

Undertaking to the Australian
Competition and Consumer
Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Bingo Industries Limited**
on behalf of itself and its subsidiaries

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1. Person giving the Undertaking

This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Bingo Industries Limited (ACN 617 748 231) on behalf of itself and its subsidiaries, including Bingo Property Pty Ltd (ACN 617 664 212), Bingo Holdings Pty Ltd (ACN 162 984 821), Bingo Pty Ltd (ACN 612 109 350), OATI (NSW) Pty Ltd (ACN 602 680 124), Bingo Equipment Pty Ltd (ACN 164 925 213), Bingo Waste Services Pty Ltd (ACN 162 988 623), Bingo Recycling Pty Ltd (ACN 163 894 362), McPherson Recycling Pty Ltd (ACN 608 610 171) and BM Recycling Pty Ltd (ACN 631 360 444), referred to as **Bingo** in this Undertaking.

2. Background

2.1 The parties to the proposed acquisition

- (a) Bingo is an ASX listed waste management company that operates a waste collections and processing business in New South Wales, including in the greater Sydney region.
- (b) Alexandria Landfill Pty Ltd (ALF) is the holding company of a group of waste management companies operating under the name Dial-a-Dump Industries (DADI).

2.2 The Proposed Acquisition

Pursuant to an agreement entered into on 21 August 2018, Bingo proposes to acquire, through a subsidiary, 100% of the shares in ALF (**Proposed Acquisition**) and thereby control of ALF and its subsidiaries, collectively referred to as **DADI** in this Undertaking. The Proposed Acquisition is subject to a condition precedent that the Proposed Acquisition receive informal merger clearance from the Australian Competition and Consumer Commission (ACCC).

2.3 The ACCC's review

- (a) On 13 September 2018, the ACCC commenced its public review of the Proposed Acquisition.
- (b) 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 *Competition and Consumer Act 2010 (Cth)* (Act).

2.4 The ACCC's competition concerns

- (a) The ACCC was concerned that the Proposed Acquisition would remove DADI's Alexandria facility as the closest competitor to Bingo's Banksmeadow facility in the eastern suburbs/inner city of Sydney, where there are limited alternative building and demolition (B&D) waste processors and the likelihood of new entry is low. As a result, Bingo would have the ability to increase rates for B&D waste processing, and/or impose exclusive processing arrangements or minimum volume conditions on its customers.
- (b) As a result of the reduction in competition between processors, the ACCC was also concerned about the impact on the waste collection market where rival collectors, who compete with Bingo for B&D waste collections contracts, will have fewer alternative processors to negotiate with for competitive processing rates. This would reduce the constraint on Bingo imposed by existing B&D waste collectors and raise barriers to entry.

2.5 The Undertaking remedy

- (a) Bingo does not consider that the Proposed Acquisition would have the effect or 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 2.4 above, Bingo has offered this undertaking pursuant to section 87B of the Act.
- (b) The objective of this Undertaking is to address the ACCC's competition concerns as set out above which would otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by placing obligations on Bingo to:
 - (i) ensure that the Divestiture Assets are divested to an Approved Purchaser (the Property to be divested either via a sale or lease, and the other assets via sale);
 - (ii) create or strengthen a viable, effective, stand-alone, independent and long term competitor in the market for processing of B&D waste in the eastern suburbs/inner city of Sydney, and, in the event the Property is leased, by appointing and maintaining an Approved Independent Lease Manager to independently manage the Property and the Approved Lease Agreement;
 - (iii) ensure the Approved Purchaser has all the necessary associated assets and rights, including an Approved Tipping Option Agreement where applicable, to compete effectively with Bingo in the market for processing of B&D waste in the eastern suburbs/inner city of Sydney;
 - (iv) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Assets prior to divestiture; and
 - (v) provide for the effective oversight of Bingo's compliance with this Undertaking.

3. Commencement of this Undertaking

This Undertaking comes into effect when:

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

4. Cessation of Ongoing Obligations

4.1 Withdrawal

Bingo 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.

4.2 Revocation

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.

4.3 Waiver

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.

4.4 Survival

Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 12, 13, 14, 15, 16, 17, 18 and 19 survive completion of the obligations in clauses 5, 6, 7, 8, 9, 10 and 11 and Confidential Schedules 5, 6, 7, 8, 9, 10, 11 and 12.

5. Divestiture of the Divestiture Assets

5.1 Divestiture

- (a) Bingo must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Assets only to an Approved Purchaser.
- (b) In the event that clause 11 applies, Bingo must not authorise the Approved Divestiture Agent to divest the Divestiture Assets to a purchaser other than an Approved Purchaser.
- (c) Bingo must divest, or cause the divestiture of, the Divestiture Assets to the Approved Purchaser by:
 - (i) the sale, assignment, and transfer of all of the assets excluding the Property in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 11 applies;
 - (ii) the sale or lease of the Property to the Approved Purchaser, as determined by agreement between Bingo and the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement or Approved Lease Agreement and within the Initial Sale Period, otherwise clause 11 applies;
 - (iii) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.2;
 - (iv) the transfer of any Transferred Personnel required pursuant to clauses 5.3;
 - (v) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.4; and
 - (vi) compliance with any Approved Transitional Supply Agreement required pursuant to clause 5.5.

5.2 Consents to Transfer of Divestiture Assets

- (a) Bingo must:
 - (i) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before the Divestiture Completion Date;
 - (ii) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;

- (iii) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents; and
 - (iv) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
 - (v) enter an agreement with the Approved Purchaser and 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.
- (b) 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 5.2, then Bingo must:
- (i) immediately provide to the ACCC in writing details of the:
 - A. Consents that have not been obtained;
 - B. reasons why the Consents have not been obtained; and
 - C. information or material required to obtain the Consents; and
 - (ii) continue to do everything in its power to satisfy clause 5.2 as soon as possible after the Divestiture Completion Date (and until such time as clause 5.2 is satisfied).
- (c) Even if Bingo has complied with clause 5.2, it remains a breach of this Undertaking if Bingo is unable to effect the divestiture of the Divestiture Assets by reason of a failure to obtain Consents.

