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**Undertaking to the Australian  
Competition & Consumer  
Commission**

Given under section 87B of the  
*Competition & Consumer Act* by  
InvoCare Limited and  
Bledisloe Group Holdings Pty Ltd

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## **1. Persons giving the Undertaking**

1.1 This Undertaking is given to the Australian Competition & Consumer Commission (ACCC) by:

- (a) InvoCare Limited (ACN 096 437 393) (**InvoCare**) on behalf of itself and its Related Bodies Corporate; and
- (b) Bledisloe Group Holdings Pty Ltd (ACN 117 060 134) (**Bledisloe**) on behalf of itself and its Subsidiaries.

## **2. Background**

### **The Parties**

#### *InvoCare*

2.1 InvoCare owns and operates funeral homes, cemeteries and crematoria in Australia and Singapore. Within north metropolitan Sydney, InvoCare owns and operates seven funeral directing businesses (from fifteen locations). Within north metropolitan Brisbane, InvoCare owns and operates one crematorium.

#### *Bledisloe*

2.2 Bledisloe owns and operates funeral homes in Australia and New Zealand and also owns and operates three cemeteries and crematoria in Queensland. Within north metropolitan Sydney, Bledisloe operates one funeral directing business (from three locations). Within north metropolitan Brisbane, Bledisloe owns and operates one crematorium.

### **The Proposed Acquisition**

2.3 InvoCare intends to acquire Bledisloe (the **Proposed Acquisition**).

### **The ACCC's review**

2.4 On 19 November 2010 the ACCC commenced its public, informal review of the Proposed Acquisition.

2.5 The ACCC undertook market inquiries and considered information provided by the Parties to the Proposed Acquisition, industry participants and other interested parties. The ACCC's inquiries were aimed at assessing whether or not the Proposed Acquisition would

have the effect or be likely to have the effect of substantially lessening competition in a market in contravention of section 50 of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

### **The ACCC's competition concerns**

- 2.6 The ACCC considered that, in the absence of this Undertaking, the Proposed Acquisition would result, or be likely to result, in a substantial lessening of competition in relation to the supply of:
- (a) funeral directing services in north metropolitan Sydney;
  - (b) funeral directing services in south metropolitan Brisbane; and
  - (c) cremation services in north metropolitan Brisbane.

#### *Funeral directing services in north metropolitan Sydney*

- 2.7 In relation to funeral directing services in north metropolitan Sydney, the ACCC considered that absent the Undertaking, the Proposed Acquisition would significantly increase concentration in the supply of funeral directing services.
- 2.8 InvoCare and Bledisloe are the largest and second largest providers of funeral directing services in north metropolitan Sydney respectively. Seven InvoCare funeral directing brands have offices in north metropolitan Sydney (*Ann Wilson, Bruce Maurer Funerals, Guardian, Liberty Funerals, Simplicity, WN Bull and White Lady*) and InvoCare benefits from a high degree of brand recognition. Bledisloe's *Gregory & Carr* branded funeral directing businesses also benefits from a high degree of brand recognition. The ACCC is concerned that due to the high degree of brand recognition associated with the InvoCare brands, customers seeking competitive quotes may unknowingly be soliciting quotes from branches of the same company and the ACCC considered that the acquisition of the Bledisloe brands may exacerbate this concern.
- 2.9 Absent the Undertaking, the Proposed Acquisition would remove the competitive constraint provided by *Gregory & Carr* on InvoCare in north metropolitan Sydney and the ACCC considered that the remaining competitors would be unlikely to provide an effective competitive constraint on the merged firm.
- 2.10 The ACCC also found that there are substantial barriers to entry and expansion in the provision of funeral directing services in north metropolitan Sydney, owing to the importance of brand recognition and the significant time required to establish a funeral directing brand in a sub-metropolitan area. As such, the ACCC considered the threat of new entry or expansion would be unlikely to constrain the merged firm.

- 2.11 The ACCC considered that, without the Undertaking, the Proposed Acquisition would result, or be likely to result, in a substantial lessening of competition in the market for the supply of funeral directing services in north metropolitan Sydney.

*Funeral directing services in south metropolitan Brisbane*

- 2.12 In relation to funeral directing services in south metropolitan Brisbane, the ACCC considered that the Proposed Acquisition would raise similar competition concerns to those raised in north metropolitan Sydney, although the ACCC notes that the degree of concentration in south metropolitan Brisbane is not as significant as in north metropolitan Sydney.
- 2.13 InvoCare and Bledisloe are the largest and second largest providers of funeral directing services in south metropolitan Brisbane respectively, with the Proposed Acquisition adding Bledisloe's *Metropolitan Funerals* branded funeral directing businesses to the four other brands that InvoCare currently operates in south metropolitan Brisbane (*George Hartnett, Reed Botcher, Simplicity and White Lady*).
- 2.14 While there would remain a number of alternative funeral directing businesses in south metropolitan Brisbane, the merged firm's share of funeral directing services in south metropolitan Brisbane would be substantially higher than the share of its next closest competitor. InvoCare would also benefit from the high degree of brand recognition associated with the InvoCare brands and Bledisloe's *Metropolitan Funerals* brand.
- 2.15 The ACCC considered that without the Undertaking, the Proposed Acquisition would result, or be likely to result, in a substantial lessening of competition in the market for funeral directing services in south metropolitan Brisbane.

*Cremation services in north metropolitan Brisbane*

- 2.16 In relation to cremation services in north metropolitan Brisbane, the ACCC considered that absent the Undertaking, the Proposed Acquisition would result in a significant increase in concentration. The Proposed Acquisition would result in the combination of the two largest suppliers of cremation services in north metropolitan Brisbane.
- 2.17 The ACCC considered that the only remaining suppliers of cremation services in north metropolitan Brisbane were unlikely to provide an effective competitive constraint on the merged firm.
- 2.18 The ACCC also concluded that there are substantial barriers to entry for the provision of cremation services in north metropolitan Brisbane and that the threat of new entry within two years was unlikely.

2.19 The ACCC considered that, without the Undertaking, the Proposed Acquisition would result, or be likely to result, in a substantial lessening of competition in the market for the supply of cremation services in north metropolitan Brisbane.

### **The Undertaking remedy**

2.20 InvoCare does not consider the Proposed Acquisition would be likely to substantially lessen competition in the relevant markets. However, as part of InvoCare's request for informal clearance of the Proposed Acquisition, and in order to address the ACCC's competition concerns, InvoCare has, without any admission as to the appropriate market or otherwise, given this Undertaking to the ACCC pursuant to section 87B of the Act.

2.21 InvoCare has addressed the ACCC's competition concerns by giving this Undertaking to:

- (a) divest the Sydney Divestiture Businesses;
- (b) divest the Brisbane Divestiture Business; and
- (c) provide a clear statement disclosing to customers of InvoCare, which funeral directing brands in Brisbane are owned by InvoCare (**Ownership Statement**).

2.22 The terms on which the Divestiture Businesses are to be divested and the Ownership Statement is to be implemented are described in this Undertaking.

2.23 The Sydney Divestiture Businesses are described in clause 1 of Schedule 5 of this Undertaking. The Brisbane Divestiture Business is described in clause 2 of Schedule 5 of this Undertaking. The InvoCare Brands that are the subject of the Ownership Statement are described in Schedule 6 of this Undertaking.

2.24 The objective of this Undertaking is to address the ACCC's competition concerns which would otherwise arise as a consequence of the Proposed Acquisition. This Undertaking aims to achieve this objective by maintaining the competition which existed before the Proposed Acquisition through:

- (a) the creation or strengthening of a viable, effective, stand-alone independent and long term competitor in the markets for funeral directing services in north metropolitan Sydney and cremation services in north metropolitan Brisbane;
- (b) ensuring that the Approved Purchaser of the Divestiture Businesses has acquired from the Parties the necessary assets, rights and agreements to compete effectively with InvoCare in

the markets for funeral directing services in north metropolitan Sydney and cremation services in north metropolitan Brisbane;

- (c) maintaining the economic viability, marketability, competitiveness and goodwill of the Divestiture Businesses prior to divestiture;
- (d) enabling the Approved Purchaser to supply the product and service offerings which are part of the Divestiture Businesses independently and without reliance upon InvoCare;
- (e) ensuring that any interim supply or technical assistance arrangements between InvoCare and the Approved Purchaser will be for a short period, at arm's length and on terms no less favourable than normal commercial terms;
- (f) the effective oversight of the operation of the Divestiture Businesses prior to divestiture, the process of divestiture and the separation of the Divestiture Businesses from businesses that will be retained by InvoCare;
- (g) increasing the transparency of brand ownership of funeral directing businesses in metropolitan Brisbane; and
- (h) the effective oversight of InvoCare's compliance with the Undertaking.

