

Victorian Container Deposit Scheme: Supply Agreement

VicReturn Limited
Scheme Coordinator
[First Supplier]
First Supplier

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Supply Agreement

Date

Parties **VicReturn Limited, ABN 54 643 014 895** of Level 15, 575 Bourke Street, Melbourne VIC 3000 (**Scheme Coordinator**)

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

Background

- A. In accordance with the *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic), the State is seeking to establish a container deposit scheme in Victoria to promote Victoria's transition to a circular economy by enabling the payment of refunds for Suitable Eligible Containers that are returned to Refund Collection Points operated under the Scheme.
- B. The State has entered into the Scheme Coordinator Agreement with the Scheme Coordinator in connection with the management, administration and operation of the Scheme for the purposes of the Act.
- C. For the purposes of the Act, the Scheme Coordinator will enter into, and give effect to, supply arrangements (as defined in the Act) with first suppliers (as defined in the Act) requiring each first supplier (amongst other things) to pay to the Scheme Coordinator contributions towards the cost of the management, administration and operation of the Scheme.
- D. This Agreement is a supply arrangement for the purposes of the Act.

General Conditions

PART A — GENERAL

1. Glossary of terms and interpretation

1.1 Glossary of terms

Capitalised terms and acronyms used in this Agreement have the meanings given to them in Schedule 3, and if not defined in Schedule 3 have the meanings given to them in the Act.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (d) a reference to a party includes that party's executors, administrators, successors, permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a standard, code or guideline (including any State policies, guidelines or requirements) includes that standard, code or guideline as amended from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (i) a reference to a party, clause, section, schedule, exhibit, attachment or annexure is a reference to a party, clause, section, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part thereof;
- (l) if the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (m) other than as set out in clause 1.2(l) a reference to "day" is a reference to a calendar day, a reference to "week" is a reference to a calendar week, a reference to "month" is a reference to a calendar month and a reference to "quarterly" is a reference to 3 monthly;
- (n) a reference to any information, material, document or thing includes that information, material, document or thing in all media, including written oral or electronic;
- (o) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (p) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (q) the word "subcontractor" will include all suppliers and consultants;
- (r) a reference to "\$" or "dollar" is to Australian currency;
- (s) a reference to time is a reference to the then current time in Melbourne, Australia;
- (t) a reference to a right includes any benefit, remedy, discretion, authority or power;
- (u) a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (v) the term "may", when used in the context of a power, right or remedy exercisable by a party, means that the party can exercise that power, right or remedy in its

absolute and unfettered discretion, and the party has no obligation to the other party to do so; and

(w) where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:

- (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Agreement is deemed to refer to that other entity; or
- (ii) ceases to exist, this Agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity.

2. Commencement of this Agreement

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

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

3. Term

This Agreement commences on the Effective Date and continues until:

- (a) it is terminated in accordance with this Agreement;
- (b) the Scheme Coordinator Agreement is terminated or is otherwise no longer in force and the State has not given an Assumption Notice under clause 4 of the First Supplier Side Deed within the required time period; or
- (c) the Scheme is otherwise no longer in force,

(Term).

4. Key obligations

4.1 Fair Dealing

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

4.2 Fraud

- (a) Each of the parties must not:
 - (i) in connection with a claim for payment under this Agreement; or
 - (ii) in purported compliance with any requirement imposed by the Act, provide any information that the party knows is false or misleading in a material particular.

- (b) The Scheme Coordinator and the First Supplier must take all reasonable steps to minimise and prevent fraud in connection with the Scheme.
- (c) The First Supplier must at all times cooperate with the Scheme Coordinator and the other Scheme Participants in respect of fraud, or possible fraud, in connection with the Scheme.

4.3 Compliance

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

5. Review of the Act

The First Supplier and the Scheme Coordinator acknowledge that pursuant to section 182 of the Act, the Minister will cause a review to be conducted of the first 5 years of operation of the Act.

6. First Supplier acknowledgements

6.1 Class of containers

The First Supplier acknowledges and agrees that this Agreement applies only to those classes of containers which are notified in writing in accordance with the reasonable requirements of the Scheme Coordinator (which may be that the submission must be through the Interface, in the form and with the information, required by the Interface) to the Scheme Coordinator and the Head, Recycling Victoria (as defined in the Act) by the First Supplier from time to time.

6.2 Copy of Supply Agreements to State

The First Supplier consents to the Scheme Coordinator providing a copy of this Agreement to the State.

6.3 Step-in and novation

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

- (a) acknowledges the State's rights to carry out an obligation under the Scheme Coordinator Agreement or this Agreement if a Default Event has occurred; and
- (b) agrees to give effect to the novation of this Agreement to the State's nominee in the event of termination or expiry of the Scheme Coordinator Agreement.

6.4 Access to Interface

- (a) The First Supplier must ensure that the First Supplier has all applicable rights (including IP Rights) to provide all Third Party Data Warehouse Material and that the Third Party Data Warehouse Material:
 - (i) does not breach any third party IP Rights or other rights;

- (ii) is provided to the Scheme Coordinator in compliance with all applicable Laws (including Privacy Laws) and complies with any applicable Laws (including any Privacy Laws); and
- (iii) is true, accurate, correct, and complete.

