

ACQUISITION BY CIRCLE HEALTH HOLDINGS LIMITED OF GHG HEALTHCARE HOLDINGS LIMITED

Undertakings given by Circle Healthcare Holdings Limited to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality

Whereas:

- (a) Circle Health Holdings Limited (**Circle**) completed the acquisition of GHG Healthcare Holdings Limited, a parent of BMI Healthcare Limited (**BMI**) on 8 January 2020 by way the purchase of the entire issued share capital of BMI (the **Transaction**) such that Circle and BMI ceased to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 22(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 8 April 2020 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (e) The CMA considers that the undertakings given below by Circle are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision; and
- (f) The CMA made an Initial Enforcement Order applying to Circle on 20 December 2019, and to Penta Capital LLP and Circle on 11 March 2020, in respect of the Transaction pursuant to section 72 of the Act for the purposes of preventing pre-emptive action (the "**IEO**"). Pursuant

to section 72(6)(b) of the Act, this Initial Enforcement Order ceases to be in force on the acceptance by the CMA of the undertakings given below by Circle.

NOW THEREFORE Circle hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

1 EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by Circle, they are accepted by the CMA.

2 DIVESTMENT OF THE DIVESTMENT BUSINESS

- 2.1 Circle shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, effect to the satisfaction of the CMA the divestment of the Divestment Business as a going concern by the end of the Divestment Period to a purchaser approved by the CMA in accordance with the provisions of these undertakings.

- 2.2 Without prejudice to the generality of paragraph 2.1 above, Circle shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Business.

- 2.3 Without prejudice to paragraph 15.1 below, Circle shall be entitled to make a reasoned application in writing to the CMA for an extension to the Divestment Period.

- 2.4 Circle shall be deemed to have complied with its obligations at paragraph 2.1 above if, as soon as reasonably practicable and in any event by the end of the Divestment Period, it has entered into a legally binding agreement (or agreements) with a purchaser (or purchasers) approved in advance by the CMA in writing pursuant to these undertakings (or a legally binding agreement (or agreements) conditional on such approval), provided that the completion of the divestment of the Divestment Business contemplated by such agreement (or agreements), if later than the end of the Divestment Period, takes place:

- (a) within a period not exceeding one month after the approval of the purchaser by the CMA or within one month of the Effective Date (whichever is later) or
- (b) within a period not exceeding 10 Working Days after all the necessary approvals and consents from third parties have been obtained,

whichever is later, provided that in any event, the completion of the divestment of the Divestment Businesses takes place within 18 months of the Effective Date.

- 2.5 Without prejudice to the generality of paragraph 2.1 above, Circle shall take the following measures to the extent they may be necessary in the opinion of the CMA to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);

- (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (d) the formation or winding up of a company.
- 2.6 Circle shall ensure that the sale and purchase agreement entered into for the purposes of paragraph 2.1 and 2.4 above includes a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with Circle and other competitors in the market for private hospital medical services.
- 2.7 In the event that Circle fails to divest the Divestment Business in accordance with paragraphs 2.1 and 2.4 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 6 below, require Circle to divest the Divestment Business as a going concern at no minimum price to a purchaser approved by the CMA.
- 2.8 Circle shall notify the CMA in writing of the identity of each proposed purchaser that makes an offer for the Divestment Business together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 5 Working Days of receipt of such offers.

3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT

- 3.1 For the purposes of the CMA approving a Proposed Purchaser of the Divestment Business in accordance with these undertakings, Circle shall, save as required or permitted by the CMA, satisfy the CMA that:
- (a) the acquisition by the Proposed Purchaser of the Divestment Business, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
 - (b) the Proposed Purchaser is independent of and unconnected to Circle and the Group of Interconnected Bodies Corporate to which Circle belongs and any Associated Person or Affiliate of Circle or such Group of Interconnected Bodies Corporate;
 - (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as a viable and active business in competition with Circle and other competitors in the market for private hospital medical services from the date of completion of the divestment of the Divestment Business;
 - (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and

- (e) the acquisition by the Proposed Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require Circle to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser will fulfil the requirements in paragraph 3.1 above.

