

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by Primary Health
Care Limited (ACN 064 530 516)

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1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Primary Health Care Limited (ACN 064 530 516) on behalf of itself and its Subsidiaries (together referred to as **Primary** in this Undertaking).

2. Background

Primary

- 2.1. Primary is an Australian healthcare company listed on the Australian Stock Exchange.
- 2.2. Primary operates medical centres as well as providing pathology services, diagnostic imaging services, health technology solutions and private health insurance throughout Australia.

Healthscope

- 2.3. Healthscope Limited (**Healthscope**) is an Australian private health care operator listed on the Australian Stock Exchange.
- 2.4. Healthscope operates private hospitals and medical centres in Australia, as well as pathology businesses in New Zealand, Singapore, Vietnam and Malaysia.
- 2.5. Until 2 February 2015, Healthscope provided pathology services in Queensland and in parts of northern New South Wales, including Tweed Heads, Murwillumbah and Kingscliff, where it collected specimens and delivered them to its laboratories in Queensland (**Healthscope Queensland pathology business**).
- 2.6. Healthscope continued to operate its remaining Australian pathology operations, in South Australia, Victoria and New South Wales, until it sold those operations to Crescent Capital Partners on 6 July 2015.

The Transaction

- 2.7. On 17 December 2014, Healthscope entered into arrangements with Primary (the **Transaction**) pursuant to which:
- (a) Primary acquired certain assets from Healthscope in relation to Healthscope's Queensland pathology business, including through the grant, assignment or transfer of:
 - (i) rights to non-hospital pathology collection centres and laboratories it previously occupied in Queensland, Tweed Heads (NSW), Murwillumbah (NSW) and Kingscliff (NSW), comprising rights to third party owned premises as well as premises owned by Healthscope;
 - (ii) rights to hospital related pathology collection centres and laboratories at private hospitals and associated hospital complexes owned by Healthscope in Queensland; and
 - (iii) property and inventory associated with the Healthscope Queensland pathology business,

(the **Healthscope Assets**);

- (b) Primary and Healthscope entered into service level agreements for each hospital and medical centre owned or leased by Healthscope in Queensland; and
- (c) Primary undertook to:
 - (i) offer employment to certain of Healthscope's former employees in Primary's Queensland pathology operations, which trade under the name QML Pathology; and
 - (ii) discontinue litigation against Healthscope and to resolve other non-litigious disputes with Healthscope.

2.8. The Transaction completed on 2 February 2015.

2.9. Healthscope retained certain assets relating to the Healthscope Queensland pathology business, including:

- (a) property comprising information technology equipment, courier cars and laboratory equipment (the **Retained Assets**); and
- (b) the lease for its Eight Mile Plains pathology laboratory.

The ACCC's investigation

- 2.10. Neither Primary nor Healthscope informed the ACCC of the Transaction. The ACCC became aware of the Transaction on 3 February 2015. On 13 February 2015, the ACCC commenced its public review of Primary's acquisition of the Healthscope Assets under its informal merger review process.
- 2.11. The ACCC undertook market inquiries and considered information provided by Primary and Healthscope, industry participants and others. The purpose of the ACCC's inquiries was to assess whether Primary's acquisition of the Healthscope Assets would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of sections 45 and/or 50 of the Act.

Primary's previous undertakings

- 2.12. On various dates throughout the ACCC's investigation, Primary undertook to the ACCC to preserve the Healthscope Assets so that they could be separately and readily identified and accounted for, pending the conclusion of the ACCC's investigation and/or any order of the court (**Interim Undertakings**).
- 2.13. The Interim Undertakings included the undertakings which were provided by Primary to the ACCC on 4 February 2015 to fully co-operate with any investigation undertaken by the ACCC in relation to the Transaction and on 9 February 2015 (**Interim Undertakings Date**) to:
 - (a) operate the Healthscope Assets in the ordinary course and give the ACCC five Business Days' notice of any intention to do otherwise; and
 - (b) deal in the ordinary course with all former employees of Healthscope who have accepted an offer of employment from Primary or any of its Subsidiaries, being an offer made on 2 or 3 February for employment in Primary's, or any of its Subsidiaries', Queensland pathology business.

The ACCC's competition concerns

- 2.14. As a result of its investigation, the ACCC was concerned that the removal of the Healthscope Queensland pathology business from the relevant market/s through Primary's acquisition of the Healthscope Assets would be likely to have the effect of substantially lessening competition in one or more markets in contravention of section 50 of the Act.

The Undertaking remedy

- 2.15. Primary does not consider that the acquisition of the Healthscope Assets would be likely to have the effect of substantially lessening competition in any market. However, to address the ACCC's competition concerns referred to in clause 2.14, Primary has offered this Undertaking pursuant to section 87B of the Act.
- 2.16. The objective of this Undertaking is to address the ACCC's competition concerns as set out in clause 2.14 above. The Undertaking aims to achieve this objective by placing obligations on Primary to:
- (a) ensure that the Divestiture Assets are sold to the Approved Purchaser;
 - (b) create a viable, effective, stand-alone, independent and long term competitor in the supply of Community Pathology Services in Queensland;
 - (c) ensure the Approved Purchaser has the necessary Consents, personnel, Technical Assistance and transitional supply to compete effectively with Primary in the supply of Community Pathology Services in Queensland;
 - (d) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Assets prior to divestiture pursuant to this Undertaking;
 - (e) refrain from, for a period of five years from the completion of the divestiture of the Divestiture Assets, disparaging the Approved Purchaser or making reference to the Approved Purchaser's business except in certain circumstances;
 - (f) desist from, for a period of 42 months from the completion of the divestiture of each Divestiture ACC Lease, taking steps to enter or entering into any arrangement for the right to use or occupy that Divestiture ACC for the purposes of offering community pathology services except in limited circumstances after the first 24 months;
 - (g) ensure that any of the Divestiture Assets that are not transferred to the Approved Purchaser by the end of the Initial Sale Period are sold to an alternative Approved Purchaser; and
 - (h) provide for the effective oversight of Primary's compliance with this Undertaking.

