



# NSW Container Deposit Scheme Refund Sharing Agreement

**Lithgow City Council**

PO Box 19  
180 Mort Street  
Lithgow NSW 279

and

**Polytrade Pty Ltd**

126-134 Thomas Murrell Crescent  
Dandenong South  
Vic 3175

# Contents

- 1. Definitions .....2**
- 2. Term and application of this document .....4**
- 3. Council to notify EPA.....4**
- 4. Council’s Refund Share .....5**
  - 4.1 Existing Refund Share .....5
  - 4.2 Council’s Refund Share .....5
  - 4.3 Calculating Council’s Refund Share and MRF Operator’s Refund Share .....5
  - 4.4 Quarterly Statement .....6
  - 4.5 Reconciliation Statement .....7
  - 4.6 Reconciliation Amount.....7
  - 4.7 Contractor’s costs are fixed .....8
- 5. Council Material .....8**
  - 5.1 Use of Council Material .....8
  - 5.2 Obligation to receive and weigh Council Material separately .....8
  - 5.3 Operate lawfully and efficiently .....8
- 6. Application for Processing Refund .....8**
  - 6.1 Application for Processing Refund .....8
  - 6.2 Compliance with WARR Legislation.....9
- 7. Claim Assessment .....9**
- 8. Records, administration and information .....9**
  - 8.1 Record keeping .....9
  - 8.2 Administration .....10
  - 8.3 Provision of information .....10
- 9. Consequence if services are suspended .....10**
- 10. Release .....11**
- 11. No processing agreement.....11**
- 12. Dispute resolution.....12**
  - 12.1 Disputes .....12
  - 12.2 Notice of Dispute .....12
  - 12.3 Negotiation .....12
  - 12.4 Submission to expert determination .....12
  - 12.5 Appointment of expert .....12
  - 12.6 Not an arbitration.....12
  - 12.7 Procedure for determination .....13
  - 12.8 Legal representation.....13
  - 12.9 Disclosure of conflict.....13
  - 12.10 Expert's determination .....14
  - 12.11 Correction .....14
  - 12.12 Cooperation .....14
  - 12.13 Costs.....14
  - 12.14 Urgent relief .....14
  - 12.15 Confidentiality.....15
  - 12.16 Continuing obligations .....15
  - 12.17 Subsequent proceedings .....15

	12.18	No Arbitration .....	15
<b>13.</b>		<b>Notices.....</b>	<b>15</b>
	13.1	Delivery of notice.....	15
	13.2	Particulars for delivery .....	16
	13.3	Time of service.....	16
<b>14.</b>		<b>GST .....</b>	<b>16</b>
	14.1	Definitions .....	16
	14.2	GST exclusive.....	16
	14.3	Increase in consideration.....	17
	14.4	Tax invoice.....	17
	14.5	Reimbursements .....	17
	14.6	Adjustment events.....	17
<b>15.</b>		<b>Obligations to continue .....</b>	<b>17</b>
<b>16.</b>		<b>Change to WARR Legislation .....</b>	<b>17</b>
<b>17.</b>		<b>Interpretation.....</b>	<b>18</b>
	17.1	Words and headings.....	18
	17.2	Specific references.....	18
<b>18.</b>		<b>General .....</b>	<b>19</b>
	18.1	Variation.....	19
	18.2	Document Review .....	19
	18.3	Counterparts .....	19
	18.4	Governing law .....	19
	18.5	Entire agreement and no reliance .....	19
	18.6	Liability.....	20
	18.7	Costs.....	20
	18.8	Severability .....	20
	18.9	Waiver.....	20
	18.10	Further assurance .....	20
	18.11	No merger.....	20
	18.12	Business Day .....	20
<b>Schedule 1</b>		<b>Reference Schedule .....</b>	<b>21</b>

---

# CDS Refund Sharing Agreement

Dated \_\_\_/\_\_\_/2018

---

## Parties

Name	Lithgow City Council, ABN 59 986 092 492
Address	PO Box 19, 180 Mort Street, Lithgow NSW 2790
Email	council@lithgow.nsw.gov.au
Contact	Andrew Muir
Short name	<b>Council</b>

Name	Polytrade Pty Ltd, ABN 26 068 669 349
Address	126-134 Thomas Murrell Crescent, Dandenong South, Vic 3175
Email	rydalmer@polytrade.com.au
Contact	Nathan Ung
Short name	<b>MRF Operator</b>

---

## Background

- A. Council Material may from time to time be delivered to the MRF under the Processing Agreement.
- B. Council and the MRF Operator wish to share the refund amounts paid to the MRF Operator in respect of Council Material by the Scheme Coordinator under the Scheme, in accordance with the terms of this document.
- C. Council and the MRF Operator intend that this document be a refund sharing agreement for the purposes of clause 18 of the CDS Regulation.
- D. The parties acknowledge that the terms of this document are fair and reasonable.

