

Victoria Container Deposit Scheme: Common Dispute Deed

The Honourable Ingrid Stitt MLC, Minister for Environment for and on
behalf of the Crown in Right of the State of Victoria
State

VicReturn Limited
Scheme Coordinator

TOMRA Cleanaway (Victoria) Pty Ltd
Network Operator

Visy CDS (VIC) Network Operator Pty Ltd
Network Operator

Re.turn It (Victoria) Pty Ltd
Network Operator

Each party which has delivered an Accession Deed Poll

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Victoria Container Deposit Scheme: Common Dispute Deed

Date: 18 April 2023

Parties:

The Honourable Ingrid Stitt MLC, Minister for Environment for and on behalf of the Crown in right of the State of Victoria (State)

VicReturn Limited, ABN 54 643 014 895 of c/o HWL Ebsworth Lawyers, Level 8, 447 Collins Street, Melbourne Victoria 3000 (**Scheme Coordinator**)

TOMRA Cleanaway (Victoria) Pty Ltd, ABN 89 659 247 917 of Level 4, 441 St Kilda Road, Melbourne Vic 3004 (**Network Operator**)

Visy CDS (VIC) Network Operator Pty Ltd, ABN 13 659 410 769 of Level 11, 2 Southbank Boulevard, Southbank Victoria 3006 (**Network Operator**)

Re.turn It (Victoria) Pty Ltd, ACN 664 532 325 of Level 27, 20 Bond Street, Sydney NSW 2000 (**Network Operator**)

Each party which has delivered an Accession Deed Poll.

Recitals:

- A. The State has entered a Scheme Coordinator Agreement with VicReturn Limited.
- B. The State has entered into a Network Operator Agreement with each of TOMRA Cleanaway (Victoria) Pty Ltd, Visy CDS (VIC) Network Operator Pty Ltd and Re.turn It (Victoria) Pty Ltd.
- C. The Scheme Coordinator has entered into a Network Agreement with each of TOMRA Cleanaway (Victoria) Pty Ltd, Visy CDS (VIC) Network Operator Pty Ltd and Re.turn It (Victoria) Pty Ltd.
- D. The Scheme Coordinator has entered into:
 - i. Supply Agreements with Suppliers; and
 - ii. Recovery Agreements with Material Recovery Facility Operators,which have acceded to, and are parties to, this deed.
- E. The Scheme Coordinator intends to enter into:
 - i. Supply Agreements with other parties each of which will be a Supplier; and
 - ii. Recovery Agreements with other parties each of which will be a Material Recovery Facility Operator,and all of which will accede to, and become party, to this deed.
- F. In accordance with the Act, other persons may be appointed from time to time as the "scheme coordinator" (as defined in the Act) or as a "network operator" (as defined in the Act) all of which will accede to, and become party, to this deed.
- G. The Scheme Coordinator may enter into Network Agreements with other parties appointed from time to time as a "network operator" (as defined in the Act) which will be a Network Operator and will accede to, and become party, to this deed.

- H. The intention of this deed is to provide a process for the determination of a Common Dispute arising under one agreement and to bind related parties and the Scheme Coordinator under other agreements to the determination, without the need to have the dispute determined again and separately under those other agreements.
- I. The terms of this deed will apply to Common Disputes where the Scheme Coordinator advises some or all of the parties to this deed that a Common Dispute exists.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

Act means the *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic).

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

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

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

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

Collection Point Agreement means an agreement between a Network Operator and a Collection Point Operator with respect to:

- (a) a collection point arrangement referred to in section 90(1)(a) of the Act; and/or
- (b) a collection refund arrangement referred to in section 90(1)(b) of the Act.

Collection Point Operator means:

- (a) if a Network Operator operates a collection point or a refund collection point (as contemplated in the Act), the Network Operator; or
- (b) a person or entity which has entered into a Collection Point Agreement with a Network Operator.

Collection Point Agreement Side Deed means each deed so entitled between the State, a Collection Point Operator and a Network Operator.

Conditions Precedent means a condition precedent set out in clause 2.1.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Scheme, including any information designated by a party to this deed (the first party) as confidential, which is disclosed, made available, communicated or delivered to a second party to this deed in connection with this deed, but excludes information which:

- (a) is in or which subsequently enters the public domain (and confidential information will not be deemed to be in the public domain merely because it relates to other information which may be in the public domain) other than as a result of a breach of an obligation of confidentiality;
- (b) the second party can demonstrate was in its possession before the date of this deed;
- (c) the second party can demonstrate was developed by it independently of any disclosures previously made by the first party; or
- (d) is lawfully obtained by the second party on a non-confidential basis from a person who is not bound by a confidentiality agreement with the first party or otherwise prohibited from disclosing the information to the second party.

Consequential Loss means any loss, damage or cost incurred that is indirect or consequential, including:

- (a) any such loss, damage or cost which is loss of profit, loss of use, loss of opportunity, loss of goodwill, special or punitive damages, loss of contract, loss of revenue, loss of reputation, loss of anticipated savings;
- (b) any remote, abnormal or unforeseeable loss; or
- (c) any other similar loss which does not flow naturally and directly from the breach or the cause of the loss.

Contract Publishing System means the system of the Victorian Government for publication of details of contracts entered into by some Victorian Public Entities, including any replacement or amended system.

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

Date of Expert Determination has the meaning given in clause 5.3(g).

