

Supply Agreement

WA Return Recycle Renew Ltd

and

#[*Party 2 name]#

Ref: MFA:BXD:917502

Doc ID 654734633/v12

Level 11, Westralia Plaza, 167 St Georges Terrace, Perth WA 6000 Australia
PO Box 7222, Cloisters Square WA 6850 Australia

Telephone +61 8 9420 1500
Facsimile 1300 704 211 (Australia) +61 2 8507 6580 (International)
hwlebsworth.com.au

Table of contents

| | | |
|-----------|--|-----------|
| 1. | Definitions and interpretation clauses | 1 |
| 1.1 | Definitions | 1 |
| 1.2 | Interpretation | 10 |
| 1.3 | Business Day | 11 |
| 2. | Commencement Date | 11 |
| 3. | Term | 11 |
| 4. | Key obligations | 11 |
| 4.1 | Fraud | 11 |
| 4.2 | Compliance | 12 |
| 4.3 | Inconsistency of obligations | 12 |
| 5. | Variations | 12 |
| 5.1 | Review Procedure | 12 |
| 5.2 | Variation Order | 13 |
| 5.3 | Acknowledgement by Beverage Supplier | 13 |
| 5.4 | Amendment by deed | 14 |
| 6. | Beverage Supplier Obligations | 14 |
| 6.1 | Beverage Products | 14 |
| 6.2 | Cooperation | 14 |
| 6.3 | Minor Beverage Supplier status | 14 |
| 7. | Data collection and reporting | 15 |
| 7.1 | Beverage Supplier obligations | 15 |
| 7.2 | Beverage Supplier Statements | 16 |
| 7.3 | Record keeping | 16 |
| 7.4 | Beverage Supplier data | 16 |
| 7.5 | Performance monitoring, enforcement and auditing | 17 |
| 7.6 | Principal obligations | 17 |
| 7.7 | Identifier | 18 |
| 7.8 | Government information | 18 |
| 7.9 | Auditor General access to Records | 18 |

| | | |
|------------|---|-----------|
| 8. | Modern Slavery | 19 |
| 8.1 | Definitions | 19 |
| 8.2 | Beverage Supplier warranties | 19 |
| 8.3 | Beverage Supplier policies and procedures | 20 |
| 8.4 | Prohibition | 20 |
| 8.5 | Reporting Obligations | 20 |
| 9. | Scheme Changes | 20 |
| 9.1 | Amendments to Agreement | 20 |
| 9.2 | Further acts and documents | 21 |
| 9.3 | No compensation | 21 |
| 10. | Payment | 21 |
| 10.1 | Payments by the Beverage Supplier | 21 |
| 10.2 | Payments Schedule | 22 |
| 10.3 | Beverage Supplier Invoices | 22 |
| 10.4 | Payment | 22 |
| 10.5 | Interest | 22 |
| 11. | GST | 23 |
| 11.1 | Preliminary | 23 |
| 11.2 | GST exclusive | 23 |
| 11.3 | Liability to pay GST | 23 |
| 11.4 | Tax invoice | 23 |
| 11.5 | Adjustment event | 23 |
| 11.6 | Reimbursement of expenses | 23 |
| 11.7 | Non merger | 23 |
| 12. | Suspension and Termination | 24 |
| 12.1 | Suspension of Beverage Supplier's obligations | 24 |
| 12.2 | Reinstatement of Beverage Supplier's rights and obligations | 24 |
| 12.3 | Termination by the Beverage Supplier | 25 |
| 12.4 | Termination by Principal | 25 |
| 12.5 | Immediate termination | 25 |

| | | |
|------------|---|-----------|
| 12.6 | Principal's entitlements after termination | 26 |
| 12.7 | Beverage Supplier's entitlements after termination | 26 |
| 12.8 | Survival | 26 |
| 12.9 | Exclusion of common law rights | 26 |
| 13. | Disputes | 26 |
| 13.1 | Notice of Dispute | 26 |
| 13.2 | Executive Negotiation | 27 |
| 13.3 | Proceedings | 27 |
| 13.4 | Continuation of obligations | 28 |
| 13.5 | Urgent interlocutory relief | 28 |
| 14. | Confidentiality and publicity | 28 |
| 14.1 | Confidentiality and Confidential Material | 28 |
| 14.2 | Exceptions to confidentiality | 28 |
| 14.3 | Publicity and branding | 30 |
| 14.4 | Rights of other Scheme Beverage Suppliers | 30 |
| 15. | Agency and transfer in relation to Container Approvals | 30 |
| 15.1 | Definitions | 30 |
| 15.2 | Appointment of Principal | 31 |
| 15.3 | Acknowledgments by Beverage Supplier | 31 |
| 15.4 | Ratification | 31 |
| 15.5 | Principal Held Container Approvals | 32 |
| 15.6 | Release of Principal | 32 |
| 16. | Notices | 33 |
| 16.1 | Requirements | 33 |
| 16.2 | How a Notice must be given | 33 |
| 16.3 | When Notices considered given and received | 33 |
| 16.4 | Time of delivery and receipt | 34 |
| 16.5 | General | 34 |
| 17. | General | 34 |
| 17.1 | Assignment | 34 |
| 17.2 | Novation to new entity | 34 |
| 17.3 | Duty | 35 |

| | | |
|---------------------|--|-----------|
| 17.4 | Preparation of Deed | 35 |
| 17.5 | Inconsistent provisions | 35 |
| 17.6 | Corporate power and authority | 35 |
| 17.7 | Waiver | 36 |
| 17.8 | Severance | 36 |
| 17.9 | Governing law and jurisdiction | 36 |
| 17.10 | Further assurances | 36 |
| 17.11 | No reliance | 36 |
| 17.12 | Entire agreement | 37 |
| 17.13 | Counterparts | 37 |
| 17.14 | Relationship of parties | 37 |
| 17.15 | Exercise of rights | 37 |
| 17.16 | Remedies cumulative | 37 |
| 17.17 | Clauses that survive termination | 38 |
| 17.18 | Priority of Deed components | 38 |
| Schedule 1 | Particulars | 39 |
| Schedule 2 | Payments Schedule | 40 |
| Schedule 3 | Approved Supply Amounts Calculation Methodology | 44 |
| Signing page | | 58 |

Supply Agreement

Date

Parties **WA Return Recycle Renew Ltd ACN 629 983 615**
of c/- HWL Ebsworth Lawyers, Level 20, 240 St Georges Terrace, Perth,
Western Australia

(Principal)

#[*Party 2 name]# ACN #[Insert ACN]# of
#[*Party 2 address]#

(Beverage Supplier)

Recitals

A. A beverage container refund scheme has been established pursuant to Part 5A of the Act (**Scheme**) for the purposes 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 Principal and the Beverage Supplier are entering into this Deed in accordance with section 47O of the Act and the requirements of the Coordinator Agreement.

