

# **Victoria Container Deposit Scheme**

## **Scheme Payments and Contribution Methodology**

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# Scheme Payments and Contribution Methodology

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## 1. Introduction

### 1.1 Meanings

In this Scheme Payments and Contribution Methodology unless the context indicates to the contrary:

- (a) all capitalised terms that are defined in clause 1.3 will have the meaning given to them in that clause;
- (b) capitalised terms used in this Scheme Payments and Contribution Methodology and not defined in it have the meaning given to those terms in the Act; and
- (c) references to clauses are references to clauses in this Scheme Payments and Contribution Methodology unless otherwise stated.

### 1.2 Interpretation

In this Scheme Payments and Contribution Methodology headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors, permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Scheme Payments and Contribution Methodology) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a standard, code or guideline (including any State policies, guidelines or requirements) includes that standard, code or guideline as amended from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, section, schedule, exhibit, attachment or annexure is a reference to a party, clause, section, schedule, exhibit, attachment or annexure to or of this Scheme Payments and Contribution Methodology, and a reference to this Scheme Payments and Contribution Methodology includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (j) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this Scheme Payments and Contribution Methodology or any part thereof;
- (k) if the day on or by which anything is to be done in accordance with this Scheme Payments and Contribution Methodology is not a Business Day, that thing must be done no later than the next Business Day;
- (l) other than as set out in clause 1.2(k) or where the drafting otherwise indicates, a reference to "day" is a reference to a calendar day, a reference to "week" is a reference to a calendar week, a reference to "month" is a reference to a calendar month and a reference to "quarterly" is a reference to 3 monthly;
- (m) a reference to any information, material, document or thing includes that information, material, document or thing in all media, including written oral or electronic;
- (n) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (o) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (p) the word "subcontractor" will include all suppliers, contractors and consultants;
- (q) a reference to "\$" or "dollar" is to Australian currency;
- (r) a reference to time is a reference to the then current time in Melbourne, Australia;
- (s) a reference to a right includes any benefit, remedy, discretion, authority or power;
- (t) a reference to an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (u) the term "may", when used in the context of a power, right or remedy exercisable by a party, means that the party can exercise that power, right or remedy in its absolute and unfettered discretion, and the party has no obligation to the other party to do so; and
- (v) where there is a reference to an authority, institute or association or other body referred to in this Scheme Payments and Contribution Methodology which:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Scheme Payments and Contribution Methodology is deemed to refer to that other entity; or
  - (ii) ceases to exist, this Scheme Payments and Contribution Methodology is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity.

### 1.3 Definitions

**Account Bank Deed** has, in respect of a Network Operator, the meaning given in the relevant Network Operator Agreement.

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

**Administration Fee** has the meaning given in the Scheme Coordinator Agreement.

**Bad Debt** means an amount due and payable by a First Supplier to the Scheme Coordinator under a Supply Agreement:

- (a) that is unpaid as at the date of termination of the relevant Supply Agreement; or
- (b) that is written off by the Scheme Coordinator as a bad debt.

**BBSW** means the 90 day bank bill swap reference rate (Average Bid) as published in the Australian Financial Review on the first Business Day of the month in which an amount payable is due. For example, if an amount is due in March 2023, the BBSW is as published on the first Business Day of March 2023.

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

**Collections Costs** means the reasonable third party costs paid by the Scheme Coordinator to recover amounts payable to the Scheme Coordinator by a First Supplier under its Supply Agreement.

**Expired Voucher** means a Voucher in respect of which the whole or part of the value to which the holder is entitled has not been claimed during its stated validity period.

**Export Payment** means a payment in respect of an Export Supply.

**Export Supply** means the subsequent Supply outside Victoria of a Suitable Eligible Container that was previously first Supplied in Victoria by a First Supplier which the subsequent Supplier reasonably believes will not be further Supplied to a person within Victoria.

**Export Supply Agreement** means an agreement or deed poll of that name as published by the Scheme Coordinator on the Scheme Participant Website and updated from time to time.

**Export Supply Statement** means the statement of Export Supplies provided by an Exporter under clause 6(b).

**Export Supply Statement Due Date** has the meaning given in clause 6(b).

**Exporter** means a person who makes an Export Supply.

**Exporter Adjustment Period** has the meaning given in clause 6(g).

**First Pricing Period** means the Pricing Period which commences on the Scheme Commencement Date.

**First Supplier** has the meaning given to that term in the Act.

**First Supplier Adjustment Period** has the meaning given in clause 5.2(l).

**Goodwill Payment** means a provision of value to a natural person other than an employee or agent of, or contractor or subcontractor to, a Network Operator of the value of a Voucher where, after a reasonable investigation, the Network Operator or its employee, agent or contractor has reasonably determined that the Voucher has been lost or damaged, which value may either be in the form of cash or the issue of a gift card and evidence of such investigation and determination must be provided to the Scheme Coordinator upon the Scheme Coordinator's request.

**Independent Scheme Auditor** has the meaning given to that term in the Scheme Coordinator Agreement.

**Integrated Retailer** means a retailer at which a Voucher may be redeemed for value and whose point of sale system (**Retailer System**) is integrated with a relevant information technology system used by the Network Operator in a way which, as a result of the interface between the Retailer System and this relevant information technology system, enables the Network Operator to determine when and to the extent a Voucher is redeemed through the retailer.

**Interface** means in respect of the information technology (IT) systems utilised by the Scheme Coordinator, any of the following to be utilised by a party interacting with the Scheme Coordinator as reasonably determined by the Scheme Coordinator:

- (a) a secure web portal or an online webform;
- (b) a method to provide or receive data (e.g. upload, or download);
- (c) an application programming interface or "API"; and/or
- (d) a reporting tool or another format or method to transfer information.

**IR Voucher** means a Voucher issued which may only be redeemed through an Integrated Retailer.

**Maintenance Amount** has, in respect of a Network Operator, the meaning given to that term in the relevant Network Operator Agreement.

**Material Recovery Facility** has the meaning given to that term in the Act.

**Material Recovery Facility Operator** means an operator of a Material Recovery Facility.

**Material Type** means any of the following material types of a Suitable Eligible Container:

- (a) glass;
- (b) aluminium;
- (c) PET;
- (d) liquid paper board;
- (e) steel;
- (f) HDPE;
- (g) other plastics;
- (h) other materials; and
- (i) any additional material type as prescribed in the Act or the Regulation.

**MRF Adjustment Period** has the meaning given in clause 9(g).

**MRF Audit Costs** means the reasonable third-party costs paid by the Scheme Coordinator to undertake sampling in accordance with the sampling plan prepared under the MRF Protocol conducted on behalf of the Scheme Coordinator in respect of a Material Recovery Facility or a Material Recovery Facility Operator (as applicable).

**MRF Certificate** means a certificate which is a Recipient Created Tax Invoice issued under clause 9(e).

**MRF Payments** means Refund Amounts payable by the Scheme Coordinator to Material Recovery Facility Operators.

**MRF Protocol** means the material recovery facilities protocol issued under section 103 of the Act as varied in accordance with section 103(5) of the Act.

**Network Agreement** means an agreement between the Scheme Coordinator and a Network Operator with respect to the 'network arrangements' referred to in section 81(1)(b) of the Act.

**Network Fee** has, in respect of a Network Operator, the meaning given to that term in the relevant Network Agreement.

**Network Operator** means each person appointed to be a network operator under the Act.

**Network Operator Agreement** has the meaning given to that term in the Act.

**Network Operator Adjustment Period** has the meaning given in clause 8(f).

**Network Operator Performance Failure Payment** or **NOPFP** means the total amount payable that is set out in a notice issued by the State to the Scheme Coordinator under clause 20.1(c) of the Scheme Coordinator Agreement in respect of a Performance Failure Payment (as defined in the relevant Network Operator Agreement) incurred by the Network Operator to the State under the relevant Network Operator Agreement.

**Network Payments** means payments made by the Scheme Coordinator pursuant to clause 8.

**Network Payments Account** means, in respect of a Network Operator, the "Network Payments Account" as defined in the relevant Network Operator Agreement.

