

LICENCE AGREEMENT

Between

Resource Recovery and Recycling Agency

And

BCRS Malta Ltd

14th September 2020

THIS AGREEMENT is made and entered into in Floriana, this 14th day of September 2020.

by and between

On the first part

Ing. Anthony Rizzo in his capacity as Chief Executive Officer appearing hereon in the name and on behalf of **Resource, Recovery and Recycling Agency** established by means of the Resource, Recovery and Recycling Agency (Establishment) Order (Subsidiary Legislation 595.28), hereinafter referred to as 'Agency',

And

On the second part

Ms;

Mr;

Mr;

Mr;

Mr;

Ms;

Mr;

Mr;

Mr;

in their capacity of Directors appearing hereon in the name and on behalf of the **BCRS Malta Ltd**, company number C 96013 hereinafter referred to as 'Contractor'.

Resource, Recovery and Recycling Agency and the Contractor may sometimes individually be referred to as 'Party' and collectively as 'Parties'.

Pursuant to the provisions of the Environment Protection Act (Chapter 549) and the Beverage Containers Recycling Regulations 2020, the Agency does hereby also grant to the Contractor, who accepts, a licence to operate a beverage container refund scheme, which licence is being granted under the terms and conditions hereinafter set out, including the terms and conditions set out in the Schedules thereto. This licence shall remain in full force and effect for the term of this Agreement, unless terminated earlier under the provisions of this Agreement or by mutual agreement of the Parties.

PREAMBLE

WHEREAS Government desires to enhance the circular economy through the establishment and operation of a beverage container refund scheme, enhance the collection and recycling of beverage containers, increase national recycling efforts and reduce litter;

WHEREAS the Government desires that the scheme contributes towards Malta's objectives of recycling of plastic, metal and glass packaging;

WHEREAS the Government is desirous to provide further support through legislative changes that would enhance the transition towards the circular economy;

WHEREAS the Contractor applied for a licence to operate and manage the Scheme which was acknowledged by the Agency on the 3rd August 2020 pursuant to regulation 4 of the Regulations.

WHEREAS the Contractor possesses the funds, technical competence and management necessary for fulfilling the obligations set out hereinafter;

WHEREAS the Contractor is willing to carry out the operation of a beverage refund container scheme in Malta;

WHEREAS the Contractor is a limited liability company set up by the Malta Beverage Producers Association, the Malta Beverage Importers Association and the Malta Beverage Retailers Association, and the Contractor satisfies the criteria laid down in regulations 4 and 7 of the Regulations, including in particular that it will assume extended producer responsibility on behalf of producers;

WHEREAS the Agency is hereby establishing the conditions for the operation and management of the Scheme

WHEREAS the Agency and the Contractor wish to mitigate abuse to the circular economy through their endeavours to support each other in a timely manner;

NOW THEREFORE it is hereby agreed between the Agency and the Contractor as follows:

SECTION 1

DEFINITIONS

1.1 Unless the context otherwise requires, the following definitions of terms used in this Agreement shall apply:

- 1.1.1 “Act” means the Environment Protection Act (Chapter 549 of the Laws of Malta);
- 1.1.2 “Affiliate” means a company which is, or may be in any way controlled, directly or indirectly, by the Contractor; or a company which, directly or indirectly, controls the Contractor, or a company which is, directly or indirectly, controlled by a company which, directly or indirectly, controls the Contractor;
- 1.1.3 “Agreement” means this instrument and includes the Preamble and the Schedules hereto;
- 1.1.4 “Directive” means Directive 94/62/EC of the European Parliament and of the Council of the 20th December 1994 on packaging and packaging waste;
- 1.1.5 “Effective Date” means the date on which this Agreement has been signed by the Parties;
- 1.1.6 “Operation” means the operation and management of the Scheme and the carrying out of the obligations undertaken by the operator of the Scheme in terms of this Agreement and the Regulations;
- 1.1.7 “Regulations” means the Beverage Containers Recycling Regulations, LN 311 of 2020;
- 1.1.8 “Scheme” shall have the meaning assigned to it in the Regulations;
- 1.1.9 “Term” means the licence period laid down in Clause 3.1 of this Agreement;
- 1.1.10 “Territory” means the territory of the Republic of Malta.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 words and phrases defined in the Act and Regulations shall have the meanings given to them in the Act and the Regulations;
- 1.2.2 the singular shall be deemed to include the plural and vice versa;
- 1.2.3 a reference to any gender shall be deemed to include a reference to any other gender or none;

- 1.2.4 any reference to a Party shall be construed to include that Party's successors and/or permitted assigns;
 - 1.2.5 any references to articles, paragraphs and schedules shall be references to an article, paragraph, or schedule of this Agreement; and
 - 1.2.6 references to days in this Agreement shall be construed as references to calendar days.
- 1.3 Any references, express or implied, to statutes or statutory provisions shall be construed as references to those statutes or provisions as respectively amended or re-enacted from time to time, or as their application has been modified by other provisions and shall include any orders, regulations, instruments or other subordinate legislation made or enacted under the relevant statute or statutory provision.
- 1.4 Article, paragraph or schedule headings shall not affect the interpretation of this Agreement.

