

# ACT Container Deposit Scheme

established under the Waste Management and Resource Recovery Act 2016, Part 10A



## 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 section 1.3 will have the meaning given to them in that section; and
- (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.

#### 1.2 Definitions

Term	Meaning
<b>Act</b>	<i>Waste Management and Resource Recovery Act 2016 (ACT), as amended or replaced from time to time.</i>
<b>Actual Container Volumes</b>	as the context requires, the volume of Containers: <ul style="list-style-type: none"><li>(1) determined by the Network Operator and reported to the Scheme Coordinator pursuant to section 6.1(c)(iv); or</li><li>(2) actually supplied by the Supplier in the relevant period as reported by the Supplier, in the Supplier Statements provided under the Supply Arrangement; or</li><li>(3) agreed by the Scheme Coordinator to have been recovered through a MRF by a MRF Operator in a quarter in accordance with the Processing Refund</li></ul>

Protocol.

<b>Administration Fee</b>	the fee calculated in accordance with section 3.1.
<b>Arrears Period</b>	has the meaning given in section 4.14(a).
<b>Assumed Container Recovery Rates</b>	the percentage of Containers expected to be collected by the Scheme (whether through Collections Points, Material Recovery Facility Operators or the Network Operator) in a Billing Period relative to the volume of Containers supplied by all Suppliers during the same Billing Period.
<b>Audit Adjustment</b>	the adjustment to the Supplier Contribution, Network Fee or Refund Amounts calculated by the Scheme Coordinator in accordance with sections 4.5(g) or 6.5(d).
<b>Bad Debt Amounts</b>	has the meaning given in section 4.3(h).
<b>BBSW</b>	ninety (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. <i>For example, if an amount is due in November 2017, the BBSW is as published on the first Business Day of November 2017.</i>
<b>Billing Period</b>	the time period covered by an invoice issued in accordance with the terms of this Scheme Payments and Contribution Methodology and the Scheme Coordinator Agreement, the Network Arrangement, Network Operator Agreement or, the Supply Agreement or the Processing Refund Protocol as the case may be.
<b>Business Day</b>	a day that is not a Saturday, Sunday or public holiday in the Territory.
<b>Exporter</b>	any entity that has executed an Export Supply Deed Poll (which is in force and has not been terminated) and supplied Export Supplies in respect of a Container previously supplied in the Territory by a Supplier.
<b>Estimated Monthly Container Volumes (by Material Type)</b>	the estimated volume of Containers by Material Type to be collected by the Network Operator calculated in accordance with section 4.6(a).
<b>Export Supplies</b>	means Containers that were initially supplied in the Territory that are subsequently exported and supplied unopened outside of the Territory which the relevant Supplier and Exporter reasonably believe will not be further supplied to a person within the Territory.
<b>Export Supply Deed Poll</b>	means the deed poll of that name as published by the Scheme Coordinator and updated from time to time.
<b>Export Supply Statements</b>	Statement of the actual Containers provided by a Supplier and subsequently Export Supplied in accordance with the reporting requirement under clause 4.7.

<b>Forecast Container Volume by Supplier</b>	for the relevant period, the amount calculated in accordance with section 4.6(c).
<b>Forecast Container Volume for all Suppliers</b>	for the relevant period, the amount calculated in accordance with section 4.6(c).
<b>Forecast Monthly Network Fee</b> (by Material Type)	the monthly forecast of the fee payable to the Network Operator calculated in accordance with section 4.3(d) on a monthly basis.
<b>Forecast Processing Refund Amount</b>	for the relevant Billing Period, the amount calculated in accordance with section 4.3(e).
<b>GST</b>	has the meaning given by the GST Act.
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Interim Supplier Contribution</b>	amounts payable by Suppliers calculated in accordance with section 4.10.
<b>Interim Supplier Contribution Invoice</b>	an invoice for an Interim Supplier Contribution issued pursuant to section 4.10.
<b>Market Share</b>	means the volume of Containers (by Material Type, or in aggregate) supplied by a Supplier in a relevant period as a percentage of the total volume of Containers (by the same Material Type or in aggregate as relevant) supplied by all Suppliers in the same period.
<b>Market Share Adjustment</b>	the adjustment to the monthly Supplier Advance Contribution calculated by the Scheme Coordinator in accordance with section 4.5(e).
<b>Material Recovery Facility Operator or MRF Operator</b>	a Material Recovery Facility Operator (as defined in the Act) with whom the Territory has entered into a material recovery facility operation services agreement.
<b>Material Type</b>	one of the following material type of a Container: <ul style="list-style-type: none"> <li>• Glass;</li> <li>• PET;</li> <li>• HDPE;</li> </ul>

- Aluminium;
- Liquid Paper Board;
- Steel;
- Other Plastics (incorporating plastics not PET or HDPE); or
- Other Materials (incorporating non-plastics not glass, aluminium, liquid paper board or steel).

*Note: where this Scheme Payments and Contribution Methodology requires calculations for or by each Material Type, the calculation should be made for each of the material type categories included in this definition.*

<b>Network Fee Adjustment</b>	for the relevant month, the amount calculated in accordance with section 4.3(d).
<b>Network Fee</b>	the amount in respect of administration and handling costs for Containers that are collected at the Collection Points which the Scheme Coordinator is obliged to pay the Network Operator under the Network Arrangement, as set out in Schedule [4] of the Network Operator Agreement.
<b>Network Operator Agreement</b>	means the Scheme Administration Agreement between the Territory and the Network Operator.
<b>Network Operator Financial Penalty</b>	any financial penalty incurred by the Network Operator in accordance with section 64Q of the Act and the Network Operator Agreement. For the avoidance of doubt, this has the same meaning as “civil penalty” in the Act.
<b>Network Payments</b>	payments made by the Scheme Coordinator to the Network Operator pursuant to section 6.
<b>Payment Certificate</b>	the certificate issued in accordance with section 6.6 or 7.1.
<b>Payment Claim</b>	a claim for payment submitted under section 6.1 or 7.1.
<b>Penalty Interest Rate</b>	BBSW + 200 basis points.
<b>Processing Refund Amount</b>	the amount of the Processing Refund for the relevant period, paid per Container to the Material Recovery Facility Operator calculated on the basis of the Refund Amount.
<b>Processing Refund Protocol</b>	the “Processing Refund Protocol” as defined in the Act, as amended or replaced from time to time.
<b>Recipient Created Tax Invoice</b>	has the meaning in the GST Act.

