purposes of paragraph 5.5 of these Final Undertakings. Thereafter, UHS and Cygnet will provide similar compliance statements to the CMA on a monthly basis until Completion, with the first such monthly statement to be submitted to the CMA no later than 19 December 2017.
- 5.7 The Vendors undertake to notify the CMA when Final Disposal and Completion have taken place.
- 5.8 The Vendors undertake to keep their customers and the CQC suitably informed of the divestiture plans, including on the choice of the Divestiture Site.

- 5.9 The Vendors undertake to inform the CMA without delay, of any developments that would risk the Final Disposal within the Divestiture Period or Completion within the Completion Period.

6 Procedure for consent and notification

- 6.1 The Vendors undertake that any application by them for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that they believe is relevant to the CMA's decision.
- 6.2 The Vendors recognise that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 6.3 In the event that the Vendors discover that an application for consent or approval has been made without full disclosure to the CMA in accordance with paragraph 6.1, the Vendors undertake to:
- 6.3.1 inform the CMA in writing identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
- 6.3.2 at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 6.3.1 above, provide to the CMA an application for consent that includes the missing information.
- 6.4 The Vendors shall 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 Final Undertakings.
- 6.5 The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five-Working-Day period referred to in paragraph 6.4 above. This provision is without prejudice to the CMA's duties under the Act.

7. Monitoring Trustee

- 7.1 The Vendors undertake that they shall secure the appointment or retention of an independent Monitoring Trustee to perform the functions in paragraph 7.8 on behalf of the CMA.

- 7.2 The Monitoring Trustee must possess appropriate qualifications and experience to carry out his functions. The Monitoring Trustee must act on behalf of the CMA and be under an obligation to the CMA to carry out his functions to the best of his abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging his duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. The Vendors shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out his functions.
- 7.3 The appointment of the Monitoring Trustee and their terms and conditions must be approved by the CMA. The Vendors must inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that the Vendors propose to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed, the Vendors must provide the CMA with a copy of the agreed terms and conditions of appointment.
- 7.4 If the proposed Monitoring Trustee is rejected by the CMA, the Vendors shall submit the names of at least two further persons within two Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 7.2 and 7.3 above.
- 7.5 The provisions of paragraph 7.6 below shall apply if:
- 7.5.1 the Vendors fail to nominate persons in accordance with paragraphs 7.3 or 7.4 above; or
 - 7.5.2 those further persons nominated by the Vendors in accordance with paragraphs 7.3 or 7.4 above are rejected by the CMA; or
 - 7.5.3 the Vendors are unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 7.6 The CMA shall nominate one or more persons to act as Monitoring Trustee, and the Vendors shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.

- 7.7 The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out below and that the Monitoring Trustee will monitor the compliance of the Vendors with their obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as he reasonably considers necessary to carry out his functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out his functions under these Final Undertakings.
- 7.8 The Monitoring Trustee's functions as set out in this paragraph are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal and Completion, shall in particular include:
- 7.8.1 monitoring compliance by the Vendors with the Asset Maintenance Undertakings set out in paragraph 5 above; and
- 7.8.2 monitoring the progress made by the Vendors against the Approved Timetable towards Final Disposal and Completion, and the steps that have otherwise been taken to comply with these Final Undertakings including:
- 7.8.2.1 the steps that have been taken towards the preparation of agreements for disposal of the Divestiture Package and the persons to whom such agreements have been distributed;
- 7.8.2.2 where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between the Vendors and their financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process;
- 7.8.2.3 in instances where the Monitoring Trustee reasonably considers there to be a risk that the Vendors will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between the Vendors and possible purchasers in connection with the disposal process; and
- 7.8.2.4 monitoring communications between the Vendors and the CQC in relation to the disposal process.
- 7.9 The Monitoring Trustee will promptly inform the CMA of any material developments arising from the operation of his functions and will provide a written report to the CMA every two weeks, the first report to be submitted not later than 3 January 2018.