SECTION 2

NATURE AND SCOPE OF THE AGREEMENT

2.1 This Agreement is a Licence Agreement whereby the Contractor shall operate and manage the Scheme at its exclusive cost and risk and in accordance with the provisions of this Agreement.

2.2 The Agency hereby appoints the Contractor, which accepts, as the exclusive contractor for the operation and management of the Scheme throughout the Territory in accordance with and subject to the provisions of the Agreement and the Regulations.

2.3 The Contractor undertakes and shall be exclusively responsible to the Agency to execute and carry out effectively and efficiently the Scheme and shall for that purpose provide all the financial and technical means required to operate and manage the Scheme.

2.5 The Contractor shall pay to the Agency all payments due under this Agreement as specified in section 3 of this Agreement.

SECTION 3

TERM AND CONSIDERATION

3.1 The term of the Agreement shall be a period of twelve (12) years from the Effective Date.

3.2 The Contractor shall pay the Agency a licence fee calculated and payable as follows:

3.2.1 The total annual consideration payable for the period from 1st January to 31st December of a particular calendar year (“the Reference Year”) shall be an amount equivalent to one percent (1 %) of the total number of beverage containers placed on the market and which were registered with the Scheme during that Reference Year (“number of containers”) multiplied by ten cents (€ 0.10);

3.2.2 Eighty percent (80%) of the total annual consideration shall be paid in two equal instalments, on 31st March and 30th September of each Reference Year. For the purpose of these payments, the fee payable to the Agency shall be calculated using the verified number of containers for the preceding Reference Year;

3.2.3 The balance of the total annual consideration, or in the event of overpayment the refund payable, shall be paid on the 31st March of the following calendar year, once the number of containers for the Reference Year is duly verified. This final instalment shall be adjusted accordingly in order to take into account the actual number of containers for the Reference Year in question, and thus the actual value of the total annual consideration for the said Reference Year;

3.2.4 In the event that the Effective Date is a date other than the 1st January, the fee payable to the Agency for the period from the Effective Date to 31st December of the same calendar year shall be an amount equivalent to one percent (1%) of the number of containers placed on the market and which were registered with the Scheme during that period multiplied by ten cents (€ 0.10), and payable as indicated in Articles 3.2.2 and 3.2.3 above, provided that the first instalment shall be due on the Effective Date and the instalments payable in terms of Article 3.2.2 shall be calculated using the estimated number of 179.4 million beverage containers:

Provided further that where the Effective Date is a date which falls in October, November or December of the calendar year in question, eighty percent (80%) of the total annual consideration shall be paid in one instalment, due on the Effective Date, and the balance due or the overpayment shall be dealt with as provided for in Article 3.2.3.

3.2.5 The value of the consideration calculated in terms of Section 3.2 excludes Value Added Tax if applicable.

3.3 In the event that producers are, in relation to the beverage containers, liable to pay other administrative fees for packaging waste under the Packaging and Packaging Waste Regulations (Subsidiary Legislation 549.43) the amount of the total annual consideration shall be deducted by an amount equal to the aforesaid administrative fees.

SECTION 4

OPERATION OF THE SCHEME

4.1 The Contractor shall commence the operation of the Scheme by not later than fourteen (14) months from the Effective Date. The Contractor shall ensure that it covers all the operations and complies with the requirements set out in Schedules 1 and 2 of this Agreement.

4.2 The Contractor shall establish and operate a web portal, which shall be live within six (6) months from the Effective Date.

4.3 The Contractor shall, by not later than eight (8) months from the Effective Date, establish conditions for participation in the Scheme by producers, distributors, retailers and catering undertakings, in terms of the provisions of the Regulations which conditions shall be made available on the Contractor's website by the same date.

4.4 The Agency shall establish a deposit applicable to the Scheme and the amount of this deposit shall be published on the Contractor's website and in at least two daily newspapers, one in the Maltese language and one in the English language. The amount of deposit shall be established and revised in consultation with the Contractor in a manner based on the purposes of the Scheme.

4.5 In the event that the value of the deposit is changed during the Term, the Contractor shall publish the new value of the said deposit on its website and in at least two daily newspapers, one in the Maltese language and one in the English language.

4.6 The Contractor may establish a registration fee and an administration fee which fees shall be published on the Contractor's website.

