

Supply Arrangements

Please find **attached for information only** the following pro-forma documents:

1. the Supply Arrangement;
2. the Supplier Side Deed; and
3. the Common Dispute Deed.

For the purposes of the *Waste Avoidance and Resource Recovery Act 2001 (NSW)* (the Act), a supplier (who undertakes the first supply in NSW of a beverage in a container) must not supply or offer to supply the beverage in the container in NSW unless a supply arrangement is in force between the supplier and the Scheme Coordinator.

The Scheme Coordinator will enter into a separate Supply Arrangement with each supplier. The Supply Arrangement will require the supplier to pay to the Scheme Coordinator contributions towards the cost of the management, administration and operation of the Scheme.

As a condition to the Supply Arrangement coming into force, a supplier will need to enter into two further documents, the Common Dispute Deed and the Supplier Side Deed.

The **Common Dispute Deed** will allow a dispute that involves some or all Suppliers with the State, the Scheme Coordinator and the Network Operator to be determined under a single process. This process will result in a determination that will be binding on all relevant parties and avoid the need for the dispute to be determined separately under the individual agreements to which each Scheme Participant and the State are party.

The **Supplier Side Deed** enables the State to (1) carry out an obligation of the Scheme Coordinator under the Supply Arrangement which it failed to carry out; and (2) if the Scheme Coordinator changes for whatever reason, novate the Supply Arrangement (i.e. transfer the rights and obligations of the Scheme Coordinator) to any replacement Scheme Coordinator or to the State.

The Scheme Coordinator will be required to make all three documents publicly accessible on, and enable suppliers to execute the documents electronically through, the Return and Earn website. **Suppliers should register and execute the documents through the Return and Earn website** (www.returnandearn.org.au). A Supply Arrangement will come into force once the supplier delivers to the Scheme Coordinator through the website:

1. a duly executed counter-part of the Supply Arrangement;
2. a duly executed deed poll acceding to the Common Dispute Deed (in the form set out in Schedule 2 of the Common Dispute Deed); and
3. a duly executed counter-part of the Supplier Side Deed.

The attached documents may be amended to facilitate electronic execution by suppliers.

NSW Container Deposit Scheme: Supply Arrangement

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Scheme Coordinator

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Supply Arrangement

Date

Parties **Exchange for Change (NSW) Pty Ltd, ACN 620 512 469** of Level 4, 126 Phillip Street, Sydney NSW 2000 (**Scheme Coordinator**)

[*], ABN [*] of [*] (**Supplier**)

Background

- A. In accordance with the *Waste Avoidance and Resource Recovery Act 2001* (NSW), the State is seeking to implement a container deposit scheme in New South Wales so as to:
- (a) recognise the responsibility that the beverage industry shares with the community for reducing and dealing with waste generated by beverage product packaging;
 - (b) establish a cost effective State-wide container deposit scheme to assist the beverage industry to discharge that responsibility and to promote the recovery, reuse and recycling of empty Containers;
 - (c) provide for the establishment of a Scheme Coordinator and Network Operators with responsibility for the administration of the Scheme;
 - (d) provide for the payment of Refund Amounts to persons depositing at Collection Points empty Containers that are subject to the Scheme;
 - (e) provide for the establishment of a cost recovery scheme administered by the Scheme Coordinator under which Suppliers agree to make contributions towards the cost of paying those Refund Amounts and other associated costs;
 - (f) prohibit the supply of beverages in Containers that are subject to the Scheme by Suppliers who have not agreed with the Scheme Coordinator to make those contributions; and
 - (g) prohibit the supply of beverages in Containers of a kind that are not approved by the EPA.
- B. The State has entered into the Scheme Coordinator Agreement with the Scheme Coordinator in connection with the management, administration and operation of the Scheme for the purposes of the Act.
- C. For the purposes of the Act, the Scheme Coordinator will enter into, and give effect to, supply arrangements (as defined in the Act) with the suppliers (as defined in the Act) requiring each supplier amongst other things to pay to the Scheme Coordinator contributions towards the cost of the management, administration and operation of the Scheme.
- D. This Agreement is a supply arrangement for the purposes of the Act.

General Conditions

PART A — GENERAL

1. Glossary of terms and interpretation

1.1 Glossary of terms

Capitalised terms and acronyms used in this Agreement have the meanings given to them in Schedule 5, and if not defined in Schedule 5 have the meanings given to them in the Act.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors, permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, section, schedule, exhibit, attachment or annexure is a reference to a party, clause, section, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part thereof;
- (k) if the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (l) other than as set out in clause 1.2(k) a reference to "day" is a reference to a calendar day, a reference to "week" is a reference to a calendar week, a reference to "month" is a reference to a calendar month and a reference to "quarterly" is a reference to 3 monthly;

- (m) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (n) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (o) the word "subcontractor" will include all suppliers and consultants;
- (p) a reference to "\$" or "dollar" is to Australian currency;
- (q) a reference to time is a reference to the then current time in Sydney, Australia;
- (r) a reference to a right includes any benefit, remedy, discretion, authority or power;
- (s) a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) the term "may", when used in the context of a power, right or remedy exercisable by a party, means that the party can exercise that power, right or remedy in its absolute and unfettered discretion, and the party has no obligation to the other party to do so; and
- (u) where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity.

2. Conditions Precedent

This Agreement takes effect and comes into force from the date on which the Supplier delivers to the Scheme Coordinator (**Effective Date**) each of the following (in form and substance satisfactory to the Scheme Coordinator):

- (a) its duly executed counterpart of this Agreement;
- (b) a duly executed deed poll acceding to the Common Dispute Deed; and
- (c) its duly executed counterpart of the Supplier Side Deed.

3. Term

This Agreement commences on the Effective Date and continues until terminated in accordance with this Agreement, the Scheme Coordinator Agreement is terminated or is otherwise no longer in force and the State has not given an Assumption Notice under clause 4 of the Supplier Side Deed within the required time period or the Scheme is otherwise no longer in force (**Term**).

4. Key obligations

4.1 Fair Dealing

The Scheme Coordinator must act fairly and must not unreasonably discriminate, against or in favour of any Scheme Participant in entering into or performing its obligations under or enforcing terms of this Agreement or other Scheme Arrangements.

4.2 Fraud

- (a) In accordance with section 47 of the Act each of the parties must not:
 - (i) in connection with a claim for payment under a Scheme Arrangement, including this Agreement; or
 - (ii) in purported compliance with any requirement imposed by or under Part 5 of the Act or under regulations made under Part 5 of the Act, provide any information that the party knows is false or misleading in a material particular.
- (b) The Scheme Coordinator and the Supplier must take all reasonable steps to minimise and prevent fraud in connection with the Scheme.

4.3 Compliance

- (a) The Scheme Coordinator and the Supplier must comply with the Act and the Scheme Arrangements.
- (b) The Supplier must give notice in writing to the Scheme Coordinator's Representative, together with relevant particulars, promptly after becoming aware of any suspected contravention or contravention of the Act or the Regulation by a Scheme Participant (including itself), any Material Recovery Facility Operator or any other person.

5. Review of Part 5 of the Act

- (a) The Supplier acknowledges the validity of the Scheme and the Scheme Arrangements as at the Effective Date.
- (b) The Supplier acknowledges that pursuant to section 48 of the Act, the Minister will review Part 5 of the Act to determine whether the policy objectives of Part 5 of the Act remain valid and whether the terms of Part 5 of the Act remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after the period of 4 years from 25 October 2016, being the date of assent to the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016* (NSW) and a report of the review will be tabled in each House of Parliament.

6. Supplier Obligations

6.1 Containers

The Supplier acknowledges and agrees that this Agreement applies only to those Containers that are supplied by the Supplier and are subject to a Container Approval, and which are listed in Schedule 4, as updated by the Supplier by the provision of notice to the Scheme Coordinator from time to time.

6.2 Cooperation

The Supplier must at all times cooperate with the Scheme Coordinator and the other Scheme Participants in respect of fraud, or possible fraud, in connection with the Scheme.

6.3 Copy of Supply Arrangements to State

The Supplier acknowledges and agrees that if requested by the State, the Scheme Coordinator may provide a copy of this Agreement to the State.

6.4 Step-in and Novation

The Supplier and the Scheme Coordinator acknowledge and agree that under the Supplier Side Deed the Supplier:

- (a) acknowledges the State's rights to carry out an obligation under the Scheme Coordinator Agreement or this Agreement which the Scheme Coordinator was obliged to carry out but which it failed to carry out within the time required in accordance with the Scheme Coordinator Agreement or this Agreement (as applicable); and
- (b) agrees to give effect to the novation of this Agreement to the State (or its nominee) in the event of termination of the Scheme Coordinator Agreement or as an alternative to termination of this Agreement under clause 11.3(b) (as applicable).

7. Data collection and reporting

7.1 Supplier obligations

- (a) If:
 - (i) the Effective Date is prior to the date which is 40 Business Days prior to the Scheme Commencement Date, then no later than the date which is 40 Business Days prior to the Scheme Commencement Date; or
 - (ii) the Effective Date is on or after the date which is 40 Business Days prior to the Scheme Commencement Date, then within 5 Business Days of the Effective Date,

the Supplier must provide to the Scheme Coordinator a statement specifying the number of beverage Containers Supplied by the Supplier in the State in the previous 12 month period (if any) itemised on a monthly basis:

- (iii) in aggregate in respect of the State; and
- (iv) in aggregate for each Container by material type,

and such statement is to be submitted via the Portal unless otherwise directed by the Scheme Coordinator.

- (b) No later than the date which is 40 Business Days after the end of each financial year during the Term, the Supplier must prepare and deliver to the Scheme Coordinator's Representative a statutory declaration in the form set out Schedule 3 executed by a director of the Supplier declaring:
 - (i) that each Supplier Statement provided by that Supplier in accordance with clause 9.4 in respect of the previous financial year was true and correct or specifying the extent to which any Supplier Statement was not true and correct;

- (ii) the number of beverage Containers Supplied by that Supplier in the State in the previous financial year:
 - A. in aggregate in respect of the State; and
 - B. in aggregate for each Container by material type; and
- (iii) each other matter prescribed by the State or which is otherwise required by the Act or the Regulation from time to time (as notified in writing by the Scheme Coordinator to the Suppliers).

7.2 Supplier data

- (a) The IP Rights in all data, documents, information, records or other material of any kind and in any form or medium prepared by the Supplier which that Supplier is required to provide to the Scheme Coordinator under this Agreement (**Supplier IP**) will remain vested in the Supplier.
- (b) The Supplier grants the Scheme Coordinator an irrevocable, royalty free, non-exclusive, licence to use the IP Rights in the Supplier IP for the purposes of the Scheme Coordinator carrying out its functions and obligations in accordance with the Act, the Regulation and the Scheme Arrangements and Scheme Agreements during the Term (and for no other purposes).
- (c) The Scheme Coordinator may transfer, or grant a sublicense in respect of, the licence referred to in clause 7.2(b) to the State.

7.3 Performance monitoring, enforcement and auditing

- (a) The Scheme Coordinator may engage an independent auditor to, at any time, audit (including a real-time audit of any applicable electronic systems for deliveries, supply chain logistics, payments, collections and verification) or review data provided by the Supplier under this Agreement to determine if that Supplier is complying with:
 - (i) the Act and the Regulation; and
 - (ii) the terms of this Agreement.
- (b) For the purposes of clause 7.3(a), the Supplier must:
 - (i) at all reasonable times give the independent auditor appointed by the Scheme Coordinator access to any areas where that Supplier's business is being carried out; and
 - (ii) if requested by the Scheme Coordinator, that Supplier must provide all reasonable assistance to the independent auditor appointed by the Scheme Coordinator in connection with any performance audit as contemplated by the Act or any other review or audit in accordance with this Agreement.

7.4 Scheme Coordinator obligations

The Scheme Coordinator must prepare, and no later than the date which is 60 Business Days after the end of each financial year, deliver to the Supplier a report specifying:

- (a) the aggregate audited number of Containers for which Refund Amounts have been paid by Collection Point Operators or Network Operators at Collection Points during that financial year;

- (b) the aggregate audited number of Containers for which the Material Recovery Facility Operators have lodged claims for payment of Processing Refunds during that financial year and the total amount of Processing Refunds paid by the Scheme Coordinator in the relevant financial year;
- (c) the Scheme Coordinator's calculation of the Supplier's market share calculated by reference to the aggregate audited number of Containers (by Container material type and in aggregate for all Container material types) Supplied in New South Wales for that financial year;
- (d) the aggregate of the Network Fees (by Container material type and in aggregate for all Container material types) paid by the Scheme Coordinator to the Network Operators during the financial year; and
- (e) the aggregate of the Administration Fee for the financial year.

7.5 Identifier

Upon this Agreement taking effect and coming into force, the Scheme Coordinator will assign a unique identifier (in a form to be determined by the EPA) to this Agreement and provide it to the Supplier.

PART B — CHANGE IN CIRCUMSTANCES

8. Scheme Changes

8.1 Amendments to Agreement

- (a) If:
 - (i) there is any Change in Law; or
 - (ii) the State varies a Scheme Administration Agreement in accordance with section 33 of the Act or clause 13.9 or clause 16 of the Scheme Coordinator Agreement,

(Scheme Change) the Scheme Coordinator may by giving no less than 30 Business Days' notice in writing to the Supplier (**Scheme Change Notice**) to amend the Scheme Payments and Contribution Methodology or other terms of this Agreement to address that Scheme Change including any additional direct costs reasonably incurred (or to be incurred), or savings made (or to be made) in relation to the Scheme as a result of such Scheme Change.

- (b) The Supplier acknowledges and agrees that with effect from the date specified in the Scheme Change Notice this Agreement is amended as set out in the Scheme Change Notice.

8.2 Further acts and documents

The Supplier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably required by the Scheme Coordinator) required by law or reasonably requested by the Scheme Coordinator to give effect to the amendment referred to in clause 8.1.

8.3 No compensation

No Supplier is entitled to any compensation from the Scheme Coordinator or the State as a result of any amendment to this Agreement pursuant to this clause 8.

PART C — PAYMENT

9. Payment

9.1 Payments by the Supplier

The Supplier must pay the Scheme Coordinator all amounts it is required to pay under, and in accordance with, the Scheme Payments and Contribution Methodology from the date which is the:

- (a) if the Effective Date occurs before the date which is 1 calendar month before the Scheme Commencement Date, first day of the calendar month prior to the calendar month in which the Scheme Commencement Date occurs; or
- (b) if the Effective Date occurs on or after the date which is 1 calendar month before the Scheme Commencement Date, the first day of the first full calendar month after the Effective Date.

9.2 Scheme Payments and Contribution Methodology

The parties acknowledge and agree that:

- (a) they must comply with the Scheme Payments and Contribution Methodology to the extent that it relates to payments made under this Agreement; and
- (b) the State may, acting reasonably and after consultation with the Scheme Coordinator and the Network Operator, amend the Scheme Payments and Contribution Methodology document (other than the Administration Fee and the Network Fees) by giving no less than 30 Business Days' Notice in writing to the Scheme Coordinator and the Network Operator. The Scheme Coordinator must provide a copy of the State's notice to the Suppliers within 3 Business Days of being given the State's notice.

9.3 Supplier Invoices

- (a) The Scheme Coordinator must give the Supplier a claim in the form of a tax invoice for payment for the relevant month of the Term (**Supplier Invoice**) on each Supplier Invoice Date and at any other time provided for in the Scheme Payments and Contribution Methodology.
- (b) Each Supplier Invoice must:
 - (i) set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Scheme Coordinator under, and in accordance with, the Scheme Payments and Contribution Methodology to enable the relevant Supplier to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Supplier to the Scheme Coordinator under this Agreement, including the Scheme Payments and Contribution Methodology; and
 - (ii) be in accordance with the Scheme Payments and Contribution Methodology.

9.4 Supplier Statement

The Supplier must, by the 15th day of each calendar month, give the Scheme Coordinator a statement (**Supplier Statement**) which must, in accordance with the Scheme Payments and Contribution Methodology:

- (a) provide details of the aggregate number of eligible Containers Supplied in the State by the Supplier during the previous month in aggregate and by reference to each Container size and material type;
- (b) provide the Scheme Coordinator such other reasonable information required to inform (and make calculations in accordance with) the Scheme Payment Contribution Methodology for the next month;
- (c) be submitted via the Portal unless otherwise directed by the Scheme Coordinator.