### **3. Commencement of the Undertaking**

#### **Commencement**

- 3.1 The Undertaking comes into effect (the **Commencement Date**) when:
- (a) the Undertaking is executed by InvoCare; and
  - (b) the Undertaking is executed by the ACCC.

### **4. Cessation of ongoing obligations**

#### **Withdrawal**

- 4.1 The Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of the Undertaking in accordance with section 87B of the Act.

#### **Revocation**

- 4.2 Notwithstanding anything else in the Undertaking, the ACCC may, at any time, revoke in writing its acceptance of the Undertaking if the

ACCC becomes aware that any information provided to it by the Parties was incorrect, inaccurate or misleading.

#### **Waiver**

- 4.3 Notwithstanding anything else in the Undertaking, the ACCC may, at any time, expressly waive in writing any of the obligations contained in the Undertaking.

#### **Completion**

- 4.4 Clauses 1, 2, 3, 4, 11, 12, 13, 14, 15, 16, 17 and 18 survive completion of the obligations in clauses 5, 6, 7, 8, 9 and 10.

### **5. Divestiture of the Divestiture Businesses**

#### **Divestiture**

- 5.1 The Parties must and in accordance with this Undertaking, divest, or cause the divestiture of the Divestiture Businesses to an Approved Purchaser.
- 5.2 The Parties must divest, or cause the divestiture of, the Divestiture Businesses to an Approved Purchaser on terms which include:
- (a) the sale, assignment, transfer or perpetual licence of all of the assets listed in Schedule 5 to the Undertaking to an Approved Purchaser, pursuant to an Approved Sale and Purchase Agreement and within the Initial Sale Period;
  - (b) the transfer of any Transferred Personnel required pursuant to clauses 5.6 and 5.7;
  - (c) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.8 and 5.9;
  - (d) compliance with any Approved Technical Assistance Agreement negotiated with the Approved Purchaser pursuant to clause 5.11;
  - (e) compliance with any Approved Interim Supply Agreement negotiated with the Approved Purchaser pursuant to clause 5.14;
  - (f) compliance with the Divestiture Businesses protection obligations in clause 7;

- (g) compliance with the provisions in relation to the separation and independent management of the Divestiture Businesses in clause 8;
  - (h) compliance with any Unsold Business obligations that arise pursuant to clause 9; and
  - (i) compliance with the independent audit provisions in clause 11.
- 5.3 The Parties must do everything in their power or control to enforce the terms of any executed agreement with an Approved Purchaser under which the Approved Purchaser is obliged to acquire the Divestiture Businesses.

#### **Transferred Personnel**

- 5.4 At the option of the Approved Purchaser of the Divestiture Businesses, the Parties must transfer to the Approved Purchaser:
- (a) any employees; and
  - (b) any service providers under a contract for service;
- who are, in the view of the Approved Purchaser, necessary for the Approved Purchaser to maintain, operate and conduct effectively the Divestiture Businesses and who consent to the transfer of their employment to the Approved Purchaser (**Transferred Personnel**).
- 5.5 When fulfilling their obligations under clause 5.4, the Parties must:
- (a) not directly or indirectly discourage any Transferred Personnel from continuing or seeking employment with, or providing services to, the Approved Purchaser;
  - (b) release the Transferred Personnel from any obligations to provide services to the Parties;
  - (c) 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 Businesses or Unsold Business; and
  - (d) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to InvoCare for a period of six months after the completion of the last agreement approved by the ACCC under clause 6.7(a).

## Consents

- 5.6 The Parties must:
- (a) obtain or assist the Approved Purchaser(s) to obtain as expeditiously as possible all Consents as required by the Approved Purchaser before completion of the sale of the Divestiture Businesses;
  - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
  - (c) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
  - (d) enter an Approved Interim Supply Agreement with the Approved Purchaser in relation to any goods or services required for the operation of the Divestiture Businesses which may be affected by any failure to gain any Consents.
- 5.7 If the Approved Purchaser fails to obtain or is unable to obtain any Consents necessary to enable the Approved Purchaser to complete the purchase of the Divestiture Businesses within 30 Business Days after the Completion Date, then:
- (a) the Parties must immediately provide to the ACCC, in writing:
    - (i) details of the Consents that have not been obtained;
    - (ii) the reasons why the Consents have not been obtained; and
    - (iii) the information or material required to obtain the Consents; and
  - (b) the Parties must continue to do everything in their power to obtain the Consents.
- 5.8 Notwithstanding the fact that the Parties have complied with clauses 5.6 and 5.7, it remains a breach of the Undertaking if the Parties are unable to effect the divestiture of the Divestiture Businesses by reason of a failure to obtain any Consents.

## Approved Technical Assistance Agreement

- 5.9 At the option of the Approved Purchaser, the Parties must provide technical assistance to the Approved Purchaser in accordance with any Approved Technical Assistance Agreement:

- (a) required by the Approved Purchaser in order to operate the Divestiture Business;
- (b) provided on a transitional basis for no more than three months; and
- (c) provided at cost and otherwise on arm's length terms.

5.10 For the avoidance of doubt, any option to renew the supply of technical assistance exercised pursuant to the Approved Technical Assistance Agreement can only be exercised subject to the requirements of clause 5.9 being satisfied.

#### **Approved Interim Supply Agreement**

5.11 The Parties must ensure the continuous supply of any goods or services which are the subject of any Approved Interim Supply Agreement for the period of the Approved Interim Supply Agreement.

5.12 The Parties must ensure that any Approved Interim Supply Agreement:

- (a) is necessary to enable the establishment of the Approved Purchaser as a viable, effective, stand-alone independent and long-term competitor in the markets referred to in clause 2.6;
- (b) lasts for a period of no longer than three months, which period is to be nominated by the Approved Purchaser;
- (c) provides for the supply or resupply of the included goods and services at cost price; and
- (d) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.

5.13 For the avoidance of doubt, any option to renew the interim supply of any goods or services exercised pursuant to the Approved Interim Supply Agreement can only be exercised subject to the requirements of clause 5.12 being satisfied.

### **6 Sale of the Divestiture Businesses to an Approved Purchaser**

#### **Sale only to an Approved Purchaser**

6.1 The Parties must sell the Divestiture Businesses only to an Approved Purchaser and must not sell the Unsold Business to a purchaser other than an Approved Purchaser.

#### **Proposed Purchaser Notice**

6.2 If the Parties or the Approved Divestiture Agent seek to have a purchaser approved by the ACCC in accordance with clause 6.7, the

Parties or the Approved Divestiture Agent must provide the ACCC with a Proposed Purchaser Notice.

- 6.3 The Parties must provide a Proposed Purchaser Notice to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

**ACCC consideration of a Proposed Purchaser**

- 6.4 Without limiting the ACCC's discretion, in making the decisions described in clause 6.7, the factors to which the ACCC may have regard include whether:
- (a) the draft agreements attached to the Proposed Purchaser Notice are consistent with the Undertaking and otherwise acceptable to the ACCC;
  - (b) the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
  - (c) the Proposed Purchaser is independent of, and has no direct or indirect material shareholding or other interest in InvoCare;
  - (d) the Proposed Purchaser is of good financial standing;
  - (e) the Proposed Purchaser has an intention to maintain and operate the assets acquired pursuant to the draft sale and purchase agreement attached to the Proposed Purchaser Notice as a going concern;
  - (f) the Proposed Purchaser is able to conduct the Divestiture Businesses effectively; and
  - (g) the divestiture to the Proposed Purchaser will address the competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Businesses under the ownership of the Proposed Purchaser.
- 6.5 The ACCC may revoke an Approved Purchaser's status as an Approved Purchaser if the ACCC becomes aware that any information provided to it by the Parties or the Approved Purchaser was incorrect, inaccurate or misleading.

