



GENERAL TERMS AND CONDITIONS OF SALE

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1. DEFINITIONS

Unless the context indicates otherwise, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 1.1. **ABC Laws** means the Bribery Act 2010 (United Kingdom), the Foreign Corrupt Practices Act, 1977 (United States of America), the Prevention and Combating of Corrupt Activities Act, 2004 (South Africa), the United Nations Convention Against Corruption, Sapin II (France's anti-corruption laws) and all other applicable Laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, each as amended from time to time;
- 1.2. **Acceptance Date** means the earlier of Veolia's acceptance of the Client's Credit Application or, in the event that the Client does not submit such a credit application, the date of Veolia's acceptance of the Client's Purchase Order;
- 1.3. **Agreement** means this agreement incorporating any annexures, addenda and schedules hereto and, where applicable, the Client's Credit Application;
- 1.4. **Applicable Laws** means:
 - 1.4.1. all statutes, ordinances, regulations, proclamations, rules and other acts having the force of law of any authority having jurisdiction and includes the common law as applicable in South Africa;
 - 1.4.2. shall also include
 - 1.4.2.1. the ABC Laws; and
 - 1.4.2.2. the Applicable Sanctions.
- 1.5. **Applicable Sanctions** shall include all sanctions, embargoes and trade restrictions by the United Nations Security Council, the United States of America and the European Union and all other Sanctions that are binding on Buyer and/or the Supplier;
- 1.6. **Best Industry Practice** means the exercise of that degree of skill, diligence, professionalism and foresight which would reasonably and ordinarily be expected from a highly skilled and experienced service provider engaged under similar circumstances as those envisaged in this Agreement;
- 1.7. **Business Day** means a day other than a Saturday or Sunday or a gazetted public holiday in the Republic of South Africa;
- 1.8. **Confidential Information** means all confidential and proprietary information disclosed by one Party ("**Disclosing Party**") to the other ("**Receiving Party**") prior to or after the Acceptance Date, whether marked as confidential information or not and shall include, without limiting its ordinary meaning, and in respect of the Parties' respective business affairs and technologies, oral, written, printed, photographically and electronically recorded information of all types, documents, letters, agreements, undertakings, messages, codes, data, formulae, specifications, blueprints, plans, processes, marketing methods, Know-How, methodology, intellectual property, trade secrets, projects, projections, cash flow charts, software and copies, notes and extracts, and the strategic plans, financial plans and financial planning process, the direction, manner, timing and implementation of any projects to be undertaken, as well as any information, economic as well as financial, regarding the affairs of a Party which comes to the attention of the other Party pursuant to this Agreement. "Confidential Information" shall not include information which (1) now or hereafter becomes, through no act or omission on the part of the Receiving Party, generally known or available to the public; (2) was acquired by the Receiving Party before receiving such information from the Disclosing Party and without restriction as to its use or disclosure; (3) is rightfully furnished to the Receiving Party by a third party without restriction as to its use or disclosure; or (4) the

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- Receiving Party, can document, was independently developed by it without a breach of any obligation of confidentiality;
- 1.9. **Client** means the Party procuring Goods and/or Services from Veolia;
- 1.10. **Client's Credit Application** means the application for credit submitted by the Client to Veolia, including all terms and conditions stated therein;
- 1.11. **Goods** means the goods supplied by Veolia to the Client;
- 1.12. **Intellectual Property** means and shall include without limitation, copyright, trademarks, service marks, trade names, domain names, design rights, patents, petty patents, computer programs, source code, object code, utility models and like rights, know-how, the Know-How, methodology, in each case, whether registered or unregistered and including applications for the grant of any of the foregoing rights in know-how, confidential information, designs, trade secrets, methodology, other intellectual property rights and all rights or forms of protection having equivalent or similar effect to any of the foregoing, which may subsist in any country in the world;
- 1.13. **Insolvency Event** means:
- 1.13.1. a compromise or composition or threatened compromise or composition by a Party with its creditors generally;
 - 1.13.2. the passing of a resolution for or the placing into provisional or final liquidation of a Party or a Party resolving to begin business rescue proceedings or the placement of a Party under business rescue;
 - 1.13.3. in circumstances where there is a default or cessation or a reasonable prospect of default or cessation (as the case may be) of a Party's normal line of business;
 - 1.13.4. of any act or omission which would, in the case of an individual, be an act of insolvency;
 - 1.13.5. disposal by a Party of a material portion of its undertaking or assets; or
 - 1.13.6. any change in the control or material change in the shareholding of a Company,
- 1.14. **Know-How** means all proprietary information relating to the business of Veolia, whether confidential or not, as well as any information reduced to material form and compiled in the design, manufacture, distribution, marketing and sale of Veolia's products and/or services and shall include information available to the public but compiled into a usable and/or valuable format by the use of labour, skill and effort;
- 1.15. **POPI Act** means the Protection of Personal Information Act, 4 of 2013;
- 1.16. **Quotation** means the quotation sent by Veolia to the Client setting out the Goods, Services and pricing;
- 1.17. **Services** means the Services rendered by Veolia to the Client;
- 1.18. **Staff** means any employee, independent contractor, agent, consultant, subcontractor or other representative of Veolia;
- 1.19. **Subcontract** means: (i) any subcontract; and (ii) any agreement or commitment to enter into a subcontract, relating to the supply of the Goods and Services under this Agreement (in their entirety or any part of them), whether formal or informal and whether or not in writing;
- 1.20. **Subcontractor** means any party to the relevant Subcontract which has agreed to supply any Goods and/or Service to the Client;
- 1.21. **Tax or Taxation** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference, including mining royalties, and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including, without limitation, PAYE, SITE and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on

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account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating thereto;

- 1.22. **Termination Date** means the date of termination of this Agreement for any reason whatsoever; and
- 1.23. **Veolia** means either Veolia Services Southern Africa (Pty) Ltd, a company with registration number 1964/007768/07, or VWT Africa International (Pty) Ltd, a company with registration number 2017/312188/07, as the case may be.

