

Recycling Panel Agreement

WA Return Recycle Renew Ltd

and

#[*Party 2 name]#

Ref MN:CW:953809

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Recycling Panel Agreement

Date

Parties

WA Return Recycle Renew Ltd ACN 629 983 615

of Unit 4, 1 Centro Avenue, Subiaco, Western Australia 6008

(Principal)

#[*Party 2 name]#

of **#[*Party 2 address]**

#(Recycler)

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. As part of the Scheme, the Principal wishes to offer processed used beverage containers for reuse and recycling through the Online Recycling Material Sales Platform and to regulate the acquisition of Processed Containers by the Recycler.
- D. The Recycler has agreed to participate in the Principal's Online Recycling Material Sales Platform and to the regulation of the acquisition of Processed Containers by the Recycler in accordance with this Agreement.

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

1. Definitions and interpretation clauses

1.1 Definitions

In this deed:

Act

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

Agreement	means this deed, including all schedules, annexures and appendices.
Approval	means any licence, permit, consent, approval, determination, certificate or other requirement: <ul style="list-style-type: none"> (a) of any Regulatory Authority having any jurisdiction in connection with the implementation of the Scheme; or (b) under any other applicable Statutory Requirement, which must be obtained or satisfied for the purposes of performance of the parties' respective obligations under this Agreement, and includes all applicable development approvals, any approval granted under a planning scheme or local law and environmental approvals.
Associate	means in respect of a party, any employee, officer, agent, or subcontractor of that party, but in respect of: <ul style="list-style-type: none"> (a) the Principal – excludes the State, the Other Scheme Participants and the Recycler; and (b) the Recycler – excludes the Principal.
Auction Terms and Conditions	means the terms and conditions relating to the Online Recycling Material Sales Platform as set out on the Platform and updated from time to time. For reference, the terms and conditions as at the date of this Agreement are set out in Schedule 2.
Bid	means a bid submitted by the Recycler on the Online Recycling Material Sales Platform in respect of a particular Saleable Quantity of Processed Materials, in the form required by the Principal from time to time.
Business Day	means a day that is not a Saturday, Sunday, or recognised public holiday in Perth, Western Australia.
Claim	means any claim, notice, demand, action, proceeding or litigation and includes any claim for the payment of money or relief from performance whether the claim, notice, demand, action, proceeding or litigation: <ul style="list-style-type: none"> (a) is in any way in connection with this Agreement or either party's conduct before this Agreement, including any direction of the Principal's Representative; (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.

Commercial Arrangements	means an agreement between the Recycler and an operator of a Material Recovery Facility.
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 6.
Confidential Material	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 Agreement.
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.
Default	has the meaning given in clause 11.1(a).
Default Cure Plan	has the meaning given in clause 11.2(a).
Default Notice	has the meaning given in clause 11.1(b).
Dispute	has the meaning given in clause 13.1(a).
Effective Date	has the meaning given in clause 2.
Executive Negotiators	in respect of a Party: <ul style="list-style-type: none"> (a) means the person stated as the Executive Negotiator of that Party in Item 3 of the Reference Schedule or such other person as is notified in writing by that Party to the other Party as its Executive Negotiator from time to time; or (b) an individual nominated in writing by a person referred to in paragraph (a) of this definition.
Existing Commercial Arrangement	means an agreement between the Recycler and a Processing Services Provider or an operator of a Material Recovery Facility entered into before the Effective Date.
Indemnified Amounts	is defined in clause 22(a) of the Auction Terms and Conditions.
Insolvency Event	means: <ul style="list-style-type: none"> (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with this Agreement for financial reasons; (b) execution is levied against a person by a creditor; (c) in relation to an individual person or a partnership, the person:

- (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a corporation, any one of the following:
- (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) the corporation entering a deed of company arrangement with creditors;
 - (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (iv) an application is made to a court for the winding up of the corporation and not stayed within 10 Business Days, 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 Agreement	has the meaning given to that term in section 47C(1) of the Act.
Material Recovery Facility	has the meaning given to that term in section 47C(1) of the Act.
Minister	means the minister who is responsible under Western Australian law for administering Part 5A of the Act.
Online Recycling Material Sales Platform	means the 'Online Recycling Material Sales Platform' nominated by the Principal and described in Schedule 4.
Other Service Provider	means any contractor (at any tier) of the Principal, including all service providers and subcontractors under the Processing Services Agreement and Material Recovery Agreement, but excluding any other service provider to the Principal that the Principal determines (in its sole discretion) is excluded from this definition from time to time.
Principal's Representative	means the individual specified in Item 1 of the Reference Schedule or such other person as is notified in writing by the Principal to the Recycler as the Principal's Representative for the purposes of this Agreement.
Processed Material	means materials produced following the processing of beverage containers delivered to: <ul style="list-style-type: none"> (a) Processing Services Providers in accordance with a Processing Services Agreement; or (b) operators of Material Recovery Facilities in accordance with a Material Recovery Agreement.
Processed Materials Sale Contract	has the meaning given in clause 6.3(b)(ii).
Processing Services Agreement	means any agreement entered into by the Principal for the provision of recycling and other waste processing services in connection with the Scheme
Processing Services Provider	means a service provider engaged by the Principal under a Processing Services Agreement
Prohibited Manner	has the meaning given to that term in section 47C(1) of the Act.
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.

Recycling Panel Agreement

means:

- (a) this Agreement; or
- (b) an agreement of that name entered into by any other recycler and the Principal.

Reference Schedule

means Schedule 1 to this Agreement.

Regulation

means any regulation made under Part 5A of the Act.

Regulatory Authority

means:

- (a) any government or a governmental, quasi-governmental or judicial entity or authority (including the department or agency responsible under Western Australia 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 Agreement.

Relevant Arrangement

is defined in clause 6.4(b).

Reserve Price

means the price determined by the Principal as the minimum acceptable price for a particular Saleable Quantity of Processed Material, as listed on the Online Recycling Material Sales Platform.

Saleable Quantity

means a quantity of Processed Materials that is a marketable quantity in accordance with the Online Recycling Material Sales Platform policies.

Scheme

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

Scheme Commencement Date

means the day fixed by the Minister by order published in the Gazette to be the appointed day for the purposes of section 47E of the Act.

Scheme Data

means any data, information or personal information accessible to the Recycler (or any third parties who have access to such Scheme Data through the Recycler) and which relates in any way to the Scheme or a Scheme Participant.

Scheme Objectives

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

Scheme Participant	<p>means:</p> <ul style="list-style-type: none"> (a) the Principal; (b) a recycler that has entered into a Recycling Panel Agreement with the Principal, including the Recycler; and (c) any Other Service Provider, <p>as the context requires.</p>
State	<p>means the Crown in right of the State of Western Australia, including the Minister.</p>
Statutory Requirements	<p>means:</p> <ul style="list-style-type: none"> (a) the Act and Regulations; (b) any law applicable to implementation and operation of the Scheme, the Recycler's obligations under this Agreement, including statutes, ordinances, regulations, by-laws, orders and other subordinate legislation, including those in relation to workplace health and safety; (c) Approvals (including any condition or requirement under them), applicable to implementation and operation of the Scheme, and the Recycler's obligations under this Agreement; and (d) in connection with the foregoing, any requirement to pay fees and charges.
Successful Purchaser	<p>means, in respect of a particular Saleable Quantity of Processed Materials, either:</p> <ul style="list-style-type: none"> (a) the person that submitted the highest Bid accepted by the Principal through the Online Recycling Material Sales Platform; or (b) the person that is otherwise determined to be the successful purchaser in accordance with the Auction Terms and Conditions.
Term	<p>has the meaning given in clause 2.</p>
Terms and Conditions of Sale	<p>means the terms under which Saleable Quantities of Processed Materials are sold by the Principal to the Successful Purchaser, as amended by the Principal from time to time in accordance with this Agreement. As of the Effective Date, the terms are as set out in Schedule 3.</p>
Wilful Misconduct	<p>means an act or failure to act by the relevant party that was intended to cause, was in deliberate disregard of, or deliberate indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgment.</p>

1.2 Interpretation

In this Agreement unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Agreement;
- (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 Agreement 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 Agreement and a reference to this Agreement includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Agreement) 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 Agreement 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 binds them jointly and severally;
- (o) a provision of this Agreement 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 Agreement or the preparation or proposal of that provision;
- (p) a reference to a body, other than a party to this Agreement (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 Agreement 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 Agreement 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.

1.4 Acknowledgement of agency

- (a) The parties acknowledge that in order to facilitate the sale of Processed Material on the Online Recycling Material Sales Platform, the Principal may undertake any obligation under this Agreement:
 - (i) directly; or
 - (ii) through an agent.
- (b) The Principal will, from time to time, notify the Recycler of the arrangements in place with its agent in connection with this Agreement, and the Recycler is entitled to deal with any such agent in accordance with those arrangements for the purposes of this Agreement.

2. Term

This Agreement takes effect and comes into force on the date of this Agreement (**Effective Date**) and continues until terminated in accordance with this Agreement or the Scheme is otherwise no longer in force (**Term**).

3. Structure of this Agreement

3.1 Provision of Online Recycling Material Sales Platform

- (a) This Agreement sets out the terms applicable to this Agreement and the terms applicable to any Processed Materials Sale Contract entered into under and in accordance with this Agreement.
- (b) This Agreement does not constitute an offer by the Principal to sell Processed Material to the Recycler, nor does it constitute an offer by the Recycler to purchase Processed Material from the Principal.
- (c) The Principal may, from time to time and in accordance with this Agreement:
 - (i) offer to sell Processed Material through the Online Recycling Material Sales Platform;
 - (ii) accept Bids from the Recycler (or any other recycler that enters into a Recycling Panel Agreement with the Principal) in respect of that Processed Material; and
 - (iii) sell Processed Material to the Recycler if the Recycler is determined by the Principal to be the Successful Purchaser in accordance with this Agreement.
- (d) The Recycler bears the cost and risk of its participation in the Online Recycling Material Sales Platform.

3.2 Non-exclusive

- (a) Nothing in this Agreement is to be taken to imply that the Recycler may not acquire goods of the same kind as the Processed Material, at any time, from any other person.
- (b) Nothing in this Agreement is to be taken to imply that the Principal may not sell goods of the same kind as the Processed Material, at any time, to any other person.

3.3 Order of precedence

To the extent of any inconsistency, the provisions of this Agreement will apply in the following order of precedence:

- (a) the Terms and Conditions of Sale (as amended from time to time in accordance with this Agreement);
- (b) the Auction Terms and Conditions (as amended from time to time in accordance with this Agreement);
- (c) the body of this Agreement, excluding schedules; and
- (d) all other schedules to this Agreement.

4. Key obligations

4.1 Fraud

- (a) The Recycler must not, in connection with this Agreement, provide any information that the Recycler knows is false or misleading in a material particular.
- (b) The Recycler must take all reasonable steps to minimise and prevent fraud in connection with the Scheme.

4.2 Compliance

- (a) The Recycler must comply with all applicable Statutory Requirements and this Agreement.
- (b) The Recycler must give notice in writing to the Principal's Representative, together with relevant particulars:
 - (i) within 24 hours after becoming aware of any suspected contravention or contraventions of any applicable Statutory Requirement by a Scheme Participant (including itself) or any other person;
 - (ii) immediately in respect of a 'relevant notice' (as that term is defined in Reg 14A of the Regulations):
 - (A) given by the Recycler or any other person; or
 - (B) issued to the Recycler or any other person,
 that relates to a 'notifiable incident' under the *Work Health and Safety Act 2020* (WA).

4.3 Notification of GST status

- (a) The Recycler must, within 5 Business Days of the Effective Date, notify the Principal of their GST registration status and ABN.
- (b) The Recycler must inform the Principal of any changes to their GST registration status within 5 Business Days.