The Healthscope Undertaking

- 2.17. As set out above, Healthscope has retained certain assets in relation to its former Queensland pathology business.
- 2.18. Healthscope has offered and the ACCC accepted the Healthscope Undertaking pursuant to section 87B of the Act.
- 2.19. Pursuant to the Healthscope Undertaking, Healthscope must:

- (a) ensure that the Retained Assets are sold to the Approved Purchaser at the Approved Purchaser's discretion;
- (b) consent to the assignment by Primary to the Approved Purchaser of any Medical Centre Sublease and/or Service Level Agreement, or enter into a new Medical Centre Sublease and/or Service Level Agreement with the Approved Purchaser; and
- (c) in relation to any Medical Centre Sublease where the head lessor is not Healthscope or one of its Related Bodies Corporate, and the consent of the head lessor is required, procure the consent of the relevant head lessor to the assignment of the relevant Medical Centre Sublease to the Approved Purchaser.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- (a) this Undertaking is executed by Primary; and
- (b) this Undertaking so executed is accepted by the ACCC,
(the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1. Primary may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 4.4. Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 8, 10, 11, 12, 13, 14, 15 and 16 survive completion of the obligations in clauses 5, 6, 7, 9, Schedule 4 and Confidential Schedule 5.

5. Divestiture of the Divestiture Assets

Divestiture

- 5.1. Primary must, in accordance with this Undertaking, divest, or cause the divestiture of the Divestiture Assets only to an Approved Purchaser by:

- (a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 4 to the Approved Purchaser within the Initial Sale Period, otherwise clause 9 applies;
- (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.2 and 5.3;
- (c) the transfer of any Transferred Personnel required pursuant to clauses 5.6 to 5.7;
- (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.10 to 5.12; and
- (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.13 to 5.14.

Consents

5.2. Primary must:

- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of each Divestiture Asset;
- (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
- (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;
- (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
- (e) enter into an agreement with the Approved Purchaser that is approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Divestiture Assets which may be affected by any failure to gain a Consent.

5.3. If, seven Business Days before completion of the divestiture of any Divestiture Asset, Consent has not been obtained for the transfer of any Divestiture ACC Lease to the Approved Purchaser, then Primary must:

- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consent that has not been obtained;
 - (ii) reasons why the Consent has not been obtained; and
 - (iii) information or material required to obtain the Consents; and
- (b) continue to do everything in its power to satisfy clause 5.2 as soon as possible to complete the divestiture of that Divestiture Asset (until such time as clause 5.2 is satisfied).

- 5.4. Even if Primary has complied with clauses 5.2 and 5.3, it remains a breach of this Undertaking if Primary is unable to effect the divestiture of any of the Divestiture Assets by reason of a failure to obtain Consents.
- 5.5. To avoid doubt, clause 5.4 will not apply in respect of obligations the ACCC has waived pursuant to clause 4.3 of this Undertaking.

Transferred Personnel

- 5.6. At the option of the Approved Purchaser, Primary must transfer to the Approved Purchaser:
- (a) all employees; and
 - (b) all service providers under a contract for service;
- who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Assets and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).
- 5.7. The date on which Primary must transfer the Transferred Personnel to the Approved Purchaser under clause 5.6 is:
- (a) for each of the Transferred Personnel who are pathology specimen collectors, no later than the date of completion of the divestiture of the Divestiture ACC Lease relevant to that person; and
 - (b) for each of the Transferred Personnel who are not pathology specimen collectors, no later than the date of the last transfer of any of the Divestiture Assets to the Approved Purchaser.
- 5.8. Primary's obligations under clause 5.6 are subject to it receiving notice from the Approved Purchaser at least 30 days prior to:
- (a) for each of the Transferred Personnel who are pathology specimen collectors, the date of completion of the divestiture of the Divestiture ACC Lease relevant to that person; and
 - (b) for each of the Transferred Personnel who are not pathology specimen collectors, the date of the last transfer of any of the Divestiture Assets to the Approved Purchaser.
- 5.9. When fulfilling its obligations under clause 5.6, Primary must:
- (a) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Approved Purchaser;
 - (b) effective no later than the date of transfer of the relevant Transferred Personnel to the Approved Purchaser, release the relevant Transferred Personnel from any obligations to provide services to Primary;
 - (c) effective no later than the date of transfer of the relevant Transferred Personnel to the Approved Purchaser, release the relevant Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the relevant Divestiture Asset or Unsold Assets; and

- (d) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Primary for a period of six months from the date of transfer of the relevant Transferred Personnel to the Approved Purchaser.

Technical Assistance

- 5.10. At the option of the Approved Purchaser, Primary must supply to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Assets.
- 5.11. Primary must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:
 - (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
 - (b) at cost and otherwise on arm's length terms.
- 5.12. To avoid doubt, Primary must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the factors set out in clauses 5.10 and 5.11.

Transitional Supply Agreements

- 5.13. At the option of the Approved Purchaser, Primary must ensure the continued supply by Primary to the Approved Purchaser, under an Approved Transitional Supply Agreement, of any goods or services that are required by the Approved Purchaser in order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor in the supply of Community Pathology Services in Queensland.
- 5.14. Primary must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
 - (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser, and approved in writing by the ACCC;
 - (b) provides for the supply of the included goods and services at cost price; and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.15. To avoid doubt, Primary must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply Agreement, the ACCC will have regard to the factors set out in clauses 5.13 and 5.14.

6. Process for approving a purchaser

Approval of Medlab as the Approved Purchaser

- 6.1. At the time this Undertaking was accepted, the ACCC also considered information of the type required in a Proposed Purchaser Notice and approved Medlab Pathology Pty Ltd (**Medlab**) as the Approved Purchaser of the Divestiture Assets.
- 6.2. ACCC approval of Medlab as the Approved Purchaser of the Divestiture Assets included approval of:
 - (a) the Sale and Purchase Agreement between Specialist Diagnostic Services Pty Limited trading as QML Pathology and Medlab as the Approved Sale and Purchase Agreement, including the approval of;
 - (b) clause 9.2 of the Approved Sale and Purchase Agreement as the Approved Transitional Technical Assistance Agreement; and
 - (c) clause 8.3 of the Approved Sale and Purchase Agreement as the Approved Transitional Supply Agreement.
- 6.3. Primary acknowledges that in the case of any inconsistency between an obligation owed by a party under the Approved Sale and Purchase Agreement and an obligation owed under this Undertaking, this Undertaking will prevail to the extent of that inconsistency. For the avoidance of doubt, however, the Approved Sale and Purchase Agreement does not form part of this Undertaking.
- 6.4. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Provision of a notice for a Proposed Purchaser

- 6.5. To seek ACCC approval for another Proposed Purchaser, Primary must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement, and a draft transitional supply agreement. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.
- 6.6. In deciding whether to exercise its discretion to approve or not approve a Proposed Purchaser, which includes approving or not approving a draft sale and purchase agreement, a draft transitional technical assistance agreement, and a draft transitional supply agreement, the ACCC may have regard to the factors that are required in the Proposed Purchaser Notice.

