

Variation to an Undertaking given to the Australian Competition and Consumer Commission

Given under section 87B(2) of the *Competition and
Consumer Act 2010* (Cth) by

Endeavour Group Limited

ACN 159 767 843

2 March 2023

THIS VARIATION is made on

2 March

2023

1. PERSONS GIVING THIS VARIATION

- 1.1 This variation is given to the Australian Competition and Consumer Commission (**ACCC**) by Endeavour Group Limited ACN 159 767 843 on behalf of itself and its subsidiaries (together referred to as **Endeavour** in this variation) of 26 Waterloo St, Surry Hills, 2010 in the State of New South Wales.

2. BACKGROUND

- 2.1 On 22 December 2022, the ACCC accepted an undertaking (the **Undertaking**) under section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) from Endeavour in connection with Endeavour's proposed acquisition of the Beach Hotel (**Proposed Acquisition**).
- 2.2 Pursuant to section 87B(2) of the CCA, Endeavour has sought the ACCC's consent to vary the Undertaking with the purpose of amending cross-referencing and typographical errors.

3. COMMENCEMENT

- 3.1 This Variation comes into effect when:
- (a) this Variation is executed by Endeavour; and
 - (b) the ACCC consents to this Variation so executed.

4. VARIATIONS

- 4.1 The variations to this Undertaking are set out in track changes in Schedule 1.
- 4.2 For ease of reference a clean version of the Undertaking as varied is set out in Schedule 2.
- 4.3 Endeavour has sought the ACCC's consent to vary the Undertaking as follows:

Variations to the body of the undertaking

- (a) amending the definition of IPG Management (SO) Pty Ltd (ACN 092 374 340) from 'IPG' to 'IPG Group' in clause 2.2;
- (b) replacing the word 'house' after the word 'which' and before the article 'a' with 'houses' in sub-clause 2.2(a);
- (c) replacing the term 'IPG' after the word 'by' with 'IPG Group' in clause 2.5;
- (d) inserting the word 'the' after 'and' and before 'Approved' in clause 6.1;
- (e) updating numbering of clause 6.5 to become clause 6.4;
- (f) updating the numbering of clause 6.6 to become clause 6.5;
- (g) updating the numbering of clause 6.7 to become clause 6.6;
- (h) deleting the wording '*the Control Date*' and replacing it with the following wording: '*Endeavour receiving ACCC notice of approval of the Proposed Independent Manager*' in clause 8.6;
- (i) deleting the wording '*the Control Date*' and replacing it with the following wording: '*Endeavour receiving ACCC notice of approval of the Proposed Independent Auditor*' in clause 9.7;

- (j) updating the cross-reference to clause 6.6 to become a cross-reference to clause 6.5 in sub-clause 9.10(c);

Variations to Schedule 1

- (k) deleting the word 'the' after the word 'which' and before the word 'Endeavour' in the definition of **Approved Sale and Purchase Agreement** in clause 1 of Schedule 1;
- (l) deleting the definition of **Consents** and moving it after the definition of **Commencement Date** and before the definition of **Control Date** in clause 1 of Schedule 1;
- (m) deleting the wording '*clause 1 of*' from the definition of **Initial Sale Period** in clause 1 of Schedule 1;
- (n) updating the cross-reference to clause 2 in the definition of **Proposed Acquisition** to become a cross-reference to clause 2.3 in clause 1 of Schedule 1;

Variations to Schedule 2

- (o) updating the numbering of sub-sub-clauses 2.2(e)(i)-(vi) of Schedule 2 to become sub-sub-clauses 2.2(e)(ii)-(vii) of Schedule 2;

Variations to Schedule 4

- (p) deleting the word 'shop' after the word 'at' and before the number '54' in the definition of **Divestiture Business** and replacing it with 'Shop' in Schedule 4;

Variations to Confidential Schedule 6

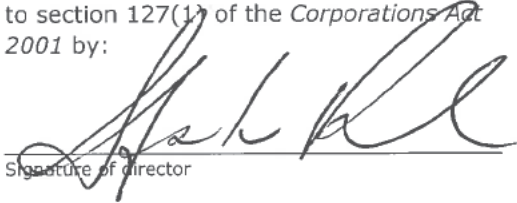
Variations to Confidential Schedule 8

5. **DEFINITIONS**

5.1 Any term defined in the Undertaking and not defined in this Variation has the meaning given in the Undertaking, unless the contrary intention appears.

5.2 **Variation** means this variation to the Undertaking.

EXECUTED by ENDEAVOUR GROUP LIMITED (ACN 159 767 843) pursuant to section 127(1) of the *Corporations Act 2001* by:



Signature of director

STEPHEN DONOHUE

Name

DATE: 2 March 2023



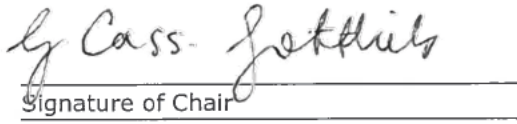
Signature of director/secretary

TARYN MORTON

Name

DATE: 2 MARCH 2023

Consent provided by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010 (Cth)*:



Signature of Chair

DATE: 8th March 2023

SCHEDULE 1

Undertaking with variations in track changes

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Endeavour Group
Limited** (ACN 159 767 843)

Contents

1	Persons giving the Undertaking	1
2	Background	1
3.	Commencement of this Undertaking	3
4.	Cessation of Ongoing Obligations	3
5.	Divestiture of the Divestiture Business	3
6.	Process for approving a Proposed Purchaser.....	6
7.	Divestiture Business Protection	8
8.	Independent Management of the Divestiture Business	10
9.	Independent Audit.....	14
10.	Failure to divest the Divestiture Business within the Initial Sale Period	18
11.	Notification of key dates and ACCC requests for information	19
12.	Disclosure of this Undertaking	20
13.	Obligation to procure.....	20
14.	No Derogation.....	21
15.	Change of Control.....	21
16.	Costs	21
17.	Notices	21
18.	Defined terms and interpretation.....	22
19.	Good faith commitment.....	22
	Schedule 1 – Dictionary and interpretation.....	24
	Schedule 2 – Proposed Purchaser Notice Form	29
	Schedule 3 – Undertaking Appointment Form.....	32
	Schedule 4 – Divestiture Business	36
	Confidential Schedule 5	38
	Confidential Schedule 6	39
	Confidential Schedule 7	45
	Confidential Schedule 8	47

1 Persons giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Endeavour Group Limited (ACN 159 767 843) on behalf of itself and its subsidiaries (together referred to as **Endeavour** in this Undertaking).

