

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Tabcorp Holdings
Limited (ACN 063 780 709)**

Contents

1. Person giving the Undertaking	1
2. Background	1
3. Commencement of this Undertaking	2
4. Cessation of Ongoing Obligations	2
5. Divestiture of the Divestiture Business	3
6. Process for approving a proposed purchaser	5
7. Divestiture Business Protection.....	7
8. Independent Management of the Divestiture Business	9
9. Independent Audit.....	13
10. Failure to divest the Divestiture Business within the Initial Sale Period	17
11. Notification of key dates and ACCC requests for information	22
12. Disclosure of this Undertaking.....	23
13. Obligation to procure	24
14. No Derogation	24
15. Change of Control.....	24
17. Notices	24
18. Defined terms and interpretation	25
Schedule 1 – Dictionary and interpretation.....	27
Schedule 2 – Proposed Purchaser Notice Form	32
Schedule 3 – Undertaking Appointment.....	34
Schedule 4 – Divestiture Business	38
Confidential Schedule 5 – Divestiture Business	40
Confidential Schedule 6 – Approved Sale and Purchase Agreements	45

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Tabcorp Holdings Limited ACN 063 780 709 on behalf of itself and its subsidiaries (together referred to as (**Tabcorp**) in this Undertaking).

2. Background

The parties to the proposed acquisition

- 2.1. Tabcorp operates an Australian gambling entertainment business with three business divisions: Wagering and Media, Keno and Gaming Services.
- 2.2. In its Gaming Services division, Tabcorp supplies various ancillary services related to electronic gaming machines (**EGMs**). Tabcorp's recently acquired Odyssey business is a licensed monitoring operator for EGMs in Queensland, which also supplies EGM field services and EGM in-venue gaming systems.
- 2.3. Tatts Group Limited (**Tatts**) operates an Australian gambling business with three business divisions: Wagering, Lotteries and Gaming Solutions.
- 2.4. In its Gaming Solutions division, Tatts supplies various ancillary services related to EGMs. Its Maxgaming business is a licensed monitoring operator in NSW, Queensland and the Northern Territory. Tatts' Bytecraft business supplies EGM field services throughout Australia. The Maxgaming monitoring business in Queensland also supplies EGM field services and in-venue gaming systems.

The Proposed Acquisition

- 2.5. Tabcorp and Tatts have reached an agreement to combine their two companies via a Tatts Scheme of Arrangement in which Tatts shareholders will receive 0.8 Tabcorp shares plus 42.5 cents per Tatts share held (**the Proposed Acquisition**).

The ACCC's review

- 2.6. On 25 November 2016, the ACCC commenced its public review of the Proposed Acquisition.
- 2.7. The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.
- 2.8. The ACCC published a Statement of Issues on 9 March 2017, which expressed the ACCC's preliminary view that there were several issues that may raise competition concerns including, as relevant to this Undertaking, regarding the supply of EGM monitoring services and ancillary services in Queensland .

The Tribunal's determination

- 2.9. On 13 March 2017, Tabcorp applied to the Australian Competition Tribunal (**Tribunal**) for authorisation for the Proposed Acquisition under section 95AT of the Act.

- 2.10. Tabcorp, for the purposes of its application to the Tribunal, accepts that the Proposed Acquisition would result in some detriment in a market or markets in which EGM monitoring services and ancillary services are provided in Queensland. Tabcorp will divest Odyssey Gaming Limited pursuant to this Undertaking to redress that detriment.
- 2.11. The ACCC considers that the divestment of Odyssey Gaming Limited pursuant to this Undertaking addresses the competition concerns which would otherwise arise as a result of the Proposed Acquisition in regards to the supply of EGM monitoring services and ancillary services in Queensland.
- 2.12. On 22 June 2017, the Tribunal determined that Tabcorp is granted merger authorisation on condition that Tabcorp offer this undertaking to the ACCC.

Objective of this Undertaking

- 2.13. The objective of this Undertaking is to address the detriments that could otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by:
- (a) ensuring that the Divestiture Business is sold to an Approved Purchaser;
 - (b) creating or strengthening a viable, effective, stand-alone, independent and long term competitor for a market or markets in which EGM monitoring services are supplied in Queensland;
 - (c) ensuring that the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with Tabcorp in a market or markets in which EGM monitoring services are supplied in Queensland;
 - (d) maintaining the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
 - (e) providing for the effective oversight of Tabcorp's compliance with this Undertaking.

