

# NSW Container Deposit Scheme: Supply Arrangement

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Scheme Coordinator

[\*]  
Supplier

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Our reference 708/80179515

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## Supply Arrangement

### Date

**Parties**                    **Exchange for Change (NSW) Pty Ltd, ACN 620 512 469** of Level 4, 126 Phillip Street, Sydney NSW 2000 (**Scheme Coordinator**)

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

### Background

- A.            In accordance with the *Waste Avoidance and Resource Recovery Act 2001* (NSW), the State is seeking to implement a container deposit scheme in New South Wales so as to:
- (a)            recognise the responsibility that the beverage industry shares with the community for reducing and dealing with waste generated by beverage product packaging;
  - (b)            establish a cost effective State-wide container deposit scheme to assist the beverage industry to discharge that responsibility and to promote the recovery, reuse and recycling of empty Containers;
  - (c)            provide for the establishment of a Scheme Coordinator and Network Operators with responsibility for the administration of the Scheme;
  - (d)            provide for the payment of Refund Amounts to persons depositing at Collection Points empty Containers that are subject to the Scheme;
  - (e)            provide for the establishment of a cost recovery scheme administered by the Scheme Coordinator under which Suppliers agree to make contributions towards the cost of paying those Refund Amounts and other associated costs;
  - (f)            prohibit the supply of beverages in Containers that are subject to the Scheme by Suppliers who have not agreed with the Scheme Coordinator to make those contributions; and
  - (g)            prohibit the supply of beverages in Containers of a kind that are not approved by the EPA.
- 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 the suppliers (as defined in the Act) requiring each 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

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## 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 5, and if not defined in Schedule 5 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 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 Agreement, and a reference to this Agreement 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 Agreement or any part thereof;
- (k) 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;
- (l) other than as set out in clause 1.2(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" is a reference to 3 monthly;

- (m) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (n) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (o) the word "subcontractor" will include all suppliers and consultants;
- (p) a reference to "\$" or "dollar" is to Australian currency;
- (q) a reference to time is a reference to the then current time in Sydney, 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 party to do so; and
- (u) 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.

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## 2. Conditions Precedent

This Agreement takes effect and comes into force from the date on which the 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 Supplier Side Deed.

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## 3. Term

This Agreement commences on the Effective Date and continues until terminated in accordance with this Agreement, 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 Supplier Side Deed within the required time period or the Scheme is otherwise no longer in force (**Term**).

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## 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 terms of this Agreement or other Scheme Arrangements.

### 4.2 Fraud

- (a) In accordance with section 47 of the Act each of the parties must not:
- (i) in connection with a claim for payment under a Scheme Arrangement, including this Agreement; or
  - (ii) in purported compliance with any requirement imposed by or under Part 5 of the Act or under regulations made under Part 5 of the Act,
- provide any information that the party knows is false or misleading in a material particular.
- (b) The Scheme Coordinator and the Supplier must take all reasonable steps to minimise and prevent fraud in connection with the Scheme.

### 4.3 Compliance

- (a) The Scheme Coordinator and the Supplier must comply with the Act and the Scheme Arrangements.
- (b) The 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), any Material Recovery Facility Operator or any other person.

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## 5. Review of Part 5 of the Act

- (a) The Supplier acknowledges the validity of the Scheme and the Scheme Arrangements as at the Effective Date.
- (b) The Supplier acknowledges that pursuant to section 48 of the Act, the Minister will review Part 5 of the Act to determine whether the policy objectives of Part 5 of the Act remain valid and whether the terms of Part 5 of the Act remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after the period of 4 years from 25 October 2016, being the date of assent to the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016* (NSW) and a report of the review will be tabled in each House of Parliament.

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## 6. Supplier Obligations

### 6.1 Containers

The Supplier acknowledges and agrees that this Agreement applies only to those Containers that are supplied by the Supplier and are subject to a Container Approval, and which are listed in Schedule 4, as updated by the Supplier by the provision of notice to the Scheme Coordinator from time to time.

## 6.2 Cooperation

The 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.

