

# MASTER SERVICES AGREEMENT

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This Master Services Agreement (this “**Agreement**”) is entered into as of [●] (“**Effective Date**”)

BETWEEN:

[**NAME OF CONTRACTOR**], having a place of business at [●] (“**Contractor**”),

AND:

**CIRCULAR MATERIALS**, a not-for-profit company incorporated under the *Canada Not-for-profit Corporations Act*, carrying on business under its business name Circular Materials Atlantic and registered as a provincial extended producer responsibility (“**EPR**”) agency in New Brunswick (“**Circular Materials**”).

RECITALS:

- A. Whereas Circular Materials represents companies and organizations (“**Producers**”) that supply products in packaging and printed paper to residents of New Brunswick obligated under the *Designated Materials Regulation* under the *Clean Environment Act* (New Brunswick);
- B. Whereas Circular Materials developed the New Brunswick Stewardship Plan for Packaging and Paper;
- C. Whereas Recycle New Brunswick approved the Stewardship Plan for Packaging and Paper on April 21, 2023;
- D. Whereas Circular Materials is meeting Producers’ obligations under the *Designated Materials Regulation* under the *Clean Environment Act* (New Brunswick) by implementing the Stewardship Plan for Packaging and Paper, including through this Agreement; and
- E. Whereas Circular Materials wishes to receive, and Contractor wishes to provide, the Services set out in this Agreement, and the parties wish to foster dialogue and a good business relationship in carrying out such Services.

In consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Circular Materials and Contractor agree as follows:

## **SECTION 1. INTERPRETATION**

1.1. Definitions. In this Agreement, the following terms will have the following meanings:

“**Affiliate**” means any entity controlled by, controlling, or under common control with a party.

“**Agreement**” has the meaning set out on the first page of this document and includes the Schedules (including Statements of Work) attached hereto.

“**Applicable Law**” means any domestic or foreign law, rule, statute, subordinate legislation, regulation, by-law, order, ordinance, protocol, code, guideline, treaty, policy, notice, direction or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline published or in force at any time during the Term which applies to or is otherwise intended to govern or regulate any person (including any party), property, transaction, activity, event or other matter, including any rule, order, judgment, directive or other requirement or guideline issued by any governmental or regulatory authority.

“**Business Continuity Plan**” has the meaning set out in Section 4.5.

**“Business Day”** means any day other than a Saturday, Sunday, or statutory holiday in the Province of New Brunswick.

**“Change”** has the meaning set out in Section 2.2.1.

**“Change Proposal”** has the meaning set out in Section 2.2.3.

**“Change Request”** has the meaning set out in Section 2.2.1.

**“Circular Materials”** has the meaning set out on the first page of this Agreement.

**“Circular Materials Policies and Standards”** has the meaning set out in Section 4.2.

**“Claim Information”** has the meaning set out in Schedule 4.2.

**“Claims”** means the reporting of inbound vehicle movements to the Receiving Facility or Pre-Conditioning Facility acting as the first point of contact for Collection Vehicles from Single-family Households, Multi-family Dwellings, Facilities, or depots.

**“Collection Contractors”** or **“Collectors”** means the contracted party undertaking the Curbside, multi-family, facility and/or depot collection of Paper and Packaging.

**“Collection Vehicle”** means the truck used for the collection of Recyclable Materials. The truck may be one compartment for the collection of Single Stream material or two compartments for the collection of Fibre Materials in one compartment and Container Materials in the other compartment. A Collection Vehicle may also be one dedicated to picking up Depot materials.

**“Confidential Information”** means information of or relating to a party (the **“Disclosing Party”**) that has or will come into the possession or knowledge of the other party (the **“Receiving Party”**) whether such information is or has been conveyed verbally or in written or other tangible form, and whether such information is acquired directly or indirectly such as in the course of discussions or other investigations by the Receiving Party, that: (a) where Circular Materials is the Disclosing Party, is any information of Circular Materials or relating to its business or affairs including technical, financial and business information, ideas, concepts or know-how, Services performance and Services delivery reporting information, and the terms of this Agreement; and (b) where Contractor is the Disclosing Party, is limited to financial information of Contractor. However, Confidential Information does not include information that: (i) was already known to the Receiving Party, without obligation to keep it confidential, at the time of its receipt from the Disclosing Party; or (ii) is or becomes available to the public other than as a result of a breach hereof by the Receiving Party; provided that the foregoing exceptions will not apply with respect to any personal information that is subject to privacy laws.

**“Container Materials”** means any beverage and non-beverage rigid plastic, steel, aluminum, bi-metal or polycoated or aseptic container. Container Materials do not include Glass or any Flexible Plastic Packaging or any Fibre Materials.

**“Contractor”** has the meaning set out on the first page of this Agreement.

**“Curb”** or **“Curbside”** means a location within one metre of a Public Street or Private Road.

**“Curbside Household”** or **“Single-family Household”** means a self-contained dwelling unit providing accommodation to one or more people, including (i) single-family dwellings, (ii) buildings with up to four (4) units and (iii) rowhouses and townhouses, in each case where the resident of each unit is expected to individually deliver In-Scope PP to the Curb for collection.

**“Designated Post-Collection Facility”** means the facility at which Contractor delivers Contractor-collected In-Scope PP to the Designated Post-Collection Service Provider. This facility will be a Receiving Facility (RF) or a Pre-Conditioning Facility (PCF) first acting as an RF.

**“Disclosing Party”** has the meaning set out in the definition of Confidential Information in this Section 1.1.

**“Dispute”** has the meaning set out in Section 14.1.

**“Effective Date”** has the meaning set out on the first page of this Agreement.

**“Expanded/Extruded Polystyrene”** means all forms of expanded/extruded foam packaging used in food and protective packaging applications and may display resin code #6. Examples include cushion packaging, takeout clamshells and meat trays.

**“Facilities”** means any eligible location other than a Single-family Household or a Multi-family Dwelling or a depot and includes schools, seniors residences and provincial or local government properties which are not IC&I.

**“Fees”** has the meaning set out in Section 5.1.

**“Fibre Materials”** means any printed paper and paper packaging. For clarity, it does not include any polycoated cartons (e.g., milk cartons) or aseptic containers (e.g., juice boxes, broth boxes). Fibre Materials do not include any Container Materials.

**“Flexible Plastic Packaging”** means any non-rigid plastic packaging including, but not limited to: HDPE or LDPE plastic bags, flexible deli or cheese packaging, flexible stand-up pouches, flexible packaging-like products, e.g., sandwich bags, lidding materials, and stretch/shrink films.

**“Force Majeure”** has the meaning set out in Section 15.3.

**“Glass”** means any clear or coloured glass bottles and jars.

**“In-Scope PP”** means the materials identified as In-Scope PP by Circular Materials in writing from time to time.

**“Industrial, Commercial and Institutional”** or **“IC&I”** means any operation or facility other than a Curbside Household, including but not limited to industrial facilities such as warehouses, distribution centres, manufacturing facilities; commercial facilities such as retail stores, offices, strip malls and vacation facilities, such as hotels, motels, cottages, cabins and rental, co-operative, fractional ownership, time-share or condominium accommodation associated with sports and leisure facilities (e.g., ski resorts); and, institutional facilities such as churches, community buildings, arenas, libraries, fire halls, long-term care homes and police stations.

**“Intellectual Property Rights”** means inventions, patents, copyrights, trademarks, industrial designs, integrated circuit topography rights, know-how, trade secrets, confidential information, and any other intellectual property rights whether registered or unregistered and including rights in any application for any of the foregoing.

**“Key Personnel”** has the meaning set out in Section 6.2.

**“Labour Disruption”** has the meaning set out in Section 4.6.2.

**“Multi-family Dwellings”** means self-contained dwelling units providing accommodation to one or more people with a minimum of six (6) dwelling units within a single building in each case where the resident of each unit takes In-Scope PP to a common collection area within or beside the building for collection.

**“Notices”** has the meaning set out in Section 15.5.

**“Other Service Provider”** has the meaning set out in Section 11.2.

**“Paper and Packaging”** or **“PP”** has the meaning set out in Schedule 4.2, as may be updated by Circular Materials pursuant to Section 4.2.

**“Post-Collection Contractor”** or **“Designated Post-Collection Service Provider”** means the entity, designated by Circular Materials, to receive Contractor-collected In-Scope PP.

**“Pre-Conditioning Facility (PCF)”** means the processing facility where the sorting of Paper and Packaging is undertaken to the specifications as set out by Circular Materials.

**“Privacy Laws”** has the meaning set out in Section 9.4.

**“Private Road”** means a privately-owned and maintained way that allows for access by a service vehicle and that serves multiple residences.

**“Producers”** has the meaning set out on the first page of this Agreement.

**“Public Street”** means a public right-of-way used for public travel, including public alleys.

**“Receiving Facility (RF)”** means the location of the first point of contact facility where Collection Vehicles take materials for bulking/consolidation for transfer to a Pre-Conditioning Facility. A Pre-Conditioning Facility may also act first as an RF.

**“Receiving Party”** has the meaning set out in the definition of Confidential Information in this Section 1.1.

**“Recyclable Material”** means all Paper and Packaging which are included in the program as outlined in Schedule 4.2.

**“Representatives”** has the meaning set out in Section 9.1.

**“Secondary Processing Facility”** or **“SPF”** means a facility where additional sorting/beneficiation of a Sorted Product from a PCF takes place to produce higher value outputs.

**“Service Level Failure”** has the meaning set out in Section 4.4.2.

**“Service Level Failure Credit”** has the meaning set out in Schedule 4.4.

**“Service Levels”** has the meaning set out in Section 4.4.1.

**“Services”** has the meaning set out in Section 2.1.

**“Single Stream”** means Fibre Materials and Container Materials combined.

**“Sorted Product”** means the outputs from a Pre-Conditioning Facility destined for further processing at a SPF, sale to an end market, final disposition as an alternative fuel, or disposal in a landfill.

**“Sorting Efficiency Rates”** or **“SERs”** means the percentage of each defined category of Recyclable Materials sorted and captured during processing at a PCF for the purposes of sending the materials to an end market or Secondary Processing Facility, relative to the quantity of each Recyclable Material received at the Pre-Conditioning Facility.

**“SOW Term”** has the meaning set out in Section 3.2.

**“Statement of Work”** means any statement of work attached hereto or as may from time to time be issued hereunder.

**“Term”** has the meaning set out in Section 3.1.

**“Valtype”** has the meaning set out in Schedule 4.2.

**“Value Added Taxes”** means such sum as shall be levied upon any portion or all of the contract price (**“Taxable Portion”**) by the federal or any provincial government and is computed as a percentage of the Taxable Portion and includes the Goods and Services Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on Contractor by Canadian or provincial tax legislation.

**“Withheld Taxes”** has the meaning set out in Section 5.5.

**“Work Product”** means the deliverables to be created or provided to Circular Materials by Contractor pursuant to any Statement of Work and any data, records, and reports that have been prepared, created, written or recorded in performance of the Services, whether by Contractor, Circular Materials, or Contractor and Circular Materials together.