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by Tabcorp; and
 - (b) this Undertaking so executed is accepted by the ACCC,
- (the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1. Tabcorp 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, 9, 11, 12, 13, 14, 15 and 16 survive completion of the obligations in clauses 5, 6, 7, 8, 10, Schedule 4, Confidential Schedule 5 and Confidential Schedule 6.

5. Divestiture of the Divestiture Business

Divestiture

- 5.1. Tabcorp must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser.
- 5.2. In the event that clause 10 applies, Tabcorp must not authorise the Approved Divestiture Agent to divest the Divestiture Business to a purchaser other than an Approved Purchaser.
- 5.3. Tabcorp must divest, or cause the divestiture of, the Divestiture Business to the Approved Purchaser by:
- (a) the sale of the Divestiture Business by way of a share sale to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement on or before the Control Date, otherwise clause 10 applies;
 - (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.4 and 5.5;
 - (c) the transfer of any Transferred Personnel required pursuant to clauses 5.7 to 5.8;
 - (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.9 to 5.11;
 - (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.12 to 5.14,

and, to ensure the effective operation of the Divestiture Business, must provide the rights and entitlements set out in Schedule 4 and Confidential Schedule 5 in accordance with the time periods set out in those Schedules, unless Tabcorp is notified in writing by the Approved Purchaser that it does not require some or all of these rights and entitlements.

Consents

- 5.4. Tabcorp must:

- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before the Divestiture Completion Date;
 - (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) enter an agreement with the Approved Purchaser and approved by the ACCC in relation to any goods or services that are required for the operation of the Divestiture Business which may be affected by any failure to gain a Consent.
- 5.5. If, seven Business Days before the Divestiture Completion Date, the Approved Purchaser fails to obtain or is unable to obtain one or more of the Consents as required under clause 5.4(a), then Tabcorp must:
- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have 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 5.4 as soon as possible after the Divestiture Completion Date (and until such time as clause 5.4 is satisfied).
- 5.6. Even if Tabcorp has complied with clauses 5.4 and 5.5, it remains a breach of this Undertaking if Tabcorp is unable to effect the divestiture of the Divestiture Business by reason of a failure to obtain Consents.

Transferred Personnel

- 5.7. Tabcorp must transfer to the Approved Purchaser all employees not currently employed by the Divestiture Business and who are necessary for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).
- 5.8. When fulfilling its obligations under clause 5.7, Tabcorp must:
- (a) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Approved Purchaser;
 - (b) effective on the Divestiture Completion Date, release the Transferred Personnel from any obligations to provide services to Tabcorp;
 - (c) effective on the Divestiture Completion Date, release the 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 Divestiture Business or Unsold Business; and

- (d) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to a Tabcorp Group Member for a period of twelve months after the Divestiture Completion Date.

Technical Assistance

- 5.9. Where clause 10 applies, and at the option of the Approved Purchaser, Tabcorp 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 Business.
- 5.10. Tabcorp 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 reasonable 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.
- 5.11. To avoid doubt, Tabcorp 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 criteria set out in clauses 5.9 and 5.10.

Transitional Supply Agreements

- 5.12. Where clause 10 applies, and at the option of the Approved Purchaser, Tabcorp must ensure the continued supply by Tabcorp 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 a market or markets in which EGM monitoring, field services and in-venue gaming systems are supplied in Queensland.
- 5.13. Tabcorp 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; and
 - (b) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.14. To avoid doubt, Tabcorp 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 criteria set out in clauses 5.12 and 5.13.

6. Process for approving a proposed purchaser

Provision of a notice for a Proposed Purchaser

- 6.1. To seek ACCC approval for a Proposed Purchaser, Tabcorp or the Approved Divestiture Agent 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 (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).
- 6.2. Unless the provisions of clause 10 apply, the Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to completion of the Proposed Acquisition. If clause 10 applies, Tabcorp or the Approved Divestiture Agent must provide a Proposed Purchaser Notice as soon as practicable after identification of a Proposed Purchaser.

Proposed purchaser approved at the time the Undertaking was accepted

- 6.3. At the time this Undertaking was accepted, the ACCC also considered information of the type required in a Proposed Purchaser Notice and approved Australian National Hotels Pty Limited (**Federal Group**) as the Approved Purchaser of the Divestiture Business.
- 6.4. ACCC approval of Federal Group as the Approved Purchaser of the Divestiture Business included approval of the following agreements which, together, constitute the Approved Sale and Purchase Agreement:
 - (i) Share Sale Agreement dated 14 April 2017;
 - (ii) Distribution and Licence Agreement dated 14 April 2017; and
 - (iii) Licence and Development Agreement dated 14 April 2017.

