

Refund Point Agreement

WA Return Recycle Renew Ltd

and

#[*Party 2 name]#

[Mobilisation Support Template - WARRRL draft 04.06.2020]

Ref: MFA:BXD:917502

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Doc ID 728206373/v7

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Refund Point Agreement

Date

Parties

WA Return Recycle Renew Ltd ACN 629 983 615

of c/- HWL Ebsworth Lawyers, Level 20, 240 St Georges Terrace
Perth, Western Australia

(Principal)

#[*Party 2 name]# [ABN / ACN] #[Insert]#

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

(Operator)

Recitals

- A. A beverage container refund scheme has been established pursuant to Part 5A of the Act (**Scheme**) for the purposes of reducing the volume of waste and promoting the recovery, reuse and recycling of empty beverage containers in Western Australia.
- B. The Scheme will be delivered by the Principal, as the Coordinator under the Act and the contractor under the Coordinator Agreement.
- C. The Principal and the Operator are entering into this Agreement in accordance with section 47Q of the Act and the requirements of the Coordinator Agreement.
- D. The Operator has agreed to provide the Services in accordance with this Agreement.

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

1. Definitions and interpretation clauses

1.1 Definitions

In this deed:

Act	means the <i>Waste Avoidance and Resource Recovery Act 2007</i> (WA).
Aggregation Point	means, in relation to an Operator Refund Point, the location nominated as the Aggregation Point for that Operator Refund Point as set out in Item 10 of the Reference Schedule.
Agreement	means this deed, including all schedules, annexures and appendices.
Approval	<p>means any licence, permit, consent, approval, determination, certificate or other requirement:</p> <p>(a) of any Regulatory Authority having any jurisdiction in connection with the implementation of the Scheme; or</p> <p>(b) under any other applicable Statutory Requirement,</p> <p>which must be obtained or satisfied for the purposes of performance of the parties' respective obligations under this Agreement, and includes all applicable development approvals, any approval granted under a planning scheme or local law and environmental approvals.</p>
Associate	<p>means, in respect of a party, any employee, officer, agent, or contractor of that party, but in respect of:</p> <p>(a) the Principal - excludes the State, the other Scheme Participants and the Operator; and</p> <p>(b) the Operator - excludes the Principal.</p>
Bale	<p>means:</p> <p>(a) as a noun, Containers that have been mechanically compressed together; and</p> <p>(b) as a verb, to mechanically compress Containers together.</p>
Business Day	means a day that is not a Saturday, Sunday, or recognised public holiday in Perth, Western Australia.
Cash	<p>means:</p> <p>(a) cash; or</p> <p>(b) another payment method (including payment by way of Vouchers) to which the Principal has given its prior written approval.</p>
Change in Law	means a change in a Statutory Requirement of the State or a State Policy after the Effective Date which:

- (a) specifically and only affects the Principal, the Scheme or the Scheme Participants; and
- (b) causes the Principal or the Operator to incur more or less costs than otherwise would have been incurred in respect of carrying out its obligations under the Act, this Agreement or the Coordinator 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 Principal's Representative;
- (b) is in any way in connection with implementation of the Scheme; or
- (c) otherwise arises at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Codes and Standards

means all relevant Australian industry codes and standards, including any codes and standards that come into effect after the Effective Date.

Collection Infrastructure

means, in respect of an Aggregation Point the receptacles provided in accordance with clause 7.8 to facilitate the collection of Containers at the Aggregation Point by the Processing Services Provider and includes the Shipping Units.

Common Dispute

has the same meaning as in the Common Dispute Procedure.

Common Dispute Procedure

means the process for resolving Common Disputes as set out in Schedule 10.

Confidential Material

in relation to a party, means any data and other commercially sensitive information provided by that party to the other party in relation to the Scheme or arising out of, or in connection with, this Agreement.

Container

has the meaning given to that term under section 47C(1) of the Act but does not include Excluded Containers.

Container Collection Services	means the minimum service requirements in relation to the collection of Containers that the Operator must deliver for each Refund Point as specified in the Services Specification.
Container Recipient	means the person notified by the Principal to the Operator in writing as the 'Container Recipient' on or about the Effective Date, as may be amended by written notice from the Principal to the Operator from time to time.
Coordinator	has the meaning given to that term in section 47C(1) of the Act.
Coordinator Agreement	means the deed entered into between the State and the Principal in connection with the appointment of the Principal as the Coordinator under the Act.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Critical Mobilisation Service Outcomes	means the outcomes so defined in the Mobilisation Service Outcomes Schedule.
Customer	means a person presenting a Container at an Operator Refund Point.
Customer Services	means the minimum service requirements in relation to interactions with Customers that the Operator must deliver for each Refund Point as specified in the Services Specification.
Customer Scheme Account	means a unique identifier assigned to a Customer through the IT Platform which is used to facilitate the payment of Refund Amounts to the Customer via the IT Platform.
Default	has the meaning given in clause 20.1(a).
Default Interest Rate	means the ninety (90) day bank bill swap reference rate (Average Bid) as published in the Australian Financial Review plus 200 basis points.
Default Notice	has the meaning given in clause 20.1(b).
Default Termination Event	means a Performance Failure which is expressly stated to be a Default Termination Event in the Performance Table.
Dispute	has the meaning given in clause 23.1(a).

Drop-Off Refund Point	means an Operator Refund Point at which Customers can deposit Containers, with the Refund Amount payable for those Containers being processed and paid by the Operator at a later time following the collection and counting of the Containers by the Operator.
Effective Date	has the meaning given to that term in clause 2.1.
Environment, Health and Safety Services	means the minimum service requirements in relation to ensuring health and safety obligations and environmental practices are met in the delivery of all Services as specified in the Services Specification.
Excluded Container	means any container that is not a Container or, pursuant to Regulations made under section 47K of the Act: <ul style="list-style-type: none"> (a) is not eligible for the payment of a Refund Amount; (b) the Operator may refuse to accept, and the Operator has refused to accept; (c) the Operator must refuse to accept; or (d) the Operator must not claim or attempt to claim payment from the coordinator under a refund point agreement.
Executive Negotiator	in respect of a Party: <ul style="list-style-type: none"> (a) means the person stated as the Executive Negotiator of that Party in Item 4 of the Reference Schedule or such other person as is notified in writing by that Party to the other Party as its Executive Negotiator from time to time; or (b) an individual nominated in writing by a person referred to in paragraph (a) of this definition.
Expiry Date	means the Initial Expiry Date, unless extended in accordance with clause 2.3, in which case the Expiry Date shall be the extended date.
Expiry Notice	has the meaning give to that term in clause 2.3(a)(ii).
Extension Notice	has the meaning given to that term in clause 2.3(a)(i).
Fee	means the fee payable by the Principal to the Operator for the Services in accordance with the terms of this Agreement, including clause 9 and the Payments Schedule.

Flexible Refund Point	means an Operator Refund Point specified to be a Flexible Refund Point in Item 10 of the Reference Schedule.
Force Majeure Event	means acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, interruption or failure of electricity services and industrial action (except industrial action which only affects the Operator).
Full Time Refund Point	means an Operator Refund Point specified to be a Full Time Refund Point in Item 10 of the Reference Schedule.
Good Industry Practice	<p>means, in relation to any activity, the exercise of that degree of skill, care, diligence, prudence, methods, practices, processes, workmanship and use of material and equipment, that would be reasonably exercised by a skilled and experienced person who:</p> <ul style="list-style-type: none"> (a) is engaged in the carrying out of activities of the same nature and extent as the Services by reference to proper and prudent practices recognised in Australia; (b) knows the facts that were known, or should reasonably have been known, to the person performing the activity at that time; (c) complies with all applicable Statutory Requirements; (d) complies with all applicable Codes and Standards; and (e) acts to the standards and in the manner required by clause 4.1(a)(iv).
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 <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.
Handling Fee	means, in respect of an Operator Refund Point, the fee per Container corresponding to the Operating Region for that Operator Refund Point set out in Schedule 7, as that Schedule may be amended or replaced from time to time in accordance with clause 9.8.

Handling Fee Payment has the meaning given to it in section 1.3 of the Payments Schedule.

HVL means any applicable legislation relating to the use of heavy vehicles in Western Australia, including:

- (a) *Road Traffic (Vehicles) Act 2012 (WA)*;
- (b) *Road Traffic (Vehicles) Regulations 2014*;
- (c) *Road Traffic (Administration) Act 2008 (WA)*;
- (d) *Road Traffic (Authorisation to Drive) Act 2008 (WA)*;
- (e) *Road Traffic Act 1974 (WA)*; and
- (f) *Road Traffic (Vehicles)(Taxing) Act 2008 (WA)*.

Initial Expiry Date means the date specified in Item 5 of the Reference Schedule.

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, other than for the purposes of solvent reconstruction or amalgamation;
- (v) a winding up order is made in respect of the corporation, other than for the purposes of solvent reconstruction or amalgamation;
- (vi) the corporation resolves by special resolution that it be wound up voluntarily, other than for a members' voluntary winding-up or for the purposes of solvent reconstruction or amalgamation; or
- (vii) a mortgagee of any property of the corporation takes possession of that property.

Intellectual Property means:

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

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

Intervening Event means any of:

- (a) a Force Majeure Event;
- (b) an incident in respect of the IT Platform which prevents the Operator from performing a critical business function;

	(c) a Change in Law; or
	(d) a breach of this Agreement by the Principal, but only to the extent that it prevents the Operator from performing the Services.
Intervening Event Notice	has the meaning given in clause 18.1.
Involved Person	has the meaning given to that term in the <i>Road Traffic (Vehicles) Act 2012</i> (WA).
IT Equipment	means the equipment to be provided by the Operator as set out in Schedule 5.
IT Platform	means the software licensed to the Operator by the Principal under this Agreement, which includes the functionality described in Schedule 4 and the POS System.
Logistics Services	means the transportation of empty Containers between each Aggregation Point and a Processing Facility.
Loss	means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.
Major Operator	means an Operator that is required to operate 5 or more Operator Refund Points or more under this Agreement.
Material Recovery Agreement	has the meaning given to that term in section 47C(1) of the Act.
Material Recovery Facility	has the meaning given to that term in section 47C(1) of the Act.
Material Type	means: <ul style="list-style-type: none"> (a) each of the following 10 types of materials: <ul style="list-style-type: none"> (i) aluminium; (ii) amber glass; (iii) clear polyethylene terephthalate (PET); (iv) coloured (non-white) PET; (v) flint (clear) glass; (vi) green Glass; (vii) high-density polyethylene (HDPE); (viii) liquid Paper Board;

- (ix) steel; and
 - (x) white PET; and
 - (b) collectively, all materials other than those described in paragraph (a) of this definition and which, for the purpose of this definition, are deemed to all be of a single material type known as "Other",
- or as otherwise notified by the Principal.

Media Policy	means the media policy as determined by the Principal, and notified to the Operator from time to time.
Minister	means the minister who is responsible under Western Australian law for administering Part 5A of the Act.
Minimum Operating Hours	means, in respect of an Operator Refund Point the minimum operating hours for that Operator Refund Point specified in Item 10 of the Reference Schedule.
Mobile Refund Point	means an Refund Point at which the Collection Infrastructure is only located during the operating hours of that Refund Point.
Mobilisation Activities	means, in respect of an Operator Refund Point, all activities reasonably necessary to enable the Operator to be able to commence and undertake the Operational Services in accordance with this Agreement by the Operations Commencement Date for that Operator Refund Point, including the activities set out in the approved Mobilisation Plan and the achievement of the Mobilisation Service Outcomes.
Mobilisation Completion Date	means, for each Operator Refund Point, the date specified as such for that Operator Refund Point in Item 10 of the Reference Schedule, unless extended in accordance with clause 8.3(b), in which case the Mobilisation Completion Date for the Operator Refund Point will be the extended date.
Mobilisation Period	means, for each Operator Refund Point, the period from the Effective Date to the Mobilisation Completion Date for that Operator Refund Point.
Mobilisation Plan	means the document of that name to be prepared, amended and updated in accordance with clause 8.2.
Mobilisation Report	means the fortnightly report to be prepared and submitted by the Operator to the Principal in accordance with clause 8.4.

Mobilisation Service Outcomes	means the outcomes so defined in the Mobilisation Service Outcomes Schedule.
Mobilisation Service Outcomes Schedule	means: <ul style="list-style-type: none"> (a) if Schedule 3 has been completed as at the date of execution of this Deed, Schedule 3; and (b) otherwise, the schedule entitled 'Mobilisation Service Outcomes' forming part of the Mobilisation Plan.
MRF Operator	means the operator of a Material Recovery Facility.
Notice of Common Dispute	means a notice issued by the Principal in accordance with clause 23.1(c).
Operating Region	means, in respect of an Operator Refund Point, the region specified as the Operating Region for that Operator Refund Point in Item 10 of the Reference Schedule, as the description of that region may be amended or replaced from time to time in accordance with clause 9.8.
Operating Week	means each seven day week commencing 00:00 Monday to 23:59 Sunday after the Scheme Commencement Date, except for the first Operating Week which will commence at 00:00 on the Scheme Commencement Date.
Operational Services	means the services detailed in the Services Specification.
Operations Commencement Date	means, for each Operator Refund Point, the day immediately following the Mobilisation Completion Date for that Operator Refund Point.
Operations Period	means, for each Operator Refund Point, the period from the Operations Commencement Date for that Operator Refund Point to the Expiry Date, unless terminated earlier in accordance with this Agreement.
Operator Invoice	is defined in clause 9.4(b).
Operator Refund Point	means each Refund Point operated by the Operator as listed in Item 10 of the Reference Schedule.
Operator's Representative	means the individual specified in Item 3 of the Reference Schedule or such other person as is notified in writing by the Operator to the Principal as the Operator's Representative for the purposes of this Agreement.
Operator Refund Point Type	means the type of each Operator Refund Point to be operated under this Agreement as specified in Item 10 of the Reference Schedule, being one or more of an Over

the Counter Refund Point, a Drop-Off Refund Point, a Mobile Refund Point or a RVM.

Other Service Provider	means any contractor (at any tier) of the Principal, including all service providers and subcontractors providing Logistics Services or Processing Services in connection with the Scheme but excluding: <ul style="list-style-type: none"> (a) the Operator and its Subcontractors; and (b) any other service provider to the Principal that the Principal determines (in its sole discretion) is excluded from this definition from time to time.
Over the Counter Refund Point	means any Refund Point that is not a RVM, Mobile Refund Point or Drop-Off Refund Point.
Parent Company Guarantee	means the guarantee to be provided by each Parent Guarantor in respect of the obligations of the Operator under this Agreement, in the form contained in Schedule 9.
Parent Guarantor	means each person named as such in Item 1 of the Reference Schedule.
Payment Claim	has the meaning given in clause 9.4(a).
Payment Direction	means a direction to pay authorising the Principal to process and make payment of the Refund Amount to a Customer on behalf of the Operator.
Payments Schedule	means Schedule 6 to this Agreement, as amended from time to time in accordance with this Agreement.
Performance Abatement	means the dollar amounts set out in the column entitled 'Performance Abatement' in the Performance Table.
Performance Failure	means the contravention of a Performance Measure by the Operator in a given period.
Performance Failure Default	means a Performance Failure which is expressly stated to be a 'Performance Failure Default' in the Performance Table.
Performance Measures	means those measures set out in the column headed 'Performance Measure' in the Performance Table.
Performance Regime	means the regime set out in Schedule 8.
Performance Table	means the table set out in section 2 of Schedule 8.
POS System	means the point of sale software that all Refund Points (other than RVMs) are required to use to accurately

record transactions and submit relevant reporting and declarations to the Principal, the functionality of which is described in Schedule 4.

Principal Policy

means each policy, guideline, manual, code, standard, circular directive, practice specification, procedure or direction of the Principal relating to the Scheme, as may be amended or updated by the Principal from time to time, which is notified to the Operator, including:

- (a) the Media Policy; and
- (b) the refund point operator's manual provided by the Principal,

but excluding any policy, guideline, manual, code, standard, circular directive, practice specification, procedure or direction that:

- (c) is inconsistent with any express provision of this Agreement; or
- (d) materially changes the nature or scope of the Services or the Operator's obligations under this Agreement.

Principal's Representative

means the individual specified in Item 2 of the Reference Schedule or such other person as is notified in writing by the Principal to the Operator as the Principal's Representative for the purposes of this Agreement.

Processing Facility

means the premises from which a Processing Services Provider carries out the services under a Processing Services Agreement.

Processing Services

means the verification and processing of Containers in preparation for sale to a recycler.

Processing Services Agreement

means any agreement entered into by the Principal for the provision of Processing Services in connection with the Scheme.

Processing Services Provider

means a service provider engaged by the Principal under a Processing Services Agreement.

Recovery Amount

means the amount payable to a MRF Operator by the Principal for a quantity of Containers in accordance with the relevant Material Recovery Agreement and the Act and is GST-inclusive.

Reference Schedule

means Schedule 1 to this Agreement.

Refund Amount

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

Refund Mark	has the meaning given to that term in section 47C(1) of the Act.
Refund Point	has the meaning given to that term in section 47C(1) of the Act.
Refund Point Agreement	has the meaning given to that term in section 47C(1) of the Act.
Refund Point Operator	has the meaning given to that term in section 47C(1) of the Act, and includes the Operator.
Regulation	means any regulation made under Part 5A of the Act.
Regulatory Authority	means: <ul style="list-style-type: none"> (a) any government or a governmental, quasi-governmental or judicial entity or authority (including the department or agency responsible under Western Australian law for the relevant provisions of the Act); (b) a stock exchange; and (c) any other authority, agency, commission, regulator, ministry, department, instrument, tribunal (including any pricing body), enterprise, delegated authority or similar entity, <p>whether of Australia or elsewhere that has powers or jurisdiction under any law over a party or any act relating to this Agreement.</p>
Reverse Vending Machine	means Refund Points that automatically count Container inserted into the machine, and RVM has the same meaning.
Review Procedure	means a review of this Agreement conducted in accordance with clause 5.1.
Scheme	has the meaning given to that term in the 'Recitals' section of this Agreement.
Scheme Change	has the meaning given to that term in clause 6.1(a).
Scheme Commencement Date	means the date on which the Scheme commences under the Act.
Scheme Data	means any data, information or personal information accessible to the Operator (or any third parties who have access to such Scheme Data through the Operator) and which relates in any way to the Scheme or a Scheme

Participant, and includes data stored or held on, or which transfers through, the IT Platform.

Scheme Objectives	mean the objects outlined in section 47A of the Act.
Scheme Participant	means: <ul style="list-style-type: none"> (a) the Principal; (b) a person that has entered into a Supply Agreement with the Principal; (c) a MRF Operator that has entered into a Material Recovery Agreement with the Principal; (d) a Refund Point Operator that has entered into a Refund Point Agreement with the Principal; and (e) any Other Service Provider, as the context requires.
Services	means the Mobilisation Activities and the Operational Services.
Services Specification	means Schedule 2 to this Agreement, as amended from time to time in accordance with this Agreement.
Shipping Unit	means that part of the Collection Infrastructure that is to be removed by the Processing Services Provider when Containers are collected from an Aggregation Point.
Special Conditions	means the special conditions set out in Schedule 12.
State	means the Crown in right of the State of Western Australia, including the Minister within the meaning of the Act.
State Policy	means each policy, guideline, code, standard, circular directive, practice specification or procedure or direction (including any direction issued by the Minister under the Act and any document prepared by the CEO (as defined in the Act)) which applies in connection with the Scheme and which affects implementation of the Scheme, which: <ul style="list-style-type: none"> (a) is notified to the Principal; (b) is publicly available or otherwise available to the Principal; or (c) the Principal is expressly required by the terms of this Agreement, by law, or by direction of the Minister or the State, to comply with, as may be amended or updated from time to time.

Statutory Requirements	<p>means:</p> <ul style="list-style-type: none"> (a) the Act and Regulations; (b) any law applicable to implementation and operation of the Scheme, the provision of the Services or the Operator's obligations under this Agreement, including statutes, ordinances, regulations, by-laws, orders and other subordinate legislation, including those in relation to workplace health and safety; (c) Approvals (including any condition or requirement under them), applicable to implementation and operation of the Scheme, the provision of the Services and/or the Operator's obligations under this Agreement; and (d) fees and charges payable in connection with the foregoing.
Subcontractor	means a person who is a contractor, subcontractor or supplier to, or agent of, the Operator (at any tier) in relation to this Agreement or the supply or performance of the Services.
Supply Agreement	has the meaning given to that term in section 47C(1) of the Act.
Term	means the term of this Agreement, commencing on the Effective Date and terminating on the Expiry Date, unless terminated earlier in accordance with this Agreement.
Trade Mark	means any trade mark registered by, or licensed to, the Principal in connection with the Scheme, as may be amended from time to time and notified by the Principal to the Operator in writing.
Variation	means a variation, amendment or modification of the Services under this Agreement (including the Services Specification or Payments Schedule) in accordance with clause 5.
Variation Order	has the meaning given in clause 5.2.
Verification Methodology	means the Scheme audit and verification methodology as determined by the Principal and notified to the Operator from time to time.
Voucher	means a card or voucher (in hard copy or electronic form) that is redeemable for goods, services or cash.
Wilful Misconduct	means an act or failure to act by the relevant party that was intended to cause, was in deliberate disregard of, or

deliberate indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgment.

1.2 Interpretation

In this Agreement unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Regulatory Authority (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Perth, Western Australia time;
- (k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement other than this Agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;

- (n) a promise, agreement, representation or warranty by two or more persons who comprise a party binds them jointly and severally;
- (o) a provision of this Agreement may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this Agreement or the preparation or proposal of that provision;
- (p) a reference to a body, other than a party to this Agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (r) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (s) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (t) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (u) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

1.3 Business Day

If anything under this Agreement is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

2. Term

2.1 Effective Date

This Agreement takes effect and comes into force on the date of this Agreement (**Effective Date**).