D. The Beverage Supplier has agreed to contribute to the cost of the Scheme in accordance with this Deed.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this deed:

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

| | |
|--|--|
| Approval | <p>means any licence, permit, consent, approval, determination, certificate or other requirement:</p> <p>(a) of any Regulatory Authority having any jurisdiction in connection with implementation of the Scheme; or (b) under any other applicable Statutory Requirement, which must be obtained or satisfied for the purposes of performance of the parties' respective obligations under this Deed.</p> |
| Approved Supply Amounts Calculation Methodology | <p>has the meaning given to that term in the <i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019</i>. As at the date of this Deed, the Approved Supply Amounts Calculation Methodology is as set out in Schedule 3.</p> |
| Associate | <p>means, in respect of a party, any employee, officer, agent, or subcontractor of that party, but in respect of:</p> <p>(a) the Principal – excludes the State, the other Scheme Participants and the Beverage Supplier; and</p> <p>(b) the Beverage Supplier – excludes the Principal.</p> |
| Beverage Product | <p>has the meaning given to that term in section 47C of the Act.</p> |
| Beverage Supplier Invoice | <p>has the meaning given to that term in the Payments Schedule.</p> |
| Beverage Supplier IP | <p>has the meaning given to that term in clause 7.4(a).</p> |
| Business Day | <p>means a day that is not a Saturday, Sunday, or public holiday and on which banks are open for business generally in Perth, Western Australia.</p> |
| Change in Law | <p>means a change in a Statutory Requirement of the State or a State Policy after the Effective Date which:</p> <p>(a) specifically and only affects the Principal, the Scheme or the Scheme Participants; and</p> <p>(b) causes the Principal 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.</p> |
| Claim | <p>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:</p> <p>(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;</p> |

| | |
|---------------------------------|--|
| | (b) is in any way in connection with implementation of the Scheme; or |
| | (c) otherwise arises at law or in equity including: <ul style="list-style-type: none"> (i) by statute; (ii) in tort for negligence or otherwise, including negligent misrepresentation; or (iii) for restitution. |
| 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 4. |
| Confidential Material | (a) 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; and (b) in relation to a Scheme Beverage Supplier, means any data and other commercially sensitive information provided by that Scheme Beverage Supplier to a party in the course of or in connection with any meeting between the Principal and Scheme Beverage Suppliers as contemplated by clause 5.1(c). |
| Container | has the meaning given to that term in section 47C(1) of the Act, but does not include Excluded Containers. |
| Container Approval | has the meaning given to that term in section 47C(1) of the Act. |
| Coordinator | has the meaning given to that term in section 47C(1) of the Act. |
| Coordinator Agreement | 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. |
| Deed | means this deed, including all schedules, annexures and appendices. |
| Dispute | has the meaning given in clause 13.1(a). |
| Effective Date | has the meaning given to that term in clause 2. |
| Excluded Container | means any container that is not a Container or, pursuant to Regulations made under section 47K of the Act: |

- (a) is not eligible for the payment of a Refund Amount;
- (b) Refund Point Operators may refuse to accept, and Refund Point Operators have refused to accept;
- (c) Refund Point Operators must refuse to accept; or
- (d) Refund Point Operators must not claim or attempt to claim payment from the Coordinator under a refund point agreement.

Executive Negotiators

in respect of a party:

- (a) means the person stated as the Executive Negotiator of that party in Item 2 of the Particulars 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
- (b) an individual nominated in writing by a person referred to in paragraph (a) of this definition.

Expert Determination Referral

has the meaning given in clause 13.3.

Exporter

has the meaning given to that term in section 47C(1) of the Act.

Export Rebate Agreement

has the meaning given to that term in section 47C(1) of the Act.

Financial Year

means each twelve month period ending 30 June, except that

- (a) the first Financial Year is the period starting on the Effective Date and ending on the next occurring 30 June; and
- (b) the last Financial Year is the period starting on the last 1 July of the Term and ending when the Term ends.

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.

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.

Material Recovery Facility

has the meaning given to that term in section 47C(1) of the Act.

Material Type

means:

- (a) each of the following 10 types of materials:
 - (i) aluminium;
 - (ii) amber glass;
 - (iii) clear polyethylene terephthalate (PET);
 - (iv) coloured (non-white) PET;
 - (v) flint (clear) Glass;
 - (vi) green Glass;
 - (vii) high-density polyethylene (HDPE);
 - (viii) liquid Paper Board;
 - (ix) steel; and
 - (x) white PET; and
- (b) collectively, all materials other than those described in paragraph (a) of this definition and which, for the purpose of this definition, are deemed to all be of a single material type known as "Other",

or as otherwise notified by the Principal.

Minister

means the minister who is responsible under Western Australian law for administering Part 5A of the Act.

| | |
|-----------------------------------|---|
| Minor Beverage Supplier | has the meaning given in section 47U(1) of the Act. |
| MRF Operator | means the operator of a Material Recovery Facility. |
| Notice of Dispute | has the meaning given in clause 13.1(b). |
| Particulars | means Schedule 1 to this Deed. |
| Payments Schedule | means the document of that name as published by the Principal on its website from time to time. As at the date of this Deed, the Payments Schedule is as set out in Schedule 2. |
| Principal's Representative | means the individual specified in Item 1 of the Particulars or such other person as is notified in writing by the Principal to the Beverage Supplier as the Principal's Representative for the purposes of this Deed. |
| Proposed Commencement Date | has the meaning given in clause 12.2(a). |
| Proposed Cessation Date | has the meaning given in clause 12.1(a). |
| Recovery Amount | means the amount payable to a MRF Operator by the Principal for a quantity of containers in accordance with the relevant Material Recovery Agreement, the Act and any relevant Recovery Amount Protocol. |
| Recovery Amount Protocol | has the meaning given to that term in regulation 4ZI(1) of the <i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019</i> . |
| Refund Amount | has the meaning given to that term in section 47C(1) of the Act and is GST inclusive. |
| Refund Point | has the meaning given to that term in section 47C(1) of the Act. |
| Refund Point Agreement | has the meaning given to that term in section 47C(1) of the Act. |
| Refund Point Operator | has the meaning given to that term in section 47C(1) of the Act. |
| Regulation | means a regulation made under Part 5A of the Act. |
| Regulatory Authority | means: <ul style="list-style-type: none"> (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);

- (b) a stock exchange; and
- (c) any other authority, agency, commission, regulator, ministry, department, instrument, tribunal (including any pricing body), enterprise, delegated authority or similar entity,

whether of Australia or elsewhere that has powers or jurisdiction under any law over a party or any act relating to this Deed.

Review Procedure

means a review of this Deed conducted in accordance with clause 5.1.

Scheme

has the meaning given to that term in the 'Recitals' section of this Deed.

Scheme Agreement

means:

- (a) a Supply Agreement; or
- (b) an Export Rebate Agreement.

Scheme Beverage Supplier

a person that has entered into a Supply Agreement with the Principal and includes the Beverage Supplier.

Scheme Change

has the meaning given in clause 9.1(a).

Scheme Change Notice

has the meaning given in clause 9.1(a).

Scheme Commencement Date

means the date on which the Scheme commences under the Act.

Scheme Objectives

mean the objects outlined in section 47A of the Act.

Scheme Participant

means:

- (a) the Principal;
- (b) a Scheme Beverage Supplier; and
- (c) an Exporter that has executed an Export Rebate Agreement,

as the context requires.

Scheme Price

has the meaning given in the Payments Schedule.

State

means the Crown in right of the State of Western Australia, including the Minister within the meaning of the Act.

State Policy

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, or the Beverage Supplier's obligations under this Deed, including Acts, 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 Beverage Supplier's obligations under this Deed; and
- (d) fees and charges payable in connection with the foregoing.

Supply

has the meaning given to that term in section 47C(1) of the Act and **Supplied** has a corresponding meaning.