5.3 Transferred Personnel

- (a) At the option of the Approved Purchaser, Bingo must transfer or cause to be transferred to the Approved Purchaser:
- (i) all employees; and
 - (ii) all service providers under a contract of service,
- listed at Confidential Schedule 5 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**).
- (b) When fulfilling its obligations under clause 5.3(a), Bingo must:
- (i) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Approved Purchaser;
 - (ii) effective on the Divestiture Completion Date, release the Transferred Personnel from any obligations to provide services to Bingo;
 - (iii) 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 Assets or Unsold Assets; and

- (iv) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Bingo for a period of six months after the Divestiture Completion Date.

5.4 Technical Assistance

- (a) At the option of the Approved Purchaser, Bingo must supply or cause to be supplied 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.
- (b) Bingo 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:
 - (i) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
 - (ii) at cost and otherwise on arm's length terms.
- (c) To avoid doubt, Bingo 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 5.4(a) and 5.4(b).

5.5 Transitional Supply Agreements

- (a) At the option of the Approved Purchaser, Bingo must ensure the continued supply by Bingo 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 market for the supply of B&D waste processing services in the eastern suburbs/inner city of Sydney.
- (b) Bingo must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
 - (i) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (ii) provides for the supply of the included goods and services at cost price; and
 - (iii) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- (c) To avoid doubt, Bingo 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 5.5(a) and (b).

5.6 Tipping option agreement

- (a) Subject to Confidential Schedule 6, at the option of the Approved Purchaser, Bingo must enter into and comply with an Approved Tipping Option Agreement which takes effect only on completion of the sale under the Approved Sale and Purchase Agreement or such other time as the Approved Purchaser and Bingo agree.

- (b) Any proposed tipping option agreement will be:
 - (i) negotiated by the Approved Purchaser and Bingo; and
 - (ii) for a minimum term of seven years and six months.
- (c) The ACCC shall have the discretion to approve or reject in writing, any proposed tipping option agreement.

6. Process for approving a Proposed Purchaser

6.1 Provision of a notice for a Proposed Purchaser

- (a) To seek ACCC approval for a Proposed Purchaser, Bingo 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 or executed sale and purchase agreement (conditional on ACCC approval), or draft lease agreement or executed lease 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).
- (b) As soon as possible following the Commencement Date, Bingo will share a list of potential purchasers of the Divestiture Assets with the ACCC.
- (c) The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

6.2 Approval of a Proposed Purchaser

- (a) 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:
 - (i) the draft sale and purchase agreement attached to the Proposed Purchaser Notice and if applicable, the draft lease agreement;
 - (ii) any draft tipping option agreement attached to the Proposed Purchaser Notice;
 - (iii) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.4(a) and 5.4(b); and
 - (iv) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clause 5.5(a) and 5.5(b).
- (b) Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.2(a), the factors to which the ACCC may have regard include whether the:
 - (i) draft sale and purchase agreement and, if applicable, the draft lease agreement and draft tipping option agreement, is consistent with this Undertaking;
 - (ii) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) Proposed Purchaser is independent of Bingo;

- (iv) Proposed Purchaser is of good financial standing;
- (v) Proposed Purchaser has an intention to maintain and operate the Divestiture Assets as a going concern;
- (vi) Proposed Purchaser is able to operate the Divestiture Assets effectively; and
- (vii) divestiture of the Divestiture Assets to the Proposed Purchaser and if applicable, leased to the Proposed Purchaser will address any competition concerns, including in relation to the likely long-term viability and competitiveness of the Divestiture Assets in the control of the Proposed Purchaser and if applicable, leased to the Proposed Purchaser.

6.3 Revocation of approval of a Proposed Purchaser

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.

7. Divestiture Assets Protection

7.1 Protection of the Divestiture Assets

From the Commencement Date, Bingo 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 or (subject to the other terms of this Undertaking) as required to allow completion of the Proposed Acquisition.

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

Without limiting this clause 7, Bingo must, from the Commencement Date until the Divestiture Completion Date, take all steps available to it to:

- (a) ensure that the Divestiture Assets are 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 Assets at the Commencement Date;
- (b) continue to provide or procure access to working capital and sources of credit for the Divestiture Assets in a manner which is consistent with the financing of the Divestiture Assets immediately prior to the Commencement Date;
- (c) continue to provide or procure administrative and technical support for the Divestiture Assets in a manner which is consistent with the operation of the Divestiture Assets before the Commencement Date and in accordance with any plans approved as at the Commencement Date;
- (d) continue existing Agreements relating to the Divestiture Assets with customers, 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 Assets on commercial terms favourable to the Divestiture Assets; and
- (f) 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 Control Date;

- (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Assets as at the Commencement Date; and
- (h) carry out promotion and marketing of the products which form part of the Divestiture Assets in accordance with any plans established before the Commencement Date.

7.3 Personnel of Bingo

- (a) From the Commencement Date until the completion of the divestiture of the Divestiture Assets, Bingo will not:
 - (i) terminate or vary the terms of employment or engagement of any of the Transferred Personnel, or agree to do any of those things; and
 - (ii) directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Business as at the Control Date to any other business operated by Bingo.
- (b) As soon as practicable after the Commencement Date, Bingo must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Bingo's obligations under this Undertaking.
- (c) Clause 7.3 does not prevent Bingo, in consultation with the Approved Independent Manager, from terminating the employment or engagement of any of the Transferred Personnel for material breaches of their Key Behavioural Obligations. In the event Bingo terminates the employment or engagement of any of the Transferred Personnel pursuant to this clause 7.3(c), Bingo will provide the ACCC with notice of which individuals have been terminated and the reasons for such termination within 2 Business Days.