2. INTERPRETATION

In this Agreement:

- 2.1. words importing natural persons shall include a reference to bodies corporate and other legal personae and vice versa;
- 2.2. a reference to any one gender shall include a reference to the other;
- 2.3. a reference to the singular shall include a reference to the plural and vice versa;
- 2.4. if any conflict arises in respect of the provisions contained in this Agreement and any annexure or schedule attached hereto, the provisions contained in this Agreement shall take precedence;
- 2.5. a reference to a Party shall include a reference to that Party's successors and assigns;
- 2.6. any reference to an enactment is to that enactment as at the Acceptance Date and as amended or re-enacted from time to time;
- 2.7. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.8. a reference to a document includes an amendment or supplement to or a replacement or novation of that document;
- 2.9. the clause headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation hereof;
- 2.10. if any provision in any definition set out in either clause 1 or this clause 2, or any other clause in this Agreement is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it may be set out in only either clause 1 or this clause 2 or such other clause, effect shall be given thereto as if it were a substantive provision set out in the body of this Agreement;
- 2.11. prior drafts of this Agreement shall not be admissible in any proceedings as evidence of any matter relating to any negotiations preceding the Acceptance Date;
- 2.12. where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in clause 1;
- 2.13. the use of the word "including", "include" and "includes" followed by a specific example(s) shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example(s);
- 2.14. reference to day(s), month(s) or year(s) shall be construed as Gregorian calendar day(s), month(s) or year(s);
- 2.15. the language of this Agreement and/or any communication flowing therefrom and/or of any alternative dispute resolution events shall be in English;

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- 2.16. the rule of interpretation that an Agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules;
- 2.17. the termination or expiry of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this; and
- 2.18. For the avoidance of doubt, unless expressly agreed to in writing by a Director of Veolia, none of the Client's (standard or otherwise) terms and conditions, whether set out or referred to in a purchase order or any other correspondence or document provided to Veolia by the Client, will form part of the Agreement. Any such terms and conditions which the Client at any time attempts to invoke or rely upon shall be of no force and effect.

3. RECORDAL

It is hereby recorded that:

- 3.1. The Client requires the provision of certain Goods and/or Services;
- 3.2. Veolia has the expertise and ability to provide the required Goods and/or Services;
- 3.3. The Parties accordingly agree to enter into the Agreement.

4. APPOINTMENT

Notwithstanding anything to the contrary, this Agreement does not constitute an agreement of employment, partnership, joint venture or agency between Veolia and the Client and shall not give rise to any relationship of employer and employee, between Veolia and any employee, agent or Subcontractor of the Client. Accordingly, neither Party shall, save as expressly stated otherwise, have the power to conclude a contract in the name of the other, to grant or pledge credit in the name of the other, to incur liabilities on behalf of the other or to employ any person on behalf of the other and neither Party shall, save as expressly stated otherwise, hold itself out to have such power.

5. DURATION

This Agreement shall commence on the Acceptance Date and shall continue until Veolia has received full and final payment for the Goods and/or Services.

6. SUPPLY OF GOODS AND SERVICES

Veolia shall (and, where appropriate, shall procure that its entire Staff) supply the Goods and/or Services in accordance with the terms of this Agreement and shall:

- 6.1. render its services in a professional and workmanlike manner in accordance with Best Industry Practices and as stipulated by this Agreement; and
- 6.2. Deliver the Goods and Services in accordance with the agreed Incoterms (if applicable).
- 6.3. Notwithstanding the above:

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- 6.3.1. Veolia does not make any express or implied warranty as to the merchantability or fitness for any particular purpose of the Goods; and
- 6.3.2. any delivery dates provided by Veolia are estimates only and unless expressly agreed otherwise in writing, the delivery period specified and agreed will not be a final deadline. The mere fact that Veolia exceeds the agreed delivery period shall not constitute a breach of contract, shall not result in default or any liability to Veolia and shall not entitle the Client to terminate the Agreement or to any other remedy for breach of contract.
- 6.4. Any delivery note, waybill, job card, or copy of the aforementioned documents signed by the Client or a third party engaged to transport the Goods shall be *prima facie* proof that delivery was made to the Client.

7. CLIENT'S RIGHTS, DUTIES & OBLIGATIONS

The Client shall:

- 7.1. make available to Veolia all relevant resources and information reasonably required for the supply of the Goods and/or Services; and
- 7.2. ensure that Veolia is afforded assistance by Client Staff members as is reasonably required by Veolia to effectively supply the Goods and/or Services.