## This Deed witnesses

---

### 1. Definitions

In this document:

**Annual Recycling Statement** has the same meaning as in the Protocol;

**Annual Throughput Reconciliation** has the same meaning as in the Protocol;

**Applicable Method** means the method specified in Item 6;

**Business Day** means a day other than a Saturday, Sunday or public holiday in New South Wales;

**CDS Regulation** means the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* (NSW);

**Claim Assessment** means an assessment made by the Scheme Coordinator under the Protocol in respect of a claim for a Processing Refund made by the MRF Operator under clause 6;

**Collection Point Operator** has the same meaning as in the WARR Act;

**Commencement Date** means the date specified in Item 2;

**Council Material** means material that:

- (a) is collected by or on behalf of Council from Council's local government area during the course of domestic waste management services;
- (b) is delivered to the MRF; and
- (c) the MRF Operator accepts at the MRF under the Processing Agreement or any other arrangement with either the Council or another party;

**Council's Refund Share** means in any period, Council's portion of the Processing Refund paid to the MRF Operator during that period under the Scheme, calculated under clause 4.3.1;

**Dispute** means any dispute or difference between Council and the MRF Operator arising out of or in connection with this document;

**Eligible Material** means material received at the MRF that is not Excluded Material;

**EPA** means the Environment Protection Authority constituted under section 5 of the *Protection of the Environment Administration Act 1991* (NSW);

**Excluded Material** means:

- (a) Scheme Material, including material the MRF Operator receives as a Collection Point Operator if at any time during the Term it becomes a Collection Point Operator;
- (b) material that is received at the MRF within a load of material that contains no 'containers', as that term is defined under Part 5 of the WARR Act; and

- (c) material that is received at the MRF from a source that is located outside of New South Wales;

**Existing Refund Share** means either:

- (a) the amount of money (if any) specified in Item 5; or  
(b) if no amount of money is specified in Item 5, the amount of money calculated in accordance with clause 4.1.2;

**Expiry Date** means the date specified in Item 3;

**Independent Assurance Report** has the same meaning as in the Protocol;

**Item** means an Item in the Reference Schedule;

**Method 1 – Weighing** has the meaning given to that term in section 6.4 of the Protocol;

**MRF** means the material recovery facility described in Item 1, or should the parties to this document and/or the Processing Agreement agree on a new material recovery facility, that facility;

**MRF Operator’s Refund Share** means in any period, the portion of the Processing Refund paid to the MRF Operator during that period under the Scheme calculated under clause 4.3.2, that is retained by the MRF Operator;

**Notification Date** means the date specified in Item 4, being the date by which a notice under clause 3 must be issued to the EPA;

**Payment Date** means the date specified in Item 8;

**Payment Method** means the method of payment specified in Item 9;

**Processing Agreement** means any agreement or arrangement, between the MRF Operator and JR Richards Pty Limited, or the MRF Operator and the contractor that collects Council’s Material from time to time, under which the MRF Operator has agreed to accept Council Material at the MRF;

**Processing Refund** means a processing refund from the Scheme Coordinator under the Scheme in respect of Eligible Material;

**Protocol** means the processing refund protocol published by the EPA under section 28(2) of the WARR Act from time to time;

**Quarter** has the same meaning as in the CDS Regulation;

**Quarterly Statement** means a statement prepared in accordance with clause 4.4.1(b);

**Reconciliation Amount** means the amount described as such in, and determined in accordance with, clause 4.6.1;

**Reconciliation Statement** means a reconciliation statement prepared in accordance with clause 4.5;

**Reference Schedule** means Schedule 1 to this document;

**Refund %** means the percentage specified in Item 7;

**Refund Period** means each of the following periods during the Term:

- (a) initially, the period commencing on the Commencement Date and ending on the immediately next 30 June;
- (b) the one-year period commencing on 1 July immediately following the end of the initial period; and
- (c) each subsequent one-year period commencing on the day immediately following the end of the preceding one-year period;

**Refund Share** means each of the MRF Operator's Refund Share and Council's Refund Share;

**Relevant Proportion** means, for any period of time, the proportion by weight that the Council Material received at the MRF in that period bears to the total Eligible Material received at the MRF in that period, expressed as a percentage;

**Scheme** has the meaning given to that term in Part 5 of the WARR Act;

**Scheme Material** has the meaning given to that term in the Protocol;

**Third Party Material** means each of:

- (a) Excluded Material; and
- (b) any other material that the MRF Operator receives at the MRF that is not Council Material;

**Term** means the term during which this document has effect, being the period commencing on the Commencement Date and terminating on the Expiry Date or earlier termination of this document;

**WARR Act** means the *Waste Avoidance and Resource Recovery Act 2001* (NSW); and

**WARR Legislation** means the WARR Act, CDS Regulation and the Protocol,

and words and expressions that are not defined in this document, but which have a defined meaning in the WARR Legislation, have the same meaning as in the WARR Legislation.