9.5 Payment

Irrespective of the existence of any Dispute, the Supplier must pay the Scheme Coordinator the amount set out as then payable in the Supplier Invoice within 7 days after receipt by that Supplier of a Supplier Invoice under clause 9.3.

9.6 Interest

- (a) If the Supplier fails to pay any amount payable by that Supplier within the time required in accordance with this Agreement, then it must pay interest on that amount from the date on which payment was due and payable until the date on which payment is made in full in accordance with the Scheme Payments and Contribution Methodology.
- (b) If the Supplier fails to pay any amount payable by that Supplier within the time required in accordance with this Agreement, clause 9.6(a) will be the Scheme Coordinator's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

10. GST and taxation

- (a) Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.
- (b) Notwithstanding any other provision of this Agreement, any amount payable for a supply made under this Agreement which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (c) If GST is payable on any supply made by a party (**GST Supplier**) under or in connection with this Agreement:
 - (i) any amount payable or consideration to be provided under any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (**Recipient**), equal to the amount of GST payable on that supply as calculated by the GST Supplier in accordance with the GST Legislation and payable at the same time and in the same manner as for the Agreed Amount;
 - (iii) the GST Supplier will provide a tax invoice (or equivalent documentation which complies with the GST Legislation) to the Recipient in respect of that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that supply is to be provided under this Agreement; and

- (iv) if the Supplier does not provide a tax invoice in accordance with the timing set out in clause 10(c)(iii), the additional amount payable by the Recipient under clause 10(c)(ii) is payable within 5 Business Days of the receipt of a tax invoice.
- (d) If for any reason, the GST payable by the GST Supplier in respect of a supply it makes under this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 10(c) in respect of that supply, the GST Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the GST Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.
- (e) If the Recipient is dissatisfied with any calculation to be made by the GST Supplier under this clause 10, the Recipient may, at its own expense and after notifying the GST Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this Agreement, the matters required to be taken into account by the GST Supplier under this clause 10 and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party under or in connection with this Agreement or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- (g) Despite any other provision of this Agreement, this clause 10 will survive the termination of this Agreement.
- (h) A reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member, and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (i) Any reference in this Agreement to fees, value, sales, revenue or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.
- (j) Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

PART D — DEFAULT, SUSPENSION, TERMINATION & DISPUTES

11. Suspension

11.1 Suspension of Supplier's obligations

- (a) A Supplier must give the Scheme Coordinator at least 20 Business Days' notice of its intention to cease or suspend the Supply of beverages in Containers in New South Wales specifying the date upon which it will cease or suspend Supply (**Proposed Cessation Date**).

- (b) Following receipt of a notice under clause 11.1(a), the Scheme Coordinator may request such further information as it may reasonably require to determine whether the Supplier will cease to Supply on the Proposed Cessation Date.
- (c) Provided that the Supplier has actually ceased or suspended the Supply of beverages in Containers in New South Wales by the Proposed Cessation Date, the Supplier's rights and obligations under this Agreement, other than those under clause 11.2, will be suspended for the period from the Proposed Cessation Date until the date on which the Supplier's rights and obligations cease to be suspended in accordance with clause 11.2.
- (d) If the Supplier's obligations under this Agreement are suspended in accordance with clause 11.1, no supply arrangement between the Scheme Coordinator and the Supplier will be in force for the purposes of section 38 of the Act.

11.2 Reinstatement of Supplier's rights and obligations

- (a) If the Supplier intends to recommence Supply of beverages in Containers in New South Wales, it must give the Scheme Coordinator at least 30 Business Days' written notice of the date on which it intends to recommence Supply (**Proposed Commencement Date**).
- (b) Within 5 Business Days of receipt of a notice under clause 11.2(a), the Scheme Coordinator must provide a Supplier Invoice to the Supplier in accordance with clause 9.3.
- (c) The Supplier's other rights and obligations under this Agreement will cease to be suspended and a supply arrangement between the Scheme Coordinator and the Supplier on the terms of this Agreement will be in force for the purposes of section 38 of the Act on the earlier to occur of:
 - (i) the Proposed Commencement Date; and
 - (ii) the date on which the Scheme Coordinator reasonably determines that the Supplier has recommenced Supply.

11.3 Termination by the Supplier

- (a) If the Supplier ceases to supply beverages in Containers in New South Wales, the Supplier may terminate this Agreement by giving the Scheme Coordinator 20 Business Days' notice in writing.
- (b) If an Insolvency Event occurs in respect of the Scheme Coordinator, and that Insolvency Event is not remedied by the Scheme Coordinator within 10 Business Days, subject to clause 3.2(b) of the Supplier Side Deed, the Supplier may immediately terminate this Agreement by written notice to the Scheme Coordinator.

11.4 Termination by Scheme Coordinator

- (a) If:
 - (i) an Insolvency Event occurs in respect of the Supplier;
 - (ii) the Supplier fails to pay any amount within 20 Business Days of that amount becoming due and payable in accordance with clause 9.5;
 - (iii) the Supplier fails to comply with its obligations under clause 7 and fails to remedy the default within 20 Business Days of being provided a written notice of default by the Scheme Coordinator; or

(iv) the Supplier contravenes the Act or the Regulation,

the Scheme Coordinator may, subject to the written approval of the State (not to be unreasonably withheld or delayed and in any event to be given or not given in accordance with this clause 11.4) terminate this Agreement by written notice to that Supplier.

- (b) The Supplier acknowledges and agrees that the State will provide its written approval or non-approval to a proposed termination of this Agreement under clause 11.4(a):
- (i) having regard to all of the relevant facts and circumstances in respect of the proposed termination; and
 - (ii) where clause 11.4(a)(ii) applies, after the Supplier fails to pay any amount within 25 Business Days of that amount becoming due and payable in accordance with clause 9.5, if the Scheme Coordinator has notified the State of the Supplier's failure to pay after 5, 10 and 15 Business Days of that amount becoming due and payable in accordance with clause 9.5; or
 - (iii) where clause 11.4(a)(iii) applies, after the Supplier fails to comply with its obligations under clause 7 for 25 Business Days, if the Scheme Coordinator has notified the State of the Suppliers failure 5, 10 and 15 Business Days of the date on which the Supplier failed to comply with its obligations under clause 7.

11.5 Scheme Coordinator's entitlements after termination

Without limiting any rights it may have under any other term of this Agreement that have accrued prior to the termination, the Scheme Coordinator is not entitled to any compensation from any Supplier or the State as a result of the termination of this Agreement, save that the Scheme Coordinator shall be entitled to recover from the Suppliers all amounts which become payable under clause 9 up to the date of termination.

11.6 Supplier's entitlements after termination

Without limiting any rights it may have under any other term of this Agreement that have accrued prior to the termination, the Supplier is not entitled to any compensation from the Scheme Coordinator or the State as a result of the termination of this Agreement.

11.7 Survival

Clauses 11.5 and 11.6 will survive the termination of this Agreement.

11.8 Exclusion of common law rights

The parties agree that, to the extent permitted by law, the parties may only terminate this Agreement in accordance with the termination rights provided to them under this Agreement.

12. Disputes

12.1 Notice of dispute

- (a) If a dispute or difference arises between the Scheme Coordinator and the Supplier in respect of any fact, matter or thing arising out of, or in any way in connection with, this Agreement (**Dispute**) the Dispute must be determined in accordance with the procedure in this clause 12.

- (b) Where a Dispute arises, the party raising the Dispute must give a notice in writing to the other party specifying:
- (i) the Dispute;
 - (ii) whether the party considers the Dispute is a Common Dispute;
 - (iii) particulars of the party's reasons for being dissatisfied; and
 - (iv) the position which the party believes is correct,
- (Notice of Dispute).**
- (c) If a Dispute, the subject of a Notice of Dispute, involves a Common Dispute, the Scheme Coordinator may, by giving written notice to the Supplier prior to the appointment of an expert under clause 12.4, require the Dispute to be resolved in accordance with the Common Dispute Deed (**Notice of Common Dispute**).
- (d) If a Notice of Common Dispute is issued:
- (i) the Common Dispute must be resolved in accordance with the Common Dispute Deed; and
 - (ii) the dispute resolution process under this clause 12 will be stayed until final resolution of the Common Dispute and the times stated in this clause 12 will be extended by the number of days from the date of the Notice of Common Dispute until the date of final resolution of the Common Dispute.
- (e) For the avoidance of doubt until such time as a Notice of Common Dispute has been issued the dispute resolution process under this clause 12 will continue to apply in respect of the Dispute.

12.2 Executive Negotiation

- (a) The Executive Negotiators must within:
- (i) 14 days of service of a Notice of Dispute; or
 - (ii) such longer period of time as the Executive Negotiators may agree in writing,
- meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- (b) The Executive Negotiators must have authority to agree to a resolution of the Dispute.
- (c) Unless the parties agree otherwise, the meeting will be held in Sydney, Australia, at a place nominated by the Scheme Coordinator.
- (d) The joint decision (if any) of the Executive Negotiators will be reduced to writing and will be contractually binding on the parties.

12.3 Referral to Expert Determination

If a Dispute:

- (a) remains unresolved (in whole or in part) within 30 Business Days after service of the Notice of Dispute; and

(b) is of a kind referred to in clause 12.4(a),

then either party may by giving notice to the other party (**Expert Determination Referral**) refer those parts of the Dispute which remain unresolved to an expert in accordance with clauses 12.4 to 12.10.

12.4 Expert Determination

- (a) Disputes in relation to the following may be referred to expert determination under clauses 12.4 to 12.10:
- (i) any dispute arising out of, or in any way in connection with a Supplier Invoice or otherwise arising under clause 9; and
 - (ii) any dispute arising out of, or in any way in connection with a termination or proposed termination of this Agreement under clause 11.4.
- (b) A Dispute which is referred to expert determination will be conducted in accordance with the Resolution Institute Expert Determination Rules, as modified by Schedule 2 to this Agreement (**Rules**).
- (c) The expert determination under this clause 12 is to be conducted by:
- (i) an independent industry expert agreed by the parties within 10 Business Days after receipt of the Expert Determination Referral; or
 - (ii) where no such independent industry expert is agreed or clause 12.4(e) applies, an independent industry expert appointed by the Chair for the time being of the Resolution Institute.
- (d) The parties must enter into an agreement with the expert on such terms as the parties and the expert may agree, in accordance with the parties' obligations as set out in the Rules.
- (e) If the expert appointed under this clause 12.4:
- (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
 - (iv) does not enter into the agreement in accordance with clause 12.4(d) within 10 Business Days of his or her appointment under this clause 12; or
 - (v) does not make a determination within the time required by clause 12.9,
- the jurisdiction of the expert shall lapse and a further expert must be appointed under clause 12.4(b).
- (f) If there has been an appointment under clause 12.4(c) and one of the events in clause 12.4(e) has occurred, the further expert appointed under clause 12.4(c) shall not be an expert previously appointed under clause 12.4(c) in respect of the same Dispute.

12.5 Not Arbitration

An expert determination conducted under this clause 12 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

12.6 Procedure for Determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require;
- (e) make such directions for the conduct of the determination as he or she considers necessary; and
- (f) not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

12.7 Disclosure of Interest

The expert must:

- (a) disclose to the parties any:
 - (i) interest he or she has in the outcome of the determination;
 - (ii) conflict of interest;
 - (iii) conflict of duty;
 - (iv) personal relationship which the expert has with either party, or either party's representatives, witnesses or experts; and
 - (v) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- (b) not communicate with one party to the determination without the knowledge of the other.

12.8 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

12.9 Conclusion of Expert Determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 12 within 28 days from the acceptance by the expert of his or her appointment.

12.10 Determination of Expert

The determination of the expert:

- (a) must be in writing;
- (b) will be substituted for the relevant Direction of the Scheme Coordinator's Representative, unless a party gives notice of appeal to the other party within 21 days of receiving such determination; and
- (c) will:
 - (i) in relation to disputes arising out of, or in any way in connection with a Supplier Invoice, or otherwise arising under clause 9 be final and binding on the parties; and
 - (ii) in relation to any other dispute, be final and binding on the parties unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

12.11 Proceedings

If a Dispute has not been resolved (in whole or in part):

- (a) where a party has given an Expert Determination Referral, and a notice of appeal is given under clause 12.10(c), within 10 days after the notice of appeal was given under clause 12.10(c); or
- (b) where clause 12.11(a) does not apply, within 80 days after service of a Notice of Dispute;

(or such longer period of time as the parties may agree in writing and irrespective of whether clauses 12.2 to 12.10 have been complied with), either party may commence legal proceedings.

12.12 Proportional Liability

Notwithstanding anything else, to the extent permissible by law, the expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any Dispute referred to expert determination pursuant to this clause 12.

12.13 Continuation of obligations

Despite the existence of a Dispute, the parties must continue to comply with their respective obligations under this Agreement.

12.14 Disputes between Scheme Participants

The parties acknowledge that a Dispute between the Supplier and the Scheme Coordinator under this Agreement may concern the rights and obligations of other Scheme Participants under the Scheme Arrangements and Scheme Administration Agreements.

PART E — OTHER

13. Confidentiality

13.1 Confidentiality of Confidential Material

Each party acknowledges and agrees that, subject to clause 13.2:

- (a) the Confidential Material is and will remain confidential to the Scheme Coordinator and the Supplier;
- (b) it has not disclosed and will not at any time, without the other party's prior written consent, disclose the Confidential Material to any third party who is not an employee of one of its Associates or of the State who has agreed to keep the Confidential Material, confidential on the same terms as this clause 13.1; and
- (c) it will not, and will ensure that its Associates do not, at any time use or reproduce or permit or allow any other person to use or reproduce the Confidential Material, other than for the purposes of this Agreement, including to carry out its obligations pursuant to this Agreement.

13.2 Exceptions to confidentiality

Where:

- (a) the State has requested a copy of this Agreement as per clause 6.3;
- (b) the party for whom the Confidential Material is confidential has notified the other party (**Disclosing Party**) in writing that the Confidential Material is in the public domain;
- (c) the Confidential Material is in the public domain through no act, neglect or default of the Disclosing Party or its Associates (the onus of proving which will be on the Disclosing Party) in the same form or medium and arranged, collected or compiled in the same manner as it was disclosed to the Disclosing Party or its Associates or created by the Disclosing Party or its Associates; or
- (d) the other party has notified the Disclosing Party in writing that the other party no longer requires the Disclosing Party to maintain the confidentiality of the Confidential Material,

then the obligations in clauses 13.1 will not, or will no longer, apply to that Confidential Material provided that this clause 13.2 will not excuse any prior breach of clauses 13.1 and the other party's rights and remedies in respect of any prior breach are expressly preserved.

13.3 State may disclose

The parties acknowledge that the State may at any time disclose Confidential Material, including:

- (a) to satisfy the requirements of parliamentary accountability;
- (b) to the New South Wales Auditor-General for the purposes of satisfying its statutory duties;
- (c) pursuant to State Policy;
- (d) in annual reports of the State; and

- (e) pursuant to the Government Information (Public Access) Act 2009 (NSW), (the **Public Disclosure Obligations**), and the parties must use all reasonable endeavours to assist the State to meet its Public Disclosure Obligations.

14. Miscellaneous

14.1 Governing law

This Agreement is governed by and must be construed according to the law in force in New South Wales.

14.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 14.2(a).

14.3 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.

14.4 Further acts and documents

The Supplier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Scheme Coordinator) required by law or reasonably requested by the Scheme Coordinator to give effect to this Agreement.

14.5 Expenses

Each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

14.6 Stamp duties

The Supplier:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Agreement, the performance of this Agreement and each transaction effected by or made under this Agreement;
- (b) indemnify the Scheme Coordinator against any Loss suffered or incurred by it arising out of, or in connection with that Suppliers' failure to comply with clause 14.6(a); and

- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the Suppliers under this clause.

14.7 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

14.8 Corporate power and authority

Each party represents and warrants to the others that it has full power to enter into and perform its obligations under this Agreement and that when executed it will constitute legal, valid and binding obligations in accordance with its terms.

14.9 Inconsistency with Act

The parties acknowledge section 29 of the Act.

14.10 Severability

If any provision contained in this Agreement is voidable, illegal or unenforceable or if this Agreement would, if a particular provision were not omitted be voidable, illegal or unenforceable, that provision will be severed from this Agreement which shall then be construed and given effect to for all purposes as if the provision had never formed a part of it.

14.11 No merger

The warranties, undertakings and indemnities in this Agreement do not merge at the end of the Term.

14.12 Prompt performance

If this Agreement specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

14.13 Counterparts

This Agreement may consist of a number of copies, each signed by one or more parties to this Agreement. If so, the signed copies are treated as making up the one document.