4.4 Declarations

No later than the date which is 10 Business Days after the end of each Quarter during the Term, the Recycler must prepare and deliver to the Principal's Representative a statutory declaration executed by:

- (a) a director of the Recycler or the ultimate parent entity of the Recycler; and
- (b) the chief executive officer or equivalent of the Recycler or the ultimate parent entity of the Recycler,

in the form prescribed by the Principal from time to time, declaring:

- (c) all Processed Materials purchased from the Principal or pursuant to a Relevant Arrangement have been reused, recycled or disposed of in a manner that is not a Prohibited Manner;
- (d) all Processed Materials declared to be for export were in fact exported as declared within 60 days of sale;
- (e) in respect of Processed Materials purchased from the Principal or pursuant to a Relevant Arrangement during the Quarter that is sold to a recycler based in Western Australia, for each Material Type: the weight of Processed Material and destination country or state of the Processed Material, if known;
- (f) in respect of Processed Materials purchased from the Principal or pursuant to a Relevant Arrangement during the Quarter that is sold to a recycler based in an Australian State or Territory other than Western Australia, for each Material Type: the weight of Processed Materials and destination country or state of Processed Materials, if known; and
- (g) in respect of Processed Materials purchased from the Principal or pursuant to a Relevant Arrangement during the Quarter that is sold to a recycler based overseas, for each Material Type: the weight of Processed Material by destination country of the first recipient and subsequent recipient if known.
- (h) any other matter in relation to the information provided by the Recycler to the Principal under this Agreement, as prescribed by the Principal from time to time (as notified in writing by the Principal to the Recycler).

5. Access to Online Recycling Material Sales Platform

5.1 Conditions of access

- (a) The Recycler agrees that its access to the Online Recycling Material Sales Platform is subject to the Auction Terms and Conditions, as updated by the Principal from time to time.
- (b) The Recycler acknowledges and agrees that:
 - (i) the Auction Terms and Conditions may be amended by the Principal in its sole discretion from time to time upon 5 Business Days' notice to the Recycler; and
 - (ii) the Recycler is not entitled to any compensation arising from the Principal exercising its rights under clause 5.1(b)(i).
- (c) The Principal may revoke, suspend or reinstate the Recycler's access to the Online Recycling Material Sales Platform at any time in accordance with the Auction Terms and Conditions.
- (d) Subject to the Recycler first complying with clause 5.1(f), the Principal will provide the Recycler with access to the Online Recycling Material Sales Platform on the later of:
 - (i) the Scheme Commencement Date; and
 - (ii) within 10 Business Days of the Effective Date.

- (e) The Principal will provide online user training on the Online Recycling Material Sales Platform (including as to how the automatic bidding function works) from time to time and the Principal will notify the Recycler of the time and how to access such training.
- (f) The Recycler must ensure that any user accessing the Online Recycling Material Sales Platform on the Recycler's behalf attends at least one of the training sessions referred to in clause 5.1(e) (whether online or in person) and passes a qualification test in respect of the use of the Online Recycling Material Sales Platform.

5.2 Licence to Online Recycling Material Sales Platform

- (a) The Principal grants to the Recycler a non-transferable, non-exclusive, royalty-free licence for the Term to use the Online Recycling Material Sales Platform for the sole purpose of performing its obligations and exercising its rights under this Agreement.
- (b) The Recycler must not sub-license any of the rights granted under clause 5.2(a) without the Principal's prior written consent.
- (c) To the extent permitted by law (including the Australian Consumer Law if applicable), the Principal makes no representations, warranties or guarantees about the Online Recycling Material Sales Platform (including about any information that is input into the Online Recycling Material Sales Platform), including that it will be accurate, current, reliable, timely, available, secure, complete, up-to-date or of a certain quality, or that it will operate in combination with any other hardware, software, system, or data, or that it is free from defects, bugs, viruses, errors or other harmful components, or that any stored data will not be lost or corrupted. The Online Recycling Material Sales Platform and all other products and services made available to the Recycler in connection with this Agreement are provided "as is" and to the extent permitted by law (including the Australian Consumer Law if applicable), the Principal disclaims any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express or implied.
- (d) To the extent not excluded under clause 5.2(c) the Principal's liability in respect of the Online Recycling Material Sales Platform under this Agreement is capped at \$1,000.
- (e) The Recycler acknowledges that through its use of the Online Recycling Material Sales Platform it may have access to Scheme Data. The Principal grants the Recycler a limited right to use the Scheme Data that it accesses in relation to the Online Recycling Material Sales Platform for the sole purpose of performing its obligations under this Agreement. The Recycler must not use the Scheme Data for any other purpose without the Principal's prior written consent. The Recycler acknowledges that Scheme Data is the sole and valuable property of the Principal and that any unauthorised disclosure, use or loss of it result in the Principal suffering Loss. The Recycler assigns to the Principal all Intellectual Property and other rights that the Recycler would otherwise have in Scheme Data. The Recycler must not assert any lien or other right against or in relation to Scheme Data or otherwise deal with Scheme Data.

5.3 Modifications

- (a) The Recycler must not (and must ensure that its personnel do not) and must not (and must ensure that its personnel do not) directly or indirectly allow or cause a third party to:

- (i) modify, the whole or any part of the Online Recycling Material Sales Platform or combine or incorporate the whole or any part of the Online Recycling Material Sales Platform in any other program or system without the prior consent in writing of the Principal;
 - (ii) circumvent, disable or otherwise interfere with security-related features of the Online Recycling Material Sales Platform; or
 - (iii) do anything which will or may damage, disrupt access to or interfere with the proper operation of the Online Recycling Material Sales Platform, including uploading or permitting any virus or malicious code to adversely affect the Online Recycling Material Sales Platform or any associated equipment or data.
- (b) The Recycler must not, and must not directly or indirectly allow or cause a third party to, copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Online Recycling Material Sales Platform or any part of it.

5.4 Indemnified Amounts

- (a) Any Indemnified Amounts determined by the Principal and notified to the Recycler are a debt due and payable by the Recycler to the Principal in accordance with the Auction Terms and Conditions.
- (b) The Principal may set-off or deduct from amounts otherwise payable to the Recycler (including under a Processed Materials Sale Contract entered into under this Agreement) any amount claimed from the Recycler by the Principal in connection with this Agreement, including any applicable Indemnified Amounts.
- (c) Nothing in clause 5.4(b) affects the Principal's right to recover the whole of any balance that remains owing after any set-off from the Recycler.

6. Sale and Purchase of Processed Materials

6.1 Terms and Conditions of Sale

- (a) The Terms and Conditions of Sale apply to the sale of all Processed Materials sold by the Principal to the Recycler.
- (b) The Recycler acknowledges and agrees that:
 - (i) the Terms and Conditions of Sale may be amended by the Principal in its sole discretion from time to time upon 5 Business Days' notice to the Recycler (provided that any such amendments only apply in respect of Processed Materials Sales Contracts entered into after the expiry of the 5 Business Day notification period); and
 - (ii) the Recycler is not entitled to any compensation arising from the Principal exercising its rights under clause 6.1(b)(i).

- (c) The Recycler agrees to the Terms and Conditions of Sale by issuing a Bid in respect of a particular Saleable Quantity of Processed Material to the Principal through the Online Recycling Material Sales Platform.
- (d) The Recycler must not purchase, or offer to purchase, Processed Materials from a Scheme Participant except in accordance with this clause 6.
- (e) The depiction of a Saleable Quantity of Processed Materials on the Online Recycling Material Sales Platform, whether visual or textual, is not to be construed as an obligation to sell but merely an invitation to treat and no contractual obligation to sell or purchase that Saleable Quantity of Processed Materials will arise until the Principal provides the Recycler with a notification under clause 6.3(b)(i).

6.2 Sale process

- (a) From time to time, the Principal may list Saleable Quantities of Processed Material for sale on the Online Recycling Material Sales Platform, and such Processed Material:
 - (i) will be offered for sale subject to a Reserve Price; and
 - (ii) is offered for sale on the terms of the Terms and Conditions of Sale.
- (b) If the Recycler wishes to purchase any Processed Material listed for sale on the Online Recycling Material Sales Platform it may submit a Bid for that Processed Material on the Online Recycling Material Sales Platform in accordance with the Auction Terms and Conditions.
- (c) Subject to clause 6.3, the Recycler acknowledges that the Principal may receive other Bids in respect of Processed Materials listed for sale on the Online Recycling Material Sales Platform and that the Principal may choose to sell the Processed Materials to another purchaser other than the Recycler.

6.3 Entry into Processed Materials Sale Contract

- (a) If, at the end of the auction period set by the Principal on the Online Recycling Material Sales Platform:
 - (i) the Principal has accepted one or more Bids and the highest Bid exceeds the relevant Reserve Price:
 - (A) the person that submitted the highest Bid accepted by the Principal (the **Successful Purchaser**) must purchase from the Principal; and
 - (B) the Principal must sell to the Successful Purchaser,
 - the particular Saleable Quantity of Processed Material on the terms of the Terms and Conditions of Sale and for the price set out in the winning Bid; and
 - (ii) the Principal has not accepted any Bids pursuant to clause 4(a) of the Auction Terms and Conditions, the Principal may in its sole discretion:
 - (A) withdraw that Processed Material from sale;
 - (B) relist that Processed Material for sale at a different Reserve Price; or

- (C) otherwise take any steps to sell that Processed Material, including by negotiation with persons that submitted bids.
- (b) If the Recycler is the highest bidder:
- (i) the Principal must promptly notify the Recycler that it is the Successful Purchaser; and
 - (ii) if the Principal issues a notification under clause 6.3(b)(i), the parties are deemed to have entered into a separate binding contract of sale and purchase on and with effect from the date of the notification, consisting of:
 - (A) the relevant Bid submitted by the Recycler and accepted by the Principal; and
 - (B) the Terms and Conditions of Sale,
(the **Processed Materials Sale Contract**).

6.4 Existing Commercial Arrangements and Commercial Arrangements

- (a) The Recycler may purchase Processed Material pursuant to:
 - (i) an Existing Commercial Arrangement, recognised by the Principal; or
 - (ii) a Commercial Arrangement, recognised by the Principal.

- (b) The Principal must recognise an Existing Commercial Arrangement or a Commercial Arrangement (each a **Relevant Arrangement**) unless:
 - (i) the counterparty to the Relevant Arrangement is not party to a Processing Services Agreement or a Material Recovery Agreement with the Principal;
 - (ii) the Recycler or the counterparty to the Relevant Arrangement is the subject of a current investigation by the Principal or a Regulatory Authority in connection with the Scheme;
 - (iii) the Recycler or the counterparty to the Relevant Arrangement is the subject of a decision by the Principal or a Regulatory Authority that is or may be adverse to the Recycler's capacity to perform its obligations under this Agreement or the Counterparty's capacity to perform its obligations under the Relevant Arrangement;
 - (iv) the Principal has issued the Recycler with a Default Notice under this Agreement and the default the subject of that Default Notice has yet to be remedied;
 - (v) the Principal has issued the counterparty to the Relevant Arrangement with notice of a default by the counterparty under a Processing Services Agreement or a Material Recovery Agreement and the default the subject of that default notice has yet to be remedied;

- (vi) the Principal reasonably believes that the Recycler does not intend to comply with its obligations under this Agreement in relation to the Processed Material the subject of the Relevant Arrangement; or
 - (vii) the Recycler or the counterparty to the Relevant Arrangement is the subject of an Insolvency Event.
- (c) The Principal may withdraw its recognition of a Relevant Arrangement on any ground upon which the Principal can refuse to recognise a Relevant Arrangement under clause 6.4(b).

6.5 Recycling of Processed Materials

The Recycler must:

- (a) reuse, recycle or dispose of in a manner that is not a Prohibited Manner all Processed Materials purchased from the Principal or pursuant to a Relevant Arrangement; and
- (b) provide reasonable evidence of compliance with clause 6.5(a) to the Principal upon request.

6.6 Disputes

- (a) If any dispute arises in relation to the conduct of the process set out in clause 6.2, including whether the Recycler has submitted a valid Bid:
 - (i) the Principal will be the sole arbitrator of such a dispute and the Principal's decision in respect of such a dispute will be final; and
 - (ii) at the option of the Principal, either:
 - (A) the Processed Material may be relisted for auction; or
 - (B) the Principal may decide the dispute.
- (b) Any dispute in relation to a Sale of Processed Materials Contract entered into under this Agreement (including in relation to payment, inspection, delivery to or collection by the Successful Purchaser) will be resolved in accordance with the Processed Materials Sale Contract.

6.7 Indemnity

- (a) Subject to clause 6.7(b), the Recycler indemnifies the Principal to the maximum extent permitted by law against and in respect of any Claim or Loss sustained by the Principal either directly or indirectly in connection with the purchase or sale of the Processed Material by the Principal under and in accordance with this Agreement.
- (b) The indemnity in clause 6.7(a) will be reduced proportionally to the extent to which the Claim or Loss was caused or contributed to by an act or omission of the Principal.

