

Victoria Container Deposit Scheme: First Supplier Side Deed

The Hon. Enver Erdogan MLC, Minister for Environment for and on behalf
of the Crown in Right of the State of Victoria
State

VicReturn Limited
Scheme Coordinator

[]
First Supplier

Clayton Utz
Lawyers
Level 15,
1 Bligh Street
Sydney NSW 2000
PO Box H3
Australia Square Sydney NSW 1215
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 708/81018455

Contents

1.	Definitions.....	2
1.1	Supply Agreement definitions.....	2
1.2	Definitions.....	2
1.3	Interpretation.....	4
2.	Commencement	5
3.	State's right to cure a Default Event	6
3.1	State's right	6
3.2	Restriction on right to terminate or suspend.....	6
3.3	No Liability	7
3.4	Scheme Coordinator to compensate State	7
3.5	No limitation on other rights.....	7
4.	Novation of Supply Agreement	8
4.1	Option	8
4.2	Novation.....	8
4.3	Release by First Supplier	9
4.4	Liability of the Scheme Coordinator.....	9
4.5	Obligations and Liability prior to the Novation Date	10
4.6	Indemnity	10
5.	First Supplier IP.....	10
6.	Miscellaneous.....	10
6.1	Governing law	10
6.2	Jurisdiction.....	11
6.3	Waiver.....	11
6.4	Further acts and documents	11
6.5	Expenses	11
6.6	Stamp duties.....	11
6.7	Entire agreement	11
6.8	Corporate power and authority	12
6.9	Severability	12
6.10	Prompt performance	12
6.11	Counterparts	12
7.	GST and taxation.....	12
8.	Notices	13

First Supplier Side Deed

Date

Parties **The Hon. Enver Erdogan, 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 Level 15, 575 Bourke Street,
Melbourne VIC 3000 (**Scheme Coordinator**)

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

Background

- A. The State and the Scheme Coordinator have entered into a "scheme coordinator agreement" (as defined in the Act).
- B. The Governor in Council has appointed the Scheme Coordinator in connection with the management and coordination of the administration of the Scheme under section 82(1) of the Act.
- C. On or about the date of this deed, the Scheme Coordinator and the First Supplier entered into a "supply arrangement" (as defined in section 81(1)(a) of the Act) requiring the 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. In accordance with the Scheme Coordinator Agreement, the Scheme Coordinator must execute this deed and arrange for the execution of this deed by the First Supplier.
- E. By executing this deed, the parties wish to make provision for:
 - (a) the State's rights to carry out an obligation under the Scheme Coordinator Agreement or the Supply Agreement which the Scheme Coordinator was obliged to carry out but which it failed to carry out within the time required in accordance with the Scheme Coordinator Agreement or the Supply Agreement (as applicable); and
 - (b) agrees to give effect to the novation of the Supply Agreement to the State's nominee in the event of termination or expiry of the Scheme Coordinator Agreement.

Operative Provisions

1. Definitions

1.1 Supply Agreement definitions

Definitions in the Supply Agreement apply in this deed unless the context requires otherwise or the relevant term is defined in this deed.

1.2 Definitions

Assumption Notice means the notice referred to in clause 4.1.

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 the Supply Agreement (as applicable); or
- (b) otherwise arises at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Default Event means:

- (a) if in the reasonable opinion of the State, there has been a breach or non-performance of an obligation under 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) (**Major Default**) and the Scheme Coordinator has not rectified that Major Default within:
 - (i) 30 days after receipt of written notice from the State requiring it to do so (or such longer period agreed by the State acting reasonably provided that the Scheme Coordinator is diligently pursuing rectification of the Major Default); or
 - (ii) in the case of a Major Default arising from a Performance Failure Default (as that term is defined in the Scheme Coordinator Agreement), within the period specified in the relevant Draft Cure Plan (as that term is defined in the Scheme Coordinator Agreement) or Final Cure Plan (as that term is defined in the Scheme Coordinator Agreement) (as applicable);
- (b) a failure by the Scheme Coordinator to carry out an obligation under the Supply Agreement that has not been carried out by the date being the later of:
 - (i) 30 days of it being required to be carried out; and
 - (ii) the expiry of any longer cure period agreed between the First Supplier and the Scheme Coordinator (if applicable); or
- (c) the Scheme Coordinator engages in fraud or dishonest conduct in performing its obligations under the Scheme Coordinator Agreement or the Supply Agreement.

Default Event Notice means the notice referred to in clause 3.2(a).

First Supplier IP has the meaning given in clause 5(a).

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.

Liability includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Novation Date has the meaning given in clause 4.2(a)(ii).

Scheme Coordinator Agreement means the agreed entitled "Victoria Container Deposit Scheme: Scheme Coordinator Agreement" between the State and the Scheme Coordinator dated 20 March 2023.

