



## **DETERMINATION OF MERGER NOTIFICATION M/16/008 - PANDAGREEN/GREENSTAR**

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### **Section 22 of the Competition Act 2002**

#### **Proposed acquisition by PandaGreen Limited of Starrus Eco Holdings Limited trading as Greenstar**

**Dated 16 August 2016**

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#### **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (“Act”), PandaGreen Limited (“Panda”) has submitted to the Competition and Consumer Protection Commission (“Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to the said proposals becoming binding on Panda.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 22(3)(a) of the Act, that the result of the proposed acquisition whereby Sretaw, through its wholly-owned subsidiary PandaGreen Limited, would acquire the entire issued share capital of Starrus Eco Holdings Limited (trading as Greenstar) from Starrus Holdings Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Isolde Goggin**  
**Chairperson**  
**Competition and Consumer Protection Commission**

#### **PROPOSALS BY PANDA TO THE CCPC RELATING TO THE GREENSTAR BUSINESSES (“Proposals”)**

#### **RECITALS**

- a) Pursuant to section 20(3) of the Competition Act 2002, as amended, Panda has submitted to the CCPC the following Proposals relating to the Greenstar Businesses for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Panda.



- b) Panda has agreed with the CCPC to commit to sell the Greenstar Businesses in accordance with the terms and procedures set out in these Proposals.
- c) Prior to the date of the Determination, the following has occurred:
  - (i) Panda identified Greyhound as a suitable prospective purchaser of the Greenstar Businesses and informed the CCPC that it was seriously considering the sale of the Greenstar Businesses to Greyhound.
  - (ii) The CCPC has verified the suitability of Greyhound as a prospective purchaser of the Greenstar Businesses and has informed Panda of its approval of Greyhound.
  - (iii) Panda has entered into non-binding Heads of Agreement with Greyhound for the sale of the Greenstar Businesses, the terms of which have been agreed with the CCPC.

#### **A. Definitions**

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**CCPC**” means the Competition and Consumer Protection Commission and its successors;

“**Determination**” means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“**DLR Customer**” or “**DLR Customers**” means a customer or customers located in the Dun Laoghaire Rathdown County Council area receiving Domestic Waste Collection Services from Greenstar at the date of the Determination;

“**DLR Business**” shall be construed in accordance with the Schedule hereto;

“**Domestic Waste Collection Services**” means waste collection services provided to domestic households, including without limitation to detached houses, semi-detached houses, terraced houses, bedsits and apartments in converted houses or commercial buildings, but excluding waste collection services provided to purpose-built apartment complexes;

“**Fingal Customer**” or “**Fingal Customers**” means a customer or customers located in the Fingal County Council area receiving Domestic Waste Collection Services from Greenstar at the date of the Determination;

“**Fingal Business**” shall be construed in accordance with the Schedule hereto;



“**Greenstar**” means Starrus Eco Holdings Limited (a private limited company incorporated under the laws of Ireland (Registration No. 527552)) trading under the name “Greenstar”;

“**Greenstar Customers**” means the DLR Customers and the Fingal Customers;

“**Greenstar Businesses**” means the DLR Business and the Fingal Business;

“**Greyhound**” means Greyhound Household (a private unlimited company incorporated under the laws of Ireland (Registration No. 487120));

“**Heads of Agreement**” means the heads of agreement entered into between Panda and Greyhound dated 13 July 2016 in the form approved by the CCPC, which relates to the proposed acquisition by Greyhound of the Greenstar Businesses;

“**Mandate**” means the mandate agreement to be entered into between Panda and the Trustee in accordance with paragraph 33 of these Proposals, the terms of which shall have previously been approved by the CCPC;

“**Material Change**” means a change whereby a purchaser of the Greenstar Businesses, or alternatively a purchaser of the DLR Business or a purchaser of the Fingal Business (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals), no longer fulfils the requirements of a “Suitable Purchaser”, as defined below;

“**Panda**” means PandaGreen Limited (a private limited company incorporated under the laws of Ireland (Registration No. 550340));

“**Panda Customer**” or “**Panda Customers**” means a customer or customers receiving Domestic Waste Collection Services from Panda;

“**Proposed Transaction**” means the proposed acquisition by Panda of the entire issued share capital of Greenstar as notified to the CCPC on 9 February 2016;

[...];

“**Suitable Purchaser**” means a purchaser who meets all of the following four criteria:

