

**ANTICIPATED ACQUISITION BY
SRCL LIMITED OF CLINISERVE HOLDINGS LIMITED**

PROPOSED UNDERTAKINGS TO BE GIVEN BY SRCL LIMITED AND CLINISERVE HOLDINGS LIMITED TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 31 July 2008 SRCL entered into a sale and purchase agreement which was subsequently amended by a deed of amendment dated 23 December 2008, under which SRCL will acquire the entire share capital of Cliniserve.
- (b) It appears to the OFT that, as a consequence of that transaction, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in the UK.
- (c) The OFT has a duty to refer an anticipated merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services.
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of Cliniserve by SRCL to the CC.
- (f) The OFT further considers that the undertakings given below by SRCL and Cliniserve are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE SRCL and Cliniserve hereby give to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by SRCL and Cliniserve, they are accepted by the OFT.

Divestment of the Littlehampton Divestment Business by Cliniserve

- 2.1 Cliniserve shall divest to the satisfaction of the OFT the Littlehampton Divestment Business as a going concern to the proposed purchaser, Ethos, to be approved by the OFT.

- 2.2 Without prejudice to the generality of paragraph 2.1 above, Cliniserve shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Littlehampton Divestment Business.

- 2.3 Cliniserve shall only be deemed to have complied with the obligation at paragraphs 2.1 and 2.2 if, prior to acceptance of these undertakings by the OFT, it has entered into a legally binding agreement, on terms approved in advance by the OFT, with the proposed purchaser, conditional only on:

- (a) formal OFT approval of the proposed purchaser for the purposes of paragraph 5.1;
- (b) acceptance by the OFT of these undertakings;
- (c) the issuing by the Environment Agency of written confirmation that it will transfer the environmental permits required for the operation of the Littlehampton treatment facility immediately after completion of the divestment of the Littlehampton Divestment Business; and
- (d) satisfaction of the conditions in the share purchase agreement of 31 July 2008 (as amended by a deed of variation dated 23 December 2008) relating to the acquisition by SRCL of Cliniserve Holdings Limited, other than the condition relating to completion of the divestment of the Littlehampton Divestment Business

provided that the completion of the divestment of the Littlehampton Divestment Business to the proposed purchaser contemplated by such agreement takes place within a period not exceeding three months from the date these undertakings take effect (as set out in paragraph 1.1 above).

- 2.4 Without prejudice to the generality of paragraph 2.1 above, Cliniserve shall take the following measures to the extent they may be necessary in the opinion of the OFT to effect the sale of the Littlehampton Divestment Business in accordance with the provisions of these undertakings:
- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (d) the formation or winding up of a company.
- 2.5 To the extent that Cliniserve divests the property associated with the Littlehampton Divestment Business other than by transfer of the freehold interest to the proposed purchaser, it shall in addition sell any residual proprietary interest in that property associated with the Littlehampton Divestment Business to a person independent of and unconnected to SRCL and the Group of Interconnected Bodies Corporate to which SRCL belongs and any Associated Person or Affiliate of SRCL or such Group of Interconnected Bodies Corporate, with the completion of the sale of that residual proprietary interest occurring within a period not exceeding three months from the date of the divestment to the proposed purchaser.
- 2.6 Cliniserve shall ensure that the sale and purchase agreement entered into for the purposes of paragraphs 2.1 and 2.3 above includes a warranty that the proposed purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Littlehampton Divestment Business as part of a viable and active business in competition with SRCL and other competitors in the treatment of healthcare risk waste in south east England.
- 2.7 In the event that Cliniserve fails to divest the Littlehampton Divestment Business in accordance with paragraphs 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 above, the OFT may require Cliniserve to divest the Littlehampton Divestment Business as a going concern to a purchaser or purchasers approved by the OFT.

Offer to proposed purchaser of interim purchase obligation on SRCL

- 3.1 SRCL shall offer to the proposed purchaser an interim purchase agreement for the treatment of healthcare risk waste at the Littlehampton treatment facility in order to give the proposed purchaser the option of a guaranteed minimum volume of waste to be treated at the Littlehampton treatment

facility for an interim period following completion of the divestment of the Littlehampton Divestment Business.

