

**AGREEMENT RELATING TO THE
CONSIGNMENT, RECOVERY AND RECYCLING
OF NON-REFILLABLE SOFT DRINK CONTAINERS**

**JANUARY 1, 2007
(WORKING TRANSLATION)**

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BETWEEN : **THE MINISTRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT ET DES PARCS**

(hereinafter referred to as the “Minister”)

AND : **RECY-QUÉBEC**

(hereinafter referred to as “RECYC-QUÉBEC”);

AND : **L'ASSOCIATION DES EMBOUTEILLEURS DE BOISSONS GAZEUSES DU QUÉBEC INC.**

(hereinafter referred to as the “Association des embouteilleurs”);

AND : **BOISSONS GAZEUSES ENVIRONNEMENT**

(hereinafter referred to by the acronym “B.G.E.”);

AND : **THE REGISTRANTS**, whose names appear in either Schedule A or Schedule B hereof,

(hereinafter referred to, as a group, as the “Registrants” and, individually, as a “Registrant”);

WHEREAS the functions of the Minister are to supervise and preserve the quality of the environment and whereas for such purposes he may make an agreement with any person, in particular for purposes relating to recovery and recycling, the whole in accordance with paragraph 12 (2) of the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs* (R.S.Q., chapter M-30.001);

WHEREAS the Québec Residual Materials Management Policy, 132 G.O.I. 968 establishes that the reduction at its source and the re-use, recycling, valorisation and disposal of residual materials, shall be privileged in this ranking order in making management choices related to the integrated management of residual materials;

WHEREAS this Québec Policy provides that manufacturers and importers of products are to assume a large measure of the responsibility and of the environmental effects of their products all along their life cycle;

WHEREAS the objects of RECYC-QUÉBEC are to promote, develop and encourage the reduction, re-use, recovery and recycling of containers, packaging, materials and products, as well as their valorisation, with a view to resource conservation and whereas RECYC-QUÉBEC has for such purposes the powers set out in the *Act respecting the Société québécoise de récupération et de recyclage* (R.S.Q., chapter S-22.01);

WHEREAS according to its constituting law, RECYC-QUÉBEC may, in particular, for this purpose, alone or with partners, administer any consignment system, including the Québec public consignment systems for non-refillable beer and soft drinks containers.

WHEREAS pursuant to the *Act respecting the sale and distribution of beer and soft drinks in non-returnable containers* (R.S.Q., chapter V-5.001), except in the case of a retail sale or a delivery pursuant to such a sale, no one may sell or deliver in Quebec beer or soft drinks in non-refillable containers unless he holds a permit to do so, and a prerequisite for obtaining such a permit is that the applicant enter into an agreement complying with the regulations adopted pursuant to that Act with the Minister and RECYC-QUÉBEC, or comply with the relevant regulations adopted pursuant to section 53.30 of the *Environment Quality Act* (R.S.Q., chapter Q-2), as the case may be;

WHEREAS in accordance with the *Act respecting the sale and distribution of beer and soft drinks in non-returnable containers* (R.S.Q., chapter V-5.001), such agreements were entered into successively on July 15, 1984, July 15, 1987, January 1, 1991, January 1, 1992, January 1, 1995 and December 1, 1995 (as amended in January 2002 and in April 2005);

WHEREAS an agreement relating to the consignment, recovery and recycling of non-refillable beer containers was entered into, that it is in force, and it is necessary to harmonise the operation of that agreement with the present Agreement;

WHEREAS the Minister deems it necessary for the protection of the environment and in the best interest of Quebec that certain measures be taken regarding the use of non-refillable containers in Quebec;

WHEREAS the parties hereto agree as to make all the efforts reasonably necessary in order to favour the meeting of the 80% objective provided for by the Québec Residual Materials Management Policy;

WHEREAS in particular, the parties agree as to the necessity for the industry to increase the rate of recovery of non-refillable containers;

WHEREAS the parties agree that it is of interest that the process of consignment, recovery and recycling of non-refillable soft drink containers contemplated in this Agreement be administered and managed by B.G.E., a non-profit corporation, to the extent provided by the Agreement;

NOW, THEREFORE, the parties hereto mutually agree and covenant as follows:

1. Purpose of the Agreement

This Agreement is intended to further the public interest in Quebec by protecting the environment through the consignment, recovery and recycling of non-refillable Soft Drink containers.

2. Definition

In this Agreement, the following terms shall have the meaning hereinafter indicated:

“Act respecting the sale and distribution of beer and soft drinks”: the *Act respecting the sale and distribution of beer and soft drinks in non-returnable containers* (R.S.Q., chapter V-5.001), as amended from time to time;

“Agreement on beer” : any agreement relating to the consignment, recovery and recycling of non-refillable beer containers executed under the authority of the *Act respecting the sale and distribution of beer and soft-drinks in non-returnable containers* and that is in force from time to time;

“Establishment”: a place of business, whether a Retail Establishment or Wholesale Establishment, within the meaning hereof;

“House Brand”: a brand held by an Establishment or a chain of Establishments designating a product which is resold to consumers exclusively by such Establishment or chain of establishments;

“Non-Recoverer”: a party to this Agreement whose name appears in Schedule B;

“Recoverer”: a party to this Agreement whose name appears in Schedule A;

“Recyclable Container”: a non-refillable container which, as a whole, as marketed, is:

- made either of steel in a proportion of more than 99% in weight, or of aluminium in a proportion of more than 99% in weight, or of glass in a proportion of more than 99% in weight, or almost exclusively of the same type or same category of plastic, or
- a container designated as recyclable by B.G.E., with the consent of RECYC-QUÉBEC, in accordance with section 11.17 of this Agreement;

and, in all cases, of which none of the components shall prevent recycling of the main body and, in the case of a “can-type” container, which has no detachable part;

“Registrant”: a party to this Agreement whose name appears in Schedule A or in Schedule B;

“Related”: the relationship between persons who do not deal with each other at arm’s length, as that term is defined and interpreted in the *Taxation Act* (R.S.Q., chapter I-3) which definition is to be read and interpreted as at the date hereof;

“Retail Establishment”: a place of business devoted exclusively to direct sales to consumers;

“Signatories”: the Minister, RECYC-QUÉBEC, the Association des embouteilleurs and B.G.E., as a group;

“Soft Drink”: soft drink as that term is defined in the *Act respecting the sale and distribution of beer and soft drinks*, in the form of a finished product only;

“Wholesale Establishment”: a place of business other than a Retail Establishment;

“Zone of Recovery”: the zone, in the Province of Quebec, within which a Recoverer habitually delivers Soft Drinks to Retail Establishments, whether directly or indirectly, including through an Establishment, a group of Establishments, a carrier or any other person.

3. Registration and Withdrawal Process

- 3.1 Any person applying for a permit to sell and delivers Soft Drinks in accordance with the *Act respecting the sale and distribution of beer and soft drinks* shall complete and sign a registration form to the present Agreement in conformity with Schedule F.
- 3.2 B.G.E. shall determine in respect of any person who wishes to become a party hereto and who complies with subsection 3.1, whether such person is a Recoverer or a Non-Recoverer. Accordingly, B.G.E. shall list such person either in Schedule A as a Recoverer or in Schedule B as a Non-Recoverer. Such person shall thereupon become a party hereto as if he himself had signed this Agreement.
- 3.3 B.G.E. shall decide whether a person referred to in subsection 3.2 is a Recoverer unless, in the opinion of B.G.E.:
 - 3.3.1 the production or distribution of Soft Drinks does not constitute the principal activity of such person;
 - 3.3.2 such person does not have in Quebec a distribution and recovery network for Soft Drinks using vehicles principally dedicated for this purpose;
 - 3.3.3 such person does not have the capacity to adequately perform the obligations of a Recoverer pursuant hereto; or
 - 3.3.4 such person primarily produces or distributes a House Brand belonging to a person to whom it is Related,

in which cases B.G.E. shall decide that such person is a Non-Recoverer.

B.G.E. may, however, render the decision considered appropriate where it deems that the strict application of the criteria set out hereinabove would be contrary to the object of this Agreement or would have the effect of discharging, directly or indirectly, a party hereto from its obligations. B.G.E. may also change the status of Recoverer or Non-Recoverer of any person under this Agreement where it deems that the situation so warrants.

- 3.4 The information given in the registration form shall be kept up-to-date by the Registrant, who shall be bound, within fifteen days following any change, to notify B.G.E. As for Non-Recoverers, they shall be bound, within 30 days foregoing any change, to provide B.G.E. with the information respecting any new container type or size.

- 3.5 B.G.E. may at any time amend Schedule A or Schedule B to make a new entry therein, change the status of any person, delete a Registrant or correct any clerical error therein.

Such an amendment shall take effect at the date when a notice is given to the person whose registration is made, changed or deleted, or at any subsequent date which may be indicated in the notice. In the case of a change of status, B.G.E. shall give the Registrant a prior fifteen day notice, except if the change is made at the request of the Registrant itself.

- 3.6 Any Registrant may, by notice to such effect, request that B.G.E. delete it from Schedule A or Schedule B, as the case may be. B.G.E. shall delete such Registrant as soon as it deems that the Registrant has met the obligations incumbent thereon pursuant hereto. However, such deletion shall in no manner affect the rights and recourses available to B.G.E., as the case may be. From and after the deletion, the Registrant shall cease to be a party to this Agreement.
- 3.7 B.G.E. shall forward to RECYC-QUÉBEC, upon receipt, all registration forms, all modifications to such forms as well as all notices forwarded to B.G.E. in accordance with subsection 3.4.

4. Rights and Obligations of Registrants

- 4.1 A Registrant shall collect from any person to whom it sells, delivers or gives in Quebec or for resale in Quebec Soft Drinks in non-refillable containers a deposit of \$0.05 for each container sold or delivered. A Registrant shall also collect from any person to whom it sells or delivers outside Quebec Soft Drinks in non-refillable containers, a deposit of \$0.05 for each container that bears an inscription identical to or similar to that provided for in Schedule D, or any other inscription which could lead someone to believe that the container is returnable in Quebec for refund of the deposit under the terms of the Agreement.
- 4.2 A Registrant may, however, refrain from collecting the deposit contemplated in subsection 4.1 with respect to non-refillable Soft Drink containers:
- 4.2.1 which it sells or delivers to a Recoverer;
 - 4.2.2 which it sells or delivers to air, railroad or maritime carriers not operating between airports, train stations or harbours in Quebec;
 - 4.2.3 if it has sufficient and probable grounds to believe that such containers will only be resold or delivered outside Quebec; or
 - 4.2.4 which it surrenders to a carrier for delivery, when such delivery, if effected by the Registrant, would be exempt under subsection 4.2.

A Registrant may also refrain from collecting the deposit contemplated in subsection 4.1 with respect to non-refillable Soft Drink containers bearing an inscription that conforms with that of Schedule D and which is sold, delivered or given to a person outside Québec, if he proves conclusively, to B.G.E.'s entire satisfaction (which may revise its decision at anytime regarding such matter if the conditions listed in i), ii) and iii) hereinafter are no longer met):

- i) that the total amount of the deposit and of any other amount refundable upon return of such container (or of a similar container), at the location where it is thus sold, delivered or given, is equal to or greater than the amount of the deposit that must be collected in accordance with this Agreement;
- ii) that he has sufficient and probable grounds to believe that it will be resold, delivered or given only in a location where the total amount of the deposit or of any other amount refundable upon return of such container (or of a similar container) is equal to or greater than the amount of the deposit which must be collected in accordance with this Agreement; and
- iii) iii) that, in all cases, such sale, delivery or gift does not prevent the operation of the consignment, recovery and recycling system for non-refillable Soft Drink containers governed by this Agreement.