## 6.3 Copy of Supply Arrangements to State

The Supplier acknowledges and agrees that if requested by the State, the Scheme Coordinator may provide a copy of this Agreement to the State.

## 6.4 Step-in and Novation

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

- (a) acknowledges the State's rights to carry out an obligation under the Scheme Coordinator Agreement or this 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 this Agreement (as applicable); and
- (b) agrees to give effect to the novation of this Agreement to the State (or its nominee) in the event of termination of the Scheme Coordinator Agreement or as an alternative to termination of this Agreement under clause 11.3(b) (as applicable).

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## 7. Data collection and reporting

### 7.1 Supplier obligations

- (a) If:
  - (i) the Effective Date is prior to the date which is 40 Business Days prior to the Scheme Commencement Date, then no later than the date which is 40 Business Days prior to the Scheme Commencement Date; or
  - (ii) the Effective Date is on or after the date which is 40 Business Days prior to the Scheme Commencement Date, then within 5 Business Days of the Effective Date,

the Supplier must provide to the Scheme Coordinator a statement specifying the number of beverage Containers Supplied by the Supplier in the State in the previous 12 month period (if any) itemised on a monthly basis:

- (iii) in aggregate in respect of the State; and
  - (iv) in aggregate for each Container by material type,
- and such statement is to be submitted via the Portal unless otherwise directed by the Scheme Coordinator.
- (b) No later than the date which is 40 Business Days after the end of each financial year during the Term, the Supplier must prepare and deliver to the Scheme Coordinator's Representative a statutory declaration in the form set out Schedule 3 executed by a director of the Supplier declaring:
    - (i) that each Supplier Statement provided by that 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 Supplier Statement was not true and correct;

- (ii) the number of beverage Containers Supplied by that Supplier in the State in the previous financial year:
  - A. in aggregate in respect of the State; and
  - B. in aggregate for each Container by material type; and
- (iii) 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 Suppliers).

## 7.2 Supplier data

- (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 Supplier which that Supplier is required to provide to the Scheme Coordinator under this Agreement (**Supplier IP**) will remain vested in the Supplier.
- (b) The Supplier grants the Scheme Coordinator an irrevocable, royalty free, non-exclusive, licence to use the IP Rights in the Supplier IP for the purposes of the Scheme Coordinator carrying out its functions and obligations in accordance with the Act, the Regulation and the Scheme Arrangements and Scheme Agreements during the Term (and for no other purposes).
- (c) The Scheme Coordinator may transfer, or grant a sublicense in respect of, the licence referred to in clause 7.2(b) to the State.

## 7.3 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 Supplier under this Agreement to determine if that Supplier is complying with:
  - (i) the Act and the Regulation; and
  - (ii) the terms of this Agreement.
- (b) For the purposes of clause 7.3(a), the Supplier must:
  - (i) at all reasonable times give the independent auditor appointed by the Scheme Coordinator access to any areas where that Supplier's business is being carried out; and
  - (ii) if requested by the Scheme Coordinator, that 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.

## 7.4 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, deliver to the Supplier a report specifying:

- (a) the aggregate audited number of Containers for which Refund Amounts have been paid by Collection Point Operators or Network Operators at Collection Points during that financial year;

- (b) the aggregate audited number of Containers for which the Material Recovery Facility Operators have lodged claims for payment of Processing Refunds during that financial year and the total amount of Processing Refunds paid by the Scheme Coordinator in the relevant financial year;
- (c) the Scheme Coordinator's calculation of the Supplier's market share calculated by reference to the aggregate audited number of Containers (by Container material type and in aggregate for all Container material types) Supplied in New South Wales for that financial year;
- (d) the aggregate of the Network Fees (by Container material type and in aggregate for all Container material types) paid by the Scheme Coordinator to the Network Operators during the financial year; and
- (e) the aggregate of the Administration Fee for the financial year.

## 7.5 Identifier

Upon this Agreement taking effect and coming into force, the Scheme Coordinator will assign a unique identifier (in a form to be determined by the EPA) to this Agreement and provide it to the Supplier.