**Approved Purchaser of the Sydney Divestiture Businesses**

- 6.6 In relation to the sale and divestiture of the Sydney Divestiture Businesses, InvoCare has provided the ACCC with a Proposed Purchaser Notice naming Albert & Meyer Pty Limited following which the ACCC:

- (a) considered the Proposed Purchaser Notice in accordance with the process described in clause 6.7; and
- (b) approved the Proposed Purchaser as the Approved Purchaser of the Sydney Divestiture Businesses in accordance with clause 6.7(a) which included approving the Approved Sale and Purchase Agreements in relation to the Sydney Divestiture Businesses.

#### **Approval of a Proposed Purchaser**

- 6.7 After receiving a Proposed Purchaser Notice the ACCC will decide whether to:
- (a) approve the entity named in the Proposed Purchaser Notice as an Approved Purchaser which includes approving:
    - (i) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
    - (ii) any draft technical assistance agreement attached to the Proposed Purchaser Notice upon criteria including those in clause 5.9; and
    - (iii) any draft interim supply agreement attached to the Proposed Purchaser Notice upon criteria including those in clause 5.12; or
  - (b) not approve the entity named in the Proposed Purchaser Notice as an Approved Purchaser.
- 6.8 Within 15 Business Days of receiving a Proposed Purchaser Notice, the ACCC will notify the Parties in writing of its decision made pursuant to clause 6.7.
- 6.9 The ACCC may extend the period within which it will provide the notice described in clause 6.8 by notifying the Parties in writing of the extension within 15 Business Days of receiving the Proposed Purchaser Notice.
- 6.10 Any extension of time by the ACCC under clause 6.9 extends the Initial Sale Period by the same length of time.
- 6.11 Upon application by the Parties, the ACCC may approve the amendment of any agreements approved pursuant to clauses 6.6(a) or 6.7(a).

## **7 Protection of the Divestiture Businesses**

### **Protection of the assets of the Divestiture Businesses**

- 7.1 From the Commencement Date, the Parties must not sell or transfer any interest, or any assets comprising part of, or used in, the Divestiture Businesses (other than the sale of stock in the ordinary course of business) or make any Material Change, except in accordance with the Undertaking.
- 7.2 Without limiting this clause 7, the Parties must, from the Commencement Date until completion of the sale of the Divestiture Businesses take all steps to:
- (a) ensure that the Divestiture Businesses are managed and operated in the ordinary course of business as fully operational, competitive going concerns and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Businesses as at the Commencement Date;
  - (b) minimise any risk of loss of competitive potential for the Divestiture Businesses;
  - (c) ensure that the Divestiture Businesses are operationally and financially separate from InvoCare unless this Undertaking provides otherwise;
  - (d) keep the books and records of the Divestiture Businesses separate from those of InvoCare unless this Undertaking provides otherwise;
  - (e) ensure that the Divestiture Businesses are able to continue existing arrangements, agreements, or contracts with customers, suppliers or other third parties that were in place at the Commencement Date; and
  - (f) provide access to working capital and sources of credit for the Divestiture Businesses.
- 7.3 From the Commencement Date until completion of the sale of the Divestiture Businesses, the Parties:
- (a) will not terminate or vary the terms of employment or engagement of any of the Transferred Personnel, or agree to do any of those things; and

- (b) will not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Businesses as at the Commencement Date to any other business owned or operated by InvoCare.

#### **Direction to personnel of InvoCare**

- 7.4 As soon as practicable after the Commencement Date, the Parties must direct the Parties' respective personnel, including directors, contractors, managers, officers, employees and agents not to do anything in breach of or inconsistent with the Parties' obligations under the Undertaking.

#### **Confidential Information**

- 7.5 Subject to clause 7.6, the Parties must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Businesses.

- 7.6 Clause 7.5 does not apply to information that:

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

provided such information is:

- (c) only used or disclosed for the permitted purpose; and
- (d) is only disclosed to those officers, employees, contractors and advisers of the Parties who need to know the information to carry out the permitted purpose.

### **8 Separation and Independent Management of the Divestiture Businesses**

#### **Approved Independent Manager for the Brisbane Divestiture Business**

- 8.1 InvoCare must appoint and maintain an Approved Independent Manager to manage the Brisbane Divestiture Business, from the Completion Date until the completion of the sale of the Brisbane Divestiture Business in accordance with the Undertaking.

#### **Appointment of Approved Independent Manager for the Sydney Divestiture Businesses**

- 8.2 If the sale of the Sydney Divestiture Businesses to the Approved Purchaser referred to in clause 6.6 is not completed within 60 Business

Days from the Completion Date, InvoCare must appoint and maintain an Approved Independent Manager to manage the Sydney Divestiture Businesses until completion of the sale of the Sydney Divestiture Businesses in accordance with the Undertaking.

**Obligations in relation to the Approved Independent Manager**

- 8.3 Without limiting its obligations in the Undertaking, InvoCare must:
- (a) comply with and enforce the 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) indemnify 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) ensure 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 reasonably considers are required by the Divestiture Business during the period of his appointment; and
    - (iii) provide and pay for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager;
  - (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) accept (and direct its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the performance of the Approved Separation and Management Plan of the Divestiture Business;
    - (ii) ensure that the Divestiture Businesses can meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;

- (iii) provide access to all the facilities, sites or operations of the Divestiture Businesses required by the Approved Independent Manager;
- (iv) provide to the Approved Independent Manager any information or documents requested by the Approved Independent Manager that he or she considers necessary for managing and operating the Divestiture Businesses or for reporting to or otherwise advising the ACCC;
- (v) not request information or reports regarding the Divestiture Businesses from the personnel of the Divestiture Businesses except through the Approved Independent Manager; and
- (vi) not appoint the Approved Independent Manager, or have any agreements, understandings or arrangements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with the Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

#### **Approval of Mr Brian Gill as the Approved Independent Manager**

- 8.4 InvoCare has provided the ACCC with a Proposed Independent Manager Notice naming Mr Brian Gill following which the ACCC:
- (a) considered the Proposed Independent Manager Notice in accordance with the process described in clause 8.5; and
  - (b) approved the appointment of Mr Brian Gill as the Approved Independent Manager pursuant to clause 8.5(a) as a precondition of ACCC acceptance of the Undertaking, which included approving the Approved Terms of Appointment and the Approved Separation and Management Plan.

#### **Approval of the Proposed Independent Manager**

- 8.5 After receiving a Proposed Independent Manager Notice, the ACCC will decide whether to:
- (a) approve the appointment of the person named in the Proposed Independent Manager Notice as the Approved Independent Manager which includes approving:
    - (i) the terms of appointment attached to the Proposed Independent Manager Notice; and

- (ii) the draft separation and management plan attached to the Proposed Independent Manager Notice.
  - (b) not approve the appointment of the person named in Proposed Independent Manager Notice as the Approved Independent Manager.
- 8.6 If the ACCC does not approve the appointment of the person named in Proposed Independent Manager Notice as the Approved Independent Manager, the ACCC will, at its absolute discretion,
- (a) identify and approve a person as the Approved Independent Manager which includes approving:
    - (i) the terms of appointment of the Approved Independent Manager; and
    - (ii) a draft separation and management plan; and
  - (b) direct InvoCare to appoint pursuant to clause 8.12 the Approved Independent Manager on the Approved Terms of Appointment.
- 8.7 Without limiting the ACCC's discretion, in making the decisions described in this clause 8 the factors to which the ACCC may have regard include:
- (a) whether the 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) whether the person named in the Proposed Independent Manager Notice or identified by the ACCC is independent of InvoCare;
  - (c) whether the terms of appointment and the draft separation and management plan are consistent with the Undertaking;
  - (d) the proposed date of appointment pursuant to the terms of appointment; and
  - (e) whether the terms of appointment and the draft separation and management plan attached to the Proposed Independent Manager Notice are otherwise acceptable to the ACCC.
- 8.8 Within 10 Business Days of receiving a Proposed Independent Manager Notice, other than in relation to Mr Brian Gill, the ACCC will notify InvoCare in writing of its decisions made under this clause.

- 8.9 The ACCC may extend the period within which it will provide the notice described in clause 8.8 by notifying InvoCare in writing of the extension within 10 Business Days of receiving the Proposed Independent Manager Notice.
- 8.10 Any extension of time by the ACCC under clause 8.9 extends the Initial Sale Period by the same length of time.
- 8.11 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 by the Parties or the Approved Independent Manager was incorrect, inaccurate or misleading.