## 1.2. Interpretation.

- 1.2.1. Including – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- 1.2.2. Technical Terms – Any capitalized term used in this Agreement that is not defined in Section 1.1 or elsewhere in this Agreement will have the generally accepted industry or technical meaning given to such term.
- 1.2.3. Number, Gender, and Persons – In this Agreement, words importing the singular number will include the plural and vice versa, and words importing the use of any gender will include the masculine, feminine and neuter genders, and the word “person” will include an individual, a trust, a partnership, a body corporate, an association or other incorporated or unincorporated organization or entity.
- 1.2.4. Headings – The headings in this Agreement are solely for convenience of reference and will not be used for purposes of interpreting or construing the provisions hereof.
- 1.2.5. Currency – Unless otherwise provided for herein, all monetary amounts referred to herein will refer to the lawful money of Canada.
- 1.2.6. Calculation of Time – When calculating the period within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period will be excluded. If the last day of such period is not a Business Day, then the period in question will end on the first Business Day following such non-Business Day.
- 1.2.7. Legislation References – Any references in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body, or other regulatory body, including any Applicable Law, will be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.



1.3. Schedules. As of the Effective Date, the following Schedules form part of this Agreement (note that Attachment numbering is not sequential and is based on a related section reference):

<b>Schedule</b>	<b>Description</b>
Schedule 2.1(a)	– Statement of Work for Curbside Collection Services
Schedule 4.2	– Circular Materials Policies and Standards
Schedule 4.4	– Service Level Methodology
Schedule 7.3	– Protocol for the Determination of Contamination Rates and Resulting Actions
Schedule 12.1	– Insurance Requirements

1.4. Priority. In the event of any inconsistency between any of the provisions of the main terms and conditions of this Agreement, any Schedule that is not a Statement of Work, and any Statement of Work, the inconsistency will be resolved by reference to the following descending order of priority: (i) SECTION 1 through SECTION 15 of this Agreement; (ii) the Schedules annexed to this Agreement that are Statements of Work; and (iii) the applicable Statement of Work, except to the extent a Statement of Work expressly states that it is intended to have priority over the main body of this Agreement or a Schedule referred to in subsection (ii), in which case the Statement of Work will have priority but solely with respect to such Statement of Work.

## **SECTION 2. SCOPE OF SERVICES**

2.1. Services. Contractor will perform the services set out in each Statement of Work and any services that are inherent, necessary, or customarily provided as part of those services, including, but not limited to, the delivery of any Work Product (collectively, the “**Services**”), all in accordance with the terms and conditions of this Agreement and the applicable Statement of Work. Each Statement of Work will be effective, incorporated into and form a part of this Agreement when mutually accepted and duly executed by both parties.

2.2. Changes.

- 2.2.1. Circular Materials may, at any time and from time to time, request additions, deletions, amendments, or any other changes to the Services set out in any Statement of Work or the manner such Services shall be performed (a “**Change**”) by issuing a change request (a “**Change Request**”). Contractor acknowledges that Circular Materials may be dependent on Contractor for the provision of the Services and, accordingly, acknowledges and agrees that Contractor shall be required to make a good faith Change Proposal (as defined below) unless it would not be technically possible for Contractor to implement such Change Request.
- 2.2.2. Contractor will provide an initial response to any Change Request within five (5) Business Days following receipt of such Change Request, such response to indicate whether Contractor is able to implement such Change Request. If is not technically possible for Contractor to implement the Change Request, the parties will, on Circular Materials’ request, meet to discuss, in good faith, if and how the intent of Circular Materials’ request could be met.
- 2.2.3. Unless the parties have agreed that it would not be technically possible for Contractor to implement a Change Request, Contractor will provide a detailed proposal (a “**Change Proposal**”) within fifteen (15) Business Days of providing its initial response, such Change Proposal shall include details with respect to the implementation of the Change Request and details of any costs or other changes required to this Agreement or the applicable Statement of Work to comply with the Change Request. The Contractor will deal transparently with Circular Materials, including making available

to Circular Materials all supporting information and documentation reasonably requested by Circular Materials that relates to the pricing of the proposed Change.

- 2.2.4. Contractor may, at any time and from time to time, request a Change by delivering a Change Proposal to Circular Materials.
- 2.2.5. If Circular Materials, in its discretion, accepts a Change Proposal, an authorized Circular Materials representative will provide Contractor with written approval of Circular Materials' acceptance in the form of an executed change order.
- 2.2.6. If Circular Materials does not accept a Change Proposal, the parties will, on Circular Materials' request, negotiate in good faith the terms pursuant to which the parties may agree to implement the proposed Change. For the avoidance of doubt, Contractor will not implement any Change to any Statement of Work without Circular Materials' prior written approval.
- 2.2.7. Any change in the work which causes, or is expected to cause, the Contractor's costs or any subcontractor's costs to decrease shall be treated as a benefit to the Contractor with the expectation and understanding Circular Materials will also realize a proportional financial benefit in an amount to be negotiated in good faith between the parties. If such an understanding cannot be reached, the parties agree to resolve the difference in accordance with the dispute resolution provisions set out in Section 14.

2.3. Non-Exclusive. Neither this Agreement nor any Statement of Work will grant Contractor exclusivity of supply unless expressly stated otherwise, with reference to this Section, in the applicable Statement of Work (and in no event will the scope of such exclusivity extend beyond the scope of Services under such Statement of Work).

### **SECTION 3. DURATION**

3.1. Term of Agreement. This Agreement will commence on the Effective Date and will continue until the expiration or termination of the last Statement of Work under this Agreement (the "**Term**").

3.2. Term of Statement of Work. Each Statement of Work will set out the term of the Statement of Work and any terms and conditions relating to the renewal of the Statement of Work (the "**SOW Term**").

### **SECTION 4. SERVICE STANDARDS**

4.1. Performance. Contractor warrants that Contractor will perform, or cause to be performed (including through appropriate supervision and inspection), the Services and otherwise fulfill its obligations hereunder honestly and in good faith, exercising reasonable skill, care and diligence, in accordance with recognized professional and North American industry standards, practices, and methods, in a timely manner and in accordance with the terms and conditions of this Agreement and any Statement of Work, having regard for the concerns, needs, and interests of residents and the environment. Except where otherwise set out in this Agreement, all weighing and measurement to be performed by Contractor will be made in accordance with the Circular Materials Policies and Standards on weights and measurements identified in Schedule 4.2.

4.2. Contractor to Comply with Circular Materials Policies and Standards. Contractor will comply at all times with all terms and requirements set out in the policies and standards set out in Schedule 4.2, as such policies and standards may be updated by Circular Materials from time to time, and such other policies and standards that Circular Materials brings to the attention of Contractor from time to time (collectively, "**Circular Materials Policies and Standards**"). Notice of updating of, or new, Circular Materials Policies and Standards may be made by Circular Materials by e-mail to the address set out in Section 15.5 (as such address may be updated pursuant to

Section 15.5) and, notwithstanding Section 15.5, such notice will be deemed duly given when so e-mailed, without the need to confirm receipt. If compliance with updated or new Circular Materials Policies and Standards would require a Change and would require Contractor to incur material additional costs, then Contractor may request a Change pursuant to Section 2.2.5 for the implementation of the updated or new Circular Materials Policies and Standards; provided that Contractor must make any such request within thirty (30) days of Circular Materials providing notice of the updated or new Circular Materials Policies and Standards.

4.3. Compliance with Law. Contractor will perform its obligations under this Agreement in a manner that complies with all Applicable Law of New Brunswick, including:

- (a) the *Employment Standards Act*;
- (b) the *Workers' Compensation Act*;
- (c) the *Occupational Health and Safety Act*; and
- (d) the *Clean Environment Act*.

4.4. Service Levels.

4.4.1. Contractor will continuously monitor each Service to identify, measure, and report issues and correct problems and to ensure that Contractor is meeting or exceeding the following service levels (collectively, the "**Service Levels**"):

- (a) all service levels set out in this Agreement, including in the applicable Statement of Work;
- (b) if Contractor is providing services similar to services performed by Contractor prior to the start of the applicable SOW Term, Contractor will, at a minimum, continue to meet the existing service levels achieved by Contractor prior to the start of the applicable SOW Term (but only to the extent they do not conflict with the scope of Service, or the obligations, set out in the applicable Statement of Work); and
- (c) if no service level is provided for a Service or component thereof, all performance levels and measurements for such Service or component are that of industry best practices,

provided that in the event of a conflict between any Service Levels, the highest Service Level standard will apply. Contractor will notify Circular Materials in writing immediately if Contractor knows that Contractor has failed, or believes Contractor will fail, to achieve a Service Level.

4.4.2. Contractor recognizes that Contractor's failure to meet a Service Level will have a material adverse impact on the business and operations of Circular Materials and that damages resulting from Contractor's failure to meet a Service Level may not be capable of precise determination. As such (and without limiting Circular Materials' rights or remedies), Circular Materials will be entitled to any express remedies for Contractor's failure to meet a Service Level (each such failure a "**Service Level Failure**") that may be set out in Schedule 4.4 or the applicable Statement of Work. Contractor agrees that it is obligated to meet all Service Levels, even if no express remedy for a failure to meet such Service Level is provided in Schedule 4.4 or in a Statement of Work.

4.4.3. Upon Circular Materials' request, and in any event at least once per year, Circular Materials will meet with Contractor (which meeting may be in person, or by Microsoft Teams, Zoom, or phone as determined by Circular Materials) to review and discuss Contractor's performance level of the Services and Service Levels.

- 4.5. Contingency Planning. Without limiting Contractor's liability for performance of its obligations under this Agreement, Contractor will implement and maintain throughout the Term such contingency measures as may be appropriate, in Circular Materials' sole discretion (acting reasonably), including a comprehensive business continuity plan (the "**Business Continuity Plan**"), to continue the performance of its obligations under this Agreement under various scenarios including equipment failure, fuel shortage, strike, road closures (including due to weather, construction or otherwise), fire, pandemic, quarantine, and natural disasters. Circular Materials will have the right, upon demand from time to time, to review the Business Continuity Plan. Contractor will update its Business Continuity Plan at least once each year and in the event of any material change in operations or circumstance. Contractor will invoke its Business Continuity Plan where necessary due to any incident or event, including an event of Force Majeure, that has the potential to have a material impact on Contractor's ability to provide any material part of the Services for any material period, or upon the request of Circular Materials. Without limiting Contractors' obligations under this Agreement, whenever an incident or event that invokes the Business Continuity Plan also impacts other services provided by Contractor, and as a result Contractor is allocating resources or implementing temporary service changes or workarounds, Contractor will treat Circular Materials and the Services no less favourably than: (i) where Contractor is a local government, any other non-essential services it provides, or (ii) where Contractor is not a local government, any of its other customers, in each case in the allocation of such resources or in the implementation of such temporary service changes or workarounds.
- 4.6. Labour Disruption.
- 4.6.1. Contractor will provide Circular Materials with at least thirty (30) days' prior written notice of the expirations of any labour agreement and Contractor will include, with such notice, an assessment of the likelihood of a Labour Disruption (as defined below).
- 4.6.2. Where a labour disruption of any kind causes a reduction in Service Levels (a "**Labour Disruption**"), Contractor will inform Circular Materials within four (4) hours by phone and e-mail of the nature and scope of the disruption, as well as Contractor's immediate plans to invoke any or all of its Business Continuity Plan.
- 4.6.3. Without limiting Contractor's obligations under this Agreement, where a Labour Disruption also impacts other services provided by Contractor, and as a result Contractor is allocating resources or implementing temporary service changes or workarounds, Contractor will treat Circular Materials and the Services no less favourably than any other services it provides, or any of its other customers, in the allocation of such resources or in the implementation of such temporary service changes or workarounds (for example, if Contractor provides collection Services hereunder and other collection services, and Contractor proposed to provide temporary drop-off sites in respect of its other collection services, then Contractor will also proposed to provide such sites in respect of the Services hereunder).
- 4.6.4. Circular Materials will have the right to make an equitable reduction to any Fees to reflect the value of any Services not received by Circular Materials due to a Labour Disruption.
- 4.6.5. Where a Labour Disruption lasts more than seven (7) days, and for so long as the Labour Disruption continues, Circular Materials will have the right to suspend this Agreement or any Statements of Work, for cause, immediately upon delivery of written notice of suspension by Circular Materials to Contractor.