(b) The First Supplier acknowledges and agrees that the Scheme Coordinator is not responsible for ensuring that the Third Party Data Warehouse Material:

- (i) is provided to the Scheme Coordinator in compliance with all applicable Laws (including Privacy Laws) and complies with any applicable Laws (including any Privacy Laws); and
- (ii) is true, accurate, correct, or complete.

(c) The First Supplier acknowledges and agrees that the Scheme Coordinator may impose reasonable terms and conditions on the First Supplier, as updated by the Scheme Coordinator from time to time, in connection with the Scheme prior to the First Supplier accessing the Interface (or accessing, uploading, or modifying any Third Party Data Warehouse Material), including terms and conditions requiring that Third Party Data Warehouse Material:

- (i) is provided to the Scheme Coordinator in compliance with all applicable Laws (including Privacy Laws) and comply with all applicable Laws (including any Privacy Laws); and
- (ii) is true, accurate, correct, and complete.

7. Data collection and reporting

7.1 First Supplier data (historical)

If the Effective Date is prior to the Scheme Commencement Date, the First Supplier must provide to the Scheme Coordinator a statement which specifies the number of Eligible Containers Supplied by the First Supplier in the State (if any) in the 12 month period immediately prior to the Scheme Commencement Date, or such other period as determined by the Scheme Coordinator in its sole discretion as notified by the Scheme Coordinator to the Supplier in writing, itemised on a monthly basis:

- (i) in aggregate in respect of the State; and
- (ii) in aggregate in respect of the State by Material Type,

within:

- (iii) 10 Business Days after the Effective Date, to the extent that such information is available at that time; and
- (iv) otherwise, 10 Business Days after the Scheme Commencement Date,

and such statement is to be submitted via the Interface or as otherwise directed by the Scheme Coordinator in writing.

(b) If the Effective Date is on or after the Scheme Commencement Date, the First Supplier must within 10 Business Days after the Effective Date provide to the Scheme Coordinator a statement which specifies the number of Eligible Containers Supplied by the First Supplier in the State (if any) in the 12 month period immediately prior to the Scheme Commencement Date, and such other period as determined by the Scheme Coordinator in its sole discretion as notified by the Scheme Coordinator to the Supplier in writing, itemised on a month to month basis:

- (i) in aggregate in respect of the State; and
- (ii) in aggregate in respect of the State by Material Type,

and such statement is to be submitted via the Interface or as otherwise directed by the Scheme Coordinator in writing.

7.2 First Supplier data (annual)

No later than the date which is 40 Business Days after the end of each financial year during the Term, the First Supplier must prepare and deliver to the Scheme Coordinator's Representative a statutory declaration in the form set out Schedule 2 executed by a director of the First Supplier declaring:

- (a) that each First Supplier Statement provided by that First Supplier in accordance with clause 9.4 in respect of the previous financial year was true and correct or specifying the extent to which any First Supplier Statement was not true and correct;
- (b) the number of Suitable Eligible Containers Supplied by that First Supplier in the State in the previous financial year:
 - (i) in aggregate in respect of the State; and
 - (ii) in aggregate in respect of the State by Material Type; and
- (c) each other matter prescribed by the State or which is otherwise required by the Act or the Regulation from time to time (as notified in writing by the Scheme Coordinator to the First Supplier).

7.3 First Supplier IP

- (a) The IP Rights in all data, documents, information, records or other material of any kind and in any form or medium prepared by the First Supplier which that First Supplier is required to provide to the Scheme Coordinator under this Agreement (**First Supplier IP**) will remain vested in the First Supplier.
- (b) The First Supplier grants to the Scheme Coordinator and its subcontractors an irrevocable, royalty free, non-exclusive, licence, including the right to sublicense this licence to the State and any other third parties, to use the IP Rights in the First Supplier IP for the purposes of the Scheme Coordinator complying with applicable laws, exercising its rights, granting rights, and carrying out its functions and obligations in accordance with the Act, the Regulation and the Scheme Agreements.

7.4 Performance monitoring, enforcement and auditing

- (a) The Scheme Coordinator may engage an independent auditor to, at any time, audit (including a real-time audit of any applicable electronic systems for deliveries, supply chain logistics, payments, collections and verification) or review data provided by the First Supplier under this Agreement to determine if that First Supplier is complying with:
 - (i) the Act and the Regulation; and
 - (ii) the terms of this Agreement.
- (b) For the purposes of clause 7.4(a), the First Supplier must:

- (i) at all reasonable times give the independent auditor appointed by the Scheme Coordinator access to any areas where that First Supplier's business is being carried out; and
- (ii) if requested by the Scheme Coordinator, that First Supplier must provide all reasonable assistance to the independent auditor appointed by the Scheme Coordinator in connection with any performance audit as contemplated by the Act or any other review or audit in accordance with this Agreement.