Supply Agreement

has the meaning given to that term in section 47C(1) of the Act.

Tax Invoice

has the same meaning as in the GST Legislation.

Term

has the meaning given in clause 3.

Variation

means a variation, amendment or modification of this Deed in accordance with clause 5.

Variation Order

has the meaning given in clause 5.2.

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. Commencement 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**).

3. Term

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**).

4. Key obligations

4.1 Fraud

- (a) Each of the parties must not:
- (i) in connection with this Deed; or
 - (ii) in purported compliance with any requirement imposed by or under Part 5A of the Act or under any Regulation,
- provide any information that the party knows is false or misleading in a material particular.
- (b) The Principal and the Beverage Supplier must take all reasonable steps to minimise and prevent fraud in connection with the Scheme.
- (c) The Beverage Supplier acknowledges and agrees that the rights, powers and remedies of the Principal in relation to any breach of this clause 4.1 are in addition to any penalties that may apply under the Act or Regulations in relation to the breach.

4.2 Compliance

- (a) The Principal and the Beverage Supplier must comply with all applicable Statutory Requirements and this Deed.
- (b) The Beverage Supplier must give notice in writing to the Principal's Representative, together with relevant particulars, promptly after becoming aware of any suspected contravention or contraventions of any applicable Statutory Requirement by a Scheme Participant (including itself) or any other person.

4.3 Inconsistency of obligations

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

| Ranking | Obligation |
|---------|--|
| 1. | obligation to comply with all Statutory Requirements |
| 2. | any other obligation under this Deed |

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

5. Variations

5.1 Review Procedure

- (a) **(Review Proposal)** During the Term:
- (i) the Beverage Supplier may, at any time but no more frequently than once in every 12-month period); and
 - (ii) the Principal may, at its discretion, at any time,
issue a notice to the other party setting out a proposal for a Variation (**Review Proposal**). The Beverage Supplier acknowledges that the Principal may also issue similar notices to other Scheme Beverage Suppliers at the same or similar time.
- (b) **(Discussion 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 Scheme Beverage Suppliers 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 Scheme Beverage Suppliers)** The Principal may invite one or more other Scheme Beverage Suppliers to any meeting between the Principal and the Beverage Supplier (including any meeting under clause 5.1(b)).
- (d) **(Direction by the Principal)** Following a 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 Beverage Supplier to carry out a Variation by issuing a written document titled "Variation Order" setting out a proposed Variation to any applicable provision of this Deed, which will take effect from the date specified in the Variation Order (a **Variation Order**).
- (b) Both parties must 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 Beverage Supplier

The Beverage Supplier acknowledges that:

- (a) in addition to this Deed, the Principal has entered into Supply Agreements with other Scheme Beverage Suppliers;
- (b) all Supply Agreements must be consistent to protect the Principal's legitimate interest in ensuring the Scheme Objectives are achieved; and
- (c) the Principal is not required to agree to any Variation proposed by the Beverage Supplier and may reject any such proposed variation in the Principal's absolute discretion.

5.4 Amendment by deed

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

6. Beverage Supplier Obligations

6.1 Beverage Products

The Beverage Supplier acknowledges and agrees that this Deed applies only to those Beverage Products that are:

- (a) Supplied by the Beverage Supplier; and
- (b) the subject of a Container Approval.

6.2 Cooperation

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

6.3 Minor Beverage Supplier status

- (a) Subject to clause 6.3(d), the Principal will (for each Financial Year during the Term) determine whether the Beverage Supplier is a Minor Beverage Supplier for the purposes of this Deed using the information provided to the Principal by the Beverage Supplier under this Deed, including:
 - (i) any statement provided under clause 7.1(a);
 - (ii) any declarations provided under clause 7.1(b);

- (iii) any Beverage Supplier Statements provided under clause 7.2; and
 - (iv) the findings of any audit conducted under clause 7.5.
- (b) The Principal will notify the Beverage Supplier of its decision within 20 Business Days after receiving the Beverage Supplier's declaration under clause 7.1(b)
- (or, in the case of the first year of the Term, within 20 Business Days of receiving the Beverage Supplier's statement under clause 7.1(a).
- (c) Subject to clause 6.3(e), if the Principal determines that the Beverage Supplier is a Minor Beverage Supplier for a given Financial Year, it will have that status for the purposes of this Deed from the date of the notification under clause 6.3(b) until 30 September of the following Financial Year. After that date, the Beverage Supplier will not be a Minor Beverage Supplier unless and until the Principal determines that it is a Minor Beverage Supplier for the subsequent Financial Year in accordance with clause 6.3(a).
- (d) The Beverage Supplier acknowledges and agrees that:
- (i) the Principal may not be able to determine whether the Beverage Supplier is a Minor Beverage Supplier for a given Financial Year if the Beverage Supplier does not fully comply with its reporting obligations under clause 7.1 for that Financial Year; and
 - (ii) the Beverage Supplier must reimburse the Principal for the cost of any audit conducted under clause 7.5 in relation to a Financial Year if the Beverage Supplier does not fully comply with its reporting obligations under clause 7.1 for that Financial Year.
- (e) The Beverage Supplier may elect to opt out of being a Minor Beverage Supplier by notifying the Principal in writing within 10 Business Days of the date of the Principal's notification under clause 6.3(b). If the Beverage Supplier notifies the Principal in accordance with this clause 6.3(e), it will not have Minor Beverage Supplier status for the purposes of this Deed for that Financial Year.

7. Data collection and reporting

7.1 Beverage Supplier obligations

- (a) If:
 - (i) the Effective Date is prior to the 15th day of the calendar month in which the Effective Date falls, then no later than the last day of that calendar month; or
 - (ii) the Effective Date is on or after the 15th day of the calendar month in which the Effective Date falls, then after the 15th day of the calendar

month immediately following the calendar month in which the Effective Date falls,

the Beverage Supplier must provide to the Principal a statement specifying the number of Beverage Product Sold by the Beverage Supplier in the previous 12 month period (if any) itemised on a monthly basis: (iii) in aggregate in respect of the State; and

(iv) for each Material Type.

- (b) No later than the date which is 40 Business Days after the end of each Financial Year during the Term, the Beverage Supplier must prepare and deliver to the Principal's Representative a statutory declaration that complies with all applicable Laws and is otherwise in such form as is advised by the Principal from time to time, executed by a director of the Beverage Supplier declaring:
- (i) that each Beverage Supplier Statement provided by that Beverage Supplier in accordance with clause 7.2 in respect of the previous Financial Year was true and correct, or specifying those Beverage Supplier Statements that were not true and correct by providing revised versions of those Beverage Supplier Statements;
 - (ii) the number of Beverage Product Sold by that Beverage Supplier in the previous Financial Year itemised on a monthly basis: (A) in aggregate in respect of the State; and
(B) in aggregate for each Material Type; and
 - (iii) each other matter prescribed by the State or which is otherwise required by the Act or the Regulations from time to time (as notified in writing by the Principal to the Beverage Supplier).

7.2 Beverage Supplier Statements

The Beverage Supplier must provide Beverage Supplier Statements as defined in and in accordance with the Payments Schedule.

7.3 Record keeping

The Beverage Supplier must prepare and maintain appropriate auditable records to document its compliance with:

- (a) the Act and the Regulations; and
- (b) the terms of this Deed.