2 Background

The parties to the proposed acquisition

- 2.1. Endeavour is a major Australian alcoholic drinks retailer and hotel operator that operates a portfolio of brands including BWS, Dan Murphy's, Jimmy Brings, Langton's and Cellarmasters. Through its wholly owned subsidiary Australian Leisure and Hospitality Group Pty Ltd (ACN 067 391 511) (**ALH**), Endeavour manages over 330 licensed hotels across Australia. Until 28 June 2021, Endeavour was a subsidiary of Woolworths Group. However, Endeavour has been separated from Woolworths Group via a demerger and is now a separately listed corporation on the ASX (ASX: EDV).
- 2.2. The vendor, IPG Management (SO) Pty Ltd (ACN 092 374 340) (**IPG**) is a wholly owned subsidiary of Independent Pub Group Holdings Pty Limited (ACN 125 365 139) (**IPG Group**). **IPG Group** owns hotels and retail liquor outlets in South Australia and Queensland. The business that is the subject of the proposed acquisition is located at the corner of Commercial Road and Griffiths Drive, Seaford. It sits on two adjoining sites, comprising:
 - (a) the main licensed Beach Hotel business (located on the larger western site, which ~~house~~houses a sports bar, various eating precincts, a commercial kitchen, a gaming room, and function rooms), and
 - (b) a three-lane drive through Cellarbrations bottle shop across the road.

together, the **Target**.

The Proposed Acquisition

- 2.3. Endeavour (through ALH) proposes to acquire the Target from IPG pursuant to a Business Sale Agreement dated 2 September 2022 (**Proposed Acquisition**).

The ACCC's review

- 2.4. On 27 October 2022, the ACCC commenced its public review of the Proposed Acquisition.
- 2.5. At the same time, the ACCC commenced the review of Endeavour's proposal to acquire, through separate transactions, three other hotels owned by **IPG Group**:
 - (a) the Tower Hotel and co-located Cellarbrations bottle shop, located at 621 Magill Road, Magill, South Australia (**Tower Hotel**),
 - (b) the Crown Inn and co-located Cellarbrations bottle shop, located at 208-210 Old South Road, Old Reynella, South Australia (**Crown Inn**), and

- (c) the Whitehorse Inn and co-located Cellarbrations bottle shop, located at 887-889 Wakefield Road, Bolivar, South Australia (**Whitehorse Inn**).
- 2.6. The ACCC undertook market inquiries and considered information provided by Endeavour, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition (and the proposed acquisitions of each of the Tower Hotel, Crown Inn and Whitehorse Inn) 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 CCA.
- 2.7. On 14 December 2022, Endeavour sought an expedited review from the ACCC and proposed a restructure to the proposed acquisitions and a divestiture undertaking which would remove the competitive overlap between the parties in relation to the Proposed Acquisition. As part of the restructure, Endeavour withdrew its proposal to acquire the Crown Inn and the Whitehorse Inn.

The ACCC's competition concerns

- 2.8. The ACCC has concerns that, in the absence of this Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the retail market for packaged liquor for off-site consumption in the local area surrounding the Target.
- 2.9. The ACCC is concerned that the Proposed Acquisition would remove the Target's closest competitor in the supply of packaged liquor for off-site consumption. The ACCC's investigation indicated that:
 - (a) the BWS Seaford, operated by Endeavour, is the closest bottle shop to the Target (by car, approximately 0.68km or a two minute drive away);
 - (b) within both three and five kilometre radii of the Target:
 - (i) the Target and BWS Seaford are the two largest suppliers of packaged liquor for off-site consumption; and
 - (ii) there are a limited number of alternative liquor stores (in addition to the BWS Seaford, there are only two within three kilometres / three within five kilometres).
- 2.10. The ACCC is concerned that, in the absence of this Undertaking, customers in the local area surrounding the Target would likely be disadvantaged by a reduction in choice of packaged liquor, lower service levels and site amenity, and less price competition especially in relation to differentiated promotional activity.

The Undertaking remedy

- 2.11. The objective of this Undertaking is to address the ACCC's competition concerns as set out above that may otherwise arise as a consequence of the Proposed Acquisition.
- 2.12. This Undertaking aims to achieve this objective by placing obligations on Endeavour as set out below:
 - (a) to ensure that the Divestiture Business is sold to an Approved Purchaser that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long term competitor for the local retail market for packaged liquor for off-site consumption;

- (b) to ensure the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with Endeavour in the local retail market for packaged liquor for off-site consumption;
- (c) to maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
- (d) to provide for the effective oversight of Endeavour's compliance with this Undertaking.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

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

4. Cessation of Ongoing Obligations

Withdrawal

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

Revocation

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

Waiver

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

Survival

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

5. Divestiture of the Divestiture Business

Divestiture

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

- (a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 10 applies;
- (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.3 to 5.4;
- (c) the transfer of any Transferred Personnel required pursuant to clauses 5.6 to 5.7;
- (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.8 to 5.10; and
- (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.11 to 5.13.

Consents

5.3. Endeavour must:

- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;
- (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
- (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;
- (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
- (e) enter 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 Business which may be affected by any failure to gain a Consent.

5.4. If, seven Business Days before completion of the divestiture of the Divestiture Business, the Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then Endeavour must:

- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
- (b) continue to do everything in its power to satisfy clause 5.3 as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.3 is satisfied).

- 5.5. Even if Endeavour has complied with clause 5.3 to 5.4, it remains a breach of this Undertaking if Endeavour is unable to effect the divestiture of the Divestiture Business by reason that one or more Consents are not obtained.

Transferred Personnel

- 5.6. At the option of the Approved Purchaser, Endeavour must transfer to the Approved Purchaser:

- (a) all employees; and
- (b) all service providers under a contract for service;

who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).

- 5.7. When fulfilling its obligations under clause 5.6, Endeavour must:

- (a) encourage all Transferred Personnel to remain with the Divestiture Business, including offering incentives based on industry practice;
- (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Divestiture Business;
- (c) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any obligations to provide services to Endeavour;
- (d) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and
- (e) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Endeavour for a period of 12 months after the completion of the divestiture of the Divestiture Business.

Technical Assistance

- 5.8. At the option of the Approved Purchaser, Endeavour must supply to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Business.

- 5.9. Endeavour must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:

- (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
- (b) at cost and otherwise on arm's length terms.

- 5.10. To avoid doubt, Endeavour 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 5.8 and 5.9.

Transitional Supply Agreements

- 5.11. At the option of the Approved Purchaser, Endeavour must ensure the continued supply by Endeavour 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 for packaged liquor for off-site consumption in the local area surrounding the Target.
- 5.12. Endeavour must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
- (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (b) provides for the supply of the included goods and services at cost price; and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.13. To avoid doubt, Endeavour 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 5.11 and 5.12.

6. Process for approving a Proposed Purchaser

Potential purchasers

- 6.1. Endeavour must provide the ACCC and the Approved Independent Auditor with:
- (a) the identity of any person who expresses an interest in acquiring the Divestiture Business;
 - (b) the status of negotiations with each person; and
 - (c) a copy of each person's offer to acquire the Divestiture Business, where relevant;
- at the following times:
- (d) as soon as possible following the Commencement Date for those persons who express interest before the Commencement Date;
 - (e) after the Commencement Date, within 10 Business Days of each person expressing the interest and/or providing an offer;
- regardless of whether the person subsequently withdraws or is declined.