Approval of a Proposed Purchaser

- 6.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:
 - (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
 - (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.9 and 5.10; and
 - (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.12 and 5.13.
- 6.6. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.5, the factors to which the ACCC may have regard include whether the:
 - (a) draft sale and purchase agreement is consistent with this Undertaking;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) Proposed Purchaser is independent of Tabcorp;
 - (d) Proposed Purchaser is of good financial standing;

- (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
- (f) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
- (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.

Revocation of approval of a Proposed Purchaser

- 6.7. The ACCC may revoke its approval of a Proposed Purchaser as an Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7. Divestiture Business Protection

Protection of the Divestiture Business

- 7.1. From the Commencement Date, Tabcorp must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business (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 and the terms of the Approved Sale and Purchase Agreement or (subject to the other terms of this Undertaking) as required to allow completion of the Proposed Acquisition.

Tabcorp's obligations in relation to the Divestiture Business prior to completion of divestiture

- 7.2. Without limiting this clause 7, Tabcorp must, from the Commencement Date until the Divestiture Completion Date, take all steps available to it to:
- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Commencement Date;
 - (b) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Commencement Date;
 - (c) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Commencement Date and in accordance with any plans established before the Commencement Date;
 - (d) continue existing Agreements with customers relating to the Divestiture Business and Material Contracts with suppliers and/or other third parties that are in place at the Commencement Date;
 - (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;

- (f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Commencement Date;
- (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Business as at the Commencement Date; and
- (h) carry out promotion and marketing of the products which form part of the Divestiture Business in accordance with any plans established before the Commencement Date.

Personnel of Tabcorp

- 7.3. From the Commencement Date until the Divestiture Completion Date, Tabcorp will not other than as required by this Undertaking:
- (a) terminate or vary the terms of employment or engagement of any personnel of Odyssey Group, or agree to do any of those things (except in the ordinary course of business); and
 - (b) directly or indirectly procure, promote or encourage the redeployment of any personnel of Odyssey Group to any other business operated by Tabcorp.
- 7.4. As soon as practicable after the Commencement Date, Tabcorp must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Tabcorp's obligations under this Undertaking.

Tabcorp's ongoing obligations in relation to the Divestiture Business

- 7.5. Where clause 10 applies, to the extent Tabcorp has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.9 to 5.14 of this Undertaking in relation to the Divestiture Business, Tabcorp must not sell, assign, transfer, and/or licence directly or indirectly any of the assets required by Tabcorp to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

- 7.6. Subject to clause 7.7, Tabcorp must not, without the consent of the Approved Purchaser, at any time from the earlier of:
- (a) the Control Date; and
 - (b) the date on which the sale of the Divestiture Business to the Approved Purchaser is completed,
- use or disclose any confidential information about the Divestiture Business gained through:
- (c) ownership and/or management of the Divestiture Business; or
 - (d) fulfilling any obligations pursuant to this Undertaking.
- 7.7. Clause 7.6 does not apply to information that:

- (a) is in the public domain or comes into the public domain otherwise than as a result of a breach of this Undertaking or any obligation of confidence owed by Tabcorp;
- (b) Tabcorp requires to comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements;
- (c) Tabcorp requires to carry out its obligations pursuant to this Undertaking; or
- (d) Tabcorp requires to carry out its obligations pursuant to the Approved Sale and Purchase Agreements, in circumstances where those obligations are consistent with the objectives of this Undertaking,

provided such information is only used for that purpose and, to the extent that it is disclosed to any officers, employees, contractors or advisors of Tabcorp, such information is only disclosed to those officers, employees, contractors and advisers who need to know the information to carry out the permitted purpose.

8. Independent Management of the Divestiture Business

Obligation to appoint an Approved Independent Manager

- 8.1. If clause 10 applies, Tabcorp must appoint and maintain an Approved Independent Manager to manage the Divestiture Business, from the Control Date until the Divestiture Completion Date in accordance with this Undertaking.

