

Commercial in Confidence

We recommend that you read our Guide to the Producer Agreement before accepting the terms, the Guide can be found in the documents section of the Circularity Scotland website.



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**PRODUCER AGREEMENT**

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This Agreement is made on the date the Producer referred to herein completes its registration with the Company via the portal located at <https://register.circularityscotland.com/wizard/returninguser>

**Between**

- (1) **Circularity Scotland Limited**, a private company limited by guarantee, registered in Scotland with company number SC680460 and whose registered office is at The Ink Building, 24 Douglas Street, Glasgow, Scotland, G2 7NQ (the **Company** or **CSL**); and
  - (2) The Producer whose details are set out in the Producer registration portal located at <https://register.circularityscotland.com/wizard/returninguser> and incorporated by reference into the Producer registration information section of Part 1 of this Agreement (**Producer**),
- (together the **parties** and each a **party**).

**Part 1 - Introduction, Agreement structure and Producer registration information**

**1. Introduction:**

- (A) The Company has been approved to carry out the functions of a Scheme Administrator for the purposes of The Deposit and Return Scheme for Scotland Regulations 2020 (amended in 2022 by The Deposit and Return Scheme for Scotland Amendment Regulations 2022), as such regulations may be amended or superseded from time to time (the **Regulations**).
- (B) The Producer is a producer for the purposes of the Regulations.
- (C) The Producer wishes to appoint the Company to act as its Scheme Administrator and to carry out the Functions and Obligations (as defined in this Agreement), all in accordance with the Regulations and this Agreement. The Company is willing to act as the Producer's Scheme Administrator and to carry out the Functions and Obligations, all in accordance with the Regulations and this Agreement.
- (D) The Company and the Producer have agreed to enter into this Agreement to govern the commercial and operational arrangements between them.
- (E) The Producer acknowledges and agrees that, subject to clause 16 in Part 2 of this Agreement, the Company may sell, assign or otherwise transfer certain payments due by a Producer to a Financier and any such assignee may rely upon and shall be entitled to all of the rights and benefits of this Agreement against the Producer with respect to such payments as if it were a party thereto.

**2. Agreement structure:**

- 2.1 This Producer Agreement (this **Agreement**) is made with effect from the date the Producer referred to herein completes its registration with the Company via the portal located at <https://register.circularityscotland.com/wizard/returninguser> and comprises:

**Part 1** - Introduction, Agreement structure and Producer registration information

**Part 2** - Terms and Conditions

**Part 3** – Policy Papers

- 2.2 A number of terms used in this Agreement are defined in the Terms and Conditions and/or the Policy Papers and all such defined terms shall apply throughout this Agreement.
- 2.3 The parties agree that the Terms and Conditions and the Policy Papers are incorporated into this Agreement by reference and must be adhered to at all times. For the avoidance of doubt, the Policy Papers are intended to be legally binding on the Producer and the Company and may only be amended or varied in accordance with the terms of this Agreement.
- 2.4 In the event of any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Regulations, the Regulations will prevail and the parties will join in procuring that the provisions of this Agreement are altered to accord with the provisions of the Regulations, PROVIDED THAT no alteration to the provisions of this Agreement shall be made in relation to

- any matter in respect of which guidance has been sought (whether from the Regulator or otherwise) on the interpretation of the Regulations until such guidance has been agreed or finally determined, to the satisfaction of the Company (acting in good faith, in accordance with the General Principles set out in Part 2 of the Schedule to the Membership Agreement).
- 2.5 In the event of any conflict, ambiguity or discrepancy between the provisions of the Terms and Conditions and the Policy Papers, the Terms and Conditions will prevail and the Company will procure that the provisions of the Policy Papers are altered to accord with the provisions of the Terms and Conditions.
- 2.6 Recognising, also, that the Company has been established by industry to be an industry led and operated scheme and accordingly is providing its services under this Agreement pursuant to the mandate set out in the General Principles set out in Part 2 of the Schedule to the Membership Agreement, to the extent that it is agreed (by the Company and its members) or finally determined that a provision of this Agreement is inconsistent with the General Principles set out in Part 2 of the Schedule to the Membership Agreement, the Company will (acting reasonably and in good faith) use reasonable endeavours to seek to amend this Agreement in a manner that the Company and the Producer agree is appropriate in order to address the relevant inconsistency.
- 2.7 The overall order of priority, therefore, is (1) the Regulations, (2) the General Principles set out in Part 2 of the Schedule to the Membership Agreement (regardless of whether the Producer is a party to the Membership Agreement or not), (3) Part 1 of this Agreement (Introduction, Agreement Structure and Producer registration information), (4) Part 2 of this Agreement (the Terms and Conditions), and (5) Part 3 of this Agreement (the Policy Papers).
- 2.8 The Company shall be entitled to amend the Policy Papers (or any of them) from time to time as it sees fit, PROVIDED THAT:
- (a) the Company shall give the Producer such advance warning of the anticipated amendments in question as is reasonably practicable in the circumstances and shall, wherever and to the extent reasonably practicable, consult with the producers that the Company then represents as Scheme Administrator in relation to any material amendments that are proposed;
  - (b) the Company shall use reasonable endeavours to ensure that any amendments to the Policy Papers are conducted during a review period that opens (i) once every six months during the Initial Term, and (ii) once every twelve months after the Initial Term (but without prejudice to the Company's ability to make amendments outside those review periods where the Company considers there is an urgent requirement to make a change);
  - (c) any amendments to Policy Papers shall apply on a uniform and consistent basis across all producers that the Company is then representing as Scheme Administrator (i.e., all such producers will be treated equally);
  - (d) any amendments to Policy Papers must be made in good faith and must be considered by the Board of the Company to be fair and consistent with the General Principles set out in Part 2 of the Schedule to the Membership Agreement (including in particular General Principle 1 therein, which is "*To establish a Scheme Administrator which is industry-led and operated and which achieves the collection targets as prescribed by the Regulations in the most professional and efficient manner possible, for the benefit of consumers, producers, retailers and return point operators. This is the core principle of the proposed Scheme Administrator and should flow through and underpin everything that it does.*");
  - (e) the Company shall keep the Regulator informed regarding any changes to the Policy Papers and shall consult with the Regulator in advance of making any amendments that may affect compliance with the Regulations; and
  - (f) any amendments to the Policy Papers shall take effect from the date on which the amendments are notified to the producers that the Company is then representing as Scheme Administrator (or such later date as the Company may specify).
- 2.9 As stated in General Principle 15 of the General Principles set out in Part 2 of the Schedule to the Membership Agreement, the Company acknowledges and agrees that all producer agreements between the Company and the producers which have appointed the Company as

their Scheme Administrator will be on the same terms in all material respects, save for variations that are driven by bona fide points of difference (such as the types of containers placed on the market).

**3. Producer registration information**

The information in relation to the Producer which has been uploaded by the Producer to the Company's registration portal located at <https://register.circularityscotland.com/wizard/returninguser> (the Producer registration information) is incorporated by reference into this Agreement and is deemed to form part of it as if set out in full in this Agreement.

4. This Agreement (comprising Part 1 (Introduction, Agreement Structure and Producer registration information), Part 2 (the Terms and Conditions) and Part 3 (the Policy Papers)) may be entered into in the form of two or more counterparts, each executed by one or more of the parties but will not be effective until all parties have executed at least one counterpart.
5. Each counterpart will be an original of this Agreement and all the counterparts taken together will constitute one instrument.

## Part 2 - Terms and Conditions

*Please note that all defined terms are as defined in clause 30 of this Part 2 (unless expressly stated otherwise).*

### 1 Appointment of the Company as Scheme Administrator

- 1.1 The Producer appoints the Company to act as the Producer's sole and exclusive Scheme Administrator for the purposes of the Regulations and the Company accepts such appointment, all on the terms of this Agreement.
- 1.2 As the Producer's Scheme Administrator, the Company shall perform the Functions and Obligations for the duration of this Agreement for the benefit of the Producer, all on the terms of this Agreement.
- 1.3 As stated in General Principle 1 of the General Principles set out in Part 2 of the Schedule to the Membership Agreement (which is titled the "Over-arching General Principle"), the Company acknowledges and agrees that it has been established as an industry-led and operated scheme administrator with a mandate to achieve the collection targets as prescribed by the Regulations in the most professional and efficient manner possible, for the benefit of consumers, producers, retailers and return point operators, and that this is the core principle of the Company and should flow through and underpin everything that it does.
- 1.4 As stated in General Principle 2 of the General Principles set out in Part 2 of the Schedule to the Membership Agreement, the Company acknowledges and agrees that it will embed good practice and continuous improvement in striving to deliver an efficient and effective Scheme.

### 2 Duration

This Agreement shall commence on the Contract Date and shall continue, subject to earlier termination in accordance with clause 3, for the Initial Term. On expiry of the Initial Term, this Agreement shall automatically continue for further periods of 12 months at a time (each a **Renewal Term**), unless and until it is terminated in accordance with clause 3.

### 3 Termination

- 3.1 Without prejudice to any other rights or remedies that either party may have, either party may terminate this Agreement (in whole, but not in part) for convenience at any time on giving the other party not less than 6 months' prior written notice, PROVIDED THAT any such notice will expire and take effect:
  - (a) at the end of the Initial Term, where it is given more than 6 months before the end of the Initial Term;
  - (b) at the end of the first Renewal Term, where it is given less than 6 months before the end of the Initial Term and more than 6 months before the end of the first Renewal Term;
  - (c) at the end of each subsequent Renewal Term during which it is given, where it is given more than 6 months before the end of that Renewal Term.

Without prejudice to its rights under this clause, to the extent that the Company is intending to exercise its right of termination under this clause 3.1 it will give the Producer as much advance warning of such intention as is reasonably practicable, for the purpose of giving the Producer as much time as possible to identify and implement an alternative solution to the appointment of the Company as its Scheme Administrator.

- 3.2 Either party may, by giving written notice to the other party, immediately terminate this Agreement (in whole, but not in part), as of the date of the notice of termination, if any of the following circumstances occur or exist:
- (a) the other party commits a material breach of this Agreement which is not capable of being remedied; or
  - (b) the other party commits a material breach of this Agreement which is capable of being remedied but is not remedied within 30 days after the date on which notice of the breach in question has been given by the non-breaching party to the breaching-party; or
  - (c) the other party is the subject of an Insolvency Event.

Without limitation, "material breach" on the part of the Producer shall include (i) fraud, fraudulent misrepresentation or dishonesty on the part of the Producer, and (ii) non-payment of any fees that are due and payable under this Agreement.

- 3.3 The Company may, by giving written notice to the Producer, immediately terminate this Agreement (in whole, but not in part), as of the date of the notice of termination, either:
- (a) if the Producer's registration with the Regulator for the purposes of the Regulations is cancelled pursuant to Regulation 9 through no fault of the Company and all rights of appeal have been exhausted without such registration being reinstated; or
  - (b) if the Producer knowingly and/or recklessly supplies false information in connection with the application for registration of the Producer or where the Producer knowingly and/or recklessly supplies false or inaccurate information pursuant to this Agreement or the Regulations; or
  - (c) if the Producer fails to timeously provide such information and assistance as is required to enable the Company to satisfy the obligations set out in Regulations 10(1) and 11(1) and such failure is not remedied within 60 days after the date on which notice of the failure in question has been given by the Company to the Producer; or
  - (d) if the Producer has been convicted of any offence pursuant to the Regulations which has a material and detrimental effect on the Company's ability or willingness to act as the Producer's Scheme Administrator and against which all rights of appeal have been exhausted.

- 3.4 The Producer may, by giving the Company not less than 6 months' prior written notice (which may be given at any time after the Contract Date, including during the Initial Term), terminate this Agreement (in whole, but not in part) in circumstances where the Producer determines, in its sole discretion, that it is not in the Producer's interests to operate in Scotland and as a result the Producer withdraws its products from sale in Scotland with the effect of the Producer no longer being required to participate in the Scheme.

- 3.5 Either party may, by giving written notice to the other party, immediately terminate this Agreement (in whole, but not in part), as of the date of the notice of termination, if the Actual Go-Live Date has not occurred by the date falling 12 months after the Scheduled Go-Live Date (or such other date as the parties may agree in writing).

- 3.6 This Agreement shall terminate automatically in the circumstances where the Company's authority to act as a Scheme Administrator and to carry out the Functions and Obligations expires, is withdrawn or is revoked. In such circumstances, the Company will notify the Producer of such withdrawal or revocation, in writing, as soon as possible after the Company becomes aware of such withdrawal or revocation.

#### **4 Consequences of Termination**

- 4.1 With effect from the Termination Date, the Company shall cease to represent the Producer as Scheme Administrator and the Producer shall comply with its obligations under the Regulations directly (or via an alternative Scheme Administrator, if any).
- 4.2 Each party shall, on request by the other party and free of charge, provide the other party with such assistance as it reasonably requires in order to ensure that the termination or expiry of this

Agreement causes the minimum disruption to the Scheme and that there is an orderly handover of any activities to the Producer and/or any replacement Scheme Administrator.

4.3 Without prejudice to the generality of clause 4.2, because the market is continuous, if the Producer's appointment of the Company as Scheme Administrator terminates for any reason other than under clause 3.6 then:

- (a) the Producer shall remain liable for all amounts due and payable under this Agreement as at such Termination Date; and
- (b) the Company shall uplift outstanding scheme packaging bearing the same registered barcode / EAN up to a maximum of 90% of deposits received for that registered barcode / EAN. Thereafter, the Producer shall remain liable for all incremental costs arising in relation to products bearing the registered barcode / EAN in question.