Day 1 Clauses means clauses 1, 2, 6, 7, 8 and 11.

Deed of Guarantee and Indemnity means (as applicable) a deed of guarantee and indemnity as defined in:

- (a) a Network Operator Agreement; or
- (b) a Scheme Coordinator Agreement.

Deed of Subcontractor Novation has the meaning given in a Scheme Coordinator Agreement or a Network Operator Agreement (as applicable),

Department means Department of Energy, Environment and Climate Action.

Dispute Resolution Procedure has the meaning given in clause 4(c).

Effective Date means the date on which the last Condition Precedent is satisfied (or waived under clause 2.3).

First Supplier Side Deed has the meaning given under the Scheme Coordinator Agreement.

IBAC means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* and includes any other organisation that may, from time to time, perform the functions of the commission.

Initial Network Operator Agreements means each of:

- (a) the agreement between the State and TOMRA Cleanaway (Victoria) Pty Ltd dated on or about the date of this deed;
- (b) the agreement between the State and Visy CDS (VIC) Network Operator Pty Ltd dated on or about the date of this deed; and
- (c) the agreement between the State and Re.turn It (Victoria) Pty Ltd dated on or about the date of this deed.

Initial Scheme Coordinator Agreement means the agreement between the State and VicReturn Limited dated on or about the date of this deed.

Loss means:

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

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

Market Share means:

- (a) if the Common Dispute relates to a Network Agreement, the proportion calculated as:
 - (i) the daily average number of Suitable Eligible Containers collected by that particular Network Operator; divided by;
 - (ii) the daily average of the total Suitable Eligible Containers collected by all Network Operators which are either an SP Party or a Related Scheme Participant,

in each case based on data for the 12 months period prior to the date of the Notice of Common Dispute (or, if the Notice of Common Dispute is issued within 12 months after the Scheme Commencement Date, the period commencing on the Scheme Commencement Date and ending on the date of the Notice of Common Dispute), as such amounts are determined in accordance with the Scheme Payments and Contribution Methodology; or

- (b) if the Common Dispute relates to a Supply Agreement, the proportion calculated as:
 - (i) the daily average number of Suitable Eligible Containers Supplied by that particular Supplier; divided by

- (ii) the daily average of the total Suitable Eligible Containers Supplied by all Suppliers which are either an SP Party or a Related Scheme Participant,

in each case based on data for the 12 months period prior to the date of the Notice of Common Dispute (or, if the Notice of Common Dispute is issued within 12 months after the Scheme Commencement Date, the period commencing on the Scheme Commencement Date and ending on the date of the Notice of Common Dispute), as such amounts are determined in accordance with the Scheme Payments and Contribution Methodology; or

- (c) if the Common Dispute relates to a Recovery Agreement, the proportion calculated as:

- (i) the daily average number of Suitable Eligible Containers recovered by that particular Material Recovery Facility Operator; divided by

- (ii) the daily average of the total Suitable Eligible Containers recovered by all Material Recovery Facility Operators which are either an SP Party or a Related Scheme Participant,

in each case based on data for the 12 months period prior to the date of the Notice of Common Dispute (or, if the Notice of Common Dispute is issued within 12 months after the Scheme Commencement Date, the period commencing on the Scheme Commencement Date and ending on the date of the Notice of Common Dispute), as such amounts are determined in accordance with the Material Recovery Facilities Protocol,

as determined by the State.

Material Recovery Facilities Protocol means the document entitled "Material Recovery Facilities Protocol" issued by the Department and published on its website as varied from time to time.

Material Recovery Facility Operator means each operator of a "material recovery facility" (as defined in the Act) that has acceded to this deed on or after the Effective Date.

Network Agreement means, at any time, a "network arrangement" as defined in section 81(1)(b) of the Act in force at that time.

Network Agreement Side Deed means each deed so entitled between the State, the Scheme Coordinator and a Network Operator.

Network Operator means each "network operator" (as defined in the Act) that has acceded to this deed on or after the Effective Date.

Network Operator Account Bank Deed means, in respect of a Network Operator, the deed entitled "Victorian Container Deposit Scheme: Account Bank Deed (Network Operator)" made between the State, the Network Operator and the "Account Bank" (as defined in the relevant Network Operator Agreement).

Network Operator Agreement means, at any time, each "network operator agreement" as defined in the Act in force at that time.

Network Operator Security Deed has, in respect of a Network Operator, the meaning given in the relevant Network Operator Agreement.

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

Notice of Dissatisfaction has the meaning given clause 5.6(a).

Notice of Participation has the meaning given clause 4(d).

Recovery Agreement means, at any time, a 'recovery arrangement' as defined in section 81(1)(c) of the Act in force at that time.

Related Scheme Participants has the meaning given in clause 4(f).

Remaining Party has the meaning given in clause 11.2(a).

Retiring Party has the meaning given in clause 11.1.

Retirement Date has the meaning given in clause 11.1.

Scheme means the container deposit scheme established under Part 6 of the Act.