Process for approving a Proposed Independent Manager

- 8.2. At least 15 Business Days before the Control Date, or if by that time Tabcorp is not aware that clause 10 will apply, within 5 Business Days of becoming so aware, Tabcorp must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including a draft terms of appointment and a draft separation and management plan.
- 8.3. If clauses 8.12, 8.13 or 8.14 apply, Tabcorp must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.
- 8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- 8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Tabcorp;
 - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and

- (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Manager

- 8.6. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, Tabcorp must by the Control Date:
- (a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 8.7. If the Approved Independent Manager has not been appointed:
- (a) by the Control Date;
 - (b) within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.12, 8.13 or 8.14; or
 - (c) if the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.3;
- then clause 8.8 applies.
- 8.8. If clause 8.7 applies, the ACCC at its discretion may:
- (a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
 - (b) direct Tabcorp to appoint a person who the ACCC has deemed is an Approved Independent Manager.

Obligations and powers of the Approved Independent Manager

- 8.9. Tabcorp must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:
- (a) maintain his or her independence from Tabcorp, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Tabcorp for the period of his or her appointment;
 - (b) act in the best interests of the Divestiture Business at all times including ensuring that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;

- (c) not use any confidential information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Independent Manager;
 - (d) make only those Material Changes to the Divestiture Business which have been approved by the ACCC;
 - (e) operate and manage the Divestiture Business to the maximum extent practicable, in a manner which is financially and operationally separate from Tabcorp;
 - (f) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking;
 - (g) provide the following reports directly to the ACCC:
 - (i) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
 - (ii) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or Tabcorp's compliance with this Undertaking; and
 - (h) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.
- 8.10. Tabcorp must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (a) manage and operate the Divestiture Business according to the Approved Separation and Management Plan until the Divestiture Completion Date;
 - (b) provide any information requested by Tabcorp pursuant to the protocol in the Approved Separation and Management Plan;
 - (c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Business requested by Tabcorp which is not covered by the protocol in the Approved Separation and Management Plan;
 - (d) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
 - (e) engage, redeploy or make redundant personnel employed in the Divestiture Business as the Approved Independent Manager determines necessary; and
 - (f) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.

Tabcorp's obligations in relation to the Approved Independent Manager

8.11. Without limiting its obligations in this Undertaking, Tabcorp must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
- (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
 - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
 - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Business; and
 - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business required by the Approved Independent Manager;
 - (iii) providing to the Approved Independent Manager any information or documents that he or she considers necessary for managing and operating the Divestiture Business or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting information or reports regarding the Divestiture Business from the personnel of the Divestiture Business except through the Approved Independent Manager; and
 - (v) not appointing the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

Resignation, revocation or termination of the Approved Independent Manager

- 8.12. Tabcorp must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the Divestiture Completion Date.
- 8.13. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.14. The ACCC may approve any proposal by, or alternatively may direct, Tabcorp to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 9.1. If clause 10 applies, Tabcorp must appoint and maintain an Approved Independent Auditor to audit and report upon Tabcorp's compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 9.2. At least 15 Business Days before the Control Date, or if by that time Tabcorp is not aware that clause 10 will apply, within 5 Business Days of becoming so aware, Tabcorp must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3. If clauses 9.16, 9.17 or 9.18 apply, Tabcorp must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.8 applies.
- 9.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.5. 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 Tabcorp;
 - (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 Approved Independent Auditor

- 9.6. 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, Tabcorp must by the Control Date:
- (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

- 9.7. If the Approved Independent Auditor has not been appointed:
- (a) by the Control Date;
 - (b) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.16, 9.17, or 9.18; or
 - (c) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.3;

then clause 9.8 applies.

- 9.8. If clause 9.7 applies, 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 Tabcorp to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

- 9.9. Tabcorp 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 Tabcorp, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Tabcorp 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 9.11; and
 - (ii) 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.

- 9.10. Tabcorp 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 Business and Tabcorp'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

- 9.11. The Approved Independent Auditor must conduct 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 Tabcorp's compliance with this Undertaking;
 - (c) identification of any areas of uncertainty or ambiguity in the Approved Independent 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) Tabcorp's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Tabcorp's compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.12. The Approved Independent Auditor is to provide an Audit Report to the ACCC and Tabcorp at the following times:
- (a) within 10 Business Days after the Control 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);

- (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
- (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.12(b), until the ACCC confirms in writing to Tabcorp that it is satisfied that Tabcorp has fulfilled its obligations pursuant to this Undertaking; and
- (d) a final report due three months after the last report provided pursuant to clause 9.12(c).