4 OBLIGATIONS IN RELATION TO THE COMMISSIONING OF CIRCLE BIRMINGHAM HOSPITAL

4.1 Circle shall take all reasonable steps to procure that by the earlier of (i) the end of the Divestment Period or (ii) the date of a divestment of the Birmingham Divestment Business, the following shall have occurred (unless otherwise agreed with the Purchaser) in respect of Circle Birmingham Hospital:

- (a) completion of the construction of the hospital building and receipt of all applicable building regulations approvals;
- (b) entry into the Underlease and the Sub-underlease;
- (c) installation and testing of the following building systems: (i) heating, ventilation and air conditioning (HVAC), (ii) water and (iii) medical gasses;
- (d) installation and testing of the LAN cabling into the server room;
- (e) installation and testing of fixed operating theatre equipment and other fixed medical equipment (including MRI and X-Ray equipment); and
- (f) installation of appropriate catering facilities.

4.2 The CMA may, in response to a written request from Circle, agree in writing to amend the scope of paragraph 4.1.

5 TRANSITIONAL SERVICES AGREEMENT

5.1 Circle shall (at the request of the Purchaser) enter into a Transitional Services Agreement with the Purchaser in a form approved by the CMA.

6 APPOINTMENT OF A TRUSTEE

6.1 The provisions of paragraph 6.2 to paragraph 6.7 below shall apply only as long as Circle has not satisfied, or where the CMA has reasonable grounds for believing that Circle will not satisfy, all or any part of the obligation to divest the Divestment Business in accordance with paragraph 2 above.

6.2 Within 5 Working Days of the CMA notifying Circle in writing that it must do so, Circle shall propose to the CMA for approval:

- (a) the names of at least two individuals to exercise the Trustee Functions; and

- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

6.3 Circle and/or any individuals nominated pursuant to paragraph 6.2 shall satisfy the CMA that, save as required or permitted by the CMA:

- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) such nominated individuals are each independent of Circle and of the Group of Interconnected Bodies Corporate to which Circle belongs and of any Associated Person or Affiliate of Circle or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of Circle, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

6.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Circle and their proposed mandates pursuant to paragraph 6.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, Circle shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 6.2 above.

6.5 In the event that:

- (a) Circle fails to propose any person or persons in accordance with paragraph 6.2 above; or
- (b) none of the persons proposed by Circle pursuant to paragraph 6.2 is approved by the CMA; or
- (c) Circle is unable for any reason to appoint within the time limit stipulated in paragraph 6.2 above any such person following approval by the CMA,

Circle shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. Circle shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

6.6 The appointment of the Trustee pursuant to paragraph 6.4 or paragraph 6.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or

- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

6.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 6.6 above, Circle shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Circle shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

7 THE MANDATE

7.1 The terms of the mandate proposed by Circle pursuant to paragraph 6.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Business as required by paragraph 8.1 below to a purchaser as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Business;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at Circle's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

8 FUNCTIONS OF TRUSTEE

8.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Business at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 8.3 below.

8.2 Without prejudice to the generality of paragraph 8.1 above, the Trustee shall take the following measures in relation to the Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Divestment Business in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);

- (b) any other transfer of interests that will take effect with the sale;
 - (c) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (d) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (e) the formation or winding up of a company.
- 8.3 The Trustee shall not sell or permit the divestment of the Divestment Business to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 8.4 Pending the divestment of the Divestment Business pursuant to paragraph 8.1 above, the Trustee shall monitor Circle's compliance with its obligations under paragraph 9.1 and paragraph 9.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that Circle is failing or will fail to comply with such obligations.
- 8.5 The Trustee may give written directions to Circle to take such steps as may be specified or described in the directions for the purpose of securing Circle's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Circle to:
- (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Business which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 8.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that Circle is failing or will fail to comply with any of its obligations under these undertakings.
- 8.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Circle nor shall the Trustee Functions be extended or varied in any way by Circle save with the prior express written consent of the CMA.

9 OBLIGATIONS OF CIRCLE FOLLOWING APPOINTMENT OF TRUSTEE

- 9.1 Circle shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 9.2 Circle shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 8.5 above; and
 - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

10 REMUNERATION OF TRUSTEE

- 10.1 Circle shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 7 above.