Scheme Agreement means:

- (a) this deed;
- (b) a State Common Dispute Deed;
- (c) a Scheme Coordinator Agreement;
- (d) a Network Operator Agreement;
- (e) a Network Agreement;
- (f) a Supply Agreement;
- (g) a First Supplier Side Deed;
- (h) a Recovery Agreement;
- (i) a Collection Point Agreement;
- (j) a Network Agreement Side Deed;
- (k) a Collection Point Agreement Side Deed;
- (l) a Scheme Coordinator Account Bank Deed;
- (m) a Network Operator Account Bank Deed;
- (n) a Scheme Coordinator Security Deed;
- (o) a Network Operator Security Deed;
- (p) a Deed of Subcontractor Novation; and
- (q) a Deed of Guarantee and Indemnity.

Scheme Commencement Date means the date the Scheme commences as notified by the State to the Scheme Coordinator which must be no earlier than 1 November 2023.

Scheme Coordinator means, at any time, the "Scheme Coordinator" as defined in the Act.

Scheme Coordinator Account Bank Deed means a deed entitled "Victorian Container Deposit Scheme: Account Bank Deed (Scheme Coordinator)" made between the State, the

Scheme Coordinator and the "Account Bank" (as defined in the Scheme Coordinator Agreement).

Scheme Coordinator Agreement means, at any time, the "Scheme Coordinator Agreement" (as defined in the Act) in force at that time.

Scheme Coordinator Security Deed has the meaning in the Scheme Coordinator Agreement.

Scheme Participant includes each of the following persons:

- (a) the Scheme Coordinator;
- (b) a Network Operator;
- (c) a Supplier; and
- (d) a Material Recovery Facility Operator.

Scheme Payments and Contribution Methodology means the document described as such that is issued by the Department and published on its website as varied or replaced from time to time.

SP Party has the meaning given in clause 4(e) and does not include the Scheme Coordinator or the State.

State Common Dispute Deed means a deed so entitled between the State, the Scheme Coordinator and a Network Operator.

Suitable Eligible Container has the meaning given in the Act.

Supplier means each "first supplier" (as defined in the Act) that has acceded to this deed on or after the Effective Date.

Supply has the meaning given in the Act.

Supply Agreement means, at any time, a "supply arrangement" as defined in section 81(1)(a) of the Act in force at that time.

Victorian Public Entity means:

- (a) a public sector body as defined in section 4 of the *Public Administration Act 2004* (Vic);
- (b) a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the *State Owned Enterprises Act 1992* (Vic);
- (c) a Council as defined in the *Local Government Act 1989* (Vic); or
- (d) an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) to (c) or any entity under the control of any of the entities listed in paragraphs (a) to (c).

1.2 Interpretation

In this deed unless the context otherwise requires:

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

2. Commencement

2.1 Conditions Precedent

This deed (except for the Day 1 Clauses) will not commence unless and until each of the following Conditions Precedent have been satisfied (or waived under clause 2.3):

- (a) execution of, and satisfaction or waiver (in accordance with the terms of the Initial Scheme Coordinator Agreement) of each condition precedent to the Initial Scheme Coordinator Agreement; and
- (b) execution of, and satisfaction or waiver (in accordance with the terms of the relevant Initial Network Operator Agreement) of each condition precedent to each of the Initial Network Operator Agreements.

2.2 Satisfaction of Conditions Precedent

- (a) The State and the Scheme Coordinator must use all reasonable endeavours to satisfy the Condition Precedent referred to in clause 2.1(a).
- (b) The State and each Network Operator (in respect of the Network Operator Agreement to which it is a party) must use all reasonable endeavours to satisfy the Condition Precedent referred to in clause 2.1(b).
- (c) Each party must not take any action that would or would be likely to, prevent or hinder the satisfaction of any Condition Precedent.
- (d) Within 2 Business Days of a party becoming aware that a Condition Precedent has been satisfied it must give the other parties written notice of that fact.

- (e) Upon the satisfaction (or waiver under clause 2.3) of all Conditions Precedent, the parties must promptly acknowledge in writing that the Conditions Precedents have been satisfied (or waived).

2.3 Waiver of Conditions Precedent

A Condition Precedent is waived if, and only if all parties agree in writing to waive the Condition Precedent.

2.4 Termination

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2.3) by the date which is 60 Business Days after the date of this Deed, then any party may give notice in writing to the other parties that it is terminating this deed if the relevant Condition Precedent is not satisfied (or waived under clause 2.3) within the period specified in the notice (which must not be less than 10 Business Days).
- (b) If a party gives notice under clause 2.4(a) and the relevant Condition Precedent is not satisfied (or waived under clause 2.3) within the period specified in the notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (c) If this deed is terminated pursuant to this clause 2.4 then no party will have any Claim against the other parties under or in respect of this deed or any Scheme Agreement or in respect of any Loss suffered or incurred in connection with this deed or the Scheme Agreement except for any Claim arising from or in relation to a breach of any Day 1 Clause.

2.5 Consequential Loss

- (a) Subject to clause 2.5(b), to the fullest extent permitted by law, no party to this deed is liable for any Consequential Loss suffered or incurred as a consequence of, or in connection with, any breach by that party of its obligations under clause 2.2 of this deed whether arising under contract, tort (including negligence), statute, equity or otherwise.
- (b) Clause 2.5(a) does not operate to exclude or limit any liability incurred by, or Claim made against a party to the extent that any Loss suffered or incurred by that party as a result of such liability or Claim:
 - (i) is a liability which cannot be limited or excluded at law;
 - (ii) Loss which arises in connection with the party's deliberate abandonment of all of its obligations under this deed;
 - (iii) for a Loss or liability to the extent the party has recovered an amount from a third party;
 - (iv) to the extent that the party is paid or indemnified for the liability under an insurance policy required by a Scheme Agreement to which it is a party, less any tax payable on the insurance proceeds and any costs of recovering the moneys from the insurer; or
 - (v) is Loss which the party would have been entitled to be indemnified for by an insurer under an insurance policy required by a Scheme Agreement to which the party is a party, but for a failure by the party to effect and maintain the insurance policy as required by the relevant Scheme Agreement to which the party is a party.

