

DRAFT UNDERTAKINGS IN LIEU OF A REFERENCE

COMPLETED ACQUISITION BY BESTWAY PANACEA HOLDINGS LIMITED OF LEXON UK HOLDINGS LIMITED AND ASUREX LIMITED

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

Whereas:

- (a) Bestway Panacea Holdings Limited (**Well or Buyer**) completed the acquisition of Lexon UK Holdings Limited (**Lexon**) and Asurex Limited (**Asurex**, each a **Target** and together the **Targets**) on 14 April 2023 by way of a share purchase agreement (the **Transaction**) such that Well and the Targets ceased to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) In its decision of 15 June 2023 (the **Decision**), the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Act that the Transaction will give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the operation of retail pharmacies in certain local areas in the UK. The CMA did not find competition concerns in relation to any of the other local area overlaps;
- (c) Under section 22(1) of the Act the 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;
- (d) 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;

- (e) As set out in 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;
- (f) The CMA considers that the undertakings given below by Well 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;
- (g) Prior to the acceptance of these undertakings by the CMA, Well entered into legally binding agreements of [date] to divest the Divestment Pharmacies as a going concern to Proposed Purchasers on terms approved by the CMA. These agreements were conditional on formal CMA approval of the Proposed Purchasers, acceptance by the CMA of these undertakings and the Proposed Purchasers obtaining Regulatory Approval (as defined in the undertakings). These agreements include a warranty that the Proposed Purchasers have the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Pharmacies as part of a viable and active business in competition with Well and other competitors in the operation of retail pharmacies in certain local areas in the UK; and
- (h) The CMA made an Initial Enforcement Order applying to Bestway Healthcare Holdings Limited, Bestway Healthcare Finco Limited, Well, Kericho Holding Limited, Lexon and Norchem Healthcare Limited on 14 April 2023 in respect of the Transaction pursuant to section 72 of the Act for the purposes of preventing pre-emptive action. 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 Well.

NOW THEREFORE Well 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 Well, they are accepted by the CMA.

2 DIVESTMENT OF THE DIVESTMENT PHARMACIES

- 2.1 Well shall ensure that the completion of the divestment of the Divestment Pharmacies to the Proposed Purchasers contemplated by the agreements referred to in recital g of these undertakings takes place within a period not exceeding 6 months from the date these undertakings take effect.
- 2.2 Well shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Pharmacies.
- 2.3 In the event that Well fails to complete the divestment of the Divestment Pharmacies in accordance with paragraphs 2.1 and 2.2 above, the CMA may, whether or not initiating the Divestiture Trustee Functions as set out in paragraph 9 below, require Well to divest the Divestment Pharmacies as a going concern at no minimum price to a purchaser or purchasers approved by the CMA.
- 2.4 The CMA has approved the divestment of the Divestment Pharmacies to the Proposed Purchasers in the expectation that the Proposed Purchasers will obtain Regulatory Approval and Well shall use all reasonable endeavours to assist the Proposed Purchasers to obtain Regulatory Approval. In the event that Regulatory Approval is not obtained by the Proposed Purchasers within 6 months from the date these undertakings take effect, or where the CMA has reasonable grounds for believing that the Proposed Purchasers may not obtain Regulatory Approval, notwithstanding the provisions of paragraph 2.3 above, the CMA may:
- (a) Direct Well to divest the Divestment Pharmacies to an alternative purchaser or purchasers that will first be approved by the CMA; or
 - (b) Initiate the Divestiture Trustee Functions as set out in paragraph 9 below to require Well to divest the Divestment Pharmacies as a going concern at no minimum price to a purchaser or purchasers approved by the CMA.

3 APPROVAL OF PURCHASERS AND TERMS OF DIVESTMENT

- 3.1 For the purposes of the CMA approving Proposed Purchasers and the terms of the divestment of the Divestment Pharmacies in accordance with these

undertakings, Well shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) The acquisition by the Proposed Purchasers of the Divestment Pharmacies, 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 Purchasers are independent of and unconnected to Well and the Group of Interconnected Bodies Corporate to which Well belongs and any Associated Person or Affiliate of Well or such Group of Interconnected Bodies Corporate;
- (c) The Proposed Purchasers have the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Pharmacies as viable and active businesses in competition with Well and other competitors in the operation of retail pharmacies in certain local areas in the UK from the date of completion of the divestment of the Divestment Pharmacies;
- (d) The Proposed Purchasers are reasonably to be expected to obtain all necessary approvals including Regulatory Approval, 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 Purchasers of the Divestment Pharmacies 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 Well to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchasers will fulfil the requirements in paragraph 3.1 above.