8. PAYMENT

- 8.1. Invoicing Process:
 - 8.1.1. Veolia will submit a tax invoice to the Client in accordance with the agreed payment terms as set out in the Client's Credit Application.
 - 8.1.2. If the Client disagrees with any amount set out in the tax invoice, it shall, in writing, notify Veolia of its disagreement.
 - 8.1.3. Veolia and the Client shall attempt to amicably settle any disputes with respect to the issued tax invoice.
- 8.2. Payment
 - 8.2.1. The Client shall pay the full undisputed amount of the tax invoice to Veolia in accordance with the payment terms set out in the Client's Credit Application.
 - 8.2.2. The Client shall make payment to Veolia by way of electronic funds transfer into the bank account nominated by Veolia on or before the due date for payment.
 - 8.2.3. The Client may not set-off any amount due to Veolia against any amount that the Client believes is, or which rightfully is, owed to it by Veolia.
- 8.3. Interest
 - 8.3.1. The Client shall be liable for interest on all late payments. Such interest shall be:
 - 8.3.1.1. charged at 3% above the Standard Bank of South Africa's prime lending rate;
 - 8.3.1.2. calculated from the day payment was due until the day payment is made; and
 - 8.3.1.3. compounded monthly.
- 8.4. Ownership
 - 8.4.1. Ownership in and of any Goods supplied by Veolia to the Client shall remain vested in Veolia until such time as the Goods have been paid for in full.

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9. AUDITS

- 9.1. The Parties shall keep at their normal place of business detailed, accurate and up to date records and books of account showing all payments made to and from a Party in connection with this Agreement for a period of at least 5 (five) years. The Parties shall ensure that such records and books of accounts are sufficient to enable the other Party to verify compliance with this Agreement, including compliance with the ABC Laws.
- 9.2. Each Party shall allow the other Party, its auditors (including internal audit Staff and external auditors), as such Party may from time to time designate in Writing, on reasonable notice to the other Party, but without notice in case of any reasonably suspected breach of any provision of this Agreement, access at all reasonable times to any facility or part of a facility at which either Party, or any of its Subcontractors, Staff, and to hardware, software, data and records relating to the Goods and Services for the purpose of performing audits and inspections to:
 - 9.2.1. verify the accuracy of charges and invoices;
 - 9.2.2. verify the integrity of data and examine the systems that process, store, support and transmit that data;
 - 9.2.3. examine the supply of the Goods and Services;
 - 9.2.4. provide to a Party's auditors and inspectors such assistance and co-operation as they may reasonably require, including installing and operating audit software. Each Party shall ensure that any such audit shall not unreasonably disrupt the other Party's business operations and shall comply with the other Party's reasonable security or confidentiality requirements; and
 - 9.2.5. at any reasonable time, audit and perform due diligence on the other Party in order to ensure compliance with applicable legislation, regulations, policies and procedures as well as undertakings regarding service delivery and BEE objectives.
- 9.3. Each Party shall promptly make available, to the other Party, any findings of any review or audit conducted by that Party (including internal and external auditors) to the extent such findings reflect conditions and events which have a material impact on the Agreement, compliance with the Agreement or the other Party.
- 9.4. Promptly after the issuance of any audit report or findings issued under clause 9.3, the Parties shall meet to review such audit report or audit findings and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report or audit findings.
- 9.5. Each Party shall maintain a complete audit trail of all financial and non-financial transactions resulting from the Agreement as reasonably necessary to give effect to the provisions of this clause 9. Each Party will maintain and provide access to the other Party, upon request, to the records, documents and other information that make up such audit trail until the later of (i) 5 (five) years after expiration or termination of the Agreement; (ii) all pending matters relating to an Agreement (e.g. disputes) are closed; or (iii) such other period as is required by the Applicable Law.
- 9.6. Notwithstanding the forgoing, the Parties shall at all times comply with the POPI Act in respect of the processing of personal information. Breach of this sub-clause shall be constituted as a material breach of the Agreement.

10. REGULATORY REQUIREMENTS

- 10.1. Each Party warrants that it is and will remain for the duration of the Agreement, fully cognisant of any relevant legislative or regulatory requirements and rulings of any

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competent authority that has jurisdiction over the Agreement and/or the provision of the supply of the Goods and Services. A Party shall promptly identify and notify the other of any relevant changes in law, legislative enactments and/or regulatory requirements and of rulings of any competent authority that may relate to the Agreement and/or the supply of the Goods and Services. The Parties shall cooperate to identify the impact of such changes. Each Party shall be responsible for any fines and/or penalties arising from any non-compliance with any law, legislative enactment or regulatory requirements or rulings of any competent authority relating to the Agreement and/or supply of the Goods and/or Services. Each Party shall remain responsible for communications with and participation in any governmental or regulatory body having jurisdiction over such Party, or any industry body in which such Party participates. Each Party shall consult with the other regarding such matters to the extent such Party deems appropriate, and the other Party shall make itself available for such consultation as is reasonably necessary.

- 10.2. Veolia's pricing shall be adjusted to take account of any increase in cost resulting from a change in law (including the introduction of new laws and the repeal or amendments to existing laws) or in the judicial or official government interpretation of such laws, made on or after the Acceptance Date which affects Veolia's performance of its obligations under the Agreement. If Veolia suffers (or will suffer) delay and/or incurs (or will incur) additional cost as a result of these changes in law or in such interpretations, made after the Acceptance Date, Veolia shall give notice to the Client and shall be entitled to a variation for time plus additional cost. A change in law shall include the consequences of a pandemic or the government (or any regulatory body) declaring a pandemic, instituting a lockdown and/or quarantine regulations.