7.5 Scheme Coordinator obligations

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

- (a) the following information, as verified in accordance with the Scheme Coordinator Agreement:
 - (i) the aggregate number of Suitable Eligible Containers for which Refund Amounts have been paid by Collection Point Operators or Network Operators at Refund Collection Points during that financial year;
 - (ii) the aggregate number of Suitable Eligible Containers for which Refund Amounts have been paid by the Scheme Coordinator to Material Recovery Facility Operators in the relevant financial year;
 - (iii) the aggregate number of Suitable Eligible Containers (by Material Type and in aggregate for all Material Types) Supplied in Victoria for that financial year;
- (b) the aggregate of the Network Fees (by Material Type and in aggregate for all Material Types) paid by the Scheme Coordinator to the Network Operators for that financial year;
- (c) the Scheme Contribution by Material Type for the current pricing period and the proposed Scheme Contribution by Material Type for the next pricing period;
- (d) the Service Fee for the financial year; and
- (e) the aggregate of the Administration Fee for the financial year.

PART B — CHANGE IN CIRCUMSTANCES

8. Scheme Changes

8.1 Amendments to Agreement

- (a) If:
 - (i) there is any Change in Law; or
 - (ii) the Scheme Coordinator Agreement is varied in accordance with clause 16 of the Scheme Coordinator Agreement,

(Scheme Change) the Scheme Coordinator may by giving no less than 30 Business Days' notice in writing to the First Supplier (**Scheme Change Notice**) amend the terms of this Agreement to address that Scheme Change including any

additional direct costs reasonably incurred (or to be incurred), or savings made (or to be made), in relation to the Scheme as a result of such Scheme Change.

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

8.2 Further acts and documents

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

8.3 No compensation

The First Supplier is not entitled to any compensation from the Scheme Coordinator or the State as a result of any amendment to this Agreement pursuant to this clause 8.

PART C — PAYMENT

9. Payment

9.1 Payments by the First Supplier

The First Supplier must pay the Scheme Coordinator all amounts it is required to pay under, and in accordance with, the Scheme Payments and Contribution Methodology, including any amount that is payable under the Scheme Payments and Contribution Methodology in respect of periods prior to the Effective Date.

9.2 Scheme Payments and Contribution Methodology

The parties acknowledge and agree that:

(a) they must comply with the Scheme Payments and Contribution Methodology and, if there is any ambiguity, discrepancy or inconsistency between the Scheme Payments and Contribution Methodology and any other term of this Agreement, the Scheme Payments and Contribution Methodology will prevail to the extent of any such ambiguity, discrepancy or inconsistency;

(b) the State may, acting reasonably and after consultation with the Scheme Coordinator (which must act reasonably), vary or replace the Scheme Payments and Contribution Methodology (other than the Administration Fee and the Network Fees) from time to time by giving no less than 30 Business Days' notice in writing (**Notice Period**) to the Scheme Coordinator; and

(c) the Scheme Coordinator must provide to the First Supplier a copy of the State's notice of any such variation or replacement of the Scheme Payments and Contribution Methodology (and the date on which it takes effect, being the date which is 4 months after the expiry of the Notice Period or as otherwise agreed by the State and the Scheme Coordinator under the Scheme Coordinator Agreement) within 3 Business Days of receipt of such notice from the State.

9.3 First Supplier Invoices

(a) A First Supplier that is a Small First Supplier can elect to make payments quarterly. The Particulars record any such an election by a Small First Supplier as at the date of making this Agreement.

- (b) The Scheme Coordinator must issue a tax invoice to the First Supplier (**First Supplier Invoice**) in accordance with the Scheme Payments and Contribution Methodology provided that, where the First Supplier is a Small First Supplier that has elected to make payments quarterly, the Scheme Coordinator can only issue First Supplier Invoices quarterly in respect of a Quarter.
- (c) Each First Supplier Invoice must be in accordance with the Scheme Payments and Contribution Methodology and set out or attach calculations (being, in respect of each Material Type, the Scheme Contribution by Material Type multiplied by the volumes Supplied by Material Type in the relevant period) in respect of all amounts claimed by the Scheme Coordinator under, and in accordance with, the Scheme Payments and Contribution Methodology.
- (d) The Scheme Coordinator must promptly respond to a request by a First Supplier for further information or clarification in respect of a First Supplier Invoice and provide such details, calculations, supporting documentation and other information in respect of the First Supplier Invoice as is reasonable requested by the First Supplier.

9.4 First Supplier Statement

The First Supplier must, give the Scheme Coordinator any statements that are required to be provided under the Scheme Payments and Contribution Methodology (**First Supplier Statement**) which must be in accordance with the Scheme Payments and Contribution Methodology, including the times for submission, the method used for submission and information required by the Scheme Payments and Contribution Methodology.

9.5 Payment

Irrespective of the existence of any Dispute, the First Supplier must pay the Scheme Coordinator the amount set out as then payable in the First Supplier Invoice in accordance with the Scheme Payments and Contribution Methodology provided that no payment is required to be made any earlier than 5 Business Days after receipt by that First Supplier of a First Supplier Invoice under clause 9.3.