3. Anti-competitive conduct

Notwithstanding anything to the contrary in this deed, a party is not obliged to comply with an obligation under clause 5.4(c), 5.4(e) or 5.4(f) where to do so may result in that or any other party breaching any law including regarding any collusion, cartel conduct, misuse of market power, anti-competitive conduct or any other similar conduct with any other Scheme Participant or any other person in relation to the Scheme.

4. Common Disputes

- (a) If the State issues a notice to the Scheme Coordinator and a Network Operator under clause 24.2(a) of a Network Operator Agreement, the Scheme Coordinator must issue a Notice of Common Dispute (no later than 5 Business Days from the date of the notice from the State under clause 24.2(a) of the Network Operator Agreement).
- (b) Clauses 4(b) to 4(f) apply if a Notice of Common Dispute has been issued.
- (c) The Common Dispute must be resolved in accordance with the procedure set out in clauses 4 and 5 (the **Dispute Resolution Procedure**).
- (d) The State may, in its absolute discretion, at any time prior to a determination under this deed, give a notice in writing to the Scheme Coordinator stating that it will participate in the dispute, in which case the State will be a party to the dispute. Irrespective of the State issuing a Notice of Participation, clause 5.9 will apply in respect of the State (**Notice of Participation**).
- (e) The parties to the dispute are the Network Operator, the Supplier or the Material Recovery Facility Operator to which the Notice of Common Dispute was issued (**SP Party**) and the Scheme Coordinator and, if the State has issued a Notice of Participation, the State.
- (f) If the Scheme Coordinator considers, in its absolute discretion, that the Common Dispute relates to other Scheme Participants which are party to a Network Agreement or to a Supply Agreement or a Recovery Agreement, then the Scheme Coordinator must notify those other Scheme Participants (**Related Scheme Participants**) with a copy to the SP Party, within 10 Business Days of the Notice of Common Dispute being issued. Notice under this clause 4(f) notice must clearly identify each of the Related Scheme Participants to allow the SP Party to be able to comply with clause 5.4. The Related Scheme Participants are not parties to the Common Dispute.

5. Dispute resolution procedure

5.1 Dispute Resolution Procedure

- (a) Within 5 Business Days of a Notice of Common Dispute being issued, a senior representative from each party to the Common Dispute must meet and use all reasonable endeavours acting in good faith to resolve the Common Dispute by joint discussions.
- (b) Compliance by a party to the Common Dispute with the Dispute Resolution Procedure is a condition precedent to any entitlement of that party to claim relief or remedy in respect of the subject of a Common Dispute.
- (c) Nothing in this clause 5 prevents a party seeking urgent injunctive or declaratory relief from a court in connection with the Common Dispute.

- (d) The parties' obligations under the Scheme Coordinator Agreement, a Network Operator Agreement, a Network Agreement, a Supply Agreement or a Recovery Agreement (as applicable) will continue despite the existence of a Common Dispute between some or all of the parties.

5.2 Referral to Expert Determination

If the Common Dispute is not resolved within:

- (a) 15 Business Days after the issue of the notification to Related Scheme Participants under clause 4(f); or
- (b) where no notification is issued under clause 4(f) within 10 Business Days after the Notice of Common Dispute being issued,

at the end of that 15 Business Day or 10 Business Day period (as applicable) the Common Dispute will be referred to expert determination.

5.3 Expert Determination

- (a) The expert must be appointed, and the expert determination must be conducted in accordance with the Resolution Institute Expert Determination Rules as modified by Schedule 1.
- (b) The parties to the Common Dispute must enter into an agreement with the appointed expert on such terms as the parties and the expert may agree or as determined in accordance with the rules for the expert determination. The parties will use their best endeavours to ensure that the agreement entered into under this clause 5.3(b) requires the expert to comply with the requirements of clause 5.3.
- (c) An expert determination conducted under this clause 5 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from the expert's own knowledge and expertise.
- (d) The expert must:
 - (i) disclose to the parties to the Common Dispute any interest the expert has in the outcome of the determination; and
 - (ii) not communicate with one party to the Common Dispute or a Related Scheme Participant without the knowledge of the other parties to the Common Dispute.
- (e) Unless otherwise agreed between the parties to the Common Dispute, the expert must notify the parties to the Common Dispute of the expert's decision upon an expert determination conducted under this clause 5 within the period set out in the agreement between the parties to the Common Dispute and the expert,.
- (f) The determination of the expert will be immediately binding on the SP Party, the Scheme Coordinator and the Related Scheme Participants on receipt, who must give effect to it unless and until it is revised in an amicable settlement or arbitral award.
- (g) The date of the expert's determination will be the date it is provided to the parties to the Common Dispute and the Related Scheme Participants (**Date of Expert Determination**).

