

Material Recovery (Bottle Crushing)  
Agreement

WA Return Recycle Renew Ltd

and

#[\*Party 2 name]#

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## Material Recovery (Bottle Crushing) Agreement

Date

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Parties

**WA Return Recycle Renew Ltd ACN 629 983 615**  
of Unit 2, 1 Centro Avenue, Subiaco, Western Australia

**(Principal)**

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**#[\*Party 2 name]# #[\*Party 2 ACN/ABN (include ACN or ABN)]#**  
of **#[\*Party 2 address]#**

**(Operator)**

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Recitals

- A. A beverage container scheme has been established pursuant to Part 5A of the Act (**Scheme**) for the purpose of reducing the volume of waste and promoting the recovery, reuse and recycling of empty beverage containers in Western Australia.
- B. The Scheme will be delivered by the Principal, as the Coordinator under the Act and the contractor under the Coordinator Agreement.
- C. The Operator operates or will operate a Bottle Crushing Service Business in Western Australia.
- D. The Principal and the Operator are entering into this Deed in accordance with section 47R of the Act and the requirements of the Coordinator Agreement.
- E. Under the terms of this Deed, the Principal agrees to pay to the Operator Recovery Amounts for Containers that are collected during the course of waste management services provided under the Scheme that are processed by the Operator for reuse or recycling.

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The parties agree, in consideration of, among other things, the mutual promises contained in this Deed as follows:

## 1. Definitions and interpretation clauses

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### 1.1 Definitions

In this deed:

|   |   |
|---|---|
| <b>Act</b>                              | means the <i>Waste Avoidance and Resource Recovery Act 2007 (WA)</i> .  |
| <b>Activities</b>                       | means the collecting or processing for reuse or recycling of glass Containers by the Operator at a Material Recovery Facility, and all related or incidental activities.  |
| <b>Annual Recycling Statement</b>       | means a statement in respect of all Processed Materials produced by the Operator in each year during the Term, including that the Processed Materials have been processed for reuse or recycling, in the form required by the Principal from time to time.  |
| <b>Annual Throughput Reconciliation</b> | has the meaning given in clause 12.2.   |
| <b>Approval</b>                         | means any licence, permit, consent, approval, determination, certificate or other requirement: <ul style="list-style-type: none"> <li>(a) of any Regulatory Authority having any jurisdiction in connection with the implementation of the Scheme; or</li> <li>(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 Deed, and includes all applicable development approvals, any approval granted under a planning scheme or local law and environmental approvals.</li> </ul> |
| <b>Approved Methodology</b>             | means the methodology approved under regulation 4ZJ(1)(c)(ii) of the Scheme Regulations (if any) current at the relevant calculation time and which, as at the date of this Deed, is as set out in Schedule 5.  |
| <b>Associate</b>                        | means, in respect of a party, any employee, officer, agent, or contractor of that party, but in respect of: <ul style="list-style-type: none"> <li>(a) the Principal - excludes the State, the other Scheme Participants and the Operator; and</li> <li>(b) the Operator - excludes the Principal.</li> </ul>   |
| <b>Audit</b>                            | means an audit undertaken pursuant to regulation 4ZL(2) of the Scheme Regulations.  |



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| <b>Audit Adjustment</b>                 | has the meaning given in clause 10.10(a).   |
| <b>Auditor</b>                          | means a person engaged by the Principal to undertake an Audit and who satisfies the requirements of regulation 4ZL(4) of the Scheme Regulations.  |
| <b>Bottle Crushing Service Business</b> | has the same meaning as in regulation 3(1) of the Scheme Regulations.   |
| <b>Business Day</b>                     | means a day that is not a Saturday, Sunday, or recognised public holiday in Perth, Western Australia.   |
| <b>Change in Law</b>                    | means a change in a Statutory Requirement of the State of Western Australia or a State Policy after the Effective Date which: <ul style="list-style-type: none"> <li>(a) specifically and only affects the Principal, the Scheme or the Scheme Participants; and</li> <li>(b) causes the Principal or the Operator to incur more or less costs than otherwise would have been incurred in respect of carrying out its obligations under the Act, this Deed or the Coordinator Agreement.</li> </ul>   |
| <b>Claim</b>                            | 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: <ul style="list-style-type: none"> <li>(a) is in any way in connection with this Deed or either party's conduct before this Deed, including any direction of the Principal's Representative;</li> <li>(b) is in any way in connection with implementation of the Scheme; or</li> <li>(c) otherwise arises at law or in equity including: <ul style="list-style-type: none"> <li>(i) by statute;</li> <li>(ii) in tort for negligence or otherwise, including negligent misrepresentation; or</li> <li>(iii) for restitution.</li> </ul> </li> </ul> |
| <b>Claim Assessment</b>                 | has the meaning given in clause 10.4.   |
| <b>Claimed Scheme Material</b>          | means any Containers in respect of which a Refund Amount or Recovery Amount has already been claimed.   |
| <b>Codes and Standards</b>              | means all relevant Australian industry codes and standards, including any codes and standards that come into effect after the Effective Date.   |

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| <b>Common Dispute</b>           | has the same meaning as in the Common Dispute Procedure.  |
| <b>Common Dispute Procedure</b> | means the process for resolving Common Disputes as set out in Schedule 9.   |
| <b>Confidential Material</b>    | in relation to a party, means any data and other commercially sensitive information provided by that party to the other party in relation to the Scheme or arising out of, or in connection with, this Deed.  |
| <b>Container</b>                | has the meaning given to that term under section 47C(1) of the Act but excludes containers not eligible for the payment of a Recovery Amount in accordance with the Act or the Regulations.   |
| <b>Coordinator</b>              | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Coordinator Agreement</b>    | means the deed entered into between the State and the Principal in connection with the appointment of the Principal as the Coordinator under the Act.   |
| <b>Corporations Act</b>         | means the <i>Corporations Act 2001</i> (Cth).   |
| <b>Deed</b>                     | means this deed, including all schedules, annexures and appendices.   |
| <b>Dispute</b>                  | has the meaning given in clause 21.1.   |
| <b>Effective Date</b>           | has the meaning given to that term in clause 2.1.   |
| <b>Exact Count Method</b>       | has the meaning given to that term in paragraph 1.5 of Schedule 3.  |
| <b>Executive Negotiators</b>    | in respect of a Party: <ul style="list-style-type: none"> <li>(a) means the person stated as the Executive Negotiator of that Party in Item 2 of the Reference Schedule or such other person as is notified in writing by that Party to the other Party as its Executive Negotiator from time to time; or</li> <li>(b) an individual nominated in writing by a person referred to in paragraph (a) of this definition.</li> </ul> |
| <b>Good Industry Practice</b>   | means, in relation to any activity, the exercise of that degree of skill, care, diligence, prudence, methods, practices, processes, workmanship and use of material and equipment, that would be reasonably exercised by a skilled and experienced person who: <ul style="list-style-type: none"> <li>(a) is engaged in the carrying out of activities of the</li> </ul>  |

same nature and extent as the Activities by reference to proper and prudent practices recognised in Australia;

- (b) knows the facts that were known, or should reasonably have been known, to the person performing the activity at that time;
- (c) complies with all applicable Statutory Requirements; and
- (d) complies with all applicable Codes and Standards.

**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.

**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 Deed 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, other than for the purposes of solvent reconstruction or amalgamation;
- (v) a winding up order is made in respect of the corporation, other than for the purposes of solvent reconstruction or amalgamation;
- (vi) the corporation resolves by special resolution that it be wound up voluntarily, other than for a members' voluntary winding-up or for the purposes of solvent reconstruction or amalgamation; or
- (vii) a mortgagee of any property of the corporation takes possession of that property.

**Intellectual Property**

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.

**IT Platform**

means the software licensed to the Operator by the Principal under this Deed, which includes the functionality described in Schedule 2 and the Online Recycling Material Sales Platform.

**Loss**

means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.

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| <b>Material Recovery Agreement</b>              | has the meaning given to that term in section 47C(1) of the Act.   |
| <b>Material Recovery Facility (or MRF)</b>      | has the meaning given to that term in section 47C(1) of the Act, and includes each Material Recovery Facility operated by the Operator.  |
| <b>Material Recovery Facility Operator</b>      | means the operator of a Material Recovery Facility, and includes the Operator.   |
| <b>Media Policy</b>                             | means the media policy as determined by the Principal, and notified to the Operator from time to time.   |
| <b>Minister</b>                                 | means the minister who is responsible under Western Australian law for administering Part 5A of the Act.   |
| <b>Notice of Dispute</b>                        | has the meaning given in clause 21.1.  |
| <b>Online Recycling Material Sales Platform</b> | means the 'Online Recycling Material Sales Platform' nominated by the Principal and described in Schedule 2.   |
| <b>Order</b>                                    | means an order to purchase a particular Saleable Quantity of Processed Materials issued by the Principal to the Operator in accordance with clause 8.2.  |
| <b>Other Service Provider</b>                   | means any contractor (at any tier) of the Principal, including all service providers and subcontractors in connection with the Scheme but excluding: <ul style="list-style-type: none"> <li>(a) the Operator and its Subcontractors; and</li> <li>(b) any Other Service Provider to the Principal that the Principal determines (in its sole discretion) is excluded from this definition from time to time.</li> </ul>  |
| <b>Payments Schedule</b>                        | means Schedule 3 to this Deed, as amended from time to time in accordance with this Deed.  |
| <b>Principal Policy</b>                         | means each policy, guideline, manual, code, standard, circular directive, practice specification, procedure or direction of the Principal relating to the Scheme, as may be amended or updated by the Principal from time to time, which is notified to the Operator, including the Media Policy, but excluding any policy, guideline, manual, code, standard, circular directive, practice specification, procedure or direction that: <ul style="list-style-type: none"> <li>(a) is inconsistent with any express provision of this Deed; or</li> <li>(b) materially changes the nature or scope of the Activities or the Operator's obligations under this Deed.</li> </ul> |

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| <b>Principal's Representative</b>        | means the individual specified in Item 1 of the Reference Schedule or such other person as is notified in writing by the Principal to the Operator as the Principal's Representative for the purposes of this Deed.  |
| <b>Private Sale</b>                      | has the meaning given in clause 7.2(a)(ii).  |
| <b>Processed Materials</b>               | means materials produced following the processing of glass Containers within the Operator's glass crushing machines, excluding any such materials produced outside of Western Australia.   |
| <b>Processed Materials Sale Contract</b> | has the meaning given in clause 8.2(c).  |
| <b>Processing Services</b>               | means the verification and processing of Containers in preparation for sale to a recycler.   |
| <b>Processing Services Agreement</b>     | means any agreement entered into by the Principal for the provision of Processing Services in connection with the Scheme.  |
| <b>Quarter</b>                           | <p>means:</p> <p>(a) subject to paragraph (b) of this definition, the following periods in the year:</p> <ul style="list-style-type: none"> <li>(i) 1 July to 30 September;</li> <li>(ii) 1 October to 31 December;</li> <li>(iii) 1 January to 31 March; and</li> <li>(iv) 1 April to 30 June,</li> </ul> <p>inclusive of the start and end dates;</p> <p>(b) the first Quarter is the period on and from the Commencement Date up to and including the first to occur thereafter of:</p> <ul style="list-style-type: none"> <li>(i) 30 September 2020;</li> <li>(ii) 31 December;</li> <li>(iii) 31 March; and</li> <li>(iv) 30 June.</li> </ul> |
| <b>Recovery Amount</b>                   | means the amount payable to the MRFO by the Principal for a quantity of containers in accordance with this Deed, the Act and Approved Methodology (if any) and is GST-inclusive.   |
| <b>Recovery Amount Claim</b>             | has the meaning given in clause 10.2(b).   |
| <b>Recyclable Waste</b>                  | means recyclable materials, including Containers.  |

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| <b>Recycler</b>                 | means an entity with a valid Recycler Panel Agreement with the Principal.   |
| <b>Recycler Panel Agreement</b> | means the agreement between the Principal and each approved Recycler, governing the Recycler's purchase of Processed Materials through the Online Recycling Material Sales Platform, and setting out the requirement for the Recycler to recycle all purchased Processed Materials in accordance with the Act and all Statutory Requirements.   |
| <b>Reference Schedule</b>       | means Schedule 1.   |
| <b>Refund Amount</b>            | has the meaning given to that term in section 47C(1) of the Act and is GST-inclusive.   |
| <b>Refund Point</b>             | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Refund Point Agreement</b>   | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Refund Point Operator</b>    | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Regulation</b>               | means any regulation made under Part 5A of the Act and includes each of the Scheme Regulations.   |
| <b>Regulatory Authority</b>     | means: <ul style="list-style-type: none"> <li>(a) any government or a governmental, quasi-governmental or judicial entity or authority (including the department or agency responsible under Western Australian law for the relevant provisions of the Act);</li> <li>(b) a stock exchange; and</li> <li>(c) any other authority, agency, commission, regulator, ministry, department, instrument, tribunal (including any pricing body), enterprise, delegated authority or similar entity,</li> </ul> <p>whether of Australia or elsewhere that has powers or jurisdiction under any law over a party or any act relating to this Deed.</p> |
| <b>Reserve Price</b>            | means the reserve price determined by the Principal in accordance with clause 8.3 for each sale of Processed Materials listed on the Online Recycling Material Sales Platform.  |
| <b>Review Procedure</b>         | means a review of this Deed conducted in accordance with clause 5.1.  |

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| <b>Saleable Quantity</b>        | means a quantity of Processed Materials that is a marketable quantity in accordance with the Online Recycling Material Sales Platform policy set out in Schedule 10.   |
| <b>Scheme</b>                   | has the meaning given to that term in the 'Recitals' section of this Deed.   |
| <b>Scheme Change</b>            | has the meaning given in clause 6.1.   |
| <b>Scheme Change Notice</b>     | has the meaning given in clause 6.1.   |
| <b>Scheme Commencement Date</b> | means the day fixed by the Minister by order published in the Gazette to the appointed day for the purpose of section 47M of the Act.  |
| <b>Scheme Data</b>              | means any data, information or personal information accessible to the Operator (or any third parties who have access to such Scheme Data through the Operator) and which relates in any way to the Scheme or a Scheme Participant, and includes data stored or held on, or which transfers through, the IT Platform.   |
| <b>Scheme Objectives</b>        | mean the objects outlined in section 47A of the Act.   |
| <b>Scheme Participant</b>       | means: <ul style="list-style-type: none"> <li>(a) the Principal;</li> <li>(b) a Material Recovery Facility Operator that has entered into a Material Recovery Agreement with the Principal;</li> <li>(c) a Refund Point Operator that has entered into a Refund Point Agreement with the Principal; and</li> <li>(d) any Other Service Provider,</li> </ul> as the context requires. |
| <b>Scheme Regulations</b>       | means the <i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019</i> .   |
| <b>Shipment Manifest</b>        | has the meaning given in clause 7.2(e).  |
| <b>State</b>                    | means the Crown in right of the State of Western Australia, including the Minister within the meaning of the Act.  |
| <b>State Policy</b>             | means each policy, guideline, code, standard, circular directive, practice specification or procedure or direction (including any direction issued by the Minister under the Act and any document prepared by the CEO (as defined in the Act)) which applies in connection with the Scheme and which affects implementation of the Scheme, which:                                    |



- (a) is notified to the Principal;
  - (b) is publicly available or otherwise available to the Principal; or
  - (c) the Principal is expressly required by the terms of this Deed, by law or by direction of the Minister or the State, to comply with,
- as may be amended or updated from time to time.

**Statutory Requirements** means:

- (a) the Act and Regulations;
- (b) any law applicable to implementation and operation of the Scheme, the provision of the services or the Operator's obligations under this Deed, including statutes, ordinances, regulations, by-laws, orders and other subordinate legislation;
- (c) Approvals (including any condition or requirement under them); applicable to implementation and operation of the Scheme, the provision of the services and/or the Operator's obligations under this Deed; and
- (d) fees and charges payable in connection with the foregoing.

**Subcontractor** means a person who is a contractor, subcontractor or supplier to, or agent of, the Operator (at any tier) in relation to this Deed or the supply or performance of the Activities.

**Successful Purchaser** means a successful purchaser of a particular Saleable Quantity of Processed Materials through the Online Recycling Material Sales Platform, as notified by the Principal to the Operator.

**Term** has the meaning given in clause 2.

**Terms and Conditions of Sale** means the terms under which Saleable Quantities of Processed Materials are sold to the Principal, as amended by the Principal from time to time in accordance with this Deed. As of the Effective Date, the terms are as set out in Schedule 4.

**Total Recovery Amount** means the aggregate of all Recovery Amounts payable to the Operator in each Quarter, as calculated in accordance with this Deed and the Approved Methodology.

**Trade Mark** means any trade mark registered by, or licensed to, the Principal in connection with the Scheme, as may be amended from time to time and notified by the Principal to the Operator in writing.

|                          |   |
|--------------------------|---|
| <b>Variation</b>         | means a variation, amendment or modification of the Activities under this Deed (including the Payments Schedule in accordance with clause 5).   |
| <b>Variation Order</b>   | has the meaning given in clause 5.2.  |
| <b>Wilful Misconduct</b> | means an act or failure to act by the relevant party that was intended to cause, was in deliberate disregard of, or deliberate indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgment. |

## 1.2 Interpretation

In this Deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Regulatory Authority (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Perth, Western Australia time;
- (k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;

- (l) a reference to an agreement other than this Deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (n) a promise, agreement, representation or warranty by two or more persons who comprise a party binds them jointly and severally;
- (o) a provision of this Deed may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this Deed or the preparation or proposal of that provision;
- (p) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Deed do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (r) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (s) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (t) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (u) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

### 1.3 Business Day

If anything under this Deed is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

## 2. Term

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### 2.1 Effective Date

This Deed takes effect and comes into force on the date on which this Deed is executed by all parties to this Deed or, if not executed on the same date, the date on which the last of the parties executes this Deed (**Effective Date**).