4.7 The Contractor may enter into agreements with third parties regarding the operation of RVMs on their premises, subject to the Contractor paying retailers a handling fee for the operation of RVMs on their premises. The Contractor may also enter into agreements with retailers operating a manual system for collection of beverage containers, subject to the Contractor paying the retailers a handling fee. The handling fee to be paid to retailers in such circumstances shall be set according to objective, non-discriminatory criteria, taking into account the type of system used for the return of beverage containers.

SECTION 5

CONDUCT OF OPERATIONS

5.1 The Contractor shall exercise due diligence in the operation and management of the Scheme in terms of this Agreement and in full compliance with the Regulations. The Contractor shall be entitled to collect, receive and retain any revenue derived from the Operation, including without limitation any proceeds from the sale of the material from collected single use containers.

5.2 In order to fulfil its obligation to monitor and control the operations of each redemption location, the Contractor shall establish and provide the necessary IT solutions and infrastructure by not later than fourteen (14) months from the Effective Date.

5.3 The Contractor shall provide the necessary solutions and infrastructure to monitor the Scheme and it shall report any irregularities found to the Agency.

5.4 The Contractor shall ensure that it complies at all times with the Standards Requirements contained in Schedule 3 to this Agreement.

SECTION 6

DUTIES OF THE CONTRACTOR

6.1 In fulfilling its duties under this Agreement, the Contractor shall comply with all applicable laws and regulations.

6.2 The Contractor shall be responsible for obtaining all necessary permits, authorisations and/or licences in order to operate the Scheme, provided that the Agency shall use its reasonable endeavours to support the Company in any dealing with Governmental entities, departments, ministries and other relevant authorities for the purpose of facilitating commencement of the Operation and the smooth running thereof during the duration of this Agreement.

6.3 The Contractor shall be responsible for all collected single use containers, which shall become the property of the Contractor upon return to a redemption location.

6.4 The Contractor shall sell all processed beverage containers as recyclable material, whether directly or through an authorized entity. The Contractor shall provide the Agency with documentation to this effect in order for the sale of the material from recovered single use containers to count towards Malta's recycling targets.

6.5 The Contractor shall finance and roll out public campaigns in relation to the Scheme in order to ensure its success.

6.6 The Contractor shall provide to the Agency all information that is required by the Agency to enable the Agency to fulfil its reporting obligations in terms of the Directive.

6.7 The Contractor shall provide to the Agency detailed information where this is required for the Agency to enforce the provisions of the Regulations in accordance with Part VI of the Regulations.

6.8 Without prejudice to the provision of sub-sections 6.6 and 6.7, the Contractor shall, by the end of April of each year, provide the Agency with the following information:

- (a) its annual management accounts and annual audited accounts duly audited by a reputable auditor for the immediately preceding financial year;
- (b) its annual audited statements of the operation of the deposit refund account; and
- (c) subject to the provisions of sub-section 6.8, information in its possession which is required by the Agency for the purpose of preparing the report referred to in regulation 36 of the Regulations.

6.9 In addition to the information mentioned in sub-sections 6.6, 6.7 and 6.8, the Contractor shall file reports with the Agency on a quarterly basis but in any case not later than fifteen (15) days from the end of each quarter with information on aggregate volumes by typology of single use containers placed on and collected from the market and the material of the empty beverage containers processed for recycling by the Contractor.

6.10 The information referred to in sub-sections 6.6, 6.7, 6.8 and 6.9 shall be provided on standard forms found in Schedule 6 annexed to the Agreement. The Agency may unilaterally amend the standard forms provided that the information requested is information which the

Contractor is obliged to provide in accordance with this Agreement and provided further that the Contractor shall be given at least one months' notice of the change to the said standard form.

6.11 The Contractor shall carry out all procurement procedures in a manner that is transparent, competitive and non-discriminatory.

SECTION 7

COLLECTION AND RECYCLING TARGETS

7.1 The Contractor shall fulfil the collection targets set out in the Fifth Schedule of the Regulations. In the event that the Contractor fails to fulfil the targets, the Contractor shall, as from the 1st January 2023, be subject to an environmental contribution indicated in Schedule 5 of this Agreement, which environmental contribution shall be paid to the Agency.

7.2 The Contractor shall fulfil the recycling targets set out in Schedule 4 of this Agreement. In the event that the Contractor fails to fulfil the said targets, the Contractor shall, as from the 1st January 2023, be subject to an environmental contribution indicated in Schedule 5 of this Agreement, which environmental contribution shall be paid to the Agency.

7.3 Without prejudice to sub-sections 7.1 and 7.2, in the event that the Contractor fails to fulfil the collection and recycling targets set out in the Fifth Schedule of the Regulations and Schedule 4 of this Agreement respectively by more than twenty (20) percentage points, the Agency shall request in writing the Contractor to provide corrective remedies within six (6) months of receipt of the said written request.