#### **Appointment of the Approved Independent Manager**

- 8.12 After receiving notice from the ACCC of any decisions pursuant to clause 8.5(a) or 8.6, and by no later than the date of appointment in the Approved Terms of Appointment, InvoCare must:
- (a) appoint the person approved by the ACCC pursuant to clause 8.5(a) or clause 8.6 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 within one Business Day of its execution.

#### **Obligations and powers of the Approved Independent Manager**

- 8.13 InvoCare must procure that the terms of appointment of the Approved Independent Manager include obligations on the Approved Independent Manager to:
- (a) maintain his or her independence from InvoCare, apart from appointment to the role of Approved Independent Manager, including not form any relationship, of the types described in clause 2(c) of Schedule 3 to the Undertaking, with InvoCare for the period of his or her appointment;
  - (b) act in the best interests of the Divestiture Businesses at all times;
  - (c) not use or disclose any confidential information gained through the management of the Divestiture Businesses other than for performing his or her functions as Approved Independent Manager;
  - (d) manage the Divestiture Businesses pursuant to the Approved Separation and Management Plan;

- (e) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to the Undertaking;
- (f) provide scheduled written reports directly to the ACCC regarding the implementation of, and any suggested changes to, the Approved Separation and Management Plan at the following times:
  - (i) within 30 Business Days of the Completion Date or within 30 days of the appointment of the Approved Independent Manager, whichever is the latter; and
  - (ii) every 30 Business Days from the date of the first report until the first month after the completion of the sale of the Divestiture Business;
- (g) immediately inform the ACCC of:
  - (i) any issues that arise in relation to the implementation of the Approved Separation and Management Plan;
  - (ii) non-compliance with the Undertaking by any person or Undertaking Appointment named in the 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 the Undertaking.

- 8.14 InvoCare must procure that the terms of appointment of the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (a) manage and operate the Divestiture Businesses according to the Approved Separation and Management Plan until the completion of the sale of the Divestiture Businesses;
  - (b) provide any information requested by InvoCare 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 in relation to confidential information required for the reasons in clause 7.6 which is not covered by the protocol in the Approved Separation and Management Plan;
  - (d) renew or replace upon expiry material contracts for the provision of goods or services to the Divestiture Businesses on commercial terms favourable to the Divestiture Business;

- (e) engage, redeploy or make redundant personnel employed in the Divestiture Businesses 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.

### **Resignation or termination of the Approved Independent Manager**

- 8.15 InvoCare 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 sale of the Divestiture Businesses.
- 8.16 The ACCC may approve any proposal by, or alternatively may direct, InvoCare 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 the Undertaking.
- 8.17 If clause 8.11, 8.15 or 8.16 applies, InvoCare must provide the ACCC with a Proposed Independent Manager Notice within 10 Business Days.

### **9. Failure to sell the Divestiture Businesses by the end of the Initial Sale Period**

#### **Sale of the Unsold Business**

- 9.1 In the event that the sale of the Divestiture Businesses or any part of the Divestiture Businesses to an Approved Purchaser is not completed by the end of the Initial Sale Period, the unsold part or parts of the Divestiture Businesses become an Unsold Business and clause 9.2 applies.

#### **Obligation to appoint an Approved Divestiture Agent**

- 9.2 If at the end of the Initial Sale Period the sale of the Divestiture Businesses has not been completed, unless otherwise agreed by the ACCC before the end of the Initial Sale Period, InvoCare must appoint and maintain until the completion of the sale of the Unsold Business:
  - (a) an Approved Divestiture Agent to effect the divestiture of the Unsold Business; and
  - (b) if no Approved Independent Manager is appointed, an Approved Independent Manager pursuant to clause 8.
- 9.3 Without limiting its obligations in the Undertaking, InvoCare must from the end of the Initial Sale Period:

- (a) comply with and enforce the terms of appointment for the Approved Divestiture Agent;
- (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:
  - (i) indemnify the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
  - (ii) provide and pay for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent; and
  - (iii) pay such fees as are agreed between the Approved Divestiture Agent and InvoCare (but not fees contingent on the price to be obtained for the Unsold Business);
- (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
  - (i) direct its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
  - (ii) provide access to the facilities, sites or operations of the Divestiture Businesses as required by the Approved Divestiture Agent;
  - (iii) provide to the Approved Divestiture Agent any information, documents or other assistance requested by the Approved Divestiture Agent that he or she considers necessary for carrying his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC; and
  - (iv) not appoint the Approved Divestiture Agent, or have any agreements, understandings or arrangements with the Approved Divestiture Agent, to utilise the Approved Divestiture Agent's services for anything other than compliance with the Undertaking until at least 12

months after the Approved Divestiture Agent ceases to act in the role of the Approved Divestiture Agent;

- (d) within three days of receipt of a notice from the ACCC pursuant to clause 6.2 which states that the ACCC has approved an Approved Purchaser pursuant to clause 6.7(a), InvoCare must instruct the Approved Divestiture Agent to complete the sale of the Divestiture Businesses to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6(a); and
- (e) other than in accordance with clause 9.3(d) of the Undertaking, not instruct the Approved Divestiture Agent to sell the Unsold Business.

### **Approval of the Approved Divestiture Agent**

- 9.4 If at the end of the Initial Sale Period, the sale of the Divestiture Businesses has not been completed, on the following Business Day InvoCare must, unless otherwise agreed by the ACCC before the end of the Initial Sale Period, provide the ACCC with:
- (a) a Proposed Divestiture Agent Notice; and
  - (b) if no Approved Independent Manager is appointed, a Proposed Independent Manager Notice.
- 9.5 After receiving a Proposed Divestiture Agent Notice, the ACCC will decide whether to:
- (a) approve the appointment of the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent which includes approving:
    - (i) the terms of appointment attached to the Proposed Divestiture Agent Notice;
    - (ii) the draft business sale agreement attached to the Proposed Divestiture Agent Notice; and
    - (iii) the draft marketing and sale plan attached to the Proposed Divestiture Agent Notice; or
  - (b) not approve the appointment of the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent.
- 9.6 If the ACCC does not approve the appointment of the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent, the ACCC will, at its absolute discretion,

- (a) identify and approve a person as the Approved Divestiture Agent which includes approving:
    - (i) the terms of appointment of the Approved Divestiture Agent; and
    - (ii) a draft business sale agreement and draft marketing and sale plan; and
  - (b) direct InvoCare to appoint pursuant to clause 9.11 the Approved Divestiture Agent on the Approved Terms of Appointment.
- 9.7 Without limiting the ACCC's discretion, in making the decisions described in clause 9, the factors to which the ACCC may have regard include:
- (a) whether the person named in the Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
  - (b) whether the person named in the Proposed Divestiture Agent Notice or identified by the ACCC is independent of InvoCare;
  - (c) whether the terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with the Undertaking;
  - (d) the proposed date of appointment pursuant to the terms of appointment;
  - (e) that the terms of appointment do not provide for remuneration to be commission based; and
  - (f) whether the terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.
- 9.8 Within 10 Business Days of receiving a Proposed Divestiture Agent Notice, the ACCC will notify InvoCare in writing of its decisions made pursuant to this clause.
- 9.9 The ACCC may extend the period within which it will provide the notice described in clause 9.8 by notifying InvoCare in writing of the extension within 10 Business Days of receiving the Proposed Divestiture Agent Notice.
- 9.10 The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any

information provided to it by the Parties or the Approved Divestiture Agent was incorrect, inaccurate or misleading.

### **Appointment of the Approved Divestiture Agent**

- 9.11 After receiving notice from the ACCC of any decisions pursuant to clause 9.5(a) or clause 9.6 and by no later than the date of appointment in the Approved Terms of Appointment, InvoCare must:
- (a) appoint the person approved by the ACCC pursuant to clause 9.5(a) or 9.6 as the Approved Divestiture Agent on the Approved Terms of Appointment; and
  - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment within one Business Day of its execution.