4.4 In the event that this Agreement is terminated by the Company, 100% of all Advance Payments that have been paid and not returned or set off against bona fide producer fees payable by the Producer to the Company under this Agreement shall be treated as a debt due by the Company to the Producer and shall be repaid by the later of (1) the date falling 24 months after the Actual Go-Live Date (or the Scheduled Go-Live Date, if there has been no Actual Go-Live Date), and (2) the date of the notice of termination, PROVIDED THAT any such repayments shall be subordinated to all bona fide third party supplier costs due and payable by the Company to Biffa as at the date of termination of this Agreement, such costs being net of any income received by Biffa under the terms of its agreement with the Company and excluding any amounts which are recoverable under the Insurance Policy (as defined in the Second Preliminary Agreement) (**Biffa's Costs**), PROVIDED FURTHER THAT any such repayments shall be subordinated to Biffa's Costs only to the extent of the Producer's proportionate share of Biffa's Costs based on the annual production volumes previously submitted by the Producer to the Company relative to total annual production volumes submitted by all other producers who have entered or will enter into agreements with the Company to pay Advance Payments. For the avoidance of doubt, any repayment due to the Producer in accordance with this clause 4.4 shall rank *pari passu* with any creditors under each First Preliminary Agreement that the Company is a party to.

4.5 In the event that this Agreement is terminated by the Producer pursuant to any of clauses 3.2, 3.5 or 3.6, 100% of all Advance Payments that have been paid and not returned or set off against bona fide producer fees payable by the Producer to the Company under this Agreement shall be treated as a debt due by the Company to the Producer and shall be repaid by the earlier of (1) the date falling 24 months after the Actual Go-Live Date (or the Scheduled Go-Live Date, if there has been no Actual Go-Live Date), and (2) the date of the notice of termination, PROVIDED THAT any such repayments shall be subordinated to Biffa's Costs, PROVIDED FURTHER THAT any such repayments shall be subordinated to Biffa's Costs only to the extent of the Producer's proportionate share of Biffa's Costs based on the annual production volumes previously submitted by the Producer to the Company relative to total annual production volumes submitted by all other producers who have entered or will enter into agreements with the Company to pay Advance Payments. For the avoidance of doubt, any repayment due to the Producer in accordance with this clause 4.5 shall rank *pari passu* with any creditors under each First Preliminary Agreement that the Company is a party to.

## **5 Obligations of the Company as Scheme Administrator**

5.1 For the duration of this Agreement, the Company shall:

- (a) act as the Producer's Scheme Administrator for the purposes of the Regulations;
- (b) comply with the Company's obligations as Scheme Administrator under the Regulations and pursuant to this Agreement; and
- (c) take all reasonable care to perform the Functions and Obligations for the benefit of the Producer in a cost-effective manner, including (without prejudice to the generality of clauses 5.1(a) and (b)):
  - (i) applying to the Regulator for registration of the Producer for the purposes of Regulation 7(1)(b);
  - (ii) at the Producer's cost, providing all assistance reasonably requested by the Producer for the purposes of Regulation 9(4) (appealing any cancellation of registration by the Regulator);

- (iii) not knowingly or recklessly supplying false information in connection with the application for registration of the Producer;
- (iv) pursuant to Regulation 16(1)(a), complying with Regulations 10(1) and 11(1) on behalf of the Producer (i.e., providing information and notifications to the Regulator under Regulation 10(1));
- (v) collecting and keeping for at least 4 years a record of the information referred to in Regulation 11(2) and providing that information to the Regulator;
- (vi) accepting the return of scheme packaging from retailers and wholesalers for the purposes of Regulation 11(1)(c);
- (vii) paying a sum equal to the deposit to the retailer or wholesaler in question for each item of scheme packaging that is returned in accordance with Regulation 11(1)(d);
- (viii) collecting scheme packaging from each return point operator, retailer operating a takeback service and hospitality retailer in accordance with Regulation 11(1)(e);
- (ix) paying a sum equal to the deposit for each item of scheme packaging collected plus a reasonable handling fee to each RPO, retailer operating a takeback service and hospitality retailer from whom they collect scheme packaging, all in accordance with Regulations 11(1)(f) and (g);
- (x) meeting the minimum collection targets specified in schedule 3 to the Regulations;
- (xi) pursuant to Regulation 16(1)(b), providing any information requested by the Scottish Ministers or the Regulator for the purpose of monitoring compliance with the requirements in Regulations 10(1) and 11(1);
- (xii) pursuant to Regulation 16(1)(c), notifying the Scottish Ministers and the Regulator in writing of any material change in the information provided as part of the Company's original application pursuant to Regulation 14, within 28 days of the date of the change; and
- (xiii) notifying the Scottish Ministers and the Producer in writing if the Company intends to withdraw from acting as Scheme Administrator.

## **6 Obligations of the Producer**

6.1 For the duration of this Agreement, the Producer shall:

- (a) comply with the Producer's obligations under the Regulations (consistent with a producer who has appointed a Scheme Administrator) and pursuant to this Agreement (including, for the avoidance of doubt, the Policy Papers (and in particular the requirement to pay producer fees and deposits));
- (b) provide the Company with such assistance as the Company may reasonably request in order to enable the Company to act as the Producer's Scheme Administrator (including, without limitation, the provision of such information and assistance as is required to enable the Company to satisfy the obligations set out in Regulations 10(1) and 11(1)); and
- (c) without prejudice to the generality of clauses 6.1(a) and (b):
  - (i) provide all information reasonably requested by the Company to enable the Company to make an application for registration of the Producer with the Regulator in accordance with Regulation 7(3), including but not limited to the information set out in Policy Paper 2 (Registration Producers & Products), with such information being received by the Company no later than 10 Business Days before the deadline for submission to the Regulator (save for any operational plan of the Company, which the Company will provide);
  - (ii) pay the Registration Fee, as updated from time to time, with such fee being received by the Company before the deadline for submission to the Regulator of the application for registration of the Producer; and



- (iii) at the Producer's cost, comply with the Producer's obligations under Regulation 12(2) (maintaining a record of the number and type of scheme articles first made available by that Producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland; and supplying any information reasonably requested by the Company for the purposes of the Company's compliance with its obligations under Regulations 16(1)(a) to (c)).

6.2 For the duration of this Agreement, the Producer authorises the Company to represent the interests of the Producer as the Producer's appointed Scheme Administrator, for the purposes of Regulation 12 of the Regulations.

6.3 The undertakings given by the Producer in clauses 6.1 and 6.2 are given by it both for itself and on behalf of such of its Associates (if any) as are relevant for the purposes of the Regulations and the Company's appointment as the Producer's Scheme Administrator. The Producer agrees to procure that such Associates (if any) comply with and behave as if they are subject to the obligations, limitations and restrictions on the Producer that are set out in this Agreement. For the avoidance of doubt, the provisions of this clause 6.3 shall not apply in relation to any Associate of the Producer that is otherwise represented by the Company as its Scheme Administrator (directly or indirectly) or that has expressly opted to not appoint the Company as its Scheme Administrator.

#### Limitations on liability

6.4 Subject to clause 6.6, the liability of the Producer under or in connection with this Agreement, whether arising from contract, negligence or otherwise, shall be limited to an amount equal to the aggregate annual fees payable by the Producer to the Company pursuant to this Agreement during the year in which the claim in question arises.

6.5 Subject to clause 6.6, no party shall be liable to the other for an indirect or consequential loss, except to the extent that such loss is covered under the relevant party's insurance policies.

6.6 The exclusions and limitations of liability set out in clauses 6.4 and 6.5 above shall not apply to:

- (a) liability arising from death or injury to persons;
- (b) the party in question's liability arising from fraud, dishonesty or reckless or gross negligence;
- (c) any failure by the Producer (or any of its Associates, as applicable) to pay any fees or other sums or charges that are due and payable under this Agreement;
- (d) any deliberate or wilful default by the party in question;
- (e) anything else which cannot be excluded or limited at law,

in each case to which no limit applies.

## **7 Title**

7.1 Title to all scheme articles, scheme packaging and any other material or container that is returned to a return point for the purposes of the Scheme shall pass to the Company as soon as the scheme articles, scheme packaging or material in question is returned to a return point. Title shall thereafter remain with the Company until the Company disposes of the material in question.

7.2 Where a Producer has exercised its right of first refusal over scheme articles or scheme packaging in accordance with the terms of Policy Paper 6 (Recovered Material - Right of First Refusal (RoFR)), title to the scheme articles or scheme packaging in question shall pass on delivery of the scheme articles or scheme packaging in question to the Producer.

7.3 The Producer acknowledges that the Company may grant security over Scheme Articles and/or Scheme Material owned by it to a Financier.

## **8 Fees**

### Registration Fee

8.1 The Registration Fee must be paid by the Producer to the Company so as to be received by the Company in cleared funds no later than the Company's deadline for submission to the Regulator. The Producer acknowledges that the Regulator will almost certainly refuse an application for registration if it is not accompanied by the relevant Registration Fee and that the

Company cannot guarantee successful registration with the Regulator if the Company has not been put in cleared funds at least 10 Business Days before the Company's deadline for submission to the Regulator.

Producer Fees, Deposits & Other Charges and Supplementary Producer Fees

- 8.2 With effect from the Actual Go-Live Date, each Producer shall pay to the Company: (i) a per unit fee (known as the Producer Fee) as set out in Policy Paper 4 (Producer Fee Charge & other Charges); (ii) the associated per unit fee (known as the Deposit); and (iii) other applicable charges set out in Policy Paper 4 (Producer Fee Charge & other Charges). The Producer Fee, Deposit and other charges are calculated and payable in accordance with the methodology set out in Policy Paper 3 (Producer Fee (PF) Methodology).
- 8.3 The Producer Fee is calculated in advance of the financial year to which it applies and is based on best available information of forecast operating costs and operating parameters. In the event that, following an in-year funding review, any of the forecast operating assumptions used in calculation of the Producer Fee prove to be materially lower than the actual operating costs and operating parameters, with the result that the Company's ability to operate the Scheme efficiently in accordance with the mandate set out in the General Principles set out in Part 2 of the Schedule to the Membership Agreement is (or is likely to be) materially prejudiced, then the Company reserves the right to seek:-
- (a) a Producer Fee per material type for all Replacement OEANs where there is a material difference between the forecast number of NEANs at Go-Live and the Producer's number of actual NEANs PoM periodically until 31<sup>st</sup> December 2023;
  - (b) further funding from the Producer through a Supplementary Producer Fee for that particular year. Where appropriate, the costs and operational parameters associated with such Supplementary Producer Fee shall be disclosed to the Producer and shall also be included in the calculations used by the Company to calculate the Producer Fee for each subsequent year following the introduction of a Supplementary Producer Fee.

Prepayments

- 8.4 The Company will perform a risk assessment, which may include a credit check, for each Producer on registration. The Company will set a credit limit for the Producer which may result in the requirement for the Producer to prepay some of its charges and maintain a positive account balance with the Company. As an alternative, the Producer may elect to obtain a financial guarantee in favour of the Company to reflect the variance between the Producer's credit limit and the liability of Company for deposits in the market. The Company may agree, subject to the risk assessment for a Producer, to (a) raise finance against the Producer Fee and Deposit from such a Producer and (b) extend the payment terms for that Producer.

Advance Payments

- 8.5 In the event that the Actual Go-Live Date is later than the Scheduled Go-Live Date then, for the shorter of (a) the duration of the period from the Scheduled Go-Live Date to the earlier of the Actual Go-Live Date and the Termination Date, and (b) the period of 12 months from the Scheduled Go-Live Date (the **Advance Payment Period**):
- (a) the Producer agrees to pay to the Company, by way of an advance of the per unit Producer Fee and with effect from the Scheduled Go-Live Date, a monthly advance equal to the amount set out in Part 1 of this Agreement as the Advance Payment, which has been calculated in accordance with the following bands:

<u>Band</u>	<u>Advance Payment (Monthly)</u>
1	Up to £1,500,000*
2	Up to £700,000*
3	Up to £370,000*
4	Up to £120,000*
5	Up to £50,000*
6	£nil

\* As advised by the Company from time to time, but subject to the following principles:

- The Producer shall fall into the band agreed between the Producer and the Company from time to time;
- The Advance Payments shall not exceed the amounts set out in the table above;
- The Company shall at all times use its reasonable endeavours to keep the amount of the Advance Payments as low as possible; and
- The Company shall, in good faith by 1 November 2023 (and in any event prior to the payment of the third Advance Payment), review the contribution by the Producer and, if appropriate, the Advance Payment amount as set out in Part 1 of this Agreement shall be adjusted accordingly.