7.4 In the event that the Contractor is, pursuant to any legislation, liable to pay any other penalty, fine or fee of whatever nature in addition to the environmental contribution referred to in the Regulations and in this Agreement in connection with its obligations in relation to the collection and recycling targets, the amount of any environmental contribution due under this Agreement and the Regulations shall be deducted by an amount equal to the aforesaid penalty, fine or fee.

SECTION 8

ADVISORY COMMITTEE

8.1 Within sixty (60) days from the Effective Date the Parties shall establish an advisory committee (hereinafter referred to as 'Advisory Committee') to provide a forum for consultation and co-operation between the Contractor and the Agency in the Contractor's conduct of Operations.

8.2 The Advisory Committee shall consist of four (4) members, two (2) of whom shall be appointed by the Agency and two (2) by the Contractor. Either Party may replace any of its representatives or designate a different representative by written notice to the other Party. Meetings of the Advisory Committee shall be held in such place as the members may agree. Each member shall have the right to bring expert advisors to any meeting of the Advisory Committee to assist in the discussion of technical and other matters

8.3 The chairman of the Advisory Committee, who shall preside over meetings, shall be one of the members appointed by the Agency and the secretary shall be one of the members appointed by the Contractor. The duties of the secretary shall be to keep notes and to prepare minutes of the meetings, to draft and transmit notices of meetings and to receive and transmit proposals and reports submitted by the Contractor or the Agency for discussion, review and advice by the Advisory Committee.

8.4 A regular meeting of the Advisory Committee shall be held at least once every one (1) month; other meetings may be held at the request of either Party, upon giving reasonable notice to the other Party of the date, time and location of the meeting and the items to be discussed.

8.5 The Advisory Committee shall have the function of reviewing and advising the Parties on the better management of the Scheme and to address on an ongoing and structured basis any reports of infringements of the provisions of the Agreement in relation to the Scheme as well as any pending remedial action regarding same.

SECTION 9

MONITORING OF THE SCHEME

9.1 The Agency has the right to oversee the operation of the Scheme.

9.2 The Agency may, in order to ensure that the Contractor is complying with the provisions of the Agreement, from time to time:

9.2.1 request the Contractor to provide it with information relating to the operations of the Contractor, which the Contractor has to provide within ten (10) working days of receipt of the said request;

9.2.2 in the event that the information provided by the Contractor is not to the Agency's satisfaction, carry out or procure the carrying out of an operational audit of the Contractor ('the Operational Audit'), in line with the following:

9.2.2.1 The Agency shall notify the Contractor in writing, with a minimum of ten (10) working days' advance notice, of the date or dates on which it wishes to carry out the Operational Audit. The Agency shall consider in good faith any reasonable request by the Contractor for the Operational Audit to be carried out on a different date if such request is made at least five (5) working days prior to the notified date.

9.2.2.2 When carrying out the Operational Audit, the Agency shall use all reasonable endeavours to minimise any disruption to the operations of the Contractor. The Contractor shall give the Agency or its representatives any reasonable assistance required during the carrying out of the Operational Audit.

9.2.2.3 Sub-section 9.2 is without prejudice to the Agency's rights in terms of the Regulations in relation to the Contractor's deposit refund account.

9.2.2.4 In the event that the Operational Audit identifies breaches of the Regulations or this Agreement by the Contractor, the expenses incurred by the Agency will be charged to the Contractor.

SECTION 10

REPRESENTATION

10.1 Not later than ten (10) days after the Effective Date, the Contractor shall appoint a person to be its representative for the purposes of this Agreement and shall give notice in writing to the Agency of the name and address of the said person. The Contractor shall, whenever such person ceases to be its representative or is unable to act as its representative, or is absent from Malta, forthwith appoint another person to be its representative and shall give notice in writing to the Agency accordingly.

10.2 Any notice, direction, instruction or other communication which the Agency is required or entitled to give or to serve on the Contractor under or pursuant to this Agreement shall be deemed to have been validly served if given to or served, whether personally or by letter, on the representative of the Contractor.

SECTION 11

JOINT AND SEVERAL OBLIGATIONS AND ASSIGNMENT

11.1 The Contractor may not, without the Agency's written consent, assign whether wholly or partly all or part of its interests and obligations under this Agreement to any person: provided that where the prospective transferee is an Affiliate of the Contractor and the Contractor remains jointly and severally responsible with the Affiliate for the interests and obligations being transferred, the Contractor shall be entitled to assign such interests and obligations without the requirement of obtaining the Agency's consent.

11.2 In giving its consent under sub-section 11.1, the Agency may impose such reasonable conditions as it may deem appropriate, and any such conditions shall thereupon be deemed to be and shall form an integral part of this Agreement.