Monthly, B.G.E. reports in writing to RECYC-QUÉBEC about the persons or containers to which the exception stated in the foregoing paragraph applies, by providing it all the details which may be reasonably required by RECYC-QUÉBEC. Notwithstanding the foregoing, RECYC-QUÉBEC may, if it considers that the application of the abovementioned paragraph harms the operation of the system governed by this Agreement, or affects the recovery rate or the financial impacts that result from it, overrule, review or modify any decision of B.G.E. rendered in accordance with the said paragraph and, if necessary, declare inapplicable this exception to all situations that it designates, RECYC-QUÉBEC's decision being final and prevailing from then on over the one rendered by B.G.E.

- 4.3 A Registrant shall not sell, deliver or give in Quebec or for resale in Quebec Soft Drinks in non-refillable containers purchased from a person whom it has reasonable grounds to believe did not hold a permit pursuant to the *Act respecting the sale and distribution of beer and soft drinks*.
- 4.4 A Registrant shall not sell, deliver or give Soft Drinks in Recyclable Containers in respect of which it must collect a deposit pursuant to this Agreement, unless such containers bear an inscription that conforms to that of Schedule D, indicating such deposit.

- 4.5 A Registrant shall comply with the terms and conditions of recovery set forth in Part 1 of Schedule C, which deals with non-reusable secondary packaging and recovery bags.
- 4.6 A Registrant shall give to any authorized representative of B.G.E., who must be independent from all of the Registrants, at all times during normal business hours, complete and unrestricted access to its installations and to all its books, records, contracts, accounting documents or other information which may be necessary or useful in order to verify full compliance with the provisions of the Agreement. Any photocopy of documents which is considered necessary or useful by such representative of B.G.E. shall be provided to the representative immediately and free of charge by the Registrant.
- 4.7 A Registrant shall not sell, deliver or give in Québec or for resale in Québec Soft Drinks in non-refillable containers unless such containers are approved beforehand, in writing, by B.G.E. and RECYC-QUÉBEC, who must then determine if the container qualifies as a Recyclable Container according to section 2 (or if they designate it as recyclable, as provided for in subsection 11.17) and make sure that it does not prevent the operation of the consignment, recovery and recycling system for non-refillable Soft Drink containers governed by this Agreement. The approval or refusal must be transmitted to the Registrant within 30 days after the receipt of said container by B.G.E. and RECYC-QUÉBEC, failing which they shall be deemed to have refused the container.

5. **Rights and Obligations of Recoverers**

- 5.1 A Recoverer shall not sell, deliver or give in Quebec or for resale in Quebec Soft Drinks in non-refillable containers unless such containers are Recyclable Containers of which neither the material, nor the size, nor the configuration, in the opinion of B.G.E. and of RECYC-QUÉBEC, prevent the operation of the consignment, recovery and recycling system for non-refillable Soft Drink containers governed by this Agreement.
- 5.2 A Recoverer shall not sell, deliver or give in Quebec or for resale in Quebec Soft Drinks in non-refillable containers otherwise than:
 - 5.2.1 directly to a Recoverer;
 - 5.2.2 within its Zone of Recovery, directly to any person where such Recoverer has no reasonable grounds to believe that such Soft Drinks are being or are likely to be resold or delivered in Quebec outside its Zone of Recovery;
 - 5.2.3 directly to an Establishment or chain of Establishments, in the case of House Brands held by the said Establishment or chain of Establishments; or

5.2.4 directly to a carrier for delivery, when such delivery, if effected by the Recoverer itself, would comply with subsection 5.2.

However, notwithstanding the foregoing and any other provision to the contrary, the sales, deliveries or gifts in Québec or for resale in Québec of Soft Drinks in non-refillable containers to an Establishment or a group of Establishments, a carrier or any other person for the purpose of sale, delivery or gift, by the latter, to Establishments or to consumers, are not permitted unless B.G.E. and RECYC-QUÉBEC are at all times satisfied, at their sole discretion, that all the obligations of said Recoverer in virtue of this Agreement are and will be fully assumed and complied with at all times and in a strict manner regarding these containers, and particularly:

- i) that all the obligations of said Recoverer in virtue of subsections 5.3, 5.4, 5.7 and 5.8 of the Agreement are and will be so complied with at all times, as if the said containers had been sold, delivered or given by himself, in his Zone of Recovery, to Establishments or to consumers; and
- ii) that the containers in question are and will be at all times recovered and entrusted for conditioning or recycling, in accordance with the terms, conditions and procedures of this Agreement.

5.3 Subject to the provisions of subsection 5.7, a Recoverer shall maintain and continue to use a Soft Drink delivery and recovery network throughout its Zone of Recovery and shall use such network to recover Recyclable Containers under the terms of this Agreement. A Recoverer shall, personally or as permitted in virtue of subsection 5.7, recover Recyclable Containers at a frequency at least equal to the frequency of distribution or at such other frequency in order to prevent, in the opinion of B.G.E., the undue accumulation of Recyclable Containers in Establishments or a significant imbalance of the Recovers' obligations and responsibilities in virtue of this Agreement.

5.4 Without limiting the terms of the last paragraph of subsection 5.2, a Recoverer shall recover all empty Soft Drink Recyclable Containers tendered to it by any Establishment or any consumer to which it sells or delivers, directly or through a Wholesale Establishment, Soft Drinks and shall refund the deposit amount determined pursuant to this Agreement, increased, in the case of an Establishment engaging in a retail sales operation (including without limitation restaurants, bars, cafeterias, kiosks, canteens, etc.), by a unit incentive fee of \$0.02 in respect to said containers when such containers:

5.4.1 bear an inscription that conforms to Schedule D; and

5.4.2 are of identical materials and of similar unit volume to the Recyclable Containers that it has sold, delivered or given to such Establishment or consumer,

the whole subject to the following terms and conditions:

- no Recoverer shall be required hereunder to accept from any Establishment or consumer, in any three-month period, more Recyclable Containers of a given packaging type and a given size than were sold or delivered to it by such Recoverer within such period;
- a Recoverer that sells or delivers Soft Drinks in Recyclable Containers to a Wholesale Establishment shall recover, to the extent and according to the terms provided in subsection 5.4, the Recyclable Containers tendered to it by any Retail Establishment to which such Wholesale Establishment sold or delivered such Soft Drinks, as if such Soft Drinks had been sold or delivered directly by such Recoverer to such Retail Establishment.

5.5 A Recoverer who, during each calendar year, recovers pursuant hereto a number of returnable Recyclable Containers that depart from the proportions set out herein below of such returnable Recyclable Containers which it has sold, delivered or given during such period for sale or resale in Quebec, shall pay to B.G.E. the non-refundable contribution set out herein below for each container unit for which it was required to collect a deposit in virtue of this Agreement, above or below the following proportions:

Aluminium Recyclable Containers	Steel or Plastic Recyclable Containers	Glass Recyclable Containers
	50% / \$0.03	50% / \$0.05
50% / \$0.00		
125% / \$0.02	n/a	n/a

B.G.E. may, if it so deems expedient in respect of the equitable sharing of the recovery obligations pursuant hereto and the inherent costs, exempt, on such other conditions as it may determine, a Recoverer from an obligation incumbent thereon by reason of this subsection 5.5, namely when a Recoverer demonstrates to the satisfaction of B.G.E. that a shortfall in the number of recovered containers is related in large part to an exceptional situation that has a significant impact on the recovery, or to a configuration of the distribution channels which, in both cases, are not attributable to the Recoverer. The request for exemption of the Recoverer must be transmitted at the latest on February 28 of the year following the expiration of the twelve month period and must be accompanied by all documents in support of it. B.G.E. may refuse all requests it deems late. A request for exemption shall not, in itself, have the effect of suspending the obligations of any Recoverer pursuant hereto.

- 5.6 When a Recoverer discovers that an Establishment or a consumer within its Zone of Recovery is encountering real difficulties in disposing of a surplus of empty Recyclable Containers for which a deposit was collected pursuant to this Agreement, it must inform B.G.E.
- 5.7 A Recoverer shall not delegate the recovery obligation imposed upon such Recoverer except to:
 - 5.7.1 an organization approved by B.G.E.; or
 - 5.7.2 a Recoverer, but only in respect of the Zone of Recovery of that Recoverer.

Nothing in subsection 5.7 shall be interpreted so as to limit or diminish the obligations of any Recoverer pursuant hereto.

Subject to the first paragraph of subsection 5.7 and subject to the conditions that B.G.E. may impose, but without limiting in any manner the Recoverer's obligations in virtue of the Agreement, in all the cases where the recovery obligation that is imposed upon a Recoverer in the present Agreement is delegated or assumed in any way by a person who is not a Recoverer duly listed in Schedule A of this Agreement, the containers that are recovered and entrusted for conditioning or recycling are deemed, for the purposes of this Agreement, to be as such by that Recoverer.

Moreover, for the purposes of all the calculations provided for in the present Agreement, including those of subsection 5.5, if several Recoverers collectively mandate a third party or one of them to take on the recovery in a given Zone of Recovery, the total recovery made by this mandatary shall be divided between his mandators on a *pro rata* basis of their respective sales in that Zone of Recovery or, if such a method cannot be reasonably used, according to any other method determined by B.G.E.

- 5.8 A Recoverer shall entrust for conditioning or recycling to an organization certified by RECYC-QUÉBEC any empty Recyclable Container that it has recovered pursuant hereto.
- 5.9 A Recoverer shall maintain all necessary controls in conformity with such standards as B.G.E. may enact and such instructions as it may give by notice, in order to ensure that no Recyclable Container recovered by it is re-tendered for refund of the deposit and that all reports required to be submitted under the terms of the Agreement are complete, exact and true in all material respects.

6. Rights and Obligations of Non-Recoverers

- 6.1 A Non-Recoverer shall not sell, deliver or give in Quebec or for resale in Quebec Soft Drinks in non-refillable containers unless such containers are Recyclable Containers of a material, size and configuration that, in the opinion of B.G.E. and of RECYC-QUÉBEC, do not prevent the operation of the consignment, recovery and recycling system for non-refillable Soft Drink containers governed by this Agreement.
- 6.2 A Non-Recoverer shall sell, deliver or give in Quebec or for resale in Quebec Soft Drinks in non-refillable containers purchased from a Recoverer only:
 - 6.2.1 directly to a Recoverer;
 - 6.2.2 directly to a an Establishment or a chain of Establishments, in the case of House Brands held by the said Establishment or chain of Establishments; or
 - 6.2.3 within the Zone of Recovery of such a Recoverer, directly to a person when such Non-Recoverer has no reasonable grounds to believe that such Soft Drinks are likely to be resold or delivered in Quebec outside the Zone of Recovery of such a Recoverer.
- 6.3 A Non-Recoverer shall not sell, deliver or give in Quebec or for resale in Quebec:
 - 6.3.1 Soft Drinks in non-refillable containers when it has reasonable grounds to believe that such Soft Drinks come directly or indirectly from a Recoverer and are likely to be resold or delivered in Quebec outside the Zone of Recovery of such a Recoverer; or
 - 6.3.2 Soft Drinks in non-refillable containers to a Recoverer where it has reasonable grounds to believe that such a Recoverer will sell or deliver such containers in violation of the provisions hereof.
- 6.4 A Non-Recoverer shall maintain all necessary controls in conformity with such standards as B.G.E. may enact and such instructions as it may give by notice, in order to ensure that all reports required to be submitted under the terms of the Agreement are complete, exact and true in all material respects.