4 MONITORING TRUSTEE – APPOINTMENT

- 4.1 Well undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions described in paragraph 6 on behalf of the CMA. Provided that the other conditions set out in this paragraph 4 are complied with, the Monitoring Trustee may be the same as

any Monitoring Trustee already appointed pursuant to the written directions made by the CMA on 20 June 2023 under the IEO. In the event that Well proposes to retain the current Monitoring Trustee, no later than five Working Days after the effective date of these undertakings (defined in paragraph 1.1 above), Well shall provide the CMA with a copy of the updated agreed terms and conditions of appointment that reflect these undertakings. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.

- 4.2 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 its duties under these undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. Well 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 its functions.
- 4.3 The appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. Well shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the effective date of these undertakings (as defined in paragraph 1.1 above) of the identity of the Monitoring Trustee that it proposes 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 by Well, Well shall provide the CMA with a copy of the agreed terms and conditions of appointment.
- 4.4 If the Monitoring Trustee is rejected by the CMA, Well shall submit the names of at least two further persons within five Working Days starting on the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 4.1 to 4.3 above.
- 4.5 The provisions of paragraph 4.6 below shall apply if:
 - (a) Well fails to nominate persons in accordance with paragraphs 4.3 and 4.4 above;
 - (b) Those further persons nominated by Well in accordance with paragraph 4.4 above are rejected by the CMA; or
 - (c) Well is unable to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.

- 4.6 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Well 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.
- 4.7 The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in paragraph 6 below and that the Monitoring Trustee will monitor the compliance of Well with its obligations under these undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these undertakings.

5 MONITORING TRUSTEE – REPLACEMENT, DISCHARGE AND REAPPOINTMENT

- 5.1 Well acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Well to replace the Monitoring Trustee.
- 5.2 If the Monitoring Trustee is removed under paragraph 5.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has affected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 4 above.

6 MONITORING TRUSTEE – FUNCTIONS

- 6.1 The Monitoring Trustee's functions as set out in this paragraph 6 are to monitor and review compliance with these undertakings and progress towards the Final Disposal, and shall in particular include:
- (a) Monitoring compliance with the undertakings set out in paragraph 2 concerning the divestment of the Divestment Pharmacies;
 - (b) Monitoring progress made towards Final Disposal and the steps that have otherwise been taken to comply with these undertakings including:
 - (i) The steps that have been taken towards the Proposed Purchasers obtaining Regulatory Approval, the progress in obtaining such Regulatory Approval;

- (ii) Reporting on any developments that the Monitoring Trustee reasonably considers may have a material impact on Well's ability to effect the Final Disposal;
 - (iii) Making recommendations to the CMA in order to ensure an efficient completion of the divestment of the Divestment Pharmacies within the time specified in paragraph 2.1 of these undertakings; and
 - (iv) Undertaking any further investigations as may be required by the CMA in relation to compliance with these undertakings and/or any proposed extension by the Parties under paragraph 17.1 of these undertakings.
- (c) Monitoring compliance with paragraph 12 (concerning interim action) which, for the avoidance of doubt, shall include monitoring that, save as otherwise agreed in advance in writing by the CMA:
 - (i) Stock levels in prescription-only medicines and pharmacy-only medicines at the Divestment Pharmacies are maintained at existing levels;
 - (ii) There are no changes made to the current opening hours of the Divestment Pharmacies;
 - (iii) Training schedules for Well staff at the Divestment Pharmacies are maintained;
 - (iv) No action is taken to solicit the transfer of repeat prescription customers from any Divestment Pharmacies to other pharmacies owned and operated by Well; and
 - (v) No action is taken which otherwise might impair the ability of the Divestment Pharmacies to compete independently or that may significantly impact on the operation of the Divestment Pharmacies.

6.2 The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these undertakings and provide a written report to the CMA every two weeks, the first report to be submitted no later than three weeks from the effective date of these undertakings (defined in paragraph 1.1 above).