11.3 Without prejudice to the provisions of sub-sections 11.1 and 11.2, the Contractor may sub-contract any of its duties or obligations arising under the Regulations or this License Agreement, provided that the Contractor cannot sub-contract the License Agreement in whole. The Contractor shall remain responsible for the performance of the obligations imposed on it by the Regulations and assumed by it in accordance with this Agreement notwithstanding any subcontracting.

11.4 The Contractor shall ensure that any person to whom it sub-contracts any of its obligations under this Agreement is in possession of any licenses, authorisations and permits which are required in terms of law.

SECTION 12

TERMINATION OF THE AGREEMENT

12.1 In the event of a material breach or of material default by the Contractor of this Agreement, the Agency, shall have the right to terminate or suspend the Agreement pursuant to sub-Section 12.2. Material breaches and material defaults shall include especially the following:

- (a) if the Contractor has knowingly submitted false statements which were of material significance for the proper execution of the Agreement;
- (b) if the Contractor is adjudicated bankrupt or insolvent by a court of competent jurisdiction;
- (c) if the Contractor is in breach of Section 11 of the Agreement;
- (d) if the Contractor fails to submit the information requested by the Agency in compliance with this Agreement;
- (e) if the Contractor fails to make payment of any sum due to the Agency together with any accrued interest thereon and without any offset within thirty (30) days after receiving notice from the Agency requiring payment.

For the avoidance of doubt, the Contractor's obligations relating to collection and recycling targets shall be dealt with in terms of sub-section 12.3.2.

12.2 In case of a material breach or material default in terms of sub-Section 12.1, the Agency shall give written notice to the Contractor requiring it to remedy or cure such breach or default within a reasonable time established by the Agency which shall in no case be less than thirty (30) days. If at the end of such period the breach or default has not been remedied or cured, or if the cause is not capable of remedy, the Agency may forthwith by notice in writing terminate the Agreement. Termination shall take place without prejudice to any rights which may have accrued to either Party against the other.

12.3 The Agency shall have the right to terminate the Agreement if the Contractor is in repeated breach of any of its obligations under this Agreement ('a Repeated Breach'). A Repeated Breach shall be deemed to exist:

12.3.1 saving sub-section 12.3.2, where the Contractor is in breach of any of its obligations under this Agreement and the Agency serves a warning notice on the Contractor stating that the breach, if it recurs frequently or continues, may result in termination of this Agreement, and the same or similar breach has continued or recurred two (2) or more times within three (3) months after the date on which the said warning notice was served on the Contractor;

12.3.2 where the Contractor is in breach of Section 7 of this Agreement, and the Agency serves a warning notice on the Contractor stating that the breach, if it recurs frequently or continues, may result in the termination of this Agreement and the same or similar breach has continued or recurred three (3) times within a period of four (4) years after the date on which the said warning notice was served on the Contractor by the Agency, provided that where the actual collection and, or recycling performance for the year in question is not below the collection and, or recycling target for the same year as set out in European Union legislation applicable

from time to time, such lower collection and, or recycling performance shall not be considered to be a breach as aforementioned. This is without prejudice to the right of the Agency to impose an environmental contribution should the Contractor not meet the targets.

12.4 Without prejudice to the provisions of sub-section 12.3.2, the Agency shall not be entitled to terminate this Agreement for failure of the Contractor to fulfil its obligations in terms of Section 7 of this Agreement before 31 December 2024.

12.5 Without prejudice to the provisions of Regulation 7 (2) of the Regulations, the Agency may terminate this Agreement by notice in writing and without any obligation to file judicial proceedings if a court makes an order that the Contractor be wound up or a resolution for a voluntary winding up of the Contractor is passed. Without prejudice to sub-section 12.1, if notice of termination is made in accordance with this sub-section, the termination shall become effective upon the date of delivery of the termination notice.

12.6 The Contractor shall be entitled to terminate this License Agreement by giving the Agency at least twenty-four (24) months' notice in writing.

SECTION 13

DISPUTE RESOLUTION

13.1 Any dispute, controversy, claim or difference of opinion on any matter arising out of the Agreement, including action for termination under Section 12, shall be finally and conclusively settled by arbitration in accordance with Part IV of the Malta Arbitration Action (Chapter 387 of the Laws of Malta) (domestic arbitration) and the Arbitration Rules of the Malta Arbitration Centre in force at the time of arbitration.