The bands are based on the following annual production volumes of Scheme Articles:

<b>Band</b>	<b>Lower Threshold</b>	<b>Upper Threshold</b>
1	350,000,000	Unlimited
2	200,000,000	349,999,999
3	100,000,000	199,999,999
4	30,000,000	99,999,999
5	10,000,000	29,999,999
6	0	9,999,999

- (b) unless otherwise agreed with the Company, the Company will issue an invoice for each Advance Payment on 16th August 2023 and thereafter on the 16th of each month (or the next Business Day thereafter, where the 16th is not a Business Day), for payment on the last Business Day of each month, throughout the Advance Payment Period;
- (c) the parties acknowledge and agree that:
- (i) all Advance Payments are an advance against the Producer Fees to be paid pursuant to this Agreement and, during the two years of operation of the Company following the Actual Go-Live Date, actual Producer Fees invoiced to the Producer will be reduced pro-rata against such Advance Payments, at the rate of £1.10 reduced by every £1.00 of Advance Payment; and
- (ii) to the extent that any balance remains of Advance Payments at the end of the second year of operation of the Company following the Actual Go-Live Date (**Advance Payment Balance**), the Producer shall, at its option, be entitled to elect to either: (A) continue with the reduction arrangement until such time as the Advance Payment Balance has been fully allocated against such Producer Fees; or (B) require the Company to repay the Producer on demand an amount equal to 100% of the Advance Payment Balance; and
- (d) all Advance Payments will be utilised to fund the bona fide operating costs required to operate the Scheme (including but not limited to bona fide third-party supplier costs payable by the Company to Biffa) and the Company as Scheme Administrator of the Scheme.

#### No Set-off etc

- 8.6 All sums payable by the Producer under this Agreement must be paid without any legal or equitable set-off, counterclaim, deduction, discount, withholding, contra or any other form of reduction, save with the written agreement of the Company on a case-by-case basis.

### **9 Intellectual Property Rights & Data**

- 9.1 Unless otherwise expressly agreed in writing by the relevant parties, nothing in this Agreement shall operate to assign or otherwise transfer a party's Intellectual Property Rights.
- 9.2 All title, interest and Intellectual Property Rights in the Logo and Company Data shall belong to and vest in the Company immediately on creation and all title, interest and Intellectual Property Rights in the Producer Data shall belong to and vest in the Producer immediately on creation.
- 9.3 The Company hereby grants to the Producer a non-exclusive, perpetual, irrevocable, royalty-free licence (with the right to grant sub-licences) to use, copy and maintain, for the duration of

this Agreement, the Logo in the United Kingdom and to the extent necessary for the purpose of enabling the Producer to receive and obtain the benefit of the Functions and Obligations. The Producer's use of the Logo must comply with the brand rules published by the Company from time to time.

9.4 The Producer hereby grants to the Company a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (with the right to grant sub-licences) to use, copy and maintain the Producer Data:

- (a) for the purpose of acting as the Producer's appointed Scheme Administrator and complying with the Regulations; and/or
- (b) in relation to the proper performance and/or operation of the Scheme.

For the avoidance of doubt, the Company shall be entitled to aggregate the Producer Data with other data and to use such aggregated data as the Company sees fit, provided that the Producer is not individually discernible from such aggregated data (any such aggregated data being Company Data).

9.5 In relation to its collection, processing and use of Company Data and/or Producer Data pursuant to this Agreement, each of the parties acknowledges and agrees:

- (a) to make all necessary registrations that it is required to make pursuant to the Data Protection Laws;
- (b) to not process personal data without having a legal basis under the Data Protection Laws to carry out such processing;
- (c) where required, to ensure appropriate consents have been obtained from data subjects to process their personal data in compliance with the Data Protection Laws;
- (d) to only collect personal data for specified, explicit and legitimate purposes in accordance with Data Protection Laws and to not further process such personal data in a manner inconsistent with those purposes;
- (e) to ensure that personal data that it has processed is accurate and, where necessary, kept up to date;
- (f) to issue appropriate privacy notices to data subjects which comply with all applicable requirements of the Data Protection Law;
- (g) to ensure that it is only processing such personal data as is adequate, relevant and limited to what is necessary for the purpose for which it is processing the personal data in accordance with the Data Protection Law;
- (h) to implement appropriate documentation in connection with its processing of personal data (such as, conducting and documenting data protection impact assessments and legitimate interests assessments and maintaining a record of processing activities);
- (i) to have in place arrangements to respond to any personal data breach in accordance with the requirements of the Data Protection Laws;
- (j) to not transfer any personal data outside of the European Economic Area or the United Kingdom, other than in accordance with Data Protection Laws; and
- (k) to have an agreement in place with any third party with whom it shares and receives personal data which governs the processing of personal data in compliance with the Data Protection Laws.

For the purposes of this clause 9.5, the terms "personal data", "data subject", "processing", "controller", "processor", "personal data breach" and "supervisory authority" shall have the meanings given to them in the Data Protection Laws.

9.6 In relation to its collection, processing and use of Company Data and/or Producer Data pursuant to this Agreement, each of the parties shall use reasonable endeavours to maintain the security and confidentiality of such data and to only use such data in a manner which is permitted by the terms of this Agreement.

## **10 Prevention of Fraud**

- 10.1 The Company shall take, and shall be permitted to take, such measures as it deems appropriate (acting reasonably and in good faith) to seek to prevent any fraudulent activity in relation to the Scheme and the Regulations, including but not limited to reporting potential fraudulent activity to, and working collaboratively with, the Police, the Regulator and any other legitimate body to investigate fraudulent activity, or, sharing any data or material in its possession with any legitimate authority investigating fraudulent or criminal activity. The Company will pursue any party found to be perpetrating any fraud against the Scheme in order to recover its costs and losses and/or support the Regulator in taking appropriate enforcement action. Certain fraudulent activities by the Producer will also lead to a material breach of this Agreement.
- 10.2 The Producer acknowledges that prevention of fraudulent activity is material in ensuring the success of the Scheme, and that fraudulent activity or under reporting of issues could result in higher Producer Fees, Supplementary Fees or other Charges to the detriment of all producers. The Producer agrees as follows:-
- (a) for the duration of this Agreement, it shall take reasonable steps to protect the integrity of the Scheme and avoid fraud;
  - (b) it shall provide all reasonable assistance to the Company to investigate or prevent fraudulent activity or under reporting of information required pursuant to this Agreement; and
  - (c) the Company shall, as part of its right to audit pursuant to clause 11, be entitled to audit the measures put in place by a Producer to prevent fraudulent activity or under reporting of the information that is required to be provided by or on behalf of the Producer pursuant to this Agreement and/or the Regulations.

## **11 Right to Audit**

- 11.1 The Company shall have the right to carry out an audit of:
- (a) as stated in clause 10.2(c) above, the measures put in place by a Producer to prevent fraudulent activity or under reporting of the information that is required to be provided by or on behalf of the Producer pursuant to this Agreement and/or the Regulations;
  - (b) the Producer's risk assessment activity in connection with fraud prevention, as it pertains to the Scheme;
  - (c) the Producer's policies, procedures and/or records to the extent that they relate specifically to the Scheme and/or the Producer's obligations under this Agreement and/or the Regulations, to ensure compliance with the terms of this Agreement and the Regulations.

The Company shall provide at least 10 Business Days' notice of its intention to carry out such audit and shall carry out an audit no more than once in any 12 month period, PROVIDED THAT, notwithstanding the foregoing, the Company may carry out an audit at any time where such audit is required (i) to comply with the requirements of any regulatory authority, or (ii) to investigate potential fraudulent or criminal activity. The costs of such audit shall be borne by the Company except that the costs of such audit shall be reimbursed by the Producer in the event of any material or deliberate non-compliance with this Agreement on the part of the Producer, including but not limited to any material or deliberate under reporting of information or any fraudulent or criminal activity. The Company will also use reasonable endeavours to procure that there is no duplication of activity between the Company and the Regulator (bearing in mind the Regulator's separate enforcement and inspection rights under the Regulations).

## **12 Dispute resolution**

- 12.1 If a dispute arises out of or in connection with this Agreement (**Dispute**) between the Company and the Producer, either party may (but shall not be obliged to) refer the matter for determination in accordance with the procedure set out in clause 12.2.
- 12.2 A Dispute referred for determination under clause 12.1 shall be resolved as follows:
- (a) by referral in the first instance to the decision of the Contract Manager of the Company and the Contract Manager of the Producer;

- (b) if a Dispute is not resolved within 14 days of its referral pursuant to clause 12.2(a) then, to the extent it is possible to escalate the matter to more senior decision makers within the parties, the Dispute shall be so escalated;
- (c) if a Dispute is not resolved within 14 days of its escalation pursuant to clause 12.2(b) (or if no such escalation was chosen and/or possible), then either party may refer the Dispute to arbitration under the rules from time to time in force of the Scottish Arbitration Centre (**SAC**) (**SAC Rules**), which SAC Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The parties will seek to reach agreement on the identity of the sole arbitrator within 10 Business Days after the initiation of arbitration. If the parties do not reach agreement on the sole arbitrator, then the appointment of the sole arbitrator shall be made by the SAC, at the request of either party. The seat, or legal place, of arbitration shall be Edinburgh. The language to be used in the arbitration shall be English. The governing law of the arbitration agreement shall be Scots law.

12.3 Nothing in this clause 12 shall preclude a party from taking legal proceedings in the courts at any time.

### 13 Notices

13.1 Any notice, consent, request, approval, settlement, election, proposal, claim form for the purposes of serving proceedings or other communication under or in connection with this Agreement will be:

- (a) in English;
- (b) in writing; and
- (c) delivered by:
  - (i) hand; or
  - (ii) internationally recognised courier service; or
  - (iii) prepaid first class post or another next working day delivery service; or
  - (iv) email or other means of secure electronic transmission,

with delivery pursuant to clauses 13.1(c)(i), (ii) or (iii) being to a party's registered office, or where a party doesn't have a registered office, the party's address as set out on the first page of this Agreement, and with delivery pursuant to clause 13.1(c)(iv) being to a valid email address provided by the relevant party for the purpose of receiving notices.

13.2 A notice will be effective on receipt and, in the absence of evidence of earlier receipt, will be deemed to have been received:

- (a) if a notice is delivered by hand:
  - (i) between 9.00 am and 5.00 pm on a Business Day (such time period being referred to as within **Business Hours**), it will be deemed received when so delivered; or
  - (ii) outside Business Hours, it will be deemed received at 9.00 am on the next Business Day after the time of delivery;
- (b) if a notice is sent by post:
  - (i) on a Business Day, it will be deemed received at 9.00 am on the second Business Day after the day on which it was posted; or
  - (ii) not on a Business Day, it will be deemed received at 9.00 am on the third Business Day after the day on which it was posted;
- (c) if a notice is sent by email or other means of secure electronic transmission, when a successful delivery receipt is generated.

13.3 A notice given under this Agreement is not validly served if sent by fax.

#### **14 Further assurance**

Each party shall (at its own expense), and shall use all its reasonable endeavours to procure that any relevant third party shall execute such documents and do such acts and things as the other party may reasonably require to give to that party the full benefit of this Agreement.

#### **15 Assignment**

Other than to a Financier, no right, interest, or obligation arising under this Agreement may be assigned, transferred or otherwise disposed of or dealt with, in whole or in part, by any party without the prior written agreement of the other party.

#### **16 Third party rights**

Unless this Agreement expressly states otherwise (which includes any provision expressed to be in favour of any person who is not a party), a person who is not a party to this Agreement has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of, or enjoy any benefit under, this Agreement.

#### **17 Not a partnership**

Nothing in this Agreement will create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between or among any of the parties.

#### **18 Announcements**

18.1 Subject to clause 18.2 and without prejudice to clause 19 (Confidentiality), no announcement, public statement, document or circular relating to the existence or subject matter of this Agreement or any ancillary matter will be made, published or issued by or on behalf of any party to this Agreement without the prior consent of the other party.

18.2 Any party may make an announcement concerning the subject matter of this Agreement or the transactions contemplated by this Agreement if (but only to the extent) required by:

- (a) the law of any relevant jurisdiction;
- (b) any regulatory body to which it is subject; or
- (c) any securities exchange on which its shares (or those of its holding company) are listed, provided that, to the extent permitted by law:
- (d) prior to making any such announcement, the relevant party will endeavour to agree the contents of such announcement with the other party before its release, where it is reasonably practicable to do so; and
- (e) the relevant party will in any event notify the other party of any such announcement made.

For the avoidance of doubt, both parties are entitled to disclose, without restriction, the fact that the Producer has appointed the Company as its Scheme Administrator for the purposes of the Scheme.

#### **19 Confidentiality**

19.1 Subject to clause 19.3, the Company shall:

- (a) keep all Producer Confidential Information confidential and only use it for the purpose of performing its role as a Scheme Administrator of the Scheme; and
- (b) other than in respect of a Financier (who shall be required to observe the confidentiality of any Producer Confidential Information that is disclosed to it by the Company), not disclose any Producer Confidential Information to a third party, other than to such of its Representatives as will of necessity acquire it as a consequence of the performance of that party's obligations under this Agreement or in the performance of the Scheme.

