

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by Veolia
Environnement S.A and its subsidiary, Veolia
Environmental Services (Australia) Pty Ltd (ACN
051 316 584)

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1 Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Veolia Environnement S.A and its subsidiary, Veolia Environmental Services (Australia) Pty Ltd (ACN 051 316 584) (together referred to as **Veolia** in this Undertaking).

2 Background

- 2.1 **Acquirer:** Veolia Environnement S.A is a listed company headquartered in France (Euronext: VIE) that provides water, waste, and energy management solutions to both industrial and municipal clients. Veolia Environnement S.A provides waste management services in Australia through its subsidiary Veolia Environmental Services (Australia) Pty Ltd.
- 2.2 **Target:** Suez S.A is a listed holding company headquartered in France (Euronext: SEV). It owns 100% of the share capital of SUEZ Group SAS. It provides water and waste management solutions to industrial and municipal clients. Suez S.A operates in Australia through various wholly-owned subsidiaries.

The Proposed Acquisition

- 2.3 Veolia acquired a 29.9% stake in Suez from Engie on 5 October 2020.
- 2.4 Veolia proposes to acquire the remaining shares in Suez that it does not already own pursuant to the Combination Agreement between Veolia and Suez dated 14 May 2021 (**Proposed Acquisition**). As part of the Proposed Acquisition, Veolia will acquire the following businesses from Suez:
- (a) its Australian waste management business;
 - (b) all of Suez's Australian water businesses that are currently operated by Suez Water & Technological Solutions S.A., or any of its subsidiaries.

The ACCC's review

- 2.5 On 19 February 2021, the ACCC commenced its public review of the Proposed Acquisition.
- 2.6 The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.7 The ACCC has concluded that, in the absence of this Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the market for dry commercial and industrial (**C&I**) waste disposal servicing Adelaide (**Adelaide Dry C&I Waste Disposal Market**).

- 2.8 Veolia has a joint venture interest in IWS, and Suez has a joint venture interest in Suez ResourceCo. Through their joint ventures, Veolia and Suez operate two of the three main dry waste disposal facilities in the north Adelaide region used by C&I collections companies.
- 2.9 The ACCC was concerned that the Proposed Acquisition would remove Suez ResourceCo as a key source of competitive constraint on IWS and the other landfills servicing the Adelaide region, potentially leading to increased prices for dry C&I waste disposal post-acquisition. The sale of Veolia's interest in IWS will ensure IWS remains as an independent competitor in the Adelaide region.

The Undertaking remedy

- 2.10 Veolia does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. However, to address the ACCC's competition concerns, Veolia has offered this Undertaking pursuant to section 87B of the Act.
- 2.11 The objective of this Undertaking is to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by placing obligations on Veolia to:
- (a) ensure that the Divestiture Interest is sold to an Approved Purchaser that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long term competitor for the Adelaide Dry C&I Waste Disposal Market;
 - (b) ensure the purchaser of the Divestiture Interest has all the necessary associated assets and rights to compete effectively with Veolia in the Adelaide Dry C&I Waste Disposal Market;
 - (c) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Interest prior to divestiture; and
 - (d) provide for the effective oversight of Veolia's compliance with this Undertaking.

3 Commencement of this Undertaking

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

4 Cessation of Ongoing Obligations

Withdrawal

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

Revocation

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

Waiver

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

Survival

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

5 Divestiture of the Divestiture Interest

Divestiture

- 5.1 If the FSI Transaction:
- (a) has not completed prior to the Control Date; and
 - (b) has not been terminated or otherwise abandoned prior to the Control Date,
- then Veolia must, from the Control Date, divest, or cause the divestiture of, the Divestiture Interest by the sale, assignment, and transfer of all of the assets in Schedule 4 to FSI, pursuant to the FSI Transaction Agreement and within the Initial Sale Period.
- 5.2 If the FSI Transaction is terminated or otherwise abandoned prior to the end of the Initial Sale Period or does not complete as contemplated by clause 5.1 by the end of the Initial Sale Period, Veolia must divest, or cause the divestiture of the Divestiture Interest by the sale, assignment, and transfer of all assets in Schedule 4 to an Approved Purchaser within the Secondary Sale Period, pursuant to an Approved Sale and Purchase Agreement otherwise clause 10 applies.
- 5.3 Once the Secondary Sale Period has commenced, Veolia must identify prospective buyers for the Divestiture Interest and seek ACCC approval for those prospective buyers pursuant to clause 6.