7.4 Bingo's ongoing obligations in relation to the Divestiture Assets

To the extent Bingo has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.4 and 5.5 of this Undertaking in relation to the Divestiture Assets, and if applicable, the provision of the Approved Lease Agreement to the Approved Purchaser pursuant to clause 5.1(c)(i)A, Bingo must not sell, assign, transfer, and/or licence directly or indirectly any of the assets required by Bingo to fulfil such obligations without the prior written consent of the ACCC.

7.5 Confidential Information

- (a) Subject to clause 7.5(b), Bingo must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Assets gained through:
 - (i) ownership and/or management of the Divestiture Assets; or
 - (ii) fulfilling any obligations pursuant to this Undertaking.
- (b) Clause 7.5(a) does not apply to information that Bingo requires to:
 - (i) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (ii) carry out its obligations pursuant to this Undertaking,

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Bingo who need to know the information to carry out the permitted purpose.

8. Independent Management of the Divestiture Assets

8.1 Obligation to appoint an Approved Independent Manager

- (a) Bingo must appoint and maintain an Approved Independent Manager to manage the Divestiture Assets, from the Control Date until the completion of the divestiture of the Divestiture Assets in accordance with this Undertaking.

8.2 Process for approving a Proposed Independent Manager

- (a) At least 15 Business Days before the Control Date, Bingo 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.
- (b) If clause 8.7 applies, Bingo must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.4(b) applies.
- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- (d) 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:
 - (i) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Assets;
 - (ii) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Bingo;
 - (iii) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (iv) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

8.3 Appointment of the Approved Independent Manager

- (a) 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, Bingo must by the Control Date:
 - (i) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
 - (ii) forward to the ACCC a copy of the executed Approved Terms of Appointment.

8.4 Failure to appoint

- (a) If the Approved Independent Manager has not been appointed:

- (i) by the Control Date;
- (ii) within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.7; or
- (iii) if the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.2(b),

then clause 8.4(b) applies.

- (b) If clause 8.4(a) applies, the ACCC at its discretion may:
 - (i) 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
 - (ii) direct Bingo to appoint a person who the ACCC has deemed is an Approved Independent Manager.

8.5 Obligations and powers of the Approved Independent Manager

- (a) Bingo must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:
 - (i) maintain his or her independence from Bingo, 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 Bingo for the period of his or her appointment;
 - (ii) act in the best interests of the Divestiture Assets at all times including ensuring that the Divestiture Assets are 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 Assets at the Control Date;
 - (iii) not use any confidential information gained through the management of the Divestiture Assets other than for performing his or her functions as Approved Independent Manager;
 - (iv) make only those Material Changes to the Business which have been approved by the ACCC;
 - (v) operate and manage the Divestiture Assets to the maximum extent practicable, in a manner which is financially and operationally separate from Bingo;
 - (vi) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking;
 - (vii) provide the following reports directly to the ACCC:
 - A. a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and

- B. an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or Bingo's compliance with this Undertaking; and
 - (viii) 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.
- (b) Bingo must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (i) manage and operate the Divestiture Assets according to the Approved Separation and Management Plan until the Divestiture Completion Date;
 - (ii) provide any information requested by Bingo pursuant to the protocol in the Approved Separation and Management Plan;
 - (iii) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Assets requested by Bingo which is not covered by the protocol in the Approved Separation and Management Plan;
 - (iv) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Assets, on commercial terms favourable to the Divestiture Assets;
 - (v) engage, redeploy or make redundant personnel employed in the Business as the Approved Independent Manager determines necessary; and
 - (vi) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.
- (c) Pursuant to clause 7.5(b)(i), Bingo may receive information relevant to its regulatory obligations. In order to ensure compliance with its Key Regulatory Obligations, and only for this purpose, Bingo may issue a directive to the Approved Independent Manager. If Bingo issues a compliance directive under this section, Bingo will provide the ACCC with notice of the terms of the directive within 2 Business Days of such a direction being issued.

8.6 Bingo's obligations in relation to the Approved Independent Manager

Without limiting its obligations in this Undertaking, Bingo 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 Assets;
 - (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 Assets, and for the Divestiture Assets to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Assets 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 Assets or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting information or reports regarding the Divestiture Assets from the personnel of the Divestiture Assets 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.

8.7 Resignation, revocation or termination of the Approved Independent Manager

- (a) Bingo 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.
- (b) 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.
- (c) The ACCC may approve any proposal by, or alternatively may direct, Bingo 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 Lease Manager

9.1 Obligation to appoint an Independent Lease Manager

In the event the Property in Schedule 4 are leased to the Approved Purchaser, Bingo must appoint and maintain an Independent Lease Manager to manage the Approved Lease Agreement for the duration of the Approved Lease Term.

9.2 Process for approving a Proposed Independent Lease Manager

- (a) At least 15 Business Days before the Lease Commencement Date, Bingo must provide the ACCC with a notice for a Proposed Independent Lease Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Lease Manager Notice**), including a draft terms of appointment and a draft lease management plan.
- (b) If clause 9.7 applies, Bingo must provide the ACCC with a Proposed Independent Lease Manager Notice within five Business Days after the relevant event occurs, otherwise clause 9.4(b) applies.
- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Lease Manager identified in the Proposed Independent Lease Manager Notice.
- (d) Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Lease Manager, the factors to which the ACCC may have regard include whether the:
 - (i) person named in the Proposed Independent Lease Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Approved Lease Agreement;
 - (ii) person named in the Proposed Independent Lease Manager Notice or identified by the ACCC is sufficiently independent of Bingo;
 - (iii) draft terms of appointment and the draft lease management plan are consistent with this Undertaking; and
 - (iv) draft terms of appointment and the draft lease management plan are otherwise acceptable to the ACCC.