19.2 Subject to clause 19.3, the Producer shall:

- (a) keep all Company Confidential Information confidential and only use it for the purpose of performing its obligations under the Scheme; and

- (b) not disclose any Company Confidential Information to a third party, other than to such of its Representatives as will of necessity acquire it as a consequence of the performance of that party's obligations to the Producer.
- 19.3 Clauses 19.1 and 19.2 shall not apply to limit the use of any Company Confidential Information or Producer Confidential Information to the extent that:
- (a) it comes into the public domain other than through breach of clauses 19.1 or 19.2;
  - (b) it is required or requested to be divulged by any court, tribunal or governmental authority with competent jurisdiction to which the party in question is subject, wherever situated;
  - (c) it is required to be disclosed by law or by any relevant national or supranational regulatory authority or in relation to the investigation of any actual or potential criminal activity by any national or international organisation responsible for investigating such criminal activity;
  - (d) it is demonstrably known to the receiving party at the date of first disclosure of the information in question to the receiving party;
  - (e) it is disclosed with the disclosing party's prior written approval to the disclosure; or
  - (f) in the case of Producer Confidential Information, it is being used by the Company (for bona fide purposes, acting in good faith) pursuant to the licence granted pursuant to clause 9.4.
- 19.4 Each party shall:
- (a) make sure that its Representatives comply with this clause 19; and
  - (b) tell the Company Secretary of the Company (in the case of Company Confidential Information) or the Producer (in the case of Producer Confidential Information) immediately if it discovers that this clause 19 has been breached.
- 19.5 In the event that a party, its Representatives or anyone to whom they transmit any Company Confidential Information or Producer Confidential Information, becomes (or it is reasonably likely that it or they shall become) legally compelled to disclose any such Company Confidential Information or Producer Confidential Information, prompt notice of such fact shall be given to the Company (in the case of Company Confidential Information) or the Producer (in the case of Producer Confidential Information) prior to any disclosure (but only to the extent that the giving of such prior notice is lawful and not contrary to any applicable law or regulation).
- 19.6 The obligations in this clause 19 shall continue without limit in time and shall survive the termination of this Agreement.

## **20 Exercise of rights**

- 20.1 In relation to the rights of each party under this Agreement:
- (a) rights may be exercised as often as necessary;
  - (b) rights are cumulative and not exclusive of any right or remedy provided by law;
  - (c) rights may be released or waived as regards any party without affecting the liability of any other party; and
  - (d) rights may only be waived specifically and in writing.
- 20.2 Any delay in exercising, or non-exercise of, any right of any party under this Agreement will not constitute a waiver of that right. A waiver of any right of any party under this Agreement is not a waiver of any other breach, and will not prevent any further or subsequent exercise of that right.

## **21 Entire Agreement**

- 21.1 This Agreement (comprising Part 1 (Introduction, Agreement structure and Producer registration information), Part 2 (the Terms and Conditions) and Part 3 (the Policy Papers)), together with the Membership Agreement (to the extent the Producer is a party to the Membership Agreement), the First Preliminary Agreement (to the extent the Producer is a party to a First Preliminary Agreement) and the Second Preliminary Agreement (to the extent the Producer is a party to a Second Preliminary Agreement), sets out the entire agreement and understanding between the parties to them in connection with the subject matter of this Agreement. For the avoidance of doubt:



- (a) to the extent there is a First Preliminary Agreement between the parties, it shall continue in accordance with its terms notwithstanding the execution of this Agreement; and
  - (b) to the extent there is a Second Preliminary Agreement between the parties, it shall automatically terminate, in accordance with its terms, with effect from the execution of this Agreement.
- 21.2 Without affecting clause 21.1, this Agreement supersedes all, if any, prior negotiations, representations, undertakings and agreements (whether oral or written) on any matter which is the subject of this Agreement.
- 21.3 Each of the parties acknowledges that it is not relying on any statement, warranty, representation, undertaking, collateral contract or other assurance given or made by or on behalf of any of the other parties or the Company (or any of their respective agents, officers, employees and advisers) in relation to the subject matter of this Agreement which is not expressly set out in this Agreement (**Non contractual Assurance**).
- 21.4 No party shall have any claim or remedy in respect of any Non-contractual Assurance. To the extent that any of the parties has been given any Non-contractual Assurance (including, for the avoidance of doubt, any innocent or negligent misrepresentation or misstatement), the relevant party unconditionally waives any claims, rights or remedies which it might otherwise have in relation thereto.
- 21.5 Nothing in this clause 21 or otherwise under this Agreement shall exclude or limit any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

## **22 Alterations**

Any alteration to this Agreement must be in writing, refer specifically to this Agreement and be duly executed by each party, PROVIDED THAT as set out in Part 1, the Company shall (subject to the provisions of clause 2.8 of Part 1) be entitled to amend the Policy Papers (or any of them) from time to time as it sees fit but shall give the Producer such advance notice of the amendments in question as is reasonable in the circumstances. Any such Policy Paper amendments shall take effect from the date on which the amendments are notified to the Producer (or such later date as the Company may specify).

## **23 Severability**

- 24.1 If any provision in this Agreement is or at any time becomes invalid, illegal or unenforceable in whole or in part, the relevant provision will apply with whatever modification or deletion is necessary to ensure that it is valid, legal and enforceable.
- 24.2 To the extent that it is not possible to modify or delete any provision under clause 24.1, the relevant provision (or part of it), to the extent that it is invalid, illegal or unenforceable, will not apply and will be deemed to not form part of this Agreement.
- 24.3 The validity, legality and enforceability of the remainder of this Agreement will not, subject to any modification or deletion under clause 24.1 and/or the effect of clause 24.2, be affected, provided that the operation of this clause 24 would not negate the commercial intention of the parties in entering into this Agreement.

## **24 Payment of costs**

Except where this Agreement provides otherwise, each party shall pay its own costs and expenses incurred in relation to the preparation, negotiation, entering into and completion of this Agreement.

## **25 Continuing effect of this Agreement**

- 25.1 All provisions of this Agreement shall, so far as they are capable of being performed or observed, continue in full force after (and notwithstanding) the Contract Date.
- 25.2 Except for those matters then already performed, the entering into this Agreement shall not constitute a waiver of any party's rights in relation to this Agreement.

## **26 Process Agent**

- 26.1 To the extent the Producer's address for the service of notices is outside Scotland, the Producer:
- (a) undertakes, within 10 Business Days after the Contract Date, to appoint a process agent (each a **Process Agent**) as its agent to accept service of process in Scotland in relation to any document initiating or otherwise connected with any court proceedings arising out of or in connection with this Agreement and to notify the Company of the identity of such Process Agent;
  - (b) agrees to notify the Company in writing of any change of address of such Process Agent within 10 Business Days of the change of address; and
  - (c) if such Process Agent ceases to be able to act under this clause 26 or ceases to have an address in Scotland, irrevocably agrees to appoint a replacement process agent (**New Process Agent**) reasonably acceptable to the Company and after such appointment reference to the Process Agent in this paragraph will be read as reference to the New Process Agent and to give to the Company notice of such appointment within 10 Business Days.
- 26.2 Any such document will be validly served on each Producer whose address for the service of notices is outside Scotland by being sent by prepaid first class post to or delivered to the Process Agent notified by them pursuant to clause 26.1 or left at the relevant Process Agent's address, whether or not forwarded to or received by the Producer in question.
- 26.3 Without affecting the effectiveness of service under any other method set out in clause 13 (Notices), service of such process upon the Process Agent at its address given in clause 26.1 or elsewhere within the jurisdiction of the courts of Scotland for the time being in force will constitute good service on the Producer in question.

## **27 Governing law**

- 27.1 This Agreement shall be governed by and construed in accordance with Scots law.
- 27.2 All claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Agreement, its subject matter, negotiation or formation shall be determined in accordance with Scots law.
- 27.3 If in any court any party argues that a court other than the courts of Scotland has jurisdiction to determine any claims or disputes (including any non-contractual claims or disputes) arising out of or in connection with this Agreement, that issue shall be determined in accordance with Scots law, and any right that any person might otherwise have to rely upon the law of the forum or any other law is irrevocably and unconditionally waived.

## **28 Submission to jurisdiction**

- 28.1 Without prejudice to clause 12, each party irrevocably submits to the exclusive jurisdiction of the Scottish courts in relation to all matters (including non-contractual matters) arising out of or in connection with this Agreement.
- 28.2 Each party irrevocably waives any right that it may have to object on any ground to an action being brought in the Scottish courts, to claim that the action brought in the Scottish courts has been brought in an inconvenient forum, or to claim that the Scottish courts do not have jurisdiction (and the waiver contained in this clause 28.2 includes a waiver of all formal and substantive requirements of any otherwise competent jurisdiction in relation to this clause 28.2).

## **29 Interpretation**

- 29.1 In this Agreement, unless the context otherwise requires:
- (a) references to this **Agreement** include Part 1 (Introduction, Agreement structure and Producer registration information), Part 2 (the Terms and Conditions) and Part 3 (the Policy Papers), as appropriate;
  - (b) references to a **party** includes the party's personal representatives, successors and permitted assigns;
  - (c) reference to a **clause** is a reference to a clause contained in these Terms and Conditions;

- (d) reference to a numbered **Regulation** is a reference to that regulation of the Regulations;
- (e) references to a **person** include any individual, firm, company, partnership or other body (with or without separate legal personality);
- (f) references to one **gender** includes all genders;
- (g) references to the **singular** include the **plural** and vice versa;
- (h) the words **other, includes, including, in particular** and words of similar effect will not limit any general words which precede them and any words which follow them will not be limited in scope to the same class as the preceding words;
- (i) the headings of this Agreement are for convenience only and do not affect its interpretation;
- (j) a reference to **legislation** is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement; and
- (k) where any term is defined in the Regulations and is not separately defined in this Agreement, that term shall have the meaning set out in the Regulations.

### 30 Definitions

In this Agreement, unless the context otherwise requires:

**Actual Go-Live Date** means the date on which the Scheme becomes operational

**Advance Payment** means the monthly amount that is set out in the Advance Payment section of Part 2 of this Agreement and that is payable (to the extent applicable) pursuant to clause 8.5 of the Terms and Conditions (and **Advance Payments** means the aggregate of each such Advance Payment)

**Advance Payment Balance** has the meaning given to it in clause 8.5(c) of the Terms and Conditions

**Advance Payment Period** has the meaning given to it in clause 8.5 of the Terms and Conditions

**Agreement** means this agreement between the Company and the Producer, comprising Part 1 (Producer registration information), Part 2 (the Terms and Conditions) and Part 3 (the Policy Papers)

**Associate** means, as regards a party, a holding company of that party or a subsidiary of that party or its holding company, and for the purposes of this definition "holding company" and "subsidiary" have the meanings given to them by section 1159 Companies Act 2006

**Biffa** means Biffa Waste Services Limited (company number 00946107)

**Biffa's Costs** has the meaning given to it in clause 4.4(b) of the Terms and Conditions

**Business Day** means any day (other than a Saturday or Sunday) on which commercial banks are open for business in Edinburgh

**Company Confidential Information** means all written, electronic or oral information, documents and materials which is confidential or proprietary to the Company, including the terms of this Agreement and any Company Data.

**Company Data** means all information, documents, data or data bases received or generated by the Company in written, electronic or oral form, whether pursuant to this Agreement or while carrying out its functions and obligations as Scheme Administrator, including but not limited to any returns data by product, data from return vending machines or manual handling RPOs and aggregated Placed on Market data, but excluding Producer Data

**Contract Date** means the date of this Agreement

**Contract Manager** means the person appointed by a party to be that party's point of contact in relation to the management of this Agreement as notified by either party to the other party from

time to time (noting that the Producer's Contract Manager as at the Contract Date is as specified in Part 1)

**Data Protection Laws** means all applicable data protection and privacy laws and regulations applying to the Company Data and the Producer Data from time to time, including the General Data Protection Regulation (EU) 2016/679 (the **EU GDPR**), the EU GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the **UK GDPR**), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC on Privacy and Electronic Communications and the Privacy and Electronic Communications (EC Directive) Regulations 2003

**Deposit** has the meaning attributed to it in the Regulations

**Dispute** has the meaning given in clause 12.1

**Financier** means any third-party funder (and any member of that third-party funder) who provides a working capital facility to the Company from time to time

**First Preliminary Agreements** means the preliminary appointment agreements between the Company and certain producers pursuant to which those producers directly or indirectly agreed to provide the Company with advance payments in the period starting on the date of the First Preliminary Agreements and ending no later than the Scheduled Go-Live Date

**Functions and Obligations** means the functions of a Scheme Administrator for the purposes of the Regulations, including the functions specified in regulation 13(2) of the Regulations, and the obligations of a Scheme Administrator, including the obligations specified in regulation 16 of the Regulations

**Initial Term** means the period from the Contract Date until the date falling 3 years after the Actual Go-Live Date

**Intellectual Property Rights** means all current and future copyright, patents, trade marks or rights in databases, inventions or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any country of the world

**Insolvency Event** means:

- (a) the party in question becomes unable to pay its debts or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (assuming, if necessary, that section 123 aforesaid applies to the party in question);
- (b) a winding-up petition is presented in respect of the party in question and is not recalled;
- (c) the party in question enters into liquidation either compulsory or voluntary or a provisional liquidator is appointed in respect of the party in question;
- (d) the party in question proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors;
- (e) distress execution or other legal process is taken or steps are taken to enforce any encumbrance over all or part of the assets and/or undertaking of the party in question; or
- (f) the party in question is subject to an event analogous to any of (a) to (g) above in any other jurisdiction

**Logo** means the logo created by or for the Company for use in relation to the Scheme and in its capacity as the Scheme Administrator

**Membership Agreement** means the membership agreement relating to the Company that is in force from time to time between the Company and its members

**NEAN** means the EAN barcodes of products introduced to be used on or close to Go Live date to supersede existing SKUs which will no longer be supplied into Scotland or as a completely new to market product. A NEAN may only be introduced, in circumstances that would be regarded as PoM after Go-Live, no earlier than 1 calendar month prior to Go Live date.