9.6 Interest

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

10. GST and taxation

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

(c) If GST is payable on any supply made by a party (**GST Supplier**) under or in connection with this Agreement:

- (i) any amount payable or consideration to be provided under any other provision of this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
- (ii) an additional amount will be payable by the party providing consideration for that supply (**Recipient**), equal to the amount of GST payable on that supply as calculated by the GST Supplier in accordance with the GST Legislation and payable at the same time and in the same manner as for the Agreed Amount;
- (iii) the GST Supplier will provide a tax invoice (or equivalent documentation which complies with the GST Legislation) to the Recipient in respect of that supply, either at the time expressly set out in any other provision of this Agreement or no later than the time at which the Agreed Amount for that supply is to be provided under this Agreement; and
- (iv) if the GST Supplier does not provide a tax invoice in accordance with the timing set out in clause 10(c)(iii), the additional amount payable by the Recipient under clause 10(c)(ii) is payable within 5 Business Days of the receipt of a tax invoice.

(d) If for any reason, the GST payable by the GST Supplier in respect of a supply it makes under this Agreement (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 10(c) in respect of that supply, the GST Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the GST Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.

(e) If the Recipient is dissatisfied with any calculation to be made by the GST Supplier under this clause 10, the Recipient may, at its own expense and after notifying the GST Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this Agreement, the matters required to be taken into account by the GST Supplier under this clause 10 and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

(f) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party under or in connection with this Agreement or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.

(g) 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.

(h) Any reference in this Agreement to fees, value, sales, revenue or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.

(i) Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

PART D — DEFAULT, SUSPENSION, TERMINATION & DISPUTES

11. Suspension

11.1 Suspension of First Supplier's obligations

- (a) A First Supplier must give the Scheme Coordinator at least 20 Business Days' notice of its intention to cease or suspend the Supply of Eligible Containers in Victoria specifying the date upon which it intends to cease or suspend Supply.
- (b) Following receipt of a notice under clause 11.1(a), the Scheme Coordinator may request such further information as it may reasonably require to determine whether the First Supplier will cease or suspend the Supply of Eligible Containers in Victoria and the date on which that is expected to occur.
- (c) Provided that the First Supplier has actually ceased or suspended the Supply of Eligible Containers in Victoria, the First Supplier's rights and obligations under this Agreement, other than those under clause 11.2, arising out of or in connection with circumstances occurring after the Cessation Date will be suspended until the date on which the First Supplier's rights and obligations cease to be suspended in accordance with clause 11.2.
- (d) If the First Supplier's obligations under this Agreement are suspended in accordance with this clause 11.1, no supply arrangement between the Scheme Coordinator and the First Supplier will be in force for the purposes of section 110(1)(a) of the Act.

11.2 Reinstatement of First Supplier's rights and obligations

- (a) If the First Supplier intends to recommence Supply of Eligible Containers in Victoria, it must give the Scheme Coordinator at least 30 Business Days' written notice of the date on which it intends to recommence Supply (**Proposed Commencement Date**).
- (b) The First Supplier's other rights and obligations under this Agreement will cease to be suspended and a supply arrangement between the Scheme Coordinator and the First Supplier on the terms of this Agreement will be in force for the purposes of section 110(1)(a) of the Act on the earlier to occur of:
 - (i) the Proposed Commencement Date; and
 - (ii) the date on which the Scheme Coordinator reasonably determines the First Supplier recommenced Supply.

11.3 Termination by the First Supplier

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

11.4 Termination by Scheme Coordinator

(a) If:

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

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

(b) The First Supplier acknowledges and agrees that the State will provide its written approval or non-approval to a proposed termination of this Agreement under clause 11.4(a):

- (i) having regard to all of the relevant facts and circumstances in respect of the proposed termination; and
- (ii) if clause 11.4(a)(ii) or clause 11.4(a)(iii) applies, provided the Scheme Coordinator has notified the State of the details of the First Supplier's failure and of its intention (subject to the State's approval) to terminate this Agreement for such failure, prior to termination of this Agreement.

11.5 Scheme Coordinator's entitlements after termination

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

11.6 First Supplier's entitlements after termination

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

11.7 Survival

Clauses 11.5 and 11.6 survive termination of this Agreement.

11.8 Exclusion of common law rights

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

12. Disputes

12.1 Notice of dispute

- (a) If a dispute or difference arises between the Scheme Coordinator and the First Supplier in respect of any fact, matter or thing arising out of, or in any way in connection with, this Agreement (**Dispute**) the Dispute must be determined in accordance with the procedure in this clause 12.
- (b) Where a Dispute arises, the party raising the Dispute must give a notice in writing to the other party specifying:
 - (i) the Dispute;
 - (ii) whether the party considers the Dispute is a Common Dispute;
 - (iii) particulars of the party's reasons for being dissatisfied; and
 - (iv) the position which the party believes is correct,

(Notice of Dispute).