- 5.4 In the event that clause 10 applies, Veolia must not authorise the Approved Divestiture Agent to divest the Divestiture Interest to a purchaser other than an Approved Purchaser.
- 5.5 Veolia must divest, or cause the divestiture of, the Divestiture Interest by:
- (a) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.6 to 5.7;
 - (b) the transfer of any Transferred Personnel required pursuant to clauses 5.9 to 5.10;
 - (c) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.11 to 5.13; and
 - (d) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.14 to 5.16.

Consents

- 5.6 Veolia must:
- (a) obtain or assist an Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Interest;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in its negotiations with an Approved Purchaser in relation to obtaining any Consents;
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
 - (e) enter an agreement with an Approved Purchaser and approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by an Approved Purchaser, in relation to any goods or services that are required for the operation of IWS which may be affected by any failure to gain a Consent.
- 5.7 If, seven Business Days before completion of the divestiture of the Divestiture Interest an Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then Veolia must:
- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
 - (b) continue to do everything in its power to satisfy clause 5.6 as soon as possible after the completion of the divestiture of the Divestiture Interest (and until such time as clause 5.6 is satisfied).

- 5.8 Even if Veolia has complied with clause 5.6 to 5.7, it remains a breach of this Undertaking if Veolia is unable to effect or cause the divestiture of the Divestiture Interest by reason that one or more Consents are not obtained.

Transferred Personnel

- 5.9 If applicable, at the option of an Approved Purchaser, Veolia must transfer or consent to transfer to the Approved Purchaser:

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

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

- 5.10 When fulfilling its obligations under clause 5.9, Veolia must:

- (a) encourage all Transferred Personnel to remain with IWS including offering incentives based on industry practice;
- (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to Veolia;
- (c) effective on the date of the divestiture of the Divestiture Interest release the Transferred Personnel from any obligations to provide services to Veolia;
- (d) effective on the date of the divestiture of the Divestiture Interest 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 IWS or Unsold Business; and
- (e) not procure, promote or encourage the transfer of any of the Transferred Personnel from an Approved Purchaser to Veolia for a period of 12 months after the completion of the divestiture of the Divestiture Interest.

Technical Assistance

- 5.11 If applicable, at the option of the Approved Purchaser, Veolia must supply, or grant its consent to supply, to an Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by an Approved Purchaser in order to operate IWS.

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

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

- 5.13 To avoid doubt, Veolia must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.11 and 5.12.

Transitional Supply Agreements

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

6 Process for approving a proposed purchaser

Potential purchasers

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

Provision of a notice for a Proposed Purchaser

- 6.2 To seek ACCC approval for a Proposed Purchaser, Veolia or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement where required by the Proposed Purchaser, and a draft transitional supply agreement where required by the Proposed Purchaser.
- 6.3 A Proposed Purchaser Notice may not be provided to the ACCC during the last 20 Business Days of the Initial Sale Period.

Purchaser of the Divestiture Interest approved at the time the Undertaking was accepted

- 6.4 At the time this Undertaking was accepted, the ACCC considered information of the type required in a Proposed Purchaser Notice and approved FSI as the Approved Purchaser of the Divestiture Interest, subject to ACCC approval of any transitional technical assistance agreement and transitional supply agreement proposed to be entered into with FSI in respect of its acquisition of the Divestiture Interest.
- 6.5 ACCC approval of FSI as the Approved Purchaser of the Divestiture Interest included approval of the FSI Transaction Agreement as the Approved Sale and Purchase Agreement.