---

## **2. Term and application of this document**

- 2.1 This document commences on the Commencement Date and, subject to clause 15 continues for the Term.
- 2.2 This document has effect despite any clause of the Processing Agreement that relates to the ownership of Council Material and, as between the parties, this document prevails over the Processing Agreement to the extent of any inconsistency.

---

## **3. Council to notify EPA**

Council must, by no later than the Notification Date, notify the EPA under clause 18(2)(b) of the CDS Regulation that Council considers:

- 3.1.1 this document to be a refund sharing agreement; and

3.1.2 the terms of this document to be fair and reasonable.

---

## **4. Council's Refund Share**

### **4.1 Existing Refund Share**

4.1.1 The MRF Operator must pay Council the Existing Refund Share within 10 Business Days after the Commencement Date.

4.1.2 The Existing Refund Share is to be calculated as a monetary amount using the following formula:

$$\text{Existing Refund Share} = (\text{RP} \times \text{PR}) \times (1 - \text{R}\%)$$

Where:

- (a) **RP** is the Relevant Proportion for the period from 1 December 2017 until the Commencement Date;
- (b) **PR** is the Processing Refund the MRF Operator received from the Scheme Coordinator in the period from 1 December 2017 until the Commencement Date; and
- (c) **R%** is the Refund %.

### **4.2 Council's Refund Share**

In each Quarter during the Term, the MRF Operator must account to and pay to Council the Council's Refund Share by the Payment Date, using the Payment Method.

### **4.3 Calculating Council's Refund Share and MRF Operator's Refund Share**

4.3.1 For each Processing Refund relating to a Quarter during the Term, Council's Refund Share is to be calculated as a monetary amount using the following formula:

$$\text{Council's Refund Share} = \text{RP} \times \text{PR} \times (1 - \text{R}\%)$$

Where:

- (a) **RP** is the Relevant Proportion for that Quarter;
- (b) **PR** is the Processing Refund the MRF Operator received from the Scheme Coordinator for that Quarter; and
- (c) **R%** is the Refund %.

4.3.2 For each Processing Refund relating to a Quarter during the Term, the MRF Operator's Refund Share is to be calculated as a monetary amount using the following formula:

$$\text{MRF Operator's Refund Share} = \text{RP} \times \text{PR} \times \text{R}\%$$

Where:

- (a) **RP** is the Relevant Proportion for that Quarter;



- (b) **PR** is the Processing Refund the MRF Operator received from the Scheme Coordinator for that Quarter; and
- (c) **R%** is the Refund %.

#### **4.4 Quarterly Statement**

4.4.1 Within 10 Business Days after receiving a Processing Refund from the Scheme Coordinator in respect of a Quarter during the Term, the MRF Operator must provide to Council:

- (a) a copy of the Claim Assessment provided by the Scheme Coordinator in relation to the Processing Refund received for that Quarter; and
- (b) a statement to Council that:
  - (i) sets out the total amount of the Processing Refund received for that Quarter;
  - (ii) specifies the total amount of material received at the MRF in that Quarter;
  - (iii) specifies the total amount of Council Material received at the MRF in that Quarter;
  - (iv) specifies the total amount of Excluded Material received at the MRF in that Quarter;
  - (v) sets out the calculation of Council's Refund Share in that Quarter;
  - (vi) sets out the calculation of the MRF Operator's Refund Share in that Quarter; and
  - (vii) is verified by a statutory declaration made by a proper officer of the MRF Operator in respect of paragraphs (ii) and (iv),

with sufficient information to enable Council to verify the calculations.

4.4.2 Council may at any time request the MRF Operator to provide additional information, calculations, estimations and documentation to enable the Council to understand, audit and verify any aspect of any Quarterly Statement and the MRF Operator must promptly comply with each such request.

4.4.3 Council may by written notice to the MRF Operator notify the MRF Operator that:

- (a) Council accepts the Quarterly Statement, in which case it may issue an invoice for the Council's Refund Share in accordance with that Quarterly Statement; or
- (b) Council does not accept the Quarterly Statement, in which case:
  - (i) the notice must identify the extent to which the Quarterly Statement is agreed or is not agreed; and
  - (ii) following the issue of that notice either party may refer the matter for dispute resolution under clause 12.

- 4.4.4 Neither the issue of a Quarterly Statement nor the payment or acceptance of moneys will be evidence or an admission as to the correctness of a Quarterly Statement nor an admission that any obligation under this document has been carried out satisfactorily.

