

## UNDERTAKINGS IN LIEU OF A REFERENCE

### COMPLETED ACQUISITIONS BY INDEPENDENT VETCARE LIMITED

#### Undertakings given by IVC to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

##### Whereas:

(a) Independent Vetcare Limited (**IVC**) completed the acquisitions of the following independent veterinary practices (the **Mergers**), such that IVC and each of the targets ceased to be distinct for the purposes of the Enterprise Act 2002 (the **Act**):

- (i) Penrose Veterinary Group Limited (**Penrose**) on 16 September 2021;
- (ii) Kevin Castle (Pet Care) Limited (**Pet Care**) on 16 September 2021;
- (iii) Swayne & Partners Limited (**Swayne**) on 22 October 2021;
- (iv) Treforest Vets (Holdings) Limited (**Treforest**) on 23 November 2021;
- (v) Mercer & Hughes Limited (**Mercer & Hughes**) on 22 March 2022;
- (vi) Swaffham Veterinary Centre Limited (**Swaffham**) 14 December 2021;
- (vii) Anglesey Pet Clinic Limited (**Anglesey**) on 12 October 2021; and
- (viii) Chiltern Equine Clinic (including Chiltern Veterinary Services Ltd and Chiltern Bury Farm Limited) (**Chiltern**) on 11 November 2021<sup>1</sup>

(together, the **Divestment Businesses**).

(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

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<sup>1</sup> eVetDrug Limited is also a Divestment Business and will be divested together with Chiltern Veterinary Services Limited and Chiltern Bury Farm Limited. eVetDrug Limited dispenses online medicine focusing on the equine market.

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 decisions of 17 February 2023, (the **Decisions**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer each of the Mergers for a Phase 2 investigation;
- (e) The CMA considers that the undertakings given below by IVC are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Penrose Merger, or may be expected to result from it, as specified in the relevant Decision;
- (f) Prior to the acceptance of these undertakings by the CMA, IVC entered into a legally binding agreement of 21 May 2023 to divest the Relevant Divestment Business as a going concern to a Proposed Purchaser (the **Proposed Purchaser**) on terms approved by the CMA. These agreements were conditional only on formal CMA approval of the Proposed Purchaser and acceptance by the CMA of these undertakings. This agreement includes a warranty that the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the relevant Divestment Business as part of a viable and active business in competition with IVC and other competitors providing veterinary services in the areas listed in the Annexes to the Decisions (the **SLC Areas**), as relevant; and
- (g) The CMA made a number of Initial Enforcement Orders applying to IVC, IVC Acquisition Pikco Ltd, IVC Acquisition Topco Ltd, Islay New Group Holding S.A., Société Des Produits Nestlé S.A. (**Nestle**), EQT Fund Management S.à r.l. (**EQT**) and Berkshire Partners LLC (**Berkshire**) on 17 November 2022 in respect of the Mergers pursuant to section 72 of the Act for the purposes of preventing pre-emptive action. On 27 March 2023, the CMA issued a Variation Order excluding Nestle, EQT and Berkshire from the scope of application of the Initial Enforcement Orders. Pursuant to section 72(6)(b) of the Act, these Initial Enforcement Orders (as varied) cease to be in force on the acceptance by the CMA of the undertakings given below by IVC.

NOW THEREFORE IVC 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 in relation to the Penrose Merger.

## **1 EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by IVC, they are accepted by the CMA (the **Effective Date**).

## **2 DIVESTMENT OF THE RELEVANT DIVESTMENT BUSINESS**

- 2.1 IVC shall ensure that the completion of the divestment of the Relevant Divestment Business to the Proposed Purchaser contemplated by the agreements referred to in recital f of these undertakings (as relevant) takes place within a period not exceeding one month from the date these undertakings take effect.
- 2.2 IVC shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Relevant Divestment Business.
- 2.3 In the event that IVC fails to complete the divestment of the Relevant Divestment Business in accordance with paragraphs 2.1 and 2.2 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 4 below, require IVC to divest the Relevant Divestment Business as a going concern at no minimum price to a purchaser or purchasers approved by the CMA.