Approval of a Proposed Purchaser after the Commencement Date

- 6.6 The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in a Proposed Purchaser Notice, which includes consideration of:
- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
 - (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.11 and 5.12; and
 - (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.14 and 5.15.
- 6.7 Without limiting the ACCC's discretion, in making a decision pursuant to clause 6.6, the factors to which the ACCC may have regard include whether:
- (a) the draft sale and purchase agreement is consistent with this Undertaking;
 - (b) a Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) a Proposed Purchaser is independent of Veolia;
 - (d) a Proposed Purchaser is of good financial standing;

- (e) a Proposed Purchaser has an intention to maintain and operate IWS as a going concern;
 - (f) a Proposed Purchaser is able to conduct IWS effectively; and
 - (g) the divestiture of the Divestiture Interest to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of IWS under the ownership of the Proposed Purchaser.
- 6.8 The ACCC may revoke an Approved Purchaser's status as an Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7 Divestiture Interest Protection

Protection of the Divestiture Interest

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

Veolia's obligations in relation to the Divestiture Interest prior to completion of divestiture

- 7.2 Without limiting this clause 7, Veolia must, from the Control Date until completion of the divestiture of the Divestiture Interest, take all steps available to it to:
- (a) ensure that Veolia is not involved in the management or day-to-day operation of the Divestiture Interest or involved in any of the Divestiture Interest decision making processes;
 - (b) ensure that IWS is kept operationally and financially separate from Veolia, including Veolia's management, commercial and operational activities or decisions;
 - (c) ensure that the books and records of IWS are kept separate from those of Veolia, except to the extent necessary for Veolia to comply with the legal and regulatory obligations set out in clause 7.7;
 - (d) ensure that, except as otherwise approved by the Approved Independent Manager, any personnel (including contractors) concerned with the management or operation of IWS are not concerned with the management or operation of any aspect of Veolia's businesses;
 - (e) minimise any risk of loss of competitive potential for IWS;
 - (f) ensure that the Divestiture Interest is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Interest at the Control Date;

- (g) continue to provide access to working capital and sources of credit for IWS in a manner which is consistent with the financing of IWS before the Control Date;
- (h) continue to provide administrative and technical support for IWS in a manner which is consistent with the operation of the Divestiture Interest before the Control Date and in accordance with any plans established before the Control Date;
- (i) continue existing Agreements relating to IWS with customers, suppliers and/or other third parties that are in place at the Control Date;
- (j) renew or replace upon expiry Material Contracts for the provision of goods or services to IWS on commercial terms favourable to IWS;
- (k) maintain the supply of those goods and services that are part of IWS to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;
- (l) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of IWS as at the Control Date;
- (m) carry out promotion and marketing of the products which form part of IWS in accordance with any plans established before the Control Date; and
- (n) carry out such other actions or plans which the Independent Manager considers necessary to maintain IWS as an ongoing competitive concern.

Personnel of Veolia

7.3 From the Control Date until completion of the divestiture of the Divestiture Interest, Veolia must:

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

7.4 As soon as practicable after the Commencement Date, Veolia must direct its personnel, including directors, contractors, managers, officers, employees and

agents not to do anything inconsistent with Veolia's obligations under this Undertaking.

Veolia's ongoing obligations in relation to the Divestiture Interest

- 7.5 To the extent Veolia has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.11 to 5.16 of this Undertaking in relation to IWS, Veolia must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

- 7.6 Subject to clause 7.7, Veolia must not, at any time from the Commencement Date, use or disclose any confidential information about IWS or the Divestiture Interest gained through:
- (a) ownership and/or management of the Divestiture Interest; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.7 Clause 7.6 does not apply to information that Veolia requires to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking;
- provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Veolia who need to know the information to carry out the permitted purpose.