#### 4.5 Reconciliation Statement

- 4.5.1 Within 20 Business Days after the end of each Refund Period in which Council Material was received or processed at the MRF, the MRF Operator must provide to Council a written reconciliation statement to Council that specifies the total:
- (a) amount of the Processing Refund received for that Refund Period;
  - (b) amount of material received at the MRF in that Refund Period;
  - (c) amount of Council Material received at the MRF in that Refund Period;
  - (d) amount of Excluded Material received at the MRF in that Refund Period;
  - (e) Contractor's Refund Share retained by the Contractor in respect of that Refund Period; and
  - (f) Council's Refund Share paid to Council in respect of that Refund Period,
- and sets out the Reconciliation Amount (if any) for that Refund Period and identifies to whom it must be paid in accordance with clause 4.6.2.
- 4.5.2 The MRF Operator must provide such additional or supplementary information as Council may require for the purpose of enabling Council to understand and assess the correctness and validity of the Reconciliation Statement.
- 4.5.3 Council may by written notice to the MRF Operator notify the MRF Operator that Council:
- (a) accepts the value of the Reconciliation Amount, and the correctness and validity of the Reconciliation Statement; or
  - (b) does not accept the Reconciliation Amount, and the correctness and validity of the Reconciliation Statement, in which case the notice must identify the extent to which the Reconciliation Statement is agreed or is not agreed.
- 4.5.4 If Council issues a written notice to the MRF Operator under clause 4.5.3(b) then either party may refer the matter for dispute resolution under clause 12.

#### 4.6 Reconciliation Amount

- 4.6.1 For each Refund Period during the Term, the Reconciliation Amount is to be calculated as a monetary amount using the following formula:

$$\text{Reconciliation Amount} = (\text{RP}_{\text{RP}} \times \text{PR}_{\text{RP}} \times (1 - \text{R}\%)) - \text{CRS}_{\text{RP}}$$

Where:

- (a)  $\text{RP}_{\text{RP}}$  is the Relevant Proportion for that Refund Period;
- (b)  $\text{PR}_{\text{RP}}$  is the Processing Refund the MRF Operator received from the Scheme Coordinator for that Refund Period;

- (c) **R%** is the Refund %; and
- (d) **CRS<sub>RP</sub>** is the total amount of Council's Refund Share that has been paid to Council in respect of that Refund Period.

4.6.2 If the Reconciliation Amount is:

- (a) greater than zero, that amount must be paid by the MRF Operator to Council; and
  - (b) less than zero, that amount must be paid by Council to the MRF Operator,
- as a lump sum amount within 20 Business Days of its determination under clause 4.5.3(a) or 4.5.4.

#### **4.7 Contractor's costs are fixed**

The parties agree that, except as provided for in clauses 4.5 and 4.6, the Refund Share of each party and the Refund % is fixed for the Term and will not be varied for any reason, including for changes in the MRF Operator's costs that it incurs over the Term, other than in accordance with clause 16.2 of this document.

---

## **5. Council Material**

### **5.1 Use of Council Material**

The MRF Operator must ensure that:

- 5.1.1 all Council Material that is processed at the MRF in a Quarter during the Term, is included in a claim under clause 6.1.1; and
- 5.1.2 no Council Material received at the MRF is diverted to be processed at a Collection Point or another material recovery facility.

### **5.2 Obligation to receive and weigh Council Material separately**

The MRF Operator must ensure that at all times Council Material is received and weighed at the MRF separately from Third Party Material.

### **5.3 Operate lawfully and efficiently**

In each Quarter in which Council Material is received or processed at the MRF the MRF Operator must operate the MRF in a proper, lawful and efficient manner.

---

## **6. Application for Processing Refund**

### **6.1 Application for Processing Refund**

- 6.1.1 Within 28 days after the end of each Quarter occurring during the Term (or such other time period consistent with the WARR Legislation) in which in that Quarter:
  - (a) Council Material was received at the MRF; and

- (b) the MRF Operator is able to make a claim for the payment of a Processing Refund from the Scheme Coordinator in respect of material received at the MRF,

the MRF Operator must make a claim in accordance with clause 19 of the CDS Regulation for the payment of a Processing Refund from the Scheme Coordinator that includes all Eligible Material in respect of which a claim is able to be made.

- 6.1.2 In making a claim under clause 6.1.1, the MRF Operator must apply the Applicable Method, unless Council gives its prior written consent to the MRF Operator applying an alternative method.

## **6.2 Compliance with WARR Legislation**

In performing its obligations under this document, the MRF Operator must comply with law, including the WARR Legislation.