- (c) If a Dispute, the subject of a Notice of Dispute, involves a Common Dispute, the Scheme Coordinator may, by giving written notice to the First Supplier prior to the appointment of an expert under clause 12.4, require the Dispute to be resolved in accordance with the Common Dispute Deed (**Notice of Common Dispute**).
- (d) If a Notice of Common Dispute is issued:
 - (i) the Common Dispute must be resolved in accordance with the Common Dispute Deed; and
 - (ii) the dispute resolution process under this clause 12 will be stayed until final resolution of the Common Dispute and the times stated in this clause 12 will be extended by the number of days from the date of the Notice of Common Dispute until the date of final resolution of the Common Dispute.
- (e) For the avoidance of doubt until such time as a Notice of Common Dispute has been issued the dispute resolution process under this clause 12 will continue to apply in respect of the Dispute.

12.2 Executive Negotiation

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

(d) The joint decision (if any) of the Executive Negotiators will be reduced to writing and will be contractually binding on the parties.

12.3 Referral to Expert Determination

If a Dispute:

- (a) remains unresolved (in whole or in part) within 30 Business Days after service of the Notice of Dispute; and
- (b) is of a kind referred to in clause 12.4(a),

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

12.4 Expert Determination

- (a) Disputes in relation to the following may be referred to expert determination under clauses 12.4 to 12.10:
 - (i) any dispute arising out of, or in any way in connection with a First Supplier Invoice or otherwise arising under clause 9; and
 - (ii) any dispute arising out of, or in any way in connection with a termination or proposed termination of this Agreement under clause 11.4.
- (b) A Dispute which is referred to expert determination will be conducted in accordance with the Resolution Institute Expert Determination Rules, as modified by Schedule 1 to this Agreement (**Rules**).
- (c) The expert determination under this clause 12 is to be conducted by:
 - (i) an independent industry expert agreed by the parties within 10 Business Days after receipt of the Expert Determination Referral; or
 - (ii) where no such independent industry expert is agreed or clause 12.4(e) applies, an independent industry expert appointed by the Chair for the time being of the Resolution Institute.
- (d) The parties must enter into an agreement with the expert on such terms as the parties and the expert may agree, in accordance with the parties' obligations as set out in the Rules.
- (e) If the expert appointed under this clause 12.4:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 10 Business Days to a request by one or both parties for advice as to whether the expert is able to conduct the determination;
 - (iv) does not enter into the agreement in accordance with clause 12.4(d) within 10 Business Days of the expert's appointment under this clause 12; or
 - (v) does not make a determination within the time required by clause 12.9,

the jurisdiction of the expert shall lapse and a further expert must be appointed under clause 12.4(c).

(f) If there has been an appointment under clause 12.4(c) and one of the events in clause 12.4(e) has occurred, the further expert appointed under clause 12.4(c) shall not be an expert previously appointed under clause 12.4(c) in respect of the same Dispute.

12.5 Not Arbitration

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

12.6 Procedure for Determination

The expert will:

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

12.7 Disclosure of Interest

The expert must:

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

12.8 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and

- (b) pay one-half of the expert's costs.

12.9 Conclusion of Expert Determination

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

12.10 Determination of Expert

The determination of the expert:

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

12.11 Proceedings

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

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

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

12.12 Proportional Liability

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

12.13 Continuation of obligations

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

12.14 Disputes between Scheme Participants

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

PART E — OTHER

13. Confidentiality

13.1 Confidentiality of Confidential Material

Each party acknowledges and agrees that, to the extent permitted by law and subject to clause 13.2:

- (a) the Confidential Material is and will remain confidential to the Scheme Coordinator and the First Supplier;
- (b) it has not disclosed and will not at any time, without the other party's prior written consent, disclose the Confidential Material to any employee or third party who has not agreed to keep the Confidential Material, confidential on the same terms as this clause 13; and
- (c) it will not, and will ensure that its Associates do not, at any time use or reproduce or permit or allow any other person to use or reproduce the Confidential Material, other than for the purposes of this Agreement, including to carry out its obligations and exercising its rights pursuant to this Agreement.

13.2 Exceptions to confidentiality

Where:

- (a) the State has requested a copy of this Agreement as contemplated in clause 6.2;
- (b) the party for whom the Confidential Material is confidential has notified the other party (**Disclosing Party**) in writing that the Confidential Material is in the public domain;
- (c) the Confidential Material is in the public domain through no act, neglect or default of the Disclosing Party or its Associates (the onus of proving which will be on the Disclosing Party); or
- (d) the other party has notified the Disclosing Party in writing that the other party no longer requires the Disclosing Party to maintain the confidentiality of the Confidential Material,

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

13.3 State may disclose

The First Supplier consents to the State publishing, disclosing or otherwise making available Confidential Material:

- (a) as may be required in order to comply with the requirements of any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Scheme Coordinator or the First Supplier;
- (b) as may be required in order to comply with the requirements of the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic), or the ombudsman appointed under the *Ombudsman Act 1973* (Vic) to the extent required in order to comply with applicable Laws;