## **SECTION 5. REPORTING AND PAYMENT**

- 5.1. Fees. In consideration of the complete and proper fulfillment of Contractor's obligations in accordance with the terms and conditions of this Agreement, Circular Materials will pay Contractor

the amounts set forth in any Statement of Work (the “Fees”). Except as expressly set out in a Statement of Work, there will be no other amounts payable by Circular Materials to Contractor in respect of the Services or this Agreement, including any amounts for expenses or costs of travel, personnel, fuel, equipment, or facilities relating to the Services or this Agreement.

5.2. Set-Off. Circular Materials may set-off and deduct from any amounts payable to Contractor: (a) any amounts owing by Contractor to Circular Materials pursuant to this Agreement or any other agreement between Contractor and Circular Materials, including any Service Level Failure Credits; and (b) any costs incurred by Circular Materials in collecting any amounts owing by Contractor to Circular Materials pursuant to this Agreement or any other agreement between the parties. The failure by Circular Materials to set-off or deduct any amount from an invoiced payment will not constitute a waiver of Circular Materials’ right to set-off, deduct or collect such amount.

5.3. Submission of Claims – Post-Collection Contractors/Designated Post-Collection Service Providers. Unless otherwise set out in a Statement of Work, Contractor will submit Claims using the Circular Materials claims reporting portal, via an uploaded spreadsheet, via an ftp server, or through such other method as Circular Materials may designate. Circular Materials will acknowledge a Claim has been received and will issue a “Claim Summary”. Upon review and approval, Circular Materials will issue a purchase order to Contractor for valid approved Claims.

5.3.1. Late Submission – Post-Collection Contractors must submit all Claims no later than five (5) days after the performance of the applicable Services (i.e., the receipt of the Collection Vehicles). In no event will Circular Materials be liable for payment of any Claim submitted more than thirty (30) days after the performance of the applicable Services.

5.3.2. Missing Claims – Collection Contractors may be asked to provide copies of weighscale tickets in support of Claims by Post-Collection Contractors. When so requested, Collection Contractors shall provide copies of the original weighscale tickets for the dates and times requested within three (3) Business Days.

5.4. Taxes. Except where otherwise noted, the Fees exclude all applicable sales, goods and services, value added, use or other commodity taxes that may be lawfully imposed upon the Services; where Contractor clearly and separately itemizes such taxes on Contractor’s invoice to Circular Materials, Circular Materials will pay, and Contractor will remit such taxes to the appropriate taxing authority. On request, Contractor will provide reasonable assistance to Circular Materials to challenge the validity of any tax imposed on it due to this Agreement. If it is determined that Circular Materials paid Contractor an amount for tax that was not due, Contractor will refund the amount (plus any interest earned on it) to Circular Materials. The parties will cooperate with each other to enable each party to determine its tax liabilities accurately and to reduce such liabilities to the extent permitted by Applicable Law.

5.5. Withholding Taxes. Circular Materials may deduct or withhold from any payment(s) made to Contractor any amount that Circular Materials is required to deduct or withhold in accordance with Applicable Law, including administrative practice (“**Withheld Taxes**”) and will remit such Withheld Taxes to the appropriate taxing authority in a timely manner. All such Withheld Taxes will be treated as having been paid to Contractor by Circular Materials.

5.6. Payment. Subject to the terms and conditions of this Agreement and any Statement of Work, Circular Materials will pay Contractor, via electronic funds transfer, the undisputed Fees for the Services within thirty (30) days of the invoice date. Contractor will provide Circular Materials with complete and accurate payment and contact information, including all information required by Circular Materials to effect electronic funds transfers and a payment email address to which Circular Materials may send Claim submission reports and purchase orders. Contractor will promptly provide Circular Materials with any updates to such contact information.

5.7. No Volume Commitment. Notwithstanding anything to the contrary in this Agreement, Contractor acknowledges that Circular Materials makes no representation or warranty as to the nature, timing, quality, quantity (number of stops or tonnes), or volume of Services required from Contractor under this Agreement or the compensation that may be earned by Contractor, including as to any amounts of materials to be collected or managed through post-collection Services by a Contractor.

## SECTION 6. PERSONNEL

6.1. Suitable Personnel. Upon Circular Materials' request, Contractor will promptly investigate any written complaint from Circular Materials regarding any unsatisfactory performance by any of Contractor's personnel (including employees of a subcontractor or agent) and take immediate corrective action. If the offending conduct is repeated, and Contractor is not restricted by a collective agreement from doing so, Circular Materials may require that such person be removed from all performance of additional work for Circular Materials. Removal of such person will be addressed by Contractor immediately.

6.2. Key Personnel. During each SOW Term, Contractor will not remove any of the persons identified as "key personnel" in such Statement of Work (or their replacements) (the "**Key Personnel**") except (a) for cause, or (b) if such person is replaced at the time of removal by personnel approved in advance by Circular Materials acting reasonably, it being understood that any such replacement shall have applicable ability, experience and expertise equal to or greater than the person being replaced. If any Key Personnel (or his or her replacement) ceases to serve in the applicable role for any reason whatsoever, Contractor shall (i) notify Circular Materials in writing within five (5) Business Days, and (ii) use commercially reasonable efforts to replace such person with personnel approved in advance by Circular Materials acting reasonably, it being understood that any such replacement shall have applicable ability, experience and expertise equal to or greater than the person being replaced.

6.3. Subcontracting. Contractor will not delegate or subcontract all or any part of Contractor's obligations under this Agreement to anyone without the prior written consent of Circular Materials (not to be unreasonably withheld), including that Circular Materials' prior written consent is required by Contractor to continue to delegate or subcontract to a person following a change in control (including a sale of all or substantially all assets) of such person. The delegation or subcontracting of all or any part of Contractor's obligations under this Agreement will not relieve Contractor from any obligation or liability hereunder. Any breach of this Agreement by any delegate or subcontractor will be deemed to be a breach of this Agreement by Contractor.

## SECTION 7. REPORTING AND AUDIT

7.1. Record Keeping. During the Term and thereafter until the later of three (3) years (or such longer period as may be required by Applicable Law) or the date all disputes or other matters relating to this Agreement are resolved, Contractor will keep and maintain complete and accurate data, records, and documents in accordance with generally accepted accounting principles consistently applied to support and document all claims and amounts becoming payable to Contractor by Circular Materials hereunder, and all data, records, and documents relating to the performance of the Services, and compliance with Contractor's obligations under this Agreement.

7.2. Reporting. In addition to any other reporting obligations under this Agreement or a Statement of Work, Contractor will undertake the following reporting to Circular Materials:

- (a) as set out in a Statement of Work, Contractor will report, through Circular Materials' Claims system, or via a method otherwise agreed between the two parties, the reporting information set out in the applicable Statement of Work for Services performed. Such reporting may include but is not limited to: applicable sites; weighscale tickets; vehicle information,

amount, type, or weight of materials; sources of materials; service dates; material inventories; and weighbill information.

- (b) upon such frequency as Circular Materials may request, depending upon the data required, reports pertaining to the performance of the Services and Contractor's other obligations under this Agreement reasonably sufficient to permit Circular Materials to monitor and manage Contractor's performance; and
- (c) such additional reports as Circular Materials may reasonably identify from time to time to be generated and delivered by Contractor on an ad hoc or periodic basis.

### 7.3. Audit.

- 7.3.1. Without limiting any other audit right, during the Term and for the period Contractor is required to comply with Section 7.1, Circular Materials (or its audit representative) will have the right, upon reasonable prior written notice to Contractor, to audit and inspect: (a) any site, facility, vehicle, or equipment relating to the performance of the Services; and (b) all data, records, documentation and other information of Contractor relating to this Agreement or the Services, in order to verify Contractor's performance and compliance with its obligations under this Agreement, including that Circular Materials (or its audit representative) may conduct a financial audit to verify the amounts paid or payable by Circular Materials hereunder. If any audit reveals that Circular Materials has been overbilled, Contractor will reimburse the overcharged amount to Circular Materials with interest at prime plus one per cent (1%), retroactive to the date of overcharge. If the overbilled amount exceeds five per cent (5%) of the total amounts charged during the period audited, Contractor will bear all of Circular Materials' costs in relation to such audit.
- 7.3.2. Without limiting any other audit right, during the Term and for the period Contractor is required to comply with Section 7.1, Contractor will make the data, records, and documents retained pursuant to Section 7.1 available for inspection or audit by Circular Materials (or its audit representative) upon Circular Materials' request.
- 7.3.3. Without limiting any other audit right, during the Term Circular Materials (or its audit representative) may conduct composition studies, without notice, of any materials collected, transported, processed, or otherwise handled under this Agreement, at any stage of the Services and regardless of the location of such materials.
- 7.3.4. Contractor will co-operate with and provide to Circular Materials (or its audit representative) such reasonable assistance as they require to exercise the rights set out in this Section 7.3. Contractor will ensure that it has agreements in place with all subcontractors to enable Circular Materials (or its audit representative) to directly exercise the audit rights under this Section 7.3 in respect of such subcontractor.
- 7.3.5. Any audit performed by Circular Materials for the purpose of determining contamination of materials collected, transported, processed, or otherwise handled under this Agreement, shall be in accordance with the protocol set out in Schedule 7.3, as amended by Circular Materials from time to time.

## **SECTION 8. REPRESENTATIONS AND WARRANTIES**

8.1. Contractor Representations and Warranties. Contractor represents and warrants to and covenants with Circular Materials that:

- (a) it is duly incorporated, validly existing, and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified to do business in all jurisdictions in which qualification is necessary in order to transact its business and perform its obligations set out in this Agreement;

- (b) it has full power, authority, and right to execute and deliver this Agreement, to make the representations, warranties, and covenants set out herein, and to perform its obligations under this Agreement in accordance with its terms. This Agreement has been validly executed by an authorized representative of Contractor, and constitutes a valid and legally binding and enforceable obligation of Contractor;
- (c) it has and will, at its own expense, procure all permits, certificates and licenses required by Applicable Law for the performance of the Services;
- (d) the representations, warranties, covenants, claims, inducements, and agreements made by Contractor in Contractor's written response to any procurement process related to the Services or this Agreement are true and correct as of the Effective Date, including those in any proposal submitted in response to a request for proposals and any statements or claims in any completed and submitted questionnaire in response to any offer of a collection financial incentive; and
- (e) it has not given and will not give commissions, payments, kickbacks, gifts, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of Circular Materials in connection with this Agreement and, to the best of its knowledge, no officer, director, employee, agent or representative of Contractor has given any such commissions, payments, kickbacks, gifts, entertainment or other inducements to any employee or agent of Circular Materials.