8 Independent Management of the Divestiture Interest

Obligation to appoint an Approved Independent Manager

- 8.1 Veolia must appoint and maintain an Approved Independent Manager to oversee the Divestiture Interest (**Approved Independent Manager**) from the Control Date until the completion of the divestiture of the Divestiture Interest in accordance with this Undertaking.

Process for approving a Proposed Independent Manager

- 8.2 At least 15 Business Days before the Control Date, Veolia must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including a draft terms of appointment and a draft separation and management plan.
- 8.3 If clauses 8.12, 8.13 or 8.14 apply, Veolia must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.

- 8.4 The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- 8.5 Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to oversee the Divestiture Interest;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Veolia;
 - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Manager

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

Failure to appoint

- 8.7 If:
- (a) the Approved Independent Manager has not been appointed by the Control Date;
 - (b) the Approved Independent Manager has not been appointed within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.12, 8.13 or 8.14; or
 - (c) the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.3;

then clause 8.8 applies.

- 8.8 If clause 8.7 applies, the ACCC at its discretion may:
- (a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
 - (b) direct Veolia to appoint a person who the ACCC has deemed is an Approved Independent Manager.

Obligations and powers of the Approved Independent Manager

- 8.9 Veolia must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:
- (a) maintain his or her independence from Veolia, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Veolia for the period of his or her appointment;
 - (b) act in the best interests of the Divestiture Interest at all times including ensuring that the Divestiture Interest is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of IWS at the Control Date;
 - (c) not use any confidential information gained through the management of the Divestiture Interest other than for performing his or her functions as Approved Independent Manager;
 - (d) make only those Material Changes to IWS or the Divestiture Interest which the ACCC does not object to;
 - (e) oversee the Divestiture Interest to the maximum extent practicable, in a manner which is financially and operationally separate from Veolia;
 - (f) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking;
 - (g) provide the following reports directly to the ACCC:
 - (i) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan and the status of the FSI Transaction including progress since the previous report and proposed actions for the upcoming month; and
 - (ii) an immediate report of any issues that arise in relation to the implementation of Approved Separation and Management Plan or Veolia's compliance with this Undertaking and the FSI Transaction; and
 - (h) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.
- 8.10 Veolia must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (a) oversee the Divestiture Interest according to the Approved Separation and Management Plan until the completion of the divestiture of the Divestiture Interest;
 - (b) provide any information requested by Veolia pursuant to the protocol in the Approved Separation and Management Plan;

- (c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Interest or IWS requested by Veolia which is not covered by the protocol in the Approved Separation and Management Plan;
- (d) make decisions on behalf of Veolia to renew or replace upon expiry Material Contracts and enter into new contracts for the provision of goods or services to IWS on commercial terms favourable to IWS;
- (e) engage, redeploy or make redundant personnel employed in the Divestiture Interest or IWS 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.

Veolia's obligations in relation to the Approved Independent Manager

8.11 Without limiting its obligations in this Undertaking, Veolia must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
- (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
 - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
 - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by IWS; and
 - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of IWS, and for the Divestiture Interest to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;

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

Resignation, revocation or termination of the Approved Independent Manager

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

9 Independent Audit

Obligation to appoint an Approved Independent Auditor

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

Process for approving a Proposed Independent Auditor

- 9.2 At least 15 Business Days before the Control Date, Veolia must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3 The Independent Auditor is to be appointed for a term of two years. Within 15 Business Days of the end of the Independent Auditor's term, Veolia must provide the ACCC with a new Proposed Independent Auditor Notice. A person who is, or

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who has been, the Independent Auditor is eligible for reappointment as the Independent Auditor.

- 9.4 If clauses 9.17, 9.18 or 9.19 apply, Veolia must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.8 applies.
- 9.5 The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.6 Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Veolia;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

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

Failure to appoint

- 9.8 If:
- (a) the Approved Independent Auditor has not been appointed by the Control Date;
 - (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.17, 9.18, or 9.19; or
 - (c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.2;

then clause 9.9 applies.