<b>Recovery Amount</b>	has the meaning set out in section 4.3(g).
<b>Refund Amount</b>	has the meaning given by the Act and Regulation, and includes GST where GST is payable.
<b>Refund Sharing Agreement</b>	has the meaning given by the Regulation.
<b>Regulation</b>	means any regulation made under Part 18 of the Act.
<b>Scheme Commencement Date</b>	the date fixed by the Minister by notification in writing for commencement of Part 10A of the <i>Waste Management and Resource Recovery Amendment Act 2017</i> (ACT).
<b>Scheme Compliance Fee</b>	an amount payable to the Territory by the Scheme Coordinator as set out in the Scheme Coordinator Agreement.
<b>Scheme Coordinator Agreement</b>	the agreement of that name between the Territory and the Scheme Coordinator being a scheme administration agreement under section 64H of the <i>Waste Management and Resource Recovery Amendment Act 2017</i> (ACT).
<b>Scheme Coordinator Fee</b>	the amount payable to the Scheme Coordinator as set out in the Scheme Coordinator Agreement.
<b>Scheme Coordinator Financial Penalty</b>	any financial penalty incurred by the Scheme Coordinator in accordance with section 64Q of the Act and the Scheme Coordinator Agreement. For the avoidance of doubt, this has the same meaning as “civil penalty” in the Act.
<b>Scheme Objectives</b>	to: <ul style="list-style-type: none"> <li>(1) recognise the responsibility that the beverage industry shares with the community for reducing and dealing with waste generated by beverage product packaging;</li> <li>(2) establish a cost effective Territory container deposit scheme to assist the beverage industry to discharge that responsibility and to promote the recovery, reuse and recycling of empty Containers;</li> <li>(3) establish a cost recovery scheme administered by the Scheme Coordinator under which Suppliers agree to make contributions in advance towards the cost of paying Refund Amounts;</li> <li>(4) prohibit the supply of beverages in Containers that are subject to the Scheme by Suppliers who have not agreed with the Scheme Coordinator to make those contributions; and</li> <li>(5) prohibit the supply of beverages in Containers of a kind that are not approved by the ACT Government.</li> </ul>

<b>Scheme Payments Account</b>	the account referred to in the Scheme Coordinator Agreement.
<b>Share of Interest pass-through</b>	has the meaning given in section 4.3(f).
<b>Supplier</b>	any entity that has entered into a Supply Arrangement (as defined in the Act) with the Scheme Coordinator.
<b>Supplier Advance Contribution</b>	the amounts to be paid by the Suppliers to the Scheme Coordinator calculated in accordance with section 4.3 or 4.13(b).
<b>Supplier Contribution Adjustment</b>	has the meaning given in section 4.5.
<b>Supplier Invoice</b>	a Tax Invoice submitted to the Supplier by the Scheme Coordinator which complies with the Supply Arrangement and is calculated in accordance with this Scheme Payments and Contributions Methodology.
<b>Supplier Penalty Interest Rate</b>	BBSW + 500 basis points.
<b>Supplier Statements</b>	a statement of the volume of Containers actually supplied by a Supplier, prepared and given to the Scheme Coordinator in accordance with the reporting requirement under the Supply Arrangement.
<b>Supplier Actual Reported Market Share</b>	the actual market share of Suppliers, as determined on the basis of the volumes actually supplied by each Supplier (as reported under the Supply Arrangement).
<b>Supplier's Estimated Market Share</b>	for the relevant period the amount calculated in accordance with section 4.6(c)(i).
<b>Tax Invoice</b>	has the meaning given in the GST Act.
<b>Territory</b>	when used: <ul style="list-style-type: none"> <li>(1) in a geographical sense, the Australian Capital Territory; and</li> <li>(2) in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).</li> </ul>

### **1.3 Process for amending**

The Territory may, acting reasonably and after not less than 7 days consultation period with the Scheme Coordinator and Network Operator, amend the Scheme Payments and Contribution Methodology document (other than in respect of the Administration Fee and Network Fees) by giving no less than 30 Business Days' Notice in writing to the Scheme Coordinator and the Network Operator.

The Scheme Coordinator and Network Operator may (in their absolute discretion) agree to waive the 30 Business Days' Notice period.

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## **2 Scheme Payments Account**

### **2.1 Establishment of Scheme Payments Account**

The Scheme Coordinator must establish and maintain a Scheme Payments Account in accordance with the requirements of the Scheme Coordinator Agreement.

### **2.2 Use of Scheme Payments Account**

The Scheme Coordinator must use the Scheme Payments Account solely for the purpose of:

- (a) receiving payments made by Suppliers pursuant to section 4;
- (b) receiving interest on the Scheme Payments Account;
- (c) receiving GST input tax credits from the Australian Taxation Office;
- (d) making payments, to the extent any such payments are due, in the following order:
  - (i) Network Payments to the Network Operator pursuant to section 6;
  - (ii) Processing Refund Amounts to MRF Operators;
  - (iii) Administration Fees;
  - (iv) Scheme Compliance Fees to the Territory;
  - (v) any amount for which the Scheme Coordinator is entitled to be indemnified from the Trust Assets in its capacity as trustee of the trust referred to in clause [13.2(b)] of the Scheme Coordinator Agreement,
  - (vi) GST, on payments received from Suppliers under the Supply Arrangements, to the Australian Tax Office;
  - (vii) costs of undertaking the sampling plan prepared under the Processing Refund Protocol;
  - (viii) payments to Suppliers, where a Supplier Invoice Amount calculated pursuant to clause 4.4 is negative;

- (ix) payments to Exporters, pursuant to clause 4.7;
- (x) payments to the Territory in respect of funding costs incurred by it for the ACT Independent Competition and Regulatory Commission's Inquiry into beverage price impacts relating to the ACT Container Deposit Scheme;
- (xi) any other payments made in connection with Scheme and authorised in writing by the Territory,

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**

#### **3.1 Invoice**

- (a) The Scheme Coordinator must prepare, on the first Business Day of each calendar month, a statement for the Administration Fee, and the basis of calculation.
- (b) The Administration Fee for a month is calculated as follows:
  - (i) the Scheme Coordinator Fee for that month; plus
  - (ii) the Recovery Amounts paid in the previous month.
- (c) A copy of the statement must be sent by email and posted by prepaid post to the Waste Manager.