## **3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT**

- 3.1 For the purposes of the CMA approving the Proposed Purchaser and the terms of the divestment of the Relevant Divestment Business in accordance with these undertakings, IVC shall, save as required or permitted by the CMA, satisfy the CMA that:
- (a) the acquisition by the Proposed Purchaser of the Relevant Divestment Business, on the terms set out above, remedy, mitigate or prevent 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 in relation to the Penrose Merger, 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 IVC and the Group of Interconnected Bodies Corporate to which IVC belongs and any Associated Person or Affiliate of IVC 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 Relevant Divestment Business as a viable and active business in competition with IVC and other competitors providing standard small animal veterinary services in the relevant SLC Area(s) from the date of completion of the divestment of the Relevant 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 acquisitions by the Proposed Purchaser of the Relevant Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK or in a substantial part of it.

3.2 The CMA may require IVC 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 APPOINTMENT OF A TRUSTEE**

4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as IVC has not satisfied, or where the CMA has reasonable grounds for believing that IVC will not satisfy, all or any part of the obligation to divest the Relevant Divestment Business in accordance with paragraph 2 above.

4.2 Within five Working Days of the CMA notifying IVC in writing that it must do so, IVC 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.

4.3 IVC and/or any individuals nominated pursuant to paragraph 4.2 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 an EU member state;

(b) such nominated individuals are each independent of IVC and of the Group of Interconnected Bodies Corporate to which IVC belongs and of any Associated Person or Affiliate of IVC or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Relevant Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of IVC, 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.

4.4 Within two Working Days of the CMA approving, at its discretion, one or more of the persons nominated by IVC and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, IVC 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 4.2 above.

4.5 In the event that:

(a) IVC fails to propose any person or persons in accordance with paragraph 4.2 above; or

(b) none of the persons proposed by IVC pursuant to paragraph 4.2 is approved by the CMA; or

(c) IVC is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

IVC 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. IVC shall use its best endeavours to make such appointment within five Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 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.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, IVC 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. IVC 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.

## **5 THE MANDATE**

5.1 The terms of the mandate proposed by IVC pursuant to paragraph 4.2 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 Relevant Divestment Business as required by paragraph 6.1 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 Relevant Divestment Business;
- (d) a mandate to comply with any orders and/or directions given by the CMA;  
and
- (e) a mandate to appoint at IVC'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.

## **6 FUNCTIONS OF TRUSTEE**

- 6.1 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 Relevant Divestment Business at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.
- 6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take the following measures in relation to the Relevant Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Relevant 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.
- 6.3 The Trustee shall not sell or permit the divestment of the Relevant 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 the 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 (or agreements) in question.

- 6.4 Pending the divestment of the Relevant Divestment Business pursuant to paragraph 6.1 above, the Trustee shall monitor IVC's compliance with its obligations under paragraphs 7.1 and 7.2 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 IVC is failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to IVC to take such steps as may be specified or described in the directions for the purpose of securing IVC's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require IVC 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 Relevant 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.
- 6.6 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 IVC is failing or will fail to comply with any of its obligations under these undertakings.
- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of IVC nor shall the Trustee Functions be extended or varied in any way by IVC save with the prior express written consent of the CMA.

## **7 OBLIGATIONS OF IVC FOLLOWING APPOINTMENT OF TRUSTEE**

- 7.1 IVC shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 IVC 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 6.6 above; and
  - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

## **8 REMUNERATION OF TRUSTEE**

- 8.1 IVC 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 5 above.

## **9 INTERIM ACTION**

- 9.1 Pending the completion of the divestment of the Relevant 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, IVC shall minimise as far as possible any risk of loss of competitive potential of the Relevant Divestment Business and in particular ensure that:
- (a) the Relevant Divestment Business is carried on separately from the IVC Business and the separate sales or brand identities of the Relevant Divestment Business maintained;
  - (b) the Relevant Divestment Business and the IVC Business are maintained as going concerns and sufficient resources are made available for the development of the Relevant Divestment Business and the IVC Business, on the basis of their respective pre-Transaction business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Relevant Divestment Business or the IVC Business;
  - (d) the nature, description, range and quality of goods and services supplied in the UK by each of the Relevant Divestment Business and the IVC Business are maintained and preserved;
  - (e) except in the ordinary course of business for the separate operation of the Relevant Divestment Business and the IVC Business:
    - i. all of the assets of the Relevant Divestment Business and the IVC Business are maintained and preserved, including facilities and goodwill;
    - ii. none of the assets of the Relevant Divestment Business or the IVC Business are disposed of; and
    - iii. no interest in the assets of the Relevant Divestment Business or the IVC Business is created or disposed of;
  - (f) there is no integration of the information technology of the Relevant Divestment Business or IVC Business, and the software and hardware platforms of the Relevant Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;



