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## PURPOSE OF BY-LAW

1. The purpose of this by-law is to better define the relationship between the BCMB and the Collection System Agent.

## DEFINITIONS AND INTERPRETATION

2. The Beverage Container Recycling Regulation (the “Regulation”) includes the following requirements:
  - (a) the manufacturers of beverages in non-refillable containers for sale or distribution in Alberta shall use and maintain a common collection system for the recovery and recycling of non-refillable registered containers from depots;
  - (b) the manufacturers shall appoint a collection system agent satisfactory to the Board to act on behalf of the manufacturers with respect to the operation of the Common Collection System;
  - (c) a manufacturer of a beverage in a refillable container for sale or distribution in Alberta shall provide a collection service capable of recovering the manufacturer’s empty refillable registered containers from all depots and retailers accepting such containers or use the common collection system;
  - (d) the collection system agent shall, in accordance with the by-laws, collect or cause to be collected non-refillable registered containers from depots;
  - (e) the collection system agent, on collecting containers from a depot pursuant to the Regulation shall, in accordance with the by-laws reimburse the depot operator for each container collected the amount of the deposit specified in the Regulation for the containers and a handling commission.
3. Terms that are defined in the Regulation have the same meaning when they are used in this by-law unless otherwise indicated.
4. In this by-law:
  - (a) “ABDA” means the Alberta Bottle Depot Association;
  - (b) “Act” means the *Environmental Protection and Enhancement Act* (Alberta);
  - (c) “BCMB” means the Beverage Container Management Board. The BCMB is a management board within the meaning of the *Environmental Protection and Enhancement Act* (Alberta) whose mandate is to regulate and enhance a leading beverage container system that protects Alberta’s environment;

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- (d) “By-laws” means BCMB by-laws passed pursuant to the Regulation;
  - (e) “Container” means a bottle, can, plastic cup or paperboard carton or a package made of metal, plastic, paper, glass or other material, or a combination of them, that contains or has contained a beverage;
  - (f) “Collection System Agent” or “CSA” means the collection system agent appointed by manufacturers and approved by the BCMB in accordance with the Regulation and this by-law;
  - (g) “CSA Agreement” means the agreement entered into between the BCMB and CSA in accordance with this by-law. as amended from time to time;
  - (h) “Common Collection System” means the container collection system in Alberta that does not distinguish between Beverage Containers of similar size and material from each other based on manufacturer;
  - (i) “Depot” means a place operated as a business for the collection of empty Container;
  - (j) “FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Alberta);
  - (k) “ILC” means the Industry Leadership Committee formed by agreement among CSA, BCMB and ABDA and comprised of the Presidents or Executive Directors, as applicable, of those entities. The purpose of ILC is to identify important issues relating to the beverage containersystem, agree on strategies for addressing those issues, and cooperate in the implementation of those strategies for the benefit of the beverage container system;
  - (l) “Manufacturer” means a person who manufactures a beverage and includes:
    - (i) a person who carries on the business of filling containers with a beverage; and
    - (ii) a person who imports a beverage in a container into Alberta for the purpose of distribution or sale in Alberta;
  - (m) “PIPA” means the *Personal Information Protection Act* (Alberta);
  - (n) “Quality Monitoring System” or “QMS” means the system administered by the BCMB for the purpose of communication and issue management and resolution;
  - (o) “Regulation” means the Beverage Container Recycling Regulation AR 101/97, as amended; and
  - (p) “Service Agreement” means an agreement entered into between the Alberta Bottle Depot Association and a Collection System Agent or Collection Service Provider, prescribing the manner and frequency of Container collections, the manner and

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frequency of payments and other matters related to the efficient operation of the beverage container system.

## APPROVAL OF THE CSA

5. A Collection System Agent appointed by manufacturers of non-refillable containers pursuant to section 8(2) of the Regulation must be satisfactory to the BCMB in order to act on behalf of those Manufacturers with respect to the operation of the Common Collection System as the CSA.
6. In order for a collection system agent to be approved by the BCMB as satisfactory, the collection system agent must provide the following information to the BCMB:
  - (a) a list of the Manufacturers who have appointed the collection system agent, a list of the Manufacturers who have not appointed the collection system agent, the form of appointment and the sales volumes of the Manufacturers who have appointed the Collection System Agent compared to the total sales volumes of non-refillable beverage containers in Alberta; and
  - (b) a copy of a CSA Agreement in a form acceptable to the BCMB, executed by the Collection System Agent.
7. The CSA is responsible, along with the ABDA for submitting to the BCMB, a service agreement which, among other things, prescribes the manner and frequency of container collections by the CSA and prescribes the manner and frequency of payments to depot operators by the CSA and any other matters related to the efficient operation of the common collection system.
8. A Service Agreement shall comply with the By-laws and the Regulation.
9. A Service Agreement must be approved by the BCMB.
10. If the CSA and the ABDA do not submit a Service Agreement the BCMB may impose a deadline for the submission of a Service Agreement.
11. If the CSA and the ABDA do not submit a Service Agreement satisfactory to the BCMB, or if after a Service Agreement is approved, but during the term of the Service Agreement, the BCMB determines that the wording of the Service Agreement is contrary to the By-laws or the Regulation or is being interpreted in a manner which is contrary to the By-laws or the Regulation, or if there is a material change in the operation of the Common Collection System, the BCMB may specify the amendments to the Service Agreement that it requires in order to approve the Service Agreement or to maintain its approval, and may impose a deadline for the submission of the amended Service Agreement containing the required amendments.

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12. If the CSA and the ABDA do not comply with a deadline imposed by the BCMB under this section, the BCMB may pass a By-law prescribing any or all matters related to the efficient operation of the common collection system by the CSA and the depots.
  13. If there is a conflict between a provision of a Service Agreement between the CSA and the ABDA and a by-law passed pursuant to this section, the by-law shall prevail over the Service Agreement.