7. Reports and Payments of Recoverers

- 7.1 No later than the 15th day of each month:
 - 7.1.1 A Recoverer shall make a report to B.G.E., in such form and in accordance with such terms as may be prescribed by B.G.E., regarding the non-refillable Soft Drink containers that the Recoverer has sold, delivered or given according to section 4 during the previous month, as well as those

non-refillable Soft Drink containers that the Recoverer has entrusted for conditioning or recycling during the same month in accordance herewith;

7.1.2 subject to the set-off and adjustment rules provided for in Part 2 of Schedule C, a Recoverer shall pay to B.G.E., on the basis of the information contained in the report provided under paragraph 7.1.1, all amount by which:

a) the total of all deposits that such a Recoverer was required to collect in accordance with the Agreement during the previous month plus the unit amount as established pursuant to paragraph 11.5.1, as the case may be, as applicable to each of the containers that were subject to a deposit during the same period of time,

exceeds

b) the total of deposits duly refunded plus the unit incentive fee duly paid by such a Recoverer during the same month, in accordance with subsection 5.4 (net of the unit amount established under paragraph 11.5.2, if any, for all containers of a certain type determined by B.G.E. and recovered by such Recoverer during the same period).

7.2 Subject to the set-off and adjustment rules provided for in Part 2 of Schedule C, B.G.E. shall refund to a Recoverer, within 30 days of the receipt of the report provided for in paragraph 7.1.1, and on the basis of the information contained in said report, all amount by which :

7.2.1 the total of deposits duly refunded plus the unit incentive fee duly paid by such a Recoverer during the previous month, in accordance with subsection 5.4 (net of the unit amount established under paragraph 11.5.2, if any, for all containers of a certain type determined by B.G.E. and recovered by such Recoverer during the same period),

exceeds

7.2.2 the total of all deposits that such a Recoverer was required to collect in accordance with the Agreement during the same month plus the unit amount as established pursuant to paragraph 11.5.1, as applicable to each of the containers that were subject to a deposit during the same period of time.

7.3 No later than March 31 of each year, a Recoverer shall pay to B.G.E. the non-refundable contribution set out in subsection 5.5.

7.4 No later than March 31 of each year, in order to verify compliance with the provisions of subsection 5.5, a Recoverer shall forward to B.G.E. a declaration,

together with an auditor's report issued by an independent accounting firm duly capacitated by the laws by which it is governed, which conforms substantially with Schedule E, confirming, for the period from January 1st to December 31 of the previous year, the total number of returnable Recyclable Containers it has sold, delivered or given and for which it was required to collect a deposit in virtue of this Agreement and the total number of returnable Recyclable Containers it has recovered (including those contemplated in the last two paragraphs of subsection 5.7, as the case may be) in accordance with the categories specified in subsection 5.5.

B.G.E may, at its sole discretion and for as long and under any other condition that it determines, exempt a Recoverer from the obligation to provide the auditor's report provided for above, more particularly when the Recoverer demonstrates that quite obviously, no amount shall be paid to, or by B.G.E. for the year in question, as long as no later than this March 31 deadline, that Recoverer forwards to B.G.E., instead of the auditor's report, the form contained in Schedule E-1 (along with the declaration of Schedule E), including a declaration signed by one of its senior officers (acceptable to B.G.E.), stating that to the best of his (her) knowledge, the information contained in the said declaration is true.

No later than May 15 of each year, B.G.E. shall transmit to RECYC-QUÉBEC the list of Recoverers exempted from providing the auditor's report in accordance with the foregoing provision for the previous calendar year.

7.5 Subject to any applicable set-off with respect to an amount due and unpaid under subsection 7.3, as the case may be, B.G.E. shall, no later than June 30 of each year, remit or credit to the Recoverers, according to their respective rights, as the case may be and as regards the financial year ending December 31 of the previous calendar year:

7.5.1 their share of the surplus of the unit amount established pursuant to subsection 11.5, net of any amount, established by B.G.E., that is necessary for its cash flow requirements or for the provisions established under subsection 11.14, as the case may be; and

7.5.2 their share of the balance of the contribution account in accordance with subsection 11.9.

7.6 Any amount owing to B.G.E. or payable by the latter under section 7 shall bear interest at a rate equivalent to the rate determined for debts owed to the Crown pursuant to section 28 of the *Act respecting the ministère du Revenu* (R.S.Q., chapter M-31), as amended from time to time.

8. Reports and Payments of Non-Recoverers

8.1 No later than the 15th day of each month:

- 8.1.1 a Non-Recoverer shall make a report to B.G.E. in the form and pursuant to such other terms and conditions as B.G.E. may prescribe, regarding the deposits paid upon purchase, the origin of the Soft Drink Recyclable Containers acquired by it, and the Soft Drink Recyclable Containers sold, delivered or given by it in accordance with section 4, during the previous month;
- 8.1.2 a Non-Recoverer shall pay to B.G.E. all deposit amounts required to be collected by it pursuant hereto during the previous month as well as, where applicable, the unit amount established pursuant to subsection 11.5 that are applicable to each of the containers for which a deposit had to be collected. A Non-Recoverer may refrain from paying to B.G.E. such deposit and unit amount if such Non-Recoverer demonstrates, to the satisfaction of B.G.E., that these amounts have already been paid by another Non-Recoverer with regard to the same containers or that such containers come directly or indirectly from a Recoverer which has sold, delivered or given them;
- 8.1.3 a Non-Recoverer shall pay to B.G.E., for each Recyclable Container sold, delivered or given during the previous month, in addition to the applicable deposit, a non-refundable contribution of a) \$0.01 for each aluminium Recyclable Container b) \$0.03 for each steel or glass Recyclable Container and c) \$0.05 \$ for each glass Recyclable Container.

A Non-Recoverer may refrain from paying such contribution if it demonstrates, to the satisfaction of B.G.E.:

- i) that it was not bound pursuant to subsection 4.2 to collect the deposit, except in respect of a House Brand sold or delivered to a Recoverer; or
- ii) that the applicable contribution has already been paid by another Non-Recoverer in respect of such containers; or
- iii) that such containers come directly or indirectly from a Recoverer which has sold them and, in the case of House Brands, that they are resold on a retail basis in the Zone of Recovery of the Recoverer.

- 8.2 No later than March 31 of each year, a Non-Recoverer shall forward to B.G.E., a declaration, together with an auditor's report issued by an independent accounting firm duly capacitated by the laws by which it is governed, which conforms substantially with Schedule E, confirming the total number of returnable Recyclable Containers it has sold, delivered or given by it and for which it was required to collect a deposit in virtue of this Agreement, for the period from January 1 to December 31 of the previous year, or, where applicable, confirming that it has paid the deposits to a Recoverer upon the purchase of all of the non-

refillable Soft Drink containers it has sold, delivered or given by it during this period.

B.G.E. may, at its sole discretion and for the duration and under any other condition that it determines, exempt a Non-Recoverer from the obligation to provide the auditor's report provided for above, more particularly when the Non-Recoverer demonstrates that quite obviously, no amount shall be paid to, or by B.G.E. for the year in question, as long as no later than this March 31 deadline, that Recoverer forwards to B.G.E., instead of the auditor's report, the form contained in Schedule E-1 (along with the declaration of Schedule E), including a declaration signed by one of its senior officers (acceptable to B.G.E.), stating that to the best of his (her) knowledge, the information contained in the said declaration is true.

No later than the May 15 of each year, B.G.E. shall transmit to RECYC-QUÉBEC the list of Non-Recoverers exempted from providing the auditor's report in accordance with the foregoing provision for the previous civil year.

- 8.3 Subject to any applicable set-off with respect to an amount due and unpaid under paragraph 8.1.3, as the case may be, B.G.E. shall, no later than June 30 of each year, remit or credit the Non-Recoverers, according to their respective rights, as the case may be and as regards the financial year ending December 31 of the previous year, their share of the surplus of the unit amount established pursuant to subsection 11.5, net of any amount, established by B.G.E., that is necessary for its cash flow requirements.
- 8.4 Any amount owing to B.G.E. or payable by the latter under section 8 shall bear interest at a rate equivalent to the rate determined for debts owed to the Crown pursuant to section 28 of the *Act respecting the ministère du Revenu* (R.S.Q., chapter M-31), as amended from time to time.

9. Publicity

The Signatories and Registrants shall comply with the following rules:

- 9.1 no televised commercial which they authorise to be broadcast in Quebec shall, directly or indirectly, show the discarding, destruction, alteration, or damaging, in any manner whatsoever, or an act prohibited by law in respect of non-refillable Soft Drink containers : and
- 9.2 without restricting the generality of subsection 9.1, no televised commercial which they authorise to be broadcast in Quebec shall be of a nature that encourages a behaviour incompatible with the purpose of this Agreement or the objectives thereof, as described in section 1.

10. Recovery Rates, Operation Results of the Consignment, Recovery and Recycling System for Non-Refillable Soft Drink Containers Governed by this Agreement

10.1 The Recoverers and B.G.E., within their respective spheres of activity, agree to make every reasonable effort necessary to increase the recovery rate of Recyclable Containers covered by this Agreement. In this perspective, they aim to reach the following recovery objectives, which are established in relation to the rate of recovery of Recyclable of beer and Soft Drink Containers that are subject to a \$0.05 deposit under the authority of an agreement or regulation made under the authority of the *Act respecting the sale and distribution of beer and soft drinks* (hereinafter, for the purposes of this section 10 only, the “contemplated containers”):

10.1.1 70% for the twelve month period ending December 31, 2007;

10.1.2 71% for the twelve month period ending December 31, 2008;

10.1.3 72% for the twelve month period ending December 31, 2009, if necessary;

10.1.4 73% for the twelve month period ending December 31, 2010, if necessary;

10.2 In the case where, for a given calendar year, the annual results of operation of the consignment, recovery and recycling system for non-refillable Soft Drink containers provided herein (the “annual results”) show a surplus instead of a deficit, this surplus will be divided according to the following provisions:

10.2.1 B.G.E. shall keep 30% of the surplus, with the obligation to invest these amounts in the program for the improvement of the recovery infrastructures and services provided for in section 24, and this, within the year during which the surplus was generated, but in any case, no later than six months following the end of the year in question. Otherwise, B.G.E. shall remit all unused balance to RECYC-QUÉBEC no later than 60 days following the expiration of this maximum six month period if this deadline occurs during the term of this Agreement or of any renewal, if any, or, if such is not the case, no later than March 31 following the end of the Agreement. In any case, RECYC-QUÉBEC shall be entitled to use the amounts thus given to it as it considers appropriate, at its sole discretion.

10.2.2 B.G.E. will pay 70% of this surplus to RECYC-QUÉBEC within 120 days following the end of the year during which the surplus was generated. RECYC-QUÉBEC undertakes to use these amounts in the following manner:

- i) if the recovery rate of the contemplated containers at the end of the year in question is less than the actual recovery rate of the contemplated containers on December 31, 2006, as determined by

RECYC-QUÉBEC (which is approximately 69%, subject to readjustment according to the data contained in the documents to be transmitted to RECYC-QUÉBEC no later than May 15, 2007 pursuant to subsection 11.4) (hereinafter, for the purposes of this section 10 only, the “reference rate”), 50% of the amount paid to RECYC-QUÉBEC will be retained by it and paid to B.G.E. in reimbursement of any annual results showing a deficit, if any, during the term of the Agreement or of any renewal (up to a maximum amount equal to the said deficit);

- ii) if the recovery rate of the contemplated containers at the end of the year in question exceeds the reference rate without exceeding 71%, the portion of the surplus amount kept by RECYC-QUÉBEC to be applied against any annual result showing a deficit will be 60%; it will be 70% if the recovery rate of the contemplated containers at the end of the year in question exceeds 71% without exceeding 72%, and 80% if the recovery rate of the contemplated containers at the end of the year in question exceeds 72%;
- iii) in the case where the amounts provided for in paragraphs 10.2.2 i) and ii) hereinabove are not used for the reimbursement of annual deficits, RECYC-QUÉBEC shall retain said amounts at the end of this Agreement or of any renewal, as the case may be, and shall be entitled to use them as it considers appropriate, at its sole discretion;
- iv) the balance of the amounts collected by RECYC-QUÉBEC as annual surpluses, that is the portion of the 70% of the surplus that is not kept for the reimbursement of any deficit under paragraphs i), ii) and iii) hereinabove, will be used by it for purposes of information, awareness and education as well as financial help for projects related to recovery and recycling, to market development for residual material and technologies, the whole in regards mainly to containers and packaging.