2.2 Expiry

This Agreement ends on the Expiry Date, unless terminated earlier in accordance with this Agreement.

2.3 Extension of Term

- (a) The Principal must, no later than the date which is 7 months before the Initial Expiry Date:
 - (i) extend the Expiry Date by the number of years specified in Item 6 of the Reference Schedule by issuing a written notice to the Operator to this effect (**Extension Notice**); or
 - (ii) issue a written notice to the Operator of its intention to let this Agreement expire on the Initial Expiry Date (**Expiry Notice**).
- (b) If the Principal does not give an Extension Notice or an Expiry Notice in accordance with clause 2.3(a), it will be deemed to have provided an Extension Notice on the date which is 7 months before the Initial Expiry Date.
- (c) The Operator must accept or reject any Extension Notice within 60 Business Days of receipt (and if it does not do so within this period, it will be deemed to have accepted the Extension Notice).
- (d) If the Principal issues an Expiry Notice or the Operator rejects an Extension Notice within the timeframe specified in clause 2.3(c), then this Agreement will expire on the Initial Expiry Date.
- (e) If an Extension Notice is accepted (or deemed to be accepted) by the Operator, the Expiry Date is extended for the number of years specified in Item 6 of the Reference Schedule and any such extension will:
 - (i) be on the terms and conditions in effect at the end of the then current Term, excluding this clause 2.3; and
 - (ii) take effect from the end of the then current Term.
- (f) Where the Term is extended under this clause 2.3, the parties may also agree to vary the Fee that is to apply during the extended Term, in accordance with the Review Procedure.
- (g) The Principal is under no obligation to extend the Term for a further period and any election to do so will be at its absolute discretion.

3. Statutory Requirements and Compliance

3.1 Compliance

In performing the Services, the Operator must (and must ensure that its personnel):

- (a) ensure that the Operational Services are carried out in a safe manner and in strict compliance with all applicable Approvals, Codes and Standards, Statutory Requirements and this Agreement;

- (b) without limiting any other obligation of the Operator under this Agreement:
 - (i) in relation to each Operator Refund Point of a particular Operator Refund Point Type, comply with the requirements of all applicable Approvals, Codes and Standards, Statutory Requirements and this Agreement with respect to that Operator Refund Point Type;
 - (ii) operate each Full Time Refund Point in such manner that the Full Time Refund Point satisfies the definition of 'full time refund point' under Statutory Requirements or State Policy; and
 - (iii) operate each Flexible Refund Point in such manner that the Flexible Refund Point satisfies the definition of 'flexible refund point' under Statutory Requirements or State Policy;
- (c) not do anything to place the Principal, its Associates or each of their respective officers, employees or agents in breach of the applicable Statutory Requirements;
- (d) report to the Principal immediately on any:
 - (i) breaches of the HVL where it is an Involved Person, as and when they occur, including any corrective actions taken resulting from these breaches; and
 - (ii) breach or potential breach of clause 3.1(a) or 3.1(c); and
- (e) provide to the Principal all notices and correspondence concerning any infringement notices.

3.2 Operator to obtain Approvals

- (a) The Operator must:
 - (i) procure prior to the Mobilisation Completion Date and maintain for the remainder of the Term (at its cost) all Approvals required for it to be able to provide the Services in accordance with this Agreement and all Statutory Requirements, and is responsible for the satisfaction of, and compliance with, the terms and conditions of any such Approvals, including any applicable environmental authorities required under the *Environmental Protection Act 1986 (WA)*;
 - (ii) upon request by the Principal, promptly provide to the Principal a copy of all Approvals obtained;
 - (iii) promptly provide to the Principal all relevant notices, applications and written communications between the Operator and any Regulatory Authority regarding each Operator Refund Point and the Services (**Authority Notices**); and

- (iv) promptly upon request by the Principal, update the Principal on the Operator's (or its Associates') discussions and interactions with any such Regulatory Authority regarding any such Authority Notices.
- (b) Without limiting clause 3.1 or clause 3.2(a), the Principal may (in its sole discretion) provide the Operator with advice and guidance with respect to obtaining any relevant Approval.

4. Standards and performance

4.1 Operator obligations

- (a) The Operator must:
 - (i) perform its obligations under this Agreement, including the Services:
 - (A) in accordance with the Services Specification;
 - (B) to an appropriate standard of amenity (including with respect to cleanliness, safety and convenience);
 - (C) in a safe and timely manner and in accordance with this Agreement, all Approvals, Statutory Requirements, State Policy, Principal Policy and any Codes and Standards that are legally binding on the Operator or the Principal;
 - (D) in a competent, efficient and professional manner which meets or exceeds the requirements of Good Industry Practice, including with respect to the handling and resolution of any Customer complaints;
 - (E) in accordance with clause 4.1(e); and
 - (F) in accordance with the terms of this Agreement.
 - (ii) take all reasonable measures to detect fraud within the Scheme during the delivery of the Services, and to promptly report any such suspected activities to the Principal;
 - (iii) ensure that each Operator Refund Point complies with all Approvals, Statutory Requirements and State Policies; and
 - (iv) in the performance of its obligations under this Agreement:
 - (A) provide all things and take all measures reasonably necessary to protect people and property;
 - (B) prevent unreasonable nuisance and unnecessary and unreasonable noise, disturbance, odour and interference with others;

- (C) ensure that the Services are fit for the purpose or purposes detailed in this Agreement;
 - (D) ensure that it has the necessary resources (including personnel) to perform the Services;
 - (E) ensure that the Services will be performed by suitably qualified personnel with appropriate skills and experience; and
 - (F) to the extent required in connection with the performance of the Services under this Agreement, co-operate and co-ordinate its activities with other Scheme Participants and any authorised Associate of the Principal (as notified to the Operator by the Principal from time to time).
- (b) The Operator must not:
- (i) by its acts or omissions, knowingly place the Principal in breach of any Statutory Requirement or other law; or
 - (ii) act in a manner that damages the Principal's brand, goodwill or reputation.
- (c) The Principal must not knowingly place the Operator in breach of any Statutory Requirement or other law.
- (d) The Operator must, at all times, use best endeavours to co-operate with the Principal, any relevant Processing Services Provider and Other Service Providers in all matters relating to this Agreement and to the Scheme.
- (e) The Principal, or an authorised Associate of the Principal for the purposes of this clause 4.1(e), as notified to the Operator by the Principal in writing from time to time, is entitled, from time to time, to:
- (i) issue directions to the Operator; and
 - (ii) notify the Operator of any policies, procedures, guidelines and rules which the Principal requires the Operator to comply with,

in respect of the Operator's performance of its obligations under this Agreement (including in respect of the Services) that are reasonable having regard to the Scheme Objectives, the operation of the Scheme and function of the Principal as Coordinator and the Operator must comply with such directions, policies, procedures, guidelines and rules.

4.2 Inconsistency of obligations

If there is any inconsistency between the various obligations of the Operator under this Agreement, the order of precedence of those obligations is as follows:

Ranking	Obligation
1.	obligation to comply with all applicable Approvals, Codes and Standards and Statutory Requirements
2.	any other obligation under this Agreement (other than the obligation to comply with Principal Policy)
3.	obligation to comply with Principal Policy

with the higher ranked obligations prevailing over the lower ranked obligations, to the extent of any inconsistency between them.

5. Variations

5.1 Review Procedure

- (a) **(Review Proposal)** During the Term:
- (i) the Operator may, at any time (but no more frequently than once in every 12 month period); and
 - (ii) the Principal may, at its discretion,
- issue a notice to the other party setting out a proposal for a Variation, provided that such proposal may not, in the Principal's reasonable opinion, materially alter the scope of the Services or the Fee, unless otherwise agreed by the parties **(Review Proposal)**. The Operator acknowledges that the Principal may also issue similar notices to other Refund Point Operators at the same or similar time.
- (b) **(Discussion of Review Proposal)** As soon as practicable after a Review Proposal is issued, the parties must meet in good faith (whether in person or remotely and at a time and method directed by the Principal acting reasonably, having regard to the fact that the meeting may be attended by one or more other Refund Point Operators in accordance with clause 5.1(c)) and work together to consider the Review Proposal, and must each use their reasonable endeavours to agree any:
- (i) timeframe for implementation of any Variation;
 - (ii) change to the Services;
 - (iii) amendment to the Payments Schedule and Verification Methodology; and
 - (iv) amendment to the terms of this Agreement.

- (c) **(Other Refund Point Operators)** The Principal may invite one or more other Refund Point Operators to any meeting between the Principal and the Operator (including any meeting under clause 5.1(b)).
- (d) **(Direction by the Principal)** Following a meeting or meetings under clause 5.1(b):
 - (i) the party that issued the Review Proposal may withdraw it; or
 - (ii) the Principal may issue a Variation Order that, in the Principal's reasonable opinion, takes into account the best interests of the Scheme.

5.2 Variation Order

- (a) Subject to the Principal first conducting a review in accordance with the Review Procedure, the Principal may direct the Operator to carry out a Variation by issuing a written document titled "Variation Order" setting out a proposed Variation to:
 - (i) the Services Specification;
 - (ii) the Payments Schedule;
 - (iii) the Verification Methodology; and/or
 - (iv) any other applicable provision of this Agreement,

as well as a price for that Variation as determined in accordance with clause 5.2(b), both of which will take effect from the date specified in the Variation Order (a **Variation Order**).
- (b) The Principal must price the Variation using the following order of precedence:
 - (i) prior agreement between the Principal and the Operator;
 - (ii) applicable rates or fees in this Agreement; and
 - (iii) reasonable rates or fees (as determined by the Principal in its reasonable opinion),

to address any direct costs reasonably incurred (or to be incurred), or savings made (or to be made) by the Operator as a consequence of the proposed Variation.
- (c) Subject to clauses 5.2(d) to 5.2(f), both parties must comply with any Variation Order issued in accordance with this Agreement and any Variation will be binding on the parties as if it was included in this Agreement, including if the Operator does not issue a Dissatisfaction Notice in accordance with clause 5.2(d).

- (d) If the Operator does not agree to a Variation directed under a Variation Order, it may issue a notice setting out its reasons to the Principal (**Dissatisfaction Notice**) within 10 Business Days of issue of the Variation Order. If the Operator does not issue a Dissatisfaction Notice in accordance with this clause 5.2(d), the parties will be bound to comply with the Variation Order and clause 5.2(c) will apply.
- (e) The Principal may, in its sole discretion, choose to amend the Variation Order on account of any Dissatisfaction Notice issued by the Operator under clause 5.2(d) within 20 Business Days of receipt of the Dissatisfaction Notice, in which case the amended Variation Order will be deemed to be a new Variation Order for the purposes of clauses 5.2(c) to 5.2(f).
- (f) If:
 - (i) the Principal does not amend the Variation Order pursuant to clause 5.2(e); and
 - (ii) the Operator does not withdraw a Dissatisfaction Notice within 5 Business Days after the expiry of the 20 Business Day period referred to in clause 5.2(e),
 clause 20.8 will apply.
- (g) The Operator must not vary the Services except as directed in writing by the Principal in accordance with this Agreement.

5.3 Omissions if Operator a Major Operator

- (a) If the Operator is a Major Operator (but not otherwise) and subject to clause 5.3(b), at any time prior to the first Mobilisation Completion Date in relation to the Operator Refund Points, the Principal may direct a Variation in accordance with this clause 5 which omits any part of the Services.
- (b) Subject to clauses 5.3(c) and 20.6, the Principal may not direct one or more Variations under clause 5.3(a) that, in the aggregate, omit greater than 33% of the total number of Operator Refund Points specified in the Reference Schedule.
- (c) For the purposes of clause 5.3(b), the number of affected Operator Refund Points omitted pursuant to Variations under clause 20.6 are not to be included in the calculation of the percentage of Operator Refund Points that have been omitted by Variations.
- (d) If a Variation omits any part of the Services, the Principal may thereafter carry out the omitted part of the Services either itself or by engaging other contractors, and the Operator will be relieved of its obligation in relation to such part of the Services.

5.4 Acknowledgement by Operator

The Operator acknowledges that:

- (a) in addition to this Agreement, the Principal has entered into Refund Point Agreements with other Refund Point Operators;
- (b) all Refund Point Agreements must be consistent to protect the Principal's legitimate interest in ensuring the efficiency of the Scheme; and
- (c) the Principal is not required to agree to any Variation proposed by the Operator.

5.5 Amendment by deed

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

6. Scheme Changes

6.1 Amendments to Agreement

- (a) If:
 - (i) there is any Change in Law, including where a direction has been issued by the Minister in accordance with section 47ZP(1) of the Act;
 - (ii) the Minister amends the Principal's appointment as the Coordinator under the Act, or
 - (iii) the Coordinator Agreement is amended,

(**Scheme Change**), the Principal may, by giving no less than 15 Business Days' notice in writing to the Operator (**Scheme Change Notice**), amend the Payments Schedule, the Verification Methodology, the Services Specification, the Reference Schedule or other terms of this Agreement to address that Scheme Change, including changing the Fee in accordance with clause 6.1(b).
- (b) The Principal must calculate any changes to the Fee as a result of the Scheme Change using the following order of precedence:
 - (i) prior agreement between the Principal and the Operator;
 - (ii) applicable rates or fees in this Agreement; and
 - (iii) reasonable rates or fees (as determined by the Principal in its reasonable opinion),

to address any direct costs reasonably incurred (or to be incurred), or savings made (or to be made) by the Operator as a consequence of the Scheme Change.

- (c) The Operator may provide the Principal with a written submission in response to the Scheme Change Notice within 5 Business Days of receiving the Scheme Change Notice (**Operator Response**).
- (d) The Principal:
 - (i) must review and consider any Operator Response provided in accordance with clause 6.1(b); and
 - (ii) may (in its sole discretion) amend the Scheme Change Notice in response to any Operator Response provided in accordance with clause 6.1(b).
- (e) Subject to clauses 6.1(g) to 6.1(i) (inclusive), if the Principal issues a Scheme Change Notice in accordance with this clause, the Operator 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, as might be amended in accordance with clause 6.1(d).
- (f) Any amendment to this Agreement under this clause 6 is not subject to the Principal first conducting a review in accordance with the Review Procedure with respect to that amendment.
- (g) If the Operator does not agree with an amendment in a Scheme Change Notice, it may issue a notice setting out its reasons to the Principal (**Dissatisfaction Notice**) and clause 20.8 shall apply.
- (h) The Principal may, in its sole discretion, choose to amend the Scheme Change Notice on account of any Dissatisfaction Notice issued by the Operator under clause 6.1(g), in which case clause 20.8 shall not apply.
- (i) With the prior agreement of the Principal but not otherwise, the Operator may withdraw a Dissatisfaction Notice.

6.2 Further acts and documents

The Operator must promptly do all further acts and execute and deliver all further documents (in form and content reasonably required by the Principal) required by law or reasonably requested by the Principal to give effect to the amendment referred to in clause 6.1.

6.3 No compensation

Other than its entitlement to any additional fees or savings determined under clause 6.1(a), the Operator is not entitled to any compensation from the Principal as a result of any amendment to this Agreement pursuant to this clause 6.

7. Services

7.1 Operational Services

During each Operations Period the Operator must provide the Operational Services in accordance with this Agreement.

7.2 Exclusivity

The Operator acknowledges and agrees that, in addition to contracting with the Operator under this Agreement, the Principal may also contract with any other Refund Point Operators with respect to the operation of any other Refund Points.

7.3 Containers collected

- (a) During each Operations Period the Operator must:
 - (i) whenever an Operator Refund Point is required to be open and operational in accordance with this Agreement, accept all Containers presented at that Operator Refund Point.
 - (ii) ensure that all Containers delivered to, or collected at, any Operator Refund Point are kept separate from any other material delivered to, or collected at, that Operator Refund Point;
 - (iii) prepare and maintain appropriate auditable records to document its compliance with clause 7.3(a)(ii); and
 - (iv) unless the Principal otherwise agrees, ensure that all bottle caps are removed from all Containers delivered to, or collected at, any Operator Refund Point.
- (b) Subject to the requirements of the Act and the Regulations, the Operator will not be entitled to any payment from the Principal under this Agreement in respect of any container that is an Excluded Container.
- (c) The Operator must keep all Excluded Containers separate from Containers delivered to, or collected at, any Operator Refund Point and must not place any Excluded Container in Collection Infrastructure at an Aggregation Point. The Operator must prepare and maintain appropriate auditable records to document its compliance with clause 7.3(b) and this clause 7.3(c), including maintaining counts and records of Excluded Containers collected by the Operator.
- (d) The Operator acknowledges that:
 - (i) the definitions of Container and Excluded Container may change during the Term under applicable Statutory Requirements;

- (ii) it will be required to accommodate any such change in the provision of the Services under this Agreement in accordance with clause 5.2 or clause 6; and
- (iii) the Operator is solely responsible for disposing of any Excluded Containers delivered to, or collected at, an Operator Refund Point.

7.4 Refund Amount

- (a) Subject to clause 7.4(b), during each Operations Period, the Operator must pay the Refund Amount:
 - (i) to each person presenting an empty Container at the Operator Refund Point;
 - (ii) either in Cash, or by issuing a Payment Direction, in accordance with section 2.3(e) of the Services Specification;
 - (iii) per empty Container collected; and
 - (iv) otherwise in accordance with the Payments Schedule and all applicable Statutory Requirements.
- (b) If an Operator Refund Point is not a Reverse Vending Machine, the Operator must not pay a Refund Amount with respect to a Container delivered to that Operator Refund Point if, pursuant to the Act or the Regulations, the person who presented the container at an Operator Refund Point is not entitled to receive any Refund Amount for that Container.
- (c) If an Operator Refund Point is a Reverse Vending Machine, the Operator must ensure that the Operator Refund Point does not accept empty Containers in circumstances where the Operator Refund Point is unable to dispense a Refund Amount for the Containers.
- (d) The Operator must not pay a Refund Amount by any means other than Cash or by issuing a Payment Direction in accordance with section 2.3(e) of the Services Specification.
- (e) If the Principal approves payment of Refund Amounts by way of Vouchers:
 - (i) each Voucher must be issued by the Operator on the condition that:
 - (A) subject to clause 7.4(e)(i)(B), the Voucher will cease to be redeemable 3 years after the day of the Voucher is supplied; or
 - (B) if applicable State or Federal legislation requires that the Voucher ceases to be redeemable no earlier than a date that is more than 3 years after the date of supply of the Voucher, the Voucher will cease to be redeemable on that later date;
 - (ii) one of the following must appear prominently on the Voucher:

- (A) the date the Voucher ceases to be redeemable; or
 - (B) the date the Voucher is supplied and a statement that identifies the period during which the Voucher is redeemable,
- and
- (iii) without limiting any other provision of this Agreement, the parties will have the rights and obligations set out in Schedule 11.

7.5 Ownership of Containers

- (a) Subject to clause 7.5(b), title in all empty Containers collected at each Operator Refund Point will vest in the Operator immediately upon:
 - (i) acceptance of the Container at the Operator Refund Point; and
 - (ii) payment of the Refund Amount by the Operator with respect to the Container in accordance with clause 7.4(a).
- (b) Title in each Container referred to in clause 7.5(a) will subsequently pass from the Operator to a Processing Services Provider nominated by the Principal immediately upon the delivery of that Container by the Operator to the Container Recipient or collection of that Container from the Operator by the Container Recipient. The Operator acknowledges that it will be entitled to receive the Refund Amount from the Principal (acting as agent for the relevant Processing Services Provider) for title in each Container transferred to that Processing Services Provider.
- (c) The Operator must do all things necessary, upon request by the Principal or the Container Recipient, to give effect to the transfer of title referred to in clause 7.5(b).
- (d) For the purposes of this clause 7.5, where the Reference Schedule provides that the Operator Refund Point is a Reverse Vending Machine, title in the empty Container will vest in the Operator immediately when the Refund Amount for the Container has been paid in accordance with the Act and the Regulations.

7.6 Return of Containers

- (a) The Operator is responsible for, at its cost, arranging the transportation of Containers collected in accordance with the Agreement to the Aggregation Points.
- (b) The Principal is responsible for, at its cost, arranging the Logistics Services from each Aggregation Point.
- (c) The Operator must cooperate with the Principal's nominated Logistics Services provider by providing all empty Containers in the Collection Infrastructure to that Logistics Services provider, in the condition, and otherwise in accordance with, the requirements specified in the Services Specification or in accordance with

the Principal's reasonable instructions (having regard to the interests of the Principal and the Operator) as given from time to time with reasonable notice. Without limiting the foregoing, the Operator must not Bale any Containers that are to be collected by a Logistics Services provider in a manner that prevents or hampers the Processing Provider to whom the Containers will be delivered from readily separating and individually counting the Baled Containers.

- (d) Without limiting the requirement for the Operator to comply with all Statutory Requirements, the Operator acknowledges and agrees to comply with the obligations set out in section 47M(5) of the Act.
- (e) The Operator will be liable for all costs it incurs in complying with this clause 7.6.

7.7 Performance Regime

- (a) Without limiting the Operator's obligations under clause 4, the Operator must perform its obligations under this Agreement in order to meet the Performance Measures.
- (b) The parties acknowledge and agree that the Performance Measures are only agreed target levels of performance against which the Operator will be assessed by the Principal and the existence of the Performance Measures does not limit the Operator's obligation to meet any other obligations in this Agreement,
- (c) This clause 7.7(c) only applies where the Operator is a Major Operator.
 - (i) A Performance Abatement may apply in respect of a Performance Failure, in accordance with the Performance Regime to reflect the agreed principle that the Principal will only pay for the quantum and quality of the Services actually provided.
 - (ii) The Operator agrees that the Performance Abatement regime under this Agreement reflects a genuine pre-estimate of the diminished value to the Principal if the Service Provider does not provide the Services in accordance with this Agreement.
 - (iii) Any Performance Abatement payable for any Performance Failure will be a debt due and payable by the Operator to the Principal in accordance with this Agreement and may be set-off against the Fee that is otherwise payable by the Principal to the Operator.