#### **3.2 First Statement**

The statement for the first Administration Fee must be prepared by the Scheme Coordinator on the first business day in July 2018. The statement for the first Administration Fee must include the Administration Fee for July 2018 and for the 30 June 2018,

#### **3.3 Payment**

The Scheme Coordinator must pay to itself the amount set out in each statement it prepares pursuant to section 3.1 from the Scheme Payments Account on the first Business Day of each month, one month in arrears.

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### **4 Contributions from Suppliers**

#### **4.1 Supplier to pay to Scheme Coordinator**

A Supplier must pay the Scheme Coordinator all amounts that it is required by this section 4 to pay, which the Scheme Coordinator must ensure are deposited into the Scheme Payments Account.

#### **4.2 Scheme Coordinator to calculate**

The Scheme Coordinator must calculate the amounts required by this section 4 to be paid by Suppliers in accordance with:

- (a) with the methodology set out in this section 4 using reasonable assumptions;



- (b) the Scheme Coordinator's contractual obligations with respect to fair dealing between Scheme Participants;
- (c) the matters set out in section 64J(2)(b) of the Act (unfair or discriminatory actions); and
- (d) the Scheme Objectives.

### 4.3 Supplier Advance Contributions

#### (a) Supplier Advance Contribution

Each Supplier's Advance Contribution for a calendar month must be calculated as the sum of that Supplier's:

- (i) Share of Scheme Coordinator Fee, as calculated in section 4.3(b);
- (ii) Share of Scheme Compliance Fee, as calculated in section 4.3(c);
- (iii) Share of Forecast Monthly Network Fee and Forecast Monthly Refund Amounts, as calculated in section 4.3(d);
- (iv) Share of Forecast Processing Refund Amounts, as calculated in section 4.3(e);
- (v) Share of Interest pass-through costs, as calculated in section 4.3(f);
- (vi) Share of Recovery Amounts as calculated in section 4.3(g); and
- (vii) Share of Bad Debt Amounts as calculated in section 4.3(h).

#### (b) Share of Scheme Coordinator Fee

Share of Scheme Coordinator Fee = A x B

Where:

A = the Supplier's Estimated Market Share for the relevant month calculated using aggregated Container volumes in accordance with section 4.6(c)(i).

B = the Scheme Coordinator Fee for the relevant month calculated under section 3.1(b)(i).

#### (c) Share of Scheme Compliance Fee

Share of Scheme Compliance Fee = A x C

Where:

A = the Supplier's Estimated Market Share for the relevant month calculated using aggregated Container volumes in accordance with section 4.6(c)(i).

C = the Scheme Compliance Fee for the relevant month.

#### (d) Share of Forecast Monthly Network Fee and Forecast Monthly Refund Amounts

- (i) **Share of Forecast Monthly Network Fee** is the sum of the Supplier's Share of Forecast Monthly Network Fee for each Material Type in the Territory.

Share of Forecast Monthly Network Fee for a Material Type in the Territory is calculated as  $D \times E \times F$

Where:

D = the Supplier's Estimated Market Share for the relevant month calculated by Material Type in accordance with section 4.6(c)(i).

E = the Estimated Monthly Container Volumes (for the Material Type, determined in accordance with section 4.6(a)).

F = the Refund Amount.

- (ii) **Share of Forecast Monthly Refund Amounts** is the sum of the Supplier's Share of Forecast Monthly Refund Amounts for each Material Type.

Share of Forecast Monthly Refund Amounts for a Material Type =  $D \times G \times H$

Where:

D = Supplier's Estimated Market Share for the relevant month calculated by Material Type in accordance with section 4.6(c)(i)

G = Estimated Monthly Container Volumes for the relevant month for the Material Type calculated in accordance with section 4.6(a).

H = Refund Amount.

**(e) Share of Forecast Processing Refund Amounts**

- (i) The Forecast Processing Refund Amount is an estimate of the amount to be paid to MRF Operators by the Scheme Coordinator quarterly in arrears, in accordance with section 7 and the Processing Refund Protocol.
- (ii) A Supplier's share of Forecast Processing Refund Amounts is the sum of the Supplier's Share of Forecast Processing Refund Amounts for each Material Type.

Share of Forecast Processing Refund Amounts for a Material Type =  $D \times J \times K$

Where;

D = Supplier's Estimated Market Share (in the relevant quarter by the Material Type, as calculated under section 4.6(c)).

J = Forecast MRF Operators' Container Volumes (in the relevant quarter of the Material Type, calculated in accordance with 4.6(b)).

K = Processing Refund.

- (iii) The Forecast Processing Refund Amount is to be converted to a monthly amount on a straight line pro-rata basis and is to be recovered from Suppliers over the relevant quarter.

**(f) Share of Interest pass-through**

Share of Interest pass-through = Supplier's Estimated Market Share x (L – M)

Where:

Supplier's Estimated Market Share for the relevant month is calculated using aggregated Container volumes in accordance with section 4.6(c)(i).

L = Interest paid into the Scheme Payment Account that has not been included in a previous Share of Interest pass-through calculation, including interest that has been paid by a Supplier under sections 4.5(h), 4.14 and 4.15.