5.4 Involvement of Related Scheme Participants

- (a) Communications provided to the expert or another party relating to the expert determination, must be provided to the Related Scheme Participants.
- (b) The Scheme Coordinator must provide a copy of each communication received from the expert (including the expert's decision) to the Related Scheme Participants within 1 day of receipt of the communication.
- (c) Subject to the Related Scheme Participant first agreeing to any reasonable obligations of confidentiality (consistent with the obligations in clause 9) required by the SP Party, the SP Party will allow the Related Scheme Participants an opportunity to review and comment upon the draft submissions and evidence (including expert opinions) (to the extent that those things relate to the Related Scheme Participant) that the SP Party proposes to submit in the expert determination by providing drafts to the Related Scheme Participants at least 14 days before the SP Party is due to make its submission.
- (d) The relevant Related Scheme Participants may comment on the draft submissions (to the extent that those submissions relate to the Related Scheme Participant) and must provide those comments to the SP Party at least 7 days before the SP Party is due to make its submission in the expert determination.
- (e) The SP Party must consider and take account of any comments provided in accordance with clause 5.4(c), in the preparation of its submissions.
- (f) The SP Party must (to the extent relevant to the Related Scheme Participant):
 - (i) provide the Related Scheme Participants with a draft of any proposed offer to settle the Common Dispute not less than 14 days prior to submitting that proposed offer to the Scheme Coordinator; and
 - (ii) not settle, waive or compromise the Common Dispute without the prior written consent of all of the Related Scheme Participants.
- (g) If it appears to the expert, or on application by a party to the Common Dispute, that the SP Party is not able adequately to represent the interests of the Related Scheme Participants, the expert may make such directions as the expert thinks fit concerning the substitution of one of the Related Scheme Participants for the SP Party, and make such other orders as the expert thinks fit. In this case, thereafter references to the SP Party in the Dispute Resolution Procedure will be references to the substitute party.

5.5 Costs of the expert determination

- (a) Subject to clause 5.5(c), 5.5(d), 5.5(e) and 5.5(f), each party to the Common Dispute will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) pay an equal share of the expert's costs.
- (b) Each Related Scheme Participant will bear its own costs of participation in the Dispute Resolution Procedure.
- (c) If the Common Dispute relates to a Network Agreement, the SP Party and each Related Scheme Participant who is a Network Operator will be responsible for the costs incurred by the SP Party in any expert determination in proportion to its Market Share. The Scheme Coordinator's own costs in respect of a Common

Dispute relating to a Network Agreement are payable by the Scheme Coordinator in accordance with clause 5.5(a).

- (d) If the Common Dispute relates to a Supply Agreement, the SP Party and each Related Scheme Participant who is a Supplier will be responsible for the costs incurred by the SP Party in any expert determination in proportion to its Market Share. The Scheme Coordinator's own costs in respect of a Common Dispute relating to a Supply Agreement are payable by the Scheme Coordinator in accordance with clause 5.5(a).
- (e) If the Common Dispute relates to a Recovery Agreement, the SP Party and each Related Scheme Participant who is a Material Recovery Facility Operator will be responsible for the costs incurred by the SP Party in any expert determination in proportion to its Market Share. The Scheme Coordinator's own costs in respect of a Common Dispute relating to a Recovery Agreement are payable by the Scheme Coordinator in accordance with clause 5.5(a).
- (f) If the Common Dispute relates to a Supply Agreement, the Network Agreement and a Recovery Agreement, the SP Party and each Related Scheme Participant will be responsible for the costs incurred by the SP Party in any expert determination in the proportions as determined by the expert. The Scheme Coordinator's own costs in respect of a Common Dispute relating to a Supply Agreement, Network Agreement and a Recovery Agreement are payable by the Scheme Coordinator in accordance with clause 5.5(a).

5.6 Notice of dissatisfaction

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

(Notice of Dissatisfaction).
- (b) A Notice of Dissatisfaction issued under this clause 5.6 must:
 - (i) state that it is given under this clause 5.6; and
 - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
- (c) If the SP Party or a Related Scheme Participant considers that a Notice of Dissatisfaction should be issued then:
 - (i) it must provide notice of that fact to the SP Party and the Related Scheme Participants of that fact and its reasons for holding that view within 10 Business Days after the Date of Expert Determination; and
 - (ii) the SP Party must take into account any notice provided under clause 5.6(c)(i) when deciding whether or not to give a Notice of Dissatisfaction.

5.7 Proceedings

Subject to clause 5.8, if a Common Dispute has not been resolved (in whole or in part):

- (a) where a party has given a Notice of Dissatisfaction pursuant to clause 5.6, within 10 Business Days after the Notice of Dissatisfaction was provided; or
- (b) where the Expert has made no decision within the period referred to in Rule 10 the Resolution Institute Expert Determination Rules as modified by Schedule 1, within 120 days of the notification of the Notice of Common Dispute to the Related Scheme Participants,

(or such longer period of time as the parties may agree in writing and irrespective of whether clauses 5.2 to 5.7 have been complied with) any party may commence legal proceedings.

5.8 Final and binding decision

If the expert has given a determination as to a Common Dispute, and no Notice of Dissatisfaction has been given within 21 days of the Date of Expert Determination, then the determination will become final and binding and the Common Dispute will be deemed to be resolved.