### 2.2 Expiry

This Deed commences on the Effective Date and continues until terminated in accordance with this Deed or the Scheme is otherwise no longer in force (**Term**).

## 3. Statutory Requirements and Compliance

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In performing the Activities, the Operator must (and must ensure that its personnel):

- (a) carry out the Activities in a safe manner and in strict compliance with all applicable Approvals, Codes and Standards, Statutory Requirements and this Deed;
- (b) not do anything to place the Principal, its Associates or each of their respective officers, employees or agents in breach of the applicable Statutory Requirements;
- (c) report to the Principal immediately on any:
  - (i) chain of responsibility breaches in respect of the Activities as and when they occur, including any corrective actions taken resulting from these breaches; and
  - (ii) breach or potential breach of clause 3(a) or 3(b); and
- (d) provide to the Principal all notices and correspondence concerning any infringement notices.

## 4. Standards and performance

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### 4.1 Operator obligations

- (a) The Operator must:
  - (i) perform its obligations under this Deed, including the Activities:
    - (A) in a safe and timely manner and in accordance with this Deed;

- (B) in accordance with all Approvals, Statutory Requirements, State Policy, Principal Policy and any Codes and Standards that are legally binding on the Operator;
  - (C) to the extent within the Operator's control, in accordance with all Approvals, Statutory Requirements, State Policy, Principal Policy and any Codes and Standards that are legally binding on the Principal and of which the Operator has previously been given notice by the Principal in accordance with this Deed; and
  - (D) in a competent, efficient and professional manner which meets or exceeds the requirements of Good Industry Practice;
- (ii) take all reasonable measures to detect fraud within the Scheme during the delivery of the Activities, and to report within 24 hours any such suspected activities to the Principal; and
  - (iii) ensure that the Activities comply with all Approvals, Statutory Requirements and State Policies.
- (b) The Operator must not:
    - (i) by its acts or omissions, knowingly place the Principal in breach of any Statutory Requirement or other law; or
    - (ii) act in a manner that damages the Principal's brand, goodwill or reputation.
  - (c) The Principal must not knowingly place the Operator in breach of any Statutory Requirement or other law.

#### 4.2 Inconsistency of obligations

If there is any inconsistency between the various obligations of the Operator under this Deed, the order of precedence of those obligations is as follows:

| Ranking | Obligation   |
|---------|--|
| 1.      | obligation to comply with all applicable Approvals, Codes and Standards and Statutory Requirements |
| 2.      | any other obligation under this Deed (other than the obligation to comply with Principal Policy)   |
| 3.      | obligation to comply with Principal Policy   |

with the higher ranked obligations prevailing over the lower ranked obligations, to the extent of any inconsistency between them.

## 5. Variations

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### 5.1 Review Procedure

- (a) **(Review Proposal)** During the Term:
- (i) the Operator may, at any time (but no more frequently than once in every 12 month period); and
  - (ii) the Principal may, at its discretion,  
  
issue a notice to the other party setting out a proposal for a Variation (**Review Proposal**). The Operator acknowledges that the Principal may also issue similar notices to other Material Recovery Facility Operators at the same or similar time.
- (b) **(Discussion of Review Proposal)** As soon as practicable after a Review Proposal is issued, the parties must meet in good faith (whether in person or remotely and at a time and method directed by the Principal acting reasonably, having regard to the fact that the meeting may be attended by one or more other Material Recovery Facility Operators in accordance with clause 5.1(c)) and work together to consider the Review Proposal, and must each use their reasonable endeavours to agree any:
- (i) timeframe for implementation of any Variation; and
  - (ii) amendment to the terms of this Deed.
- (c) **(Other Material Recovery Facility Operators)** The Principal may invite one or more other Material Recovery Facility Operators to any meeting between the Principal and the Operator (including any meeting under clause 5.1(b)).
- (d) **(Direction by the Principal)** Following any meeting or meetings under clause 5.1(b):
- (i) the party that issued the Review Proposal may withdraw it; or
  - (ii) the Principal may issue a Variation Order that, in the Principal's reasonable opinion, takes into account the best interests of the Scheme.

### 5.2 Variation Order

- (a) Subject to the Principal first conducting a review in accordance with the Review Procedure, the Principal may direct the Operator to carry out a Variation by issuing a written document titled "Variation Order" setting out a proposed Variation to:
- (i) the Payments Schedule; and/or
  - (ii) any other applicable provision of this Deed,

(a **Variation Order**) which will take effect from the date specified in the Variation Order.

- (b) Both parties must:
  - (i) do all things and execute all documents required to give effect to any Variation Order; and
  - (ii) comply with any Variation Order issued in accordance with this Deed and any Variation will be binding on the parties as if it was included in this Deed.

### 5.3 Acknowledgement by Operator

The Operator acknowledges that:

- (a) in addition to this Deed, the Principal has entered into similar agreements to provide similar services in connection with the Scheme with other service providers;
- (b) all such agreements must be consistent to protect the Principal's legitimate interest in achieving the Scheme Objectives; and
- (c) the Principal is not required to agree to any Variation proposed by the Operator and may reject any such proposed variation in the Principal's absolute discretion.

## 6. Scheme Changes

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### 6.1 Amendments to Deed

- (a) If:
  - (i) there is any Change in Law, including where a direction has been issued by the Minister in accordance with section 47ZP(1) of the Act or where the Approved Methodology has been reviewed or reissued in accordance with the Regulations;
  - (ii) the Minister amends the Principal's appointment as the Coordinator under the Act; or
  - (iii) the Coordinator Agreement is amended,

(**Scheme Change**), the Principal may, at its discretion, by giving no less than 15 Business Days' notice in writing to the Operator (**Scheme Change Notice**) amend the Payments Schedule, the Reference Schedule or other terms of this Deed to address that Scheme Change.

- (b) The Operator may provide the Principal with a written submission in response to the Scheme Change Notice within 5 Business Days of receiving the Scheme Change Notice (**Operator Response**).
- (c) The Principal:
  - (i) must review and consider any Operator Response provided in accordance with clause 6.1(b); and
  - (ii) may (in its sole discretion) amend the Scheme Change Notice in response to any Operator Response provided in accordance with clause 6.1(b).
- (d) The Operator acknowledges and agrees that with effect from the date specified in the Scheme Change Notice the terms of this Deed are amended as set out in the Scheme Change Notice, as might be amended in accordance with clause 6.1(c)(ii).
- (e) Any amendment to this Deed under this clause 6.1 is not subject to the Principal first conducting a review in accordance with the Review Procedure with respect to that amendment.

## 6.2 Further acts and documents

The Operator must promptly do all further acts and execute and deliver all further documents (in form and content reasonably required by the Principal) required by law or reasonably requested by the Principal to give effect to the amendment referred to in clause 6.1.

## 6.3 No compensation

The Operator is not entitled to any compensation from the Principal or the State as a result of any amendment to this Deed under this clause 6.

# 7. Activities

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## 7.1 Verification protocol

- (a) The Operator agrees to implement any reasonable step, policy or procedure requested by the Principal to assist in verifying the number of Containers processed and sold for reuse or recycling by the Operator and preventing or minimising fraud within the Scheme including:
  - (i) if the Operator installs scanners which identify and count Containers and other ineligible material inserted into the Operator's glass crushing machines, the regular provision of data in relation to such scanners, including:



- (A) the exact count of the total number of glass Containers and items of ineligible material inserted into the machine and not successfully scanned, per location per machine, at the times and in the format as directed by the Principal;
  - (B) the exact count of the total number of glass Containers and items of ineligible material inserted into the machine and successfully scanned, per location per machine, at the times and in the format as directed by the Principal;
  - (C) the exact count of glass Containers per location per machine, at the times and in the format as directed by the Principal; and
  - (D) the exact count of glass Containers per location per machine, dispatched for recycling by the Operator and receipted by the purchaser in accordance with clause 7.2;
  - (E) access to the transactional data from such scanners at the times and in the format as directed by the Principal;
  - (F) a mechanism to prevent a Container from being retrieved from the glass crushing machine, prior to crushing, after it has been inserted; and
- (ii) policies and verifiable procedures to separately identify, store and process materials from the Operator's glass crushing machines from other similar material in the Operator's possession or control.
- (b) To the extent of any ambiguity, discrepancy or inconsistency between this Deed and the Approved Methodology, the parties agree that the Approved Methodology prevails.

## 7.2 Recycling of Containers

- (a) The Operator agrees that Processed Materials, in respect of which a Recovery Amount is claimed by the Operator in accordance with this Deed, must be:
  - (i) sold by the Operator through the Online Recycling Material Sales Platform in accordance with this clause 7 and clause 8; or
  - (ii) sold by the Operator directly to a private purchaser under the terms of a private contractual arrangement between the Operator and the purchaser (including spot contracts constituted by way of purchase orders, sales orders and invoices), in accordance with this clause 7 (**Private Sale**); or
  - (iii) recycled by the Operator.
- (b) The Operator must not dispose of, sell, or offer to sell, Processed Materials in respect of which a Recovery Amount is claimed or will be claimed, except in accordance with clause 7.2(a).

- (c) The Operator must not sell Processed Materials through a Private Sale unless:
  - (i) the purchaser is a Recycler; and
  - (ii) the Private Sale does not place the Principal in breach of any applicable Statutory Requirement.
- (d) The Operator agrees that, to the extent it breaches any requirement of this clause 7.2, the Principal may make an Audit Adjustment in accordance with clause 10.10.
- (e) If the Operator chooses to sell any Processed Materials through a Private Sale, it must, prior to the despatch of the Processed Materials to the purchaser:
  - (i) create a shipment manifest for each shipment associated with that sale (**Shipment Manifest**) before it is transported to the purchaser, using the IT Platform as directed by the Principal;
  - (ii) ensure that the relevant transport carrier and the purchaser receive a copy of the Shipment Manifest; and
  - (iii) submit the Private Sale information through the IT Platform in accordance with clause 7.2(h).
- (f) The Operator must prepare and retain documentary evidence of its compliance with its obligations under this clause 7.2 as reasonably required by the Principal from time to time, including (if applicable) evidence that the Operator has recycled the Processed Materials itself in accordance with clause 7.2(a)(iii).
- (g) The Operator acknowledges that the Principal may:
  - (i) audit (or procure the audit of) the documentary evidence referred to in clause 7.2(f) to determine whether the Operator has complied with its obligations under this clause 7.2; and
  - (ii) give notice in writing to the State (and must, at the same time, provide a copy to the Operator) if it reasonably believes that the Operator has failed to comply with this clause 7.2.
- (h) The Operator must ensure that the details, including weight, of all Processed Materials shipped to a Recycler or to a Private Sale purchaser under this clause 7.2, are logged and confirmed by the recipient of the Processed Materials on the IT Platform on the day of receipt of the relevant shipment being despatched, or as otherwise reasonably directed by the Principal.
- (i) The Principal may use the data submitted on the IT Platform in accordance with clause 7.2(h) to assess the Operator's compliance with this Deed, including to:
  - (i) confirm that materials have been despatched to and received by the purchaser;
  - (ii) track the weight of shipments; and

- (iii) verify that the shipments are issued to persons entitled to receive those shipments in accordance with this Deed, the Act and Regulations.

### 7.3 Claimed Scheme Material and Processing Services

- (a) The Operator must:
  - (i) at all times store any Claimed Scheme Material separately from any other Recyclable Waste;
  - (ii) keep separate at all times any Containers or Processed Materials which the Operator has obtained through the delivery of Activities in accordance with this Deed, from all other material collected by the Operator (including under a Processing Services Agreement or Refund Point Agreement);
  - (iii) not claim a Recovery Amount in respect of any:
    - (A) Container that was not collected as part of the Operator's Bottle Crushing Service Business; or
    - (B) Containers which have already been subject to the payment of a "Collection Fee" (as that term is defined under a Processing Services Agreement); or
    - (C) Claimed Scheme Material; and
  - (iv) if relevant, fully comply with any Processing Services Agreement and Refund Point Agreement to which it is a party.
- (b) The Operator must at all times have in place auditable and verifiable controls (including policies, codes of practice, CCTV or other optical surveillance devices, records, and IT systems) to demonstrate compliance with clause 7.3(a). The Operator must retain the footage from the CCTV or other optical surveillance devices for a minimum of 6 weeks.
- (c) Any failure by the Operator to comply with this clause 7.3 may result in an Audit Adjustment.

### 7.4 IT Platform

- (a) The Principal will provide the Operator with:
  - (i) access to the IT Platform software; and
  - (ii) installation instructions and training material in relation to the IT Platform, promptly following the Operator's compliance with clause 7.4(c).
- (b) The Principal will:

- (i) provide help desk support to the Operator during installation of the IT Platform software by the Operator and during the Term; and
  - (ii) provide a single session of online or in-person user training on the IT Platform and the Principal will notify the Operator of the date, time and location of such training.
- (c) The Operator's staff must attend the training session referred to in clause 7.4(b)(ii) and pass a qualification test in respect of the use of the IT Platform. Except for the training referred to in clause 7.4(b)(ii), the Operator must train the Operator's staff on the use of the IT Platform.

## 8. Online Recycling Material Sales Platform

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### 8.1 Terms and Conditions of Sale

- (a) The Terms and Conditions of Sale apply to the sale of all Saleable Quantities of Processed Materials sold by the Operator to the Principal.
- (b) The Operator acknowledges and agrees that:
  - (i) subject to clause 8.1(d), the Terms and Conditions of Sale may be amended by the Principal in its sole discretion from time to time upon 5 Business Days' notice to the Operator (provided that any such amendments only apply in respect of Orders issued by the Principal to the Operator after the expiry of the 5 Business Day notification period); and
  - (ii) any such amendment does not constitute a Variation under clause 5.
- (c) The Operator agrees to the Terms and Conditions of Sale by issuing a notification offering to sell a particular Saleable Quantity of Processed Materials to the Principal under clause 8.2(a).
- (d) The Principal must not amend the Terms and Conditions of Sale such that the net amount payable to the Operator in respect of the sale of Processed Material under the Processed Materials Sale Contract is reduced (unless otherwise agreed in writing by the Operator).

### 8.2 Orders

- (a) The Operator may offer to sell a particular Saleable Quantity of Processed Materials to the Principal at any time during the Term, by issuing a notification (accompanied by relevant supporting information in relation to the Processed Materials being offered for sale in the form reasonably required by the Principal from time to time) to the Principal through the Online Recycling Material Sales Platform. The Operator must ensure that a notification issued under this clause 8.2(a) fully and accurately describes the condition of the relevant Saleable Quantity of Processed Materials.

- (b) In response to any such notification, the Principal may at any time purchase the Saleable Quantity of Processed Materials being offered for sale by the Operator by issuing an Order to the Operator through the Online Recycling Material Sales Platform.
- (c) If the Principal issues an Order under clause 8.2(b), the parties are deemed to have entered into a separate binding contract of sale and purchase on and with effect from the date of the Order, consisting of:
  - (i) the Order issued by the Principal; and
  - (ii) the Terms and Conditions of Sale,  
  
(the **Processed Materials Sale Contract**).
- (d) To the extent of any inconsistency between the Terms and Conditions of Sale and this Deed, the Terms and Conditions of Sale (as amended from time to time) will prevail.

### 8.3 Resale to Successful Purchaser

- (a) The Operator acknowledges and agrees that the Principal will seek to resell all Saleable Quantities of Processed Materials purchased from the Operator pursuant to any Processed Materials Sale Contract entered into under clause 8.2 to Recyclers on the Online Recycling Material Sales Platform, subject to a Reserve Price determined by the Principal in its sole discretion. In determining the Reserve Price, the Principal will have regard to the suggested Reserve Price advised by the Operator under clause 8.3(c).
- (b) The Recycler that makes the highest acceptable bid (in accordance with the Recycler Panel Agreement) in excess of the Reserve Price at the end of the sale period published on the Online Recycling Material Sales Platform will become the Successful Purchaser for a particular Saleable Quantity of Processed Material (and the Principal will sell that Processed Material to the Successful Purchaser in accordance with the Recycler Panel Agreement).
- (c) The Operator may advise the Principal of a suggested Reserve Price to apply in respect of the Processed Materials by the 15th Business Day of each month, for the following month.

### 8.4 Dispute

The Operator acknowledges that any dispute in relation to the sale and purchase of Saleable Quantities of Processed Materials (including in relation to payment, inspection, delivery or collection by the Successful Purchaser) will be resolved in accordance with the Processed Materials Sale Contract.

## 8.5 Indemnity

- (a) The Operator indemnifies the Principal to the maximum extent permitted by law against and in respect of any Claim or Loss sustained by the Principal either directly or indirectly in connection with:
  - (i) the purchase or sale of the Processed Material by the Principal under and in accordance with this Deed, including where the notification issued by the Operator under clause 8.2(a) does not fully or accurately describe the condition of the relevant Saleable Quantity of Processed Material; and
  - (ii) any breach of this Deed by the Operator.
- (b) The indemnity in clause 8.5(a) will be reduced proportionally to the extent to which the Claim or Loss was caused or contributed to by an act or omission of the Principal.