Provision of a notice for a Proposed Purchaser

- 6.2. To seek ACCC approval for a Proposed Purchaser, Endeavour or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).
- 6.3. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

Approval of a Proposed Purchaser after the Commencement Date

6.4. ~~6.5.~~ The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:

- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
- (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.8 and 5.9; and
- (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.11 and 5.12.

6.5. ~~6.6.~~ Without limiting the ACCC's discretion, in making the decision pursuant to clause ~~6.5~~6.4, the factors to which the ACCC may have regard include whether the:

- (a) draft sale and purchase agreement is consistent with this Undertaking;
- (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
- (c) Proposed Purchaser is independent of Endeavour;
- (d) Proposed Purchaser is of good financial standing;
- (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
- (f) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
- (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.

6.6. ~~6.7.~~ 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 Business Protection

Protection of the Divestiture Business

- 7.1. From the Commencement Date, Endeavour must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Proposed Acquisition.

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

- 7.2. Without limiting this clause 7, Endeavour must, from the Commencement Date until completion of the divestiture of the Divestiture Business, take all steps available to it to:
- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Commencement Date;
 - (b) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Commencement Date;
 - (c) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Commencement Date and in accordance with any plans established before the Commencement Date;
 - (d) continue existing Agreements relating to the Divestiture Business 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 Business on commercial terms favourable to the Divestiture Business;
 - (f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Commencement Date;
 - (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Business as at the Commencement Date; and
 - (h) carry out promotion and marketing of the products which form part of the Divestiture Business in accordance with any plans established before the Commencement Date.

Personnel of Endeavour

- 7.3. From the Commencement Date until completion of the divestiture of the Divestiture Business, Endeavour must:

- (a) in consultation with the Approved Independent Manager, replace any
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;
 - who leave or will leave the Divestiture Business before divestiture;
- (b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any of the
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;
 - and
- (c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Business as at the Control Date to any other business operated by Endeavour.

7.4. As soon as practicable after the Commencement Date, Endeavour must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Endeavour's obligations under this Undertaking.

Endeavour's ongoing obligations in relation to the Divestiture Business

7.5. To the extent Endeavour has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.8 to 5.13 of this Undertaking in relation to the Divestiture Business, Endeavour must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

7.6. Subject to clause 7.7, Endeavour must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:

- (a) ownership and/or management of the Divestiture Business; or
- (b) fulfilling any obligations pursuant to this Undertaking.

7.7. Clause 7.6 does not apply to information that Endeavour requires to:

- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
- (b) carry out its obligations pursuant to this Undertaking;

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

8. Independent Management of the Divestiture Business

Obligation to appoint an Approved Independent Manager

- 8.1. Endeavour must appoint and maintain an Approved Independent Manager to manage the Divestiture Business, within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Manager until the completion of the divestiture of the Divestiture Business or until the end of the Initial Sale Period in accordance with this Undertaking. Endeavour must also comply with the provisions in Confidential Schedule 8 from the Commencement Date.

Process for approving a Proposed Independent Manager

- 8.2. Within 5 Business Days of the Control Date, Endeavour must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including a draft terms of appointment and a draft separation and management plan.
- 8.3. If clauses 8.12, 8.13 or 8.14 apply, Endeavour must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.
- 8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- 8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Endeavour;
 - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Manager

- 8.6. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, Endeavour must within 2 Business Days of ~~the Control Date~~Endeavour receiving ACCC notice of approval of the Proposed Independent Manager:
- (a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

8.7. If:

- (a) the Approved Independent Manager has not been appointed within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Manager;
- (b) the Approved Independent Manager has not been appointed within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.12, 8.13 or 8.14; or
- (c) the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.2;

then clause 8.8 applies.

8.8. If clause 8.7 applies, the ACCC at its discretion may:

- (a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
- (b) direct Endeavour to appoint a person who the ACCC has deemed is an Approved Independent Manager.

Obligations and powers of the Approved Independent Manager

8.9. Endeavour must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:

- (a) maintain his or her independence from Endeavour, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Endeavour for the period of his or her appointment;
- (b) act in the best interests of the Divestiture Business at all times including ensuring that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;
- (c) not use any confidential information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Independent Manager;
- (d) make only those Material Changes to the Divestiture Business which the ACCC does not object to;
- (e) operate and manage the Divestiture Business to the maximum extent practicable, in a manner which is financially and operationally separate from Endeavour;

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

Endeavour's obligations in relation to the Approved Independent Manager

- 8.11. Without limiting its obligations in this Undertaking, Endeavour must:
- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
 - (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:

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

Resignation, revocation or termination of the Approved Independent Manager

- 8.12. Endeavour 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 completion of the divestiture of the Divestiture Business.
- 8.13. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.14. The ACCC may approve any proposal by, or alternatively may direct, Endeavour to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Independent Audit

Obligation to appoint an Approved Independent Auditor

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

Process for approving a Proposed Independent Auditor

- 9.2. Within 5 Business Days of the Control Date, Endeavour must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3. The Independent Auditor is to be appointed for a term of two years. Within 15 Business Days of the end of the Independent Auditor's term, Endeavour must provide the ACCC with a new Proposed Independent Auditor Notice. A person who is, or who has been, the Independent Auditor is eligible for reappointment as the Independent Auditor.
- 9.4. If clauses 9.17, 9.18 or 9.19 apply, Endeavour must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.9 applies.
- 9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Endeavour;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 9.7. 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, Endeavour must within 2 Business Days of ~~the Control Date~~ Endeavour receiving ACCC notice of approval of the Proposed Independent Auditor:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 9.8. If:
- (a) the Approved Independent Auditor has not been appointed within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Auditor;
 - (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.17, 9.18, or 9.19; or
 - (c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.2;
- then clause 9.9 applies.
- 9.9. If clause 9.8 applies, the ACCC at its absolute discretion may:
- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
 - (b) direct Endeavour to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

- 9.10. Endeavour must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
- (a) maintain his or her independence from Endeavour, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Endeavour for the period of his or her appointment;
 - (b) conduct compliance auditing according to the Approved Audit Plan;
 - (c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business against the factors (as relevant) in clause ~~6.6.5~~ 6.6.5;
 - (d) provide the following reports directly to the ACCC:

- (i) a scheduled written Audit Report as described in clause 9.12;
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
 - (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business following an assessment under clause 9.10(c); and
- (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.
- 9.11. Endeavour must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (a) access the facilities, sites or operations of the Divestiture Business and Endeavour's other businesses as required by the Approved Independent Auditor;
 - (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
 - (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

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

- (iii) Endeavour's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Endeavour's compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.13. The Approved Independent Auditor is to provide an Audit Report to the ACCC and Endeavour at the following times:
- (a) within 10 Business Days after being appointed as the Approved Independent Auditor by Endeavour, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
 - (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.13(b), until the ACCC confirms in writing to Endeavour that it is satisfied that Endeavour has fulfilled its obligations pursuant to this Undertaking; and
 - (d) a final report due three months after the last report provided pursuant to clause 9.13(c).
- 9.14. Endeavour must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 9.15. Endeavour 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).