9.13. Tabcorp must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.

9.14. Tabcorp must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

Tabcorp's obligations in relation to the Approved Independent Auditor

9.15. Without limiting its obligations in this Undertaking, Tabcorp 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 Tabcorp 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 Divestiture Business and Tabcorp'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 having 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

- 9.16. Tabcorp must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.17. 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.
- 9.18. The ACCC may approve any proposal by, or alternatively may direct, Tabcorp 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.

10. Failure to divest the Divestiture Business within the Initial Sale Period

Divestiture of the Unsold Business

- 10.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed within the Initial Sale Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 10 apply.

Obligation to appoint an Approved Divestiture Agent

- 10.2. From the end of the Initial Sale Period, Tabcorp must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.

Process for approving a Proposed Divestiture Agent

- 10.3. At least 15 Business Days prior to the end of the Initial Sale Period, or if by that time Tabcorp is not aware that clause 10 will apply, within 5 Business Days of becoming so aware, if the divestiture of the Divestiture Business has not been completed, Tabcorp 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 sale agreement, and draft marketing and sale plan.

- 10.4. If clauses 10.14, 10.15 or 10.16 apply, Tabcorp must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 10.9 applies.
- 10.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- 10.6. 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 Tabcorp;
 - (c) draft terms of appointment, draft sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) draft terms of appointment, draft sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

Appointment of the Approved Divestiture Agent

- 10.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft sale agreement and draft marketing and sale plan, Tabcorp 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

- 10.8. If the Approved Divestiture Agent has not been appointed:
- (a) within 10 Business Days after the Divestiture Business becomes an Unsold Business;
 - (b) within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 10.14, 10.15 or 10.16; or
 - (c) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 10.4;
- then clause 10.9 applies.
- 10.9. If clause 10.8 applies, the ACCC may, at its absolute discretion:
- (a) identify and approve a person as the Approved Divestiture Agent, including approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or

- (b) direct Tabcorp to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

Obligations and powers of the Approved Divestiture Agent

10.10. Tabcorp must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:

- (a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
- (b) maintain his or her independence from Tabcorp, apart from appointment to the role of Approved Divestiture Agent, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Tabcorp for the period of his or her appointment;
- (c) not use any confidential information gained through the divestiture of the Unsold Business 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 Business as quickly as possible using the Approved Sale and Purchase Agreement;
- (f) co-operate with the requests of any Approved Independent Manager or 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 Sale and Purchase 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 10.11(d));
 - (v) the efforts made to sell the Unsold Business;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Business; and
 - (viii) any other information required by the ACCC.

- (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
 - (i) any moneys derived from the divestiture of the Unsold Business;
 - (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 10.11(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) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iii) any offers for the Unsold Business;
- (j) accept any offer for the Unsold Business upon instruction from Tabcorp given in accordance with clause 10.13(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.

10.11. Tabcorp 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 Business 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 6.5;
- (c) upon instruction pursuant to clause 10.13(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Sale and Purchase 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.

10.12. Any irrevocable power of attorney granted pursuant to clause 10.11 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 10.14, 10.15 and 10.16, or in the event that the Unsold Business is divested in accordance with this Undertaking.

Tabcorp's obligations in relation to the Approved Divestiture Agent

- 10.13. Without limiting its obligations in this Undertaking, Tabcorp 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 Tabcorp (but not fees contingent on the price to be obtained for the Unsold Business); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Tabcorp within 15 Business Days after the end of the Initial Sale Period, Tabcorp 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 10;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business 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 pursuant to clause 6.5, Tabcorp must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.5; and
 - (e) other than in accordance with clause 10.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

Resignation, revocation or termination of the Approved Divestiture Agent

- 10.14. Tabcorp 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 Business.
- 10.15. 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.
- 10.16. The ACCC may approve any proposal by, or alternatively may direct, Tabcorp 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.

11. Notification of key dates and ACCC requests for information

- 11.1. Tabcorp must notify the ACCC and each Undertaking Appointment in writing of:
 - (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Business, at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Business, within one Business Day of that date.
- 11.2. The ACCC may direct Tabcorp in respect of its compliance with this Undertaking to, and Tabcorp must:
 - (a) furnish information to the ACCC in the time (but no shorter than a reasonable time) and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Tabcorp'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.
- 11.3. Any direction made by the ACCC under clause 11.2 will be notified to Tabcorp, in accordance with clause 17.2.
- 11.4. In respect of Tabcorp'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.