- (c) to satisfy the disclosure requirements of the Victorian Auditor-General to the extent that such disclosure is required by any applicable Laws;
- (d) to satisfy the requirements of Parliamentary accountability to the extent that disclosure in order to satisfy such requirements is required by any applicable Laws;
- (e) if the disclosure is in the proper course of the official duties of the responsible Minister, the Treasurer of Victoria, the Premier or the Attorney General, or the Department (provided that, in the case of the Department, the State procures that the applicable people and the Department agree, or has agreed to, maintain the confidentiality of the Confidential Material);
- (f) to any State Associate, any Authority or any person authorised or nominated by the State to the extent necessary for the purpose of establishment, management, administration, operation, or oversight, of the Scheme provided they agree or have agreed to maintain the confidentiality of the Confidential Material;
- (g) to satisfy any other recognised public requirement to the extent that disclosure in order to satisfy such requirements is required by any applicable Laws;
- (h) to comply with applicable Laws; or
- (i) to the IBAC.

14. Miscellaneous

14.1 Governing law

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

14.2 Jurisdiction

Each party irrevocably:

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

14.3 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

14.4 Further acts and documents

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

14.5 Expenses

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

14.6 Stamp duties

The First Supplier:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Agreement, the performance of this Agreement and each transaction effected by or made under this Agreement;
- (b) indemnify the Scheme Coordinator against any Loss suffered or incurred by it arising out of, or in connection with the First Supplier's failure to comply with clause 14.6(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the First Supplier under this clause 14.6.

14.7 Entire agreement and no reliance

- (a) To the extent permitted by law, in relation to its subject matter, this Agreement:
 - (i) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
 - (ii) supersedes any prior written or other agreement of the parties.
- (b) No reliance is to be placed by the First Supplier on any representation, promise or other inducement made or given or alleged to be made or given by the Scheme Coordinator prior to the Effective Date.

14.8 Corporate power and authority

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

14.9 Severability

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

14.10 No merger

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

14.11 Prompt performance

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

14.12 Counterparts

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

14.13 Electronic Signature

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

- (a) the requirement for a signature under any law being met; and
- (b) any other party to this Agreement 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.

14.14 No representation or reliance

- (a) The First Supplier acknowledges that the Scheme Coordinator (and any person acting on the Scheme Coordinator's behalf) has not made any representation or inducement to it to enter into this Agreement, except for representations expressly set out in this Agreement.
- (b) The First Supplier acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the Scheme Coordinator, except for representations expressly set out in this Agreement.

14.15 Amendments

Subject to clause 8, this Agreement may only be varied by a document signed by or on behalf of each party.

14.16 Assignment

- (a) Subject to clause 14.16(b), neither party may assign or novate any of its rights or obligations under this Agreement without the prior consent of the State.
- (b) If the Scheme Coordinator Agreement is terminated, the parties agree to transfer the Scheme Coordinator's rights and obligations under this Agreement to the State (or its nominee) for the remainder of the Term in accordance with the First Supplier Side Deed.

14.17 To the extent not excluded by laws

The rights, duties and remedies granted or imposed under this Agreement are additional to and not exclusive of any rights, duties or remedies provided by law and operate to the extent not excluded by law.

14.18 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) It is not necessary for the Scheme Coordinator to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- (c) The First Supplier must pay on demand any amount it must pay under an indemnity in this Agreement.

14.19 Survival

Without limiting any other provision of this Agreement, each indemnity in this Agreement and clauses 10, 11.5 and 11.6 will survive the termination, completion or expiration of this Agreement.

14.20 Notices

(a) Communications in writing

- (i) Subject to clause 14.20(a)(ii), any communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:
 - A. must be in writing; and
 - B. may be made or delivered by hand, prepaid post or by email.
- (ii) Notwithstanding clause 14.20(a)(i), the parties acknowledge and agree that:
 - A. where expressly provided in this Agreement the First Supplier must submit information via the Interface; and
 - B. the Scheme Coordinator may direct the First Supplier by written notice to send any communication in a manner other than by hand, prepaid post or email (including via the Interface).

(b) Addresses

The address and email address and the department or officer, if any, for whose attention the communication is to be made of each party for any communication to be made under or in connection with this Agreement is as follows (or as otherwise notified from time to time via the Interface):

(i) The Scheme Coordinator

Name: VicReturn Limited
Address: Level 15, 575 Bourke Street, Melbourne VIC 3000
Email: legal@vicreturn.com.au
For the attention of: Scheme Coordinator's Representative

(ii) First Supplier

Name: []

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

(c) **Delivery**

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

- (i) (in the case of prepaid post) on the 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 email) when it is dispatched by the sender to each of the email addresses specified by the recipient; and
- (iii) (in the case of delivery by hand) on delivery,

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

Executed as a deed.