7.4 Beverage Supplier data

- (a) The Intellectual Property in all data, documents, information, records or other material of any kind and in any form or medium prepared by the Beverage Supplier which the Beverage Supplier is required to provide to the Principal under this Deed (**Beverage Supplier IP**) will remain vested in the Beverage Supplier.
- (b) The Beverage Supplier grants the Principal an irrevocable, royalty free, nonexclusive, licence to use the Intellectual Property in the Beverage Supplier IP for the purposes of the Principal carrying out its functions and obligations in connection with the Scheme in accordance with the Act, the Regulations, the Coordinator Agreement, the Scheme Agreements and this Deed:
 - (i) during the Term; and
 - (ii) in accordance with any provision of this Deed that survives the termination or expiry of this Deed,
 (and for no other purposes).
- (c) The Principal may transfer, or grant a sublicense in respect of, the licence referred to in clause 7.4(b) to the State.

7.5 Performance monitoring, enforcement and auditing

- (a) The Principal may (at any time) audit or engage an independent auditor to audit (including a real-time audit of any applicable electronic systems for deliveries, supply chain logistics, payments, collections and verification) or review data provided by the Beverage Supplier under this Deed to determine if that Beverage Supplier is complying with: (i) the Act and the Regulations; and
 - (ii) the terms of this Deed.
- (b) For the purposes of an audit pursuant to clause 7.5(a), the Beverage Supplier must:
 - (i) at all reasonable times give the Principal or the independent auditor appointed by the Principal (as applicable) access to any areas where that Beverage Supplier's business is being carried out; and
 - (ii) if requested by the Principal, that Beverage Supplier must provide all reasonable assistance to Principal or the independent auditor appointed by the Principal (as applicable) in connection with any performance audit as contemplated by the Act or any other review or audit in accordance with this Deed.

7.6 Principal obligations

The Principal must prepare and, no later than the date which is 60 Business Days after the end of each Financial Year, deliver to the Beverage Supplier a report specifying:

- (a) the aggregate audited number of Containers for which Refund Amounts have been paid by Refund Point Operators during that Financial Year;
- (b) the aggregate audited number of Containers for which the MRF Operators have lodged claims for payment of Recovery Amounts during that Financial Year and the total amount of Recovery Amounts paid by the Principal in the relevant Financial Year; and
- (c) the Principal's calculation of the Beverage Supplier's market share calculated by reference to the aggregate audited number of Beverage Products (by Material Type and in aggregate for all Material Types) Sold for that Financial Year.

7.7 Identifier

Upon this Deed taking effect and coming into force, the Principal will assign a unique identifier to the Beverage Supplier and provide it to the Beverage Supplier.

7.8 Government information

The Beverage Supplier 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 by the Beverage Supplier under, and any information produced by or given to the Beverage Supplier 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; and
- (d) where the Principal has disclosed information in accordance with this clause 7.8 the Beverage Supplier 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 Beverage Supplier to provide information or produce material in accordance with that section.

7.9 Auditor General access to Records

- (a) The Beverage Supplier must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Beverage Supplier's Records concerning this Deed.
- (b) The Beverage Supplier 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 7.9 and clause 14.2(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.

8. Modern Slavery

8.1 Definitions

In this clause 8:

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.

8.2 Beverage Supplier warranties

The Beverage Supplier represents, warrants and undertakes:

- (a) that no form of Modern Slavery is used in the Beverage Supplier'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, antislavery provisions that are at least as onerous as those set out in this clause 8; and
- (f) to notify to the Principal promptly upon becoming aware of any incident, complaint or allegation that the Beverage Supplier, or any entity in its supply chain, has engaged in Modern Slavery.

8.3 Beverage Supplier policies and procedures

Throughout the Term, the Beverage Supplier must have and implement its own policies and procedures that are designed to ensure compliance with the warranties contained in clause 8.2.

8.4 Prohibition

The Beverage Supplier must not engage in Modern Slavery.

8.5 Reporting Obligations

- (a) At the request of the Principal, the Beverage Supplier must:
 - (i) confirm in writing that it has complied with its undertakings under this clause 8 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 8.2.
- (b) Upon becoming aware of any actual, reasonably suspected or anticipated breach of this clause 8, the Beverage Supplier must immediately provide written notice of the breach, giving full details of such breach, to the Principal.

9. Scheme Changes

9.1 Amendments to Agreement

- (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
 - (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, by giving no less than 20 Business Days' notice in writing to the Beverage Supplier (**Scheme Change Notice**), amend the terms of this Deed to address that Scheme Change, including any additional direct costs reasonably incurred (or to be incurred), or savings made (or to be made) by the Principal in relation to the Scheme as a result of such Scheme Change.
- (b) The Beverage Supplier may provide the Principal with a written submission in response to the Scheme Change Notice within 10 Business Days of receiving the Scheme Change Notice (**Beverage Supplier Response**).
- (c) The Principal:
- (i) must review and consider any Beverage Supplier Response provided in accordance with clause 9.1(b); and
 - (ii) may (in its sole discretion) amend the Scheme Change Notice in response to any Beverage Supplier Response provided in accordance with clause 9.1(b).
- (d) The Beverage Supplier 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 9.1(c).
- (e) Any amendment to this Deed under this clause 9 is not subject to the Principal first conducting a review in accordance with the Review Procedure with respect to that amendment.

9.2 Further acts and documents

The Beverage Supplier 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 9.1.

9.3 No compensation

The Beverage Supplier is not entitled to any compensation from the Principal or the State as a result of any amendment to this Deed under this clause 9.

10. Payment

10.1 Payments by the Beverage Supplier

- (a) The Beverage Supplier must pay the Principal all amounts it is required to pay at the times at which it is required to pay them in accordance with the Payments Schedule.
- (b) The Beverage Supplier must make all payments under this Deed to the Principal's nominated bank account, as set out in the Particulars, or as notified in writing by the Principal from time to time.

10.2 Payments Schedule

The parties acknowledge and agree that:

- (a) they must comply with the Payments Schedule to the extent that it relates to payments made under this Deed;
- (b) if the Payment Schedule in Schedule 2 is amended in accordance with clause 10.2(b), the Principal must publish the currently applicable Payments Schedule on a website which is accessible by the Beverage Supplier;
- (c) subject to compliance with the Approved Supply Amounts Calculation Methodology, the Principal may amend the Payments Schedule from time to time with effect from a date notified to the Beverage Supplier (provided that the Principal must provide no less than 10 Business Days' notice to the Beverage Supplier of this date); and
- (d) the Payments Schedule as at the date of this Deed is set out at Schedule 2 for reference.

The Principal must publish any amended Payments Schedule in accordance with this clause 10.2 no later than the time from which it takes effect.

10.3 Beverage Supplier Invoices

The Principal must give the Beverage Supplier a claim in the form of a Tax Invoice in accordance with the Payments Schedule.

10.4 Payment

Irrespective of the existence of any Dispute, the Beverage Supplier must pay the Principal the amount set out as then payable in the Beverage Supplier Invoice in accordance with the Payments Schedule.

10.5 Interest

- (a) If the Beverage Supplier fails to pay any amount payable by the Beverage Supplier within the time required in accordance with this Deed, then it must pay interest on that amount from the date on which payment was due and until the date on which payment is made in full, in accordance with the Payments Schedule.
- (b) If the Beverage Supplier fails to pay any amount payable by the Beverage Supplier within the time required in accordance with this Deed, clause 10.5(a) will be the Principal's sole entitlement to interest including damages for loss of, use of, or the cost of borrowing, money.