- 11.5. Tabcorp will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.
- 11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.7. 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 11; 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 11.
- 11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which Tabcorp has a claim of legal professional or other privilege.

12. Disclosure of this Undertaking

- 12.1. Tabcorp and the ACCC agree that Confidential Schedule 5 and Confidential Schedule 6 will remain confidential at all times.
- 12.2. Tabcorp acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedule 5 and Confidential Schedule 6.
- 12.3. Tabcorp acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
 - (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.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 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.
- 12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

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

14. No Derogation

- 14.1. 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 Tabcorp of any term of this Undertaking.
- 14.2. 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 Tabcorp 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.

15. Change of Control

- 15.1. In the event that a Change of Control is reasonably expected to occur, Tabcorp 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 Tabcorp pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Tabcorp in writing that a section 87B undertaking under this clause is not required.

16. Costs

- 16.1. Tabcorp must pay all of its own costs incurred in relation to this Undertaking.

17. Notices

Giving Notices

- 17.1. 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

- 17.2. Any notice or communication to Tabcorp pursuant to this Undertaking must be sent to:

Name: Tabcorp Holdings Limited
Address: 5 Bowen Crescent Melbourne VIC 3004
Email Address: Fiona.mead@tabcorp.com.au
Attention: Ms. Fiona Mead (Company Secretary)

- 17.3. 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).
- 17.4. 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

- 17.5. Tabcorp must notify the ACCC of a change to its contact details within three Business Days.
- 17.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 17.3 and 17.4, will be taken to be received.

18. Defined terms and interpretation

Definitions in the Dictionary

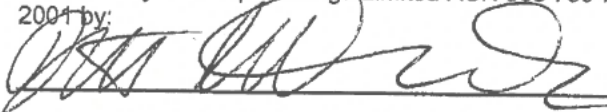
- 18.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to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

Interpretation

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

Executed as an Undertaking

Executed by Tabcorp Holdings Limited ACN 063 780 709 pursuant to section 127(1) of the Corporations Act 2001 by:



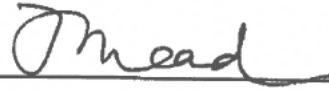
Signature of director

David Attenborough

Name of director (print)

26/06/17

Date



Signature of a director/company secretary

Fiona Mead

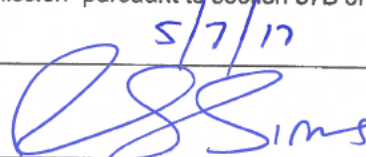
Name of director/company secretary (print)

26/06/17.

Date

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

And signed on behalf of the Commission:


5/7/17

Chairman

Date

5/7/17

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.

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 Divestiture Agent means the person approved by the ACCC and appointed under clause 10 of this Undertaking.

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

Approved Independent Manager 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 Business.

Approved Purchaser means the person approved by the ACCC under clause 6 of this Undertaking.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which Tabcorp will divest the Divestiture Business to an Approved Purchaser and an Approved Purchaser will acquire the Divestiture Business from Tabcorp. In relation to Federal Group, this refers to the following agreements; the Share Sale Agreement, the Licence and Development Agreement and the Distribution and Licence Agreement, which are contained in Confidential Schedule 6 to this Undertaking.

Approved Separation and Management Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

- a) separate the Divestiture Business from any business to be retained by Tabcorp; and
- b) manage and operate the Divestiture Business independently of Tabcorp and any retained business.

Approved Transitional Supply Agreement means any agreement, for the supply of goods or services (other than Technical Assistance) by Tabcorp 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 Tabcorp 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 the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, 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 9.11 of this Undertaking.

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

Change of Control means:

- the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Tabcorp to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- the sale or transfer of any assets necessary, or which may be necessary, to enable compliance with this Undertaking in its entirety.

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

Control Date means the date on which the Proposed Acquisition is completed.

Consents means any Government Consents or Third Party Consents.

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

Divestiture Business means the business and assets described in Schedule 4 and Confidential Schedule 5 to this Undertaking.

Divestiture Completion Date means the date the divestiture of the Divestiture Business is completed.

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

Establishment Audit has the meaning given to it in clause 10.1(a) of this Undertaking.

Federal Group has the meaning given to it in clause 6.4 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 Business.

Holding Company has the meaning given by section 9 of the Corporations Act.