5.9 Binding Nature of Common Dispute

- (a) The parties to this deed unequivocally and unreservedly agree that, if they receive a Notice of Common Dispute:
 - (i) provided that clause 5.4(f) has been complied with, they will be bound by any settlement of the subject matter of that Common Dispute to the extent that it touches upon or concerns any right, remedy, benefit or entitlement in a Network Agreement, a Supply Agreement or a Recovery Agreement to which they are a party and the State will be bound to the extent it resolves the dispute under an agreement between the State and the Scheme Coordinator or a Network Operator;
 - (ii) subject to clause 5.8, any determination by an expert or a court in relation to that Common Dispute will be binding on the parties to that Notice of Common Dispute without the need for a separate appointment or determination under this deed to the extent that such determination is binding on the parties to this deed; and
 - (iii) the parties agree to accept in full and final resolution of all and any entitlement, privilege, benefit or liability, which they may have arising out of or in connection with this deed or any Network Agreement, Supply Agreement or Recovery Agreement in respect of the Common Dispute, which has been determined in respect of the Common Dispute in accordance with this deed.
- (b) The parties agree that the provisions of this deed apply to a Common Dispute the subject of a Notice of Common Dispute whether or not they participate in the Dispute Resolution Procedure.

5.10 Time for Compliance

Any remedy or benefit to which a party to this deed is entitled pursuant to clause 5.9 must be paid or granted by the relevant party by the later of:

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

6. Governing Law

This deed is governed by and is to be construed in accordance with the laws in force in the State of Victoria.

7. Jurisdiction

- (a) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the courts to which the appeals from those courts may be made with respect to any arbitration or proceedings that are permitted to be brought at any time.
- (b) The parties irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceedings has been brought in an inconvenient forum, where that venue falls within clause 7(a).

8. Proportionate Liability

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

9. Confidentiality

9.1 Use of Confidential Information

Each party must keep the Confidential Information confidential and secure and must (and must ensure that its personnel and advisers will):

- (a) use and reproduce Confidential Information only to the extent necessary to perform their obligations under the Scheme Agreements to which it is a party; and
- (b) not disclose or otherwise make available Confidential Information other than to their personnel who have a need to know the information to enable the party to perform its obligations under the Scheme Agreements to which it is a party.

9.2 Exceptions to obligations of confidentiality

- (a) Notwithstanding clause 9.1, a party may disclose the Confidential Information:
 - (i) to its legal advisors, auditors and other advisors who require this information to provide advice to the party in relation to this deed or the other Scheme Agreements to which it is party; or
 - (ii) to the extent that it is required by Law, court order, a House of Parliament, or a Committee of a House of Parliament to disclose all or any part of the Confidential Information.
- (b) If a party is required to disclose Confidential Information to a court, the party must notify the court of the obligations the party owes in respect of the Confidential Information and use its reasonable endeavours to have the relevant Confidential Information disclosed only on a confidential basis and any proceedings be held in private (as appropriate).

9.3 Consent to disclosure of information

The Scheme Coordinator acknowledges the consents given to the State under clause 27.6 of the Scheme Coordinator Agreement and the equivalent consents given to the State under the Supply Agreements and the Recovery Agreements and the Network Operators acknowledge the consents given under clause 27.5 of the Network Operator Agreements to publish or otherwise make information available in relation to that party.

10. Accession

- (a) A party signing an Accession Deed Poll (the **Accession Party**) covenants and agrees with all parties to this deed from time to time (whether original or by accession) (**Existing Parties**) on and from the date of delivery of an Accession Deed Poll to the Scheme Coordinator (or where the Accession Party is the Scheme Coordinator, to the State) (**Accession Date**) to observe, perform and be bound by this deed so that, from the Accession Date, the Accession Party will:
- (i) be a party to this deed; and
 - (ii) assume the rights and obligations of a party as specified in this deed, in the capacity of a Scheme Coordinator, Network Operator, Supplier or Material Recovery Facility Operator (as specified in the relevant Accession Deed Poll).
- (b) Each Existing Party:
- (i) irrevocably and unconditionally consents to the Accession Party becoming a party to this deed on and from the Accession Date in the capacity of a Scheme Coordinator, Network Operator, Supplier or Material Recovery Facility Operator (as specified in the relevant Accession Deed Poll);
 - (ii) agrees that the Accession Party will be entitled to exercise all rights, privileges and benefits afforded to it as a party as specified in this deed in the capacity of a Scheme Coordinator, Network Operator, Supplier or Material Recovery Facility Operator (as specified in the relevant Accession Deed Poll); and
 - (iii) agrees that it continues to be bound by this deed notwithstanding the accession contemplated in clause 10(a) of this deed.

11. Retirement of Scheme Coordinator or Network Operator

11.1 Retirement

With effect on and from the date (**Retirement Date**) on which a party's (**Retiring Party**) appointment as a "scheme coordinator" or a "network operator" (as applicable) is revoked under the Act, the Retiring Party will cease to be entitled to its rights and will cease to be bound by its obligations under this deed.

11.2 Releases

- (a) Subject to clause 11.3, the Retiring Party releases each other party (**Remaining Party**) from all obligations and liability under or in respect of this deed to be performed or discharged at or after the Retirement Date.
- (b) Subject to clause 11.3, each Remaining Party releases the Retiring Party from all obligations and liability under or in respect of this deed to be performed or discharged at or after the Retirement Date.