- 1) the acquisition by the purchaser of the Greenstar Businesses, or alternatively the acquisition by separate purchasers of the DLR Business and of the Fingal Business (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals), or the terms and conditions of any such acquisition would not be likely to create prima facie competition concerns;
- 2) the purchaser (or, in the case of separate purchasers, each purchaser) is unconnected to and independent of Panda and Greenstar;
- 3) the purchaser (or, in the case of separate purchasers, each purchaser) is able to provide, on a financially viable basis, Domestic Waste Collection



Services to the Greenstar Customers, or alternatively to the DLR Customers or to the Fingal Customers (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals); and

4) the purchaser (or, in the case of separate purchasers, each purchaser) is reasonably likely to obtain all permits or access to assets required to provide Domestic Waste Collection Services to the Greenstar Customers, or alternatively to the DLR Customers or to the Fingal Customers (if the DLR Business and the Fingal Business are intended to be acquired by separate purchasers pursuant to paragraph 12 or paragraph 39 of these Proposals);

“Trustee” means the trustee approved, or deemed to have been approved, by the CCPC with whom Panda shall enter into the Mandate in accordance with paragraph 33 of these Proposals.

#### **B. Divestment by Panda to Greyhound**

2. Panda undertakes, subject to the provisions set out herein, to effect the sale of the Greenstar Businesses to Greyhound [...] of the Determination.
3. Panda agrees with the CCPC that the sale of the Greenstar Businesses to Greyhound shall be upon the basis of the broad terms set out in the Heads of Agreement. Panda shall immediately inform the CCPC if Greyhound exercises its rights in accordance with the Heads of Agreement to decide not to proceed with the acquisition of the Greenstar Businesses.
4. Panda shall be deemed to have complied with paragraph 2 above if, [...] from the Determination (or such longer period as may be allowed by the CCPC), it has entered into a binding contract for the sale of each of the Greenstar Businesses to Greyhound (subject to due diligence, regulatory permits and any other necessary conditions not within the control of Panda or Greyhound) provided that such sale is completed within [...] from the date of the binding contract (or such longer period as may be allowed by the CCPC).
5. Panda shall immediately inform the CCPC if, having entered into a binding contract with Panda for the acquisition of the Greenstar Businesses, Greyhound exercises any relevant rights it has pursuant to such binding contract not to proceed with the acquisition of the Greenstar Businesses.
6. When Panda and Greyhound have entered into a binding contract for the sale of the Greenstar Businesses, Panda shall submit to each of the CCPC and the Trustee at the same time a copy of the binding contract together with a fully documented and reasoned proposal which demonstrates that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change in the status of Greyhound since the CCPC assessed Greyhound’s suitability to purchase the Greenstar



Businesses, subject to the CCPC agreeing to keep confidential all such information received.

7. Within [...] of the receipt by the CCPC of the binding contract for the sale of the Greenstar Businesses and accompanying fully documented and reasoned proposal in accordance with paragraph 6, the CCPC shall communicate in writing its view as to whether the conditions laid down in these Proposals have been fulfilled and, in particular, as to whether there has been any Material Change in the status of Greyhound as provided for in paragraph 6.
8. Panda recognises that, if at any time prior to completion of the sale of the Greenstar Businesses to Greyhound, the CCPC considers on the basis of information available to it that:

[...]

the CCPC may withdraw its approval of Greyhound as a Suitable Purchaser of the Greenstar Businesses. In the event that the CCPC withdraws its approval of Greyhound as a Suitable Purchaser of the Greenstar Businesses as provided for in this paragraph, the procedure provided for in paragraph 9 of these Proposals shall be followed.

#### **C. Divestment by Panda to an Alternative Purchaser or Purchasers**

9. Panda undertakes, subject to the provisions set out herein, to effect the sale of each of the Greenstar Businesses to an alternative prospective purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld) in the following circumstances, such sale to be effected within [...] of the occurrence of any one of these events:
  - (i) if the CCPC withdraws its approval of the suitability of Greyhound as a purchaser of the Greenstar Businesses for one or more of the reasons referred to in paragraph 8 of these Proposals;
  - (ii) if Panda informs the CCPC, pursuant to paragraph 3 of these Proposals, that Greyhound has exercised its rights in accordance with the Heads of Agreement not to proceed with the acquisition of the Greenstar Businesses;
  - (iii) if [...] (or such longer period as may be agreed by the CCPC) have elapsed after the date of the Determination without Panda having entered into a binding agreement with Greyhound for the disposal of each of the Greenstar Businesses; or
  - (iv) if, having entered into a binding agreement with Greyhound for the acquisition of the Greenstar Businesses, Panda informs the CCPC,



pursuant to paragraph 5 of these Proposals, that Greyhound has exercised its rights pursuant to such binding agreement not to proceed with the acquisition of the Greenstar Businesses.