11. GST

11.1 Preliminary

Unless otherwise defined in clause 1.1, words or expressions used in this clause that are defined in the GST Legislation have the same meaning given to them in that Act.

11.2 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.

11.3 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.

11.4 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.

11.5 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 11.3 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.

11.6 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.

11.7 Non merger

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

12. Suspension and Termination

12.1 Suspension of Beverage Supplier's obligations

- (a) A Beverage Supplier must give the Principal at least 20 Business Days' notice of its intention to cease or suspend the Sale of Beverage Products specifying the date upon which it will do so (**Proposed Cessation Date**).
- (b) Following receipt of a notice under clause 12.1(a), the Principal may request such further information as it may reasonably require in order to determine whether the Beverage Supplier will cease or suspend the Sale of Beverage Products on the Proposed Cessation Date.
- (c) Promptly after the Beverage Supplier ceases or suspends the Sale of Beverage Products, the Beverage Supplier must submit a statutory declaration to the Principal that complies with all applicable Laws and is otherwise in such form as is advised by the Principal from time to time, executed by a director of the Beverage Supplier declaring that the Beverage Supplier has ceased or suspended the Sale of Beverage Products.
- (d) Provided that the Beverage Supplier has actually ceased or suspended the Sale of Beverage Products and has complied with clause 12.1(c), the Beverage Supplier's rights and obligations under this Deed, other than those under clause 12.2, will be suspended for the period from the date the Beverage Supplier has ceased or suspended the Sale of Beverage Products as set out in the statutory declaration given under clause 12.1(c) until the date on which the Beverage Supplier's rights and obligations cease to be suspended in accordance with clause 12.2.

- (e) If the Beverage Supplier's obligations under this Deed are suspended in accordance with clause 12.2, no Supply Agreement between the Principal and the Beverage Supplier will be in force for the purposes of section 47O of the Act.

12.2 Reinstatement of Beverage Supplier's rights and obligations

- (a) If:
- (i) the Beverage Supplier's rights and obligations under this Deed have been suspended under clause 12.1;
 - (ii) the Beverage Supplier intends to recommence the Sale of Beverage Products,
- it must give the Principal at least 20 Business Days' written notice of the date on which it intends to do so (**Proposed Commencement Date**).
- (b) Subject to this Deed not having been terminated for any reason, the Beverage Supplier's other rights and obligations under this Deed will cease to be suspended and a Supply Agreement between the Principal and the Beverage Supplier on the terms of this Deed will be in force for the purposes of section 47E(2) of the Act on the earlier to occur of:
- (i) the Proposed Commencement Date; and
 - (ii) the date on which the Principal reasonably determines that the Beverage Supplier has recommenced the Sale of Beverage Products.

12.3 Termination by the Beverage Supplier

If the Beverage Supplier has submitted to the Principal:

- (a) a notice of its intention to cease the Sale of Beverage Products in accordance with clause 12.1(a); and
- (b) a statutory declaration in accordance with clause 12.1(c),

the Beverage Supplier may terminate this Deed by giving the Principal 20 Business Days' notice in writing.

12.4 Termination by Principal

Subject to any provision of the *Corporations Act 2001* (Cth) or any related subordinate legislation that may prevent or restrict the exercise of a right of termination or other right under this Deed, if:

- (a) an Insolvency Event occurs in respect of the Beverage Supplier;

- (b) the Beverage Supplier breaches this Deed (including failing to pay when due any amount payable under this Deed) or a Statutory Requirement and:
 - (i) the breach is not capable of being remedied; or
 - (ii) the breach is capable of being remedied but is not remedied within 20 Business Days of the Beverage Supplier being given notice of the default by the Principal;
- (c) the Beverage Supplier provides a statutory declaration under clause 12.1(c) that the Beverage Supplier knew, or should reasonably have known, was false in any respect; the Principal may terminate this Deed by written notice to the Beverage Supplier.

12.5 Immediate termination

This Deed will terminate immediately:

- (a) on the effective date of a repeal of the Scheme; or
- (b) subject to clause 17.2, 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.

12.6 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 Beverage Suppliers all amounts which become payable under clause 10 up to the date of termination.

12.7 Beverage Supplier'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 Beverage Supplier is not entitled to any compensation from the Principal or the State as a result of the termination of this Deed.

12.8 Survival

Clauses 12.6 and 12.7 will survive the termination or expiration of this Deed.

12.9 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.

13. Disputes

13.1 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 Beverage Supplier 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 13.
- (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 Beverage Supplier, 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 13 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 13 will continue to apply in respect of the Dispute.

13.2 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.

13.3 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.

13.4 Continuation of obligations

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

13.5 Urgent interlocutory relief

Nothing in this clause 13 prevents a party from seeking urgent injunctive or interlocutory relief.

14. Confidentiality and publicity

14.1 Confidentiality and Confidential Material

Each party acknowledges and agrees, and covenants and undertakes in favour of each other Scheme Beverage Supplier, that subject to clause 14.2:

- (a) the Confidential Material of the other party is and will remain confidential to the other party;
- (b) the Confidential Material of a Scheme Beverage Supplier is and will remain confidential to that Scheme Beverage Supplier;

- (c) it has not disclosed and will not at any time, without the other party's prior written consent, disclose the contents of Deed or the other party's Confidential Material to any third party;
- (d) it has not disclosed and will not at any time, without the Scheme Beverage Supplier's written consent, disclose that Scheme Beverage Supplier's Confidential Material to any third party; and
- (e) 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 or a Scheme Beverage Supplier's Confidential Material, other than for the purposes of this Deed, including to carry out its obligations pursuant to this Deed.

14.2 Exceptions to confidentiality

- (a) It will not be a breach of clause 14.1:
 - (i) if, in response to a request from the State, a party 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 7.8(a);
 - (ii) if the Principal discloses the Beverage Supplier's or another Scheme Beverage Supplier's Confidential Material in an aggregated format that does not identify or attribute that Confidential Material as belonging to the Beverage Supplier or other Scheme Beverage Supplier (as applicable);
 - (iii) if a party (**Disclosing Party**) discloses the other party's or a Scheme Beverage Supplier's Confidential Material 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 Material 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 7.9.
- (b) Clause 14.1 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); or

- (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.
- (iii) to the use or disclosure of a Scheme Beverage Supplier's Confidential Material by a party if:
 - (A) that Confidential Material is in the public domain through no act, neglect or default of the party (the onus of proving which will be on that party); or
 - (B) the Scheme Beverage Supplier has notified the party in writing that the Scheme Beverage Supplier no longer requires the party to maintain that Confidential Material as confidential.
- (c) Nothing in this clause 14.2 will excuse any prior breach of clauses 14.1 and the other party's rights and remedies in respect of any prior breach are expressly preserved.
- (d) The Beverage Supplier 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.

14.3 Publicity and branding

Without limiting any other obligation contained in this clause 14, the Beverage Supplier must:

- (a) at all times comply with any reasonable protocols or procedures notified by the Principal relating to confidentiality, branding, and/or advertising 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 14 (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.

14.4 Rights of other Scheme Beverage Suppliers

The covenants and undertakings in this clause 14 in favour of other Scheme Beverage Suppliers are intended to confer a benefit directly on other Scheme Beverage Suppliers and are intended to be, and are, directly enforceable by other Scheme Beverage Suppliers and this Deed operates as a deed poll in favour of other Scheme Beverage Suppliers.