7. Divestiture Assets Protection

Protection of the Divestiture Assets

- 7.1. From the Commencement Date, Primary must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Assets (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking.

Primary's obligations in relation to the Divestiture Assets prior to completion of divestiture

- 7.2. Without limiting this clause 7, Primary must, from the Commencement Date until completion of the divestiture of the Divestiture Assets, take all steps available to it to:

- (a) not shut down, decommission, dispose, denude or rationalise the Divestiture Assets;
- (b) ensure that the Divestiture Assets are managed and operated in the ordinary course of business in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Assets as at the Interim Undertakings Date;
- (c) continue to provide access to working capital and sources of credit for the Divestiture Assets in a manner which is consistent with the financing of the businesses associated with the Divestiture Assets as at the Interim Undertakings Date;
- (d) continue to provide administrative and technical support for the Divestiture Assets in a manner which is consistent with the operation of the Divestiture Assets as at the Interim Undertakings Date;
- (e) continue and renew upon expiry existing Agreements relating to the Divestiture Assets with customers, suppliers and/or other third parties;
- (f) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Assets on commercial terms favourable to the businesses associated with the Divestiture Assets;
- (g) maintain the supply of those goods and services that are part of the Divestiture Assets to existing customers in a manner consistent with the supply of those goods and services as at the Interim Undertakings Date;
- (h) maintain the standard of manufacture, distribution, promotion and sale of those products which are related to the Divestiture Assets as at the Interim Undertakings Date; and
- (i) carry out promotion and marketing of the products which are related to the Divestiture Assets in accordance with any plans established as at the Commencement Date;
- (j) in relation to the Divestiture Assets listed in section 3 of Schedule 4:
 - (i) seek to hold over as monthly tenant in relation to any such leases that are expiring and do not include an option to renew (other than options already exercised), subject to paying the same rent as is currently payable plus no more than a CPI increase; and
 - (ii) exercise any option to renew that is due to be exercised in the period prior to completion of the divestiture of the Divestiture Assets.

7.3. To avoid doubt, if Primary is forced to close a collection centre because the lessor has declined to allow Primary to occupy that centre or despite Primary's best endeavours, refused to lease their premises to Primary, this will not constitute a breach by Primary of the obligations described in clause 7.2 above or this Undertaking.

Transferred Personnel

7.4. From the Commencement Date until completion of the divestiture of the Divestiture Assets, Primary must not:

- (a) terminate or vary the terms of employment or engagement of any of the Transferred Personnel, or agree to do any of those things; and
 - (b) directly or indirectly procure, promote or encourage the redeployment of the Transferred Personnel to any other business operated by Primary.
- 7.5. As soon as practicable after the Commencement Date, Primary must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Primary's obligations under this Undertaking.

Obligation not to disparage or undermine the Approved Purchaser

- 7.6. For a period of five years from the Commencement Date, Primary must not:
- (a) disparage or attempt to disparage the Approved Purchaser; or
 - (b) make any reference to the Approved Purchaser's Community Pathology Services business in Queensland, or any of the Approved Purchaser's collection centres or laboratories, when Primary is marketing, promoting or selling its Community Pathology Services in Queensland, communicating with medical practitioners, employees of medical centres or patients, or otherwise operating its Community Pathology Services business in Queensland, unless the reference is factually correct, not misleading, is compliant with clause 7.11 and is with respect to:
 - (i) price, including billing policies;
 - (ii) rent paid for collection centres; or
 - (iii) the geographical reach of the available Community Pathology Services, opening hours of collection centres and range of tests available.
- 7.7. Subject to the obligations in clause 7.6, Primary may:
- (a) highlight the benefits of its Community Pathology Services in Queensland;
 - (b) provide Community Pathology Services to medical practitioners located at the Divestiture ACCs who have, pursuant to their right to acquire pathology services from the provider of their choice, chosen to refer Community Pathology Services to Primary following completion of the divestiture; or
 - (c) answer any consumer or health care professional inquiries.

Primary's other ongoing obligations in relation to the Divestiture Assets

- 7.8. For a period of 24 months from the date of completion of the divestiture of each Divestiture ACC Lease, Primary must not enter into any arrangement (or take any steps to do so) for the right to use or occupy for the purposes of offering community pathology services:
- (a) the site to which that lease relates; or
 - (b) any other part of the premises of any medical practice in which the site is located.

- 7.9. For each Divestiture ACC, for the period of 18 months from the date of the expiry of the period referred to in clause 7.8, Primary may only enter into an arrangement for the right to use or occupy that Divestiture ACC (or take any steps to do so) where:
- (a) the Approved Purchaser's right to use that asset is due to expire through the effluxion of time within a three month period;
 - (b) the landlord has informed the Approved Purchaser that it proposes to decline the Approved Purchaser a right to occupy the site; or
 - (c) the site is otherwise no longer in the Approved Purchaser's power or control.
- 7.10. To the extent Primary has obligations in relation to the provision of Technical Assistance or continued supply pursuant to clauses 5.10 to 5.15 of this Undertaking in relation to the Divestiture Assets, Primary must not sell, assign, transfer, and/or license directly or indirectly any of the assets required by Primary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

- 7.11. Primary must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Assets, including any collection centres to which they relate, gained through:
- (a) the Transaction Process;
 - (b) operation of the Divestiture Assets, including any collection centres to which they relate; or
 - (c) fulfilling any obligations pursuant to this Undertaking.
- 7.12. Clause 7.11 does not apply to information that Primary requires to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking (**Permitted Purpose**),
- provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Primary who need to know the information to carry out the Permitted Purpose.

8. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 8.1. Primary must appoint and maintain an Approved Independent Auditor to audit and report upon Primary's compliance with this Undertaking.
- 8.2. To seek ACCC approval for a Proposed Auditor, Primary must provide the ACCC with a notice in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.

Appointment of RSM as the Approved Independent Auditor

- 8.3. Prior to the Commencement Date, the ACCC considered information of the type required in a Proposed Independent Auditor Notice and approved RSM as the independent auditor to audit and report upon Primary's compliance with the Interim Undertakings.
- 8.4. ACCC approval of RSM as the independent auditor included approval of RSM's:
 - (a) terms of appointment dated 18 March 2015; and
 - (b) audit plan in relation to the Interim Undertakings.
- 8.5. Primary appointed RSM as the independent auditor to audit and report on Primary's compliance with the Interim Undertakings on 18 March 2015.
- 8.6. At the time this Undertaking was accepted, the ACCC approved RSM's appointment as the Approved Independent Auditor.
- 8.7. ACCC approval of RSM as the Approved Independent Auditor included approval of amendments to the documents described above in clause 8.4(a) and (b), to incorporate the requirements of clauses 8.8 to 8.14.

Obligations and powers of the Approved Independent Auditor

- 8.8. Primary must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
 - (a) maintain his or her independence from Primary, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Primary for the period of his or her appointment;
 - (b) conduct compliance auditing according to the Approved Audit Plan;
 - (c) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 8.10;
 - (ii) a fortnightly report outlining leases that are expiring, or for which a renewal option is due to be exercised, in the following month relevant to clause 7.2(j), an explanation of the steps taken by Primary to comply with clause 7.2(j) and identification of any non-compliance by Primary in relation to clause 7.2(j); and
 - (iii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
 - (d) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

- 8.9. Primary must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (a) access the facilities, sites or operations of the Divestiture Assets and Primary's other businesses as required by the Approved Independent Auditor;
 - (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
 - (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

- 8.10. Primary must procure that the Approved Independent Auditor conducts an audit and prepare a detailed report (**Audit Report**) that includes:
- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (b) a full audit of Primary's compliance with this Undertaking;
 - (c) identification of any areas of uncertainty or ambiguity in the Auditor's interpretation of any obligations contained in this Undertaking;
 - (d) all of the reasons for the conclusions reached in the Audit Report;
 - (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) Primary's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Primary's compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 8.11. Primary must procure that the Approved Independent Auditor provides reports to the ACCC and Primary at the following times:
- (a) a report 10 Business Days after the Commencement Date in relation to clause 8.8(c)(ii), and every fortnight thereafter in relation to clause 8.8(c)(ii);
 - (b) an Audit Report within 10 Business Days after the Commencement Date, at which time the Audit Report is to include the results of the initial audit and

any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);

- (c) an Audit Report every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Assets is completed;
 - (d) an Audit Report every three months after the date of provision of the last Audit Report pursuant to clause 8.11(c), until the ACCC confirms in writing to Primary that it is satisfied that Primary has fulfilled its obligations pursuant to this Undertaking;
 - (e) a final Audit Report due three months after the last report provided pursuant to clause 8.11(d).
- 8.12. Primary must implement any recommendations made by the Approved Independent Auditor, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the relevant report or such other period as agreed in writing with the ACCC.
- 8.13. Primary must comply with any direction of the ACCC in relation to matters arising from reports by the Approved Independent Auditor within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

Primary's obligations in relation to the Approved Independent Auditor

8.14. Without limiting its obligations in this Undertaking, Primary must:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing Primary personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 8;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Assets and Primary's other businesses as required by the Approved Independent Auditor;

- (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
- (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
- (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 8.15. Primary must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 8.16. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.17. The ACCC may approve any proposal by, or alternatively may direct, Primary to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

Process for approving a replacement Independent Auditor

- 8.18. If clauses 8.15, 8.16 or 8.17 apply, Primary must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 8.22 applies.
- 8.19. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 8.20. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Primary;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Replacement Approved Independent Auditor

- 8.21. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Primary must, within two Business Days of receiving the notice:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint the Replacement Approved Independent Auditor

- 8.22. If the Approved Independent Auditor has not been appointed pursuant to clause 8.21 or the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 8.18, then, the ACCC at its absolute discretion may:
- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
 - (b) direct Primary to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

9. Failure to divest the Divestiture Assets within the Initial Sale Period

Divestiture of the Unsold Assets

- 9.1. In the event that the divestiture of any of the Divestiture Assets to an Approved Purchaser is not completed by the end of the Initial Sale Period, then those Divestiture Assets become unsold assets (**Unsold Assets**) and the provisions of this clause 9 apply.

Obligation to appoint an Approved Divestiture Agent

- 9.2. From the end of the Initial Sale Period, Primary must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Assets.

Process for approving a Proposed Divestiture Agent

- 9.3. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of any of the Divestiture Assets has not been completed, Primary must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) including draft terms of appointment, a draft asset sale agreement, and draft marketing and sale plan.
- 9.4. If clauses 9.14, 9.15 or 9.16 apply, Primary must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 9.9 applies.
- 9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- 9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:

- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
- (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of Primary;
- (c) draft terms of appointment, draft asset sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
- (d) draft terms of appointment, draft asset sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

Appointment of the Approved Divestiture Agent

- 9.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft asset sale agreement and draft marketing and sale plan, Primary must within two Business Days:
- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 9.8. If the Approved Divestiture Agent has not been appointed:
- (a) within 10 Business Days after the Divestiture Assets become Unsold Assets;
 - (b) within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 9.14, 9.15 or 9.16; or
 - (c) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 9.4;
- then clause 9.9 applies.
- 9.9. If clause 9.8 applies, the ACCC may, at its absolute discretion:
- (a) identify and approve a person as the Approved Divestiture Agent, includes approving the draft terms of appointment of the Approved Divestiture Agent, draft asset sale agreement and draft marketing and sale plan; and/or
 - (b) direct Primary to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