7 DIVESTITURE TRUSTEE - APPOINTMENT

- 7.1 The provisions of paragraph 7.2 to paragraph 7.7 below shall apply only as long as Well has not satisfied, or where the CMA has reasonable grounds for believing that Well will not satisfy, all or any part of the obligation to divest the Divestment Pharmacies in accordance with paragraph 2 above.
- 7.2 Within five Working Days of the CMA notifying Well in writing that it must do so, Well shall propose to the CMA for approval:
- (a) The names of at least two individuals to exercise the Divestiture Trustee Functions; and
 - (b) The full terms of a mandate in accordance with which the Divestiture Trustee shall carry out the Divestiture Trustee Functions.
- 7.3 Well and/or any individuals nominated pursuant to paragraph 7.2 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 Well and of the Group of Interconnected Bodies Corporate to which Well belongs and of any Associated Person or Affiliate of Well or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Pharmacies to be sold pursuant to these undertakings, and, in the reasonable opinion of Well, are appropriate to be appointed as Divestiture 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 Divestiture Trustee Functions.
- 7.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Well and their proposed mandates pursuant to paragraph 7.2 above, and subject to any modifications the CMA deems necessary for the Divestiture Trustee to carry out the Divestiture Trustee Functions, Well shall use its best endeavours to appoint from the persons so approved one person to carry out the Divestiture Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 7.2 above.

7.5 In the event that:

- (a) Well fails to propose any person or persons in accordance with paragraph 7.2 above; or
- (b) None of the persons proposed by Well pursuant to paragraph 7.2 is approved by the CMA; or
- (c) Well is unable for any reason to appoint within the time limit stipulated in paragraph 7.4 above any such person following approval by the CMA,

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

7.6 The appointment of the Divestiture Trustee pursuant to paragraph 7.4 or paragraph 7.5 above shall be irrevocable unless:

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

7.7 In the event that the appointment of the Divestiture Trustee is terminated in accordance with paragraph 7.6 above, Well 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 Divestiture Trustee Functions in accordance with such mandate as is approved by the CMA. Well shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Divestiture Trustee shall continue as Divestiture Trustee until a new Divestiture Trustee is in place and a full handover of all relevant information has taken place.

8 DIVESTITURE TRUSTEE - MANDATE

- 8.1 The terms of the mandate proposed by Well pursuant to paragraph 7.2 above shall, as a minimum, contain all provisions necessary to enable the Divestiture Trustee to carry out the Divestiture Trustee Functions including, without limitation to the generality of this paragraph:
- (a) An exclusive, irrevocable mandate to sell the Divestment Pharmacies as required by paragraph 9.1 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 Divestiture Trustee considers appropriate to effect an expedient sale;
 - (b) A mandate to take any other steps necessary for, or incidental to, the Divestiture Trustee's mandate under sub-paragraph (a) above;
 - (c) A comprehensive power of attorney to the Divestiture Trustee (including the authority to grant sub-powers of attorney to the Divestiture Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Pharmacies;
 - (d) A mandate to comply with any orders and/or directions given by the CMA; and
 - (e) A mandate to appoint at Well's expense such advisers as the CMA and/or the Divestiture Trustee reasonably considers necessary or appropriate in connection with the performance of the Divestiture Trustee Functions.

9 DIVESTITURE TRUSTEE - FUNCTIONS

- 9.1 The Divestiture 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 Pharmacies at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 9.3 below.
- 9.2 Without prejudice to the generality of paragraph 9.1 above, the Divestiture Trustee shall take the following measures in relation to the Divestment Pharmacies to the extent to which such measures may be necessary to effect the divestment of the Divestment Pharmacies 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.
- 9.3 The Divestiture Trustee shall not sell or permit the divestment of the Divestment Pharmacies 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 Divestiture 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.
- 9.4 Pending the divestment of the Divestment Pharmacies pursuant to paragraph 9.1 above, the Divestiture Trustee shall monitor Well's compliance with its obligations under paragraph 10.1 and paragraph 10.2 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 Divestiture Trustee concludes on reasonable grounds that Well is failing or will fail to comply with such obligations.
- 9.5 The Divestiture Trustee may give written directions to Well to take such steps as may be specified or described in the directions for the purpose of securing Well's compliance with its obligations under these undertakings or enabling the Divestiture Trustee to carry out the Divestiture Trustee Functions. The Divestiture Trustee may not require Well 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 Pharmacies which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 9.6 The Divestiture 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 Divestiture Trustee Functions as the CMA may require. The Divestiture Trustee shall promptly report in writing to the CMA if the Divestiture Trustee concludes on reasonable grounds that Well is failing or will fail to comply with any of its obligations under these undertakings.