M = the amount of any deductions under section 6.6(b) for interest earned on the Network Payments Account that has not been included in a previous Share of Interest pass-through calculation.

**(g) Share of Recovery Amounts**

Share of Recovery Amounts = Supplier's Market Share x Recovery Amounts for the month prior to the relevant month

“Recovery Amounts” are the reasonable third party costs paid by the Scheme Coordinator to recover amounts which were payable to the Scheme by a Supplier under its Supply Arrangement but which were not paid when due.

“Supplier's Market Share” is the market share on an aggregated basis calculated, if ascertainable, using the Supplier's Actual Reported Market Share in accordance with section 4.5(e)(ii) or otherwise using the Supplier's Estimated Market Share in accordance with section 4.6(c)(i) for the period when the Recovery Amounts were incurred.

**(h) Share of Bad Debt Amounts**

Share of Bad Debt Amounts = Supplier's Market Share x Bad Debt Amounts

Where:

Bad Debt Amounts are outstanding amounts due from one or more Suppliers:

- (i) when the relevant Supply Arrangement is terminated; or
- (ii) that are written off by the Scheme Coordinator as bad debts in the month prior to the relevant month; and

Supplier's Market Share is the market share on an aggregated basis calculated, if ascertainable, using the Supplier's Actual Reported Market Share in accordance with section 4.5(e)(ii) or otherwise using the Supplier's Estimated Market Share in accordance with section 4.6(c)(i) for the month in which the amount due from a Supplier that is the subject of a Bad Debt Amount originally fell due.

#### 4.4 Supplier Invoice Amounts

The amount of a Supplier Invoice for a month is to be calculated as the sum of:

- (i) the Supplier Advance Contribution for that Supplier calculated in accordance with section 4.3 for the period to which the Supplier Invoice relates; and
- (ii) the adjustments for that Supplier for previous months calculated in accordance with section 4.5.

#### 4.5 Supplier Contribution Adjustments

- (a) Supplier Advance Contributions for a month are calculated based on estimated Scheme costs and a Supplier's Estimated Market Share. To the extent there are differences between these estimates and the actual Scheme costs or actual Market Shares, there will need to be an adjustment to the Supplier Advance Contribution (**Supplier Contribution Adjustment**) in a subsequent Supplier Invoice calculated in accordance with this section 4.5.
- (b) The amount of a Supplier Contribution Adjustment will be equal to the difference between:
  - (i) the amount of the Supplier Advance Contributions calculated under clause 4.3 (noting this calculation is based on estimated Scheme costs and a Supplier's Estimated Market Shares);
  - and
  - (ii) the actual Scheme costs for each cost used in the calculation of the Supplier Advance Contribution, and a Supplier's Actual Reported Market Share.
- (c) A Supplier Contribution Adjustment will be separately itemised on a Supplier Invoice (under section 4.4) and will include the data upon which the adjustment has been calculated.
- (d) Supplier Contribution Adjustments will be calculated on either a monthly, quarterly or six (6) monthly basis, reflecting the billing or Container redemption cycle of the relevant Scheme cost component as set out in sections 4.5(e) to 4.5(g).
- (e) **Monthly adjustments:** Each Supplier Invoice (under section 4.4) will include an amount to adjust for:
  - (i) **Container Volume Adjustments**, being the difference between:
    - (1) the Actual Monthly Container Volumes (for each Material Type) recovered by Network Operator during a previous month as reported under section 6.1(c)(iv);
    - and
    - (2) the Estimated Monthly Container Volumes (by Material Type) as calculated under section 4.6(a) and used to calculate Supplier Advance Contributions for that month.
  - (ii) **Market Share Adjustments**, being the difference between:
    - (1) a Supplier's Actual Reported Market Share (in total and by Material Type) calculated using the same methodology as set out in section 4.6(c)(i) but using

Actual Container Volumes rather than Forecast Container Volumes and based on historical Container volumes (by Material Types) supplied for the three months ending with the operating month (inclusive) based on the data provided by Suppliers under the Supply Arrangement; and

- (2) a Supplier's Estimate Market Share (calculated in accordance with section 4.6(c)(i)) and used to calculate the Supplier Advance Contributions for that month.

The Market Share Adjustment will be used to recalculate all Supplier Advance Contribution cost components under section 4.3, for the purposes of the Supplier Contribution Adjustment.

- (iii) **Recovery Amount Adjustment:** If Recovery Amounts are recovered from a defaulting Supplier in the month prior to the month in which the Supplier Invoice is issued, the recovered funds will be a credit in that Supplier Invoice for those Suppliers who paid any invoice which included an amount on account of those Recovery Amounts. The amount credited will be in the same proportion to the relevant Suppliers' contributions to the Recovery Amounts.
- (iv) **Bad Debt Amounts Adjustment:** If amounts are subsequently recovered in respect of a Bad Debt Amount, the recovered funds will be offset against the next Supplier Invoice for those Suppliers who paid any invoice in the month in which the amount due from a Supplier that is the subject of a Bad Debt Amount originally fell due. The amount offset will be in the same proportion to the relevant Supplier's Market Share on an aggregated basis calculated, if ascertainable, using the Supplier's Actual Reported Market Share in accordance with section 4.5(e)(ii) or otherwise using the Supplier's Estimated Market Share in accordance with section 4.6(c)(i) for that month.
- (v) **Interim Supplier Contribution Adjustment:** If funds are subsequently recovered from a defaulting Supplier in the month prior to the month in which the Supplier Invoice is issued, the recovered funds will be a credit in that Supplier Invoice for those Suppliers who paid an invoice in respect of an Interim Supplier Contribution or any other invoice issued to a Supplier which included an amount in respect of that defaulting Supplier's contribution. The amount credited will be in the same proportion to the relevant Suppliers' contributions in the original invoices.
- (vi) **Supplier Contribution in Arrears Adjustment:** Any amounts, other than interest, recovered under section 4.14 are to be a credit in the next Supplier Invoice under section 4.4 issued to those Suppliers who had paid Supplier Invoices during the Arrears Period.
- (vii) **Trustee Indemnity Adjustment:** Any amount for which the Scheme Coordinator is entitled to be indemnified from the Trust Assets in its capacity as trustee of the trust referred to in clause 13.2(b) of the Scheme Coordinator Agreement will be apportioned in the month after it is paid between Suppliers by aggregate Market Share using the Supplier's Actual Reported Market Share in accordance with clause 4.5(e)(ii) for the relevant period to which the amount the subject of the indemnity relates.
- (f) **Quarterly Processing Refund Volume Adjustments:** On a quarterly basis, the first Supplier Invoice (under section 4.4) issued after the Scheme Coordinator has made the quarterly payments to MRF Operators pursuant to section 7.1, will also include an amount to adjust for differences between:
- (i) the actual volume of Containers (by Material Type) agreed by the Scheme