State Representative has the meaning given to that term in the Scheme Coordinator Agreement.

Supply Agreement means the agreement so entitled between the Scheme Coordinator and the First Supplier dated on or about the date of this deed.

Transferee has the meaning given in clause 4.2(a).

1.3 Interpretation

In this deed:

- (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 deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) 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;

- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) 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 deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this deed or any part thereof;
- (k) if the day on or by which anything is to be done in accordance with this deed is not a Business Day, that thing must be done no later than the next Business Day;
- (l) other than as set out in clause 1.3(k) 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" or a quarter (unless the defined terms "Quarter" or "Quarterly" is used) is a reference to 3 monthly;
- (m) a reference to any information, material, document or thing includes that information, material, document or thing in all media, including written oral or electronic;
- (n) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (o) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (p) a reference to "\$" or "dollar" is to Australian currency;
- (q) a reference to time is a reference to the then current time in Melbourne, Australia;
- (r) a reference to a right includes any benefit, remedy, discretion, authority or power;
- (s) 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;
- (t) 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 parties to do so; and
- (u) where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity.

2. Commencement

This deed commences and comes into force on the Effective Date.

3. State's right to cure a Default Event

3.1 State's right

- (a) On becoming aware of any Default Event the State may (but is not obliged to) give the Scheme Coordinator written notice requiring the Scheme Coordinator to remedy that Default Event within a reasonable time specified by the State in that notice. If the Scheme Coordinator does not remedy that Default Event in accordance with the State's notice, the State may (but is not obliged to) take steps either itself or by an Associate or a third party to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Upon the State exercising any of its rights to take steps either itself or by an Associate or a third party to cure or remedy, or procure the cure or remedy of, that Default Event under this clause 3, the Scheme Coordinator's obligations under the Scheme Coordinator Agreement or the Supply Agreement (as applicable) are suspended to the extent necessary to permit the State to exercise its step-in rights and for such period as the Scheme Coordinator is prevented from performing such obligations by the State's exercise of its step-in rights.
- (c) After the obligation under the Scheme Coordinator Agreement or the Supply Agreement (as applicable) which the Scheme Coordinator has failed to carry out has been carried out by the State or by an Associate or a third party pursuant to clause 3.1(a), the Scheme Coordinator will continue to perform its obligations under the Scheme Coordinator Agreement or the Supply Agreement (as applicable) that were suspended pursuant to clause 3.1(b).
- (d) If the State exercises its step-in rights, the State may, after giving reasonable prior notice (which must not be less than 3 Business Days) to the Scheme Coordinator and the First Supplier, cease to exercise those rights, and in any event, will cease to exercise its step-in rights once the relevant Default Event has been remedied. If the State ceases to exercise its step rights, the State must give reasonable assistance to the Scheme Coordinator to ensure that the transition is effected as smoothly as possible.

3.2 Restriction on right to terminate or suspend

The First Supplier must not terminate, rescind, or accept the repudiation of, the Supply Agreement (other than pursuant to clause 11.3(a) of the Supply Agreement) unless each of the following conditions has been satisfied:

- (a) the First Supplier has given to the State prior notice setting out details of the circumstances giving rise to the right to terminate, rescind, or accept the repudiation of, the Supply Agreement (**Default Event Notice**) and has provided a copy of that Default Event Notice to the Scheme Coordinator;
- (b) either:
 - (i) if the Default Event is capable of cure or remedy within 20 Business Days, that Default Event has not been cured or remedied within 20 Business Days (or such longer period as is agreed between the parties) after the date on which the Default Event Notice is received by the State and the Scheme Coordinator;
 - (ii) if the Default Event is not one described in clause 3.2(b)(i), but is nevertheless reasonably capable of cure or remedy, the State has not commenced curing or remedying the Default Event within 20 Business Days after the date on which the Default Event Notice is received by the State and the Scheme Coordinator and the State has not continued to diligently pursue that cure or remedy;

- (iii) if the Default Event is not capable of cure or remedy and:
 - A. the Default Event Notice contains a claim for reasonable compensation for the Default Event, the Scheme Coordinator (or another person on behalf of the Scheme Coordinator) has not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the Supply Agreement or agreed to in writing by the First Supplier) after the date on which Default Event Notice is given to the State and the Scheme Coordinator;
 - B. the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, the State does not commence and continue to perform the Scheme Coordinator's obligations under the Scheme Coordinator Agreement or the Supply Agreement (as applicable) within 20 Business Days (or such longer period as is permitted under the Scheme Coordinator Agreement or the Supply Agreement (as applicable) or agreed to in writing by the First Supplier) after the date on which Default Event Notice is given to the State and the Scheme Coordinator; or
- (iv) the State notifies the First Supplier in writing (and provides a copy of such notice to the Scheme Coordinator) within 20 Business Days after the date on which the Default Event Notice is received by the State that the State elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