Obligations and powers of the Approved Divestiture Agent

- 9.10. Primary must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Independent Divestiture Agent to:
- (a) divest the Unsold Assets only to an Approved Purchaser, at no minimum price;

- (b) maintain his or her independence from Primary, apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Primary for the period of his or her appointment;
- (c) not use any confidential information gained through the divestiture of the Unsold Assets other than for performing his or her functions as Approved Divestiture Agent;
- (d) follow the Approved Marketing and Sale Plan;
- (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Assets as quickly as possible using the Approved Asset Sale Agreement;
- (f) co-operate with the requests of any Approved Independent Auditor appointed pursuant to this Undertaking;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - (i) information regarding the implementation of the Approved Asset Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 9.11(d));
 - (v) the efforts made to sell the Unsold Assets;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Assets; and
 - (viii) any other information required by the ACCC.
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Assets, provide a written report directly to the ACCC which includes a final accounting of:
 - (i) any moneys derived from the divestiture of the Unsold Assets;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
 - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 9.11(d));
- (i) immediately inform the ACCC of:

- (i) any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and any Approved Marketing and Sale Plan;
 - (ii) a failure to obtain Consent for the transfer of a Divestiture ACC Lease;
 - (iii) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iv) any offers for the Unsold Assets;
 - (j) accept any offer for the Unsold Assets upon instruction from Primary given in accordance with clause 9.13(d); and
 - (k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.
- 9.11. Primary must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:
- (a) negotiate with purchasers to divest the Unsold Assets on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
 - (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.6;
 - (c) upon instruction pursuant to clause 9.13(d), complete the divestiture of the Unsold Assets to the Approved Purchaser in accordance with the Approved Asset Sale Agreement; and
 - (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.
- 9.12. Any irrevocable power of attorney granted pursuant to clause 9.11 will end upon resignation or termination of the Approved Divestiture Agent, in accordance with clauses 9.14, 9.15 and 9.16, or in the event that the Unsold Assets are divested in accordance with this Undertaking.

Primary's obligations in relation to the Approved Divestiture Agent

- 9.13. Without limiting its obligations in this Undertaking, Primary must from the end of the Initial Sale Period:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
 - (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:
 - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss,

claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;

- (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and Primary (but not fees contingent on the price to be obtained for the Unsold Assets); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Primary within 15 Business Days after the end of the Initial Sale Period, Primary agrees to pay such fees as are directed by the ACCC;
- (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
- (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of the Unsold Assets as required by the Approved Divestiture Agent; and
 - (iii) providing to the Approved Divestiture Agent any information, documents or other assistance he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC of its decision pursuant to clause 6.6, Primary must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Assets to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6; and
- (e) other than in accordance with clause 9.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Assets.

Resignation, revocation or termination of the Approved Divestiture Agent

- 9.14. Primary must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Assets.
- 9.15. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.16. The ACCC may approve any proposal by, or alternatively may direct, Primary to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

10. Notification of key dates and ACCC requests for information

- 10.1. Primary must notify the ACCC and each Undertaking Appointment in writing of:
- (a) the anticipated date of the completion of the divestiture of the Divestiture Assets, at least five Business Days before that date; and
 - (b) the occurrence of the completion of the divestiture of the Divestiture Assets, within one Business Day of that date.
- 10.2. The ACCC may direct Primary in respect of its compliance with this Undertaking to, and Primary must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Primary's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 10.3. Any direction made by the ACCC under clause 10.2 will be notified to Primary, in accordance with clause 16.2.
- 10.4. In respect of Primary's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 10.5. Primary will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 10.4.
- 10.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 10 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 10.7. The ACCC may in its discretion to be exercised in good faith:
- (a) advise any Undertaking Appointment of any request made by it under this clause 10; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 10.

- 10.8. Nothing in this clause 10 requires the provision of information or documents in respect of which Primary has a claim of legal professional or other privilege.

11. Disclosure of this Undertaking

- 11.1. Primary and the ACCC agree that Confidential Schedule 5, will remain confidential until after the completion of the divestiture of the Divestiture Assets or Unsold Assets.
- 11.2. Primary acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedule 5.
- 11.3. Primary acknowledges that the ACCC may, subject to clause 11.1:
- (a) make this Undertaking publicly available; and
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 11.4. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 11.5. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

12. Obligation to procure

- 12.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Primary to take or refrain from taking some action, Primary will procure that Related Body Corporate to take or refrain from taking that action.

13. No Derogation

- 13.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Primary of any term of this Undertaking.
- 13.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Primary does not fully implement and/or perform its obligations under this Undertaking or

in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

14. Change of Control

14.1. In the event that a Change of Control is reasonably expected to occur, Primary must:

- (a) notify the ACCC of this expectation as soon as practicable; and
- (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Primary pursuant to this Undertaking (or those obligations with which Primary is no longer able to comply as a consequence of the Change of Control), or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Primary in writing that a section 87B undertaking under this clause is not required.

15. Costs

15.1. Primary must pay all of its own costs incurred in relation to this Undertaking.

16. Notices

Giving Notices

16.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger and Authorisation Review Division

With a copy sent to: mergersucu@acc.gov.au
Attention: Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

16.2. Any notice or communication to Primary pursuant to this Undertaking must be sent to:

Name: Primary Health Care Limited

Address: Level 6, 203 Pacific Highway
St. Leonards NSW 2065

Email Address: ian.streeter@primaryhealthcare.com.au

Fax number: +61 2 9432 9449

Attention: Ian Streeter

With a copy sent to:

Name: King & Wood Mallesons

Address: Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Email Address: sharon.henrick@au.kwm.com

Fax number: +61 2 9296 3999

Attention: Sharon Henrick

- 16.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 16.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 16.5. Primary must notify the ACCC of a change to its contact details within three Business Days.
- 16.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 16.3 and 16.4, will be taken to be received.

