

Completed Acquisition by Rentokil Initial plc of Cannon Hygiene Limited.

Final Undertakings given by Rentokil Initial plc and Cannon Hygiene Limited to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

Background

- A. On 28 June 2018, the Competition and Markets Authority (the ‘CMA’), in accordance with [section 22\(1\)](#) of the Enterprise Act 2002 (the ‘Act’), referred the completed acquisition by Rentokil Initial plc (‘Rentokil’) of Cannon Hygiene Limited (‘Cannon UK’) (the ‘Merger’) to a group of CMA panel members (‘the Reference’) to determine, pursuant to [section 35](#) of the Act:
- (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition in any market or markets in the United Kingdom (‘UK’) for goods or services.
- B. On 10 July 2018, the CMA made an [Interim Order](#) applying to Rentokil and Cannon (the ‘Parties’) requiring the Parties to hold the business of Rentokil (the ‘Rentokil business’) separate from the business of Cannon UK (the Cannon UK business’) until the Reference was finally determined.
- C. On 25 January 2019, the CMA published a report pursuant to [section 38](#) of the Act (the ‘Report’) which concluded that:
- (a) the Merger has created a relevant merger situation;
 - (b) the creation of that situation has resulted in, and may be expected to result in a substantial lessening of competition (‘SLC’) in relation to the supply of waste disposal services to the following national and multi-regional customers:
 - (i) Customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier; and

(ii) Public and private framework customers with national or multi-regional coverage;

and,

(c) the CMA should take action to remedy the SLC and any adverse effects arising from it.

D. The CMA, having regard to its findings, requires the divestiture of the contracts of Cannon UK's customers affected by the SLC (the 'SLC Contracts') to a suitable purchaser with any operations and infrastructure required by a prospective purchaser to enable it to service and perform the SLC Contracts which could involve a sale of the Cannon legal entity to an Approved Purchaser if the Framework Contracts cannot be novated to an Approved Purchaser in accordance with the obligations in Paragraph 3.3.3 below.

E. ✂

F. Now therefore each of Rentokil and Cannon UK give to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to [section 82](#) of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Report and any adverse effects arising from it.

1 Interpretation

- 1.1 The purpose of these Final Undertakings is to give effect to the Remedy in the Report and they shall be construed accordingly.
- 1.2 Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).
- 1.3 The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.5. References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to these Final Undertakings unless otherwise stated.
- 1.6. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 1.7. The Annexes form part of these Final Undertakings.
- 1.8. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 1.9. Further in these Final Undertakings:

‘the Act’	means the Enterprise Act 2002;
‘Affiliate’	means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;
✂	✂
✂	✂

‘Approved Purchaser’	means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 3;
✂	✂
‘Approved Timetable’	means the timetable notified by the CMA to Rentokil paragraph 9.1;
‘Asset Maintenance Undertakings’	means those undertakings set out in paragraph 5;
‘Associated Person’	means a person who is an associated person within the meaning of section 127 of the Act;
‘business’	has the meaning given by section 129(1) and (3) of the Act;
‘Cannon UK business’	means the business of Cannon Hygiene Limited and its Subsidiaries and Affiliates as carried on in the UK;
“Cannon UK Employees”	means all employees of Cannon UK as at the Commencement Date;
‘Commencement Date’	means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;
“Completion Date”	means, as the context requires, the completion date for the sale of the Divestiture Package ✂
‘Confidential Information’	means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;
‘control’	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of

	the Act;
“Cut Off Date”	means 4 weeks after the Commencement Date;
‘Directions’	means written directions given by the CMA as set out in paragraph 4.5;
‘Divestiture Package’	means the SLC Contracts, any operations and infrastructure and those matters listed in Annex 1 as required by a prospective purchaser to enable it to service and perform the SLC Contracts;.
‘Divestiture Period’	means the period of \times beginning on the Commencement Date or such longer period as the CMA may approve on request;
‘Divestiture Trustee’	means a person appointed in accordance with paragraph 11;
‘Framework Contracts’	means the framework contracts that Cannon UK has entered into with the Framework Customers;
‘Framework Customers’	means North Western Universities Purchasing Consortium, Eastern Shires Purchasing Organisation and Purchase Direct Limited;
‘Key Staff’	means those staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business and who are listed in Annex 4;
‘Monitoring Trustee’	means a person appointed in accordance with paragraph 6;
‘ordinary course of business’	means customary commercial transactions and practices in the day-to-