11. APPLICABLE LAWS AND SPECIFICALLY BRIBERY AND CORRUPTION

11.1. Corruption and Conduct of the Parties

- 11.1.1. Each Party acknowledges that the Applicable Laws apply to it and its subsidiaries and any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Party or any of its subsidiaries and/or performing services or supplying the Goods and/or Services or otherwise (in the widest sense possible) in connection with this Agreement, for the purposes of the subject matter of this Agreement.
- 11.1.2. Each Party shall and shall procure that its subsidiaries and any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Party or any of its subsidiaries performing services or providing Goods and Services in connection with this Agreement shall not:
- 11.1.2.1. use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action;
- 11.1.2.2. make any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;
- 11.1.2.3. under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage, which may be construed as being made to solicit any favour, to any of Veolia's directors, officers, agents, employees and/or affiliates;
- 11.1.2.4. request, act, agree, receive, accept, offer, promise, give, induce or promote the acceptance or offering of a bribe, rebate, payoff, influence payment, kickback or other unlawful payment; (directly or indirectly, passively or actively), in any form whatsoever

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- including but not limited to the gratuity, enticement, incentive, facilitation fee or gift;
 - 11.1.2.5. act in any manner in a way which would be reasonably regarded as:
 - 11.1.2.5.1. providing an unfair or undue or illegal advantage to the Party and/or its subsidiaries in order to retain or win business; or
 - 11.1.2.5.2. providing an unfair or undue or illegal advantage to the Party and/or its subsidiaries in conducting its business; and
 - 11.1.2.6. violate any provision of the Applicable Laws.
 - 11.1.2.7. each Party shall conduct:
 - 11.1.2.7.1. its businesses in compliance with the Applicable Laws and shall maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance therewith;
 - 11.1.2.7.2. at all times act in good faith and in an ethical manner towards the other and any other person or entity which the Party may come into contact while performing any obligation or enforcing any right in terms of this Agreement and shall to the maximum extent possible advise such persons that each Party has a zero tolerance against fraud and corruption; and
 - 11.1.2.7.3. immediately report to the other Party any unethical, fraudulent or unlawful conduct which it becomes aware of as well as to the relevant authorities for the duration of this Agreement.
 - 11.1.2.8. each Party further acknowledges that any information that is brought to the Party's attention and which information the other Party is obliged to disclose in terms of applicable legislation to the appropriate authorities will be disclosed by the relevant Party to the appropriate authorities forthwith.
- 11.2. Representation on Compliance with Applicable Laws
Each Party hereby represents and warrants that:
- 11.2.1. neither it nor any of its subsidiaries nor, to the Party's best knowledge, any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Party has or any of its subsidiaries:
 - 11.2.1.1. used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action;
 - 11.2.1.2. made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;
 - 11.2.1.3. made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment;
 - 11.2.1.4. violated or is in violation of any provision of the ABC Laws;
 - 11.2.1.5. been convicted of any offence involving bribery, corruption, fraud or dishonesty;
 - 11.2.1.6. been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory

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- body regarding any offence or alleged offence under the Applicable Laws; and
- 11.2.1.7. been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts; and the Party and any officer, agent, employee, affiliate or other person associated or acting on behalf of the Party has conducted its businesses in compliance with the Applicable Laws and has instituted and maintains policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance therewith.
- 11.2.2. none of the directors, officers, agents, employees, affiliates or other persons directly related or linked to this Agreement is a foreign public official. If the Party becomes reasonably aware that a foreign public official may be involved with this Agreement the Party shall immediately inform the other thereof as to allow the other the opportunity to assess the situation fully. If the other Party is reasonably of the opinion that any such relationship could be in breach of the Applicable Laws or be seen as being unethical. The other Party shall be entitled to instruct the Party to terminate such business relationship forthwith.
- 11.2.3. no foreign public official owns a direct or indirect interest in the Party or any person associated with it and no public official has any legal or beneficial interest in any payments made by the Party under this Agreement.
- 11.3. Notification and Cooperation
- 11.3.1. Each Party shall immediately notify the other in writing if at any time during the term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the representation set out in clause 11 at the relevant time, or has reason to believe that it has or any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Party or any of its subsidiaries supplying the Goods and Services in connection with this Agreement has:
- 11.3.1.1. been subject to an investigation or prosecution which relates to an alleged breach of the Applicable Laws;
- 11.3.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment; and/or
- 11.3.1.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person directly or indirectly connected with this Agreement has committed or attempted to commit a breach of the Applicable Laws.
- 11.3.2. If either Party notifies the other pursuant to clause 11.3.1, or if a Party otherwise becomes aware of any of the matters described in such clause and notifies them to the other Party, the other Party shall respond promptly to any enquiries, co-operate with any investigation, and allow the Party to audit any emails, books, records, bank account information and/or any other relevant documentation in accordance with the provisions of this Agreement.
- 11.4. Anti-Money Laundering and Combating the Financing of Terrorism
- 11.4.1. Neither Party shall launder money or finance any terrorism and should the a Party have cause to suspect that it might be or has been exposed to funds for which the source is doubtful, the circumstances must immediately be advised to the other Party.

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11.4.2. Each Party reserves the right to investigate and/or report any doubtful or suspicious transactions to whichever authorities may need to be notified.

11.4.3. If there is a suspicion that the Agreement was entered into under dubious circumstances, the Agreement can be suspended, at the risk of the breaching Party pending an investigation to the other Party's satisfaction.

11.5. Indemnification

The Client shall indemnify Veolia and keep it indemnified on an after-tax basis in full and on demand from and against all and any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect, special or consequential losses, loss of profit, loss of reputation and all interest and legal and other professional costs and expenses) suffered or reasonably incurred by Veolia arising out of, or in connection with, any breach or alleged breach of the Agreement.