3.2 SRCL shall be deemed to have complied with the obligation at paragraph 3.1 if the OFT is satisfied that, prior to the acceptance of these undertakings by the OFT, SRCL has offered to enter into a legally binding purchase agreement with the proposed purchaser, conditional only on completion of the divestment of the Littlehampton Divestment Business and completion of the acquisition of Cliniserve by SRCL, on terms such that:

- (a) the duration of any such agreement shall be for a maximum of two years following completion of the divestment of the Littlehampton Divestment Business, with no ability to extend beyond this two year period;
- (b) subject to any reduction in volume by the proposed purchaser, SRCL shall have an obligation to purchase from the proposed purchaser treatment services equating to 3500 tonnes per annum for treatment at the Littlehampton treatment facility;
- (c) the proposed purchaser shall at any time during the life of the agreement have the right to reduce the volume of waste it is treating on behalf of SRCL by the provision of 120 days notice to SRCL and, for the avoidance of doubt, the proposed purchaser shall have the right to make multiple such reductions in treatment volume during the life of the agreement and shall be under no obligation to take any minimum volume of waste from SRCL;

provided that where the proposed purchaser wishes to take up the offer of such a purchase agreement with SRCL, the terms of that agreement shall be approved in advance by the OFT prior to the acceptance of these undertakings by the OFT.

Non-acquisition of Cliniserve by SRCL pending divestment of the Littlehampton Divestment Business by Cliniserve

4.1 Unless and until Cliniserve has completed the divestment of the Littlehampton Divestment Business to the proposed purchaser (or to an alternative purchaser approved by the OFT (under paragraph 2.7) in accordance with its obligations under paragraph 2 above, or except with the prior written consent of the OFT, SRCL or any member of the Group of Interconnected Bodies Corporate to which SRCL belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in Cliniserve;

- (ii) any Interest in any company carrying on or having Control of Cliniserve (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of SRCL or of any members of the Group of Interconnected Bodies Corporate to which SRCL belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the ordinary course of business, any of the assets of Cliniserve;
- (b) shall procure that no employee or director of SRCL or of any member of the Group of Interconnected Bodies Corporate to which SRCL belongs holds or is nominated to any directorship or managerial position in Cliniserve or any company or other undertaking utilising or having Control of Cliniserve without the OFT's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of Cliniserve or any company or other undertaking carrying on or having Control of Cliniserve; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of SRCL or of any member of the Group of Interconnected Bodies Corporate to which SRCL belongs directly or indirectly acquiring Cliniserve or doing any of the things listed in sub-paragraphs (a), (b) and (c) above.

Approval of purchaser and terms of divestment by Cliniserve

5.1 For the purposes of the OFT approving a proposed purchaser in accordance with these undertakings, Cliniserve shall, save as required or permitted by the OFT, satisfy the OFT that:

- (a) the acquisition by the proposed purchaser remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (b) the proposed purchaser is independent of and unconnected to SRCL and the Group of Interconnected Bodies Corporate to which SRCL belongs and any Associated Person or Affiliate of SRCL or such Group of Interconnected Bodies Corporate;
- (c) the proposed purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Littlehampton Divestment Business as part of a viable and active business in competition with SRCL and other competitors in the treatment of healthcare risk waste in south east England;
- (d) the proposed purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority including landlord's consent to the transfer of any leasehold interest;
- (e) the acquisition by the proposed purchaser of the Littlehampton Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK; and
- (f) the proposed purchaser has the firm intention of maintaining and operating the Littlehampton Divestment Business from the date of completion of the divestment as part of a viable and active business in competition with SRCL and other competitors in the treatment of healthcare risk waste in south east England.

5.2 The OFT may require Cliniserve and/or a proposed purchaser to provide it with such information and documentation as it may reasonably require to satisfy the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 5.1 above.

Interim action by Cliniserve

6. Pending the divestment of the Littlehampton Divestment Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, Cliniserve shall ensure that:

- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Decision, the Littlehampton Divestment Business is maintained as a going concern and sufficient resources are made available for the development of the Littlehampton Divestment Business on the basis of its pre-merger plans;
- (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Littlehampton Divestment

Business or the management responsibilities within the Littlehampton Divestment Business;

- (c) except with the prior written consent of the OFT, the Littlehampton Divestment Business is maintained and preserved, including facilities and goodwill;
- (d) the nature, description, range and standard of goods and services currently supplied by the Littlehampton Divestment Business are maintained and preserved;
- (e) except in accordance with these undertakings, no assets of the Littlehampton Divestment Business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (f) there is no further integration of the information technology used by Cliniserve with that used by the Littlehampton Divestment Business and the software and hardware platforms of the Littlehampton Divestment Business shall remain essentially unchanged, except for routine changes and maintenance; and
- (g) all reasonable steps are taken to encourage all Key Staff to remain with the Littlehampton Divestment Business.

