

AGREEMENT

THIS AGREEMENT, made in duplicate, for management of a province-wide deposit return program for Program Containers is effective as of the 6TH day of November, 2006

BETWEEN:

HER MAJESTY THE QUEEN

in right of Ontario as represented by the Minister of Public Infrastructure
Renewal

(referred to as the “**Ministry**”)

AND:

Brewers Retail Inc.

(referred to as “**BRI**”)

WHEREAS the Ministry recognizes that finding ways to reduce waste is one of the most important issues facing Ontario municipalities;

AND WHEREAS the Ministry is committed to reducing waste going to landfill, lowering recycling costs for municipalities, freeing up blue box space for expanded recycling programs and ensuring a healthier environment and stronger, more vibrant communities for Ontarians;

AND WHEREAS, to achieve these goals, the Government of Ontario announced its intention to initiate a province-wide deposit return program under which Ontario consumers would pay a deposit on all wine and spirit containers purchased in Ontario at the LCBO Stores, Agency Stores and Winery and Distillery Retail Stores, and then be able to return the wine and spirit containers to BRI stores and other locations as specified herein for a full refund;

AND WHEREAS the Ministry is confident that this new initiative will enhance environmental protection in Ontario and improve the efficiency of the blue box program;

AND WHEREAS the Ministry desires to ultimately achieve the goal of ensuring that 85 per cent of Program Containers sold in Ontario will be returned for a refund of Deposit and that 90 percent of glass Program Containers collected will be recycled for Higher Order Recycling Uses, in order to reduce the number of containers that end up in landfill;

AND WHEREAS BRI wishes to assist the Ministry in achieving its environmental goals;

AND WHEREAS the Ministry and BRI recognize that meeting the stated environmental goals is also dependent on excellent customer service that makes the deposit-return program convenient, efficient and accessible so Ontarians are encouraged to return their Program Containers for refund of Deposit;

AND WHEREAS the Ministry and BRI wish to enter into an agreement specifying the terms and conditions by which BRI would operate the deposit-return program on behalf of the Ministry;

AND WHEREAS the Ministry wishes to appoint BRI as the exclusive service provider in the Province of Ontario to provide those services in connection with the deposit-return program as are described herein, subject to and on the terms of this Contract;

AND WHEREAS for greater certainty, each of the Ministry and BRI acknowledges that neither the deposit-return program nor anything in this Contract applies to the deposit and collection arrangements between BRI and brewers regarding non-refillable beer containers and refillable beer containers nor to any existing business agreements, contracts or arrangements between the LCBO and BRI;

AND WHEREAS BRI is authorized pursuant to the *Liquor Control Act* (Ontario) to operate retail outlets for the sale and distribution of beer products to the public in the Province of Ontario;

AND WHEREAS pursuant to a Memorandum of Understanding dated September 8, 2006, the Ministry and BRI have agreed that the deposit-return program must be organized and operated pursuant to a number of key principles, including:

Performance Based with shared goals for financial, environmental, health and safety, and customer service performance;

Ensuring Value for Money with a handling fee structure that is competitive within the Canadian context;

Ensuring Accountability for financial, environmental and other performance goals agreed to by the parties through an accountability framework that would include independent audits;

Timely Implementation with the new deposit return program implemented province-wide by February 2007; and

Ensuring Certainty with the term of the agreement being appropriate to the commitments and investments of the parties.

AND WHEREAS each of the Ministry and BRI acknowledges and agrees that the deposit-return program established hereby achieves such key principles as described in the Memorandum of Understanding;

NOW THEREFORE, in consideration of their respective agreements set out below, the parties covenant and agree as follows:

ARTICLE 1
INTERPRETATION AND GENERAL PROVISIONS

1.1 Defined Terms

When used in this Contract, in addition to the definitions set forth elsewhere in this Contract and in Schedule 1, the following words or expressions have the following meanings:

“**Agencies**” means all advisory, adjudicative, regulatory (including those with governing boards), and operational service agencies of the Province of Ontario;

“**Authority**” means any government authority, Agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over this Contract; and “**Authorities**” means all such authorities, agencies, bodies and departments;

“**BRI Address**” and “**BRI Representative**” mean:

Brewers Retail Inc.
5900 Explorer Drive
Mississauga, Ontario
L4W 5L2

Attention: Vice-President, Finance

Telephone: 905.361.4255
Fax: 905.361.4289

“**BRI Confidential Information**” means all information of BRI that is of a confidential nature that is expressly identified as such by BRI which comes into the knowledge, possession or control of the Ministry in connection with this Contract. For greater certainty, BRI Confidential Information shall not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Ministry of any duty of confidentiality owed by the Ministry to BRI or to any third-party; (ii) the Ministry can demonstrate to have been rightfully obtained by the Ministry, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Ministry free of any obligation of confidence; (iii) the Ministry can demonstrate to have been rightfully known to or in the possession of the Ministry at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Ministry; and BRI Confidential Information shall not include the terms of this Contract;