11.6. Material Breach

Breach of any provision of this clause 11 shall be deemed a material breach and either Party shall have the right to terminate the Agreement on written notice to the other Party, in which event such termination shall be without any liability and without prejudice to any claims which the innocent Party may have for damages against the breaching Party except as limited herein. If a Party terminates this Agreement for breach of a provision of this clause 11 the breaching Party shall not be entitled to claim compensation, performance or any further remuneration or costs regardless of any activities or agreements with additional third parties entered into before termination.

12. CONFIDENTIALITY

12.1. The Receiving Party acknowledges that the Confidential Information of the Disclosing Party is a valuable, special and a unique asset belonging to the Disclosing Party and accordingly, that it is not to be used to advance the interests of any person other than the Disclosing Party.

12.2. All the Confidential Information obtained or received by the Receiving Party from the Disclosing Party shall be treated as confidential and shall be used solely for purposes of the performance of the Receiving Party's obligation in terms of this Agreement, and shall not be used and/or disclosed to any third party by the Receiving Party to the prejudice of the Disclosing Party. The Confidential Information shall accordingly not be used for any other reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be withheld for any reason whatsoever.

12.3. The Receiving Party shall ensure that each of its officers, employees, agents and Subcontractors, as well as all entities associated with the Receiving Party and such associated entities' officers, employees, agents and Subcontractors involved directly or indirectly with the performance of the Receiving Party's obligations in terms of this Agreement, shall be individually bound not to disclose any of the Disclosing Party's Confidential Information to any third party and each such individual shall remain so bound notwithstanding the fact that such officer, employee, agent and/or Subcontractor shall have ceased to be an officer, employee, agent or Subcontractor of the Receiving Party or any of its associated entities.

12.4. The Receiving Party shall securely store all documents, papers and any other information furnished to it by the Disclosing Party in connection with or which constitutes Confidential Information in such a manner as to ensure that only individuals involved in the rendering of the Services and entitled to access thereto and who are bound in terms of this clause 12 shall be able to access same.

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- 12.5. The Receiving Party agrees that, notwithstanding the fact that certain of the Confidential Information may already be in its possession, the Confidential Information shall remain subject to the provisions of this clause 12.
- 12.6. In the event of the Receiving Party being compelled in law to disclose any of the Confidential Information to any third party, it shall immediately notify the Disclosing Party thereof to enable the Disclosing Party to seek an appropriate protective order or waive compliance with such provisions of this clause 12 as would prevent compliance in law or give its consent thereto, and such waiver or consent shall not constitute a breach of this clause 12.
- 12.7. Upon becoming aware of any loss, unauthorised use or disclosure of the Confidential Information, the Receiving Party shall immediately notify the Disclosing Party in writing by addressing a letter in accordance with clause 19 to the Disclosing Party of such loss, unauthorised use or disclosure. The Receiving Party agrees to use its best endeavours to assist the Disclosing Party in remedying such unauthorised use or disclosure of the Confidential Information.
- 12.8. Where requested by the Disclosing Party by way of written notice, the Receiving Party shall, within 14 (fourteen) days of the aforesaid notice furnish the Disclosing Party with a certificate under the hand of a member of the executive committee of the Receiving Party, or any other person having the appropriate legal authority to sign such certificate on behalf of the Receiving Party, confirming that all Confidential Information as well as copies thereof have been returned and, if incapable of return, have been destroyed and that no copies of such Confidential Information have been retained by the Receiving Party. Such certificate shall constitute prima facie evidence of proof of the return or destruction of such Confidential Information.
- 12.9. This Agreement does not grant the Receiving Party any license to use the Confidential Information of the Disclosing Party.
- 12.10. The Receiving Party undertakes to protect the Disclosing Party's Confidential Information using not less than the same standard of care that it would be applied in respect of its own proprietary, secret or Confidential Information (which standard shall in any event be of no lesser standard than the Best Industry Practice) and that the Disclosing Party's Confidential Information shall be stored by the Receiving Party in such a way as to prevent unauthorised disclosure.
- 12.11. Save for compliance by a Party with the requirements of any securities exchange and/or securities regulation panel, no Party may publish any announcement relating to this Agreement without the prior written consent of the other Party.
- 12.12. The provisions of this clause shall survive the termination of this Agreement for whatever reason.
- 12.13. Notwithstanding the forgoing, the Parties shall at all times comply with the provisions of the POPI Act in respect of the processing of personal information. In this regard, the Client is directed to Veolia's Information Manual which is available upon request and can be accessed at https://www.veolia.co.za/PAIA_Manual.

13. INVENTIONS, DISCOVERIES AND COPYRIGHT

- 13.1. Notwithstanding anything to the contrary contained in this Agreement, it is recorded that, where applicable any discovery or invention or secret process or improvement in procedure made or discovered by Veolia in supplying the Goods and Services shall belong to and be the absolute property of Veolia. Such works shall become Veolia Intellectual Property;

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- 13.2. All Intellectual Property belonging to and vested in Veolia, prior and up to the Acceptance Date shall remain vested in Veolia. The Client accepts that it shall have no rights whatsoever to or in respect of such Intellectual Property.