Continued separation by SRCL

- 7. Except with the prior written consent of the OFT, following the divestment of the Littlehampton Divestment Business, SRCL or any member of the Group of Interconnected Bodies Corporate to which SRCL belongs:
 - (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the Littlehampton Divestment Business other than any residual proprietary interest in the property associated with the Littlehampton Divestment Business pending divestment of that residuary proprietary interest pursuant to paragraph 2.5;
 - (ii) any Interest in any company carrying on or having Control of the Littlehampton Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of SRCL or of any members of the Group of Interconnected Bodies Corporate to which SRCL belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than

three per cent of the voting rights exercisable at meetings of such company); or

- (iii) other than in the ordinary course of business, any of the assets of the Littlehampton Divestment Business;
- (b) shall procure that no employee or director of SRCL or of any member of the Group of Interconnected Bodies Corporate to which SRCL belongs holds or is nominated to any directorship or managerial position in the Littlehampton Divestment Business or any company or other undertaking utilising or having Control of the Littlehampton Divestment Business without the OFT's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Littlehampton Divestment Business or any company or other undertaking carrying on or having Control of the Littlehampton Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of SRCL or of any member of the Group of Interconnected Bodies Corporate to which SRCL belongs directly or indirectly acquiring the Littlehampton Divestment Business or doing any of the things listed in sub-paragraphs (a), (b) and (c) above.

Compliance by Cliniserve and SRCL

- 8.1 Cliniserve and/or SRCL shall comply promptly with such written directions as the OFT may from time to time give:
 - (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 8.2 Cliniserve and SRCL shall procure that any member of the same Group of Interconnected Bodies Corporate as Cliniserve or SRCL complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Cliniserve or SRCL shall be attributed to Cliniserve or SRCL respectively for the purposes of these undertakings.

- 8.3 Where any Affiliate of Cliniserve or SRCL is not a member of the same Group of Interconnected Bodies Corporate as Cliniserve or SRCL, Cliniserve and/or SRCL shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Extension of time limits

9. The OFT may, in response to a written request from Cliniserve and/or SRCL, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

Provision of Information by Cliniserve and SRCL

10. Cliniserve and/or SRCL shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

Interpretation

- 11.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 11.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 11.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 11.4 For the purposes of these undertakings:

"Acquisition" means the anticipated acquisition by SRCL of Cliniserve pursuant to a sale and purchase agreement dated 31 July 2008, as amended by a Deed of Amendment dated 23 December 2008;

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“Associated Person” means a person or persons associated with Cliniserve within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

“Business” has the meaning given by section 129(1) and (3) of the Act;

“CC” means the Competition Commission;

“Cliniserve” means Cliniserve Holdings Limited;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“Control” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“Decision” means the OFT’s decision under section 33 of the Act dated 21 November 2008 in connection with the Acquisition;

“Divestment” shall include, in addition to the sale of freehold property, the transfer of a leasehold interest or the grant of a long lease on normal commercial terms of not less than 25 years duration and the word "divest" and its derivatives shall be construed accordingly; and "purchase", "purchaser", "acquire" and "acquisition" and "attempted divestment" shall be construed to include both freehold and leasehold transactions;

“Ethos” means Ethos Recycling Limited;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Healthcare risk waste” means waste produced in the healthcare system which requires treatment prior to disposal, including syringes, dressings, pharmaceutical products, anatomical and low level radioactive waste;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“Key Staff” means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

“Littlehampton Divestment Business” means the business treating medial waste at the Littlehampton treatment facility owned by Cliniserve and located at the date of the undertakings in Littlehampton, West Sussex, comprising the whole or substantially the whole of the rights, assets, interests and obligations of or associated with that business as operated immediately prior to the date of the Acquisition, including without prejudice to the foregoing, save as required or permitted by the OFT:

- (a) where capable of being transferred, all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of the Littlehampton treatment facility;
- (b) where capable of being transferred, all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of the Littlehampton treatment facility;
- (c) where capable of being transferred, all or substantially all contracts, leases and commitments of or associated with the Littlehampton treatment facility, but excluding customer waste treatment contracts concluded with Cliniserve; and
- (d) all credit and other records relating to the Littlehampton treatment facility, but excluding records of customer waste treatment contracts concluded with Cliniserve.

“Littlehampton treatment facility” means the alternative technology clinical waste treatment facility currently located at the freehold property known as Unit B, Arunside Industrial Estate, Fort Road, Wick, Littlehampton, West Sussex BN17 7QU;

“OFT” means the Office of Fair Trading;

“SRCL” means SRCL Limited;

“Subsidiary” shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated; and

“UK” means the United Kingdom of Great Britain and Northern Ireland.

FOR AND ON BEHALF OF **SRCL LIMITED**

..... Signature

..... Name

..... Title

..... Date

Authorised Signatory

FOR AND ON BEHALF OF **CLINISERVE HOLDINGS LIMITED**

..... Signature

..... Name

..... Title

..... Date

Authorised Signatory