7. Information, Audits and Reporting

7.1 Audit and Reporting

- (a) The Recycler must at all times:
- (i) have auditable systems in place to record all information required to be reported to the Principal and retain such information for a period of no less than 7 years;
 - (ii) provide such information as the Principal reasonably requires, at such times as the Principal reasonably requires, in order for the Principal to comply with its reporting obligations under Statutory Requirements;
 - (iii) reasonably cooperate with, and provide (or seek to provide) access to, the Principal (or an Associate or auditor of the Principal as notified to the Recycler by the Principal from time to time) so as to allow the Principal or its Associate to undertake any audit or review of the Recycler's compliance with this Agreement;
 - (iv) provide the Principal with reports and statutory declarations as requested by the Principal, including reports on the items required to be recorded under clause 7.1(a)(i);
 - (v) provide the Principal and any auditor engaged by or on behalf of the Principal with all information, documents and access to personnel and premises reasonably requested by the Principal or the auditor with respect to the Recycler's obligations under this Agreement;
 - (vi) cooperate with and provide any assistance to any auditor engaged by or on behalf of the Principal for the purposes of undertaking an audit or review of the Recycler's compliance with its obligations under this Agreement; and
 - (vii) otherwise take all reasonable measures to facilitate the Principal's compliance with its auditing and reporting obligations under all Statutory Requirements.
- (b) For the purposes of this clause 7.1, an auditor can be a qualified accountant or other authorised investigator.

7.2 Principal's right to inspect

- (a) The Principal or its Associates may at any time audit, examine or review the Recycler's compliance with its obligations under this Agreement, including to determine if amounts paid to the Recycler are properly payable to the Recycler under this Agreement (including any Processed Materials Sale Contract entered into under this Agreement).
- (b) If requested by the Principal's Representative, the Recycler must provide reasonable assistance to the Principal in connection with any review, examination or audit in accordance with this clause 7.2.
- (c) The Recycler acknowledges that:
- (i) the Principal owes no duty to the Recycler to audit or review its compliance with the requirements of this Agreement if it or one of its Associates does so audit or review; and

- (ii) no audit or review by the Principal or an Associate of the Principal will in any way lessen or otherwise affect:
 - (A) the Recycler's obligations whether under this Agreement or otherwise at law; or
 - (B) the Principal's rights against the Recycler whether under this Agreement or otherwise at law.

7.3 Government information

The Recycler acknowledges and agrees that:

- (a) if requested by the State, the Principal may provide a copy of this Agreement, and any information relating to this Agreement, 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 Recycler under a Processed Materials Sale Contract entered into in accordance with this Agreement may be disclosed by the Principal to 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 7.3 the Recycler 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 Recycler to provide information or produce material in accordance with that section.

7.4 Auditor General access to Records

- (a) The Recycler must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Recycler's Records concerning this Agreement.
- (b) The Recycler 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 Agreement.
- (c) In this clause 7.4 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 Agreement, whether or not containing confidential information, and however such records and information are held, stored or recorded.

8. Data, security and recovery

The Recycler must at all times comply with the Principal's policies and procedures (as notified to the Recycler from time to time), for the security and integrity of all information technology systems used in relation to this Agreement, including any system used to store Scheme Data.

9. Modern Slavery

9.1 Definitions

In this clause 9:

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.

9.2 Recycler warranties

The Recycler represents, warrants and undertakes:

- (a) that no form of Modern Slavery is used in the Recycler's business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
- (b) to comply with all applicable employment and work health and safety laws;
- (c) to comply with all applicable statutory requirements relating to Modern Slavery, including but not limited to any imposed by the Commonwealth Act;
- (d) to comply with all applicable Modern Slavery reporting requirements, including but not limited to any imposed by the Commonwealth Act;
- (e) to include, in each of its contracts with its subcontractors and/or suppliers, anti-slavery provisions that are at least as onerous as those set out in this clause 9; and
- (f) to notify to the Principal promptly upon becoming aware of any incident, complaint or allegation that the Recycler, or any entity in its supply chain, has engaged in Modern Slavery.

9.3 Recycler policies and procedures

Throughout the Term, the Recycler must have and implement its own policies and procedures that are designed to ensure compliance with the warranties contained in clause 9.2.

9.4 Prohibition

The Recycler must not engage in Modern Slavery.

9.5 Reporting Obligations

- (a) At the request of the Principal, the Recycler must:
 - (i) confirm in writing that it has complied with its undertakings under this clause 9 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 9.2.
- (b) Upon becoming aware of any actual, reasonably suspected or anticipated breach of this clause 9, the Recycler must immediately provide written notice of the breach, giving full details of such breach, to the Principal.

10. Insurance

- (a) Unless otherwise agreed by the Principal in writing, the Recycler must:
 - (i) effect and maintain with a financially secure and reputable insurer, for the duration of the Term, sufficient levels of the customary types of insurances relevant to a business of such nature, including:
 - (A) public and products liability insurance for an amount not less than \$20 million per occurrence or series of occurrences; and
 - (B) for the amount required by law:
 - (1) workers compensation insurance to insure against liability for death of or injury to persons employed by the Recycler, including liability by statute and at common law; and
 - (2) comprehensive motor vehicle insurance including compulsory third-party insurance in respect of all motor vehicles used by the Recycler in connection with this Agreement (or any Processed Materials Sale Contract entered into under this Agreement);
 - (ii) upon request by the Principal, provide the Principal with certificates of currency from its insurers certifying that it has insurance sufficient to comply with clause 10(a)(i); and

- (iii) ensure that the Principal is noted as an interested party under the policies required by clause 10(a)(i).
- (b) Despite any other provision of this Agreement, the Principal may refuse to make any payment otherwise due under this Agreement (or any Processed Materials Sale Contract entered into under this Agreement) until the Recycler has fully complied with its obligations under clause 10(a).

11. Default and Termination

11.1 Default

- (a) A material breach by the Recycler (a **Default**) includes each of the following:
 - (i) the Recycler fails to comply with any of its obligations under this Agreement;
 - (ii) any representation or warranty given by the Recycler is untrue or misleading (whether by omission or otherwise) when made, given or repeated; or
 - (iii) if in the opinion of the Principal, acting reasonably, the Recycler performs its obligations under this Agreement, or otherwise acts, in a manner that:
 - (A) is unsafe;
 - (B) adversely affects the Principal or its brand, goodwill or reputation; or
 - (C) places the Principal in breach of any Statutory Requirement.
- (b) If the Recycler commits a Default which is capable of remedy, the Principal must provide written notice to the Recycler setting out in detail the nature of the alleged Default (**Default Notice**).

11.2 Default Cure Plan

- (a) If the relevant Default is not remedied to the Principal's satisfaction within 5 Business Days of a Default Notice being issued, the Principal may direct the Recycler to prepare and implement a default remedy plan (**Default Cure Plan**).
- (b) The Default Cure Plan:
 - (i) must include a period of time within which the Recycler proposes to remedy the Default; and
 - (ii) may include steps to remedy the Default.
- (c) The Recycler must comply with any Default Cure Plan prepared in accordance with this clause 11.2.

11.3 Exclusion of common law rights

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

11.4 Immediate termination

- (a) This Agreement will terminate immediately if:
 - (i) the Scheme is repealed; or
 - (ii) there is a revocation of the Principal's appointment as the Coordinator for the Scheme under the Act.
- (b) Clause 11.4(a)(ii) will not apply if a new Coordinator is appointed and, pursuant to the Regulations, this Agreement is automatically assigned to, and assumed by, that incoming Coordinator upon the Principal's appointment as the Coordinator for the Scheme under the Act coming to an end.

11.5 Termination by either party

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 Agreement, either party may terminate this Agreement immediately by notice to the other party if:

- (a) an Insolvency Event occurs in respect of a party; or
- (b) the other party commits an act of fraud, including any act of fraud prohibited under the Act or Regulations.

11.6 Termination by Principal

The Principal may terminate this Agreement immediately by notice to the Recycler if:

- (a) the State is of the reasonable opinion that the Recycler is not (or is no longer) a fit and proper person for the purposes of this Agreement;
- (b) the Principal is of the reasonable opinion that the Recycler is not (or is no longer) a fit and proper person. In determining whether the Recycler is not (or is no longer) a fit and proper person, the Principal will have regard to any public or private reports of misconduct, fraud, alleged criminal conduct or poor governance of or by the Recycler or its Associates (whether or not in relation to the Scheme) and any conduct of the Recycler or its Associates which may bring the Principal or the Scheme into disrepute or impact on, or be inconsistent with, the achievement of the Scheme Objectives;
- (c) in exercise of rights under the Act, the Regulations or the conditions of appointment of the Principal as Coordinator under the Act, the State directs that this Agreement be terminated;
- (d) the Recycler commits a Default (in respect of which the Principal has provided a Default Notice) and the Recycler has not remedied the Default to the Principal's satisfaction within 5 Business Days or such longer period as is specified in the Default Notice;

- (e) the Recycler commits a Default (in respect of which the Principal has provided a Default Notice and directed the Recycler to prepare and implement a Default Cure Plan) and:
 - (i) the Recycler has not taken any steps to prepare or implement the Default Cure Plan approved by the Principal within 5 Business Days of the Principal directing it to do so; or
 - (ii) the Recycler has not remedied the Default at the end of the cure period set out in the Default Cure Plan approved by the Principal;
- (f) the Recycler commits a Default that is not capable of being remedied;
- (g) the Recycler commits a criminal or fraudulent act or engages in Wilful Misconduct;
- (h) there is a change to a Statutory Requirement or an Approval that makes or will make either party's performance of this Agreement non-compliant or contrary to law or policy; or
- (i) the Recycler is the subject of a decision by a Regulatory Authority that is or may be adverse to the Recycler's capacity to perform its obligations under this Agreement or is harmful to the reputation of the Principal.

11.7 No compensation

The Recycler acknowledges that it is not entitled to any compensation from the Principal where this Agreement is terminated under this clause 11.

11.8 Rights not affected

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

12. Liability

12.1 General

Each party excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void.

12.2 Consequential loss

- (a) Subject to clauses 5.4, 12.2(b) and 12.2(c), each party excludes all liability to the other party for loss of goodwill, loss of customers, loss of capital, downtime costs, indirect loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, incurred by or awarded against the other party under or in any way connected with this Agreement.
- (b) The exclusion in clause 12.2(a) does not in any way limit the Recycler's liability under clause 12.3.
- (c) Nothing in clause 12.2(a) excludes or limits a party's liability:

- (i) for a criminal or fraudulent act or Wilful Misconduct; or
- (ii) in respect of liquidated damages payable under this Agreement (if any) or under any provision in this Agreement where a debt or other payment is due.

12.3 Indemnity by Recycler

- (a) Subject to clause 12.3(b), the Recycler indemnifies the Principal against any Claim or Loss sustained by the Principal arising out of any act or omission of the Recycler in breach of this Agreement, that causes the Principal to be in breach of, or gives rise to any Loss sustained by the Principal in connection with any Statutory Requirement, including with respect to any of its obligations as the Coordinator, or any third party claim.
- (b) The indemnity in clause 12.3(a) will be reduced proportionally to the extent to which the Claim or Loss was caused or contributed to by an act or omission of the Principal.

13. Disputes

13.1 Notice of Dispute

- (a) Subject to clause 6.6, 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 Recycler in respect of any fact, matter or thing arising out of, or in any way in connection with, this Agreement (**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 Recycler, 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 commence 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 Agreement.

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 that, subject to clause 14.2:

- (a) the Confidential Material of the other party is and will remain confidential to the other party;
- (b) it has not disclosed and will not at any time, without the other party's prior written consent, disclose the contents of this Agreement or the other party's Confidential Material to any third party; and
- (c) it will not, and will ensure that its Associates do not, at any time, use or reproduce or permit or allow any other person to use or reproduce this Agreement, the other party's Confidential Material, other than for the purposes of this Agreement, including to carry out its obligations pursuant to this Agreement.

14.2 Exceptions to confidentiality

- (a) It will not be a breach of clause 14.1:
 - (i) if the Principal, in response to a request from the State, discloses a copy of this Agreement or any relevant information relating to this Agreement, to the State or representatives of the State acting in relation to such request, as contemplated by clause 7.3(a);
 - (ii) if a party (**Disclosing Party**) discloses the other party's Confidential Information or this Agreement:
 - (A) to an Associate of the Disclosing Party who has previously agreed to keep, and to ensure that its employees keep, that Confidential Information or the contents of this Agreement (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 7.4.
- (b) Clause 14.1 does not apply:
 - (i) to a party's Confidential Material or a provision of this Agreement 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 Agreement that the other party has notified the Other Party in writing that the other party no longer requires the Other Party to maintain as confidential.
- (c) Nothing in this clause 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 Recycler 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 Agreement.