- 10.3 The annual results shall be established taking into account deposits collected and reimbursed by the Registrants in regards to the contemplated containers (taking into account the compensation mechanism provided under section 22), less **a)** the amount of the unit incentive fees paid for these containers pursuant to subsection 5.4 of this Agreement (taking into account the compensation mechanism provided under section 22), and **b)** a credit (of a maximum amount of \$500,000 for each calendar year) of \$0.018 per non-refundable container recovered by the Registrants (excluding, particularly, artisans) within the framework of the system governed by it.

11. **B.G.E.'s Rights and Obligations**

- 11.1 RECYC-QUÉBEC and B.G.E. cannot, without the previous written consent of the other Signatories, who may refuse for any reason, at their sole discretion, with or without motive, modify the deposit amount provided for herewith in regards to any type of recyclable container.
- 11.2 B.G.E. may enact standards and require that non-reusable secondary packaging and recovery bags bear distinctive marks, in accordance with Part 1 of Schedule C. It shall ensure that certain secondary packaging is available to the Registrants, as provided for in that Schedule, at a reasonable cost.
- 11.3 B.G.E. is responsible for:
 - 11.3.1 verifying the observance, by the Registrants and any other person who is not a Registrant but sells, delivers or gives, in Québec, Soft Drinks in non-refillable containers, or who intends to do so, of the provisions of the present Agreement and of the *Act respecting the sale and distribution of beer and soft drinks*, the whole, from the date upon which the Agreement comes into force and for the full term thereof;
 - 11.3.2 the handling of any complaint it receives from the public or an Establishment, about which it must inform RECYC-QUÉBEC without delay, by providing all relevant information or documentation with respect thereof;
 - 11.3.3 when it is informed or has knowledge that a person is having difficulty disposing of empty returnable Recyclable Containers, of taking all measures which it deems necessary to remedy the situation.

Notwithstanding the above, the follow-up with respect to the complaints mentioned in paragraph 11.3.2 may also be made by RECYC-QUÉBEC (who must then inform B.G.E. as soon as possible), being understood that in all cases, B.G.E. and RECYC-QUÉBEC shall fully collaborate with respect to any measures which may be undertaken in relation to any such complaint.

When B.G.E. is informed or has knowledge of a violation of the provisions of the present Agreement or of the *Act respecting the sale and distribution of beer and soft drinks*, it must take the appropriate measures to remedy the situation and in particular, but without limiting the generality of the foregoing, it prepares and makes up the required file, as the case may be, for the purposes of penal complaints that could be filed according to that Act and submits them to RECYC-QUÉBEC, which will then decide of the appropriate action. B.G.E. must, on a monthly basis, present to RECYC-QUÉBEC a list of the complaints received and of recorded violations, indicate the measures taken in regards to them and provide any other information which may be reasonably required by RECYC-QUÉBEC.

B.G.E. and RECYC-QUÉBEC each assume their own costs with regards to the measures that they undertake according to the present paragraph.

- 11.4 No later than May 15 of each year, B.G.E. shall send to RECYC-QUÉBEC, for the period from January 1 to December 31 of the previous year, a) its financial statements audited by an independent accounting firm duly capacitated by the laws by which it is governed, b) an audited annual report setting forth the sales and recovery statistics for non-refillable Soft Drink containers, including the statistics for each one of the categories of containers determined by RECYC-QUÉBEC (including the non-refundable containers), and c) the list of Registrants for which an audit was completed during the year in question by B.G.E.

B.G.E. shall provide any auditor appointed by RECYC-QUÉBEC with complete and unrestricted access during normal business hours to its installations and to all its books, records, contracts, accounting documents or other information relevant to this Agreement. Any photocopy of these documents that are considered necessary or useful by such representative of RECYC-QUÉBEC shall be provided to the representative immediately and free of charge by B.G.E.

- 11.5 Subject to subsections 10.2, 10.3 and 11.3, B.G.E. and the Registrants assume, at the entire exoneration of RECYC-QUÉBEC, all management and administrative costs associated with the consignment, recovery and recycling of non-refillable Soft Drink containers provided for herein, including more particularly any deficit related to annual results (within the meaning and scope given to this term in subsections 10.2 and 10.3).

B.G.E. may establish a unit amount:

- 11.5.1 that is to be added to any deposit that is to be collected and remitted to B.G.E. by a Registrant pursuant to this Agreement; or, as the case may be
- 11.5.2 that is to be deducted from an amount that is otherwise to be reimbursed, credited or paid by B.G.E. to a Registrant for each container, of a certain type determined by B.G.E., that is recovered by a Registrant according to the terms of the Agreement,

for the purpose of ensuring payment of amounts due under the terms of this Agreement, in order to cover said management and administrative costs associated with the system provided for herein for the current or for the previous year, as the case may be, and to finance the program for the improvement of the recovery infrastructure and services provided under section 24, as the case may be. B.G.E. may, at all times, modify this amount in accordance with any actual or anticipated deficits for the previous, current or following year, and any surplus accumulated during that year shall be remitted or credited to the Registrants, pro rated to the amount contributed by each of them, according to the terms of subsections 7.5 and 8.3 and any deficit may be carried over to the following year. Notwithstanding any of the foregoing, any deficit for the final year of the Agreement, or its last renewal

period as the case may be, may be claimed directly from the Registrants, by way of a special contribution charge or otherwise.

B.G.E. shall give notice of any modification, replacement or revocation of a unit amount at least 30 days prior to its coming into force. Such amount can be adjusted on a quarterly basis in accordance with the cost forecasts associated with the payment of amounts due under the terms of the Agreement and the management and administration of the system.

If the unit amount is modified, replaced or revoked by B.G.E. pursuant to this subsection 11.5, the rules of compensation and adjustment provided for under part 2 of schedule C are then adjusted according to the methods that B.G.E. may determine.

For the purposes of clarity, B.G.E. may, even concurrently, establish a unit amount in accordance with paragraph 11.5.1 and one or more unit amounts under paragraph 11.5.2.

- 11.6 From the date of the coming into force of this Agreement, B.G.E. shall not, directly or indirectly, without prior written approval of RECYC-QUÉBEC, the Association des détaillants en alimentation du Québec and the Conseil canadien de la distribution alimentaire, increase the costs and responsibilities, for Retail Establishments, arising out of the consignment, recovery and recycling system for non-refillable Soft Drink containers provided for herein, subject only to the amount that a Retail Establishment may be required to pay, either directly or through a third party, pursuant to subsection 11.5 of this Agreement if it markets non-refillable Soft Drink containers.
- 11.7 B.G.E. shall maintain a separate account called the “contribution account”, relative to any contribution received or receivable by B.G.E. pursuant to paragraph 5.5 or to paragraph 8.1.3.
- 11.8 The amounts attributed to the “contribution account” shall, until they are distributed, be deposited with a financial institution authorized to receive deposits from the public in Quebec or otherwise invested in conformity with articles 1339 to 1344 of the *Civil Code of Québec*.
- 11.9 Within 120 days of the end of each financial year of B.G.E., the latter shall allocate among the Recoverers the balance showing in each item of such account at the end of such financial year (net of the sums paid by B.G.E. for purposes of recovery of the contributions payable in virtue of this Agreement), proportionally to the number of Recyclable Containers of the type contemplated by such item recovered pursuant hereto, during such financial year by each of them respectively.

For the purposes of this subsection 11.9, the number of a Recoverer's containers is established net of, if necessary, the number of containers of the same type recovered in exception to a provision provided for under subsection 5.5.

- 11.10 The powers provided for in the various subsections of section 11 shall be in addition to those powers otherwise devolved upon B.G.E. pursuant to the provisions of this Agreement.
- 11.11 Whenever it intends to exercise the power provided for in subsection 11.2, B.G.E. shall give the Signatories at least 30 days prior notice of its intention and, on request, give the latter a reasonable opportunity to make representations.
- 11.12 B.G.E. may require RECYC-QUÉBEC to make available to it, all registers, information or data which may be necessary or useful to B.G.E. for the exercise of its rights and obligations pursuant to this Agreement and RECYC-QUÉBEC shall comply with such a request, subject to its duties of confidentiality and protection of confidential information.
- 11.13 For the duration of this Agreement, B.G.E.'s general by-laws:
 - 11.13.1 shall state that RECYC-QUÉBEC may send a representative to B.G.E.'s meetings of its board of directors, such representative holding the same rights and privileges as the directors of B.G.E. with respect to notice of meetings, access to information and the right to speak at such meetings and such representative may not be removed or dismissed by reason of his failure to be present at a specified number of meetings of the board of directors. For greater certainty, such representative shall not have any right to vote at the meetings of the board of directors of B.G.E.;
 - 11.13.2 shall provide that a representative of the enterprise that are at the origin of the introduction of House Brands Products in the Quebec market shall be entitled to sit at its board of directors, as a director holding all rights and privileges attributed to such a function in B.G.E.'s general by-laws; and
 - 11.13.3 may not be modified, with respect to the requirements prescribed at paragraphs 11.13.1 and 11.13.2, without the prior written consent of RECYC-QUÉBEC.
- 11.14 The unit amount established under subsection 11.5 and, generally, B.G.E.'s operating budgets, must be such and shall provide for provisions that allow B.G.E. to have in hand, at all times, all necessary amounts to meet, when due, all financial commitments required under the terms of this Agreement without having recourse to any financing, by way of a loan and, more particularly, so that it may remit when due all amounts that become due to RECYC-QUÉBEC.

- 11.15 Notwithstanding any provision of this Agreement, none of the provisions of this Agreement shall, directly or indirectly, be interpreted as establishing B.G.E. as an agent, mandatary or representative of the Crown or of RECYC-QUÉBEC.
- 11.16 Upon receipt by B.G.E. of the receipts issued by a conditioner or a recycler, B.G.E. shall reimburse the deposit to all artisans, with respect to all non-refillable beer or Soft Drink containers that bear the inscription provided for in Schedule D that were remitted by an artisan to a conditioner or recycler duly certified by RECYC-QUÉBEC, on the 15th day of the month following such remittance.
- 11.17 B.G.E. may, with, in all cases, the prior written consent of RECYC-QUÉBEC, designate as recyclable a container which does not strictly fulfill the conditions set out in section 2 of the present Agreement under the definition of “Recyclable Container”, when it deems that the available conditioning or recycling services and the market prospects and conditions allow the conditioning or recycling of the container in question on a reasonable commercial basis. B.G.E. or RECYC-QUÉBEC may, at any time, revise and overrule this designation and prohibit the use of a container, in accordance with the above mentioned criteria.