**NIR Voucher** means a Voucher issued which may only be redeemed through a Non Integrated Retailer.

**Non Integrated Retailers** means a retailer through which a Voucher may be redeemed for value and who is not an Integrated Retailer.

**Notice of Dispute** has, in respect of a First Supplier, the meaning given in the relevant Supply Agreement.

**Overpayment** means an amount paid by the Scheme Coordinator that has subsequently been determined not to be properly payable.

**Payment Certificate** means a certificate which is a Recipient Created Tax Invoice issued under clause 8(c).

**Penalty Interest Rate** means BBSW plus 200 basis points.

**Pricing Period** means a period of 6 months or 12 months (or such other period as determined by the Scheme Coordinator (acting reasonably)) in respect of which a Scheme Contribution by Material Type applies.

**Quarter** means each 3 month period commencing on a Quarterly Date save that:

- (a) the first Quarter will be the period from the Scheme Commencement Date until the day before the first Quarterly Date occurring after the Scheme Commencement Date; and
- (b) for the purposes of the definition of Scheme Coordinator Performance Failure Payment or SCPFP only, the last Quarter of the Term will be the period from the last Quarterly Date during the Term to the last day of the Term.

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

**Recipient Created Tax Invoice** has the meaning given by subsection 29-70(3) of *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

**Recovery Agreement** means an agreement between the Scheme Coordinator and a Material Recovery Facility Operator with respect to the 'recovery arrangements' referred to in section 81(1)(c) of the Act.

**Refund Amount** has the meaning given to that term in the Act.

**Refund Collection Point** means a 'collection point' or a 'refund collection point' as contemplated in Part 6 of the Act or a Regulation.

**Regulation** means any regulation made under the Act.

**Related Body Corporate** has the meaning given to that term in the Corporation Act 2001 (Cth).

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

**Scheme Agreement** means "Scheme Agreement" as defined in the Scheme Coordinator Agreement.

**Scheme Contribution by Material Type** means, in respect of a Material Type, the amount per Suitable Eligible Container determined by the Scheme Coordinator under clause 5.

**Scheme Coordinator** has the meaning given to that term in the Act.

**Scheme Coordinator Agreement** has the meaning given to that term in the Act.

**Scheme Coordinator Performance Failure Payment** or **SCPFP** means, in respect of a Quarter, the amount payable that is set out in a Tax Invoice issued by the State to the Scheme Coordinator under clause 20.1(b) of the Scheme Coordinator Agreement in respect of a Performance Failure Payment (as defined in the Scheme Coordinator Agreement) incurred by the Scheme Coordinator to the State under the Scheme Coordinator Agreement.

**Scheme Coordinator Statement** has the meaning given in clause 3a.

**Scheme Costs** means the payments referred to in clause 2(b)(ix).

**Scheme Participant Website** has the meaning given to that term in the Scheme Coordinator Agreement.

**Scheme Payments Account** has the meaning given to that term in the Scheme Coordinator Agreement.

**Service Fee** means, in respect of a month, the amount referred to using that term that is payable to the State under clause 20.1(a) of the Scheme Coordinator Agreement.

**Significant General Change in Law** has, in respect of a Network Operator, the meaning given to that term in the relevant Network Operator Agreement.

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

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

**State Loan Agreement** means the agreement entitled "Victoria Container Deposit Scheme State Loan Facility Agreement" between Treasury Corporation of Victoria and VicReturn Limited (ACN 643 014 895) dated 28 July 2023.

**Supply Agreement** means an agreement between the Scheme Coordinator and a First Supplier with respect to the 'supply arrangements' referred to in section 81(1)(a) of the Act.

**Suitable Eligible Container** has the meaning given to that term in the Act.

**Supply** has the meaning given to that term in the Act.

**Tax Invoice** means has the meaning given by subsection 29-70(1) of *A New Tax System (Goods & Services Tax) Act 1999* (Cth).



**Term** has the meaning given in the Scheme Coordinator Agreement.

**Third Party Refund Amount** means an amount payable by a Network Operator to a Collection Point Operator (excluding the Network Operator) in respect of a Refund Amount paid by or on behalf of a Collection Point Operator to, or at the direction of, a person who presents a Suitable Eligible Container to a Refund Collection Point and, for the avoidance of doubt, excludes amounts paid or payable in respect of Vouchers.

**Voucher** means a token issued, including in an electronic form, by or on behalf of a Network Operator, its agents and contractors to, or at the direction of, a person who has presented a Suitable Eligible Container to a Refund Collection Point that enables its holder during a stated validity period to claim value equal to the Refund Amount payable in respect of that Suitable Eligible Container.

**Voucher Expiration Rate** means, in respect of a Voucher Period (**Current Voucher Period**):

- (a) where a Network Operator, or its employees, agents or contractors on its behalf has issued any IR Vouchers in the Voucher Period that expired on the day which is 2 years and 1 day prior to the commencement of the Current Voucher Period, the percentage equal to the total value of such IR Vouchers that became Expired Vouchers in the Current Voucher Period as a percentage of the total value of such IR Vouchers issued in that Voucher Period;
- (b) where a Network Operator, or its employees, agents or contractors on its behalf has not issued any IR Vouchers in the Voucher Period that expired on the day which is 2 years and 1 day prior to the commencement of the Current Voucher Period, the Scheme Coordinator's reasonable estimate of the percentage equal to the total value of NIR Vouchers issued by all Network Operators that became Expired Vouchers in the Current Voucher Period as a percentage of the total value of NIR Vouchers issued by all Network Operators in that Voucher Period as is approved by the State, acting reasonably. The Scheme Coordinator's estimate must reflect a fair and consistent treatment of all Network Operators, including any Network Operator whose Voucher Expiration Rate has been determined pursuant to clause (a) of this definition.

**Voucher Period** has the meaning given in clause 8(i).

**Week** means a 7-day period commencing on a Monday.

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## 2. Scheme Payments Account

- (a) The Scheme Coordinator must establish and maintain a Scheme Payments Account and hold all moneys in the Scheme Payments Account on trust for the State to be dealt with in accordance with this Scheme Payments and Contribution Methodology, in accordance with the Scheme Coordinator Agreement.
- (b) The Scheme Coordinator must use the Scheme Payments Account solely for the purpose of:
  - (i) receiving Scheme Contributions by Material Type and other payments made by First Suppliers pursuant to clause 5;
  - (ii) receiving funds under the State Loan Agreement pursuant to clause 4;
  - (iii) receiving interest on the balance standing to the credit of the Scheme Payments Account;
  - (iv) receiving interest earned on the balance standing to the credit of the Network Payments Accounts from the Network Operators (less bank fees incurred and amounts payable to the Australian Taxation Office in

respect of tax liability on interest earned on the balances standing to the credit of the Network Payments Account) pursuant to clause 7;

- (v) receiving amounts in respect of Expired Vouchers pursuant to clauses 7(e) and 8(j);
- (vi) receiving other amounts required to be paid into the Scheme Payments Account pursuant to the Scheme Agreements;
- (vii) receiving Overpayments;
- (viii) receiving amounts in respect of GST in respect of transactions referred to in this clause; and
- (ix) making payments, to the extent any such payments are due, in the following order:
  - A. Network Payments in accordance with clause 8;
  - B. Export Payments in accordance with clause 6;
  - C. MRF Payments in accordance with clause 9;
  - D. payments required under the State Loan Agreement in accordance with clause 4;
  - E. payments to the Australian Taxation Office in respect of tax liability on interest earned on the balances standing to the credit of the Scheme Payments Account and GST liability in respect of transactions referred to in this clause;
  - F. amounts payable to the Independent Scheme Auditor as reasonably agreed by the State and the Scheme Coordinator;
  - G. amounts payable to the State pursuant to clause 10.3;
  - H. amounts payable to the Scheme Coordinator itself pursuant to clause 3(c);
  - I. amounts payable to the State pursuant to clause 10.2(a)(i);
  - J. amounts payable to the Network Operator pursuant to clause 10.2(a)(ii);
  - K. Service Fees in accordance with clause 10.1;
  - L. amounts required to be paid from the Scheme Payments Account pursuant to the Scheme Agreements; and
  - M. any amount for which the Scheme Coordinator is entitled to be indemnified from the "Trust Assets" (as defined in the Scheme Coordinator Agreement) in its capacity as trustee of the trust referred to in clause 13.2 of the Scheme Coordinator Agreement,

and must not use the Scheme Payments Account to pay the operating expenses of the Scheme Coordinator or for any other purposes.