### **Obligations and powers of the Approved Divestiture Agent**

- 9.12 InvoCare must procure that the terms of appointment of the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:
- (a) maintain his or her independence from InvoCare, apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in clause 2(c) of Schedule 3 to the Undertaking with InvoCare for the period of his or her appointment;
  - (b) not disclose or use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
  - (c) ensure that InvoCare complies with its obligations pursuant to the Undertaking;
  - (d) follow the Approved Marketing and Sale Plan;
  - (e) divest the Unsold Business only to an Approved Purchaser with no obligation imposed by InvoCare to achieve a sale at a minimum price;
  - (f) must use his or her best endeavours to enter into a binding agreement for the sale of the Unsold Business as quickly as possible, using the Approved Business Sale Agreement;
  - (g) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to the Undertaking;

- (h) every 30 Business Days following appointment as the Approved Divestiture Agent provide written reports directly to the ACCC which include:
  - (i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
  - (ii) information regarding any suggested changes to the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
  - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
  - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 9.14(d));
  - (v) the efforts made to sell the Unsold Business;
  - (vi) the identity of any advisers engaged;
  - (vii) the identity of any persons expressing interest in the Unsold Business; and
  - (viii) any other information required by the ACCC;
- (i) within 30 Business Days of the completion of the sale of the Divestiture Businesses, provide a written report directly to the ACCC which includes a final accounting of:
  - (i) any moneys derived from the divestiture of the Unsold Business;
  - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
  - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 9.14(d));
- (j) immediately inform the ACCC of:
  - (i) any issues that arise in relation to the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan;

- (ii) non-compliance with the Undertaking by any person named in the Undertaking;
- (iii) any offers for the Unsold Business;
- (k) immediately accept any offer for the Unsold Business upon instruction from InvoCare given in accordance with clause 9.3(d); and
- (l) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to the Undertaking.

9.14 InvoCare must procure that the terms of appointment of the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:

- (a) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with the Undertaking and the Approved Marketing and Sale Plan;
- (b) execute any agreements with the Approved Purchaser required pursuant to clause 6;
- (c) upon instruction pursuant to clause 9.3(d), complete the sale of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and
- (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.

9.15 Any irrevocable power of attorney granted pursuant to clause 9.14 will end upon revocation of approval, resignation or termination of the Approved Divestiture Agent in accordance with clauses 9.10, 9.16 or 9.17 or in the event that the Unsold Business is sold in accordance with the Undertaking.

#### **Resignation or termination of the Approved Divestiture Agent**

9.16 InvoCare must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the sale of the Unsold Business.

9.17 The ACCC may approve any proposal by, or alternatively may direct, InvoCare to terminate the appointment of the Approved Divestiture

Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of the Undertaking.

- 9.18 If clauses 9.10, 9.16 or 9.17 apply then InvoCare must provide a Proposed Divestiture Agent Notice within 10 Business Days.

## **10. Ownership Statement**

### **Statement of InvoCare ownership**

- 10.1 For a period of 60 calendar months from the date which is 6 calendar months after the Completion Date or such earlier date as notified by InvoCare to the ACCC, in respect of all marketing and advertising in the Brisbane metropolitan area of each of the InvoCare Brands, InvoCare will include the Ownership Statement.
- 10.1A The Ownership Statement must, in all cases, be visible and clear.
- 10.2 For the purposes of fulfilling its obligations in clause 10.1, InvoCare will use the Ownership Statement, in the following manner where a brand name is used to denote a brand:
- (a) For text based consumer marketing materials created by or on behalf of InvoCare being brochures, flyers, newspapers, advertorials, magazines and business directory advertisements (excluding death and funeral notices, ASX announcements, annual and half yearly reports), posters, poster billboards, bus backs, pull up banners, business letterheads and other business forms setting out quotations, contracts and arrangements:
    - (i) the Ownership Statement must be used once in conjunction with the use of the brand name; and
    - (ii) irrespective of where it is included in the relevant marketing materials, the font for the Ownership Statement is to be no less than one third of the size of the largest text depiction of the brand name (for example, a 16 point font Ownership Statement for a 48 point text depiction) or 10 point, whichever is the larger.
  - (aa) Where text based marketing materials have four or more pages, the Ownership Statement will appear on the front page or the inside front page.
  - (b) For InvoCare's online websites, the Ownership Statement is to be included on the home page, location page and 'about us' page and the font of the Ownership Statement is to be no less

than one third of the size of the largest depiction of the brand name or 10 point whichever is the larger on the relevant page.

- (c) For television advertising which uses a brand name the Ownership Statement must be used once on the last visual frame and the font of the Ownership Statement is to be no less than one third of the size of the largest depiction of the brand name or 10 point whichever is the larger.
- (d) For radio advertising which uses a brand name the Ownership Statement must be used once in the last sentence of the voice over in the same delivery as the delivery of the brand name.
- (e) In respect of each retail business location, InvoCare will display in the reception the Ownership Statement in a sign with font of 70 point.

10.3 The ACCC may approve exceptions to clause 10.2 if, in the ACCC's opinion, InvoCare's alternative solution clearly identifies to the audience of the advertising and marketing materials that InvoCare is the owner of the relevant brand.

## **11. Independent Audit**

### **Obligation to appoint an Approved Independent Auditor**

11.1 From the Commencement Date, the Parties must appoint and maintain an Approved Independent Auditor to audit and report upon the Parties' compliance with the Undertaking including:

- (a) the divestiture of the Divestiture Businesses including any agreements that continue after the completion of the sale of the Divestiture Businesses; and
- (b) the Ownership Statement obligations in clause 10.

11.2 Without limiting the Parties' obligations in the Undertaking, the Parties must:

- (a) comply with and enforce the 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) indemnify 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) provide and pay 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) direct the Parties' personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 11;
  - (ii) provide access to the facilities, sites or operations of the Divestiture Businesses and the Parties' other businesses as required by the Approved Independent Auditor;
  - (iii) provide to the Approved Independent Auditor any information or documents requested by the Approved Independent Auditor that he or she considers necessary for carrying his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
  - (iv) not request 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 appoint the Approved Independent Auditor, or have any agreements, understandings or arrangements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with the Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

**Approval of Mr David Merryweather of KordaMentha as the Approved Independent Auditor**

11.3 The Parties have provided the ACCC with a Proposed Independent Auditor Notice for Mr David Merryweather following which the ACCC:

- (a) considered the Proposed Independent Auditor notice in accordance with the process described in clause 11.4; and

- (b) approved the appointment of Mr David Merryweather as the Approved Independent Auditor pursuant to clause 11.4(a) as a precondition to ACCC acceptance of the Undertaking, which included approving the Approve Terms of Appointment and the Approved Audit Plan.

#### **Approval of the Proposed Independent Auditor**

11.4 After receiving a Proposed Independent Auditor Notice, the ACCC will decide whether to:

- (a) approve the appointment of the person named in the Proposed Independent Auditor Notice as the Approved Independent Auditor which includes approving:
  - (i) the terms of appointment attached to the Proposed Independent Auditor Notice; and
  - (ii) the draft audit plan attached to the Proposed Independent Auditor Notice; or
- (b) not approve the appointment of the person named in the Proposed Independent Auditor Notice as the Approved Independent Auditor.

11.5 If the ACCC does not approve the appointment of the person named in Proposed Independent Auditor Notice as the Approved Independent Auditor, the ACCC will, at the ACCC's absolute discretion:

- (a) identify and approve a person as the Approved Independent Auditor which includes approving:
  - (i) the terms of appointment of the Approved Independent Auditor; and
  - (ii) a draft audit plan; and
- (b) direct InvoCare to appoint pursuant to clause 11.11 the Approved Independent Auditor on the Approved Terms of Appointment.

11.6 Without limiting the ACCC's discretion, in making the decisions described in clause 11, the factors to which the ACCC may have regard include:

- (a) whether the person named in 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) whether the person named in the Proposed Independent Auditor Notice or identified by the ACCC is independent of the Parties;
  - (c) whether the terms of appointment and the draft audit plan are consistent with the Undertaking;
  - (d) the proposed date of appointment pursuant to the terms of appointment; and
  - (e) whether the terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.
- 11.7 Within 10 Business Days of receiving a Proposed Independent Auditor Notice, the ACCC will notify the Parties in writing of its decisions made pursuant to this clause.
- 11.8 The ACCC may extend the period within which it will provide the notice described in clause 11.7 by notifying the Parties in writing of the extension within 10 Business Days of receiving the Proposed Independent Auditor Notice.
- 11.9 Any extension of time by the ACCC under clause 11.8 extends the Initial Sale Period by the same length of time.
- 11.10 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 by the Parties or the Approved Independent Auditor was incorrect, inaccurate or misleading.