14.14 Notices

(a) Communications in writing

Any communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (i) must be in writing;
- (ii) unless otherwise stated, may be made or delivered by hand, prepaid post or by email; and
- (iii) unless otherwise agreed by the Scheme Coordinator, must also be submitted via the Portal.

(b) **Addresses**

The address and email address and the department or officer, if any, for whose attention the communication is to be made of each party for any communication to be made under or in connection with this Agreement is as follows:

(i) **The Scheme Coordinator**

Name: Exchange for Change (NSW) Pty Ltd

Address: Level 4, 126 - 130 Phillip Street
Sydney NSW 2000

Email: jeff.maguire@ccamatil.com

For the attention of: Scheme Coordinator's Representative

(ii) **Supplier**

Name: []
Address: []
Email: []
For the attention of: []

(c) **Delivery**

Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
- (ii) (in the case of email) when it is dispatched by the sender to each of the email addresses specified by the recipient; and
- (iii) (in the case of delivery by hand) on delivery,

but, in each case, if the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

Executed as a deed.

Scheme Coordinator

Executed by Exchange for Change (NSW) Pty Ltd ACN 620 512 469 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Supplier

Executed by [insert name of Supplier] ABN [insert ABN] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Particulars

Clause 1.1 - Glossary of terms

Scheme Coordinator's Representative: (Clause 1.1)	Name: Jeff Maguire Address: Level 4, 126-130 Phillip Street, Sydney NSW 2000 Telephone: +61 (0) 419 245479 Email: jeff.maguire@ccamatil.com
Executive Negotiators: (Clause 1.1)	Scheme Coordinator: Jeff Maguire (or such other person notified to the Supplier in writing by the Scheme Coordinator from time to time) Supplier: []

Schedule 1 - Scheme Payments and Contribution Methodology

Schedule 2 - Rules for Expert Determination Process

Resolution Institute Expert Determination Rules

In accordance with, and subject to the Resolution Institute Expert Determination Rules including Schedules A and B, the Parties agree to modify the application of those Rules as follows:

Modifications are underlined.

1. **RULE 5 Role of the Expert**

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Contract, the requirements of procedural fairness, and according to law.

2. [no modification]

3. [no modification]

3A. The rules of evidence do not apply to the Process.

4. (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the Parties immediately.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under clause 4(c) above, unless the Parties agree otherwise.

5. [no modification]

2. **RULE 10 The Expert's Determination**

1. Unless otherwise agreed between the Parties, the Expert must notify the parties of his or her decision within 28 days from the acceptance by the expert of his or her appointment. As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, the Expert shall determine the Dispute between the parties and notify such determination in writing to the parties.

2. [no modification]

3. Unless otherwise agreed by the parties, the Expert's determination:

(a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;

(b) must allow for any amount already paid to a Party under or for the purposes of Part 3 of the Building and Construction Industry Security of Payment Act 1999 (NSW) (and any equivalent statute in any other state or territory);

(c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

(d) to the extent permitted by law, will not apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state, territory, or the Commonwealth).

4. [no modification]

3. Rule 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

Schedule 3 - Supplier annual statutory declaration

New South Wales

Statutory Declaration

I, **[Insert declarant's name]** of **[Insert declarant's address]**, **[Insert declarant's occupation]**, do solemnly and sincerely declare that:

2. the Supplier Statements (as defined in the Supply Arrangement between Exchange for Change (NSW) Pty Ltd, ACN 620 512 469 (**Scheme Coordinator**) and [], ABN [] (**Supplier**) attached to this declaration as Attachment A are true and correct;
3. the number of beverage Containers Supplied by the Supplier in New South Wales in the previous financial year:
 - (a) in aggregate in respect of the State; and
 - (b) in aggregate for each Container material type is as follows:

No.	Container type	Aggregate number Supplied
1.	Aluminium	
2.	Glass	
3.	PET	
4.	HDPE	
5.	Liquid paper board	
6.	Other plastics	
7.	Steel	
8.	Other	
	Total	
Aggregate for NSW		

4. *[insert any other matter prescribed by the State or which is otherwise required by the Act or the Regulation from time to time (as notified in writing by the Scheme Coordinator to the Suppliers)].*

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900 (NSW).

Declared at
this _____ day of _____ 20____
Before me:

Signature of person before whom the declaration is made

Signature of declarant

Full name, qualification and address of person before whom the declaration is made

And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):

[*strike out the text that does not apply]

- 1. *I saw the face of the declarant.
 OR
 *I did not see the face of the declarant because he/she was wearing a face covering, but I am satisfied that he/she had a special justification for not removing it.

- 2. *I have known the person for at least 12 months.
 OR
 *I confirmed the person's identity using the following identification document:

Identification document relied on
(may be original or certified copy)

Signature of person before whom the declaration is made

Annexure

This is "Annexure A" referred to in the statutory declaration of [*Declarant's name as in statutory declaration*] of [*Declarant's address as in statutory declaration*] made before me this day of 20...

.....
Signature of person before whom the declaration is made

Schedule 4 - Containers

Schedule 5 - Glossary of Defined Terms

In this Agreement:

Act means the *Waste Avoidance and Resource Recovery Act 2001* (NSW).

Administration Fee has the meaning given in the Scheme Payments and Contribution Methodology.

Agreed Amount has the meaning given in clause 10(c)(i).

Agreement means the NSW Container Deposit Scheme Supply Agreement contractual relationship between the parties constituted by:

- (a) the General Conditions;
- (b) the Particulars; and
- (c) the Schedules.

Approval means any licence, permit, consent, approval, determination, certificate or other requirement:

- (a) of any Authority having any jurisdiction in connection with implementation of the Scheme; or
- (b) under any other applicable Statutory Requirement,

which must be obtained or satisfied for the purposes of performance of the parties' respective obligations under this Agreement.

Associate in respect of a party, any employee, officer, agent, or subcontractor of that party, but in respect of:

- (a) the Scheme Coordinator - excludes the State, the other Scheme Participants and the Material Recovery Facility Operators; and
- (b) the Supplier - excludes Scheme Coordinator.

Assumption Notice has the meaning given in clause 4.1 of the Supplier Side Deed.

Authority means any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

Change in Law means a change in a Statutory Requirement of the State of New South Wales or a State Policy after the Effective Date which:

- (a) specifically and only affects the Scheme Coordinator, the Scheme or the Scheme Participants;
- (b) causes the Scheme Coordinator to incur more or less direct costs than otherwise would have been incurred in respect of carrying out its obligations under the Scheme Coordinator Agreement; and
- (c) was not reasonably foreseeable and capable of being included in the Scheme Payments and Contributions Methodology at the date of this Agreement.

Claim means any claim, notice, demand, action, proceeding or litigation and includes any claim for the payment of money or relief from performance whether the claim, notice, demand, action, proceeding or litigation:

- (a) is in any way in connection with this Agreement or either party's conduct before this Agreement, including any Direction of the Scheme Coordinator's Representative;
- (b) is in any way in connection with implementation of the Scheme; or
- (c) otherwise arises at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Common Dispute means a dispute which involves a question of law (including a question of contract interpretation) or a question of fact, that is of general application or importance to a Network Arrangement, a Supply Arrangement, a network operator agreement (as defined in the Act), the Scheme Coordinator Agreement or this Agreement between the Scheme Coordinator, another Scheme Participant and the State.

Common Dispute Deed means the deed dated 28 July 2017, between the Scheme Coordinator, the Network Operator and all other parties who have executed or acceded to the deed from time to time in the form of the deed so entitled and appearing on the Scheme Coordinator's website.

Confidential Material means:

- (a) this Agreement;
- (b) any data and other commercially sensitive information provided by either party to the other party in relation to the Scheme or arising out of, or in connection with, this Agreement

Container has the meaning given in section 22 of the Act.

Dispute has the meaning given in clause 12.1(a).

Effective Date has the meaning given in clause 2.

EPA means the NSW Environment Protection Authority constituted by section 5 of the *Protection of the Environment Administration Act 1991 (NSW)*.

Executive Negotiators means the persons stated in the Particulars.

Expert Determination Referral has the meaning given in clause 12.3.

General Conditions means the General Conditions of this Agreement.

GST means the tax payable on taxable supplies under the GST Legislation, and includes an amount that a party is notionally liable to pay as GST under the GST Legislation.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

GST Supplier has the meaning given in clause 10(c).

Insolvency Event means:

- (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with this Agreement for financial reasons;
- (b) execution is levied against a person by a creditor;
- (c) in relation to an individual person or a partnership, the person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a corporation, any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) the corporation entering a deed of company arrangement with creditors;
 - (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (iv) an application is made to a court for the winding up of the corporation and not stayed within 10 Business Days;
 - (v) a winding up order is made in respect of the corporation;
 - (vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
 - (vii) a mortgagee of any property of the corporation takes possession of that property.

IP Rights means:

- (a) all copyright and analogous rights;
- (b) all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields; and
- (c) all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing,

whether created before, on or after the Effective Date and whether existing in Australia or otherwise.

Loss means:

- (a) any cost, expense, loss, damage or liability; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.

Material Recovery Facility Operator has the meaning given in the Act.

Minister means the NSW Minister for the Environment.

Network Fee has the meaning given in the Scheme Payments and Contribution Methodology.

Network Operator has the meaning given in the Act.

Notice of Dispute has the meaning given in clause 12.1(b).

Particulars means the particulars annexed to the General Conditions of this Agreement and entitled "Particulars".

Processing Refund has the meaning given in section 28(1) of the Act.

Proposed Commencement Date has the meaning given in clause 11.2(a).

Proposed Cessation Date has the meaning given in clause 11.1(a).

Public Disclosure Obligations has the meaning given in clause 13.3.

Recipient has the meaning given in clause 10(c)(ii).

Refund Amount has the meaning given in the Act.

Regulation means:

- (a) the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* (NSW); and
- (b) any other regulation made under Part 5 of the Act.

Scheme has the meaning given in the Act.

Scheme Arrangement has the meaning given in the Act.

Scheme Change has the meaning given in clause 8.1.

Scheme Change Notice has the meaning given in clause 8.1.

Scheme Commencement Date means the "Scheme commencement day" as defined in the Regulation.

Scheme Coordinator Agreement means the agreement of that name entered into by the State and the Scheme Coordinator.

Scheme Coordinator's Representative means a person named in the Particulars or any other person from time to time appointed as a Scheme Coordinator's Representative.

Scheme Participant has the meaning given in the Act.

Scheme Payments and Contribution Methodology means Schedule 1, as amended from time to time in accordance with clause 8.

State means the Crown in right of the State of New South Wales.

State Policy means any policy, guideline, standard, circular directive, practice specification or procedure which applies in connection with the Scheme and which affects implementation of the Scheme:

- (a) which are notified to the Scheme Coordinator;
- (b) which are publicly available or otherwise available to the Scheme Coordinator; or
- (c) which the Scheme Coordinator is expressly required by the terms of this Agreement, by law or by Direction of the State to comply with,

as may be amended or updated from time to time.

Statutory Requirements means:

- (a) any law applicable to implementation of the Scheme, including Acts, ordinances, regulations, by-laws, orders and other subordinate legislation;
- (b) Approvals (including any condition or requirement under them); applicable to implementation of the Scheme and
- (c) fees and charges payable in connection with the foregoing.

Supplier Invoice has the meaning given in clause 9.3.

Supplier Invoice Date means the first Business Day of each calendar month beginning the calendar month prior to the Scheme Commencement Date.

Supplier IP has the meaning given in clause 7.2(a).

Supply has the meaning given in the Act.

Supplier Side Deed means the deed, the parties to which are the State, the Scheme Coordinator and the Supplier, in the form of the deed so entitled and appearing on the Scheme Coordinator's website.

Term has the meaning given in clause 3.

Scheme Payments and Contribution Methodology 4 August 2017

1 Introduction

1.1 Meanings

In this Scheme Payments and Contribution Methodology unless the context indicates to the contrary:

- (a) all capitalised terms that are defined in clause 1.3 will have the meaning given to them in that clause;
- (b) capitalised terms used in this Scheme Payments and Contribution Methodology and not defined in it have the meaning given to those terms in the Act; and
- (c) references to clauses are references to clauses in this Scheme Payments and Contribution Methodology.

1.2 Interpretation

In this Scheme Payments and Contribution Methodology headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors, permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Scheme Payments and Contribution Methodology) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, section, schedule, exhibit, attachment or annexure is a reference to a party, clause, section, schedule, exhibit, attachment or annexure to or of this Scheme Payments and Contribution Methodology, and a reference to this Scheme Payments and Contribution Methodology includes all schedules, exhibits, attachments and annexures to it;

- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Scheme Payments and Contribution Methodology or any part thereof;
- (j) if the day on or by which anything is to be done in accordance with this Scheme Payments and Contribution Methodology is not a Business Day, that thing must be done no later than the next Business Day;
- (k) other than as set out in clause 1.2(k) a reference to "day" is a reference to a calendar day, a reference to "week" is a reference to a calendar week, a reference to "month" is a reference to a calendar month and a reference to "quarterly" is a reference to 3 monthly;
- (l) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (m) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (n) the word "subcontractor" will include all suppliers, contractors and consultants;
- (o) a reference to "\$" or "dollar" is to Australian currency;
- (p) a reference to time is a reference to the then current time in Sydney, Australia;
- (q) a reference to a right includes any benefit, remedy, discretion, authority or power;
- (r) a reference to an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (s) the term "may", when used in the context of a power, right or remedy exercisable by a party, means that the party can exercise that power, right or remedy in its absolute and unfettered discretion, and the party has no obligation to the other party to do so; and
- (t) where there is a reference to an authority, institute or association or other body referred to in this Scheme Payments and Contribution Methodology which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Scheme Payments and Contribution Methodology is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Scheme Payments and Contribution Methodology is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity.

1.3 Definitions

Term	Meaning
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Act	The <i>Waste Avoidance and Resource Recovery Act 2001</i> (NSW)
Actual Container Volumes	<p>means, as the context requires, either the volume of Containers:</p> <ul style="list-style-type: none"> a) determined by the Network Operator and reported to the Scheme Coordinator pursuant to clause 6.7(d)(iv); b) actually supplied by the Supplier in the relevant period as reported by the Supplier, in the Supplier Statements provided under clause 9.4 of the Supply Arrangement; c) actually agreed to have been recovered through the MRFOs in a quarter in accordance with the Processing Refund Protocol.
Administration Fee	means the fee calculated in accordance with clause 3.1.
Arrears Period	has the meaning given in clause 4.14(a).
Assumed Container Recovery Rates	means the percentage of Containers expected to be collected by the Scheme (whether through Collections Points, the Material Recovery Facility Operators or the Network Operator) in a Billing Period relative to the volume of Containers supplied by all Suppliers during the same Billing Period.
Audit Adjustment	means the adjustment to the Supplier Contribution, Network Fee or Refund Amounts calculated by the Scheme Coordinator in accordance with clauses 4.5(g) or 6.5(d).
Bad Debt Amounts	has the meaning given in clause 4.3(h).
BBSW	means ninety (90) day bank bill swap reference rate (Average Bid) as published in the Australian Financial Review.
Billing Period	means the time period covered by an invoice issued in accordance with the terms of this Scheme Payments and Contribution Methodology and the Scheme Coordination Agreement, the Network Arrangement, Network Operator Agreement or, the Supply Agreement or the Processing Refund Protocol as the case may be.
Business Day	<p>means a day that is not:</p> <ul style="list-style-type: none"> a) a Saturday, Sunday; or b) public holiday for Sydney under the <i>Public Holidays Act 2010</i> (NSW).

Collection Point	has the meaning given in the Network Operator Agreement.
Collection Point Operator	has the meaning given in the Network Operator Agreement.
Container	has the meaning given in section 22 of the Act.
Estimated Container Volumes	means the amount calculated in accordance with clause 6.2(a).
Estimated Monthly Container Volumes (by Material Type)	means the estimated volume of Containers by Material Type to be collected across Zones 1 to 7 by each Network Operator calculated in accordance with clause 4.6(a).
Forecast Container Volume by Supplier	means for the relevant period, the amount calculated in accordance with clause 4.6(c).
Forecast Container Volume for all Suppliers	means for the relevant period, the amount calculated in accordance with clause 4.6(c).
Forecast Monthly Network Fee (by Material Type)	means the fee payable to the Network Operator calculated in accordance with clause 4.3(d).
Forecast Network Fee	means or the relevant Billing Period, the amount calculated in accordance with clause 6.2.
Forecast Processing Refund Amount	means for the relevant Billing Period, the amount calculated in accordance with clause 4.3(e).
Forecast Refund Amount	means the amount determined in accordance with clause 6.3.
Interim Supplier Contribution	means amounts payable by Suppliers calculated in accordance with clause 4.10.
Interim Supplier Contribution Invoice	means an invoice for an Interim Supplier Contribution issued pursuant to clause 4.10.
Liquidity Buffer	has the meaning given in the Scheme Coordinator Services Specification.
Market Share	means the volume of Containers (by Material Type, or in aggregate) supplied by a Supplier in a relevant period as a percentage of the total volume of Containers (by the same Material Type or in aggregate as relevant) supplied by all

Suppliers in the same period.