## 9. Performance Records

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### 9.1 Maintenance of records

- (a) The Operator must prepare and maintain complete and accurate records in connection with or relevant to the Activities at the level of detail and relating to such matters as is needed to meet or exceed Good Industry Practice or as the Principal reasonably directs.
- (b) The Operator must permit the Principal, at any reasonable time, to review any of those records.

### 9.2 Maintenance of copies

The Operator must retain, and ensure its Subcontractors retain, in a secure and orderly manner:

- (a) all documentation relating to the performance of the Activities;
- (b) all documentation relating to the sale of Processed Materials via the Online Recycling Material Sales Platform;
- (c) all documentation relating to the sale of Processed Materials via Private Sale;
- (d) all invoices rendered to the Principal in relation to the Activities; and
- (e) such other documentation that the Principal reasonably requires the Operator to maintain in accordance with this clause from time to time,

for a period of no less than 7 years.

### 9.3 Operator's assistance

The Operator must promptly and fully co-operate (and must procure that each of its Subcontractors, related purchasers and Private Sale purchasers promptly and fully co-operate) with the Principal and any Regulatory Authority and do everything reasonably necessary to assist the Principal in exercising any right the Principal is entitled to under this Deed.

## 10. Payment

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### 10.1 Conditions precedent to initial Recovery Amount Claim

The Operator is not entitled to make its first Recovery Amount Claim unless and until:

- (a) it has provided the Principal with a statement (in a form reasonably required by the Principal):
  - (i) specifying the weight of materials produced following the processing of Recyclable Waste in the previous 12 month period in aggregate in respect of each of the Operator's Material Recovery Facilities; and
  - (ii) specifying the total weight of materials produced following the processing of Recyclable Waste:
    - (A) in its possession or control as of the date of the statement; and
    - (B) expected to be in its possession or control as at:
      - (1) if the Effective Date is on or before the Scheme Commencement Date, the Scheme Commencement Date; and
      - (2) if the Effective Date is after the Scheme Commencement Date, the Effective Date;
- (b) it has provided the Principal with any other information reasonably requested by the Principal to verify the statement provided under clause 10.1(a) (provided that any such request is made within 30 Business Days of the Operator providing the statement under clause 10.1(a));
- (c) it has provided the Principal with the opportunity to examine or review the Operator and each of its Material Recovery Facilities in order to verify the accuracy of the statement provided under clause 10.1(a) (provided that any such examination or review is conducted within 90 Business Days of the Operator providing the statement under clause 10.1(a));
- (d) it submits a statutory declaration in the form set out in Schedule 7 (amended to the extent required in order to comply with the requirements for a statutory declaration set out in section 12 of the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*) in respect of the accuracy of the statement

provided under clause 10.1(a) and any other information provided under clause 10.1(b), signed by an approved person, who is one of the following:

- (i) a director of the Operator or the ultimate parent entity of the Operator; and
  - (ii) the chief executive officer or equivalent of the Operator or the ultimate parent entity of the Operator; and
- (e) it advises the Principal of its chosen method for calculating Containers recovered, being either the Exact Count Method or such other method as is permitted under the Approved Methodology.

## 10.2 Payment by Principal

- (a) The parties acknowledge and agree that:
- (i) they must comply with the Approved Methodology and Payments Schedule; and
  - (ii) subject to any adjustments or deductions permitted under this Deed, the Act or the Approved Methodology, the amount, inclusive of GST, payable by the Principal per eligible Container is equal to the Refund Amount.
- (b) Subject to clauses 10.1 and 10.2(c), the Operator may make a claim for the payment of a Recovery Amount for a particular quantity of Containers (as determined in accordance with this clause 10 and the Approved Methodology) by lodging a claim with the Principal in the form and manner set out in this clause 10, the Approved Methodology and Payments Schedule (**Recovery Amount Claim**).
- (c) A Recovery Amount Claim must be lodged by the Operator within 10 Business Days of the end of each Quarter. Only one Recovery Amount Claim per Quarter can be made by the Operator for each Material Recovery Facility that they operate. The claim must include all relevant information for all Recyclable Waste that the Operator intends to make a Recovery Amount Claim on for that Quarter.
- (d) A valid Recovery Amount Claim must (unless the Principal agrees otherwise in writing) comply with the requirements of the Payments Schedule.
- (e) Notwithstanding any other provision of this Deed, the Operator will not be entitled to claim a Recovery Amount with respect to:
- (i) any Recyclable Waste except to the extent that Recyclable Waste comprises glass Containers; or
  - (ii) any Claimed Scheme Material; or
  - (iii) any Recyclable Waste it collected or received prior to:



- (A) if the Effective Date is on or before the Scheme Commencement Date, the Scheme Commencement Date; and
- (B) if the Effective Date is after the Scheme Commencement Date, the Effective Date.

### 10.3 Payment on account

- (a) Any payment of moneys by the Principal under this Deed does not constitute:
  - (i) approval that the relevant Recovery Amount Claim fully and accurately reflects the aggregate number and weight of Containers processed by the Operator for reuse or recycling in accordance with this Deed or the Approved Methodology;
  - (ii) an admission of liability; or
  - (iii) approval by the Principal of the Operator's performance or compliance with this Deed,

but is only to be taken as payment on account.

- (b) The Operator agrees that any payment of moneys by the Principal under this Deed does not prevent the Principal from requiring a further adjustment to the amount confirmed or paid (including in accordance with clause 10.6), to ensure that actual amounts finally paid to the Operator are the amounts required to be paid in accordance with this Deed and the Approved Methodology, taking into account any relevant actual information not available at the time that the calculation or payment of amounts was made.

### 10.4 Timeframe for payment

- (a) Subject to clause 10.4(d), the Principal must:
  - (i) within 15 Business Days of receiving a valid Recovery Amount Claim, issue the Operator with a claim assessment, which must include the following information:
    - (A) the Total Recovery Amount payable to the Operator for the Quarter;
    - (B) any amounts set-off or deducted by the Principal from the Total Recovery Amount; and
    - (C) the sum of the estimated number of Containers processed for reuse or recycling during the Quarter,

**(Claim Assessment)**; and
  - (ii) within 20 Business Days of issuing a Claim Assessment, pay the Operator:

- (A) the Total Recovery Amount payable by the Principal as determined in accordance with this Deed and the Approved Methodology; plus
  - (B) any adjustments or other amounts calculated in accordance with this Deed, which may be a positive or negative value.
- (b) The Principal must make payment to the Operator's nominated bank account, as set out in the Reference Schedule, or as notified by the Operator from time to time.
- (c) The Operator must not make a Recovery Amount Claim for a quantity of Containers if the Operator received, sorted or otherwise handled the Containers before:
  - (i) if the Effective Date is on or before the Scheme Commencement Date, the Scheme Commencement Date; and
  - (ii) if the Effective Date is after the Scheme Commencement Date, the Effective Date.
- (d) The Principal may refuse to issue a Claim Assessment in respect of a Recovery Amount Claim where it reasonably determines that the Recovery Amount Claim has not been made in accordance with this Deed and the Approved Methodology, in which case:
  - (i) the Principal must provide the Operator with written reasons for the refusal;
  - (ii) the Operator may amend the Recovery Amount Claim under clause 10.6; and
  - (iii) the Principal is not liable to make any payment to the Operator until it has received a Recovery Amount Claim that has been made in accordance with this Deed and the Approved Methodology.

#### 10.5 Right of Set-Off

- (a) The Principal may set-off or deduct from amounts otherwise payable to the Operator any amount:
  - (i) due or owing from the Operator to the Principal; or
  - (ii) otherwise claimed from the Operator by the Principal in connection with this Deed, including the amounts set out in clause 11.2,

and if that payment is insufficient, the Principal may have recourse to future payments, including in respect of future Recovery Amount Claims.
- (b) Failure by the Principal at any time to exercise its entitlement under clause 10.5(a) will not prejudice the Principal's right to exercise that entitlement later.

- (c) Nothing in this clause 10.5 affects the Principal's right to recover the whole of any balance that remains owing after any set-off from the Operator.

#### 10.6 Amending Recovery Amount Claim

- (a) The Operator may amend a Recovery Amount Claim submitted to the Principal by notifying the Principal in writing within 20 Business Days:
  - (i) from the date of the original Recovery Amount Claim; or
  - (ii) if clause 10.4(d) applies, from the date of receiving the Principal's reasons for refusal of the original Recovery Amount Claim pursuant to clause 10.4(d)(i),

and include any relevant supporting information in relation to the amendment requested by the Principal.

- (b) The Operator may not amend a Recovery Amount Claim if the original Recovery Amount Claim was not lodged with the Principal within 10 Business Days of the end of the relevant Quarter.
- (c) In deciding whether the amended Recovery Amount Claim has been made in accordance with this Deed and the Approved Methodology, the Principal:
  - (i) must have regard to any matters it is required to consider under this Deed (including the Payments Schedule) and the Approved Methodology; and
  - (ii) may have regard to any other matter that it considers relevant.
- (d) The Principal must, within 15 Business Days of receiving an amended Recovery Amount Claim:
  - (i) notify the Operator that the amended Recovery Amount Claim has not been made in accordance with this Deed and the Approved Methodology (in which case the Principal must provide clear and reasonably justifiable reasons for its decision); or
  - (ii) issue a Claim Assessment with respect to the amended Recovery Amount Claim.

#### 10.7 Principal amendments to Claim Assessment

- (a) The Principal may amend a Claim Assessment if an Audit includes
  - (i) a qualified reasonable conclusion;
  - (ii) an adverse conclusion; or
  - (iii) a conclusion that the Auditor is unable to form an opinion about a matter being audited.

- (b) If the Principal amends a Claim Assessment in accordance with clause 10.7(a), the Principal must notify the Operator accordingly and provide clear and justifiable reasons for the amendment.

#### 10.8 Review of Claim Assessments

- (a) The Operator may request the Principal to reconsider a Claim Assessment made under clause 10.4(a) or 10.7.
- (b) Such request must:
  - (i) be in writing;
  - (ii) provide a description of the matter to be reconsidered with reference to the relevant provisions of this Deed, the Approved Methodology and relevant supporting information; and
  - (iii) be received by the Principal no later than 20 Business Days after the relevant assessment was made.
- (c) The Principal must reconsider the assessment and confirm, vary or set aside the original assessment, and provide written notice of, and the reasons for, its decision to the Operator within 20 Business Days after the request is received by the Principal.

#### 10.9 Review Adjustments

- (a) Where a Claim Assessment is amended or reviewed in accordance with clause 10.7 or 10.8, and it is determined that there has been an underpayment to the Operator, the Principal must make payment to the Operator's nominated bank account, as set out in the Reference Schedule, within 10 Business Days of:
  - (i) amending the Claim Assessment under clause 10.7; or
  - (ii) providing the relevant review notice under clause 10.8(c),
 as applicable.
- (b) Where a Claim Assessment is amended or reviewed in accordance with clause 10.7 or 10.8, and it is determined that there has been an overpayment to the Operator:
  - (i) the Principal must advise the Operator in writing that there has been an overpayment and detail the extent of that overpayment; and
  - (ii) the Operator must pay the Principal the total amount that has been overpaid within 10 Business Days of being notified of the overpayment by the Principal, and such amount will (at that time) be considered to be a debt immediately due and payable.

## 10.10 Audit Adjustments

- (a) If an Audit identifies an actual non-compliance with this Deed or the Approved Methodology (occurring at any time) which results in a discrepancy, the Principal must provide notice in writing to the Operator of:
  - (i) the non-compliance (together with detailed particulars of the discrepancy); and
  - (ii) the details of any audit adjustment the Principal proposes to make under this clause 10.10 in respect of that non-compliance,
 

**(Audit Adjustment)** within 15 Business Days of the completion of the audit.
- (b) If the Operator does not agree with the outcome of the Audit, the proposed Audit Adjustment as notified under clause 10.10(a), or any Audit Adjustment made in accordance with clause 10.10(c), the Operator may give written notice to that effect to the Principal and issue a Notice of Dispute in accordance with clause 21.
- (c) The Principal may make an Audit Adjustment to the extent necessary to correct the relevant discrepancy. Where the Audit Adjustment is required to correct an overpayment to the Operator, the amount equal to the overpayment will be a debt immediately due and payable by the Operator to the Principal.
- (d) For the avoidance of doubt, the issuing of a Dispute Notice under clause 10.10(b) will not prevent the Principal from making an Audit Adjustment under clause 10.10(c), but any Audit Adjustment made will be subject to the outcome of the relevant Dispute.

## 10.11 Value of Processed Material

- (a) Where the parties have entered into a Processed Materials Sale Contract in accordance with clause 8.2, the Principal must pay the Operator (or the Operator must pay the Principal, as applicable) in respect of the value of Processed Material transacted and settled in accordance with the terms of the relevant Processed Materials Sale Contract.
- (b) The value of Processed Materials transacted and settled under this Deed is exclusive of GST.

## 10.12 Records

- (a) All records of evidence and documents supporting each Recovery Amount Claim must be kept in a form that may be easily inspected by the Principal. This may be an electronic or hard copy format.
- (b) The Operator must keep records of the activities that:
  - (i) allow it to report accurately under this Deed and the Approved Methodology; and

- (ii) enable the Principal to ascertain whether the Operator has complied with its obligations under this Deed and the Approved Methodology.
- (c) The Operator must retain all records referred to under this clause 10.12 for 7 years from the end of the Reporting Period to which the records relate.

### 10.13 Indemnity

- (a) The Operator indemnifies the Principal against any claim, loss, damage, liability, cost and expense that may be incurred or sustained by the Principal arising out of any act or omission of the Operator in breach of this clause 10, including any breach that caused the Principal to make payments to the Operator otherwise than in accordance with the Approved Methodology.
- (b) The Principal may set off or deduct from amounts otherwise payable to the Operator any amount claimed under the indemnity in clause 10.13(a), under clause 10.5.

## 11. Audit and inspection

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### 11.1 Audit, access and reporting

The Operator must and must ensure that its Associates at all times:

- (a) comply with the Approved Methodology;
- (b) have auditable systems in place to record all information required to be reported to the Principal, for each Material Recovery Facility in accordance with this Deed and the Approved Methodology;
- (c) provide such information as the Principal reasonably requires, at such times as the Principal reasonably requires, in order for the Principal to comply with its reporting obligations under Statutory Requirements;
- (d) cooperate with, and provide (or seek to provide) access to, the Principal (or an Associate of the Principal as notified to the Operator by the Principal from time to time, including Auditors) and the State so as to allow the Principal, its Associate and the State to undertake any Audit or review of the performance of the Activities under this Deed;
- (e) provide the Principal with reports and statutory declarations, as specified in this Deed and the Approved Methodology, including reports on the items required to be recorded under clause 11.1(b);
- (f) provide the Principal and the Principal's Associates (including any Auditor) with all information, documents and access to premises reasonably requested by the Principal or the Principal's Associates with respect to the Activities and the Operator's obligations under this Deed, including permitting the inspection and copying of the records referred to in clause 10.12;

- (g) cooperate with and provide any reasonable assistance to any Auditor; and
- (h) otherwise take all reasonable measures to facilitate the Principal's compliance with its auditing and reporting obligations under all Statutory Requirements.
- (i) The Operator acknowledges that:
  - (i) the Principal owes no duty to the Operator to audit or review the Activities for errors, omissions or compliance with the requirements of this Deed if it or one of its Associates does so inspect the Activities; and
  - (ii) no audit or review of the Activities by the Principal, an Associate of the Principal or the State will in any way lessen or otherwise affect:
    - (A) the Operator's obligations whether under this Deed or otherwise at law; or
    - (B) the Principal's rights against the Operator whether under this Deed or otherwise at law.

## 11.2 Audit costs

- (a) The costs of Audits will be borne by the parties in accordance with regulation 4ZL(2) of the Scheme Regulations
- (b) The Operator is liable for, and the Principal may set-off or deduct from amounts otherwise payable to the Operator, those costs incurred by the Principal that are payable by the Operator in accordance with the Approved Methodology and are not otherwise taken into account in the calculation of the Recovery Amount.

## 11.3 Government information

The Operator acknowledges and agrees that:

- (a) if requested by the State, the Principal may provide a copy of this Deed, and any information relating to this Deed, to the State;
- (b) the Principal has obligations under the Statutory Requirements arising from its role as the Coordinator under the Act;
- (c) payments made to the Operator under, and any information produced by or given to the Operator in connection with, this Deed may be disclosed by the Principal to members of the public, the State, another Regulatory Authority or an Associate of the Principal in accordance with applicable Statutory Requirements;
- (d) where the Principal has disclosed information in accordance with this clause 11.3 the Operator irrevocably releases and discharges the Principal and the State from any Claim arising from such disclosure; and

- (e) pursuant to section 47ZZC of the Act, an authorised person, as defined in that section, may require the Operator to provide information or produce material in accordance with that section.

#### 11.4 Auditor General access to Records

- (a) The Operator must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Operator's Records concerning this Deed.
- (b) The Operator acknowledges and agrees that the Auditor General, or an authorised representative of the Auditor General, may require access to and examine the Principal's Records concerning this Deed.
- (c) In this clause 11.4 and clause 20.2(a):
  - (i) **Auditor General** means the person holding the office of Auditor General for Western Australia continued by section 6 of the *Auditor General Act 2006*; and
  - (ii) **Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with this Deed, whether or not containing confidential information, and however such records and information are held, stored or recorded.