7.8 Collection Infrastructure

- (a) On or before the Mobilisation Completion Date (and at all times thereafter), the Principal must ensure that, at no cost to the Operator, the relevant Processing Services Provider provides the Operator with receptacles at each Aggregation Point that have sufficient capacity to accommodate the volume of Containers reasonably anticipated to be deposited at that Aggregation Point. Except as expressly provided in this clause 7.8(a), the Principal may determine the nature

of the receptacles to be provided under this clause 7.8(a) in its absolute discretion.

- (b) The Operator is entitled to, at its sole cost, provide and use collection and storage equipment at each Operator Refund Point and Aggregation Point, other than the Collection Infrastructure, to facilitate efficient operations, but all Containers must be decanted into Collection Infrastructure by the Operator prior to collection.
- (c) The Operator acknowledges that the Collection Infrastructure provided to or used by the Operator for the purposes of this Agreement remains the property of the relevant Processing Services Provider and that the Processing Services Provider may identify the Collection Infrastructure as its property.
- (d) The Operator must only use the Collection Infrastructure:
 - (i) for the purposes of providing the Services; and
 - (ii) in a manner consistent with any requirements or protocols for storing or maintaining the Collection Infrastructure, as notified by the Principal or the relevant Processing Services Provider to the Operator.
- (e) The Operator must not, except to the extent reasonably necessary to enable the Operator to provide the Services or with the prior written approval of the Principal and the relevant Processing Services Provider:
 - (i) modify the Collection Infrastructure;
 - (ii) move the Collection Infrastructure from the location to which it was delivered or installed;
 - (iii) transfer possession or control of the Collection Infrastructure to any other person (except a Container Recipient); or
 - (iv) create or allow to be created any security interest over the Collection Infrastructure.
- (f) The Operator must promptly return all items of Collection Infrastructure to the Processing Services Provider nominated by the Principal:
 - (i) that are not required by the Operator in the performance of the Services; and
 - (ii) at the end of the Term.

7.9 Loss of or damage to Collection Infrastructure

- (a) The Operator must take reasonable care to prevent loss of, or damage to, the Collection Infrastructure.

- (b) The Operator is not responsible for any fair wear and tear to the Collection Infrastructure or any loss or damage to the Collection Infrastructure where it has fully complied with clause 7.8.
- (c) Subject to clause 7.9(b), the Operator is liable to the Processing Services Provider for any loss of or damage to the Collection Infrastructure in its possession (such liability shall be reduced to the extent the Principal or the Processing Services Provider has caused or contributed to the event resulting in such loss or damage).
- (d) The Operator acknowledges that any dispute in relation to loss of, or damage to, the Collection Infrastructure will be a Common Dispute to be resolved between the Operator and the Processing Services Provider under the Common Dispute Procedure.

7.10 IT Platform mobilisation

- (a) The Operator must comply with section 2.3(c)(ii) of Schedule 2 prior to the Mobilisation Completion Date for each Operator Refund Point.
- (b) The Principal will provide the Operator with:
 - (i) access to the IT Platform software; and
 - (ii) installation instructions and training material in relation to the IT Platform,
 by the following dates:
 - (iii) if the Operator has first complied with clause 7.10(a) and 7.10(d), on or prior to the date specified in Item 7 of the Reference Schedule; and
 - (iv) if the Operator has not first complied with clause 7.10(a) and 7.10(d), promptly after the Operator has complied with clause 7.10(a) and 7.10(d).
- (c) The Principal will:
 - (i) provide help desk support to the Operator during installation of the IT Platform software by the Operator and during the Operations Period; and
 - (ii) provide a single session of online or in-person user training on the IT Platform on or prior to the date specified in Item 8 of the Reference Schedule and notify the Operator of the time and location of such training.
- (d) The Operator, or least one representative of the Operator, must attend the training session referred to in clause 7.10(c)(ii) and pass a qualification test in respect of the use of the IT Platform. Except for the training referred to in clause 7.10(c)(ii), the Operator must train the Operator's staff on the use of the IT Platform.

- (e) The Operator must uniquely identify each of its staff members using the IT Platform by registering the staff member on the IT Platform.
- (f) The Operator must ensure that the Operator has its own information technology support for ongoing operations.
- (g) In order to determine whether a container is a Container, the Operator must refer to the register of Containers maintained by the Principal in accordance with the Regulations.

7.11 Containers not to be collected from MRF Operators

The Operator must not knowingly accept any Containers from any person, including a MRF Operator, that the person has received or obtained as a result of the collection of waste on behalf of local government authorities from the bins used in households, public places and public buildings.

7.12 Containers collected from commercial businesses.

Subject to clause 7.11 and compliance with any applicable Principal Policy, the Operator may accept any Containers from commercial business.

7.13 Operator not to accept Bales

Notwithstanding any other provision of this Agreement, the Operator must not accept any Bales.

8. Mobilisation

8.1 Mobilisation Activities

During each Mobilisation Period, the Operator must perform the Mobilisation Activities in accordance with this clause 8, including (at its cost):

- (a) obtaining all Approvals;
- (b) procurement and installation of equipment;
- (c) engaging and training staff;
- (d) installing and testing its information technology and other systems; and
- (e) entering into any applicable services contracts,

required for it to be able to achieve the Mobilisation Service Outcomes and deliver the Services in accordance with this Agreement and all Statutory Requirements.

8.2 Mobilisation Plan

- (a) The Operator must deliver the Mobilisation Activities in accordance with the Mobilisation Plan approved by the Principal.
- (b) Where the Principal has approved the Operator's Mobilisation Plan prior to the Effective Date, this Mobilisation Plan is annexed as Annexure A.
- (c) This clause 8.2(c) applies where the Principal has not approved the Operator's Mobilisation Plan prior to the Effective Date. The Operator must, within 10 Business Days of the Effective Date, prepare a Mobilisation Plan and submit it to the Principal.
 - (i) The Mobilisation Plan must be in the format provided by the Principal, and set out:
 - (A) the Mobilisation Activities to be performed by the Operator for each Operator Refund Point;
 - (B) how the Mobilisation Service Outcomes will be achieved by the Operator for each Operator Refund Point;
 - (C) if paragraph (b) of the definition of Mobilisation Service Outcomes Schedule applies, the Mobilisation Service Outcomes Schedule; and
 - (D) such other information pertaining to the fulfilment of the Mobilisation Service Outcomes as is requested by the Principal.
 - (ii) Within 10 Business Days of receipt of the Mobilisation Plan (or any other period as agreed by the parties), the Principal must either:
 - (A) provide reasonable comments on the Mobilisation Plan (if any) to the Operator; or
 - (B) approve the Mobilisation Plan.
 - (iii) If clause 8.2(c)(ii)(A) applies:
 - (A) the Operator must amend the Mobilisation Plan and resubmit it to the Principal within 5 Business Days of receipt of the Principal's comments for Principal approval; and
 - (B) the Principal will approve the updated Mobilisation Plan (acting reasonably) within 5 Business Days of its receipt, and if the Principal does not approve the Mobilisation Plan (acting reasonably) then clause 8.2(c)(ii)(A) applies in respect of any further updated Mobilisation Plan.

8.3 Mobilisation Completion Date

- (a) The Operator must complete all Mobilisation Activities and achieve the Mobilisation Service Outcomes for each Operator Refund Point on or before the Mobilisation Completion Date for that Operator Refund Point.
- (b) Each Mobilisation Completion Date may only be extended where, in the Principal's Representative's reasonable opinion, an act or omission of the Principal has delayed the Operator from being able to comply with its obligation in this clause 8.3, or where there has been a Variation or an Intervening Event.

8.4 Mobilisation Report

During each Mobilisation Period the Operator must provide the Principal a fortnightly report in such format as the Principal's Representative requires containing or setting out:

- (a) details of the progress made by the Operator in the previous fortnight in respect of the Mobilisation Activities;
- (b) progress against the achievement of the Mobilisation Service Outcomes;
- (c) any act, matter, or thing which may have an actual or potential adverse impact on the progress of the Mobilisation Activities, together with detailer particulars as to how the Operator is dealing with any such issues; and
- (d) any other information the Principal's Representative may reasonably request from time to time.

9. Payment

9.1 Payment by Principal

- (a) The Principal must pay the Refund Amount and the Fee to the Operator in accordance with this clause 9, the Payments Schedule and this Agreement.
- (b) The Refund Amount is paid by the Principal to the Operator as agent for the relevant Processing Services Provider in consideration for the Containers collected from the Operator by that Processing Services Provider;
- (c) The Fee consists of:
 - (i) the Handling Fee Payment (less any applicable Performance Abatement as determined in accordance with this Agreement), which is paid by the Principal to the Operator under this Agreement in consideration for the Services provided by the Operator; and

- (ii) any adjustments, interest or GST applicable to the Handling Fee Payment as determined in accordance with this Agreement and the Payments Schedule.
- (d) The Refund Amount and the Fee may be adjusted to account for:
 - (i) the results of the Principal's audit and verification procedures;
 - (ii) any Containers that are returned but which are not processed through the IT Platform and POS System in accordance with the Services Specification; and
 - (iii) documentation required to be provided in accordance with the Services Specification (including reports and statutory declarations on collection material data) and otherwise in accordance with this Agreement which is not provided to the Principal.
- (e) The Refund Amount will be automatically adjusted to reflect any adjustment to the value of the Refund Amount under the Act or Regulation.
- (f) Where the Principal fails to make a payment to the Operator in accordance with this clause 9, the Principal will be liable to pay the Operator interest on any overdue payments at the Default Interest Rate.

9.2 Refund Amount and Fee all inclusive

The Operator agrees that the Refund Amount and the Fee payable in accordance with this Agreement includes:

- (a) consideration for the Containers collected from the Operator by the nominated Processing Services Provider;
- (b) all costs, expenses, fees, charges and other amounts incurred by the Operator in performing all of its obligations under this Agreement;
- (c) payment of any items of services which are reasonably inferred or necessary for the proper performance of the Operational Services; and
- (d) the Operator's profit, attendance, preliminaries, allowances, supervision, overheads and margin in connection with the performance of all of its obligations under this Agreement.

9.3 Expenses

The Operator must pay all costs and expenses incurred in carrying out the Operational Services and performing any other duties to be performed by the Operator pursuant to this Agreement regardless of whether the costs and expenses exceed the Refund Amount and the Fee.

9.4 Operator Invoices

- (a) Subject to clause 9.4(c), the Operator must submit to the Principal a claim for payment for the relevant Operating Week through the IT Platform by no later than 5:00pm (AWST) on the second Business Day of the next Operating Week, which complies with the requirements set out in section 2.2 of the Payments Schedule (**Payment Claim**).
- (b) Within four Business Days of the Operator complying with clause 9.4(a), the Principal will issue an invoice (as agent for the Operator) for the amount payable to the Operator in relation to the Payment Claim (**Operator Invoice**) and such Operator Invoice will:
 - (i) be prepared in accordance with any requirements for a claim for a collection amount prescribed by the Act or Regulations;
 - (ii) in respect of all amounts claimed by the Operator in the Payment Claim, set out or attach sufficient details, calculations, supporting documentation and other information used by the Principal to fully and accurately determine (without needing to refer to any other documentation or information) the Refund Amount and Fee then payable by the Principal to the Operator under this Agreement, including under the Payments Schedule;
 - (iii) separately set out details of the aggregate number of Refund Amounts paid by the Operator to Customers in accordance with clause 7.4; and
 - (iv) be in accordance with the Payments Schedule.
- (c) The Operator acknowledges and agrees that it must not make a claim for payment under clause 9.4(a) where it is prohibited from making such a claim under section 47Q(2) of the Act.
- (d) The Principal will not be required to comply with its obligations in clause 9.5(a) with respect to any claim made by the Operator in breach of clause 9.4(c).

9.5 Timeframe for payment

- (a) Subject to clauses 9.4(d) and 9.5(b), the Principal must pay the Operator any undisputed amount set out as then payable in the Operator Invoice within 5 Business Days of receiving a Payment Claim.
- (b) Despite any other provision of this Agreement, the Parties acknowledge and agree that, where the Act or Regulations authorise the Principal to decide that an amount claimed by the Operator is not payable:
 - (i) the Principal may decide, in accordance with the relevant provisions of the Act and Regulations, that an amount claimed under clause 9.4(a) is not payable to the Operator;

- (ii) the Principal will not be required to comply with its obligations in clause 9.5(a) to the extent that it has made a decision under clause 9.5(b)(i) with respect to the relevant amount claimed; and
- (iii) where the Principal has made a decision under clause 9.5(b)(i) with respect to any amount claimed, the Principal must give the Operator an information notice for the decision that complies with the requirements of the Act or the Regulations (if any).

9.6 Right of Set-Off

- (a) The Principal may set off or deduct from amounts otherwise payable to the Operator any amount claimed from the Operator by the Principal in connection with this Agreement, including in connection with any Performance Failure under the Performance Regime (if applicable).
- (b) Nothing in this clause 9.6 affects the Principal's right to recover the whole of any balance that remains owing after any set-off from the Operator.

9.7 Appointment of Principal as agent for the Operator for the payment of Refund Amounts

- (a) The Operator appoints the Principal as its agent for the sole purpose of facilitating the transfer of title in Containers to the relevant Processing Services Provider, receiving payment of Refund Amounts from the relevant Processing Services Provider (through the Principal as agent for that Processing Services Provider), and the payment of Refund Amounts, including the issuing of Payment Directions.
- (b) The Operator indemnifies the Principal to the extent of any liability incurred by the Principal in dealing with third parties as agent for the Operator (except to the extent any such liability is due to the Principal acting in breach of this clause 9.7).
- (c) The Operator must do all things necessary, upon request by the Principal, to give effect to the appointment as agent under clause 9.7(a).

9.8 Changes to description of Operating Region

The parties acknowledge and agree that

- (a) other than Perth, each Operating Region described in this Agreement corresponds to the local government districts established under the *Local Government Act 1995 (WA)* (**Local Government Act**) described in Schedule 7 as falling within that Operating Region as at the Effective Date; and
- (b) in the event any of those local government districts under the *Local Government Act*, or the area falling within the definition of the metropolitan region in the *Planning and Development Act 2005 (WA)*, are amended or redefined, the Principal may (in its sole discretion) amend or replace Schedule 7 and the description of the Operating Region for each Operator Refund Point in the

Reference Schedule so that each Operating Region continues to cover a similar geographic area when compared to the Operating Regions as at the Effective Date.

10. Parent Company Guarantee

- (a) This clause 10 only applies if the Operator:
 - (i) is a Major Operator;
 - (ii) is not the ultimate Australian holding company in the Operator's corporate group; and
 - (iii) the Reference Schedule sets out the Parent Guarantor(s) from whom a Parent Company Guarantee must be provided.
- (b) The Operator must provide the Principal with a Parent Company Guarantee duly executed by each Parent Guarantor within 10 Business Days of the Effective Date, in the form contained in Schedule 9.
- (c) Despite any other provision of this Agreement, the Principal may refuse to make any payment otherwise due under this Agreement until the Operator has fully complied with its obligations under clause 10(b).

11. Information, Audits and Reporting

11.1 Audit and reporting

- (a) The Operator must and must ensure that its Associates:
 - (i) comply with the Verification Methodology;
 - (ii) have auditable systems in place to record:
 - (A) the number of Containers collected at each Operator Refund Point by Material Type;
 - (B) the number of Excluded Containers collected at each Operator Refund Point;
 - (C) the number of Containers sorted at each Operator Refund Point by Material Type; and
 - (D) the number of Containers transported from each Operator Refund Point by Material Type for recycling and processing in accordance with clause 7.6;

- (iii) (without limiting the requirement for the Operator to comply with all Statutory Requirements) comply with its obligations under the Act or Regulations to keep and maintain statutory declarations prescribed by the Regulations;
 - (iv) provide such information as the Principal reasonably requires, at such times as the Principal reasonably requires, in order for the Principal to comply with its reporting obligations under Statutory Requirements;
 - (v) cooperate with, and provide access to, the Principal (or an Associate of the Principal as notified to the Operator by the Principal from time to time) and the State so as to allow the Principal, its Associate and the State to (upon providing reasonable notice to the Operator) undertake any audit or review of the performance of the Services under this Agreement;
 - (vi) provide the Principal with reports and statutory declarations on collection material data, as specified in the Services Specification, including reports on the items listed in clauses 11.1(a)(ii)(A) to 11.1(a)(ii)(D) (inclusive);
 - (vii) provide the Principal and any auditor engaged by or on behalf of the Principal with all information, documents and access to premises reasonably requested by the Principal or the auditor with respect to the Services and the Operator's obligations under this Agreement;
 - (viii) cooperate with and provide any assistance to any auditor engaged by or on behalf of the Principal for the purposes of undertaking an audit or review of the Services and the Operator's compliance with its obligations under this Agreement;
 - (ix) cooperate with and provide any assistance to any auditor engaged by or on behalf of the Principal for the purposes of undertaking any procedures in accordance with the Verification Methodology;
 - (x) cooperate with and provide any assistance to any auditor engaged by or on behalf of the Principal for the purposes of undertaking an audit or review of the Operator's records, books and other documentation relating to the business where the Principal reasonably suspects a fraud or other anomaly in respect of the Scheme; and
 - (xi) otherwise take all reasonable measures to facilitate the Principal's compliance with its auditing and reporting obligations under all Statutory Requirements.
- (b) For the purposes of this clause 11.1, an auditor can be a qualified accountant or other authorised investigator.

11.2 Government information

The Operator acknowledges and agrees that:

- (a) if requested by the State, the Principal may provide a copy of this Agreement, and any information relating to this Agreement, to the State;
- (b) the Principal has obligations under the Statutory Requirements arising from its role as the Coordinator under the Act;
- (c) payments made to the Operator under this Agreement may be disclosed by the Principal to the State, another Regulatory Authority or an Associate of the Principal in accordance with applicable Statutory Requirements;
- (d) where the Principal has disclosed information in accordance with this clause 11.2 the Operator irrevocably releases and discharges the Principal and the State from any Claim arising from such disclosure; and
- (e) pursuant to section 47ZZC of the Act, an authorised person, as defined in that section, may require the Operator to provide information or produce material in accordance with that section.

11.3 Auditor General access to Records

- (a) The Operator must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Operator's Records concerning this Agreement.
- (b) The Operator acknowledges and agrees that the Auditor General, or an authorised representative of the Auditor General, may require access to and examine the Principal's Records concerning this Agreement.
- (c) In this clause 11.3 and clause 22.2(a):
 - (i) **Auditor General** means the person holding the office of Auditor General for Western Australia continued by section 6 of the *Auditor General Act 2006*; and
 - (ii) **Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with this Agreement, whether or not containing confidential information, and however such records and information are held, stored or recorded.

11.4 Contravention of the Act

The Operator must give written notice to the Principal, together with relevant particulars, promptly (and, in any event, no later than 5 Business Days) after becoming aware of any contravention of the Act or the Regulation by a Scheme Participant or any other person.

12. Fraud

- (a) The Operator must not:
- (i) in connection with a claim for payment under this Agreement;
 - (ii) in purported compliance with any requirement imposed by or under Part 5A of the Act or under any Regulation; or
 - (iii) otherwise in connection with this Agreement,
- provide any information that it knows is false or misleading in a material particular.
- (b) The Operator must:
- (i) not (and must ensure that its Associates do not) claim a Refund Amount in respect of any Containers which have already been subject to the payment of a Refund Amount or a Recovery Amount;
 - (ii) take all reasonable steps to minimise and prevent fraud in connection with the Scheme;
 - (iii) on the Principal's written request, provide the Principal with all requested information relating to the Operator's processes and practices in providing the Services, to the extent reasonably required by the Principal to determine the Operator's compliance with clause 12(b)(i); and
 - (iv) on the Principal's written request provide a statutory declaration confirming compliance with the requirements of this clause 12 and that it is not engaged in, or aware of in respect of the Scheme, any fraud.
- (c) The Operator acknowledges and agrees that the rights, powers and remedies of the Principal in relation to any breach of this clause 12 are in addition to any penalties that may apply under the Act or Regulations in relation to the breach.

13. Data, security and recovery

The Operator must at all times comply with State Policies, and Principal Policy, for the security and integrity of all information technology systems and Scheme Data.

14. Modern Slavery

14.1 Definitions

In this clause 14:

Commonwealth Act means *Modern Slavery Act 2018* (Cth); and

Modern Slavery means:

- (a) any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited or defined as a modern slavery offence under all applicable anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to the *Criminal Code Act 1995* (Cth) (specifically Schedule 1 Divisions 270 and 271), the *Modern Slavery Act 2018* (NSW) (specifically section 5(1) and Schedule 2) and the Commonwealth Act; and
- (b) any conditions or practices similar to those prohibited under the legislation referred to in paragraph (a) of this definition.

14.2 Operator warranties

The Operator represents, warrants and undertakes:

- (a) that no form of Modern Slavery is used in the Operator's business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
- (b) to comply with all applicable employment and work health and safety laws;
- (c) to comply with all applicable statutory requirements relating to Modern Slavery, including but not limited to any imposed by the Commonwealth Act;
- (d) to comply with all applicable Modern Slavery reporting requirements, including but not limited to any imposed by the Commonwealth Act;
- (e) to include, in each of its contracts with its subcontractors and/or suppliers, anti-slavery provisions that are at least as onerous as those set out in this clause 14; and
- (f) to notify to the Principal promptly upon becoming aware of any incident, complaint or allegation that the Operator, or any entity in its supply chain, has engaged in Modern Slavery.

14.3 Operator policies and procedures

Throughout the Term, the Operator must have and implement its own policies and procedures that are designed to ensure compliance with the warranties contained in clause 14.2.

14.4 Prohibition

The Operator must not engage in Modern Slavery.