15. Agency and transfer in relation to Container Approvals

15.1 Definitions

In this clause 15:

- (a) **Application Fee** means the fee referred to in regulation 31(2)(c) of the Western Australian Regulations.
- (b) **CEO** has the same meaning as in the Act.
- (c) **First Responsible Supplier** has the meaning given to that term in section 47D of the Act.
- (d) **Queensland Act** means the *Waste Reduction and Recycling Act 2011 (Qld)*.
- (e) **Queensland Approval** has the meaning given to the term 'container approval' in section 99ZN of the Queensland Act.
- (f) **Queensland Coordinator** has the meaning given to that term 'Product Responsibility Organisation' in the Queensland Act.
- (g) **Supplied Product** means a Beverage Product in respect of which the Beverage Supplier is a First Responsible Supplier.
- (h) **Transfer Fee** means the fee referred to in regulation 30(3)(d) of the Western Australian Regulations.
- (i) **Western Australian Regulations** means the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019*.

15.2 Appointment of Principal

- (a) The Beverage Supplier appoints the Principal as its agent and irrevocably authorises the Principal to, at any time prior to the Scheme Commencement Date, make application under section 47F(1) of the Act for the grant to the Beverage Supplier of a Container Approval for each Beverage Product in respect of which a Queensland Approval is held by the Beverage Supplier (**Western Australian Application**).
- (b) The Principal accepts the appointment in accordance with the terms of this clause 15.

15.3 Acknowledgments by Beverage Supplier

The Beverage Supplier acknowledges and agrees that:

- (a) the Principal has no obligation to make any Western Australian Applications;

- (b) the Principal may have made Western Australian Applications prior to the Effective Date;
- (c) without limiting clause 15.6, the Principal has no liability to the Beverage Supplier for the refusal of any Western Australian Application;
- (d) any Western Australian Application that is made will be based solely on information provided to the Principal by or on behalf of the Queensland Coordinator and, without limiting clause 15.6, the Principal has no liability to the Beverage Supplier for any omissions, errors or inaccuracies in that information;
- (e) the Beverage Supplier is solely responsible for responding to any requests for further information from any Regulatory Authority (including the CEO) in relation to any Western Australian Application made by the Principal; and
- (f) the Beverage Supplier must reimburse the Principal on demand for any Application Fees paid by the Principal for Western Australian Applications.

15.4 Ratification

The Beverage Supplier hereby:

- (a) adopts and approves; and
- (b) ratifies anything done or not by the Principal in connection with, any Western Australian Applications made by the Principal prior to the Effective Date.

15.5 Principal Held Container Approvals

- (a) This clause 15.5 applies to any Container Approval granted to the Principal pursuant to an application made by the Principal under section 47F(1) of the Act for the grant to the Principal of a Container Approval for a Supplied Product (**Principal Held Container Approval**), whether such application is made before, on or after the Effective Date.
- (b) The Beverage Supplier acknowledges and agrees that the Principal may make application under regulation 30(1) of the Western Australian Regulations to transfer the Principal Held Container Approval to the Beverage Supplier (**Transfer Application**).
- (c) For the purposes of regulation 30(3)(c) of the Western Australian Regulations, the Beverage Supplier hereby consents to:
 - (i) the Principal making the Transfer Application; and
 - (ii) the transfer to the Beverage Supplier of the Principal Held Container Approval.
- (d) The Beverage Supplier acknowledges and agrees that:

- (i) the Principal may, but is under no obligation to, make any application for a Principal Held Container Approval;
- (ii) without limiting clause 15.6, the Principal has no liability to the Beverage Supplier for the refusal of any application for a Principal Held Container Approval;
- (iii) any application for a Principal Held Container Approval that is made will be based solely on information provided to the Principal by or on behalf of the Queensland Coordinator and, without limiting clause 15.6, the Principal has no liability to the Beverage Supplier for any omissions, errors or inaccuracies in that information; and
- (iv) the Beverage Supplier must reimburse the Principal on demand for:
 - (A) any Application Fee paid by the Principal for an application for a Principal Held Container Approval; and
 - (B) any Transfer Fee paid by the Principal for a Transfer Application.

15.6 Release of Principal

The Beverage Supplier irrevocably releases and discharges the Principal from all Loss arising from (directly or indirectly), or in connection with, any:

- (a) Western Australian Application made by the Principal, whether before, on or after the Effective Date;

- (b) application for a Principal Held Container Approval, whether made before, on or after the Effective Date;
- (c) Transfer Application; and
- (d) Principal Held Container Approval (including its transfer to the Beverage Supplier), whether applied for or granted before, on or after the Effective Date.

16. Notices

16.1 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 the Item 4 and Item 5 of the Particulars 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.

16.2 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.

16.3 When Notices considered given and received

Subject to clause 16.4, 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.

16.4 Time of delivery and receipt

If pursuant to clause 16.3 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.

16.5 General

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

17. General

17.1 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 Beverage Supplier.
- (b) The Beverage Supplier cannot assign, novate, charge, create a security interest over, 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. The consent of the Principal may be withheld in its absolute discretion without giving any reason for doing so.

17.2 Novation to new entity

Where:

- (b)
- (a) another entity is to be appointed as the Coordinator under the Act (**Successor Scheme Coordinator**); and

the State requires that this agreement 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 that the Principal ceases to be the Coordinator, this Agreement is terminated and the Incoming Party and the Beverage Supplier become parties to a new contract on the same terms as this Agreement for the balance of the Term.

17.3 Duty

The Beverage Supplier:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under this Deed;
- (b) must indemnify the Principal against any Loss suffered or incurred by it arising out of, or in connection with that Beverage Supplier's failure to comply with clause 17.3(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the Beverage Supplier under this clause 17.2.

17.4 Preparation of Deed

Unless otherwise expressly provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

17.5 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),

(b)

17.6 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.

Example

17.7 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 17.7(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.

17.8 Severance

If a provision in this Deed is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Deed for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Deed.

17.9 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.

17.10 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.

17.11 No reliance

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

17.12 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.

17.13 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.

17.14 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) Except as set out in clause 15, nothing in this Deed gives a party authority to bind any other party in any way.

17.15 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.

17.16 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.

17.17 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, this clause 17.17 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.

17.18 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 schedules |
| 2. | schedules to this Deed |

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

Schedule 1 Particulars

| Item | | |
|--------|---|---|
| Item 1 | Principal's Representative: (Clause 1.1) | Name: [*] Address: [*] Email: [*] |
| Item 2 | Executive Negotiators: (Clause 1.1) | Principal: Tim Cusack, Chief Executive Officer, WA Return Recycle Renew Ltd Beverage Supplier: [*] |

| | | |
|--------|--|---|
| Item 3 | Bank Account Details: Principal (Clause 10.1) | Name of Account: WA Return Recycle Renew Ltd Branch Name: [*] Account Number: [*] BSB Number: [*] |
| Item 4 | Notice Details: Principal (Clause 16.1(c)) | Name: WA Return Recycle Renew Ltd Address: Unit 2, 1 Centro Avenue, Subiaco WA 6008 Email: [*] For the attention of: [*] |
| Item 5 | Notices Details: Beverage Supplier (Clause 16.1(c)) | Name: [*] Address: [*] Email: [*] For the attention of: [*] |

Schedule 2 Payments Schedule

This schedule sets out the arrangements that govern how Beverage Suppliers will be invoiced and pay contributions to fund Scheme costs.