10. Panda agrees with the CCPC that the sale of the Greenstar Businesses shall be upon such conditions as the CCPC may reasonably consider proper and that the sale of the Greenstar Businesses to a prospective purchaser (or purchasers) must not be likely to create, in light of information available to the CCPC, prima facie competition concerns.
11. Panda agrees that for a prospective purchaser (or purchasers) to obtain the CCPC's approval, such purchaser (or purchasers) shall:
  - (i) be unconnected to and independent of Panda and Greenstar;
  - (ii) be deemed able to provide Domestic Waste Collection Services to the Greenstar Customers on a financially viable basis; and
  - (iii) have, or be deemed reasonably likely to obtain, all permits and access to assets required to provide Domestic Waste Collection Services to the Greenstar Customers.
12. Panda shall be deemed to have complied with paragraph 9 of these Proposals if, within a [...] after the occurrence of any one of the events set out in paragraph 9 above (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 16 below), it has entered into a binding contract for the sale of the Greenstar Businesses to a single prospective purchaser, or alternatively for the sale of each of the DLR Business and the Fingal Business to separate prospective purchasers (subject to due diligence, regulatory permits and any other conditions not within the control of Panda or the purchaser(s)), provided that each such sale is (or sales are) completed within [...] from the date of the relevant binding contract (or such longer period as may be allowed by the CCPC).
13. Panda shall immediately inform the CCPC if, having entered into a binding contract with Panda for the acquisition of the Greenstar Businesses, or alternatively for the acquisition of the DLR Business or the Fingal Business, a prospective purchaser exercises any relevant rights it has pursuant to the binding contract not to proceed with the proposed acquisition.
14. Panda shall:
  - (i) promptly inform each of the CCPC and the Trustee at the same time in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the Greenstar Businesses, or alternatively the DLR Business or the Fingal Business, and to whom Panda is seriously considering the sale of the Greenstar Businesses, or alternatively the DLR Business or the Fingal



Business, in order to enable the CCPC to verify the suitability of the prospective purchaser or purchasers;

- (ii) when the parties have entered into a binding contract for the sale of the Greenstar Businesses, or alternatively the DLR Business or the Fingal Business, submit a fully documented and reasoned proposal relating to each such sale to each of the CCPC and the Trustee at the same time (including a copy of the binding contract) in order to enable the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change in the status of the purchaser since the CCPC assessed that purchaser's suitability under paragraph 14(i), subject to the CCPC agreeing to keep confidential all such information received.

15. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within two weeks of the receipt by the CCPC of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 14(i). Separately, within two weeks of the receipt by the CCPC of a binding contract and accompanying fully documented and reasoned proposal in accordance with paragraph 14(ii), the CCPC shall communicate in writing its view as to whether the conditions laid down in these Proposals have been fulfilled and as to whether there has been any Material Change in the status of the purchaser as provided for in paragraph 14(ii).
16. Failure of the CCPC to communicate its approval or non-approval of a prospective purchaser within two weeks of the receipt by the CCPC of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 14(i) shall suspend the running of the three month period established in paragraph 9 above until the CCPC communicates its approval or non-approval. In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Panda shall be free to accept any offer or to select the offer it considers best.

#### **D. The Greenstar Businesses to be Divested**

##### ***The Greenstar Businesses***

17. Panda undertakes to dispose of the entirety of the Greenstar Businesses. Panda shall take all necessary actions, including procuring any necessary actions by Greenstar, to ensure the disposal of the entirety of the Greenstar Businesses.
18. Panda undertakes to ensure that the divestment of the Greenstar Businesses is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law. Panda shall procure that Greyhound or any other prospective purchaser(s) of the Greenstar Businesses takes all necessary steps to ensure that the divestment of the Greenstar Businesses is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law.
19. Save as required by law, Panda confirms that it will not impose, as a condition of sale of the Greenstar Businesses to Greyhound, or alternatively of the DLR Business and/or the



Fingal Business to any other prospective purchaser(s), an obligation on Greyhound or on any other prospective purchaser(s) to acquire any associated assets or staff from Panda or Greenstar.