## SECTION 9. CONFIDENTIALITY

9.1. Confidentiality Covenant. The Receiving Party will: (i) take all measures reasonably required to maintain the confidentiality and security of the Confidential Information of the Disclosing Party; (ii) not use or reproduce Confidential Information for any purpose, other than as reasonably required to exercise or perform its rights or obligations under this Agreement; (iii) not disclose any Confidential Information other than to employees, agents or subcontractors of the Receiving Party ("**Representatives**") to the extent, and only to the extent, they have a need to know the Confidential Information in order for Receiving Party to exercise its rights or perform its obligations under this Agreement and who are bound by a legal obligation to protect the received Confidential Information from unauthorized use or disclosure; and (iv) be responsible for any breach of this Agreement by any of its Representatives.

9.2. Legal Requirement. Notwithstanding Section 9.1, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by Applicable Law, provided that, unless prohibited by Applicable Law, the Receiving Party gives the Disclosing Party an opportunity to oppose the disclosure or to seek a protective order protecting such Confidential Information prior to any such disclosure.

9.3. Return of Confidential Information. Upon expiry or termination of this Agreement, or upon request by the Disclosing Party, the Receiving Party will return to the Disclosing Party, or irrecoverably destroy and provide confirmation of same, any Confidential Information of the Disclosing Party, except as required for legal and audit purposes.

9.4. Privacy Laws. Contractor will not access, collect, use, disclose, dispose of or otherwise handle information of or about individuals that is subject to Applicable Law relating to privacy ("**Privacy Laws**") in the performance of its obligations under this Agreement, except: (a) to the extent necessary to perform the Services; (b) in accordance with all Privacy Laws; and (c) in a manner that enables Circular Materials to comply with all Privacy Laws, including that Contractor will obtain appropriate consents from the applicable individuals to allow Contractor and Circular Materials to exercise their rights and to perform their obligations under this Agreement as they relate to such information. Unless prohibited by Applicable Law, Contractor will immediately notify



Circular Materials of any demand, or request by a third party (including any government or regulatory authority) for the disclosure of any information of Circular Materials that is subject to Privacy Laws, and, to the maximum extent permitted by law, will oppose, seek judicial relief of and appeal any such demand or request. Contractor will immediately notify Circular Materials if Contractor becomes aware that Contractor has failed to comply with Privacy Laws in connection with the performance of this Agreement.

## SECTION 10. PROPRIETARY RIGHTS

10.1. Ownership. Except as otherwise specifically provided in any Statement of Work, or as otherwise agreed to by the parties in writing, the Work Product, together with any Intellectual Property Rights therein will be owned by Circular Materials; accordingly, Contractor will assign and hereby assigns to Circular Materials all rights, title, and interest it may have from time to time in the Work Products effective upon creation. During the Term, Contractor will have a non-exclusive, non-transferable license to use the Work Products for the sole purpose of providing and completing the Services. Contractor will obtain from all individuals involved in the development of the Work Product an express and irrevocable waiver in favour of Circular Materials, its successors and assigns of any and all moral rights arising under the *Copyright Act* (Canada) as amended (or any successor legislation of similar force and effect) or under similar legislation in other jurisdictions or at common law that Contractor or such individuals, as authors, have with respect to the Work Products.

## SECTION 11. INDEMNITY

11.1. Indemnity. Contractor will indemnify and save harmless Circular Materials, its Affiliates, and their respective directors, officers, contractors, employees, volunteers, and agents from and against any and all manner of actions or causes of actions, damages, costs, losses or expenses of whatever kind (including related legal fees on a solicitor and client basis) which may be sustained or incurred by reason of or directly or indirectly arising out of any act or omission of Contractor or any person for whom the Contractor is, at law or under this Agreement, responsible, in relation to the Services or this Agreement, including without limitation arising out of any (i) breach of this Agreement; (ii) damages to persons or property, personal injury or death; (iii) breach of Applicable Law; (iv) spill, leak, contamination, or other environmental damage; or (v) infringement, violation or misappropriation of any third party's right, including any Intellectual Property Right.

11.2. Available Remedies. If Contractor sustains damage in the course of performing the Services that is caused by another contractor of Circular Materials with whom Contractor is obligated under this Agreement to interact with directly (an "**Other Service Provider**"), Circular Materials will, upon Contractor's reasonable and good faith request, use commercially reasonable efforts to exercise, for Contractor's benefit, such contractual remedies of indemnification or receipt of service level failure credits as Circular Materials may have with the Other Service Provider that apply to the damage sustained by Contractor and the event which caused the damage; provided that Contractor: (i) has first used reasonable efforts to address the damage directly with the Other Service Provider, including exercising direct remedies Contractor may have under Applicable Law, contract or otherwise; and (ii) will have a duty to mitigate its damages.

## SECTION 12. INSURANCE

12.1. Insurance. During the Term and for any additional period following the end of the Term set out in Schedule 12.1, Contractor will have and maintain in force in Canada, and will cause it subcontractors to have and maintain in force in Canada, at a minimum, the insurance coverages set out in Schedule 12.1, and Contractor will (and will cause its subcontractors to) otherwise comply with the provisions of Schedule 12.1. Failure to secure such insurance coverage, or the failure to comply fully with any of Schedule 12.1 will be deemed to be a material breach of this Agreement. None of the requirements contained herein as to types, limits, and approval of insurance coverage

to be maintained by Contractor are intended to and will not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

## SECTION 13. TERMINATION

13.1. Termination for Convenience. Either party may, at any time and without cause, terminate this Agreement or any Statements of Work for convenience upon giving the other party one year (365 days) for Collection Contractors and two years (730 days) for Post-Collection Contractors prior written notice (or such shorter amount of notice if agreed in writing by the other party). Upon receipt of a notice of termination by either party, Contractor will commence the orderly wind down of the Services contracted hereunder, prepare its statement of account based on the effective date specified in the notice, and immediately return all Work Product to Circular Materials, whether completed or not. In addition, Post-Collection Contractors will assign ownership of all production data associated with Sorting Efficiency Rates and will turn all data over to Circular Materials immediately upon ending this Agreement or the Statement of Work.

13.2. Termination by Circular Materials for Cause. Circular Materials may elect to terminate this Agreement or any Statements of Work by providing written notice of such termination, effective immediately or at such other time set out in the notice of termination, to Contractor where:

- (a) Contractor becomes subject to proceedings in bankruptcy or insolvency, voluntarily or involuntarily, if a receiver is appointed with or without Contractor's consent, if Contractor assigns its property to its creditors or performs any other act of bankruptcy or if Contractor becomes insolvent and cannot pay its debts when they are due;
- (b) Contractor commits a material breach of this Agreement and does not cure such breach within thirty (30) days of receipt of notice thereof from Circular Materials;
- (c) Contractor fails to provide all or a material portion of the Services for a consecutive period of more than seven (7) days;
- (d) Contractor's performance creates a hazard to public health or safety or to the environment;
- (e) Contractor is assessed Service Level Failure Credits in excess of \$10,000 during any rolling six-month period;
- (f) Contractor fails to meet pre-determined Sorting Efficiency Rates on an accumulated average, for two (2) consecutive quarters; or
- (g) any other termination right described in this Agreement or a Statement of Work is triggered.

13.3. Termination by Contractor for Cause. Contractor may elect to terminate this Agreement by providing written notice of such termination, effective immediately, to Circular Materials in the event that Circular Materials fails to pay undisputed Fees, as they become due, in an amount that exceeds the aggregate Fees invoiced by Contractor under the three (3) most recent prior monthly consolidated invoices issued by Contractor, and Circular Materials does not cure such non-payment within sixty (60) days of receipt of notice thereof from Contractor.

13.4. Change in Applicable Law. Circular Materials may elect to terminate this Agreement or any Statements of Work by providing written notice of such termination, effective immediately or at such other time set out in the notice of termination, to Contractor in the event that there is a material change in Applicable Law applicable to Circular Materials or the Services, including if there is a material change to an approved plan under the *Designated Materials Regulation* under the *Clean Environment Act* (New Brunswick) or if any new plan (whether submitted by Circular Materials or any other person) is approved thereunder.

13.5. Disruption of Service. The parties expressly agree that the failure or inability of Contractor to perform its obligations under this Agreement will constitute a breach hereunder, and that any costs and expenses reasonably incurred by Circular Materials for any replacement services resulting from such failure or inability will be considered direct damages hereunder.

13.6. Termination Assistance. Upon termination or expiration of this Agreement, Contractor will continue to provide Services hereunder, and will make reasonable efforts to cooperate and assist, according to mutually agreeable terms and conditions, to ensure that there is an orderly transfer of the Services required by Circular Materials pursuant to this Agreement.

13.7. Survival. The following sections will survive the expiration or termination of this Agreement, regardless of the reasons for its expiration or termination, in addition to any other provision which by law or by its nature should survive: SECTION 9 (Confidentiality), SECTION 11 (Indemnity), SECTION 12 (Insurance), SECTION 14 (Dispute Resolution) and SECTION 15 (General Provisions) in their entirety, and Sections 7.1, 7.3, 10.1, 13.6, and 13.7. The expiry or termination of this Agreement will not affect the rights of any party to make a claim for damages arising from a breach of any provision of this Agreement which occurred prior to such expiry or termination.

## **SECTION 14. DISPUTE RESOLUTION**

14.1. Disputes. Any dispute that touches upon the validity, construction, meaning, performance or effect of this Agreement or the rights or liabilities of the parties or any matter arising out of, or in connection with this Agreement (a “**Dispute**”), between Circular Materials and Contractor will be addressed as follows:

- (a) The parties will first attempt to resolve the Dispute through representatives from each of Circular Materials and Contractor who work most closely with each other on related matters, within fifteen (15) days after written notice of the Dispute was first given, or as otherwise agreed upon.
- (b) If the Dispute is not resolved in accordance with paragraph (a) of this section within the period set out above, either party may escalate the Dispute to the senior Circular Materials and Contractor representatives, who will meet and work together in good faith to attempt to resolve the Dispute within a further fifteen (15) days, or as otherwise agreed upon.
- (c) If the Dispute is not resolved in accordance with paragraphs (a) and (b) of this section within the periods set out above, then either party may escalate the Dispute to non-binding third party mediation. The mediation will take place at a time and place mutually agreed to by the parties and will be led by a third-party facilitator jointly selected by the parties (who, unless otherwise mutually agreed by the parties, will be an individual accredited to provide such services). If the Dispute remains unresolved within forty-five (45) days from the point at which a party escalated the Dispute to non-binding third party mediation, either party may escalate the Dispute by delivering a written notice to the other party referring the matter to binding arbitration.
- (d) If the parties are unable to resolve the Dispute in accordance with paragraphs (a), (b) and (c) of this section within the periods set out above, unless otherwise mutually agreed by the parties in writing, the Dispute will be conclusively settled by means of private and confidential binding arbitration, to the exclusion of courts of law. The arbitration will take place before a single arbitrator in New Brunswick in the English language and will otherwise be undertaken under the auspices and rules of the ADR Atlantic Institute. The decision of the arbitrator will be final and binding on the parties and will not be subject to appeal on any grounds whatsoever and will be enforceable against Circular Materials and Contractor as the case may be. The parties will mutually agree on an arbitrator, where the parties are unable to mutually agree on an arbitrator, the arbitrator will be determined pursuant to the rules of the ADR Atlantic Institute.