	day supply of its products and services;
‘Purchaser Approval Criteria’	means the criteria set out in Annex 3;
‘Related Person’	means any Subsidiary, Affiliate or Associated Person;
‘Rentokil business’	means the business conducted by Rentokil in the UK;
‘Rentokil’s Legal Representatives’	means Freshfields Bruckhaus Deringer LLP;
‘Report’	means the report entitled “Completed Acquisition by Rentokil Initial plc of Cannon Hygiene Limited.” published by the CMA on 25 January 2019;
‘SLC’	means the substantial lessening of competition and adverse effects identified by the CMA in the Report;
‘SLC Contracts’	means the contracts of Cannon UK’s SLC Customers as of the Cut Off Date (to the extent that such contracts are still in existence at the Completion Date), together with any contracts of new SLC Customers who contract with Cannon UK after the Cut Off Date but before the Completion Date;
‘SLC Customers’	means in relation to Cannon UK (i) its customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier (<i>Direct SLC Customers</i>); and (ii) the Framework Customers;
‘Subsidiary’	has the meaning given by section 1159 of the Companies Act 2006;
‘Transitional Arrangements’	means the arrangements listed in Annex 2;

‘UK’	means the United Kingdom of Great Britain and Northern Ireland;
‘Working Day’	means a day that is not a Saturday or Sunday or a bank holiday in England.

2 Commencement

- 2.1. These Final Undertakings will come into force on the Commencement Date in accordance with [section 82\(2\)](#) of the Act.

3 Divestiture Undertakings

- 3.1. Rentokil and Cannon UK each give the following undertakings:
- 3.1.1. To use best endeavours to procure the divestiture of the Divestiture Package including those matters listed in Annex 1 of these Final Undertakings to an Approved Purchaser within the Divestiture Period having due regard to the findings in the Report;
 - 3.1.2. To identify potential purchasers of the Divestiture Package within ✂ of the Commencement Date; and
 - 3.1.3. To provide the CMA with information within ✂ of the Commencement Date, and such other information reasonably required by the CMA within any deadline set by the CMA, to demonstrate that a potential purchaser meets the Purchaser Approval Criteria and will operate the Divestiture Package as an effective and financially viable competitor in the supply of washroom services to national/multi-regional end customers and framework customers in the UK and that the Divestiture Package is being offered and sold in a manner consistent with these Final Undertakings.
- 3.2. ✂
- 3.3. Rentokil and Cannon UK shall be deemed to have divested the Divestiture Package to an Approved Purchaser within the Divestiture Period in accordance with paragraph 3.1.1 if, by the end of the Divestiture Period and to the satisfaction of the CMA, they have:
- 3.3.1. completed the divestiture of the Divestiture Package and activities to the Approved Purchaser as detailed in Annex 1 of these Final Undertakings;

- 3.3.2. if required by the Approved Purchaser, agreed to implement suitable transitional arrangements with the Approved Purchaser in accordance with Annex 2 of these Final Undertakings; and
- 3.3.3. used best endeavours to assign the SLC Contracts of the Direct SLC Customers (without requiring consent) and novate the Framework Contracts to the Approved Purchaser to enable the Approved Purchaser to operate the SLC Contracts as an effective and financially viable competitor in the supply of washroom services to national/multi-regional end customers and framework customers in the UK.
- 3.4. Rentokil undertakes to inform the CMA as soon as practicable, and in any event within two Working Days, when the divestiture of the Divestiture Package has had heads of terms (if applicable or, if not, the final sale and purchase agreement) agreed, and when it has been completed.
- 3.5. Rentokil undertakes to seek CMA approval of the final terms of the divestiture of the Divestiture Package prior to the Completion Date.
- 3.6. ✕
- 3.7. Rentokil undertakes to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or believes it is unlikely to, achieve divestiture of the Divestiture Package within the Divestiture Period.
- 3.8. ✕
- 3.9. ✕
- 3.10. ✕
- 3.11. ✕

4 Additional Obligations

- 4.1 Rentokil undertakes to provide the CMA with sufficient information regarding each potential purchaser having regard to the criteria set out in Annex 3 to enable the CMA to give its approval of that potential purchaser, which shall not be unreasonably withheld.
- 4.2 The CMA will advise Rentokil whether any potential purchaser is an Approved Purchaser within a reasonable time of the CMA concluding it has received sufficient information under paragraph 3.1.3 ✕.