11 INTERIM ACTION

- 11.1 Subject to the NHSE Agreement and pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA, Circle shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business and in particular ensure that:
- (a) the Divestment Business and the Circle Business are maintained as a going concern and sufficient resources are made available for the development of the Divestment Business on the basis of its pre-Transaction business plans or budgets;
 - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within the Divestment Business;
 - (c) the nature, description, range and quality of goods and/or services supplied in the UK by each of the Divestment Business are maintained and preserved;
 - (d) except in the ordinary course of business:
 - (i) all of the assets of the Divestment Business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Divestment Business are disposed of; and
 - (iii) no interest in the assets of the Divestment Business is created or disposed of;
 - (e) there is no integration of the Divestment Business with the Circle Business other than that which existed as at the Effective Date;

- (f) all existing contracts of the Divestment Business and the Circle Business continue to be serviced by the business to which they were awarded, except that the Divestment Business shall continue to benefit from existing contracts (and any renewals of such contracts) entered into by Circle for the benefit of the group prior to the sale of the Divestment Business;
- (g) no changes are made to Key Staff of the Divestment Business;
- (h) no Key Staff are transferred between the Divestment Business and the Circle Business;
- (i) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business; and
- (j) other than as required to facilitate the performance of the NHSE Agreement and/or as permitted by the Exclusion Order, no Confidential Information relating to either of the Divestment Business or the Circle Business shall pass, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or affiliates) to the Circle Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for internal and external financial or regulatory reporting, and/or with compliance with accounting and HMRC obligations) or any steps necessary in order for Circle to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by the Circle Business in relation to the Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

11.2 At all times, Circle will actively keep the CMA informed of any material developments relating to the Divestment Business, which includes, but is not limited to:

- (a) details of Key Staff who leave the Divestment Business;
- (b) any interruption of the Divestment Business (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;
- (c) all substantial customer volumes lost by the Divestment Business; and
- (d) substantial changes in the Divestment Business's contractual arrangements or relationships with key suppliers.

12 CONTINUED SEPARATION

12.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Business pursuant to these undertakings, Circle, or any member of the Group of Interconnected bodies Corporate to which Circle belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:

- (i) an Interest in the Divestment Business; or
 - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Circle or of any members of the Group of Interconnected Bodies Corporate to which Circle belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the normal course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of Circle or any member of the Group of Interconnected Bodies Corporate to which Circle belongs for as long as they are an employee or director of Circle or any member of the Group of Interconnected Bodies Corporate to which Circle belongs holds or is nominated to any directorship or managerial position in the Divestment Business or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Business without the CMA's prior written consent;
 - (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Business or any company or other undertaking carrying on or having control of that Divestment Business; and
 - (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Circle or of any member of the Group of Interconnected Bodies Corporate to which Circle belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in sub-paragraphs 12.1(a), 12.1(b) and 12.1(c) above.

13 COMPLIANCE

- 13.1 Circle shall comply promptly with such written directions as the CMA may from time to time give:
- (a) 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; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 13.2 Circle shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
 - (b) investigating potential breaches of the provisions of these undertakings.

- 13.3 Circle shall procure that any member of the same Group of Interconnected Bodies Corporate as Circle complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Circle shall be attributed to Circle for the purposes of these undertakings.
- 13.4 Where any Affiliate of Circle is not a member of the same Group of Interconnected Bodies Corporate as Circle, Circle shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

14 PROVISION OF INFORMATION

- 14.1 Circle shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

15 EXTENSION OF TIME LIMITS

- 15.1 The CMA may, in response to a written request from Circle, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

16 SERVICE

- 16.1 Circle hereby authorises Ashurst LLP, whose address for service is FAO Nigel Parr/Christopher Eberhardt, Ashurst LLP, London Fruit & Wool Exchange, 1 Duval Square, London E1 6PW, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Circle, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 16.2 Unless Circle inform the CMA in writing that Ashurst LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Circle if it is served on Ashurst LLP; and service shall be deemed to have been acknowledged by Circle if it is acknowledged by Ashurst LLP or such other nominee.
- 16.3 Paragraph 16.2 above has effect irrespective of whether, as between Circle and Ashurst LLP or other nominees, Ashurst LLP or other nominees has or continues to have any authority to accept and acknowledge service on Circle's or any of its respective Subsidiaries' behalf.
- 16.4 No failure or mistake by Ashurst LLP or other nominees (including a failure to notify Circle of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 16.5 Any communication from Circle to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ, or such other person or address as the CMA may direct in writing.

17 EFFECT OF INVALIDITY

- 17.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Circle undertakes to continue to observe the remaining provisions.

18 GOVERNING LAW

- 18.1 Circle recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 18.2 In the event that a dispute arises concerning these undertakings, Circle undertakes to submit to the courts of England and Wales.