9.3 Appointment of the Approved Independent Lease Manager

- (a) After receiving a written notice from the ACCC of its approval of the Proposed Independent Lease Manager, and the draft terms of appointment and the draft lease management plan, Bingo must by the Lease Commencement Date:
 - (i) appoint the person approved by the ACCC as the Approved Independent Lease Manager on the Approved Terms of Appointment; and
 - (ii) forward to the ACCC a copy of the executed Approved Terms of Appointment.

9.4 Failure to appoint

- (a) If the Approved Independent Lease Manager has not been appointed:
 - (i) by the Lease Commencement Date;

- (ii) within 15 Business Days after the Approved Independent Lease Manager resigns or otherwise ceases to act as the Approved Independent Lease Manager pursuant to clause 9.7; or
- (iii) if the ACCC has not received a Proposed Independent Lease Manager Notice pursuant to clause 9.2(b),

then clause 9.4(b) applies.

- (b) If clause 9.4(a) applies, the ACCC at its discretion may:
 - (i) identify and approve a person as the Approved Independent Lease Manager, including approving the draft terms of appointment of the Approved Independent Lease Manager and the draft lease management plan; and/or
 - (ii) direct Bingo to appoint a person who the ACCC has deemed is an Approved Independent Lease Manager.

9.5 Obligations and powers of the Approved Independent Lease Manager

- (a) Bingo must procure that any proposed terms of appointment for the Approved Independent Lease Manager include obligations on the Approved Independent Lease Manager to:
 - (i) maintain her or his independence from Bingo and the Approved Purchaser, apart from appointment to the role of Approved Independent Lease Manager, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Bingo or the Approved Purchaser for the period of her or his appointment;
 - (ii) act in the best interests of the Property at all times including managing it independently in the ordinary course of business;
 - (iii) not use any confidential information gained through the management of the Approved Lease Agreement or the Property other than for performing her or his functions as Approved Independent Lease Manager;
 - (iv) co-operate with the requests of any Approved Independent Auditor appointed pursuant to this Undertaking;
 - (v) provide reports to the Approved Independent Auditor regarding the operation and management of the Property, the Approved Lease Agreement and the Approved Lease Management Plan every six months for the first two years of the Approved Lease Term and then annually;
 - (vi) provide an immediate report to the ACCC and the Approved Independent Auditor of any issues that arise in relation to Bingo's compliance with the Approved Lease Agreement or the Approved Lease Management Plan; and
 - (vii) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Lease Manager pursuant to this Undertaking.

- (b) Bingo must procure that any proposed terms of appointment for the Approved Independent Lease Manager provide the Approved Independent Lease Manager with the sole authority to:
- (i) independently manage the Property pursuant to the terms of the Approved Lease Agreement and the Approved Lease Management Plan during the Approved Lease Term;
 - (ii) provide any information requested by Bingo pursuant to the protocol in the Approved Lease Management Plan;
 - (iii) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Property requested by Bingo which is not covered by the protocol in the Approved Lease Management Plan;
 - (iv) resolve any disputes arising in relation to the Approved Lease Agreement. If the Independent Lease Manager is unable to resolve a dispute within two months of the dispute arising, the dispute may be addressed through the dispute resolution process set out in the Approved Lease Agreement; and
 - (v) engage any external expertise, assistance or advice required by the Approved Independent Lease Manager to perform her or his functions as the Approved Independent Lease Manager.
- (c) It will not contravene the independence of the Approved Independent Lease Manager if the terms of appointment require the Independent Lease Manager to commence dispute resolution processes in the circumstances set out in Confidential Schedule 12.

9.6 Bingo's obligations in relation to the Approved Independent Lease Manager

Without limiting its obligations in this Undertaking, Bingo must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Lease Manager;
- (b) maintain and fund the Approved Independent Lease Manager to carry out her or his functions, including
 - (i) indemnifying the Approved Independent Lease Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Lease Manager of her or his functions as the Approved Independent Lease 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 Lease Manager;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Lease Manager to perform her or his functions as the Approved Independent Lease Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Lease Manager's ability to carry out her or his obligations as the Approved Independent Lease Manager, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved

Independent Lease Manager as to the control, management, financing and operations of the Property, and for the Property to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;

- (ii) providing access to the facilities, sites or operations of the Property required by the Approved Independent Lease Manager;
- (iii) providing to the Approved Independent Lease Manager any information or documents that she or he considers necessary for managing the Property and the Approved Lease Agreement or for reporting to the Independent Auditor or otherwise advising the ACCC;
- (iv) not requesting information or reports regarding the Approved Lease Agreement except through the Approved Independent Lease Manager; and
- (v) not appointing the Approved Independent Lease Manager, or have any Agreements with the Approved Independent Lease Manager, to utilise the Approved Independent Lease Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Lease Manager ceases to act in the role of the Approved Independent Lease Manager.

9.7 Resignation, revocation or termination of the Approved Independent Lease Manager

- (a) Bingo must immediately notify the ACCC in the event that the Approved Independent Lease Manager resigns or otherwise stops acting as the Approved Independent Lease Manager before the end of the Approved Lease Agreement.
- (b) The ACCC may revoke an Approved Independent Lease Manager's status as the Approved Independent Lease Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- (c) The ACCC may approve any proposal by, or alternatively may direct, Bingo to terminate the appointment of the Approved Independent Lease Manager if in the ACCC's view the Approved Independent Lease Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

10. Independent Audit

10.1 Obligation to appoint an Approved Independent Auditor

Bingo must appoint and maintain an Approved Independent Auditor to audit and report upon Bingo's compliance with this Undertaking.