- (e) Notwithstanding anything to the contrary in this Section 14.1, either party may start litigation proceedings in a court of law at any time for an application for a temporary restraining order or other form of injunctive relief and each party hereby attorns to the non-exclusive jurisdiction of the courts of the province of New Brunswick for such purpose.

## SECTION 15. GENERAL PROVISIONS

15.1. Relationship of the Parties. It is acknowledged by the parties hereto that the Contractor is being retained by Circular Materials in the capacity of independent contractor and not as an employee of Circular Materials. The Contractor and Circular Materials acknowledge and agree that this Agreement does not create a partnership, joint venture, agency, or other special relationship between them. Except as may be specified in writing, neither party will have the power to obligate or bind the other party. Personnel supplied by Contractor will work exclusively for Contractor and will not for any purpose be considered employees or agents of Circular Materials.

15.2. Assignment. This Agreement may not be assigned by either party in whole or in part, without the other party's prior written consent, except that Circular Materials may assign this Agreement without Contractor's consent to a person with an approved plan under the *Designated Materials Regulation* under the *Clean Environment Act* (New Brunswick), or who otherwise has obligations similar to those of Circular Materials or one or more Producers under any successor regulation or legislation, or to a person as part of a corporate reorganization of Circular Materials. Any attempt by a party to assign all or any part of this Agreement without prior written consent (where such consent is required) is void. Any assignment occurring by operation of law such as on a bankruptcy or amalgamation will be deemed to be an assignment and will be subject to this Section 15.2.

15.3. Force Majeure. Neither party to this Agreement or any Statement of Work will be liable to the other party for any failure or delay in fulfilling an obligation hereunder, if said failure or delay is attributable to a fire, act of God, natural disaster, war, riot, civil disturbance, earthquake, flood, or court or governmental order beyond such party's reasonable control ("**Force Majeure**"). The parties agree that the deadline for fulfilling the obligation in question will be extended for a period equal to that of the continuance of the Force Majeure. The party to which the Force Majeure applies will use all commercially reasonable efforts to minimize the effect of the Force Majeure on its performance under this Agreement or any Statement of Work.

15.4. Governing Law. This Agreement and any Statement of Work will be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein without regard to conflicts of law that would apply a different body of law. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of New Brunswick for any legal proceedings arising out of this Agreement, any Statement of Work, or the performance of the obligations hereunder.

15.5. Notices. All notices, requests, demands or other communications (collectively "**Notices**") given by one party to the other party, will be in writing, in the English and French languages, and will be deemed duly given (i) when delivered by hand; (ii) when sent by facsimile (with receipt confirmed), (iii) except for a notice of termination permitted under this Agreement, by e-mail (with receipt confirmed), (iv) on the designated day of delivery after being given to an express overnight courier with a reliable system for tracking delivery, or (v) six (6) days after the day of mailing, when mailed by Canada Post, registered or certified mail, return receipt requested and postage prepaid, and addressed as follows:

To Contractor:

●

E-mail: ●

Attention: ●

To Circular Materials:

Circular Materials  
700-1 St. Clair Avenue West  
Toronto, Ontario M4V 1K6

E-mail: [NBoperations@circularamaterials.ca](mailto:NBoperations@circularamaterials.ca)

Attention: Director, Contracts Management

or to such other address as may be designated by notice given by either party to the other.

15.6. Further Assurances. The parties will do, execute, or deliver all such further acts, documents and things as the other party may reasonably require from time to time for the purpose of giving effect to this Agreement and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

15.7. No Publicity. Contractor will not use the name or trademarks of Circular Materials nor make any statement or issue any advertisement, publicity release, press releases to the public or the media with respect to this Agreement or Circular Materials, unless it has obtained Circular Materials' prior written approval, including that Contractor will not disclose or otherwise publicly report on any Service performance metrics (including volumes of material collected or processed).

15.8. Timing. Time will be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement will operate as a waiver of this provision.

15.9. Severability. If any provision, or portion thereof, of this Agreement or any Statement of Work is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination will not impair or affect the validity, legality or enforceability of the remaining provisions of this Agreement or any Statement of Work, and each provision, or portion thereof, is hereby declared to be separate, severable and distinct.

15.10. Waiver. A waiver of any provision of this Agreement or any Statement of Work will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement or any Statement of Work, or to exercise any term hereof, will not act as a waiver of any right, promise or term, which will continue in full force and effect.

15.11. Remedies Cumulative. No single or partial exercise of any right or remedy under this Agreement or any Statement of Work will preclude any other or further exercise of any other right or remedy in this Agreement or any Statement of Work or as provided at law or in equity. Rights and remedies provided in this Agreement, or any Statement of Work are cumulative and not exclusive of any right or remedy provided at law or in equity.

15.12. Amendment. This Agreement or any Statement of Work may only be amended by written agreement duly executed by authorized representatives of the parties.

15.13. Entire Agreement. This Agreement and any Statement of Work will constitute the entire agreement between the parties with respect to the subject matter hereof and will replace all prior promises or understandings, oral or written. There is no representation, warranty, collateral term or condition or collateral agreement affecting this Agreement, other than as expressed in writing in

this Agreement. Any purchase order or other instrument of Contractor accompanying either a Statement of Work, a Contractor payment or otherwise is for Contractor's internal use only and its terms will not alter or amend the terms of this Agreement.

15.14. Counterparts. This Agreement and any Statement of Work may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to this Agreement or any Statement of Work by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement or the Statement of Work by such party.

(Signature page follows.)

IN WITNESS WHEREOF the parties have executed this Agreement effective as of the Effective Date.

**CIRCULAR MATERIALS**

Per: \_\_\_\_\_  
(I have authority to bind Circular Materials)

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

**[CONTRACTOR]**

Per: \_\_\_\_\_  
(I have authority to bind Contractor)

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

Per: \_\_\_\_\_  
(I have authority to bind Contractor)

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

Note: Second signatory to be completed by Contractor only if Contractor requires two signatories (and by leaving the second signatory blank and returning the Agreement to Circular Materials, Contractor and the first signatory represent that no additional signatories are required).

## SCHEDULE 4.2 CIRCULAR MATERIALS POLICIES AND STANDARDS

As of the Effective Date, the following are Circular Materials Policies and Standards:

1. Circular Materials' Weight and Measurement Standards, a copy of which is set out below:

Circular Materials requires that PP collected, transported and processed be weighed, and that accurate weights be reported to Circular Materials.

“**Weight**” is defined by Circular Materials as the following:

“**Gross Weight**” means the weight of the truck or container plus its contents, measured in kilograms unless otherwise noted.

“**Tare Weight**” means the weight of the empty truck or container and any equipment without its contents, measured in kilograms unless otherwise noted.

“**Net Weight**” is the weight of the contents of the container or truck, calculated as Gross Weight minus Tare Weight, measured in kilograms unless otherwise noted.

The above weights will always exclude the weight of the vehicle and any contents other than the PP collected.

The following equation must always be true.

$$\text{Net Weight} = \text{Gross Weight} - \text{Tare Weight}$$

Measurement Canada has produced a comprehensive guide on taking and recording weights, available at <http://www.ic.gc.ca/eic/site/mc-mc.nsf/eng/lm00205.html>.

### Collector Responsibilities

All loads must be documented in a manner specified by Circular Materials, as amended by Circular Materials from time to time, including a certified weigh scale ticket. The certified scale ticket may be provided by the Designated Post-Collection Service Provider to the Collector if the weighing is performed by the Designated Post-Collection Service Provider. If the Collector is performing the actual weighing, the Designated Post-Collection Service Provider responsibilities noted below must be followed by the Collector.

Collectors are to maintain the following Net Weight records as provided on weigh scale tickets and provide upon request to Circular Materials information that includes, but is not limited to (as aligned with Post-Collection Contractor responsibilities):

- Curbside Collection: origin, destination site, Valtype (Single-family Households), Weight by collection date and time, delivery date and time, Collector ID, truck number, material (i.e., Single Stream, Fibre Materials, or Container Materials);
- Multi-Family Building Collection: origin, destination site, Valtype (Multi-family Dwellings), Weight by collection date and time, delivery date and time, Collector ID, truck number, material (i.e., Single Stream, Fibre Materials, or Container Materials);
- Facilities: origin, destination site, Valtype (Facilities), Weight by collection date and time, delivery date and time, Collector ID, truck number, material (i.e., Single Stream, Fibre Materials, or Container Materials);
- Depot Collection: origin, destination site, Valtype (depots), Weight by collection date and time, delivery date and time, Collector ID, truck number, material (i.e., Glass, Flexible Plastic Packaging, Expanded/Extruded Polystyrene);

### Post-Collection Contractor Responsibilities



The Designated Post-Collection Service Provider must have the necessary equipment to accurately weigh all PP received regardless of material category and container type, including the ability to subtract the container weight (Tare Weight deduction) from the Gross Weight to report Net Weight to Circular Materials.

All loads must be documented in a manner specified by Circular Materials, as amended by Circular Materials from time to time, including a certified weigh scale ticket provided by the Designated Post-Collection Service Provider. Every weigh scale ticket shall include the following information for each Collection Vehicle delivering Recyclable Material to a Designated Post-Collection Facility and information shall be compliant with the terms and standards provided by Circular Materials. Information may include, but not be limited to:

- a) Service date;
- b) Report date;
- c) Originating site for community or depot name and postal code;
- d) Type of Recyclable Material onboard (i.e., for Single Stream, mixed containers, Fibre Materials, Glass, Flexible Plastic Packaging, Expanded/Extruded Polystyrene);
- e) Collection channel or service type (“**Valtype**”) (i.e., Single-family Households, Multi-family Dwellings and Facilities etc.);
- f) Collection Contractor ID number;
- g) Collection Vehicle number;
- h) Scale ticket number;
- i) Gross Weight (kilograms);
- j) Tare Weight (kilograms); and
- k) Net Weight (kilograms; kilograms by compartment where two or more materials onboard)

Where multiple materials are picked up from one or more depots on a single vehicle, e.g., through supersacs, upon arrival at the [●]<sup>1</sup> (the “**Receiving Facility**” or “**RF**”), information must be recorded by each depot location and net weight by material type (i.e., Clear Glass, Coloured Glass, Expanded/Extruded Polystyrene, Flexible Plastic Packaging), and such other information as Circular Materials may designate (collectively, “**Claim Information**”). Standard Tare Weights for specific trucks may only be used on specific written permission of Circular Materials.

At least once each week, the Designated Post-Collection Service Provider will report the Claim Information through Circular Materials’ claims reporting portal, or through such other method as Circular Materials may designate.

**A note on material enroute:**

A Post-Collection Contractor transporter may deliver PP to a consolidation or transfer point (Receiving Facility (RF)) prior to delivering it to the processing site. In such cases Net Weights must be measured and recorded for reporting purposes at the consolidation or transfer point by the Designated Post-Collection Service Provider to Circular Materials.

Designated Post-Collection Service Providers may repack PP at an RF prior to transporting it to the processing site. If contamination is found and discarded during the repacking process, then the Designated Post-Collection Service Provider must report the quantity of contamination (Net Weight) and the management method to Circular Materials in the final diversion report.