11.3 Obligations and liability prior to the Retirement Date

Nothing in this deed releases the Retiring Party or any Remaining Party from any right, obligation or liability under this deed arising or accruing before the Retirement Date, including any right, obligation or liability in relation to a Common Dispute in respect of which a Notice of Dispute has been served before the Retirement Date and the State does not assume any such obligation or liabilities under this deed.

12. Electronic signatures and counterparts

12.1 Electronic signature

Each party warrants that immediately prior to entering into this deed, it has unconditionally consented to:

- (a) the requirement for a signature under any law being met; and
- (b) any other party to this deed executing it,

by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

12.2 Counterparts

This deed may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

12.3 Electronic communication

Without limitation, the parties agree that this deed may be exchanged by hand, post, or any electronic method that evidences a party's execution of this deed, including by a party forwarding a copy of its executed counterpart by hand, post or electronic means to the other party.

13. Notices

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

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

A. State

Name: Tony Circelli, Head, Recycling Victoria
Address: PO Box 500, East Melbourne VIC 8002
E-mail: container.deposit@delwp.vic.gov.au
For the attention of: Manager, CDS Systems and Oversight

B. Scheme Coordinator

Name: VicReturn Limited
Address: c/o HWL Ebsworth Lawyers, Level 8, 447 Collins Street,
Melbourne Victoria 3000
Email: Edward.Dowse@lionco.com
For the attention of: Scheme Coordinator's Representative

C. Network Operator

Name: TOMRA Cleanaway (Victoria) Pty Ltd
Address: Level 4, 441 St Kilda Road, Melbourne Vic 3004
Email: James.Dorney@tcnsw.com.au
For the attention of: Chief Executive Officer

D. Network Operator

Name: Visy CDS (VIC) Network Operator Pty Ltd
Address: Unit 26-29, 1 International Drive, Westmeadows (Tullamarine)
Email: tim.o'donnell@visy.com.au
For the attention of: Tim O'Donnell

E. Network Operator

Name: Re.turn It (Victoria) Pty Ltd
Address: Level 27, 20 Bond Street, Sydney NSW 2000
Email: dan.chesson@re-group.com
For the attention of: Commercial Director - Re.Group

(c) must be delivered or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with clause 13(b); and

(d) is taken to be received by the addressee:

(i) (in the case of prepaid post) on the fifth Business Day after the date of posting to an address within Australia, and on the tenth Business Day after the date of posting by airmail to an address outside Australia;

(ii) (in the case of delivery by hand) on delivery; and

(iii) (in the case of email) when it is dispatched by the sender to each of the email addresses specified by the recipient,

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

The notice details of any Accession Party will be as set out in the Schedule to the relevant Accession Deed Poll.

Schedule 1 - Rules for the Expert Determination Process

Resolution Institute Expert Determination Rules

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

Modifications are underlined.

1. RULE 5 Role of the Expert

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Agreement, the requirements of procedural fairness, and according to law.
2. [no modification]
3. [no modification]
- 3A. The rules of evidence do not apply to the Process.
4.
 - (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.
 - (b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.
 - (c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the Parties immediately.
 - (d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under clause 4(c) above, unless the Parties agree otherwise.
5. [no modification]

2. RULE 10 The Expert's Determination

1. Unless otherwise agreed between the Parties, the Expert must notify the parties of the Expert's decision within 28 days from the acceptance by the Expert of the Expert's appointment. As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, the Expert shall determine the Dispute between the parties and notify such determination in writing to the parties.
2. [no modification]
3. Subject to any rule of law or equity or written agreement of the parties to the contrary, Unless otherwise agreed by the parties, the Expert's determination:
 - (a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;
 - (b) must allow for any amount already paid to a Party under or for the purposes of Divisions 1 and 2 of Part 3 of the *Building and Construction Industry Security of Payment Act 2002* (Vic) (and any equivalent statute in any other state or territory);

- (c) may make such orders as the Expert considers appropriate for the restitution of any amount so paid, and such other orders as the Expert considers appropriate; and
- (d) to the extent permitted by law, will not apply or have regard to the provisions of Part IVAA of the *Wrongs Act 1958* (Vic) (and any equivalent statutory provision in any other state, territory, or the Commonwealth).

4. [no modification]

3. Rule 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

Schedule 2 - Accession Deed Poll

Accession Deed Poll

Dated

[Party title – insert (as applicable): Scheme Coordinator/Network Operator/Supplier/Material Recovery Facility Operator]

[Insert full name of party] [Insert ABN] (**Accession Party**)

Background

- A. The Accession Party seeks to enter into a *[insert agreement name (as applicable): Scheme Coordinator Agreement/Network Operator Agreement/Supply Agreement/Recovery Agreement]* with the *[insert counter-party to agreement (as applicable): the State/the Scheme Coordinator]* for the purpose of the *Circular Economy (Waste Reduction and Recycling) Act 2021 (Vic)*.
- B. This deed poll is entered into in accordance with clause 8 of the Common Dispute Deed.
- C. As of the Accession Date, the Accession Party agrees to perform its obligations as *[insert party title (as applicable): the Scheme Coordinator/a Network Operator/a Supplier/a Material Recovery Facility Operator]* under the Common Dispute Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed poll:

Accession Date means the date of delivery of this deed poll to the Scheme Coordinator (or, where the Accession Party is the Scheme Coordinator, to the State).