10.2 Process for approving a Proposed Independent Auditor

- (a) At least 15 Business Days before the Control Date, Bingo 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.
- (b) If clause 8.7 applies, Bingo must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 8.4(b) applies.

- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- (d) 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:
 - (i) 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;
 - (ii) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Bingo;
 - (iii) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (iv) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

10.3 Appointment of the Approved Independent Auditor

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, Bingo 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.

10.4 Failure to appoint

- (a) If the Approved Independent Auditor has not been appointed:
 - (i) by the Control Date;
 - (ii) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 8.7; or
 - (iii) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 10.2(b),

then clause 10.4(b) applies.

- (b) If clause 10.4(a) applies, the ACCC at its absolute discretion may:
 - (i) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
 - (ii) direct Bingo to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

10.5 Obligations and powers of the Approved Independent Auditor

- (a) Bingo must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (i) maintain his or her independence from Bingo, 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 Bingo for the period of his or her appointment;
 - (ii) conduct compliance auditing according to the Approved Audit Plan;
 - (iii) provide the following reports directly to the ACCC:
 - A. a scheduled written Audit Report as described in clause 10.6(a); and
 - B. 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
 - (iv) 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.
- (b) Bingo must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (i) access the facilities, sites or operations of the Divestiture Assets and Bingo's other assets as required by the Approved Independent Auditor;
 - (ii) 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
 - (iii) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

10.6 Compliance Audit

- (a) The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
- (i) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (ii) a full audit of Bingo's compliance with this Undertaking;
 - (iii) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
 - (iv) all of the reasons for the conclusions reached in the Audit Report;
 - (v) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (vi) any recommendations by the Approved Independent Auditor to improve:
 - A. the Approved Audit Plan;

- B. the integrity of the auditing process;
 - C. Bingo's processes or reporting systems in relation to compliance with this Undertaking; and
 - D. Bingo's compliance with this Undertaking; and
- (vii) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- (b) The Approved Independent Auditor is to provide an Audit Report to the ACCC and Bingo at the following times:
- (i) 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**);
 - (ii) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Assets is completed;
 - (iii) every six months after the date of provision of the last Audit Report pursuant to clause 10.6(b)(ii) for the first two years and then annually, until the ACCC confirms in writing to Bingo that it is satisfied that Bingo has fulfilled its obligations pursuant to this Undertaking; and
 - (iv) a final report due three months after the last report provided pursuant to clause 10.6(b)(iii).
- (c) Bingo 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.
- (d) Bingo 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).

10.7 Bingo's obligations in relation to the Approved Independent Auditor

Without limiting its obligations in this Undertaking, Bingo 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 Bingo 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 Assets and Bingo's other assets 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.

10.8 Resignation, revocation or termination of the Approved Independent Auditor

- (a) Bingo must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- (b) 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.
- (c) The ACCC may approve any proposal by, or alternatively may direct, Bingo 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.

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

11.1 Divestiture of the Unsold Assets

In the event that the divestiture of the Divestiture Assets to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Assets become an unsold asset (**Unsold Assets**) and the provisions of this clause 11 apply.

11.2 Obligation to appoint an Approved Divestiture Agent

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

11.3 Process for approving a Proposed Divestiture Agent

- (a) At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of the Divestiture Assets has not been completed, Bingo 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 if applicable a draft lease agreement, and draft marketing and sale plan.
- (b) If clause 11.8 applies, Bingo must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 11.5(b) applies.
- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- (d) 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:
 - (i) 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;
 - (ii) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of Bingo;
 - (iii) draft terms of appointment, draft sale agreement and if applicable, a draft lease agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (iv) draft terms of appointment, draft sale agreement and if applicable, a draft lease agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

11.4 Appointment of the Approved Divestiture Agent

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, Bingo 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.

11.5 Failure to appoint

- (a) If the Approved Divestiture Agent has not been appointed:
 - (i) within 10 Business Days after the Divestiture Assets become Unsold Assets;
 - (ii) within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clause 11.8: or
 - (iii) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 11.3(b),

then clause 11.5(b) applies.

- (b) If clause 11.5(a) applies, the ACCC may, at its absolute discretion:
 - (i) 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
 - (ii) direct Bingo to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

11.6 Obligations and powers of the Approved Divestiture Agent

- (a) Bingo must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:
 - (i) divest the Unsold Assets only to an Approved Purchaser, at no minimum price, pursuant to the process provided at Confidential Schedule 11;
 - (ii) maintain his or her independence from Bingo, 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 Bingo for the period of his or her appointment;
 - (iii) 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;
 - (iv) follow the Approved Marketing and Sale Plan;
 - (v) 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 Sale and Purchase Agreement and if applicable, Approved Lease Agreement;
 - (vi) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
 - (vii) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - A. 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;
 - B. information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - C. 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;
 - D. a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 11.6(b)(iv));

- E. the efforts made to sell the Unsold Assets;
 - F. the identity of any advisers engaged;
 - G. the identity of any persons expressing interest in the Unsold Assets; and
 - H. any other information required by the ACCC; and
- (viii) 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:
- A. any moneys derived from the divestiture of the Unsold Assets;
 - B. all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
 - C. all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 11.6(b)(iv)); and
- (ix) immediately inform the ACCC of:
- A. any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and if applicable an Approved Lease Agreement and any Approved Marketing and Sale Plan;
 - B. non-compliance with this Undertaking by any person named in this Undertaking;
 - C. any offers for the Unsold Assets; and
- (x) accept any offer for the Unsold Assets upon instruction from Bingo given in accordance with clause 11.7(d); and
- (xi) 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.
- (b) Bingo 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:
- (i) 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;
 - (ii) execute any agreements with the Approved Purchaser required pursuant to clause 6.2(a);
 - (iii) upon instruction pursuant to clause 11.7(d), complete the divestiture of the Unsold Assets to the Approved Purchaser in accordance with the Approved Sale and Purchase Agreement; and
 - (iv) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.