14.5 Reporting Obligations

- (a) At the request of the Principal, the Operator must:
 - (i) confirm in writing that it has complied with its undertakings under this clause 14 and must provide such evidence of such compliance as is reasonably requested by the Principal; and
 - (ii) provide such information as the Principal reasonably requires in order for the Principal to comply with any statutory reporting obligations relating to matters the subject of the warranties contained in clause 14.2.
- (b) Upon becoming aware of any actual, reasonably suspected or anticipated breach of this clause 14, the Operator must immediately provide written notice of the breach, giving full details of such breach, to the Principal.

15. Signage and branding

- (a) Where requested by the Principal, the Operator must:
 - (i) display at each Operator Refund Point all signs and logos; and
 - (ii) appropriately use and display any other branding or marketing information or materials,

required by the Principal in relation to the Scheme and in accordance with any relevant Principal Policy.
- (b) The Operator must not deface or obscure, and must use all reasonable endeavours to ensure no other person defaces, obscures or steals, any such signs, information or materials.
- (c) Without limiting clause 15(b), the Operator must ensure that, at each Operator Refund Point, any Scheme logo required to be displayed pursuant to clause 15(a) is clearly visible and sufficiently prominent such that, in the Principal's reasonable opinion, Customers and potential Customers can quickly, easily and clearly identify the site by the Scheme logo, and not be confused by other logos or branding

16. Intellectual Property and Trade Marks

16.1 Trade Marks licence

- (a) The Principal will use its best endeavours to procure the grant to the Operator of a non- exclusive, royalty free, non-transferable, non-sub-licensable licence to use any Trade Marks during the Term in Australia for the limited purpose of

applying those trademarks to the carrying out of the Services, in accordance with this Agreement.

- (b) Except for the specific rights granted to the Operator under this clause 16.1, all rights in all Trade Marks are retained by the entity that registered that Trade Mark.

16.2 Use of Trade Marks

- (a) The Operator acknowledges and agrees that:
 - (i) it has no rights in or to the Trade Marks (other than the rights granted by this Agreement);
 - (ii) its use of the Trade Marks is for the benefit of the Principal;
 - (iii) the protocols and procedures referred to in clause 22.3(a) may include requirements relating to the use of Trade Marks;
 - (iv) the powers (if any) conferred by section 26 of the *Trade Marks Act 1995* (Cth) are expressly excluded from this Agreement, other than to the extent provided for in this Agreement.
- (b) The Principal may give notice to the Operator that:
 - (i) the Principal considers that the Operator's use of the Trade Marks is in some way prejudicial to the interests of the Principal; or
 - (ii) the Operator's use of the Trade Marks does not comply with this Agreement.
- (c) Upon receipt of any notice referred to in clause 16.2(b), the Operator must promptly cease such use (unless otherwise agreed between the parties).
- (d) The Operator must not, without the prior written consent of the Principal:
 - (i) use any of the Trade Marks together with any other trade marks, logos, names, trading styles or get up; and
 - (ii) use or register or attempt to use or register anywhere in the world any trade mark or business, trading, company or domain name, which includes or incorporates, or which is substantially identical or deceptively similar to, any of the Trade Marks.

16.3 Licence to IT Platform

- (a) The Principal grants to the Operator a non-transferable, non-exclusive, royalty-free licence for the Term to use the IT Platform for the sole purpose of performing its obligations under this Agreement.
- (b) The Operator must not sub-license any of the rights granted under clause 16.3(a) without the Principal's prior written consent.

- (c) To the extent permitted by law (including the Australian Consumer Law if applicable), the Principal makes no representations, warranties or guarantees about the IT Platform (including about any information that is input into the IT Platform), including that it will be accurate, current, reliable, timely, available, secure, complete, up-to-date or of a certain quality, or that it will operate in combination with any other hardware, software, system, or data, or that it is free from defects, bugs, viruses, errors or other harmful components, or that any stored data will not be lost or corrupted. The IT Platform and all other products and services made available to the Operator in connection with this Agreement are provided "as is" and to the extent permitted by law (including the Australian Consumer Law if applicable), the Principal disclaims any and all warranties and representations of any kind, including any warranty or non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express, implied or statutory.
- (d) To the extent not excluded under clause 16.3(c) the Principal's liability in respect of the IT Platform under this Agreement is capped at \$1,000.
- (e) The Operator acknowledges that, through its use of the IT Platform, it may have access to Scheme Data. The Operator acknowledges that Scheme Data is the sole and valuable property of the Principal and that any unauthorised disclosure, use or loss of it could give rise to damage to the Principal. The Operator assigns to the Principal all Intellectual Property that the Operator would otherwise have in Scheme Data. The Operator must not assert any lien or other right against or to Scheme Data or otherwise deal with Scheme Data.

16.4 Modifications

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

16.5 Other Intellectual Property

Subject to clauses 16.1, 16.2 and 16.3:

- (a) ownership of Intellectual Property continues to vest in the party that created that Intellectual Property; and
- (b) each party grants to the other a non-exclusive, royalty free, non-transferable licence to use all Intellectual Property owned by or licensed to that party, solely for the purposes of performing this Agreement.

Other than as provided for in clauses 16.1, 16.2, 16.3 and this clause 16.5, the Operator must not, at any time, use in the course of trade or business any Intellectual Property owned by or licensed to the Principal or its Related Body Corporate (as that term is defined in the Corporations Act) without the prior written consent of the Principal.

17. Insurance

- (a) Unless otherwise agreed by the Principal in writing, the Operator must:
 - (i) effect and maintain with a financially secure and reputable insurer, for the duration of the Term, sufficient levels of the customary types of insurances relevant to a business of such nature, including:
 - (A) public and products liability insurance for an amount not less than \$20 million per occurrence or series of occurrences; and
 - (B) for the amount required by law:
 - (1) workers compensation insurance to insure against liability for death of or injury to persons employed by the Operator, including liability by statute and at common law; and
 - (2) comprehensive motor vehicle insurance including compulsory third party insurance in respect of all motor vehicles used by the Operator in connection with the performance of the Services.
 - (ii) upon request by the Principal, provide the Principal with certificates of currency from its insurers certifying that it has insurance sufficient to comply with this clause 17; and
 - (iii) ensure that the Principal is noted as an interested party under the policies required by this clause 17.
- (b) Despite any other provision of this Agreement, the Principal may refuse to make any payment otherwise due under this Agreement until the Operator has fully complied with its obligations under clause 17(a).

18. Intervening Event

18.1 Notice by Operator

If the Operator is of the opinion that an Intervening Event has occurred or is likely to occur, it must promptly give the Principal's Representative a written notice, which must include full particulars of all relevant matters including:

- (a) details of the Intervening Event and details of the basis on which the Operator has formed the opinion that the relevant event constitutes an Intervening Event;
- (b) details of the obligations affected (including any effect on Performance Measures under the Performance Regime);
- (c) details of the action that the Operator has taken and proposes to take to avoid or minimise the consequences of the Intervening Event;
- (d) to the extent possible, an estimate of the time during which the Operator will be unable to carry out the affected obligations due to the Intervening Event; and
- (e) details of any insurance proceeds on which the Operator may be able to rely in relation to the Intervening Event,

(Intervening Event Notice).

18.2 Actions to be taken

The Operator must:

- (a) promptly after the occurrence of an Intervening Event, take and continue to take proper and reasonable steps to cure, avoid or minimise the consequence of the Intervening Event; and
- (b) after giving an Intervening Event Notice, continue to promptly provide the Principal's Representative with all relevant information relating to the Intervening Event.

18.3 Conditions precedent to relief

It is a condition precedent to any relief or entitlement in respect of an Intervening Event being granted under this Agreement, that:

- (a) the Operator has complied with its obligations under clauses 18.1 and 18.2; and
- (b) neither the Operator nor its Associates has, by act or omission, directly or indirectly caused the Intervening Event.

18.4 Notice by Principal

If the Principal is of the opinion that a Force Majeure Event or a Change in Law has occurred or is likely to occur it must promptly give the Operator's Representative a written notice of the occurrence or likely occurrence of that Intervening Event.

18.5 Suspension of obligations

- (a) If the conditions precedent in clause 18.3 have been satisfied, then the:
- (i) Operator's obligation to perform the Services (or part of the Services) affected by the Intervening Event will be suspended (and, if applicable, the Principal will not be entitled to impose a penalty for any Performance Failure under the Performance Regime);
 - (ii) the Principal will have no Claim against the Operator; and
 - (iii) the Principal cannot give notice under clause 20.1,
- but only for the duration and to the extent that:
- (iv) the Intervening Event continues to prevent the Operator from performing the Services (or part of the Services); and
 - (v) the Operator has taken and is continuing to take all proper and reasonable steps:
 - (A) to minimise the duration of the Intervening Event; and
 - (B) to avoid or minimise the consequences of the Intervening Event.
- (b) If the Principal has given a notice to the Operator under clause 18.4:
- (i) Operator's obligation to perform the Services (or part of the Services) affected by the relevant Force Majeure Event or Change in Law will be suspended (and, if applicable, the Principal will not be entitled to impose a penalty for any Performance Failure under the Performance Regime);
 - (ii) the Principal will have no Claim against the Operator;
 - (iii) the Principal cannot give notice under clause 20.1; and
 - (iv) the Principal's obligations under this Agreement will be suspended, other than obligations to pay money that is due and payable,
- but only for the duration and to the extent that:
- (v) the Force Majeure Event or Change in Law continues to prevent the Operator from performing the Services (or part of the Services);

- (vi) the Operator has taken and is continuing to take all proper and reasonable steps:
 - (A) to minimise the duration of the Force Majeure Event or Change in Law; and
 - (B) to avoid or minimise the consequences of the Force Majeure Event or Change in Law; and
 - (C) the Force Majeure Event or Change in Law continues to prevent the Principal from complying with its obligations under this Agreement.

19. Suspension

19.1 Suspension by the Principal

The Principal may direct the Operator to suspend the whole or any part of the provision of the Services for such time as the Principal thinks fit:

- (a) to comply with any Approval, Statutory Requirement, or direction of the State (including any suspension of the Principal's appointment under the Act);
- (b) to prevent or abate any emergency situation;
- (c) for the protection or safety of any person, property or the environment;
- (d) to eliminate, reduce or mitigate any hazard or risk;
- (e) to exercise any of its rights or comply with any of its obligations under this Agreement; or
- (f) if the Operator is, or the Principal reasonably believes the Operator may be, in breach under this Agreement.

The Operator must recommence provision of the Services on reasonable notice by the Principal.

19.2 Suspension by the Operator

- (a) Subject to clause 19.1 and clause 19.2(b), the Operator must not suspend performance of any of its obligations under this Agreement without the Principal's prior written approval. The Principal may approve or disapprove the suspension in its discretion and may impose conditions to any approval.
- (b) The Operator may suspend the whole or any part of the provision of the Services:
 - (i) to prevent or abate any emergency situation; or

- (ii) for the protection or safety of any person, property or the environment where there is an imminent risk or danger to that person, property or the environment.
- (c) The Operator must:
 - (i) as soon as practicable, notify the Principal of any suspension under clause 19.2(b) and the circumstances giving rise to the suspension;
 - (ii) take all reasonable steps within the Operator's control to address the circumstances giving rise to the suspension; and
 - (iii) recommence provision of the Services upon the emergency or imminent risk or danger that gave rise to the suspension ceasing to exist.

19.3 Compensation for suspension

- (a) Subject to clause 19.3(b), the Operator will be entitled to reasonable compensation from the Principal (as determined by the Principal acting reasonably) as a result of a suspension effected under this clause 19.
- (b) The Operator's right to compensation under this clause 19.3 is subject to the following limitations:
 - (i) the Operator will not be entitled to compensation where the suspension has been effected under clause 19.1(b), clause 19.1(c), clause 19.1(d) or clause 19.2 (to the extent any such situation, hazard or risk is caused or contributed to by the Operator) or clause 19.1(f);
 - (ii) the compensation will only be payable if the Operator has taken all reasonable steps to mitigate its losses resulting from the suspension; and
 - (iii) the amount of compensation payable will be reduced proportionally to the extent the Operator has caused or contributed to the event resulting in the suspension.

20. Default and Termination

20.1 Default

- (a) A material breach by the Operator (**Default**) includes each of the following:
 - (i) any Operator Refund Point or any part of the Services fails to comply with any requirement of this Agreement, including the Services Specification;

- (ii) the Operator fails to commence Operational Services at an Operator Refund Point by the relevant Operations Commencement Date for that Operator Refund Point;
 - (iii) the Operator fails to comply with any of its obligations or performance of the Services in accordance with this Agreement, or any applicable Statutory Requirement or Approval;
 - (iv) any representation or warranty given by the Operator is untrue or misleading (whether by omission or otherwise) when made, given or repeated;
 - (v) it performs its obligations under this Agreement, or otherwise acts, in a manner that:
 - (A) is unsafe;
 - (B) adversely affects the brand, goodwill or reputation of the Principal; or
 - (C) places the Principal in breach of any Statutory Requirement;
 - (vi) a Performance Failure Default has occurred; and
 - (vii) a breach of clause 10.
- (b) If the Operator commits a Default which is capable of remedy, the Principal must provide written notice to the Operator setting out in detail the nature of the alleged Default (**Default Notice**).

20.2 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.

20.3 Immediate termination

This Agreement will terminate immediately:

- (a) on the effective date of a repeal of the Scheme; or
- (b) subject to clause 26.3, if the Principal's appointment as the Coordinator for the Scheme under the Act is terminated or rescinded or comes to an end for any reason.

20.4 Termination by either party

Subject to any provision of the Corporations Act or any related subordinate legislation that may prevent or restrict the exercise of a right of termination or other right under this

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

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

20.5 Termination by Principal

If:

- (a) the Principal:
 - (i) is of the reasonable opinion that the Operator is not (or is no longer) a fit and proper person for the purposes of providing the Services under this Agreement; and
 - (ii) has given the Operator not less than 20 Business Days' notice of its intention to terminate this agreement under this clause 20.5(a), which notice must set out the basis upon which the Principal has formed the opinion referred to in clause 20.5(a)(i) and invite the Operator to make a submission as to why this Agreement should not be terminated.

In determining whether the Operator is not (or is no longer) a fit and proper person, the Principal may have regard to any public or private reports of misconduct, fraud, alleged criminal conduct or poor governance of or by the Operator or its Associates (whether or not in relation to the Scheme) and any conduct of the Operator or its Associates which may bring the Principal or the Scheme into disrepute or impact on, or be inconsistent with, the achievement of the Scheme Objectives.

- (b) in exercise of rights under the Act, the Regulations or the conditions of appointment of the Principal as Coordinator under the Act, the State directs that this Agreement be terminated;
- (c) the Operator commits a Default (in respect of which the Principal has provided a Default Notice) and the Operator has not remedied the Default to the Principal's satisfaction (acting reasonably) within 5 Business Days or such longer period as is specified in the Default Notice;
- (d) the Operator commits a Default that is not capable of being remedied (and the Operator is unable to overcome or otherwise mitigate the effect of the Default to the Principal's satisfaction);
- (e) a Default Termination Event occurs;
- (f) the Operator commits a criminal or fraudulent act or engages in Wilful Misconduct;

- (g) there is a change to a Statutory Requirement or an Approval that makes or will make either party's performance of this Agreement non-compliant or contrary to law or policy;
- (h) the Operator is the subject of an investigation or decision by a Regulatory Authority that is or may be adverse to the Operator's capacity to perform the Services or harmful to the reputation of the Principal; or
- (i) a Force Majeure Event prevents the Operator from performing the Services for a continuous period exceeding three months,

(each, an **Event of Default**) the Principal may, in its absolute discretion, terminate this Agreement (or any part of it) immediately by notice to the Operator.

20.6 Operator Refund Point Specific Default

If:

- (a) an Event of Default arises under clauses 20.5(c), 20.5(d), 20.5(e) or 20.5(i); and
- (b) the Operator demonstrates to the Principal's satisfaction, acting reasonably, that the Event of Default only affected 33% or fewer of the total number of Operator Refund Points then the subject of this Agreement,

the Principal:

- (c) may not terminate this Agreement in its entirety on the basis of such that Event of Default; and
- (d) may elect to direct a Variation to omit one or more of the affected Operator Refund Point from the Services.

20.7 Termination by Operator

- (a) The Operator may terminate this Agreement upon 20 Business Days' written notice to the Principal if the Principal fails:
 - (i) to make a payment to the Operator in accordance with this Agreement within 20 Business Days of such payment being due, subject to clause 20.7(b); or
 - (ii) to provide the Operator with access to the IT Platform software in accordance with clause 7.10(b) and the Principal has not remedied such breach within 5 Business Days of being given written notice by the Operator to do so.
- (b) The Operator must not terminate this Agreement where the Principal's failure to make a payment is the subject of an unresolved Dispute under clause 23.

20.8 Termination upon Notice of Dissatisfaction

Either party may, by no less than 6 months' written notice to the other party (or such other period as agreed between the parties in writing) terminate this Agreement if:

- (a) clause 5.2(f) applies; or
- (b) the Operator has provided a Dissatisfaction Notice under clause 6.1(g).

20.9 No compensation

Except where the Operator has terminated this Agreement under clause 20.4 or clause 20.7(a), the Operator acknowledges that its entitlement to any compensation from the Principal where this Agreement is terminated in accordance with this clause 20 is as expressly provided for in this clause 20.

20.10 Transition out by Operator

- (a) Following the issue of a notice by the Operator under clause 20.7(a) or by either party under clause 20.8, the Operator must, during the relevant notice period, continue to perform the Services in accordance with the terms of this Agreement, provided that where clause 20.8 applies, the Operator shall not be required to comply with any amendments to the Agreement which are the subject of the Dissatisfaction Notice.
- (b) Where:
 - (i) an Expiry Notice has been issued by the Principal or an Extension Notice has been rejected by the Operator;
 - (ii) a notice under clause 20.5 has been given by the Principal;
 - (iii) a notice under clause 20.6 has been given by the Operator; or
 - (iv) a notice under clause 20.8 has been given by either party,

the Operator must comply with any direction issued by the Principal (acting reasonably) in relation to transitioning the Services provided under this Agreement to another Refund Point Operator.
- (c) The Operator will not be entitled to any additional payment with respect to its obligations under clause 20.10(b).

20.11 Rights not affected

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

21. Liability

21.1 General

- (a) Subject to clause 21.1(b), to the maximum extent permitted by law, the Operator's aggregate liability in respect of any act or omission under this Agreement for each 12 month period during the Operations Period is limited to 100% of the aggregate Refund Amount and Fee paid to the Operator under this Agreement in respect of that period.
- (b) Clause 21.1(a) does not limit or affect the Operator's liability to the Principal:
 - (i) with respect to the Operator's obligations under clauses 16, 21.3 or 22;
 - (ii) which cannot be limited at law;
 - (iii) which is due to the Operator's criminal act, fraud or Wilful Misconduct;
 - (iv) for any claim by any third party in respect of loss or damage to property or injury to, illness or death of, persons;
 - (v) to the extent that the Operator is paid or indemnified for the liability under an insurance policy required by this Agreement; and
 - (vi) to the extent that the Operator would have been entitled to be indemnified for that liability by an insurer under an insurance policy required by this Agreement, but for a failure by the Operator to effect and maintain the insurance policy as required by this Agreement,

and such liability will not be included in any calculation of the Operator's total aggregate liability under clause 21.1(a).
- (c) Each party excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void.

21.2 Consequential loss

- (a) Subject to clauses 21.2(b) and 21.2(c), and to the maximum extent permitted by law, each party excludes all liability to the other party for loss of goodwill, loss of customers, loss of capital, downtime costs, indirect loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any third party claims for compensation, damage, cost or expense, incurred by or awarded against the other party under or in any way connected with this Agreement or in respect of the provision of any of the Services described in this Agreement.
- (b) The exclusion in clause 21.2(a) does not in any way limit the Operator's liability under clause 21.3.

- (c) Nothing in clause 21.2(a) excludes or limits a party's liability:
 - (i) for a criminal or fraudulent act or Wilful Misconduct; or
 - (ii) in respect of liquidated damages payable under this Agreement (if any) or under any provision in this Agreement where a debt or other payment is due.

21.3 Indemnity by Operator

- (a) Subject to clause 21.3(b), the Operator indemnifies the Principal against any Claim or Loss sustained by the Principal arising out of any act or omission of the Operator in breach of this Agreement, that causes the Principal to be in breach of, or gives rise to any Loss sustained by the Principal in connection with any Statutory Requirement, including with respect to any of its obligations as the Coordinator.
- (b) The indemnity in clause 21.3(a) will be reduced proportionally to the extent to which the Claim or Loss was caused or contributed to by an act or omission of the Principal.

22. Confidentiality

22.1 Confidentiality and Confidential Material

Each party acknowledges and agrees that, subject to clause 22.2:

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

22.2 Exceptions to confidentiality

- (a) It will not be a breach of clause 22.1:
 - (i) if the Principal, in response to a request from the State, discloses a copy of this Agreement or any relevant information relating to this Agreement, to the State or representatives of the State acting in relation to such request, as contemplated by clause 11.2(a);

- (ii) if a party (**Disclosing Party**) discloses the other party's Confidential Information or this Agreement:
 - (A) to an Associate of the Disclosing Party who has previously agreed to keep, and to ensure that its employees keep, that Confidential Information or the contents of this Agreement (as applicable) confidential;
 - (B) in order to comply with its obligations under the Act, the Regulations, or any other applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body or the applicable rules of any stock exchange; or
 - (C) to the Auditor General, or an authorised representative of the Auditor General, as part of the Records of the Disclosing Party, as contemplated by clause 11.3.

- (b) Clause 22.1 does not apply:
 - (i) to a party's Confidential Material or a provision of this Agreement that is in the public domain through no act, neglect or default of the other party (**Other Party**) or its Associates (the onus of proving which will be on the Other Party);
 - (ii) to Confidential Material of the other party or a provision of this Agreement that the other party has notified the Other Party in writing that the other party no longer requires the Other Party to maintain as confidential.