Initial Sale Period means the period commencing on the Commencement Date and ending on the Control Date.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

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

Odyssey Group means Odyssey Gaming Limited ACN 074 735 452 and its wholly owned subsidiaries Odyssey Gaming Services Pty Limited ACN 061 363 139, Bounty Pty. Limited ACN 096 276 292, and Bounty Systems Pty. Limited ACN 090 692 489.

Proposed Acquisition is defined in clause 2 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 10.3 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 9.2 of this Undertaking.

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

Proposed Independent Manager 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 6.1 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).

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

Tabcorp means the company referred to in clause 1.1 of this Undertaking.

Tabcorp Group means Tabcorp and each of its Subsidiaries.

Tabcorp Group Member means each member of the Tabcorp Group.

Tatts means Tatts Group Limited ABN 19 108 686 040.

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, 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 Business.

Transferred Personnel has the meaning given to it in clause 5.7 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 Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

Unsold Business has the meaning given to it in clause 10.1 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, Tabcorp 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 – Undertaking given to the ACCC under section 87B of the *Competition and Consumer Act 2010* (Cth) by Tabcorp Holdings Limited (ACN 063 780 709)

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/or the directors of the Proposed Purchaser.
 - (d) details of any of the following types of relationships between Tabcorp and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Tabcorp and the Proposed Purchaser are Associated Entities;
 - (ii) Tabcorp is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Tabcorp;
 - (iv) Tabcorp and the Proposed Purchaser are Related Entities;
 - (v) Tabcorp and the Proposed Purchaser are Related Parties;

- (vi) any Related Party, Related Entity or Entity Connected with Tabcorp is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) Tabcorp 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 Tabcorp or has been in the past three years;
 - (ix) Tabcorp is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Tabcorp 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 Tabcorp:
- (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 Business as a going concern;
 - (v) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
 - (vi) whether the divestiture of the Divestiture Business 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 Business 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 Business, 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 Tabcorp 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 Manager; or
- Independent Auditor; or
- Divestiture Agent;

(the **Undertaking Appointments**).

This form is to be used for each of the above 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 i.e. Independent Auditor/Divestiture Agent/Independent Manager] Form – [insert name of undertaking] to the below email addresses:

- 1) mergers@acc.gov.au

Attention: Executive General Manager
Merger and Authorisation Review Division

- 2) With a copy sent to:

mergersucu@acc.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, Divestiture Agent or Independent Manager (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 (delete any that do not apply)] of [the Undertaking Appointment's employer].
 - (c) details of any of the following types of relationships between Tabcorp 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) Tabcorp and [the Undertaking Appointment's employer] are Associated Entities.
 - (ii) Tabcorp is an Entity Connected with [the Undertaking Appointment's employer].
 - (iii) [The Undertaking Appointment's employer] is an Entity Connected with Tabcorp.
 - (iv) Tabcorp and [the Undertaking Appointment's employer] are Related Entities.
 - (v) Tabcorp and [the Undertaking Appointment's employer] are Related Parties
 - (vi) any Related Party, Related Entity or Entity Connected with Tabcorp is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment].
 - (vii) Tabcorp 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 Tabcorp or has been in the past three years.
 - (ix) Tabcorp is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years.
 - (x) any other relationship between Tabcorp 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 Business, 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 business sale agreement drafted by the Proposed Divestiture Agent in consultation with Tabcorp. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 2) The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

Proposed Independent Manager

- 1) The finalised draft separation and management plan for the Divestiture Business detailing the measures and timing to be implemented by Tabcorp and the Approved Independent Manager in order to fulfil Tabcorp's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with Tabcorp to achieve the objectives of the Undertaking including:
 - (a) the intended mode of operation of the Divestiture Business until completion of its divestiture;
 - (b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from Tabcorp, including the:
 - (i) separation of the books and records of the Divestiture Business from those of Tabcorp;
 - (ii) severance of the Divestiture Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and
 - (iv) severance of arrangements to share personnel and plant between the Divestiture Business and any businesses to be retained by Tabcorp, to the extent possible without compromising the viability of the Divestiture Business;
 - (c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the divestiture of the Divestiture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Divestiture Business;
 - (d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business;
 - (e) any Material Changes to the Divestiture Business required in order to fulfil Tabcorp's and the Approved Independent Manager's obligations pursuant to the Undertaking;