---

## **7. Claim Assessment**

- 7.1 The MRF Operator must provide Council with at least 10 Business Days' written notice before submitting a request to the Scheme Coordinator to reconsider a Claim Assessment and must have regard to any comments by Council on the proposed request prior to submitting it.
- 7.2 Council may direct the MRF Operator to submit a request to the Scheme Coordinator to reconsider a Claim Assessment, and the MRF Operator must comply with each such direction.
- 7.3 If the MRF Operator submits a request to reconsider a Claim Assessment to the Scheme Coordinator, the MRF Operator must provide to Council:
  - 7.3.1 a copy of the request at the same time as it is submitted to the Scheme Coordinator; and
  - 7.3.2 any subsequent correspondence regarding the outcome of that request within 5 Business Days of issuing or receiving the correspondence.
- 7.4 The MRF Operator must notify Council within 5 Business Days after receiving notice from the Scheme Coordinator that a claimed Processing Refund amount in a Claim Assessment has been amended.
- 7.5 If a Claim Assessment is amended by the Scheme Coordinator, then the Refund Share of each party must be recalculated accordingly, and any shortfall or overpayment accounted for.

---

## **8. Records, administration and information**

### **8.1 Record keeping**

The MRF Operator must keep and maintain until 7 years after the expiry of the Term, and provide to Council on request, all necessary records, accounts and documents to properly and efficiently manage the MRF Operator's participation in the Scheme, so far as its participation relates to Council Material.

## 8.2 Administration

The MRF Operator must promptly perform all administrative tasks necessary to enable Processing Refunds to be paid in respect of Council Material under this document.

## 8.3 Provision of information

Without limiting any other clause of this document, the MRF Operator must provide Council with:

- 8.3.1 all applications, claims and supporting documentation submitted to the Scheme Coordinator under clause 6.1.1, at the same time it submits the claim to the Scheme Coordinator including the *Polytrade Rydalmere quarterly claim form to CDS Portal*;
- 8.3.2 if amendments are made to claims or supporting documentation submitted under clause 6.1.1, copies of the amended claim and supporting documentation, at the same time it submits the amended claim to the Scheme Coordinator;
- 8.3.3 all reports it gives to the Scheme Coordinator or the EPA under the WARR Legislation relating to a Quarter during the Term, including:
  - (a) the monthly report required under sections 6.2 and 6.4 or 6.5 (as applicable) of the Protocol;
  - (b) the Polytrade 'Recovery Percentage and Tonnes' report;
  - (c) the Annual Throughput Reconciliation;
  - (d) the Annual Recycling Statement; and
  - (e) the Independent Assurance Report,at the same time it gives that report to the Scheme Coordinator or the EPA;
- 8.3.4 all correspondence from the MRF Operator to the Scheme Coordinator or the EPA that relates to this document at the same time it gives that correspondence to the Scheme Coordinator or the EPA;
- 8.3.5 all correspondence from the Scheme Coordinator or the EPA that relates to this document, including the *RCTI from Exchange for Change for quarterly refund*, promptly upon receipt of that correspondence, and in any case within 5 Business Days of receiving the correspondence; and

---

## 9. Consequence if services are suspended

If the MRF Operator validly and lawfully suspends the processing of Council Material under the Processing Agreement, then:

- 9.1.1 for any Council Material that is delivered to the MRF during the period of suspension and is not processed at the MRF during the period of suspension, the MRF Operator is not required during the period of suspension to account to or pay to Council the Council's Refund Share in respect of that material; and
- 9.1.2 once the suspension ends, the MRF Operator must account to and pay to Council the Council's Refund Share in respect of any Council Material that was delivered to the MRF during the period of suspension.

---

## 10. Release

- 10.1 In this clause 10, **Claim** means any action, claim, demand or proceeding however it arises and whether it is present or future, fixed or unascertained, actual or contingent, and includes an action, claim, demand or proceeding:
- 10.1.1 based in law or equity, or under statute or otherwise;
  - 10.1.2 arising under an indemnity;
  - 10.1.3 arising under the Processing Agreement;
  - 10.1.4 whether or not the facts, matters, circumstances or law giving rise to it are known to any party or any other person at the date of this document; or
- whether or not it is within the contemplation of any party or any other person at the date of this document.
- 10.2 The parties acknowledge and agree that:
- 10.2.1 this document sets out the entirety of the parties' arrangements in relation to the Scheme and the impacts of the Scheme on each party; and
  - 10.2.2 except to the extent that a Claim in relation to the Scheme, or any impact in connection to the Scheme, is permitted under this document, neither party may make such a Claim against the other party,
- and each party releases the other accordingly.
- 10.3 Either party may plead this clause as a bar to any Claim to which the release applies under clause 10.2.