- (c) Nothing in this clause 22.2 will excuse any prior breach of clause 22.1 and the other party's rights and remedies in respect of any prior breach are expressly preserved.

- (d) The Operator acknowledges that the State may have certain rights and obligations under freedom of information legislation (including the *Freedom of Information Act 1992 (WA)*), and that these rights and obligations may impact on the parties' rights and obligations under this Agreement.

22.3 Publicity and branding

Without limiting any other obligation contained in this clause 22, the Operator must, in addition to its obligations under clause 15:

- (a) at all times comply with any protocols or procedures notified by the Principal relating to confidentiality, branding (including the use of Trade Marks), public releases or announcements, advertising and/or any comment to the media in connection with or relating to the Scheme or the Principal, including the Media Policy; and
- (b) as soon as practicable after it becomes aware of any non-compliance with the obligations contained in this clause 22 (either by it or another person), notify the

Principal of the non-compliance, and take such reasonable action as is directed by the Principal in respect of any such non-compliance.

23. Disputes

23.1 Notice of Dispute

- (a) Except where the Agreement has been terminated, or the dispute or difference concerns whether the Agreement has been validly terminated, if a dispute or difference arises between the Principal and the Operator in respect of any fact, matter or thing arising out of, or in any way in connection with, this Agreement (**Dispute**) the parties must follow the procedure in this clause 23.
- (b) Where a Dispute arises, the party raising the Dispute must give a notice in writing to the other party specifying:
 - (i) the Dispute;
 - (ii) whether the party considers the Dispute is a Common Dispute;
 - (iii) particulars of the party's reasons for being dissatisfied; and
 - (iv) the position which the party believes is correct,

(Notice of Dispute)
- (c) If a Dispute the subject of a Notice of Dispute involves a Common Dispute, the Principal may, by giving written notice to the Operator, require the Dispute to be resolved in accordance with the Common Dispute Procedure (**Notice of Common Dispute**).
- (d) If a Notice of Common Dispute is issued:
 - (i) the Common Dispute must be resolved in accordance with the Common Dispute Procedure; and
 - (ii) the dispute resolution process under this clause 23 will be permanently stayed.
- (e) For the avoidance of doubt until such time as a Notice of Common Dispute has been issued the dispute resolution process under this clause 23 will continue to apply in respect of the Dispute.

23.2 Executive Negotiation

- (a) The Executive Negotiators must within:
 - (i) 10 Business Days of service of a Notice of Dispute; or

- (ii) such longer period of time as the Executive Negotiators may agree in writing,

meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.

- (b) The Executive Negotiators must have authority to agree to a resolution of the Dispute.
- (c) The meeting will be held in any one of the following forums, as reasonably determined by the Principal:
 - (i) by phone (including by teleconference);
 - (ii) by videoconference; or
 - (iii) in person (at a place reasonably nominated by the Principal).
- (d) The joint decision (if any) of the Executive Negotiators will be reduced to writing and will be contractually binding on the parties.

23.3 Proceedings

If a Dispute remains unresolved (in whole or in part) within 20 Business Days after service of the Notice of Dispute, or such longer period of time as the Executive Negotiators may agree in writing, then either party may by giving notice to the other party proceed to legal proceedings in respect of those parts of the Dispute which remain unresolved.

23.4 Continuation of obligations

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

23.5 Urgent interlocutory relief

Nothing in this clause 23 prevents a party from seeking urgent injunctive or interlocutory relief.

24. GST

24.1 Preliminary

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

24.2 **GST exclusive**

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

24.3 **Liability to pay GST**

If a party makes a taxable supply under this Agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

24.4 **Tax invoice**

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

24.5 **Adjustment event**

If an adjustment event arises in relation to a taxable supply made by a Supplier under this Agreement, the amount paid or payable by the Recipient pursuant to clause 24.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

24.6 **Reimbursement of expenses**

If a third party makes a taxable supply and this Agreement requires a party to this Agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

24.7 **Non merger**

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

25. **Notices**

25.1 **Requirements**

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

- (a) in writing;

- (b) in English or accompanied by a certified translation into English;
- (c) addressed to a party in accordance with its details set out in Item 9 of the Reference Schedule or as otherwise specified by that party by Notice (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

25.2 How a Notice must be given

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

- (a) delivered personally;
- (b) sent by regular post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;
- (d) sent by airmail if sent from a place outside Australia; or
- (e) sent by email.

25.3 When Notices considered given and received

Subject to clause 25.4, a Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

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

25.4 Time of delivery and receipt

If pursuant to clause 25.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

25.5 General

A party may change its contact details as set out in the Reference Schedule by giving a Notice to each other party.

26. General

26.1 Assignment

- (a) The Principal may assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement without the consent of the Operator.
- (b) The Operator cannot assign, novate, charge, create a security interest over, subcontract, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the Principal. The consent of the Principal may be withheld in its absolute discretion without giving any reason for doing so.
- (c) Where the Principal provides its prior written consent to a proposal by the Operator to subcontract any of its rights or obligations under this Agreement in accordance with clause 26.1(b), the Operator must, within 10 Business Days of receiving that consent and in any event within 5 Business Days after the subcontract starts notify the Principal of:
 - (i) the name of the person to whom the operation is subcontracted;
 - (ii) when the subcontracting arrangement starts and ends; and
 - (iii) a brief summary of the terms of the subcontracting arrangement.
- (d) The Operator's liability and obligations under this Agreement are not lessened or otherwise affected by subcontracting the performance of any of the Operator's obligations under this Agreement and the Operator is liable to the Principal for the acts and omissions of any subcontractor as if they were acts and omissions of the Operator.

26.2 Change of Control

- (a) For the purposes of this clause 26.2, a Change of Control occurs if the Operator comes under the control of a third party (**New Controller**) who did not Control the Operator at the commencement of this Agreement and Control has the meaning given to it in section 50AA of the Corporations Act.

- (b) The Operator must not allow a Change of Control which adversely affects the Operator's ability to deliver the Services to occur without obtaining the Principal's prior written consent (which must not be unreasonably withheld).
- (c) Without limiting clause 26.2(b), the Principal must not withhold its consent to a Change in Control if (in the Principal's reasonable opinion):
 - (i) the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the Operator to fulfil its obligations under the Agreement; and
 - (ii) the New Controller:
 - (A) is a fit and proper person;
 - (B) has a sufficient level of relevant industry experience; and
 - (C) is of good financial standing.

26.3 Novation to new entity

Where:

- (a) another entity is to be appointed as the Coordinator under the Act (**Successor Scheme Coordinator**); and
- (b) the State requires that this agreement be novated to the Successor Scheme Coordinator or the State (**Incoming Party**),

the parties must enter into a novation agreement with the Incoming Party such that, with effect on the date that the Principal ceases to be the Coordinator, this Agreement is terminated and the Incoming Party and the Operator become parties to a new contract on the same terms as this Agreement for the balance of the Term.

26.4 Duty

The Operator:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Agreement, the performance of this Agreement and each transaction effected by or made under this Agreement;
- (b) indemnify the Principal against any Loss suffered or incurred by it arising out of, or in connection with that Operator's failure to comply with clause 26.4(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid by the Operator under this clause.

26.5 Inconsistent provisions

- (a) The parties acknowledge the effect of section 47ZZA of the Act on the validity of the provisions of this Agreement.
- (b) To the extent a provision of this Agreement is found to be prohibited or unenforceable (whether due to the operation of section 47ZZA of the Act or otherwise), the parties agree:
 - (i) that the remaining provisions of this Agreement are not invalidated; and
 - (ii) to engage in good faith negotiations to address and overcome the consequences of the provision being found to be prohibited or unenforceable (including by making any necessary amendments to this Agreement).

26.6 No Agency or Partnership

Except for clause 9.7, nothing in this Agreement is to be construed as constituting an agency, partnership, joint venture, or any other form of association between the parties in which one party may be liable for the acts or omissions of any other party. No party has the authority to incur any obligation or make any representation or warranty on behalf of, or to pledge the credit of, any other party.

26.7 Costs and expenses

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

26.8 Waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (c) A waiver given by a party in accordance with clause 26.8(a):
 - (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
 - (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under this Agreement nor is it to be construed as a waiver of any other obligation or breach.

26.9 Severance

If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.

26.10 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed under the laws in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

26.11 Further assurances

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

26.12 No reliance

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

26.13 Entire agreement

This Agreement states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

26.14 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- (b) A party that has executed a counterpart of this Agreement may exchange that counterpart with another party by emailing it to the other party or the other party's legal representative and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party or the other party's legal representative. However, the validity of this Agreement is not affected if the party who has emailed the counterpart delays in delivering or does not deliver it by hand or by post.

26.15 Exercise of rights

- (a) Unless expressly required by the terms of this Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

26.16 Remedies cumulative

Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

26.17 Clauses that survive termination

- (a) Without limiting or impacting upon the continued operation of any clause which is expressed to, or as a matter of construction is intended to, survive the termination or expiry of this Agreement, clauses 20.9, 20.10, 21 and this clause 26.17 survive the termination or expiry of this Agreement for any reason.
- (b) Each indemnity contained in this Agreement is a continuing obligation, independent from the other obligations of the parties and survives the termination or expiry of this Agreement. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

26.18 Priority of Agreement components

If there is any inconsistency between various components of this Agreement, the order of precedence of those component parts is as follows:

Ranking	Document
1.	Special Conditions
2.	Schedule 11
3.	this Agreement, excluding annexures and schedules
4.	schedules to this Agreement, other than Schedule 11 and the Special Conditions
4.	annexures to this Agreement

with the higher ranked components prevailing over the lower ranked components, to the extent of any inconsistency between them.

Schedule 1 Reference Schedule

Item		
Item 1	Parent Guarantor(s) (clause 1.1)	[*]
Item 2	Principal's Representative (clause 1.1)	Tony Scaglione
Item 3	Operator's Representative (clause 1.1)	[*]
Item 4	Executive Negotiators (clause 1.1)	Principal: Tim Cusack, Chief Executive Officer, WA Return Recycle Renew Ltd Operator: [*]
Item 5	Initial Expiry Date (clause 1.1)	The date that is 5 years from the Scheme Commencement Date
Item 6	Years by which the Expiry Date can be extended (clause 2.3(a)(i))	2 years
Item 7	Date for provision of access to and materials re. IT Platform (clause 7.10(b)(iii))	[*]
Item 8	Date for provision of user training (clause 7.10(c)(ii))	[*]
Item 9	Notices (clause 25)	Principal Address: Unit 2, 1 Centro Avenue, Subiaco WA 6008 Email: tony.scaglione@warrri.com.au Attention: Head - Refund Point Operations Operator Address: [*] Email: [*] Attention: [*]
Item 10	Operator Refund Points (clause 1.1)	

Item		
Operator Refund Point 1		
	Location of Operator Refund Point (clause 1.1)	[Refund Point Address]
	Operating Region (clause 1.1)	[Refund Point Operating Region]
	Full Time Refund Point or Flexible Refund Point (Clause 1.1)	[Full Time Refund Point or Flexible Refund Point]
	Operator Refund Point Type (clause 1.1)	["Over the Counter Refund Point", "Drop-Off Refund Point", "Mobile Refund Point" or "RVM"]
	Aggregation Point (clause 1.1)	[Aggregation Point Address]
	Minimum Operating Hours (and collection frequency in the case of Drop-Off Refund Points and RVMs) (clause 1.1)	<p>[Specify the minimum times and days which the Refund Point will be open to the public.</p> <p>Full-time refund points are expected to reflect full time business operations and must provide a minimum of 35 hours per week including at least four weekend hours.</p> <p>Flexible refund points can be stationary facilities which must provide at least 16 ordinary business hours per fortnight, at least eight of which must be weekend hours.]</p>
	Mobilisation Completion Date (clauses 1.1 and 8.3)	The day immediately preceding the Scheme Commencement Date
Operator Refund Point <input checked="" type="checkbox"/> [Drafting note – Section to be duplicated as required]		
	Location of Operator Refund Point (clause 1.1)	[Refund Point Address]
	Operating Region (clause 1.1)	[Refund Point Operating Region]
	Full Time Refund Point or Flexible Refund Point (clause 1.1)	[Full Time Refund Point or Flexible Refund Point]

Item		
	Operator Refund Point Type (clause 1.1)	["Over the Counter Refund Point", "Drop-Off Refund Point", "Mobile Refund Point" or "RVM"]
	Aggregation Point (clause 1.1)	[Aggregation Point Address]
	Minimum Operating Hours (and collection frequency in the case of Drop-Off Refund Points and RVMs) (clause 1.1)	<p>[Specify the minimum times and days which the Refund Point will be open to the public.]</p> <p>Full time refund point are expected to reflect full time business operations and must provide a minimum of 35 hours per week including at least four weekend hours.</p> <p>Flexible refund points can be stationary facilities which must provide at least 16 ordinary business hours per fortnight, at least eight of which must be weekend hours.]</p>
	Mobilisation Completion Date (clauses 1.1 and 8.3)	The day immediately preceding the Scheme Commencement Date

Schedule 2 Services Specification

Unless otherwise specified in this Schedule 2, a reference to a section is to a section of this Schedule 2.

1. Introduction

1.1 Structure of the Services Specification

- (a) The Services Specification sets out the Operational Services delivery requirements of the Operator.
- (b) The applicability of the Services Specification is as follows:
 - (i) *Container Collection Services*: This section sets the minimum service requirements in relation to the collection of Containers that the Operator must deliver for each Operator Refund Point;
 - (ii) *Customer Services*: This section sets the minimum service requirements in relation to interactions with Customers that the Operator must deliver for each Operator Refund Point; and
 - (iii) *Environment, Health and Safety Services*: This section sets the minimum service requirements in relation to ensuring health and safety obligations and environmental practices are met in the delivery of all Services.
- (c) Each section sets out the:
 - (i) Key objectives;
 - (ii) Scope; and
 - (iii) minimum service requirements;in respect of the relevant Services.

1.2 Key objectives

- (a) The Operator must operate the Operator Refund Point in accordance with this Agreement and the Services Specification to support the successful delivery of the Scheme. The Operator must provide the Operational Services in a consistent manner that:
 - (i) supports and assists the Principal in delivering the Scheme Objectives as outlined in the Act;
 - (ii) increases the recovery and recycling of empty Containers;
 - (iii) reduces the number of empty Containers that are littered or disposed of to landfill; and

- (iv) provides opportunities for social enterprise, and benefits for community organisations.

2. CONTAINER COLLECTION SERVICES

2.1 Introduction

This section outlines the service specific requirements for the provision of Container Collection Services for each Operator Refund Point.

2.2 Key Objectives

The main objectives for the Operator of Container Collection Services are:

- (a) the accurate payment of Refund Amounts to Customers on the presentation of Containers;
- (b) the initial sortation of Containers to facilitate recycling;
- (c) the preparation and facilitation of the collection of Containers for further processing;
- (d) supporting the integrity and transparency of the Scheme;
- (e) accurately recording data;
- (f) minimising and preventing fraud; and
- (g) supporting the Principal's audit and verification activities.

2.3 Scope and Requirements

(a) General Requirements

- (i) In delivering the Container Collection Services, the Operator must:
 - (A) act in accordance with the directions of the Principal or nominated delegates;
 - (B) ensure that all activities are undertaken in a manner that maximises the redemption of Containers;
 - (C) undertake all reasonable measures to minimise and prevent fraud in respect of the Scheme; and
 - (D) allow the Principal, or any party appointed by the Principal, reasonable access and assistance to its operations, facilities and records to support Scheme audit and verification activities.

(b) Accessibility

- (i) The Operator must ensure that:

- (A) each Operator Refund Point operated is available to the general public;
 - (B) each Operator Refund Point is accessible to people with disabilities and complies with all relevant laws, standards and codes regarding disability access;
 - (C) the opening hours of the Operator Refund Point (and/or collection frequency in the case of Drop-Off Refund Points) are reasonable in light of the volume of Containers collected at the Operator Refund Point, and the Operator Refund Point is open and operational, with capacity to accept Containers, during the Minimum Operating Hours; and
 - (D) without limiting section 2.3(b)(i)(C), ensure that each Operator Refund Point that is a RVM is regularly emptied to maintain capacity to accept Containers and is otherwise kept in good working order.
- (c) IT Platform and Customer Scheme Accounts
- (i) The Operator must:
 - (A) utilise the IT Platform and POS System, and as directed by the Principal to deliver the Operational Services;
 - (B) use the Customer Scheme Account; and
 - (C) not:
 - (1) offer to any Customer; or
 - (2) require any Customer to utilise, in connection with the Scheme:
 - (3) any unique identifier assigned to a Customer other than the Customer Scheme Account; or
 - (4) any form of information technology system or software (including any downloaded application) other than the IT Platform.
 - (ii) The Operator must satisfy the following requirements in respect of any IT Equipment that utilises the IT Platform:
 - (A) The Operator must provide:
 - (1) all required IT Equipment (including all equipment as set out in Schedule 5);

- (2) consumables associated with the IT Equipment (e.g. printer cartridges and printer labels);
 - (3) internet access (where internet access is not reasonably reliable, the Operator will need to establish internet access for a period at least once every operating week in order to submit a Payment Claim. This requirement may be varied for Refund Points operating in extremely remote areas, at the reasonable discretion of the Principal); and
 - (4) reliable power.
- (B) The Operator must provide all maintenance and support to the IT Equipment.
 - (C) The Operator must ensure that all staff are appropriately trained in the use of the IT Equipment and the IT Platform.
 - (D) The Operator must have in place appropriate measures to support business continuity, including:
 - (1) an appropriate protocol to backup all data;
 - (2) the appropriate upgrade and maintenance of hardware;
 - (3) support and training of staff to ensure business continuity; and
 - (4) a disaster recovery plan setting out how the Operator will respond to IT Equipment and IT Platform failures, updated and tested annually, and share the plan and testing results with the Principal by the anniversary of the Scheme Commencement Date.
- (iii) To ensure the Operator Refund Point continues to operate in the event of a fault, the Operator must:
 - (A) maintain appropriate backup hardware in case of hardware malfunctions; and
 - (B) maintain a manual processing solution that captures all relevant data to be subsequently entered into the IT Platform once the fault is resolved (e.g. serial numbered receipt books).
 - (iv) The Operator must:
 - (A) implement practices, processes and systems to sufficiently identify and protect or mitigate against the following events occurring in relation to all software and data held on the IT Platform (including Scheme Data):

- (1) complete or partial loss;
 - (2) complete or partial corruption;
 - (3) malicious deletion;
 - (4) accidental deletion;
 - (5) unauthorised access, and
- (B) provide all reasonable access required by Principal auditors to Operator hardware, software or any other system, process, procedures and records.
- (d) Container Sorting, Counting and Preparation for Transport
- (i) The Operator must:
 - (A) maintain a count of all the Containers individually (and not by weight) collected by Material Type each day;
 - (B) sort and separate all Containers by Material Type;
 - (C) securely store all collected Containers under cover prior to collection by the Principal's nominated Logistics Services providers;
 - (D) store sorted Containers in the Collection Infrastructure provided by the Processing Services Provider designated by the Principal to support the Operator Refund Point prior to collection by the Principal's nominated Logistics Services providers;
 - (E) prepare the Shipping Units for collection including by maintaining a count of the Containers within each Shipping Unit and the preparation of logistics documentation (shipment manifest) via the IT Platform;
 - (F) facilitate the collection of the Shipping Units by the Logistics Services providers nominated by the Principal for transportation to a Processing Facility;
 - (G) to the extent possible, take all reasonable actions to ensure that Containers are recycled and are not disposed of at landfill; and
 - (H) ensure sufficient security around the Container count to ensure the integrity of the count (e.g. CCTV footage captured).
 - (ii) The Operator is responsible for ensuring that any counting methodology used is an exact, accurate, verifiable method of counting Containers individually (and not by weight) and is otherwise in accordance with a Verification Methodology approved by the Principal. Any change to such

counting methodology requires the express prior approval of the Principal.

- (e) Refund Amount Payment
 - (i) The Operator must use best endeavours to determine whether the Customer has a Customer Scheme Account.
 - (ii) If the Customer does have a Customer Scheme Account and the Customer wishes for the Refund Amount to be paid to them electronically through their Customer Scheme Account, the following process must be followed:
 - (A) upon receiving the Customer's instructions to issue payment via the Customer Scheme Account (or upon the Customer selecting this option at an RVM), the Operator must pay the Refund Amount to the Customer by issuing a Payment Direction through the IT Platform;
 - (B) where the Operator Refund Point is an RVM, the Payment Direction will be automatically issued when the Customer selects the option of receiving the Refund Amount electronically via their Customer Scheme Account;
 - (C) once the Payment Direction is issued to the Principal, a Processing Services Provider nominated by the Principal will issue an identical payment direction to the Principal under the Processing Services Agreement. The Principal will then directly process the payment of the Refund Amount through the IT Platform in accordance with the information collected through the IT Platform and the Customer's Customer Scheme Account; and
 - (D) the Customer will be offered a paper or electronic receipt from the Operator (or from the RVM) as written acknowledgement of payment of the Refund Amount.
 - (iii) If the Customer does not have a Customer Scheme Account, or does not wish to use their Customer Scheme Account to receive payment electronically, the Operator must pay any Refund Amounts payable to that Customer in Cash.
 - (iv) The Operator must comply with all Statutory Requirements and protocols put in place by the Principal around the acceptance of Containers and payment of Refund Amounts. This includes the collection of statutory declarations and appropriate identification for redemptions exceeding certain volumes as defined in regulation. The parties acknowledge and agree that the threshold for requiring the statutory declaration is calculated on the basis of the aggregate volume per customer per day and not on the aggregate volume per transaction.