- 9.7 For the purpose of fulfilling the Divestiture Trustee Functions, the Divestiture Trustee shall not be bound by instructions of Well nor shall the Divestiture Trustee Functions be extended or varied in any way by Well save with the prior express written consent of the CMA.

10 OBLIGATIONS OF WELL FOLLOWING APPOINTMENT OF DIVESTITURE TRUSTEE

- 10.1 Well shall not give any instruction or request to the Divestiture Trustee which conflicts with the Divestiture Trustee Functions.
- 10.2 Well shall take all such steps as are reasonably necessary to enable the Divestiture Trustee to carry out the Divestiture Trustee Functions, including but not limited to:
- (a) Complying with such written directions as the Divestiture Trustee may from time to time give pursuant to paragraph 9.5 above; and
 - (b) Providing the Divestiture Trustee with all such assistance and information as it may reasonably require in carrying out the Divestiture Trustee Functions.

11 DIVESTITURE TRUSTEE - REMUNERATION

- 11.1 Well shall pay the Divestiture Trustee a reasonable remuneration for the services it provides in carrying out the Divestiture Trustee Functions, and shall pay the Divestiture Trustee in a way that does not impede the independent and effective fulfilment of the Divestiture Trustee Functions, which shall be set out in the Divestiture Trustee's mandate referred to in paragraph 8 above.

12 INTERIM ACTION

- 12.1 Pending the completion of the divestment of the Divestment Pharmacies 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, Well shall minimise as far as possible any risk of loss of competitive potential of the Divestment Pharmacies and in particular ensure that:

- (a) The Divestment Pharmacies are carried on separately from the Well Business to the extent that they were prior to the Transaction (ie except for common support functions provided by Well) and the Divestment Pharmacies' separate sales or brand identity is maintained;
- (b) The Divestment Pharmacies and the Well Business are maintained as a going concern and sufficient resources are made available for the development of the Divestment Pharmacies and the Well 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 Divestment Pharmacies or the Well Business;
- (d) The nature, description, range and quality of goods and/or services supplied in the UK by each of the Divestment Pharmacies and the Well Business are maintained and preserved;
- (e) Except in the ordinary course of business for the separate operation of the Divestment Pharmacies and the Well Business:
 - (i) All of the assets of the Divestment Pharmacies and the Well Business are maintained and preserved, including facilities and goodwill;
 - (ii) None of the assets of the Divestment Pharmacies or the Well Business are disposed of; and
 - (iii) No interest in the assets of the Divestment Pharmacies or the Well Business is created or disposed of;
- (f) There is no integration of the information technology of the Divestment Pharmacies or Well Businesses, and the software and hardware platforms of the Divestment Pharmacies shall remain essentially unchanged, except for routine changes and maintenance;
- (g) The customer and supplier lists of the Divestment Pharmacies and the Well Business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Pharmacies will be carried out by the Divestment Pharmacies alone and for the avoidance of doubt the Well Business will not negotiate on behalf of the Divestment Pharmacies (and vice versa) or enter into any joint agreements with the Divestment Pharmacies (and vice versa);

- (h) All existing contracts of the Divestment Pharmacies and the Well Business continue to be serviced by the business to which they were awarded;
- (i) No changes are made to Key Staff of the Divestment Pharmacies or Well Business;
- (j) No Key Staff are transferred between the Divestment Pharmacies and the Well Business;
- (k) All reasonable steps are taken to encourage all Key Staff to remain with the Divestment Pharmacies and the Well Business; and
- (l) No Confidential Information relating to either of the Divestment Pharmacies or the Well Business shall pass, directly or indirectly, from the Divestment Pharmacies (or any of its employees, directors, agents or affiliates) to the Well 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 Well to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Pharmacies, any records or copies (electronic or otherwise) of Confidential Information held by Well in relation to the Divestment Pharmacies (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).

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

- (a) Details of Key Staff who leave the Well Business or the Divestment Pharmacies;
- (b) Any interruption of the Well Business or the Divestment Pharmacies (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 Pharmacies; and

- (d) Substantial changes in the Well Business's or the Divestment Pharmacies' contractual arrangements or relationships with key suppliers.