12. Binding Force

- 12.1 No party to this Agreement may assign or otherwise dispose of, in whole or in part, the rights that are conferred on it herein, nor may it waive such rights without the consent of all the other parties hereto.
- 12.2 The fact that one or more persons, mentioned herein or in a Schedule hereto as Signatories or Registrants in respect of this Agreement, have not signed this Agreement does not discharge the Signatories or Registrants who have signed it of their obligations hereunder.
- 12.3 Each of the parties hereto covenants that any person to whom it is related shall respect this Agreement as though it were a party hereto.
- 12.4 Notwithstanding the foregoing provisions, RECYC-QUÉBEC may at any time assign its rights to a subsidiary and substitute the latter as debtor pursuant hereto, by simple notice to the other Signatories and Registrants. Such delegation shall effect novation as of the date thereof or as of such prior date as indicated in the notice, subject, in the latter case, to the rights acquired by a third party prior to the delegation and subject, in every case, to the obligations of RECYC-QUÉBEC under the second paragraph of subsection 14.5.

13. Remedies

- 13.1 The rights conferred by this Agreement shall be particular to each of the parties hereto and it is agreed that each one of them shall have the right to require that the

Agreement be respected by any other party hereto, by way of an injunction, without prejudice to any other recourse.

- 13.2 Subject to section 23, no party, with the exception of RECYC-QUÉBEC, may terminate this Agreement or justify its non-performance of an obligation hereunder by the default of another party to perform its obligations.

14. Term, Amendments And Transitional Measures

- 14.1 This document bears witness to an Agreement coming into force on January 1, 2007, such that notwithstanding the actual date of signature, any reference to the date of said Agreement is considered to refer to January 1, 2007.

Notwithstanding the foregoing, subsections 4.7, 5.5 and paragraph 8.1.3 come into force on the first (1st) day of the month following the date of signature of this Agreement.

- 14.2 This Agreement shall have a term ending on December 31, 2008. However, notwithstanding the foregoing, unless a written notice to the contrary is given, on or prior to June 30, 2008, by the Minister, RECYC-QUÉBEC or the Association des embouteilleurs, this Agreement shall be automatically renewed for an additional twelve month period beginning on January 1, 2009; moreover, it shall be automatically renewed for a twelve month period, beginning on January 1, 2010, unless a written notice to the contrary is given, on or prior to June 30, 2009, by the Minister, RECYC-QUÉBEC or the Association des embouteilleurs. Should the Agreement be renewed, it will be renewed under the same terms and conditions stipulated in the present Agreement, unless otherwise provided for in this Agreement, as the case may be, and there shall be no possibility of a tacit or automatic renewal after December 31, 2010.

- 14.3 The Signatories of this Agreement may, with the unanimous and written consent thereof, make any correction, addition or amendment to this Agreement.

Such correction, addition or amendment shall come into force only upon the expiry of a fifteen day prior notice given by B.G.E. to all the Registrants, or at such subsequent date as may be mentioned in the notice and to which the Signatories have unanimously agreed in writing. The prior notice shall contain a summary of the corrections, additions or amendments so made in this Agreement.

- 14.4 Notwithstanding the terms of subsection 14.2, the Association des embouteilleurs may, at all times, terminate the present Agreement by giving a reasonable prior notice to the other Signatories if, pursuant to a law of the National Assembly, a government regulation, a government or ministerial policy or to an administrative measure, a fee, or any other form of payment or contribution, other than those established under this Agreement, is imposed on the Association des

embouteilleurs, on B.G.E. or on the Registrants by virtue of their marketing or distribution activities with respect to Soft Drink containers.

The Agreement shall thereafter terminate when a fee, or any other form of payment or contribution, comes into force.

- 14.5 Notwithstanding its expiry, this Agreement shall continue to have effect in respect of any situation of fact or law which has arisen during its term and any act performed during such period and, more particularly, without limiting the generality of the foregoing, B.G.E. shall benefit fully and entirely of all rights and powers provided for in subsection 4.6 upon expiry of the Agreement in order to ensure that the Agreement is complied with, by the Registrants, during the initial term of the Agreement, or its renewal period, as the case may be.

In conformity with the relevant provisions of this Agreement, B.G.E. shall be entitled to collect the amount of the deposits and the unit amount established according to subsection 11.5 with respect to all containers sold, delivered or given during the term of the Agreement, and any renewal period, as the case may be, and shall be bound to reimburse the deposits and the unit incentive fee due with respect to all containers recovered by a Recoverer during the same period of time in accordance with this Agreement, to the entire discharge of RECYC-QUÉBEC, being expressly understood that RECYC-QUÉBEC shall be responsible and solely bound to pay the deposit and unit incentive payable with respect to the containers that are subject to the Agreement, that were sold, delivered or given during the term of the Agreement and recovered by a Recoverer after the date of expiry of the Agreement, or, in case of renewal, sold, delivered or given during a renewal period of the Agreement and recovered by a Recoverer after the last renewal period, to the entire discharge of B.G.E.

15. Severability

In the event that any provision of this Agreement, or the application of any provision in a particular situation, is declared invalid, inoperative, illegal or non-enforceable, in whole or in part, by a court of competent jurisdiction, without possibility of appeal, all other provisions of this agreement shall remain in force to the extent that they are not affected by the decision.

16. Notices, Reports and Payments

- 16.1 Any notice, report or payment pursuant to this Agreement shall not be deemed given, made or submitted in writing to B.G.E. until it is forwarded to the attention of B.G.E. to such address as the latter may have notified the Registrant during the term of this Agreement. Any notice must refer to this Agreement.
- 16.2 Any notice shall be deemed to have been given to any Signatory, other than B.G.E., and to a Registrant, when forwarded in writing to the attention of the

addressee, and in the case of a Registrant, at the address provided in Schedule A or in Schedule B, as the case may be, or to any other address notified by the addressee to B.G.E. during the term of this Agreement.

- 16.3 It is the responsibility of the sender to show that his item has been duly delivered. However, notices sent by registered mail, postage paid, duly addressed and deposited in a post office in Quebec, are presumed (unless there is a strike or a work slowdown) to be delivered on the fifth banking day following the sending thereof.

17. Consultation Committee

A consultation committee may be established by RECYC-QUÉBEC for the purposes of discussing issues related to the consignment, the recovery and the recycling of non-refillable beer and Soft Drink containers, which committee may, at the option of RECYC-QUEBEC be made up of any person, including representatives of the beer and Soft Drink producers, distributors, Retail Establishments, Wholesale Establishments, conditioners, recyclers, consumers, and the Minister and where B.G.E. will be required to participate.

18. Rights of RECY-QUÉBEC

- 18.1 Without limiting its powers in accordance with the *Act respecting the sale and distribution of beer and soft drinks*, its constituting law (including the power to administer, alone or with partners, any consignment system), of this Agreement or otherwise, RECYC-QUÉBEC may, at all times:

18.1.1 remedy any default of B.G.E. hereunder which is not remedied within 20 days of the transmission by RECYC-QUÉBEC of a written notice, and to claim from B.G.E. the costs resulting from such intervention;

18.1.2 to the extent that RECYC-QUÉBEC considers any of B.G.E.'s decision, procedure, intervention or measure, or any omission or delay on its part contravenes the *Act respecting the sale and distribution of beer and soft drinks* or the Agreement, or harms the consignment, recovery and recycling system for non-refillable Soft Drink containers governed by this Agreement, RECYC-QUÉBEC, if such a situation or default is not remedied within 20 days of the transmission by it of a written notice to that effect, may intervene and act in place and stead of B.G.E. (including reversing, reviewing or modifying any action on its part, carry out any inspection or verification for which B.G.E. is responsible in virtue of this Agreement, etc.) and claim from B.G.E. all costs resulting from any such intervention. If RECYC-QUÉBEC intervenes in this manner, its decision is final and prevails over the one of B.G.E. and binds the Registrants in the same way as if it had been made by B.G.E.

- 18.2 Notwithstanding any provision to the contrary and without limiting its rights pursuant to other provisions hereof, RECYC-QUÉBEC has the right to pay, with the amount it may owe to B.G.E., any amount that is owed to it by the latter in virtue of this Agreement or which RECYC-QUÉBEC must pay to a third party, for and in the place of B.G.E., either as a result of a default on the part of B.G.E. or for any other cause.

19. **Conditioners / Recyclers**

- 19.1 Throughout the term of the Agreement and of any renewal period, as the case may be, RECYC-QUÉBEC shall certify the conditioning and recycling bodies contemplated herein in accordance with the recycler's certification policy and the existing practices in force from time to time. Furthermore, RECYC-QUÉBEC shall enter into the required written agreements with B.G.E. and these conditioning and recycling bodies according to the standard form that is in use from time to time, as jointly amended by B.G.E. and RECYC-QUÉBEC, as the case may be. RECYC-QUÉBEC may subject its approval or consent to such conditions as it deems appropriate and may conclude any agreement in this respect.
- 19.2 If RECYC-QUÉBEC wishes to amend its certification policies and practices and such amendments have a financial impact on the management and administrative costs of the consignment, recovery and recycling system for non-refillable Soft Drink containers contemplated herein, or if they significantly restrict the possibility for a person to become a conditioner or a recycler, such amendments must be approved by a majority of the members of an *ad hoc* committee formed of three (3) persons, namely one representative of RECYC-QUÉBEC, one representative of B.G.E. and one representative of the conditioners/recyclers appointed by RECYC-QUÉBEC.
- 19.3 The procedures, calculations and sampling which must be undertaken by conditioners and recyclers shall be determined by a common agreement between RECYC-QUÉBEC and the representatives of the Soft Drink and beer industries in order to ensure their equity for everybody and their flexibility. B.G.E. may amend these procedures, calculations and sampling, to the extent that it is able to reach a prior agreement with RECYC-QUÉBEC.
- 19.4 A technical committee made up of representatives of B.G.E. and of RECYC-QUÉBEC and of a representative appointed by the conditioners and recyclers (failing which, by RECYC-QUÉBEC) shall meet at the request of RECYC-QUÉBEC in order to discuss the procedures and the methods for the execution of calculations and sampling.
- 19.5 B.G.E. must, regularly, undertake inspections with respect to procedures, calculations and sampling by conditioners and recyclers for the purposes of this

Agreement. RECYC-QUÉBEC may also, at any time, make such inspections and, if such intervention results from a default on the part of B.G.E. that is not remedied after a prior written notice by RECYC-QUÉBEC that provides a reasonable period of time to remedy said default, claim the costs resulting from such intervention.

- 19.6 With respect to any inspection that it does under the terms of the present section, of the operating facilities of a conditioner or a recycler, B.G.E., without prejudice to its right to share results with RECYC-QUÉBEC, maintains the confidentiality of any information belonging to said conditioners and recyclers, other than those information that they have themselves obtained from recoverers in accordance with their obligations under the terms of the Agreement or of any Certification Agreement, except for the disclosure of said information when the recycler or conditioner is in default under the terms of its obligations provided in the Certification Agreement as signed by such recycler or conditioner, or as provided by usual exceptions. Under the present paragraph, “usual exceptions” cover situations when :

19.6.1 the information has become generally known to the public or is available to the public, other than by disclosure from the inspectors, representatives or authorized agents of B.G.E., by B.G.E. itself or by RECYC-QUÉBEC;

19.6.2 the information was already known to the inspectors, representatives or authorized agents of B.G.E., by B.G.E. itself or by RECYC-QUÉBEC before the inspection date ;

19.6.3 the information was or has become known to the inspectors, representatives or authorized agents of B.G.E., by B.G.E. itself or by RECYC-QUÉBEC, following a disclosure required under the law ; or

19.6.4 the information was legally obtained from a person not covered by the obligation of confidentiality in respect of conditioners and recyclers.

For clarification purposes, notwithstanding any provision to the contrary :

19.6.5 the information relating to the processes and equipments of conditioners and recyclers are and should remain confidential and should not be disclosed to anyone, at any time, provided such disclosure is not required to establish a default on the part of said conditioner or recycler, or is not required by law;

19.6.6 if, after an inspection, a conditioner or recycler is found in default, B.G.E. or RECYC-QUÉBEC, as the case may be, will allow the conditioner or recycler to remedy the default if this can be done, before notifying the client of the conditioner or recycler.