- 9.9 If clause 9.8 applies, the ACCC at its absolute discretion may:

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

Obligations and powers of the Approved Independent Auditor

9.10 Veolia must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from Veolia, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Veolia for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Interest against the factors (as relevant) in clause 6.7;
- (d) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 9.12;
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
 - (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Interest following an assessment under clause 9.10(c); and
- (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

9.11 Veolia must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access the facilities, sites or operations of IWS and Veolia's other businesses as required by the Approved Independent Auditor;
- (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
- (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

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Compliance Audit

- 9.12 The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (b) a full audit of Veolia's compliance with this Undertaking;
 - (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
 - (d) all of the reasons for the conclusions reached in the Audit Report;
 - (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) Veolia's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Veolia's compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.13 The Approved Independent Auditor is to provide an Audit Report to the ACCC and Veolia at the following times:
- (a) within 10 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Interest is completed;
 - (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.13(b), until the ACCC confirms in writing to Veolia that it is satisfied that Veolia has fulfilled its obligations pursuant to this Undertaking; and
 - (d) if requested by the ACCC, a final report due three months after the last report provided pursuant to clause 9.13(c).
- 9.14 Veolia must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.

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

Veolia's obligations in relation to the Approved Independent Auditor

- 9.16 Without limiting its obligations in this Undertaking, Veolia must:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
 - (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
 - (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing Veolia's personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of IWS and Veolia's other businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

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

10 Failure to divest within the Secondary Sale Period

Divestiture of the Unsold Business

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

Obligation to appoint an Approved Divestiture Agent

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

Process for approving a Proposed Divestiture Agent

- 10.3 At least 15 Business Days prior to the end of the Secondary Sale Period, if the divestiture of the Divestiture Interest has not been completed, Veolia must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) including draft terms of appointment, a draft business sale agreement, and draft marketing and sale plan.
- 10.4 If clauses 10.14, 10.15 or 10.16 apply, Veolia must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 10.9 applies.
- 10.5 The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- 10.6 Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:
- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;

- (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of Veolia;
- (c) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
- (d) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

Appointment of the Approved Divestiture Agent

10.7 After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft business sale agreement and draft marketing and sale plan, Veolia must within two Business Days:

- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

10.8 If:

- (a) the Approved Divestiture Agent has not been appointed within 10 Business Days after the Divestiture Interest becomes an Unsold Business;
- (b) the Approved Divestiture Agent has not been appointed within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 10.14, 10.15 or 10.16; or
- (c) the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 10.4;

then clause 10.9 applies.

10.9 If clause 10.8 applies, the ACCC may, at its absolute discretion:

- (a) identify and approve a person as the Approved Divestiture Agent, including approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or
- (b) direct Veolia to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

Obligations and powers of the Approved Divestiture Agent

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

- (a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
- (b) maintain his or her independence from Veolia, apart from appointment to the role of Approved Divestiture Agent, including not form any

- relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with Veolia for the period of his or her appointment;
- (c) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
 - (d) follow the Approved Marketing and Sale Plan;
 - (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;
 - (f) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
 - (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - (i) information regarding the implementation of the Approved 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 any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
 - (v) the efforts made to sell the Unsold Business;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Business; and
 - (viii) any other information required by the ACCC.
 - (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
 - (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
 - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
 - (i) immediately inform the ACCC of:

- (i) any issues that arise in relation to the implementation of the Approved Business Sale Agreement and any Approved Marketing and Sale Plan;
- (ii) non-compliance with this Undertaking by any person named in this Undertaking;
- (iii) any offers for the Unsold Business;
- (j) accept any offer for the Unsold Business upon instruction from Veolia given in accordance with clause 10.13(d); and
- (k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.

10.11 Veolia must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:

- (a) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
- (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.6;
- (c) upon instruction pursuant to clause 10.13(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved 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.