- 4.3 Rentokil undertakes to not actively solicit for provision of waste disposal services for washrooms to the SLC Customers for a period to be negotiated with the prospective purchaser following the Completion Date but Rentokil is not restricted from accepting a SLC Customer that proactively approaches Rentokil as a waste service provider. After the negotiated period, Rentokil is permitted to participate in tenders for provision of waste disposal services for washrooms to the SLC Customers.
- 4.4 ✂
- 4.5 Rentokil and Cannon UK undertake to comply with any Directions the CMA may issue relating to these Final Undertakings and will promptly take such steps as may be specified or described in the Directions.
- 4.6 Any delay by the CMA in making a written Direction shall not affect the obligations of Rentokil or Cannon UK at such time as the CMA makes any written Direction under paragraph 4.5.
- 4.7 Subject to paragraph 4.3, Rentokil undertakes to procure that it and any Related Person will not for a period of ✂ from the Completion Date and subject to paragraph 4.5, bring under common ownership or control in whole or in part the Divestiture Package or any asset within the Divestiture Package without the prior written consent of the CMA.
- 4.8 ✂

5 Asset Maintenance Undertakings

- 5.1 Rentokil and Cannon UK undertake that until the divestiture of the Divestiture Package ✂ is completed, except with the express written consent of the CMA, it will not take any action which might:
- (a) lead to the integration of the Cannon UK business with the Rentokil business;
 - (b) transfer the ownership or control of the Cannon UK business or any of their Related Persons except in the course of complying with these Final Undertakings;
 - (c) otherwise impair the ability of the Cannon UK business or the Rentokil business to compete independently in any of the markets affected by the transaction.

5.2 Rentokil and Cannon UK undertake that until the divestiture of the Divestiture Package is completed, they will procure that, except with the prior written consent of the CMA:

- (a) the Cannon UK business is carried on separately from the Rentokil business and the Cannon UK business's separate sales or brand identity is maintained;
- (b) the Cannon UK business and the Rentokil business are maintained as going concerns and sufficient resources are made available for the development of the Cannon UK business and the Rentokil business, on the basis of their respective pre-Merger business plans;
- (c) Rentokil will continue to provide the necessary transitional support services to ensure that the customer and supplier contracts, employees, support services, assets and inventory as detailed in Annex 2 of these Final Undertakings that would be required to allow an Approved Purchaser to operate the Divestiture Package as a viable and competitive concern are maintained;
- (d) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within the Cannon UK business;
- (e) the nature, description, range and quality of goods and/or services supplied in the UK by Cannon UK are maintained and preserved;
- (f) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Cannon UK business and the Rentokil business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Cannon UK business or the Rentokil business are disposed of; and
 - (iii) no security interest in or lien on the assets of the Cannon UK business or the Rentokil business is created or disposed of;
- (g) there is no integration of the information technology of the Cannon UK or Rentokil businesses, and the software and hardware platforms of the Cannon UK business shall remain essentially unchanged, except for routine changes and maintenance;

- (h) the customer and supplier lists of the Rentokil UK and Cannon UK businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Cannon UK business will be carried out by the Cannon UK business alone and for the avoidance of doubt the Rentokil business will not negotiate on behalf of the Cannon UK business (and vice versa) or enter into any joint agreements with the Cannon UK business (and vice versa);
- (i) all existing contracts of the Cannon UK business and the Rentokil business continue to be serviced by the business to which they were awarded;
- (j) no changes are made to Key Staff of the Cannon UK business;
- (k) no Key Staff are transferred between the Cannon UK business and the Rentokil business;
- (l) all reasonable steps are taken to encourage all Key Staff to remain with the Cannon UK business;
- (m) no Confidential Information shall pass, directly or indirectly, from the Cannon UK business on the one hand (or any of its employees, directors, agents or Related Persons) to the Rentokil business on the other hand (or any of its employees, directors, agents, or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations); and
- (n) its Subsidiaries and Affiliates do not actively solicit for employment any employees included in the Divestiture for a period of 30 after the divestiture of the Divestiture Package.