13 CONTINUED SEPARATION

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

- (a) Shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) An Interest in any of the Divestment Pharmacies;
 - (ii) Any Interest in any company carrying on or having Control of any of the Divestment Pharmacies (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Well or of any members of the Group of Interconnected Bodies Corporate to which Well 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 any of the Divestment Pharmacies;
- (b) Shall procure that no employee or director of Well or any member of the Group of Interconnected Bodies Corporate to which Well belongs for as long as they are an employee or director of Well or any member of the Group of Interconnected Bodies Corporate to which Well belongs holds or is nominated to any directorship or managerial position in any of the Divestment Pharmacies or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Pharmacies 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 any of the Divestment Pharmacies or any company or other undertaking carrying on or having control of that Divestment Pharmacies; 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 Well or of any member of the Group of Interconnected Bodies Corporate to which Well belongs directly or indirectly acquiring any of the Divestment Pharmacies or doing any of the things listed in sub-paragraphs 13.1(a), 13.1(b) and 13.1(c) above.

14 NEW DIVESTMENT IF WELL OBTAINS POSSESSION OF A DIVESTMENT PHARMACY PROPERTY

- 14.1 In the event that, following divestment of any of the Divestment Pharmacies in a manner that has involved Well assigning an existing lease or granting a sub-lease to the purchaser of the Divestment Pharmacies, Well benefits from or becomes subject to an Occupation Interest (so long as Well so benefits or becomes so subject during the term of the lease assigned or sub-lease granted by Well as part of such divestment), Well 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 Well 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 Divestment Pharmacies.
- 14.2 In determining, for the purposes of sub-paragraph 14.1(b) above, whether to require Well 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 Decision.
- 14.3 In the event that Well fails to divest the Occupation Interest in accordance with paragraph 14.1 above, the CMA may, whether or not initiating the Divestiture Trustee Functions set out in these undertakings, require Well to divest the Occupation Interest at no minimum price to a purchaser approved by the CMA.
- 14.4 Well 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.

- 14.5 In the event that the CMA gives written directions under paragraph 14.1 above for Well to effect a new divestment of the Occupation Interest, paragraphs 3, 7, 8, 9, 10, 11 and 12 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to 'Divestment Pharmacies' in those paragraphs shall be construed as references to 'Occupation Interest'.

15 COMPLIANCE

- 15.1 Well 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.
- 15.2 Well 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.
- 15.3 Well shall procure that any member of the same Group of Interconnected Bodies Corporate as Well 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 Well shall be attributed to Well for the purposes of these undertakings.
- 15.4 Where any Affiliate of Well is not a member of the same Group of Interconnected Bodies Corporate as Well, Well shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

16 PROVISION OF INFORMATION

- 16.1 Well 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.

17 EXTENSION OF TIME LIMITS

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

18 SERVICE

- 18.1 Well hereby authorises Bristows LLP, whose address for service is 100 Victoria Embankment, London, EC4Y 0DH, 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 Well, 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).
- 18.2 Unless Well informs the CMA in writing that Bristows 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 Well if it is served on Bristows LLP; and service shall be deemed to have been acknowledged by Well if it is acknowledged by Bristows LLP or such other nominee.
- 18.3 Paragraph 18.2 above has effect irrespective of whether, as between Well and Bristows LLP or other nominees, Bristows LLP or other nominees has or continues to have any authority to accept and acknowledge service on Well's or any of its respective Subsidiaries' behalf.
- 18.4 No failure or mistake by Bristows LLP or other nominees (including a failure to notify Well 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.
- 18.5 Any communication from Well 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.

19 EFFECT OF INVALIDITY

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

20 GOVERNING LAW

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

21 TERMINATION

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

22 INTERPRETATION

- 22.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 22.2 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.
- 22.3 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.
- 22.4 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 Well 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;

“Decision” means the CMA’s decision under section 22 of the Act dated 15 June 2023 in connection with the Transaction;

“Divestment Pharmacies” means any and all of the pharmacies listed in Annex 1 to these undertakings and **“Divestment Pharmacy”** means any one of those Divestment Pharmacies. Divestment Pharmacies shall also mean any such other pharmacy or pharmacies that are substituted for any or all of the pharmacies listed at Annex 1, that the CMA requires to be divested to effectively address the substantial lessening of competition caused by the Transaction in each relevant local area if, in the view of the CMA, there are reasonable grounds for believing that any of the pharmacies listed in Annex 1 will not be divested for any reason. For the avoidance of doubt, the substituted Divestment Pharmacies shall only be considered Divestment Pharmacies from the time the CMA reaches the view that there are reasonable grounds for believing that any of the pharmacies listed in Annex 1 will not be divested for any reason;

“Divestment Pharmacies Property” means the relevant property associated with the Divestment Pharmacies as at the date of these undertakings;