Scheme Coordinator

Executed by **VicReturn Limited** in accordance with section 127(1) 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

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

First Supplier

Executed by **[insert name of First Supplier]** **[insert ABN]** in accordance with section 127(1) 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

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

Particulars

Clause 1.1 - Glossary of terms

Scheme Coordinator's Representative: (Clause 1.1)	Name: Matt Davis Address: Level 15, 575 Bourke Street, Melbourne VIC 3000 Telephone: +61 3 9125 1450 Email: legal@vicreturn.com.au
Executive Negotiators: (Clause 1.1)	Scheme Coordinator: Matt Davis (or such other person notified to the First Supplier in writing by the Scheme Coordinator from time to time) First Supplier: []

Clause 9.3(a) - First Supplier Invoices

Small First Supplier election to pay quarterly (Clause 9.3(a))	[Yes/No]
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Schedule 1 - Rules for Expert Determination Process

Resolution Institute Expert Determination Rules

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

Modifications are underlined.

1. RULE 5 Role of the Expert

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the 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. Unless otherwise agreed by the parties, the Expert's determination:

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

(b) must allow for any amount already paid to a Party under or for the purposes of Part 3 of the Building and Construction Industry Security of Payment Act 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 - First Supplier annual statutory declaration

Victoria

Statutory Declaration

I, **[insert declarant's name]** of **[Insert declarant's address]**, **[insert declarant's occupation]**, make the following statutory declaration under the *Oaths and Affirmations Act 2018* (Vic):

1. the First Supplier is [legal name of First Supplier] ABN [xx xxx xxx xxx] and the Scheme Coordinator is VicReturn Limited, ABN 54 643 014 895;
2. the First Supplier and the Scheme Coordinator are parties to the Supply Agreement between [], ABN [] (**Scheme Coordinator**) and [], ABN [] (**First Supplier**) executed prior to the date of this statutory declaration (**Supply Agreement**);
3. capitalised terms used in this declaration have the meaning given in the Supply Agreement; and
4. I confirm to the best of my knowledge and belief:
 - 4.1 the First Supplier Statements (as defined in the Supply Agreement) attached to this declaration as Annexure A are true and correct;
 - 4.2 the number of Suitable Eligible Containers Supplied by the First Supplier in Victoria in the previous financial year:
 - (a) in aggregate in respect of the State; and
 - (b) in aggregate in respect of the State for each Material Type is as follows:

No.	Material Type	Aggregate number Supplied
1.	Aluminium	
2.	Glass	
3.	PET	
4.	HDPE	
5.	Liquid paper board	
6.	Steel	
7.	Other materials	
8.	Other plastics	
	Total	

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Declared at *[place]* in the State of Victoria
On this _____ day
of _____ 20_____
Before me:

Signature of authorised statutory declaration witness

Signature of declarant

I am an authorised statutory declaration witness and I sign this document in the presence of the person making this declaration

Insert name, capacity in which authorised person has authority to witness statutory declaration, and address

A person authorised under section 30(2) of the *Oaths and Affirmations Act 2018* (Vic) to witness the signing of a statutory declaration

Annexure A

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

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

First Supplier Statements

Material Type	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Aluminium													
Glass													
PET													
HDPE													
Liquid paper board													
Steel													
Other materials													
Other plastics													
Total													

Schedule 3 - Glossary of Defined Terms

In this Agreement:

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

Administration Fee has the meaning given to the term “Administration Fee” in the Scheme Payments and Contribution Methodology.

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

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

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

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

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

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

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

- (a) the Scheme Coordinator - excludes the State and the other Scheme Participants;
- (b) the First Supplier - excludes the Scheme Coordinator and the other Scheme Participants; and
- (c) the State - excludes the Scheme Coordinator, the First Supplier and the other Scheme Participants.

Assumption Notice has the meaning given in the First Supplier Side Deed.

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

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

Cessation Date means the date on which the First Supplier ceased or suspended the Supply of Eligible Containers in Victoria as reasonably determined by the Scheme Coordinator.

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

- (a) specifically and only affects the Scheme Coordinator or the Scheme Participants or the Scheme;

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

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

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

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 has the meaning given in the Act.

Common Dispute means a dispute between the Scheme Coordinator, another Scheme Participant (excluding a Collection Point Operator) and the State which involves a question of law (including a question of contract interpretation) or a question of fact, that is of general application or importance to a Network Agreement, a Supply Agreement, a Recovery Agreement, a Network Operator Agreement, the Scheme Coordinator Agreement or this Agreement.

Common Dispute Deed means the deed so entitled dated [] between the State, the Scheme Coordinator and the Network Operators and all other parties who have executed or acceded to the deed from time to time.

Confidential Material means:

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

Default Event means if, in the reasonable opinion of the State, there has been a breach or non-performance of the Scheme Coordinator Agreement by the Scheme Coordinator which substantially prevents, hinders, degrades or delays the performance of any critical aspect of the Services (as that term is defined in the Scheme Coordinator Agreement).

Department means the Department of Energy, Environment and Climate Action.

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

Effective Date has the meaning given in clause 2.

Eligible Container has the meaning given in the Act.

Executive Negotiators means the persons stated in the Particulars.

Expert Determination Referral has the meaning given in clause 12.3.

First Supplier Invoice has the meaning given in clause 9.3.

First Supplier IP has the meaning given in clause 7.3(a).

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

First Supplier Statement has the meaning given in clause 9.4.