#### 11.5 Contravention of the Act

The Operator must give written notice to the Principal, together with relevant particulars, within 24 hours after becoming aware of any contravention of the Act or the Regulations by a Scheme Participant or any other person.

## 12. Reporting

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### 12.1 Annual Recycling Statement

- (a) The Operator must prepare and submit an Annual Recycling Statement for each Material Recovery Facility to the Principal within 40 Business Days of the end of each year ended 30 June (the **Reporting Period**).
- (b) The Annual Recycling Statement must be in the form determined by the Principal and made available on the IT Platform at the end of the Reporting Period, and must contain the following information:
  - (i) the Annual Throughput Reconciliation, prepared in accordance with clause 12.2;



- (ii) such other information required under this Deed and the Approved Methodology; and
- (iii) any other information reasonably required by the Principal.

## 12.2 Annual throughput reconciliation

The Operator must prepare an Annual Throughput Reconciliation of all Recyclable Waste received, processed, despatched and on hand for each Material Recovery Facility, by the date, and in the format required by, the Principal.

## 12.3 Statutory Requirements

Without limiting the operation of clause 4.2, the rights and obligations of each party under the Statutory Requirements prevail over those in this clause 12 to the extent of any inconsistency.

## 13. Fraud

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- (a) The Operator must not:
  - (i) in connection with a claim for payment under this Deed; or
  - (ii) otherwise in connection with this Deed,

provide any information that it knows is false or misleading in a material particular.
- (b) The Operator must:
  - (i) not (and must ensure that its Associates do not) claim a Recovery Amount in respect of any Containers which have already been subject to the payment of a Refund Amount or a Recovery Amount;
  - (ii) take all reasonable steps as directed by the Principal to minimise and prevent fraud in connection with the Scheme;
  - (iii) independently take all reasonable steps to minimise and prevent fraud in connection with the Scheme; and
  - (iv) on the Principal's written request, provide the Principal with all requested information relating to the Operator's processes and practices in providing the Activities, to the extent reasonably required by the Principal to determine the Operator's compliance with clause 13(b)(i); and
  - (v) on the Principal's written request provide a statutory declaration signed by:

- (A) a director of the Operator or the ultimate parent entity of the Operator;
- (B) the chief executive officer or equivalent of the Operator or the ultimate parent entity of the Operator;
- (C) the chief financial officer or equivalent of the Operator or the ultimate parent entity of the Operator; or
- (D) the company secretary of the Operator or the ultimate parent entity of the Operator; or
- (E) any other person approved by the Principal in writing from time to time for the purposes of swearing a statutory declaration for the purposes of this clause 13(b)(v),

confirming the Operator's compliance with the requirements of this clause 13 and that the Operator is not engaged in, or aware of in respect of the Scheme, any fraud.

- (c) The Operator acknowledges and agrees that the rights, powers and remedies of the Principal in relation to any breach of this clause 13 are in addition to any penalties that may apply under the Act or Regulations in relation to the breach.

## 14. Data, security and recovery

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The Operator must at all times comply with State Policies, and the Principal Policy, for the security and integrity of all information technology systems and Scheme Data.

## 15. Modern Slavery

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### 15.1 Definitions

In this clause 15:

**Commonwealth Act** means *Modern Slavery Act 2018* (Cth); and

**Modern Slavery** means:

- (a) any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited or defined as a modern slavery offence under all applicable anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to the *Criminal Code Act 1995* (Cth) (specifically Schedule 1 Divisions 270 and 271), the *Modern Slavery Act 2018* (NSW) (specifically section 5(1) and Schedule 2) and the Commonwealth Act; and

- (b) any conditions or practices similar to those prohibited under the legislation referred to in paragraph (a) of this definition.

## 15.2 Operator warranties

The Operator represents, warrants and undertakes:

- (a) that no form of Modern Slavery is used in the Operator's business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
- (b) to comply with all applicable employment and work health and safety laws;
- (c) to comply with all applicable statutory requirements relating to Modern Slavery, including but not limited to any imposed by the Commonwealth Act;
- (d) to comply with all applicable Modern Slavery reporting requirements, including but not limited to any imposed by the Commonwealth Act;
- (e) to include, in each of its contracts with its subcontractors and/or suppliers, anti-slavery provisions that are at least as onerous as those set out in this clause 15; and
- (f) to notify to the Principal promptly upon becoming aware of any incident, complaint or allegation that the Operator, or any entity in its supply chain, has engaged in Modern Slavery.

## 15.3 Operator policies and procedures

Throughout the Term, the Operator must have and implement its own policies and procedures that are designed to ensure compliance with the warranties contained in clause 15.2.

## 15.4 Prohibition

The Operator must not engage in Modern Slavery.

## 15.5 Reporting Obligations

- (a) At the request of the Principal, the Operator must:
  - (i) confirm in writing that it has complied with its undertakings under this clause 15 and must provide such evidence of such compliance as is reasonably requested by the Principal; and
  - (ii) provide such information as the Principal reasonably requires in order for the Principal to comply with any statutory reporting obligations relating to matters the subject of the warranties contained in clause 15.2.

- (b) Upon becoming aware of any actual, reasonably suspected or anticipated breach of this clause 15, the Operator must immediately provide written notice of the breach, giving full details of such breach, to the Principal.

## 16. Intellectual Property

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### 16.1 Licence to IT Platform

- (a) The Principal grants to the Operator a non-transferable, non-exclusive, royalty-free licence for the Term to use the IT Platform for the sole purpose of performing its obligations under this Deed.
- (b) The Operator must not sub-license any of the rights granted under clause 16.1(a) without the Principal's prior written consent.
- (c) To the extent permitted by law (including the Australian Consumer Law if applicable), the Principal makes no representations, warranties or guarantees about the IT Platform (including about any information that is input into the IT Platform), including that it will be accurate, current, reliable, timely, available, secure, complete, up-to-date or of a certain quality, or that it will operate in combination with any other hardware, software, system, or data, or that it is free from defects, bugs, viruses, errors or other harmful components, or that any stored data will not be lost or corrupted. The IT Platform and all other products and services made available to the Operator in connection with this Deed are provided "as is" and to the extent permitted by law (including the Australian Consumer Law if applicable), the Principal disclaims any and all warranties and representations of any kind, including any warranty or non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express, implied or statutory.
- (d) To the extent not excluded under clause 16.1(c) the Principal's liability in respect of the IT Platform under this Deed is capped at \$1,000.
- (e) The Operator acknowledges that through its use of the IT Platform it may have access to Scheme Data. The Operator acknowledges that Scheme Data is the sole and valuable property of the Principal and that any unauthorised disclosure, use or loss of it could give rise to damage to the Principal. The Operator assigns to the Principal all Intellectual Property that the Operator would otherwise have in Scheme Data. The Operator must not assert any lien or other right against or to Scheme Data or otherwise deal with Scheme Data.

### 16.2 Modifications

- (a) The Operator must not (and must ensure that its personnel do not) directly or indirectly allow or cause a third party to:
  - (i) modify, the whole or any part of the IT Platform or combine or incorporate the whole or any part of the IT Platform in any other program or system without the prior consent in writing of the Principal;

- (ii) circumvent, disable or otherwise interfere with security-related features of the IT Platform; or
  - (iii) do anything which will or may damage, disrupt access to or interfere with the proper operation of the IT Platform, including uploading or permitting any virus or malicious code to adversely affect the IT Platform or any associated equipment or data.
- (b) The Operator must not, and must not directly or indirectly allow or cause a third party to, copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the IT Platform or any part of it.

### 16.3 Other Intellectual Property

Subject to clause 16.1:

- (a) ownership of Intellectual Property continues to vest in the party that created that Intellectual Property; and
- (b) each party grants to the other a non-exclusive, royalty free, non-transferable licence to use all Intellectual Property owned by or licensed to that party, solely for the purposes of performing this Deed.

Other than as provided for in clauses 16.1 and this clause 16.2, the Operator must not, at any time, use in the course of trade or business any Intellectual Property owned by or licensed to the Principal or its Related Body Corporate (as that term is defined in the Corporations Act) without the prior written consent of the Principal.

## 17. Insurance

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- (a) Unless otherwise agreed by the Principal in writing, the Operator must:
  - (i) effect and maintain with a financially secure and reputable insurer, for the duration of the Term, sufficient levels of the customary types of insurances relevant to a business of such nature, including:
    - (A) public and products liability insurance for an amount not less than \$20 million per occurrence or series of occurrences; and
    - (B) for the amount required by law:
      - (1) workers compensation insurance to insure against liability for death of or injury to persons employed by the Operator, including liability by statute and at common law; and
      - (2) comprehensive motor vehicle insurance including compulsory third party insurance in respect of all motor

vehicles used by the Operator in connection with the performance of the Activities; and

- (ii) upon request by the Principal, provide the Principal with certificates of currency from its insurers certifying that it has insurance sufficient to comply with clause 17(a)(i).
- (b) Despite any other provision of this Deed, the Principal may refuse to make any payment otherwise due under this Deed (except for the Collection Fee) until the Operator has fully complied with its obligations under clause 17(a).

## 18. Default and Termination

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### 18.1 Default

- (a) A material breach by the Operator (a **Default**) may include any of the following:
  - (i) any Material Recovery Facility or any part of the Activities fails to comply with any requirement of this Deed, including the Approved Methodology;
  - (ii) the Operator fails to comply with any of its obligations or performance of the Activities in accordance with this Deed, or any applicable Statutory Requirement or Approval;
  - (iii) any representation or warranty given by the Operator is untrue or misleading (whether by omission or otherwise) when made, given or repeated; or
  - (iv) it performs its obligations under this Deed, or otherwise acts, in a manner that:
    - (A) is unsafe;
    - (B) adversely affects the brand, goodwill or reputation of the Principal; or
    - (C) places the Principal in breach of any Statutory Requirement.
- (b) If the Operator commits a Default which is capable of remedy, the Principal must provide written notice to the Operator setting out in detail the nature of the alleged Default (**Default Notice**).

### 18.2 Default Cure Plan

- (a) If the relevant Default is capable of remedy and is not remedied to the Principal's satisfaction within 5 Business Days of a Default Notice being issued, the Principal may direct the Operator to prepare and implement a default remedy plan (**Default Cure Plan**), and the Operator must:

- (i) prepare the Default Cure Plan; and
- (ii) submit it for the Principal's approval,

in accordance with the timeframes and other requirements specified in the Principal's direction.

- (b) The Principal must either approve or reject the Default Cure Plan within 15 Business Days of its submission under clause 18.2(a). Where the Principal fails to approve or reject the Default Cure Plan within this timeframe, the Default Cure Plan will be deemed to have been accepted.
- (c) Where the Principal rejects the Default Cure Plan, the Operator must amend and re-submit the Default Cure Plan in accordance with the procedure in clause 18.2(a). If the Principal, acting reasonably, rejects a re-submitted Default Cure Plan, the Principal may terminate this Deed under clause 18.6(e)(ii).
- (d) The Default Cure Plan must:
  - (i) include a period of time within which the Operator proposes to remedy the Default; and
  - (ii) include steps to remedy the Default.
- (e) The Operator must comply with any Default Cure Plan approved by the Principal in accordance with this clause 18.2.

### 18.3 Exclusion of common law rights

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

### 18.4 Immediate termination

This Deed will terminate immediately:

- (a) on the effective date of a repeal of the Scheme; or
- (b) subject to clause 23.3, if the Principal's appointment as the Coordinator for the Scheme under the Act is terminated or rescinded or comes to an end for any reason.

### 18.5 Termination by Operator

- (a) The Operator may terminate this Deed upon 20 Business Days' written notice to the Principal.
- (b) Upon providing a notice under clause 18.5(a), the Operator irrevocably waives its right to receive any further payments under or in connection with this Deed, excluding any amount payable to the Operator under this Deed in respect of

which the Operator has submitted a claim in accordance with this Deed prior to the date of termination and which is not paid before the date of termination.

## 18.6 Termination by Principal

If:

- (a) the State has advised the Principal that, in its reasonable opinion, the Operator is not (or is no longer) a fit and proper person for the purposes of providing the Activities under this Deed;
- (b) the Principal:
  - (i) is of the reasonable opinion that the Operator is not (or is no longer) a fit and proper person for the purposes of providing the Activities under this Deed; and
  - (ii) has given the Operator not less than 20 Business Days' notice of its intention to terminate this Deed under this clause 18.6(b), which notice must set out the basis upon which the Principal has formed the opinion referred to in clause 18.6(b)(i) and invite the Operator to make a submission as to why this Deed should not be terminated.

In determining whether the Operator is not (or is no longer) a fit and proper person, the Principal will have regard to any public or private reports of misconduct, fraud, alleged criminal conduct or poor governance of or by the Operator or its Associates (whether or not in relation to the Scheme) and any conduct of the Operator or its Associates which may bring the Principal or the Scheme into disrepute or impact on, or be inconsistent with, the achievement of the Scheme Objectives;

- (c) in exercise of rights under the Act, the Regulations or the conditions of appointment of the Principal as Coordinator under the Act, the State directs that this Deed be terminated;
- (d) the Operator no longer operates a Bottle Crushing Service Business in Western Australia;
- (e) the Operator commits a Default (in respect of which the Principal has provided a Default Notice and directed the Operator to prepare and implement a Default Cure Plan) and:
  - (i) the Operator was required to re-submit the Default Cure Plan under clause 18.2(c) but failed to do so within 5 Business Days;
  - (ii) the Principal has, acting reasonably, rejected the Default Cure Plan more than once under clause 18.2(c);
  - (iii) the Operator has not taken any steps to implement the Default Cure Plan approved by the Principal within five Business Days of the Principal approving the Default Cure Plan under clause 18.2(b);



- (iv) the Operator has not remedied the Default at the end of the cure period set out in the Default Cure Plan approved by the Principal; or
- (v) the Principal forms the reasonable opinion that the Operator is unlikely to remedy the Default by the end of the cure period set out in the Default Cure Plan approved by the Principal (provided that such opinion may not be formed earlier than 10 Business Days after the Default Cure Plan is approved by the Principal under clause 18.2(b);
- (f) the Operator commits a Default that is not capable of being remedied (and the Operator is unable to overcome or otherwise mitigate the effect of the Default to the Principal's reasonable satisfaction);
- (g) the Operator commits a criminal or fraudulent act or engages in Wilful Misconduct;
- (h) there is a change to a Statutory Requirement or an Approval that makes or will make either party's performance of this Deed non-compliant or contrary to law or policy; or
- (i) the Operator is the subject of an investigation or decision by a Regulatory Authority that is or may be adverse to the Operator's capacity to perform the Activities or harmful to the reputation of the Principal,

the Principal may, in its absolute discretion, terminate this Deed (or any part of it) immediately by notice to the Operator.

#### 18.7 Termination by either party

Subject to any provision of the Corporations Act or any related subordinate legislation that may prevent or restrict the exercise of a right of termination or other right under this Deed, either party may terminate this Deed immediately by notice to the other party if an Insolvency Event occurs in respect of the other party.

#### 18.8 Principal's entitlements after termination

Without limiting any rights it may have under any other term of this Deed that have accrued prior to the termination, the Principal shall be entitled to recover from the Operator:

- (a) all amounts which became payable by the Operator to the Principal under or in connection with this Deed up to the date of termination; and
- (b) all amounts which would have been recoverable under this Deed if this Deed had not been terminated.

#### 18.9 Operator's entitlements after termination

Without limiting any rights it may have under any other term of this Deed that have accrued prior to the termination, the Operator is not entitled to any compensation from the Principal as a result of the termination of this Deed.

#### 18.10 Rights not affected

Termination of this Deed does not affect any accrued rights or remedies of either party.

#### 18.11 Section 47R of Act

The parties acknowledge that, upon the termination or earlier expiry of this Deed, the Operator will no longer be considered to have entered into a Material Recovery Agreement with the Principal for the purposes of section 47R of the Act.

## 19. Liability

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### 19.1 General

- (a) Subject to clause 19.1(b), to the maximum extent permitted by law, the Operator's aggregate liability in respect of any claim under this Agreement is limited to 100% of the aggregate Recovery Amounts paid to the Operator under this Agreement in respect of the period of 12 months prior to the claim arising.
- (b) Clause 19.1(a) does not limit or affect the Operator's liability to the Principal:
  - (i) with respect to the Operator's obligations under 16, 19.3 or 20;
  - (ii) which cannot be limited at law;
  - (iii) which is due to the Operator's criminal act, fraud or Wilful Misconduct;
  - (iv) for any claim by any third party in respect of loss or damage to property or injury to, illness or death of, persons;
  - (v) to the extent that the Operator is paid or indemnified for the liability under an insurance policy required by this Agreement; and
  - (vi) to the extent that the Operator would have been entitled to be indemnified for that liability by an insurer under an insurance policy:
    - (A) required by this Agreement but for a failure by the Operator to effect and maintain the insurance policy as required by this Agreement; or
    - (B) that would have been required by this Agreement but for the Principal agreeing otherwise,

and such liability will not be included in any calculation of the Operator's total aggregate liability under clause 19.1(a).

## 19.2 Consequential loss

- (a) Subject to clauses 19.2(b) and 19.2(c), and to the maximum extent permitted by law, each party excludes all liability to the other party for loss of goodwill, loss of customers, loss of capital, downtime costs, indirect loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any third party claims for compensation, damage, cost or expense, incurred by or awarded against the other party under or in any way connected with this Deed or in respect of the provision of any of the Activities described in this Deed.
- (b) The exclusion in clause 19.2(a) does not in any way limit the Operator's liability under clause 19.3.
- (c) Nothing in clause 19.2(a) excludes or limits a party's liability:
  - (i) for a criminal or fraudulent act or Wilful Misconduct; or
  - (ii) in respect of liquidated damages payable under this Deed (if any) or under any provision in this Deed where a debt or other payment is due.