14.3 Publicity and branding

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

- (a) at all times comply with any protocols or procedures notified by the Principal relating to confidentiality, branding, public releases or announcements, advertising and/or any comment to the media in connection with or relating to the Scheme; 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.

15. GST

15.1 Preliminary

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

15.2 GST exclusive

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

15.3 Liability to pay GST

If a party makes a taxable supply under this Agreement (**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.

15.4 Tax invoice

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

15.5 Adjustment event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this Agreement, the amount paid or payable by the Recipient pursuant to clause 15.3 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.

15.6 Reimbursement of expenses

If a third party makes a taxable supply and this Agreement requires a party to this Agreement (**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.

15.7 Non merger

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

16. Notices

16.1 Requirements

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

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) addressed to a party in accordance with its details set out in Item 4 of the Reference Schedule or as otherwise specified by that party by Notice (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

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.

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 Agreement without the consent of the Recycler.
- (b) The Recycler cannot assign, novate, charge, create a security interest over, subcontract, encumber or otherwise deal with any of its rights or obligations under this Agreement, 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:

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

- (d) the State requires that this 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 of novation, this Agreement is terminated and the Incoming Party and the Recycler become parties to a new contract on the same terms as this Agreement for the balance of the Term.

17.3 **Duty**

The Recycler:

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

17.4 **Inconsistent provisions**

To the extent a provision of this Agreement is found to be prohibited or unenforceable in any jurisdiction, the parties agree:

- (a) that the validity or enforceability of the relevant provision in any other jurisdiction is not affected;
- (b) that the remaining provisions of this Agreement are not invalidated; and
- (c) 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 Agreement).

17.5 **No Agency or Partnership**

Nothing in this Agreement is to be construed as constituting an agency, partnership, joint venture, or any other form of association between the parties in which one party may be liable for the acts or omissions of any other party. No party has the authority to incur any obligation or make any representation or warranty on behalf of, or to pledge the credit of, any other party.

17.6 **Costs and expenses**

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

17.7 Variation

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

17.8 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 17.8(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 Agreement nor is it to be construed as a waiver of any other obligation or breach.

17.9 Severance

If a provision in this Agreement 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 Agreement 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 Agreement.

17.10 Governing law and jurisdiction

- (a) This Agreement 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 Agreement. 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.

17.11 Further assurances

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

17.12 No reliance

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

17.13 Entire agreement

This Agreement 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.

17.14 Counterparts

- (a) This Agreement 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 Agreement 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 Agreement is not affected if the party who has emailed the counterpart delays in delivering or does not deliver it by hand or by post.

17.15 Exercise of rights

- (a) Unless expressly required by the terms of this Agreement, 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 Agreement.
- (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 Agreement. 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 Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

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 Agreement, clauses 11.7, 12 and this clause 17.17 survive the termination or expiry of this Agreement.
- (b) Each indemnity contained in this Agreement is a continuing obligation, independent from the other obligations of the parties and survives the termination or expiry of this Agreement. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

17.18 Corporate power and authority

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

Schedule 1 Reference Schedule

Item		
Item 1	Principal's Representative: (clause 1.1)	[*]
Item 2	Recycler's Representative: (clause 1.1)	[*]
Item 3	Executive Negotiators (clause 1.1)	Principal: [*] Recycler: [*]
Item 4	Notices (clause 13.4)	Principal Address: [*] Email: [*] For the attention of: [*] Recycler Address: [*] Email: [*] Attention: [*]
Item 5	Bank Account Details: Recycler	Name of Account: [*] Branch Name: [*] Account Number: [*] BSB Number: [*]
Item 6	Bank Account Details: Principal	Name of Account: [*] Account Number: [*] BSB Number: [*]

Schedule 2 Auction Terms and Conditions

Auction and Online Material Sales Platform Terms and Conditions

1. Definitions and Interpretation

1.1 Definitions

In this Schedule 1, a reference to a clause is to a clause of this Schedule 1, unless otherwise specified and the following definitions apply.

Accepted Bid has the meaning given to that term in clause 4(b).

Auction End Time has the meaning given to that term in clause 6(a)(iii).

Auction Event means an auction within which any recycler may submit a Bid on one or more Lots.

Auction Terms and Conditions means these terms and conditions.

Automatic Bidding has the meaning given to that term in clause 9.

Bid Manipulation means any practice which unfairly induces others to make bids or unconscionably controls the bid price, including:

- (a) shill bidding;
- (b) sniping;
- (c) bid rigging;
- (d) bid rotation;
- (e) any form of collusion with regard to the placing of bids; or
- (f) any form of unfair or unconscionable behaviour inconsistent with that of a fit and proper person.

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

Content has the meaning given to that term in clause 15(a).

Direct Sale means a sale to a recycler other than as part of an Auction Event.

Lot means a particular Saleable Quantity of Processed Material that is listed for sale on the Online Recycling Material Sales Platform.

MRF means a person that is currently a party to a Material Recovery Agreement with the Principal.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel means employees, partners, agents and sub-contractors (including employees of sub-contractors).

Privacy Act means the *Privacy Act 1988* (Cth).

Processed Material means the material output of either a Processor or MRF.

Processed Materials Sale Contract has the meaning given in clause 6.3(b)(ii) of the body of the agreement of which this Schedule 1 forms a part.

Processor means a person that is currently a party to a Processing Services Agreement with the Principal.

Recycler Representative means an individual who intends on registering an account on the Online Recycling Material Sales Platform who will act for and on behalf of the Recycler.

Recycling Panel Agreement means the deed entitled 'Recycling Panel Agreement' between the Buyer and the Seller.

Reserve Price has the meaning given to that term in clause 6(a)(ii).

Scheme means the beverage container refund scheme established pursuant to the Act.

Scheme Data has the meaning given to that term in clause 16(a).

Successful Purchaser has the meaning given to that term in clause 8(a).

Third Party Content has the meaning given to that term in clause 11(b).

2. Registration of Recycler Representatives

- (a) The Recycler must nominate one or more Recycler Representatives to be registered members to participate in auctions conducted through the Online Recycling Material Sales Platform.
- (b) To create an account, each Recycler Representative must:
 - (i) be at least 18 years of age;
 - (ii) possess the legal right and ability to enter into a legally binding agreement with the Principal;
 - (iii) agree and warrant to use the website in accordance with these Auction Terms and Conditions;
 - (iv) have attended at least one training session provided by the Principal on the Online Recycling Material Sales Platform (whether online or in person) and passed a qualification test in respect of the use of the Online Recycling Material Sales Platform; and

- (v) be an employee, agent or contractor of the Recycler, that has been nominated by the Recycler to act on behalf of it as the Recycler.
- (c) The Recycler is responsible and liable for the acts or omissions of a Recycler Representative (including the compliance by the Recycler Representative with these Terms).
- (d) When a Recycler Representative registers and activates an account, he or she will provide the Principal with Personal Information including their name, email address, phone number and proof of identification. The Recycler must ensure that this information is accurate and current. The Principal will handle all personal information it collects in accordance with its Privacy Policy: <https://warrri.com.au/privacy-policy/>.
- (e) When a Recycler Representative registers and activates an account, the Principal will provide him or her with a user name and password. The Recycler Representative is responsible for keeping this user name and password confidential and secure and is responsible for all use and activity carried out under their user name.
- (f) Without limiting clause 2(c), the Recycler must inform the Principal within 24 hours if a Recycler Representative ceases to be an employee, agent or contractor of the Recycler, that has been nominated by the Recycler to act on behalf of it as the Recycler.

3. Auctions

- (a) The Principal may, in its sole discretion, decide to sell a Lot listed on the Online Recycling Material Sales Platform by way of:
 - (i) an Auction Event; or
 - (ii) a Direct Sale.
- (b) Sales under clause 3(a)(ii), will be subject to additional terms and conditions that govern that type of sale, which will be available to the Recycler prior to, or at the time of, the sale.

4. Bids

- (a) The Principal may, acting reasonably, accept or reject a Bid, including:
 - (i) if the Bid is below the Reserve Price or the opening bid price (as applicable);
 - (ii) on any ground upon which the Principal could suspend the Recycler Representative's access to the Online Recycling Material Sales Platform under clause 10(a);
 - (iii) if the Principal reasonably believes the Bid was made in error;
 - (iv) if the Processed Material is not fit for sale;
 - (v) if an event beyond the reasonable control of the Principal has occurred which the Principal reasonably believes will result in a breach of the resulting Processed Materials Sale Contract if the Recycler is the Successful Bidder;

- (vi) if the Bid was made after the end time for the relevant Auction Event; or
 - (vii) if the Principal has exercised, or intends to exercise, any of its rights under clause 6(c) in relation to the relevant Auction Event.
- (b) Without limiting clause 4(a), the acceptance of a Bid shall be taken to arise from:
- (i) a notice generated by the Online Recycling Material Sales Platform acknowledging that the Bid has been received by the Principal for processing; or
 - (ii) a notice sent by the Principal to the Recycler, by whatever means, to confirm receipt of a Bid and to verify the identity or other details relating to the Recycler,
- (Accepted Bid).**
- (c) A Bid amount must reflect the amount per metric tonne (or some other unit of measure determined by the Principal) that the Recycler proposes to pay for the applicable Lot. If a Bid is the highest Accepted Bid on a Lot, and that Bid is over the Reserve Price, the total price payable by the Successful Purchaser for the Lot will be calculated by reference to the actual weight of the Lot multiplied by the amount per metric tonne (or some other unit of measure determined by the Principal) bid by the Successful Purchaser.
 - (d) The Recycler acknowledges that the Principal may submit Bids itself or through its agents.
 - (e) Bids must only be submitted via the bidding function within the Online Recycling Material Sales Platform. Bids submitted through other mediums will not be accepted.
 - (f) If a minimum bid increment applies to a Lot, no Bid in relation to that Lot may be less than the previous bid plus that minimum increment.
 - (g) A Bid constitutes an irrevocable offer to purchase the Lot to which the Bid relates. The offer will be deemed to be accepted if the Principal issues the Recycler a notification that it is the Successful Purchaser.
 - (h) The Principal may provide the Recycler with opportunities to provide feedback in relation to Lots it has purchased. The Recycler agrees to use this system reasonably and fairly. The Recycler must not, and must procure that its Personnel (including any Recycler Representative) do not, use this system maliciously or with the intention of impacting the outcome of any Auction Event.
 - (i) If a Recycler's account is suspended under clause 10, the Principal may delete any of the Recycler's Bids at its sole discretion. If the Principal does not delete a Bid, the Recycler will remain bound by these Auction Terms and Conditions in respect of that Bid.
 - (j) The Recycler acknowledges that the Principal may require the Recycler to provide additional verification or information associated with a Bid.
 - (k) The Recycler agrees and warrants that:
 - (i) it has the legal capacity to purchase the Lot it Bid for and will not otherwise be breaching any Statutory Requirement in purchasing that Lot;
 - (ii) its Bid and, if successful, its purchase of the Lot is made in compliance with all applicable Statutory Requirements or guidelines; and

- (iii) it will not Bid for any Lot unless it is capable of paying for the relevant Lot in the amount of the Bid it made.

5. Lots

- (a) The Recycler acknowledges that:
 - (i) it has been provided with a reasonable opportunity to inspect a Lot (in coordination with the relevant Processor or MRF that has possession or control of the Lot) before placing a Bid on the Lot in an Auction Event, or purchasing the Lot through a Direct Sale, and it is the Recycler's responsibility to conduct any due diligence it considers necessary in relation to any Lots on which it Bids;
 - (ii) the Principal is not liable to the Recycler or any other person for any inaccuracies in the photographs and descriptions of a Lot;
 - (iii) the Principal may update descriptions and photographs of a Lot at any time prior to or during an Auction Event or prior to a sale by Direct Sale;
 - (iv) the Principal may prevent the Recycler from collecting a Lot under a Processed Materials Sale Contract, until such time as the Recycler has paid any outstanding invoices relating to other Processed Materials Sale Contracts that it is a party to.
- (b) The Recycler agrees and warrants that:
 - (i) the purchase of any Lot is at its own risk; and
 - (ii) the Principal is not responsible for delays in communications or down-time incurred during its connection to the Online Recycling Material Sales Platform. The Recycler is responsible for maintaining its connection to the Online Recycling Material Sales Platform.