19 TERMINATION

- 19.1 Circle recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 19.2 Circle recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

20 INTERPRETATION

- 20.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 20.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 20.3 In these 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.
- 20.4 For the purposes of these undertakings:
- “the Act”** means the Enterprise Act 2002;
- “Affiliate”** a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;
- “Associated Person”** means a person or persons associated with Circle within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;
- “Bath Divestment Business”** means the entire issued share capital of Circle Hospital (Bath) Limited (company number 06296104) with registered office at 32 Welbeck Street, London, W1G which operates Circle Bath Hospital located at Foxcote Ave, Peasedown St John, Bath BA2 8SQ, as more fully described in Annex 1; or

"Birmingham Divestment Business" means the entire issued share capital of Circle Birmingham Limited (company number 07714029) with registered office at 32 Welbeck Street, London, W1G 8EU which operates Circle Birmingham Hospital, as more fully described in Annex 2;

"BMI" means BMI Healthcare Limited (company number 02164270) with registered office at 1st Floor, 30 Cannon Street, London, EC4M 6XH;

"business" has the meaning given by section 129(1) and (3) of the Act;

"Circle" means Circle Health Holdings Limited (company number 10543098) with registered office at 32 Welbeck Street, London, W1G 8EU;

"Circle Bath Hospital" means the hospital located at Foxcote Ave, Peasedown St John, Bath BA2 8SQ;

"Circle Birmingham Hospital" means the hospital located at 5 Pebble Mill Road, Birmingham, B5 7SA;

"Circle Business" means the business of Circle and its Group of Interconnected Bodies Corporate carried on as at 8 January 2020 but excluding the Divestment Business;

"CMA" means the Competition and Markets Authority or any successor body;

"Confidential Information" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"Decision" means the CMA's decision under section 22 of the Act dated 8 April 2020 in connection with the Transaction;

"Divestment Business" means the Bath Divestment Business and the Birmingham Divestment Business;

"Divestment Period" means [X] following the Divestment Period Trigger Date, together with any extension granted by the CMA in accordance with paragraph 2.3;

"Divestment Period Trigger Date" means: (a) in relation to Circle Birmingham Hospital, the Effective Date; and (b) in relation to Circle Bath Hospital, [X] weeks after the date on which the hospital is released from the scope of the NHSE Agreement;

"Effective Date" means the effective date of these undertakings as set out in paragraph 1.1;

"enterprise" has the meaning given in section 129(1) of the Act;

"Exclusion Order" means The Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020 S.I. 2020 No.368;

"GHG" means GHG Healthcare Holdings Limited (company number 05740193) with registered office at 1st Floor, 30 Cannon Street, London, EC4M 6XH;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business, save as otherwise agreed in advance in writing by the CMA pursuant to paragraph 12;

"NHSE Agreement" means the agreement dated 21 March 2020 between NHS England, Circle, BMI and other private hospital operators;

"Proposed Purchaser" means any proposed purchaser(s) for the Divestment Business;

"Purchaser" means the purchaser or purchasers as approved by the CMA of the Divestment Business;

"Subsidiary" shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

"Sub-underlease" means the sub-underlease to be entered into between Circle Birmingham Limited (company number 07714029) with registered office at 32 Welbeck Street, London, W1G 8EU and Circle Rehabilitation Services Limited (company number 10527747), 32 Welbeck Street, London W1G 8EU;

"the Transaction" means the acquisition by Circle of GHG, a parent of BMI, on 8 January 2020 by way of sale and purchase agreement;

"Transitional Services Agreement" means an agreement whereby (at the request of the purchaser) Circle would continue to provide at the request of the purchaser certain central functions or services for an agreed (short-term) period following completion of the disposal of the Divestment Business to the purchaser to enable a smooth transition of the Divestment Business;

"Trustee" means the person appointed pursuant to paragraph 6.4, paragraph 6.5 or paragraph 6.7 to carry out the Trustee Functions;

"Trustee Functions" means the functions set out in paragraph 8;

"UK" means the United Kingdom of Great Britain and Northern Ireland;

"Underlease" means the underlease agreement to be entered into between MPT Circle-Birmingham S.a.r.l. (company number. B210919) with registered office at 25 Rue Philippe II, L-2340 Luxembourg City, Luxembourg and Circle Birmingham Limited (company number 07714029) with registered office at 32 Welbeck Street, London, W1G 8EU;

"Working Day" means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

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

FOR AND ON BEHALF OF Circle

Signature

Name

Title

Date

DATE ACCEPTED BY THE CMA:

Annex 1

Description of Bath Divestment Business

Circle Hospital (Bath) Limited ("**CHBL**") operates the Circle Bath Hospital located at Foxcote Ave, Peasedown St John, Bath BA2 8SQ. The divestment of Circle Bath Hospital will be by way of a sale of the issued share capital of CHBL. Circle Bath Hospital has 28 inpatient beds, 22 day case beds and four operating theatres.