17. Defined terms and interpretation

Definitions in the Dictionary


- 17.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation


- 17.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Primary Health Care Limited (ACN 064 530 516) pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of ~~director~~ *company secretary*
CHARLES TILLEY
COMPANY SECRETARY



Signature of a ~~director~~ *company secretary*
PETER GREGG
MANAGING DIRECTOR

Name of ~~director~~ (print)
company secretary

Name of ~~director~~ (print)

Name of ~~director~~ *company secretary* (print)

Name of ~~director~~ (print)

Date *7 June 2016*

Date *7 June 2016*

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 on: [date of Commission decision]

15 JUNE 2016

And signed on behalf of the Commission:

Chairman

ROD SIMS

Date

15 June 2016

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding, but excluding the contracts, arrangements and understandings relating to the sites listed in sections 1 to 4 of Schedule 4 and referred to in Confidential Schedule 5.

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Asset Sale Agreement means the standard form contract for the divestiture of the Unsold Assets which has been approved by the ACCC in accordance with the terms of this Undertaking.

Approved Divestiture Agent means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Assets.

Approved Purchaser means Mediab, who has been approved by the ACCC under clause 6 of this Undertaking, or any other purchaser for the Divestiture Assets who has been approved by the ACCC.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Primary will divest the Divestiture Assets to the Approved Purchaser and Approved Purchaser will acquire the Divestiture Assets from Primary.

Approved Transitional Supply Agreement means any agreement, for the transitional supply of goods or services (other than Technical Assistance) by Primary to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Technical Assistance Agreement means any agreement, for the supply of Technical Assistance by Primary to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Terms of Appointment means the terms of appointment for an Undertaking Appointment, as approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 8.10 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in Queensland.

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Primary to any other person or entity in circumstances where, as a result of that assignment or transfer, Primary will or may be unable to comply with this Undertaking in whole or in part; or
- (b) the sale, assignment, transfer and/or licence (directly or indirectly) of assets necessary, or which may be necessary, to enable Primary to comply with this undertaking, in circumstances where, as a result of that sale or transfer, Primary will or may be unable to comply with this Undertaking in whole or in part.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Community Pathology Services means pathology services provided on referral by a general practitioner or specialist doctor, excluding pathology services provided to in-patients in public hospitals.

Consents means any Government Consents or Third Party Consents.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture ACC means a collection centre approved under the *Health Insurance Act 1973* (Cth) which is operated under a Divestiture ACC Lease,

Divestiture ACC Lease means the assets described in parts 3 and 4 of Schedule 4 to this Undertaking, where those assets are within Primary's possession or control at the Commencement Date.

Divestiture Assets means the assets described in Schedule 4 and Confidential Schedule 5 to this Undertaking, where those assets are within Primary's possession or control at the Commencement Date. After the end of the Initial Sale Period, the Divestiture Assets are Unsold Assets.

Entity Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given to it in clause 8.11(b) of this Undertaking.

Government Consents means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Assets.

Healthscope means Healthscope Limited (ACN 147 250 780).

Healthscope Assets means the assets relating to Healthscope's former Queensland pathology business which were transferred to Primary pursuant to the Transaction, as described in clause 2.7 of this Undertaking.

Healthscope Queensland pathology business has the meaning given to it in clause 2.5 of this Undertaking.

Healthscope Undertaking is the undertaking given by Healthscope to the ACCC pursuant to section 87B of the Act in relation to Primary's acquisition of the Healthscope Assets.

Initial Sale Period is defined in Confidential Schedule 5 to this Undertaking.

Interim Undertakings has the meaning given to it in clause 2.12 of this Undertaking.

Interim Undertakings Date has the meaning given to it in clause 2.13 of this Undertaking.

Material Change means any change to the structure, attributes or extent of the Divestiture Assets that may affect, or impact on, the competitiveness of the Divestiture Assets.

Material Contract means any Agreement that is necessary for the operation of the Divestiture Assets.

Medlab means Medlab Pathology Pty Ltd (ACN 088 071 041).

Medical Centre Sublease means the sublease in relation to each medical centre set out in section 1 of Schedule 4 which is identified as being subject to a sublease.

Permitted Purpose has the meaning given in clause 7.12(b) of this Undertaking.

Primary has the meaning given to it in clause 1.1 of this Undertaking.

Proposed Divestiture Agent means a person named in a Proposed Divestiture Notice.

Proposed Divestiture Agent Notice has the meaning given to it in clause 9.3 of this Undertaking.

Proposed Independent Auditor means a person named in Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 8.2 of this Undertaking.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice has the meaning given to it in clause 6.5 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

Retained Assets means the assets relating to Healthscope's former Queensland pathology business which were retained by Healthscope, as described in clause 2.9 of this Undertaking.

Service Level Agreement means, the service level agreement (with a lease) in relation to each medical centre set out in section 1 of Schedule 4 which is identified as being subject to a sublease; or the Service Level Agreement (without a lease) in relation to each medical centre set out in section 2 of Schedule 4 which is identified as being subject to a Service Level Agreement (without a lease).

Subsidiary has the meaning given by section 9 of the Corporations Act.

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Assets, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

Third Party Consents means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Assets.

Transaction means the arrangements entered into by Primary and Healthscope as described in clause 2.7 of this Undertaking.

Transaction Process means the negotiation and finalisation of the Transaction, including the process of due diligence.

Transferred Personnel has the meaning given to it in clause 5.6 of this Undertaking.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Appointment means the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

Unsold Assets has the meaning given to it in clause 9.1 of this Undertaking.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;

- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Primary will do everything reasonably within its power to ensure that its performance of

those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;

(q) a reference to:

- (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
- (ii) a party includes its successors and permitted assigns; and
- (iii) a monetary amount is in Australian dollars.

Schedule 2 – Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Primary section 87B Undertaking
Address: mergers@accc.gov.au
Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersucu@accc.gov.au
Attention: Director, Undertakings Compliance Unit Merger Coordination and Strategy Branch, Merger and Authorisation Review Division

- 1) In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Contact name:
 - (d) Telephone number:
 - (e) Other contact details:
- 2) Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the owner/s and the directors of the Proposed Purchaser.
 - (d) details of any of the following types of relationships between Primary and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Primary and the Proposed Purchaser are Associated Entities;
 - (ii) Primary is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Primary;
 - (iv) Primary and the Proposed Purchaser are Related Entities;
 - (v) Primary and the Proposed Purchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Primary is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;

- (vii) Primary and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Proposed Purchaser is a supplier of Primary or has been in the past three years;
 - (ix) Primary is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Primary and the Proposed Purchaser that allows one to affect the business decisions of the other.
- (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of Primary:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) whether the Proposed Purchaser is of good financial standing;
 - (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Assets as a going concern;
 - (v) whether the Proposed Purchaser is able to operate the Divestiture Assets effectively;
 - (vi) whether the divestiture of the Divestiture Assets to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Assets under the ownership of the Proposed Purchaser; and
 - (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Assets, such as outstanding legal action or disputes.

3) Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.
- (b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking.
- (c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking.
- (d) any documents required to support the information provided by Primary pursuant to this form.

Schedule 3 – Undertaking Appointment

This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking:

- Independent Auditor; or
- Divestiture Agent;

(the **Undertaking Appointments**).

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed* [only include relevant Undertaking Appointment] *Form* – Primary section 87B Undertaking to the below email addresses:

1 mergers@accc.gov.au

Attention: Executive General Manager
Merger and Authorisation Review Division

2 **With a copy sent to:**

mergersucu@accc.gov.au

Attention: Director
Undertakings Compliance Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

Information Required

The ACCC requires the following information in order to assess a proposed Independent Auditor or Divestiture Agent (i.e. the relevant Undertaking Appointment).

1) Proposed Undertaking Appointment Details:

- (a) the name of the Proposed Undertaking Appointment; and
- (b) the name of the proposed Undertaking Appointment's employer and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.

2) A submission containing the following information:

- (a) details of the Undertaking Appointment's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
- (b) the names of the owner/s and the directors of the Undertaking Appointment's employer.
- (c) details of any of the following types of relationships between Primary and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Primary and the Undertaking Appointment's employer are Associated Entities.
 - (ii) Primary is an Entity Connected with the Undertaking Appointment's employer.
 - (iii) the Undertaking Appointment's employer is an Entity Connected with Primary.
 - (iv) Primary and the Undertaking Appointment's employer are Related Entities.
 - (v) Primary and [the Undertaking Appointment's employer are Related Parties.
 - (vi) any Related Party, Related Entity or Entity Connected with Primary is a Related Party, Related Entity or Entity Connected with the Undertaking Appointment.
 - (vii) Primary and the Undertaking Appointment or the Undertaking Appointment's employer have a contractual relationship or had one within the past three years, other than those attached to this form.
 - (viii) the Undertaking Appointment's employer is a supplier of Primary or has been in the past three years.
 - (ix) Primary is a supplier of the Undertaking Appointment's employer or has been in the past three years.
 - (x) any other relationship between Primary and the Undertaking Appointment or the Undertaking Appointment's employer that allows one to affect the business decisions of the other.
- 3) A document outlining the terms of appointment for the proposed Undertaking Appointment.

Specific Information required for Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

Proposed Independent Auditor

- 1) A finalised draft audit plan for the Divestiture Assets, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the Establishment Audit and the Audit Report.

Proposed Divestiture Agent

- 1) The finalised draft asset sale agreement drafted by the Proposed Divestiture Agent in consultation with Primary. The draft asset sale agreement is to provide for the divestiture of the Unsold Assets.
- 2) The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Assets.

Schedule 4 – Divestiture Assets

Further details of the Divestiture Assets are contained in Confidential Schedule 5.

- 1 The benefit of the following Service Level Agreements (with a lease) where Healthscope is the landlord or sub lessor :**

Asset	
1	Chermside Medical Centre
2	Bundall Medical Centre
3	Mater Hill Family Practice
4	Woodford Medical Centre
5	Mountain Creek Medical Centre
6	Chancellor Park Family Practice
7	Noosaville 7-Day

- 2 The benefit of the following Service Level Agreement (without a lease)**

Asset	
1	Milton Clinic
2	Glass House Mountains Family Practice
3	Auchenflower Family Practice
4	Molescan Booval
5	Molescan Morningside
6	Molescan Cairns
7	Molescan Sunnybank

- 3 The benefit of any oral or written agreement or arrangement under which Primary has the right to use or occupy the leasehold property in respect of the site of the following pathology collection centres where Healthscope is not the landlord:**

Asset	
1	Unit 1B, 134A Point Cartwright Dve. BUDDINA Qld 4575

Asset	
2	Tenancy 1, 7 Ballinger Rd. BUDERIM Qld 4556
3	Part 28 Crofton St. BUNDABERG Qld 4670
4	Part Unit 2 / 6 Classic Way BURLEIGH WATERS Qld 4220
5	Shop 1A, 174 Galleon Way CURRUMBIN WATERS Qld 4223
6	Shop 1 Eagleby Medical Centre EAGLEBY Qld 4207
7	Part HIMC, 21C Marina Shopping Village, Santa Barbara Rd HOPE ISLAND. Qld 4212
8	Shop 4, 2 Wembley Rd. LOGAN Qld 4114
9	Part 135 Margate Pde. MARGATE Qld 4019
10	Shop 12 Maroochydore Waters Shopping Centre, 10 Denna St. MAROOCHYDORE Qld 4558
11	Part 121-123 Nambour Mapleton Rd. NAMBOUR Qld 4560
12	44A Runaway Bay Shopping Village RUNAWAY BAY Qld 4216
13	Part 4A SPMC Cnr Ferry & Benowa Rds. SOUTHPORT Qld 4215
14	Part Rode Medical Centre Shop 17-19 Cnr Rode & Appleby Rds. STAFFORD HEIGHTS Qld 4053
15	Part 328 Gympie Rd. STRATHPINE Qld 4500
16	Part Upper Coomera Medical Centre Cnr Reserve & Hargraves Rds. UPPER COOMERA Qld 4209
17	Shop 20,28 Elizabeth Street ACACIA RIDGE Qld 4110
18	Part PRFP Shop, 114 PRSV Mt Lindesay Highway PARK RIDGE Qld 4125
19	Part BWFP 40 Hollywell Road BIGGERA WATERS Qld 4216
20	Suite 3a, 7 Margaret Street, PALMWOODS Qld 4555
21	Part 50 Second Ave MAROOCHYDORE Qld 4558
22	Rm 5, 1 Mudgeeraba Rd. WORONGARY Qld 4213
23	Lease D, 184 Station Rd. BURPENGARY Qld 4505
24	PART 11 WINDSOR ROAD RED HILL Qld 4059
25	Part 180 Napper Rd PARKWOOD Qld 4214
26	Path Room 1, 294 Bourbong Street BUNDABERG Qld 4670