#### **Appointment of the Approved Independent Auditor**

- 11.11 After receiving notice from the ACCC of any decisions pursuant to clause 11.4(a) or 11.5 and by no later than the date of appointment in the Approved Terms of Appointment, the Parties must:
- (a) appoint the person approved by the ACCC pursuant to clause 11.4(a) or clause 11.5 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 within one Business Day of its execution.

#### **Obligations and powers of the Approved Independent Auditor**

- 11.12 The Parties must procure that the terms of appointment of the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
- (a) maintain his or her independence from the Parties, apart from appointment to the role of Approved Independent Auditor,

including not form any relationship of the types described in clause 2(c) or 2(d) of Schedule 3 to the Undertaking with the Parties for the period of his or her appointment;

- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) provide a scheduled written Auditor's Report as described in clauses 11.14 and 11.15;
- (d) immediately inform the ACCC of:
  - (i) any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor;
  - (ii) non-compliance with the Undertaking by any person or Undertaking Appointment named in the Undertaking; 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 the Undertaking.

11.13 The Parties must procure that the terms of appointment of the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access the facilities, sites or operations of the Divestiture Businesses and the Parties' 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**

11.14 The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Auditor's Report**) on:

- (a) the Parties' compliance with the Undertaking;
- (b) all of the reasons for the conclusions reached in the Auditor's Report;

- (c) any qualifications made by the Approved Independent Auditor in forming his or her views;
- (d) any recommendations by the Approved Independent Auditor to improve the Approved Audit Plan, the integrity of the auditing process and any recommendations to improve the Parties' processes or reporting systems in relation to compliance with the Undertaking; and
- (e) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.

11.15 The Approved Independent Auditor is to provide an Auditor's Report to the ACCC and the Parties at the following times:

- (a) within 10 Business Days of the Commencement Date, at which time the Auditor's Report is to include the results of the establishment audit;
- (b) every month from the date of the first Auditor's Report until the first month after completion of the sale of the Divestiture Businesses; and
- (c) every three months after the date of provision of the last Auditor's Report pursuant to clause 11.15(b), until the ACCC confirms in writing to the Parties that it is satisfied that the obligations in clauses 5, 6, 7, 8, 9, and 10 as relevant have been satisfied.

11.16 The Parties must implement any recommendations of the Approved Independent Auditor made in the Auditor's Report, and notify the ACCC of the implementation of the recommendations, within 10 Business Days of receiving the Auditor's Report or after a period agreed with the ACCC.

11.17 The Parties must comply with any direction of the ACCC in relation to matters arising from the Auditor's Report within 10 Business Days of being so directed (or such longer period as agreed with the ACCC).

#### **Resignation or termination of the Approved Independent Auditor**

11.18 The Parties must immediately notify the ACCC in the event that an Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor before the ACCC has provided a written notice to the Parties pursuant to clauses 4.1, 4.2 or 4.3.

11.19 The ACCC may approve any proposal by, or alternatively may direct, the Parties to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts

inconsistently with the provisions of this Undertaking or the terms of his or her appointment.

- 11.20 If clause 11.10, 11.18 or 11.19 applies, the Parties must provide the ACCC with a Proposed Independent Auditor Notice within 10 Business Days of the resignation or termination of the Approved Independent Auditor.

## **12. Information**

- 12.1 The Parties must notify the ACCC and each Undertaking Appointment in writing of the proposed date of each of the following events at least least one Business Day before that date:
- (a) the completion of the Proposed Acquisition; and
  - (b) the completion of the sale of the Divestiture Businesses.
- 12.2 The Parties must notify the ACCC and each Undertaking Appointment in writing of the occurrence of each of the following events within one Business Day after the date the event occurs:
- (a) the completion of the Proposed Acquisition; and
  - (b) the completion of the sale of the Divestiture Businesses.
- 12.3 The ACCC may direct the Parties in respect of the Parties' compliance with this Undertaking to, and the Parties must:
- (a) furnish information, documents and materials to the ACCC in the time and in the form requested by the ACCC;
  - (b) produce information, documents and materials to the ACCC within the Parties' custody, power or control in the time and in the form requested by the ACCC; and/or
  - (c) direct its personnel, including its directors, contractors, managers, officers, employees and agents, to attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have.
- 12.4 Any direction made by the ACCC under clause 12.3 will be notified to the Parties, in accordance with clause 17.2 and 17.3 as applicable.
- 12.5 In respect of the Parties' 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, documents and materials to the ACCC in the time and in the form requested by the ACCC;
  - (b) produce information, 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.
- 12.6 The Parties will use their best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 12.5.
- 12.7 Information furnished, documents and materials produced or information given in response to any request or direction from the ACCC under this clause 12 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 12.8 The ACCC may, in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 12; 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 12.
- 12.9 Nothing in this clause 12 requires the provision of information or documents in respect of which the Parties have a claim of legal professional or other privilege.

### **13. Disclosure of the Undertaking**

- 13.1 The Parties and the ACCC agree that Schedule 4 to the Undertaking will remain confidential until after the completion of the sale of the Divestiture Business.
- 13.2 The Parties acknowledges that the ACCC may provide each Undertaking Appointment with a copy of the Undertaking which includes an unredacted Schedule 4 to the Undertaking.
- 13.3 The Parties acknowledges that the ACCC may, subject to clause 13.1:
- (a) make this Undertaking publicly available;

- (b) publish this Undertaking on its public Section 87B Undertakings Register; and
  - (c) from time to time publicly refer to this Undertaking.
- 13.4 Nothing in this clause 13 prevents the ACCC from disclosing such information as:
  - (a) is required by law;
  - (b) is permitted by section 155AAA of the Act;
  - (c) is necessary for the purpose of enforcement action under section 87B of the Act; or
  - (d) is necessary for the purpose of making such market enquiries as the ACCC thinks fit to assess the impact on competition arising in connection with the Undertaking.
- 13.5 Nothing in this clause 13 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory function and powers.

#### **14. Obligation to procure**

- 14.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of the Parties to take or refrain from taking some action, InvoCare will procure that the Related Body Corporate to take or refrain from taking that action, as the case may be.

#### **15. No derogation**

- 15.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the duration of this Undertaking in respect of any breach by the Parties of any term of this Undertaking.
- 15.2 Nothing in this Undertaking is intended to restrict the ACCC's right to take action under the Act for penalties or other remedies in the event that the Parties do not fully implement and/or perform their obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

#### **16. Costs**

- 16.1 The Parties must pay its own costs incurred in relation to this Undertaking.

## 17. Notices

### Service of notices

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

Email address: [mergers@accc.gov.au](mailto:mergers@accc.gov.au),  
Executive General Manager  
Mergers and Acquisitions Group

With an email copy sent to:

[mergersucu@accc.gov.au](mailto:mergersucu@accc.gov.au)  
Director  
Undertaking Compliance Unit  
Merger Coordination and Strategy  
Branch

- 17.2 Any notice or other communication to InvoCare or to Bledisloe after the Completion Date pursuant to this Undertaking must be sent to:

Name: InvoCare Limited  
Attention: Andrew Smith, Chief Executive Officer  
Address: Level 4, 153 Walker Street North Sydney NSW  
2060  
Email: [andrew.smith@invocare.com.au](mailto:andrew.smith@invocare.com.au)

- 17.3 Until the Completion Date, any notice or other communication to Bledisloe pursuant to this Undertaking must be sent to:

Name: Bledisloe Group Holdings Pty Ltd  
Attention: Phil Wikman  
Address: Level 11, 300 Ann Street Brisbane 4000  
Email: [pwikman@bledisloe.com.au](mailto:pwikman@bledisloe.com.au)

### Change of address or fax number

- 17.4 If either of the Parties or the ACCC gives the other three Business Days notice of a change to its address or fax number, any notice or communication is only given to the relevant entity if it is delivered, posted or faxed to the most recently advised address or fax number.

## **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 Clause 1 of Schedule 1 to the Undertaking (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 Clause 2 of Schedule 1 to the Undertaking sets out rules of interpretation for the Undertaking.