## PART B — CHANGE IN CIRCUMSTANCES

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### 8. Scheme Changes

#### 8.1 Amendments to Agreement

- (a) If:
  - (i) there is any Change in Law; or
  - (ii) the State varies a Scheme Administration Agreement in accordance with section 33 of the Act or clause 13.9 or 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 Supplier (**Scheme Change Notice**) to amend the Scheme Payments and Contribution Methodology or other 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 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 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

No Supplier is 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

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### 9. Payment

#### 9.1 Payments by the Supplier

The Supplier must pay the Scheme Coordinator all amounts it is required to pay under, and in accordance with, the Scheme Payments and Contribution Methodology from the date which is the:

- (a) if the Effective Date occurs before the date which is 1 calendar month before the Scheme Commencement Date, first day of the calendar month prior to the calendar month in which the Scheme Commencement Date occurs; or
- (b) if the Effective Date occurs on or after the date which is 1 calendar month before the Scheme Commencement Date, the first day of the first full calendar month after 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 to the extent that it relates to payments made under this Agreement; and
- (b) the State may, acting reasonably and after consultation with the Scheme Coordinator and the Network Operator, amend the Scheme Payments and Contribution Methodology document (other than the Administration Fee and the Network Fees) by giving no less than 30 Business Days' Notice in writing to the Scheme Coordinator and the Network Operator. The Scheme Coordinator must provide a copy of the State's notice to the Suppliers within 3 Business Days of being given the State's notice.

#### 9.3 Supplier Invoices

- (a) The Scheme Coordinator must give the Supplier a claim in the form of a tax invoice for payment for the relevant month of the Term (**Supplier Invoice**) on each Supplier Invoice Date and at any other time provided for in the Scheme Payments and Contribution Methodology.
- (b) Each Supplier Invoice must:
  - (i) set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Scheme Coordinator under, and in accordance with, the Scheme Payments and Contribution Methodology to enable the relevant Supplier to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Supplier to the Scheme Coordinator under this Agreement, including the Scheme Payments and Contribution Methodology; and
  - (ii) be in accordance with the Scheme Payments and Contribution Methodology.

#### 9.4 Supplier Statement

The Supplier must, by the 15<sup>th</sup> day of each calendar month, give the Scheme Coordinator a statement (**Supplier Statement**) which must, in accordance with the Scheme Payments and Contribution Methodology:

- (a) provide details of the aggregate number of eligible Containers Supplied in the State by the Supplier during the previous month in aggregate and by reference to each Container size and material type;
- (b) provide the Scheme Coordinator such other reasonable information required to inform (and make calculations in accordance with) the Scheme Payment Contribution Methodology for the next month;
- (c) be submitted via the Portal unless otherwise directed by the Scheme Coordinator.

## 9.5 Payment

Irrespective of the existence of any Dispute, the Supplier must pay the Scheme Coordinator the amount set out as then payable in the Supplier Invoice within 7 days after receipt by that Supplier of a Supplier Invoice under clause 9.3.

## 9.6 Interest

- (a) If the Supplier fails to pay any amount payable by that Supplier within the time required in accordance with this Agreement, then it must pay interest on that amount from the date on which payment was due and payable until the date on which payment is made in full in accordance with the Scheme Payments and Contribution Methodology.
- (b) If the Supplier fails to pay any amount payable by that 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.

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## 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 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) Despite any other provision of this Agreement, this clause 10 will survive the termination of this Agreement.
- (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 Agreement to fees, value, sales, revenue or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.
- (j) 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

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### 11. Suspension

#### 11.1 Suspension of Supplier's obligations

- (a) A Supplier must give the Scheme Coordinator at least 20 Business Days' notice of its intention to cease or suspend the Supply of beverages in Containers in New South Wales specifying the date upon which it will cease or suspend Supply (**Proposed Cessation Date**).

- (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 Supplier will cease to Supply on the Proposed Cessation Date.
- (c) Provided that the Supplier has actually ceased or suspended the Supply of beverages in Containers in New South Wales by the Proposed Cessation Date, the Supplier's rights and obligations under this Agreement, other than those under clause 11.2, will be suspended for the period from the Proposed Cessation Date until the date on which the Supplier's rights and obligations cease to be suspended in accordance with clause 11.2.
- (d) If the Supplier's obligations under this Agreement are suspended in accordance with clause 11.1, no supply arrangement between the Scheme Coordinator and the Supplier will be in force for the purposes of section 38 of the Act.