***Non-solicitation of Greenstar Customers [...]***

20. Panda undertakes not to solicit or conduct marketing activities specifically targeted at individual Greenstar Customers [...] for the provision of Domestic Waste Collection Services by for instance direct mail, including the sending of unsolicited emails, or telephone sales, or using promotions specifically targeted at the Greenstar Customers [...] at any time until the expiry of [...] following the completion of the sale of the Greenstar Businesses. For the avoidance of doubt, this paragraph shall not restrict Panda from conducting general marketing activities, including leaflet drops and advertising in media or on the internet, in the Dun Laoghaire Rathdown and Fingal County Council areas which are not specifically targeted at the Greenstar Customers [...]. In the event that Greyhound does not acquire the Greenstar Businesses for one or more of the reasons set out in paragraph 9 of these Proposals and each of the DLR Business and the Fingal Business are acquired by one or more alternative purchasers who have been approved by the CCPC in accordance with paragraph 15 or paragraph 41 of these Proposals, [...] referred to in this paragraph shall begin to run from:
- (i) the date of completion of the sale of the DLR Business in respect of any DLR Customer divested to the relevant purchaser pursuant to these Proposals; and
  - (ii) the date of completion of the sale of the Fingal Business in respect of any Fingal Customer divested to the relevant purchaser pursuant to these Proposals.
21. During the relevant [...] referred to in paragraph 20 of these Proposals, in the event that a Greenstar Customer [...] submits an unsolicited request to Panda for a quotation for the provision of Domestic Waste Collection Services by Panda, Panda shall respond in writing in a timely manner (the “Offer”). Panda shall not subsequently amend the price or terms and conditions for the provision of the Domestic Waste Collection Services contained in the Offer, although Panda may provide clarifications on the Offer, which must also be in writing, in response to a specific query received from that same Greenstar Customer [...]. Panda shall not comment on the prices or terms and conditions offered by a competing supplier of Domestic Waste Collection Services if asked to do so by a Greenstar Customer [...]. Panda shall retain copies of the Offer and written responses for a period of [...] after communication to the relevant Greenstar Customer [...] and must provide copies of the Offer and written responses to the CCPC upon the request of the CCPC.
22. Panda shall submit to the CCPC within [...] after the date of the Determination a written report (the “First Report”) demonstrating Panda’s compliance with its obligations set out in paragraph 21 of these Proposals since the date of the Determination. Panda shall submit to the CCPC within [...] after the date of submission of the First Report and at intervals of [...] thereafter, a written report (each, a “Compliance Report”) demonstrating Panda’s continued compliance with its obligations set out in paragraph





21 of these Proposals until the expiry of [...] after the [...] period referred to in paragraph 20 of these Proposals. The First Report and each subsequent Compliance Report shall include the following:

- (i) the total number of unsolicited requests for a quotation for the provision of Domestic Waste Collection Services received by Panda from Greenstar Customers [...] during [...];
- (ii) how Panda dealt with each such unsolicited request received from a Greenstar Customer [...] during the preceding [...] period, including the price and terms and conditions for the provision of Domestic Waste Collection Services contained in any Offer made by Panda to a Greenstar Customer [...] and clarifications on any Offer made by Panda;
- (iii) the total number of Greenstar Customers [...] who, as a result of an unsolicited request to Panda, commenced receiving Domestic Waste Collection Services from Panda during the preceding [...].

#### ***Continued Separation***

23. [...]

24. Panda undertakes that if it attempts, [...], to acquire any interest in:

- (i) Greyhound; or
- (ii) in the event that Greyhound does not acquire the Greenstar Businesses for one or more of the reasons set out in paragraph 9 of these Proposals, the purchaser of the DLR Business and/or the purchaser of the Fingal Business;

Panda will inform the CCPC prior to doing so and will, if required to do so by the CCPC, notify any such proposed acquisition in accordance with Section 18(3) of the Act (or its successor provision, if applicable) if such proposed acquisition is not required to be notified under Section 18(1) of the Act (or its successor provision, if applicable).