## 19.3 Indemnity by Operator

- (a) Subject to clause 19.3(a), the Operator indemnifies the Principal against any Claim or Loss sustained by the Principal arising out of any act or omission of the Operator in breach of this Deed, that causes the Principal to be in breach of, or gives rise to any Loss sustained by the Principal in connection with any Statutory Requirement, including with respect to any of its obligations as the Coordinator.
- (b) The indemnity in clause 19.3(a) will be reduced proportionally to the extent to which the Claim or Loss was caused or contributed to by an act or omission of the Principal.

## 20. Confidentiality

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### 20.1 Confidentiality and Confidential Material

Each party acknowledges and agrees that, subject to clause 20.2:

- (a) the Confidential Material of the other party is and will remain confidential to the other party;
- (b) it has not disclosed and will not at any time, without the other party's prior written consent, disclose the contents of this Deed or the other party's Confidential Material to any third party; 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 this Deed or

the other party's Confidential Material, other than for the purposes of this Deed, including to carry out its obligations pursuant to this Deed.

## 20.2 Exceptions to confidentiality

- (a) It will not be a breach of clause 20.1:
  - (i) If the Principal, in response to a request from the State, discloses a copy of this Deed or any relevant information relating to this Deed to the State or representatives of the State acting in relation to such request, as contemplated by clause 11.3(a);
  - (ii) if a party (**Disclosing Party**) discloses the other party's Confidential Information or this Deed:
    - (A) to an Associate of the Disclosing Party who has previously agreed to keep, and to ensure that its employees keep, that Confidential Information or the contents of this Deed (as applicable) confidential;
    - (B) in order to comply with its obligations under the Act, the Regulations, or any other applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body or the applicable rules of any stock exchange; or
    - (C) to the Auditor General, or an authorised representative of the Auditor General, as part of the Records of the Disclosing Party, as contemplated by clause 11.4.
- (b) Clause 20.1 does not apply:
  - (i) to a party's Confidential Material or a provision of this Deed that is in the public domain through no act, neglect or default of the other party (**Other Party**) or its Associates (the onus of proving which will be on the Other Party);
  - (ii) to Confidential Material of the other party or a provision of this Deed that the other party has notified the Other Party in writing that the other party no longer requires the Other Party to maintain as confidential.
- (c) Nothing in this clause 20.2 will excuse any prior breach of clause 20.1 and the other party's rights and remedies in respect of any prior breach are expressly preserved.
- (d) The Operator acknowledges that the State may have certain rights and obligations under freedom of information legislation (including the *Freedom of Information Act 1992 (WA)*) and that these rights and obligations may impact on the parties' rights and obligations under this Deed.

## 20.3 Publicity and branding

Without limiting any other obligation contained in this clause 20, the Operator must:

- (a) at all times comply with any protocols or procedures notified by the Principal relating to confidentiality, branding (including the use of Trade Marks), public releases or announcements, advertising and/or any comment to the media in connection with or relating to the Scheme or the Principal, including the Media Policy; and
- (b) as soon as practicable after it becomes aware of any non-compliance with the obligations contained in this clause 20 (either by it or another person), notify the Principal of the non-compliance, and take such reasonable action as is directed by the Principal in respect of any such non-compliance.

## 21. Disputes

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### 21.1 Notice of Dispute

- (a) Except where the Agreement has been terminated, or the dispute or difference concerns whether the Agreement has been validly terminated, if a dispute or difference arises between the Principal and the Operator in respect of any fact, matter or thing arising out of, or in any way in connection with this Deed (**Dispute**), the parties must follow the procedure in this clause 21.
- (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 Principal may, by giving written notice to the Operator, require the Dispute to be resolved in accordance with the Common Dispute Procedure (**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 Procedure; and
  - (ii) the dispute resolution process under this clause 21 will be permanently stayed.

- (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 21 will continue to apply in respect of the Dispute.

## 21.2 Executive Negotiation

- (a) The Executive Negotiators must within:
  - (i) 10 Business 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) The meeting will be held in any one of the following forums, as reasonably determined by the Principal:
  - (i) by phone (including by teleconference);
  - (ii) by videoconference; or
  - (iii) in person (at a place reasonably nominated by the Principal).
- (d) The joint decision (if any) of the Executive Negotiators will be reduced to writing and will be contractually binding on the parties.

## 21.3 Proceedings

If a Dispute remains unresolved (in whole or in part) within 20 Business Days after service of the Notice of Dispute, or such longer period of time as the Executive Negotiators may agree in writing, then either party may by giving notice to the other party proceed to legal proceedings in respect of those parts of the Dispute which remain unresolved.

## 21.4 Continuation of obligations

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

## 21.5 Urgent interlocutory relief

Nothing in this clause 21 prevents a party from seeking urgent injunctive or interlocutory relief.

## 22. Notices

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### 22.1 Requirements

All notices, requests, demands, consents, approvals, or other communications under this Deed (**Notice**) to, by or from a party must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) addressed to a party in accordance with its details set out in Item 3 of the Reference Schedule or as otherwise specified by that party by Notice (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

### 22.2 How a Notice must be given

In addition to any other method of giving Notices permitted by statute, a Notice must be:

- (a) delivered personally;
- (b) sent by regular post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;
- (d) sent by airmail if sent from a place outside Australia; or
- (e) sent by email.

### 22.3 When Notices considered given and received

Subject to clause 22.4, a Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;
- (b) if sent from a place within Australia by regular post to the address set out in the Notified Contact Details which is an address that is within Australia, at 9.00 am on the sixth Business Day after the date of posting;
- (c) if sent from a place within Australia by airmail to the address set out in the Notified Contact Details which is an address outside Australia, at 9.00 am on the tenth Business Day after the date of posting;

- (d) if sent from a place outside Australia by airmail to the address set out in the Notified Contact Details which is an address that is within or outside Australia, at 9.00 am on the twelfth Business Day after the date of posting;
- (e) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

#### 22.4 Time of delivery and receipt

If pursuant to clause 22.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

#### 22.5 General

A party may change its contact details as set out in the Reference Schedule by giving a Notice to each other party.

### 23. General

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#### 23.1 Assignment

- (a) The Principal may assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed without the consent of the Operator.
- (b) The Operator cannot assign, novate, charge, create a security interest over, subcontract, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of the Principal (which must not be unreasonably withheld).
- (c) Where the Principal provides its prior written consent to a proposal by the Operator to subcontract any of its rights or obligations under this Deed in accordance with clause 23.1(b), the Operator must, within 10 Business Days of receiving that consent notify the Principal of:
  - (i) the name of the person to whom the operation is subcontracted;
  - (ii) when the subcontracting arrangement starts and ends; and
  - (iii) a summary of the terms of the subcontracting arrangement, excluding any pricing information.
- (d) The Operator's liability and obligations under this Deed are not lessened or otherwise affected by subcontracting the performance of any of the Operator's obligations under this Deed and the Operator is liable to the Principal for the



acts and omissions of any subcontractor as if they were acts and omissions of the Operator.

## 23.2 Change of Control

- (a) For the purposes of this clause 23.2, a Change of Control occurs if the Operator comes under the control of a third party (**New Controller**) who did not Control the Operator at the commencement of this Deed and **Control** has the meaning given to it in section 50AA of the Corporations Act.
- (b) The Operator must not allow a Change of Control which adversely affects the Operator's ability to deliver the Activities to occur without obtaining the Principal's prior written consent (which must not be unreasonably withheld).
- (c) Without limiting clause 23.2(c), the Principal must not withhold its consent to a Change of Control if (in the Principal's reasonable opinion):
  - (i) the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the Operator to fulfil its obligations under the Deed; and
  - (ii) the New Controller:
    - (A) is a fit and proper person;
    - (B) has a sufficient level of relevant industry experience; and
    - (C) is of good financial standing.

## 23.3 Novation to new entity

Where:

- (a) the Principal's appointment as the Coordinator under the Act ends for any reason;
- (b) another entity is or is to be appointed as the Coordinator under the Act (**Successor Scheme Coordinator**);
- (c) the Regulations do not provide that this Deed is automatically assigned to, and assumed by, that incoming Coordinator upon the Principal's appointment as the Coordinator for the Scheme under the Act coming to an end; and
- (d) the State requires that this deed be novated to the Successor Scheme Coordinator or the State (**Incoming Party**),

the parties must enter into a novation agreement with the Incoming Party such that, with effect on the date of novation, this Deed is terminated and the Incoming Party and the Operator become parties to a new contract on the same terms as this Deed for the balance of the Term.

#### 23.4 **Duty**

The Operator:

- (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 Principal against any Loss suffered or incurred by it arising out of, or in connection with that Operator's failure to comply with clause 23.4(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the Operator under this clause.

#### 23.5 **Inconsistent provisions**

- (a) The parties acknowledge the effect of section 47ZZA of the Act on the validity of the provisions of this Deed.
- (b) To the extent a provision of this Deed is found to be prohibited or unenforceable (whether due to the operation of section 47ZZA of the Act or otherwise), the parties agree:
  - (i) that the remaining provisions of this Deed are not invalidated; and
  - (ii) to engage in good faith negotiations to address and overcome the consequences of the provision being found to be prohibited or unenforceable (including by making any necessary amendments to this Deed).

#### 23.6 **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.

#### 23.7 **Costs and expenses**

Unless otherwise expressly provided in this Deed, each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this Deed.

#### 23.8 **Variation**

Other than as expressly set out elsewhere in this Deed, this Deed may be amended only by another deed executed by all the parties.

### 23.9 Waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (c) A waiver given by a party in accordance with clause 23.9(a):
  - (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
  - (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under this Deed nor is it to be construed as a waiver of any other obligation or breach.

### 23.10 Governing law and jurisdiction

- (a) This Deed is governed by and is to be construed under the laws in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 23.11 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this Deed and the transactions contemplated by it.

### 23.12 No reliance

No party has relied on any statement by any other party which has not been expressly included in this Deed.

### 23.13 Entire agreement

This Deed states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### 23.14 Counterparts

- (a) This Deed may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.

- (b) A party that has executed a counterpart of this Deed may exchange that counterpart with another party by emailing it to the other party or the other party's legal representative and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party or the other party's legal representative. However, the validity of this Deed is not affected if the party who has emailed the counterpart delays in delivering or does not deliver it by hand or by post.

#### 23.15 Relationship of parties

- (a) The parties are not, and are not to be taken, by reason of anything in this Deed to be in a partnership, joint venture, employment or fiduciary relationship.
- (b) Nothing in this Deed gives a party authority to bind any other party in any way.

#### 23.16 Exercise of rights

- (a) Unless expressly required by the terms of this Deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

#### 23.17 Remedies cumulative

Except as provided in this Deed and permitted by law, the rights, powers and remedies provided in this Deed are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Deed.

#### 23.18 Clauses that survive termination

- (a) Without limiting or impacting upon the continued operation of any clause which is expressed to, or as a matter of construction is intended to, survive the termination or expiry of this Deed, clause 18.10, clause 19 and this clause 23.18 survive the termination or expiry of this Deed for any reason.
- (b) Each indemnity contained in this Deed is a continuing obligation, independent from the other obligations of the parties and survives the termination or expiry of this Deed. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

#### 23.19 Priority of Deed components

If there is any inconsistency between various components of this Deed, the order of precedence of those component parts is as follows:

| Ranking | Document                                     |
|---------|--|
| 1.      | this Deed, excluding annexures and schedules |
| 2.      | schedules to this Deed                       |
| 3.      | annexures to this Deed                       |

with the higher ranked components prevailing over the lower ranked components, to the extent of any inconsistency between them.

## 24. GST

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### 24.1 Preliminary

Unless otherwise defined in clause 1.1, words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**) have the same meaning given to them in that Act.

### 24.2 GST exclusive

Unless otherwise stated, any amount specified in this Deed as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

### 24.3 Liability to pay GST

If a party makes a taxable supply under this Deed (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

### 24.4 Tax invoice

Notwithstanding the foregoing, the Recipient is not obliged under this Deed to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

### 24.5 Adjustment event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this Deed, the amount paid or payable by the Recipient pursuant to clause 24.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

#### 24.6 Reimbursement of expenses

If a third party makes a taxable supply and this Deed requires a party to this Deed (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

#### 24.7 Non merger

This clause does not merge on completion and will continue to apply after expiration or termination of this Deed.

## Schedule 1 Reference Schedule

|                      |  |  |
|----------------------|--|--|
| <p><b>Item 1</b></p> | <p><b>Principal's Representative:<br/>(Clause 1.1)</b></p> | <p>Name: [*]<br/>Address: [*]<br/>Email: [*]</p>   |
| <p><b>Item 2</b></p> | <p><b>Executive Negotiators:<br/>(Clause 1.1)</b></p>      | <p><b>Principal:</b> Tim Cusack, Chief Executive Officer, WA Return Recycle Renew Ltd<br/><b>Operator:</b> [*]</p>   |
| <p><b>Item 3</b></p> | <p><b>Notices<br/>(Clause 22.1(c))</b></p>                 | <p><b>Principal</b><br/>Address: Unit 2, 1 Centro Avenue, Subiaco WA 6008<br/>Email: [*]<br/>Attention: [*]<br/><b>Operator</b><br/>Address: [*]<br/>Email: [*]<br/>Attention: [*]</p> |
| <p><b>Item 4</b></p> | <p><b>Bank details<br/>(Clause 10.4(b))</b></p>            | <p>Account Name: [*]<br/>BSB: [*]<br/>Account Number: [*]</p>  |

## Schedule 2 IT Platform & Online Recycling Material Sales Platform

### 1. Overview

This Schedule 2 sets out the functions of the IT Platform and Online Recycling Material Sales Platform that will support the Operator in performing the Activities.

As per clause 16.1(c) of the Deed, the IT Platform are provided “as is”, and is provided to support the Scheme reporting and Activities requirements of the Operator. The IT Platform is not designed to support all business functions necessary to operate a business. The Operator should undertake its own due diligence to understand the scope and functionality of the IT Platform and Online Recycling Material Sales Platform.

In the event of any inconsistency between the contents of this Schedule and the remainder of this Deed, the remainder of the Deed shall prevail to the extent of that inconsistency.

### 2. IT Platform

- (a) The IT Platform will act as the “transaction record system” to capture required data to facilitate Scheme reporting.
- (b) The IT Platform will facilitate the preparation of Recovery Amount Claims.
- (c) The IT Platform will facilitate the creation of Shipment Manifests.
- (d) The IT Platform will be an interface for submitting Scheme reporting. Reports may also be required to be submitted outside the IT Platform at the direction of the Principal.

### 3. Online Recycling Material Sales Platform

- (a) The Online Recycling Material Sales Platform is the means by which Material Recovery Facility Operators will list material for sale electronically for purchase by the Principal (and where the Principal will list material for resale to a panel of approved Recyclers).
- (b) The Online Recycling Material Sales Platform will facilitate listing of Processed Materials for sale.



## Schedule 3      Payments Schedule

In this Schedule 3, unless otherwise specified, a reference to a clause is to a clause of this Schedule 3.

### 1.      **Payment calculation and claims**

#### 1.1      **Payment calculation**

- (a)      The amount payable in respect of a given Recovery Amount Claim is calculated according to the following formula:

$$\text{Amount} = C_n \times RA$$

Where:

$C_n$       =      the total number of glass Containers dispatched by the Operator and received by the purchaser for reuse and recycling in the previous Quarter; and

$RA$       =      the Recovery Amount.

- (b)      The amount payable in accordance with this clause 1 is inclusive of GST.

#### 1.2      **Payment Adjustment**

From time to time, a payment adjustment may be made to the amount payable in respect of a given Recovery Amount Claim to account for:

- (a)      any Audit Adjustment, as determined in accordance with clause 10.10 of this Deed;
- (b)      any Container or Processed Material that is not processed through the IT Platform;
- (c)      where documentation required to be provided in accordance with this Deed is not provided to the Principal; or
- (d)      any other circumstances where an auditor engaged by or on behalf of the Principal for the purposes of undertaking an audit or review of the Activities and the Operator's compliance with its obligations under this Deed determines that the Operator has been paid more or less than it was properly entitled to under this Deed.