## 11.2 Reinstatement of Supplier's rights and obligations

- (a) If the Supplier intends to recommence Supply of beverages in Containers in New South Wales, 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) Within 5 Business Days of receipt of a notice under clause 11.2(a), the Scheme Coordinator must provide a Supplier Invoice to the Supplier in accordance with clause 9.3.
- (c) The Supplier's other rights and obligations under this Agreement will cease to be suspended and a supply arrangement between the Scheme Coordinator and the Supplier on the terms of this Agreement will be in force for the purposes of section 38 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 that the Supplier has recommenced Supply.

## 11.3 Termination by the Supplier

- (a) If the Supplier ceases to supply beverages in Containers in New South Wales, the 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 Supplier Side Deed, the 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 Supplier;
  - (ii) the 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 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 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 Supplier.

- (b) The 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) where clause 11.4(a)(ii) applies, after the Supplier fails to pay any amount within 25 Business Days of that amount becoming due and payable in accordance with clause 9.5, if the Scheme Coordinator has notified the State of the Supplier's failure to pay after 5, 10 and 15 Business Days of that amount becoming due and payable in accordance with clause 9.5; or
  - (iii) where clause 11.4(a)(iii) applies, after the Supplier fails to comply with its obligations under clause 7 for 25 Business Days, if the Scheme Coordinator has notified the State of the Suppliers failure 5, 10 and 15 Business Days of the date on which the Supplier failed to comply with its obligations under clause 7.

## 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 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 Suppliers all amounts which become payable under clause 9 up to the date of termination.

## 11.6 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 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 will survive the 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.

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## 12. Disputes

### 12.1 Notice of dispute

- (a) If a dispute or difference arises between the Scheme Coordinator and the 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 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 Sydney, 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 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 2 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 he or she 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 his or her 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(b).
- (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 his or her 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 he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require;
- (e) make such directions for the conduct of the determination as he or she 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 he or she 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 his or her decision upon an expert determination conducted under this clause 12 within 28 days from the acceptance by the expert of his or her 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 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(c), within 10 days after the notice of appeal was given under clause 12.10(c); 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 Supplier and the Scheme Coordinator under this Agreement may concern the rights and obligations of other Scheme Participants under the Scheme Arrangements and Scheme Administration Agreements.

## PART E — OTHER

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### 13. Confidentiality

#### 13.1 Confidentiality of Confidential Material

Each party acknowledges and agrees that, subject to clause 13.2:

- (a) the Confidential Material is and will remain confidential to the Scheme Coordinator and the 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 third party who is not an employee of one of its Associates or of the State who has agreed to keep the Confidential Material, confidential on the same terms as this clause 13.1; 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 pursuant to this Agreement.

#### 13.2 Exceptions to confidentiality

Where:

- (a) the State has requested a copy of this Agreement as per clause 6.3;
- (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) in the same form or medium and arranged, collected or compiled in the same manner as it was disclosed to the Disclosing Party or its Associates or created by the Disclosing Party or its Associates; 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 parties acknowledge that the State may at any time disclose Confidential Material, including:

- (a) to satisfy the requirements of parliamentary accountability;
- (b) to the New South Wales Auditor-General for the purposes of satisfying its statutory duties;
- (c) pursuant to State Policy;
- (d) in annual reports of the State; and

- (e) pursuant to the Government Information (Public Access) Act 2009 (NSW), (the **Public Disclosure Obligations**), and the parties must use all reasonable endeavours to assist the State to meet its Public Disclosure Obligations.

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## **14. Miscellaneous**

### **14.1 Governing law**

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

### **14.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, 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.

### **14.4 Further acts and documents**

The 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 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 that Suppliers' 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 Suppliers under this clause.

#### **14.7 Entire agreement**

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

- (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.