**Executed** as an Undertaking

**Executed** by InvoCare Limited ACN 096 437 393 pursuant to section 127(1) of the *Corporations Act 2001*



Signature of director

IAN FERRIER

Name of director (print)

7 JUNE 2011

Date



Signature of a director/~~company secretary~~  
[Please delete as applicable]

ANDREW SMITH

Name of director/~~company secretary~~  
[Please delete as applicable] (print)

7 JUNE 2011

Date

**Executed** by Bledisloe Group Holdings Pty Ltd ABN 59 067 304 545 pursuant to section 127(1) of the *Corporations Act 2001*



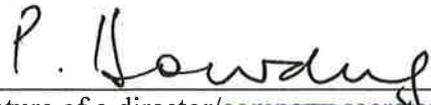
Signature of director

Paul Francis Williams

Name of director (print)

8 June 2011

Date



Signature of a director/~~company secretary~~  
[Please delete as applicable]

Peter Dowding

Name of director/~~company secretary~~  
[Please delete as applicable] (print)

8 June 2011

Date

**Executed** by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010*



Graeme Julian Samuel  
Chairman

8 June 2011

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).

**Approved Audit Plan** means the plan approved by the ACCC under clause 11.3(b), 11.4(a)(ii) or clause 11.5(a)(ii), as amended from time to time by ACCC direction given under clause 11.12(e), by which the Approved Independent Auditor will audit and report upon compliance with the Undertaking.

**Approved Business Sale Agreement** means the standard form contract for the sale of the Unsold Business which has been approved by the ACCC pursuant to clause 9.5(a)(ii) or clause 9.6(a)(ii) and as amended from time to time by ACCC direction given under clause 9.13(l).

**Approved Divestiture Agent** means the person appointed under clause 9.11.

**Approved Independent Auditor** means the person appointed under clause 11.11.

**Approved Independent Manager** means the person appointed under clause 8.12.

**Approved Interim Supply Agreement** means any agreement approved by the ACCC under clause 6.7(a)(iii) and as amended from time to time under clause 6.11.

**Approved Marketing and Sale Plan** means the plan approved by the ACCC under clause 9.5(a)(iii) or clause 9.6(a)(ii), as amended from time to time by ACCC direction given under clause 9.13(l), by which the Approved Divestiture Agent will market and effect the sale of the Unsold Business.

**Approved Purchaser** means Albert and Meyer Pty Limited or one or more Proposed Purchasers approved by the ACCC in accordance with clause 6.6(a).

**Approved Sale and Purchase Agreement** means a contract approved by the ACCC under clause 6.6(b) or clause 6.7(a)(i) and as amended from time to time under clause 6.11.

**Approved Separation and Management Plan** means the plan approved by the ACCC under clause 8.4(b), clause 8.5(a)(ii) or clause 8.6(a)(ii), as amended from time to time by ACCC direction given under clause 8.13(h), by which the Approved Independent Manager will:

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

**Approved Technical Assistance Agreement** means any agreement approved by the ACCC pursuant to clause 6.7(a)(ii) and as amended from time to time under clause 6.11.

**Approved Terms of Appointment** means, in relation to:

- (a) the Approved Independent Manager, the terms of appointment approved by the ACCC pursuant to clause 8.5(a)(i) or clause 8.6(a)(i);
- (b) the Approved Divestiture Agent, the terms of appointment approved by the ACCC pursuant to clause 9.5(a)(i) or clause 9.6(a)(i);
- (c) the Approved Independent Auditor, the terms of appointment approved by the ACCC pursuant to clause 11.4(a)(i) or clause 11.5(a)(i).

**Auditor's Report** has the meaning referred to in clause 11.14.

**Bledisloe** means Bledisloe Group Holdings Pty Ltd (ACN 117 060 134) and its Subsidiaries.

**Business Day** means a day on which trading banks are open for business in Australian Capital Territory, Australia but does not include any Saturday, Sunday or public holiday.

**Commencement Date** means the date described in clause 3.1.

**Completion Date** means the date on which the Proposed Acquisition is completed.

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

**Divestiture Businesses** means the Sydney Divestiture Businesses or the Brisbane Divestiture Business or both.

**Initial Sale Period** means the relevant period specified in Confidential Schedule 4.

**InvoCare** means InvoCare Limited (ACN 096 437 393) and its Related Bodies Corporate.

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

**Material Change** means any change to the structure, attributes, extent or operations of the Divestiture Businesses that may affect, or impact on, the Divestiture Businesses' competitiveness, independence from InvoCare and their viability.

**Ownership Statement** means the phrase "A proud member of InvoCare".

**Parties** means InvoCare and Bledisloe both jointly and severally.

**Proposed Acquisition** is defined in clause 2.3

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

**Proposed Divestiture Agent Notice** means a completed notice in the form of Schedule 3 to the Undertaking provided to the ACCC with all required attachments in relation to a Proposed Divestiture Agent.

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

**Proposed Independent Auditor Notice** means a completed notice in the form of Schedule 3 to the Undertaking provided to the ACCC with all required attachments in relation to a Proposed Independent Auditor.

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

**Proposed Independent Manager Notice** means a completed notice in the form of Schedule 3 to the Undertaking provided to the ACCC with all required attachments in relation to a Proposed Independent Manager.

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

**Proposed Purchaser Notice** means a completed notice in the form of Schedule 2 to the Undertaking provided to the ACCC with all required attachments in relation to a Proposed Purchaser.

**Related Bodies Corporate** has the meaning given in section 4A of the Act.

**Subsidiary** has the meaning given in section 4A of the Act.

**Third Party Consents** means any consents (excluding Government Consents) required by the Approved Purchaser and necessary for the conduct of the Divestiture Businesses to the assignment, novation, sale, sub-licensing or transfer of any assets, licences, material contracts, permits or approvals used in the Divestiture Businesses.

**Transferred Personnel** is defined in clause 5.4.

**Undertaking** is a reference to all provision 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.

**Unsold Business** has the meaning given to it in clause 9.1.

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## 2 Interpretation

2.1 In the interpretation of this Undertaking, the following provisions apply unless the context requires otherwise:

- (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, that 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, other than Bledisloe, includes its Related Bodies Corporate. A reference to Bledisloe includes its Subsidiaries.
- (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 has a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has the 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”, “include”, “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) shall 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 this paragraph, or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to:
  - (i) the 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) the need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns.
- (o) The ACCC may authorise the 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, InvoCare 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 all its successors and permitted assigns; and
  - (iii) a monetary amount is in Australia dollars.

## Schedule 2 – Proposed Purchaser Notice Form

### Proposed Purchaser Notice

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

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

#### Email

*subject line:*

Proposed Purchaser Notice – InvoCare Bledisloe Undertaking

*email address:*

[mergers@acc.gov.au](mailto:mergers@acc.gov.au),

Executive General Manager  
Mergers and Acquisitions Group

With an email copy sent to:

[mergersucu@acc.gov.au](mailto:mergersucu@acc.gov.au)

Director  
Undertaking Compliance Unit  
Merger Coordination and Strategy Branch

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1. In relation to the Proposed Purchaser, please provide the following information:
  - (a) Name of the Proposed Purchaser:
  - (b) Address:
  - (c) Contact name:
  - (d) Telephone number:
  - (e) Other contact details:
  
2. Please attach a submission containing the following information to this form:

- (a) A description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
- (b) Details of the Proposed Purchaser's experience in the relevant market/s of concern described in clause 2.
- (c) The names of the [owner/s and the directors (delete any that do not apply)] of the Proposed Purchaser.
- (d) A section addressing the factors set out in clause 6.4 of the Undertaking, including any information adverse to the Proposed Purchaser, in the power, possession or control of InvoCare.
- (e) Details of any of the following types of relationships between InvoCare and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
  - i. InvoCare and the Proposed Purchaser are Associated Entities.
  - ii. InvoCare is an Entity Connected with the Proposed Purchaser.
  - iii. The Proposed Purchaser is an Entity Connected with InvoCare.
  - iv. InvoCare and the Proposed Purchaser are Related Entities.
  - v. InvoCare and the Proposed Purchaser are Related Parties.
  - vi. Any Related Party, Related Entity or Entity Connected with InvoCare is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser.
  - vii. Any Related Party, Related Entity or Entity Connected with InvoCare has had a Relationship with a Related Party, Related Entity or Entity Connected with the Proposed Purchaser within the past three years.
  - viii. InvoCare and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form.
  - ix. The Proposed Purchaser is a supplier of InvoCare or has been in the past three years.