6 Monitoring Trustee – Appointment

- 6.1 Rentokil undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions in paragraph 8 of these Final Undertakings.
- 6.2 The Monitoring Trustee must possess appropriate qualifications and experience to carry out their functions. The Monitoring Trustee must be under an obligation to carry out his functions to the best of his abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging his duties under these Final Undertakings, unless it can be

resolved in a manner and within a time frame acceptable to the CMA. Rentokil shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out his functions.

- 6.3 The appointment of the Monitoring Trustee and their terms and conditions must be approved by the CMA. Rentokil shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that they propose to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed, Rentokil shall provide the CMA with a copy of the agreed terms and conditions of appointment
- 6.4 If the proposed Monitoring Trustee is rejected by the CMA, Rentokil shall submit the names of at least two further persons within five Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 6.2 and 6.3 above.
- 6.5 The provisions of paragraph 6.6 below shall apply if:
- 6.5.1 Rentokil fails to nominate persons in accordance with paragraphs 6.3 or 6.4 above; or
 - 6.5.2 those further persons nominated in accordance with paragraphs 6.3 or 6.4 above are rejected by the CMA; or
 - 6.5.3 Rentokil is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
- 6.6 The CMA shall nominate one or more persons to act as Monitoring Trustee, and Rentokil shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
- 6.7 The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out below in paragraphs 8 and 9 and that the Monitoring Trustee will monitor the compliance of Rentokil with its obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as he reasonably considers necessary to carry out his functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out his functions under these Final Undertakings.

7 Monitoring Trustee – replacement, discharge and reappointment

- 7.1 Rentokil acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require Rentokil to replace the Monitoring Trustee.
- 7.2 If the Monitoring Trustee is removed under paragraph 7.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has affected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 6 above.

8 Monitoring Trustee Functions – Divestiture of the Divestiture Package

- 8.1 The Monitoring Trustee's functions as set out in this paragraph are to monitor and review compliance with these Final Undertakings and progress towards the divestiture of the Divestiture Package, and shall in particular include:
- 8.1.1 monitoring compliance with the Asset Maintenance Undertakings set out in paragraph 5 above;
 - 8.1.2 auditing the completeness of the list of SLC contracts at the Cut Off Date; and
 - 8.1.3 monitoring the progress made against the Approved Timetable towards divestiture of the Divestiture Package, and the steps that have otherwise been taken to comply with these Final Undertakings including:
 - 8.1.3.1 the steps that have been taken towards the preparation of agreements for the transfer of the Divestiture Package and the persons to whom such agreements have been distributed;
 - 8.1.3.2 where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between Rentokil and their financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process; and

8.1.3.3 in instances where the Monitoring Trustee reasonably considers there to be a risk that Rentokil will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between Rentokil and possible purchasers in connection with the disposal process.

- 8.2 The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every two weeks, the first report to be submitted not later than three weeks from the Commencement Date.
- 8.3 If the Monitoring Trustee advises the CMA that the Divestiture Package is unlikely to be sold within the Divestiture Period, or the Divestiture Period expires without agreement by the Approved Purchaser to acquire the Divestiture Package, then the CMA will consult the Monitoring Trustee about the progress of negotiations and, unless satisfied that the Divestiture Package will be sold within the Divestiture Period, will issue Directions to Rentokil ✕.