- (v) The above applies to all Operator Refund Points except where an exemption has been provided by the Principal in writing.
- (f) Information to be provided to the Principal
 - (i) By no later than 5:00 pm (AWST) of the second Business Day of the next Operating Week, the Operator must utilise the IT Platform to submit a declaration of the actual number of Containers, by Material Type:
 - (A) collected at each Refund Point operated during each day of the Operating Week;
 - (B) picked up each day in each Shipping Unit by the Principal's nominated Logistics Services providers at each Refund Point operated during the Operating Week; and
 - (C) stored at each Refund Point operated at the end of each day.
 - (ii) Within 20 Business Days of the end of each financial year (30 June), the Operator is required to provide to the Principal a signed statutory declaration in the form prescribed by the Principal, which states:
 - (A) the total number of Containers, by Material Type, collected at each Refund Point operated over the last financial year;
 - (B) the total value of the Refund Amounts paid by the Operator to Customers over the last financial year;
 - (C) that the information contained in each declaration submitted under section 2.3(f)(i) above over the last financial year is true and correct; and
 - (D) that the Operator has complied with its obligations under clause 12 of this Agreement in the last financial year.
 - (iii) The Operator must notify the Principal immediately of any of the following, in such a way nominated by the Principal:
 - (A) identification of any unregistered or unapproved materials;
 - (B) environmental, health or safety incidents;
 - (C) any false or fraudulent claims made; and
 - (D) any unauthorised access to the IT Platform or Scheme Data.
 - (iv) The Operator is required to ensure that their information (for example contact details, address and bank account details) within the Principal's records is complete and up-to-date at all times.

3. CUSTOMER SERVICES

3.1 Introduction

- (a) This section outlines the service specific requirements for the provision of Customer Services for each Refund Point.
- (b) In addition to these service specific requirements, the Operator must comply with:
 - (i) all Container Collection Services, as outlined in section 2; and
 - (ii) all Environment, Health and Safety Services, as outlined in section 4.

3.2 Key Objectives

The Operator must provide Customer Services that:

- (a) creates a positive experience for the public in regards to the Scheme;
- (b) maintains high levels of customer service at all times;
- (c) encourages Scheme participation of social enterprises, not-for-profit organisations and community groups; and
- (d) supports and complies with the Principal's marketing and branding activities.

3.3 Scope and Requirements

(a) General Requirements

In delivering the Customer Services, the Operator must act in accordance with the reasonable directions of the Principal or its nominated delegates, including Principal Policy.

(b) Customer Service

- (i) The Operator is required to maximise the level of customer service provided at each Refund Point, including by:
 - (A) being available for Customer engagement and complaints handling, whether in person at the Refund Point or by providing visible contact details (as may be the case for Drop-Off Refund Points and RVMs);
 - (B) make available and publically display contact details for any enquiries;
 - (C) minimise wait times at each Refund Point;
 - (D) ensure that public areas within the Refund Point and its surrounding areas are clean and tidy;

- (E) ensure that any customer service notices required to be displayed by the Principal are appropriately displayed; and
 - (F) strive for continuous customer service improvement, including by seeking customer feedback through surveys or other such activities.
- (ii) Subject to item (iv) below, the Operator must ensure that the opening hours of the Refund Point meet the minimum requirements as set out in the Reference Schedule, are fixed, displayed and are made easily accessible to the public, such as via a website or displayed on public signage.
 - (iii) The Operator must notify the Principal of the operating hours of Refund Points (and collection frequency in the case of Drop-Off Refund Points) which it operates, and notify the Principal of any changes to its operating hours (and collection frequency in the case of Drop-Off Refund Points and RVMs) at least 14 days prior to the change.
 - (iv) In the case of mobile Refund Point or pop-up Refund Points, the Operator must make all reasonable efforts to make available and known to the public the hours of operation and location of each Refund Point. This may include using media such as websites, newspaper advertisements or public posters / materials.
- (c) Marketing and branding
- (i) The Operator is required to display marketing and branding materials as directed by the Principal at each Refund Point. This also includes:
 - (A) ensuring that any Scheme branding, including signage and materials provided by the Principal and/or the State is appropriately displayed;
 - (B) ensuring that any materials developed by the Operator are approved by the Principal and are consistent with the Scheme branding guidelines developed by the Principal (such as colour schemes, signage or otherwise); and
 - (C) ensuring appropriate and consistent signage at entry points to each Refund Point to allow Customers to easily recognise, identify and access the Refund Point.
- (d) Community engagement
- (i) The Operator is expected to provide reasonable community support and engagement, including:
 - (A) participating in local promotional and community awareness events as appropriate; and

- (B) undertaking educational activities to support the Scheme Objectives of increasing redemption rates and reducing litter.

4. ENVIRONMENT, HEALTH AND SAFETY SERVICES

4.1 Introduction

- (a) This section outlines the service specific requirements for the provision of Environment, Health and Safety Services for each Refund Point.
- (b) In addition to these service specific requirements, the Operator must comply with:
 - (i) all Container Collection Services, as outlined in section 2; and
 - (ii) all Customer Services, as outlined in section 3.

4.2 Key Objectives

The main objectives for the Environment, Health and Safety Services are:

- (a) ensuring all applicable approvals and permits to perform the Operational Services are maintained;
- (b) compliance with the all Statutory Requirements and State Policies, including all relevant Legislation and Regulation;
- (c) providing a clean, safe and healthy working environment for its employees;
- (d) ensuring the safety of all public persons accessing the Refund Point and considers the community in which it operates; and
- (e) ensuring its employees are trained and established practises are in place to respond to any emergency circumstances that may impact on Refund Point operations.

4.3 Scope and Requirements

- (a) Approvals and Permits
 - (i) The Operator must:
 - (A) maintain all applicable approvals required to perform the Operational Services;
 - (B) maintain all applicable permits required to perform the Operational Services;
 - (C) maintain all applicable licenses required to perform the Operational Services; and

- (D) provide the Principal with evidence that all applicable approvals and permits are held within 5 Business Days of the request of the Principal.
- (b) Workplace health and safety
- (i) The Operator must comply with the *Occupational Safety and Health Act 1984* (WA) at all times and in all of its operations.
 - (ii) The Operator will be required to develop policies that are compliant with the *Occupational Safety and Health Act 1984* (WA) and any other relevant Legislation and Regulations, and any reasonable requests from the Principal. These policies will need to be provided to the Principal at least annually, and must:
 - (A) ensure appropriate training and competency of staff;
 - (B) include the development and implementation of induction training plans for all staff; and
 - (C) ensure all staff are trained in personal protective equipment requirements and comply with personal protective equipment requirements at all times.
 - (iii) The Operator must ensure appropriate instructions, policies and procedures are in place to support workplace health and safety, including development, implementation and training in regards to:
 - (A) Standard operating procedures, including ensuring standard operating procedures are made available and accessible to all staff;
 - (B) onsite traffic management plans for each Refund Point; and
 - (C) public access plans and exclusion zones, including a child safety policy regarding the safety and adult supervision of children onsite.
 - (iv) In relation to equipment and hazardous materials, the Operator must:
 - (A) prepare, maintain and update an asset register containing details of all equipment;
 - (B) prepare, maintain and update a register of all hazardous materials and goods;
 - (C) ensure appropriate storage of equipment and hazardous goods; and
 - (D) develop protocols and standard operating procedures for equipment and hazardous goods (such as no-smoking policies near hazardous goods).

- (v) The Operator must undertake a proactive approach to the identification of risks and hazards and undertake all reasonable actions to eliminate or control these risks, including:
 - (A) undertaking regular site risk assessments for each Refund Point;
 - (B) undertaking regular equipment risk assessments for all equipment; and
 - (C) reporting of all incidents, near-misses and potential or actual hazards.

- (c) Heavy Vehicle legislation
 - (i) The Operator must comply with the HVL at all times and in all of its operations (to the extent the HVL is applicable to the Operator).
 - (ii) The Operator will be required to develop policies that are compliant with the Act and any other relevant legislation and regulations, and any requests from the Principal. These policies will need to be provided to the Principal at least annually, and must:
 - (A) ensure appropriate training and competency of staff; and
 - (B) include the development and implementation of induction training plans for all staff.
 - (iii) The Operator must ensure appropriate instructions, policies and procedures are in place where the Operator is loading or unloading vehicles. These policies and procedures must be compliant with the National Transport Commission's Load Restraint Guide referred to in the *Road Traffic (Vehicles) Regulations 2014 (WA)* (or the equivalent guideline or policy as directed by the Principal).

- (d) Emergency Management
 - (i) The Operator must develop an Emergency Management Plan and provide to the Principal on an annual basis. The Emergency Management Plan must detail:
 - (A) business continuity, such as in the event of:
 - (1) facilities issues such as utilities unavailability;
 - (2) extreme weather conditions;
 - (3) computer systems failure; and
 - (4) industrial action;
 - (B) local emergencies, such as in the event of:

- (1) fire or flood;
 - (2) chemical, biological, radioactive or nuclear release; and
 - (3) violence on a Refund Point site; and
 - (C) any other disasters.
 - (ii) The Operator must update the Emergency Management Plan at the end of each operating year and in the event of any major change to operations.
- (e) Environmental Management
- (i) The Operator must at all times act in accordance with good environmental management practices.
 - (ii) The Operator is required to develop and comply with an Environmental Management Plan, to be provided to the Principal on an annual basis. This must take into consideration:
 - (A) noise reduction, particularly in regards to handling glass or the use of any equipment;
 - (B) liquid pollution and the correct disposal of liquid waste; and
 - (C) traffic management, including:
 - (1) clearways on roads; and
 - (2) ensuring appropriate access onto site, especially for semi-trailer or heavy vehicles where required.
 - (iii) At all times, the Operator is required to act in accordance with all relevant legislation and regulation, including, where applicable:
 - (A) the Act;
 - (B) the Regulations;
 - (C) the *Environmental Protection Act 1986 (WA)*;
 - (D) the *Environmental Protection Regulations 1987 (WA)*;
 - (E) the *Planning and Development Act 2005* and any relevant scheme made under that Act,
 - (F) any local law made under the *Local Government Act 1995*; and
 - (G) any other State or Federal legislation or regulations relevant for the operations of a Refund Point.
- (f) Environmental, Health and Safety Reporting

- (i) The Operator is required to provide the following to the Principal on an annual basis:
 - (A) A Workplace Health and Safety Report, which must include, at a minimum:
 - (1) the Operator's performance against workplace health and safety requirements during the previous year;
 - (2) details of any workplace health and safety incidents in the previous year; and
 - (3) Workplace health and safety objectives and activities to be undertaken over the next year.
 - (B) An Environmental Management Report, which must include, at a minimum:
 - (1) the Operator's performance against environmental management requirements for the previous year;
 - (2) details of any environmental management incidents in the previous year; and
 - (3) environmental management objectives for the following year.
 - (ii) The Operator must provide the Emergency Management Plan at the end of each operating year and in the event of any major change to operations.
- (g) Environmental, Health and Safety audit and access
- (i) The Operator must cooperate with, and provide access to, the Principal (or an Associate of the Principal as notified to the Operator by the Principal from time to time) and the State so as to allow the Principal, its Associate and the State to (upon providing reasonable notice to the Operator) undertake any audit or review of the performance of the Environment, Health and Safety Services, including compliance with all relevant legislation and regulation.

Schedule 3 Mobilisation Service Outcomes

The Table below sets out the Mobilisation Service Outcomes for the Operator Refund Points.

Table 1 - Mobilisation Service Outcomes

Item	Outcome	Critical Mobilisation Service Outcome	Date
Town Planning			
1.	Evidence of Development Application submission or confirmation that installation does not breach any existing Development Approval conditions	No	[date]
2.	Evidence of Development Application approval provided to Principal	Yes	[date]
3.	Review and close out of implications of any Development Application conditions	No	[date]
Premises			
4.	Evidence of site ownership or executed lease agreement provided to Principal	Yes	[date]
Building works (where applicable)			
5.	Final Refund Point layout provided to Principal	No	[date]
6.	Scope and schedule of building works provided to Principal	Yes	[date]
Equipment (where applicable)			
7.	Confirmation and evidence of counting tables ordered	No	[date]
8.	Confirmation and evidence of counting tables arrival on site	No	[date]
9.	Confirmation and evidence of forklifts ordered	No	[date]
10.	Confirmation and evidence of forklifts arrival on site	No	[date]
11.	Confirmation and evidence of RVMs ordered	No	[date]
12.	Confirmation and evidence of RVMs arrival on site	No	[date]
13.	Confirmation and evidence of RVM commissioning complete	Yes (if applicable)	[date]
14.	Confirmation and evidence of Drop-Off bins ordered	No	[date]
15.	Confirmation and evidence of Drop-Off bins arrival on site	No	[date]
16.	Confirmation and evidence of Drop-Off bins installation complete	Yes (if applicable)	[date]

17.	Confirmation and evidence of automated counting machines ordered	No	[date]
18.	Confirmation and evidence of automated counting machines arrival on site	No	[date]
19.	Confirmation and evidence of automated counting machines commissioning complete	Yes (if applicable)	[date]
Signage and branding			
20.	Identification of Development Application requirements for Refund Point site signage (if applicable)	No	[date]
21.	Evidence of Development Application submission provided to Principal (if applicable)	No	[date]
22.	Evidence of Development Application approval provided to Principal (if applicable)	No	[date]
23.	Signage drawing submitted to Principal for review and approval prior to order	No	[date]
24.	Confirmation of order of signage and evidence provided	No	[date]
25.	Confirmation of signage arrival and install on site	Yes	[date]
Information technology			
26.	Confirmation of IT infrastructure availability to contracted site	No	[date]
27.	Confirmation of procurement of appropriate IT Equipment (refer to Schedule 5)	No	[date]
28.	Final confirmation of all required IT infrastructure installed on site	Yes	[date]
29.	Completion of IT Platform training by all staff	Yes	[date]
Other			
30.	Required insurances obtained and evidence provided to the Principal	No	[date]
31.	Policies compliant with the <i>Occupational Safety and Health Act 1984 (WA)</i> developed and provided to the Principal, including but not limited to the Emergency Management Plan and Environmental Management Plan	Yes	[date]
32.	Staff training completed	Yes	[date]
33.	Mobilisation Completion Date	Yes	As per the Reference Schedule

Schedule 4 IT Platform

1. IT Platform and POS System functionality

This Schedule sets out the functionality of the IT Platform and POS System for the information of the Operator, and how these systems will support each of the Operator Refund Point Types. As per clause 16.3 of the Agreement, the IT Platform and POS System are provided “as is”, and may not support all requirements of the Operator. The Operator should undertake their own due diligence to understand the scope and functionality of the IT Platform and POS System.

In the event of any inconsistency between the contents of this Schedule and the remainder of this Agreement, the remainder of the Agreement shall prevail to the extent of that inconsistency.

2. Over the Counter Refund Points

- (a) The POS System will act as the “transaction record system” to capture required data and facilitate the payment of Refund Amounts to Customers.
- (b) Payment can be made via cash or can be made electronically by the Principal against the Customer Scheme Account where supplied by Customer. Payment advice is emailed to the Customer when Customer Scheme Accounts are used. In case of disputes, correction to the accounts will be done as required by the Principal on advice from the Operator.
- (c) The POS System will facilitate the preparation of Payment Claims.
- (d) The POS System will prepare shipment manifests for Logistics Services providers (requires connection to the internet).
- (e) For reconciliation and audit purposes, an electronic end of the day report is generated in accordance with Material Type and payment method.

3. Drop-Off Refund Points

- (a) POS System to provide a means for Customers to return bags of Containers to a Refund Point for later processing.
- (b) Customer returns tracked against Customer Scheme Account.
- (c) Customer Scheme Account used to generate unique labels (to be printed at the Refund Point) to be attached to returned bags of Containers by the Customer.
- (d) When the bags of Containers are processed by the Operator, the Operator will scan the bag ID and record the count of Containers by Material Type.
- (e) Payment to be made electronically by the Principal against the Customer Scheme Account.

- (f) Payment advice is emailed to the Customer. In case of disputes, correction to the accounts will be done as required by the Principal on advice from the Operator.
- (g) The POS System will facilitate the preparation of Payment Claims.
- (h) For reconciliation and audit purposes an electronic end of the day report is generated in accordance with Material Type and payment method.

4. RVM Refund Points

- (a) Authorised RVM Operators to be able to access:
 - (i) product registry data;
 - (ii) Customer Scheme Account identification numbers; and
 - (iii) charity organisation Customer Scheme Account identifier and charity name.
- (b) Operator to upload transactions daily to the Principal via the IT Platform providing transaction level data per RVM.
- (c) Payment to be made electronically by the Principal against the Customer Scheme Account where supplied by Customer. Payment advice is emailed to the Customer. In case of disputes, correction to the accounts will be done as required by the Principal on advice from the Operator.
- (d) The POS System will facilitate the preparation of Payment Claims.

Schedule 5 Operator IT Equipment

The Operator will be able to utilise the IT Platform either via a PC or Apple iPad. A PC is recommended for Operators processing a large number of transactions (as it will allow for the more efficient entry and processing of transactions). Apple iPad will be sufficient (albeit less efficient) for small Refund Points, Mobile Refund Points and as a customer interface at Drop-Off locations.

The Operator must provide the following IT Equipment:

- (a) A PC (c) or Apple iPad (d) and the required supporting equipment to be used as a primary device to access the IT Platform;
- (b) The Operator must provide a back-up device (a PC or Apple iPad);
- (c) A PC consists of the following equipment:
 - (i) A PC (or laptop) running Windows 10 Professional;
 - (ii) Up to 250 GB of available hard drive space;
 - (iii) Keyboard and mouse;
 - (iv) Internet / network connectivity;
 - (v) LCD monitor with minimum display resolution of 1920 x 1080;
 - (vi) Backup power supply;
 - (vii) Up to date Anti-virus and Anti-malware software from Symantec, Norton, MicroTrend, McFee or BitDefender;
 - (viii) Up to date internet browser from one of Edge, Chrome, Firefox;
 - (ix) A4 printer compatible with the PC (to be used for reporting and generation of logistics manifests);
 - (x) Docket (customer receipt) printer compatible with the PC. A recommended list of printers will be made available by the Principal prior to the Scheme Commencement Date;
 - (xi) Label printer compatible with the PC (where PC is used as bag drop customer interface). A recommended list of printers will be made available by the Principal prior to the Scheme Commencement Date; and
 - (xii) Bar code scanner / user security device may be required. If required a recommended list of readily available devices will be provided by the Principal prior to the Scheme Commencement Date;
- (d) An Apple iPad consists of the following equipment:
 - (i) Apple iPad running the latest available version of iOS;
 - (ii) A4 printer compatible with the iPad (if device is intended to be used for full IT Platform functionality);
 - (iii) Docket (customer receipt) printer compatible with the iPad (if Operator intends to provide paper receipts to customers). A recommended list of printers will be made available by the Principal prior to the Scheme Commencement Date;

- (iv) Label printer connected to and compatible with the Apple iPad (where iPad is used for bag drop customer interface). A recommended list of printers will be made available by the Principal prior to the Scheme Commencement Date; and
- (e) Hardware to access internet (e.g. router / modem).

It is expected that this schedule will be updated as IT technology develops.

Schedule 6 Payments Schedule

Unless otherwise specified in this Schedule 6, a reference to a section is to a section of this Schedule 6.

1. **Payment calculation**

1.1 Fee calculation

- (a) The amount payable to the Operator for a given Operating Week is the Fee in respect of the Operational Services as calculated according to the following formula, plus the Refund Amount (calculated in accordance with section 1.2):

$$Fee = HFP - A + Adj + I_n$$

Where:

- HFP = the Handling Fee Payment calculated in accordance with section 1.3;
- A = Abatements calculated in accordance with section 1.4 (only applies if the Operator is a Major Operator);
- Adj = any adjustments to the Weekly Payment calculated in accordance with section 1.5;
- I_n = interest amount payable where the payment is n days overdue, determined in accordance with section 2.3.

1.2 Refund Amount Payment

- (a) The Refund Amount is the amount set by Regulation which is payable by the Operator to Customers in exchange for returning Containers.
- (b) The Principal will, on behalf of the relevant Processing Services Provider, pay the Operator an amount equal to the total value of Refund Amounts the Operator has paid to Customers by:
- (i) paying the Operator the Refund Amount which the Operator has paid directly to Customers in Cash; and
 - (ii) paying the Customer on behalf of the Operator and the Processing Services Provider in the circumstances set out in section 2.3(e) of the Services Specification,

(Refund Amount Payment).

- (c) The Refund Amount Payment payable directly to the Operator under section 1.2(b)(i) will be calculated based on the number of Containers collected during the Operating Week and for which the Operator has paid a Refund Amount to the Customer directly in Cash (excluding any Refund Amounts paid directly to

Customers by the Principal through a Payment Direction issued by the Operator to the Processing Services Provider and subsequently through a payment direction issued by the Processing Services Provider to the Principal), as set out in the Payment Claim submitted in accordance with clause 9.4(a).

- (d) The Refund Amount Payment payable to the Operator under this section 1.2 is not paid in consideration for the Services provided by the Operator under this Agreement.

1.3 Handling Fee Payment

- (a) The Handling Fee Payment is the payment provided to the Operator for the collection of Containers, as described in the Services Specification (section 2, 3, and 4).
- (b) The Handling Fee Payment is calculated based on:
 - (i) the Handling Fee for the relevant Operating Region where the Refund Point is located, as set out in Schedule 7; multiplied by
 - (ii) the number of Containers collected during the Operating Week, as set out in the Payment Claim submitted by the Operator to the Principal in accordance with clause 9.4(a); plus
 - (iii) $1/11^{\text{th}}$ multiplied by the Refund Amount multiplied by the number of Containers collected from any entity that makes a GST-free supply of the Containers to the Operator pursuant to section 38-255 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) during the Operating Week, as set out in the Payment Claim submitted by the Operator to the Principal in accordance with clause 9.4(a).
- (c) The Handling Fee set out in this section 1.3 is exclusive of GST.

1.4 Abatements

- (a) This section 1.4 only applies if the Operator is a Major Operator.
- (b) Subject to the Performance Regime, in any Operating Week, the abatement amount will be calculated as the aggregate Performance Abatements accrued in the Operating Week.