#### 1.3      **Recovery Amount Claim**

A valid Recovery Amount Claim must:

- (a) include any information required under the Act and Regulations and this Deed;
- (b) be in the format prescribed by the Principal, and include at a minimum the following information:
  - (i) the name, address and contact details of the Operator;
  - (ii) the ABN and ACN of the Operator;
  - (iii) the name and work contact details of a contact person for the Recovery Amount Claim;
  - (iv) if the Exact Count Method is used, the number of Containers received at each MRF during the Quarter;
  - (v) if the current Approved Methodology involves calculating the number of Containers by weight, the weight (in kilograms) of each shipment of Recyclable Waste received at each MRF during the Quarter;
  - (vi) the source and delivery date of each shipment of Recyclable Waste received at each MRF during the Quarter. The source of each shipment of Recyclable Waste must be recorded as follows (sources are mutually exclusive):
    - (A) Recyclable Waste collected or received from commercial organisations;
    - (B) where Recyclable Waste is received from another Material Recovery Facility Operator which has not claimed the Recovery Amount, the identity of the relevant Material Recovery Facility Operator; and
    - (C) where Recyclable Waste is received from another State or Territory, the relevant State or Territory;
  - (vii) for each shipment of Recyclable Waste dispatched from a Material Recovery Facility and receipted by the recipient:
    - (A) weight (in kilograms);
    - (B) organisation;
    - (C) delivery address;
    - (D) delivery date and time;
    - (E) destination (destinations are mutually exclusive);
      - (1) whether Recyclable Waste is being sent to a Recycler for genuine reuse or recycling;

- (2) whether the Recyclable Waste is being sent to landfill (or any other purpose that is not genuine reuse or recycling);
- (3) whether the Recyclable Waste is being transferred to another location or another Material Recovery Facility; and
- (F) whether the Recyclable Waste is Claimed Scheme Material; and
- (viii) include a throughput reconciliation of all Recyclable Waste received, processed, dispatched, receipted and on hand for each Material Recovery Facility operated, reconciling the shipment information reported under clauses 1.3(b)(iv) and 1.3(b)(v), in the format required by the Principal, which reconciliation may include reasonable estimates of stored Processed Materials and unprocessed Recyclable Waste;
- (c) be verified by a statutory declaration in the form set out in Schedule 6 (amended to the extent required in order to comply with the requirements for a statutory declaration set out in section 12 of the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*) signed by:
  - (i) a director of the Operator or the ultimate parent entity of the Operator;
  - (ii) the chief executive officer or equivalent of the Operator or the ultimate parent entity of the Operator;
  - (iii) the chief financial officer or equivalent of the Operator or the ultimate parent entity of the Operator; or
  - (i) the company secretary of the Operator or the ultimate parent entity of the Operator; or
  - (iv) any other person approved by the Principal in writing from time to time for the purposes of swearing a statutory declaration for the purposes of this clause 1.3(c).

#### 1.4 Stock on hand

- (a) In respect of each Audit conducted under regulation 4ZL(2)(a) of the Scheme Regulations, the containers held by the Operator that were collected or received by the Operator prior to the date on which the Operator and the Coordinator entered into this Deed will be confirmed in an Audit report issued Auditor that must be provided by the Principal to the Operator and annexed to a statutory declaration by the Operator in the form set out in Schedule 8 (amended to the extent required in order to comply with the requirements for a statutory declaration set out in section 12 of the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*) declaring that there is no further stock held outside of each Material Recovery Facility that has not already been accounted for in the Audit Report, signed by:

- (i) a director of the Operator or the ultimate parent entity of the Operator;
  - (ii) the chief executive officer or equivalent of the Operator or the ultimate parent entity of the Operator;
  - (iii) the chief financial officer or equivalent of the Operator or the ultimate parent entity of the Operator; or
  - (ii) the company secretary of the Operator or the ultimate parent entity of the Operator; or
  - (iv) any other person approved by the Principal in writing from time to time for the purposes of swearing a statutory declaration for the purposes of this clause 1.4(a).
- (b) The Principal is not liable to pay a Recovery Amount unless the Operator has complied with clause 1.4(a).
- (c) The Principal is not liable to pay a Recovery Amount in respect of any stock on hand held by the Operator prior to the later of:
- (i) the Scheme Commencement Date; and
  - (ii) the Effective Date,

and this stock on hand will be deducted from the volume of materials used to calculate Recovery Amounts under this Deed.

## 1.5 Exact Count Method

Unless there is an Approved Methodology that provides otherwise, the Exact Count Method must be applied to all Containers. The Exact Count Method means the number of Containers subject to the payment of Recovery Amounts each quarter as determined by the Operator (and notified to the Principal) in accordance with the following methodology:

- (a) the Exact Count Method must be applied to all Containers nominated by the MRFO and notified to the Principal in accordance with clause 10.1 of this Deed;
- (b) each Container must be counted electronically;
- (c) each Container may not be counted more than once;
- (d) counted Containers must be separately stored for audit purposes;
- (e) records specifying the exact count and the location of the counted Containers must be maintained for audit purposes, and must be submitted monthly to the Principal; and
- (f) sorting and counting of Containers crushed through a bottle crushing machine operated by the Operator must take place at the location of the bottle crushing machine.

## Schedule 4 Terms and Conditions of Sale

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Schedule 4, a reference to a clause is to a clause of this Schedule 4 unless otherwise specified and the following definitions apply:

**Act** means the *Waste Avoidance and Resource Recovery Act 2007 (WA)*.

**Associate** means, in respect of a party, any employee, officer, agent, or contractor of that party, but in respect of:

- (a) the Buyer - excludes the State and the Seller; and
- (b) the Seller - excludes the Buyer.

**Business Day** means a day that is not a Saturday, Sunday, or recognised public holiday in Perth, Western Australia.

**Buyer** means WA Return Recycle Renew Ltd ACN 629 983 615.

**Common Dispute** has the same meaning as in the Common Dispute Procedure.

**Common Dispute Procedure** means the process for resolving Common Disputes as set out in Schedule 9.

**Container** has the meaning given to that term in section 47C(1) of the Act but excludes containers not eligible for the payment of a Refund Amount.

**GST** has the meaning given by the GST Law.

**GST Group** has the meaning given by the GST Law.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Initial Payment** has the meaning given in clause 2.3(a)(i).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Invoice** means a sales invoice generated by the Buyer in accordance with these Terms and Conditions of Sale.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

**Notice of Common Dispute** has the meaning given in clause 6.1(c).

**Online Recycling Material Sales Platform** means the 'Online Recycling Material Sales Platform' nominated by the Buyer.

**Operating Hours** means the operating hours displayed on the Online Recycling Material Sales Platform or otherwise notified (as applicable):

- (a) to the Buyer by the Seller for the collection of the Processed Materials at the relevant collection location; or
- (b) to the Seller by the Buyer for the delivery of the Processed Materials to the relevant delivery location.

**Order** means the order issued by the Buyer on the Online Recycling Material Sales Platform in respect of the Processed Materials.

**Processed Materials** means a specific quantity of materials produced following the processing of Containers as listed for sale and described by the Seller on the Online Recycling Material Sales Platform and as described in the Order.

**Processed Materials Option** has the meaning given in clause 4.1(a).

**Processed Materials Option Notice** means a notice substantively in the form set out in Schedule 1.

**Processed Materials Option Period** means the period beginning on the Sale Date and ending on the date which is 6 weeks after the Sale Date.

**Processed Materials Sale Contract** means the contract arising from the Buyer issuing an Order in response to the Seller's offer to sell the Processed Materials, and consists of:

- (a) the Order issued by the Buyer; and
- (b) these Terms and Conditions of Sale.

**Related Agreement** means the deed entitled 'Material Recovery (Bottle Crushing) Agreement' between the Buyer and the Seller.

**Resale Payment** has the meaning given in clause 2.4(a).

**Sale Date** has the meaning given in clause 2.2(b).

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind.

**Seller** means the entity so identified in the Order and in the case of an individual, his or her executors, administrators and assigns and in the case of a company its successors and assigns.

**Seller Warranties** means the warranties given by the Seller under clause 3.2.

**Successful Purchaser** means a successful purchaser of the resold Processed Materials through the Online Recycling Material Sales Platform, as notified by the Buyer to the Seller.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (d) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, these Terms and Conditions of Sale unless expressly stated otherwise.
- (e) A reference to a party to the Processed Materials Sale Contract or another agreement or document includes the party's successors and permitted substitutes or assigns.
- (f) A reference to a statute includes that statute as amended, re-enacted or replaced and as in effect from time to time.
- (g) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.

## 1.3 Buyer's agent

- (a) The parties acknowledge that in order to coordinate the Buyer's rights and obligations under the Processed Materials Sale Contract, the Buyer may undertake those activities:
  - (i) directly; or
  - (ii) through an agent appointed by the Buyer.
- (b) The Buyer will notify the Seller of the arrangements in place from time to time for the purposes of coordinating the activities referred to above, and the Seller is entitled to deal with the Buyer's nominated agent in accordance with those arrangements for the purposes of the Processed Materials Sale Contract.

## 2. Sale of Processed Materials

### 2.1 Effective Date

The Processed Materials Sale Contract takes effect from the date an Order is issued by the Buyer to the Seller.

## 2.2 Sale and Purchase

- (a) The Seller, as legal and beneficial owner, sells the Processed Materials free from all Security Interests to the Buyer and the Buyer buys the Processed Materials on the terms set out in the Processed Materials Sale Contract.
- (b) Title to, and property in, the Processed Materials passes to the Buyer with effect from the date the Buyer issues the Order to the Seller (**Sale Date**).
- (c) The Seller must do all things necessary, upon request by the Buyer, to give effect to the transfer of title referred to in clause 2.2(b).

## 2.3 Consideration

- (a) As consideration for the purchase of the Processed Materials and as consideration for the grant of the Processed Materials Option, the Buyer must pay the Seller:
  - (i) \$1 (the **Initial Payment**) in accordance with this clause 2.3; and
  - (ii) the Resale Payment in accordance with clause 2.4.
- (b) The Buyer will promptly issue an acknowledgement to the Seller in respect of the Initial Payment after issuing an Order.
- (c) The Buyer must pay the Initial Payment to the Seller:
  - (i) if the Buyer enters into a binding sale and purchase contract to resell the Processed Materials to a Successful Purchaser, in accordance with clause 2.4; or
  - (ii) if the Buyer exercises the Processed Materials Option, in accordance with clause 4.3,

whichever occurs first.

## 2.4 Resale Payment

Subject to clause 2.5:

- (a) if the Buyer enters into a binding sale and purchase contract to resell the Processed Materials to a Successful Purchaser:
  - (i) the Buyer must promptly notify the Seller of the resale price to be received by the Buyer from the Successful Purchaser;
  - (ii) the Buyer must pay the Seller the Initial Payment;
  - (iii) the Buyer must pay the Seller an amount equal to:



- (A) 100% of the resale price received by the Buyer from the Successful Purchaser if the resale price is greater than \$0; or
  - (B) \$0 if the resale price is less than or equal to \$0,
- (the **Resale Payment**); and
- (b) the Buyer will issue an Invoice to the Seller in respect of the net Resale Payment (after the setting-off or deducting the Initial Payment) payable by the Buyer (as applicable):
    - (i) if the resale price is greater than \$0, within 6 Business Days of receiving payment from the Successful Purchaser; and
    - (ii) if the resale price is less than or equal to \$0, within 6 Business Days of the Buyer enters into a binding sale and purchase contract to resell the Processed Materials to a Successful Purchaser; and.
  - (c) the Buyer must pay any such Invoice within 5 Business Days of it being issued.

## 2.5 Dispute raised by Successful Purchaser

- (a) If, at any time prior to payment being made in accordance with clause 2.4(c), the Buyer notifies the Seller that the Successful Purchaser has initiated a dispute in respect of the Processed Materials:
  - (i) the Buyer and the Seller are immediately relieved of their respective obligations under clause 2.4 (and any rights or liabilities accrued by either the Buyer or the Seller under clause 2.4 prior to that notification are taken to be waived or discharged, as applicable);
  - (ii) the Seller must use best endeavours to assist the Buyer in resolving the dispute with the Successful Purchaser; and
  - (iii) the Buyer may issue a Notice of Common Dispute to the Seller in respect of the dispute initiated by the Successful Purchaser, in which case the dispute must be resolved in accordance with the Common Dispute Procedure.
- (b) If:
  - (i) the Buyer notifies the Seller that the dispute initiated by the Successful Purchaser has been resolved and the Successful Purchaser will proceed with the sale and purchase of the Processed Materials; or
  - (ii) there is a final and binding determination under the Common Dispute Procedure that the Successful Purchaser must proceed with the sale and purchase of the Processed Materials,

then the process set out in clause 2.4 applies as if the Buyer had entered into a new binding sale and purchase contract to resell the Processed Materials to the

Successful Purchaser at the date and for the price set out in the notification or determination.

### **3. Warranties by Seller**

#### **3.1 Warranties**

- (a) The Seller represents and warrants to the Buyer that each of the Seller Warranties is true and correct.
- (b) Each of the Seller Warranties is given as at the Sale Date.
- (c) The Seller indemnifies the Buyer against any claim or loss which may be incurred by the Buyer (directly or indirectly) because of or in connection with a breach of the Seller Warranties.

#### **3.2 Seller Warranties**

As at the Sale Date, the Seller warrants that:

- (a) it has kept the Buyer fully and accurately informed as to the condition of the Processed Materials;
- (b) it is the legal and beneficial owner of the Processed Materials;
- (c) it sells the Processed Materials free from all Security Interests;
- (d) no notice has been served on the Seller in respect of the Processed Materials which might materially impair, prevent or otherwise interfere with the use of, or proprietary rights in, the Processed Materials by the Buyer or any subsequent Successful Purchaser;
- (e) to the best of the Seller's knowledge and belief:
  - (i) there is no action contemplated, pending or threatened nor any written notice from local or other competent authorities or from any third person, which adversely affects or which may adversely affect the use of the Processed Materials or any part of them; and
  - (ii) there has not occurred, in connection with the Processed Materials, any act, omission, event or circumstance likely to give rise in the future to any material civil, criminal or administrative action, order, review, investigation, proceeding or suit, under any Law applicable to the Processed Materials, other than review or investigations in the nature of routine or periodic exercises which relate to events of a non-material nature; and
- (f) the Seller has not received notice of any civil, criminal or administrative action, or other proceeding or suit under any Law applicable to the Processed Materials.

#### 4. Processed Materials Option

##### 4.1 Grant of Processed Materials Option

Subject to clause 4.2:

- (a) in consideration of the Initial Payment, the Seller irrevocably grants to the Buyer an option for the Buyer to require the Seller to repurchase the Processed Materials from the Buyer in accordance with this clause 4 (the **Processed Materials Option**);
- (b) the Processed Materials Option constitutes an irrevocable offer by the Seller to repurchase the Processed Materials from the Buyer in accordance with this clause 4 which, if exercised, must be exercised during the Processed Materials Option Period in accordance with the provisions of this clause 4.

##### 4.2 When Processed Materials Option lapses

The Processed Materials Option granted under this clause 4 immediately lapses on the earlier of:

- (a) the date the Buyer pays the Seller in accordance with clause 2.4(c);
- (b) the date the Buyer (in its sole discretion) notifies the Seller in writing that it irrevocably waives its right to exercise the Processed Materials Option; and
- (c) the end of the Processed Materials Option Period.

##### 4.3 Exercise of Processed Materials Option

- (a) Unless the Processed Materials Option has lapsed in accordance with clause 4.2, it may be exercised by the Buyer at any time by delivery to the Seller of a completed and duly signed Processed Materials Option Notice.
- (b) On the exercise of the Processed Materials Option in accordance with clause 4.3(a):
  - (i) the Buyer must pay the Seller the Initial Payment;
  - (ii) the Seller must pay the Buyer \$1 (the **Repurchase Price**) as consideration for the repurchase of the Processed Materials; and
  - (iii) title to, and property in, the Processed Materials passes to the Seller with effect from the date of the Processed Materials Option Notice.
- (c) The Seller may set-off or deduct the Repurchase Price payable to the Buyer from the Initial Payment payable to the Seller.
- (d) The Buyer will issue an Invoice to the Seller in respect of the net Repurchase Price payable (after the setting-off or deducting the Initial Payment) within 6 Business Days of issuing the Processed Materials Option Notice.

- (e) The right of the Buyer to exercise the Processed Materials Option, receive the Repurchase Price and transfer title to and property in the Processed Materials to the Seller and the obligation of the Seller to pay the Repurchase Price are absolute and unconditional.

## **5. Storage and collection or delivery of Processed Materials**

### **5.1 Storage on Seller's premises**

- (a) On and from the Sale Date until such time as the Processed Materials are collected from the Seller's premises by the Buyer's nominee or delivered to the Buyer's nominee (as applicable), the Seller will:
  - (i) for no charge, permit the Buyer to store the Processed Materials at the Seller's premises; and
  - (ii) ensure that the Processed Materials are properly secured and not relocated from the Seller's premises (unless otherwise agreed by the Buyer).
- (b) The Seller must provide the Buyer (or its nominee(s)) with reasonable opportunities to access the site where the Processed Materials are stored during normal Operating Hours for the purpose of viewing the state or condition of the Processed Materials for the purposes of undertaking due diligence and any pre-purchase inspections.
- (c) The Seller must immediately notify the Buyer of any loss or damage to the Processed Materials (however caused) between the Sale Date and the date the Processed Materials are collected from the Seller's premises by the Buyer's nominee or delivered to the Buyer's nominee (as applicable).
- (d) The storage (and, if applicable, delivery) of the Processed Materials under this clause 5 is solely at the Seller's risk. The Seller indemnifies the Buyer for:
  - (i) any loss or damage to the Processed Materials (however caused); and
  - (ii) any other liability in relation to the storage of the Processed Materials at the Seller's premises,

between the Sale Date and the date the Processed Materials are collected from the Seller's premises by the Buyer's nominee or delivered to the Buyer's nominee (as applicable).

### **5.2 Collection of Processed Materials**

- (a) This clause 5.2 applies where the Order specifies that the Processed Materials are to be collected by the Buyer's nominee.
- (b) The Seller must make the Processed Materials available for collection during the Operating Hours to the Buyer's nominee within the collection period notified by the Buyer to the Seller through the Online Recycling Material Sales Platform.