---

## 11. No processing agreement

- 11.1 The parties acknowledge and agree that this document is not a processing agreement (as that term is defined under clause 18 of the CDS Regulation).
- 11.2 Nothing in this document creates any obligation:
- 11.2.1 on Council to deliver Council Material to the MRF; or
  - 11.2.2 on the MRF Operator to receive or accept Council Material at the MRF.
- 11.3 Without affecting any obligation, right or warranty under the Processing Agreement:
- 11.3.1 Council makes no warranty or representation:
    - (a) as to whether any Council Material will be delivered to the MRF; or
    - (b) as to the type, classification, character, nature, content, quality, consistency or any other characteristic of any Council Material that is delivered to the MRF; and
  - 11.3.2 except as expressly set out in this document, the MRF Operator makes no warranty or representation about the recovery outcomes that it may achieve at the MRF in relation to the processing of Council Material.

---

## **12. Dispute resolution**

### **12.1 Disputes**

Any Dispute must be resolved under this clause 12 except where this document states otherwise.

### **12.2 Notice of Dispute**

If a party wishes to have a Dispute resolved or determined, it must give a written notice (**Notice of Dispute**) to the other party. A Notice of Dispute must state that it is a notice under this clause 12.2 and must specify in reasonable detail:

12.2.1 the legal basis for and detailed particulars of the Dispute;

12.2.2 the facts relied on; and

12.2.3 the relief or outcome sought.

### **12.3 Negotiation**

Within 10 Business Days after a Notice of Dispute is given (or a longer period agreed by the parties in writing), the parties must ensure that representatives of each party with authority to resolve the Dispute meet, undertake good faith negotiations and use their reasonable endeavours to resolve the Dispute.

### **12.4 Submission to expert determination**

If a Dispute is not resolved within 20 Business Days after a Notice of Dispute is given, either party may give a written notice to the other party requiring that the Dispute be referred for expert determination in accordance with this clause 12 (**Notice of Referral**).

### **12.5 Appointment of expert**

12.5.1 Only an Expert (as defined in clause 12.5.2) may conduct an expert determination under clause 12.

12.5.2 An Expert is a person:

- (a) agreed between the parties as having the relevant expertise, skills and experience to make determinations in relation to the matters in dispute; or
- (b) where the parties are unable to reach agreement within 10 Business Days of a Notice of Referral, a person appointed by the Resolution Institute (or an office holder or appointee of the Resolution Institute) at the request of a party. The parties must comply with the requirements of the Resolution Institute in making this determination.

12.5.3 The parties must promptly enter into an engagement agreement with the Expert on terms reasonably required by the Expert.

### **12.6 Not an arbitration**

An agreement for expert determination under this document is not an arbitration agreement under the *Commercial Arbitration Act 2010* (NSW).

## **12.7 Procedure for determination**

The procedure before the Expert shall be in accordance with procedures required by the Expert, and the Expert must:

- 12.7.1 invite and receive, if made, submissions from Council and the MRF Operator;
- 12.7.2 act fairly, impartially and independently of each party;
- 12.7.3 apply the Expert's own knowledge and expertise;
- 12.7.4 determine and notify the parties of the procedure for conducting the expert determination as the Expert thinks fit, and is not bound by the rules of evidence;
- 12.7.5 make any directions for conducting the expert determination;
- 12.7.6 not accept verbal submissions unless both parties are present;
- 12.7.7 on receipt of a written submission from one party, ensure that a copy of such submission is given promptly to the other party;
- 12.7.8 take into consideration all documents, information and other material which the parties give the Expert and which the Expert, in its reasonable opinion, considers relevant;
- 12.7.9 not be expected or required to obtain or refer to any other documents, information or materials (but may do so if the Expert so wishes);
- 12.7.10 determine the Dispute as expeditiously as possible;
- 12.7.11 give the parties a written determination within 30 Business Days after the date of the engagement agreement referred to in clause 12.5.3, or any later date the parties may agree in writing. The expert shall not be required to give reasons unless a party requires that the expert do so; and
- 12.7.12 in making the determination act bona fide to give effect to this document.

## **12.8 Legal representation**

Each party is entitled to legal representation during the expert determination.

## **12.9 Disclosure of conflict**

- 12.9.1 The Expert must use all reasonable endeavours to avoid any actual or potential:
  - (a) conflict of interest; or
  - (b) circumstance that may reasonably be considered to adversely affect the Expert's impartiality or independence.
- 12.9.2 The Expert must immediately give the parties written notice if the Expert becomes aware of the existence of anything described in clause 12.9.1.



## **12.10 Expert's determination**

To the extent permitted by law, the Expert's determination is final and binding on the parties unless:

- 12.10.1 there is any fraud;
- 12.10.2 there is a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- 12.10.3 a party considers that the determination has not been made in accordance with or does not give effect to this document and the parties' respective rights and obligations under it and both conditions below apply:
  - (a) the value of the claim exceeds \$100,000; and
  - (b) within 60 Business Days after the Expert gives the parties the determination, a party gives written notice to the other party referring the matter to a Court.