Asset	
27	Part 648 Sherwod Road SHERWOOD Qld 4075
28	Part 204 Bestmann Rd East SANDSTONE POINT Qld 4511
29	Part 36 Wharf Street TWEED HEADS NSW 2485
30	Unit 23, 115 – 117 Buckley Rd BURPENGARY Qld 4505
31	Part Algester MC, 34 Algester Rd ALGESTER Qld 4115
32	Pathology Rm, 15 Maple St MALENY Qld 4552
33	Part Shop 20, 97 Flockton St MCDOWALL Qld 4053
34	Part Unit 32/33, Jimboomba Junction SC, 671 Cusack Lane JIMBOOMBA Qld 4280
35	Part Shop 3, 52 Juers St KINGSTON Qld 4114
36	Part Shop 1108A Garden City SC, Logan Rd UPPER MOUNT GRAVATT Qld 4122
37	Part Shop 5 Palms SC, 172 Goondoon St GLADSTONE Qld 4680
38	Part 342 Cavendish Rd COORPAROO Qld 4151
39	Shop 37A Harbour Town SC, Cnr Gold Coast Highway & Oxley Drv BIGGERA WATERS Qld 4216
40	Room 1, Shop 8, Woodland Plaza, 50 Woodland Dr REEDY CREEK Qld 4227
41	Part Shop 48, Homeworld Centre, 502 Hope Island Rd HELENSVALE Qld 4212
42	Part 2-3/57 Thomas Drv CHEVRON ISLAND Qld 4217
43	Shop 1, 31-35 Golden Wattle Drive, NARANGBA Qld 4504
44	Room 11, 25 Zammit St DECEPTION BAY Qld 4508
45	Bleeding Rm, Unit 3, 16-18 Falkinder Avenue, PARADISE POINT Qld 4216
46	Pathology Rm, 91 Griffith St, COOLANGATTA Qld 4225
47	Tenancy 3D, 383 Logan Road, GREENSLOPES Qld 4120
48	Path Rm, Station Chamber, 3/120 Lennox St, MARYBOROUGH Qld 4650
49	Shop 4, 72 Simpson Street, BEERWAH Qld 4519
50	Path Rm, Shop 1, 720 Albany Creek Rd, ALBANY CREEK Qld 4035
51	Path Rm, Bennetts Rd MC, 154 Bennetts Rd, NORMAN PARK Qld 4170

Asset	
52	Path Rm, Unit 16, 3221 Surfers Paradise Bld, SURFERS PARADISE Qld 4217
53	Treatment Room 2, 33 George St, SOUTHPORT Qld 4215
54	Shop 4C, Monterey Keys SC, 175 Monterey Keys Rd HELENSVALE Qld 4212
55	Path Rm, Shop 122B & 122C, Stockland SC, 149 West Burleigh Rd, WEST BURLEIGH Qld 4219
56	Path Room, T10, 28 Dixon Dve, PIMPAMA Qld 4209
57	Path Room, 5/921 Anzac Ave, MANGO HILL Qld 4509
58	Path Room, 16 Dickson Way, DUNWICH Qld 4183
59	Path Room, Shop 2 & 3, 1 Finucane Rd, CAPALABA Qld 4157
60	Path Room, Part of Suite 4, 1 Bell Place, MUDGEERABA Qld 4213
61	140 Main Street MURWILLUMBAH NSW 2484
62	Path Rooms 1 & 2 and Nursing Station, 116 Robertson Street, FORTITUDE VALLEY Qld 4006
63	Path Rm, Kingscliff Family Medical Centre, 38-42 Pearl Street KINGSCLIFFE NSW 2487
64	Path Room, Lutwyche MC, Shop SPO28, 543 Lutwyche Road, LUTWYCHE Qld 4030
65	Pathology Room Shop 2a Ezy Shopping Centre Plaza, Wirraway Parade, Inala Qld 4077
66	206-214 Philip Street GLADSTONE Qld 4680

- 4 The benefit of any oral or written agreement or arrangement under which Primary has the right to use or occupy the leasehold property in respect of the site of the following laboratories and associated collection centres not owned by Healthscope:**

	Asset	Services
1	Caloundra Laboratory (Accreditation No. 15094; Category B (Branch)), 1st Floor, Golden Beach Medical Centre, 34 Landsborough Parade, Golden Beach Qld 4551	Pathology laboratory and collection centre
2	Bundaberg Laboratory (Accreditation No. 15231; Category B (Branch)), Shop 7, 53 Woongarra Street	Pathology laboratory and collection centre

5 Property

Asset	Detail
Furniture and equipment in collection centres formerly operated by Healthscope	
Laboratory equipment in laboratories and collection centres formerly operated by Healthscope	<ul style="list-style-type: none"> • 1 x SYSMEX XT1800i (Haematology, Healthscope's Bundaberg laboratory); • SYSMEX CA560 (Haematology, Healthscope's Bundaberg laboratory); • Heraeus Megafuge (Centrifuge, Healthscope's Bundaberg laboratory); • OLYMPUS BX41 (Microscope, Healthscope's Bundaberg laboratory); • Sysmex XT1800i - SN 16180 (Haematology, Healthscope's Caloundra laboratory); • Sysmex Ca560 - SNA2719 (Haematology, Healthscope's Caloundra laboratory); • Cell counter (Haematology, Healthscope's Caloundra laboratory); • Olympus BX41 (Microscope, Caloundra laboratory); • Eppendorf Centrifuge 5810R (Healthscope's Caloundra laboratory);

6 Inventory

Asset	Detail
Consumables used by Healthscope in the operation of its former Queensland pathology business	Disposable syringes, needles, tubes, swabs and other items which are consumed on a daily basis in the ordinary course of operating collection centres in the collection centres identified in sections 1, 3 and 4 of this Schedule,

Confidential Schedule 5