## **EVALUATION OF THE CSA**

14. After the initial approval, the BCMB shall evaluate the CSA from time to time to determine whether the CSA remains satisfactory to the BCMB. This evaluation will be based upon:
  - (a) the CSA's compliance with the provisions of the Regulation and applicable BCMB Bylaws;
  - (b) the CSA's compliance with any agreements between the CSA and the BCMB;
  - (c) the CSA's compliance with the terms of any Service Agreement between the CSA and the ABDA in force during the period relevant to the evaluation;
  - (d) evidence of direct and measurable results on return rates from each program run by the CSA;
  - (e) the proper recycling of all recovered and recyclable Containers and reconciliation of all material streams;
  - (f) the provision by the CSA of information requested by the BCMB in a complete and timely fashion;
  - (g) any other items specified in the CSA Agreement.
15. To assist with the BCMB's ongoing evaluation of the CSA, the CSA shall provide a written self-evaluation on an annual basis, no later than 90 days after the end of each operating year.
16. The BCMB shall provide to the CSA a written evaluation of the CSA's performance on an annual basis, no later than 90 days after the receipt of the CSA's self-evaluation provided pursuant to section 15 above. If, during the BCMB's ongoing evaluation of the CSA, the BCMB identifies any material deficiency in the CSA's performance of the criteria set out in section 8 above, the BCMB shall provide to the CSA a written notification of such deficiency.
17. The BCMB's ongoing evaluation of the CSA's performance, including, without limitation, the BCMB's annual written evaluation contemplated in section 10 above, shall address the performance standards and/or requirements described in the CSA Agreement.

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18. The CSA shall respond in writing to any matter raised in the BCMB's ongoing or annual evaluation of the CSA in a timely fashion, and shall:
- (a) provide an action plan to rectify any deficiency or deficiencies noted in the BCMB's evaluation and/or notification provided pursuant to section 10 above; and
  - (b) where the BCMB identifies any breach of the CSA's obligations under this by-law and notifies and advises the CSA that such breach must be corrected, correct such breach within 30 days or, if it is not reasonably practical to expect the CSA to fully correct such breach within 30 days and diligently continue to take steps to correct such breach thereafter until it is fully corrected.

## GENERAL REQUIREMENTS OF THE CSA

19. The CSA shall at all times, act in good faith.
20. The CSA shall comply with the provisions of the Regulation, By-laws, the CSA Agreement and the Service Agreement.
21. The CSA shall collect Containers from Depots in accordance with the By-laws and the Service Agreement.
22. The CSA shall cause non-refillable Containers to be recycled by a method approved by the BCMB in accordance with the Regulation.
23. The CSA shall conduct its operations so as to fulfill its obligation to maintain and manage an amount of operating reserve sufficient to ensure adequate cash flow to fulfill its obligations to achieve operational and financial stability for the system responsible for the recovery of non-refillable beverage containers.
24. The CSA shall cooperate and collaborate with the BCMB to promote and improve beverage container system in Alberta. The CSA shall participate in ILC and other industry and BCMB committees if invited to participate.
25. The CSA shall provide the BCMB with such information relating to the CSA operations as specified in any By-laws or as may be requested by the BCMB from time to time.
26. The CSA shall comply with FIPPA and with PIPA in response to any information requests from the BCMB related to a request received by the BCMB in accordance with FIPPA, which requires the BCMB to disclose records which are in the possession of the CSA unless it can be shown that:
- (a) the CSA had a reasonable expectation of confidentiality in respect of such information and that disclosing such information would be harmful to the CSA's business interests, all in accordance with section 16 of FIPPA;

- (b) the CSA can demonstrate that any such records or an applicable portion thereof are exempt from disclosure under Part 1, Division 2 of the FIPPA; or
- (c) the CSA is prohibited from disclosing any such records or an applicable portion in compliance with PIPA.

27. The CSA shall cooperate in the performance of any audits performed or directed by the BCMB.

## COMPLIANCE STANDARDS

28. The CSA shall meet the standards specified in the CSA Agreement with respect to the following areas of compliance:

- (a) transportation;
- (b) shipping containers;
- (c) payment to Depot;
- (d) reporting;
- (e) use of the Quality Monitoring System;
- (f) quality control; and
- (g) non-beverage containers.

29. The failure of the CSA to meet the standards established by the BCMB with respect to these areas of compliance will result in progressive enforcement actions.

## REPORTS AND RECORD KEEPING

30. The CSA shall keep or cause to be kept books, documents, records and accounts for the purpose of this by-law and the Regulation.

## TERMINATION

31. The BCMB may rescind the approval of the CSA for cause.

32. If the Regulation is amended in such a way that the CSA's role is significantly altered or rescinded, the BCMB may rescind the approval of the CSA.

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33. If the Manufacturers that represent, in the aggregate, ninety percent (90%) of the sales volume of Beverage Containers in Alberta rescind their appointment of the CSA as the Collection System Agent, the BCMB shall rescind its approval of the CSA.
34. If the CSA's approval is rescinded by the BCMB or if the CSA ceases to be such under an alternative program, the CSA will:
- (a) cooperate with the BCMB to ensure an effective transition to a new Collection System Agent appointed by the Manufacturers to facilitate an orderly transfer of its assets and information related to the Common Collection System to any such Collection System Agent; or
  - (b) facilitate an orderly transfer of its assets and information related to the Common Collection System to an alternative program, including without limitation the orderly distribution of assets in favour of an alternative program responsible for the environmental stewardship of Containers in Alberta for the benefit of Albertans;

all subject to an accounting of such assets and subject to the CSA and/or the BCMB's obligations in respect of the use and disclosure of confidential information.