Market Share Adjustment

means the adjustment to the monthly Supplier Advance Contribution calculated by the Scheme Coordinator in accordance with clause 4.5(e).

Material Type

means a material type of a Container, limited to the following types, as enumerated in Schedule 10 of the Network Operator Agreement:

- Glass;
- PET;
- HDPE;
- Aluminium;
- Liquid Paper Board;
- Steel;
- Other Plastics (incorporating plastics not PET or HDPE); or
- Other Materials (incorporating non-plastics not glass, aluminium, liquid paper board or steel),

where this Scheme Payments and Contribution Methodology requires calculations for or by each Material Type, the calculation should be made for each of the material type categories included in this definition.

MRFO

Material Recovery Facility Operators.

MRF Protocol

means Container Deposit Scheme Material Recovery Facility Processing Refund Protocol.

Network Fee Adjustment

means for the relevant month, the amount calculated in accordance with clause 4.3(d).

Network Fee

has the meaning given in the Network Operator Agreement.

Network Operator

means Tomra Cleanaway Pty Limited (ACN 620 427 116).

Network Operator Agreement

means the Agreement between the State and the Network Operator.

Network Operator

Any financial penalty incurred by the Network Operator in accordance with clause 20.1 of the Network Operator

Financial Penalty	Agreement.
Network Payments	Payments made by the Scheme Coordinator to the Network Operator pursuant to clause 6.
Network Payments Account	has the meaning given in the Network Operator Agreement.
Payment Certificate	is the certificate issued in accordance with clause 6.8.
Payment Claim	A claim submitted under clause 6.7.
Penalty Interest Rate	BBSW + 200 basis points.
Processing Refund Amount	The amount paid per Container to the Eligible Material Recovery Facility Operators being the Refund Amount.
Recovery Amount	has the meaning set out in clause 4.3(g).
Refund Amount	means the amount prescribed in section 6 of the Regulation.
Regulation	means the <i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017</i> (NSW) and any other Regulation made under Part 5 of the Act.
Related Body Corporate	has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
Scheme	has the meaning given in the Act.
Scheme Commencement Date	means 1 December 2017 or such other date as is determined by the State.
Scheme Compliance Fee	The amount payable to the State as set out in Part 2 of Schedule 7 to the Scheme Coordinator Agreement.
Scheme Coordinator	Exchange for Change (NSW) Pty Ltd ACN 620 512 469.
Scheme Coordinator Agreement	The agreement of that name between the State and the Scheme Coordinator.
Scheme Coordinator Fee	The amount payable to the Scheme Coordinator as set out in Schedule 7 to the Scheme Coordinator Agreement.
Scheme Coordinator	Any financial penalty incurred by the Scheme Coordinator in accordance with clause 20.1 of the Scheme Coordinator

Financial Penalty	Agreement.
Scheme Objectives	<p>The State is seeking to implement a container deposit scheme in New South Wales so as to:</p> <ol style="list-style-type: none"> i. recognise the responsibility that the beverage industry shares with the community for reducing and dealing with waste generated by beverage product packaging; ii. establish a cost effective State-wide container deposit scheme to assist the beverage industry to discharge that responsibility and to promote the recovery, reuse and recycling of empty Containers; iii. provide for the establishment of a Scheme Coordinator and Network Operators with responsibility for the administration of the Scheme; iv. provide for the payment of a Refund Amount to persons depositing at Collection Points empty Containers that are subject to the Scheme; v. provide for the establishment of a cost recovery scheme administered by the Scheme Coordinator under which Suppliers agree to make contributions towards the cost of paying those Refund Amounts; vi. prohibit the supply of beverages in Containers that are subject to the Scheme by Suppliers who have not agreed with the Scheme Coordinator to make those contributions; and vii. prohibit the supply of beverages in Containers of a kind that are not approved by the NSW Environment Protection Authority .
Scheme Payments Account	The account referred to in clause 13.2 of the Scheme Coordinator Agreement.
Share of Interest pass-through	has the meaning given in clause 4.3(f).

State	The Crown in right of the State of New South Wales
Supplier	Any entity that has entered into a Supply Arrangement with the Scheme Coordinator.
Supplier Advance Contribution	The amounts calculated in accordance with clause 4.3 or 4.13(b).
Supplier Contribution Adjustment	has the meaning given in clause 4.5.
Supplier Invoice	has the meaning given in the Supply Arrangement.
Supplier Penalty Interest Rate	BBSW + 500 basis points.
Supplier Statements	Statement of the actual Containers provided by a Supplier in accordance with the reporting requirement under clause 9.4 of the Supply Arrangement.
Supplier Actual Reported Market Share	as determined on the basis of the volumes actually supplied by each Supplier (as reported under clause 9.4 of the Supply Arrangement).
Supplier's Estimated Market Share	for the relevant period the amount calculated in accordance with clause 4.6(c)(i).
Tax Invoice	has the meaning given in a <i>New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Trust Assets	has the meaning given in clause 13.2 of the Scheme Coordinator Agreement
Supply Arrangement	has the meaning given in the Act.
Zone	means each of Zone 1, Zone 2, Zone 3, Zone 4, Zone 5, Zone 6 and Zone 7 and "Zones" means all of them as defined in the Scheme Coordinator Agreement.

2 Scheme Payments Account

- 2.1 The Scheme Coordinator must establish and maintain a Scheme Payments Account in accordance with the requirements of clause 5.3(a) of the Scheme Coordinator Services Specification.
- 2.2 The Scheme Coordinator must use the Scheme Payments Account solely for the purpose of:
- a) receiving payments made by Suppliers pursuant to clause 4;
 - b) receiving funds from the Liquidity Buffer pursuant to clause 4.11(a);
 - c) receiving interest on the Scheme Payments Account;
 - d) making payments, to the extent any such payments are due, in the following order:
 - i. Network Payments;
 - ii. Amounts payable to the State pursuant to clause 8.2(c)(i);
 - iii. Amounts payable to the Scheme Coordinator itself pursuant to clause 8.2(c)(ii);
 - iv. Processing Refund Amounts;
 - v. Administration Fees;
 - vi. Amounts payable to the State pursuant to clause 8.2(a)(i);
 - vii. Amounts payable to the Network Operator pursuant to clause 8.2(a)(ii);
 - viii. Scheme Compliance Fees;
 - ix. Replenishment of the Scheme Liquidity Buffer pursuant to clause 4.11;
 - x. any amount for which the Scheme Coordinator is entitled to be indemnified from the Trust Assets in its capacity as trustee of the trust referred to in clause 13.2(b) of the Scheme Coordinator Agreement,

and must not use the Scheme Payments account to pay the operating expenses of the Scheme Coordinator or for any other purposes.

3 Administration Fee

- 3.1 Invoice
- a) The Scheme Coordinator must issue on the first Business Day of each calendar month, a statement for the Administration Fee.
 - b) The Administration Fee for a month is calculated as follows:
 - i. the Scheme Coordinator Fee for that month; plus
 - ii. the Recovery Amounts paid in the previous month.

- c) A copy of the statement must be sent by email and posted by prepaid post to the State.
- 3.2 First Statement
- a) The statement for the first Administration Fee will be issued on the Scheme Commencement Date.
- 3.3 Payment
- a) The Scheme Coordinator must pay to itself the amount set out in each statement it issues pursuant to clause 3.1 from the Scheme Payments Account on the first Business Day of each month less any amounts required by clause 3.3(b) to be deducted from the amount claimed in the invoice;
 - b) The Scheme Coordinator must deduct from the amount to be paid to itself in respect of any statement for a month issued pursuant to clause 3.1, the amounts payable to the State in accordance with clause 8.2.

4 Contributions from Suppliers

- 4.1 A Supplier must pay the Scheme Coordinator all amounts that it is required by this clause 4 to pay, which the Scheme Coordinator must ensure are deposited into the Scheme Payments Account.
- 4.2 The Scheme Coordinator must calculate the amounts required by this clause 4 to be paid by Suppliers in accordance with the methodology set out in this clause 4 using reasonable assumptions, in accordance with:
- a) the Scheme Coordinator's contractual obligations with respect to fair dealing between Scheme Participants;
 - b) the matters set out in section 25(3)(b) of the Act; and
 - c) the Scheme Objectives.
- 4.3 Supplier Advance Contributions
- a) Each Supplier's Advance Contribution for a calendar month is calculated as the sum of that Supplier's:
 - i. Share of Scheme Coordinator Fee, as calculated in clause 4.3(b);
 - ii. Share of Scheme Compliance Fee, as calculated in clause 4.3(c);
 - iii. Share of Forecast Monthly Network Fee and Forecast Monthly Refund Amounts, as calculated in clause 4.3(d);
 - iv. Share of Forecast Processing Refund Amounts, as calculated in clause 4.3(e);
 - v. Share of Interest pass-through costs, as calculated in clause 4.3(f);
 - vi. Share of Recovery Amounts as calculated in clause 4.3(g);
 - vii. Share of Bad Debt Amounts as calculated in clause 4.3(h).

b) **Share of Scheme Coordinator Fee**

Share of Scheme Coordinator Fee = Supplier's Estimated Market Share for the relevant month x Scheme Coordinator Fee for the relevant month

Where:

Supplier's Estimated Market Share is calculated using aggregated Container volumes in accordance with clause 4.6(c)(i).

Scheme Coordinator Fee is the amount calculated under clause 3.1(b)(i) for the relevant month.

c) **Share of Scheme Compliance Fee**

Share of Scheme Compliance Fee = A x C

Where:

A = Supplier's Estimated Market Share for the relevant month which is calculated using aggregated Container volumes in accordance with clause 4.6(c)(i).

C = Scheme Compliance Fee for the relevant month.

d) **Share of Forecast Monthly Network Fee and Forecast Monthly Refund Amounts**

- i. **Share of Forecast Monthly Network Fee** is the sum of the Supplier's Share of Forecast Monthly Network Fee for each Material Type in each Zone.

Share of Forecast Monthly Network Fee for a Material Type in a Zone is calculated as $D \times E \times F$

Where:

D = Supplier's Estimated Market Share for the relevant month which is calculated by Material Type in accordance with clause 4.6(c)(i).

E = Estimated Monthly Container Volumes (for the Material Type in the Zone, determined in accordance with clause 4.6(a)).

F = the value payable for each Container of the Material Type in the Zone set out in Schedule 10 to the Network Operator Agreement.

- ii. **Share of Forecast Monthly Refund Amounts** is the sum of the Supplier's Share of Forecast Monthly Refund Amounts for each Material Type.

Share of Forecast Monthly Refund Amounts for a Material Type = $D \times F \times G$

Where:

D = Supplier's Estimated Market Share for the relevant month which is calculated by Material Type in accordance with clause 4.6(c)(i)

F = Estimated Monthly Container Volumes for the relevant month for the Material Type calculated in accordance with clause 4.6(a).

G = Refund Amount.

e) **Share of Forecast Processing Refund Amounts**

- i. The Forecast Processing Refund Amount is an estimate of the amount to be paid to MRFOs quarterly in arrears, in accordance with clause 7.
- ii. A Supplier's share of Forecast Processing Refund Amounts is the sum of the Supplier's Share of Forecast Processing Refund Amounts for each Material Type.

Share of Forecast Processing Refund Amounts for a Material Type = $D \times H \times J/3$

Where;

D = Supplier's Estimated Market Share (in the relevant quarter by the Material Type, as calculated under clause 4.6(c)).

H = Forecast MRFO Container Volumes (in the relevant quarter of the Material Type, calculated in accordance with 4.6(b)).

J = Processing Refund.

- iii. The Forecast Processing Refund Amount is to be converted to a monthly amount on a straight line pro-rata basis and is to be recovered from Suppliers over the relevant quarter.

f) **Share of Interest pass-through**

Share of Interest pass-through = Supplier's Estimated Market Share x Net Interest

Where:

Supplier's Estimated Market Share for the relevant month is calculated using aggregated Container volumes in accordance with clause 4.6(c)(i).

Net Interest = J - K - L

Where:

J = Interest paid by the Scheme Coordinator in relation to a drawing on the Liquidity Buffer that has not been included in a previous Share of Interest pass-through calculation.

K = Interest paid into the Scheme Payment Account that has not been included in a previous Share of Interest pass-through calculation, including interest that has been paid by a Supplier under clauses 4.5(h), 4.14 and 4.15; and

L = The amount of any deductions under clause 6.8(b) for interest earned on the Network Payments Account that has not been included in a previous Share of Interest pass-through calculation.

g) **Share of Recovery Amounts**

Share of Recovery Amounts = Supplier's Market Share x Recovery Amounts for the month prior to the relevant month

Recovery Amounts are the reasonable third party costs paid by the Scheme Coordinator to recover amounts payable to the Scheme by a Supplier under its Supply Arrangement.

Supplier's Market Share is the market share on an aggregated basis calculated, if ascertainable, using the Supplier's Actual Reported Market Share in accordance with clause 4.5(e)(ii) or otherwise using the Supplier's Estimated Market Share in accordance with clause 4.6(c)(i) for the period when the Recovery Amounts were incurred.

h) **Share of Bad Debt Amounts**

Share of Bad Debt Amounts = Supplier's Market Share x Bad Debt Amounts

where:

Bad Debt Amounts are outstanding amounts due from one or more Suppliers:

- i. when the relevant Supply Arrangement is terminated; or
- ii. that are written off by the Scheme Coordinator as bad debts in the month prior to the relevant month; and

Supplier's Market Share is the market share on an aggregated basis calculated, if ascertainable, using the Supplier's Actual Reported Market Share in accordance with clause 4.5(e)(ii) or otherwise using the Supplier's Estimated Market Share in accordance with clause 4.6(c)(i) for the month in which the amount due from a Supplier that is the subject of a Bad Debt Amount originally fell due.

4.4 Supplier Invoice Amounts

The amount of a Supplier Invoice for a month is to be calculated as the sum of:

- i. the Supplier Advance Contribution for that Supplier calculated in accordance with clause 4.3 for the period to which the Supplier Invoice relates; and
- ii. the adjustments for that Supplier for previous months calculated in accordance with clause 4.5.

4.5 Supplier Contribution Adjustments

- a) Supplier Advance Contributions for a month are calculated based on estimated Scheme costs and a Supplier's Estimated Market Share. To the extent there are differences between these estimates and the actual Scheme costs or actual Market Shares, there will need to be an adjustment to the Supplier Advance Contribution (**Supplier Contribution Adjustment**) in a subsequent Supplier Invoice calculated in accordance with this clause 4.5.
- b) The value of a Supplier Contribution Adjustment will be equal to the difference between the value of the Supplier Advance Contributions calculated under clause 4.3 based on:
 - i. Estimated Scheme Costs and a Supplier's Estimated Market Shares; and
 - ii. Actual Scheme Costs and a Supplier's Actual Reported Market Share.
- c) A Supplier Contribution Adjustment will be separately itemised on a Supplier Invoice (under clause 4.4) and will include the data upon which the adjustment has been calculated.