General Conditions means clauses 1 to 14 of this Agreement of which this Schedule 3 forms part.

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

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

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

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.

Insolvency Event means:

- (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with this Agreement for financial reasons;
- (b) execution is levied against a person by a creditor;
- (c) in relation to an individual person or a partnership, the person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against that person or presents that person's own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a corporation, any one of the following:

- (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
- (ii) the corporation entering a deed of company arrangement with creditors;
- (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
- (iv) an application is made to a court for the winding up of the corporation and not stayed within 10 Business Days;
- (v) a winding up order is made in respect of the corporation;
- (vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
- (vii) a mortgagee of any property of the corporation takes possession of that property.

Interface means a secure web portal accessed via Scheme Coordinator's website to submit Supplier data or by such other means as notified by the Scheme Coordinator to the First Supplier in writing.

IP Rights means:

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

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

Law means:

- (d) Commonwealth, Victoria or local government legislation including regulations, by-laws and other subordinate legislation; and
- (e) principles of law or equity established by decisions of courts.

Loss means:

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

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

Material Recovery Facility has the meaning given in the Act.

Material Recovery Facility Operator means the operator of a Material Recovery Facility.

Materials means all data, information, text, drawings, statistics, analysis, records and any other materials embodied in any form or medium.

Material Type has the meaning given in the Scheme Payments and Contribution Methodology.

Minister means the Victorian Minister for Environment.

Network Agreement means any agreement between the Scheme Coordinator and a Network Operator made in respect of a network arrangement (as defined in the Act).

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

Network Operator has the meaning given in the Act.

Network Operator Agreement has the meaning given in the Act.

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

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

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

PDP Act means the *Privacy and Data Protection Act 2014* (Vic).

Personal Information:

- (a) has the meaning given to that term in the PDP Act; and
- (b) also includes, health information, as that term is defined in the *Health Records Act 2001* (Vic).

Privacy Laws means all legislation, binding principles required by law, and industry codes and policies required by Law, relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, and includes the PDP Act.

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

Quarter means each 3 month period commencing on a Quarterly Date save that the first Quarter will be the period from the Scheme Commencement Date until the day before the first Quarterly Date occurring after the Scheme Commencement Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October.

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

Recovery Agreement means any agreement between the Scheme Coordinator and a Material Recovery Facility Operator made in respect of a recovery arrangement (as defined in the Act).

Refund Amount has the meaning given in the Act.

Refund Collection Point means a collection point or a refund collection point as contemplated in Part 6 of the Act and includes:

- (a) an 'automated collection point' (as defined in the Act);
- (b) a 'collection point' (as defined in the Regulation); and

- (c) a 'mobile collection point' (as defined in the Regulation).

Regulation means any regulation made under the Act.

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

Scheme Agreements means:

- (a) the Common Disputes Deed;
- (b) the Scheme Coordinator Agreement;
- (c) each Network Operator Agreement;
- (d) each Supply Agreement;
- (e) each Recovery Agreement;
- (f) each Network Agreement;
- (g) each Collection Point Agreement; and
- (h) any other agreement which the State and the Scheme Coordinator agree is a Scheme Agreement.

Scheme Change has the meaning given in clause 8.1.

Scheme Change Notice has the meaning given in clause 8.1.

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

Scheme Contribution by Material Type has the meaning given in the Scheme Payments and Contribution Methodology.

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

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

Scheme Participant includes each of the following persons:

- (a) the Scheme Coordinator;
- (b) the First Supplier;
- (c) any other first supplier (as defined in the Act);
- (d) a Network Operator;
- (e) a Collection Point Operator; and
- (f) a Material Recovery Facility Operator.

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

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

Small First Supplier means a First Supplier that has supplied less than 300,000 Suitable Eligible Containers in the State in the preceding financial year or who can demonstrate that they are likely to supply less than 300,000 Suitable Eligible Containers in the State in the current financial year.

State means the Crown in right of the State of Victoria.

State Policy means any policy, guideline, standard, circular directive, practice specification or procedure which applies in connection with the performance of the Scheme Coordinator's obligations under the Scheme Coordinator Agreement and which affects the performance of those obligations:

- (a) which is not publicly available but has been notified to the Scheme Coordinator by the State;
- (b) which is publicly available and has been notified to the Scheme Coordinator or otherwise made available to the Scheme Coordinator by the State; or
- (c) which the Scheme Coordinator is expressly required by the terms of the Scheme Coordinator Agreement, by law or by direction of the State to comply with,

as may be amended or updated from time to time.

Statutory Requirements means:

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

Suitable Eligible Container has the meaning given in the Act.

Supply has the meaning given in the Act.

Supply Agreement means an agreement between the Scheme Coordinator and a first supplier (as defined in the Act) with respect to a supply arrangement (as defined in the Act) and includes this Agreement.

Term has the meaning given in clause 3.

Third Party Data Warehouse Materials means any Materials developed, disclosed, made available, communicated, delivered or provided to the Scheme Coordinator that are uploaded to the Interface by the First Supplier (including on behalf of a third party) in connection with the Scheme.