13.2 The person to appoint an arbitrator or arbitrators, should that need arise shall be the Malta Arbitration Centre.

13.3 The number of arbitrators shall be three (3). The Party initiating the arbitration shall appoint one arbitrator, and upon failure of the responding Party to appoint another arbitrator within thirty (30) days, the Party initiating the arbitration may request the Malta Arbitration Centre to appoint a second arbitrator in accordance with the said Rules. The Malta Arbitration Centre shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

13.4 The arbitration shall take place in Malta. The language to be used in the arbitration proceedings shall be English.

13.5 The arbitration award shall be final and binding and shall state the reasons upon which it is based.

13.6 The right of recourse to Arbitration under this Section shall survive the termination of this Agreement.

SECTION 14

FORCE MAJEURE

14.1 The non-performance or delay in performance by the Agency or the Contractor of any obligation under this Agreement shall be excused if and to the extent that such non-performance or delay is caused by force majeure. The period of any such non-performance or delay, together with such period as may be necessary for the restoration of any damage done during such delay, shall be added to the time allowed in this Agreement for the performance of such obligation and for the performance of any obligation depending thereon as well as to the term of this Agreement.

14.2 The following shall constitute force majeure: act of war, invasion, blockade, hostilities, embargo or other enemy action, revolution, rebellion, terrorist acts, civil commotion, riots, insurrections, earthquake, flood, fire, storm, epidemics, and any other natural physical disaster, labour disturbances, strikes or other causes, whether similar or dissimilar to the foregoing, reasonably beyond the control of the Agency or of the Contractor: provided, that inability to obtain equipment, supplies or fuel shall not constitute force majeure unless the cause thereof is itself force majeure.

14.3 The Party whose ability to perform its obligations or whose timely performance is affected by force majeure shall notify the other Party thereof in writing, stating the cause, the remedies proposed to remove the cause and the time considered necessary to so remedy as expeditiously as possible.

14.4 The Party claiming force majeure shall exercise all effort to mitigate the extent, duration and effect of the force majeure.

14.5 The cessation or interruption due to force majeure shall not exceed the duration of six (6) months from when force majeure is claimed by either Party. Upon the lapse of six (6) months either Party may terminate this Agreement by giving thirty (30) days notice to the other Party.

In the event that any of the Parties exercises its right to terminate this Agreement in accordance with this sub-section, neither Party shall be liable towards the other Party for any damages or other form of compensation.

SECTION 15

GOVERNING LAW

15.1 The Agreement shall be governed by and interpreted and applied in accordance with the Laws of Malta.

15.2 It is agreed that the Contractor has entered into this Agreement in reliance on the laws, rules and regulations of Malta as they existed on the Effective Date, and the Agency hereby confirms that all rights granted to the Contractor hereunder are in conformity with such laws, rules and regulations.

15.3 Should there be any change in the laws, rules or regulations of Malta subsequent to the Effective Date which materially restricts, divests or limits any rights or benefits accruing to the Contractor or which significantly changes the economic framework within which the Contractor is operating or which materially increases the Contractor's obligations under this Agreement or under any laws, rules or regulations of Malta as in existence on the Effective Date, the Contractor may, at any time thereafter, so notify the Agency in writing. Within thirty (30) days from receipt of such notice, the Agency and the Contractor shall meet to negotiate in good faith and agree upon the modifications which need to be made to the terms of this Agreement to restore the Contractor's economic rights and benefits hereunder to a level equivalent to what they would have been had such change not taken place, or upon such other remedy as they agree may be appropriate.

SECTION 16

CONFIDENTIALITY

16.1 The Contractor hereby agrees that all information and data which it may receive from the Agency in connection with this Agreement or otherwise arising from the activities hereunder shall be considered strictly confidential and shall not be disclosed to any person or entity not a Party to this Agreement without the prior written consent of the Agency, except:

- (a) to employees (including directors) of the Contractor provided that such employees maintain confidentiality as provided in this Section;
- (b) to consultants, contractors, legal counsel or auditors of the Contractor provided such persons or entities are required to maintain confidentiality as provided in this Section and only to the extent that such information is necessary for any matter pertaining to this Agreement;
- (c) to the extent that such data and information must be disclosed pursuant to any rules or requirements or in compliance with any applicable laws or regulations;
- (d) where any data or information is already part of the public domain or is in possession of the Contractor without any restrictions or, through no fault of the Contractor, becomes part of the public domain;
- (e) to arbitrators in accordance with section 13 of this Agreement, upon request of the arbitrators, and only to the extent that such information is necessary for the performance of their functions.
- (f) to prospective assignees;
- (g) to sub-contractors of the Contractor;
- (h) to financial advisors of the Contractor.

16.2 The Agency hereby agrees that all information and data received from the Contractor in connection with this Agreement or otherwise arising from the activities thereunder shall be considered strictly confidential and shall not be disclosed to any person or entity not a Party to this Agreement during the duration of the Agreement.