**Placed on Market** has the meaning attributed to it in Policy Paper 4 (Producer Fee Charge & other Charges)

**Policy Papers** means the policy papers referred to in Part 3 and incorporated by reference, as such Policy Papers may be updated by the Board of the Company from time to time in accordance with the terms of this Agreement, and **Policy Paper** shall be construed accordingly

**Producer** has the meaning attributed to it in the Regulations

**Producer Confidential Information** means all written, electronic or oral information, documents and materials which is confidential or proprietary to the Producer or relates solely and exclusively to the business of the Producer, including Producer Data

**Producer Data** means all information, documents and data provided to the Company by or on behalf of the Producer pursuant to this Agreement and in relation to the period during which the Company is the Producer's appointed Scheme Administrator, including the Producer's individual Placed on Market data for the period during which the Company is the Producer's appointed Scheme Administrator but excluding Company Data

**Producer Fee** means the charges payable by a Producer to the Company as set out in the Company's tariff card, which the Company intends to publish annually in accordance with Policy Paper 4 (Producer Fee Charge & Other Charges)

**Registration Fee** means the registration fee set out in the Regulations

**Regulations** means The Deposit and Return Scheme for Scotland Regulations 2020, adopted in 2020 to implement the Scheme (amended in 2022 by The Deposit and Return Scheme for Scotland Amendment Regulations 2022), as such regulations may be amended or superseded from time to time

**Replacement OEAN** means the EAN barcodes relating to articles which will be replaced with identical products but which bear a new EAN barcode (NEAN) either Scottish or UK wide.

**Representatives** means the directors, officers, employees, agents and/or auditors of, and the professional advisers to, the party in question

**Regulator** means the regulator of the Scheme from time to time (with the initial Regulator of the Scheme being SEPA)

**Renewal Term** has the meaning given to it in clause 2

**return point** has the meaning attributed to it in the Regulations

**return point operator** has the meaning attributed to it in the Regulations and **RPO** means a return point operator

**Scheduled Go-Live Date** means 16 August 2023

**Scheme** means the Deposit Return Scheme for Scotland, as implemented by the Regulations

**Scheme Administrator** has the meaning attributed to it in the Regulations

**scheme articles** has the meaning attributed to it in the Regulations

**scheme packaging** has the meaning attributed to it in the Regulations

**Second Preliminary Agreement** means the second preliminary appointment agreement (if any) between the Company and the Producer pursuant to which the Producer directly or indirectly agreed to provide the Company with advance payments in the period starting on the date of the Scheduled Go-Live Date

**SEPA** means The Scottish Environment Protection Agency (and any replacement thereof or successor thereto, for the purposes of the Regulations)

**Supplementary Producer Fee** means any fee charged by the Company which is in addition to the Producer Fee in any particular year

**Termination Date** means the date of termination of this Agreement

**Terms and Conditions** means the terms and conditions set out in Part 2 of this Agreement

### **PART 3 – Policy Papers**

*The Policy Papers are:*

*Policy Paper No.1: Product Coding & Marking*

*Policy Paper No.2: Registration Producers & Products*

*Policy Paper No.3: Producer Fee (PF) Methodology*

*Policy Paper No.4: Producer Fee Charge & other Charges*

*Policy Paper No.5: Accounting & Invoicing Timetable*

*Policy Paper No.6: Recovered Material - Right of First Refusal (RoFR)*

**Policy Paper 1**  
**Product Coding & Marking**

1. Coding Nomenclature

1.1 Scheme Article

A Scheme Article is as defined in the Regulations in paragraph 3 (2) as:  
a drink (regardless of whether it is sold alone or as a unit in a multipack) that is

- (a) contained and sold in packaging that is made wholly or mainly from PET plastic, glass, steel or aluminium;
- (b) is conceived or designed to contain at least 50 ml and no more than 3 litres of liquid; is sealed in an airtight and watertight state at the point of sale; cannot be returned to its state at the point of sale by the consumer, and is single-use packaging,
- (b) first made available to be marketed, offered for sale or sold by the producer on or after 16 August 2023, and
- (c) made available to be marketed, offered for sale or sold by the producer for the purposes of its retail sale in Scotland.

1.2 Scheme Packaging

Scheme Packaging is as defined in the Regulations in paragraph 3 (2) as:

the packaging for a Scheme Article that is conceived or designed to come in direct contact with the drink, and does not include packaging conceived or designed to group together multiple components in a multipack e.g., it is the individual can within a multipack not the packaging that binds the individual cans together.

1.3 Non-Scottish Article

A non-Scottish article is as defined in the Amended Regulations in paragraph 5 (a) as:

an article that meets the criteria of a Scheme Article, paragraphs 1.1 (a) and 1.1 (b), above but which does not meet the criteria in paragraph 1.1 (c) above.

1.4 GTIN / EAN

GTIN refers to the Global Trade Item Number. Specifically, GTIN is the series of numbers associated with a barcode. GTIN codes are part of larger global data structures that help identify a company's unique product.

The European Article Number or EAN is a standard describing a barcode symbology and numbering system used in global trade to identify a specific retail product type, in a specific packaging configuration, from a specific manufacturer.

1.5 Old EAN (OEAN)

CSL use the term OEAN to identify the EAN barcodes relating to articles which will either:-

- Be replaced with identical products but which bear a new EAN barcode (NEAN) either Scottish or UK wide (“Replacement OEAN”) or
- Be no longer sold by the Producer in Scotland i.e., withdrawn by the Producer from the market post Go Live date (16<sup>th</sup> August 2023). Note If produced and available for sale before 16<sup>th</sup> August 2023 OEANs may continue to be sold in Scotland after Go Live date as non-Scheme Articles (“Delisted OEAN”).

OEANs are not Scheme Articles. OEANs do not form part of the PoM.

#### Registering OEANs

OEANs do not need to be registered with SEPA but CSL requires that Producers register Replacement OEANs with CSL in order that they can be included in the product list for acceptance by RVMs. Delisted OEANs may optionally be registered to facilitate collection.

A Return Point Operator is not required to accept OEANs but can optionally choose to accept these to avoid littering around the RVM. In those cases CSL will arrange for collections of OEAN, Except where otherwise indicated in this Agreement, there will be no PF charged on OEANs, and there will be no RHF payment or deposit payment / redemption.

#### 1.6 Retained EAN (REAN)

CSL use this term to refer to the EAN barcodes of existing products which will not be changed following Go Live and which will become Scheme Articles.

These barcodes will be split into two subsets – Scottish specific and UK wide:-

- REAN (UK): Retained Scheme Articles - The Producer retains an existing product available across the UK (or internationally) and registers the EAN for sale in Scotland’s DRS
- REAN (S): Retained Scheme Article - The Producer retains an existing product available in Scotland only and registers the EAN for sale in Scotland’s DRS

These SKUs will also be subject to a Day 1 charge (Policy Paper 4) in order to submit fees for those items already in the market at Go Live and which will be returned after Go Live for deposit redemption and material collection (the date of sale cannot be determined from the barcode).

#### 1.7 New EAN (NEAN)

CSL use this term to refer to the EAN barcodes of products introduced to be used on or close to Go Live date to supersede existing SKUs which will no longer be supplied into Scotland or as a completely new to market product. A NEAN may only be introduced, in circumstances that would be regarded as PoM after Go-Live, no earlier than 1 calendar month prior to Go Live date (otherwise they are considered as REANs).

All NEANs Placed on Market will be subject to a Producer Fee, Deposit and UK wide surcharge where applicable. As with REANs these barcodes will be split into two subsets – Scottish specific and UK wide:-

- NEAN (S)\*: New Scheme Articles - The producer launches a new product intended for sale only in Scotland and registers the EAN for sale in Scotland’s DRS.



- NEAN (UK)\*: New Scheme Articles (UK Wide) - The producer launches a new product available across the UK (or internationally) and registers the EAN for sale in Scotland's DRS.

### 1.8 Scottish Only SKU

A Scottish Only SKU relates to where a separate EAN code is allocated to products generally intended to be only sold in Scotland and on which a Producer Fee (PF) and deposit will be charged. It is not intended for supply outside of Scotland and the payment of a PF and deposit to CSL is applicable on all issues. If these SKUs are sold outside of Scotland no refund of deposits or fees is payable by CSL.

### 1.9 UK Wide SKU

A UK wide SKU relates to EAN codes used for Scheme Articles which are also sold elsewhere in the UK and not solely in Scotland. UK wide SKUs will attract a Producer Fee surcharge (refer Policy Paper 4) to reflect the potential risk of non-Scottish product being returned for redemption; producers will be required to implement control procedures to ensure they have records to indicate compliance with the reporting of sales of Scheme Articles (i.e. those intended for the purpose of retail sale in Scotland). Producers of UK wide SKUs are required to undertake an assessment for each such SKU relating to the risk of these SKUs being diverted from the rest of the UK into Scotland without the payment of a deposit. This risk assessment should identify the mitigating processes the Producer will undertake to minimise any identified risk.

A UK REAN and a UK NEAN are examples of UK Wide SKUs.

## 2. Unique Coding

To permit unique identification, all Scheme Articles must be allocated, and bear a GS1 compliant EAN barcode (gs1uk.org). Unique identification is the most robust way to help discharge obligations and forms part of CSL's approval by the DRS regulator SEPA. This ensures that items can be identified as Scheme Articles / Scheme Packaging and deposits transacted correctly.

Where a producer wishes to use barcode stickers on a Scheme Article instead of including it within the existing label the Producer must seek the approval of Circularity Scotland prior to use. Barcode stickers will only be permitted on lower volume Scheme Articles as notified by Circularity Scotland. Barcode stickers will still require to be GS1 compliant.

Circularity Scotland recognise the challenges faced by producers with a large number of products each with a limited volume as advised by Circularity Scotland and the requirement to provide an EAN for those individual products. The Producer may with the agreement of Circularity Scotland permit the use of one EAN to cover multiple individual products where the volume of those products is limited and on the basis that Scheme Packaging and weight are identical.

## 3. Multipack coding

Individual containers within a multipack need to be registered as Scheme Articles. If the same container type is packed in different multipack formats (e.g. 24 pack, 12 pack) it may bear the same EAN code. There is no requirement to register the barcode (used for sales) attached to the outer multipack format as this code is not used for returns. The producer should consider the implications

of 'bleed through' from the inner code at the point of sale. The inner code will generally not be set up as a sales unit and will therefore not be recognised as a valid code for sale. Alternatives include inner container orientation or outer packaging revisions.

#### 4. Logos & Branding

It is strongly recommended that all Scheme Articles using a Scottish-specific EAN carry the version of the DRS label logo designed for such EAN types, as issued and approved by CSL. For such Scheme Articles all existing recycling and anti-litter logos should be removed (e.g., OPRL, Tidy Man). These changes must be in place in time to produce products which a producer will deem a Scottish-specific EAN.

Producers are also strongly encouraged to incorporate the UK-wide version of the logo on all Scheme Articles which retain an existing UK-wide EAN, or which adopt a new UK-wide EAN at go live. This logo will carry the wording "Scotland only" to remind consumers that the return requirement pertains only to Scotland. Existing recycling and litter logos can be retained to support that different message outside Scotland. These changes must be in place in time to produce products which a producer will deem a UK-wide EAN, but we will consider alternative implementation in some limited cases.

Scheme branding can be used in a variety of other areas to promote DRS and support its introduction. Such usage will be approved by CSL during detailed marketing planning.

**Policy Paper 2**  
**Registration – Producers & Products**

1. Registration Overview

Producers and importers of Scheme Articles are required under the Regulations to register with the Scottish Environment Protection Agency (SEPA). CSL will perform the regulatory registration on behalf of producers.

The Regulations require that registration with SEPA takes place before the 1<sup>st</sup> of March in each calendar year. For calendar year 2023 and, subject to confirmation subsequent years, registration with CSL will commence from 1<sup>st</sup> December of the year prior to registration. As registration with SEPA requires the previous year's Placed on Market (PoM; see Policy Paper 4) data it may not be possible for the registration to be confirmed to SEPA until the final PoM data for the prior calendar year has been received e.g. when registering for calendar year 2024 in Jan / Feb 24 CSL will not be able to compute the PoM for calendar year 2023 until the producer has submitted their PoM report detailing the Dec 2023 PoM (due 9<sup>th</sup> Jan).

In the first year, 2023, comprehensive information will need to be provided and this Producer Agreement requires approval and signature (electronically) as part of the registration process. However, in each subsequent year, the data required for registration will need to be confirmed and verified as a true and accurate record reaffirming the appointment of CSL as a Scheme Administrator, and the relevant registration fee payment made. Full details of the registration requirements, necessary to both provide the statutory information (as specified in the DRS regulations) and the additional data to enable CSL to function can be found on the CSL website.

The annual registration fee, charged by SEPA, is prescribed within the Regulations and subsequent amendments (currently £365) and must be paid to and received by CSL prior to registration with SEPA in order that CSL can make remittance to SEPA with the application on the producer's behalf. Payment will be taken by credit / debit card and a settled invoice made available once approved.

Where there are multiple importers of the same product into the UK and selling in Scotland each importer will be required to register. Returns will be allocated on the basis of declared PoM.

1.1 Year 1

1. Producer Detail

Users will initially create an account as a new user to CSL. Instructions are published on the CSL website and can be accessed by clicking.