#### **E. Interim Position of the Greenstar Customers**

25. Following the Determination and pending the disposal of the Greenstar Businesses, Panda undertakes to hold separate the Greenstar Customers and to continue to provide (or, if applicable, to procure the continued provision by Greenstar of) Domestic Waste Collection Services to the Greenstar Customers until the date of disposal in accordance with good commercial practice. Panda further undertakes to appoint, or to procure the appointment by Greenstar of, a manager (the “**Greenstar Customer Manager**”) as the person with responsibility for the continued day-to-day management of the Greenstar Customers and of the Domestic Waste Collection Services provided to the Greenstar Customers, under the supervision of the Trustee. The Greenstar Customer Manager shall continue to manage all operations relating to the Greenstar Customers in the best interests of the Greenstar Customers with a view to maintaining the nature, description, range and standard of the Domestic Waste Collection Services provided to the



Greenstar Customers. Further, the Greenstar Customer Manager shall be responsible for ensuring that no competitively sensitive information relating to the Greenstar Customers is provided to Panda during the period from the date of the Determination until the date of the disposal of the Greenstar Businesses (save, with the agreement of the Trustee, where such information is required for the provision of Domestic Waste Collection Services to the Greenstar Customers in accordance with good commercial practice or for the purpose of assisting the divestiture by Panda of the Greenstar Businesses to Greyhound or to any other prospective purchaser(s)).

26. Panda undertakes to maintain (or, if applicable, to procure the maintenance by Greenstar of) the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers during the period from the date of the Determination until the date of disposal of the Greenstar Businesses and, more specifically:
- (i) to provide an equivalent standard of service (including the frequency of collection and the appointed day of collection) to the Greenstar Customers as provided by Greenstar to the Greenstar Customers at the date of the Determination;
  - (ii) to provide Domestic Waste Collection Services to the Greenstar Customers on terms (including price and the nature and range of services provided) equivalent to those provided to the Greenstar Customers by Greenstar at the date of the Determination, except where otherwise required by law;
  - (iii) to provide Domestic Waste Collection Services to the Greenstar Customers using Greenstar-branded trucks and Greenstar-branded bins;
  - (iv) to issue Greenstar-branded invoices to the Greenstar Customers in the same format as those issued to the Greenstar Customers by Greenstar at the date of the Determination, except where otherwise required by law;
  - (v) to provide customer services, help and assistance to the Greenstar Customers via a dedicated telephone number;
  - (vi) to maintain all permits required to provide Domestic Waste Collection Services to the Greenstar Customers; and
  - (vii) to commit to repair or replace any assets (including trucks and bins) necessary for the provision of Domestic Waste Collection Services to the Greenstar Customers in the event that such assets become damaged or lost or fall into disrepair prior to the date of disposal of the Greenstar Businesses;

For the avoidance of doubt, Panda shall procure that Greenstar provides such assistance required to ensure compliance with the obligations contained in this paragraph 26.



27. The obligations contained in paragraph 26 of these Proposals shall cease immediately on disposal of the Greenstar Businesses or (where relevant and appropriate) at such later time as may be agreed between Panda and Greyhound or any other purchaser(s) of the Greenstar Businesses.
28. Panda undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the management of the Greenstar Customers or the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers until the date of disposal of the Greenstar Businesses.
29. If, during the period from the date of the Determination until the date of disposal of the Greenstar Businesses, (i) one or more Greenstar Customers do not consent to the proposed transfer of their personal data to Greyhound or to any other purchaser(s) of the Greenstar Businesses (the “Exiting Greenstar Customers”) [...].

#### **F. Trustee Appointment, Mandate and Powers**

##### ***Appointment of a Trustee***

30. No later than ten working days after the Determination, Panda will propose to the CCPC a trustee, who is independent of Panda and Greenstar (the “Proposed Trustee”). The appointment of the Proposed Trustee is subject to the approval of the CCPC. If the CCPC does not reject the Proposed Trustee by notice in writing within five working days of the proposal, the Proposed Trustee shall be deemed to have been approved.
31. If the Proposed Trustee is rejected, Panda will propose the name of a new trustee (the “New Trustee”) within ten days of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Panda within ten days of the new proposal, the New Trustee shall be deemed to have been approved.
32. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable trustee (the “CCPC Trustee”) which Panda will appoint or cause to be appointed.