- (c) Each party will notify the other if they become aware of any circumstances which will delay collection beyond a reasonable time after the estimated collection period and provide a revised estimated collection period.
- (d) The risk of loss or damage to the Processed Materials shall pass to the Buyer's nominee at the time the Processed Materials are collected from the Seller's premises by the Buyer's nominee.

### 5.3 Delivery to the Buyer's nominee

- (a) This clause 5.3 applies where the Order specifies that the Processed Materials are to be delivered to the Buyer's nominee.
- (b) The Seller must make the Processed Materials available for delivery during Operating Hours to the Buyer's nominee within the delivery period notified by the Buyer to the Seller through the Online Recycling Material Sales Platform.
- (c) The Seller must, for no additional charge, deliver the Processed Materials to the Buyer's nominee during Operating Hours at a date and time to be agreed with the Buyer, but in any case no later than 3 Business Days after the start of the delivery period notified under clause 5.3(b) (unless otherwise agreed between the Seller and the Buyer).

## 6. Dispute process

### 6.1 Notice of Dispute

- (a) If a dispute or difference arises between the Seller and the Buyer in respect of any fact, matter or thing arising out of, or in any way in connection with, the Processed Materials Sale Contract (**Dispute**) the parties must follow the procedure in this clause 6.
- (b) Where a Dispute arises, the party raising the Dispute must give a notice in writing to the other party specifying:
  - (i) reasonable details of the Dispute;
  - (ii) particulars of the party's reasons for being dissatisfied; and
  - (iii) the position which the party believes is correct,

**(Notice of Dispute).**
- (c) If the Buyer determines that a Dispute, the subject of a Notice of Dispute, involves a Common Dispute, the Buyer will give written notice to the Seller requiring the Dispute to be resolved in accordance with the Common Dispute Procedure (**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 Procedure; and

- (ii) the dispute resolution process under this clause 6 will be permanently stayed and the Dispute will be determined in accordance with the Common Dispute Procedure.

## 6.2 Executive Negotiation

- (a) If a Notice of Common Dispute has not been issued by the Buyer, an authorised representative of each of the Buyer and Seller (the **Executive Negotiators**) must within:
  - (i) 10 Business 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) The meeting will be held in any one of the following forums, as reasonably determined by the Buyer:
  - (i) by phone (including by teleconference);
  - (ii) by videoconference; or
  - (iii) in person (at a place reasonably nominated by the Buyer).
- (d) The joint decision (if any) of the Executive Negotiators will be reduced to writing and will be contractually binding on the parties.
- (e) If the Executive Negotiators are unable to resolve the dispute within 20 Business Days of service of a Notice of Dispute, either party may commence legal proceedings.

## 6.3 Urgent interlocutory relief

Nothing in this clause 6 prevents a party from seeking urgent injunctive or interlocutory relief.

## 7. GST

- (a) Unless the context requires otherwise, words used in this clause 7 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 the Processed Materials Sale Contract, any amount payable for a supply made under the Processed Materials Sale Contract 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 the Processed Materials Sale Contract:
- (i) any amount payable or consideration to be provided under any other provision of the Processed Materials Sale Contract for that supply (**Agreed Amount**) is exclusive of GST;
  - (ii) unless consideration is stated to be inclusive of GST, 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 upon request from the Recipient.
- (d) If for any reason, the GST payable by the GST Supplier in respect of a supply it makes under the Processed Materials Sale Contract (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 7(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). 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 7, the Recipient may, at its own expense and after notifying the GST Supplier accordingly, refer the matter to an independent expert nominated by the Chair for the time being of the Resolution Institute 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 the Processed Materials Sale Contract, the matters required to be taken into account by the GST Supplier under this clause 7 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 the Processed Materials Sale Contract 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 the Processed Materials Sale Contract.

- (g) Despite any other provision of the Processed Materials Sale Contract, this clause 7 will survive the termination of the Processed Materials Sale Contract.
- (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 the Processed Materials Sale Contract to fees, value, sales, revenue or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.
- (j) Any reference in the Processed Materials Sale Contract to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

**8. Notices**

Any communication (including each notice, consent, approval, request and demand) under or in connection with the Processed Materials Sale Contract must be given in accordance with clause 22 of the Related Agreement.

**9. No waiver**

No failure to exercise and no delay in exercising any right, power or remedy under the Processed Materials Sale Contract will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

**10. Governing law**

- (a) The laws in force in Western Australia govern the Processed Materials Sale Contract.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.



## Schedule 1

### Processed Materials Option Notice

To: ***[Insert Seller]***

We refer to the Processed Materials Option granted under clause 4 of the Processed Materials Sale Contract between WA Return Recycle Renew Ltd ACN 629 983 615 (**Buyer**) and ***[insert Seller]*** dated [\*] (the **Agreement**).

Take notice that the Buyer exercises the Processed Materials Option contained in the Agreement in respect of the Processed Materials and requires the Seller to purchase the Processed Materials in accordance with the Agreement on [\*].

Definitions in the Agreement apply in this notice.

Executed for and on behalf of

WA Return Recycle Renew Ltd ACN 629 983 615

By: ***[Authorised Officer]***

Dated:

## Schedule 5      Approved Methodology

[APPROVED METHODOLOGY TO BE INSERTED]

## Schedule 6 Form of Recovery Amount Claim Statutory Declaration

### Western Australia

#### *Oaths, Affidavits and Statutory Declarations Act 2005*

### Statutory Declaration

I, **[Insert declarant's name]** of **[Insert declarant's address]**, **[Insert declarant's occupation]**, sincerely declare as follows:

1. I am **[Insert position held]** of **[Insert name]**, ABN **[Insert ABN]** (Operator).
2. The Operator entered into the Material Recovery (Bottle Crushing) Agreement with WA Return Recycle Renew Ltd ACN 629 983 615 (**Principal**) on **[Insert date]** (the **MRA**). Capitalised terms in this declaration have the meaning given in the MRA.
3. As of the date of this declaration, the Operator has submitted a Recovery Amount Claim.
4. I confirm, in relation to the Recovery Amount Claim referred to in paragraph 3 above, that to the best of my knowledge:
  - (a) all reasonable steps have been taken to verify the information in the Recovery Amount Claim;
  - (b) the Recovery Amount Claim is accurate and complete;
  - (c) the MRA and the Approved Methodology has been correctly applied in determining the details of the Recovery Amount Claim;
  - (d) the Processed Material (the subject of the Recovery Amount Claim) has:
    - (i) been sold to the Principal on the Online Recycling Material Sales Platform or sold via Private Sale in accordance with the requirements of the MRA;
    - (ii) not otherwise been subject to a claim for payment of the Recovery Amount by any other Material Recovery Facility Operator;
    - (iii) not otherwise been subject to a claim for payment of a Refund Amount by any Refund Point Operator; and
    - (iv) been received by the Operator on or after the Scheme Commencement Date.
5. Documentation supporting paragraph 4 above is attached and marked "Annexure A".

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005 at **[Insert place]**, on **[Insert date]** by -

---

Signature of **DEPONENT**

In the presence of –

---

Signature of Authorised Witness

---

Print full name of Authorised Witness

---

Qualification to be an Authorised Witness

## Annexure A

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 7 Form of Initial Recovery Amount Claim Statutory Declaration

### Western Australia

#### *Oaths, Affidavits and Statutory Declarations Act 2005*

I, **[Insert declarant's name]** of **[Insert declarant's address]**, **[Insert declarant's occupation]**, sincerely declare as follows:

1. I am **[Insert position held]** of **[Insert name]**, ABN **[Insert ABN]** (**Operator**).
2. The Operator entered into the Material Recovery (Bottle Crushing) Agreement with WA Return Recycle Renew Ltd ACN 629 983 615 (**Principal**) on **[Insert date]** (the **MRA**). Capitalised terms in this declaration have the meaning given in the MRA.
3. Under and in accordance with the MRA, the Operator submitted a statement to the Principal:
  - (a) specifying the volume of materials produced by the Operator following the processing of Containers in the 12 month period [date] to [date] in aggregate in respect of each of the Operator's Material Recovery Facilities; and
  - (b) specifying the total volume of materials produced following the processing of Containers in its possession or control as of [date];
4. A copy of the statement referred to in paragraph 3 above is attached and marked "Annexure A".
5. Under and in accordance with the MRA, the Operator provided further information to verify the statement referred to in paragraph 3 above. A copy of the information provided is attached and marked "Annexure B".
6. I confirm that, to the best of my knowledge:
  - (a) the statement attached and marked "Annexure A"; and
  - (b) the information attached and marked "Annexure B",

is true and correct in all material respects.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* at **[Insert place]**, on **[Insert date]** by -

---

Signature of **DEPONENT**

In the presence of –

---

Signature of Authorised Witness

---

Print full name of Authorised Witness

---

Qualification to be an Authorised Witness

## Annexure A

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



## Annexure B

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 8 Form of Statutory Declaration confirming no additional stock on hand

### Western Australia

#### *Oaths, Affidavits and Statutory Declarations Act 2005*

I, **[Insert declarant's name]** of **[Insert declarant's address]**, **[Insert declarant's occupation]**, sincerely declare as follows:

1. I am **[Insert position held]** of **[Insert name]**, ABN **[Insert ABN]** (Operator).
2. The Operator entered into the Material Recovery (Bottle Crushing) Agreement with WA Return Recycle Renew Ltd ACN 629 983 615 (**Principal**) on **[Insert date]** (the **MRA**). Capitalised terms in this declaration have the meaning given in the MRA.
3. Under and in accordance with regulation 4ZL(2)(a) of the Scheme Regulations, on **[Insert date]** an Auditor counted and recorded the stock on hand (in kilograms) of glass Containers or crushed glass Containers located at each Material Recovery Facility or stored offsite (together the **Stock on Hand**).
4. A copy of the report of the Auditor confirming the Stock on Hand is attached and marked "Annexure A" (**Auditor Report**).
5. As at the date of this declaration, there is no further stock held outside of each Material Recovery Facility that is not accounted for in the Auditor Report.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* at **[Insert place]**, on **[Insert date]** by -

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Signature of **DEPONENT**

In the presence of –

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Signature of Authorised Witness

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Print full name of Authorised Witness

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Qualification to be an Authorised Witness

## Annexure A

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 9 Common Disputes Procedure

### 1. Definitions and interpretation clauses

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#### 1.1 Definitions

In this Procedure:

|                               |   |
|-------------------------------|---|
| <b>Act</b>                    | means the <i>Waste Avoidance and Resource Recovery Act 2007</i> (WA).   |
| <b>Agreement</b>              | the agreement of which this Procedure forms a part.   |
| <b>Business Day</b>           | means a day that is not a Saturday, Sunday, or recognised public holiday in Perth, Western Australia.   |
| <b>Common Dispute</b>         | means a dispute or an issue 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 the Principal and one or more Scheme Service Providers.   |
| <b>Counterparty</b>           | means the party to the Agreement other than the Principal.  |
| <b>Dispute Party</b>          | has the meaning given in clause 3.1(c).   |
| <b>Interface Issue</b>        | means a dispute or an issue which involves a question of law (including a question of contract interpretation) or a question of fact that arises between two or more Scheme Service Providers in relation to their respective Scheme Agreements, and includes a dispute or issue in connection with: <ul style="list-style-type: none"> <li>(a) "Collection Infrastructure" (as that term is defined under the Refund Point Agreement or Processing Services Agreement);</li> <li>(b) a "Processed Materials Sale Contract" (as that term is defined under the Processing Services Agreement, Material Recovery Agreement or Recycling Panel Agreement); and</li> <li>(c) the collection and delivery of "Containers" in "Collection Infrastructure" (as those terms are defined under the Refund Point Agreement, Logistics Services Agreement or Processing Services Agreement).</li> </ul> |
| <b>Issue Resolution Board</b> | means a board established by the Principal under clause 5.  |
| <b>Logistics Provider</b>     | means a person who provides logistics services in relation to   |

|  |   |
|--|---|
|  | the Scheme.   |
| <b>Logistics Services Agreement</b>        | means a written agreement between the Principal and a Logistics Provider in relation to transportation of beverage containers and processed materials between Scheme Service Providers. |
| <b>Material Recovery Agreement</b>         | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Material Recovery Facility</b>          | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Material Recovery Facility Operator</b> | means the operator of a Material Recovery Facility.   |
| <b>Member</b>                              | means a member of the Issue Resolution Board.   |
| <b>Notice of Common Dispute</b>            | means a Notice of Common Dispute given under a Scheme Agreement or a notice deemed to be a Notice of Common Dispute pursuant to clause 3.1(a).  |
| <b>Principal</b>                           | means WA Return Recycle Renew Ltd ACN 629 983 615.  |
| <b>Principal Dispute</b>                   | means a Common Dispute between the Principal and one or more Scheme Service Providers.  |
| <b>Procedure</b>                           | means this Schedule 9.  |
| <b>Processing Services</b>                 | means the verification and processing of beverage containers in preparation for sale to a Recycler.   |
| <b>Processing Services Agreement</b>       | means any agreement entered into by the Principal for the provision of Processing Services in connection with the Scheme.   |
| <b>Processing Services Provider</b>        | means a service provider engaged by the Principal under a Processing Services Agreement.  |
| <b>Recycler</b>                            | means a person who has agreed to participate in the Principal's online auction platform for processed materials.  |
| <b>Recycling Panel Agreement</b>           | means a written agreement between the Principal and a Recycler in relation to participation in Principal's online auction platform for processed materials.                             |
| <b>Refund Point</b>                        | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Refund Point Agreement</b>              | has the meaning given to that term in section 47C(1) of the Act.  |
| <b>Refund Point</b>                        | has the meaning given to that term in section 47C(1) of the Act.  |

**Operator**

**Related Scheme Service Provider** means each party that has issued a notification in accordance with clause 3.2(a).

**Scheme** means the beverage container refund scheme established under Part 5A of the Act.

**Scheme Agreement** means:

- (a) a Logistics Services Agreement;
- (b) a Material Recovery Agreement;
- (c) a Processing Services Agreement;
- (d) a Recycling Panel Agreement; and
- (e) a Refund Point Agreement,

as the context requires, and includes the Agreement.

**Scheme Commencement Date** means the day fixed by the Minister by order published in the Gazette to the appointed day for the purpose of section 47M of the Act.

**Scheme Service Provider** means:

- (a) a Logistics Provider that has entered into a Logistics Services Agreement with the Principal;
- (b) a Material Recovery Facility Operator that has entered into a Material Recovery Agreement with the Principal;
- (c) a Processing Services Provider that has entered into a Processing Services Agreement with the Principal;
- (d) a Recycler that has entered into a Recycling Panel Agreement with the Principal; and
- (e) a Refund Point Operator that has entered into a Refund Point Agreement with the Principal,

as the context requires, whether such agreement is entered into before or after the date of the Agreement, and includes the Counterparty.

## 1.2 Interpretation

Clause 1.2 of the Deed applies to this Procedure as though set out here in full, except that references to "this Deed" should be read as "this Procedure".

## 2. Status of this Procedure

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- (a) The parties acknowledge that each Scheme Service Provider must comply with the terms of the Procedure under and in accordance with the Scheme Service Provider's respective Scheme Agreement.
- (b) The Counterparty acknowledges that the obligations of that party under this Procedure owed to Scheme Service Providers are in favour of each Scheme Service Provider, are directly enforceable by each Scheme Service Provider and this Procedure operates as a deed poll in favour of each Scheme Service Provider, such that each Scheme Service Provider may enforce the terms of this Procedure against the Counterparty as if:
  - (i) this Procedure was a separate deed; and
  - (ii) each Scheme Service Provider was a party to, and had signed, sealed and delivered, that deed.
- (c) Each party acknowledges that its obligations under this Procedure are irrevocable.

## 3. Common Disputes

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### 3.1 Notice of Common Dispute

- (a) If a dispute or difference arises in respect of any fact, matter or thing arising out of, or in any way in connection with, this Procedure (**CDP Dispute**), the CDP Dispute is deemed to be a Common Dispute and the Principal may issue a written notice to the Scheme Service Providers in respect of the CDP Dispute, which notice will be deemed to be a Notice of Common Dispute for the purposes of this Procedure.
- (b) If a Notice of Common Dispute has been issued under a Scheme Agreement or clause 3.1(a) the Principal must determine (acting reasonably) whether that Common Dispute:
  - (i) is an Interface Issue; or
  - (ii) a Principal Dispute.
- (c) Subject to clauses 3.2, the parties to:
  - (i) a Common Dispute that is an Interface Issue as determined pursuant to clause 3.1(b) are the Scheme Service Providers; and
  - (ii) a Common Dispute that is a Principal Dispute as determined pursuant to clause 3.1(b) are the Principal and the Scheme Service Providers,
 to whom the Notice of Common Dispute was issued (each a **Dispute Party**).

- (d) The Principal must, at the same time as giving a Notice of Common Dispute to a Scheme Service Provider, give the Scheme Service Provider notice of:
  - (i) each other Scheme Service Provider to whom the Notice of Common Dispute has been given; and
  - (ii) the Notified Contact Details of each other such Scheme Service Provider for the purposes of clause 8 of this Procedure.

### 3.2 Related Scheme Service Provider

- (a) A Dispute Party in relation to a Principal Dispute as determined pursuant to clause 3.1(b) may, within 20 Business Days of the Notice of Common Dispute being issued, elect not to be a Dispute Party in relation to that Principal Dispute by giving notice in writing of that election to the Principal and each other Dispute Party.
- (b) A Scheme Service Provider that elects not to be an Dispute Party in accordance with clause 3.2(a) will:
  - (i) become a **Related Scheme Service Provider** under this Procedure; and
  - (ii) cease to be party to that Principal Dispute.