Endeavour's obligations in relation to the Approved Independent Auditor

- 9.16. Without limiting its obligations in this Undertaking, Endeavour 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 Endeavour personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business and Endeavour's other businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 9.17. Endeavour must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.18. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.19. The ACCC may approve any proposal by, or alternatively may direct, Endeavour 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 and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

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

- 10.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period the provisions of Confidential Schedule 6 apply.

11. Notification of key dates and ACCC requests for information

- 11.1. Endeavour must notify the ACCC and each Undertaking Appointment in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable) at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), within one Business Day of that date.
- 11.2. The ACCC may direct Endeavour in respect of its compliance with this Undertaking to, and Endeavour must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Endeavour's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.3. Any direction made by the ACCC under clause 11.2 will be notified to Endeavour, in accordance with clause 17.2.
- 11.4. In respect of Endeavour's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.5. Endeavour will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.
- 11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.

- 11.7. The ACCC may in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which Endeavour has a claim of legal professional or other privilege.

12. Disclosure of this Undertaking

- 12.1. Endeavour and the ACCC agree that Confidential Schedules 5-8 and parts of this Undertaking will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business.
- 12.2. Endeavour acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of this Undertaking.
- 12.3. Endeavour acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

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

that action.

14. No Derogation

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

15. Change of Control

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

16. Costs

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

17. Notices

Giving Notices

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

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger, Exemptions & Digital Division

With a copy sent to: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Policy, Coordination & Remedies Branch
Merger, Exemptions & Digital Division

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

Name: Peter Atkin, Chief Legal Officer, Endeavour

Address: 26 Waterloo St, Surry Hills, NSW 2010

Email Address: peter.atkin@edg.com.au;

With a copy sent to: liz.hersey@edg.com.au

Attention: Peter Atkin/Liz Hersey

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

Change of contact details

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

18. Defined terms and interpretation

Definitions in the Dictionary

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

Interpretation

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

19. Good faith commitment

- 19.1. If any interpretation issues arise between the ACCC and Endeavour in relation to the terms of this undertaking, Endeavour and the ACCC will negotiate in good faith as soon as possible in order to resolve such issues to achieve the purpose of the undertaking.

Executed as an Undertaking

Executed by Endeavour Group Limited ACN: 159 767 843 pursuant to section 127(1) of the *Corporations Act 2001* by:

Signature of director	Signature of a director/company secretary
Name of director (print)	Name of director/company secretary (print)
Date	Date

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

Date

and signed on behalf of the Commission:

Chair

Date

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

Approved Divestiture Agent means the person approved by the ACCC and appointed under Confidential Schedule 6.

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

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

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

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

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

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

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

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

Approved Terms of Appointment means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

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

Audit Report has the meaning given to it in clause 9.12 of this Undertaking.

Beach Hotel means the licensed hotel business and attached bottle shop trading under the Cellarbrations banner, located at the corner of Commercial Road and Griffiths Drive, Seaford, South Australia 5169.

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

Change of Control means:

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

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

Consents means any Government Consents or Third Party Consents.

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

~~**Consents means any Government Consents or Third Party Consents.**~~

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

Divestiture Business means the items described in Schedule 4 to this Undertaking.

Endeavour means the entity referred to in clause 1.1 of this Undertaking.

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

Establishment Audit has the meaning given to it in clause 9.13(a) of this Undertaking.

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

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

Initial Sale Period is defined in ~~clause 1 of~~ Confidential Schedule 5 to this Undertaking.

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

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

Proposed Acquisition is defined in clause ~~22.3~~ 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 Confidential Schedule 6.

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

Proposed Independent Auditor Notice has the meaning given to it in clause 9.2 of this Undertaking.

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

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

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

Proposed Purchaser Notice has the meaning given to it in clause 6.2 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.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

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 Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

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

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

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

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

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

Unsold Business has the meaning given to it in Confidential Schedule 6.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
 - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
 - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
 - (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
 - (m) material not forming part of this Undertaking may be considered to:

- (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
- (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Endeavour 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

This form sets out the information required by the ACCC in relation to a Proposed Purchaser.

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

1. Method of Delivery to the ACCC

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

Email

Subject line: Proposed Purchaser Notice – [insert name of undertaking]
Address: mergers@acc.gov.au
Attention: Executive General Manager – Merger, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au
Attention: Director, Remedies Unit - Policy, Coordination & Remedies Branch,
Merger, Exemptions & Digital Division

2. Information Required

The ACCC requires the following information in order to assess a Proposed Purchaser.

2.1 Proposed Purchaser details:

- (a) Name of the Proposed Purchaser;
- (b) Address;
- (c) Contact name;
- (d) Telephone number;
- (e) Other contact details.

2.2 A submission containing the following information:

- (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
- (b) details of the Proposed Purchaser's experience in the relevant market(s);
- (c) the names of the owner(s) and the director(s) of the Proposed Purchaser;
- (d) details of any of the following types of relationships between Endeavour and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:

- (i) Endeavour and the Proposed Purchaser are Associated Entities;
 - (ii) Endeavour is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Endeavour;
 - (iv) Endeavour and the Proposed Purchaser are Related Entities;
 - (v) Endeavour and the Proposed Purchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Endeavour is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) Endeavour 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 Endeavour or has been in the past three years;
 - (ix) Endeavour is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Endeavour 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 Endeavour:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (ii) ~~(i)~~ whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) ~~(ii)~~ whether the Proposed Purchaser is of good financial standing;
 - (iv) ~~(iii)~~ whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (v) ~~(iv)~~ whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
 - (vi) ~~(v)~~ whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
 - (vii) ~~(vi)~~ any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

2.3 Please also attach to this form:

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

Schedule 3 – Undertaking Appointment Form

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

- Independent Manager;
- Independent Auditor; or
- Divestiture Agent

(the **Undertaking Appointment**).

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.

1. Method of Delivery to the ACCC

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

Email

Subject line: Proposed [only include relevant Undertaking Appointment i.e. Independent Manager/Independent Auditor/Divestiture Agent] Notice – [insert name of undertaking]

Address: mergers@acc.gov.au

Attention: Executive General Manager – Mergers, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit - Policy, Coordination & Remedies Branch, Mergers, Exemptions & Digital Division

2. Information Required

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

2.1 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:
 - (i) Address;
 - (ii) Contact name;
 - (iii) Telephone number;

- (iv) Other contact details.

2.2 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 director(s) of the Undertaking Appointment's employer;
- (c) details of any of the following types of relationships between Endeavour 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) Endeavour and the Undertaking Appointment's employer are Associated Entities;
 - (ii) Endeavour is an Entity Connected with the Undertaking Appointment's employer;
 - (iii) The Undertaking Appointment's employer is an Entity Connected with Endeavour;
 - (iv) Endeavour and the Undertaking Appointment's employer are Related Entities;
 - (v) Endeavour and the Undertaking Appointment's employer are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Endeavour is a Related Party, Related Entity or Entity Connected with the Undertaking Appointment;
 - (vii) Endeavour 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 Endeavour or has been in the past three years;
 - (ix) Endeavour is a supplier of the Undertaking Appointment's employer or has been in the past three years; and
 - (x) any other relationship between Endeavour 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 within the past three years.