##### ***Trustee’s Mandate***

33. Within ten working days of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee, Panda shall enter into a mandate agreement (“Mandate”) with the approved trustee (the “Trustee”), the terms of which shall have previously been agreed with the CCPC, which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Panda’s compliance with the terms of these Proposals and in a manner consistent with the purpose of these Proposals.
34. The Trustee shall be independent of Panda and Greenstar, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
35. Throughout the duration of the Trustee’s appointment, the Trustee shall:



- (i) provide written reports (“**Trustee Reports**”) to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the Determination, or at such other times or time periods as the CCPC may specify and are notified in writing to Panda. Panda shall receive a non-confidential copy of such Trustee Reports;
  - (ii) monitor and advise the CCPC as to the conduct of the negotiations between Panda and Greyhound or any other prospective purchaser(s) for the sale of the Greenstar Businesses;
  - (iii) monitor and advise the CCPC as to whether Greyhound or any other prospective purchaser(s) continues to satisfy the CCPC’s requirements as to suitability;
  - (iv) monitor the maintenance of the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers by Panda from the date of the Determination until completion of the sale of the Greenstar Businesses; and
  - (v) monitor and advise the CCPC as to the effectiveness of the process by which the Greenstar Customers [...] are transferred to Greyhound or any other prospective purchaser(s) of the Greenstar Businesses.
36. The Trustee’s duties and functions as set out above shall not be extended or varied in any way by Panda, save with the express consent of the CCPC. Any instruction or request to the Trustee from Panda which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
37. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination so long as Panda is first given an opportunity to comment on any such orders or instructions in advance.

#### ***Divestment by the Trustee***

38. In the circumstances specified below, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Greenstar Businesses to one prospective purchaser, or alternatively for the sale of the DLR Business and/or the Fingal Business to one or more prospective purchasers, [...] upon such terms and conditions as it considers appropriate for an expedient sale:
- (i) if [...] (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in paragraph 16 of these Proposals) have elapsed after the date of the occurrence of any one of the events set out in paragraph 9 above without Panda having entered into a binding contract for the disposal of the entirety of the Greenstar Businesses; or



- (ii) if any prospective purchaser referred to in section C of these Proposals exercises any relevant rights it has pursuant to any binding contract with Panda not to proceed with the acquisition of the Greenstar Businesses, or alternatively of the DLR Business or the Fingal Business.
- 39. For the avoidance of doubt, for the purpose of paragraph 38 of these Proposals, the Trustee shall have a mandate to negotiate and conclude arrangements for the sale of the DLR Business (if not already sold to a purchaser approved by the CCPC) to one prospective purchaser and separately for the sale of the Fingal Business (if not already sold to a purchaser approved by the CCPC) to a second prospective purchaser.
- 40. In the event of the occurrence of any of the circumstances listed in paragraph 38 of these Proposals, the Trustee shall:
  - (i) identify at the earliest opportunity a viable prospective purchaser of the Greenstar Businesses, or alternatively a viable prospective purchaser for each or either of the DLR Business and/or the Fingal Business, who shall be unconnected to and independent of Panda and Greenstar;
  - (ii) following the identification of a viable prospective purchaser (or purchasers), promptly inform the CCPC in writing, with a fully documented and reasoned proposal, of the identity of the said prospective purchaser(s) and the Trustee's view as to the suitability of the said prospective purchaser(s), in order to enable the CCPC to verify the suitability of the prospective purchaser(s);
  - (iii) following receipt of the CCPC's approval of the suitability of the prospective purchaser(s), negotiate and conclude [...] a binding contract for the sale of the Greenstar Businesses, or alternatively for the sale of each or either of the DLR Business and/or the Fingal Business, at [...] and upon such terms and conditions as the Trustee considers appropriate for an expedient sale;
  - (iv) when a binding contract for the sale of the Greenstar Businesses, or alternatively for each or either of the DLR Business and/or the Fingal Business, has been entered into with the prospective purchaser(s), submit a fully documented and reasoned proposal (including a copy of the binding contract) relating to each such sale to the CCPC in order to enable the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change in the status of the prospective purchaser(s) since the CCPC assessed the suitability of the prospective purchaser(s) under paragraph 40(ii) subject to the CCPC agreeing to keep confidential all such information received.
- 41. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser [...] of the receipt by the CCPC of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 40(ii). Separately, within two weeks of the receipt by the CCPC of a binding contract and accompanying fully documented and reasoned proposal in accordance with paragraph 40(iv), the CCPC



shall communicate in writing its view as to whether the conditions laid down in these Proposals have been fulfilled and as to whether there has been any Material Change in the status of the purchaser as provided for in paragraph 40(iv).