- d) Supplier Contribution Adjustments will be calculated on either a monthly, quarterly or six (6) monthly basis, reflecting the billing or Container redemption cycle of the relevant Scheme Cost component as set out in clauses 4.5(e) to 4.5(g).
- e) **Monthly adjustments:** Each Supplier Invoice (under clause 4.4) will include an amount to adjust for:
- i. **Container Volume Adjustments**, being the difference between:
 - Actual Monthly Container Volumes (for each Material Type in each Zone) recovered by Network Operators during a previous month as reported under clause 6.7(d)(iv); and
 - Estimated Monthly Container Volumes (by Material Type) as calculated under clause 4.6(a) and used to calculate Supplier Advance Contributions for that month.
 - ii. **Market Share Adjustments**, being the difference between:
 - A Supplier's Actual Reported Market Share (in total and by Material Type) calculated using the same methodology as set out in clause 4.6(c)(i); and
 - A Supplier's Estimate Market Share (calculated in accordance with clause 4.6(c)(i)) and used to calculate the Supplier Advance Contributions for that month.
 - The Market Share Adjustment will be used to recalculate all Supplier Advance Contribution cost components under clause 4.3.
 - iii. **Recovery Amount Adjustment:** If Recovery Amounts are recovered from a defaulting Supplier in the month prior to the month in which the Supplier Invoice is issued, the recovered funds will be a credit in that Supplier Invoice for those Suppliers who paid any invoice which included an amount on account of those Recovery Amounts. The amount credited will be in the same proportion to the relevant Suppliers' contributions to the Recovery Amounts.
 - iv. **Bad Debt Amounts Adjustment:** If amounts are subsequently recovered in respect of a Bad Debt Amount, the recovered funds will be offset against the next Supplier Invoice for those Suppliers who paid any invoice in the month in which the amount due from a Supplier that is the subject of a Bad Debt Amount originally fell due. The amount offset will be in the same proportion to the relevant Supplier's Market Share on an aggregated basis calculated, if ascertainable, using the Supplier's Actual Reported Market Share in accordance with clause 4.5(e)(ii) or otherwise using the Supplier's Estimated Market Share in accordance with clause 4.6(c)(i) for that month.
 - v. **Interim Supplier Contribution Adjustment:** If funds are subsequently recovered from a defaulting Supplier in the month prior to the month in which the Supplier Invoice is issued, the recovered funds will be a credit in that Supplier Invoice for those Suppliers who paid an invoice in respect of an Interim Supplier Contribution or any other invoice issued to a Supplier which included an amount in respect of that defaulting Supplier's contribution. The amount credited will be in the same proportion to the relevant Suppliers' contributions in the original invoices.

- vi. **Supplier Contribution in Arrears Adjustment:** Any amounts, other than interest, recovered under clause 4.14 are to be a credit in the next Supplier Invoice under clause 4.4 issued to those Suppliers who had paid Supplier Invoices during the Arrears Period.
 - vii. **Trustee Indemnity Adjustment:** Any amount for which the Scheme Coordinator is entitled to be indemnified from the Trust Assets in its capacity as trustee of the trust referred to in clause 13.2(b) of the Scheme Coordinator Agreement will be apportioned in the month after it is paid between Suppliers by aggregate Market Share using the Supplier's Actual Reported Market Share in accordance with clause 4.5(e)(ii) for the relevant period to which the amount the subject of the indemnity relates.
- f) **Quarterly Processing Refund Volume Adjustments:** On a quarterly basis, the first Supplier Invoice (under clause 4.4) issued after the Scheme Coordinator has made the quarterly payments to MRFOs pursuant to clause 7.1, will also include an amount to adjust for differences between:
- i. The agreed volume of Containers (by Material Type) under the Processing Refund Protocol agreed to have been collected by MRFOs in the quarter for which they were paid; and
 - ii. The Forecast Processing Refund Volumes (calculated under clause 4.6(b)) used to calculate the Forecast Processing Refund Amounts included in the Supplier Advance Contributions calculations for the same quarter.

Quarterly Processing Refund Volume Adjustments will be calculated based on the actual Market Share of Suppliers by Material Type in the quarter over which the Containers were deemed to be collected in accordance with clause 4.5(e).

Quarterly Processing Refund Volume Adjustments will be used to recalculate a Supplier's share of Forecast Processing Refund Amounts under clause 4.3(e).

- g) **Half-yearly Audit Adjustments:** Invoices issued on 1 January and 1 June (or as otherwise determined by the Scheme Coordinator acting reasonably in consultation with the State) will include adjustments to reflect the results of findings in respect of audits of Suppliers, Network Operators and Collection Points completed in the prior six (6) month period (**Audit Adjustment Period**). The adjustment will be made to reflect:
- i. the difference between:
 - Actual Container Volumes recovered through Network Operators and MRFOs in a relevant period, as determined by the audits; and
 - Container volumes assumed for the purpose of the calculation of Supplier Advance Contributions in respect of that same period, including any adjustments previously made to those amounts under clause 4.5(e) and (f);
 - ii. the difference between:
 - a Supplier's Actual Reported Market Share percentage (in total and by Material Type) as recalculated by the Scheme Coordinator (in accordance with the methodology set out in clause 4.6(c)), based on the Actual Container Volumes supplied by each Supplier, as reported under clause 9.3 of the Supply Arrangement, and adjusted to include any audit findings under 4.5(g)(i); and

- the Supplier's Estimated Market Share (calculated under clause 4.6(c) and used to calculate the Supplier Advance Contributions in respect of that same period, including any adjustments previously made to those amounts under clause 4.5(e).

h) **Specific audit finding:** Where the results of an audit have identified that the aggregate number of Containers supplied in the State by a Supplier have been understated in a Supplier Statement provided to the Scheme Coordinator under clause 9.4 of its Supply Arrangement, the amount of that understatement will be used to make an adjustment to that Supplier's Market Share in respect of the period to which the understatement relates. This adjusted Market Share will be used to recalculate all Supplier Advance Contribution cost components under clause 4.3 and the amount so determined (**Supplier Adjustment Amount**) will be included in the Supplier's next Supplier Invoice together with interest as though the adjustment amounts are late payments, calculated under clause 4.14.

4.6 Principles for forecasting

a) **Forecasting Network Volumes**

Estimated Monthly Container Volumes (by Material Type) is the estimated volume of Containers (by Material Type) to be collected (during the relevant Billing Period) in each of Zones 1 to 7 and in aggregate by the Network Operator.

The Scheme Coordinator for the first three (3) Supplier Invoices is to calculate Estimated Monthly Container Volumes (by Material Type) by reference to:

- Historical Container volumes by Material Type (for the comparable Billing Period in the prior year) based on container volume data provided under clause 7.1(a) of the Supply Arrangement;
- Assumed Container Recovery Rates through the Scheme (whether through the Material Recovery Facility Operators or the Network Operator) as reasonably determined by the Scheme Coordinator.

For the fourth and subsequent Supplier Invoices, the Scheme Coordinator is to calculate the Estimated Monthly Container Volumes (by Material Type) by reference to the weekly Actual Container Volumes (by Material Type) data supplied by the Network Operator in accordance with clause 6.7(d)(iv).

The Scheme Coordinator may also (acting reasonably) take into consideration any other historical Container volume data provided to the Scheme Coordinator under the Supply Arrangement or the Network Arrangement.

The Scheme Coordinator will use this data to estimate the volume of Containers (by Material Type) to be collected by Network Operators for the next Billing Period.

b) **Forecast Processing Refund Volumes**

The Scheme Coordinator will estimate the volume of Containers expected to be collected by Material Recovery Facility Operators during a quarter based on:

- Information provided by Material Recovery Facility Operators under the MRF Protocol;
or

- Any other information determined by the Scheme Coordinator as providing a reasonable basis to estimate the volume of Containers to be collected by Material Recovery Facility Operators during the relevant Billing Period.

c) **Estimated Market Share**

- i. A Supplier's Estimated Market Share will be calculated by the Scheme Coordinator based on the number of Containers supplied (either by aggregated Container volumes or by aggregated Container volumes by Material Type as required in the formulas in clause 4.3) as follows:

$$\text{Supplier's Estimated Market Share} = M \div N$$

where:

M = Forecast Container Volume by Supplier (for the relevant Billing Period); and

N = Forecast Container Volume for all Suppliers (for the relevant Billing Period).

- ii. For the first three (3) monthly Supplier Advance Contribution calculations under clause 4.3(a):
- **Forecast Container Volume by Supplier** will be based on the number of Containers (by Material Types) supplied during the previous 12 month period by the Suppliers based on information supplied under clause 7.1(a) of the Supply Arrangement;
 - **Forecast Container Volume for all Suppliers** will be the aggregation of the number of Containers supplied during the previous 12 month period by all Suppliers (by Material Type) based on information supplied clause 7.1(a) of the Supply Arrangement.
- iii. Post the issue of the first three (3) monthly Supplier Advance Contribution invoices, the Estimated Market Share is to be calculated as follows:
- **Forecast Container Volume by Supplier** will be the sum of the number of Containers (by Material Type) reported by the Supplier in the Supplier Statements provided under clause 9.4 of the Supply Arrangement for the relevant Billing Period.
 - **Forecast Container Volume for all Suppliers** will be the sum of the number of Containers supplied (by Material Type) by all Suppliers in the Supplier Statements provided under clause 9.4 of the Supply Arrangement for the relevant Billing Period.
- iv. In calculating a Supplier's Estimated Market Share under this clause 4.6(c) the Scheme Coordinator may also (acting reasonably) take into consideration the Container volume information provided under clause 4.6(c)(ii).
- v. In calculating the Estimated Supplier Market Share the data used to determine the Forecast Container Volume by Supplier and the Forecast Container Volume for all Suppliers must be:
- for the same period (as determined by the Scheme Coordinator); and
 - taken from the same data source.

4.7 Estimated Monthly Container Volumes (by Material Type)

Estimated Monthly Container Volumes (by Material Type) is the sum of the estimated volume of Containers (by Material Type) to be collected (during the relevant Billing Period) across Zones 1 to 7 by the Network Operator.

The Scheme Coordinator for the first three (3) Supplier Invoices is to calculate Estimated Monthly Container Volumes (by Material Type) by reference to:

- Historical Container volumes by Material Type (for the comparable Billing Period) based on container volume data provided under clause 7.1(a) of the Supply Arrangement;
- Assumed Container Recovery Rates through the scheme (whether through Collections Points, the Material Recovery Facility Operators or the Network Operator) consistent with clause 4.6(a).

For the fourth and subsequent Supplier Invoices, the Scheme Coordinator is to calculate the Estimated Monthly Container Volumes (by Material Type) by reference to the weekly Actual Container Volumes (by Material Type) data supplied by the Network Operator in accordance with clause 6.7(d)(iv).

The Scheme Coordinator may also (acting reasonably) take into consideration any other historical Container volume data provided to the Scheme Coordinator under the Supply Arrangement or the Network Arrangement.

The Scheme Coordinator must use this data to estimate the volume of Containers (by Material Type) to be collected by Network Operators for each relevant month.

4.8 Supplier non payment

In the event a Supplier fails to pay or is unable to pay a Supplier Invoice, and there is a risk of there being insufficient funds in the Scheme Payment Account to meet the costs of the Scheme during a month, the Scheme Coordinator may issue an Interim Supplier Contribution Invoice in accordance with the requirements of clause 4.10.

4.9 Monthly Supplier Invoice

- a) The Scheme Coordinator must give the Supplier a Supplier Invoice calculated in accordance with clause 4.4 on the first Business Day of the calendar month in accordance with clause 9.3 of the Supply Arrangement.
- b) Month to which a Supplier Invoice relates

The month to which a Supplier Invoice relates is the calendar month immediately after the month in which the Supplier Invoice is issued. For example, an invoice issued on 1 November 2017 relates to December 2017 and will include the Supplier Advance Contribution in respect of December 2017.

4.10 Interim Supplier Contribution

- a) If the Scheme Coordinator subsequently identifies, after the issue of a Supplier Invoice, the invoiced Supplier Contributions for a month will not cover the Scheme costs until the next anticipated receipt of payment from Suppliers, the Scheme Coordinator will be entitled to issue an Interim Supplier Contribution Invoice to ensure each Supplier's total financial contribution for each month reflects such costs.

- b) Interim Supplier Contributions are to be calculated using a methodology consistent with the process and formulae outlined in clause 4.3, on the basis of their Estimated Market Share (adjusted to exclude any Suppliers who have failed to pay a Supplier Invoice generating the need for an Interim Supplier Contribution).
- c) The Scheme Coordinator must notify each Supplier by email and in writing as soon as it becomes aware of the need to issue an Interim Supplier Contribution Invoice. The Scheme Coordinator must provide the Suppliers sufficient information to understand the factors that have contributed to the need for an Interim Supplier Contribution and guidance as to the potential amount of the Interim Supplier Contribution Invoice.
- d) A Supplier must pay an Interim Supplier Contribution Invoice within seven (7) calendar days of receipt.

4.11 Replenishment of Scheme Liquidity Buffer

- a) The Scheme Coordinator must use the Scheme Liquidity Buffer on an interim basis to fund the payment of Scheme costs when there are insufficient funds in the Scheme Payments Account to meet Scheme costs.
- b) The Scheme Coordinator may issue (at any time) an Interim Supplier Contribution Invoice under clause 4.10 to recover the value of any funds drawn from the Scheme Liquidity Buffer to pay Scheme costs.
- c) Suppliers will be invoiced a proportion of the amount to be recovered to replenish the Scheme Liquidity Buffer under this clause 4.11 based on the Supplier's Estimated Market Share as calculated in accordance with clause 4.6(c). The Scheme Liquidity Buffer must be replenished using funds from the Scheme Payments Account as these invoices are paid.

4.12 Existing Supplier

- a) If a Supplier (that is supplying beverages in New South Wales prior to 1 October 2017) enters into a Supply Arrangement after 1 October 2017, but before 1 November 2017 (**Existing Supplier**), the Supplier Advance Contribution for the Existing Supplier for the first month will include an extra 2 cents per Container.
- b) The Scheme Coordinator must send a Supplier Invoice to the Existing Supplier within five (5) Business Days of receipt of the number of Containers (by Material Type) reported by the Supplier under clause 9.4 of the Supply Arrangement.
- c) The Supplier Advance Contribution determined and invoiced in accordance with this clause 4.12 will be subject to the adjustments set out in clause 4.5.
- d) The Supplier Invoice calculation for the second month for the Existing Supplier, will be in accordance with clause 4.4.

4.13 New Supplier

- a) If a Supplier commences supplying Containers into or within New South Wales after 1 October 2017 and enters into a Supply Arrangement after 1 October 2017 (**New Supplier**), the New Supplier must, within 5 Business Days of entering into the Supply Arrangement, advise the Scheme Coordinator of the forecast volume of Containers to be supplied by the New Supplier (**New Supplier Forecast Container Volumes**) for the first three calendar

months of operation (where the first month is the calendar month in which the Supplier entered the market).

- b) The Supplier Advance Contribution for the New Supplier for the month in which it commences the supply of Containers will be equal to:

New Supplier Forecast Container Volumes x P cents per Container,

where:

P = An amount reasonably determined by the Scheme Coordinator to reflect an appropriate allowance to determine the New Supplier's first contribution to payment of Scheme costs.

- c) The Scheme Coordinator must send a Supplier Invoice to the New Supplier within five (5) Business Days of the New Supplier entering into the Supply Arrangement, which may include recovery of estimated Supplier Contributions for the month in which the Supplier commenced supplying, and the month in which the invoice is issued (as well as the following month if that is in accordance with the normal invoicing process).
- d) Amounts invoiced under this clause 4.13, will be subject to the adjustments set out in clause 4.5.
- e) The second Supplier Invoice for the New Supplier, will be in accordance with clause 4.4.

4.14 Supplier Contributions in Arrears

- a) Any Supplier that is found to have been supplying Containers into or within New South Wales without having a Supply Arrangement in force pursuant to Section 38 of the Act (**Identified Supplier**) after 31 October 2017 is to be invoiced by the Scheme Coordinator for Supplier Advance Contributions in respect of the period from the Scheme Commencement Date or the date from which the Supplier first supplied Containers into or within New South Wales until the first month in respect of which the Identified Supplier commences making Supplier Advance Contributions in advance (**Arrears Period**).
- b) The first Supplier Invoice for the Identified Supplier will be calculated in accordance with clauses 4.3 to 4.6, with Actual Container Volumes (either disclosed by the Supplier or determined by the Scheme Coordinator through an audit process or any other reasonable methodology) to be used in respect of the Arrears Period in place of Forecast Container Volume by Supplier to calculate the Identified Supplier's Market Share.
- c) The first Supplier Invoice for the Identified Supplier will also include:
- interest calculated in accordance with the formula set out in clause 4.15 for the Arrears Period except that the period for the calculation is the Arrears Period and the amount upon which the interest is calculated is the amount of the Supplier Advance Contributions contained in that invoice; and
 - an extra 2 cents per Container in the Supplier Advance Contribution for the first month in respect of which the Identified Supplier commences making Supplier Advance Contributions in advance. The payment for that month will be subject to the adjustments set out in clause 4.5.