16.3 For the purposes of this section, “confidential information” means any information in relation to the relevant Party’s business, affairs or functions, which is obtained from either Party to the Agreement, either in writing or orally or in a visual or electronic form (including without limitation, in a magnetic or digital form) and whether or not directly or indirectly from, or pursuant to discussions with the Parties but shall not include:

- (a) information which is or comes into the public domain in any way without breach of this Agreement by the receiving Party;
- (b) information which was already known to the receiving Party prior to its receipt hereof from the disclosing Party;
- (c) information which was subsequently disclosed to the receiving Party lawfully by a third party that did not obtain the same, whether directly or indirectly, from the disclosing Party.

16.4 The confidentiality obligation shall continue after the expiry or termination of this Agreement.

16.5 The Contractor shall ensure that personal data is processed in accordance with the Data Protection Act (Chapter 586 of the Laws of Malta) and any other relevant legislation which is applicable during the Term of this Agreement including Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) – (the GDPR) including any subsidiary legislation issued thereunder (as may be amended from time to time) and also, where applicable, the guidance and codes of practice issued by any relevant supervisory authority or similar authoritative entity. In particular, and as far as permissible at law, the Contractor shall ensure that the Agency shall be in a position to lawfully process any personal data disclosed or transferred to the Agency by the Contractor pursuant to this Agreement.

16.6 Notwithstanding Article 16.2, the Parties may disclose Confidential Information to the minimum extent required by (i) an order of any court of competent jurisdiction or any regulatory (including any stock exchange regulations), judicial, governmental or similar body or any taxation authority of competent jurisdiction; or (ii) a public law obligation.

SECTION 17

ACCESS TO INFORMATION

17.1 Each of the Parties acknowledges that they are, or may be, subject to the requirements of the Freedom of Information Act (Chapter 496 of the Laws of Malta) and the Environment Information Regulations, as applicable, and shall assist and co-operate with each other to enable each of the Parties to comply with these information requirements.

17.2 Each Party shall provide to the other Party (“the Requesting Party”):

17.2.1 a copy of all information in its possession or power in the form that the Requesting Party requires within seven days from the date of such request; and

17.2.2 all necessary assistance as reasonably requested by the Requesting Party to enable the Requesting Party to respond to a request for information within the time for compliance set out in the Freedom of Information Act and in the Environmental Information Regulations.

17.3 The Requesting Party shall be responsible to determine at its absolute discretion whether commercially sensitive information and/or any other information:

17.3.1 is exempt from disclosure in accordance with the provisions of the Freedom of Information Act or the Environmental Information Regulations; and

17.3.2 is to be disclosed in response to a request for information.

17.4 For the purposes of this section, “Environmental Information Regulations” shall mean the Freedom of Access to Information on the Environment Regulations (LN 116 of 2005) together with any guidance and/or codes of practice issued by the Information and Data Protection Commissioner or the competent authority in relation to such legislation.

SECTION 18

NOTICES

All notices authorised or required between the Parties under this Agreement shall be in writing, in English and delivered in person or by registered mail or by courier service or by any electronic means of transmitting written communications which provides confirmation of complete transmission, and addressed to such Parties as designated below. Any notice shall be deemed delivered only when received by the Party to whom such notice is directed. "Received" for purposes of this section shall be actual delivery of the notice to the address of the Party to be notified, specified in accordance with this section. Each Party shall have the right to change its address at any time and/or designate that copies of all such notices be directed to another person at another address, by giving written notice thereof to the other Party.

Agency

Elite Business Centre, Level 1, Trejqa ta' Box Box, Msida MSD1840

Contractor

BCRS Malta Ltd, 103, Strait Street, Valletta VLT 1436

SECTION 19

MISCELLANEOUS

19.1 The Agreement embodies the entire agreement and understanding between the Parties relating to the subject matter hereof, and supersedes all other prior terms, conditions, agreements or understandings (express or implied, written or oral) concerning the subject matter.

19.2 If and to the extent that any court or tribunal of competent jurisdiction holds any part or provision of this Agreement to be invalid or unenforceable, the Parties shall agree upon an equitable adjustment of such provision with a view towards affecting its purpose. Such holding shall in no way affect the validity or effectiveness of the other provisions of this Agreement, which shall remain in full force and effect.

19.3 This Agreement shall inure to the benefit of and be binding upon the Parties and, where the context admits or requires their Affiliates and respective permitted successors or assigns.

19.4 This Agreement shall not be amended, altered or qualified except by an addendum in writing signed by the Parties.

19.5 Any waiver by a Party of any provision of this Agreement in any instance shall not be deemed to be a general waiver of such provision by that Party or to sanction any subsequent breach thereof by the other Party.

19.6 The headings and sub-headings used in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

19.7 Nothing in this Agreement shall constitute a partnership between the Parties or any of their Affiliates. The Contractor is an independent provider of services entitled to operate with its own assets and under its own commercial and trading standard terms and conditions (subject to the provisions of the Regulations or any other law), and is not the servant or agent of the Agency.