2.3 A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

3. Specific Information required for Undertaking Appointments

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

Proposed Independent Auditor

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

Proposed Divestiture Agent

- 3.2 The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with Endeavour. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 3.3 The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

Proposed Independent Manager

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

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

Schedule 4 – Divestiture Business

Divestiture Business means all rights and assets held or controlled by Endeavour in the bottle shop business known as BWS Seaford, located at ~~shop~~Shop 54 of the Seaford Central Shopping Centre, corner of Commercial Road and the Parade, Seaford, South Australia.

Property Address (leasehold)	Shop 54, Seaford Central Shopping Centre Corner of Commercial Road and the Parade Seaford SA 5169	
Description of site	Site for the retail sale of alcoholic liquors and beverages, and the ancillary sale of non-liquor products and snack lines, including tobacco products. The site is co-located with the supermarket operated by the Landlord located at Shop 54 of the Seaford Central Shopping Centre, and is operated by Endeavour under the 'BWS' retail brand.	
Description of facilities	All existing fittings and fixtures, including cool-room, storage area, and store Point of Sale technology.	
Government licences, permits and authorisations	Packaged Liquor Sales licence number 57701372	
Goods Inventory	All inventory on hand at the time of settlement.	
Right to occupy the Premises under the Sub-lease	Premises	Site number: 5646 Site name: Seaford SA Certificate of Title Register Book Volume 5995 Folio 469 and Volume 5066 of Folio 279
	Landlord	Woolworths Group Limited ABN 88 000 014 675
	Tenant	Endeavour Group Limited ABN 77 159 767 843
	Head Lessor	Seaford Property Investment Pty Ltd and Distribution Lessor Corporation
	Head Lease	The lease between the Head Lessor (as landlord) and the Landlord (as tenant) with registration number 11044227
	Total land	Premises: 251m ² Head Lease Premises: 2,689.40m ²
	Term	7 years, 4 months and 27 days
	Commencement Date	3 February 2020

	Expiry	29 June 2027
	Further Term(s)	2 terms of 5 years less one day each
	Permitted Use	The retail sale of alcoholic liquors and beverages, and may include the ancillary retail sale of non-liquor products and snack lines, including tobacco products usually sold at bottle shops, to the extent that each of those uses is not prohibited by the Head Lease.
	Landlord consents	Consent to assign: sub-lease to Purchaser.
	Third party Contracts	Endeavour will use its best endeavours to assist the Approved Purchaser to ensure that they have the benefit of all third party goods and services necessary to conduct the Divestiture Business in the same manner as it was prior to entry into this Undertaking.

Confidential Schedule 5

Confidential Schedule 6

Confidential Schedule 7

Confidential Schedule 8

SCHEDULE 2

Undertaking with variations – clean version

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Endeavour Group
Limited** (ACN 159 767 843)

Contents

1	Persons giving the Undertaking	1
2	Background	1
3.	Commencement of this Undertaking	3
4.	Cessation of Ongoing Obligations	3
5.	Divestiture of the Divestiture Business	3
6.	Process for approving a Proposed Purchaser.....	6
7.	Divestiture Business Protection	8
8.	Independent Management of the Divestiture Business	10
9.	Independent Audit.....	14
10.	Failure to divest the Divestiture Business within the Initial Sale Period	18
11.	Notification of key dates and ACCC requests for information	19
12.	Disclosure of this Undertaking	20
13.	Obligation to procure.....	20
14.	No Derogation.....	21
15.	Change of Control	21
16.	Costs	21
17.	Notices	21
18.	Defined terms and interpretation.....	22
19.	Good faith commitment.....	22
	Schedule 1 – Dictionary and interpretation.....	24
	Schedule 2 – Proposed Purchaser Notice Form	29
	Schedule 3 – Undertaking Appointment Form.....	32
	Schedule 4 – Divestiture Business	36
	Confidential Schedule 5	38
	Confidential Schedule 6	39
	Confidential Schedule 7	45
	Confidential Schedule 8	47

1 Persons giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Endeavour Group Limited (ACN 159 767 843) on behalf of itself and its subsidiaries (together referred to as **Endeavour** in this Undertaking).

2 Background

The parties to the proposed acquisition

- 2.1. Endeavour is a major Australian alcoholic drinks retailer and hotel operator that operates a portfolio of brands including BWS, Dan Murphy's, Jimmy Brings, Langton's and Cellarmasters. Through its wholly owned subsidiary Australian Leisure and Hospitality Group Pty Ltd (ACN 067 391 511) (**ALH**), Endeavour manages over 330 licensed hotels across Australia. Until 28 June 2021, Endeavour was a subsidiary of Woolworths Group. However, Endeavour has been separated from Woolworths Group via a demerger and is now a separately listed corporation on the ASX (ASX: EDV).
- 2.2. The vendor, IPG Management (SO) Pty Ltd (ACN 092 374 340) (**IPG**) is a wholly owned subsidiary of Independent Pub Group Holdings Pty Limited (ACN 125 365 139) (**IPG Group**). IPG Group owns hotels and retail liquor outlets in South Australia and Queensland. The business that is the subject of the proposed acquisition is located at the corner of Commercial Road and Griffiths Drive, Seaford. It sits on two adjoining sites, comprising:
 - (a) the main licensed Beach Hotel business (located on the larger western site, which houses a sports bar, various eating precincts, a commercial kitchen, a gaming room, and function rooms), and
 - (b) a three-lane drive through Cellarbrations bottle shop across the road.

together, the **Target**.

The Proposed Acquisition

- 2.3. Endeavour (through ALH) proposes to acquire the Target from IPG pursuant to a Business Sale Agreement dated 2 September 2022 (**Proposed Acquisition**).

The ACCC's review

- 2.4. On 27 October 2022, the ACCC commenced its public review of the Proposed Acquisition.
- 2.5. At the same time, the ACCC commenced the review of Endeavour's proposal to acquire, through separate transactions, three other hotels owned by IPG Group:
 - (a) the Tower Hotel and co-located Cellarbrations bottle shop, located at 621 Magill Road, Magill, South Australia (**Tower Hotel**),
 - (b) the Crown Inn and co-located Cellarbrations bottle shop, located at 208-210 Old South Road, Old Reynella, South Australia (**Crown Inn**), and

- (c) the Whitehorse Inn and co-located Cellarbrations bottle shop, located at 887-889 Wakefield Road, Bolivar, South Australia (**Whitehorse Inn**).
- 2.6. The ACCC undertook market inquiries and considered information provided by Endeavour, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition (and the proposed acquisitions of each of the Tower Hotel, Crown Inn and Whitehorse Inn) 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 CCA.
- 2.7. On 14 December 2022, Endeavour sought an expedited review from the ACCC and proposed a restructure to the proposed acquisitions and a divestiture undertaking which would remove the competitive overlap between the parties in relation to the Proposed Acquisition. As part of the restructure, Endeavour withdrew its proposal to acquire the Crown Inn and the Whitehorse Inn.