3.3 No Liability

The First Supplier and the Scheme Coordinator acknowledge and agree that:

- (a) without limiting the liability of the Scheme Coordinator (which continues to be responsible for the performance of its obligations under the Scheme Coordinator Agreement and Supply Agreement (as applicable)), the State will not be liable for any obligation or Liability of the Scheme Coordinator under the Scheme Coordinator Agreement or the Supply Agreement by reason only of the State performing any one or more of the Scheme Coordinator's obligations under the Scheme Coordinator Agreement or the Supply Agreement (as applicable); and
- (b) the Scheme Coordinator and the First Supplier each release the State from any such obligation or Liability referred to in clause 3.3(a) other than as a result of the State's wilful misconduct or negligence in the exercise of its step-in rights under this deed.

3.4 Scheme Coordinator to compensate State

Any reasonable Loss suffered or incurred by the State arising out of or in any way in connection with the exercise of its rights under this deed will be a debt due and payable from the Scheme Coordinator to the State.

3.5 No limitation on other rights

The exercise (or failure to exercise) by the State of its rights under this clause 3 will not limit:

- (a) the State's rights against the Scheme Coordinator under the Scheme Coordinator Agreement or otherwise according to law; or
- (b) the First Supplier's rights against the Scheme Coordinator under the Supply Agreement or otherwise according to law.

4. Novation of Supply Agreement

4.1 Option

- (a) If:
- (i) the State terminates the Scheme Coordinator Agreement; or
 - (ii) the Scheme Coordinator Agreement expires or is otherwise no longer in force,
- then the State may (in its absolute discretion) give a notice containing the matters set out in clause 4.1(b) (**Assumption Notice**) within 20 Business Days to the Scheme Coordinator and the First Supplier and, for the avoidance of doubt:
- (iii) the Assumption Notice given to the Scheme Coordinator and the Assumption Notice given to the First Supplier do not need to be in the same form, provided that any Assumption Notice contains the matters set out in clause 4.1(b);
 - (iv) an Assumption Notice does not need to be specifically addressed to the party to whom it is given, nor does it need to contain particulars of this deed, including the names of the parties to it or the date it is made. To the extent this deed or the parties to it need to be referred to in an Assumption Notice, these matters can be referred to generically; and
 - (v) an Assumption Notice given to the Scheme Coordinator can be in respect of multiple First Suppliers.
- (b) The Assumption Notice must specify:
- (i) that it is a notice under this clause 4.1; and
 - (ii) the name of the State's nominee (**Transferee**), which must be an entity that has been appointed, or that the State proposes to appoint, as scheme coordinator in connection with the management and coordination of the administration of the Scheme under section 82(1) of the Act.

4.2 Novation

- (a) The Scheme Coordinator and the First Supplier irrevocably offer to novate the Supply Agreement on the following terms:
- (i) the First Supplier irrevocably offers to the Transferee to enter into a new contract on the same terms as the Supply Agreement amended as follows (**New Supply Agreement**):
 - A. any reference in the New Supply Agreement to the Scheme Coordinator is to be read as a reference to the Transferee;
 - B. Clause 2 is to be amended as follows:

This Agreement takes effect and comes into force for the purposes of the Act from the Novation Date (**Effective Date**).
 - A. Schedule 3 is to be amended by adding the following definitions:

Novation Date has the meaning given in the Original First Supplier Side Deed.

Original First Supplier Side Deed means the First Supplier Side Deed between the First Supplier, the Original Scheme Coordinator and the State.

Original Scheme Coordinator means the scheme coordinator who is a party to the Original Supply Agreement.

Original Supply Agreement means the Supply Agreement to which the First Supplier was a party that was in effect immediately prior to the Novation Date.

- (ii) the First Supplier's offer in clause 4.2(a)(i) is deemed to have been accepted by the Transferee without the need for further communication to the First Supplier on the latest to occur of:
 - A. the State giving the Assumption Notice to the Scheme Coordinator and the First Supplier; and
 - B. the Transferee being appointed as scheme coordinator in connection with the management and coordination of the administration of the Scheme under section 82(1) of the Act.

(Novation Date).

- (iii) Immediately prior to the Novation Date the Supply Agreement is amended to add a new clause 11.9 in the following terms:

"The parties agree that this Agreement is terminated on the Novation Date (as that term is defined in the First Supplier Side Deed)".

- (b) After the Novation Date, the First Supplier agrees to enter into a first supplier side deed with the State and the Transferee in the same form and substance as this deed (save as to party details) (**New First Supplier Side Deed**) and irrevocably appoints the State Representative to be its attorney to execute and, if applicable, deliver or exchange by any means the New First Supplier Side Deed for and on its behalf. The New First Supplier Deed may be constituted by a deed between the Transferee, the State and multiple First Suppliers. The State must arrange for a copy of the executed New First Supplier Deed to be given to the First Supplier as soon as practicable after it has been entered into.