1. Definitions

In this Payments Schedule, the following definitions apply. Capitalised terms in this Payments Schedule that are not defined below are defined in this Deed. Unless otherwise specified in this Payments Schedule, a reference to a clause is to a clause of this Payments Schedule.

BBSW means the ninety (90) day bank bill swap reference rate (Average Bid) as published in the Australian Financial Review on the first Business Day of the month in which an amount payable is due. For example, if an amount is due in November 2019, the BBSW is as published on the first Business Day of November 2019.

Beverage Product Sold means, in respect of a period, a Container used for a Beverage Product that was first Supplied in Western Australia during that period.

Beverage Supplier Invoice Date means the 15th day of the calendar month (or the last Business Day prior to this date) following the end of each Beverage Supplier Invoice Period.

Beverage Supplier Invoice Period means:

- (a) for Minor Beverage Suppliers:
 - (i) subject to subparagraph (a)(ii) of this definition, each Quarter; or
 - (ii) if the Minor Beverage Supplier so elects, each calendar month;
 and
- (b) for all other Beverage Suppliers, each calendar month.

Beverage Supplier Statement Date means the 15th day of the calendar month (or the last Business Day prior to this date) following the end of each Beverage Supplier Invoice Period.

Interest Rate means BBSW plus 200 basis points.

Quarter means the following periods in the year:

- (a) 1 July to 30 September;
- (b) 1 October to 31 December; (c) 1 January to 31 March; and
- (d) 1 April to 30 June.

Supply has the meaning given to that term in section 47C(1) of the Act and **Supplied** has a corresponding meaning.

2. Beverage Supplier Statement

The Beverage Supplier must, by each Beverage Supplier Statement Date, give the Principal a statement (**Beverage Supplier Statement**) in respect of the preceding Beverage Supplier Invoice Period, which must:

- (a) provide details of the number of Beverage Product Sold by the Beverage Supplier of each Material Type in each calendar month in the preceding Beverage Supplier Invoice Period;
- (b) provide such other information reasonably required by the Principal in connection with the calculation of the Scheme Prices in accordance with section 4; and
- (c) be submitted in a form specified from time to time by the Principal, acting reasonably.

3. Invoicing

3.1 Regular Beverage Supplier Invoices

- (a) The Principal must issue the Beverage Supplier with a Tax Invoice (**Beverage Supplier Invoice**) in respect of the Beverage Supplier's contributions to the cost of the Scheme for the relevant Beverage Supplier Invoice Period on or after each Beverage Supplier Invoice Date.
- (b) The Beverage Supplier Invoice will be calculated with reference to the relevant Beverage Supplier Statement and the Scheme Price for each Material Type for the relevant Beverage Supplier Invoice Period in accordance with section 5.
- (c) If the Beverage Supplier fails to provide a Beverage Supplier Statement to the Principal by the Beverage Supplier Statement Date, the Principal may issue the Beverage Supplier with a Beverage Supplier Invoice based on its reasonable assumptions in respect of the information that would otherwise have been required to be included in the Beverage Supplier Statement, including the number of Beverage Product Sold by the Beverage Supplier for each Material Type in each calendar month in the preceding Beverage Supplier Invoice Period.

3.2 Interim Beverage Supplier Invoices

- (a) If the Scheme Prices set out in a Beverage Supplier Invoice are insufficient in respect of the matters referred to in section 4(d), the Principal may (in its sole discretion) issue the Beverage Supplier with an interim Beverage Supplier Invoice in respect of the Beverage Supplier's contributions to the costs of the Scheme at any time prior to the issue of the Beverage Supplier Invoice for the next Beverage Supplier Invoice Period.
- (b) The interim Beverage Supplier Invoice will be calculated with reference to:
 - (i) the relevant Beverage Supplier Statement (or if the Beverage Supplier failed to provide a Beverage Supplier Statement, the Principal's reasonable assumptions in respect of the number of Beverage Product Sold by the Beverage Supplier for each Material Type in each calendar month in the relevant Beverage Supplier Invoice Period); and
 - (ii) an interim invoice price determined by the Principal for each Material Type for the relevant Beverage Supplier Invoice Period (or months within the Beverage Supplier Invoice Period) with reference to the number of Beverage Product Sold of each Material Type.
- (c) Where the Principal issues the Beverage Supplier with an interim Beverage Supplier Invoice under section 3.2(a), it must issue an interim Beverage Supplier Invoice to all Scheme Beverage Suppliers on a consistent basis unless otherwise prescribed by Regulations.

4. Scheme Prices

The parties acknowledge and agree that:

- (a) The Principal is a not for profit entity established to administer and provide governance for the Scheme and the income and property of the Principal must only be used to further the Scheme Objectives.
- (b) The Principal is responsible for determining the Scheme Beverage Suppliers' contributions to the costs of the Scheme.
- (c) The Principal will determine the amounts that will be charged to Scheme Beverage Suppliers (including Minor Beverage Suppliers) on a per Beverage Product Sold basis for each Material Type for each calendar month (**Scheme Prices**). Each Scheme Beverage Supplier will be subject to the same Scheme Prices, unless otherwise prescribed by Regulations. Without limiting section 3.2, the Principal may amend the Scheme Prices applying to a particular month at any time prior to issuing a Beverage Supplier Invoice to any Beverage Supplier for that month.
- (d) The Scheme Price for each Material Type for each month will be determined by the Principal in accordance with the Approved Supply Amount Calculation Methodology.

5. Beverage Supplier Invoice Amount

- (a) The Beverage Supplier Invoice amount for each Beverage Supplier Invoice Period will be calculated as the sum of invoice amounts payable for each month in the Beverage Supplier Invoice Period.
- (b) The invoice amount for each month (exclusive of any GST payable by the Beverage Supplier) is calculated in accordance with the Approved Supply Amount Calculation Methodology.
- (c) The Principal may adjust a Beverage Supplier Invoice to account for:
 - (i) any interest payable in accordance with section 6 in respect of overdue payments;
 - (ii) the results of the Principal's audit and verification procedures, including any discrepancies between the number of Beverage Product Sold by Material Type and the amount declared in any previous Beverage Supplier Statements;
 - (iii) any correction to estimation errors where a previous invoice has been issued in accordance with section 3.1(c) or 3.2; or
 - (iv) 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 Beverage Supplier's compliance with its obligations under this Deed determines that the Beverage Supplier has paid more or less than it was properly entitled to under this Deed.

6. Payment Terms

- (a) The Beverage Supplier must pay the Principal the amount set out as then payable in the Beverage Supplier Invoice within 5 Business Days.
- (b) If the Beverage Supplier fails to pay any amount payable within the time required, it must pay interest on the overdue amount at the Interest Rate from the date on which payment was due and payable until the date on which payment is made in full. Interest accrues daily and is payable on demand.

Example

Schedule 3 Approved Supply Amounts Calculation Methodology

1) Defined terms

In this supply amount calculation methodology, the following definitions apply:

Act means the *Waste Avoidance and Resource Recovery Act 2007*.

Beverage Product has the meaning given to that term in the Act.

Beverage Product Sold means, in respect of a month, a Container used for a Beverage Product that was first Supplied in Western Australia by the First Responsible Supplier during that month as declared by the First Responsible Supplier.