- (c) Any irrevocable power of attorney granted pursuant to clause 11.6(b) will end upon resignation or termination of the Approved Divestiture Agent in accordance with clause 11.8, or in the event that the Unsold Assets is divested in accordance with this Undertaking.

11.7 Bingo's obligations in relation to the Approved Divestiture Agent

Without limiting its obligations in this Undertaking, Bingo 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 Bingo (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 Bingo within 15 Business Days after the end of the Initial Sale Period, Bingo 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 11;
 - (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 pursuant to clause 6.2(a), Bingo 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 6.2(a); and
- (e) other than in accordance with clause 11.7(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Assets.

11.8 Resignation, revocation or termination of the Approved Divestiture Agent

- (a) Bingo 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.
- (b) 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.
- (c) The ACCC may approve any proposal by, or alternatively may direct, Bingo 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.

12. Notification of key dates and ACCC requests for information

- (a) Bingo must notify the ACCC and each Undertaking Appointment in writing of:
 - (i) the anticipated date of the Control Date, at least five Business Days before that date;
 - (ii) the anticipated date of the completion of the divestiture of the Divestiture Assets, at least five Business Days before that date;
 - (iii) the occurrence of the Control Date, within one Business Day of that date; and
 - (iv) the occurrence of the completion of the divestiture of the Divestiture Assets, within one Business Day of that date.
- (b) The ACCC may direct Bingo in respect of its compliance with this Undertaking to, and Bingo must:
 - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (ii) produce documents and materials to the ACCC within Bingo's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (iii) 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.
- (c) Any direction made by the ACCC under clause 12(b) will be notified to Bingo, in accordance with clause 19.1(b).
- (d) In respect of Bingo'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:
 - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (ii) 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

- (iii) 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.
- (e) Bingo will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 12(d).
- (f) 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.
- (g) The ACCC may in its discretion to be exercised in good faith:
 - (i) advise any Undertaking Appointment of any request made by it under this clause 12; and/or
 - (ii) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 12.
- (h) Nothing in this clause 12 requires the provision of information or documents in respect of which Bingo has a claim of legal professional or other privilege.

13. Disclosure of this Undertaking

- (a) Bingo and the ACCC agree that Confidential Schedules 5, 6, 7, 8, 9, 10, 11 and 12 will remain confidential until after the Divestiture Completion Date.
- (b) Bingo acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedules 5, 6, 7, 8, 9, 10, 11 and 12.
- (c) Bingo acknowledges that the ACCC may, subject to clause 13(a):
 - (i) make this Undertaking publicly available;
 - (ii) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (iii) from time to time publicly refer to this Undertaking.
- (d) Nothing in clause 13(a) or the confidential parts of this Undertaking referred to in clause 13(a) prevents the ACCC from disclosing such information as is:
 - (i) required by law;
 - (ii) permitted by section 155AAA of the Act;
 - (iii) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (iv) 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.
- (e) Nothing in clause 13(a) or the confidential parts of this Undertaking referred to in clause 13(a) prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

14. Obligation to procure

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

15. No Derogation

- (a) 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 Bingo of any term of this Undertaking.
- (b) 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 Bingo 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.

16. Change of Control

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

17. Resolving inconsistencies

To the extent that there are inconsistencies between this Undertaking and any of the following:

- (a) Approved Lease Agreement; and
- (b) Approved Tipping Option Agreement,

as regards to Bingo's obligations pursuant to this Undertaking, this Undertaking prevails.

18. Costs

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

19. Notices

19.1 Giving Notices

- (a) 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: mergersru@acc.gov.au
Attention: Director, Remedies Unit

Coordination and Strategy Branch
Merger and Authorisation Review Division

- (b) Any notice or communication to Bingo pursuant to this Undertaking must be sent to:

Name: Daniel Tartak
Address: 305 Parramatta Rd, Auburn NSW 2144
Email Address: Daniel.Tartak@bingoindustries.com.au

and copied to: Patrick Gay, Partner, Herbert Smith Freehills
patrick.gay@hsf.com

- (c) 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).
- (d) If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

19.2 Change of contact details

- (a) Bingo must notify the ACCC of a change to its contact details within three Business Days.
- (b) Any notice or communication will be sent to the most recently advised contact details and subject to clauses 19.1(c) and 19.1(d), will be taken to be received.

20. Defined terms and interpretation

20.1 Definitions in the Dictionary

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.

20.2 Interpretation

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

Executed as an Undertaking

Executed by **Bingo Industries Limited** (ACN 617 748 231) in accordance with section 127 of the Corporations Act 2001 (Cth):

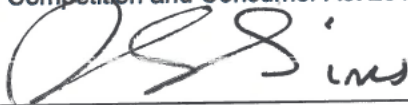


Signature of director

Daniel Tartak

Full name of director

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



Signature

And signed on behalf of the Commission

Rodney Graham Sims

Chairman



Signature of company secretary/director

Daniel Girgis

Full name of company secretary/director

Signature

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 11 of this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 10 of this Undertaking.

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

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

Approved Lease Agreement means the lease approved by the ACCC in accordance with the terms of this Undertaking, by which the Property will be leased to an Approved Purchaser.

Approved Lease Term means the period commencing at the start of the term of the Approved Lease Agreement and ending on the earlier of:

- (a) the date on which Bingo divests the Property such that Bingo or any related body corporate ceases to hold any direct or indirect interest in the Property; and
- (b) 20 years later (inclusive of any options to renew).