6. Auction Events

- (a) For each Auction Event, the Principal may stipulate the applicable:
 - (i) opening bid price;
 - (ii) minimum acceptable price for the Lot, which may be either more or less than \$0 (**Reserve Price**);
 - (iii) end time for the Auction Event, at which time no further Bids will be accepted in relation to any Lots that are included in the Auction Event (**Auction End Time**);
 - (iv) minimum bid increment; and
 - (v) any other conditions determined by the Principal to be relevant to that Auction Event.
- (b) The Principal may change the Reserve Price or Auction End Time, in respect of an Auction Event or individual Lot, at any point prior to the Auction End Time.

- (c) The Principal may, at its sole discretion:
- (i) withdraw a Lot from an Auction Event at any time (including after the commencement of an auction but prior to its completion) for any reason, regardless of whether a Bid has been submitted that is higher than the Reserve Price for that Lot, in which case the Lot will remain unsold;
 - (ii) cancel or reschedule an Auction Event at any time (including after the commencement of an auction but prior to its completion) for any reason, regardless of whether a Bid has been submitted that is higher than the Reserve Price for a Lot in that Auction Event, in which case any related Lots will remain unsold; or
 - (iii) prevent Bids from being submitted for any period of time during the Auction Event.
- (d) If the Principal withdraws a Lot or cancels an Auction Event pursuant to clause 6(c), the Principal may not sell the withdrawn Lot or any Lots the subject of an Auction Event other than:
- (i) by a further Auction Event;
 - (ii) to the Processor from whom the Lot was purchased by the Principal; or
 - (iii) to the MRF from whom the Lot was purchased by the Principal.

7. Overtime bidding

- (a) Without limiting clause 6(b), the Principal may extend an Auction End Time in respect of an individual Lot by five (5) minutes if a Bid on the relevant Lot is accepted within the five (5) minute period immediately before the Auction End Time. The Principal may extend the Auction End Time in respect of the Lot for further five (5) minute periods until a five (5) minute period has lapsed during which no Bids have been accepted.
- (b) It is the Recycler's responsibility to monitor changes to the Auction End Time. The Principal will not be liable for any Loss the Recycler may suffer due to the Principal's decision to extend or not extend an Auction End Time.

8. Completion of Auction

If, at the Auction End Time:

- (a) there is an Accepted Bid which is above the Reserve Price and the Recycler is the recycler that submitted the highest Accepted Bid (the **Successful Purchaser**):
 - (i) the Recycler must purchase; and
 - (ii) the Principal must sell (**Seller**),

the particular Lot in accordance with the terms of clause 6.3(b) of the Recycling Panel Agreement; and

- (b) if there is not an Accepted Bid which is above the Reserve Price, the Principal may, at its sole discretion withdraw that Lot from sale and:
 - (i) relist the Lot for sale in an Auction Event; and/or
 - (ii) sell the Lot through a Direct Sale.

9. Automatic Bidding

The Principal may offer and the Recycler may elect to use the automatic bidding function of the Online Recycling Material Sales Platform to place Bids (**Automatic Bidding**). If the Recycler elects to use Automatic Bidding, it acknowledges and agrees that:

- (a) it is responsible for selecting a maximum bid amount. The system will automatically submit Bids on its behalf up to this maximum bid amount. The Principal accepts no liability for any sale that results from a failure by the Recycler to select a maximum bid amount;
- (b) if a minimum bid increment applies to the Lot, Bids will be submitted on the Recycler's behalf for the amount equal to the previous bid plus that minimum increment, up to any maximum bid amount;
- (c) if no minimum bid increment applies to the Lot, the Recycler may select the bid increment to apply to the Automatic Bidding, otherwise the Principal will select a bid increment on the Recycler's behalf at the Principal's discretion;
- (d) the Principal is not liable for any errors that occur in relation to Automatic Bidding and the Recycler is responsible for monitoring Bids placed on its behalf; and
- (e) the Recycler is bound by all Bids submitted on its behalf through the Automatic Bidding system.
- (f) The Recycler acknowledges and agrees that if:
 - (i) it elects to use Automatic Bidding in respect of a Lot;
 - (ii) it selects the same maximum bid amount (**Common Maximum Bid**) as another recycler that has elected to use Automatic Bidding in respect of that Lot (**Other Bidder**);
 - (iii) the Other Bidder places the Common Maximum Bid using Automatic Bidding in relation to the relevant Lot at an earlier point in time than the Recycler did; and
 - (iv) the highest Accepted Bid on the relevant Lot is equal to the Common Maximum Bid,

the Recycler may be considered to be outbid by the Other Bidder, in which case the Recycler will not be the Successful Purchaser of the Lot.

10. Suspension

- (a) If:
- (i) the Recycler breaches any term of these Auction Terms and Conditions or the Recycling Panel Agreement;
 - (ii) the Recycler has clearly demonstrated (either expressly or impliedly) that it does not intend to comply with these Auction Terms and Conditions or the Recycling Panel Agreement;
 - (iii) the Principal suspects that the Recycler Representative's account is connected with identity theft;
 - (iv) the Principal suspects that the Recycler has committed or intends to commit fraud, either through the Online Recycling Material Sales Platform or otherwise;
 - (v) the Principal suspects that the Recycler is colluding with at least one other registered user, either on the Online Recycling Material Sales Platform or otherwise;
 - (vi) the Principal considers that the Recycler's activity on the Online Recycling Material Sales Platform may negatively impact the functionality or security of the Online Recycling Material Sales Platform;
 - (vii) the Principal considers that the Recycler's activity on the Online Recycling Material Sales Platform is suspicious;
 - (viii) the Recycler breaches the terms of any Processed Materials Sale Contract that the Recycler is a party to;
 - (ix) the Recycler is the subject of an investigation or decision by a Regulatory Authority that is or may be adverse to the Recycler's capacity to perform its obligations under this Agreement or is harmful to the reputation of the Principal;
 - (x) the total of all amounts payable by the Recycler under one or more Processed Materials Sale Contracts and which are unpaid (whether or not those amounts have fallen due for payment) exceeds \$20,000, or such other amount as the Principal advises to the Recycler from time to time; or
 - (xi) the Recycler or Recycler Representative suffers an Insolvency Event,
- the Principal may immediately (at its discretion and without notice to the Recycler):
- (xii) suspend (including for an indefinite period) the Recycler Representative's access to the Online Recycling Material Sales Platform; and/or
 - (xiii) prevent further access by the Recycler or the Recycler Representative to the Online Recycling Material Sales Platform.
- (b) Upon expiration or termination of the Recycling Panel Agreement, the Recycler Representative shall cease all use of the Online Recycling Material Sales Platform and Content, and the Principal may delete the Recycler Representative's account and all data provided by the Recycler.

- (c) If the Recycler Representative's account is suspended due to a failure to pay an invoice on time, the Principal may reactivate the account once the invoice has been paid in full.
- (d) If the Recycler Representative's account is suspended or terminated, the Recycler may nominate an alternative Recycler Representative to act on its behalf through a new account.

11. User and Third Party Content

- (a) The Recycler warrants that all information it provides through the Online Recycling Material Sales Platform, to any person, is complete, accurate and up-to-date to the best of its knowledge.
- (b) The Recycler acknowledges that the Online Recycling Material Sales Platform may incorporate content and information provided by third parties, including Processors, MRFs and other recyclers (**Third Party Content**) and that the Principal is not responsible for the accuracy, quality, integrity or reliability of the same.
- (c) To the extent permitted by law (including the Australian Consumer Law if applicable), the Principal does not give any representation or warranty as to the reliability, accuracy or completeness of any Third Party Content and will have no responsibility or liability to the Recycler or any other person arising from or in connection with any error, defect or inaccuracy in any Third Party Content or any content or information provided by the Recycler.

12. Accuracy, completeness and timeliness of information

- (a) The information provided on the Online Recycling Material Sales Platform (including information relating to a particular Lot) is not comprehensive and is intended only to provide a summary of the subject matter covered. While the Principal uses all reasonable attempts to ensure the accuracy and completeness of the information on the Online Recycling Material Sales Platform, to the extent permitted by law, including the Australian Consumer Law, the Principal makes no warranty or representation regarding the information on the Online Recycling Material Sales Platform. The Recycler should monitor any changes to the information contained on the Online Recycling Material Sales Platform.
- (b) The Principal is not liable to the Recycler or anyone else if interference with or damage to the Recycler or Recycler Representative's computer systems occurs in connection with the use of the Online Recycling Material Sales Platform or a linked website or application. The Recycler must take its own precautions to ensure that whatever it selects for its use from the Online Recycling Material Sales Platform is free of viruses or anything else (such as worms or Trojan horses) that may interfere with or damage the operations of its computer systems.
- (c) The Principal may, from time to time and without notice, change or add to the Online Recycling Material Sales Platform (including the Auction Terms and Conditions) or the information, products or services described in it. However, the Principal does not undertake to keep the Online Recycling Material Sales Platform updated. The Principal is

not liable to the Recycler or anyone else if errors occur in the information on the Online Recycling Material Sales Platform or if that information is not up-to-date.

13. Online Recycling Material Sales Platform availability

- (a) The Recycler acknowledges that the Principal may restrict access to the Online Recycling Material Sales Platform in order to conduct site maintenance from time to time.
- (b) The Principal is not liable to the Recycler or anyone else if it suffers loss because the Online Recycling Material Sales Platform is temporarily unavailable due to scheduled site maintenance or any unexpected event.
- (c) The Online Recycling Material Sales Platform is optimised for use from desktop computers. The Principal recommends that the Recycler avoids operating the Online Recycling Material Sales Platform from a tablet or mobile device.

14. Linked sites

The Online Recycling Material Sales Platform may contain links to websites operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, the Principal does not endorse and is not responsible for the content on those linked websites and has no control over or rights in those linked websites.

15. Intellectual property rights

- (a) The Principal owns or licenses from third parties all rights, title and interest (including copyright, designs, patents, trademarks and other intellectual property rights) in the Online Recycling Material Sales Platform and in all of the material (including all text, graphics, logos, audio and software) made available on the Online Recycling Material Sales Platform (**Content**).
- (b) The Recycler's use of the Online Recycling Material Sales Platform and use of and access to any Content does not grant or transfer any rights, title or interest to the Recycler in relation to the Online Recycling Material Sales Platform or the Content. However the Principal does grant the Recycler a licence to access the Online Recycling Material Sales Platform and view the Content on the terms and conditions set out in the Recycling Panel Agreement and these Auction Terms and Conditions and, where applicable, as expressly authorised by the Principal and/or its third party licensors.
- (c) Any reproduction or redistribution of the Online Recycling Material Sales Platform or the Content is prohibited. In addition, the Recycler must not copy the Content to any other server, location or support for publication, reproduction or distribution.
- (d) All other use, copying or reproduction of the Online Recycling Material Sales Platform, the Content or any part of it is prohibited, except to the extent permitted by law.

16. Ownership and use of Scheme Data

- (a) The Recycler acknowledges that through its use of the Online Recycling Material Sales Platform it may have access to data or information relating to the Scheme, Processors, MRFs and other recyclers (**Scheme Data**). The Principal grants the Recycler a limited right to use the Scheme Data that it accesses in relation to the Online Recycling Material Sales Platform for the sole purpose of fulfilling its obligations and exercising its rights under the Recycling Panel Agreement and these Auction Terms and Conditions. The Recycler must not use the Scheme Data for any other purpose, without the Principal's prior written consent.
- (b) The Recycler acknowledges that Scheme Data is the sole and valuable property of the Principal and that any unauthorised disclosure, use or loss of it could give rise to damage to the Principal.
- (c) The Recycler agrees to assign to the Principal all intellectual property rights and any other rights that it would otherwise have in Scheme Data and do everything necessary to give effect to that assignment.
- (d) The Recycler acknowledges and agrees that:
 - (i) without limiting anything else in these Auction Terms and Conditions, subject to its compliance with law (including privacy law), the Principal may use and disclose Scheme Data in any way and for any purpose whatsoever; and
 - (ii) the Recycler must not assert any lien or other right against or in relation to Scheme Data or otherwise deal with Scheme Data.