8. Monitoring Trustee – duties and obligations of the Vendors

- 8.1 The Vendors and each of their subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the Monitoring Trustee, in particular by providing the Monitoring Trustee with all cooperation, assistance and information as the Monitoring Trustee may reasonably require in order to discharge his or her functions, including but not limited to:
- 8.1.1 the provision of full and complete access to all personnel, books, records, documents, facilities and information of:
- (i) the Vendors, which relate(s) to the Cygnet East Midlands Site or the CAS East Midlands Sites; and
 - (ii) the Divestiture Package,
- as the Monitoring Trustee may reasonably require (excluding any material properly the subject of legal privilege); and
- 8.1.2 the provision of such office and supporting facilities as the Monitoring Trustee may reasonably require.
- 8.2 If the Vendors or any of their subsidiaries are in any doubt, as to whether any action or communication would infringe the requirements of the Monitoring Trustee as set out above, they are required to contact the Monitoring Trustee for clarification.
- 8.3 If the Vendors or any of their subsidiaries have any reason to suspect that the requirements of the Monitoring Trustee may have been breached, they must notify the Monitoring Trustee and the CMA immediately.

9. Divestment Reporting Obligations

- 9.1 The Vendors undertake that within the period of five Working Days from the Commencement Date they will provide a written report to the CMA setting out the timetable that they propose to adopt, subject to the CMA's approval, to ensure the Final Disposal and Completion (the 'Approved Timetable'). The report will outline the progress that the Vendors have made towards the Final Disposal and Completion, and the steps that have otherwise been taken to comply with these Final Undertakings, and shall in particular report on:
- 9.1.1 the identity of the Divestiture Site chosen to be part of the Divestiture Package;
- 9.1.2 the status of any discussions that have been held with potential purchasers of the Divestiture Package;

- 9.1.3 the progress that has been made towards agreeing Heads of Terms (if applicable);
 - 9.1.4 the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement has been distributed;
 - 9.1.5 the progress on obtaining any necessary regulatory approvals; and
 - 9.1.6 such other matters as may be directed by the CMA from time to time.
- 9.2 Thereafter, the Vendors will provide similar reports to the CMA every two weeks, or at such other interval as agreed with the CMA, until Completion. The reports will include an update on the progress that has been made against the Approved Timetable and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee in accordance with paragraph 7.9 of these Final Undertakings.
- 9.3 The Vendors undertake that in the report to the CMA pursuant to paragraphs 9.1 and 9.2 it shall, among other things, provide to the CMA:
- 9.3.1 the total number of persons who have lodged a formal bid with the Vendors for the acquisition of the Divestiture Package since the publication of the CMA's Final Report;
 - 9.3.2 the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with the Vendors for the acquisition of the Divestiture Package since the publication of the CMA's Final Report and subsequently been short-listed by the Vendors as a preferred purchaser for the Divestiture Package; and
 - 9.3.3 details of the efforts taken by the Vendors and their financial advisers to solicit purchasers for the Divestiture Package.
- 9.4 In the event that the Vendors do not meet a step as set out in the Approved Timetable, or are otherwise delayed in implementing the divestiture required pursuant to these Final Undertakings, the Vendors undertake to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days from becoming aware that a step in the Approved Timetable has not been met.

10. Directions

- 10.1 The Vendors will comply with such written Directions as the CMA may from time to time issue and will take such steps as may be specified or described in the Directions for complying with these Final Undertakings.

- 10.2 Any delay by the CMA in making a written Direction shall not affect the obligations of the Vendors at such time as the CMA makes any written Direction under paragraph 10.1.

11. Conditions for the appointment of a Divestiture Trustee

- 11.1 Without prejudice to the CMA's order-making power under section 83 of the Act, the Vendors undertake that they shall at the written Direction of the CMA appoint a Divestiture Trustee in accordance with paragraph 12 to give effect to the Trustee Obligation.
- 11.2 The Divestiture Trustee shall fulfil the Trustee Obligation and shall undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CMA may specify in the written Direction referred to in paragraph 11.1 above.