20. B.G.E.'s Contributions Towards Information, Awareness and Education

20.1 B.G.E. shall pay to RECYC-QUÉBEC an amount of \$0.0015 for each container that is not recovered and for which a deposit should have been collected in accordance with this Agreement, as a contribution towards information, awareness and education of the population in regards to recycling and recovery, with respect mainly to refundable non- refillable containers. Such contribution shall be payable by B.G.E. to RECYC-QUÉBEC twice every year, namely:

20.1.1 no later than September 30 of each year, regarding the containers not recovered during the period extending from January to June inclusively preceding said September 30;

20.1.2 no later than March 31 of each year, regarding the containers not recovered during the period extending from July to December inclusively preceding said March 31.

20.2 For the purpose of clarity, the foregoing provisions will apply to the period extending from July to December 2008 inclusively and, in case of renewal of the Agreement, to the period extending from July to December 2009 inclusively and to the period extending from July to December 2010, as the case may be.

20.3 RECYC-QUÉBEC shall annually report on the use of all amounts collected pursuant to this section for the above mentioned purposes.

21. Interest and Payments

Any amount owing and unpaid when due to RECYC-QUÉBEC by B.G.E. or payable by RECYC-QUÉBEC to B.G.E. pursuant to this Agreement shall bear interest at a rate equivalent to the rate determined for debts owed to the Crown pursuant to section 28 of *An Act respecting the ministère du Revenu* (R.S.Q., chapter M-31), as amended from time to time.

22. Compensation Fund

A compensation fund shall be established so as to provide for the required adjustments with respect to the amounts paid by RECYC-QUÉBEC and B.G.E. as regards the recovery of non-refillable beer and Soft Drink containers, under the terms of this Agreement or the Agreement Relating to Beer. This compensation fund is managed and administered by RECYC-QUÉBEC and is governed by the following rules:

22.1 no later than the 15th day of each month, RECYC-QUÉBEC shall forward a statement of account to B.G.E. setting out the amounts due by B.G.E. to RECYC-QUÉBEC, or by the latter to the former, according to the terms of this section, for the previous month.

22.2 The amounts payable by RECYC-QUÉBEC to B.G.E., or by the latter to the former, under the terms of this section are established according to the following parameters:

22.2.1 RECYC-QUÉBEC shall remit or credit B.G.E.:

- i) the total amount of \$0.10 or \$0.20 deposits duly remitted or credited by B.G.E. to the Registrants to this Agreement, during the previous month, with respect to non-refillable beer containers; and
- ii) the share of deposits that is attributable to the registrants to the Beer Agreement that were paid by B.G.E., during the previous month, to the artisans authorised by RECYC-QUÉBEC. This share is equal to a percentage obtained by dividing the number of non-refillable beer and containers sold, delivered or given by the number of non-refillable beer and Soft Drink containers sold, delivered or given, in accordance with the terms of this Agreement and the Beer Agreement, during the previous month;

22.2.2 B.G.E. shall remit to RECYC-QUÉBEC, or the latter shall remit to the former, as the case may be, the amount **a)** of the \$0.05 deposits **b)** of the unit incentive fee of \$0.02 paid to the Establishments in accordance with subsection 5.4, which have been duly remitted or credited, during the previous month, either by B.G.E. to the Registrants to this Agreement, or either by RECYC-QUÉBEC to the registrants to the Beer Agreement, that exceed the average rate of recovery of non-refillable beer and Soft Drink containers of a same material bearing a \$0.05 deposit for the twelve-month period ending the last day of the previous month.

22.3 After set-off between the amounts due by RECYC-QUÉBEC to B.G.E. and by the latter to the former pursuant to the terms of this section, all amounts due, according to the terms of this section, shall be paid, as the case may be:

22.3.1 by RECYC-QUÉBEC, within fifteen days of the remittance of the statement of account as provided under subsection 22.1, once all amounts otherwise due by B.G.E. under the terms of this Agreement have been deducted; or

22.3.2 by B.G.E., within fifteen days of the receipt of the statement of account.

22.4 The appropriate and definitive adjustments shall be established by RECYC-QUÉBEC in compliance with Part 2 of Schedule C of this Agreement and the Beer Agreement.

22.5 For the purposes of all calculations provided for in this section, B.G.E. shall forward to RECYC-QUÉBEC:

22.5.1 every month, no later than the 25th day of each month, all relevant information or statistics for the previous month; and

22.5.2 at three-month intervals, all relevant information with respect to the adjustments provided for in Part 2 of Schedule C.

If B.G.E. does not forward such information or statistics, RECYC-QUÉBEC may calculate the amount due or to be remitted by either in the manner it deems the most appropriate and the amount thus determined shall be final and binding upon the parties.

22.6 insofar as required by the market conditions, and more particularly if the amount of any deposit is modified, B.G.E. and RECYC-QUÉBEC shall agree on all appropriate adjustments to the compensation mechanism provided for under this section 22.

23. Termination

23.1 B.G.E. shall be charged with the administration of this Agreement. It shall deploy all required efforts and shall exercise all recourses that are necessary to ensure that the Registrants fulfil their obligations faithfully pursuant hereto, during the initial term of the Agreement and any renewal period, as the case may be.

23.2 If B.G.E. fails to perform any of its obligations under subsection 23.1, or otherwise under the terms of the Agreement and:

23.2.1 in the case of a default to pay an amount of money, if the default persists for more than fifteen days of a written notice of RECYC-QUÉBEC to this effect; or

23.2.2 in the case of any other default pursuant hereto, if the default persists more than thirty days of a written notice of RECYC-QUÉBEC to this effect,

and if, in either case, the default is not of minor importance according to the *Civil Code of Quebec*, the Minister may, upon recommendation from RECYC-QUÉBEC, by notice to the other Signatories and to all of the Registrants, notify them that the Minister designates RECYC-QUÉBEC, or any other person designated in the notice, to enjoy and benefit, from the date indicated in the notice, for the unspent period of time of the Agreement and for any renewal period, as the case may be, all of the rights and privileges of B.G.E. as provided in the Agreement that the Minister may wish RECYC-QUÉBEC, or such other person, to enjoy or benefit, instead of B.G.E., which choice the Minister may exercise at his entire discretion. In such event, the stipulations provided in the Agreement referred to in the notice of the Minister are deemed amended so as to replace “B.G.E.” by “RECYC-QUÉBEC”, or such other person designated, and B.G.E. shall be deprived of all its rights, as the case may be, under the terms of

any of the provisions indicated in the notice. B.G.E. shall nevertheless remain responsible for all obligations imposed under the terms of the Agreement for any situation that originated prior to the date indicated in the notice of the Minister. In addition to the provisions mentioned in this section, the Minister may choose, which option shall be indicated in the notice, to require that all provisions of this Agreement be complied with and, more particularly, the provisions of section 10 and subsection 11.1.

Without limiting the generality of the foregoing, the Minister may exercise the option provided hereinabove either during the Agreement or any renewal period, as the case may be, or after the expiry of either and, if the option is exercised, the person designated by the Minister may, and has the legal interest to exercise all recourses that may be exercised by B.G.E. against a Registrant by virtue of this Agreement, B.G.E. being deemed in such an event to have assigned all its rights to such person against any such Registrant.

24. Program for the Improvement of the Recovery Infrastructures and Services

- 24.1 During the period starting January 1st 2007 and until the end of the Agreement, including all renewal periods, as the case may be, B.G.E. will invest, during each calendar year, the portion of the annual results surpluses as provided for under paragraph 10.2.1 as well as an amount of \$0.0010 for each refundable container that is not recovered and for which a deposit should have been collected pursuant to this Agreement, in the framework of a program for the improvement of the recovery infrastructures and services set up or administered by B.G.E. which will include implementation of equipment (that may include so-called “intelligent” reverse vending machines), as well as the implementation of new services or other similar means, as the case may be and which, in all cases, shall comply with the purpose of the Agreement, to achieve improved access for the return and recovery of such containers and have a direct and significant impact on such accessibility.

The admissible spending financed by the annual results’ surplus and the contribution of \$0.0010 for each container which is not recovered as provided for under section 24.1 must be duly incurred during the calendar year during which calculations are made regarding the surplus and the containers which are not recovered, but in any case, no later than six months following the end of the year in question. Otherwise, B.G.E. shall remit all unused balance to RECYC-QUÉBEC no later than 60 days following the expiration of this maximum six month period if this deadline occurs within the term of this Agreement or of any renewal, if any, or, if such is not the case, no later than March 31 following the end of the Agreement.

If the amount invested in the program for the improvement of the recovery infrastructures and services in accordance with the foregoing exceed, during a given calendar year, the hereinabove mentioned minimum amounts, such surplus may be used during the subsequent calendar year, if (and only if) the latter occurs during the Agreement or any renewal thereof.

Notwithstanding any provision to the contrary in the agreement relating to consignment, recovery and recycling of non-refillable Soft Drink containers of December 1, 1999 (as amended, more particularly, by the April 2005 amendment), the penalty payable for the 2006 calendar year will be reduced by \$1,050,000, which amount B.G.E. undertakes to invest at the rate of a minimum of \$350,000 per calendar year commencing with the year 2007 (to a maximum of the said amount of \$1,050,000), in the program provided for under this section 24, for specific purposes of the improvement of container recovery, that the whole, in regards mainly to the refundable non-refillable containers, when these are consumed either outside the domicile or the residence during such events as festivals, fairs, exhibitions, celebrations or public shows or other events of the same nature, or in such establishments where the consumption takes place in the establishment itself, as bars or restaurants. If the annual minimum amount of \$350,000 is not so invested, B.G.E. will pay the entire balance to RECYC-QUÉBEC no later than March 31 of the following calendar year, and the latter may then use this amount as it considers appropriate, at its sole discretion. As the case may be, B.G.E. shall also pay to RECYC-QUÉBEC, no later than March 31 following the end of the Agreement (including any renewal period), the balance of the amount of \$1,050,000 which has not been invested in accordance with the terms of the Agreement.

The total amount of the expenses duly incurred by B.G.E. in relation to its program for the improvement of the recovery infrastructures and services is established, for each period, in accordance with the generally accepted accounting principles.

24.2

For clarity purposes, the admissible expenses for the program include the costs of leasing or acquisition, as well as the costs related the setting up, maintenance, repairs and the functioning of the machines, equipment, rolling material or any other immovable, as well as expenses or rental fees for space and costs of recovery services or any other similar means (such as specified, more particularly, in section 24.1) set up and assumed by B.G.E. in the framework of the program for the improvement of the recovery infrastructures and services, net from, if necessary, the income or benefit drawn by B.G.E. from these operations, including particularly, if necessary, any deposit not reimbursed and the value of the material.

The admissible expenses may also include the costs related to the information, awareness and education activities related to a project to improve the recovery infrastructures or the services of recovery of the refundable containers and the salary of a B.G.E. employee, insofar as proven to RECYC-QUÉBEC that such employee is assigned exclusively for the management or the activities of the program. However, the total annual salary of the employee, including employee benefits, shall not exceed \$70,000 per year. However, notwithstanding the foregoing, the expenses mentioned in this paragraph and that directly or indirectly related to sweepstake or promotional material are only admissible if previously approved by RECYC-QUÉBEC.

However, the admissible expenses exclude all fees related to the management and administration, whether direct or indirect, of B.G.E. (including the salaries of regular employees or senior management, subject to the foregoing), administrative premises, use of such equipment as phones, faxes, photocopy machines, computers or others. The expenses also exclude infrastructure and equipment owned directly or indirectly by the Soft Drink bottlers or distributors and all costs related to marketing, discounts or rebates offered along with the sale of Soft Drinks.