Having created the account, the user will be required to provide the necessary detail required to register. The data requirement represents the regulatory details prescribed by SEPA together with the additional data necessary for CSL to perform operations for an effective DRS. As part of this, the producer will need to provide:

- Name and address of entity registering. Note the entity to be registered is as detailed in the Regulations Policy Paper 1. Any queries regarding the correct corporate entity within a group should be addressed in the first instance to SEPA.
- Type of producer and the nature of how Scheme Articles are supplied into Scotland (route to market)
- Organisation type – limited company, partnership etc

- Details of key officers / directors/partners/ owners
- Turnover (total) – this will determine whether a producer is exempt from paying a fee whether a fee is due or not
- Contact details – requires an Administrator user and an Approver(s) user (can be the same). One or two Approver users may be set up to facilitate the signing of the contract and Direct Debit mandate We will collect these details in early 2023 in preparation for Go Live.
- Bank details
- Accounting Calendar, (monthly, 4,4,5/5,4,4 or 13x4), period start date, 53-week year indicator and date of 53<sup>rd</sup> week if appropriate.

## 2. Product details

Details of all the products that the producer wishes to register as being available for sales as Scheme Articles must be entered as set out in the CSL website. The details can be entered manually or via a file upload.

Accurate product details are required to enable validation in Reverse Vending Machines (“RVMs”), reconcile weights of material returned and the determination of right of first refusal (RoFR). Forecasted volumes for Scheme Articles to be Placed on Market are required as a statutory provision for SEPA and to support the CSL planning processes.

## 3. Approval

Once all the details have been entered successfully the user will be required to either approve the contract and accept the terms and conditions or submit it for approval by the identified approver.

## 4. Payment

Once signed the final part of the process is to make payment of the SEPA registration fee (currently £365) which, given the short processing time to submit to SEPA, will need to be made by credit / debit card

If a producer fails to complete the registration process within the timeframe to enable CSL to complete the registration with SEPA by the statutory registration deadline a producer may not be compliant with the Regulations and may be unable to sell the relevant products in Scotland.

Circularity Scotland will review the products registered and may require samples of the Scheme Packaging to be submitted for testing. This will largely be limited to non-standard packaging to ensure satisfactory RVM processing. Producers will be notified of this requirement by 30 April 2023.

### 1.2 Year 2 Onwards (2024 Onwards)

Producers will be required to confirm that the producer account details remain valid, updating where appropriate, and that the products registered as Scheme Articles remains complete and accurate, at the annual (re)registration process and to pay the annual registration fee as detailed in the Regulations and subsequent amendments.

As part of the re-registration process the producer will also need to provide forecasts for the forthcoming calendar year as part of the DRS regulatory requirements. This, like the initial

product set up, may be done either by file upload (see website for detailed specification) or directly by manual input.

Re-registration will commence from 1<sup>st</sup> December each year with CSL, until 1<sup>st</sup> March. CSL cannot complete the re-registration with SEPA however until it has received the final PoM figures for the prior calendar year as the annual PoM figures are required for submission to SEPA (see above).

As with the initial registration if a producer fails to complete the registration process within the timeframe to enable CSL complete the registration with SEPA by the statutory registration deadline a producer may not be compliant with the Regulations and may be unable to sell the relevant products in Scotland.

### 1.3 Product detail updates

Producers must advise CSL, via a product update, either file upload or manual entry of any changes to the Scheme Articles registered. This may be done at any time during the year as detailed below. It is only necessary to provide details of the products being changed, added or delisted

#### 1. Product delisting

If a product is no longer to be made available in Scotland the product record needs to be updated to indicate no further items will be Placed on Market and the effective date of the delist. Note this will not result in an immediate delisting from the CSL valid product file as there will be containers remaining in the supply chain, including those with consumers awaiting return. CSL will continue to allow container redemptions until the return rate reaches 90% cumulative return rate. Note that until a product is flagged for delisting a Placed on Market figure must be reported even if the sales are zero.

#### 2. Product addition

To add a product the producer must provide full details of the product (as for the initial original set up of products) with an effective start date and include a forecast for the period between effective date and end of the calendar year Please note:

- CSL must be contacted 6 weeks in advance of launch to determine whether physical containers need to be provided for testing. See 4 below.
- Advise CSL of any instance of multi material packaging in order that the recyclability can be assessed (including such items as film wrap).
- The producer must report Placed on Market volume in the periodic reports from the effective start date and no product should be physically supplied before the start date as the RVMs and apps used for product validation may not have been updated. The system will indicate that a product has been successfully added.

#### 3. Product Amendment

If there is significant change, outside the allowable tolerances as published by CSL from time to time on their website a new product EAN will be required. Where an amendment is allowable the producer will be required to update the product data for that product; this can be effected either via a file upload or entered manually.

#### 4. Product testing

When new products are introduced then the producer must advise CSL of its intention at least 6 weeks prior to introduction of the products and CSL may, at its sole discretion, require the submission of 6 samples of the packaging in advance of the new products being introduced to enable, at the producer's cost, the testing of the package for automated return via RVMs and the recyclability of the material.

**Policy Paper 3**  
**Producer Fee (PF) Methodology**

1. Introduction & Principles

This Policy Paper describes how the Producer Fee will be calculated.

The Producer Fee (“PF”) is the payment made by producers to ensure CSL has sufficient revenue to cover its operating costs and maintain a small operating reserve having taken into account CSL’s revenue streams, the sale of collected materials and, when available, unredeemed deposits.

A per unit Producer Fee is charged; this is common to all producers irrespective of volume placed onto the market. The same PF will apply to all SKU sizes but will vary by material type.

For the relevant materials defined in the Regulations, CSL will charge a PF for scheme articles constructed from:

- PET Plastic i.e., Polyethylene Terephthalate
- Steel or Aluminium
- Glass

The PF calculation methodology will be applied consistently each period and the PF is calculated and communicated annually according to the timetable below.

The PF is a separate charge to the deposit (set as 20p within the Regulations). It is also separate to the other charges set out in Policy Paper 4 which relate to and address separate risks (including for example, the Day 1 REAN Payment).

2. Producer Fee Timetable

The initial PF will apply to PoM for the period 16<sup>th</sup> August 2023 to 31<sup>st</sup> July 2024, unless otherwise indicated.

In addition a charge will be paid by each Producer in relation to the Deposit which is currently set as 20p per unit within the Regulations.

In subsequent years the PF will be communicated on 31<sup>st</sup> March each year and will be applicable from 1<sup>st</sup> August of that year until 31<sup>st</sup> July the following year. The PF, deposit and other charges are set out in the Rate Card on CSL’s website and updated each year.

3. Method of Calculation

The calculation of the PF is determined at a per container level, building up the components that contribute to its value, taking into account forecast Placed on Market volumes, revenue streams and operating costs.

The PF is calculated as follows:

$$\frac{\text{Forecast income} - \text{Forecast costs}}{\text{Forecast invoiced number of containers}}$$

#### Forecast income

- Sale of recyclate material
- Unredeemed deposits
- UK Surcharge

#### Forecast costs

- Logistics & operations costs
- All other operational and funding costs

#### Forecast invoiced number of containers

- Forecast annual Placed on Market Scheme Article Volumes invoiced post go live

There are 3 elements of the PF calculation which vary by material type:

- Sale of recyclate material
- Logistics & operations costs
- Forecast invoiced number of containers

All other income and costs are allocated equally by container.

The PF per unit will be common to all producers irrespective of volume placed on the market. It will be calculated periodically and, after period 1, will be based on data gathered from experience of operating the DRS and on producer forecasts of issues for the upcoming period. Any variance arising from inaccuracies in the estimate will be carried into the following period (subject to a continuous materiality review).

Where we can offer certainty by fixing a longer term Producer Fee i.e. beyond 12 months we will solicit the opinion of industry for consensus on adopting this approach.

The Producer Fee (particularly the initial Producer Fee for the period from 16<sup>th</sup> August 2023 to 31<sup>st</sup> July 2024) is calculated based on a number of assumptions, including but not limited to:-

- the value of recyclate material.
- no material changes in DRS forecast costs,
- the currently assumed annual aggregate number of Scheme Articles PoM,

In the event that there is a material change in the assumptions used in the calculation of the Producer Fee the Producer Fee may require to be updated.

#### 4. VAT

All producer fee charges will be subject to VAT at standard rate and will be identified separately to deposit charges on all invoicing.

Under current VAT proposals, Circularity Scotland is required to transact all deposits, receipts and payments, at the rate of 20p i.e., it receives 20p from the producer and remits 20p to the RPO. As



no supply is made by CSL regarding the Deposit and it simply passes it between parties it is a non-vatable transaction. CSL will provide producers with the information to make an adjustment to output VAT once the Scheme Packaging has been returned.

Note: Final and revised proposals are still awaited from HMRC & HM Treasury. Circularity Scotland will review any revised proposals and use best endeavours to ensure it complies with any new regulation and work with producers and RPOs to obtain the required information to fully support correct VAT accounting on deposits.

## 5. In Year Funding Review

The Producer Fee is calculated in advance of the financial year to which the Producer Fee applies and is based on best available information of forecast operating costs and operating parameters. The Producer Fee is the balancing payment made by producers to cover the excess of costs over revenue and to ensure CSL has sufficient liquidity to operate the DRS on behalf of Producers.

The Board of Circularity Scotland will continually review the parameters, forecasts and assumptions used to determine the Producer Fee. Should any of these parameters or forecasted operating assumptions, following review, prove to be materially different to the initial assumptions used, this could result in liquidity issues for CSL and therefore impact the viability of the Scheme Administrator. Whilst CSL intends to build a small operating reserve to cover the risk of some variations, it is possible that this is insufficient to cover CSL's cash requirements to fund unexpected business risk.

CSL may seek to address any liquidity shortfall through other funding mechanisms. If it cannot achieve this it will seek further funding through a Supplementary Producer Fee in accordance with Clause 8.3 of the Agreement.

The cost of repaying any external funding mechanism will be passed back to the Producer through its inclusion in CSL's costs when calculating the Producer Fee in CSL's subsequent financial year. Any over recoveries or surplus generated arising from favourable variances in any of the parameters will normally be carried forward and included as part of the subsequent year's PF calculation.

[In the unlikely event of an unfunded deficit \(where the costs cannot be covered by the existing cash inflow\) resulting in a Supplementary Producer Fee, this will be a one off supplementary fee in a particular year. As a reminder the overarching general principle enshrined in Circularity Scotland's constitution is to strive to achieve the collection targets in the Regulations in the most efficient manner for the benefit of producers. Circularity Scotland is a not for profit organisation with no commercial incentive to put in place excessive fees. On the other hand, if we determine that the producer fees are giving us a surplus we will endeavour to return this surplus to the producer as quickly as we can and even within the year where possible.](#)

## 6. Year 2 Onwards

Establishing the Producer Fee for Year 2 (1<sup>st</sup> Aug 2024) onwards will follow the same methodology approach as Year 1 Producer Fee. It will however use the new annual forecasts provided at annual registration and follow a different timetable, with the producer fee being published on 31<sup>st</sup> March with the revised fee being charged from 1<sup>st</sup> August.

As noted above any favourable operating cost variance will be carried forward as an offset to the forecasted operating costs for the coming year. Any variance in material price will be applied to the forecasted material price/income for the coming year to reflect this by gain or loss to each material.

## 7. Standard for Core & Ancillary Container Materials

A key objective of the DRS is to improve recycling of material by this we mean reducing the cost of recycling, improving the yield and maximising the sales revenue. Where containers are introduced into the DRS which potentially impact these recycling objectives Circularity Scotland reserves the right to introduce additional charges. The purpose of these charges will be to encourage adoption of ancillary materials (those materials associated with a container over and above the core material) which will improve the recyclability of containers and thereby improve scheme efficiency and cost-effectiveness. Materials covered by this policy include but are not limited to those used for labels, glues, lids and wraps. The policy will also cover Scheme Article composition, shape and dimensions. This approach has been adopted successfully in many mature schemes across Europe.

The likely mechanism to support these objectives will be through the use of a higher producer fee for specific types of Scheme Articles. It is also possible that, as the scheme develops some ancillary materials will be prohibited by Circularity Scotland. The development of this policy will be done in collaboration with producers to achieve a balance between scheme improvement, and any production or financial impact on producers.

**Policy Paper 4**  
**Producer Fee Charges & Other Charges**

Introduction

This Policy Paper covers:

1. Principles around Placed on Market and charging
2. The definition of Placed on Market
3. When the Producer Fee & Deposit will be charged to Producers in their operating relationship with CSL
4. The risks and requirements relating to the use of UK wide EAN codes (defined as Scheme Articles in Scotland and non-Scottish in the rest of the UK)
5. The necessity for CSL to implement a surcharge for these UK wide EANs
6. Day 1 REAN Payment
7. Month One invoice

**1. Principles**

- The Producer Fee and the Deposit is charged to Producers based on a Producer's declared Placed on Market volumes of Scheme Articles:-
  - on a monthly basis, or
  - in line with a producer's accounting timetable (as outlined in Policy Paper 5);  
or
  - on other extended credit terms as otherwise agreed with the Company.
- The charges, including Deposits and producer fee, are based on the amount of Scheme Articles Placed on Market as declared by Producers.
- Each Producer has the responsibility pursuant to its regulatory obligations to maintain an accurate record of Placed on Market.
- The Placed on Market figures may be audited by CSL, upon request as part of its right to audit pursuant to clause 11, or the Scheme Regulator.

**2. Definition of Placed on Market (PoM)**

Placed on Market (PoM) means the total amount of Scheme Articles of a Producer (i) made available in Scotland or (ii) where UK wide EANs are used intended for sale in Scotland or will become available for redemption of a deposit in Scotland i.e. returned to either a manual return point, reverse vending machine, sold in closed loop hospitality in Scotland or any other allowable return mechanism.