The Designated Post-Collection Service Provider must provide diversion reports to Circular Materials. All recycling and disposal activities must be detailed on the diversion reports, and Net Weights of material directed to recycling, recovery and disposal must be provided. The total Net Weight of PP recycled, recovered, and disposed recorded on diversion reports should match the total Net Weight of PP received.

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<sup>1</sup> **Note:** To be determined and will be specific for each contract depending on location in the province.

These totals will be reviewed by Circular Materials on a regular basis as part of its chain of custody audits.

2. **“Paper and Packaging”** or **“PP”** means the materials set out in Circular Materials’ Paper and Packaging Description, a copy of which is set out in the table below:

### Categories of Paper

Category Name	Definitions
Newspapers	<b>Definition:</b> Newspaper publications with or without a glossy cover and published for quick consumption.
Newsprint (inserts and circulars)	<b>Definition:</b> Newsprint inserts, flyers and circulars. <b>Examples:</b> Includes park guides, auto publications, real estate supplements and product manuals printed on newsprint.
Magazines and Catalogues	<b>Magazines: Definition:</b> Bound periodicals, whether the paper is coated, glossy/ non-glossy, which sometimes includes mastheads. <b>Examples:</b> Includes daily/weekly/monthly or annual magazines and travel or promotional magazines. <b>Catalogues: Definition:</b> Bound paper, whether the paper is coated, glossy/non-glossy. <b>Examples:</b> Retailer product catalogues, bound promotional documents containing product lists, coupon books, automotive and real estate guides/catalogues (if not printed on newsprint).
Directories	<b>Definition:</b> Printed bound directories, whether printed on newsprint, glossy/non-glossy paper of residential and/or business contact information such as telephone numbers, postal codes and websites. <b>Examples:</b> Phone books and business directories.
Paper for General Use	<b>Definition:</b> Paper that is used for copying, writing or any other general use. <b>Examples:</b> Paper based home, craft, hobby and home office supplies including items such as loose-leaf paper purchased for use in home printers, blank graph or ruled notebooks and notepads, sketchpads, construction and hobby craft paper. Excludes bound reference books, bound literary books, bound textbooks and paper which may be unsafe or unsanitary to recycle such as paper towel or toilet paper.
Purchased Posters, Calendars, Greeting Cards and Envelopes	<b>Definition:</b> Paper product supplied to consumers. <b>Examples:</b> Posters, calendars, greeting cards, blank envelopes purchased individually or in bulk.
Other Printed Materials	<b>Definition:</b> All other paper products/materials that are not included in the paper product categories above. <b>Examples:</b> Blank and printed envelopes distributed to the residential consumer; promotional cards sent to the residential consumer; free promotional calendars and posters; promotional inserts within or outside envelopes; printed information found within packaged products (such as assembly instructions, user guides, promotional information, warranty cards, product safety information, coupons); annual policy information including policy documents and statements; monthly, quarterly or annual statements; investment fund reports, fund prospectus, contracts, lottery tickets, scratch cards and fund raising tickets; cash register receipts, debit and credit receipts, proof of purchases and other printed material provided at point of sale such as promotional post cards; statements and information inserts from banks, credit card companies and utility companies; information and forms distributed by municipal, regional, provincial and federal governments; transportation and transit schedules, HR-related documents distributed to employees such as T4s.

### Categories of Packaging

Category Name	Definitions
Containers	<b>Definition:</b> Includes Gable Top polycoated cartons used for non-beverage products, and any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program. <b>Examples:</b> Dairy products, dairy substitutes, fortified beverages (source of protein) meal replacements, molasses, sugar, confectionery products, laundry and cleaning products.
Aseptic Containers	<b>Definition:</b> Includes aseptic polycoated and foilized boxes and containers used for non-beverage products, and any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program. <b>Examples:</b> Dairy products, dairy substitutes, fortified beverages (source of protein) meal replacements, soups, sauces and other non-beverages.

Category Name	Definitions
Single-sided Polycoated Paperboard	<b>Definition:</b> Includes packaging made from paperboard that has a polyethylene (or other plastic) coating on the inner side of the packaging only. <b>Examples:</b> Paper cups and bowls provided at quick service restaurants to serve foods and beverages. Paper takeout boxes with a polycoat lining on the inside of the packaging would be reported to this category.
Double-sided Polycoated Paperboard	<b>Definition:</b> Includes packaging made from paperboard that has a polyethylene (or other plastic) coating on both the outer and inner side of the packaging. <b>Examples:</b> Tubs and folding boxes used to package ice cream, cold drink paper cups provided at quick service restaurants to serve beverages. Paper takeout boxes with a polycoat lining on both the inside and the outside of the packaging would be reported to this category.
Paper Laminates	<b>Definition:</b> Includes laminated paper packaging where paper is the main component, along with either metalized foil/wax/plastic. The paper component represents the greatest percentage by weight. <b>Examples:</b> Fibre spiral wound containers (with plastic, aluminum, steel bottom and lid) for: frozen juice, chips, cookie dough, coffee, nuts, microwavable paper containers, wrappers, paper wrap packaging provided with food, such as sandwiches, burgers, or muffins, paper/plastic based wrapping paper and gift bags supplied as packaging at point of sale, pet food bags, laminated Kraft paper bags (filled at point of sale) and laminated Kraft paper packaging. Include any paper laminate packaging-like products supplied to consumers in this category.
Kraft Paper Carry-Out Bags	<b>Definition:</b> Non-laminated Kraft paper bags filled at point of sale or supplied to consumers as packaging-like products. <b>Examples:</b> Non-laminated grocery bags, prescription bags, non-laminated paper take-out bags used for mushrooms or food delivery.
Kraft Paper - Non-Laminated	<b>Definition:</b> Non-laminated Kraft paper packaging. <b>Examples:</b> Kraft paper packaging used for products such as flour, sugar, potatoes or oatmeal. Includes non-laminated Kraft paper used for mailing packages.
Corrugated Cardboard	<b>Definition:</b> Multi-layered paper board and fibre which may have one or more layers of corrugation. <b>Examples:</b> Electronic product boxes such as television and computer boxes, pizza boxes, boxes used for transport of e-commerce items to residential consumers. Includes corrugated moving boxes and banker boxes supplied to consumers as packaging-like products.
Boxboard and Other Paper Packaging	<b>Definition:</b> Single layered paperboard and fibre board with no corrugation and all types of molded pulp packaging. Includes paper packaging not included in any other paper subcategories. Fibre-board containers made from other non-wood sources (e.g., bamboo, bagasse, eucalyptus). <b>Examples:</b> Paper board such as cereal, tissue and shoe boxes, molded pulp paper packaging such as egg cartons, fibre pots and formed coffee take-out trays, stiff paperboard used to mount plastic blister packs (e.g., for toys and batteries), the roll inside of toilet paper, paper towel, tin foil and plastic wrap, tissue paper used as paper packaging for stuffing packaging, paper-based wrapping paper and gift bags supplied as packaging at point of sale or as packaging-like products, newsprint used as packaging material in shoe boxes and shipping boxes used for transport of e-commerce items to residential customers, clothing hang tags.
Clear PET Bottles, Jars and Jugs < 5 Litres	<b>Definition:</b> Transparent, light blue or light green #1 PET (Polyethylene Terephthalate) bottles, jars and jugs with a volume of less than 5 litres of a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program, displaying the #1 resin code. <b>Examples:</b> Salad dressing bottles, peanut butter containers, edible oil bottles, dish soap or mouthwash bottles.
Clear PET Bottles, Jars and Jugs >= 5 Litres	<b>Definition:</b> Transparent, light blue or light green #1 PET (Polyethylene Terephthalate) bottles, jars and jugs with a volume of 5 litres or more of a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program, displaying the #1 resin code. <b>Examples:</b> Salad dressing bottles, edible oil bottles.
Coloured PET Bottles, Jars and Jugs < 5 Litres	<b>Definition:</b> Coloured #1 PET (Polyethylene Terephthalate) bottles, jars and jugs with a volume of less than 5 litres of a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program, displaying the #1 resin code. <b>Examples:</b> Salad dressing bottles, peanut butter containers, edible oil bottles, dish soap or mouthwash bottles.
Coloured PET Bottles, Jars and Jugs >= 5 Litres	<b>Definition:</b> Coloured #1 PET (Polyethylene Terephthalate) bottles, jars and jugs with a volume of 5 litres or more of a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program, displaying the #1 resin code. <b>Examples:</b> Salad dressing bottles, edible oil bottles.
Clear PET Thermoform Containers	<b>Definition:</b> PET thermoform clear, light green and light blue containers such as clamshells used for non-beverage products. <b>Examples:</b> Muffin or cake containers, salad containers, egg containers, trays.
Coloured PET Thermoform Containers	<b>Definition:</b> Coloured PET thermoform containers such as clamshells used for non-beverage products.

Category Name	Definitions
	<b>Examples:</b> Muffin or cake containers, salad containers, egg containers, trays.
Natural HDPE Bottles, Jars and Jugs < 5 Litres	<b>Definition:</b> Natural or translucent #2 HDPE (High Density Polyethylene) bottles, jars and jugs, with a volume less than 5 litres displaying the #2 resin code containing a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program. <b>Examples:</b> Laundry detergent, shampoo, bleach, vinegar, corn syrup, body wash, household cleaning products, etc.
Natural HDPE Bottles, Jars and Jugs >= 5 Litres	<b>Definition:</b> Natural or translucent #2 HDPE (High Density Polyethylene) bottles, jars and jugs with a volume of 5 litres or more, displaying the #2 resin code containing a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program. <b>Examples:</b> Laundry detergent, bleach, cleaning supplies supplied in containers that are 5 litres or more.
Coloured HDPE Bottles, Jars and Jugs < 5 Litres	<b>Definition:</b> Coloured #2 HDPE (High Density Polyethylene) bottles, jars and jugs, with a volume less than 5 litres displaying the #2 resin code containing a non-beverage product, any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program and products other than oil or glycol included in the New Brunswick Oil and Glycol Product Stewardship Plan. <b>Examples:</b> Laundry detergent, shampoo, bleach, vinegar, corn syrup, body wash, household cleaning products, etc.
Coloured HDPE Bottles, Jars and Jugs >= 5 Litres	<b>Definition:</b> Coloured #2 HDPE (High Density Polyethylene) bottles, jars and jugs with a volume of 5 litres or more, displaying the #2 resin code containing a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program. <b>Examples:</b> Laundry detergent, bleach, cleaning supplies.
Other Polyethylene (PE) Packaging < 5 Litres	<b>Definition:</b> Includes all other polyethylene rigid (non-foamed) packaging not reported above with a volume less than 5 litres displaying the #2 or #4 resin code containing a non-beverage product. Does not include laminated PE packaging tubes with non-PE barrier layers. <b>Examples:</b> #2 HDPE Pails and buckets (that are not bottles, jars or jugs) and lids used to package oils or other prepared foods and consumer goods. Includes #4 LDPE bottles.
Other Polyethylene (PE) Packaging >= 5 Litres	<b>Definition:</b> Includes all other polyethylene rigid (non-foamed) packaging not reported above with a volume of 5 litres or more displaying the #2 or #4 resin code containing a non-beverage product. Does not include laminated PE packaging tubes with non-PE barrier layers. <b>Examples:</b> #2 HDPE Pails and buckets (that are not bottles, jars or jugs) used to package oils or other prepared foods and consumer goods. Includes #4 LDPE bottles.
Polypropylene (PP) Packaging < 5 Litres	<b>Definition:</b> Includes all PP #5 rigid packaging and containers with a volume of < 5 litres displaying the #5 resin code containing a non-beverage product, any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program and products other than paint included in the New Brunswick Paint Stewardship Plan. <b>Examples:</b> Cosmetic products, such as creams and lotions, prescription pills, as well as microwaveable foods are commonly packaged in PP containers.
Polypropylene (PP) Packaging >= 5 Litres	<b>Definition:</b> Includes all PP #5 rigid packaging with a volume of 5 litres or more displaying the #5 resin code containing a non-beverage product, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program. <b>Examples:</b> Cosmetic products, such as creams and lotions, prescription pills, as well as microwaveable foods are commonly packaged in PP containers.
Expanded/Extruded Polystyrene	<b>Definition:</b> All forms of expanded/extruded foam packaging used in food and protective packaging applications and may display resin code #6. <b>Examples:</b> Meat trays, beverage cups used as packaging, cushion packaging for consumer products and PS foam packing peanuts. Includes beverage cups, plates and other packaging-like-products made of expanded polystyrene supplied to consumers
Rigid Polystyrene (PS)	<b>Definition:</b> All other non-expanded polystyrene packaging that is not included in the Expanded/Extruded Polystyrene category above. May display resin code #6. <b>Examples:</b> Polystyrene clear clamshell containers such as berry and muffin containers, opaque clamshell containers such as food take-out containers, yogurt containers, clear rigid trays, and packaging-like products such as beverage cups and plates, plastic hangers provided as packaging with an item of clothing.
PLA, PHA, PHB	<b>Definition:</b> Plastic containers consisting of bioplastics made of either PLA (polylactic acid), PHA (polyhydroxyalkanoates) and PHB (poly-3-hydroxybutyrate) polymers for non-beverage products, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program. <b>Examples:</b> PLA clamshell containers, PLA egg containers, peanut packaging.
All Other Rigid Plastic Packaging (not listed above) < 5 Litres	<b>Definition:</b> All forms of rigid or foamed plastic packaging and containers with a volume less than 5 litres, for non-beverage products, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program that are not included in any of the other plastic subcategories, including all #3 PVC packaging and Polyurethane (PU) foam packaging. Also includes non-coded plastics. <b>Examples:</b> Hand cream tubes, polyethylene foam sheets, inserts and molds for packing appliances, some plastic blister packaging used to display toys, batteries or other products, and plastic hangers provided as packaging with an item of clothing.