9 Divestiture Reporting Obligations

- 9.1 Rentokil undertakes that within the period of five Working Days from the Commencement Date they shall provide a written report to the CMA setting out the timetable that they propose to adopt to ensure the divestiture of the Divestiture Package and any associated infrastructure. The CMA will either approve this timetable as proposed or require reasonable amendments to it and will notify Rentokil of the Approved Timetable.
- 9.2 The report provided under paragraph 9.1 shall also outline the progress that Rentokil has made towards the divestiture of the Divestiture Package and any associated infrastructure, and the steps that have otherwise been taken to comply with these Final Undertakings, and shall in particular report on:
- 9.2.1 the status of any discussions that have been held with potential purchasers of the Divestiture Package;
 - 9.2.2 the progress that has been made towards agreeing heads of terms (if applicable);
 - 9.2.3 the steps that have been taken towards reaching an agreed sales agreement and the persons to whom any agreement has been distributed; and
 - 9.2.4 such other matters as may be directed by the CMA from time to time.

- 9.3 Thereafter Rentokil will provide similar reports to the CMA every two weeks, or at such other interval as agreed by the CMA, until the divestiture of the Divestiture Package have been completed. The reports will include an update on the progress that has been made against the Approved Timetable and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee.
- 9.4 Rentokil undertakes that in the report to the CMA provided pursuant to paragraphs 9.1 to 9.3 they shall provide to the CMA:
- 9.4.1 the total number of persons who have lodged a formal bid for the acquisition of the Divestiture Package since the publication of the Report;
 - 9.4.2 the name, address, email address, contact point and telephone number of each person who has lodged a formal bid for the acquisition of the Divestiture Package since the publication of the Report and subsequently been short-listed by Rentokil as a preferred purchaser; and
 - 9.4.3 details of the efforts taken by Rentokil and their financial advisers to solicit purchasers of the Divestiture Package.
- 9.5 In the event that Rentokil does not meet a step as set out in the Approved Timetable or is otherwise delayed in implementing the divestiture required pursuant to these Final Undertakings, Rentokil undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days from becoming aware that a step in the Approved Timetable has not been met.
- 9.6 ✂
- 9.7 ✂
- 9.8 ✂
- 9.9 ✂
- 9.10 ✂
- 10 ✂**
- 10.1 ✂
- 10.2 ✂

11 Divestiture Trustee – appointment

- 11.1 Rentokil recognises and acknowledges that the CMA may direct the appointment of a Divestiture Trustee in the circumstances described in paragraph 10.2.
- 11.2 Rentokil undertakes that on the Direction of the CMA and in accordance with such Directions given as to timing, Rentokil shall submit to the CMA for approval a list of persons from whom they propose to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 11.3 below and shall include among other things:
- 11.2.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties; and
 - 11.2.2 a schedule of the steps to be taken to give effect to the mandate.
- 11.3 Each person on the list referred to in paragraph 11.2 shall be independent of and unconnected to Rentokil, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 11.4 The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, Rentokil shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Rentokil shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Rentokil undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 11.5 If all the proposed Divestiture Trustees are rejected by the CMA, Rentokil shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 11.3 and 11.4 above.
- 11.6 The provisions of paragraph 11.7 below shall apply only if:

- 11.6.1 Rentokil fails to nominate persons in accordance with paragraph 11.2 above;
 - 11.6.2 Those further persons nominated by Rentokil in accordance with paragraph 11.5 above are rejected by the CMA; or
 - 11.6.3 Rentokil is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 11.7 The CMA shall nominate one or more persons to act as a Divestiture Trustee, and Rentokil shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

12 Divestiture Trustee – Functions

- 12.1 Rentokil undertakes to enable the Divestiture Trustee to carry out its duties and to provide such co-operation and resources as the Divestiture Trustee may reasonably require.
- 12.2 Rentokil recognises and acknowledges that:
- 12.2.1 the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Divestiture Package ✕;
 - 12.2.2 in order to implement the Divestiture Package ✕, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written Directions or instructions to the Divestiture Trustee to amend the Divestiture Package ✕, where the CMA has reasonable grounds for believing that the Divestiture Package ✕ cannot be achieved within the Divestiture Period ✕;
 - 12.2.3 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the Divestiture Package ✕ such terms and conditions as the CMA considers appropriate; and
 - 12.2.4 the Divestiture Trustee shall protect the legitimate financial interests of Rentokil subject to the Divestiture Trustee's overriding obligations to implement the Divestiture Package ✕.
- 12.3 Rentokil recognises and acknowledges that the Divestiture Trustee shall take such steps and measures as it considers necessary to divest the Divestiture

Package ✕ and to that end the Divestiture Trustee may give written directions to Rentokil. Rentokil undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.