17. Privacy

- (a) The Recycler must comply with the Privacy Act (as though the Recycler were an entity bound by the Privacy Act and notwithstanding the small business exception in the Privacy Act) and any other legislation, principles, industry codes and policies, as amended or replaced from time to time, which relate to the collection, use, disclosure, storage or granting of access rights to Personal Information, in respect of any Personal Information that:
 - (i) it discloses to the Principal; or
 - (ii) comes into the Recycler's possession or control by any means, including through use of the Online Recycling Material Sales Platform.
- (b) The Recycler must, throughout the Term, obtain all necessary consents, and provide all necessary notices, relevant to its use of the Online Recycling Material Sales Platform, including those in relation to collection, use, disclosure and storage of Personal Information of any individual whose Personal Information may be provided to the Principal, directly or indirectly, as contemplated by these Auction Terms and Conditions.

18. Collection notice

- (a) The Principal collects Personal Information about the Recycler Representative, including their:
- (i) name;
 - (ii) email address;
 - (iii) phone number;
 - (iv) driver's licence or some other form of identification; and
 - (v) IP address,
- in order to:
- (i) verify that the Recycler Representative is entitled to be a registered user of the Online Recycling Material Sales Platform;
 - (ii) monitor the Recycler Representative's use of the Online Recycling Material Sales Platform;
 - (iii) manage auctions;
 - (iv) facilitate sales through the Online Recycling Material Sales Platform;
 - (v) send the Recycler notifications about Auction Events and transactions that it has been involved in;
 - (vi) improve the user experience; and
 - (vii) for purposes otherwise set out in our Privacy Policy at <https://warrri.com.au/privacy-policy/>.
- (b) The Principal may disclose that Personal Information to:
- (i) third parties that help the Principal deliver its services (including information technology suppliers, communication suppliers and our business partners);
 - (ii) the State of Western Australia;
 - (iii) other registered members of the Online Recycling Material Sales Platform to the extent necessary to conduct auctions and facilitate sales; or
 - (iv) as required by law,
- in accordance with the Principal's Privacy Policy.
- (c) If the Recycler Representative does not provide this information, the Principal may not be able to provide the Recycler Representative with access to the Online Recycling Material Sales Platform.

- (d) The Principal may disclose Personal Information outside of Australia to its third party suppliers and service providers located in overseas countries including but not limited to the Philippines, India, Singapore, the United States, Canada, the United Kingdom and New Zealand.
- (e) The Principal's Privacy Policy explains: (i) how it stores and uses, and how a person may access and correct their Personal Information; (ii) how a person can lodge a complaint regarding the handling of their Personal Information; and (iii) how the Principal will handle any complaint. If the Recycler Representative would like any further information about the Principal's privacy policies or practices, please contact the Principal.
- (f) The Recycler must ensure that the Recycler Representative is made aware of the content of this clause 18 prior to or at the time of, or, if that is not possible, as soon as possible after, providing their Personal Information to the Principal.
- (g) By providing their Personal Information to the Principal, the Recycler Representative consents to the collection, use, storage and disclosure of that information as described in the Privacy Policy and these Auction Terms and Conditions.

19. Conditions of access

The Recycler must, and must procure that its Personnel (including any Recycler Representative):

- (a) comply with all applicable Statutory Requirements (including any applicable privacy laws);
- (b) use each function of the Online Recycling Material Sales Platform only for its intended purpose;
- (c) not engage in Bid Manipulation;
- (d) not copy, modify, merge, alter, adapt, translate, de compile, disassemble or reverse engineer any aspect of the Online Recycling Material Sales Platform or otherwise attempt to derive the source code relating to any aspect of the Online Recycling Material Sales Platform, or merge any software or any part of any software with any aspect of the Online Recycling Material Sales Platform unless expressly permitted by the Auction Terms and Conditions;
- (e) not interfere in any manner with the Online Recycling Material Sales Platform or its source code or any work product of the Online Recycling Material Sales Platform (except as permitted by the Auction Terms and Conditions);
- (f) not in any circumstances sell or license or offer for sale or license the Recycler's access to the Online Recycling Material Sales Platform, nor allow any person to use or have access to the Recycler's username or password, other than as permitted by the Auction Terms and Conditions;
- (g) not remove, modify or obscure any copyright, trade mark, service mark, tagline or other notices that appear during use of the Online Recycling Material Sales Platform; and
- (h) not use any data mining, gathering or extraction tools (excluding tools provided by the Online Recycling Material Sales Platform for the Recycler's use).

20. Unacceptable activity

- (a) The Recycler must not, and must procure that its Personnel (including any Recycler Representative) do not, do any act that the Principal would deem to be inappropriate, is unlawful or is prohibited by any Statutory Requirement applicable to the Online Recycling Material Sales Platform, including but not limited to:
 - (i) any act that would constitute a breach of either the privacy (including uploading private or personal information without an individual's consent) or any other of the legal rights of individuals (including intellectual property rights);
 - (ii) using the Online Recycling Material Sales Platform to defame or libel the Principal, our employees or other individuals;
 - (iii) uploading files that contain viruses that may cause damage to the Principal's property or the property of other individuals;
 - (iv) any act that involves the sale or promotion of any illegal business activities or prohibited products or services;
 - (v) any act that involves unsolicited commercial electronic messages; or
 - (vi) posting or transmitting to the Online Recycling Material Sales Platform any non-authorized material including, but not limited to, material that is false or that is, in our opinion, likely to cause annoyance, or which is defamatory, racist, obscene, threatening, pornographic or otherwise or which is detrimental to or in violation of the Principal's systems or a third party's systems or network security.
- (b) If the Principal allows the Recycler to post any information to the Online Recycling Material Sales Platform, the Principal has the right to take down this information at its sole discretion and without notice.

21. Warranties and disclaimers

- (a) To the extent permitted by law (including the Australian Consumer Law if applicable), the Principal makes no representations, warranties or guarantees about the Online Recycling Material Sales Platform (including about any information that is input into the Online Recycling Material Sales Platform), including that it will be accurate, current, reliable, timely, available, secure, complete, up-to-date or of a certain quality, or that it will operate in combination with any other hardware, software, system, or data, or that it is free from defects, bugs, viruses, errors or other harmful components, or that any stored data will not be lost or corrupted.
- (b) The Online Recycling Material Sales Platform and all other products and services made available to the Recycler in connection with these Auction Terms and Conditions are provided "as is" and to the extent permitted by law (including the Australian Consumer Law if applicable), the Principal disclaims any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express or implied.
- (c) The Principal reserves the right to restrict, suspend or terminate without notice the Recycler or Recycler Representative's access to the Online Recycling Material Sales

Platform, any Content, or any feature of the Online Recycling Material Sales Platform at any time without notice and the Principal will not be responsible for any Loss that may arise as a result.

22. Indemnified Amounts

- (a) If the Recycler:
- (i) is a party to a Dispute or Common Dispute which is not decided in the Recycler's favour;
 - (ii) (or their agent or nominee) fails to follow any safety procedures, notified to it by the relevant Processor or MRF, when visiting a site for the purposes of inspecting or collecting a Lot, which results in intervention by the Principal at the request of the Processor or MRF;
 - (iii) (or their agent or nominee) repeatedly demonstrates unreasonable behaviour towards a Processor or MRF, which requires intervention by the Principal, in one or more of the following ways:
 - (A) attending a site without organising in advance;
 - (B) intentionally blocking business as usual activities (for example, blocking the driveway with trucks until collection is complete); or
 - (C) impeding Processor or MRF operations by making access or collection requests outside of hours,
 - (iv) (or their agent or nominee) repeatedly fails to act in a timely manner, which requires intervention by the Principal, in one or more of the following ways:
 - (A) failing to meet agreed timeframes;
 - (B) failing to complete manifest data when required (including GST or export information);
 - (C) failing to submit a statutory declaration to the Principal by such time required by the Principal,

the Principal may, at its discretion and by notice to the Recycler, require the Recycler to indemnify the Principal against any Loss suffered or incurred by the Principal in connection with the conduct of the Recycler referred to in this clause 22(a), including but not limited to legal fees on a solicitor own client basis and staff costs (**Indemnified Amounts**).

- (b) Any Indemnified Amounts are a debt due and payable by the Recycler to the Principal and the Principal may set-off or deduct from amounts otherwise payable to the Recycler (including under a Processed Materials Sale Contract entered into under these Auction Terms and Conditions) any applicable Indemnified Amounts.
- (c) Nothing in clause 22(b) affects the Principal's right to recover the whole of any balance that remains owing after any set-off from the Recycler or any other rights and remedies in connection with those matters in clause 22(a).

Schedule 3 Terms and Conditions of Sale

1. Definitions and interpretation

1.1 Definition

In this Schedule 3, a reference to a clause is to a clause of this Schedule 3, unless otherwise specified and the following definitions apply:

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

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.

Bid means the bid submitted by the Buyer on the Online Recycling Material Sales Platform in respect of the Processed Materials, in the form required by the Seller from time to time.

Business Day 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.

Buyer means the Recycler.

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

- (a) is in any way in connection with the Processed Materials Sale Contract; or
- (b) otherwise arises at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Consideration has the meaning given by the GST Law.

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

Effective Date has the meaning given in clause 2.1

GST has the meaning given by the GST Law.

GST Group has the meaning given by the GST Law.

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

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

Invoice means the sales invoice generated by the Seller in respect of the Processed Materials.

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.

Online Recycling Material Sales Platform means the 'Online Recycling Material Sales Platform' nominated by the Seller and located at <https://auction.containersforchange.com.au>.

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

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

Penalty Interest Rate means BBSW plus 200 basis points.

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

Processed Materials Sale Contract means the contract arising from the acceptance by the Seller of the Bid, and consists of:

- (a) the relevant Bid submitted by the Buyer and accepted by the Seller; and
- (b) these Terms and Conditions of Sale.

Recycling Panel Agreement means the deed entitled 'Recycling Panel Agreement' between the Buyer and the Seller.

Refund Amount has the meaning given to that term in section 47C(1) of the Act and is GST-inclusive.

Reserve Price means the reserve price determined by the Seller in accordance with the Processing Services Agreement for each sale of Processed Materials listed on the Online Recycling Material Sales Platform.

Sale Price means the price set out in the Bid submitted by the Buyer and accepted by the Seller multiplied by the verified weight of the Processed Materials as determined under clause 3.1, as set out in the Invoice.

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

Seller means WA Return Recycle Renew Ltd ACN 629 983 615. **Taxable Supply** has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.2 Interpretation

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

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

2. Sale of Processed Materials

2.1 Effective Date

The Processed Materials Sale Contract takes effect from the time and date the Seller notifies the Buyer that it is the highest bidder above the Reserve Price at the end of the auction period set on the Online Recycling Material Sales Platform (**Effective Date**).

2.2 Inspection of goods

The Buyer acknowledges and agrees that:

- (a) photographs, drawings, illustrations, weights, dimensions and any other specifications or particulars accompanying, associated with or contained on the Online Recycling Material Sales Platform describe generally the goods offered but are subject to alteration without notice and the Seller is not bound as to the details or the accuracy thereof;
- (b) despite any assistance provided by the Seller to the Buyer with respect to the purchase of the Processed Material (whether by way of representation, statement, information or advice, and whether of a technical nature or otherwise), responsibility for the final decision to purchase shall rest in all respects solely with the Buyer;
- (c) it has been given the opportunity to inspect the Processed Materials for the purposes of undertaking due diligence and any pre-purchase inspections and confirms that the outcome of its due diligence is satisfactory for the Buyer to proceed with the purchase of the Processed Materials.

2.3 Sale and Purchase

- (a) The Seller, as legal and beneficial owner, sells the Processed Materials free from all Security Interests to the Buyer and the Buyer buys the Processed Materials on the terms set out in the Processed Materials Sale Contract.
- (b) Subject to the terms of this Agreement, the Processed Materials are sold on an as is basis as at the date the Processed Materials are:
 - (i) collected from the Seller's nominated location by the Buyer (or its officers, employees and agents); or
 - (ii) delivered to the Buyer's nominated location in Western Australia (unless some other location is agreed by the Seller) by the Seller (or its nominee),

as applicable based on the relevant listing for the Processed Materials on the Online Recycling Material Sales Platform.