## **12.11 Correction**

Any party may make a written request to the Expert to correct the determination for:

- 12.11.1 a minor mistake arising from a slip or omission; or
- 12.11.2 a defect in form.

## **12.12 Cooperation**

Each party must:

- 12.12.1 cooperate in good faith with the Expert and the other party in the conduct of the expert determination; and
- 12.12.2 use reasonable endeavours to comply with all requests and directions reasonably given by the Expert.

## **12.13 Costs**

The parties must:

- 12.13.1 comply with any reasonable direction of the Expert to provide security deposits for the Expert's fees and disbursements;
- 12.13.2 each pay half of the Expert's fees and disbursements in connection with the expert determination; and
- 12.13.3 bear their own costs in connection with the expert determination, unless the Expert awards reasonable costs of the determination to a particular party.

## **12.14 Urgent relief**

Nothing in this clause 12 prejudices the right of a party to seek urgent injunctive or declaratory relief for any matter in connection with this document.

## **12.15 Confidentiality**

12.15.1 Subject to clause 12.15.2, the parties must, and must ensure that the Expert must, keep confidential, and not disclose to any other person:

- (a) all proceedings and submissions relating to an expert determination under clause, including the fact that any step in the expert determination is occurring; and
- (b) all documents and any other information (in any form) relating to the expert determination, including the Expert's determination.

12.15.2 A party may disclose confidential information referred to in clause 12.15.1:

- (a) if that party obtains the prior written consent of the other party;
- (b) as required by law; or
- (c) to the extent necessary to give effect to or to enforce a determination.

## **12.16 Continuing obligations**

Despite the existence of a Dispute or its referral to expert determination, each party must continue to perform their obligations under this document.

## **12.17 Subsequent proceedings**

A party must not appoint the Expert as arbitrator, advocate or adviser in any arbitral, judicial or adjudication proceedings relating to the Dispute or any part of it, except with the other party's written consent.

## **12.18 No Arbitration**

The parties acknowledge and agree that this document is not an arbitration agreement. The Expert acts as an expert not as an arbitrator.

---

## **13. Notices**

### **13.1 Delivery of notice**

13.1.1 A notice or other communication required or permitted to be given to a party under this document must be in writing and may be delivered:

- (a) personally to the party;
- (b) by leaving it at the party's address;
- (c) by posting it by regular prepaid post, priority prepaid post, registered post, priority registered post or express post addressed to the party at the party's address; or
- (d) by electronic mail to the party's email address,

in each case, as specified in the notice details of that party.

13.1.2 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

### **13.2 Particulars for delivery**

13.2.1 The notice details of each party are set out on page 1 of this document under the heading 'Parties' (or as notified by a party to the other parties in accordance with this clause).

13.2.2 Any party may change its notice details by giving notice to the other parties.

### **13.3 Time of service**

A notice or other communication is deemed delivered:

13.3.1 if delivered personally or left at the person's address, upon delivery;

13.3.2 if posted within Australia to an Australian address:

(a) using regular prepaid post or registered post, 6 Business Days after posting;

(b) using priority prepaid post or priority registered post, 4 Business Days after posting; and

(c) using express post, 2 Business Days after posting;

13.3.3 if posted from a place to an address in a different country, 10 Business Days after posting;

13.3.4 if delivered by electronic mail, subject to clause 13.3.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and

13.3.5 if received after 5.00pm in the place it is received, or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

---

## **14. GST**

### **14.1 Definitions**

In this clause:

14.1.1 words and expressions that are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;

14.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### **14.2 GST exclusive**

Except as otherwise provided in this document, all consideration payable under this document in relation to any supply is exclusive of GST.

### **14.3 Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this document (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 14.4, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this document in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this document).

### **14.4 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 14.3.

### **14.5 Reimbursements**

If this document requires a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:

14.5.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and

14.5.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

### **14.6 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this document:

14.6.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and

14.6.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

---

## **15. Obligations to continue**

15.1 Except as provided in clause 16, this document cannot be terminated unless the Processing Agreement is terminated or expires, in which case the termination of this document can be effected by Council serving a termination notice on the MRF Operator.

15.2 If this document is terminated or expires, despite the termination and until otherwise agreed in writing between the parties, the obligations of the parties under it will continue to apply and the MRF Operator must continue to pay any Council's Refund Share for any Quarter in which Council Material is received or processed at the MRF until such time as there is no further Council Material received or processed at the MRF.

---

## **16. Change to WARR Legislation**

16.1 If the WARR Legislation is repealed, then once:

16.1.1 no further refunds are payable in respect of Council Material; and

16.1.2 Council serves notice to the MRF Operator confirming that this document will terminate,

this document will terminate and no longer have effect.