1.5 Payment Adjustment

- (a) From time to time, a payment adjustment may be made to the Refund Amount and Fee to account for:
 - (i) any discrepancies between the number of Containers by Material Type set out in a previous Payment Claim and the actual number of Containers by Material Type as determined by the Principal's audit and verification processes consistent with clause 11.1 of the Agreement;

- (ii) any adjustments to an Invoice made by the Operator where a discrepancy between the number of Containers by Material Type is identified; or
- (b) any other circumstances where an auditor engaged by or on behalf of the Principal for the purposes of undertaking an audit or review of the Services and the Operator's compliance with its obligations under this Agreement determines that the Operator has been paid more or less than it was properly entitled to under this Agreement.

Payment Calculation - Worked Example

The parties acknowledge that the worked example below is for illustrative purposes only and:

- (a) is solely intended to assist the parties to undertake the calculations referred to in this schedule;
- (b) does not form part of this Agreement; and
- (c) will not be used as a contractual reference for the purposes of interpreting this Agreement.

The Payment Claim for a given Operating Week contained the following information:

- Operating Region: 7. Perth and Peel
- Handling Fee: \$0.06 per Container
- Containers collected:

Material Types	Containers
Aluminium	80,000
Amber Glass	30,000
Clear PET	60,000
Coloured (non-white) PET	10,000
Flint (clear) Glass	30,000
Green Glass	28,000
HDPE	2,000
Liquid Paper Board	3,000
Other	1,000
Steel	1,000
White PET	5,000
TOTAL	250,000

- Containers redeemed through Customer Scheme Accounts and paid by the Principal to the Customer directly: **200,000 Containers**
- No Abatements, Adjustments or Interest has been applied during this Operating Week

Based on this Payment Claim, the total amount payable for the Operating Week is calculated below (which includes the Refund Amount Payment (RAP) in accordance with Section 1.2 plus the Fee and applicable GST):

$$\text{Total amount payable to the Operator} = \text{RAP} + \text{HFP} - \text{A} + \text{Adj} + \text{GST} + \text{I}_n$$

$$\begin{aligned} \text{RAP} &= \$0.1 \times \text{Containers redeemed in cash or cash equivalent} \\ &= \$0.1 \times 50,000 \\ &= \$5,000 \text{ (GST incl), paid by the Principal as agent for the Processing Services Provider} \\ \text{HFP} &= \$0.06 \times \text{total Containers} \\ &= \$0.06 \times 250,000 \\ &= \$15,000 \\ \text{A} &= \text{Nil} \\ \text{Adj} &= \text{Nil} \\ \text{GST} &= (\text{HFP} + \text{Adj}) \times (\text{GST}_r) \\ &= (\$15,000 + \text{Nil}) \times 0.1 \\ &= \$1,500 \end{aligned}$$

Where GST_r is the rate of GST to be applied (as set by legislation, currently at 10%) payable in accordance with clause 24 of this Agreement on the Fee in respect of the Operational Services.
 $\text{I}_n = \text{Nil}$

$$\begin{aligned} \text{Total amount payable} &= \text{RAP} + \text{HFP} - \text{A} + \text{Adj} + \text{GST} + \text{I}_n \\ &= \$5,000 + \$15,000 + \$1,500 \\ &= \$21,500 \end{aligned}$$

2. Payment terms

2.1 Payment by Principal

As set out in clause 9.5 of the Agreement, the Refund Amount Payment and Fee will be paid weekly in arrears to the Operator by the Principal within 5 Business Days of an Operator Invoice being issued, after receiving a Payment Claim.

2.2 Payment Claim

- (a) A Payment Claim:
- (i) must set out or attach sufficient details, calculations and supporting documentation, including the number of Containers collected during the operating week by Material Type, in regards to the amounts claimed by the Operator to enable the Principal to fully and accurately determine the amount payable by the Principal to the Operator;
 - (ii) must be submitted through the IT Platform, or if agreed otherwise by the Principal, be set out in a format and include the information requirements as specified by the Principal; and
 - (iii) without limiting section 2.2(a)(ii) above, must comply with the requirements for a claim for payment for Containers collected under the Act and the Regulations.
- (b) The Operator is responsible for ensuring the accuracy and integrity of the Payment Claim.

2.3 Interest Payment

- (a) Where the Principal fails to pay the Operator on time in accordance with this section 2 and clause 9 of the Agreement, the Principal will be liable to pay the Operator interest on any overdue payments at the Default Interest Rate as set out in the Agreement.
- (b) The interest payment payable in respect of an overdue payment by the Principal to the Operator is determined according to the following formula:

$$I_n = \left(\text{Amount} * \frac{i}{365} \right) x n$$

Where:

Amount= the overdue amount

i = The Default Interest Rate expressed in percentage per annum terms

n = The number of days whereby the Principal has failed to pay the Amount to the Operator beyond the payment terms in accordance with this section 2

- (c) For the avoidance of doubt, Interest will not be payable by the Principal to the Operator where the Principal has determined that an amount claimed under clause 9.4(a) by the Operator is not a valid or complete Payment Claim.

3. Indexation

- (a) The Handling Fee will be indexed according to section 3(b) each year, with the first indexation adjustment to be applied on 1 July 2021.
- (b) The Handling Fee will be indexed on an annual basis by the Consumer Price Index (CPI), being the percentage change between the 'all groups' – Perth CPI for the June quarter in the previous year and the June quarter of the current year, as shown on the Australian Bureau of Statistics website, in any one Financial Year during the Operational Period.
- (c) If the CPI index referred to in section 3(b) is suspended or discontinued or the basis of calculating that index is changed substantially, the Principal may nominate a replacement index which reflects similar cost fluctuations in a similar geographic area.
- (d) Indexation does not apply to any components of the Fee other than the Handling Fee.

Schedule 7 Handling Fees By Operating Region

The table below sets out the Handling Fee applicable for each Operating Region as at the Effective Date.

Operating Region	Handling Fee (excl GST)
1. Kimberley - the local government districts of Broome, Derby-West Kimberley, Halls Creek and Wyndham-East Kimberley.	\$0.06 per Container
2. Pilbara - the local government districts of Ashburton, East Pilbara, Port Hedland and Roebourne.	\$0.06 per Container
3. Gascoyne - the local government districts of Carnarvon, Exmouth, Shark Bay and Upper Gascoyne.	\$0.06 per Container
4. Mid West - the local government districts of Carnamah, Chapman Valley, Coorow, Cue, Geraldton, Greenough, Irwin, Meekatharra, Mingenew, Morawa, Mt. Magnet, Mullewa, Murchison, Northampton, Perenjori, Sandstone, Three Springs, Wiluna and Yalgoo.	\$0.06 per Container
5. Goldfields – Esperance - the local government districts of Coolgardie, Dundas, Esperance, Kalgoorlie-Boulder, Laverton, Leonora, Menzies, Ngaanyatjaraku and Ravensthorpe.	\$0.06 per Container
6. Wheatbelt - The local government districts of Beverley, Brookton, Bruce Rock, Chittering, Corrigin, Cuballing, Cunderdin, Dandaragan, Dalwallinu, Dowerin, Dumbleyung, Gingin, Goomalling, Kellerberrin, Kondinin, Koorda, Kulin, Lake Grace, Merredin, Moora, Mt. Marshall, Mukinbudin, Narembeen, Narrogin (Town), Narrogin (Shire), Northam (Town), Northam (Shire), Nungarin, Pingelly, Quairading, Tammin, Toodyay, Trayning, Victoria Plains, Wagin, Wandering, West Arthur, Westonia, Wickepin, Williams, Wongan-Ballidu, Wyalkatchem, Yilgarn and York.	\$0.06 per Container
7. Perth and Peel Perth - the metropolitan region as defined in the <i>Planning and Development Act 2005 (WA)</i> . Peel - the local government districts of Boddington, Mandurah, Murray Serpentine-Jarrahdale and Waroona.	\$0.06 per Container
8. South West - the local government districts of Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, Bunbury, Busselton, Capel, Collie, Dardanup, Donnybrook-Balingup, Harvey, Manjimup and Nannup.	\$0.06 per Container

9. Great Southern - the local government districts of Albany (Town), Albany (Shire), Broomehill, Cranbrook, Denmark, Gnowangerup, Jerramungup, Katanning, Kent, Kojonup, Plantagenet, Tambellup and Woodanilling.	\$0.06 per Container
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Schedule 8 Performance Regime

Unless otherwise specified in this Schedule 8, a reference to a section is to a section of this Schedule 8.

1. Performance Regime

1.1 Performance Failures and Performance Abatements

Section 2 sets out the Performance Measures and the consequences for the Operator if a Performance Failure occurs in respect of each Performance Measure.

1.2 Abatements

- (a) This section 1.2 only applies if the Operator is a Major Operator.
- (b) For each Performance Failure the Operator will incur an abatement in the amount and circumstances set out in the Performance Table.
- (c) Where abatements apply in respect of multiple Performance Failures that are triggered as a result of a single event, as reasonably determined by the Principal, the Performance Abatement will be limited to the greatest abatement amount which applies to any of the relevant Performance Failures triggered by that event.

1.3 Reporting

The Operator must report Performance Failures within 24 hours of occurrence to the Principal.

1.4 Explanation of Section 2

In section 2:

- (a) each Performance Failure is identified by a unique reference number which should be used by the Operator in all reporting of Performance Failures. The unique reference number is set out in the column headed "No.";
- (b) the column headed "Performance Measure", sets out the actual Performance Measure;
- (c) the column headed "Measurement", explains some of the tools that will be used to assess whether the Performance Measure has been contravened and the abatement accrued. The Principal reserves the right to use other tools and mechanisms to assess a Performance Failure where reasonable;
- (d) the column headed "Performance Assessment Period", sets out the period over which a Performance Failure will be assessed. For example where it says "weekly" the assessment will be made once a week, "monthly" once a month etc.;

- (e) the column headed "Penalty" sets out the implications for the Performance Failure for all Operators; and
- (f) the column headed "Performance Abatement" sets out the Performance Abatement payable for the Performance Failure (if section 1.2 applies).

2. Performance Table

No.	Performance Measure	Measurement	Performance Assessment Period	Penalty (all Operators)	Performance Abatement (only applies if Operator is a Major Operator)
PF1	<p>Mobilisation</p> <p>Delivery of Refund Points by the Mobilisation Completion Date in accordance with this Agreement.</p>	<p>The total number of operational Refund Points as determined by the Principal against the number of Refund Points to be operated in accordance with this Agreement</p>	<p>Mobilisation Completion Date and Weekly thereafter.</p>	<p>Default Termination Event if Performance Failure persists for more than 4 weeks.</p>	<p>\$500 per week for each week, or part thereof, that a Refund Point is not operating in accordance with the Agreement.</p> <p>This Performance Abatement will not accrue where the Operator has not obtained the necessary Approvals for a Refund Point but has demonstrated to the Principal's reasonable satisfaction that:</p> <ul style="list-style-type: none"> x it has used best endeavours to obtain such Approvals; and x it has submitted a Development Application for the Refund Point by the date listed in Item 1 in the Mobilisation Service Outcomes Schedule.

No.	Performance Measure	Measurement	Performance Assessment Period	Penalty (all Operators)	Performance Abatement (only applies if Operator is a Major Operator)
PF2	<p>Mobilisation</p> <p>Achievement of the Mobilisation Service Outcomes as set out in the Mobilisation Service Outcomes Schedule by the relevant dates.</p>	Various including by audit, Periodic Reports and other reporting by the Operator.	As required during Mobilisation Period.	Default Termination Event if Performance Failure persists for more than 4 weeks (critical mobilisation outcomes only).	<p>\$500 per week, or part thereof, for each missed Critical Mobilisation Service Outcome for each Refund Point.</p> <p>A Performance Abatement in respect of Item 3 of the Mobilisation Service Outcomes Schedule will not accrue where the Operator has demonstrated to the Principal's reasonable satisfaction that:</p> <ul style="list-style-type: none"> x it has used best endeavours to obtain such Approvals; and x it has submitted a Development Application for the Refund Point by the date listed in Item 1 in the Mobilisation Service Outcomes Schedule. <p>Accrued penalty only due and payable if the Operator fails to deliver the Services by the Mobilisation Completion Date.</p>
PF3	<p>Refund Point availability</p> <p>The Operator must ensure that each Refund Point operates for the published opening hours for that Refund Point.</p>	By verified complaint or by audit outcome.	Monthly	Performance Failure Default for more than two instances of Operator non-compliance in a given month.	<p>\$100 for each day that the Refund Point has not operated for the published hours.</p> <p>A Performance Abatement in respect of PF3 will not accrue if the Operator has demonstrated to the Principal's reasonable satisfaction that the Refund Point did not operate for the published opening hours for a reason beyond the Operator's</p>

No.	Performance Measure	Measurement	Performance Assessment Period	Penalty (all Operators)	Performance Abatement (only applies if Operator is a Major Operator)
PF4A	Customer Complaints The Operator must ensure that all Customer complaints or disputes are responded to in a timely manner.	All complaints and disputes to be responded to within 5 Business Days	Monthly	Performance Failure Default for more than three instances of Operator non-compliance in a given month.	\$100 per complaint or dispute not responded within 5 Business Days.
PF4B	Customer Complaints The Operator must take reasonable steps to resolve the complaint or dispute (and provide supporting evidence to demonstrate this).	By verified complaint, evidence of reasonable steps to be provided by 5 Business Days; Principal to review and assess accordingly	Monthly	Performance Failure Default for more than three instances of Operator non-compliance in a given month.	\$100 per complaint or dispute where evidence of reasonable steps not provided within 5 Business Days.
PF5	Customer Experience The Operator must display all marketing, branding materials and required notices as directed by the Principal at each Refund Point	Various including by audit or verified complaint. Operator will be provided with a period of 5 Business Days after initial incidence of non-compliance identified before Performance Measure against assessed.	Monthly	Performance Failure Default for more than 2 occurrences in a given month.	\$500 per incidence of non-compliance.

No.	Performance Measure	Measurement	Performance Assessment Period	Penalty (all Operators)	Performance Abatement (only applies if Operator is a Major Operator)
PF6	<p>Data and reporting</p> <p>The Operator must submit all data, reports, declarations and any other information to the Principal when due in accordance with the Services Specification.</p>	When data, report, declaration or information is due to be submitted.	Monthly	<p>Operator Payment Claims not processed while data and reporting is outstanding.</p> <p>Performance Failure Default for any report or information more than 20 Business Days late.</p>	<p>\$100 for each day late.</p> <p>Time period runs concurrently with PF7.</p>
PF7	<p>Data and reporting</p> <p>The Operator must ensure that all data, reports, declarations and any other information required to be provided in accordance with the Services Specification are accurate.</p>	Principal determination.	Monthly	Performance Failure Default for more than 2 identified inaccuracies in a given month.	\$500 per incidence.
PF8	<p>Audit results</p> <p>The Operator must ensure that there are no errors in reported Container volumes by Material Type.</p>	The total number of systematic material errors (with a potential financial impact of more than \$500) found by the Principal.	Monthly	Performance Failure Default	\$1,000 per incidence.

No.	Performance Measure	Measurement	Performance Assessment Period	Penalty (all Operators)	Performance Abatement (only applies if Operator is a Major Operator)
PF9	Operation of the Scheme For any material breach by the Operator in the delivery of the Services outlined in the Services Specification.	Various including verified complaint, by audit, Periodic Reports and other reporting by Principal.	Monthly	Performance Failure Default	\$100 per incidence.
PF10	Operation of the Scheme The Operator must report Performance Failures within 24 hours of the Operator becoming aware of the Performance Failure.	The Principal's reasonable determination of the number of days that the Operator is aware of the Performance Failure.	Immediately	Performance Failure Default after 20 Business Days	\$100 per Business Day not reported.

Schedule 9 Form of Parent Company Guarantee

Parent Company Guarantee

Date:

Parties: [Parent Guarantor] (ACN [*] of [*] (the **Parent Guarantor**)
WA Return Recycle Renew Ltd ACN 629 983 615 of [*] (the **Principal**).

[Operator] (ACN [*] of [*]) (the **Operator**).

1. Definitions

1.1 Capitalised terms in this Parent Company Guarantee have the meaning given in clause 1.1 of the Agreement unless otherwise defined below.

Agreement means the Refund Point Agreement dated on or about the date of this Parent Company Guarantee between the Principal and the Operator.

Related Entity of an entity means another entity which is related to the first within the meaning of section 50 of the *Corporations Act 2001* (Cth) or is in any economic entity (as defined in any approved accounting standard) which contains the first.

1.2 Clause 1.2 of the Agreement applies to this Parent Company Guarantee as though set out here in full, except that references to "this Agreement" should be read as "this Parent Company Guarantee".

2. Guarantee

2.1 Subject only to the provisions of this Parent Company Guarantee, the Parent Guarantor unconditionally and irrevocably guarantees to the Principal the due and punctual performance and observance by the Operator of its obligations under the Agreement, including (without limitation) the obligation to perform the Services in accordance with the Agreement.

2.2 Nothing in this Parent Company Guarantee restricts or otherwise affects the rights of the Principal under the Agreement.

3. Indemnity

3.1 As a separate undertaking, subject only to the provisions of this Parent Company Guarantee, the Parent Guarantor unconditionally and irrevocably indemnifies, and must keep indemnified, the Principal against any Claims against, or costs, losses, damages or liabilities suffered or incurred by the Principal to the extent that the Operator is liable to the Principal under the Agreement, including (without limitation) a breach of the obligation to perform the Services in accordance with the Agreement. It is not necessary for the Principal to incur expense or make payment before enforcing that right of indemnity.

3.2 The indemnity in clause 3.1 survives the termination of this Parent Company Guarantee.

3.3 The Parent Guarantor will make any payment under the indemnity in clause 3.1 on demand in writing by the Principal.

4. Completion undertaking

If the Principal is entitled to terminate the Agreement, and the Principal gives the Parent Guarantor a written notice under this clause 4, then the Parent Guarantor must perform the Operator's obligations under the Agreement.

5. Interest

The Parent Guarantor must pay interest on any amount payable under this Parent Company Guarantee from the time the amount becomes due for payment until it is paid in full at the rate which is the 90 day Bank Bill Swap Reference Rate (Average Bid) as published in the Australian Financial Review on the day the amount became due for payment.

6. Enforcement of rights

The Parent Guarantor waives any right it has of first requiring the Principal to commence proceedings or enforce any other right against the Operator or any other person before claiming under this Parent Company Guarantee.

7. Continuing security

This Parent Company Guarantee is a continuing security and is not discharged by any one payment or any one act.

8. Guarantee not affected

8.1 The obligations and liabilities of the Parent Guarantor under this Parent Company Guarantee as a guarantor, indemnifier or debtor and the rights of the Principal under this Parent Company Guarantee will not be released, discharged, affected, varied or limited by any matter or thing which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the granting of any time, indulgence or other concession to the Operator or any delay in the enforcement of any right by the Principal;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Principal;
- (c) any change in the relationship between the Parent Guarantor and the Operator;
- (d) any novation of a right of the Principal or any assignment of any right or interest of the Operator or the Principal in the Agreement;
- (e) any Variation;
- (f) any variation, amendment or termination of the Agreement;

- (g) the invalidity, illegality or unenforceability of an obligation or liability of a person other than the Parent Guarantor; or
- (h) the Operator being insolvent.

9. Suspension of Parent Guarantor's rights

The Parent Guarantor may not, without the consent of the Principal:

- (a) raise a set-off or counterclaim available to it against the Principal in reduction of its liability under this Parent Company Guarantee; or
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Principal in connection with the Agreement.

10. Reinstatement of Guarantee

If a claim that a payment or transfer to the Principal in connection with the Agreement or this Parent Company Guarantee is void or voidable (including, but not limited to, a claim under laws relating to liquidation, insolvency or protection of creditors) is upheld, conceded or compromised, then the Principal is entitled immediately as against the Parent Guarantor to the rights to which it would have been entitled under this Parent Company Guarantee if the payment or transfer had not occurred.

11. Representations and warranties

The Parent Guarantor warrants that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into this Parent Company Guarantee and comply with its obligations under it;
- (c) this Parent Company Guarantee and the transactions under it which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;
- (d) it has in full force and effect the authorisations necessary for it to enter into this Parent Company Guarantee, to comply with its obligations and exercise its rights under it, and allow it to be enforced; and
- (e) its obligations under this Parent Company Guarantee are valid and binding and, subject to any laws relating to insolvency, are enforceable against it in accordance with its terms.

12. Costs

12.1 The Parent Guarantor must pay or reimburse the Principal on demand for:

- (a) the Principal's costs, charges and expenses in making, enforcing and doing anything in connection with this Parent Company Guarantee including, but not limited to, legal costs and expenses reasonably incurred; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this Parent Company Guarantee or a payment, receipt or other transaction contemplated by it.

12.2 Money paid to the Principal by the Parent Guarantor must be applied first against payment of costs, charges and expenses under this clause then against other obligations under the guarantee and indemnity.

12.3 To the extent that any monies payable under any other clause of this Parent Company Guarantee are regarded for the purposes of any law relating to GST as consideration (in whole or in part) for a taxable supply, the party paying must pay an additional amount to the receiving party calculated by multiplying the consideration for the supply by the prevailing GST rate. For the purposes of this clause 12.3, GST is defined as a goods and services tax, as governed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13. Notices

(a) Any notice, consent, approval or other communication under this deed must be:

- (i) in writing;
- (ii) delivered by hand or by mail to the address, or sent by email to the email address, shown below:

(A) to the Principal:

Address: []

For the attention of: [*]

Email: [*]

(B) to the Parent Guarantor:

Address: []

For the attention of: [*]

Email: [*]

(C) to the Operator:

Address: [*]

For the attention of: [*]

Email: [*]

(iii) marked with the following title:

Parent Company Guarantee

(b) A notice is given on the day that:

(i) it is delivered to the addressee; or

(ii) if sent by email, when it is dispatched by the sender to each of the email addresses specified by the recipient.