- 24.3 Annually, at the same time B.G.E. submits reports listed under subsection 11.4 of the present Agreement, it will submit to RECYC-QUÉBEC, a written report relating to the program for the improvement of the recovery infrastructures and services, which will include information, data, or documents that RECYC-QUÉBEC could reasonably request, including more specifically and without limitations, the following :

24.3.1 Item by item detail of expenses committed and by project;

24.3.2 a copy of all relevant documents relating to the admissible expenses;

24.3.3 precise locations where such machines, equipments, rolling stock or other fixed assets were installed or moved during the period; as the case may be ;

24.3.4 the process followed by B.G.E. during said period, for the rental, acquisition, sale, maintenance, repair and operation of the machines, equipments and other fixed assets as well as for the collection of the containers, with the understanding that in all cases, B.G.E. will deal with the various suppliers and distributors.

- 24.4 A committee will be formed by B.G.E. for the purposes of the administration of the program provided for under this section 24, including at least one representative of RECYC-QUÉBEC. The role of this committee will consist more particularly to approve the different projects (or, in accordance with the internal regulations of B.G.E., to recommend such approval to its board of directors).

25. Agreement of May 17, 1985

This Agreement shall not affect the settlement agreement entered into on May 17, 1985 between the A.D.A., the Quebec Wholesale Grocers' Association, the Conseil québécois du commerce au détail, the Canadian Grocery Distributors' Institute, the Ferme Carnaval Inc., Épiciers Métro Richelieu Inc., the Groupe Servi, representing Les Aliments Servi Inc., Hudon et Deaudelin Ltée, Provigo Inc., Steinberg Inc., and the Comité spécial des détaillants; such agreement remains valid and any reference made within the scope of such agreement to the Agreement dated July 15, 1984 is henceforth deemed to constitute a reference to this Agreement.

26. **Election of Domicile**

For the purposes of any proceedings resulting from this Agreement, the Registrants elect domicile in the judicial district of Montreal.

27. **Applicable Law**

This Agreement is governed by the laws of the Province of Quebec and shall be interpreted in accordance therewith.

SIGNED

**The Ministre du Développement durable, de
l'Environnement et des Parcs**

By :

Claude Béchar

Date _____

RECYC-QUÉBEC

By :

Robert Lemieux, president

Date _____

**L'Association des embouteilleurs de boissons
gazeuses du Québec inc.**

By:

Marc Coulombe, president

Date _____

Boissons Gazeuses Environnement**By :**

Edouard Darche, president**Date** _____**SCHEDULES**

- Schedule A : List of Recoverers
- Schedule B : List of Non-Recoverers
- Schedule C : Terms of Recovery
- Part 1 : Non-reusable Secondary Packaging and Recovery Bags
- Part 2 : Set-off and Adjustment Rules
- Schedule D : Identification of Containers
- Schedule E : Auditor's Report and Declaration
- Schedule E-1 : Declaration of an Officer Relating to the Annual Declaration Attached as
Schedule E
- Schedule F : Registration Form

SCHEDULE A

(Available separately)

List of Recoverers

Name or Corporate Name
of Registrant

Home or Principal Place of
Business Address

Mailing Address

SCHEDULE B
(Available separately)

List of Non-Recoverers

Name or Corporate Name of Registrant	Home or Principal Place of Business Address	Mailing Address
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SCHEDULE C

Terms of Recovery

Part 1

Non-reusable Secondary Packaging and Recovery Bags

1. All non-reusable secondary packaging of the containers contemplated in the Agreement must be such that they may be used to return the containers (except where a bag or another type of secondary container is provided for such return), be recyclable and be of such size and configuration that containers of a similar unit volume may be accommodated therein.
2. B.G.E. shall ensure that bags to be used for the recovery of containers under this Agreement are available to the Registrants, at a reasonable cost. A Registrant shall provide a sufficient number of such bags to the Retail Establishments it serves, free of charge or on a reasonable basis of consignment.
3. Bags used for the recovery of containers shall meet such volume, resistance and colour standards as may be established by B.G.E. and bear such distinctive mark as the latter may require, for control purposes.
4. Where it deems that a type of non-reusable secondary packaging does not comply with section 1, B.G.E. may, in addition to the other remedies it may have, enact standards by which to render such type of packaging in compliance.
5. A standard requirement in accordance with section 3 or 4 shall come into force as soon as B.G.E. notifies the Signatories and Registrants thereof or as of such subsequent date as specified in the notice.

Part 2

Set-off and Adjustment Rules

1. The adjustment between the amounts owed by both B.G.E. and the Recoverer pursuant to paragraph 7.1.2 and subsection 7.2 of the Agreement, is done monthly
2. B.G.E. shall adjust any claim of a Recoverer on a quarterly basis relating to a difference between:
 - 2.1 the number of containers declared by the Recoverer as having been recovered pursuant to the Agreement during such three-month period; and
 - 2.2 the number of containers that the Recoverer has entrusted for recycling or of which it has otherwise disposed pursuant to the Agreement during such period, as evaluated by

B.G.E. according to its own calculations, weightings, measures, controls, samplings, examinations or statements or those of the conditioning or recycling organization certified by RECYC-QUÉBEC pursuant to the Agreement.

it being stipulated that the Recoverer is obliged to pay to B.G.E., on notice of such adjustment, a sum equal to the result obtained when the unit amount of the deposit and of the unit incentive fee (deduction made, as the case may be, of the unit amount established by B.G.E. under paragraph 11.5.2 for each container of a type determined by B.G.E.) is multiplied by the excess of the number contemplated in subsection 2.1 over that which is contemplated in subsection 2.2.

3. All amounts due by reason of an adjustment under Schedule C is to be paid forthwith and shall bear interest at a rate equivalent to the rate determined for debts owed to the Crown pursuant to section 28 of the *Act respecting the ministère du Revenu* (R.S.Q., chapter M-31), as amended from time to time.

SCHEDULE D

Identification of Containers

1. All containers must indicate clearly and legibly (in characters of at least twelve points or any other smaller character but in this case, with the prior approval of B.G.E. and RECYC-QUÉBEC, who may refuse at their sole discretion) by stamping or dying, with an indelible inscription, a label or another means solidly affixed to the container:
 - 1.1 the amount of deposit applicable to the container;
 - 1.2 the word “Québec”; and
 - 1.3 the terms “consignée” and “refund” or “deposit”.

Notwithstanding any provision to the contrary, the consignment inscription cannot, in any event, be appended exclusively on any part of the container which is used in any possible way in the line of a special offer, a sweepstake or of any event of such nature and generally, with the objective of drawing from it any advantage other than the remittance of the deposit.

2. Each of the required inscriptions pursuant to section 1 may not appear:
 - 2.1 under the container only; or
 - 2.2 on a part of the container, notably on a crown cap or a rotor cap or on a metallic cover, which may be removed or that is pushed in order to open it.

In the case of a can-type container, such inscriptions must appear on the cover.

3. The inscriptions must be in a colour that contrasts with the container colour or the background colour of any other label or inscription affixed to the container.
4. In respect of the deposit provided for in this Agreement, only the aforementioned inscriptions shall appear on the containers. Any other inscription in respect of any deposit or processing of such container or similar containers in the other jurisdictions is prohibited.

SCHEDULE E

Auditor's Report

To the Directors of _____

I (We) have verified the appended declarations in respect of the quantities of Recyclable Container sold and recovered for the period from January 1 to December 31 20____, in accordance with subsection 5.5 of the Agreement relating to the Consignment, Recovery and Recycling of Non-Refillable Soft Drink Containers, as modified until the date of the present Agreement (the "Agreement"). The responsibility of such financial information falls to the management of _____. My (Our) responsibility consists of expressing an opinion on such financial information on the basis of my (our) audit.

My (Our) audit was carried out in accordance with generally accepted standards. Such standards require that the audit be planned and executed so as to provide reasonable assurance that the enclosed declarations are exempt from serious inaccuracies. The audit includes audit testing of audit evidence in support of the amounts and other information provided in the financial information. It also includes a valuation of the accounting principles followed and significant estimations made by management, as well as an assessment of the overall presentation of the financial information.

In my (our) opinion, such declarations present faithfully, in all material respects, a faithful image of the quantities of refundable Recyclable Containers sold and recovered during the period from January 1 to December 31, 20____ in accordance with the provisions of subsection 5.5 of the Agreement.

Firm

City_____

Date_____

SCHEDULE E-1

DECLARATION OF AN OFFICER RELATING TO THE ANNUAL DECLARATION ATTACHED AS SCHEDULE E

To : BOISSONS GAZEUZES ENVIRONNEMENT

I _____ (name), _____ (title) of _____ (name of registrant) solemnly declare that to the best of my knowledge, the information contained in the attached declaration of _____ relating to the quantity of recyclable containers of Soft Drinks, sold, delivered or given for the period from January 1st to December 31st 200____, is true, complete and trustworthy, and that this declaration has been completed in accordance with the terms of the *Agreement relating to the consignment, recovery and recycling of non-refillable soft drink containers* (as amended, as the case may be, and in force during the period in question); or, as the case may be, that with respect to the totality of non-refillable Soft Drink containers that this registrant has sold, delivered or given during the said period, the registrant has paid the totality of the deposits to a Recoverer, upon purchase.

AND I HAVE SIGNED

City _____ Date _____

(name and title)

DECLARATION COVERING THE PERIOD FROM JANUARY 1 TO DECEMBER 31, 20__¹

a) **Quantities of Recyclable Containers Sold and Recovered**

	Aluminium Recyclable Containers	Steel or Plastic Recyclable Containers	Glass Recyclable Containers
<u>(A)Total Quantity of Containers Sold and Recovered:</u>			
Total quantity of containers sold (500)			
Total quantity of containers recovered (501)			
<u>B)Establishment of the quantities subject to indemnity calculation:</u>			
Minimum recovery % (as per subsection 5.5. of the Agreement) (521)	%	%	%
Maximum recovery % (as per subsection 5.5. of the Agreement) (522)	%	%	%
Minimum required recovery quantity (line 500 X line 521) (523)			
Maximum authorized recovery quantity (line 500 X line 522) (524)			

¹ This declaration must be audited by an independent accounting firm and appended to the Auditor's Report issued thereby. This declaration must relate only to the recyclable containers which are or must be consigned in virtue of the Agreement relating to the consignment, recovery and recycling of non-refillable soft drink containers in force at the time of this declaration.

DECLARATION COVERING THE PERIOD FROM JANUARY 1 TO DECEMBER 31, 20____²

a) Quantities of Recyclable Containers Sold and Recovered

B) Establishment of the quantities subject to the calculation of the non-reimbursable contribution :

Quantity differing from minimum threshold (line 523 - line 501) positive balance only (526)

_____ %

_____ %

_____ %

Quantity differing from maximum threshold (line 501 - line 524) positive balance only (527)

_____ %

_____ %

_____ %

C) Calculation of the non-reimbursable contribution

Minimum non-reimbursable unit contribution (as per subsection 5.5 of the Agreement) (551)

Total minimum non-reimbursable contribution (line 526 X line 551) (552)

Maximum non-reimbursable unit contribution (as per subsection 5.5 of the Agreement) (554)

Total maximum non-reimbursable contribution (line 527 X line 554) (555)

**Total amount due to B.G.E.
(total of the line 552 and 555 amounts)
(556)**

_____ \$

² This declaration must be audited by an independent accounting firm and appended to the Auditor's Report issued thereby. This declaration must relate only to the recyclable containers which are or must be consigned in virtue of the Agreement relating to the consignment, recovery and recycling of non-refillable soft drink containers in force at the time of this declaration.