The ACCC's competition concerns

- 2.8. The ACCC has concerns that, in the absence of this Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the retail market for packaged liquor for off-site consumption in the local area surrounding the Target.
- 2.9. The ACCC is concerned that the Proposed Acquisition would remove the Target's closest competitor in the supply of packaged liquor for off-site consumption. The ACCC's investigation indicated that:
 - (a) the BWS Seaford, operated by Endeavour, is the closest bottle shop to the Target (by car, approximately 0.68km or a two minute drive away);
 - (b) within both three and five kilometre radii of the Target:
 - (i) the Target and BWS Seaford are the two largest suppliers of packaged liquor for off-site consumption; and
 - (ii) there are a limited number of alternative liquor stores (in addition to the BWS Seaford, there are only two within three kilometres / three within five kilometres).
- 2.10. The ACCC is concerned that, in the absence of this Undertaking, customers in the local area surrounding the Target would likely be disadvantaged by a reduction in choice of packaged liquor, lower service levels and site amenity, and less price competition especially in relation to differentiated promotional activity.

The Undertaking remedy

- 2.11. The objective of this Undertaking is to address the ACCC's competition concerns as set out above that may otherwise arise as a consequence of the Proposed Acquisition.
- 2.12. This Undertaking aims to achieve this objective by placing obligations on Endeavour as set out below:
 - (a) to ensure that the Divestiture Business is sold to an Approved Purchaser that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long term competitor for the local retail market for packaged liquor for off-site consumption;

- (b) to ensure the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with Endeavour in the local retail market for packaged liquor for off-site consumption;
- (c) to maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
- (d) to provide for the effective oversight of Endeavour's compliance with this Undertaking.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

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

4. Cessation of Ongoing Obligations

Withdrawal

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

Revocation

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

Waiver

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

Survival

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

5. Divestiture of the Divestiture Business

Divestiture

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

- (a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 10 applies;
- (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.3 to 5.4;
- (c) the transfer of any Transferred Personnel required pursuant to clauses 5.6 to 5.7;
- (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.8 to 5.10; and
- (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.11 to 5.13.

Consents

5.3. Endeavour must:

- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;
- (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
- (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents;
- (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
- (e) enter 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 Business which may be affected by any failure to gain a Consent.

5.4. If, seven Business Days before completion of the divestiture of the Divestiture Business, the Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then Endeavour must:

- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
- (b) continue to do everything in its power to satisfy clause 5.3 as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.3 is satisfied).

- 5.5. Even if Endeavour has complied with clause 5.3 to 5.4, it remains a breach of this Undertaking if Endeavour is unable to effect the divestiture of the Divestiture Business by reason that one or more Consents are not obtained.

Transferred Personnel

- 5.6. At the option of the Approved Purchaser, Endeavour must transfer to the Approved Purchaser:

- (a) all employees; and
- (b) all service providers under a contract for service;

who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).

- 5.7. When fulfilling its obligations under clause 5.6, Endeavour must:

- (a) encourage all Transferred Personnel to remain with the Divestiture Business, including offering incentives based on industry practice;
- (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Divestiture Business;
- (c) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any obligations to provide services to Endeavour;
- (d) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and
- (e) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to Endeavour for a period of 12 months after the completion of the divestiture of the Divestiture Business.

Technical Assistance

- 5.8. At the option of the Approved Purchaser, Endeavour must supply to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Business.

- 5.9. Endeavour must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:

- (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
- (b) at cost and otherwise on arm's length terms.

- 5.10. To avoid doubt, Endeavour 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 5.8 and 5.9.

Transitional Supply Agreements

- 5.11. At the option of the Approved Purchaser, Endeavour must ensure the continued supply by Endeavour 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 for packaged liquor for off-site consumption in the local area surrounding the Target.
- 5.12. Endeavour must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
- (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (b) provides for the supply of the included goods and services at cost price; and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.13. To avoid doubt, Endeavour 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 5.11 and 5.12.

6. Process for approving a Proposed Purchaser

Potential purchasers

- 6.1. Endeavour must provide the ACCC and the Approved Independent Auditor with:
- (a) the identity of any person who expresses an interest in acquiring the Divestiture Business;
 - (b) the status of negotiations with each person; and
 - (c) a copy of each person's offer to acquire the Divestiture Business, where relevant;
- at the following times:
- (d) as soon as possible following the Commencement Date for those persons who express interest before the Commencement Date;
 - (e) after the Commencement Date, within 10 Business Days of each person expressing the interest and/or providing an offer;
- regardless of whether the person subsequently withdraws or is declined.

Provision of a notice for a Proposed Purchaser

- 6.2. To seek ACCC approval for a Proposed Purchaser, Endeavour or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).
- 6.3. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

Approval of a Proposed Purchaser after the Commencement Date

- 6.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:
- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
 - (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.8 and 5.9; and
 - (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.11 and 5.12.
- 6.5. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.4, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase agreement is consistent with this Undertaking;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) Proposed Purchaser is independent of Endeavour;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (f) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
 - (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 6.6. 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 Business Protection

Protection of the Divestiture Business

- 7.1. From the Commencement Date, Endeavour must not sell or transfer its interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Proposed Acquisition.

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

- 7.2. Without limiting this clause 7, Endeavour must, from the Commencement Date until completion of the divestiture of the Divestiture Business, take all steps available to it to:
- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Commencement Date;
 - (b) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Commencement Date;
 - (c) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Commencement Date and in accordance with any plans established before the Commencement Date;
 - (d) continue existing Agreements relating to the Divestiture Business 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 Business on commercial terms favourable to the Divestiture Business;
 - (f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Commencement Date;
 - (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Business as at the Commencement Date; and
 - (h) carry out promotion and marketing of the products which form part of the Divestiture Business in accordance with any plans established before the Commencement Date.

Personnel of Endeavour

- 7.3. From the Commencement Date until completion of the divestiture of the Divestiture Business, Endeavour must:

- (a) in consultation with the Approved Independent Manager, replace any
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;

who leave or will leave the Divestiture Business before divestiture;
- (b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any of the
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;

and
- (c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Business as at the Control Date to any other business operated by Endeavour.

7.4. As soon as practicable after the Commencement Date, Endeavour must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Endeavour's obligations under this Undertaking.

Endeavour's ongoing obligations in relation to the Divestiture Business

7.5. To the extent Endeavour has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.8 to 5.13 of this Undertaking in relation to the Divestiture Business, Endeavour must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

7.6. Subject to clause 7.7, Endeavour must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:

- (a) ownership and/or management of the Divestiture Business; or
- (b) fulfilling any obligations pursuant to this Undertaking.