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

Veolia's obligations in relation to the Approved Divestiture Agent

10.13 Without limiting its obligations in this Undertaking, Veolia must from the end of the Secondary Sale Period:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
- (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:
 - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross

- negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
- (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and Veolia (but not fees contingent on the price to be obtained for the Unsold Business); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Veolia within 15 Business Days after the end of the Secondary Sale Period, Veolia agrees to pay such fees as are directed by the ACCC;
- (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
- (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
 - (iii) providing to the Approved Divestiture Agent any information, documents or other assistance he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.6, Veolia must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6; and
- (e) other than in accordance with clause 10.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

Resignation, revocation or termination of the Approved Divestiture Agent

- 10.14 Veolia must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.
- 10.15 The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.16 The ACCC may approve any proposal by, or alternatively may direct, Veolia to terminate the Approved Divestiture Agent if in the ACCC's view an Approved

Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

11 Notification of key dates and ACCC requests for information

- 11.1 Veolia must notify the ACCC and each Undertaking Appointment in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Interest or Unsold Business (as applicable), at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Interest or Unsold Business (as applicable), within one Business Day of that date.
- 11.2 The ACCC may direct Veolia in respect of its compliance with this Undertaking to, and Veolia must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Veolia's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.3 Any direction made by the ACCC under clause 11.2 will be notified to Veolia in accordance with clause 19.2.
- 11.4 In respect of Veolia's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.5 Veolia will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.

- 11.6 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.7 The ACCC may in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8 Nothing in this clause 11 requires the provision of information or documents in respect of which Veolia has a claim of legal professional or other privilege.

12 Disclosure of this Undertaking

- 12.1 Veolia and the ACCC agree that Confidential Schedules 5 and 6 will remain confidential until after the completion of the divestiture of the Divestiture Interest or Unsold Business.
- 12.2 Veolia acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedules 5 and 6.
- 12.3 Veolia acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 12.4 Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 12.5 Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13 Obligation to procure

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

14 No Derogation

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

15 Change of Control

- 15.1 In the event that a Change of Control is reasonably expected to occur, Veolia must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Veolia pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Veolia in writing that a section 87B undertaking under this clause is not required.

16 Costs

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

17 Jurisdiction

- 17.1 Veolia Environnement S.A irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 17.2 Unless and until notified in writing by Veolia to the ACCC of the appointment of another person as agent within Australia, Veolia Environnement S.A appoints Veolia Environmental Services (Australia) Pty Ltd (ACN 051 316 584), as its agent for the purposes of service of process in relation to this Undertaking.

18 Resolving inconsistencies

- 18.1 To the extent there are inconsistencies between this Undertaking and any of the following:
- (a) Approved Sale and Purchase Agreement;

- (b) Approved Transitional Technical Assistance Agreement;
- (c) Approved Transitional Supply Agreement; or
- (d) Approved Business Sale Agreement

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

19 Notices

Giving Notices

- 19.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:
- Email address: mergers@acc.gov.au
 Attention: Executive General Manager
 Merger and Authorisation Review Division
- With a copy sent to:** mergersru@acc.gov.au
 Attention: Director, Remedies Unit
 Coordination and Strategy Branch
 Merger and Authorisation Review Division
- 19.2 Any notice or communication to Veolia pursuant to this Undertaking must be sent to:
- Name: Jane Sandilands, Chief Legal Officer, Veolia Australia & New Zealand
- Address: Level 4, 65 Pirrama Road, Pyrmont, 2009
- Email Address: jane.sandilands@veolia.com
- Fax number: N/A
- Attention: Jane Sandilands
- With a copy sent to:**
- Name: Carolyn Oddie, Partner, Allens
- Address: Level 28, Deutsche Bank Place, 126 Philip Street, Sydney, 2000
- Email Address: Carolyn.oddie@allens.com.au
- Fax number: +61 2 9230 5333
- Attention: Carolyn Oddie
- 19.3 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 19.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 19.5 Veolia must notify the ACCC of a change to its contact details within three Business Days.
- 19.6 Any notice or communication will be sent to the most recently advised contact details and subject to clauses 19.3 and 19.4, will be taken to be received.