14. VIS MAJOR AND CASUS FORTUITUS

- 14.1. Failure on the part of a Party (“**Affected Party**”) to perform in terms of or comply with the provisions of the Agreement shall not be deemed to be a breach of the Agreement by the Affected Party, insofar as such failure is due to an event or circumstance of *vis major* (i.e. any superior force, power or agency which cannot be resisted or controlled by an ordinary individual – including acts of nature and acts of man) or is due to *casus fortuitus* (i.e. an inevitable event that is something exceptional, extraordinary or unforeseen and which human foresight cannot be expected to anticipate or to reasonably foresee, or if it can be foreseen, it cannot be avoided by the exercise of reasonable care or caution).
- 14.2. Without limiting the generality and intention of clause 14.1 in any way, the event or circumstances may include but are not limited to:
- 14.2.1. war, hostilities, riots, civil or military insurrection and like political disturbances; natural disasters such as earthquakes, fires, floods and storms; acts or omissions by Governments (central, federal, regional, provincial, local, municipal); strikes and lock-outs of an industry wide nature and state organs/public authorities; terrorism or sabotage, or any other circumstance beyond the reasonable control of the Affected Party,
 - 14.2.2. Provided that the mere shortage of funds shall in no circumstances constitute *vis major* or *casus fortuitus*.
- 14.3. If the Affected Party is by reason of *vis major* or *casus fortuitus* prevented from fulfilling its obligations under the Agreement, the Affected Party shall immediately notify the other Party in writing thereof. Such notice shall stipulate:
- 14.3.1. the cause, nature and extent of the event or circumstances;
 - 14.3.2. the expected duration of the circumstances or event; and
 - 14.3.3. the extent to which the performance of the Affected Party will be affected.
- 14.4. The Parties shall then promptly confer within 5 (five) days with a view to dealing with the matter on a cost-effective basis.
- 14.5. To the extent that the Affected Party is prevented to perform its obligations in terms of the Agreement due to *vis major* or *casus fortuitus*, the Affected Party shall for the duration of *vis major* or *casus fortuitus* be temporarily excused from its liability to perform such obligations – provided, always, that the Affected Party shall not be so excused or discharged from its obligations if its non-performance is due to the fault, negligence or wilful act or omission of the Affected Party.
- 14.6. The Affected Party shall within 5 (five) days of its notice to the other Party in terms of clause 14.2, having regard to all the relevant factors, submit in good faith alternative proposals to the other Party as to how the event or circumstances can be overcome. Such proposals shall be in sufficient detail to enable the other Party to technically and financially assess the alternatives and to decide whether any of the alternatives are acceptable to the other Party.
- 14.7. For as long as that an event or circumstance of *vis major* or *casus fortuitus* continues the following provisions shall apply:
- 14.7.1. the Affected Party shall make every effort to mitigate the effect on the other Party of its failure or omission to perform fully;
 - 14.7.2. the Affected Party shall keep the other Party fully informed about the situation; and

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- 14.7.3. the other Party shall be entitled to make such temporary arrangements (including *inter alia* the appointment of a third party to perform the Affected Party's obligations during the period of duration of the *vis major* or *casus fortuitus*) as may be necessary to ensure the continuation of this Agreement.
- 14.8. To the extent that the Affected Party is prevented by *vis major* or *casus fortuitus* to comply fully with its obligations in terms of the Agreement, the other Party shall not have any claim for damages, compensation or loss of any nature against the Affected Party – provided, always, that the other Party shall have a claim for damages or other lawful remedy against the Affected Party in the event that the non-performance by the Affected Party is due to the fault, negligence or wilful act or omission of the Affected Party. In the event that the period of *vis major* or *casus fortuitus* exceeds an uninterrupted period of 60 (sixty) days, either Party may terminate the Agreement in writing.
- 14.9. For the avoidance of doubt, the inability of the Client to make any payment owing to Veolia in terms of the Agreement shall not constitute *vis major* or *casus fortuitus*, regardless of the cause of the Client's inability to meet its payment obligations timeously.

15. BREACH

- 15.1. Should the Client commit a breach of any of the provisions of this Agreement, then Veolia shall be entitled to give the Client 7 (seven) day's written notice to remedy the breach.
- 15.2. Subject to the provisions of clause 15.1, if the Client fails to comply with such notice or commits any breach which is not capable of remedy, then Veolia shall be entitled, in its sole discretion, to cancel this Agreement and/or to claim immediate payment and/or to claim specific performance by the Client of all of its obligations whether or not the due date for payment and/or performance has passed; should Veolia decide to pursue any of the aforementioned remedies, the exercise of such remedy will not affect any of Veolia's rights to claim damages or to institute any other claim to which it may be otherwise entitled to in law or in terms of this Agreement.
- 15.3. Either Party shall be entitled to cancel this Agreement immediately notwithstanding the provisions of clause 15.1 and 15.2 if the other Party commits an Insolvency Event or an Insolvency Event occurs in relation to the other Party.
- 15.4. Notwithstanding anything to the contrary contained in this Agreement, Veolia shall be entitled in its sole discretion to give notice to terminate this Agreement with immediate effect, such termination to be effective upon deemed receipt of such notice, if the Client commits a material breach (including a series of minor breaches which together are considered to be material) of this Agreement.
- 15.5. A breach of clauses 9, 10, 11, 12, 13 and 20.18 shall be deemed a material breach under this clause 15. If Veolia terminates this Agreement for breach of clauses 9, 10, 11, 12, 13 or 20.18, the Client shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

16. TERMINATION FOR CONVENIENCE

- 16.1. Veolia may terminate this Agreement in whole or in part for convenience and without cause prior to commencing any manufacturing by giving the Client at least 1 (one) month's prior notice designating the "**Termination Date**".

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- 16.2. If a purported termination by Veolia under the balance of the provisions of this Agreement is determined by a competent authority not to be a proper termination under the applicable clause, then such termination by Veolia shall be deemed to be a termination for convenience under this clause 16.