42. The Trustee shall have regard to the legitimate financial interests of Panda in respect of the sale of the Greenstar Businesses, [...].

***Further provisions relating to the Trustee***

43. Panda will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties, with the exception of Greenstar, provide such assistance required to ensure compliance with these Proposals. For the avoidance of doubt, Panda will procure that Greenstar provides all assistance as may be required by the Trustee in order to ensure compliance with these Proposals. Panda will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Panda as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
44. In addition, at the expense of Panda, the Trustee may (during the trustee divestment period referred to in paragraph 38 *et seq* above) appoint advisors (in particular for corporate finance or legal advice), subject to Panda's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Panda refuse to approve the advisors proposed by the Trustee the CCPC may approve the appointment of such advisors instead, after first having heard Panda. Only the Trustee shall be entitled to issue instructions to the advisors.
45. The Trustee shall have full and complete access to the Greenstar Customer Manager (as defined in paragraph 25 of these Proposals) in order to ensure compliance by Panda with its obligation to maintain the nature, description, range and standard of the Domestic Waste Collection Services provided to the Greenstar Customers from the date of the Determination until completion of the sale of the Greenstar Businesses.
46. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible, given the nature of its tasks, due regard to the commercial interests of Panda.
47. Panda shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Panda for, any liabilities arising out of the performance of the Trustee's duties under the Proposals and the Mandate, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
48. The Mandate and these Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Panda announces that the Proposed Transaction has been irrevocably abandoned.



49. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

**G. Review clause**

50. The CCPC may at its sole discretion extend any of the time periods provided for in these Proposals in response to a reasoned request from Panda or the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole discretion, in response to a reasoned request from Panda or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Proposals.



## SCHEDULE TO THE PROPOSALS

1. The Greenstar Businesses to be divested by Panda pursuant to the Proposals consist of the DLR Business and the Fingal Business as defined in this Schedule to the Proposals.
2. The “**DLR Business**” consists of the following assets which are maintained by Greenstar at the date of the Determination:
  - (i) all books, records and correspondence relating to the DLR Customers, including the full name, address and contact details of each DLR Customer and any other relevant information relating to each DLR Customer (including but not limited to account number, bin tag number, number and type of bins, billing frequency, billing charge, billing date, payment method, debtor balance and prepaid calculation), which are maintained by Greenstar at the date of the Determination;
  - (ii) the rights, interest and obligations under all contracts between Greenstar and each of the DLR Customers for the provision of Domestic Waste Collection Services which are in force at the date of the Determination;
  - (iii) all debts (less any deferred income calculated upon closing of the sale of the Greenstar Businesses) in respect of the DLR Customers which are outstanding at the date of the Determination;
  - (iv) all bins provided by Greenstar to each of the DLR Customers at the date of the Determination;
  - (v) if requested by the prospective purchaser, and agreed by Panda, any trucks or other physical assets used by Greenstar for the purpose of providing Domestic Waste Collection Services to the DLR Customers at the date of the Determination; and
  - (vi) if requested by the prospective purchaser, and agreed by Panda, any employees of Greenstar involved in the provision of Domestic Waste Collection Services to the DLR Customers at the date of the Determination.
3. The “**Fingal Business**” consists of the following assets which are maintained by Greenstar at the date of the Determination:
  - (i) all books, records and correspondence relating to the Fingal Customers, including the full name, address and contact details of each Fingal Customer and any other relevant information relating to each Fingal Customer (including but not limited to account number, bin tag number, number and type of bins, billing frequency, billing charge, billing date, payment method, debtor balance and prepaid calculation), which are maintained by Greenstar at the date of the Determination;





- (ii) the rights, interest and obligations under all contracts between Greenstar and each of the Fingal Customers for the provision of Domestic Waste Collection Services which are in force at the date of the Determination;
- (iii) all debts (less any deferred income calculated upon closing of the sale of the Greenstar Businesses) in respect of the Fingal Customers which are outstanding at the date of the Determination; and
- (iv) all bins provided by Greenstar to each of the Fingal Customers at the date of the Determination;
- (v) if requested by the prospective purchaser, and agreed by Panda, any trucks or other physical assets used by Greenstar for the purpose of providing Domestic Waste Collection Services to the Fingal Customers at the date of the Determination; and
- (vi) if requested by the prospective purchaser, and agreed by Panda, any employees of Greenstar involved in the provision of Domestic Waste Collection Services to the Fingal Customers at the date of the Determination.