12. Divestiture Trustee – appointment procedure

- 12.1 The Vendors recognise and acknowledge that the CMA may direct the appointment of a Divestiture Trustee at any time after the expiry of the Divestiture Period, or prior to the expiry of the Divestiture Period where the CMA, upon reasonable grounds, considers that the Vendors have not complied with the Approved Timetable in such a way that Final Disposal may not be expected to take place within the Divestiture Period.
- 12.2 The Vendors recognise and acknowledge that the CMA may direct the appointment of a Divestiture Trustee at any time after the expiry of the Completion Period if relevant regulatory approvals have not been obtained by the Approved Purchaser within the Completion Period, or prior to the expiry of the Completion Period where the CMA, upon reasonable grounds, considers that any relevant regulatory approvals will not be granted to the Approved Purchaser within the Completion Period.
- 12.3 The Vendors undertake that on the Direction of the CMA, and in accordance with such Directions as are given by the CMA as to the timing for taking these steps, the Vendors shall submit to the CMA for approval a list of two or more persons from who they propose to appoint a Divestiture Trustee. The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirement set out in paragraph 12.4 below and shall include among other things:
- 12.3.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and

- 12.3.2 a schedule of the steps to be taken to give effect to the mandate.
- 12.4 Each person on the list referred to in paragraph 12.3 shall be independent of and unconnected to the Vendors, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 12.5 The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, the Vendors shall use their best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, the Vendors shall be free to choose the Divestiture Trustee to be appointed from among the names approved. The Vendors undertake to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 12.6 If all the proposed Divestiture Trustees are rejected by the CMA, the Vendors shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 12.3 and 12.4 above.
- 12.7 The provisions of paragraph 12.8 below shall apply only if:
- 12.7.1 the Vendors fail to nominate persons in accordance with paragraph 12.3 above; or
- 12.7.2 those further persons nominated by the Vendors in accordance with paragraph 12.6 above are rejected by the CMA; or
- 12.7.3 The Vendors are unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 12.8 The CMA shall nominate one or more persons to act as a Divestiture Trustee, and the Vendors shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

13. Divestiture Trustee – functions

- 13.1 The Vendors undertake to enable the Divestiture Trustee to carry out the Trustee Obligation.
- 13.2 The Vendors recognise and acknowledge that:
- 13.2.1 the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Trustee Obligation to bring about the Final Disposal and Completion,
 - 13.2.2 in order to give effect to the Remedy, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written Directions or instructions to the Divestiture Trustee to select a Divestiture Site other than the Divestiture Site proposed by the Vendors, where the CMA has reasonable grounds for believing that the site proposed by the Vendors cannot be divested within the Completion Period;
 - 13.2.3 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and
 - 13.2.4 the Divestiture Trustee shall protect the legitimate financial interests of the Vendors subject to the Divestiture Trustee's overriding obligations to give effect to the Trustee Obligation.
- 13.3 The Vendors recognise and acknowledge that the Divestiture Trustee shall take such steps and measures as it considers necessary to discharge the Trustee Obligation and to that end the Divestiture Trustee may give written directions to any of the Vendors, as applicable. The Vendors undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.
- 13.4 The Vendors recognise and acknowledge that in the performance of the Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of any of the Vendors. The Vendors undertake that they shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

14. Divestiture Trustee – duties and obligations of the Vendors

- 14.1 The Vendors undertake to provide the Divestiture Trustee with such cooperation, assistance and information relating to the Cygnet Divestiture Site

and the CAS Divestiture Sites (including the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the Final Disposal of the Divestiture Package and Completion of the divestiture but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Trustee Obligation.

- 14.2 The Vendors recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligations (save where material is properly the subject of legal privilege) and the Vendors undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, the Vendors undertake to make available to the Divestiture Trustee one or more offices on its premises, and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for the performance of the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with the Vendors' internal policies.
- 14.3 The Vendors undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation including by the appointment of advisers to assist with the disposal process. The Vendors undertake that upon the reasonable request of the Divestiture Trustee the Vendors shall execute the documents required to give effect to the Trustee Obligation.
- 14.4 The Vendors undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation and the Vendors recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to the Vendors or any of their subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 14.5 The Vendors undertake that at their expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture

Trustee will consider using the advisers already appointed by the Vendors. Should the Vendors refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with the Vendors, approve and direct the appointment of such advisers.

- 14.6 The Vendors undertake to make no objection to the Final Disposal and Completion of any Divestiture Package save on the grounds of either bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of the Vendors, subject to the Trustee Obligation. Where the Vendors wish to make an objection on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee reasonably to protect the legitimate financial and business interests of the Vendors, they shall submit to the CMA a notice setting out their objections within two Working Days from the day on which they became aware of the fact or facts giving rise to their objection.