16.2 If the WARR Legislation is amended:

16.2.1 to reduce the refund amount;

16.2.2 to increase the refund amount; or

16.2.3 in a manner that materially affects the obligations or costs under the Scheme,

then the parties agree to negotiate in good faith amendments to this document:

16.2.4 to adjust their respective Refund Shares in order to agree a fair and reasonable allocation of the available refund having regard to the Relevant Proportion of the likely operating and administrative costs to be incurred by the MRF Operator that are properly and reasonably incurred as a direct and natural consequence of the implementation of the Scheme in relation to Eligible Material and deducting the Relevant Proportion of any savings or reductions in costs as a consequence of or relating to the implementation of the Scheme in relation to Eligible Material; and

16.2.5 to ensure that reporting and other obligations are in compliance with the Scheme as amended.

---

## **17. Interpretation**

### **17.1 Words and headings**

In this document, unless expressed to the contrary:

17.1.1 words denoting the singular include the plural and vice versa;

17.1.2 the word 'includes' in any form is not a word of limitation;

17.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;

17.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this document; and

17.1.5 no rule of construction applies to the disadvantage of the party preparing this document on the basis that it prepared or put forward this document or any part of it.

### **17.2 Specific references**

In this document, unless expressed to the contrary, a reference to:

17.2.1 a gender includes all other genders;

17.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;

- 17.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 17.2.4 writing includes writing in digital form;
- 17.2.5 'this document' is to this document as amended from time to time;
- 17.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 17.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this document;
- 17.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 17.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 17.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 17.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

---

## **18. General**

### **18.1 Variation**

This document may only be varied by a written document executed by the parties.

### **18.2 Document Review**

This document is to be reviewed annually by the parties, however no variation to this document including purportedly made pursuant to this clause 18.2 will be effective unless varied in accordance with clause 18.1.

### **18.3 Counterparts**

This document may be executed in counterparts, all of which taken together constitute one document.

### **18.4 Governing law**

This document is governed by the law applying in New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

### **18.5 Entire agreement and no reliance**

18.5.1 This document:

- (a) constitutes the entire agreement between the parties in relation to its subject matter; and

- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) prior to entering into this document, in relation to the subject matter of this document.

18.5.2 The parties acknowledge that in entering into this document each party has not relied on any representations made by the other party (or its agents or employees) other than matters expressly set out in this document.

## **18.6 Liability**

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

## **18.7 Costs**

A party which has an obligation to do anything under this document must perform that obligation at its cost unless expressly stated otherwise.

## **18.8 Severability**

18.8.1 Any provision of this document that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

18.8.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this document that is unlawful or unenforceable will be severed from this document and the remaining provisions continue in force.

## **18.9 Waiver**

The failure of a party at any time to insist on performance of any provision of this document is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this document.

## **18.10 Further assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this document.

## **18.11 No merger**

The warranties, undertakings, agreements and continuing obligations in this document do not merge on completion of the transactions contemplated by this document.

## **18.12 Business Day**

If a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

---

## Schedule 1      Reference Schedule

<b>Item 1.</b>	<b>MRF</b>	Polytrade's Rydalmere MRF, 32 South Street, Rydalmere, NSW 2116
<b>Item 2.</b>	<b>Commencement Date</b>	1 December 2018
<b>Item 3.</b>	<b>Expiry Date</b>	The later of 3 November 2023, and the date that the Processing Agreement expires or is terminated.
<b>Item 4.</b>	<b>Notification Date</b>	30 November 2018
<b>Item 5.</b>	<b>Existing Refund Share</b>	Calculated in accordance with clause 4.1.2
<b>Item 6.</b>	<b>Applicable Method</b>	Method 1 - Weighing
<b>Item 7.</b>	<b>Refund %</b>	50%
<b>Item 8.</b>	<b>Payment Date</b>	The date that is the earlier of: (a) 10 Business Days after the Quarterly Statement is issued to Council and Council issues an invoice; and (b) 25 Business Days after the MRF Operator receives the Processing Refund to which the Council's Refund Share relates.
<b>Item 9.</b>	<b>Payment Method</b>	By electronic bank transfer into Council's nominated bank account



---

# Signing Page

**Executed** by the parties as a deed

**Executed** for and on behalf of **Lithgow City Council** by:

.....  
Signature of authorised person

.....  
Signature of witness

.....  
Office held

.....  
Name of witness (print)

.....  
Name of authorised person (print)

**Executed** by **Polytrade Pty Ltd ACN 068 669 349** in )  
accordance with s 127(1) of the *Corporations Act* )  
*2001*:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Print full name

.....  
Print full name