Category Name	Definitions
All Other Rigid Plastic Packaging (not listed above) >= 5 Litres	<p><b>Definition:</b> All forms of rigid or foamed plastic packaging and containers with a volume of 5 litres or more, for non-beverage products, or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program that are not included in any of the other plastic subcategories, including all #3 PVC packaging and Polyurethane (PU) foam packaging. Also includes non-coded plastics.</p> <p><b>Examples:</b> Hand cream tubes, polyethylene foam sheets, inserts and molds for packing appliances, some plastic blister packaging used to display toys, batteries or other products, and plastic hangers provided as packaging with an item of clothing.</p>
LDPE/HDPE Film	<p><b>Definition:</b> Includes plastic film made from LDPE, LLDPE, HDPE (Low Density, Linear Low-Density, High-Density Polyethylene) or combinations thereof. May display resin code #4 or #2. PE films reported under this category must not contain any barrier layers or other non-PE resins.</p> <p><b>Examples:</b> May include certain fresh and frozen vegetable bags, diaper packaging, bread bags, shrink wrap around products (e.g., around a tray of 24 water bottles), dry cleaner bags, soil and fertilizer bags, produce and bulk store bags provided to the residential consumer as service packaging, film used around newspapers, magazines and catalogues for protection. Includes LDPE/HDPE Film supplied to consumers as packaging-like products</p>
LDPE/HDPE Film Carry-Out Bags	<p><b>Definition:</b> Includes #4 LDPE or #2 HDPE (Low Density/High Density Polyethylene) film carry-out bags provided at point of sale or supplied as packaging-like products. May display resin code #4 or #2.</p> <p><b>Examples:</b> Plastic shopping bags with or without images or text.</p>
Polypropylene (PP) Film	<p><b>Definition:</b> Includes plastic film made from PP. May display resin code #5. PP films reported under this category must not contain any barrier layers or other non-PP resins.</p> <p><b>Examples:</b> May include certain fresh and frozen vegetable bags or overwrap, baked goods, and confectionary products.</p>
PLA, PHA, PHB - Plastic Film	<p><b>Definition:</b> Plastic film consisting of bioplastics made of either PLA (polylactic acid), PHA (polyhydroxyalkanoates) and/or PHB (poly-3 hydroxybutyrate) polymers.</p> <p><b>Examples:</b> PLA, PHA, PHB shrink wrap around products, PLA, PHA, PHB bags for vegetables and salad, PLA, PHA, PHB film used around newspapers and magazines and catalogues for protection.</p>
PLA, PHA, PHB Carry-Out bags	<p><b>Definition:</b> Plastic carry-out bags consisting of bioplastics made of either PLA (polylactic acid), PHA (polyhydroxyalkanoates) and/or PHB (poly-3-hydroxybutyrate) polymers.</p> <p><b>Examples:</b> Carry-out bags.</p>
Plastic Laminates and Other Flexible Plastic Packaging	<p><b>Definition:</b> All laminated film and laminated flexible plastic packaging comprised of multiple plastic resin types and/ or combinations of plastic resins and metalized foils, wax, and/or paper. This material category also includes mono material such as those made of PET, PVC, EVA and other films that do not meet the definition of LDPE/HDPE Film or PLA, PHA, PHB – Plastic film.</p> <p><b>Examples:</b> May include candy wrappers, coffee pouches, chip bags, cheese wraps, cereal liner bags, shrink wrap, prepackaged deli meat pouches, yogurt stick packs, vacuum packaging, bubble wrap, stand up pouches, woven or non-woven plastic bags intended for more than one use when provided as packaging, net bags used for citrus fruits, nuts or cosmetic samples, plastic or plastic/foil based wrapping paper and gift bags supplied as packaging or packaging-like products at point of sale.</p>
Steel Aerosol Containers	<p><b>Definition:</b> All aerosol containers that are more than 50% steel by weight containing products other than oil or glycol included in the New Brunswick Oil and Glycol Product Stewardship Plan and paints included in the New Brunswick Paint Stewardship Plan.</p> <p><b>Examples:</b> Air freshener, deodorant and hairspray containers, food spray cans, wax and polish spray cans, insulating foam spray cans.</p>
Other Steel Containers and Packaging	<p><b>Definition:</b> All other containers or packaging that are more than 50% steel by weight or other metal and are not included in another steel and other metal packaging subcategory. Includes any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program.</p> <p><b>Examples:</b> Steel food containers such as soup, lids and closures on packaging (closures for both beverage and non-beverage products), wire hangers when provided as packaging with an item of clothing, cookie tins, tea tins.</p>
Aluminum Aerosol Containers	<p><b>Definition:</b> Includes aluminum aerosol containers that are at least 95% aluminum by weight.</p> <p><b>Examples:</b> Air freshener spray cans, hairspray cans, food spray cans, deodorant spray cans, mousse spray cans, etc.</p>
Aluminum Food Containers	<p><b>Definition:</b> Sealed, rigid containers that are at least 95% by weight of aluminum. Includes any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program.</p> <p><b>Examples:</b> Pet food cans, food cans, sardine cans, aluminum shoe polish containers and other similar non-food aluminum containers.</p>
Other Aluminum Packaging	<p><b>Definition:</b> Aluminum packaging and packaging-like products not included in another aluminum packaging subcategory.</p> <p><b>Examples:</b> Foil wrap supplied to the residential consumer as packaging, pie plates, yogurt/sour cream seals, frozen food trays, lids and closures for beverage and non-beverage containers, tea light candle holders.</p>

Category Name	Definitions
Clear Glass	<p><b>Definition:</b> Clear glass containers used for non-beverage products or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program.</p> <p><b>Examples:</b> Clear food containers such as pickles, salsa, tomato sauce and jam jars, ketchup bottles, cosmetic containers for creams and spice bottles.</p>
Coloured Glass	<p><b>Definition:</b> Coloured glass containers used for non-beverage products or any beverage product not bearing a deposit under the New Brunswick Beverage Containers Program.</p> <p><b>Examples:</b> Olive oil bottles, balsamic vinegar bottles, cosmetic containers for creams that are coloured glass.</p>

**SCHEDULE 4.4**  
**SERVICE LEVEL METHODOLOGY**

1. Contractor will measure and record all data reasonably required by Circular Materials to determine Contractor's performance of the Services against the applicable Service Levels. Contractor will retain such records in accordance with Section 7.1 of the main terms of the Agreement. Upon request, and upon such frequency as Circular Materials may indicate (which may not be more frequently than monthly), Contractor will deliver to Circular Materials a report, in a form and format approved by Circular Materials, setting out details of Contractor's actual performance of the Services as measured against each Service Level during the applicable reporting period.
  
2. In the event of a Service Level Failure in respect of a Service Level expressly set out in a Statement of Work, Contractor will credit to Circular Materials the applicable service level failure credit set out in such Statement of Work (the "**Service Level Failure Credit**"). Contractor agrees that Service Level Failure Credits compensate Circular Materials in part for the reduced value of the Services provided by Contractor (and not as a penalty or exclusive liquidated damages). Contractor agrees that the Service Level Failure Credits are only partial compensation for the damage that may be suffered by Circular Materials because of Contractor's failure to meet a Service Level and that payment of any Service Level Failure Credit is without prejudice to any entitlement Circular Materials may have to damages or other remedies under this Agreement, at law or in equity. Service Level Failure Credits will be due regardless of the way the Service Level Failure is identified (including where reported by Contractor or identified by Circular Materials).

**SCHEDULE 7.3**  
**PROTOCOL FOR THE DETERMINATION OF CONTAMINATION RATES AND RESULTING ACTIONS**



**Protocol for the Determination of Contamination Rates and Resulting Actions**

This document provides an overview of Circular Materials’ process for auditing, determining contamination rates and contamination reduction plans.

This approach has been tested and proven successful in jurisdictions such as British Columbia where overall contamination rates have seen improvements since the start of the program.

**Audit Sampling and Security Protocol**

Circular Materials will collect audit samples from a municipality or First Nation community (Entity). The audit samples will be determined using the following considerations:

- Size of entity – number of households;
- Single stream vs two stream – split by tonnes collected in the province; and
- Single family households vs multi-family dwellings – based on counts provided by Entities.