## 4. Common Dispute resolution procedure

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### 4.1 Operation of clause

- (a) Subject to clause 4.1(b), compliance with this clause 4 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 a Common Dispute.
- (b) Nothing in this clause 4.1 prevents a party seeking urgent injunctive or declaratory relief from a court in connection with the Common Dispute.
- (c) The Principal and each Scheme Service Provider's obligations under their respective Scheme Agreements will continue despite the existence of a Common Dispute.

### 4.2 Negotiations in good faith

Within 5 Business Days of a Notice of Common Dispute being issued, a senior representative from each Dispute Party must meet and use all reasonable endeavours, acting in good faith, to resolve the Common Dispute.



#### 4.3 Referral to the Issue Resolution Board

If the Common Dispute is not resolved within 20 Business Days after the issue of the Notice of Common Dispute, the Principal must refer the Common Dispute to an Issue Resolution Board.

## 5. Issue Resolution Board

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### 5.1 Issue Resolution Board

- (a) In relation to each Common Dispute required to be referred to an Issue Resolution Board under this Procedure, the Principal must, within 30 Business Days of the expiration of the 20 Business Day period referred to in that clause, establish an Issue Resolution Board comprising members as follows:
  - (i) a chairperson; and
  - (ii) 2 other members,
 (each a **Member**) appointed in accordance with clause 5.1(b).
- (b) The Principal must:
  - (i) request that the Chair for the time being of the Resolution Institute (**Chair**) appoint the chairperson and Members;
  - (ii) at the time a request is made under clause 5.1(b)(i), advise the Chair of the skills, qualifications and experience required of the Member or Members to be appointed having regard to the nature of the Common Disputes; and
  - (iii) promptly engage the person or persons appointed by the Chair as a Member, provided that they have the appropriate skills, qualifications and experience to determine Common Disputes.
- (c) If a Member appointed under this clause 5.1:
  - (i) is unavailable;
  - (ii) declines to act as a Member;
  - (iii) does not respond within 10 Business Days to a referral under clause 4.3;
  - (iv) breaches the terms of their engagement with the Principal, including in relation to the matters referred to under clause 5.2 and 5.3; or
  - (v) is removed from that position by the Principal pursuant to clause 5.3(b),

that Member's appointment will immediately terminate and a new Member must be appointed in accordance with clause 5.1(b).

- (d) The Principal must publish notification of the appointment and termination of appointment of each Member under this 5.1 on the Principal's website.
- (e) If a Common Dispute is referred to an Issue Resolution Board under clause 4.3, the Issue Resolution Board will be deemed to have received such reference on the date when it is received by the chairperson of the Issue Resolution Board.

## 5.2 Issue Resolution Board duties

- (a) The terms of each Member's engagement with the Principal will provide that:
  - (i) each Member must consider fairly and impartially, and act in good faith in trying to resolve, each Common Dispute referred to the Issue Resolution Board;
  - (ii) each Member must carry out their obligations as a Member:
    - (A) honestly and independently;
    - (B) with due care and diligence; and
    - (C) in compliance with this Procedure and any relevant Scheme Agreement.
- (b) The Members will be deemed to be not acting as arbitrators, and may reach a decision from their own knowledge and expertise.

## 5.3 Conflict of Interest

- (a) The terms of each Member's engagement with the Principal must provide that, during the term of appointment as a Member, the Member must notify the Principal if they become aware of any circumstance that might reasonably be considered to affect their capacity to act independently, impartially and without bias.
- (b) The Principal must within 5 Business Days of a notification referred to under clause 5.3(a) remove the Member if it reasonably believes that the circumstances notified are such that Member should be replaced.
- (c) Except where the Issue Resolution Board is determining a Principal Dispute, an individual who is an employee of the Principal may be appointed as a Member.
- (d) For the avoidance of doubt, an individual's engagement by the Principal to act as a Member are not circumstances to which clauses 5.3(a) and 5.3(b) apply.

#### 5.4 Liability and Indemnity

- (a) The parties acknowledge that a Member is not liable to any party to this Procedure or any Scheme Service Provider for any act or omission done as a Member in good faith and with due care and diligence.
- (b) For the purpose of this clause 5.4 the parties agree that a Member's act or omission will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

#### 5.5 Confidentiality

The parties acknowledge that the terms of each Member's engagement with the Principal will provide that, in relation to all confidential information disclosed to the Issue Resolution Board, each Member must:

- (a) keep that information confidential;
- (b) not disclose that information except if compelled by law;
- (c) not use that information for a purpose other than the resolution of the Common Dispute; and
- (d) be bound by this obligation of confidentiality whether or not such confidential information is or later comes to be in the public domain.

#### 5.6 Issue Resolution Board process

The Dispute Parties must comply with the rules for the Issue Resolution Board decision process set out in the Appendix to this Procedure in respect of any Common Dispute referred to the Issue Resolution Board pursuant to clause 4.3.

#### 5.7 Costs of the Issue Resolution Board

Each Dispute Party will, in respect of the Common Dispute referred to the Issue Resolution Board:

- (a) bear its own costs; and
- (b) pay an equal share of the Members' reasonable costs.

## 6. Interface Issues

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### 6.1 Operation of clause

This clause 6 applies to a Common Dispute in relation to which the Principal has made a determination pursuant to clause 3.1(b)(i).

## 6.2 Notice of dissatisfaction

- (a) Subject to clause 6.2(b), if a Dispute Party in relation to an Interface Issue is dissatisfied with the Issue Resolution Board's determination it may give notice of its dissatisfaction by providing it to the other Dispute Parties (**Notice of Dissatisfaction**).
- (b) A Dispute Party must not give a Notice of Dissatisfaction if more than 20 Business Days have passed after:
  - (i) the date of the issue of the notice by the Issue Resolution Board of its determination; or
  - (ii) if the Issue Resolution Board fails to give its determination within the time required, the period within which the Issue Resolution Board was required to give its determination,
 as applicable.
- (c) A Notice of Dissatisfaction issued under this clause 6.2 must:
  - (i) state that it is given under this clause 6.2; and
  - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
- (d) Where an Dispute Party has properly given a Notice of Dissatisfaction under and in accordance with this clause 6.2 and the Common Dispute has not been resolved within 10 Business Days after the Notice of Dissatisfaction has been given, any Dispute Party may commence legal proceedings in respect of that Common Dispute.
- (e) Despite any Notice of Dissatisfaction given under this clause 6.2, the Dispute Parties agree that the Issue Resolution Board's determination remains binding upon them until such time as it is revised in an amicable settlement or a court judgment.

## 6.3 Binding Nature of Issues Resolution Board determination on Interface Issue

If:

- (a) a Scheme Service Provider received a Notice of Common Dispute in respect of an Interface Issue that is resolved under this Procedure (each such Scheme Service Provider being a **Notified Party**);
- (b) the Issue Resolution Board has given a determination as to that Interface Issue; and
- (c) no Notice of Dissatisfaction has been properly given under and in accordance with clause 6.2,

then that Notified Party unequivocally and unreservedly agrees that:

- (d) the determination by the Issue Resolution Board is final and binding on each Dispute Party, who must give effect to it;
- (e) that Notified Party will be bound by any settlement or determination of the subject matter of that Interface Issue to the extent that it touches upon or concerns any right, remedy, benefit or entitlement in a Scheme Agreement to which they are a party;
- (f) the determination by the Issue Resolution Board in relation to that Interface Issue will be binding on all Notified Parties without the need for a separate appointment or determination under this Procedure to the extent that such determination is binding on the parties to this Procedure; and
- (g) the Notified 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 Procedure or any Scheme Agreement in respect of the Interface Issue, which has been determined in respect of the Interface Issue in accordance with this Procedure.

#### 6.4 Time for Compliance

Any remedy or benefit to which a Scheme Service Provider is entitled pursuant to clause 6.3 must be paid or granted by the relevant Scheme Service Provider by the later of:

- (a) 20 Business Days of the binding settlement or determination of such entitlement under this Procedure; or
- (b) as otherwise determined by the Issue Resolution Board.

## 7. Principal Disputes

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### 7.1 Operation of clause

This clause 7 applies to a Common Dispute in relation to which the Principal has made a determination pursuant to clause 3.1(b)(ii).

### 7.2 Involvement of Related Scheme Service Providers

- (a) Communications provided to the Issue Resolution Board or a Dispute Party relating to the Principal Dispute, must be provided to the Related Scheme Service Providers.
- (b) The Principal must provide a copy of each communication received from the Issue Resolution Board (including the Issue Resolution Board's decision), to the Related Scheme Service Providers within 1 Business Day of receipt of the communication.

- (c) The Dispute Party must provide each relevant Related Scheme Service Provider with access to drafts of the submissions and evidence (including expert opinions) that it proposes to submit in the Issue Resolution Board determination, at least 20 Business Days before the Dispute Party is due to make its submission.
- (d) The Related Scheme Service Providers may comment on the draft submissions, however any comments must be provided to the Dispute Party at least 10 Business Days before the Dispute Party is due to make its submission in the Issue Resolution Board determination.
- (e) The Dispute Party must consider and take account of any comments provided in accordance with clause 7.2(d), in the preparation of its submissions.
- (f) The Dispute Party must:
  - (i) provide the relevant Related Scheme Service Providers with a draft of any proposed offer to settle the Common Dispute not less than 10 Business Days prior to submitting that proposed offer to the Principal; and
  - (ii) not settle, waive or compromise the Common Dispute without the prior written consent of all of the relevant Related Scheme Service Providers.
- (g) If it appears to the Issue Resolution Board, or on application by a Dispute Party, that the Dispute Party is not able adequately to represent the interests of the relevant Related Scheme Service Providers, the Issue Resolution Board may make such directions as it thinks fit concerning the substitution of one of the Related Scheme Service Providers for the Dispute Party, and make such other orders as it thinks fit. In this case, thereafter references to the Dispute Party in relation to the Principal Dispute will be references to the substitute party.

### 7.3 Notice of dissatisfaction

- (a) Subject to clause 7.3(b), if a Dispute Party is dissatisfied with the Issue Resolution Board's determination or the Issue Resolution Board fails to give its determination within the time required it may give notice of its dissatisfaction by providing it to the other Dispute Parties (**Notice of Dissatisfaction**).
- (b) A Dispute Party must not give a Notice of Dissatisfaction if more than 20 Business Days have passed after:
  - (i) the date of the issue of the notice by the Issue Resolution Board of its determination; or
  - (ii) if the Issue Resolution Board fails to give its determination within the time required, the period within which the Issue Resolution Board was required to give its determination
 (as applicable).
- (c) A Notice of Dissatisfaction issued under this clause 7.3 must:

- (i) state that it is given under this clause 7.3; and
  - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
- (d) If the Dispute Party or a Related Scheme Service Provider considers that a Notice of Dissatisfaction should be issued, then it must provide notice to the Related Scheme Service Providers and the Dispute Party (as applicable) of that fact and its reasons for holding that view within 15 Business Days after:
- (i) the date of Issue Resolution Board's determination; or
  - (ii) if the Issue Resolution Board fails to give its determination within the time required, the period within which the Issue Resolution Board was required to give its determination
- (as applicable).
- (e) Where a Related Scheme Service Provider provides a notice under clause 7.3(d), the Dispute Party must take that notice into account when deciding whether or not to give a Notice of Dissatisfaction.
- (f) If a Principal Dispute has not been resolved (in whole or in part) within 85 Business Days of the Principal issuing a Notice of Common Dispute (irrespective of whether the other provisions of this Procedure have been complied with), any party may commence legal proceedings.

#### 7.4 **Binding Nature of Issues Resolution Board determination on a Principal Dispute**

If:

- (a) a Scheme Service Provider received a Notice of Common Dispute in respect of a Principal Dispute that is resolved under this Procedure (each such Scheme Service Provider being a **Notified Party**);
- (b) the Issue Resolution Board has given a determination as to that Principal Dispute; and
- (c) no Notice of Dissatisfaction has been properly given under and in accordance with clause 7.3,

then that Scheme Service Provider unequivocally and unreservedly agrees that:

- (d) the determination of the Issue Resolution Board will be final and binding on each Dispute Party, the Principal and the Related Scheme Service Providers on receipt, who must give effect to it;
- (e) it will be bound by any settlement or determination 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 Scheme Agreement to which they are a party;

- (f) any determination by an Issue Resolution Board in relation to that Principal Dispute will be binding on all Notified Parties without the need for a separate appointment or determination under this Procedure to the extent that such determination is binding on the parties to this Procedure; and
- (g) the Notified Parties and the Principal 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 Procedure or any Scheme Agreement in respect of the Principal Dispute, which has been determined in respect of the Principal Dispute in accordance with this Procedure.

## 7.5 Time for Compliance

Any remedy or benefit to which a party to this Procedure is entitled pursuant to clause 7.4 must be paid or granted by the relevant party by the later of:

- (a) 20 Business Days of the binding settlement or determination of such entitlement under this Procedure; 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 Procedure as determined by an Issue Resolution Board or a court.

## 8. Notices

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### 8.1 Requirements

All notices, requests, demands, consents, approvals, or other communications under this Procedure (**Notice**) to, by or from a party must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) addressed to a party in accordance with its details set out in Schedule 1 or as otherwise specified by that party by Notice (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

### 8.2 How a Notice must be given

In addition to any other method of giving Notices permitted by statute, a Notice must be:

- (a) delivered personally;
- (b) sent by regular post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;



- (d) sent by airmail if sent from a place outside Australia; or
- (e) sent by email.

### 8.3 When Notices considered given and received

Subject to clause 8.2, a Notice takes effect when received (or such later time as specified in it) and a Notice is deemed to have been given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;
- (b) if sent from a place within Australia by regular post to the address set out in the Notified Contact Details which is an address that is within Australia, at 9.00 am on the sixth Business Day after the date of posting;
- (c) if sent from a place within Australia by airmail to the address set out in the Notified Contact Details which is an address outside Australia, at 9.00 am on the tenth Business Day after the date of posting;
- (d) if sent from a place outside Australia by airmail to the address set out in the Notified Contact Details which is an address that is within or outside Australia, at 9.00 am on the twelfth Business Day after the date of posting;
- (e) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

### 8.4 Time of delivery and receipt

If pursuant to clause 8.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

## 9. General

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### 9.1 Acknowledgment of operation of Procedure

Each party agrees that the provisions of this Procedure apply to a Common Dispute the subject of a Notice of Common Dispute whether or not that party participates in the dispute resolution procedure under this Procedure.

## Appendix - Rules for the Issue Resolution Board decision process

### 1. **Written submissions**

- (a) Within 5 Business Days after the referral of a Common Dispute to the Issue Resolution Board under clause 4.3, or such other time as the Issue Resolution Board may consider reasonable in the circumstances, each party must give to each other party and the Issue Resolution Board a written submission in support of that party's contentions.
- (b) If the Issue Resolution Board considers it appropriate, a party may reply in writing to the submissions of another party within the time allowed by the Issue Resolution Board.
- (c) If the Issue Resolution Board decides further information or documentation is required for the determination of the Common Dispute, the Issue Resolution Board may direct one or more parties to provide such further submissions, information or documents as the Issue Resolution Board may require.
- (d) The Issue Resolution Board must disclose to all parties all submissions, further submissions, information and documents received.

### 2. **Conference**

- (a) Any party may, in writing, request the Issue Resolution Board to call a conference of the parties.
- (b) At least 5 Business Days before the conference, the Issue Resolution Board must inform the parties in writing of the date, venue and agenda for the conference.
- (c) The parties must appear at the conference and may make submissions on the subject matter of the conference.

### 3. **Decision**

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 25 Business Days after referral of a Common Dispute to the Issue Resolution Board under clause 4.3 (or such other period as the parties may agree), the Issue Resolution Board must:
  - (i) determine the Common Dispute between the parties by unanimous agreement between the Members; and
  - (ii) notify the Dispute Parties of that decision in accordance with clause 8 of the Procedure. The Issue Resolution Board must issue the notices to all Dispute Parties on the same Business Day.
- (b) The decision of the Issue Resolution Board must:

- (i) be in writing stating the Issue Resolution Board's decision and giving reasons; and
  - (ii) be made on the basis of the submissions (if any) of the parties, the conference (if any), and the Issue Resolution Board's own expertise.
- (c) If the Issue Resolution Board's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Issue Resolution Board must correct the decision.

4. **General**

- (a) The failure of a party to comply with any requirement of this Appendix will not terminate or discontinue the Common Dispute resolution process.

## Schedule 10 Online Recycling Material Sales Platform policy

- (a) A quantity of Processed Materials is a marketable quantity if it:
  - (i) comprises one or more standard transportation units, such as a shipping container or a truckload; and
  - (ii) subject to clause (b) of this policy, has a weight of 18 tonnes or more.
- (b) If the MRF offers the Principal a quantity of Processed Materials that is less than 18 tonnes, the Principal may, in its absolute discretion, elect to treat the quantity as a marketable quantity.
- (c) An election will be deemed to have been made by the Principal under clause (b) of this policy if the Principal issues an Order to the Operator through the Online Recycling Material Sales Platform in respect of that quantity of Processed Materials.

## Signing page

Executed as deed

**Executed by WA Return Recycle Renew Ltd ACN 629 983 615** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

**Executed by #[\*Party 2 name]# #[\*Party 2 ACN]#** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)