- (g) the customer and supplier lists of the Relevant Divestment Business and the IVC Business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Relevant Divestment Business will be carried out by the Relevant Divestment Business alone and for the avoidance of doubt the IVC Business will not negotiate on behalf of the Relevant Divestment Business (and vice versa) or enter into any joint agreements with the Relevant Divestment Business (and vice versa);
- (h) all existing contracts of the Relevant Divestment Business and the IVC Business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to Key Staff of the Relevant Divestment Business or IVC Business;
- (j) no Key Staff are transferred between the Relevant Divestment Business and the IVC Business;
- (k) all reasonable steps are taken to encourage all Key Staff to remain with the Relevant Divestment Business and the IVC Business; and
- (l) no Confidential Information relating to either of the Relevant Divestment Business or the IVC Business shall pass, directly or indirectly, from the Relevant Divestment Business (or any of their employees, directors, agents or affiliates) to the IVC 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 compliance with external regulatory and/or accounting obligations) or any steps necessary in order for IVC to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Relevant Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by IVC in relation to the Relevant 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).

9.2 Any action by IVC and/or the Relevant Divestment Business which would have been permitted under the terms of one or more of the Derogations, shall continue to be so permitted until completion of the divestment of the Relevant Divestment Business, subject to compliance with the terms and conditions set out in the Derogations.

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

- (a) details of Key Staff who leave the IVC Business or the Relevant Divestment Business;

- (b) any interruption of the IVC Business or the Relevant 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 Relevant Divestment Business; and
- (d) substantial changes in the IVC Business's or the Relevant Divestment Business' contractual arrangements or relationships with key suppliers.

## **10 CONTINUED SEPARATION**

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

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
  - i. an Interest in the Relevant Divestment Business; or
  - ii. any Interest in any company carrying on or having Control of the Relevant Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of IVC or of any members of the Group of Interconnected Bodies Corporate to which IVC 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 Relevant Divestment Business;
- (b) shall procure that no employee or director of IVC or any member of the Group of Interconnected Bodies Corporate to which IVC belongs for as long as they are an employee or director of IVC or any member of the Group of Interconnected Bodies Corporate to which IVC belongs holds or is nominated to any directorship or managerial position in the Relevant Divestment Business or directorship or managerial position in any company or other undertaking carrying on or having control of the Relevant 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 Relevant Divestment Business or any company or other undertaking carrying on or having control of the Relevant 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 IVC or of any member of the Group of Interconnected Bodies Corporate to which IVC belongs directly or indirectly acquiring the Relevant Divestment Business or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above.

## **11 NEW DIVESTMENT IF IVC OBTAINS POSSESSION OF A DIVESTMENT BUSINESS PROPERTY**

11.1 In the event that, following divestment of the Relevant Divestment Business in a manner that has involved IVC assigning an existing lease or granting a sub-lease to the purchaser of the Relevant Divestment Business, IVC benefits from or becomes subject to an Occupation Interest (so long as IVC so benefits or becomes so subject during the term of the lease assigned or sub-lease granted by IVC as part of such divestment), IVC shall:

(a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the CMA in writing of that fact; and

(b) using its best endeavours and acting in good faith comply with such written directions as the CMA may give to IVC to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Relevant Divestment Business.

11.2 In determining, for the purposes of sub-paragraph 11.1(b) above, whether to require IVC to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, the CMA may have regard to any change of circumstances since the Decisions (as relevant).

11.3 In the event that IVC fails to divest the Occupation Interest in accordance with paragraph 11.1 above, the CMA may, whether or not initiating the Trustee Functions set out in these undertakings, require IVC to divest the Occupation Interest at no minimum price to a purchaser approved by the CMA.

11.4 IVC shall notify the CMA in writing of the identity of each proposed purchaser that makes an offer for the Occupation Interest 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 10 Working Days of receipt of such offers.

11.5 In the event that the CMA gives written directions under paragraph 11.1 above for IVC to effect a new divestment of the Occupation Interest, paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to the Relevant Divestment Business in those paragraphs shall be construed as

references to 'Occupation Interest'.