- 12.4 Rentokil recognises and acknowledges that in the divestiture of the Divestiture Package ✕ the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Rentokil. Rentokil undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

13 Divestiture Trustee – duties and obligations of Rentokil

- 13.1 Rentokil undertakes to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the divestiture of the Divestiture Package ✕ but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require to divest the Divestiture Package ✕.
- 13.2 Rentokil recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the divestiture of the Divestiture Package ✕ (save where material is properly the subject of legal privilege) and Rentokil undertakes to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, Rentokil undertakes to make available to the Divestiture Trustee one or more offices on its premises, and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for divestiture of the Divestiture Package ✕, subject in each case to the Divestiture Trustee's compliance with Rentokil's internal policies.
- 13.3 Rentokil undertakes to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to divest the Divestiture Package ✕ including by the appointment of advisers to assist with the disposal process. Rentokil undertakes that upon the reasonable request of the Divestiture Trustee Rentokil shall execute the documents required to divest the Divestiture Package ✕.
- 13.4 Rentokil undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest the Divestiture Package ✕ and Rentokil recognises and

acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Rentokil or any of its Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to divest the Divestiture Package ~~✗~~, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

- 13.5 Rentokil undertakes that at its expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary for the divestiture of the Divestiture Package ~~✗~~, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by Rentokil. Should Rentokil refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Rentokil, approve and direct the appointment of such advisers.
- 13.6 Rentokil undertakes to make no objection to the divestiture of the Divestiture Package ~~✗~~ save on such grounds of bad faith, wilful default, recklessness or negligence by the Divestiture Trustee. Where Rentokil wishes to make an objection on the grounds of bad faith by the Divestiture Trustee, they shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it becomes aware of the fact or facts giving rise to its objection.

14 Divestiture Trustee – replacement, discharge and reappointment

- 14.1 Rentokil acknowledges that if the Divestiture Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Rentokil to replace the Divestiture Trustee.
- 14.2 If the Divestiture Trustee is removed under paragraph 14.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has affected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 11 above.
- 14.3 Rentokil recognises and acknowledges that, other than in accordance with paragraph 14.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

15 ✂

15.1 ✂

15.2 ✂

15.3 ✂

16 Variations to these Final Undertakings

16.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with [sections 82\(2\)](#) and [82\(5\)](#) of the Act.

16.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.

16.3 The consent of the CMA shall not be unreasonably withheld.

17 General obligations to provide information to the CMA

17.1 Rentokil undertakes that it shall promptly provide to the CMA such information and such co-operation as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under [sections 82, 83, 93\(6\)](#) and [94](#) of the Act.

17.2 Rentokil undertakes that should it at any time be in breach of any provision of these Final Undertakings, it will notify the CMA within two Working Days starting with the date it becomes aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.

17.3 Where any person, including a Monitoring Trustee or Divestiture Trustee must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Rentokil undertakes that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Rentokil to any person other than to the CMA, without the prior written consent of both the CMA and Rentokil.

18 Acceptance of service

18.1 Rentokil hereby authorises Rentokil's Legal Representatives, whose address for service is 65 Fleet Street, London EC4Y 1HT to accept on its behalf

service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to Rentokil or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).

- 18.2 Unless Rentokil (as the case may be) informs the CMA that Rentokil's Legal Representatives have ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on Rentokil if it is served on Rentokil's Legal Representatives, and service or receipt shall be deemed to be acknowledged by it if it is acknowledged by email from Rentokil's Legal Representatives to the CMA.
- 18.3 Paragraph 18.1 has effect irrespective of whether, as between Rentokil and Rentokil's Legal Representatives, Rentokil's Legal Representatives have or continue to have any authority to accept and acknowledge service on behalf of it (unless it informs the CMA that Rentokil's Legal Representatives have ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Rentokil's Legal Representatives (including a failure to notify Rentokil of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

19 Effect of invalidity

- 19.1 Rentokil undertakes that should any provision of these Final Undertakings be contrary to law or invalid for any reason, they shall continue to observe the remaining provisions.