Container has the meaning given to that term in the Act and the Regulations.

Container Recovery Rate has the meaning given to that term in the Regulations.

Coordinator has the meaning given to that term in the Act.

First Responsible Supplier has the meaning given to that term in the Act and the Regulations.

Material Type means each material type listed in the Recovery Amount Protocol.

MRF Operator has the meaning given to that term in the Act and the Regulations.

Recovery Amount Protocol has the meaning given to that term in the Regulations.

Refund Point has the meaning given to that term in the Act and the Regulations.

Regulations means the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019*.

Scheme means the container deposit scheme established under Part 5A of the Act.

Scheme Objectives means the objects set out at section 47A of the Act.

Scheme Price means the price attributed to each Container, calculated in accordance with this supply amount calculation methodology.

Supply has the meaning given to that term in the Act and **Supplied** has a corresponding meaning.

2) Scheme pricing calculation

- a) The Scheme Price for each month will be determined by the Coordinator with reference to:

- (i) the number of Beverage Products of each Material Type that First Responsible Suppliers declare they have first Supplied in the State during the month;
 - (ii) an estimate of the number of Containers that are returned to Refund Points or collected or received by MRF Operators during the month;
 - (iii) the Container Recovery Rate for the month;
 - (iv) the recovery value of each Material Type used for the Container being the cost incurred in, or revenue received from, getting the material recycled, as determined by the Coordinator;
 - (v) the Scheme Objectives; and
 - (vi) the Coordinator's current and forecast capital reserves.
- b) The Coordinator will set Scheme Prices so that, over time:
- (i) aggregate contributions are approximately equal to the aggregate costs of the Scheme;
 - (ii) the Scheme remains liquid at all times; and
 - (iii) If the Coordinator accumulates excess cash reserves, the excess reserves are drawn to fund future Scheme costs.

3) Calculation of the invoice amount for each First Responsible Supplier

The invoice amount for each month (exclusive of any GST payable by the First Responsible Supplier) will be calculated as:

$$A_i = \sum_m S_{m,i} \times P_{m,i}$$

Where:

A_i is the invoice amount payable by the First Responsible Supplier for month i

$S_{m,i}$ is the number of Beverage Product Sold by the First Responsible Supplier of Material Type m during month i

$P_{m,i}$ is the applicable Scheme Price for Beverage Product Sold of Material Type m during month i .

Schedule 4 Common Disputes Procedure

1. Definitions and interpretation clauses

1.1 Definitions

In this Procedure:

| | |
|-----------------------------------|--|
| Act | means the <i>Waste Avoidance and Resource Recovery Act 2007</i> (WA). |
| Agreement | the deed of which this Schedule 4 forms a part. |
| Business Day | means a day that is not a Saturday, Sunday, or recognised public holiday in Perth, Western Australia. |
| Common Dispute | 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 Contributors. |
| Counterparty | means the party to the Agreement other than the Principal. |
| Dispute Party | has the meaning given in clause 3.1(b). |
| Exporter | has the meaning given to that term in section 47C(1) of the Act. |
| Export Rebate Agreement | has the meaning given to that term in section 47C(1) of the Act. |
| Issue Resolution Board | means a board established by the Principal under clause 5. |
| Member | means a member of the Issue Resolution Board. |
| Notice of Common Dispute | 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). |
| Principal | means WA Return Recycle Renew Ltd ACN 629 983 615. |
| Procedure | means this Schedule 4. |
| Related Scheme Contributor | means each party notified by the Principal 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 Supply Agreement; and
- (b) an Export Rebate Agreement, as the context requires, and includes the Agreement.

Scheme Contributor means:

- (c) a Supplier that has entered into a Supply Agreement; and
- (d) a Scheme Exporter,
as the context requires, whether such agreement is entered into before or after the date of the Agreement, and includes the Counterparty.

Scheme Exporter means an Exporter that has entered into an Export Rebate Agreement, and includes the Claimant.

1.2 Interpretation

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

2. Status of this Procedure

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

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 Contributors 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 parties to the Common Dispute are the Principal and the relevant Scheme Contributors to whom the Notice of Common Dispute was issued (each a **Dispute Party**).
- (c) The Principal must, at the same time as giving a Notice of Common Dispute to a Scheme Contributor, give the Scheme Contributor notice of:
 - (i) each other Scheme Contributor to whom the Notice of Common Dispute has been given; and
 - (ii) the Notified Contact Details of each other such Scheme Contributor for the purposes of clause 6 of this Procedure.

3.2 Related Scheme Contributor

- (a) The Principal must notify all Scheme Contributors (with a copy to each Dispute Party) within 10 Business Days of the Notice of Common Dispute being issued.
- (b) Each notice given by the Principal under this clause 3.2 must clearly identify each of the Related Scheme Contributor to allow each Dispute Party to be able to comply with clause 4.4. The Related Scheme Contributors are not parties to the Common Dispute.

4. Common Dispute resolution procedure

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 Contributor'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

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 Common 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 Contributor 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 Involvement of Related Scheme Contributors

- (a) Communications provided to the Issue Resolution Board or a Dispute Party must be provided to the Related Scheme Contributors.
- (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 Contributors within 1 Business Day of receipt of the communication.

- (c) The Dispute Party must provide each relevant Related Scheme Contributor 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 Contributors 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 5.7(d), in the preparation of its submissions.
- (f) The Dispute Party must:
 - (i) provide the relevant Related Scheme Contributors 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 Contributors.
- (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 Contributors, the Issue Resolution Board may make such directions as it thinks fit concerning the substitution of one of the Related Scheme Contributors 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 Common Dispute will be references to the substitute party.

5.8 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.

5.9 Notice of dissatisfaction

- (a) Subject to clause 5.9(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 5.9 must:
 - (i) state that it is given under this clause 5.9; and
 - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
- (d) If the Dispute Party or a Related Scheme Contributor considers that a Notice of Dissatisfaction should be issued, then it must provide notice to the Related Scheme Contributors 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 Contributor provides a notice under clause 5.9(d), the Dispute Party must take that notice into account when deciding whether or not to give a Notice of Dissatisfaction.
- (f) If a Common 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.

5.10 **Binding Nature of a Common Dispute**

If:

- (a) the Issue Resolution Board has given a determination as to that Common Dispute; and
- (b) no Notice of Dissatisfaction has been properly given under and in accordance with clause 5.9,

then the Principal and each Scheme Contributor unequivocally and unreservedly agrees that:

- (c) the determination of the Issue Resolution Board will be final and binding on each Dispute Party, the Principal and the Related Scheme Contributors (each a **Notified Party**) on receipt, who must give effect to it;
- (d) 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;
- (e) any determination by an Issue Resolution Board in relation to that Common 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
- (f) 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 Common Dispute, which has been determined in respect of the Common Dispute in accordance with this Procedure.

5.11 Time for Compliance

Any remedy or benefit to which a party to this Procedure is entitled pursuant to clause 5.10 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.

6. Notices

6.1 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.

6.2 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.

6.3 When Notices considered given and received

Subject to clause 6.2, 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.

6.4 Time of delivery and receipt

If pursuant to clause 6.3 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.

7. General

7.1 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 - for the Issue Resolution Board decision process

7. 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.

8. 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.

9. 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 parties of that decision in accordance with clause 6. The Issue Resolution Board must issue the notices to all 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.

10. General

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

Signing page

Executed as a 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)