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### 3. Administration Fee and other Scheme Coordinator payments

- (a) The Scheme Coordinator may issue on the 5<sup>th</sup> Business Day of each calendar month commencing in the calendar month in which the Scheme Commencement Date occurs, a statement for that calendar month containing the amounts set out in clause 3(b) (**Scheme Coordinator Statement**) as a Recipient Created Tax Invoice. A copy of the Scheme Coordinator Statement must be sent by email to the State.
- (b) The amounts payable to the Scheme Coordinator in respect of a calendar month are:
  - (i) in the case of each calendar month during the Term (as defined in the Scheme Coordinator Agreement):
    - A. the Administration Fee for that calendar month; and
    - B. in respect of each calendar month occurring after the calendar month in which the Scheme Commencement Date occurs:
      - 1) the Collections Costs paid by the Scheme Coordinator in the previous calendar month; and
      - 2) the MRF Audit Costs paid by the Scheme Coordinator in the previous calendar month; and
  - (ii) in the case of the calendar month occurring immediately after the expiry or termination of the Term (as defined in the Scheme Coordinator Agreement):
    - A. the Collections Costs paid by the Scheme Coordinator in the previous calendar month; and
    - B. the MRF Audit Costs paid by the Scheme Coordinator in the previous calendar month.
- (c) Subject to clause 10, the Scheme Coordinator must pay to itself the amount set out in each Scheme Coordinator Statement it issues pursuant to clause 3(a) from the Scheme Payments Account on or after the last Business Day of each calendar month.

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### 4. State Loan Agreement

- (a) The Scheme Coordinator may make drawdowns under the State Loan Agreement in accordance with its terms.
- (b) The Scheme Coordinator must make payments under the State Loan Agreement in accordance with its terms.

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### 5. First Supplier Contributions

#### 5.1 Scheme Costs Estimates and Proposed Scheme Contribution by Material Type

- (a) The Scheme Coordinator will no later than 120 Business Days prior to the commencement of each Pricing Period provide to the State (other than in relation to the First Pricing Period when this must be provided no later than the date which is 5 months prior to the Scheme Commencement Date):

- (i) its reasonable estimates of Scheme Costs and unrecovered Bad Debts in respect of each Material Type for that Pricing Period;
- (ii) its reasonable estimates of the volume of each Material Type to be Supplied by First Suppliers during that Pricing Period; and
- (iii) its proposed Scheme Contribution by Material Type for each Material Type for that Pricing Period,

together with supporting detailed particulars for the basis for these estimates and proposed Scheme Contribution by Material Type.

(b) For the purposes of clauses 5.1, 5.2(a) and 5.2(c):

- (i) the total estimated amount of the Scheme Coordinator's proposed or determined Scheme Contribution by Material Type for a Pricing Period must be sufficient to ensure that, in the Scheme Coordinator's reasonable opinion, the Scheme will maintain sufficient liquidity over the duration of that Pricing Period and subsequent Pricing Periods for the Scheme Coordinator to pay Scheme Costs in accordance with this Scheme Payments and Contributions Methodology as and when they fall due;
- (ii) a Scheme Contribution by Material Type must be a single amount expressed in cents per container exclusive of GST in respect of a Suitable Eligible Container of each particular Material Type;
- (iii) the Scheme Coordinator must have a reasonable belief that the aggregate of the proposed or determined Scheme Contribution by Material Type for a Pricing Period in respect of a particular Material Type approximately equals any amounts required to ensure that the Scheme Coordinator meets its obligations under clause 5.1(b)(i). The Scheme Contribution by Material Type must be determined taking into account the matters set out in clause 5.1(b)(v) and must reasonably reflect the utilised Scheme Costs by Material Type of returning Suitable Eligible Containers through the Scheme;
- (iv) any excess Scheme liquidity at the end of a Pricing Period must be carried forward and taken into account in determining the Scheme Contribution by Material Type in relation to the following Pricing Period;
- (v) in determining the amounts, the Scheme Coordinator must take into account actual and forecast data available to it in relation to:
  - A. Suitable Eligible Containers by Material Type that have been collected by Network Operators;
  - B. Suitable Eligible Containers by Material Type that have been delivered for recycling as required in accordance with the MRF Protocol by Material Recovery Facility Operators; and
  - C. Suitable Eligible Containers by Material Type that have been Supplied by First Suppliers, and

any other information determined by the Scheme Coordinator as providing a reasonable basis to determine the amounts.

(c) After providing the State with estimates and proposed Scheme Contribution by Material Type for each Material Type under clause 5.1, the Scheme Coordinator must consult with the State and the State may provide comments to the Scheme Coordinator in relation to these estimates and proposed Scheme Contribution by Material Type for each Material Type and, in relation to the First Pricing Period,

must approve the proposed Scheme Contribution by Material Type for each Material Type in accordance with the Scheme Coordinator Agreement.

## **5.2 Scheme Contribution by Material Type**

- (a) After having had reasonable regard to any comments made by the State under clause 5.1(c) and, in respect of the First Pricing Period, after approval of the proposed Scheme Contribution by Material Type for each Material Type in accordance with the Scheme Coordinator Agreement, the Scheme Coordinator must determine the Scheme Contribution by Material Type for a Pricing Period. The Scheme Coordinator's determination must be made no earlier than 20 Business Days after the Scheme Coordinator has provided the State with estimates and the proposed Scheme Contribution by Material Type for each Material Type under clause 5.1 and no later than 100 Business Days prior to the commencement of the Pricing Period (other than in respect of the First Pricing Period when it must be made after approval of the proposed Scheme Contribution by Material Type for each Material Type in accordance with the Scheme Coordinator Agreement and no later than the date which is 4 months prior to the Scheme Commencement Date or such other date as is agreed between the Scheme Coordinator and the State). Subject to clause 5.2(c), the Scheme Contribution by Material Type so determined will apply in respect of that Pricing Period.
- (b) The Scheme Coordinator must notify the First Suppliers in writing of the amounts of each Scheme Contribution by Material Type for a Pricing Period no later than 80 Business Days prior to the commencement of the Pricing Period (other than in respect of a First Supplier who has entered into a Supply Agreement in the period that is 90 days prior to the commencement of a Pricing Period when this notification must be made as soon as practicable after the Supply Agreement has been entered into).
- (c) If, during a Pricing Period, the Scheme Coordinator reasonably believes that the Scheme Contribution by Material Type in relation to that Pricing Period will be insufficient to ensure the liquidity of the Scheme, the Scheme Coordinator may determine to increase the Scheme Contribution by Material Type for that Pricing Period by amounts no greater than amounts which the Scheme Coordinator reasonably believes will be sufficient to ensure the liquidity of the Scheme. The increased Scheme Contribution by Material Type so determined will apply from a date specified by the Scheme Coordinator, which must be at least 20 Business Days after the Scheme Coordinator has notified the First Suppliers of the amount of the increased Scheme Contribution by Material Type.
- (d) A First Supplier must, by the 15<sup>th</sup> day of each month following the month in which the Scheme Commencement Date falls, give the Scheme Coordinator a statement setting out, in accordance with the reasonable requirements of the Scheme Coordinator (which may be that the submission must be through the Interface, in the form and with the information, required by the Interface) which sets out:
  - (i) details of the aggregate number of Suitable Eligible Containers first Supplied in the State by that First Supplier during the previous month in aggregate and by reference to Material Type;
  - (ii) if that First Supplier is aware that any information previously provided by that First Supplier under this clause 5.2(d) (or deemed to be provided by that First Supplier in accordance with clause 5.2(e)) was incorrect, to the extent the First Supplier has not provided updated information in a statement provided under this clause 5.2(d), particulars of such incorrect information, including the respects in which it was incorrect and updated correct information; and
  - (iii) such other reasonable information required by the Scheme Coordinator to inform and make calculations in accordance with this Scheme Payments and Contribution Methodology.