20 Extension of time

- 20.1 Rentokil recognises and acknowledges that the CMA may, where it considers it appropriate, in response to a written request from Rentokil showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which Rentokil, the Monitoring Trustee and/or the Divestiture Trustee (as the case may be) must take action.

21 Undertakings given jointly and severally

- 21.1 Where undertakings in these Final Undertakings are given by Rentokil and Cannon, they are given jointly and severally.

22 Governing law

22.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.

22.2 Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF RENTOKIL

.....

Signed

.....

Name

.....

Title

.....

Date

FOR AND ON BEHALF OF CANNON

.....

Signed

.....

Name

.....

Title

.....

Date

Annex 1: Matters included within the Divestiture Package

1. Subject to the requirements of the purchaser, the Divestiture Package should include the following assets and operations:

1.1.1. the Cannon contracts of the customers in markets in which the SLC arose, namely the Direct SLC Customers and the Framework Customers (as of the Cut Off Date) and those end users that have contracted services with Cannon under those Framework Contracts.

The Divestiture Package will also include any new customers of Cannon UK who fall within the SLC definition and who have been acquired by Cannon UK between the Cut Off Date and the Completion Date. It will exclude any customers who were customers of Cannon UK at the Cut Off Date who fell within the SLC definition but are no longer customers of Cannon UK at the Completion Date unless as a result of a formal objection being raised in accordance with paragraph 4.4 of the undertakings;

1.1.2. the 'Cannon Hygiene' brand and the 'Cannon' brand, to the extent owned or controlled by the Parties in the UK. If required by a prospective purchaser, Rentokil would then promptly implement a rebranding process related to the retained assets and business lines to address the risk of any confusion following the divestiture;

1.1.3. all intangible assets owned or controlled by Cannon UK which are necessary to carry out washroom services for the SLC Contracts, including the relevant intellectual property rights (trademarks, service marks and domain names);

1.1.4. all Cannon employees and other personnel primarily engaged in providing or supporting the SLC Contracts, including central national account management capability, service technicians and those with other central functions (subject to employment law restrictions). Staff of the Cannon UK business in the UK who are primarily engaged in supporting the SLC Contracts are to be transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006;

1.1.5. permits and licences: all permits and licenses in relation to waste collection and disposal of healthcare waste services including waste carrier licenses to the extent that they are transferable; and

1.1.6. other assets:

- 1.1.6.1. all Cannon UK facilities engaged in washroom services to support the SLC Contracts including all on-site equipment related to such washroom services as well as all such leased equipment to be transferred to the purchaser to the fullest extent possible;
 - 1.1.6.2. all leases for the transferred Cannon UK facilities or a sub-lease (or licence to occupy) as appropriate, to the extent transferrable;
 - 1.1.6.3. all Cannon vehicles currently owned or leased by Cannon UK which are used to service the SLC Contracts; and
 - 1.1.6.4. any other asset which is both used (exclusively or not) to service the SLC Contracts and necessary in order to ensure the continued viability and competitiveness of the SLC Contracts, or an adequate substitute.
- 1.2. Relevant historical customer information for the SLC Customers in the UK, including contact details, enquiry, order and invoicing history.
- 1.3. Relevant historical operational information, including finance, tax, IT, legal, procurement and human resources records, for the SLC Customers of the Cannon UK business in the UK.

Annex 2: Transitional Arrangements

- 1.1. A transitional services agreement to be provided to the purchaser. The precise terms of the agreement for the provision of these services to be provided on a transitional basis are to be determined through negotiations between Rentokil and the purchaser. The CMA will review this agreement as part of the approval of the terms of the divestiture.
- 1.2. The transitional arrangements to be made available to a prospective purchaser must to the extent required by a prospective purchaser include, at a minimum:
 - 1.2.1. support for back office systems such as finance, HR, IT and procurement;
 - 1.2.2. reasonable assistance in liaising with hygiene and washroom products and consumables suppliers to ensure a smooth transfer of products/consumables to the prospective purchaser;
 - 1.2.3. customer care and contract management support;
 - 1.2.4. the right to purchase hygiene and washroom products and consumables for a period of up to 30; and
 - 1.2.5. reasonable training and assistance to the purchaser at Rentokil's expense.