17. TERMINATION

- 17.1. Notwithstanding anything to the contrary, and notwithstanding the termination of this Agreement or any part thereof for any reason whatsoever, the provisions of this Agreement which expressly or by implication are intended to survive termination, shall survive such termination and shall continue to be of force and effect.
- 17.2. In the event of termination of this Agreement or any part thereof, any amount paid by the Client to Veolia in advance (**“the Advance Payment”**) in respect of any obligation which is due to be performed by Veolia after the date of such termination and which will not be performed as a result of such termination shall, within 15 (fifteen) days after such termination, be repaid to the Client; however, prior to repaying the Advance Amount Veolia shall be entitled to set off any amounts owed to it by the Client, whether in respect of damages or otherwise.

18. DISPUTE RESOLUTION

18.1. Mediation

- 18.1.1. If any dispute arises between any of the Parties in regard to the carrying into effect of any of the Parties' rights and obligations arising from this Agreement, or the termination or purported termination of this Agreement, such Parties agree to negotiate with each other in good faith in an effort to resolve such dispute.
- 18.1.2. If such negotiations fail or do not occur within 14 (fourteen) days after the dispute arises, the dispute shall not become the subject of litigation or arbitration until it has been heard by a mediator unless such action is critical to avoid the prescription of a cause of action or right at law or in order to obtain an interdict, or otherwise to limit any material damage to such Party's interests.
- 18.1.3. Such dispute shall be referred to mediation before a mediator within 3 (three) days after the good faith negotiations have not resulted in the resolution of the dispute. The mediator shall be appointed by the Parties or failing agreement by them as to the mediator, shall be nominated, at the instance of any of the Parties to the dispute, by the Association of Arbitrators, Southern Africa (**“AoA”**). The mediation shall be conducted according to AoA rules.
- 18.1.4. The mediation shall terminate upon any one of the disputants withdrawing or the mediator informing the disputants that in the mediator's opinion, no useful purpose will be achieved in continuing the mediation. All communications made by the disputants to the mediator or to each other during or in connection with the mediation are made without prejudice to any rights which they may have and form part of *bona fide* settlement negotiations. The Parties shall keep the mediation proceedings and any order made by the mediator confidential save to the extent otherwise contemplated herein. The mediator shall not be compelled by any aggrieved Party to disclose any fact learnt in the course of the mediation in any subsequent legal proceedings

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which may take place and the Parties waive their right to require the mediator to testify regarding what transpired in the mediation.

- 18.1.5. The mediator shall:
- 18.1.5.1. be entitled to communicate and meet with any disputant either in the presence of the other disputant/s or in private;
 - 18.1.5.2. not disclose any information furnished in confidence by any one disputant to the mediator, to any other disputant without the prior consent of the disputant who furnished the information;
 - 18.1.5.3. act impartially and disclose to the disputants any relationship or dealings which the mediator may have had with any of the disputants;
 - 18.1.5.4. not make any decision which is binding upon the disputants, the resolution of the dispute depending entirely upon the disputants achieving agreement in respect thereof.

18.2. Arbitration

- 18.2.1. Subject to compliance with the mediation provisions contained in clause 18.1 and the mediation being unsuccessful, the provisions of this clause 18.2 shall apply to the resolution of any dispute referred to or contemplated in clause 18.2.2.
- 18.2.2. Save in respect of those provisions of the Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:
- 18.2.2.1. the interpretation of; or
 - 18.2.2.2. the carrying into effect of; or
 - 18.2.2.3. any of the Parties' rights and obligations arising from; or
 - 18.2.2.4. the termination or purported termination of or arising from the termination of; or
 - 18.2.2.5. the rectification or proposed rectification of this Agreement, or out of or pursuant to this Agreement (other than where an interdict is sought or urgent relief, which may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.
- 18.2.3. That arbitration shall be held:
- 18.2.3.1. with only the Parties and their legal representatives present thereat; and
 - 18.2.3.2. at Johannesburg, South Africa.
- 18.2.4. It is the intention that the arbitration shall, where possible, be held and concluded within 20 (twenty) Business Days after it has been demanded. The Parties shall use all reasonable endeavours to procure the expeditious completion of the arbitration.
- 18.2.5. Save as expressly provided in this Agreement to the contrary, the arbitration shall be conducted in accordance with AoA rules of arbitration.
- 18.2.6. There shall be 1 (one) arbitrator who shall, if the question in issue is:
- 18.2.6.1. primarily an accounting matter, an independent chartered accountant with not less than 10 (ten) years' experience as a chartered accountant;
 - 18.2.6.2. primarily a legal matter, a practising senior counsel or, alternatively, a practising attorney with not less than 15 (fifteen) years' experience as an attorney; or
 - 18.2.6.3. any other matter, a suitably qualified person.
- 18.2.7. The nomination of the arbitrator shall be agreed upon between the Parties in writing or, failing agreement by the Parties within 5 (five) Business Days after

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the arbitration has been demanded, at the request of any of the Parties shall be nominated by the Chairman for the time being of the AoA who, in making his nomination, shall have regard to the nature of the dispute. Upon the aforesaid nomination, the Parties shall forthwith appoint such person as the arbitrator. If the aforesaid Chairman fails or refuses to make the nomination, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

- 18.2.8. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 18.2.9. The arbitrator shall be obliged to give his award in writing fully supported by reasons. His award shall be final and binding on the Parties to the dispute.
- 18.2.10. The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

19. DOMICILIUM AND NOTICES

19.1. The Parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings), their respective addresses set out as follows, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

19.1.1. Veolia:

13 Pressburg Road, Golfview Office Park, Lethabong, Modderfontein, 1609, South Africa.

19.1.2. The Client:

As recorded in the Client's Credit Application.