- (e) If a First Supplier does not provide a statement under clause 5.2(d) by the 15<sup>th</sup> day of a month, the Scheme Coordinator may itself issue the First Supplier's statement under clause 5.2(d) with such information as the Scheme Coordinator reasonably believes to be fair and reasonable. The Scheme Coordinator must notify the First Supplier in writing of the fact that it has issued a statement and the information contained in the statement at the same time as it issues an invoice in respect of that statement, which notification may be contained within the invoice. For the avoidance of doubt:
  - (i) a statement issued by the Scheme Coordinator under this clause 5.2(e) is deemed to be a statement provided by that First Supplier under clause 5.2(d); and
  - (ii) if the First Supplier wishes to dispute any matter in relation to a statement issued by the Scheme Coordinator under this clause 5.2(e), it may issue a Notice of Dispute under its Supply Agreement to the Scheme Coordinator, but it will be bound by the statement so issued unless and until it is varied or set aside in accordance with the dispute resolution procedure under the Supply Agreement.
- (f) The amount payable by a First Supplier in respect of a month is the aggregate of the amounts determined by multiplying the number of Suitable Eligible Containers of each Material Type first Supplied in the State by that First Supplier in that month by the amount of the Scheme Contribution by Material Type applicable to that Material Type.
- (g) A First Supplier must, within 10 Business Days of the date of a Supply Agreement coming into effect, provide the Scheme Coordinator with a statement (via the Interface) which details the aggregate number of Suitable Eligible Containers First Supplied in Victoria by that First Supplier in aggregate and by reference to Material Type on a month-by-month basis in accordance with the obligations under its Supply Agreement.
- (h) Where a First Supplier enters into a Supply Agreement subsequent to the Scheme Commencement Date:
  - (i) the First Supplier is liable to pay Scheme Contributions by Material Type in respect of all Suitable Eligible Containers in respect of which it has been the First Supplier since the Scheme Commencement Date;
  - (ii) the First Supplier must, within 10 Business Days of the date that Supply Agreement came into effect, give the Scheme Coordinator a statement which either:
    - A. states that the First Supplier has not been the First Supplier in respect of any Suitable Eligible Containers in the period from the Scheme Commencement Date until the last day of the month prior to the month in which that Supply Agreement came into effect; or
    - B. other than to the extent to which the information has already been provided pursuant to clause 5.2(g), contains the information required to be provided in a statement under clause 5.2(d) on a month by month basis in respect of the period between the Scheme Commencement Date and the last day of the month prior to the month in which that Supply Agreement came into effect. For the avoidance of doubt, nothing in this clause 5.2(h)(ii)B requires a First Supplier to provide 2 separate statements containing the information required to be provided in a statement under clause 5.2(d) in respect of the month prior to the month in which that Supply Agreement came into effect; and

- (iii) if the First Supplier does not provide the statement under clause 5.2(h)(ii) by 10<sup>th</sup> Business Day after that Supply Agreement came into effect, the Scheme Coordinator may itself issue the First Supplier's statement under clause 5.2(h)(ii) with such information as the Scheme Coordinator reasonably believes to be fair and reasonable. The Scheme Coordinator must notify the First Supplier in writing of the fact that it has issued a statement and the information contained in the statement by the end of the month in which the statement is made. For the avoidance of doubt:
    - A. a statement issued by the Scheme Coordinator under this clause 5.2(h)(iii) is deemed to be a statement provided by that First Supplier under clause 5.2(h)(ii); and
    - B. if the First Supplier wishes to dispute any matter in relation to a statement issued by the Scheme Coordinator under this clause 5.2(h)(iii), it may issue a Notice of Dispute under its Supply Agreement to the Scheme Coordinator, but it will be bound by the statement so issued unless and until it is varied or set aside in accordance with the dispute resolution procedure under the Supply Agreement.
- (i) Unless a First Supplier is a Small First Supplier who has elected to make payments Quarterly, the Scheme Coordinator must, after receiving a statement under clause 5.2(d), no earlier than the 15<sup>th</sup> day of a month and no later than last day of the month in which a statement under clause 5.2(d) is received, issue a claim in the form of a Tax Invoice (**Supplier Invoice**) to the First Supplier which sets out the amount the First Supplier must pay in respect of the month to which the statement relates, adjusted, as required, to reflect any incorrect payments made in respect of previous months (including in respect of Suitable Eligible Containers that were previously first Supplied by the First Supplier that had not been approved as a Suitable Eligible Container under the Act at the time of their Supply) and, where clause 5.2(g) applies, to include any amount payable in respect of the period between the Scheme Commencement Date and the last day of the month prior to the month in which the relevant Supply Agreement came into effect. The Supplier Invoice must set out or attach calculations (being, in respect of each Material Type, the Scheme Contribution by Material Type multiplied by the volumes Supplied by Material Type in the relevant period) in respect of all amounts claimed by the Scheme Coordinator under, and in accordance with, this Scheme Payments and Contribution Methodology. The Scheme Coordinator must promptly respond to a request by a First Supplier for further information or clarification in respect of a Supplier Invoice and provide such details, calculations, supporting documentation and other information in respect of the First Supplier Invoice as is reasonably requested by the First Supplier.
- (j) If a First Supplier is a Small First Supplier who has elected to make payments Quarterly, the Scheme Coordinator must, after receiving a statement under clause 5.2(d) in respect of the last month of the Quarter, no earlier than the 15<sup>th</sup> day of a Quarter and no later than last day of the month in which a statement under clause 5.2(d) in respect of the last month in the Quarter is received, issue an invoice to the First Supplier which sets out the amount the First Supplier must pay in respect of the previous Quarter, adjusted, as required, to reflect any incorrect payments made in respect of previous Quarters (including in respect of Suitable Eligible Containers that were previously first Supplied by the First Supplier that had not been approved as a Suitable Eligible Container under the Act at the time of their Supply) and, where clause 5.2(g) applies, to include any amount payable in respect of the period between the Scheme Commencement Date and the last day of the month prior to the month in which the relevant Supply Agreement came into effect. The invoice must set out or attach calculations (being, in respect of each Material Type, the Scheme Contribution by Material Type multiplied by the volumes Supplied by Material Type in the relevant period) in respect of all amounts claimed by the Scheme Coordinator under, and in accordance with, this Scheme Payments and

Contribution Methodology. The Scheme Coordinator must promptly respond to a request by a Small First Supplier for further information or clarification in respect of an invoice and provide such details, calculations, supporting documentation and other information in respect of the invoice as is reasonably requested by the Small First Supplier.

- (k) A First Supplier must pay the Scheme Coordinator the amount set out as then payable in an invoice issued under clauses 5.2(i) or 5.2(j) within 5 Business Days after the invoice is issued in accordance with its Supply Agreement to that First Supplier by the Scheme Coordinator.
- (l) Invoices under clauses 5.2(i) or 5.2(j) may include adjustments to reflect the correction of errors, changes to reported information or the result of an audit conducted, in respect of a prior invoicing period (**First Supplier Adjustment Period**). The adjustment will:
  - (i) be made to reflect the difference between:
    - A. the actual number of Suitable Eligible Containers of each Material Type first Supplied in the State by the relevant First Supplier during the First Supplier Adjustment Period adjusted to reflect the correction of errors, changes to reported information or as determined by the results of audits; and
    - B. the number of Suitable Eligible Containers of each Material Type first Supplied in the State by that First Supplier that had been used to determine invoice amounts in respect of that First Supplier Adjustment Period; and
  - (ii) and will be determined using the relevant Scheme Contribution by Material Type which applied during the First Supplier Adjustment Period.