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

“Final Disposal” means completion of the sale of the Divestment Pharmacies to the Proposed Purchasers;

“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 Pharmacies or the Well Business, as the case may be;

“Monitoring Trustee” means the person or persons appointed pursuant to paragraph 4 to carry out the Monitoring Trustee Functions;

“Monitoring Trustee Functions” means the functions set out at paragraph 6;

“Regulatory Approval” means all regulatory and other approvals, consents or registrations granted by NHS England, the General Pharmaceutical Council (including the expiry of all mandatory minimum notice periods associated with such) and/or all other relevant regulatory or other industry bodies which are required to effect the divestment of the Divestment Pharmacies to the Proposed Purchasers and permit the Divestment Pharmacies to commence operations under new ownership and be carried on as a going concern;

“Occupation Interest” means an interest in the Divestment Pharmacies Property by virtue of which Well enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Pharmacies Property provided always that: (i) the original purchaser (or its successor) is not in occupation of the Divestment Pharmacies Property; and/or (ii) before such interest in the Divestment Pharmacies Property arose, the most recent use to which the Divestment Pharmacies Property had been put was that of the operation of retail pharmacies in certain local areas in the UK;

“Proposed Purchaser” means each and any of the companies listed at Annex 2 - Proposed Purchasers, or such other proposed purchaser, or purchasers, for each of the Divestment Pharmacies;

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

“the Transaction” means the completed acquisition by Bestway Panacea Holdings Limited of the entire issued share capital of Lexon UK Holdings Limited and Asurex Limited;

“Divestiture Trustee” means the person appointed pursuant to paragraph 7.4, paragraph 7.5 or paragraph 7.7 to carry out the Divestiture Trustee Functions;

“Divestiture Trustee Functions” means the functions set out in paragraph 9;

“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;

“Well” means BESTWAY PANACEA HOLDINGS LIMITED, a private limited liability company incorporated in England and Wales with registered number 09225479 whose registered office is at Merchants Warehouse Castle Street, Castlefield, Manchester M3 4LZ, UK;

“Well Business” means the business of Well and its Group of Interconnected Bodies Corporate carried on as at 14 April 2023;

“Target” means the entire issued share capital of Lexon UK Holdings Limited (‘Lexon’) with company number 11217461 and Asurex Limited with company number 04399894 (‘Asurex’).

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

FOR AND ON BEHALF OF Well

Signature

Name

Title

Date

DATE ACCEPTED BY THE CMA:

Annex 1 – Divestment Pharmacies

Brand	Pharmacy code	Address
Well	FN907	Well Seaham - 43 Church Street, SR7 7HF
Well	FXF69	Well Bishop Auckland – Unit 7, Newgate Centre , County Durham, DL14 7JQ
Well	FG244	Well Moreton – The Pharmacy, Pasture Road Health Centre, Pasture Road, Moreton, Wirral, CH46 8SA
Well	FNK57	Well High Howdon – 86 Windsor Drive, Wallsend, NE28 0PS
Well	FPM20	Well Pensby – 309 Pensby Road, Pensby, CH61 9NE
Well	FVQ79	Well Kenton – 29 Arlington Avenue, Kenton, Newcastle upon Tyne, NE3 4TS
Well	FMP31	Well Stockton-on-Tees – 70 Bishopton Lane, TS18 2AJ

Annex 2 – Proposed Purchasers

Proposed Purchaser		Relevant Divestment Pharmacy	
Company name	Company number	Divestment Pharmacy code	Address
Teesside LLP	OC400411	FN907	Well Seaham – 43 Church Street, SR7 7HF
HA Healthcare Ltd	14140056	FXF69	Well Bishop Auckland – Unit 7, Newgate Centre, County Durham, DL14 7JQ
Gorgemead Limited	1425062	FG244	Well Moreton - The Pharmacy, Pasture Road Health Centre, Pasture Road, Moreton, Wirral, CH46 8SA
S K Pharmacare Limited	7578352	FNK57	Well High Howdon – 86 Windsor Drive, Wallsend, NE28 0PS
Gorgemead Limited	1425062	FPM20	Well Pensby – 309 Pensby Road, Pensby CH61 9NE
Alrahi & Singh Limited	7276011	FVQ79	Well Kenton – 29 Arlington Avenue, Kenton, Newcastle upon Tyne, NE3 4TS
Pyramid Pharma 7 Ltd	13467502	FMP31	Well Stockton-on-Tees – 70 Bishopton Lane, TS18 2AJ