2.4 Title and Property

- (a) The risk of loss or damage to the goods shall pass to the Buyer on and from the Effective Date.
- (b) Title to the goods shall remain with the Seller until all money owing to the Seller by the Buyer has been paid in full.
- (c) Until such time that the Buyer has paid in full all money owing to the Seller for the Processed Materials, the following applies:

- (i) the Buyer shall store the Processed Materials in a manner which identifies them as the Seller's goods;
 - (ii) the Buyer shall hold the goods as bailee for the Seller subject to its right to deal with the goods in the ordinary course of the Buyer's business; and
 - (iii) the Buyer shall indemnify the Seller against any claim arising out of the possession, use or disposal of the goods by the Buyer or repossession or attempted repossession by the Seller.
- (d) If:
- (i) a payment is not paid in accordance with the Processed Materials Sale Contract;
 - (ii) the Buyer commits any other breach of the Processed Materials Sale Contract;
 - (iii) the Seller receives notice of or reasonably believes that a third person may attempt to levy execution against the goods,
- then the Seller may at any time, without notice to the Buyer and without prejudice to any other rights which it may have against the Buyer:
- (i) terminate the Processed Materials Sale Contract and the bailment referred to in clause 2.4(c); and
 - (ii) enter upon any premises owned or occupied by the Buyer where the Seller reasonably believes the goods may be stored and repossess the goods without being liable for any damage caused.

3. Payment

3.1 Calculation of Sale Price

- (a) The Seller must calculate the Sale Price on the basis of the price set out in the Bid and the verified actual weight of the Processed Materials.
- (b) The Buyer acknowledges that the Seller's nominee will weigh the Processed Materials at or prior to the time the Buyer collects the Processed Materials or the Seller's nominee delivers the Processed Materials (as applicable).
- (c) The Buyer or its nominee may choose to be present for the process referred to in clause 3.1(b), and must provide reasonable notice to the Seller's nominee if it intends to be present.
- (d) Whether or not the Buyer or its nominee is present for the process referred to in clause 3.1(b), the Buyer or its nominee must sign the manifest prior to taking

possession of the Processed Materials and agrees that it accepts the weight recorded in the manifest for the purposes of the calculation of the Sale Price.

3.2 Where Sale Price greater than or equal to \$0

- (a) If the Sale Price is greater than or equal to \$0, the Buyer must pay the Sale Price to the Seller for the Processed Materials, as set out in the Invoice issued by the Seller to the Buyer.
- (b) The Seller will issue an Invoice to the Buyer in respect of the Processed Material within 3 Business Days of the Buyer collecting the Processed Materials or the Seller's nominee delivering the Processed Materials (as applicable).
- (c) The Buyer must pay any such Invoice within 5 Business Days of it being issued.
- (d) If payment is not made in full by the Buyer within this period, the Seller is entitled to:
 - (i) refuse to make any further supply of goods to the Buyer;
 - (ii) demand and receive immediate payment of any invoice in respect of any other Processed Materials Sale Contract whether payment is then due or not;
 - (iii) charge interest at the Penalty Interest Rate calculated on a daily basis from the due date until payment is made, or until judgment, as the case may be; and
 - (iv) recover possession of all goods to which it has retained title under clause 2.4 in which case the Seller will credit the Buyer with any part of the price paid by the Buyer to the Seller in respect of those goods, less any amounts due and payable by the Buyer to the Seller.

3.3 Where Sale Price less than \$0

- (a) If the Sale Price is less than \$0, the Seller must pay the Sale Price to the Buyer for the Processed Materials, as set out in the Invoice issued by the Seller to the Buyer.
- (b) The Seller will issue an Invoice to the Buyer in respect of the Processed Material within 3 Business Days of the Buyer collecting the Processed Materials or the Seller's nominee delivering the Processed Materials (as applicable).
- (c) The Seller must pay any such Invoice within 10 Business Days of it being issued.

3.4 Notifications relating to GST

- (a) If the Buyer is not GST registered, it must confirm whether the Processed Materials:

- (i) are intended for export (and if so, confirm the intended export destination); and
- (ii) will be used or altered (except as needed to prepare them for transportation),

in a form reasonably required by the Seller and prior to the date the Processed Materials are collected by or delivered to the Buyer in accordance with clause 4.

- (b) If the Buyer is not GST registered and it confirms that the Processed Materials are intended for export and will not be used or altered (except as needed to prepare them for transportation) then:
 - (i) the Seller will not include GST in the Invoice issued by the Seller to the Buyer; and
 - (ii) the Buyer must provide evidence that the Processed Materials are exported (to the Seller's reasonable satisfaction, including by providing a copy of the relevant bill of lading) within 60 days of the date of the Invoice.
- (c) If the Buyer does not fully comply with clause 3.4(b)(ii), the Seller may issue an additional Invoice to the Buyer in respect of GST payable in respect of the sale of the Processed Materials, and the Buyer must pay any such Invoice within 5 Business Days of it being issued.

4. Collection or delivery of Processed Materials

4.1 Collection Period

- (a) This clause 4.1 applies where the relevant listing for the Processed Materials on the Online Recycling Material Sales Platform specifies that the Processed Materials are to be collected by the Buyer.
- (b) The Seller must notify the Buyer of the date the Processed Materials become available for collection (**Collection Availability Date**).
- (c) The Seller must arrange for the Processed Materials to be available for collection by the Buyer during Operating Hours within the later of:
 - (i) 5 Business Days after the Collection Availability Date (or as otherwise agreed in writing between the Seller and the Buyer); and
 - (ii) 5 Business Days after the Effective Date,
 (the **Collection Period**).
- (d) The Buyer must collect the Processed Materials within the Collection Period.

4.2 Delivery Period

- (a) This clause 4.2 applies where the relevant listing for the Processed Materials on the Online Recycling Material Sales Platform specifies that the Processed Materials are to be delivered to the Buyer.
- (b) The Seller must notify the Buyer of the date the Processed Materials become available for delivery (**Delivery Availability Date**).
- (c) The Seller must arrange for the Processed Materials to be delivered to the Buyer during Operating Hours no later than 5 Business Days after the Delivery Availability Date (or as otherwise agreed in writing between the Seller and the Buyer) (the **Delivery Period**).
- (d) The Seller must notify the Buyer of the date and time within the Delivery Period that the Processed Materials will be delivered. The Buyer must be available to accept delivery of the Processed Materials at that time (unless otherwise agreed by the Seller and the Buyer).
- (e) The delivery of the Processed Materials to the Buyer under this clause 4.2 does not limit or otherwise affect clause 2.4(a).

4.3 Failure to collect or accept delivery

- (a) If the Buyer fails to collect the Processed Materials within the Collection Period or fails to accept delivery of the Processed Materials within the Delivery Period (as applicable), then unless otherwise agreed by the Buyer and the Seller:
 - (i) the Buyer and the Seller are immediately relieved of their respective obligations under clause 3 (and any rights or liabilities accrued by either the Buyer or the Seller under clause 3 prior to that notification are taken to be waived or discharged, as applicable);
 - (ii) the Buyer acknowledges that the Seller may relist the Processed Materials and seek to enter into another binding sale and purchase contract to resell the Processed Materials to a Successful Purchaser;
 - (iii) the Buyer must, within 5 Business Days of a written demand by the Seller, pay the Seller:
 - (A) the difference between the Sale Price (calculated using the estimated weight of the Processed Materials if the verified weight is not available) and the price received by the Seller under any separate and subsequent binding sale and purchase contract to resell the Processed Material (as notified to the Buyer by the Seller) provided that the latter is less than the former; and
 - (B) any other loss, damage and expense incurred by Seller as a result of the failure,

and such amount will be a debt due and payable by the Buyer to the Seller from that time; and

- (iv) the Buyer and the Seller agree that the Buyer will be deemed to have cancelled the Bid, and that clause 5(b) applies.
- (b) Clause 4.2(a) does not, in any way, limit the Buyer's liability under clause 7(c).

5. Alteration or cancellation of Bid

- (a) Bids may not be altered or cancelled without the written consent of the Seller.
- (b) If the Seller agrees to alter or cancel the Bid, the Buyer shall pay to the Seller any loss, damage and expense incurred in relation to the cancellation of that Bid.

6. Warranty

- (a) To the extent permitted by law, any statements, representations or conduct made or done prior to entering into the Processed Materials Sale Contract are excluded.
- (b) All implied terms, conditions, guarantees and warranties are excluded to the maximum extent permitted by law (including any warranties under the *Competition and Consumer Act 2010* (Cth), the *Sale of Goods Act 1895* (WA) or any similar legislation).
- (c) If any legislation implies into the Processed Materials Sale Contract any term, condition, guarantee or warranty which cannot be lawfully excluded, then that term, condition, guarantee or warranty shall be included in the Processed Materials Sale Contract to the extent required by the relevant legislation but each party's liability in respect of any breach thereof shall be limited to the maximum extent (if any) permitted by that legislation.

7. Limitation of liability

- (a) The liability of the Seller for a breach of a condition or warranty that by law cannot be excluded is limited, at the Seller's option, to:
 - (i) the replacement of the Processed Materials; or
 - (ii) the supply of materials equivalent to the Processed Materials; or
 - (iii) the cost of replacing the Processed Materials or of acquiring equivalent Processed Materials (not to exceed the Sale Price).
- (b) To the maximum extent permitted by law, the Seller is not liable for:

- (i) any loss or damage to the goods resulting from any act or omission on the part of the Buyer, or the employees, contractors or agents of the Buyer; or
 - (ii) any liability to the Buyer for loss of goodwill, loss of customers, loss of capital, downtime costs, indirect loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any third party claims for compensation, damage, cost or expense, incurred by or awarded against the other party under or in any way connected with the Processed Materials Sale Contract; or
 - (iii) any act or omission (including negligence) on the Seller's part (including any agent or nominee of the Seller) in relation to its obligations under the Processed Materials Sale Contract, however caused.
- (c) Without limiting clause 7(b), the Seller expressly disclaims responsibility for:
- (i) any goods that are damaged by accident;
 - (ii) any loss suffered by the Buyer as a result of incorrect information having been supplied by the Buyer to the Seller in or in connection with a Bid.

8. Indemnity

- (a) The Buyer indemnifies the Seller to the maximum extent permitted by law against and in respect of any Claim or Loss sustained by the Seller either directly or indirectly in connection with any breach by the Buyer of the Processed Materials Sale Contract, including:
 - (i) any false declaration under clause 3.4(a);
 - (ii) any failure to collect the Processed Materials within the Collection Period or accept delivery of the Processed Materials within the Delivery Period; and
 - (iii) any alteration or cancellation of the Buyer's Bid.
- (b) The indemnity in clause 8(a) will be reduced proportionally to the extent to which the Claim or Loss was caused or contributed to by an act or omission of the Seller.

9. Dispute process

9.1 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 Seller and the Buyer in respect of any fact, matter or thing arising out of, or in any way in connection with, the Processed Materials Sale Contract (**Dispute**) the parties must follow the procedure in this clause 9.
- (b) Subject to clause 9.1(c), where a Dispute arises, the party raising the Dispute must give a notice in writing to the other party specifying:
 - (i) reasonable details of the Dispute;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct,

(Notice of Dispute).
- (c) The Buyer must not issue a Notice of Dispute after the date that is 5 Business Days after:
 - (i) where the Sale Price is greater than or equal to \$0, the date the Buyer must pay an Invoice in accordance with clause 3.1; and
 - (ii) where the Sale Price is less than \$0, the date the Seller pays an Invoice in accordance with clause 3.2,

(the **Dispute Period**) unless the Dispute concerns an act or omission of the Seller in connection with the Processed Materials Sale Contract which occurs after the date referred to above (**Excluded Dispute**).
- (d) The Buyer waives or discharges all of its rights to raise any Dispute (other than an Excluded Dispute) after the end of the Dispute Period.
- (e) If the Seller determines that a Dispute, the subject of a Notice of Dispute, involves a Common Dispute, the Seller will give written notice to the Buyer requiring the Dispute to be resolved in accordance with the Common Dispute Procedure (**Notice of Common Dispute**).
- (f) 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 9 will be permanently stayed and the Dispute will be determined in accordance with the Common Dispute Procedure.

9.2 Executive Negotiation

- (a) If a Notice of Common Dispute has not been issued by the Seller, an authorised representative of each of the Buyer and Seller (the **Executive Negotiators**) must within:
- (i) 14 days of service of a Notice of Dispute; or
 - (ii) such longer period of time as the Executive Negotiators may agree in writing,
- meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- (b) The Executive Negotiators must have authority to agree to a resolution of the Dispute.
- (c) The meeting will be held in any one of the following forums, as reasonably determined by the Seller:
- (i) by phone (including by teleconference);
 - (ii) by videoconference; or
 - (iii) in person (at a place reasonably nominated by the Seller).
- (d) The joint decision (if any) of the Executive Negotiators will be reduced to writing and will be contractually binding on the parties.
- (e) If the Executive Negotiators are unable to resolve the dispute within 28 days of service of a Notice of Dispute, either party may commence legal proceedings.