### 5.3 Interest on Scheme Contribution by Material Types

- (a) If a First Supplier who is a member of the Scheme Coordinator or a Related Body Corporate to a member of the Scheme Coordinator fails to pay any amount payable by that First Supplier within the time required in accordance with its Supply Agreement and that amount remains outstanding 30 days after it falls due for payment, it must pay interest on that amount in accordance with clause 9.6 of the Supply Agreement and calculated in accordance with clause 5.3(c) (which may be waived at the discretion of the Scheme Coordinator with the consent of the State).
- (b) If a First Supplier fails to pay any amount payable by that First Supplier within the time required in accordance with its Supply Agreement and that amount remains outstanding 30 days after it falls due for payment, it may (at the discretion of the Scheme Coordinator) pay interest on that amount in accordance with clause 9.6 of the Supply Agreement and calculated in accordance with clause 5.3(c). The Scheme Coordinator must exercise its discretion under this clause 5.3(b) fairly reasonably and consistently in relation to all relevant First Suppliers and, where the First Supplier is a Small first Supplier, must only exercise its discretion to determine that interest is payable where the First Supplier has repeatedly failed to pay amounts due within 30 days after they fall due or has wilfully disregarded its obligations under its Supply Agreement.
- (c) Interest will be charged on any late payment by a First Supplier of an invoice as follows:

$$\text{Interest for late payment} = \frac{\text{overdue amount} \times \text{Penalty Interest Rate} \times \text{Number of days payment is late less 30 days}}{365}$$



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## 6. Exporter Supplies

- (a) An Exporter is not entitled to an Export Payment in respect of an Export Supply unless the Exporter has provided (in accordance with this clause 6) an Export Supply Statement in respect of that Export Supply by the date which is 12 months after the date on which the Export Supply was made.
- (b) An Exporter may include details of Export Supplies in a monthly Export Supply Statement which may be given to the Scheme Coordinator by the 15<sup>th</sup> day of each month in respect of the previous month (**Export Supply Statement Due Date**). Each Export Supply Statement must be in accordance with the reasonable requirements of the Scheme Coordinator (which may include that the submission must be made through the Interface, in the form and with the information, required by the Scheme Coordinator and published by the Scheme Coordinator on the Interface and contains:
  - (i) details of the aggregate number of Suitable Eligible Containers that were the subject of Export Supplies by the Exporter during the previous month in aggregate and by reference to each Material Type;
  - (ii) a statement that the Exporter reasonably believes that each Suitable Eligible Container the subject of the aggregate number of Export Supplies referred to in clause 6(b)(i) will not be further Supplied to a person within Victoria;
  - (iii) if the Exporter is aware that any information previously provided by that Exporter in an Export Supply Statement was incorrect, to the extent the Exporter has not provided updated information in a statement provided under this clause 6(b), particulars of such incorrect information, including the respects in which it was incorrect and updated correct information; and
  - (iv) such other reasonable information required by the Scheme Coordinator to inform and make calculations in accordance with this Scheme Payments and Contribution Methodology.
- (c) Export Supplies can only be claimed by an Exporter who has:
  - (i) executed an Export Supply Agreement in favour of the Scheme Coordinator (which is in force and has not been terminated);
  - (ii) been issued with an Exporter ID (**EID**) by the Scheme Coordinator; and
  - (iii) not had its EID revoked by the Scheme Coordinator for one of the following reasons:
    - A. breach of the Export Supply Agreement including failure to provide an annual statutory declaration or failure to comply with the records and audit obligations;
    - B. an audit identifies fraudulent conduct, a material inconsistency or a deliberate misstatement in connection with the Exporter's reported Export Supplies; or
    - C. the Exporter is not a fit and proper person.
- (d) The Exporter must, within 10 Business Days of the date that the Export Supply Agreement came into effect, provide the Scheme Coordinator a statement which details the aggregate number of Suitable Eligible Containers Export Supplied in the State by that Exporter in aggregate and by reference to Material Type by month in accordance with the obligations under its Exporter Supply Agreement.

- (e) Any Export Supply Statement that is materially incomplete, inaccurate or materially non-compliant with clause 6(b) may not be accepted by the Scheme Coordinator acting reasonably. The Scheme Coordinator will notify the Exporter that an Export Supply Statement has not been accepted in accordance with this clause as soon as practical. The Exporter may resubmit any such Export Supply Statements not accepted in accordance with this clause in accordance with clause 6(b).
- (f) The Scheme Coordinator must issue the Exporter with a Recipient Created Tax Invoice in respect of the Export Supplies the subject of an Export Supply Statement (based on the Scheme Contribution by Material Type applicable at the time the Export Supply was made) within 10 Business Days of the Export Supply Statement Due Date in the month in which a complete and accurate Export Supply Statement was submitted by the Exporter. Any Export Supply Statement received on a day in a month after the Export Supply Statement Due Date will be deemed to have been submitted in the following month. In determining the amount payable to the Exporter in respect of the Export Supplies the subject of the Export Supply Statement, the Scheme Coordinator can take into account any corrections made pursuant to clause 6(b)(iii) in that Export Supply Statement. The Scheme Coordinator must pay the Exporter in accordance with the Recipient Created Tax Invoice within 10 Business Days of that invoice being issued.
- (g) The Scheme Coordinator may at any time either require payments from an Exporter or make payments to an Exporter to reflect the correction of errors, changes to reported information or the result of an audit conducted, in respect of a prior invoicing period (**Exporter Adjustment Period**). Any required payments will reflect the difference between:
  - (i) a calculation of the Export Payment using the actual number of Suitable Eligible Containers of each Material Type adjusted to reflect the correction of errors, changes to reported information or as determined by the results of audits and the relevant Scheme Contribution by Material Type that applied to the relevant Suitable Eligible Containers that were the subject of Export Supplies by the Exporter at the time the Export Supply was made; and
  - (ii) the Export Payments made by the Scheme Coordinator in respect of that Exporter Adjustment Period.

Any amounts required to be payable under this clause 6(g) will be a debt due and payable to the party to whom the amount is payable within 5 Business Days of the Scheme Coordinator notifying the Exporter of such requirements under this clause 6(g).

- (h) If the Scheme Coordinator is late in making a payment under clause 6(f), the Scheme Coordinator must pay the Exporter interest on any unpaid amounts at the Penalty Interest Rate commencing from the day when the unpaid amounts are due (which, where the Scheme Coordinator has not issued a Recipient Created Tax Invoice in accordance with clause 6(f), must be determined on the assumption that the Scheme Coordinator had issued a Recipient Created Tax Invoice in accordance with clause 6(f)). For the avoidance of doubt, the interest paid by the Scheme Coordinator is not a Scheme Cost, cannot be included in a Scheme Contribution by Material Type and must be paid by the Scheme Coordinator.

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## 7. Network Payments Account

- (a) Each Network Operator must establish and maintain a Network Payments Account, and hold all moneys in the Network Payments Account on trust for the State to be dealt with in accordance with this Scheme Payments and Contribution Methodology, in accordance with the requirements of the relevant Network Operator Agreement.

- (b) A Network Operator must use its Network Payments Account solely for the purposes of:
- (i) receiving amounts from the Scheme Coordinator in respect of Third Party Refund Amounts;
  - (ii) receiving amounts from the Scheme Coordinator in respect of Vouchers;
  - (iii) receiving interest on the balance standing to the credit of the Network Payments Account; and
  - (iv) making payments of, to the extent any such payments are due, in the following order:
    - A. Third Party Refund Amounts to Collection Point Operators other than the Network Operator provided that where the Network Operator has paid a Third Party Refund Amount to a Collection Point Operator in advance of receiving the payment in respect of this Third Party Refund Amount under clause 8(e)(i), such Third Party Refund Amounts can be paid to the Network Operator;
    - B. to any entity to whom the Network Operator has a liability to make a payment in respect of the value of Vouchers (other than Vouchers where the Network Operator itself has the liability to meet the claim of the holder of the Voucher) that have been issued;
    - C. payments to the Australian Taxation Office in respect of tax liability on interest earned on the balances standing to the credit of the Network Payments Account and GST liability in respect of transactions referred to in this clause;
    - D. interest earned on the balance standing to the credit of the Network Payments Account to the Scheme Coordinator (less bank fees incurred and amounts payable to the Australian Taxation Office in respect of tax liability on interest earned on the balances standing to the credit of the Network Payments Account);
    - E. amounts in respect of Expired Vouchers to the Scheme Coordinator or itself in accordance with clause 7(e);
    - F. other amounts required to be paid from the Network Payments Account pursuant to the Scheme Agreements; and
    - G. any amount for which the Network Operator is entitled to be indemnified from the "Trust Assets" (as defined in the relevant Network Operator Agreement) in its capacity as trustee of the trust referred to in clause 13.2 of the relevant Network Operator Agreement,
- and must not use the Network Payments Account to pay the operating expenses of the Network Operator or for any other purposes.
- (c) The Network Operator must ensure all amounts paid by the Scheme Coordinator in respect of Third Party Refund Amounts and Vouchers are deposited into the Network Payments Account.
- (d) Within 10 Business Days after the end of a financial year, the Network Operator must pay the interest earned on the Network Payments Account in that financial year, less any bank fees incurred by the Network Operator in respect of the

Network Payments Account in that financial year and tax liability in respect of that interest earned, to the Scheme Coordinator.