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 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 Bingo will divest the Divestiture Assets to the Approved Purchaser and an Approved Purchaser will acquire the Divestiture Assets from Bingo.

Approved Lease Management Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Lease Manager will manage and operate the Property independently of Bingo.

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 Assets from any assets to be retained by Bingo; and
- (b) manage and operate the Divestiture Assets independently of Bingo and any retained assets.

Approved Tipping Option Agreement means an agreement approved by the ACCC in accordance with the terms of this Undertaking for the Approved Purchaser to tip residual waste at a landfill owned or operated by Bingo, consistent with Confidential Schedule 8. The agreement will relate to residual waste destined to landfill deriving from the processing of waste at the Business (Banksmeadow Waste), and will include residual waste from further processing of the Banksmeadow Waste at another facility of the Approved Purchaser, which may be carried out following initial processing at the Business.

Approved Transitional Supply Agreement means any agreement, for the supply of goods or services (other than Technical Assistance) by Bingo 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 Bingo 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 Lease Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

Assets means the assets described in the item titled Assets in Schedule 4.

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

Audit Report has the meaning given to it in clause 10.6(a) of this Undertaking.

Bingo means the company referred to in clause 1 of this Undertaking.

Bingo Group means Bingo and each of its Subsidiaries.

Bingo Group Member means each member of the Bingo Group.

Business means the business described in the item titled Business in Schedule 4.

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:

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

Commencement Date means the date described in clause 3 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).

Customer Contracts means the customer contracts exclusively relating to the Divestiture Assets.

DADI means Dial-A-Dump Pty. Limited (ACN 003 755 673).

Divestiture Assets means the Property, Business and Assets described under the items labelled as such in Schedule 4.

Divestiture Completion Date means the date the divestiture of the Divestiture Assets 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 10.6(b)(i) 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.

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

Initial Sale Period means the period specified in Confidential Schedule 9.

Key Behavioural Obligations means an individual's behavioural obligations under their employment contract, Bingo's company policies and procedures or in circumstances that would otherwise justify summary dismissal at law.

Key Regulatory Obligations means the statutory obligations imposed on Bingo pursuant to the following:

- (a) the conditions under the Environmental Protection Licence granted in relation to the processing facility located on the Property;
- (b) the development approval granted in relation to the Property;
- (c) local council legislation or regulations applicable to the Property; and
- (d) New South Wales work health and safety legislation, particularly the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2017* (NSW).

Lease Commencement Date means the date on which the initial term of the Approved Lease Agreement commences.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Assets or product or service sold by a 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.

Property means the property described in the item titled Property in Schedule 4.

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 11.3 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 10.2 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 Independent Lease Manager means a person named in a Proposed Independent Lease Manager Notice.

Proposed Independent Lease Manager Notice has the meaning given to it in clause 9.2 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.

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.

Transferred Personnel means the personnel identified in Confidential Schedule 5.

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 Assets has the meaning given to it in clause 11.1 of this Undertaking.

2. Interpretation

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, Bingo 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 Bingo Industries 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: mergersru@accc.gov.au

Attention: Director, Remedies 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 markets.
 - (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 Bingo and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Bingo and the Proposed Purchaser are Associated Entities;
 - (ii) Bingo is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Bingo;

- (iv) Bingo and the Proposed Purchaser are Related Entities;
 - (v) Bingo and the Proposed Purchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Bingo is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) Bingo 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 Bingo or has been in the past three years;
 - (ix) Bingo is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Bingo 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 Bingo:
- (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 conduct 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;
 - (vii) Bingo's and the Proposed Purchaser's assessment of any upgrades or changes (if any) to the Divestiture Assets which will be required to effect the transfer of the EPA licence for the Property to the Proposed Purchaser as well as the details of any other upgrades or changes required by any other regulator that Bingo and the Proposed Purchaser are aware of after conducting an assessment in relation to the Divestiture Assets at the time the Proposed Purchaser Notice is submitted to the ACCC. Evidence not older than three months should be provided to the ACCC to support that assessment; and
 - (viii) 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) if applicable, the finalised draft of the lease agreement.
- (c) If applicable, the finalised draft of the tipping option agreement.
- (d) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking.
- (e) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking.
- (f) any documents required to support the information provided by Bingo 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; or
- Independent Lease Manager

(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/Independent Lease 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:** mergersru@acc.gov.au

Attention: Director
Remedies 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 or Independent Lease 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 Bingo 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) Bingo and [the Undertaking Appointment's employer] are Associated Entities.
 - (ii) Bingo is an Entity Connected with [the Undertaking Appointment's employer].
 - (iii) [The Undertaking Appointment's employer] is an Entity Connected with Bingo.
 - (iv) Bingo and [the Undertaking Appointment's employer] are Related Entities.
 - (v) Bingo and [the Undertaking Appointment's employer] are Related Parties
 - (vi) any Related Party, Related Entity or Entity Connected with Bingo is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment].
 - (vii) Bingo 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 Bingo or has been in the past three years.
 - (ix) Bingo is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years.
 - (x) any other relationship between Bingo and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other.
- (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC.