4.15 Interest on Late Payment of Supplier Contributions

- a) If a Supplier fails to pay any amount payable by that Supplier within the time required in accordance with its Supply Arrangement, it must pay interest on that amount in accordance with clause 9.6 of the Supply Arrangement and this clause 4.15.
- b) Interest will be charged on any late payment by a Supplier of a Supplier Invoice as follows:
Interest for Late Payment =

overdue amount x Supplier Penalty Interest Rate x Number of days payment is late/365

5 Network Payments Account

- 5.1 The Network Operator must establish and maintain a Network Payments Account in accordance with the requirements of clause 13.2 of the Network Operator Agreement.
- 5.2 The Network Operator must use the Network Payments Account solely for the purpose of:
 - a) Receiving Network Payments;
 - b) Receiving interest on the Network Payments Account;
 - c) Making payments of, to the extent any such payments are due, in the following order:
 - i. Refund Amounts paid to a person who presents a Container to a Collection Point;
 - ii. Network Fee,and must not use the Network Payments Account to pay the operating expenses of the Network Operator and not for any other purposes.
- 5.3 The Network Operator must ensure all Network Payments are deposited into the Network Payments Account.
- 5.4 The Network Operator must not withdraw an amount from the Network Payments Account in respect of a Refund Amount paid to a person who presents a Container to a Collection Point or Network Fee unless:
 - a) the Container to which that amount or that Fee relates has been determined, in accordance with the methodology used by the Network Operator, to have been collected and counted at an automated facility; or
 - b) it is an amount that is paid to the operator of a Collection Point:
 - i. that is not the Network Operator, its shareholders or their Related Bodies Corporate; and
 - ii. which does not produce an automated count used for the determination of the actual number of Containers referred to in clause 6.7(d)(iv),

as a float subject to written terms set out in the arrangement between the Network Operator and that Collection Point Operator on account of Refund Amounts anticipated to be made provided that the aggregate of such float amounts withdrawn from the

Network Payments Account cannot at any time exceed an amount in aggregate calculated as \$5000 multiplied by the number of such Collection Points.

6 Payments to Network Operators

6.1 Payment Claims

- a) The Network Operator must give the Scheme Coordinator a claim for payment, weekly for the combined value of:
- i. **Forecast Network Fee** for the period to which the Payment Claim relates as calculated in clause 6.2; and
 - ii. **Forecast Refund Amount** for the period to which the Payment Claim relates as calculated in clause 6.3,
- less, if applicable, the value of interest earned on the Network Payments Account as described in clause 6.4 as part of the Payment Claim submitted pursuant to clause 6.7(d).

6.2 Forecast Network Fee

- a) Forecast Network Fee will be the aggregate of Forecast Network Fee for each Material Type in each Zone. The Forecast Network Fee for a material type in a Zone will be calculated as follows:

Forecast Network Fee = Estimated Container Volumes x Network Fee Amount

where:

Estimated Container Volumes: The volume of Containers of the Material Type estimated by the Network Operator to be collected by the Network Operator in the Zone for the period to which the Payment Claim relates. Estimated Container Volumes should be prepared on a consistent basis with the Estimated Monthly Container Volumes used in clause 4.6(a) to calculate the Supplier Advance Contribution under clause 4.3.

Network Fee Amount is the value payable for each Container of the Material Type in the Zone set out in Schedule 10 to the Network Operator Agreement.

- b) The Total Forecast Network Fees will be equal to the sum of the amounts calculated for each Material Type, by each Zone based on the above methodology.

6.3 Forecast Refund Amount

- a) The Forecast Refund Amount will be calculated as follows:

Forecast Refund Amount = Estimated Container Volumes x Refund Amount

where:

Estimated Container Volumes are the sum of the estimate of the volume of Containers to be collected by the Network Operator in each Zone for the period to which the Payment Claim relates. This is the same sum of the Container values used in clause 6.2(a).

6.4 Interest on the Network Payments Account

- a) Interest credited to the Network Payments Account during any month (as set out by the Network Operator to the Scheme Coordinator in a Payment Claim under clause 6.7) is to be a deduction in the first Payment Certificate issued by the Scheme Coordinator to the Network Operator after the Payment Claim setting out that amount has been submitted to the Scheme Coordinator.

6.5 Network Operator Adjustments

- a) The amounts calculated under clauses 6.2 and 6.3 are based on estimated Container volumes by Material Type and Zone. To the extent there are differences between these estimates and the actual volume of Containers these will be adjusted by the Scheme Coordinator in subsequent Payment Certificates as set out in the following paragraphs of this clause 6.5.

- b) **Network Fee Adjustment**

The Network Fee Adjustment will be equal to the difference between:

- i. The Forecast Network Fee calculated in accordance with clause 6.2 for the relevant period; and
- ii. The actual Network Fee calculated by the Scheme Coordinator using the same methodology as clause 6.2, but substituting the Actual Container Volumes by Material Type that were collected within each Zone and have been determined, in accordance with the actual automated count as recorded by the Network Operator, to have been collected and counted at an automated facility for that period reported to the Scheme Coordinator pursuant to clause 6.7(d)(iv).

- c) **Refund Amount Adjustment**

The Refund Amount Adjustment will be equal to the difference between:

- i. The Forecast Refund Amount calculated in accordance with clause 6.3 for the relevant period; and
- ii. The actual sum of Refund Amounts calculated by the Scheme Coordinator using the same methodology as clause 6.3, but substituting the Actual Container Volumes that were collected within each Zone and have been determined, in accordance with the actual automated count as recorded by the Network Operator, to have been collected and counted at an automated facility for that period which the Network Operator reported to the Scheme Coordinator pursuant to clause 6.7(d)(iv).

- d) **Audit Adjustment**

- i. The Scheme Coordinator may make an adjustment to Network Fee or Refund Amounts paid, where the results of an audit finalised in accordance with clause 6.7 of the Network Arrangement (undertaken in accordance with clause 6.6 of the Network Arrangement) has identified a difference between:
 - the Container volumes (by zone and Material Type) reported by the Network Operator (**Reported Volumes**) and used to calculate the actual Network Fee Adjustment (under clause 6.5(b)) or the Refund Amount Adjustment (under clause 6.5(c)) for a relevant period; and
 - the Container volumes (by zone and Material Type) that were collected within each Zone and have been counted at an automated facility identified through the audit for that same period (**Adjusted Container Volumes**).

- ii. The Audit Adjustment must be calculated for the period of each individual Payment Claim (by zone and Material Type) the subject of the audit and the total value of the individual calculations will be aggregated for the purposes of calculating the total Audit Adjustment. The amount of the Audit Adjustment will be limited to the identified difference.
- iii. The first Payment Certificate issued in the month after the identification of a difference referred to in clause 6.5(d)(i) will include adjustments to reflect the results of findings in respect of that audit and any other audits of Network Operators and Collection Points completed in the prior month.
- iv. Amounts recovered through an Audit Adjustment under clauses 6.5(d) will be offset against the next Supplier Advance Contribution for each Supplier that made Supplier Advance Contributions during the period to which the Audit Adjustment relates (based on their actual or estimated market shares as appropriate calculated as set out in clause 4 during the period to which the Audit Adjustment relates).

6.6 Estimated Container Volumes

- a) The Network Operator must consult with the Scheme Coordinator on a reasonable basis for determining the Estimated Container Volumes to be used prior to actual Collection volume data becoming available after the Scheme Commencement Date.
- b) Subject to clause 6.6(a), for the purposes of calculating the Forecast Container Fees under clause 6.2(a) and 6.3, the Network Operator must base its Estimated Container Volumes (by Zone and by Material Type) on the volume of Containers actually collected in the previous week (by Zone and by Material Type).
- c) Where the Network Operator determines that the previous week's collection data does not provide an appropriate basis for determining the Estimated Container Volumes, the Network Operator must provide the Scheme Coordinator with appropriate evidence to support the alternate basis for the Estimated Container Volumes.
- d) The Scheme Coordinator may challenge the Estimated Container Volume set out in a Payment Claim and consult with the Network Operator on a revised Estimated Container Volume. Unless the Network Operator submits a revised Estimated Container Volume in writing within two (2) Business Days of the submission of a Payment Claim, the Scheme Coordinator must use the Estimated Container Volume set out in the Payment Claim for the purpose of the Payment Certificate it issues in respect of that Payment Claim.
- e) Where the Network Operator, consistently over or under estimates the value of Estimated Container Volumes by a material amount (relative to Actual Container Volumes reported under clause 11.2 of the Network Arrangement), the Network Operator and Scheme Coordinator must review and agree upon an updated estimating methodology to be used for the purposes of clauses 6.2 and 6.3.

6.7 Payment Claims

- a) The Network Operator must submit Payment Claims to the Scheme Coordinator weekly on Mondays no later than 5.00 PM via the Online Portal unless otherwise directed by the Scheme Coordinator. For the purposes of determining the commencement of the period for issue of a Payment Certificate under clause 6.8(a) and the period for payment under clause 6.9:
 - i. Payment Claims submitted prior to 5.00 PM on Monday will be taken to have been submitted and received on Monday at 5.00 pm; and

- ii. Payment Claims submitted after 5.00 PM on Monday, or after 5.00 PM on a subsequent day, will be taken to have been submitted and received at 5.00 PM on the next Business Day.
- b) The period to which a Payment Claim relates is the period in full days commencing four (4) weeks after the day the Payment Claim was required to be submitted and ending seven (7) days after except that where the Scheme Commencement Date does not fall on a Monday, this period commences on the Scheme Commencement Date.
- c) The period to which a Payment Claim relates cannot be any earlier than the Scheme Commencement Date.
- d) Payment Claims must be in a format which the Scheme Coordinator reasonably requires and contain the following information:
 - i. The first Payment Claim for each month must set out the interest credited to the Network Payments Account during the previous month;
 - ii. Breakdown of the Estimated Container Volumes by Material Type and Zone for the period to which the Payment Claim relates;
 - iii. Estimate of the Refund Amount payments and Network Fee payable for the period to which the Payment Claim relates based on the Estimated Container Volumes by Material Type and Zone referred to in (ii);
 - iv. Must set out, for the seven (7) day period ending at 11.59 PM on the second Sunday preceding the required time for submission of the Payment Claim, the actual aggregate number of Containers (and a breakdown of that number of Containers by Material Type) that have been determined, in accordance with the automated count recorded by the Network Operator, to have been collected within each Zone and counted at an automated facility; and
 - v. Set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Network Operator:
 - To enable the Scheme Coordinator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Scheme Coordinator to the Network Operator under the Scheme Payments and Contribution Methodology; and
 - Including any such documentation or information which the Scheme Coordinator may by written notice from time to time reasonably require the Network Operator to set out or attach, whether in relation to a specific Payment Claim or all Payment Claims generally.

6.8 Payment Certificates

- a) The Scheme Coordinator must issue a Payment Certificate no later than five (5) Business Days after a Payment Claim is submitted.
- b) The Payment Certificate must set out the amount to which the Network Operator is entitled to payment in relation to the Payment Claim as a Recipient Created Tax Invoice as reasonably determined by the Scheme Coordinator, subject to clause 6.6(e), using the Estimated Container Volumes by Material Type and Zone set out in the Payment Claim and calculated as the sum of:

- i. Forecast Network Fee for the period to which the Payment Claim relates (clause 6.2);
- ii. Forecast Refund Amount for the period to which the Payment Claim relates (clause 6.3); and
- iii. Any adjustments made by the Scheme Coordinator under clause 6.5 since the last Payment Certificate was issued ,except that adjustments made under clause 6.5(d) can only be made in Payment Certificates issued in the first week of December and May (or as otherwise determined by the Scheme Coordinator in consultation with the State),

less the interest earned on the Network Payments Account set out in a Payment Claim submitted pursuant to clause 6.7(d)(i) if the Payment Certificate is the first Payment Certificate issued by the Scheme Coordinator after that Payment Claim was submitted.

- c) If the Scheme Coordinator does not, in relation to a Payment Claim, issue a Payment Certificate within the time set out in clause 6.8(a), the Payment Claim is deemed to be a Payment Certificate issued pursuant to clause 6.8(a) with the estimate of the Refund Amount payment and Network Fee payable for the period to which the Payment Claim relates referred to in clause 6.7(d)(iii) being deemed to be the amount to which the Network Operator is entitled to payment in relation to that Payment Claim.

6.9 Payment Timing

The Scheme Coordinator must pay the Network Operator from the Scheme Payment Account the amount set out in a Payment Certificate issued, or deemed to be issued, pursuant to clause 6.8(a) within ten (10) Business Days of receipt of the Payment Claim to which it relates, less a deduction equal to the amount of any Network Operator Financial Penalty Invoice issued by the State to the Network Operator since the previous Payment Certificate was issued pursuant to clause 6.8(a).

6.10 Late Payments

- a) If the Scheme Coordinator is late in paying a Payment Claim, the Scheme Coordinator must pay the Network Operator in accordance with the Network Arrangement including, for the avoidance of doubt, interest on any unpaid amounts at the Penalty Interest Rate as prescribed under the Network Arrangement.
- b) The interest paid by the Scheme Coordinator cannot be passed onto Suppliers as a Scheme cost and must be paid by the Scheme Coordinator.

7 Payments to Material Recovery Facility Operators

7.1 Processing Refund Amount

- a) The Scheme Coordinator must pay eligible MRFOs the Processing Refund Amounts quarterly in arrears from the Scheme Payment Account, in accordance with the MRF Protocol, clause 13.8 of the Scheme Coordinator Agreement and this clause 7.
- b) Eligible MRFOs may provide the Scheme Coordinator with a claim for payment for a Processing Refund Amount in accordance with the requirements of clause 13.8(d) of the Scheme Coordinator Agreement.

- c) Upon receipt of a complying claim for payment, the Scheme Coordinator must issue the relevant MRFO with a claim assessment in accordance with requirements of clause 13.8(d) of the Scheme Coordinator Agreement.
- d) The Scheme Coordinator must pay to the MRFO the Processing Refund Amount for each Container obtained (and invoiced) by that MRFO in accordance with clause 13.8(e) of the Scheme Coordinator Agreement.
- e) The cost of undertaking the sampling plan prepared under the MRF Protocol conducted by the Scheme Coordinator on a MRFO in a relevant quarter will be deducted from the Processing Refund Amount payable to the MRFO in accordance with the MRF Protocol.

7.2 Disputes

- a) The Scheme Coordinator may challenge any claim for payment in accordance with clause 13.8(h) of the Scheme Coordinator Agreement.
- b) The Scheme Coordinator must consult with the MRFO in the event that there is any issue or non-compliance in respect of any aspect of a claim for payment.
- c) The Scheme Coordinator must arrange for the MRFO to issue a revised claim for payment, addressing any issue identified and agreed with the MRFO.

7.3 Late Payments

- a) If the Scheme Coordinator fails to pay any amount payable by the Scheme Coordinator to the MRFO within the time required in accordance with the Processing Refund Protocol, then it must pay interest on that amount:
 - i. from the date on which payment was due and payable until the date on which payment is made in full; and
 - ii. calculated at the Penalty Interest Rate.
- b) The interest paid by the Scheme Coordinator cannot be passed onto Suppliers as a Scheme cost and must be paid by the Scheme Coordinator.

8 Payment of the Scheme Compliance Fee and Financial Penalties

8.1 Scheme Compliance Fee

- a) On the first Business Day of each month, the State will issue the Scheme Co-ordinator with a Tax Invoice for the amount of the Scheme Compliance Fee for that month.
- b) The Scheme Coordinator must pay from the Scheme Payments Account the amount set out in the State's Tax Invoice as a debt due and payable within five (5) Business Days of the receipt of the Tax Invoice.

8.2 Financial Penalties

- a) The State may issue the Scheme Coordinator with a Tax Invoice for the amount of any Scheme Coordinator Financial Penalty which the Scheme Coordinator must pay in accordance with the Scheme Coordinator Agreement. The Scheme Coordinator must pay:

- i. to the State, any Scheme Coordinator Financial Penalty less any amount referred to in clause 8.2(a)(ii) at the same time it pays itself under clause 3.3(a); and
- ii. to the Network Operator, any amount of the Scheme Coordinator Financial Penalty that is required to be paid to the Network Operator under clause 16.4 of the Network Arrangement or any amount of the Scheme Coordinator Financial Penalty that the State agrees to pay to the Network Operator under clause 14.2 of the Network Operator Agreement to the Network Operator at the same time as the Scheme Coordinator pays the State pursuant to 8.2(a)(i),

in full or partial satisfaction of its obligation to pay the Scheme Coordinator Financial Penalty to the State.