- (e) Within 10 Business Days after giving the Scheme Coordinator a statement pursuant to clause 8(i), a Network Operator must, from the Network Payments Account:
  - (i) pay the Scheme Coordinator an amount equal to the amount referred to in clause 8(i)(iii)A less the amount referred to in clause 8(i)(vi)A; and
  - (ii) pay to itself the amount referred to in clause 8(i)(vi)A.
- (f) The Network Operator must not withdraw an amount from the Network Payments Account in respect of a Third Party Refund Amount or a Voucher unless a Refund Amount in respect of the Suitable Eligible Container to which that amount relates has been determined, in accordance with the methodology used by the Network Operator, to have been properly paid or payable.
- (g) Notwithstanding any other provision in this clause 7, but subject to the Account Bank Deed:
  - (i) interest earned on the Network Payments Account may be used to pay bank fees reasonably payable in relation to that account which bank fees are payable as a result of the number of payment transactions from the Network Payments Account being greater than they otherwise would be if the bank account that was to be used by a Network Operator was its usual operating bank account and not a special purpose bank account as required by this clause 7;
  - (ii) subject to 7(g)(i), each Network Operator is responsible for ensuring the payment of all bank fees in relation to its Network Payments Account;
  - (iii) the Network Payments Account must not be allowed to be overdrawn;
  - (iv) a Network Operator's arrangements in relation to its Network Payments Account may include a right for the institution with whom the account is held to debit bank fees to the account; and
  - (v) any payments to and from the Network Payments Account to reflect the matters set out in clauses 7(g)(i) - 7(g)(iv) are permitted.

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## **8. Network Payments**

- (a) A Network Operator must, by the 2<sup>nd</sup> day after the end of each Week following the Scheme Commencement Date, give the Scheme Coordinator a statement setting out, in accordance with the reasonable requirements of the Scheme Coordinator (which may include that the submission must be through the Interface, in the form and with the information, required by the Interface) in respect of that Week:
  - (i) the number of Suitable Eligible Containers collected at Refund Collection Points by that Network Operator, its agents and contractors:
    - A. in aggregate; and
    - B. by Refund Collection Point,by reference to Material Type;
  - (ii) the Refund Amounts paid by that Network Operator, its agents and contractors to, or at the direction of, persons who have presented a Suitable Eligible Container to a Refund Collection Point:

- A. in aggregate; and
    - B. by Refund Collection Point,

separately itemising the Third Party Refund Amounts;
  - (iii) the aggregate face value of Vouchers that were issued:
    - A. in total;
    - B. by or through Refund Collection Point; and
    - C. where the Network Operator itself has the liability to meet the claim of the holder of the Voucher;
  - (iv) the Network Operator's calculation of the Network Fee, including any calculation of an adjustment in relation to a Maintenance Amount together with all supporting documentation in relation to the calculation of the adjustment, which must cover any amounts received or to be received by the Network Operator under any other government assistance program in connection with the Significant General Change in Law and the proceeds of any applicable insurance policy (including those proceeds that the Network Operator would have been entitled to receive if it had complied with the insurance policy);
  - (v) if the Network Operator is aware that any information previously provided by the Network Operator under this clause 8(a) was incorrect, to the extent the Network Operator has not provided updated information in a statement provided under this clause 8(a), particulars of such incorrect information, including details of the respects in which it was incorrect and updated correct information; and
  - (vi) such other reasonable information required by the Scheme Coordinator to inform and make calculations in accordance with this Scheme Payments and Contribution Methodology.
- (b) Any statement that is materially incomplete, inaccurate or materially non-compliant with clause 8(a) may not be accepted by the Scheme Coordinator acting reasonably. The Scheme Coordinator will notify the Network Operator that a statement has not been accepted in accordance with this clause as soon as practical. The Network Operator may resubmit any such statements not accepted in accordance with this clause in accordance with 8(a).
- (c) Subject to clause 8(b), the Scheme Coordinator must issue a Payment Certificate (or, at its discretion a number of Payment Certificates) by whichever is the latest of the Tuesday of the week after a Network Operator submits a statement under clause 8(a) or, if there are more than 3 days that are not Business Days in the 7 day period commencing on the Wednesday of the week in which a Network Operator submits a statement under clause 8(a), the Wednesday of the week after a Network Operator submits a statement under clause 8(a) provided that any statement submitted by a Network Operator under clause 8(a) that is submitted after a Tuesday will be deemed to have been submitted in the following week. The Payment Certificate (or if more than 1 Payment Certificate is issued in relation to a statement, such Payment Certificates in aggregate) must set out the amount to which the Network Operator is entitled to be paid in relation to that statement, including any adjustment that the Scheme Coordinator has validly determined, acting reasonably, should be made in relation to a Maintenance Amount:
- (i) adjusted, as required, to reflect any incorrect payments made in respect of previous Weeks; and
  - (ii) less the sum of:

- A. the amount of any NOPFP issued in that Week; and
- B. the amount of any NOPFPs that have been issued prior to that Week that have not been previously deducted from amounts payable to the Network Operator,

as a Recipient Created Tax Invoice.

For the avoidance of doubt:

- the obligations under clauses 8(a) and 8(b) are intended to create a single weekly payment day for Network Operators, being Tuesday, unless there are 3 or more non-Business Days in the 7 day period immediately preceding (and including) a Tuesday in which case the weekly payment day is delayed for that week only to Wednesday;
- the obligations under clauses 8(a) and 8(c) apply even if a day is not a Business Day;
- the Scheme Coordinator may be required to issue Payment Certificates in respect of multiple weeks on the same day, depending upon when a Network Operator submits its statements under clause 8(a); and
- by way of illustration and for the avoidance of doubt:
  - the Scheme Coordinator may issue multiple Payment Certificates in place of a single Payment Certificate;
  - if the Monday of a week is a public holiday and there are no other public holidays in the period which commences on the Wednesday of the prior week and ends on Tuesday of that week, payment day for that week is on the Wednesday;
  - if a week is the week immediately following Easter, Monday of that week is a public holiday and Friday of the previous week was a public holiday this means that there were 4 non-Business Days in the relevant 7 day period for the purposes of that week and payment day for that week is Wednesday;
  - if the Wednesday of a week is a public holiday and the Wednesday of the previous week was a public holiday, payment day for that week is Wednesday; and
  - the Scheme Coordinator and a Network Operator are able to negotiate bespoke arrangements in relation to specific periods, such as Christmas and Easter pursuant to clause 8(k).