Coordinator under the Processing Refund Protocol to have been collected by MRF Operator in the quarter for which the MRF Operator was paid for those Containers; and

- (ii) the Forecast Processing Refund Volumes (calculated under section 4.6(b)) used to calculate the Forecast Processing Refund Amounts included in the Supplier Advance Contributions calculations for the same quarter.

Quarterly Processing Refund Volume Adjustments will be calculated based on the actual Market Share of Suppliers by Material Type in the quarter over which the Containers were deemed to be collected in accordance with section 4.5(e).

Quarterly Processing Refund Volume Adjustments will be used to recalculate a Supplier's Share of Forecast Processing Refund Amounts under section 4.3(e) for the purpose of the Supplier Contribution Adjustment.

- (g) **Half-yearly Audit Adjustments:** Invoices issued on 1 January and 1 June (or as otherwise determined by the Scheme Coordinator acting reasonably in consultation with the Territory) will include adjustments to reflect the results of findings in respect of audits of Suppliers, the Network Operator and Collection Points completed in the prior six (6) month period (**Audit Adjustment Period**). The adjustment will be made to reflect:

- (i) the difference between:

- (1) Actual Container Volumes recovered through the Network Operator (including Collection Points) and the MRF Operator in a relevant period, as determined by the audits; and
- (2) Container volumes assumed for the purpose of the calculation of Supplier Advance Contributions in respect of that same period, including any adjustments previously made to those amounts under section 4.5(e) and (f);

and

- (ii) the difference between:

- (1) a Supplier's Actual Reported Market Share percentage (in total and by Material Type) as recalculated by the Scheme Coordinator (in accordance with the methodology set out in section 4.6(c)), based on the Actual Container Volumes supplied by each Supplier, as reported under the Supply Arrangement, and adjusted to include any audit findings under 4.5(g)(i); and
- (2) the Supplier's Estimated Market Share (calculated under section 4.6(c) and used to calculate the Supplier Advance Contributions in respect of that same period, including any adjustments previously made to those amounts under section 4.5(e).

- (h) **Specific audit finding:** Where the results of an audit have identified that the aggregate number of Containers supplied by a Supplier have been understated in a Supplier Statement provided to the Scheme Coordinator under its Supply Arrangement, the amount of that understatement will be used to make an adjustment to that Supplier's Market Share in respect of the period to which the understatement relates. This adjusted Market Share will be used to recalculate all Supplier Advance Contribution cost components under section 4.3 and the amount so determined (**Supplier Adjustment Amount**) will be included in the Supplier's next Supplier Invoice together with interest as though the adjustment amounts are late payments, calculated under section 4.14.

## 4.6 Principles for forecasting

### (a) Forecasting Network Volumes

- (i) **Estimated Monthly Container Volumes (by Material Type)** is the sum of the estimated volume of Containers (by Material Type) to be collected (during the relevant Billing Period) by the Network Operator.
- (ii) The Scheme Coordinator, for the first three (3) Supplier Invoices, is to calculate Estimated Monthly Container Volumes (by Material Type) by reference to:
  - (1) historical Container volumes by Material Type (for the comparable Billing Period in the prior year) based on container volume data provided under the Supply Arrangement; and
  - (2) assumed Container Recovery Rates through the Scheme (whether through the Material Recovery Facility Operator or the Network Operator) as reasonably determined by the Scheme Coordinator.
- (iii) For the fourth and subsequent Supplier Invoices, the Scheme Coordinator is to calculate the Estimated Monthly Container Volumes (by Material Type) by reference to the weekly Actual Container Volumes (by Material Type) data supplied by the Network Operator in accordance with section 6.1(c)(iv).
- (iv) The Scheme Coordinator may also (acting reasonably) take into consideration any other historical Container volume data provided to the Scheme Coordinator under the Supply Arrangement or the Network Arrangement (including but not limited to seasonal adjustments).
- (v) The Scheme Coordinator will use this data to estimate the volume of Containers (by Material Type) to be collected by Network Operator for the next Billing Period.

### (b) Forecast Processing Refund Volumes

The Scheme Coordinator will estimate the volume of Containers expected to be collected by Material Recovery Facility Operator during a quarter based on:

- (i) information provided by Material Recovery Facility Operator under the Processing Refund Protocol; and
- (ii) any other information determined by the Scheme Coordinator as providing a reasonable basis to estimate the volume of Containers to be collected by Material Recovery Facility Operator during the relevant Billing Period (including but not limited to seasonal adjustments).

### (c) Estimated Market Share

- (i) A Supplier's Estimated Market Share will be calculated by the Scheme Coordinator based on the number of Containers supplied (either by aggregated Container volumes or by aggregated Container volumes by Material Type as required in the formulas in section 4.3) as follows:

$$\text{Supplier's Estimated Market Share} = M \div N$$

Where:

M = Forecast Container Volume supplied by the Supplier (for the three month period ending with the operating month inclusive); and

N = Forecast Container Volume supplied by all Suppliers (for the same period).