- (f) the cooperation required from the Independent Manager with Tabcorp in relation to the divestiture of the Divestiture Business, including:
 - (i) the activities to be conducted by the Independent Manager that are necessary for the effective operation of the Divestiture Business, having regard to the nature of the Divestiture Business (including the extent to which the Divestiture Business already has a management structure in place prior to the proposed acquisition that will be retained during the hold separate period);
 - (ii) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed;
 - (iii) the method by which the Independent Manager and Tabcorp will preserve the confidentiality of the Divestiture Business's competitively sensitive information from Tabcorp and its advisers throughout this process; and
 - (iv) a protocol whereby the Approved Independent Manager can provide any information requested by Tabcorp without disclosing the details of the Divestiture Business's competitively sensitive information to Tabcorp.

Schedule 4 – Divestiture Business

Pursuant to this Undertaking, Tabcorp undertakes to divest all of the issued share capital in Odyssey Gaming Limited ACN 074 735 452 (**Odyssey Gaming**).

As at the Divestiture Completion Date, Odyssey Gaming will have the following wholly-owned subsidiaries:

- Odyssey Gaming Services Pty Limited ACN 061 363 139;
 - Bounty Pty. Limited ACN 096 276 292; and
 - Bounty Systems Pty. Limited ACN 090 692 489,
- (Odyssey Gaming and the above subsidiaries together, the **Odyssey Group** and each an **Odyssey Group Member**).

The Odyssey Group conducts the business of supplying:

- licensed monitoring services (including EGM monitoring and EGM repair and maintenance); and
- in-venue gaming and promotional management systems and related services, in Queensland (**Odyssey Business**).

The Divestiture Business includes all assets and rights necessary to compete effectively with Tabcorp in a market or markets in which EGM monitoring services are supplied in Queensland, including the following:

- all customer contracts in respect of the Odyssey Business;
- all business records necessary for the Odyssey Business;
- plant and equipment owned by an Odyssey Group Member (including computer hardware and machinery);
- stock owned by an Odyssey Group Member;
- all supply agreements to which an Odyssey Group Member is a party;
- the intellectual property rights that are owned by an Odyssey Group Member, including:
 - registered Australian trademarks relating to 'Bounty', 'Sentinel', 'Odyssey' and 'Getsmart Betsmart';
 - the Jackpot system patent (Patent number 2005200481) registered in Australia;
 - the odysseygaming.com registered domain name;
 - registered business names for 'Betsmart', 'Odyssey Gaming Limited' and 'Bounty Pty. Limited' and 'Bounty Systems Pty. Limited'; and
 - the following software: (1) the Sentinel monitoring system, (2) the Sentinel jackpot system, (3) the software associated with site controller technologies, (4) the monitoring system HUB technologies (data collection and reporting tools), and (5) the titan software (compliance and centralised reporting);
 - the plans and specifications relating to the Sentinel 3G system;subject to the licence back from Bounty to Intecq of the Sentinel related intellectual property rights for existing customers outside of Queensland .
- a copy of the object code and source code for technology products Metropolis, Breakaway, CardIT (including their respective releases and upgrades that will be made available on a six monthly basis during the exclusivity period (as referenced below)) and licence to use, modify, and adapt the code and develop derivative and ancillary products;
- leasehold property located at:
 - 1110 Kingsford Smith Drive, Eagle Farm QLD 4009;
 - Suite 1.20, 202 Jells Road, Wheelers Hill, VIC, 3150
 - Unit 6/96 Township Drive, Burleigh Heads QLD 4220;
 - Unit 2, 6 Rutledge Street, Toowoomba, QLD, 4350; and
 - Unit 26, 39 Aerodrome Road, Caboolture, QLD, 4510;

- Government licences, permits, and authorisations (including the monitoring operator licence granted by the Queensland Office of Liquor and Gaming Regulation) necessary for the Divestiture Business to carry on the Odyssey Business;
- personnel employed by any Odyssey Group Member, including any Transferred Employees;

In addition, the Divestiture Business includes the following rights and entitlements, which are outlined in more detail in Confidential Schedule 5:

- rights to distribute eBet hardware in Queensland, with such distribution to be exclusive for three years;
- licence and distribution rights and any applicable third party royalty payments with respect to certain technology products;
- rights to obtain support services; and
- rights to the replacement of defective eBet Hardware.

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

Confidential Schedule 5 – Divestiture Business

Confidential

Confidential Schedule 6 – Approved Sale and Purchase Agreements

Confidential