## **12 COMPLIANCE**

12.1 IVC 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.

12.2 IVC 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.

12.3 IVC shall procure that any member of the same Group of Interconnected Bodies Corporate as IVC 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 IVC shall be attributed to IVC for the purposes of these undertakings.

12.4 Where any Affiliate of IVC is not a member of the same Group of Interconnected Bodies Corporate as IVC, IVC shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **13 PROVISION OF INFORMATION**

13.1 IVC 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.

## **14 EXTENSION OF TIME LIMITS**

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

## **15 SERVICE**

15.1 IVC hereby authorises Slaughter and May, whose address for service is One Bunhill Row, London, EC1Y 8YY, 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 IVC, 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).

- 15.2 Unless IVC informs the CMA in writing that Slaughter and May 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 IVC if it is served on Slaughter and May; and service shall be deemed to have been acknowledged by IVC if it is acknowledged by Slaughter and May or such other nominee.
- 15.3 Paragraph 15.2 above has effect irrespective of whether, as between IVC and Slaughter and May or other nominees, Slaughter and May or other nominees has or continues to have any authority to accept and acknowledge service on IVC's or any of its respective Subsidiaries' behalf.
- 15.4 No failure or mistake by Slaughter and May or other nominees (including a failure to notify IVC 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.
- 15.5 Any communication from IVC 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.

## **16 EFFECT OF INVALIDITY**

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

## **17 GOVERNING LAW**

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

## **18 TERMINATION**

- 18.1 IVC recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 18.2 IVC 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.

## **19 INTERPRETATION**

- 19.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

19.2 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.

19.3 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.

19.4 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 IVC within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

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

**‘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;

**‘Decisions’** means the CMA’s decisions under section 22 of the Act dated 17 February 2023 in connection with each of the Mergers;

**‘Derogations’** means any derogations granted by the CMA from the initial enforcement order served by the CMA on IVC in relation to the Transactions, including but not limited to the following:

- Derogation 2 June 2023
- Derogation 11 May 2023
- Derogation 11 May 2023
- Derogation 26 April 2023
- Derogation 25 April 2023
- Derogation 21 April 2023

- Derogation 11 April 2023
- Derogation 31 March 2023
- Derogation 30 March 2023
- Derogation 23 March 2023
- Derogation 21 March 2023
- Derogation 20 March 2023
- Derogation 22 February 2023
- Derogation 15 February 2023
- Derogation 8 February 2023
- Derogation 8 February 2023
- Derogation 7 February 2023
- Derogation 3 February 2023
- Derogation 3 February 2023
- Derogation 1 February 2023
- Derogation 25 January 2023
- Derogation 20 January 2023
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- Derogation 14 December 2022
- Derogation 9 December 2022
- Derogation 5 December 2022
- Derogation 5 December 2022
- Derogation 24 November 2022
- Derogation 7 November 2022
- Derogation 31 October 2022
- Derogation 31 October 2022
- Derogation 31 October 2022

**‘Divestment Businesses’** has the meaning given in recital (a);

**‘Divestment Business Property’** means the relevant property associated with the Relevant Divestment Business as at the date of these undertakings;

**‘enterprise’** has the meaning given in section 129(1) of the Act;

**‘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;

**'IVC'** means Independent Vetcare Limited;

**'IVC Business'** means the IVC sites identified by the CMA (using the methodology set out in the Decisions) as overlapping with the Relevant Divestment Business in the relevant local areas;

**'Key Staff'** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Relevant Divestment Business or the IVC Business, as the case may be;

**'the Mergers'** has the meaning given in recital (a);

**'Occupation Interest'** means an interest in the Divestment Business Property by virtue of which IVC enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Business Property provided always that: (i) the original purchaser (or its successor) is not in occupation of the Divestment Business Property; and/or (ii) before such interest in the Divestment Business Property arose, the most recent use to which the Divestment Business Property had been put was that of carrying on veterinary services;

**'Proposed Purchaser'** means Wick Bidco Limited or such other proposed purchasers;

**'Relevant Divestment Business'** means Penrose Veterinary Group Limited;

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

**'Trustee'** means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

**'Trustee Functions'** means the functions set out in paragraph 6;

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

**'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; and

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

## **FOR AND ON BEHALF OF IVC**

Signature

Name



Title

Date 28 June 2023

**DATE ACCEPTED BY THE CMA: 30 June 2023**