20 Defined terms and interpretation

Definitions in the Dictionary

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

Interpretation



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

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Executed as an Undertaking

Executed by Veolia Environnement S.A:

	
Signature of director	Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)
Antoine FLENOT	Helman le PAS de SÉCHEVAL
Name of director (print)	Name of director/company secretary (print)
Date 17/12/2021	Date 17.12.2021

Executed by Veolia Environmental Services (Australia) Pty Ltd (ACN 051 316 584)
pursuant to section 127(1) of the *Corporations Act 2001* by:



Signature of director	Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)

Executed as an Undertaking

Executed by Veolia Environnement S.A:

Signature of director	Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)
Name of director (print)	Name of director/company secretary (print)
Date	Date

Executed by Veolia Environmental Services (Australia) Pty Ltd (ACN 051 316 584)
pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)
RICHARD KIRKMAN	DAVID GERRARD

Name of director (print)	Name of director/company secretary (print)
18. 12. 2021	18. 12. 2021
Date	Date

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

20 December 2021

Date

and signed on behalf of the Commission:

 im s

Chair

20 December 2021

Date

Schedule 1 – Dictionary and interpretation

1 Dictionary

ACCC means the Australian Competition and Consumer Commission.

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

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

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

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

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

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

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

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

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

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

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

- (a) separate the Divestiture Interest from any business to be retained by Veolia; and
- (b) oversee the Divestiture Interest independently of Veolia and any retained business.

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

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

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

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

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

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

Change of Control means:

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

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

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

Consents means any Government Consents or Third Party Consents.

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

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

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

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

FSI means Pelican Asset Co Pty Ltd, Pelican Land Co Pty Ltd and First Sentier Investors (Australia) RE Ltd.

FSI Transaction means the transaction for the sale of the IWS as between Veolia, Acquista Investments Pty Ltd, Pelican Asset Co Pty Ltd, Pelican Land Co Pty Ltd and First Sentier Investors (Australia) RE Ltd.

FSI Transaction Agreement means the Business Sale Deed executed by Veolia, Acquista Investments Pty Ltd, Pelican Asset Co Pty Ltd, Pelican Land Co Pty Ltd and First Sentier Investors (Australia) RE Ltd dated 28 July 2021 attached at Confidential Schedule 6.

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

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

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

IWS means Integrated Waste Services Partnership (ABN 23 043 564 833) and the Partnership Agreement dated 5 January 2004, and includes the related business conducted by the partners.

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

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

Proposed Acquisition is defined in clause 2 of this Undertaking.

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

Proposed Divestiture Agent Notice has the meaning given to it in clause 10.3 of this Undertaking.

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

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

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

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

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

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

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

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

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

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

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

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

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

Suez ResourceCo means SITA-ResourceCo Alternative Fuels Pty Ltd (ACN 097 250 032).

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

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

Transferred Personnel has the meaning given to it in clause 5.9 of this Undertaking.

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

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

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

Unsold Business has the meaning given to it in clause 10.1 of this Undertaking.

Veolia means Veolia Environnement S.A and its subsidiary, Veolia Environmental Services (Australia) Pty Ltd (ACN 051 316 584)

2 Interpretation

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

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

- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Veolia will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 – Proposed Purchaser Notice Form

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

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

1 Method of Delivery to the ACCC

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

Email

Subject line: Proposed Purchaser Notice – Veolia Environnement S.A and its subsidiary, Veolia Environmental Services (Australia) Pty Ltd

Address: mergers@acc.gov.au

Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch, Merger and Authorisation Review Division

2 Information Required

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

- 2.1 Proposed Purchaser details:
- (a) Name of the Proposed Purchaser;
 - (b) Address;
 - (c) Contact name;
 - (d) Telephone number;
 - (e) Other contact details.
- 2.2 A submission containing the following information:
- (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business;
 - (b) details of the Proposed Purchaser's experience in the relevant market(s);
 - (c) the names of the owner(s) and the director(s) of the Proposed Purchaser;
 - (d) details of any of the following types of relationships between Veolia and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:

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

2.3 Please also attach to this form:

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

Schedule 3 – Undertaking Appointment Form

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

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

(the **Undertaking Appointment**).