#### **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 Inconsistency with Act**

The parties acknowledge section 29 of the Act.

#### **14.10 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.

#### **14.11 No merger**

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

#### **14.12 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.

#### **14.13 Counterparts**

- (a) This Agreement may consist of a number of copies, each signed by one or more parties to this Agreement. If so, the signed copies are treated as making up the one document.
- (b) A party may sign electronically a soft copy of this Agreement through DocuSign, and bind itself accordingly. That will satisfy any statutory or other requirements for it to be in writing and signed by that party. Any soft copy so signed will constitute an executed original counterpart. In addition, it is intended to print it out when so signed, so that the relevant signatures will appear in the printout, and any print-out will also be an executed original counterpart.

#### **14.14 Notices**

- (a) **Communications in writing**

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

- (i) must be in writing;
- (ii) unless otherwise stated, may be made or delivered by hand, prepaid post or by email; and
- (iii) unless otherwise agreed by the Scheme Coordinator, must also be submitted via the Portal.

(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:

(i) **The Scheme Coordinator**

Name: Exchange for Change (NSW) Pty Ltd  
 Address: Level 4, 126-130 Phillip Street  
 Sydney NSW 2000  
 Email: [legal@exchangeforchange.com.au](mailto:legal@exchangeforchange.com.au)  
 For the attention of: Commercial Manager – Exchange for Change

(ii) **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 third working day after the date of posting to an address within Australia, and on the fifth 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, 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 **Exchange for Change (NSW) Pty Ltd ACN 620 512 469** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

**Supplier**

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

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

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## Particulars

### Clause 1.1 - Glossary of terms

<b>Scheme Coordinator's Representative: (Clause 1.1)</b>	Name: Jeff Maguire Address: Level 4, 126-130 Phillip Street, Sydney NSW 2000 Telephone: +61 (0) 419 245479 Email: jeff.maguire@ccamatil.com
<b>Executive Negotiators: (Clause 1.1)</b>	<b>Scheme Coordinator:</b> Jeff Maguire (or such other person notified to the Supplier in writing by the Scheme Coordinator from time to time) <b>Supplier:</b> [*]

**Schedule 1 - Scheme Payments and Contribution Methodology**

## Schedule 2 - 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 Contract, 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 his or her decision within 28 days from the acceptance by the expert of his or her 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 1999 (NSW) (and any equivalent statute in any other state or territory);

(c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

(d) to the extent permitted by law, will not apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW) (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 3 - Supplier annual statutory declaration

### New South Wales

## Statutory Declaration

I, **[Insert declarant's name]** of **[Insert declarant's address]**, **[Insert declarant's occupation]**, do solemnly and sincerely declare that:

2. the Supplier Statements (as defined in the Supply Arrangement between Exchange for Change (NSW) Pty Ltd, ACN 620 512 469 (**Scheme Coordinator**) and [ ], ABN [ ] (**Supplier**) attached to this declaration as Attachment A are true and correct;
3. the number of beverage Containers Supplied by the Supplier in New South Wales in the previous financial year:
  - (a) in aggregate in respect of the State; and
  - (b) in aggregate for each Container material type is as follows:

No.	Container type	Aggregate number Supplied
1.	Aluminium	
2.	Glass	
3.	PET	
4.	HDPE	
5.	Liquid paper board	
6.	Other plastics	
7.	Steel	
8.	Other	
	Total	
Aggregate for NSW		

4. *[insert any 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 Suppliers)].*

**And I make** this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900 (NSW).

**Declared at**  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Before me:

\_\_\_\_\_  
Signature of person before whom the declaration is made

\_\_\_\_\_  
Signature of declarant

\_\_\_\_\_  
Full name, qualification and address of person before whom the declaration is made

And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):

[\**strike out the text that does not apply*]

1.        \*I saw the face of the declarant.  
          *OR*  
          \*I did not see the face of the declarant because he/she was wearing a face covering, but I am satisfied that he/she had a special justification for not removing it.
  