- (ii) Each Supplier's Estimated Market Share is to be calculated using historical Container volumes supplied. Subject to 4.6(c)(iii), the calculation should be based on the most recent three months of data provided by Suppliers under the Supply Arrangement.
- (iii) In calculating a Supplier's Estimated Market Share under this section 4.6(c) the Scheme Coordinator may take into consideration seasonal trends by using historical Container volumes data for the corresponding quarter in the previous year (instead of the most recent three months), where the Scheme Coordinator, acting reasonably, believes that doing so will provide better estimates of Suppliers' market shares. Where this is done, the same consideration must be taken into account for all Suppliers and the period used must be three consecutive months.
- (iv) In calculating the Supplier's Estimated Market Share the data used must be:
  - (1) for the same period (as determined by the Scheme Coordinator) (except where a Supplier entered the market after the end of the period, in which case the Scheme Coordinator will select the months of data to use for that Supplier, acting reasonably with the aim to produce the best estimate of market share); and
  - (2) taken from the same data source.

#### **4.7 Not used - placeholder for Export Supplies**

#### **4.8 Supplier non payment**

In the event a Supplier fails to pay (for whatever reason) a Supplier Invoice, and there is a risk of there being insufficient funds in the Scheme Payment Account to meet the costs of the Scheme during a month, the Scheme Coordinator may issue an Interim Supplier Contribution Invoice in accordance with the requirements of section 4.10.

#### **4.9 Monthly Supplier Invoice**

- (a) The Scheme Coordinator must give the Supplier a Supplier Invoice calculated in accordance with section 4.4 on the first Business Day of the calendar month in accordance with the Supply Arrangement.
- (b) (Month to which a Supplier Invoice relates) The month to which a Supplier Invoice is to relate is the calendar month in which the Supplier Invoice is issued. For example, an invoice issued on 1 July 2018 relates to July 2018 and must include the Supplier Advance Contribution calculated by the Scheme Coordinator in respect of July 2018.

#### **4.10 Interim Supplier Contribution**

- (a) If the Scheme Coordinator subsequently identifies, after the issue of a Supplier Invoice, the invoiced Supplier Advance Contributions for a month will not cover the actual Scheme costs until the next anticipated receipt of payment from Suppliers, the Scheme Coordinator will be entitled to issue an Interim Supplier Contribution Invoice to ensure each Supplier's total financial contribution for each month reflects such costs.



- (b) Interim Supplier Contributions are to be calculated using a methodology consistent with the process and formulae outlined in section 4.3, on the basis of their Estimated Market Share (adjusted to exclude any Suppliers who have failed to pay a Supplier Invoice generating the need for an Interim Supplier Contribution).
- (c) The Scheme Coordinator must notify each Supplier by email and in writing as soon as it becomes aware of the need to issue an Interim Supplier Contribution Invoice. The Scheme Coordinator must provide the Suppliers sufficient information to understand the factors that have contributed to the need for an Interim Supplier Contribution and guidance as to the potential amount of the Interim Supplier Contribution Invoice.
- (d) A Supplier must pay an Interim Supplier Contribution Invoice within seven (7) calendar days of receipt.

#### 4.11 Not used

#### 4.12 Existing Supplier

- (a) The Scheme Coordinator must send a Supplier Invoice to the Existing Supplier in accordance with sections 4.4 and 4.9 after it receives advice from the supplier of the number of Containers (by Material Type) reported by the Supplier under clause 7.1 of the Supply Arrangement.
- (b) The Supplier Advance Contribution determined and invoiced in accordance with this section 4.12 will be subject to the adjustments set out in section 4.5.
- (c) The Supplier Invoice calculation for the second and subsequent months for the Existing Supplier, will be in accordance with section 4.4.
- (d) In this item "Existing Suppliers" means a Supplier that enters into a Supply Arrangement after 29 March 2018 but before 30 June 2018.

#### 4.13 New Supplier

- (a) If a Supplier commences supplying Containers into or within the Territory after the Scheme Commencement Date and enters into a Supply Arrangement after 30 June 2018 (**New Supplier**), the New Supplier must, within 5 Business Days of entering into the Supply Arrangement, advise the Scheme Coordinator of the forecast volume of Containers by Material Type to be supplied by the New Supplier (**New Supplier Forecast Container Volumes**) for the first three calendar months of operation (where the first month is the calendar month in which the Supplier entered the market).
- (b) The Supplier Advance Contribution for the New Supplier for the month in which it commences the supply of Containers will be the aggregate of the results of the following formula, calculated for each Material Type:

New Supplier Forecast Container Volumes by Material Type x P cents per Container by Material Type

where:

P = An amount reasonably determined by the Scheme Coordinator to reflect an appropriate allowance to determine the New Supplier's first contribution to payment of Scheme costs.

- (c) The Scheme Coordinator must send a Supplier Invoice to the New Supplier within five (5) Business Days of the New Supplier entering into the Supply Arrangement, which may include recovery of estimated Supplier Contributions for the month in which the Supplier commenced supplying in the Territory, and the month in which the invoice is issued (as well as the following month if that is in accordance with the normal invoicing process).
- (d) Amounts invoiced under this section 4.12, will be subject to the adjustments set out in section 4.5.
- (e) The second Supplier Invoice for the New Supplier, will be in accordance with section 4.4.

#### **4.14 Supplier Contributions in Arrears**

- (a) Any Supplier that is found to have been supplying Containers into or within the Territory without having a Supply Arrangement in force pursuant to Section 64W of the Act (**Identified Supplier**) after the Scheme Commencement Date is to be invoiced by the Scheme Coordinator for Supplier Advance Contributions in respect of the period from the Scheme Commencement Date or the date from which the Supplier first supplied Containers into or within the Territory until the first month in respect of which the Identified Supplier commences making Supplier Advance Contributions in advance (**Arrears Period**).
- (b) The first Supplier Invoice for the Identified Supplier will be calculated in accordance with sections 4.3 to 4.6, with Actual Container Volumes (either disclosed by the Supplier or determined by the Scheme Coordinator through an audit process or any other reasonable methodology) to be used in respect of the Arrears Period in place of Forecast Container Volume by Supplier to calculate the Identified Supplier's Market Share.
- (c) The first Supplier Invoice for the Identified Supplier will also include:
  - (i) interest calculated in accordance with the formula set out in section 4.14 for the Arrears Period except that the period for the calculation is the Arrears Period and the amount upon which the interest is calculated is the amount of the Supplier Advance Contributions contained in that invoice; and
  - (ii) an extra 2 cents per Container in the Supplier Advance Contribution for the first month in respect of which the Identified Supplier commences making Supplier Advance Contributions in advance. The payment for that month will be subject to the adjustments set out in section 4.5.