(d) Each Payment Certificate, to the extent applicable, must also, in relation to a statement submitted by the Network Operator under clause 8(a), set out or attach:

- (i) the amount of the Network Fee payable in respect of the Week the subject of the statement;
- (ii) the aggregate amount payable in respect of the Week the subject of the statement to the Network Operator in respect of Refund Amounts paid by that Network Operator, its agents and contractors to, or at the direction of, persons who have presented a Suitable Eligible Container to a Refund Collection Point, excluding Third Party Refund Amounts;
- (iii) the aggregate amount payable to the Network Operator in respect of Third Party Refund Amounts;

- (iv) the aggregate amount payable in respect of the Week the subject of the statement to the Network Operator in respect of Vouchers;
  - (v) the amount of any adjustments required to reflect any incorrect payments made in respect of previous Weeks;
  - (vi) the amount of any deductions under clause 8(c)(ii); and
  - (vii) the calculations of all amounts to be paid to the Network Operator under, and in accordance with, the Scheme Payments and Contribution Methodology to enable the Network Operator fully and accurately to determine the amount then payable by the Scheme Coordinator to the Network Operator. The Scheme Coordinator must promptly respond to a request by a Network Operator for further information or clarification in respect of a Payment Certificate and provide such details, calculations, supporting documentation and other information in respect of the Payment Certificate as is reasonably requested by the Network Operator.
- (e) The Scheme Coordinator must pay a Network Operator the aggregate amount set out in each Payment Certificate at the time it is issued to the Network Operator as follows:
- (i) the aggregate amounts payable to the Network Operator in respect of Third Party Refund Amounts and Vouchers (other than Vouchers where the Network Operator itself has the liability to meet the claim of the holder of the Voucher) are to be deposited into the Network Payments Account; and
  - (ii) the balance is to be paid directly to the Network Operator.
- (f) Payment Certificates may include adjustments to reflect the correction of errors, changes to reported information or the result of an audit conducted, in respect of a prior invoicing period (**Network Operator Adjustment Period**). In the case of an audit conducted in respect of a prior invoicing period, the adjustment will be made to reflect any adjustments that need to be made, including, as applicable, the difference between:
- (i) the actual number of Suitable Eligible Containers of each Material Type collected by the relevant Network Operator, its agents and contractors during the sample period the subject of the relevant audit (**Sample Period**) from the Refund Collection Points which were the subject of the relevant audit (**Sample Refund Collection Points**) and the actual Refund Amounts paid and Vouchers issued and paid by that Network Operator, its agents and contractors to persons who have presented a Suitable Eligible Container to the Sample Refund Collection Point during the Sample Period as determined by the audits; and
  - (ii) the number of Suitable Eligible Containers of each Material Type collected by the relevant Network Operator, its agents and contractors from the Sample Refund Collection Points and the Refund Amounts paid and Vouchers issued and paid by that Network Operator, its agents and contractors to persons who have presented a Suitable Eligible Container to a Sample Refund Collection Point that had been used to determine Network Payments in respect of that Sample Period and those Sample Refund Collection Points.
- (g) If the Scheme Coordinator is late in making a payment under clause 8(e), the Scheme Coordinator must pay the relevant Network Operator in accordance with the Network Agreement including interest on any unpaid amounts at the Penalty Interest Rate commencing from the day the Payment Certificate was issued (which, where the Scheme Coordinator has not issued a Payment Certificate in accordance

with clause 8(c), must be determined on the assumption that the Scheme Coordinator had issued a Payment Certificate in accordance with clause 8(c)). For the avoidance of doubt, the interest paid by the Scheme Coordinator is not a Scheme Cost, cannot be included in a Scheme Contribution by Material Type and must be paid by the Scheme Coordinator.

- (h) A Network Operator must maintain the following records for a period of at least 5 years (or longer if required by law) after a Voucher has been issued by or on behalf of the Network Operator, its agents and contractors to persons who have presented a Suitable Eligible Container to a Refund Collection Point:
  - (i) identification details of each Voucher including the Voucher ID, Refund Collection Point at which the Voucher was issued, the date and time issued, and the party (whether Integrated Retailer or otherwise) where the Voucher was intended to be redeemed at;
  - (ii) date of the end of the validity period of each Voucher; and
  - (iii) in respect of IR Vouchers, amounts paid or value given to a holder of the Voucher and dates on which such amounts were paid or value given.
- (i) A Network Operator must within 20 Business Days after the end of a financial year and on the final day of the term of its Network Operator Agreement provide the Scheme Coordinator with a statement containing the following information concerning Vouchers in relation to that financial year or the financial year in which the final day of the term of its Network Operator Agreement occurs (as the case may be) (**Voucher Period**):
  - (i) the aggregate face value of such Vouchers issued during the Voucher Period, separately itemising Vouchers that were issued that are IR Vouchers and NIR Vouchers;
  - (ii) the aggregate amount that was paid by the Network Operator in respect of Vouchers during the Voucher Period, separately itemising the aggregate amounts of Goodwill Payments, payments in respect of IR Vouchers and payments in respect of NIR Vouchers;
  - (iii) the aggregate face value of IR Vouchers which became Expired Vouchers during the Voucher Period, separately itemising:
    - A. the aggregate amount of such IR Vouchers in respect of which no payment has been made from the Network Payments Account;
    - B. the aggregate amount of such IR Vouchers where the Network Operator itself has the liability to meet the claim of the holder of the Voucher; and
    - C. the aggregate amount of such IR Vouchers in respect of which a payment has been made from the Network Payments Account
  - (iv) the Voucher Expiration Rate applying to that Voucher Period together with particulars of the calculation of the Voucher Expiration Rate;
  - (v) an amount equal to the face value of NIR Vouchers issued in the earlier Voucher Period that expired on the day which is 2 years and 1 day prior to the commencement of the Voucher Period multiplied by the Voucher Expiration Rate applicable to that Voucher Period or, where a Network Operator and the Scheme Coordinator agree that the nature and location of Refund Collection Points issuing NIR Vouchers are substantially different from the nature and location of the Refund Collection Points



issuing IR Vouchers (by way of example, a Refund Collection Point issuing NIR Vouchers that is located within a retailer's premises is likely to have a greater percentage of NIR Vouchers redeemed than if the Refund Collection Point was located elsewhere), multiplied by such other factor that is agreed by that Network Operator and the Scheme Coordinator and approved by the State as an alternative to the Voucher Expiration Rate; and

(vi) Goodwill Payments itemised as follows:

- A. the aggregate amount of Goodwill Payments made in respect of IR Vouchers in respect of which no payment has been made from the Network Payments Account that became Expired Vouchers during the Voucher Period;
- B. the aggregate amount of Goodwill Payments made in respect of IR Vouchers where the Network Operator itself has the liability to meet the claim of the holder of the Voucher that became Expired Vouchers during the Voucher Period;
- C. the aggregate amount of Goodwill Payments made in respect of IR Vouchers in respect of which payment has been made from the Network Payments Account that became Expired Vouchers during the Voucher Period; and
- D. the amount of Goodwill Payments made in respect of NIR Vouchers issued in the earlier Voucher Period that expired on the day which is 2 years and 1 day prior to the commencement of the Voucher Period; and

(j) The Network Operator must at the same time as giving the Scheme Coordinator a statement pursuant to clause 8(i), pay the Scheme Coordinator an amount calculated as follows:

(i) the total of the amounts referred to in clauses 8(i)(iii)B, 8(i)(iii)C and 8(i)(v);

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(ii) the total of the amounts referred to in clauses 8(i)(vi)B and 8(i)(vi)C and 8(i)(vi)D.

(k) Other than in respect of dates or timing that refer to the final day of the term, the dates and timings set out in this clause 8 can be varied in respect of a Network Operator by written agreement between that Network Operator and the Scheme Coordinator.

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## 9. Payments to Material Recovery Facility Operators

- (a) The Scheme Coordinator must pay eligible Material Recovery Facility Operators MRF Payments Quarterly in arrears from the Scheme Payment Account, in accordance with the MRF Protocol, the relevant Recovery Agreement, clause 13.5 of the Scheme Coordinator Agreement and this clause 9.
- (b) MRF Payments can only be claimed by a Material Recovery Facility Operator who has executed a Recovery Agreement.
- (c) A Material Recovery Facility Operator may provide to the Scheme Coordinator a Quarterly statement which must be given to the Scheme Coordinator by the 20th Business Day after the end of a Quarter (**MRF Quarterly Statement Due Date**). The statement must be in accordance with the requirements of clause 13.5 of the

Scheme Coordinator Agreement, the Regulation, the MRF Protocol and the relevant Recovery Agreement and the reasonable requirements of the Scheme Coordinator (which may include that the submission must be through the Interface, in the form and with the information, required by the Interface). Each statement must contain:

- (i) the volume of material in tonnes (measured to 3 decimal places) containing Suitable Eligible Containers that was delivered for recycling as required in accordance with the MRF Protocol by the Material Recovery Facility Operator during the previous Quarter in aggregate and by reference to each Material Type containing Suitable Eligible Containers;
  - (ii) if the Material Recovery Facility Operator is aware that any information previously provided by that Material Recovery Facility Operator in a statement under this clause 9(c) was incorrect, to the extent the Material Recovery Facility Operator has not provided updated information in a statement provided under this clause 9(c), particulars of such incorrect information, including the respects in which it was incorrect and updated correct information; and
  - (iii) such other reasonable information required by the Scheme Coordinator to inform and make calculations in accordance with this Scheme Payments and Contribution Methodology.
- (d) Any statement that is materially incomplete, inaccurate or materially non-compliant with clause 9(c) may not be accepted by the Scheme Coordinator acting reasonably. The Scheme Coordinator will notify the Material Recovery Facility Operator that a statement has not been accepted in accordance with this clause as soon as practical. The Material Recovery Facility Operator may resubmit any such statements not accepted in accordance with this clause in accordance with 9(c).
- (e) The Scheme Coordinator must issue a MRF Certificate (or multiple MRF Certificates in place of a single MRF Certificate):
  - (i) where a Material Recovery Facility Operator provides a complete and accurate statement under clause 9(c) in the period that commences on the day following the end of a Quarter and ends on the first MRF Quarterly Statement Due Date following that Quarter, no later than 20 Business Days after that MRF Quarterly Statement Due Date;
  - (ii) where a Material Recovery Facility Operator provides a complete and accurate statement under clause 9(c) in respect of a Quarter in the period that commences on the day following the first MRF Quarterly Statement Due Date following that Quarter and ends on the date in the following month that corresponds to the date in the month on which that MRF Quarterly Due Date fell, no later than 20 Business Days after the last day in that period; and
  - (iii) otherwise, no later than 20 Business Days from the first MRF Quarterly Statement Due Date that follows a Material Recovery Facility Operator providing a complete and accurate statement under clause 9(c).

A MRF Certificate must set out the MRF Payment to which the Material Recovery Facility Operator is entitled to be paid in relation to that statement adjusted, as required, to reflect any incorrect payments made in respect of previous Quarters, as a Recipient Created Tax Invoice as reasonably determined by the Scheme Coordinator. The MRF Certificate must be in accordance with the requirements of clause 13.5 of the Scheme Coordinator Agreement, the Regulation, the MRF Protocol and the relevant Recovery Agreement and also, in relation to that statement, set out the calculations in respect of all amounts the subject of the MRF Certificate to enable the Material Recovery Facility Operator to determine the

amount then payable by the Scheme Coordinator to the Material Recovery Facility Operator. The Scheme Coordinator must promptly respond to a request by a Material Recovery Facility Operator for further information or clarification in respect of a MRF Certificate and provide such details, calculations, supporting documentation and other information in respect of the MRF Certificate as is reasonably requested by the Material Recovery Facility Operator.

- (f) The Scheme Coordinator must pay the Material Recovery Facility Operator the aggregate amount of MRF Payments set out in each MRF Certificate within 5 Business Days of issuing the MRF Certificate.
- (g) MRF Certificates may include adjustments to reflect the correction of errors, changes to reported information or the result of an audit conducted and any other adjustment expressly permitted or required in accordance with the MRF Protocol, in respect of a prior Quarter (**MRF Adjustment Period**), including adjustments to reflect the difference between:
  - (i) the actual number of Suitable Eligible Containers of each Material Type delivered for recycling as required in accordance with the MRF Protocol by the relevant Material Recovery Facility Operator during the MRF Adjustment Period adjusted to reflect the correction of errors, changes to reported information or as determined by results of the audits; and
  - (ii) the number of Suitable Eligible Containers of each Material Type delivered for recycling as required in accordance with the MRF Protocol by that Material Recovery Facility Operator that had been used to determine MRF Payments in respect of that MRF Adjustment Period.
- (h) If the Scheme Coordinator is late in making a payment under clause 9(f), the Scheme Coordinator must pay the Material Recovery Facility Operator in accordance with the requirements of clause 13.5 of the Scheme Coordinator Agreement, the Regulation, the MRF Protocol and the relevant Recovery Agreement including, interest on any unpaid amounts at the Penalty Interest Rate commencing from the day the MRF Certificate was issued (which, where the Scheme Coordinator has not issued an MRF Certificate in accordance with clause 9(e), must be determined on the assumption that the Scheme Coordinator had issued an MRF Certificate in accordance with clause 9(e)). For the avoidance of doubt, the interest paid by the Scheme Coordinator is not a Scheme Cost, cannot be included in a Scheme Contribution by Material Type and must be paid by the Scheme Coordinator.

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## **10. Service Fee and Performance Failure Payments**

### **10.1 Service Fee**

On the first Business Day of each month which occurs after the issue of a notice in accordance with paragraph 3 of Part 2 of Schedule 6 to the Scheme Coordinator Agreement, the State will issue the Scheme Coordinator with a Tax Invoice for the amount of the Service Fee for that month. The Scheme Coordinator must pay from the Scheme Payments Account the amount set out in the State's Tax Invoice as a debt due and payable within 5 Business Days of the receipt of the Tax Invoice.

### **10.2 SCPFPs**

The Scheme Coordinator must pay any SCPFPs as follows:

- (a) the Scheme Coordinator must deduct from any amount to be paid to itself under clause 3(c) the amount of any SCPFP that has not previously been paid and must pay the amount so deducted from the Scheme Payments Account as follows:

- (i) to the State, less any amount referred to in clause 10.2(a)(ii) at the same time it pays itself, or, but for this clause 10.2(a) would have been required to pay itself, under clause 3(c); and
- (ii) to the Network Operator, any amount of the SCPFP that:
  - A. is required to be paid to the Network Operator under clause 16.5 of the Network Agreement; and
  - B. the State agrees to pay to a Network Operator under clause 14.2 of the Network Operator Agreement

to the Network Operator at the same time as the Scheme Coordinator pays, or but for this clause 10.2(a) would have been required to pay, the State pursuant to clause 10.2(a)(i),

in full or partial satisfaction of its obligation to pay the SCPFP to the State.

- (b) Any SCPFP that has not been paid as at the time of termination or expiry of the Scheme Coordinator Agreement becomes a debt immediately due and payable by the Scheme Coordinator to the State at that time. The Scheme Coordinator must pay the amount of any Tax Invoice issued by the State in respect of a SCPFP after termination or expiry of the Scheme Coordinator Agreement as a debt due and payable within 20 Business Days of the receipt of the Tax Invoice.

### 10.3 NOPFPs

- (a) The State may issue the Network Operator with a Tax Invoice for the amount of any NOPFP (which the Network Operator must pay to the State in accordance with the Network Operator Agreement). The State will provide the Scheme Coordinator with a copy of all Tax Invoices for the NOPFPs.
- (b) The Scheme Coordinator must, at the same time as it makes a payment under clause 8(e) in relation to a Payment Certificate in respect of which a deduction under clause 8(c)(ii) has been made, pay from the Scheme Payments Account an amount equal to the amount so deducted as follows:
  - (i) to itself:
    - A. any amount that is required to be paid to itself under clause 16.5 of the Network Agreement that has not previously been paid; and
    - B. any amount of the NOPFP that the State agrees to pay to the Scheme Coordinator in accordance with clause 14.2 of the Scheme Coordinator Agreement that has not previously been paid.

(together “**Scheme Coordinator Adjustments**”), and

- (ii) to the State the amount so deducted under clause 8(c)(ii) less the Scheme Coordinator Adjustments,

in full or partial satisfaction of the Network Operator’s obligation to pay the NOPFP to the State.

- (c) The payment by the Scheme Coordinator of the amount of a Scheme Coordinator Adjustment is taken to be a payment to the Scheme Coordinator under clause 16.5 of the Network Agreement and/or the payment of an amount of the NOPFP that the State agrees to pay to the Scheme Coordinator in accordance with clause 14.2 of the Scheme Coordinator Agreement (as the case may be).

- (d) Any NOPFP that has not been paid as at the time of termination or expiry of a relevant Network Operator Agreement becomes a debt immediately due and payable by that Network Operator to the State at that time. That Network Operator must pay the amount of any Tax Invoice issued by the State under clause 10.3(a) after termination or expiry of the Scheme Coordinator Agreement as a debt due and payable within twenty (20) Business Days of the receipt of the Invoice.