This definition of PoM therefore includes all items that may give rise to a deposit redemption and so will include not only normal sales e.g. EPOS data but also Scheme Articles sold or issued for any other purposes and which may give rise to a deposit redemption. This includes, but is not limited to:

- Normal Sales inc. sales under bond\*
- Sponsorship
- Freeloaders
- Gifts

- Promotions
- Charity Donations
- Stock shrinkage

\* where sales under bond are specifically for export outside of the UK they may be excluded from PoM, however the producer must ensure they have conclusive evidence of export from the customer.

The definition of PoM will include products which may have either a Scottish SKU or UK Wide SKU:-

- **Scottish only SKUs**

For items with Scottish only SKUs this will be all output, this can be those products which are ex works or invoiced directly to a producer's customer or any unaccountable loss e.g. warehouse shrinkage. Scottish only Scheme Articles are normally intended for sale in Scotland only. As a Scottish only EAN, all issues will be reported as PoM and whilst a producer may decide to sell Scottish only SKUs outside of Scotland no adjustment is allowed for any sale or issue within the rest of the UK (rUK) directly or indirectly and a full producer fee and deposit will be payable.

- **UK wide SKUs**

For UK wide items the PoM figure should be validated in accordance with the processes identified as part of the initial guidance on risk assessment a copy of which is attached at Appendix 1 below for convenience but does not form part of this Policy Paper.

For own label products the same principles apply-

- a. The producer of the own label product has the responsibility to maintain an accurate record of Placed on Market.
- b. The definition of PoM is the same for own label products.

### **3. How the Charges will be charged to Producers in their operating relationship with CSL**

#### *A. Mechanism*

- On a monthly basis (or periodic for non-monthly accounting), Producers are required to declare the actual PoM volumes for the previous month or period together with any adjustment up or down for previous months as part of the true up set out below.
- This monthly PoM declaration is provided at EAN level. The data transfer to CSL will be in an electronic file format.
- Producers are required to provide a 'positive' return for each of their registered Scheme Articles (i.e. where there is nil PoM for an active Scheme Article the producer is required to declare 'zero' rather than leaving the data field blank).
- By the 9th calendar day following each accounting period the producer will report the previous periods actual PoM figures
- The data from the monthly or periodic return is used by CSL to calculate a monthly invoice to the Producer for charges due.

B. *True up of the monthly reporting of the actual PoM*

- The Producer also can separately correct actual PoM volumes at a later date.

**4. The risks and requirements relating to the use of UK wide EAN codes (defined as Scheme Articles in Scotland and non-Scottish in the rest of the UK).**

SKUs available for sale in other areas of the UK in addition to Scotland are only Scheme Articles where intended for sale in Scotland or will become available for redemption of a deposit in Scotland i.e returned to either a manual return point, reverse vending machine, sold in closed loop hospitality in Scotland or any other allowable return mechanism. To ensure compliance with the DRS Regulations, the producer must take all reasonable steps to identify accurately all product being sold (or made available) to consumers retailers and wholesalers in Scotland both directly and indirectly (e.g. via multi-tier third party wholesalers).

A producer is required to assess the risk associated with the use of such a product and implement an associated mitigation plan. This risk assessment will need to be formalised to provide evidence of due diligence regarding meeting the obligations on the producer to identify accurately all product being sold (or made available) to consumers retailers and wholesalers in Scotland both directly and indirectly (e.g. via multi-tier third party wholesalers). A producer shall submit its risk assessment and mitigation plan to Circularity Scotland on request.

A copy of the guidance note in relation to the use of UK wide SKUs is attached at Appendix 1 below for convenience but does not form part of this Policy Paper.

**5. The necessity for CSL to implement a surcharge for these UK wide EANs**

UK wide surcharge

If a Producer chooses to register a UK wide SKU (NEAN (UK) or REAN (UK)) as a Scheme Article, there is a greater chance of over returns (through deliberate or accidental return of containers bought outside of Scotland, without a deposit paid, but returned in Scotland with deposit redeemed). This triggers a deposit return and an associated RHF charge to be paid by CSL – on which no Deposit or Producer Fee has been paid to CSL by the producer.

To reflect the direct risk associated with the use of UK wide SKUs CSL will -

- Apply a surcharge to each UK wide SKU PoM volume declared by Producers.
- Calculate the surcharge to reflect the increased risk of fraudulent or unexpectedly higher returns.

The surcharge in year 1 will be set at 5% of (deposit value plus weighted return point handling fee (RHF)). This 5% 'over redemption' risk will be reviewed during year 1 and will be adjusted in subsequent years in line with actual experience.

Redemption Rate > 100%

The Regulations require that DRS delivers a redemption rate of 90% for calendar year 2025 onwards.

The Producer Fee has been calculated on the assumption of achieving this 90% redemption rate. CSL will monitor all PoM Scheme Articles against measured redeemed Scheme Articles to produce a cumulative return rate for each EAN. This will be reconciled to the same cut off as the PoM (end of month or accounting period).

Where the cumulative redemption rate exceeds 100% CSL will automatically generate an invoice to the relevant Producer to cover the costs associated with this over redemption. Payment of this invoice will fall due on standard terms and will be collected by direct debit.

#### Unexpectedly High Redemption Rates

In addition in the event of any unexpectedly high redemption rate for any individual SKU CSL reserves right to charge an appropriate additional handling fee and deposit or introduce a corrective measure including utilising a Scottish SKU to inhibit future high redemption rates.

### 6. Day 1 REAN Payment

The Day 1 REAN Payment is specific to the Go-Live of the DRS Scheme.

If producers choose to continue to use existing SKUS (REAN) it creates a Day 1 risk to the DRS or the cost of redemption of items which, whilst not sold as Scheme Articles (as of the date of Go-Live) may be redeemed by consumers for deposit redemption after Go-Live. With the use of REANs there is no capability for the Return Point Operator and CSL to identify whether an individual article was sold before or after Go-Live and therefore whether a PF and deposit has been remitted to CSL. This payment covers this CSL liability for deposit redemption, retail handling fees and collection costs for such items which can now be redeemed by consumers but on which no deposit or Producer Fee has been paid.

It is not possible to determine absolutely the quantum of articles which will be redeemed as no PoM data is collected **pre** Go-Live. CSL will raise an initial Day 1 REAN Payment (being the applicable producer fees including any relevant UK Surcharge and Deposit), set at three weeks of average forecasted REAN annual sales. **Post** go live we will be able to determine which of these REANs are being redeemed at a higher rate than comparable NEANs. On day 90 (and days 180 and 270) we will assess the amount of over redemption and accordingly raise charges to redress any shortfall. The Day 1 REAN Payment will be invoiced in line with the timetable detailed in Policy Paper 5.

[The Day 1 REAN payment will be payable on all REANs in excess of 3,000,000 units per annum.](#)

[Example:](#)

[Forecast REAN volume 4,000,000 units per annum](#)

[0 – 3,000,000](#) [No payment due](#)

[3,000,001 – 4,000,000](#) [Payment due on 1,000,000 units as per calculation below](#)

[Payment calculated on 1,000,000 / 365 \\* 21\\* \(Deposit + producer fee by material type + UK surcharge \(where applicable\)\)](#)

To mitigate this Day 1 REAN Payment the producer may reach commercial agreements with its customers to obtain stock figures as at Go-Live enabling that stock to be converted to Scheme Articles and allow those customers to sell the stock as Scheme Articles and remit the deposits to the producer. All parties involved in this conversion must pay/receive deposits as they would for any Scheme Article. If the Producer converts more than three weeks stock (corresponding to the Day 1 REAN Payment) they should inform Circularity Scotland immediately to arrange payment of the additional Deposits and Producer Fees

### NEANs Reporting

The definition of NEAN is an EAN that is PoM no more than one month before go live. All NEANs in the supply chain on or before the 16<sup>th</sup> of August must be declared in the month one Placed on Market report. Circularity Scotland will use this for invoicing purposes. This will fall due in line with the accounting timetable in Policy Paper 5.

### 7. Month 1 Invoice

In order to maintain cash flow CSL will make a charge equivalent to three weeks of annualised forecast sales (21/365 annual sales). This payment will be required for both NEANs and REANs. It will be taken by direct debit on 31<sup>st</sup> August 2023 based on 21/365 of annualised sales forecast for monthly accounting producers and at the end of the first accounting period for those on alternative accounting calendars.

The Month 1 invoice is a one off charge that is designed to cover Circularity Scotland's initial liability for deposit redemption, retail handling fees and collection costs for such items which immediately after Go-Live will start to be redeemed by consumers but in relation to which no deposit or Producer Fee has yet been paid.

Whilst the Month 1 invoice is a one off charge and not a loan. The income and associated liabilities of the Company following Go-Live and during the first year of operation of the deposit return scheme will be reviewed by Circularity Scotland by 31<sup>st</sup> October 2024. A review prior to 31<sup>st</sup> October 2024 will ensure that Circularity Scotland has a full year of PoM data including August 2024.

[The Month 1 Invoice payment will be payable on all NEANs and REANs in excess of 3,000,000 units per annum.](#)

[Example:](#)

[Forecast NEAN and REAN volume 4,000,000 units per annum](#)

[0 – 3,000,000](#) [No payment due](#)

[3,000,001 – 4,000,000](#) [Payment due on 1,000,000 as per calculation below](#)

[Payment calculated on 1,000,000 / 365 \\* 21\\* \(Deposit + producer fee by material type + UK surcharge \(where applicable\)\)](#)

Where, on review, redemption rates are no more than 5% higher than the redemption rate for similar EANs, Circularity Scotland will rebate the Month 1 invoice to the producer. Where the redemption rates are greater than 5% of the redemption rate for a similar EANs, Circularity Scotland will carry out a further review and where practical rebate the Month 1 Invoice subject to ensuring that the objectives of the deposit return scheme will continue to be met.

For the avoidance of doubt, any rebate will be calculated on a producer by producer basis to balance up each individual producer's payments, and to ensure that one producer will not subsidise another producer



## **APPENDIX 1**

### **USE OF UK WIDE SKUs**

#### **1. Introduction**

As part of its Operational Plan CSL indicated that products included in the DRS scheme as Scheme Articles would be identifiable by a unique, GS1 compliant, barcode. However, in response to producer and distributor concerns over the impact of duplication of SKUs (Scotland and rest of UK) on supply chains it was considered that a single product (code) may be used throughout the whole of the UK. Such SKUs, referred to as UK wide SKUs, will carry a producer fee premium to reflect the increased risk of containers being presented for deposit reimbursement when a deposit was not originally paid e.g. bought by a consumer outside of Scotland but returned for deposit redemption in Scotland.

There are also more significant risks of such UK wide SKUs, sold by the producer outside of Scotland without deposit and producer fee, then being resold, contrary to the DRS regulations, to a wholesaler/retailer in Scotland (they are Non-Scottish Articles as the producer did not intend that they be sold in Scotland as Scheme Articles) either with or without deposit and without the knowledge of the producer.

A reseller outside of Scotland may attempt to represent the product as Scheme Articles, with a deposit having been paid, to a retailer in Scotland who then acquires the product in the belief that they are compliant. Alternatively, a retailer in Scotland may acquire product outside of Scotland, with no deposit, and mis-represent them as Scheme Articles to consumers. There is no identification on the product that adequately differentiates Scheme Articles from non-Scheme Articles in these circumstances. Only a financial audit trail would provide such evidence.

#### **2. Risk Assessment**

Prior to determining that the use of a UK wide SKU (REAN or NEAN) is appropriate, a producer is required to assess the risk associated with the use of such a code. This assessment will need to be formalised to provide evidence of due diligence regarding meeting the obligations on the producer to report accurate Placed on Market data and ensure that they minimise the risk of non-Scheme Articles (non-Scottish Articles) being presented for sale in Scotland. It is believed that the highest risk items will be high volume (maximum sales potential) and low value (lower investment, higher return potential).

The table below details some of the considerations in the determination of the level of risk. (They are not presented in any particular order)

<b>Consideration</b>	<b>Assessment</b>	<b>Rationale</b>
Route to Market:	Split between retail and wholesale	Direct to retail lower risk than sales to resellers
Market Share	Volume share relative to direct competitor brands	The larger the market share the greater the opportunity
Value	Value relative to the deposit	Deposits are the same for all products irrespective of value. The return therefore

		is greater on lower value products
Alcohol	Is it an alcoholic product?	Alcoholic drinks sellers and wholesalers operate in a regulated market. Note: This alone should not be seen a failsafe against fraud.
Availability of supporting information	Is data available that can support the declared numbers e.g. EPOS	Different sources of data can be used to validate the 'reported' data

### 3. **Mitigating Factors**

Having completed the risk assessment, the producer must document how it will mitigate against the identified risks. As part of any subsequent compliance assessment the producer will be required to demonstrate that any process identified and implemented as part of the risk assessment has been carried out successfully or discrepancies investigated.

Examples of mitigating factors may include:

- Creation of 'Regional' forecast for Scotland; compare actual sales vs forecast.
- Monitor return rates: CSL will highlight variances to comparable basket of products/outlying products and investigate. Cumulative return rates in excess of 100% will result in a charge to the producer; where this persists CSL will investigate and take appropriate action.
- Obtain first tier sales information from resellers through commercial arrangements where appropriate.
- Use commercially available data e.g. Nielsen/Kantar.
- Clear audit trail for stock supplied vs deposit paid; investigate unexpected changes in ratio.