#### **4.15 Interest on Late Payment of Supplier Contributions**

- (a) If a Supplier fails to pay any amount payable by that Supplier within the time required in accordance with its Supply Arrangement, it must pay interest on that amount in accordance with the Supply Arrangement and this section 4.14.
- (b) Interest will be charged on any late payment by a Supplier of a Supplier Invoice as follows: Interest for Late Payment = overdue amount x Supplier Penalty Interest Rate x Number of days payment is late/365

## 5 Not used

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## 6 Payments to the Network Operator

### 6.1 Payment Claims

- (a) The Network Operator must give the Scheme Coordinator a claim for payment weekly for the previous calendar week (“**Referable Week**”) as calculated in section 6.2 and 6.3.
- (b) The period to which a Payment Claim relates cannot be any earlier than the Scheme Commencement Date.
- (c) Payment Claims must be in a format which the Scheme Coordinator reasonably requires and contain the following information:
  - (i) the actual aggregate of the Container Volumes and a breakdown of the Container Volumes by Material Type, for the Referable Week;
  - (ii) the Refund Amount payments and Network Fee payable for Referable Week, based on the Container Volumes by Material Type referred to in section 6.1(c)(i); and
  - (iii) the interest credited to the Network Payments Account during the Referable Week;
  - (iv) sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Network Operator:
    - (1) to enable the Scheme Coordinator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Scheme Coordinator to the Network Operator; and
    - (2) including any such documentation or information which the Scheme Coordinator may by written notice from time to time reasonably require the Network Operator to set out or attach, whether in relation to a specific Payment Claim or all Payment Claims generally.

### 6.2 The Network Operator Fee

- (a) The Network Operator Fee is the aggregate of the Network Fees and Refunds for collected containers of all Material Types. The Network Operator Fee for all collected containers of a particular Material Type will be calculated as follows:

$$\text{Network Operator Fee} = \text{Container Volumes} \times (\text{Network Fee} + \text{Refund})$$

where:

**Container Volumes:** The volume of Containers of the Material Type collected by the Network Operator for the period to which the Payment Claim relates.

**Network Fee** is the amount payable per Container as set out in Schedule [4] to the Network Operator Agreement.

**Refund** is the Refund Amount as defined in the Regulations.

## 6.3 Network Operator Adjustments

### (a) Overview

Without limiting section 6.1(c) the Network Operator must maintain, and provide to the Scheme Coordinator when requested, data to verify payments by the Scheme Coordinator to the Network Operator, including:

- (1) all the detail set out in section 6.1(c);
- (2) a breakdown of each amount of the Network Fee paid to each Collection Point Operator;
- (3) a breakdown of the Containers identified by Material Type for which a Refund Amount has been paid, for each Collection Point (to verify all Refund Amounts paid to the Canberra community under the Scheme);
- (4) all Containers identified by Material Type for each Collection Point; and
- (5) financial records for each Collection Point, including itemised reports showing the total Refund Amounts paid per Container Material Type.

### (b) Audit Adjustment

- (i) The Scheme Coordinator may make a payment adjustment to Network Fee or Refund Amounts paid to the Network Operator, where the results of an audit finalised in accordance with the Network Arrangement (undertaken in accordance with the Network Arrangement) has identified a difference between:
  - (1) the Container volumes reported by the Network Operator (**Reported Volumes**) used to calculate the Network Operator Fee; and
  - (2) the Container volumes that were collected within the Territory as identified through the audit for the same period (**Adjusted Container Volumes**).
- (ii) The Audit Adjustment must be calculated for the Referable Week of each individual Payment Claim the subject of the audit and the total value of the individual calculations will be aggregated for the purposes of calculating the total Audit Adjustment. The amount of the Audit Adjustment will be limited to the identified difference.
- (iii) The first Payment Certificate issued in the week after the identification of a difference referred to in section 6.5(d)(i) will include adjustments to reflect the results of findings in respect of that audit and any other audits of Network Operator and Collection Points completed in the prior month.
- (iv) Amounts recovered by the Scheme Coordinator through an Audit Adjustment under section 6.5(d) will be offset against the next Supplier Advance Contribution for each Supplier that made Supplier Advance Contributions during the period to which the Audit Adjustment relates (based on their actual or estimated market shares as appropriate calculated as set out in section 4 during the period to which the Audit Adjustment relates).

## 6.4 Container Volumes

- (a) For the purposes of calculating the Network Operator Fee, the Network Operator must base its Container Volumes on the volume of Containers actually collected in the previous week.
- (b) The Scheme Coordinator may challenge the Container Volume set out in a Payment Claim and consult with the Network Operator on a revised Container Volume.
- (c) Unless the Network Operator submits a revised Container Volume in writing within two (2) Business Days of the submission of a Payment Claim, the Scheme Coordinator must use the Container Volume set out in the Payment Claim for the purpose of the Payment Certificate it issues in respect of that Payment Claim.
- (d) Where the Network Operator consistently over or under reports the Container Volumes by a material amount, the Network Operator and Scheme Coordinator must review and agree upon an updated methodology to be used for the purpose of counting container volumes and submit it to the Territory. The Territory may update this document to reflect the updated methodology and the Scheme Coordinator and Network Operator hereby waive the notice period under section 1.3 for this purpose.