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 Lease Manager

1. The finalised draft terms of appointment of the proposed Independent Lease Manager.

2. The finalised draft lease management plan of the Proposed Independent Lease Manager, detailing the measures to be implemented by Bingo and the Approved Independent Lease Manager in order to fulfil Bingo's and the Approved Independent Lease Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Lease Manager in consultation with Bingo to achieve the objectives of the Undertaking including:
 - (a) how the Approved Independent Lease Manager will manage the Approved Lease Agreement and the Property for the duration of the Approved Lease Term, including:
 - (i) the activities to be conducted by the Approved Independent Lease Manager that are necessary for the effective operation of the Approved Lease Agreement and Property;
 - (ii) a protocol whereby the Approved Independent Lease Manager can provide any information requested by Bingo regarding the Property without disclosing the details of the Property's competitively sensitive information to Bingo;
 - (b) separation measures to ensure the Property is managed in a manner which is independent of Bingo;
 - (c) the cooperation required from the Proposed Independent Lease Manager with Bingo in relation to the management and operation of the Property, including:
 - (i) the method by which due diligence information, site visits and personnel interviews in relation to the Property will be managed;
 - (ii) the method by which the Approved Independent Lease Manager and Bingo will preserve the confidentiality of the Property's and Approved Purchaser's competitively sensitive information from Bingo and its advisers throughout this process; and
 - (iii) a protocol whereby the Approved Independent Lease Manager can provide any information requested by Bingo without disclosing the details of the Approved Purchaser's competitively sensitive information to Bingo.

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 business sale agreement drafted by the Proposed Divestiture Agent in consultation with Bingo. The draft business 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.

Proposed Independent Manager

1. The finalised draft separation and management plan for the Divestiture Assets detailing the measures and timing to be implemented by Bingo and the Approved Independent Manager in order to fulfil Bingo'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 Bingo to achieve the objectives of the Undertaking including:

- (a) the intended mode of operation of the Divestiture Assets until completion of its divestiture;
- (b) separation measures to ensure the Divestiture Assets is operated in a manner which is financially and operationally separate from Bingo, including the:
 - (i) separation of the books and records of the Divestiture Assets from those of Bingo;
 - (ii) severance of the Divestiture Assets' participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Assets;
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Assets; and
 - (iv) severance of arrangements to share personnel and Facility between the Divestiture Assets and any businesses to be retained by Bingo, to the extent possible without compromising the viability of the Divestiture Assets;
- (c) details of contracts for the provision of goods or services to the Divestiture Assets which will expire after the completion of the divestiture of the Divestiture Assets 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;
- (d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Assets has access to all personnel necessary to operate the Divestiture Assets;
- (e) any Material Changes to the Divestiture Assets required in order to fulfil Bingo's and the Approved Independent Manager's obligations pursuant to the Undertaking;
- (f) the cooperation required from the Independent Manager with Bingo in relation to the divestiture of the Divestiture Assets, including:
 - (i) the activities to be conducted by the Independent Manager that are necessary for the effective operation of the Divestiture Assets, having regard to the nature of the Divestiture Assets (including the extent to which the Divestiture Assets 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 Assets will be managed;
 - (iii) the method by which the Independent Manager and Bingo will preserve the confidentiality of the Divestiture Assets' competitively sensitive information from Bingo and its advisers throughout this process; and
 - (iv) a protocol whereby the Approved Independent Manager can provide any information requested by Bingo without disclosing the details of the Divestiture Assets' competitively sensitive information to Bingo.

Schedule 4 – Divestiture Assets

Property

No.	Property Location/Address	Land Zoning	Land Type	Land Purpose	Description	Title Particulars		Lot/Plan No	Land Area (m2)	Date Registered	Parent Title Particulars	
						Volume	Folio				Volume	Folio
1.	38 McPherson St, Banksmeadow NSW 2019	Industrial 1	Developed Commercial	Waste Management Facility	Waste Management Facility	10911	006	Lot 8 Section 2 in Deposited Plan 11235; Lots 110 - 117 (inclusive) in Deposited Plan 131166 (Folio Identifier Auto Consol 10862-62); and Lot 9 in Deposited Plan 651995.	20,233	17.4.67 (14.11.05)	-	-

Business: The Bingo Group's business located at the Property of operating a waste processing facility.

Assets

Banksmeadow Equipment List			
Description	Vin/Serial/Chassis No.	Engine No.	Asset Category
2012 Volvo EC210C Excavator With Magnet Plant No. 749	VCEC210CC0011894	11292043	EXCAVATOR
2014 Volvo EC300D Excavator	VCEC300DPE0270666	11659217	EXCAVATOR
2014 Volvo EC220D Excavator With Magnet Plant No. 750	VCEC220DJ002704449	11690189	EXCAVATOR
2016 Komatsu 3.5 tonne Forklift Model: FD35AT-17	346577	14298	FORKLIFT

2015 Hyundai HL760-9 Loader	HHKHLL01KF0000671	76005504	FRONT END LOADER
2015 Hyundai GL760-9 Loader	HH1HLL01JB0000139	26575480	FRONT END LOADER
2010 Kohler Power Systems 1100KVA Generator			GENERATOR
2015 Hydraulic Magnet on Plant No. 758	9669-2 220V	N/A	MAGNET
2014 Liebherr LH30M Hydraulic Excavator	WLHZ1200VZKO78766	120DK0072 94018522	MATERIAL HANDLER
2010 Fixed Picking Station	N/A	N/A	RECYCLING PLANT
2017 Terex TRS550 Spaleck Screen	TRXRS550JDGH44311	N/A	RECYCLING PLANT
2016 Fuel Fix 10,000L Fuel Tank	2439	N/A	TRANSTANK
2015 Mettler Toledo Weighbridge	N/A	N/A	WEIGHBRIDGE
Banksmeadow 12m Concrete Inground Weighbridge	ACCUN/59	N/A	WEIGHBRIDGE

Schedule 5 – Confidential Transferred Personnel

Schedule 6 – Confidential Tipping Option Conditions

Schedule 7 – Confidential Lease Agreement

Schedule 8 – Confidential – Tipping option agreement

Schedule 9 – Confidential: Initial Sale Period

Schedule 10 – Confidential Business sale agreement term sheet

Schedule 11 – Confidential process for divesting the Unsold Assets

Schedule 12 – Confidential Independent Lease Manager