- b) The State may issue the Network Operator with a Tax Invoice for the amount of any Network Operator Financial Penalty (which the Network Operator must pay to the State in accordance with the Network Operator Agreement). The State will provide the Scheme Coordinator with a copy of all Tax Invoices for the Network Operator Financial Penalties.
- c) The Scheme Coordinator must pay from the Scheme Payment Account:
 - i. to the State - the amount of the deduction referred to in clause 6.9 at the same time it pays the Network Operator pursuant to clause 6.9 less any amount referred to in clause 8.2(c)(ii); and
 - ii. to itself any amount of the Network Operator Financial Penalty that is required to be paid to the Scheme Coordinator under clause 16.4 of the Network Arrangement, or any amount of the Network Operator Financial Penalty that the State agrees to pay to the Scheme Coordinator in accordance with clause 14.2 of the Scheme Coordinator Agreement at the same time as it pays the State pursuant to 8.2(c)(i).

NSW Container Deposit Scheme: Supplier Side Deed

Minister for the Environment for the State of New South Wales
State

Exchange for Change (NSW) Pty Ltd
Scheme Coordinator

[*]
Supplier

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Supplier Side Deed

Date

Parties

The Honourable Gabrielle Cecelia Upton MP, Minister for the Environment (State)

Exchange for Change (NSW) Pty Ltd (ACN 620 512 469) of Level 4, 126 Phillip Street, Sydney NSW 2000 (**Scheme Coordinator**)

[*] (ABN [*]) of [*] (Supplier)

Background

- A. By deed dated 28 July 2017 (the **Scheme Coordinator Agreement**) between the State and the Scheme Coordinator, the State appointed the Scheme Coordinator in connection with the management and administration of the Scheme for the purposes of the Act.
- B. By agreement dated on or about the date of this deed (the **Supply Arrangement**), the Scheme Coordinator entered into an agreement with the Suppliers requiring the Suppliers amongst other things to pay to the Scheme Coordinator contributions towards the cost of the management, administration and operation of the Scheme.
- C. In accordance with the Scheme Coordinator Agreement, the Scheme Coordinator must execute this deed and arrange for the execution of this deed by the Supplier.
- D. By executing this deed, the parties wish to make provision for:
 - (a) the State's rights to carry out an obligation under the Scheme Coordinator Agreement or Supply Arrangement which the Scheme Coordinator was obliged to carry out but which it failed to carry out within the time required in accordance with the Scheme Coordinator Agreement or Supplier Arrangement (as applicable); and
 - (b) agrees to give effect to the novation of the Supply Arrangement to the State (or its nominee) in the event of termination of the Scheme Coordinator Agreement or as an alternative to termination of the Supply Arrangement under clause 11.3(a) of its general conditions (as applicable).

Operative Provisions

1. Definitions

1.1 Supply Arrangement definitions

Definitions in the Supply Arrangement apply in this deed unless the context requires otherwise or the relevant term is defined in this deed.

1.2 Definitions

Assumption Notice means the notice referred to in clause 4.1.

Claim means any claim, notice, demand, action, proceeding or litigation and includes any claim for the payment of money or relief from performance whether the claim, notice, demand, action, proceeding or litigation:

- (a) is in any way in connection with this deed or either party's conduct before this deed, including; or
- (b) otherwise arises at law or in equity including:

- (i) by statute;
- (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
- (iii) for restitution.

Default Event means:

- (a) any default (howsoever described) by the Scheme Coordinator under the Supply Arrangement; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle either:

- (c) the State to terminate, rescind, accept the repudiation of, or suspend any or all of the Scheme Coordinator's obligations under, the Scheme Coordinator Agreement; or
- (d) the Supplier to terminate, rescind, accept the repudiation of, or suspend any or all of the Scheme Coordinator's obligations under, the Supply Arrangement.

Default Event Notice means the notice referred to in clause 3.2(a).

Liability includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Novation Date has the meaning given in clause 4.2(b).

Scheme Commencement Date means the "Scheme commencement day" as defined in the *Waste Avoidance and Resource Recovery Act (Container Deposit Scheme) Regulation 2017* (NSW).

Transferee has the meaning given in clause 4.2(a).

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors, permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, section, schedule, exhibit, attachment or annexure is a reference to a party, clause, section, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part thereof;
- (k) if the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (l) other than as set out in clause 1.3(k) a reference to "day" is a reference to a calendar day, a reference to "week" is a reference to a calendar week, a reference to "month" is a reference to a calendar month and a reference to "quarterly" is a reference to 3 monthly;
- (m) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (n) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (o) the word "subcontractor" will include all suppliers and consultants;
- (p) a reference to "\$" or "dollar" is to Australian currency;
- (q) a reference to time is a reference to the then current time in Sydney, Australia;
- (r) a reference to a right includes any benefit, remedy, discretion, authority or power;
- (s) a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) the term "may", when used in the context of a power, right or remedy exercisable by a party, means that the party can exercise that power, right or remedy in its absolute and unfettered discretion, and the party has no obligation to the other party to do so; and

- (u) where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity.

2. Commencement

This deed commences and comes into force on the Effective Date.

3. State's right to cure a Default Event

3.1 State's right

- (a) On becoming aware of any Default Event the State may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Upon the State exercising any of its rights under this clause 3, the Scheme Coordinator's obligations under the Supply Arrangement are suspended to the extent and for such period as the Scheme Coordinator is prevented from performing such obligations by the State's exercise of its step-in rights.
- (c) If the State exercises its step-in rights, the State may, after giving reasonable prior notice to the Scheme Coordinator and the Supplier, cease to exercise those rights, and in any event, will cease to exercise its step-in rights once the relevant Default Event has been remedied.

3.2 Restriction on right to terminate or suspend

The Supplier must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Supply Arrangement unless each of the following conditions has been satisfied:

- (a) the Supplier has given to the State prior notice (**Default Event Notice**) setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Supply Arrangement;
- (b) either:
 - (i) if the Default Event is capable of cure or remedy within 20 Business Days, that Default Event has not been cured or remedied within 20 Business Days (or such longer period as is agreed between the parties) after the date on which the Default Event Notice is received by the State;
 - (ii) if the Default Event is not one described in clause (i), but is nevertheless reasonably capable of cure or remedy, the State has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the Default Event Notice is received by the State and the State has not continued to diligently pursue that cure or remedy; or
 - (iii) the State notifies the Supplier in writing within 20 Business Days after the date on which the Default Event Notice is received by the State that

the State elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 No Liability

The Supplier and the Scheme Coordinator acknowledge and agree that:

- (a) without limiting the liability of the Scheme Coordinator (which continues to be responsible for the performance of its obligations under the Scheme Coordinator Agreement and Supply Arrangement (as applicable)), the State will not be liable for any obligation or Liability of the Scheme Coordinator under the Scheme Coordinator Agreement or the Supply Arrangement by reason only of the State performing any one or more the Scheme Coordinator's obligations under the Scheme Coordinator Agreement or the Supply Arrangement (as applicable); and
- (b) the Scheme Coordinator and the Supplier each release the State from any such obligation or Liability.

3.4 Scheme Coordinator to compensate State

Any reasonable Loss suffered or incurred by the State arising in connection with the exercise of its step-in rights under this deed will be a debt due from the Scheme Coordinator to the State.

3.5 No limitation on other rights

The exercise (or failure to exercise) by the State of its rights under this clause 3 will not limit the State's rights against the Scheme Coordinator under the Scheme Coordinator Agreement or otherwise according to law.

4. Novation of Supply Arrangement

4.1 Option

If:

- (a) the State terminates the Scheme Coordinator Agreement;
- (b) the Supplier issues a written notice under clause 11.3(b) of the Supply Arrangement; or
- (c) the Scheme Coordinator Agreement expires or is otherwise no longer in force,

then the State may (in its absolute discretion) exercise its rights under this clause 4 by giving a notice (**Assumption Notice**) within 20 Business Days to the Scheme Coordinator and the Supplier.

4.2 Novation

- (a) Promptly following the receipt of an Assumption Notice, the parties must novate the Supply Arrangement so that the State or its nominee (**Transferee**) and the Supplier are parties to a new contract on the same terms as the Supply Arrangement, as amended by this deed.
- (b) From the date such novation comes into effect (**Novation Date**), any reference in the Supply Arrangement to the Scheme Coordinator shall be read as a reference to the Transferee.

4.3 Rights and obligations of the State and the Supplier under the Supply Arrangement

If the State gives an Assumption Notice then, subject to clause 4.6, on and from the Novation Date:

- (a) the Transferee:
 - (i) will be bound by and must comply with the terms of the Supply Arrangement, as may be amended by this deed; and
 - (ii) will enjoy the rights and benefits conferred on the Scheme Coordinator under the terms of the Supply Arrangement,in all respects as if the Transferee had originally been named in the Supply Arrangement as a party instead of the Scheme Coordinator; and
- (b) the Supplier will comply with the terms of the Supply Arrangement (as amended by the novation deed) on the basis that Transferee has replaced the Scheme Coordinator under the Supply Arrangement.

4.4 Release by Supplier

Without limiting clause 4.6, the Supplier acknowledges that neither the State nor its nominee (if applicable) will be responsible for any obligations or Liabilities of the Scheme Coordinator under or in respect of the Supply Arrangement arising prior to the Novation Date.

4.5 Release by the Scheme Coordinator

- (a) The Scheme Coordinator will remain liable to the Supplier in respect of any rights against the Scheme Coordinator which may have accrued to the Supplier prior to the Novation Date.
- (b) Nothing in this clause affects the obligations of the Scheme Coordinator to the State or its nominee (if applicable) under the Scheme Coordinator Agreement.

4.6 Obligations and Liability prior to the Novation Date

Nothing in this deed releases the Scheme Coordinator or the Supplier from any obligation or liability under the Supply Arrangement arising or accruing before the Novation Date and neither the State nor its nominee (if applicable) assumes any such obligation or liabilities.

4.7 Indemnity

The Scheme Coordinator indemnifies the State or its nominee (if applicable) against any Claim or Liability incurred or made against the State or its nominee (as applicable) by the Supplier or any other person in connection with any act, matter, default or omission of the Scheme Coordinator in respect of the Supply Arrangement prior to the Novation Date.

4.8 Amendments to Supply Arrangement

On and from the Novation Date, the terms of the Supply Arrangement will be deemed to be amended as required to reflect the fact that the Scheme Coordinator Agreement is at an end, and that the Supply Arrangement must operate independently of the Scheme Coordinator Agreement, on the basis that:

- (a) the rights and obligations that Transferee will assume under the Supply Arrangement from the Novation Date will be equivalent to those that the Scheme

Coordinator would have had under the Supply Arrangement had the Scheme Coordinator Agreement not been terminated; and

- (b) the rights and obligations that the Supplier will assume under the Supply Arrangement from the Novation Date will be equivalent to those that the Supplier would have had under the Supply Arrangement had the Scheme Coordinator Agreement not been terminated.

5. Miscellaneous

5.1 Governing law

This deed is governed by and must be construed according to the law in force in New South Wales.

5.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 5.2(a).

5.3 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

5.4 Further acts and documents

The Supplier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Scheme Coordinator) required by law or reasonably requested by the Scheme Coordinator to give effect to this deed.

5.5 Expenses

Each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

5.6 Stamp duties

The Supplier:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnify the other parties against any Loss suffered or incurred by it arising out of, or in connection with that Suppliers' failure to comply with clause 5.6(a); and

- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the Suppliers under this clause.

5.7 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

5.8 Corporate power and authority

Each party represents and warrants to the others that it has full power to enter into and perform its obligations under this deed and that when executed it will constitute legal, valid and binding obligations in accordance with its terms.

5.9 Inconsistency with Act

The parties acknowledge section 29 of the Act.

5.10 Severability

If any provision contained in this deed is voidable, illegal or unenforceable or if this deed would, if a particular provision were not omitted be voidable, illegal or unenforceable, that provision will be severed from this deed which shall then be construed and given effect to for all purposes as if the provision had never formed a part of it.

5.11 Prompt performance

If this deed specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

5.12 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to this deed. If so, the signed copies are treated as making up the one document.

6. GST and taxation

- (a) Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.
- (b) Notwithstanding any other provision of this Agreement, any amount payable for a supply made under this Agreement which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (c) If GST is payable on any supply made by a party (**GST Supplier**) under or in connection with this Agreement:
 - (i) any amount payable or consideration to be provided under any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;

- (ii) an additional amount will be payable by the party providing consideration for that supply (**Recipient**), equal to the amount of GST payable on that supply as calculated by the GST Supplier in accordance with the GST Legislation and payable at the same time and in the same manner as for the Agreed Amount;
 - (iii) the GST Supplier will provide a tax invoice (or equivalent documentation which complies with the GST Legislation) to the Recipient in respect of that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that supply is to be provided under this Agreement; and
 - (iv) if the Supplier does not provide a tax invoice in accordance with the timing set out in clause 6(c)(iii), the additional amount payable by the Recipient under clause 6(c)(ii) is payable within 5 Business Days of the receipt of a tax invoice.
- (d) If for any reason, the GST payable by the GST Supplier in respect of a supply it makes under this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 6(c) in respect of that supply, the GST Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the GST Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.
- (e) If the Recipient is dissatisfied with any calculation to be made by the GST Supplier under this clause 6, the Recipient may, at its own expense and after notifying the GST Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this Agreement, the matters required to be taken into account by the GST Supplier under this clause 6 and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party under or in connection with this Agreement or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- (g) Despite any other provision of this Agreement, this clause 6 will survive the termination of this Agreement.
- (h) A reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member, and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (i) Any reference in this Agreement to fees, value, sales, revenue or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.
- (j) Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

7. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) The State

Name: NSW Environment Protection Authority

Address: Level 14, 59 Goulburn Street
Sydney NSW 2000

Email: Alex.Young@epa.nsw.gov.au

For the attention of: State Representative

- (ii) The Scheme Coordinator

Name: Exchange for Change (NSW) Pty Ltd

Address: Level 4, 126-130 Phillip Street
Sydney NSW 2000

Email: jeff.maguire@ccamatil.com

For the attention of: Scheme Coordinator's Representative

- (iii) Supplier

Name: []

Address: []

Email: []

For the attention of: []

- (c) must be delivered or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with clause (b); and
- (d) is taken to be received by the addressee:

- (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;

- (ii) (in the case of email) when it is dispatched by the sender to each of the email addresses specified by the recipient; and

- (iii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

Executed by the parties as a deed

State

Executed by the Honourable Gabrielle Cecelia Upton MP, Minister for the Environment for and on behalf of the Crown in right of the State of New South Wales in the presence of:

Signature of witness

The Honourable Gabrielle Cecelia Upton MP,
Minister for the Environment

Full name of witness

Office held

Scheme Coordinator

Executed by Exchange for Change (NSW) Pty Ltd ACN 620 512 469 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Supplier

Executed by [*] ABN [*] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

NSW Container Deposit Scheme: Common Dispute Deed

Minister for the Environment of the State of New South Wales
State

Exchange for Change (NSW) Pty Ltd
Scheme Coordinator

Tomra Cleanaway Pty Limited
Network Operator

[and all parties who have delivered an Accession Deed Poll]

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Our reference 708/80179515

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Common Dispute Deed

NSW Container Deposit Scheme - Common Dispute Deed

Date:

Parties:

1. Exchange for Change (NSW) Pty Ltd ACN 620 512 469 of Level 4, 126-130 Phillip Street Sydney NSW 2000 (**Scheme Coordinator**);
2. Tomra Cleanaway Pty Limited ACN 620 427 116 of Level 31, 133 Castlereagh Street, Sydney NSW 2000 (**Network Operator**);
3. Minister for the Environment for and on behalf of the Crown in right of the State of New South Wales (**State**);
4. All parties who have delivered an Accession Deed Poll.

Recitals:

- A The State has entered the Scheme Coordinator Agreement with the Scheme Coordinator.
- B The State has entered the Network Operator Agreement with the Network Operator.
- C The Scheme Coordinator has entered into a Network Arrangement with the Network Operator.
- D The Scheme Coordinator has entered into Supply Arrangements with Suppliers which have acceded to and are parties to the Common Dispute Deed.
- E The Scheme Coordinator intends to enter into Supply Arrangements with other parties each of which will be a Supplier, and will accede to and become party to the Common Disputes Deed.
- F The intention of this deed is to provide a process for the determination of a Common Dispute arising under one agreement and to bind related parties and the Scheme Coordinator under other agreements to the determination, without the need to have the dispute determined again and separately under those other agreements.
- G The terms of this deed will apply to Common Disputes where the Scheme Coordinator advises some or all of the parties to this deed that a Common Dispute exists.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

Act means the Waste Avoidance and Resource Recovery Act 2001 (NSW).