(c) A party may, from time to time, notify the other parties (if applicable) of any change to its details in clause 13(a)(ii).

14. Governing law

(a) The law of this deed is the law in force in Western Australia.

(b) The parties submit to the jurisdiction of the courts of Western Australia.

15. Confidentiality

(a) The Principal agrees not to disclose information provided by the Parent Guarantor that is not publicly available except:

(i) in connection with any person exercising rights or dealing with rights or obligations under the Agreement (including in connection with preparatory steps such as negotiating with any potential assignee or potential participant of the Principal's or other person who is considering contracting with the Principal in connection with the Agreement);

(ii) to officers, employees, auditors, legal and other advisers of the Principal;

(iii) to any Related Entity of the Principal, provided the recipient agrees to act consistently with this clause 15;

(iv) to the shareholders and directors of the Principal and its Related Entities; or

(v) as required by any law or stock exchange or Regulatory Authority.

(b) The Parent Guarantor consents to disclosures made in accordance with this clause 15.

16. Counterparts

This deed may consist of a number of copies of this deed, each signed by one or more parties to this deed. When taken together, the signed copies are treated as making up the one document.

17. Limitation on Parent Guarantor’s Liability

Notwithstanding any other provision of this deed, the aggregate of the liability of the Parent Guarantor to the Principal under this deed is limited to \$[Value to be equal to \$20,000 per Operator Refund Point]. The liability of the Parent Guarantor is limited to Claims made under this Parent Company Guarantee by the Principal (whether or not such Claim has been determined) during the Term or within 12 months from the expiry of the Term.

Executed and delivered as a deed

Executed by WA Return Recycle Renew Ltd ACN 629 983 615 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

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

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

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

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Schedule 10 Common Disputes Procedure

1. Definitions and interpretation clauses

1.1 Definitions

In this Procedure:

Act	means the <i>Waste Avoidance and Resource Recovery Act 2007</i> (WA).
Agreement	the agreement of which this Procedure forms a part.
Business Day	means a day that is not a Saturday, Sunday, or recognised public holiday in Perth, Western Australia.
Common Dispute	means a dispute or an issue which involves a question of law (including a question of contract interpretation) or a question of fact, that is of general application or importance to the Principal and one or more Scheme Service Providers.
Counterparty	means the party to the Agreement other than the Principal.
Dispute Party	has the meaning given in clause 3.1(c).
Interface Issue	means a dispute or an issue which involves a question of law (including a question of contract interpretation) or a question of fact that arises between two or more Scheme Service Providers in relation to their respective Scheme Agreements, and includes a dispute or issue in connection with: <ul style="list-style-type: none">(a) "Collection Infrastructure" (as that term is defined under the Refund Point Agreement or Processing Services Agreement);(b) a "Processed Materials Sale Contract" (as that term is defined under the Processing Services Agreement, Material Recovery Agreement or Recycling Panel Agreement); and(c) the collection and delivery of "Containers" in "Collection Infrastructure" (as those terms are defined under the Refund Point Agreement, Logistics Services Agreement or Processing Services Agreement).
Issue Resolution Board	means a board established by the Principal under clause 5.

Logistics Provider	means a person who provides logistics services in relation to the Scheme.
Logistics Services Agreement	means a written agreement between the Principal and a Logistics Provider in relation to transportation of beverage containers and processed materials between Scheme Service Providers.
Material Recovery Agreement	has the meaning given to that term in section 47C(1) of the Act.
Material Recovery Facility	has the meaning given to that term in section 47C(1) of the Act.
Material Recovery Facility Operator	means the operator of a Material Recovery Facility.
Member	means a member of the Issue Resolution Board.
Notice of Common Dispute	means a Notice of Common Dispute given under a Scheme Agreement or a notice deemed to be a Notice of Common Dispute pursuant to clause 3.1(a).
Principal	means WA Return Recycle Renew Ltd ACN 629 983 615.
Principal Dispute	means a Common Dispute between the Principal and one or more Scheme Service Providers.
Procedure	means this Schedule 10.
Processing Services	means the verification and processing of beverage containers in preparation for sale to a Recycler.
Processing Services Agreement	means any agreement entered into by the Principal for the provision of Processing Services in connection with the Scheme.
Processing Services Provider	means a service provider engaged by the Principal under a Processing Services Agreement.
Recycler	means a person who has agreed to participate in the Principal's online auction platform for processed materials.
Recycling Panel Agreement	means a written agreement between the Principal and a Recycler in relation to participation in Principal's online auction platform for processed materials.
Refund Point	has the meaning given to that term in section 47C(1) of the Act.

Refund Point Agreement	has the meaning given to that term in section 47C(1) of the Act.
Refund Point Operator	has the meaning given to that term in section 47C(1) of the Act.
Related Scheme Service Provider	means each party that has issued a notification in accordance with clause 3.2(a).
Scheme	means the beverage container refund scheme established under Part 5A of the Act.
Scheme Agreement	means: <ul style="list-style-type: none"> (a) a Logistics Services Agreement; (b) a Material Recovery Agreement; (c) a Processing Services Agreement; (d) a Recycling Panel Agreement; and (e) a Refund Point Agreement, as the context requires, and includes the Agreement.
Scheme Commencement Date	means the date on which the Scheme commences under the Act.
Scheme Service Provider	means: <ul style="list-style-type: none"> (a) a Logistics Provider that has entered into a Logistics Services Agreement with the Principal; (b) a Material Recovery Facility Operator that has entered into a Material Recovery Agreement with the Principal; (c) a Processing Services Provider that has entered into a Processing Services Agreement with the Principal; (d) a Recycler that has entered into a Recycling Panel Agreement with the Principal; and (e) a Refund Point Operator that has entered into a Refund Point Agreement with the Principal, as the context requires, whether such agreement is entered into before or after the date of the Agreement, and includes the Counterparty.

1.2 Interpretation

Clause 1.2 of the Agreement applies to this Procedure as though set out here in full, except that references to "this Agreement" should be read as "this Procedure".

2. Status of this Procedure

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

3. Common Disputes

3.1 Notice of Common Dispute

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

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

3.2 Related Scheme Service Provider

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

4. Common Dispute resolution procedure

4.1 Operation of clause

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

4.2 Negotiations in good faith

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

4.3 Referral to the Issue Resolution Board

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

5. Issue Resolution Board

5.1 Issue Resolution Board

- (a) In relation to each Common Dispute required to be referred to an Issue Resolution Board under this Procedure, the Principal must, within 30 Business Days of the expiration of the 20 Business Day period referred to in that clause, establish an Issue Resolution Board comprising members as follows:
 - (i) a chairperson; and
 - (ii) 2 other members,(each a **Member**) appointed in accordance with clause 5.1(b).
- (b) The Principal must:
 - (i) request that the Chair for the time being of the Resolution Institute (**Chair**) appoint the chairperson and Members;
 - (ii) at the time a request is made under clause 5.1(b)(i), advise the Chair of the skills, qualifications and experience required of the Member or Members to be appointed having regard to the nature of the Common Disputes; and
 - (iii) promptly engage the person or persons appointed by the Chair as a Member, provided that they have the appropriate skills, qualifications and experience to determine Common Disputes.
- (c) If a Member appointed under this clause 5.1:
 - (i) is unavailable;
 - (ii) declines to act as a Member;
 - (iii) does not respond within 10 Business Days to a referral under clause 4.3;

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

5.2 Issue Resolution Board duties

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

5.3 Conflict of Interest

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

5.4 **Liability and Indemnity**

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

5.5 **Confidentiality**

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

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

5.6 **Issue Resolution Board process**

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

5.7 **Costs of the Issue Resolution Board**

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

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

6. **Interface Issues**

6.1 **Operation of clause**

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

6.2 Notice of dissatisfaction

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

6.3 Binding Nature of Issues Resolution Board determination on Interface Issue

If:

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

then that Notified Party unequivocally and unreservedly agrees that:

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

6.4 Time for Compliance

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

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

7. Principal Disputes

7.1 Operation of clause

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

7.2 Involvement of Related Scheme Service Providers

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

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

7.3 Notice of dissatisfaction

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

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

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

If:

- (a) a Scheme Service Provider received a Notice of Common Dispute in respect of a Principal Dispute that is resolved under this Procedure (each such Scheme Service Provider being a **Notified Party**);
- (b) the Issue Resolution Board has given a determination as to that Principal Dispute; and
- (c) no Notice of Dissatisfaction has been properly given under and in accordance with clause 7.3,

then that Scheme Service Provider unequivocally and unreservedly agrees that:

- (d) the determination of the Issue Resolution Board will be final and binding on each Dispute Party, the Principal and the Related Scheme Service Providers on receipt, who must give effect to it;
- (e) it will be bound by any settlement or determination of the subject matter of that Common Dispute to the extent that it touches upon or concerns any right, remedy, benefit or entitlement in a Scheme Agreement to which they are a party;

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

7.5 Time for Compliance

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

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

8. Notices

8.1 Requirements

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

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

8.2 How a Notice must be given

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

- (a) delivered personally;
- (b) sent by regular post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;

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

8.3 When Notices considered given and received

Subject to clause 8.2, a Notice takes effect when received (or such later time as specified in it) and a Notice is deemed to have been given by the sending party and received by the receiving party:

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

8.4 Time of delivery and receipt

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

9. General

9.1 Acknowledgment of operation of Procedure

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

Appendix - Rules for the Issue Resolution Board decision process

1. Written submissions

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

2. Conference

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

3. Decision

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

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

4. General

The failure of a party to comply with any requirement of this Appendix will not terminate or discontinue the Common Dispute resolution process.

Schedule 11 Vouchers

1. Application

This Schedule 11 will apply if the Principal approves payment of Refund Amounts by way of Vouchers.

2. Voucher records

The Operator must prepare and maintain auditable records to document:

- (a) each Voucher issued by or on behalf of the Operator, including the date of issue and the value of each Voucher;
- (b) each Voucher issued by or on behalf of the Operator that has been redeemed;
- (c) each Voucher issued by or on behalf of the Operator that has yet to be redeemed and has yet to expire; and
- (d) each Voucher issued by or on behalf of the Operator that has not been redeemed and has expired.

3. Amount of Refund Amounts held on trust

- (a) Subject to clause 5 of this Schedule 11, upon payment by the Principal to the Operator of a Refund Amount in relation to which a Voucher has been issued by the Operator the Operator must pay an amount equal to the Refund Amount (**Security Amount**) into a separate interest bearing trust account with an authorised deposit-taking institution (within the meaning of the *Banking Act 1959* (Cth)) (**Trust Account**) to be held by the Operator on trust for the Principal until:
 - (i) an amount equal to that Refund Amount is paid to the Principal in accordance with clause 4 of this Schedule 11; or
 - (ii) the Voucher is presented for redemption in accordance with the conditions of issue of the Voucher.
- (b) The Principal will be entitled to any interest which accrues on the Security Amount, less any applicable taxes and charges payable in respect of the trust account in which the Security Amount is held, including any tax deducted from such account because of failure to supply a tax file number, (**Interest**) and any tax credit will belong to the Principal.

4. Provision of records, audit and repayment to Principal

- (a) On an annual basis, the Operator must provide to the Principal a written reconciliation of:
 - (i) if the Principal has not provided a waiver under clause 5 of this Schedule 11, the Trust Account balance;
 - (ii) all Vouchers issued by or on behalf of the Operator;
 - (iii) if the Principal has not provided a waiver under clause 5 of this Schedule 11, all amounts paid in and out of the Trust Account;
 - (iv) each Voucher issued by or on behalf of the Operator that has been redeemed;
 - (v) each Voucher issued by or on behalf of the Operator that has yet to be redeemed and has yet to expire;
 - (vi) each Voucher issued by or on behalf of the Operator that has not been redeemed and has expired; and
 - (vii) all Interest (if any),

(Reconciliation).
- (b) For the avoidance of doubt, the Principal's rights of access and audit under clause 11 of the Agreement apply to all records relating to Vouchers and the Trust Account.
- (c) If a Reconciliation or an audit undertaken by or on behalf of the Principal discloses that the Operator has received a Refund Amount that relates to a Voucher that has expired and has not be redeemed, an amount equal to that Refund Amount must be paid by the Operator to the Principal within one month of the Reconciliation or audit (as applicable), which amount may be paid out of the Security Amount in the Trust Account (if any).
- (d) If the Principal has not provided a waiver under clause 5 of this Schedule 11, and a Reconciliation or an audit undertaken by or on behalf of the Principal discloses that there is any Interest in the Trust Account, that Interest must be paid by the Operator to the Principal within one month of the Reconciliation or audit (as applicable).

5. Waiver of Security Amount requirements

- (a) The Principal may by notice in writing to the Operator, having regard to the financial capacity of the Operator to pay any monies that may become due to the Principal under clause 4(c) of this Schedule 11, waive the requirements of clause 3 of this Schedule 11.

- (b) A waiver under this clause 5 does not affect any liability of the Operator that may arise under clause 4(c) of this Schedule 11.

Schedule 12 Special Conditions

1. Definitions

In this Schedule 12:

- (c) **Employees** means the individual employees described in section **Error! Reference source not found.** (if any);
- (d) **Employee Payments** means the Mobilisation Expenses described in section **Error! Reference source not found.** (if any);
- (e) **Mobilisation Expenses** is defined in section 6;
- (f) **Payee** means, in respect of a Mobilisation Expense:
 - (i) subject to paragraph (ii) of this definition, the third party to whom the Mobilisation Expense has been paid by the Operator; and
 - (ii) in respect of Employee Payments (if any), the Employee to whom the payments relates; and
- (g) unless otherwise stated, a reference to a section is to a section of this Schedule 12.

2. Termination of existing Refund Point Agreement

- (a) Subject to section 2(b), with effect on the Effective Date:
 - (i) the Refund Point Agreement between the Operator and the Principal dated [INSERT DATE] (**Existing Agreement**) is terminated; and
 - (ii) the Principal and the Operator are each released and discharged from their respective obligations under the Existing Agreement.
- (b) Termination of the Existing Agreement does not affect any accrued rights or remedies of either party.

3. Payment of Mobilisation Expenses

- (a) Subject to section 3(b), in consideration for the performance of the Mobilisation Activities in accordance with this Agreement and subject to section 4, the Principal must, in accordance with this section 3, reimburse the Operator for Mobilisation Expenses the subject of each claim made by the Operator that complies with the requirements set out in section 3(d) (**Expenses Claim**).
- (b) Notwithstanding any other provision of this Agreement, the maximum aggregate amount of all Mobilisation Expenses that can be claimed by the Operator under this Schedule 12, and which the Principal is liable to pay, is AUD\$[Insert].

- (c) The Operator must submit to the Principal an Expenses Claim for payment of Mobilisation Expenses in respect of a month by no later than 5:00pm (AWST) on the fifth Business Day of the next month.
- (d) An Expenses Claim:
 - (i) must be submitted to the Principal by such means as the Principal directs from time to time;
 - (ii) must set out or attach sufficient details, calculations and supporting documentation in regards to the amounts claimed by the Operator to enable the Principal to fully and accurately determine the amount of Mobilisation Expenses payable by the Principal; and
 - (iii) must be provided with evidence satisfactory to the Principal, acting reasonably:
 - (A) that no Insolvency Event has occurred in respect of the Operator (including but not limited to the occurrence of any of the events specified in section 3(h)), which requirement will be satisfied if the Operator (or, if the Operator is not an individual, an director or officer of the Operator) provides a sworn statutory declaration to the Principal declaring that no Insolvency Event has occurred in respect of the Operator and that the Operator intends to continue to comply with its obligations under this Agreement;
 - (B) in respect of each Employee Payment claimed - that the relevant Employee is not an Excluded Employee;
 - (C) in respect of each Mobilisation Expense claimed (other than an Employee Payment) - that:
 - (1) the Operator has taken all reasonable steps to endeavour to negotiate a reduction of the Mobilisation Expense with the Payee; and
 - (2) the Mobilisation Expense has been paid by the Operator to the Payee.
- (e) The Operator is responsible for ensuring the accuracy and integrity of each Expenses Claim.
- (f) Within five Business Days of the Operator complying with section 3(d), the Principal will issue an invoice (as agent for the Operator) for the amount payable by the Principal in relation to the Expenses Claim (**Operator Expenses Invoice**) and such Operator Expenses Invoice must, in respect of all amounts claimed by the Operator in the Expenses Claim, set out or attach sufficient details, calculations and other information used by the Principal to determine the Mobilisation Expenses then payable by the Principal to the Operator under this Schedule 12.

- (g) Without limiting clause 11.2(a) of the Agreement, the Operator acknowledges and agrees that, if requested by the State, the Principal may provide to the State a copy of all documentation, and access to all information, provided by the Operator to the Principal under this Schedule 12.
- (h) For the purposes of section 3(d)(iii)(A), an Insolvency Event includes:
 - (i) An administrator of the Operator is appointed.
 - (ii) Except for the purpose of a solvent reconstruction or amalgamation previously approved by the State:
 - (A) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (1) the winding up, dissolution or administration of the Operator; or
 - (2) the Operator entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them,

(other than frivolous or vexatious applications, proceedings, notices and steps, and applications disputed by the Operator in good faith and dismissed within 10 Business Days); or
 - (B) the Operator ceases, suspends or threatens to cease or suspend the conduct of all or substantially all of its business or disposes of or threatens to dispose of substantially all of its assets.
 - (iii) The Operator:
 - (A) is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute); or
 - (B) stops or suspends or threatens to stop or suspend payment of all or a class of its debts.
- (i) The Principal must pay the Operator each undisputed Mobilisation Expense set out in the Operator Expenses Invoice within 5 Business Days of receiving a Payment Claim.

4. Reduction of Mobilisation Expense

Notwithstanding any other provision of this Schedule 12, the amount of each Mobilisation Expense that would otherwise be payable by the Principal under this Schedule 12 will be reduced by the amount of that Mobilisation Expense that the

Operator is or was entitled to be paid by any Government Agency, whether or not the Operator has been or will be paid that amount by the Government Agency;

5. Repayment of Mobilisation Expenses

- (a) If:
- (i) any funds received by the Operator are not required for a Mobilisation Expense for any reason (including where the Mobilisation Expense for which an Operator has been reimbursed is refunded by the Payee); or
 - (ii) this Agreement is terminated by the Principal pursuant to clause 20 of this Agreement on the basis of:
 - (A) the Operator becoming subject to an Insolvency Event; or
 - (B) a default by the Operator,that occurred prior to the date that is one month after the Scheme Commencement Date,
- then the amount of all Mobilisation Expenses paid by the Principal under this Schedule 12 will be a debt immediately due and payable by the Operator to the Principal.
- (b) This section 5 survives termination of this Agreement.

6. Mobilisation Expenses

In this Schedule 12, the Mobilisation Expenses means the expenses and amounts described in this section 6;

6.1 Rent and outgoings

[Complete details in the following or, if no such rent and outgoings are to be paid, delete the following and insert "NOT APPLICABLE"]

- (a) The rent and outgoings payable by the Operator (excluding any GST) in respect of the period from and including 2 June 2020 up to and including the day immediately preceding the Scheme Commencement Date under:
- (i) the lease of the Operator Refund Point located at *[insert]* dated *[insert date]* between *[insert]* as lessor and the Operator as lessee;
 - (ii) *[Repeat (i) for each other relevant lease]*

6.2 Licence fees and outgoings

[Complete details in the following or, if no such fees and outgoings are to be paid, delete the following and insert "NOT APPLICABLE"]

- (a) The licence fee and outgoings payable by the Operator (excluding any GST) in respect of the period from and including 2 June 2020 up to and including the day immediately preceding the Scheme Commencement Date under:
- (i) the licence to use the Operator Refund Point located at *[insert]* dated *[insert date]* between *[insert]* as licensor and the Operator as licensee.
 - (ii) *[Repeat (i) for each other relevant licence].*

6.3 Loan costs and outgoings - land acquisition

[Complete details in the following or, if no such interest and principal costs are to be paid, delete the following and insert "NOT APPLICABLE"]

- (a) The interest and principal amounts payable by the Operator (excluding any voluntary principal payments, any penalty interest and any GST) in respect of the period from and including 2 June 2020 up to and including the day immediately preceding the Scheme Commencement Date on loans for the acquisition of:
- (i) the site of the Operator Refund Point located at *[insert]* under the loan agreement between *[insert]* as lender and the Operator as borrower dated *[insert date]*;
 - (ii) *[Repeat (i) for each other relevant Operator Refund Point].*

(Refund Point Properties)

- (b) Outgoings payable by the Operator (excluding any GST) in respect of the period from and including 2 June 2020 up to and including the day immediately preceding the Scheme Commencement Date for the Refund Point Properties. In this section 6.3(b), **Outgoings** means all:
- (i) local government rates;
 - (ii) land tax; and
 - (iii) charges for or in respect of water, gas, sewerage or electricity supplied to the Refund Point Property, excluding charges for consumption and excess water.

6.4 Interest costs - construction

[Complete details in the following or, if no such interest costs are to be paid, delete the following and insert "NOT APPLICABLE"]

The interest and principal amounts payable by the Eligible Operator (excluding any voluntary principal payments, any penalty interest and any GST) in respect of the period from and including 2 June 2020 up to and including the day immediately preceding the Scheme Commencement Date on loan monies advanced for the construction of:

- (i) *[insert]* at the Operator Refund Point located at *[insert]* under the loan agreement between *[insert]* as lender and the Operator as borrower dated *[insert date]*.
- (ii) *[Repeat (i) for each other relevant Operator Refund Point construction]*

Signing page

Executed as a deed

Executed by WA Return Recycle Renew Ltd ACN 629 983 615 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

[Appropriate execution clause for Operator to be inserted]

Annexure A Mobilisation Plan

[Approved mobilisation plan to be annexed with dates expressed as a number of days prior to the Scheme Commencement Date.]