- x. InvoCare is a supplier of the Proposed Purchaser or has been in the past three years.
  - xi. Any other relationship between InvoCare and the Proposed Purchaser that allows one to affect the business decisions of the other.
3. Please also attach to this form:
- (a) The finalised draft of the sale and purchase agreement for approval by the ACCC pursuant to clause 6.6(b)(i) or 6.7(a)(i).
  - (b) The finalised draft of any technical assistance agreement, for approval by the ACCC pursuant to clause 6.7(a)(ii).
  - (c) The finalised draft of any interim supply agreement for approval by the ACCC pursuant to clause 6.7(a)(iii).
  - (d) Any documents required to support the information provided by InvoCare pursuant to this form.

## Schedule 3 – Proposed Undertaking Appointment Notice Form

### Proposed [please delete one: Independent Auditor/Divestiture Agent/Independent Manager] Notice

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

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

#### Email

*subject line:*

Proposed [please delete one: Independent Auditor/Divestiture Agent/Independent Manager] Notice – InvoCare Bledisloe Undertaking

*email address:*

*mergers@accc.gov.au*,

Executive General Manager  
Mergers and Acquisitions Group

With an email copy sent to:

*mergersucu@accc.gov.au*

Director  
Undertaking Compliance Unit  
Merger Coordination and Strategy Branch

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1. In relation to the Proposed [please delete one: Independent Auditor/Divestiture Agent/Independent Manager], please provide the following information:
  - (a) Name of the Proposed [please delete one: Independent Auditor/Divestiture Agent/Independent Manager]  
[insert name of proposed undertaking appointment]
  - (b) Name of the employer of the Proposed [please delete one: Independent Auditor/Divestiture Agent/Independent Manager]  
[insert full name of employer of proposed undertaking appointment]  
**[name of employer]**

- (c) Address:
  - (d) Contact name:
  - (e) Telephone number:
  - (f) Other contact details:
2. Please attach a submission containing the following information to this form:
- (a) Details of [insert name of proposed undertaking appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
  - (b) The names of the [owner/s and the directors (delete any that do not apply)] of [insert name of employer].
  - (c) Details of any of the following types of relationships between InvoCare and [insert name of proposed undertaking appointment] or [insert name of employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
    - i. InvoCare and [insert name of employer] are Associated Entities.
    - ii. InvoCare is an Entity Connected with [insert name of employer].
    - iii. [insert name of employer] is an Entity Connected with InvoCare.
    - iv. InvoCare and [insert name of employer] are Related Entities.
    - v. InvoCare and [insert name of employer] are Related Parties.
    - vi. Any Related Party, Related Entity or Entity Connected with InvoCare is a Related Party, Related Entity or Entity Connected with [insert name of proposed undertaking appointment].
    - vii. Any Related Party, Related Entity or Entity Connected with InvoCare has had a Relationship with a Related Party, Related Entity or Entity Connected with [insert name of proposed undertaking appointment] within the past three years.

- viii. InvoCare and [insert name of proposed undertaking appointment] or [insert name of employer] have a contractual relationship or had one within the past three years, other than those attached to this form.
  - ix. [insert name of employer] is a supplier of InvoCare or has been in the past three years.
  - x. InvoCare is a supplier of the [insert name of employer] or has been in the past three years.
  - xi. Any other relationship between InvoCare and [insert name of proposed undertaking appointment] or [insert name of employer] that allows one to affect the business decisions of the other.
- (d) For a Proposed Independent Auditor, details of any of relationships equivalent to those listed in clause 2(c) of this Schedule, between Bledisloe and [insert name of proposed undertaking appointment] or [insert name of employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:

3. Please also attach to this form:

- (a) The finalised draft of the terms of appointment of the Proposed [please delete one: Independent Auditor/Divestiture Agent/Independent Manager], including:
  - (i) the proposed date of appointment; and
  - (ii) the proposed fees.

Delete all but one as relevant:

A. Proposed Independent Auditor

- (b) The finalised draft audit plan for the Divestiture Businesses, 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 Auditor's Reports to be submitted under clause 11.14 of the Undertaking.

B. Proposed Divestiture Agent

- (b) The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with InvoCare. The draft business sale agreement is to provide for the sale of the Divestiture Businesses.
- (c) The Proposed Divestiture Agent's draft marketing and sale plan for the Divestiture Businesses.

C. Proposed Independent Manager

- (b) The finalised draft separation and management plan for the Divestiture Businesses detailing the measures and their timing that will be implemented by InvoCare and the Approved Independent Manager in order to fulfil InvoCare's and the Approved Independent Manager's obligations pursuant to the Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with InvoCare to achieve the relevant Undertaking objectives in clause 2 and include:
- (i) the intended mode of operation of the Divestiture Businesses until completion of sale;
  - (ii) a proposed financial plan for the Divestiture Businesses until completion of sale;
  - (iii) separation measures to ensure the Divestiture Businesses are operated in a manner which is financially and operationally separate from InvoCare, including the:
    - A. separation of the books and records of the Divestiture Businesses from those of InvoCare;
    - B. severance of the Divestiture Businesses' participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Businesses;
    - C. implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and
    - D. severance of arrangements to share personnel and plant between the Divestiture Businesses and any businesses to be retained by InvoCare, to the extent possible without compromising the viability of the Divestiture Business;
  - (iv) details of contracts for the provision of goods or services to the Divestiture Businesses which will expire during the Initial Sale Period and the actions which will be taken to ensure they are replaced on commercial terms favourable to the Divestiture Business;
  - (v) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Businesses have access to the correct personnel necessary to operate the Divestiture Businesses;
  - (vi) any Material Changes to the Divestiture Businesses required in order to fulfil InvoCare's and the Approved

Independent Manager's obligations pursuant to the Undertaking;

- (vii) the cooperation required from the Independent Manager with InvoCare in relation to the divestiture of the Divestiture Businesses, including:
  - A. the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Businesses will be managed; and
  - B. the method by which the Independent Manager and InvoCare will preserve the confidentiality of the Divestiture Businesses' competitively sensitive information from InvoCare and its advisers throughout this process; and
- (viii) a protocol whereby the Approved Independent Manager can provide any information required by InvoCare pursuant to clause 7.6 of the Undertaking without disclosing the details of the Divestiture Businesses' competitively sensitive information to InvoCare.

**Schedule 4 – Confidential Clauses**

[Confidential material excluded  
from Public Register.]

## Schedule 5 – Divestiture Businesses

### 1. Sydney Divestiture Businesses

InvoCare proposes to divest the Gregory & Carr brand name, the assets (including pre-paid funeral plans), stock and vehicles associated with the following funeral service locations:

Locations	Highlighted Facilities
Gregory & Carr, Gordon	<ul style="list-style-type: none"><li>• Chapel</li><li>• Arrangement rooms</li><li>• Mortuary</li><li>• Garage space for hearses</li><li>• Administrative offices</li></ul>
Gregory & Carr, Mona Vale	<ul style="list-style-type: none"><li>• Shopfront</li></ul>
Gregory & Carr, Brookvale	<ul style="list-style-type: none"><li>• Shopfront</li></ul>

### 2. Brisbane Divestiture Business

InvoCare proposes to divest the following cremation services business:

Business	Highlighted Facilities
Great Northern Garden of Remembrance, Deception Bay	<ul style="list-style-type: none"><li>• Funeral service facilities (currently trading as Metropolitan Funerals)</li><li>• Cremator (one)</li><li>• Chapel (one)</li></ul>

## Schedule 6 – InvoCare Brands

### 1. Brisbane Funeral Directing Services

Brand	Locations
Simplicity	Buranda
	Kedron
	Logan
	Strathpine
	J&H Reed / Simplicity Funerals, Ipswich
White Lady	Tanah Merah
	Chelmer
	Kelvin Grove
	Morningside
George Hartnett	Redcliffe
	Wynnum
	Cleveland
	Albany Creek
	Sandgate
	Holland Park
Cannon & Cripps	Cannon & Cripps
Value Funerals Qld	Value Funerals Qld
No Frills Funerals	N/A
<b>Purchased Bledisloe brand / locations</b>	
Metropolitan	Aspley
	Petrie
	Redcliffe
	Mt Gravatt
	Cleveland
	Springwood
	Wynnum
	Toowong