This form is to be used for each of the above appointments.

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

1 Method of Delivery to the ACCC

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

Email

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

Address: mergers@acc.gov.au

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

With an email copy sent to:

Address: mergersru@acc.gov.au

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

2 Information Required

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

2.1 Proposed Undertaking Appointment details:

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

(iv) Other contact details.

2.2 A submission containing the following information:

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

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

3 Specific Information required for Undertaking Appointments

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

Proposed Independent Auditor

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

Proposed Divestiture Agent

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

Proposed Independent Manager

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

ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to IWS;

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

Schedule 4 – Divestiture Interest

1 Divestiture Interest

The Divestiture Interest consists of Veolia's 50.01% share in IWS and Veolia's interest in the following assets:

(a) Operational assets:

Facility	Address	
IWS Northern Balefill Landfill ¹	Pt Wakefield Road, Lower Light SA 5501	Owned by Acquista Investments Pty Ltd and Veolia Environmental Services (Australia) Pty Ltd.
IWS Wingfield ²	Lot 254 Cnr Hines and Wingfield Roads, Wingfield SA 5013	Owned by Acquista Investments Pty Ltd and leased to IWS.
IWS Southern Recycling Centre ³	112 Bakewell Dr, Seaford Heights SA 5169	Leased to IWS.

- (b) Land, leases or the right to use land associated with the facilities of IWS listed in the table above;
- (c) Agreements with third parties for the acquisition of goods or services associated with each facility of IWS;
- (d) Material customer contracts related to the supply of waste disposal services associated with each facility of IWS;
- (e) All authorisations necessary for the operation of the facilities of IWS listed in the table above;
- (f) Intellectual property rights that are owned by IWS, or by Veolia in relation to IWS, including the trademarks, registered business names, logos, brands, designs, copyright and rights to use those things;
- (g) For each of the facilities of IWS, plant, equipment, machinery, furniture, fixtures and fittings to the extent owned or leased by Veolia, and used or held for use by IWS including:
- (i) fixed plant and equipment such as weighbridges, site buildings;
 - (ii) motor vehicles including cars, trucks, forklifts and diggers;
 - (iii) safety equipment;
 - (iv) monitoring equipment;

¹ Also known as IWS's Dublin Landfill.

² IWS Wingfield includes the IWS head office, the Wingfield transfer station, and the IWS Recycling Centre.

³ The Southern Recycling Centre is operated by IWS in a joint venture with the Southern Region Waste Resource Authority (which acts on behalf of local councils).

- (v) other equipment such as pressure washers and welders, tools and spare parts;
- (vi) office equipment.
- (h) the unincorporated SRWRA Joint Venture Arrangement dated 23 February 2012 between Southern Region Waste Resource Authority (ABN 37 443 975 085) and IWS;
- (i) Goods inventory owned by IWS, or by Veolia in relation to IWS;
- (j) All rental agreements that Veolia or IWS is a party to, in relation to IWS, consisting of:
 - (i) Caterpillar Master Loan Agreement (and each loan agreement thereunder);
 - (ii) Caterpillar Master Chattel Mortgage (and each mortgage thereunder); and
 - (iii) each Westpac Master Rental Agreement and each rental agreement thereunder.
- (k) Business records, including data, books and customer records, necessary for IWS; and
- (l) Employees of IWS.

Confidential Schedule 5

Confidential Schedule 6