4.3 Release by First Supplier

Without limiting clause 4.5, the First Supplier acknowledges that neither the State nor its nominee will be responsible for any obligations or Liabilities of the Scheme Coordinator under or in respect of the Supply Agreement arising prior to the Novation Date.

4.4 Liability of the Scheme Coordinator

- (a) The Scheme Coordinator will remain liable to the First Supplier in respect of any rights against the Scheme Coordinator which may have accrued to the First Supplier prior to the Novation Date.
- (b) The State and the First Supplier forever release the Scheme Coordinator from all obligations and Liability arising or which may accrue under or in connection with the Supply Agreement after the Novation Date.

- (c) Nothing in this clause affects the obligations of the Scheme Coordinator to the State or its nominee under the Scheme Coordinator Agreement.

4.5 Obligations and Liability prior to the Novation Date

Nothing in this deed or the New Supplier Agreement releases the Scheme Coordinator or the First Supplier from any obligation or Liability under or in connection with the Supply Agreement arising or accruing before the Novation Date and neither the State nor the Transferee assumes any such obligation or liabilities.

4.6 Indemnity

The Scheme Coordinator indemnifies the State and the Transferee against any Claim or Liability incurred or made against the State or its nominee by the First Supplier or any other person in connection with any act, matter, default or omission of the Scheme Coordinator in respect of the Supply Agreement prior to the Novation Date.

5. First Supplier IP

- (a) As between the parties, 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 the First Supplier is required to provide to the Scheme Coordinator under the Supply Agreement (**First Supplier IP**) will remain vested in the First Supplier.
- (b) The First Supplier grants to the State and the Scheme Coordinator an irrevocable, royalty free, non-exclusive, licence, including the right to sublicense this licence to any "Scheme Coordinator" (as defined in the Act) appointed under the Act and to any other government or other government agency, to use the IP Rights in the First Supplier IP for:
- (i) the purposes of the State or the Scheme Coordinator (as the case may be) complying with applicable laws, exercising its rights and carrying out its functions and obligations in accordance with the Act, the Regulation and the Scheme Agreements to which it is a party; and
 - (ii) any other purpose in connection with the establishment, administration, management, oversight or operation of:
 - A. the Scheme; and
 - B. other container deposit, recycling and product stewardship schemes, but only to the extent that such First Supplier IP is in a de-identified and aggregated form with aggregation to be at a Scheme wide level or at least two or more 'First Suppliers' (as that term is defined in the Act).

6. Miscellaneous

6.1 Governing law

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

6.2 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 deed; 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 6.2(a).

6.3 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 deed 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 deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

6.4 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 deed.

6.5 Expenses

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

6.6 Stamp duties

The First Supplier:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnify the other parties against any Loss suffered or incurred by it arising out of, or in connection with that First Supplier's failure to comply with clause 6.6(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.

6.7 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

6.8 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 deed and that when executed it will constitute legal, valid and binding obligations in accordance with its terms.

6.9 Severability

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

6.10 Prompt performance

If this deed 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.

6.11 Counterparts

This deed 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.

7. 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 deed, any amount payable for a supply made under this deed 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 deed:
 - (i) any amount payable or consideration to be provided under any other provision of this deed 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 deed or no later than the time at which the Agreed Amount for that supply is to be provided under this deed; and
 - (iv) if the Supplier does not provide a tax invoice in accordance with the timing set out in clause 7(c)(iii), the additional amount payable by the Recipient under clause 7(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 deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 7(c) in respect of that supply, the GST Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). 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 7, the Recipient may, at its own expense and after notifying the GST Supplier accordingly, refer the matter to an independent expert nominated by the 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 deed, the matters required to be taken into account by the GST Supplier under this clause 7 and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party under or in connection with this deed 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 deed.
- (g) Despite any other provision of this deed, this clause 7 will survive the termination of this deed.
- (h) A reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member, and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (i) Any reference in this deed to fees, value, sales, revenue or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.
- (j) Any reference in this deed to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

8. 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):

- (i) **The State**

Name: Tony Circelli, Head Circular Economy, EPA
Address: GPO Box 4395, Melbourne, VIC, 3001
Email: container.deposit@epa.vic.gov.au

For the attention of: Manager, CDS Determinations

(ii) **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

(iii) **First Supplier**

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

- (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 8(b); and
- (d) is taken to be received by the addressee:
- (i) (in the case of prepaid post) on the fifth working day after the date of posting to an address within Australia, and on the tenth working 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 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 by the parties as a deed

State

**Executed by the Hon. Enver Erdogan
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

Full name of witness

Office held

The **Hon. Enver Erdogan MLC**, Minister for
Environment

First Supplier

Executed by

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

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 Director

Full name of Director who states that they are
a Director