A sample schedule will be provided to each Receiving Facility (RF) or Pre-Conditioning Facility (PCF) acting as an RF a minimum of one week prior to the beginning of the month. The schedule will be similar to the following:

Single Family or Multi-Family	Collection Category	Receiving Facility Name	Facility Code	Collector Name	Municipality	Week	Date or Truck of Week	Time
Single Family	Single Stream	Receiving Facility #1	RF1	Fero	Entity 98	07/01 to 07/05	2024-07-02	13:10
Multi-Family	Single Stream	Receiving Facility #1	RF1	Fero	Entity 98	07/01 to 07/05	anytime	
Single Family	Fibre Materials	Receiving Facility #1	RF1	Miller	Entity 80	07/15 to 07/19	2024-07-15	10:51
Single Family	Container Materials	Receiving Facility #1	RF1	Miller	Entity 80	07/15 to 07/19	2024-07-16	15:56
Single Family	Single Stream	Receiving Facility #1	RF1	Southern Sanitation	Entity 93	07/22 to 07/26	2024-07-24	12:26
Multi-Family	Fibre Materials	Receiving Facility #1	RF1	Fero	Entity 98	07/22 to 07/26	2nd	
Multi-Family	Container Materials	Receiving Facility #1	RF1	GFL	Entity 106	07/22 to 07/26	3rd	

Training on how to read and take samples will be provided to RF employees.

**Audit Process**

1. A sample will be immediately taken upon arrival of the single family/multi-family dwelling truck. The identified truck will be directed to a clear opening on the tip floor where the contents will be emptied.
2. A 100kg sample will be taken as per Circular Materials’ requirements.
3. Materials from the truck will first be mixed with a front-end loader/skidsteer. Once mixed, material will be dropped into a specialty audit sample supersac. Any material which falls over the side of the supersac and onto the ground is not to be picked up to avoid selection bias in the samples. A second bucketload can be added if necessary to fill the supersac.
  - a. Generally, one supersac is needed for single stream and fibre samples and two supersacs for container samples that reach the required 100kg.
  - b. At no time are more than two supersacs to be used.
4. Each supersac is zipped closed and sealed with a Circular Materials-provided serialized zip tie. The supersac sample will be clearly marked with a tag identifying the source (route, truck





number, municipality, collection service provider), the material sampled (i.e., fibre material, container material, single stream), date and time of the audit sample and the zip tie number.

5. The individual in charge of the audit sampling will film the audit sampling process and keep the file for a minimum of 45 days after the end of the month, available for viewing by Circular Materials. The file name will be associated with the time and location of the audit sample taking the unique serial identification number zip tie and the tag.
6. The weight of each supersac will be taken and recorded for each sample right on the identification tag.
7. Once the sample is taken and sealed, the sample will be placed in a secure area until it is picked up for transport to the auditing centre.

#### **Audit Sorting Protocol**

1. A full-time audit team will be stationed at the auditing centre to complete audits in real-time. Upon arrival at the auditing centre, the supersacs will be removed from the truck and taken to the secure sample storage area.
2. The samples will be sorted in a large, secure room where sorting tables and sorting bins are clearly marked with each material category.
3. A unique serial identification number zip tie will be removed at the start of the audit of each sample and will be retained for future reference.
4. Each sample will be sorted individually. Scales will be certified for trade with the certificates stored at the site for ease of review by the Circular Materials representative. The tare weights of all bins will be clearly marked right on the bin which will be reset each week.
5. All samples will be completely sorted and all materials weighed with all bins emptied before moving onto the next audit.
6. The information from each audit sample will be immediately entered into a computer and the total weight tallied. This weight will be compared to the audit sample weight to ensure consistency between the total sample weight and the total weight of the categorized materials.

#### **Audit Verification**

To support sufficient coverage and accuracy, Circular Materials will set up at least two cameras at the audit centre to view the auditing process as it occurs. If there is any discrepancy over the results of the audits, this process will ensure the audit process can be reviewed to confirm accuracy.

Having all the audits completed at one location provides a number of key advantages:

- Higher quality audits with consistency in the auditing approach;
- Ability to consistently train and oversee all staff at the same time;
- Support back-ups to oversee audits if an auditor needs to depart from one of the RFs/PCFs or other designated audit sampling locations,
- Provide real time data with the sampling of each audit – no month end rush of data points;
- Less likelihood of a “lost” or “contaminated” sample resulting from having to store samples for a month at a time prior to sorting;
- Ability to oversee each and every audit daily;



- Ability to see first-hand and provide for proper distribution and assignment of new and emerging packaging into the proper categories (and to see new possibly difficult-to-manage packaging types);
- Ability to see all types of non-PPP received to support the development of targeted public education and promotion programs and feedback to collectors;
- Cost effective and efficient – doesn't require sending representatives to oversee audits at various locations every month; and
- Enables efficiencies thereby reducing the risk associated with statistically insufficient data particularly as collector report cards must have accurate data in support of any conclusions.

#### **Extrapolating Results to Entities and Collectors**

The results of the audits are known by collector and by day of the week (i.e., in effect by route). Circular Materials will not use single data points for the purpose of extrapolating contamination rates for any Entity.

Report cards on contamination are based on all audits taken for an Entity/Collector over a period of six months. All audits will be combined on a normalized basis, i.e., the contamination rate is determined not by averaging each sample, but because sample sizes vary, the contamination rate is calculated at percentage per 100kg. A bare minimum of two (preferably three or more, respecting size of community will be a factor, for example, small communities may only be randomly selected infrequently) will be taken before a report card will be generated.

The results of the calculations will be presented by material category to each Entity/Collector, with an accounting of the overall contamination rate for the period.

#### **Entities/Collectors Exceeding Contamination Targets**

Circular Materials' overall goal for contamination is 4%. Note any packaging or paper material designated under the Stewardship Plan, regardless if it is considered recyclable at this time or not (e.g., multi-material, multi-laminated pouches), are not considered contamination for the purposes of calculating the overall contamination rate.

The focus will be on starting with those Entities/Collectors which are the farthest from the target. Where an Entity/Collector is identified as having a contamination rate which needs attention, a meeting will be arranged with the Entity/Collector to review the results in more detail. The Contamination Reduction Plans will be implemented in phases as necessary.

#### **Phase 1: Initial Contamination Reduction Plan**

Where warranted, Circular Materials will request the Entity/Collector to develop a Contamination Reduction Plan to address the contamination issue. As the audit results will be broken down into more than 50 categories, the results will likely point to where attention is needed to reduce the contamination rates. This will give the Entity/Collector an area of focus to support behaviour change and further public promotion and education. Circular Materials will support Entities in developing their Contamination Reduction Plan, as well as develop and deploy educational materials for commonly occurring contaminants in the audits.

The Entity will submit its Contamination Reduction Plan for review by Circular Materials. Upon approval by Circular Materials, the Entity/Collector will implement the plan. A further six months of samples will be taken and, perhaps, if warranted, additional samples will be taken to evaluate the effectiveness of the



Contamination Reduction Plan. The results of the next six months of audits will be shared with the Entity/Collector.

If the contamination rates show significant improvement, e.g., moving from 20% to 15%, Circular Materials will ask the first Contamination Reduction Plan to be continued, but no Service Level Failure Credits will be applied.

#### Phase 2: Follow-up Contamination Reduction Plans

Where contamination rates have not improved or improved only marginally, a second Contamination Reduction Plan will be required from the Entity/Collector. The expectation will be for an enhanced approach with more frequent or targeted communication for a route, greater effort to sort out contamination ahead of collection (e.g., leaving materials behind with “oops” stickers). At this point, no Service Level Failure Credits will be applied.

The cycle will continue as necessary where continuous improvement in the contamination rates is not seen. If after a third round of preparing and implementing a Contamination Reduction Plan fails to show improvement in the contamination rates, only then, and at the discretion of Circular Materials, will Service Level Failure Credits will be applied.

Overall, from the beginning of the process until the completion of three rounds of Contamination Reduction Plans, the process will take between 18 and 24 months. The critical factor in avoiding any Service Level Failure Credits, even if 4% is not achieved after this period, is Circular Materials seeing continuous improvement.

Circular Materials will support the development of effective Contamination Reduction Plans.

Through its promotion and education plans, Circular Materials will employ strategies and tactics aimed at educating and influencing recycling behavior. This includes, but is not limited to, educating consumers on the material accepted within the collection system, how to prepare materials for placement in the blue box collection system, and where collection systems can be accessed. A number of communication tools will be deployed to address contamination and maximize reach.

Once Circular Materials establishes a consistent the blue box recycling program across the province with a harmonized list of acceptable materials, promotion and education will be implemented at a larger scale.

#### **Questions**

If you have questions about this process, please contact us at [NBoperations@circularmaterials.ca](mailto:NBoperations@circularmaterials.ca).

**SCHEDULE 12.1  
INSURANCE REQUIREMENTS**

1. **Insurance Coverage.** The insurance coverage required pursuant to Section 12.1 of the main Agreement is as follows:
  - (a) Comprehensive General Liability coverage with limits of not less than \$5,000,000 (five million dollars) per occurrence with a deductible not exceeding \$100,000 (one hundred thousand dollars) per occurrence, or, where Contractor is a local government, Contractor may self-insure for equivalent or better coverage (in which case Contractor will respond to all claims, actions, demands, expenses and losses by whomsoever made in the same manner as if commercial comprehensive general liability insurance was purchased for same and as if Circular Materials were included in such policy as an additional insured);
  - (b) Contractor will seek advice and obtain any necessary environmental impairment liability insurance or other such policy as may be recommended by their insurance broker or legal counsel to adequately protect against risks of environmental liability, with typical environmental impairment liability insurance for the Services having a limit of not less than \$1,000,000 (one million dollars) per occurrence with a deductible not greater than \$100,000 (one hundred thousand dollars) (for clarity, neither the amount nor type of environmental impairment liability insurance obtained by Contractor will in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Agreement);
  - (c) Workers' compensation insurance or workplace safety and insurance coverage with the applicable provincial (including in all cases New Brunswick) or territorial workplace safety board or employer's liability insurance or both with limits as required by Applicable Law covering all Contractor personnel; and
  - (d) Such other insurance coverage as may be set out in a Statement of Work.
2. **Requirements for Insurer.** All insurers must be reputable and financially creditworthy insurers with an AM Best financial strength rating of "A-" or higher (or equivalent rating by a similar agency, in Circular Materials' sole discretion).
3. **Circular Materials as Additional Insured.** Contractor will add Circular Materials as an additional insured on its Commercial General Liability policy with the following language: "Circular Materials and its affiliated entities, officers, partners, directors, employees, representatives, and agents are included as Additional Insureds for Comprehensive General Liability. Such coverage is primary and non-contributing."
4. **Evidence of Insurance.** Contractor will cause its insurers to issue to Circular Materials certificates of insurance on the Effective Date, and once each calendar year thereafter, evidencing that the coverages and policy endorsements required under this Agreement are maintained in force. Where Contractor is a local government and opts to self-insure pursuant to Section 1(a) of this Schedule, Contractor will provide a written attestation stating and evidencing such self-insurance (including evidence of authority and financial ability to self-insure), in a form acceptable to Circular Materials, on the Effective Date and once each calendar year thereafter.
5. **Changes to Insurance Coverage.** Contractor will not reduce any insurance coverage below the requirements set out in this Schedule without Circular Materials' prior written consent. Contractor will provide not less than thirty (30) days' notice to Circular Materials prior to any material change to its insurance coverage or to its insurer.

6. **Coverage Details.** The insurance coverages under which Circular Materials is named as additional insured will be primary, and all coverage will be non-contributing with respect to any other insurance or self-insurance that may be maintained by Circular Materials.
7. **Additional Period of Coverage.** Contractor will continue to have and maintain in force the insurance coverages set out in this Schedule, and Contractor will continue to comply with Section 12.1 of the main Agreement and Schedule 12.1, beyond the end of the Term for an additional two (2) years thereafter.