19.2. Any written notice required in terms of clause 19 shall only be satisfied if such notice is given in a written, paper based form in English and if sent by e-mail any notice is to be in .pdf format duly signed and attached to the e-mail. The body of the e-mail itself will not be deemed to be proper notice.

19.3. Either Party shall be entitled, from time to time by written notice to the other Party, to vary its physical domicilium to another address which is not a post office box or a poste restante.

19.4. Either Party shall be entitled, from time to time by written notice to the other Party, to vary its e-mail address to any other e-mail address.

19.5. All notices given in terms of this Agreement shall be in writing and any notice given by either Party to the other ("Addressee") which:

19.5.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

19.5.2. if transmitted by e-mail be deemed to have been received by the addressee 1 (one) Business Day after despatch.

19.6. In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted or that the e-mail was properly addressed and despatched and confirmation of full transmission was received (as the case may be).

20. GENERAL PROVISIONS

20.1. Priority of Documents

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- 20.1.1. The documents comprising this Agreement are to be viewed as mutually explanatory of one another. In the event of ambiguity or discrepancy and for the purpose of interpretation, the priority of the documents shall be in accordance with the following sequence:
- 20.1.1.1. Client Credit Application
 - 20.1.1.2. Agreement;
 - 20.1.1.3. Veolia's Quotation together with any appendices;
 - 20.1.1.4. the schedules and annexures to the Agreement (if any), except where different provisions impose different standards of performance within the documents comprising the Agreement, then the highest standards will prevail.
- 20.1.2. If either Party finds any discrepancy, ambiguity or inconsistency in or between any of the documents forming part of this Agreement, then such Party shall immediately notify the other Party, giving details of such discrepancy, ambiguity or inconsistency. The Parties shall discuss and come to an agreement regarding any discrepancy, ambiguity or inconsistency.
- 20.2. Cession of Rights and Delegation of Obligations
The Client shall not be entitled to freely cede its rights, assign its obligations, delegate its rights and obligations in terms of this Agreement and/or transfer this Agreement to a subsidiary, sister or holding company or to any third party without Veolia's explicit consent.
- 20.3. Exclusion of Consequential Loss
To the extent permissible under the Applicable Law, Veolia shall not in any circumstances be liable to the Client for any special, indirect or consequential losses (including but not limited to any loss of profit, loss of use, loss of production, loss of business or loss of business opportunity) incurred by it and which arise out of this Agreement.
- 20.4. Limitation of Liability
The total liability of Veolia whether in delict (tort), contract or otherwise and whether in connection with this Agreement or not, shall in no circumstances exceed 10% of the total order value for the supply of the Goods and/or Services.
- 20.5. Severability
All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of this Agreement which is, or becomes, unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be deemed *pro non scripto*, and the remaining provisions of this Agreement shall be of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 20.6. Governing Law
- 20.6.1. The Agreement shall be governed by and interpreted in accordance with the laws of South Africa (both in respect of substantive and procedural law and notwithstanding any conflict of law principles that may apply).
 - 20.6.2. Subject to the provisions of clause 18, each of the Parties irrevocably agrees and submits to the non-exclusive jurisdiction of the Gauteng Local Division of the High Court of South Africa to hear and determine any suit, action or proceeding which may arise out of or in connection with this Agreement.
- 20.7. Good Faith
The Parties shall act in good faith towards each other and shall not bring the other Party into disrepute.

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- 20.8. Co-operation
Each of the Parties undertakes, at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms of this Agreement.
- 20.9. Whole Agreement
20.9.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.
20.9.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
20.9.3. No oral undertaking not to sue (*pactum de non petendo*) shall be of any force or effect.
- 20.10. No Waiver
20.10.1. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
20.10.2. To the extent permissible by law Veolia shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 20.11. Nature of the Relationship
Each Party agrees and acknowledges that it is independent of the other Party and that it is not an agent for any undisclosed principal or partnership. This Agreement shall not be construed as creating any relationship of partnership, joint venture, employment or agency between the Parties and nothing in this Agreement shall be construed as conferring a right on either Party to bind the other in any manner whatsoever.
- 20.12. Parent Company Guarantee
If the Client is a subsidiary of another corporation and if requested by Veolia the Client shall, ensure that its parent company provides a parent company guarantee in the form suitable to Veolia.
- 20.13. Stipulatio Alteri
No part of this Agreement shall constitute a contract in favour of any person who is not a Party to the Agreement (*stipulatio alteri*) unless the provision in question expressly provides that it does constitute a *stipulatio alteri*. Accordingly, a person who is not party to this Agreement shall have no right under this Agreement to enforce any term of this Agreement.
- 20.14. Insurance

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If Veolia is required to insure any assets and/or existing property, the Client shall notify Veolia of this requirement and Veolia accordingly reserves the right to review its pricing.

20.15. Health, Safety and Environment

The Parties shall at all times ensure compliance with the following regulations in so far as they are applicable to this Agreement and the provision of Goods and/or Services:

- 20.15.1. Occupational Health and Safety Act, 85 of 1993;
- 20.15.2. National Environmental Management Act, 107 of 1998;
- 20.15.3. National Water Act 36 of 1998; and
- 20.15.4. Water Services Act, 108 of 1997.

[END]

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