7.7. Clause 7.6 does not apply to information that Endeavour requires to:

- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
- (b) carry out its obligations pursuant to this Undertaking;

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

8. Independent Management of the Divestiture Business

Obligation to appoint an Approved Independent Manager

- 8.1. Endeavour must appoint and maintain an Approved Independent Manager to manage the Divestiture Business, within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Manager until the completion of the divestiture of the Divestiture Business or until the end of the Initial Sale Period in accordance with this Undertaking. Endeavour must also comply with the provisions in Confidential Schedule 8 from the Commencement Date.

Process for approving a Proposed Independent Manager

- 8.2. Within 5 Business Days of the Control Date, Endeavour must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including a draft terms of appointment and a draft separation and management plan.
- 8.3. If clauses 8.12, 8.13 or 8.14 apply, Endeavour must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.
- 8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- 8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Endeavour;
 - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Manager

- 8.6. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, Endeavour must within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Manager:
- (a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

8.7. If:

- (a) the Approved Independent Manager has not been appointed within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Manager;
- (b) the Approved Independent Manager has not been appointed within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.12, 8.13 or 8.14; or
- (c) the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.2;

then clause 8.8 applies.

8.8. If clause 8.7 applies, the ACCC at its discretion may:

- (a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
- (b) direct Endeavour to appoint a person who the ACCC has deemed is an Approved Independent Manager.

Obligations and powers of the Approved Independent Manager

8.9. Endeavour must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:

- (a) maintain his or her independence from Endeavour, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Endeavour for the period of his or her appointment;
- (b) act in the best interests of the Divestiture Business at all times including ensuring that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;
- (c) not use any confidential information gained through the management of the Divestiture Business other than for performing his or her functions as Approved Independent Manager;
- (d) make only those Material Changes to the Divestiture Business which the ACCC does not object to;
- (e) operate and manage the Divestiture Business to the maximum extent practicable, in a manner which is financially and operationally separate from Endeavour;

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

Endeavour's obligations in relation to the Approved Independent Manager

- 8.11. Without limiting its obligations in this Undertaking, Endeavour must:
- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
 - (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:

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

Resignation, revocation or termination of the Approved Independent Manager

- 8.12. Endeavour 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 completion of the divestiture of the Divestiture Business.
- 8.13. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.14. The ACCC may approve any proposal by, or alternatively may direct, Endeavour to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Independent Audit

Obligation to appoint an Approved Independent Auditor

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

Process for approving a Proposed Independent Auditor

- 9.2. Within 5 Business Days of the Control Date, Endeavour must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3. The Independent Auditor is to be appointed for a term of two years. Within 15 Business Days of the end of the Independent Auditor's term, Endeavour must provide the ACCC with a new Proposed Independent Auditor Notice. A person who is, or who has been, the Independent Auditor is eligible for reappointment as the Independent Auditor.
- 9.4. If clauses 9.17, 9.18 or 9.19 apply, Endeavour must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.9 applies.
- 9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Endeavour;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 9.7. 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, Endeavour must within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Auditor:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 9.8. If:
- (a) the Approved Independent Auditor has not been appointed within 2 Business Days of Endeavour receiving ACCC notice of approval of the Proposed Independent Auditor;
 - (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.17, 9.18, or 9.19; or
 - (c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.2;
- then clause 9.9 applies.
- 9.9. If clause 9.8 applies, the ACCC at its absolute discretion may:
- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
 - (b) direct Endeavour to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

- 9.10. Endeavour must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
- (a) maintain his or her independence from Endeavour, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Endeavour for the period of his or her appointment;
 - (b) conduct compliance auditing according to the Approved Audit Plan;
 - (c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business against the factors (as relevant) in clause 6.5;
 - (d) provide the following reports directly to the ACCC:

- (i) a scheduled written Audit Report as described in clause 9.12;
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
 - (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business following an assessment under clause 9.10(c); and
- (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.
- 9.11. Endeavour must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (a) access the facilities, sites or operations of the Divestiture Business and Endeavour's other businesses as required by the Approved Independent Auditor;
 - (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
 - (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

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

- (iii) Endeavour's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Endeavour's compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.13. The Approved Independent Auditor is to provide an Audit Report to the ACCC and Endeavour at the following times:
- (a) within 10 Business Days after being appointed as the Approved Independent Auditor by Endeavour, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
 - (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.13(b), until the ACCC confirms in writing to Endeavour that it is satisfied that Endeavour has fulfilled its obligations pursuant to this Undertaking; and
 - (d) a final report due three months after the last report provided pursuant to clause 9.13(c).
- 9.14. Endeavour must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 9.15. Endeavour 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).

Endeavour's obligations in relation to the Approved Independent Auditor

- 9.16. Without limiting its obligations in this Undertaking, Endeavour 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 Endeavour personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business and Endeavour's other businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 9.17. Endeavour must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.18. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.19. The ACCC may approve any proposal by, or alternatively may direct, Endeavour 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 and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

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

- 10.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period the provisions of Confidential Schedule 6 apply.

11. Notification of key dates and ACCC requests for information

- 11.1. Endeavour must notify the ACCC and each Undertaking Appointment in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable) at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), within one Business Day of that date.
- 11.2. The ACCC may direct Endeavour in respect of its compliance with this Undertaking to, and Endeavour must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Endeavour's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.3. Any direction made by the ACCC under clause 11.2 will be notified to Endeavour, in accordance with clause 17.2.
- 11.4. In respect of Endeavour's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.5. Endeavour will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.
- 11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.

- 11.7. The ACCC may in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which Endeavour has a claim of legal professional or other privilege.

12. Disclosure of this Undertaking

- 12.1. Endeavour and the ACCC agree that Confidential Schedules 5-8 and parts of this Undertaking will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business.
- 12.2. Endeavour acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of this Undertaking.
- 12.3. Endeavour acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

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

that action.

14. No Derogation

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

15. Change of Control

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

16. Costs

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

17. Notices

Giving Notices

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

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger, Exemptions & Digital Division

With a copy sent to: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Policy, Coordination & Remedies Branch
Merger, Exemptions & Digital Division

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

Name: Peter Atkin, Chief Legal Officer, Endeavour

Address: 26 Waterloo St, Surry Hills, NSW 2010

Email Address: peter.atkin@edg.com.au;

With a copy sent to: liz.hersey@edg.com.au

Attention: Peter Atkin/Liz Hersey

17.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

17.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

17.5. Endeavour must notify the ACCC of a change to its contact details within three Business Days.

17.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 17.3 and 17.4, will be taken to be received.

18. Defined terms and interpretation

Definitions in the Dictionary

18.1. A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

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

19. Good faith commitment

19.1. If any interpretation issues arise between the ACCC and Endeavour in relation to the terms of this undertaking, Endeavour and the ACCC will negotiate in good faith as soon as possible in order to resolve such issues to achieve the purpose of the undertaking.

Executed as an Undertaking

Executed by Endeavour Group Limited ACN: 159 767 843 pursuant to section 127(1) of the *Corporations Act 2001* by:

Signature of director	Signature of a director/company secretary
Name of director (print)	Name of director/company secretary (print)
Date	Date

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

Date

and signed on behalf of the Commission:

Chair

Date

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

Approved Divestiture Agent means the person approved by the ACCC and appointed under Confidential Schedule 6.