DECLARATION COVERING THE PERIOD FROM JANUARY 1 TO DECEMBER 31, 20____³

b) **Deposit paid at purchase**

The Registrant confirms that it has paid the deposits to a Recoverer, upon the purchase of all non-refillable Soft Drink containers sold, delivered or given by it during the period of January 1 to December 31, 20 ____.

³ This declaration must be audited by an independent accounting firm and appended to the Auditor's Report issued thereby. This declaration must relate only to the recyclable containers which are or must be consigned in virtue of the *Agreement relating to the consignment, recovery and recycling of non-refillable soft drink containers* in force at the time of this declaration.

SCHEDULE F

Registration Form

Agreement of January 1, 2007 entered into and concluded pursuant to the *Act respecting the sale and distribution of beer and soft drinks in non-returnable containers*

Name or Corporate Name of Registrant: _____

Legal Status:

☐ Legal person or Partnership⁴ _____ ☐ Sole Ownership

Date of Incorporation:
(if applicable)

Principal Shareholders
or Partners:

Principal Directors:

⁴ If the Registrant is a legal person or a partnership, the Registrant must annex a certified resolution of the directors or of the partners, as the case may be, authorizing the signatory to sign this registration form.

Address of Domicile or Principal Place of Business in Quebec:

Mailing Address (if different):

List of principal activities of the Registrant (as a percentage of total business volume):

The Registrant has a Soft Drink distribution and recovery network for Softs Drink using vehicles principally dedicated for this purpose (check):

No ☐

Yes ☐

If Yes, in the following areas:

Brands of Soft Drinks distributed by the Registrant:

Description of containers (materials, size and configuration)

The undersigned (the "Registrant") intends to file with the Minister of the Sustainable Development, Environment and Parks an application to obtain a permit pursuant to the *Act respecting the sale and distribution of beer and soft drinks in non-returnable containers* (R.S.Q., chapter V-5.001).

The Registrant declares that he has examined the Agreement dated January 1, 2007 entered into pursuant to said Act, as modified until the date hereof, and agrees to be bound by such Agreement, as though he had signed it originally, upon his being listed on Schedule A or B of the Agreement.

The Registrant declares that all information provided in this form and in the accompanying documents, if any, is true and complete.

He undertakes to notify B.G.E. of any change made to this form within 15 days. Should he be a Non-Recoverer, he hereby undertakes, where new products are marketed, to give 30 days prior notice.

Signature

Date

Name and title or signatory

(in block letters)

Telephone : ()

Fax : ()

NAME OF THE COMPANY (PARTNERSHIP)

RESOLUTION

RESOLVED:

THAT the Company (Partnership) be a party to the Agreement dated January 1, 2007 entered into pursuant to the *Act respecting the sale and distribution of beer and soft drinks in non-returnable containers*;

THAT the _____, Mr.(Mrs) _____
(t i t l e) (n a m e)

be hereby authorized to complete and sign the registration form contemplated by Schedule F of the said Agreement and to do all such other things and sign all such other documents as may be necessary or useful to give effect to this Resolution.”

CERTIFICATE

I, the undersigned, secretary of _____

hereby certify that the previous is the complete and exact text of the Resolution adopted by the Directors of the Company (Partnership); I further certify that this Resolution is in full force and effect as at the date hereof, without modification.

(d a t e)

(s i g n a t u r e)

AN ACT RESPECTING THE SALE AND DISTRIBUTION OF BEER AND SOFT DRINKS IN NON-RETURNABLE CONTAINERS (R.S.Q., c. V-5.001)

Interpretation, **1.** In this Act,

“beer”; “beer” means the beverage obtained by the alcoholic fermentation in drinking water of an infusion or decoction of barley malt, hops or any other similar product;

“soft drink”; “soft drink” means aerated water to which an essence or syrup has been added;

“permit”; “permit” means a permit prescribed by section 2 of this Act.

1984, c. 30, s. 1.

Non-returnable containers. **2.** Except in the case of a retail sale or a delivery made following such sale, no person may sell or deliver beer or soft drinks in non-returnable containers unless he holds a permit issued for that purpose by the Minister of Sustainable Development, Environment and Parks.

1984, c. 30, s. 2; 1984, c. 36, s. 44; 1988, c. 41, s. 89; 1994, c. 16, s. 51; 1996, c. 9, s. 2; 1999, c. 36, s.158; 2006, c. 3, s.35.

Permit. **3.** No permit may be issued unless the applicant is party to an agreement in conformity with the prescriptions of the regulations made under this Act, entered into with the Minister and the Société québécoise de récupération et de recyclage incorporated under the Act respecting the Société québécoise de récupération et de recyclage (chapter S-22.01), or unless he complies with the regulations adopted pursuant to section 53.30 of the Environment Quality Act (chapter Q-2) and respecting non-returnable containers for beer or soft drinks.

1984, c. 30, s. 3; 1990, c. 23, s. 38; 1994, c. 17, s. 75; 1996, c. 9, s. 3; 1999, c. 75, s. 42.

Revocation or suspension. The Minister, on such conditions as he may determine, may revoke or suspend any permit if its holder fails to comply with the provisions of an agreement entered into under section 3, ceases to be a party to the agreement or does not comply with the regulations adopted pursuant to section 53.30 of the Environment Quality Act (chapter Q-2) and respecting non-returnable containers for beer or soft drinks.

Observations. The Minister shall, before revoking or suspending any permit, notify the permit holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the holder at least 10 days to present observations.

1984, c. 30, s. 4; 1984, c. 36, s. 44; 1988, c. 41, s. 89; 1990, c. 23, s. 39; 1994, c. 16, s. 51; 1994, c. 17, s. 75; 1996, c. 9, s. 4; 1997, c. 43, s. 410; 1999, c. 75, s. 42.

Non-returnable containers. **4.1.** No person may, as part of a retail sales operation, offer for sale or sell beer or soft drinks in non-returnable containers, or distribute beer or soft drinks free of charge in non-returnable containers, unless the containers are marked as required under an agreement or the regulations referred to in section 3.

1996, c. 9, s. 5.

Non-returnable containers. **4.2.** Every person who, as part of a retail sales operation, offers for sale or sells beer or soft drinks in non-returnable containers, or distributes beer or soft drinks free of charge in non-returnable containers, must accept the return of empty containers that are marked as required under an agreement or the regulations referred to in section 3, and refund the refundable portion of the deposit.

Applicability. The first paragraph does not apply where the beer or soft drinks are sold, offered for sale or distributed free of charge for consumption on the premises, or by means of an automatic vending machine.

1996, c. 9, s. 5.

Regulations. **5.** The Government may make regulations.

- (1) prescribing the duration and the modalities of issue and renewal of permits;
- (2) exempting carriers acting on behalf of permit holders from the requirement of holding a permit themselves, and prescribing the modalities and conditions of such exemptions;
- (3) determining the principles and restrictions that must be applied under the agreement contemplated in section 3 in respect of the channels of distribution, sale, transport and delivery of beer or soft drinks in non-returnable containers and the use of such containers.

1984, c. 30, s. 5.

- Offences and penalties. **6.** Every person who contravenes any of sections 2, 4.1 or 4.2 is liable to a fine
- of not less than \$600 nor more than \$30_000 for a first offence;
- (2) of not less than \$1_200 nor more than \$60_000 for any subsequent offence.
- Offences and penalties. Every person who contravenes the provisions of an agreement entered into under section 3 is liable to the same penalties.
- 1984, c. 30, s. 6; 1990, c. 4, s. 635; 1992, c. 61, s. 433; 1994, c. 17, s. 75; 1996, c. 9, s. 6.
- Offence continued. **7.** Where an offence described in section 6 continues for more than one day, it constitutes a separate offence for each day during which it continues.
- 1984, c. 30, s. 7.
- 8.** (Repealed).
- 1984, c. 30, s. 8; 1990, c. 4, s. 636.
- 9.** (Omitted).
- 1984, c. 30, s. 9.
- Minister responsible. **10.** The Minister of Sustainable Development, Environment and Parks is responsible for the administration of this Act.
- 1984, c. 30, s. 10; 1984, c. 36, s. 44; 1988, c. 41, s. 89; 1994, c. 16, s. 51; 1996, c. 9, s. 7; 1999, c. 36, s. 158; 2006, c.3, s. 35.
- 11.** (This section ceased to have effect on 27 June 1989).
- 1984, c. 30, s. 11; U. K., 1982, c. 11, Sch. B, Part I, s. 33.
- 12.** (Omitted).
- 1984, c. 30, s. 12.

BEER AND SOFT DRINKS DISTRIBUTORS, PERMITS REGULATION (R.R.Q., chapter P-9.2, r. 1)

1. A permit issued under the *Act respecting beer and soft drink distributors, permits* (R.S.Q., c. P-9.2) shall be valid for a maximum duration of twelve months. A new permit may be issued at the end of such term.

2. A carrier delivering on behalf of the holder of a permit issued under the Act shall be exempted from holding such a permit.

3. In addition to what the Minister of the Environment and Wildlife may agree, the following principles and restrictions shall apply to an agreement covered by section 3 of the Act:

(1) non-returnable containers used for the sale or delivery of beer or soft drinks shall be suitable for recycling;

(2) a consignment system shall be set up in order to promote the recovery of non-returnable containers used for the sale or delivery of beer or soft drinks;

(3) a recovery system shall be set up for non-returnable containers used for the sale or delivery of beer or soft drinks, so that:

(a) each distributor of beer or soft drinks who is a party to an agreement entered into with the Minister of the Environment and Wildlife is identified as a recoverer or a non-recoverer, depending upon whether he is required by the terms of the agreement to recover empty beer or soft drink containers;

(b) the recovery zone of a recoverer shall correspond to the zone where he regularly delivers beer or soft drinks to retail stores in refillable containers;

(c) each recoverer shall be bound to recover as many empty non-refillable beer or soft drink containers within his recovery zone as he sells;

(d) no recoverer or non-recoverer may sell or deliver in Quebec or for resale in Quebec beer or soft drinks in non-refillable containers purchased from a person who he has reasonable grounds to believe does not hold a permit under the Act;

(e) no soft drink distributor who is a recoverer may sell or deliver in Quebec or for resale in Quebec soft drinks in non-refillable containers otherwise than:

i. directly to a distributor of soft drinks who is a recoverer;

ii. within his recovery zone, directly to any person, where he has no reasonable grounds for believing that such soft drinks are resold or delivered in Quebec or are liable to be resold or delivered in Quebec outside his recovery zone;

iii. directly to a retail store or an association of retail stores, where such sale or delivery involves soft drinks identified solely by mark belonging by that retail store or association of retail stores and that are resold to consumers exclusively by such retail store or chain of retail stores; or

iv. directly to a carrier for delivery, where such delivery, if he made it himself, would be permitted under this sub-paragraph (e);

(f) no non-recoverer may sell or deliver in Quebec or for resale in Quebec soft drinks in non-refillable containers purchased from a soft drink distributor who is a recoverer except:

i. in the manner covered by clause (i) or clause (iii) of sub-paragraph (e); or

ii. within the recovery zone of such distributor, directly to any person, where such non-recoverer has no reasonable grounds for believing that such soft drinks are resold or delivered in Quebec or are liable to be resold or delivered in Quebec outside the recovery zone of such distributor;

(g) a non-recoverer who used non-refillable containers to sell or deliver beer or soft drinks shall share the financial burden of recovering such containers;

(4) a procedure shall be laid down under which a contribution shall be payable above a certain volume of sales so as to check the number of non-returnable containers used for the sale or delivery of beer or soft drinks.

4. *(Omitted)*

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