Annex 3: Purchaser Approval Criteria

These Purchaser Approval Criteria are to be construed as consistent with and giving effect to paragraphs 11.271 to 11.272 of the Report.

1. Independence

- 1.1. An Approved Purchaser of the SLC contracts should not have any significant connection (for example financial, management, shared directorships, equity interests, reciprocal commercial arrangements) to Rentokil or Cannon.

2. Capability

- 2.1. An Approved Purchaser must have access to appropriate financial resources, expertise and assets to be or to become an effective competitor in the market for supply of washroom services in the UK. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor in this market.
- 2.2. When assessing the capability of a potential Purchaser of the SLC contracts, an Approved Purchaser must:
 - 2.2.1. be currently active within the supply of washroom services (in the UK or internationally), or be able to demonstrate the ability to provide the necessary capabilities to be active upon acquiring (e.g. by access to an experienced management team);
 - 2.2.2. have a robust business plan, and a detailed explanation of how acquiring the divestiture package will help achieve this plan. This should demonstrate how the proposed business will compete with the Parties on an ongoing basis; and
 - 2.2.3. have access to sufficient existing financial capital to support its business plan and future investments.
- 2.3. An Approved Purchaser of the SLC Contracts must demonstrate to the satisfaction of the CMA that it has sufficient management and operational staff (including sales and technical support) that are experienced in the supply of washroom services or to demonstrate that it has the necessary capabilities as at the Completion Date to be able to recruit experienced staff within a short period.
- 2.4. Any prospective purchaser will need to provide to the satisfaction of the CMA credible business plans that demonstrate they, already or as a result of acquiring the Divestiture Package will:

- 2.4.1. have sufficient incentives to compete for, and have the ability to win, new national/multi-regional customers, whether it is through tendering and/or bilateral negotiation;
- 2.4.2. have sufficient incentives and ability to retain the SLC Customers acquired through the divestment process;
- 2.4.3. have the capability and ambition to be a framework provider and satisfy the appointment criteria of Cannon's three framework partners to be accepted on the framework and compete for a place when the frameworks are retendered in the future;
- 2.4.4. have a credible plan as to how they are going to compete for, and win, new national/multi-regional end customers and customers procuring under a framework agreement;
- 2.4.5. have the ability to meet the ongoing service and account management requirements of the SLC Customers;
- 2.4.6. have the capability to service Cannon's Framework Customers on their current terms and have sufficient incentives to compete for and have the ability to win new customers procuring under these frameworks;
- 2.4.7. have the resources to not only acquire the divestiture package but the resources to be a successful competitor going forward; and
- 2.4.8. have the ability to provide a national coverage in all regions of the UK (including by sub-contracting operations).¹

3. *Commitment to relevant market*

- 3.1. An Approved Purchaser must demonstrate to the satisfaction of the CMA that it has commitment and credible plans for competing in the market for supply of waste disposal services in the UK, evidenced by:
 - 3.1.1. A business plan to maintain and operate a viable business actively competing in the market for supply of washroom services in the UK;

¹ Permitted sub-contracting will include: (i) sub-contracting by Cannon UK for a transitional period in order to assist with the Approved Purchaser's integration of SLC Customers into its service network; (ii) the continuance of sub-contracting where an Approved Purchaser had already been sub-contracting elements of its existing services to Cannon UK, Rentokil or another third party service provider prior to the Completion Date; and (iii) sub-contracting by Cannon UK, Rentokil or another third party service provider on a longer term basis in specific locations where the Approved Purchaser does not have or will not have the necessary scale (due to the limited amount of service activity with the SLC Customers it has acquired in such locations) to commercially justify from a cost standpoint building its own local infrastructure to support such service activity directly.

3.1.2. Managerial, operational and technical capability to support such a business plan.

4. *Absence of competitive or regulatory concerns*

- 4.1. An Approved Purchaser should not give rise to a material risk that completion of the sale will not remedy the SLC and the adverse effects arising from it.
- 4.2. An Approved Purchaser should not give rise to a realistic prospect of competition or regulatory concerns in the market for supply of washroom services in the UK.

Annex 4: Key Staff

1. ✂
2. ✂
3. ✂
4. ✂
5. ✂