19.8 This Agreement may be executed in any number of counterparts which taken together will constitute one agreement.

19.9 The text of any press release concerning the subject matter of this Agreement shall require the approval of both Parties which shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first hereinabove written:

Agency

By: Ing. Anthony Rizzo
Title: Chief Executive Officer

Contractor

By:
Title: Director

By:
Title: Director

By:
Title: Director

By:
Title: Director

By:
Title: Director

By:
Title: Director

By:
Title: Director

By:
Title: Director

By:
Title: Director

SCHEDULE 1

Operations

1. The operation of the clearing centre;
2. The supply of RVMs;
3. The operation of the aforementioned RVMs;
4. The monitoring and control of redemption locations;
5. The transport of single use containers from redemption locations to the clearing centre;
6. The monitoring of the Scheme and the report of any irregularities to the Agency.

SCHEDULE 2

Technical and other specifications of the clearing centre

The required infrastructure shall consist of advance sorting, bailing and supporting equipment at a central infrastructure.

Schedule 3

Standards requirements

Minimum standards from sorting to recycling at the clearing centre

1. The output of the clearing centre should be bales of high quality, well-sorted monostream of plastic, metal and glass materials respectively, subject to the below.
2. Caps and labels of PET bottles should be sorted separately from any PET bales.
3. The bales of sorted PET must meet the highest possible standards without contamination by other plastics.
4. Steel and aluminium cans should be sorted separately.
5. Glass is to be sorted in a manner so as to maximise its sale value.

RVMs

1. There shall be the number of RVMs in the Territory as indicated in the market study.
2. RVMs have to be able to collect beverage containers of a capacity between 0.1 litres and 3 litres.
3. RVMs have to be able to read barcodes.

Service availability of RVMs

1. At least eighty per cent (80%) of the RVMs rolled out by the operator have to be in working order between 8.00am and 7.00pm from Monday to Saturday.
2. At least ten per cent (10%) of the RVMs rolled out by the operator have to be available for use and in working order for the remaining time including all hours on Sunday.
3. The redemption locations with RVMs shall be shown on an active application (App), which shall indicate which redemption locations are available to use, which are not, and which are out of service. The App shall be active for at least 99% of the time.

Security

The IT and infrastructure utilised by the Contractor must protect the system against fraud.

Schedule 4

Recycling targets calculated for each individual material stream

(i) Material stream I: beverage containers made from metal –

From 1 January 2022 to 31 December 2022 – 65% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2023 to 31 December 2023 - 65% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2024 to 31 December 2024 - 75% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2025 to 31 December 2025 - 80% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2026 to 31 December 2026 and every calendar year thereafter - 85% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

(ii) Material stream II: beverage containers made from plastic –

From 1 January 2022 to 31 December 2022 – 65% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2023 to 31 December 2023 - 65% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2024 to 31 December 2024 - 75% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2025 to 31 December 2025 - 80% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2026 to 31 December 2026 and every calendar year thereafter - 85% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

(iii) Material stream III: beverage containers made from glass –

From 1 January 2022 to 31 December 2022 – 65% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2023 to 31 December 2023 - 65% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2024 to 31 December 2024 - 75% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2025 to 31 December 2025 - 80% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

1 January 2026 to 31 December 2026 and every calendar year thereafter - 85% of the single use containers registered in terms of the Scheme as having been placed on the market during the same period

Schedule 5:

Environmental Contribution

Contribution for failure to fulfil the collection targets set out in the Regulations

The Contractor shall not be liable to make any payments or to pay a contribution to the Agency where the actual collection performance for the year in question is not more than five (5) percentage points below the collection target for the same year as set out in the Regulations.

Where the actual collection performance for the year in question is more than five (5) percentage points below the collection target for the same year as set out in the Regulations, the Contractor shall pay to the Agency a sum equivalent to the value of the unredeemed deposits related to the difference between the actual collection performance for the year in question and the collection target for the same year less five (5) percentage points.

Contribution for failure to fulfil the recycling targets set out in Schedule 4 or pursuant to the Regulations (including without limitation regulation 9)

The Contractor shall pay to the Agency by way of environmental contribution a sum, denominated in euro (€), to be calculated as follows:

$$(10,000 \times [PT-AP] \times 100)$$

Where PT = the recycling target designated for the year based on registered market placement for the material stream where the recycling target has not been met, less five (5) percentage points expressed as a percentage in decimal form

AP = the actual recycling performance achieved during that year for the material stream where the recycling target has not been met expressed as a percentage in decimal form

Schedule 6

Standard Forms

To be provided by the Contractor prior to the commencement of its operations.