9.3 Urgent interlocutory relief

Nothing in this clause 9 prevents a party from seeking urgent injunctive or interlocutory relief.

10. GST

- (a) Unless the context requires otherwise, words used in this clause 10 that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.
- (b) This clause 10 is subject to clause 3.4.
- (c) Notwithstanding any other provision of the Processed Materials Sale Contract, any amount payable for a supply made under the Processed Materials Sale Contract which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax

credits which that party is entitled to in respect of that cost, expense or other amount.

- (d) If GST is payable on any supply made by a party (**GST Supplier**) under or in connection with the Processed Materials Sale Contract:
- (i) any amount payable or consideration to be provided under any other provision of the Processed Materials Sale Contract for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) (an additional amount will be payable by the party providing consideration for that supply (**Recipient**), equal to the amount of GST payable on that supply as calculated by the GST Supplier in accordance with the GST Legislation and payable at the same time and in the same manner as for the Agreed Amount;
 - (iii) the GST Supplier will provide a tax invoice (or equivalent documentation which complies with the GST Legislation) to the Recipient in respect of that supply upon request from the Recipient.
- (e) If for any reason, the GST payable by the GST Supplier in respect of a supply it makes under the Processed Materials Sale Contract (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 7(c) in respect of that supply, the GST Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The GST Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.
- (f) If the Recipient is dissatisfied with any calculation to be made by the GST Supplier under this clause 10, the Recipient may, at its own expense and after notifying the GST Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants Australia and New Zealand for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of the Processed Materials Sale Contract, the matters required to be taken into account by the GST Supplier under this clause 10 and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (g) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party under or in connection with the Processed Materials Sale Contract or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in respect of any supply made under or in connection with the Processed Materials Sale Contract.

- (h) Despite any other provision of the Processed Materials Sale Contract, this clause 10 will survive the termination of the Processed Materials Sale Contract.
- (i) A reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member, and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (j) Any reference in the Processed Materials Sale Contract to fees, value, sales, revenue or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.
- (k) Any reference in the Processed Materials Sale Contract to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

11. Notices

Any communication (including each notice, consent, approval, request and demand) under or in connection with the Processed Materials Sale Contract must be given in accordance with clause 16 of the Recycling Panel Agreement.

12. No waiver

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

13. Governing law

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

Schedule 4 Online Recycling Material Sales Platform

1. Overview

- (a) This Schedule sets out the functions of the Online Recycling Material Sales Platform.
- (b) As per clause 5.2(c) of the Agreement, the Online Recycling Material Sales Platform is provided “as is”. The Recycler should undertake its own due diligence to understand the scope and functionality of the Online Recycling Material Sales Platform.
- (c) In the event of any inconsistency between the contents of this Schedule and the remainder of this Agreement, the remainder of the Agreement shall prevail to the extent of that inconsistency.

2. Online Recycling Material Sales Platform

- (a) The Online Recycling Material Sales Platform is the means by which the Principal will list material for sale electronically for purchase by a panel of approved Recyclers.
- (b) The Online Recycling Material Sales Platform will facilitate listing of Processed Materials for sale and update Processed Material on hand once collected by or delivered to the Successful Purchaser.

Schedule 5 Existing Commercial Arrangements

Schedule 6 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 agreement of which this Procedure 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 Service Providers.
Counterparty	means the party to the Agreement other than the Principal.
Dispute Party	has the meaning given in clause 3.1(c).
Interface Issue	means a dispute or an issue which involves a question of law (including a question of contract interpretation) or a question of fact that arises between two or more Scheme Service Providers in relation to their respective Scheme Agreements, and includes a dispute or issue in connection with: <ul style="list-style-type: none"> (a) "Collection Infrastructure" (as that term is defined under the Refund Point Agreement or Processing Services Agreement); (b) a "Processed Materials Sale Contract" (as that term is defined under the Processing Services Agreement, Material Recovery Agreement or Recycling Panel Agreement); and (c) the collection and delivery of "Containers" in "Collection Infrastructure" (as those terms are defined under the Refund Point Agreement, Logistics Services Agreement or Processing Services Agreement).
Issue Resolution Board	means a board established by the Principal under clause 5.

Logistics Provider	means a person who provides logistics services in relation to the Scheme.
Logistics Services Agreement	means a written agreement between the Principal and a Logistics Provider in relation to transportation of beverage containers and processed materials between Scheme Service Providers.
Material Recovery Agreement	has the meaning given to that term in section 47C(1) of the Act.
Material Recovery Facility	has the meaning given to that term in section 47C(1) of the Act.
Material Recovery Facility Operator	means the operator of a Material Recovery Facility.
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.
Principal Dispute	means a Common Dispute between the Principal and one or more Scheme Service Providers.
Procedure	means this Schedule 6.
Processing Services	means the verification and processing of beverage containers in preparation for sale to a Recycler.
Processing Services Agreement	means any agreement entered into by the Principal for the provision of Processing Services in connection with the Scheme.
Processing Services Provider	means a service provider engaged by the Principal under a Processing Services Agreement.
Recycler	means a person who has agreed to participate in the Principal's online auction platform for processed materials.
Recycling Panel Agreement	means a written agreement between the Principal and a Recycler in relation to participation in Principal's online auction platform for processed materials.
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.
Related Scheme Service Provider	means each party that has issued a notification in accordance with clause 3.2(a).
Scheme	means the beverage container refund scheme established under Part 5A of the Act.
Scheme Agreement	<p>means:</p> <ul style="list-style-type: none"> (a) a Logistics Services Agreement; (b) a Material Recovery Agreement; (c) a Processing Services Agreement; (d) a Recycling Panel Agreement; and (e) a Refund Point Agreement, <p>as the context requires, and includes the Agreement.</p>
Scheme Commencement Date	means the date on which the Scheme commences under the Act.
Scheme Service Provider	<p>means:</p> <ul style="list-style-type: none"> (a) a Logistics Provider that has entered into a Logistics Services Agreement with the Principal; (b) a Material Recovery Facility Operator that has entered into a Material Recovery Agreement with the Principal; (c) a Processing Services Provider that has entered into a Processing Services Agreement with the Principal; (d) a Recycler that has entered into a Recycling Panel Agreement with the Principal; and (e) a Refund Point Operator that has entered into a Refund Point Agreement with the Principal, <p>as the context requires, whether such agreement is entered into before or after the date of the Agreement, and includes the Counterparty.</p>

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

3. Common Disputes

3.1 Notice of Common Dispute

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

- (iii) a Common Dispute that is an Interface Issue as determined pursuant to clause 3.1(b) are the Scheme Service Providers; and
- (iv) a Common Dispute that is a Principal Dispute as determined pursuant to clause 3.1(b) are the Principal and the Scheme Service Providers, to whom the Notice of Common Dispute was issued (each a **Dispute Party**).
- (d) The Principal must, at the same time as giving a Notice of Common Dispute to a Scheme Service Provider, give the Scheme Service Provider notice of:
 - (i) each other Scheme Service Provider to whom the Notice of Common Dispute has been given; and
 - (ii) the Notified Contact Details of each other such Scheme Service Provider for the purposes of clause 8 of this Procedure.

3.2 Related Scheme Service Provider

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

4. Common Dispute resolution procedure

4.1 Operation of clause

- (a) Subject to clause 4.1(b), compliance with this clause 4 is a condition precedent to any entitlement to claim relief or remedy (whether by way of proceedings in a court or otherwise) in respect of a Common Dispute.
- (b) Nothing in this clause 4.1 prevents a party seeking urgent injunctive or declaratory relief from a court in connection with the Common Dispute.
- (c) The Principal and each Scheme Service Provider's obligations under their respective Scheme Agreements will continue despite the existence of a Common Dispute.

4.2 Negotiations in good faith

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

4.3 Referral to the Issue Resolution Board

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

5. Issue Resolution Board

5.1 Issue Resolution Board

- (a) In relation to each Common Dispute required to be referred to an Issue Resolution Board under this Procedure, the Principal must, within 30 Business Days of the expiration of the 20 Business Day period referred to in that clause, establish an Issue Resolution Board comprising members as follows:
 - (i) a chairperson; and
 - (ii) 2 other members,

(each a **Member**) appointed in accordance with clause 5.1(b).
- (b) The Principal must:
 - (i) request that the Chair for the time being of the Resolution Institute (**Chair**) appoint the chairperson and Members;
 - (ii) at the time a request is made under clause 5.1(b)(i), advise the Chair of the skills, qualifications and experience required of the Member or Members to be appointed having regard to the nature of the Common Disputes; and
 - (iii) promptly engage the person or persons appointed by the Chair as a Member, provided that they have the appropriate skills, qualifications and experience to determine Common Disputes.
- (c) If a Member appointed under this clause 5.1:
 - (i) is unavailable;
 - (ii) declines to act as a Member;
 - (iii) does not respond within 10 Business Days to a referral under clause 4.3;

- (iv) breaches the terms of their engagement with the Principal, including in relation to the matters referred to under clause 5.2 and 5.3; or
- (v) is removed from that position by the Principal pursuant to clause 5.3(b),
that Member's appointment will immediately terminate and a new Member must be appointed in accordance with clause 5.1(b).
- (d) The Principal must publish notification of the appointment and termination of appointment of each Member under this 5.1 on the Principal's website.
- (e) If a Common Dispute is referred to an Issue Resolution Board under clause 4.3, the Issue Resolution Board will be deemed to have received such reference on the date when it is received by the chairperson of the Issue Resolution Board.

5.2 Issue Resolution Board duties

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

5.3 Conflict of Interest

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

5.4 Liability and Indemnity

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

5.5 Confidentiality

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

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

5.6 Issue Resolution Board process

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

5.7 Costs of the Issue Resolution Board

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

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

6. Interface Issues

6.1 Operation of clause

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

6.2 Notice of dissatisfaction

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

6.3 Binding Nature of Issues Resolution Board determination on Interface Issue

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

then that Notified Party unequivocally and unreservedly agrees that:

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

6.4 Time for Compliance

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

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

7. Principal Disputes

7.1 Operation of clause

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

7.2 Involvement of Related Scheme Service Providers

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

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

7.3 Notice of dissatisfaction

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

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

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

- (a) If:
- (i) a Scheme Service Provider received a Notice of Common Dispute in respect of a Principal Dispute that is resolved under this Procedure (each such Scheme Service Provider being a **Notified Party**);
 - (ii) the Issue Resolution Board has given a determination as to that Principal Dispute; and
 - (iii) no Notice of Dissatisfaction has been properly given under and in accordance with clause 7.3,
- then that Scheme Service Provider unequivocally and unreservedly agrees that:
- (iv) the determination of the Issue Resolution Board will be final and binding on each Dispute Party, the Principal and the Related Scheme Service Providers on receipt, who must give effect to it;
 - (v) 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;

- (vi) any determination by an Issue Resolution Board in relation to that Principal Dispute will be binding on all Notified Parties without the need for a separate appointment or determination under this Procedure to the extent that such determination is binding on the parties to this Procedure; and
- (vii) the Notified Parties and the Principal agree to accept in full and final resolution of all and any entitlement, privilege, benefit or liability, which they may have arising out of or in connection with this Procedure or any Scheme Agreement in respect of the Principal Dispute, which has been determined in respect of the Principal Dispute in accordance with this Procedure.

7.5 Time for Compliance

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

- (a) 20 Business Days of the binding settlement or determination of such entitlement under this Procedure; or
- (b) the date such remedy or benefit must be paid or granted by the party responsible for paying or granting it under any provision of this Procedure as determined by an Issue Resolution Board or a court.

8. Notices

8.1 Requirements

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

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

8.2 How a Notice must be given

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

- (a) delivered personally;
- (b) sent by regular post if sent within Australia;

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

8.3 When Notices considered given and received

Subject to clause 8.4, a Notice takes effect when received (or such later time as specified in it) and a Notice is deemed to have been given by the sending party and received by the receiving party:

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

8.4 Time of delivery and receipt

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

9. General

9.1 Acknowledgment of operation of Procedure

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

Appendix - Rules for the Issue Resolution Board decision process

1. Written submissions

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

2. Conference

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

3. Decision

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

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

4. General

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 and delivered 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)

[EXECUTION CLAUSE FOR RECYCLER TO BE INSERTED]