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

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

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

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

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

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

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

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

Approved Terms of Appointment means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

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

Audit Report has the meaning given to it in clause 9.12 of this Undertaking.

Beach Hotel means the licensed hotel business and attached bottle shop trading under the Cellarbrations banner, located at the corner of Commercial Road and Griffiths Drive, Seaford, South Australia 5169.

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

Change of Control means:

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

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

Consents means any Government Consents or Third Party Consents.

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

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

Divestiture Business means the items described in Schedule 4 to this Undertaking.

Endeavour means the entity referred to in clause 1.1 of this Undertaking.

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

Establishment Audit has the meaning given to it in clause 9.13(a) of this Undertaking.

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

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

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

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

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

Proposed Acquisition is defined in clause 2.3 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 Confidential Schedule 6.

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

Proposed Independent Auditor Notice has the meaning given to it in clause 9.2 of this Undertaking.

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

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

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

Proposed Purchaser Notice has the meaning given to it in clause 6.2 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.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

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 Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

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

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

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

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

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

Unsold Business has the meaning given to it in Confidential Schedule 6.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
 - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
 - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
 - (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
 - (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or

- (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Endeavour 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

This form sets out the information required by the ACCC in relation to a Proposed Purchaser.

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

1. Method of Delivery to the ACCC

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

Email

Subject line: Proposed Purchaser Notice – [insert name of undertaking]
Address: mergers@acc.gov.au
Attention: Executive General Manager – Merger, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au
Attention: Director, Remedies Unit - Policy, Coordination & Remedies Branch,
Merger, Exemptions & Digital Division

2. Information Required

The ACCC requires the following information in order to assess a Proposed Purchaser.

2.1 Proposed Purchaser details:

- (a) Name of the Proposed Purchaser;
- (b) Address;
- (c) Contact name;
- (d) Telephone number;
- (e) Other contact details.

2.2 A submission containing the following information:

- (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
- (b) details of the Proposed Purchaser's experience in the relevant market(s);
- (c) the names of the owner(s) and the director(s) of the Proposed Purchaser;
- (d) details of any of the following types of relationships between Endeavour and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:

- (i) Endeavour and the Proposed Purchaser are Associated Entities;
 - (ii) Endeavour is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Endeavour;
 - (iv) Endeavour and the Proposed Purchaser are Related Entities;
 - (v) Endeavour and the Proposed Purchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Endeavour is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) Endeavour 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 Endeavour or has been in the past three years;
 - (ix) Endeavour is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Endeavour 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 Endeavour:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) whether the Proposed Purchaser is of good financial standing;
 - (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (v) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
 - (vi) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
 - (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

2.3 Please also attach to this form:

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

Schedule 3 – Undertaking Appointment Form

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

- Independent Manager;
- Independent Auditor; or
- Divestiture Agent

(the **Undertaking Appointment**).

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.

1. Method of Delivery to the ACCC

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

Email

Subject line: Proposed [only include relevant Undertaking Appointment i.e. Independent Manager/Independent Auditor/Divestiture Agent] Notice – [insert name of undertaking]

Address: mergers@acc.gov.au

Attention: Executive General Manager – Mergers, Exemptions & Digital Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit - Policy, Coordination & Remedies Branch,
Mergers, Exemptions & Digital Division

2. Information Required

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

2.1 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:
 - (i) Address;
 - (ii) Contact name;
 - (iii) Telephone number;

(iv) Other contact details.

2.2 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 director(s) of the Undertaking Appointment's employer;
- (c) details of any of the following types of relationships between Endeavour 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) Endeavour and the Undertaking Appointment's employer are Associated Entities;
 - (ii) Endeavour is an Entity Connected with the Undertaking Appointment's employer;
 - (iii) The Undertaking Appointment's employer is an Entity Connected with Endeavour;
 - (iv) Endeavour and the Undertaking Appointment's employer are Related Entities;
 - (v) Endeavour and the Undertaking Appointment's employer are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with Endeavour is a Related Party, Related Entity or Entity Connected with the Undertaking Appointment;
 - (vii) Endeavour 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 Endeavour or has been in the past three years;
 - (ix) Endeavour is a supplier of the Undertaking Appointment's employer or has been in the past three years; and
 - (x) any other relationship between Endeavour 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 within the past three years.

2.3 A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

3. Specific Information required for Undertaking Appointments

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

Proposed Independent Auditor

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

Proposed Divestiture Agent

- 3.2 The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with Endeavour. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 3.3 The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

Proposed Independent Manager

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

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

Schedule 4 – Divestiture Business

Divestiture Business means all rights and assets held or controlled by Endeavour in the bottle shop business known as BWS Seaford, located at Shop 54 of the Seaford Central Shopping Centre, corner of Commercial Road and the Parade, Seaford, South Australia.

Property Address (leasehold)	Shop 54, Seaford Central Shopping Centre Corner of Commercial Road and the Parade Seaford SA 5169	
Description of site	Site for the retail sale of alcoholic liquors and beverages, and the ancillary sale of non-liquor products and snack lines, including tobacco products. The site is co-located with the supermarket operated by the Landlord located at Shop 54 of the Seaford Central Shopping Centre, and is operated by Endeavour under the 'BWS' retail brand.	
Description of facilities	All existing fittings and fixtures, including cool-room, storage area, and store Point of Sale technology.	
Government licences, permits and authorisations	Packaged Liquor Sales licence number 57701372	
Goods Inventory	All inventory on hand at the time of settlement.	
Right to occupy the Premises under the Sub-lease	Premises	Site number: 5646 Site name: Seaford SA Certificate of Title Register Book Volume 5995 Folio 469 and Volume 5066 of Folio 279
	Landlord	Woolworths Group Limited ABN 88 000 014 675
	Tenant	Endeavour Group Limited ABN 77 159 767 843
	Head Lessor	Seaford Property Investment Pty Ltd and Distribution Lessor Corporation
	Head Lease	The lease between the Head Lessor (as landlord) and the Landlord (as tenant) with registration number 11044227
	Total land	Premises: 251m ² Head Lease Premises: 2,689.40m ²
	Term	7 years, 4 months and 27 days
	Commencement Date	3 February 2020

	Expiry	29 June 2027
	Further Term(s)	2 terms of 5 years less one day each
	Permitted Use	The retail sale of alcoholic liquors and beverages, and may include the ancillary retail sale of non-liquor products and snack lines, including tobacco products usually sold at bottle shops, to the extent that each of those uses is not prohibited by the Head Lease.
	Landlord consents	Consent to assign: sub-lease to Purchaser.
	Third party Contracts	Endeavour will use its best endeavours to assist the Approved Purchaser to ensure that they have the benefit of all third party goods and services necessary to conduct the Divestiture Business in the same manner as it was prior to entry into this Undertaking.

Confidential Schedule 5

Confidential Schedule 6

Confidential Schedule 7

Confidential Schedule 8