2.        \*I have known the person for at least 12 months.  
          *OR*  
          \*I confirmed the person's identity using the following identification document:

\_\_\_\_\_  
Identification document relied on  
(may be original or certified copy)

\_\_\_\_\_  
Signature of person before whom the declaration is made

**Annexure**

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 this        day of 20...

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

**Schedule 4 - Containers**

## Schedule 5 - Glossary of Defined Terms

In this Agreement:

**Act** means the *Waste Avoidance and Resource Recovery Act 2001* (NSW).

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

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

**Agreement** means the NSW 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 implementation of the Scheme; or
- (b) under any other applicable Statutory Requirement,

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

**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, the other Scheme Participants and the Material Recovery Facility Operators; and
- (b) the Supplier - excludes Scheme Coordinator.

**Assumption Notice** has the meaning given in clause 4.1 of the 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 Sydney.

**Change in Law** means a change in a Statutory Requirement of the State of New South Wales or a State Policy after the Effective Date which:

- (a) specifically and only affects the Scheme Coordinator, the Scheme or the Scheme Participants;
- (b) causes the Scheme Coordinator to incur more or less direct 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 Contributions 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.

**Common Dispute** means a dispute 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 Arrangement, a Supply Arrangement, a network operator agreement (as defined in the Act), the Scheme Coordinator Agreement or this Agreement between the Scheme Coordinator, another Scheme Participant and the State.

**Common Dispute Deed** means the deed dated 28 July 2017, between the Scheme Coordinator, the Network Operator and all other parties who have executed or acceded to the deed from time to time in the form of the deed so entitled and appearing on the Scheme Coordinator's website.

**Confidential Material** means:

- (a) this Agreement;
- (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

**Container** has the meaning given in section 22 of the Act.

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

**Effective Date** has the meaning given in clause 2.

**EPA** means the NSW Environment Protection Authority constituted by section 5 of the *Protection of the Environment Administration Act 1991 (NSW)*.

**Executive Negotiators** means the persons stated in the Particulars.

**Expert Determination Referral** has the meaning given in clause 12.3.

**General Conditions** means the General Conditions of this Agreement.

**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).

**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 him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a corporation, any one of the following:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
  - (ii) the corporation entering a deed of company arrangement with creditors;
  - (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
  - (iv) an application is made to a court for the winding up of the corporation and not stayed within 10 Business Days;
  - (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.

**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.

**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 Operator** has the meaning given in the Act.

**Minister** means the NSW Minister for the Environment.

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

**Network Operator** has the meaning given in the Act.

**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".

**Processing Refund** has the meaning given in section 28(1) of the Act.

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

**Proposed Cessation Date** has the meaning given in clause 11.1(a).

**Public Disclosure Obligations** has the meaning given in clause 13.3.

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

**Refund Amount** has the meaning given in the Act.

**Regulation** means:

- (a) the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* (NSW); and
- (b) any other regulation made under Part 5 of the Act.

**Scheme** has the meaning given in the Act.

**Scheme Arrangement** has the meaning given in the Act.

**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 "Scheme commencement day" as defined in the Regulation.

**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** has the meaning given in the Act.

**Scheme Payments and Contribution Methodology** means Schedule 1, as amended from time to time in accordance with clause 8.

**State** means the Crown in right of the State of New South Wales.

**State Policy** means any policy, guideline, standard, circular directive, practice specification or procedure which applies in connection with the Scheme and which affects implementation of the Scheme:

- (a) which are notified to the Scheme Coordinator;
- (b) which are publicly available or otherwise available to the Scheme Coordinator; or
- (c) which the Scheme Coordinator is expressly required by the terms of this 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 implementation of the Scheme, including Acts, ordinances, regulations, by-laws, orders and other subordinate legislation;
- (b) Approvals (including any condition or requirement under them); applicable to implementation of the Scheme and
- (c) fees and charges payable in connection with the foregoing.

**Supplier Invoice** has the meaning given in clause 9.3.

**Supplier Invoice Date** means the first Business Day of each calendar month beginning the calendar month prior to the Scheme Commencement Date.

**Supplier IP** has the meaning given in clause 7.2(a).

**Supply** has the meaning given in the Act.

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

**Term** has the meaning given in clause 3.