If no satisfactory control procedure can be identified the producer should reconsider the use of a Scottish specific SKU.

### 4. **Placed on Market (PoM) – UK wide SKUs**

Accurate PoM is a regulatory requirement as part of annual registration. CSL will submit this on behalf of the producer based on the monthly/periodic reporting; the producer is therefore responsible for the accurate reporting of PoM to CSL. This is more straightforward with Scottish specific SKUs but is more complex where UK wide SKUs are selected. As many supply chains operate on a pan UK basis deliveries of a UK wide SKU into a single customer's warehouse may be used to support shipments both into Scotland and the rest of the UK (rUK). To ensure accurate reporting for the producer's PoM reporting there are possible options for the determination of whether the item supplied is a Non-Scottish Article or a Scheme Article.

Examples are:

- Supply as Non-Scottish Article and obtain actual returns from retailers/resellers post-despatch from warehouse, rather than on delivery, to convert to Scheme Articles
  - Ensure charges for deposits can be reconciled to deliveries (producer and retailer).
  - Retailer to ensure sales data can be supported by deposit charges.

- Producer to monitor % between total delivered and declared as sold in Scotland.
- Charge deposits based on delivery address
  - Supply Scheme Articles to Scottish delivery addresses and Non-Scottish Articles to rUK addresses
  - Provision for recipient to advise adjustment based on subsequent shipment address and for producer to subsequently adjust PoM
- Split delivery – Scheme Articles (deposited), Non-Scottish Articles (non-deposited)
  - Can be used where customers have the capability to hold a single SKU with deposit status indicator

## 5. **Invoicing**

To provide a comprehensive audit trail back up the supply chain, to ensure that Scheme Articles on sale can be validated as such where UK wide SKUs are being used, the producer should ensure that the following principles are followed regarding invoicing:

- Indicate clearly on the invoice which products have a deposit charged.
- Do not include deposit charge in the unit product cost.
- Show a separate line for total deposits charged (by VAT rate).
- For retrospective deposit charging provide supporting documentation regarding SKUs they relate to i.e. link the deposits to the products previously delivered.

## 6. **Disclaimer**

Please note that the subject matter covered in this guidance is not exhaustive and is not intended to be relied upon as a substitute for obtaining specific legal advice. Individual circumstances may differ. The information contained in this guidance is given in good faith but any liability of Circularity Scotland Limited or its professional advisors (including their respective members or employees) to you or any third party which may arise out of the reliance by you or any other party of the contents of this guidance is hereby excluded to the fullest extent permitted by law. Circularity Scotland Limited and its professional advisors accept no duty of care or liability for any loss occasioned, whether caused by negligence or otherwise, to any person acting or refraining from actions as a result of any material in this guidance. We would strongly recommend that you consult professional advisors on specific issues before acting or refraining from action on any of the contents of this guidance.

**Policy Paper 5**  
**Accounting & Invoicing Timetable**

**1. Reporting**

**Monthly PoM Reporting**

PoM figures for all Scheme Articles must be reported to CSL to enable the periodic (monthly or accounting period) charge to be calculated and invoiced. CSL will operate three types of reporting calendar and will class reporters as either operating on a 'calendar' reporting basis or on an 'accounting period' reporting basis. Once the reporting basis is agreed, the producer will be unable to change the basis for their reporting.

For those producers on monthly calendar reporting this must be by 23.59hrs on the 9<sup>th</sup> day of the month following the month to which the PoM figures relate.

For those producers using accounting periods 4,4,5 (or a combination of 4,4,5) or 13 x 4 reporting this will be 23.59 hrs, 9 calendar days following the end of each accounting period. These options are provided to allow producers to align their PoM reporting with their internal accounting and sales reporting. At initial registration producers will select their preferred accounting timetable. There is no restriction on an organisation on non-monthly internal accounting, for example, 4,4,5 accounting, selecting to report calendar monthly if their procedures allow the accurate collation of data to the month end cut off. At annual registration producers on non-monthly accounting will be required to indicate whether there will be a 53<sup>rd</sup> week in the current calendar year.

The figures may be transmitted to CSL in the format detailed in the interface specification or entered manually via the producer's customer portal. For each submission the producer may enter a purchase order number or other such reference to facilitate subsequent invoice matching.

The producer is required to report an absolute number against each of its registered Scheme Articles. Where the volume of PoM is nil, a zero return should be entered rather than leaving the field blank. A blank field will trigger system driven data population, resulting in the forecast volume being inserted.

Where a producer fails to submit their return, CSL will automatically populate all the PoM fields with 'forecast' data submitted by producers as part of the registration process.

No manual data override will be undertaken by CSL. All data used for the purposes of invoices will be sourced from producers – either through the monthly submission process or, where the monthly submission is missing or incomplete, from the producers forecast.

**Monthly Volume True Up Reporting**

Producers have the ability to correct any previous month's PoM reporting through the monthly volume 'true up process (Schedule 4). This 'true up' adjustment will be made at SKU level with the purpose of correcting any prior month's submission.

For NEANs all volumes PoM prior to Go Live must be reported within the first PoM reporting period to facilitate the inclusion of this volume in the first charge.

## 1.1 Summary Timetable: Reporting, Invoicing, Payment

### Day 1 REAN Payment

The Day 1 charge be based on forecast data and is applicable to REANs Scottish and UK only. This will be collected by direct debit as indicated in the table below.

<b>CSL invoice mechanism</b>	Day 1 charge
<b>Basis</b>	Annualised Forecast Data – 3 week period <a href="#">above 3,000,000 volume threshold</a>
<b>Date invoice raised</b>	16/07/23
<b>Payment terms</b>	30 days
<b>Invoice data</b>	REANs – Scottish and UK only
<b>Invoice due date</b>	16/08/23
<b>Direct debit collection date</b>	14/08/23
<b>Direct debit receipt date</b>	16/08/23
<b>Accounting calendar</b>	All

### Month 1 Invoice

<b>CSL invoice mechanism</b>	Month 1 Invoice
<b>Basis</b>	Annualised Forecast Data – 3 week period <a href="#">above 3,000,000 volume threshold</a>
<b>Date invoice raised</b>	01/08/23
<b>Payment terms</b>	30 days
<b>Invoice data</b>	All EANs – Scottish and UK only
<b>Invoice due date</b>	31/08/23
<b>Direct debit collection date</b>	29/08/23
<b>Direct debit receipt date</b>	31/08/23
<b>Accounting calendar</b>	All

## 1.2 Recurring Payment Terms and Monthly Invoicing

[Deposit and all fees on the first 250,000 units per month will be payable by direct debit and payable on 2 months credit terms from when the invoice is raised. For deposit and all fees on volumes above 250,000 units per month, p](#)Payment to CSL will be by direct debit and will be taken 3 days from when the invoiced is raised. [The Producer has the right to opt out of the 2 month credit terms set out above, in which case the payment to CSL will be by direct debit and will be taken 3 days from when the invoice is raised for 100% of the Producer’s volume.](#)

— The standard monthly invoice will include:

Description

Producer fee current period: PET

Producer fee current period: Metal

Producer fee current period: Glass

Producer fee true up previous period: PET

Producer fee true up previous period: Metal

Producer fee true up previous period: Glass

PoM deposit current period

PoM deposit true up previous period

UK Surcharge ( if applicable) 5% OF (PoM deposit plus 5% of weighted RHF)

Examples of accounting calendars can be found in the Producer Fee FAQs.

## **Policy Paper 6**

### **Recovered material – Right of First Refusal (RoFR)**

#### 1. Background

A Producer, as defined by the Regulations, including importers, has the option to exercise a right, subject to the threshold set out below, to acquire a quantity of aluminium, steel, glass or PET material recovered as part of the deposit redemption process. CSL has an obligation to make available this amount of material in a form which will be determined by the CSL board from time to time. As the producer fee is calculated on the basis of achieving the market rate for recovered material a producer will be required to pay the market rate for material obtained when exercising this right. In the glass of glass, CSL is unable to separate the material into different coloured material. Where a producer wishes to exercise its RoFR over glass this will not be separated and will be available for collection on a mixed basis.

Title to all of the collected material transfers to CSL on redemption by the consumer at the return point (RP) whether manual or via Reverse Vending Machine. The risk of loss or damage in all collected material shall remain with the RP until collected by CSL.

Title and risk to collected material shall pass to a Producer when collected from CSL in accordance with clause 5 below.

In order to exercise the right to acquire a quantity of material recovered as part of the deposit redemption process a Producer will require to have a minimum annual amount of 100 tonnes of each type of material recovered.

#### 2. Volume Calculation

A Producer will have the right to acquire an equivalent amount of volume in kilogrammes of each type of material to that returned for each of its Producer's containers as part of the deposit redemption process. CSL will maintain a return rate for each DRS scheme EAN registered by each Producer. Using the verified weight held on file CSL will determine by each EAN the amount of each material type recovered and sum this to create a total material type for each Producer which shall be subject to adjustment for process losses where appropriate, this is the amount for exercise under the RoFR.

The volume will be based on actual recoveries for the period to which the exercise applies and as a consequence the first material will not be available until such point where, at the discretion of CSL using historical performance, there is sufficient quantity of material to make the collection of a viable quantity of material possible without a risk of over recovery.

#### 3. The Price

For aluminium, steel and PET the price will be determined by reference to the relevant index applicable to such material set out below-

- Glass                      Let's Recycle.com – mixed glass (Top)
- Aluminium                Percentage of London Metal Exchange Aluminium Index.

The percentage will be recalculated and published periodically to reflect the current rates being achieved by CSL, which is a function of the physical market for recyclates in the UK and the contamination level achievable from our facilities

- Steel                      Percentage of London Metal Exchange Steel Index.  
The percentage will be recalculated and published periodically to reflect the current rates being achieved by CSL, which is a function of the physical market for recyclates in the UK and the contamination level achievable from our facilities
- PET                      ICIS index entitled “PET Nat Baled Bottles FD, new (Free Delivered, North Western Europe)”.

The price for the current month of supply will be set by the price published by relevant index for the prior month.

#### 4. Exercising the RoFR

A Producer will be required to positively advise CSL in writing that it wishes to exercise its RoFR. The right may be exercised in relation to aluminium, glass, steel or PET. A Producer will be required to enter into a separate agreement with CSL prior to commencement of any sale of RoFR material.

A Producer who exercises their right of first refusal agrees that any scheme packaging purchased shall only be used for the purposes of reprocessing such material back into drinks containers.

In order to ensure the maximum efficiency of the DRS scheme and the most favourable terms for Scheme operation, CSL has put in place long term supply of materials agreements, in view of that a Producer will require to give 6 months advance notice of its intention to exercise its RoFR. In the event that a Producer wishes to exercise its right of first refusal as soon as possible after the Scheme go-live date (16<sup>th</sup> August 2023) it will require to positively advise CSL no later than 15<sup>th</sup> February 2023. In respect of PET material the following procedure has been agreed with CSL’s logistics provider:-

- (i) CSL shall be notified by Biffa, its logistics provider, of the total weight of the material that has been collected in accordance the logistics contract. Biffa shall provide CSL with a forecast of the amount of material Biffa reasonably considers will be available for supply in the next 6 months.
- (ii) CSL and Biffa shall meet on a monthly basis to assess the quality of the material and agree the yield of the material.
- (iii) CSL shall notify producers who have exercised RoFR, of the forecast amount of the material available for supply, as provided by Biffa.
- (iv) CSL shall notify Biffa of the quantity of material over which a producer’s RoFR is exercised six months in advance, detailing who have exercised the RoFR and the amount of material each Producer is purchasing.



The right must be exercised for a minimum period of 6 months after which a Producer must give a minimum 6 month's period of notice should it no longer wish to exercise the right; such notice will not be effective until such 6 months' notice period has elapsed and will be coincidental with the last day of a calendar month.

Where a Producer has provided notice to, and exercises, its RoFR it shall be entitled to purchase its fair share of material in the event that any third-party purchaser chooses not purchase material from CSL in accordance with that third party's agreement with CSL. The amount of and purchase price for such material shall be at the price set out in this Policy Paper.

#### 5. Collection

Where a Producer has provided 6 months-notice of its intention to exercise its RoFR, the right of first refusal will commence once the cumulative entitlement of each type of material equivalent to a Producer's containers returned as part of the deposit redemption process scheme material collected reaches a minimum of 10 tonnes. CSL will notify such Producer when the minimum of 10 tonnes has been reached.

CSL will advise a Producer of when material is available and from which of its operating centres it is to be collected from. A producer, at its own expense, shall arrange for uplift of collected material purchased under RoFR within 3 working days of advice from CSL. Failing which CSL shall be entitled to charge a Producer storage charges.

#### 6. Invoicing & Payment

CSL will invoice the sale of material to a Producer for each load collected. Invoices will be issued and paid in Sterling and will include VAT at the prevailing rate together with any other prevailing tax. CSL records shall be proof of the weight of material to be sold to a Producer.

Payment terms will be 30 days from issue and if an invoice remains outstanding 60 days after issue CSL shall be entitled, at its sole discretion, to terminate a Producer's right of first refusal with immediate effect and seek to recover all outstanding monies relating to all material sales whether invoiced or not.

The Company does not provide any guarantee to a Producer in respect of the quantity or quality of collected material which is sold to a producer either pursuant to RoFR or otherwise.

A Producer will not export any of the collected Containers outside of the United Kingdom of Great Britain and Northern Ireland without the express written consent of CSL, acting reasonably.