Accession Deed Poll means a deed substantially in the form of Schedule 2 to this deed.

Common Dispute means a dispute which involves a question of law (including a question of contract interpretation) or a question of fact, that is of general application or importance to a Network Operator Agreement, Scheme Coordinator Agreement, Network Arrangement or Supply Arrangement between the Scheme Coordinator and another Scheme Participant and in respect of which the Scheme Coordinator has given a Notice of Common Dispute.

Effective Date means the date on which the later of the Scheme Coordinator, the Network Operator and the State executes this deed.

Notice of Common Dispute means a Notice of Common Dispute given under a Scheme Coordinator Agreement, Network Operator Agreement, Supply Arrangement or a Network Arrangement.

Notice of Participation means a notice given under clause 2(b) of this deed.

Network Operator means Tomra Cleanaway Pty Limited.

Network Operator Agreement means the agreement entered into by the Network Operator and the State in relation to the Scheme on or about the date of this deed.

Network Arrangement means a contract between the Scheme Coordinator and a Network Operator in relation to the NSW Container Deposit Scheme.

Market Share means:

- (a) If the Common Dispute relates to a Supply Arrangement, the proportion calculated as:
 - (i) The daily average number of containers supplied by that particular Supplier; divided by
 - (ii) the daily average of the total containers supplied by all Suppliers which are either an SP Party or a Related Scheme Participant,in each case based on data for the 12 months period prior to the date of the Notice of Common Dispute, as such amounts are determined in accordance with the Scheme Payment and Contribution Methodology.
- (b) If the Common Dispute relates to a Network Arrangement, the proportion calculated as:
 - (i) The daily average number of containers recovered by that particular Network Operator; divided by
 - (ii) The daily average of the total number of containers recovered by all Network Operators which are either SP Party or a Related Scheme Participant,in each case, based on data for the 12 month period prior to the date of the Notice of Common Dispute (or such shorter period, if the Notice of Common Dispute is issued prior to the first anniversary of the execution of the particular Network Operator's Network Arrangement), as such amounts are determined in accordance with the Verification Methodology.

Portal means the online portal to be developed by the Scheme Coordinator in accordance with the Scheme Coordinator Agreement.

Scheme has the meaning given in the Act.

Scheme Coordinator Agreement means the agreement entered into by the Scheme Coordinator and the State in relation the Scheme on or about the date of this deed.

Supplier means each Supplier that has acceded to this deed on or after the Effective Date.

Supply Arrangement means a contract between the Scheme Coordinator and a Supplier in relation to the Scheme.

1.2 Interpretation

In this deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any Party to this deed includes that Party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to this deed or to any other deed, agreement, document or instrument is deemed to include a reference to this deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (f) headings are for convenience only and do not affect the interpretation of this deed;
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (h) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward or drafted this deed or any part.

2. Common Disputes

If a Notice of Common Dispute has been issued:

- (a) The Common Dispute must be resolved in accordance with the procedure set out in clauses 2 and 3 (the **Dispute Resolution Procedure**).
- (b) The State may at its absolute discretion, at any time prior to a determination under this deed, give a Notice of Participation to the Scheme Coordinator in which case the State will be a party to the dispute. Irrespective of the State issuing a Notice of Participation, clause 3.9 will apply in respect of the State.
- (c) The parties to the dispute are the Scheme Coordinator and the Supplier or Network Operator to which the Notice of Common Dispute was issued ("**SP Party**") and, if the State has issued a Notice of Participation, the State.
- (d) If the Scheme Coordinator considers in its absolute discretion that the Common Dispute relates to other Scheme Participants which are party to a Supply Arrangement or Network Arrangement, then the Scheme Coordinator must notify via the Portal those other Scheme Participants ("**Related Scheme Participants**") with a copy to the SP Party, within 14 days of the Notice of Common Dispute being issued which notice must clearly identify each of the Related Scheme Participants to allow the SP Party to be able to comply with clause 3.4. The Related Scheme Participants are not parties to the Common Dispute.

3. Dispute resolution procedure

3.1 Dispute Resolution Procedure

- (a) Within 7 days of a Notice of Common Dispute being issued, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Common Dispute by joint discussions.
- (b) Compliance with the Dispute Resolution Procedure is a condition precedent to any entitlement to claim relief or remedy (whether by way of proceedings in a court or otherwise) in respect of the subject of a Common Dispute.
- (c) Nothing in this clause 3 prevents a party seeking urgent injunctive or declaratory relief from a court in connection with the Common Dispute.
- (d) The parties' obligations under the Network Arrangement and the Supply Arrangement (as applicable) will continue despite the existence of a Common Dispute between some or all of the parties.

3.2 Referral to Expert Determination

If the Common Dispute is not resolved within 20 days after the issue of the notification to Related Scheme Participants via the Portal under clause 2(d), the Common Dispute will be referred to expert determination (**Referral Date**).

3.3 Expert Determination

- (a) The expert must be appointed, and the expert determination must be conducted in accordance with the Resolution Institute Expert Determination Rules as modified by Schedule 1.
- (b) The parties to the Common Dispute must enter into an agreement with the appointed expert on such terms as the parties and the expert may agree or as determined in accordance with the rules for the expert determination.
- (c) An expert determination conducted under this clause 3 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (d) The expert must:
 - (i) disclose to the parties to the Common Dispute any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the Common Dispute or a Related Scheme Participant without the knowledge of the other.
- (e) Unless otherwise agreed between the parties to the Common Dispute, the expert must notify the parties to the Common Dispute of his or her decision upon an expert determination conducted under this clause 3 within the period set out in the agreement between the parties to the Common Dispute and the expert, by providing it to them via the Portal.
- (f) The determination of the expert will be immediately binding on the SP Party, the Scheme Coordinator and the Related Scheme Participants on receipt, who must give effect to it unless and until it is revised in an amicable settlement or a court judgment.

- (g) The date of the expert's determination will be the date it is provided to the parties to the Common Dispute and the Related Scheme Participants via the Portal (**Date of Expert Determination**).

3.4 Involvement of Related Scheme Participants

- (a) Communications provided to the expert or another party relating to the expert determination, must be provided via the Portal to the Related Scheme Participants.
- (b) The Scheme Coordinator must provide via the Portal a copy of each communication received from the expert (including the expert's decision), to the Related Scheme Participants within 1 day of receipt of the communication.
- (c) The SP Party will allow the Related Scheme Participants an opportunity to review and comment upon the draft submissions and evidence (including expert opinions) that the SP Party proposes to submit in the expert determination by providing drafts to the Related Scheme Participants at least 14 days before the SP Party is due to make its submission.
- (d) The Related Scheme Participants may comment on the draft submissions provided that any comments are provided via the Portal to the SP Party at least 7 days before the SP Party is due to make its submission in the expert determination.
- (e) The SP Party must consider and take account of any comments provided in accordance with paragraph (c) above, in the preparation of its submissions;
- (f) The SP Party must:
 - (i) provide the Related Scheme Participants with a draft of any proposed offer to settle the Common Dispute not less than 14 days prior to submitting that proposed offer to the Scheme Coordinator; and
 - (ii) not settle, waive or compromise the Common Dispute without the prior written consent of all of the Related Scheme Participants.
- (g) If it appears to the expert, or on application by a party to the Common Dispute, that the SP Party is not able adequately to represent the interests of the Related Scheme Participants, the expert may make such directions as he or she thinks fit concerning the substitution of one of the Related Scheme Participants for the SP Party, and make such other orders as it thinks fit. In this case, thereafter references to the SP Party in the Dispute Resolution Procedure will be references to the substitute party.

3.5 Costs of the expert determination

- (a) Subject to clause 3.5(c), each party to the Common Dispute will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) pay an equal share of the expert's costs.
- (b) Each Related Scheme Participant will bear its own costs of participation in the Dispute Resolution Process.
- (c) If the Common Dispute relates to a Supply Arrangement, the SP Party and each Related Scheme Participant who is a Supplier will be responsible for the costs incurred by the SP Party in any expert determination in proportion to its Market Share. If the Common Dispute relates to a Network Arrangement, the SP Party and each Related Scheme Participant who is a Network Operator will be responsible for the costs incurred by the SP Party in any expert determination in proportion to its

Market Share. If the Common Dispute relates to both a Supply Arrangement and a Network Arrangement, the SP Party and each Related Scheme Participant will be responsible for the costs incurred by the SP Party in any expert determination in the proportions as determined by the expert.

3.6 Notice of dissatisfaction

- (a) If:
 - (i) a party to the Common Dispute is dissatisfied with the expert's determination then it may, within 21 days after the Date of Expert Determination, give notice of its dissatisfaction by providing it to the other party via the Portal; or
 - (ii) the expert fails to give its determination within the time required (if any is agreed with the expert), then any party may, within 21 days after this period has expired, give a notice of dissatisfaction by providing it to the other party via the Portal,

(Notice of Dissatisfaction).

- (b) A Notice of Dissatisfaction issued under this clause 3.6 must:
 - (i) state that it is given under this clause 3.6; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) If the SP Party or a Related Scheme Participant considers that a Notice of Dissatisfaction should be issued then;
 - (i) it must provide notice of that fact to the SP Party and the Related Scheme Participants of that fact and its reasons for holding that view via the Portal within 10 Business Days after the Date of Expert Determination; and
 - (ii) the SP Party must take into account any notice provided under clause 3.5(c) when deciding whether or not to give a Notice of Dissatisfaction.

3.7 Proceedings

If a Common Dispute has not been resolved (in whole or in part):

- (a) where a party has given a Notice of Dissatisfaction pursuant to clause 3.6, within 14 days after the Notice of Dissatisfaction was provided via the Portal; or
- (b) where clause 3.7(a) does not apply, within 120 days of the notification of the Notice of Common Dispute to the Related Scheme Participants;

(irrespective of whether clauses 3.2 to 3.7 have been complied with), any party may commence legal proceedings.

3.8 Final and binding decision

If the expert has given a determination as to a Common Dispute, and no Notice of Dissatisfaction has been given within 20 days of the Date of Expert Determination, then the determination will become final and binding.

3.9 Binding Nature of Common Dispute

- (a) The parties to this deed unequivocally and unreservedly agree that, if they receive a Notice of Common Dispute:
 - (i) provided that clause 3.4(f) has been complied with, they will be bound by any settlement of the subject matter of that Common Dispute to the extent that it touches upon or concerns any right, remedy, benefit or entitlement in a Network Arrangement or a Supply Arrangement to which they are a party and the State will be bound to the extent it resolves the dispute under an agreement between the State and the Scheme Coordinator or Network Operator.
 - (ii) any determination by an expert or a court in relation to that Common Dispute will be binding on the parties to that Notice of Common Dispute without the need for a separate appointment or determination under this deed to the extent that such determination is binding on the parties to this deed; and
 - (iii) the parties agree to accept in full and final resolution of all and any entitlement, privilege, benefit or liability, which they may have arising out of or in connection with this deed or any Network Arrangement or Supply Arrangement in respect of the Common Dispute, which has been determined in respect of the Common Dispute in accordance with this deed.
- (b) The parties agree that the provisions of this deed apply to a Common Dispute the subject of a Notice of Common Dispute whether or not they participate in the Dispute Resolution Procedures.

3.10 Time for Compliance

Any remedy or benefit to which a party to this Deed is entitled pursuant to clause 3.8 must be paid or granted by the relevant party by the later of:

- (a) 30 days of the binding settlement or determination of such entitlement under this deed; or
- (b) the date such remedy or benefit must be paid or granted by the party responsible for paying or granting it under any provision of this deed.

4. Governing Law

This agreement is governed by and is to be construed in accordance with the laws in force in the State of New South Wales.

5. Jurisdiction

- (a) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts to which the appeals from those courts may be made with respect to any arbitration or proceedings that are permitted to be brought at any time.
- (b) The parties irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceedings has been brought in an inconvenient forum, where that venue falls within clause 5(a).

6. Proportionate Liability

Notwithstanding anything else, to the extent permissible by law, the expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any Common Dispute referred to expert determination pursuant to this clause.

7. Accession of Supplier

- (a) A party signing an Accession Deed Poll (the **Accession Party**) covenants and agrees with all parties to this deed from time to time (whether original or by accession) (**Existing Parties**) on and from the date of delivery of an Accession Deed Poll to the Scheme Coordinator (**Accession Date**) to observe, perform and be bound by this deed so that, from the Accession Date, the Accession Party will be a party to this deed and will assume the rights and obligations of a party as specified in this deed.
- (b) Each Existing Party:
 - (i) irrevocably and unconditionally consents to the Accession Party becoming a party to this deed on and from the Accession Date;
 - (ii) agrees that the Accession Party will be entitled to exercise all rights, privileges and benefits afforded to it as a party as specified in this deed; and
 - (iii) agrees that it continues to be bound by this deed notwithstanding the accession contemplated in clause 7(a) of this deed.

8. Counterparts

This deed may consist of a number of copies, each signed by one or more parties to this deed. The date of this deed is the Effective Date.

Schedule 1 - Rules for the Expert Determination Process

Resolution Institute Expert Determination Rules

In accordance with, and subject to the Resolution Institute Expert Determination Rules including Schedules A and B, the Parties agree to modify the application of those Rules as follows:

Modifications are underlined.

1. RULE 5 Role of the Expert

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Contract, the requirements of procedural fairness, and according to law.
2. [no modification]
3. [no modification]
- 3A. The rules of evidence do not apply to the Process.
4. (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the Parties immediately.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under clause 4(c) above, unless the Parties agree otherwise.

5. [no modification]

2. RULE 10 The Expert's Determination

1. Unless otherwise agreed between the Parties, the Expert must notify the parties of his or her decision within 28 days from the acceptance by the expert of his or her appointment. As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, the Expert shall determine the Dispute between the parties and notify such determination in writing to the parties.
2. [no modification]
3. Unless otherwise agreed by the parties, the Expert's determination:
 - (a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;
 - (c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and
 - (d) to the extent permitted by law, will not apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state, territory, or the Commonwealth).

4. [no modification]

3. Rule 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

Schedule 2 - Accession Deed Poll

Accession Deed Poll

Dated

Supplier [Insert full name of relevant Supplier] [Insert ABN] (Supplier)

Background

- A. The Supplier seeks to enter into a supply arrangement with the Scheme Coordinator for the purpose of section 38 of the Waste Avoidance and Recourse Recovery Act 2001 (NSW).
- B. This deed poll is entered into in accordance with clause 7 of the Common Dispute Deed dated [] (Common Dispute Deed).
- C. As of the Effective Date the Supplier agrees to perform its obligations as the Supplier under the Common Dispute Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed poll:

Effective Date means the date of delivery of this deed to the Scheme Coordinator.

1.2 Definitions in Supply Arrangement

- (a) Unless otherwise defined, expressions used in this deed poll have the meanings given to them in the Common Dispute Deed.
- (b) Clause 1.2 of the Common Dispute Deed applies to this deed poll as if it was set out in full in this deed poll.

2. Accession to the Common Dispute Deed

- (a) A party signing this deed poll (the **Accession Party**) covenants and agrees with all parties to the Common Dispute Deed from time to time (whether original or by accession) (**Existing Parties**) on and from the date of delivery of this deed poll to the Scheme Coordinator (**Accession Date**) to observe, perform and be bound by the Common Dispute Deed so that, from the Accession Date, the Accession Party will be a party to the Common Dispute Deed and will assume the rights and obligations of a party as specified in the Common Dispute Deed.
- (b) The Accession Party confirms that it has been supplied with a copy of the Common Dispute Deed.
- (c) This deed poll is made by the Accession Party in favour of each Existing Party and is irrevocable.
- (d) Each Existing Party may enforce the terms of this deed poll against the Accession Party as if it were a party to this deed poll.

3. Governing law

This agreement is governed by the law applying in and must be construed according to the law in force in New South Wales.

Executed as a deed poll

Accession Party

Executed by [insert name of Accession Party]
ABN [insert ABN] in accordance with
section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed as a deed.

State

Executed by the Honourable Gabrielle Cecilia Upton MP, Minister for the Environment for and on behalf of the Crown in right of the State of New South Wales in the presence of:

Signature of witness

The Honourable Gabrielle Cecilia Upton MP,
Minister for the Environment

Full name of witness

Office held

Scheme Coordinator

Executed by Exchange for Change (NSW) Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Network Operator

Executed by Tomra Cleanaway Pty Limited ACN 620 427 116 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director