## 6.5 Payment Certificates

- (a) The Scheme Coordinator must issue a Payment Certificate no later than five (5) Business Days after a Payment Claim is submitted.
- (b) The Payment Certificate must set out the amount to which the Network Operator is entitled to payment in relation to the Payment Claim as a Recipient Created Tax Invoice as reasonably determined by the Scheme Coordinator, subject to section 6.6(e), using the Container Volumes set out in the Payment Claim and calculated as the sum of:
  - (i) Network Operator Fee for the period to which the Payment Claim relates (section 6.2); and
  - (ii) any adjustments made by the Scheme Coordinator under section 6.4, less the interest earned on the Network Payments Account set out in the Payment Claim submitted pursuant to section 6.1(c).
- (c) If the Scheme Coordinator does not, in relation to a Payment Claim, issue a Payment Certificate within the time set out in section 6.7(a), the Payment Claim is deemed to be a Payment Certificate issued pursuant to section 6.7(a) with the claimed Network Operator Fee payable for the Referable Month being deemed to be the amount to which the Network Operator is entitled to payment in relation to that Payment Claim.

## 6.6 Payment Timing

The Scheme Coordinator must pay the Network Operator from the Scheme Payment Account the amount set out in a Payment Certificate issued, or deemed to be issued, pursuant to section 6.6(a) within seven (7) days of receipt of the Payment Claim to which it relates.

## 6.7 Late Payments

If the Scheme Coordinator is late in paying a Payment Claim, the Scheme Coordinator must pay the Network Operator interest on any unpaid amounts from the date on which payment was due and payable until the date on which payment in full was made, at the Penalty

Interest Rate.

The interest paid by the Scheme Coordinator cannot be passed onto Suppliers as a Scheme cost and must be paid by the Scheme Coordinator.

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## **7 Payments to Material Recovery Facility Operator**

### **7.1 Processing Refund Amount**

- (a) The Scheme Coordinator must pay the MRF Operator the Processing Refund Amounts periodically in arrears from the Scheme Payments Account, in accordance with the Processing Refund Protocol, the Scheme Coordinator Agreement, the Regulation and this section 7.
- (b) A precondition to payment of a Processing Refund is that a Processing Refund Protocol is in force in relation to the Processing Refund, and in accordance section 3.2 of the Processing Refund Protocol, a refund sharing agreement (as defined in the Processing Refund Protocol) that the Waste Manager has approved is in place, or the absence of such a refund sharing agreement has been approved by the Waste Manager.
- (c) A MRF Operator may provide the Scheme Coordinator with a Payment Claim for payment for a Processing Refund Amount in accordance with the requirements of the Processing Refund Protocol and Regulation.
- (d) Upon receipt of a complying Payment Claim, the Scheme Coordinator must issue the MRF Operator with a Payment Certificate in accordance with the Processing Refund Protocol, Regulation and Scheme Coordinator Agreement, including setting out any adjustments allowed under the Processing Refund Protocol. The Payment Certificate must set out the amount to which the MRF Operator is entitled to payment in relation to the Payment Claim as a Recipient Created Tax Invoice.
- (e) The Scheme Coordinator must pay to a MRF Operator the Processing Refund Amount out of the Scheme Payments Account for each Container obtained (and invoiced) by the MRF Operator in accordance with the Processing Refund Protocol, Regulation and Scheme Coordinator Agreement.
- (f) The cost of undertaking the sampling plan prepared under the Processing Refund Protocol conducted by the Scheme Coordinator on the MRF Operator in a relevant period will be deducted from the Processing Refund Amount payable to the MRF Operator in accordance with the Territory Processing Refund Protocol.
- (g) If the Scheme Coordinator does not, in relation to a Payment Claim, issue a Payment Certificate within the time set out in section 7.1(d), the Payment Claim is deemed to be a Payment Certificate issued pursuant to section 7.1(d) with the claimed Processing Refund Amount payable being deemed to be the amount to which the MRF Operator is entitled to payment in relation to that Payment Claim.

## **7.2 Disputes**

- (a) The Scheme Coordinator may challenge any claim for payment in accordance with the Processing Refund Protocol.
- (b) The Scheme Coordinator must consult with the MRF Operator in the event that there is any issue or non-compliance in respect of any aspect of a claim for payment.
- (c) The Scheme Coordinator must arrange for the MRF Operator to issue a revised claim for payment, addressing any issue identified and agreed with the MRF Operator.

## **7.3 Late Payments**

- (a) If the Scheme Coordinator fails to pay any amount payable by the Scheme Coordinator to the MRF Operator within the time required in accordance with the Processing Refund Protocol, then it must pay interest on that amount:
  - (i) from the date on which payment was due and payable until the date on which payment is made in full; and
  - (ii) calculated at the Penalty Interest Rate.
- (b) The interest paid by the Scheme Coordinator cannot be passed onto Suppliers as a Scheme cost and must be paid by the Scheme Coordinator.

## **7.4 Verification**

- (a) To verify its Payment Claim, the MRF Operator must provide to the Scheme Coordinator with each claim, as a minimum the information required to be provided under the Processing Refund Protocol.

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## **8 Payment of the Scheme Compliance Fee and Financial Penalties**

### **8.1 Scheme Compliance Fee**

- (a) On the last Business Day of each month, the Territory will issue the Scheme Coordinator with a Tax Invoice for the amount of the Scheme Compliance Fee for that month.
- (b) The Scheme Coordinator must pay from the Scheme Payments Account the amount set out in the Territory's Tax Invoice as a debt due and payable within five (5) Business Days of the receipt of the Tax Invoice.

### **8.2 Financial Penalties**

- (a) The Territory may issue the Network Operator with a Payment Claim for the amount of any Network Operator Financial Penalty (which the Network Operator must pay to the Territory in accordance with the Network Operator Agreement).
  - (b) The Territory may issue the Scheme Coordinator with a Payment Claim for the amount of any Scheme Coordinator Financial Penalty (which the Scheme Coordinator must pay to the Territory in accordance with the Scheme Coordinator Agreement).
-