15. Divestiture Trustee – replacement, discharge and reappointment

- 15.1 The Vendors acknowledge that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require the Vendors to replace the Divestiture Trustee.
- 15.2 If the Divestiture Trustee is removed under paragraph 15.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 12 above.
- 15.3 The Vendors recognise and acknowledge that, other than in accordance with paragraph 15.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

16. Additional Undertakings to protect the divestment of the Divestiture Package

- 16.1 The Vendors shall procure that all senior management who have been employed by the Divestiture Site and who have or will be transferred to the Vendors and who have knowledge of the Divestiture Site's operations and customer details sign non-disclosure agreements.

- 16.2 The Vendors shall not seek to recruit the staff that are included in the Divestiture Package for a period of 12 months after the Final Disposal.
- 16.3 The Vendors will be required to use their best endeavours to sell the Divestiture Site with the benefit of all the existing customer contracts held by the Divestiture Site at the Commencement date.

17. Variations to these Final Undertakings

- 17.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 17.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Final Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 17.3 The consent of the CMA shall not be unreasonably withheld.

18. General obligation to provide information to the CMA

- 18.1 The Vendors undertake that they shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.
- 18.2 The Vendors undertake that should they at any time be in breach of any provision of these Final Undertakings, they will notify the CMA within two Working Days starting with the date they become aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.
- 18.3 Where any person, including a Monitoring Trustee or Divestiture Trustee must provide information in relation to the Vendors to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, the Vendors undertake that they will take reasonable steps within their power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of the Vendors to any person other than to the CMA, without the prior written consent of both the CMA and the Vendors.

19. Acceptance of Service

- 19.1 The Vendors hereby authorise Ross Mackenzie (or any other partner) of Ashurst LLP, whose address for service is Broadwalk House, 5 Appold Street, London, EC2A 2HA to accept on their behalf service of all documents, orders,

requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to the Vendors in connection with proceedings in court in the United Kingdom).

- 19.2 Unless the Vendors inform the CMA that Ashurst LLP has ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on their behalf, any document, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on the Vendors if it is served on Ashurst LLP at its registered office for the attention of Ross Mackenzie, or via email to Ross Mackenzie, and service or receipt shall be deemed to be acknowledged by the Vendors if it is acknowledged by email from an Ashurst LLP employee to the CMA.
- 19.3 Paragraph 19.1 has effect irrespective of whether, as between the Vendors and Ashurst LLP, Ashurst LLP has or continues to have any authority to accept and acknowledge service on behalf of the Vendors (unless the Vendors inform the CMA that Ashurst LLP has ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Ashurst LLP (including a failure to notify the Vendors of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

20. Effect of invalidity

- 20.1 The Vendors undertake that should any provision of these Final Undertakings be contrary to law or invalid for any reason, the Vendors shall continue to observe the remaining provisions.

21. Extension of time

- 21.1 The Vendors recognise and acknowledge that the CMA may, where it considers it appropriate, in response to a written request from the Vendors showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which the Vendors, the Monitoring Trustee and/or the Divestiture Trustee (as the case may be) must take action.

22. Governing law

- 22.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.

22.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

23. Termination and release

23.1 These Final Undertakings shall remain in force until the date on which the obligation on the Vendors under paragraph 4.1.3 expires.

23.2 The variation, release or supersession of these Final Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

FOR AND ON BEHALF OF UHS

..... Signature
..... Name
..... Title
..... Date

FOR AND ON BEHALF OF CYGNET

..... Signature
..... Name
..... Title
..... Date

FOR AND ON BEHALF OF CAS

..... Signature
..... Name
..... Title
..... Date

Purchaser Approval Criteria

These Purchaser Approval Criteria are to be construed as consistent with and giving effect to paragraphs 14.97-14.100 and paragraphs 14.144-14.145 of the Final Report.

1. Independence

At the time of the Final Disposal, the Approved Purchaser must have no significant connection (for example financial, ownership or management links)¹ to the Vendors or any Associated Person or Affiliate of the Vendors or their respective Groups of Interconnected Bodies Corporate that may compromise the purchaser's incentives to compete with the Parties.