Circle Bath Hospital will be divested with all of the assets owned by CHBL which are currently utilised by and necessary for the operation of the hospital, including:

- a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of the business, including:
 - i. the leasehold interest in Bath Business Park, Peasedown St John, Bath BA2 8SQ. The landlord is MPT Bath S.à.r.l (a company registered with the Luxembourg Trade and Companies Register under number B187783, with registered office at 6, rue Eugène Ruppert L-2453 Luxembourg). This leasehold interest expires in 2029 and is renewable at CBHL's option for a further 15-year term;
 - ii. a leasehold interest in an additional administrative office at Unit 5, Bath Business Park, Peasedown St John, Bath BA2 8SQ;
 - iii. the hospital building, infrastructure and fixtures;
 - iv. medical equipment, including all operating theatre and ward equipment;
 - v. beds, furniture and other furnishings; and
 - vi. IT equipment and telephone systems;
- b) where capable of being transferred, all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit of the business;
- c) where capable of being transferred, all or substantially all contracts, leases, commitments and customer orders of or associated with the business including any relevant contracts with NHS Clinical Commissioning Groups; and
- d) all customer, credit and other records related to or associated with the business.

There are [X] staff employed at Circle Bath Hospital, which would transfer to a purchaser. In addition, Circle Bath Hospital has access to [X] "bank" staff. The benefit of the arrangements with these bank staff would transfer to a purchaser.

Annex 2

Description of Birmingham Divestment Business

Circle Birmingham Limited ("**CBL**") holds the interest in the Circle Birmingham Hospital facility at 5 Pebble Mill Road, Birmingham, B5 7SA. The divestment of Circle Birmingham Hospital will be by way of a sale of the issued share capital of CBL.

Circle Birmingham Hospital was due to open in [X] 2020 but operational commencement has been substantially delayed due to the Coronavirus (COVID-19) outbreak. Circle Birmingham Hospital was planned to open with 20 inpatient beds, 15 day case beds and three operating theatres.

Following completion of the commissioning steps set out in paragraph 4.1 of these undertakings (as amended with the CMA's consent in accordance with paragraph 4.2) Circle Birmingham Hospital will be divested with the following assets owned by CBL:

- a. the hospital building at 5 Pebble Mill Road, Birmingham, B5 7SA and all applicable buildings regulations approvals following practical completion of the facility;
- b. the Underlease and Sub-underlease;
- c. the following systems and equipment, which Circle shall install and test:
 - i. heating, ventilation and air conditioning (HVAC);
 - ii. water;
 - iii. medical gasses;
 - iv. LAN cabling into the server room;
 - v. fixed operating theatre equipment and other fixed medical equipment (including MRI and X-Ray equipment); and
 - vi. catering facilities to provide meals for patients and staff (including for Circle Rehab);
- d. subject to necessary consents, an equipment finance lease with [X] in relation to the installed MRI equipment, X-Ray machine, beds, furniture and certain other assets to be transferred to the Purchaser; and
- e. where capable of being transferred, all or substantially all supplier contracts which have been agreed or entered into by CBL.

Members of staff employed by CBL would transfer to a purchaser where they are required to commission and maintain the Circle Birmingham facility in accordance with paragraph 4.1 and where they constitute Key Staff.

The Birmingham Divestment Business shall not include the Circle Rehabilitation facility which is scheduled to open on the same site as Circle Birmingham Hospital but is operated by a different subsidiary (Circle Rehabilitation Services Limited ("**CRSL**"). CRSL has entered into an agreement for sub-underlease with CBL granting it the right to operate a stand-alone rehabilitation facility within a separately demised area within the development. The rehabilitation facility occupies part of the first

and third floors of the facility and most of the second floor. In addition, there are shared areas such as lift lobbies and stairways.

The sub-underlease requires CBL to provide the following services to CRSL for the duration of the lease (subject to any amendments which may be agreed with a purchaser):

- a) access to lobby and common reception areas;
- b) IT capabilities via LAN & WAN;
- c) catering – with terms to be agreed prior to service commencement;
- d) 50 car parking spaces;
- e) utilities; and
- f) facilities maintenance, including HVAC, water, building exterior, portering and housekeeping.