Common Dispute Deed means the deed entitled "Victoria Container Deposit Scheme: Common Dispute Deed" dated *[insert]*.

1.2 Definitions in Common Dispute Deed

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

2. Accession to the Common Dispute Deed

- (a) The Accession Party covenants and agrees with all parties to the Common Dispute Deed from time to time (whether original or by accession) (**Existing Parties**) on and from the Accession Date to observe, perform and be bound by the Common Dispute Deed so that, from the Accession Date, the Accession Party will be a party to the Common Dispute Deed and will assume the rights and obligations of a party as specified in the Common Dispute Deed in the capacity of *[insert party title (as*

applicable): the Scheme Coordinator/a Network Operator/a Supplier/a Material Recovery Facility Operator].

- (b) The Accession Party confirms that it has been supplied with a copy of the Common Dispute Deed.
- (c) This deed poll is made by the Accession Party in favour of each Existing Party and is irrevocable.
- (d) On and from the Accession Date, each Existing Party may enforce the terms of this deed poll against the Accession Party as if it were a party to this deed poll in the capacity of *[insert party title (as applicable): the Scheme Coordinator/a Network Operator/a Supplier/a Material Recovery Facility Operator].*

3. Governing law

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

Executed as a deed poll

Accession Party

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

Signature of director

Signature of company secretary/director

Full name of director who states that they are a
director

Full name of company secretary/director who states
that they are a company secretary/director

Schedule to Accession Deed Poll - Details for Notices for Accession Party

The notice details of the Accession Party for the purposes of clause 13 of the Common Dispute Deed are as follows:

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

Executed as a deed.

State

**Executed by the Honourable Ingrid Stitt MLC,
Minister for Environment for and on behalf of
the Crown in right of the State of Victoria** in
the presence of:



Signature of witness

Kane Barrett

Full name of witness

Lawyer

Office held

Scheme Coordinator

Executed by VicReturn Limited in accordance
with section 127 of the Corporations Act 2001
(Cth):

Signature of director

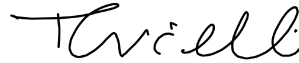
Full name of director who states that they are a
director

Network Operator (Zones 1 and 4)

Executed by TOMRA Cleanaway (Victoria) Pty
Ltd in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Full name of director who states that they are a
director



The Honourable Ingrid Stitt MLC, Minister for
Environment *by her delegate Tony Circelli,*
Head, Recycling Victoria

Signature of company secretary/director

Full name of company secretary/director who
states that they are a company
secretary/director

Signature of company secretary/director

Full name of company secretary/director who
states that they are a company
secretary/director

Executed as a deed.

State

**Executed by the Honourable Ingrid Stitt MLC,
Minister for Environment for and on behalf of
the Crown in right of the State of Victoria** in
the presence of:

Signature of witness

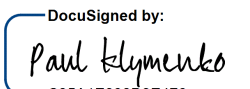
The Honourable Ingrid Stitt MLC, Minister for
Environment

Full name of witness


Office held

Scheme Coordinator

Executed by VicReturn Limited in accordance
with section 127 of the Corporations Act 2001
(Cth):

DocuSigned by:

C35A1E898B3E476...

Signature of director

DocuSigned by:

5922151DEDE64E9...

Signature of company secretary/director

Paul Klymenko

Edward William Dowse

Full name of director who states that they are a
director

Full name of company secretary/director who
states that they are a company
secretary/director

Network Operator (Zones 1 and 4)

Executed by TOMRA Cleanaway (Victoria) Pty
Ltd in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director who states that they are a
director

Full name of company secretary/director who
states that they are a company
secretary/director

Executed as a deed.

State

Executed by the Honourable Ingrid Stitt MLC, Minister for Environment for and on behalf of the Crown in right of the State of Victoria in the presence of:

Signature of witness

The Honourable Ingrid Stitt MLC, Minister for Environment

Full name of witness

Office held

Scheme Coordinator

Executed by VicReturn Limited in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director who states that they are a director

Full name of company secretary/director who states that they are a company secretary/director

Network Operator (Zones 1 and 4)

Executed by TOMRA Cleanaway (Victoria) Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

DocuSigned by:
Markus Berkeley Fraval
09AB459C894F408...

Signature of director

DocuSigned by:
Frank Lintvelt
C6187BD0593B4D1...

Signature of company secretary/director

Markus Berkeley Fraval

Frank Lintvelt - Director

Full name of director who states that they are a director

Full name of company secretary/director who states that they are a company secretary/director

Network Operator (Zones 2 and 5)

Executed by Visy CDS (VIC) Network Operator Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

VINCENT PETER O'HALLORAN

Full name of director who states that they are a director

Network Operator (Zones 3 and 6)

Executed by Re.turn It (Victoria) Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director who states that they are a director



Signature of company secretary/director

ROBERT ANDREW KAYE

Full name of company secretary/director who states that they are a company secretary/director

Signature of company secretary/director

Full name of company secretary/director who states that they are a company secretary/director

Network Operator (Zones 2 and 5)

Executed by Visy CDS (VIC) Network Operator Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director who states that they are a director

Full name of company secretary/director who states that they are a company secretary/director

Network Operator (Zones 3 and 6)

Executed by Re.turn It (Victoria) Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director



Signature of company secretary/director

Daniel John Chesson

William Kidman

Full name of director who states that they are a director

Full name of company secretary/director who states that they are a company secretary/director