2. Capability

The Approved Purchaser must have access to appropriate financial resources, expertise and assets to be an effective competitor in the male LTMH rehabilitation market in the East Midlands. This access should be sufficient to enable the Divestiture Package to continue to develop as an effective competitor in the male LTMH rehabilitation market. A suitable purchaser must be able to demonstrate an ability to provide continuity of care to patients at the Divestiture Site, and have experience of providing mental health services in the UK. The Approved Purchaser must have, or be able to obtain without undue delay, all necessary licences and consents from any regulatory or other authority to purchase and operate the Divestiture Site.

3. Commitment to the relevant market

The Approved Purchaser must demonstrate to the satisfaction of the CMA that it has commitment and credible plans to provide male LTMH rehabilitation services at the Divestiture Site. This could be demonstrated by (among other things) a suitable business plan (including managerial capability, operational capability and technical capability or such other evidence as the CMA considers appropriate) to maintain and operate the Divestiture Site as a viable and active business in competition with the Vendors and other competitors in the relevant market so as to remedy the SLC and any adverse effect arising from it.

¹ This can include for example an equity interest, shared directors, reciprocal trading relationships or continuing financial assistance. CC8, paragraphs 3.15, 3.18.

4. Absence of competitive or regulatory concern

In considering whether to give consent to any Approved Agreement the CMA shall consider whether the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of the Divestiture Package would not remedy the SLC and any adverse effects likely to arise from it. In addition, the acquisition of the Divestiture Site by the Approved Purchaser must not raise further competition concerns in the East Midlands male LTMH market. The CMA shall also take into account any concerns relating to the proposed purchasers' ability to obtain, without undue delay, all necessary licences and consents from any regulatory or other authority to purchase and operate the Divestiture Site.

Part A: CAS Divestiture Sites	
Site	Location
<p>CAS Storthfield House</p> <p>(to include the whole service portfolio at this site, not limited to male LTMH services, and including the residential step-down facility, The Sycamores)</p>	
<p>CAS Sherwood House</p> <p>(to include the whole service portfolio at this site, not limited to male LTMH services)</p>	
<p>CAS The Limes</p>	
Part B: Cygnet Divestiture Site	
Site	Location
<p>Cygnet Derby</p> <p>(to include the whole service portfolio at this site, not limited to male LTMH service)</p>	

Part A: CAS East Midlands Sites	
Site	Location
CAS Storthfield House	
CAS Sherwood House	
CAS The Limes	
CAS The Oaks	
CAS St Augustine's	
Part B: Cygnet East Midlands Sites	
Site	Location
Cygnet Derby	
Cygnet Lodge Brighthouse	

Divestiture Package

1. The Vendors shall offer to include in the Divestiture Package the following core elements relating to the Divestiture Site:
 - (a) Freehold site or (if leasehold) rights to the lease;
 - (b) Physical facilities and assets related to the provision of the relevant mental health services provided at the Divestiture Site;
 - (c) Transfer of skilled staff and other staff considered key to day-to-day running and future growth of business at the Divestiture Site;
 - (d) Rights to use the relevant site or ward name (without the name of the relevant Party);
 - (e) Transfer of all relevant customer and patient data and records (including carer data and records) for the purposes of ensuring continuity of treatment and to enable the purchasers to discharge its statutory and regulatory obligations;
 - (f) Transfer of other site related records held or maintained by the Parties to include:
 - (i) Staff records, including training;
 - (ii) Fire risk assessments;
 - (iii) Health and safety records;
 - (iv) Serious incident reports including action taken;
 - (v) Maintenance schedules to adhere to building regulations;
 - (g) Transfer of rights to receive services and utilities currently being provided at the Divestiture Site, to include, as relevant, gas, electricity, water and sewerage, building access and services
 - (h) Necessary transitional services depending on the requirements of the Approved Purchaser, for a period to be approved by the CMA, which may include:

- (i) Access to relevant training for staff;
 - (ii) Services of registered hospital manager;
 - (iii) Other essential supplies such as medicines, catering, cleaning, office supplies;
 - (iv) Self-audit and self-assurance reporting arrangements;
 - (v) Provision of central support services such as finance, procurement, HR, and IT.
2. The Vendors shall use best endeavours to novate all customer contracts and supply agreements.
 3. The Vendors shall use best endeavours to transfer existing contracts with clinical staff including visiting consultants.