“**Business Day**” means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year’s Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Ministry has elected to be closed for business;

“**Conflict of Interest**” means, subject to section 2.11, any situation or circumstance where in relation to the performance of its obligations in this Contract, BRI’s other commitments,

relationships or financial interests (i) could reasonably be expected to cause BRI to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement in a material respect; or (ii) could reasonably be expected to compromise, impair or be incompatible with the effective performance of BRI's contractual obligations in a material respect;

“**Contract**” means the aggregate of: (a) this agreement, including Schedule 1; and (b) any amendments executed in accordance with the terms of this Contract;

“**Expiry Date**” means **February 5, 2012** (or such other date which is five (5) years following the Commencement Date) or, if the original term is extended by mutual agreement of the parties in writing, the final date of the extended term;

“**Event of Insolvency**” means, in respect of BRI, the occurrence of any one of the following events: (a) if BRI: (i) other than in connection with a *bona fide* corporate reorganization which does not otherwise contravene this Contract, is wound up, dissolved, liquidated or has its existence terminated or has any resolution passed therefor, or makes a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada); (ii) makes an application to the applicable court for a compromise or arrangement under the *Companies' Creditors Arrangement Act* (Canada); or (iii) files any written request, application, answer or other document seeking or consenting to any reorganization, arrangement, composition, readjustment, liquidation or similar relief for itself under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally, including any notice of intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada); (b) if a court of competent jurisdiction enters an order, judgment or decree against BRI which approves or provides for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief with respect to BRI, under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally and such order, judgment or decree remains unvacated and unstayed for an aggregate period of sixty (60) days (whether or not consecutive) from the date it is made; (c) if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for or with respect to BRI and that appointment remains in effect for an aggregate period of sixty (60) days (whether or not consecutive) from the date of the appointment; or (d) if an encumbrancer or anyone acting on behalf of an encumbrancer takes possession of all or substantially all of the property of BRI and remains in possession for an aggregate period of sixty (60) days (whether or not consecutive) from the first date of the taking of possession;

“**Fees**” means the applicable price set out in Part F of Schedule 1, in Canadian funds, to be charged for the applicable Deliverables, all as set out in Schedule 1, but, for clarity, excluding Deposits to be refunded to BRI, representing, except as expressly set forth in this Contract, the full amount chargeable by BRI for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes, excluding Goods and Services Tax and Provincial Sales Tax, if any; (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead;

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended;

“Fiscal Year” means the period running from April 1 in one calendar year to, and including, March 31 in the next calendar year;

“Ministry Address” and **“Ministry Representative”** mean:

Ministry of Public Infrastructure Renewal
777 Bay Street, 4th Floor
Toronto, Ontario M5G 2E5

Attention: Director
Gaming and Alcohol Policy Branch
Agencies Division
Ministry of Public Infrastructure Renewal

Telephone: 416.314.4288
Fax: 416.212.4941

“Ontario Public Service” means the ministries and other administrative units of the Government of Ontario over which Ministers of the Crown preside, and for the purposes of this Contract includes the Agencies, and **“OPS”** has the same meaning;

“OPS Confidential Information” means all information of the Ontario Public Service that is of a confidential nature that is expressly identified as such by the Ministry which comes into the knowledge, possession or control of BRI in connection with this Contract. For greater certainty, OPS Confidential Information shall:

(a) include: (i) all new information derived at any time from any such information whether created by the OPS, BRI or any third-party; (ii) all information (including Personal Information) that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but

(b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of BRI of any duty of confidentiality owed by BRI to the OPS or to any third-party; (ii) BRI can demonstrate to have been rightfully obtained by BRI, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to BRI free of any obligation of confidence; (iii) BRI can demonstrate to have been rightfully known to or in the possession of BRI at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by BRI; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under this Contract or at law and OPS Confidential Information shall not include the terms of this Contract;

“Person” includes any individuals, persons, firms, partnerships, joint ventures, unincorporated associations, trusts, corporations, government or public institution, or any combination thereof;

“Personal Information” means recorded information about an identifiable individual or that may identify an individual;

“**Proceeding**” means any action, claim, demand, lawsuit, or other proceeding;

“**Record**”, for the purposes of this Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the Ministry to BRI, or provided by BRI to the Ministry, for the purposes of this Contract; or (b) created by BRI in the performance of this Contract; and shall include or exclude any information specifically described in Schedule 1;

“**Requirements of Law**” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions, and agreements with all Authorities, in each case, having the force of law, and that now or at any time hereafter may be applicable to either this Contract or the Deliverables or any part of them;

“**Schedule 1**” means Schedule 1 (Schedule of Deliverables, Fees and Supplementary Provisions);

“**Step in Rights**” means the right of the Ministry to operate one or more Deposit return facilities or retain a third party to operate one or more Deposit return facilities, in each case, in specified geographic areas, all in accordance with, and limited to, the Ministry’s Step in Rights set forth in Part D of Schedule 1; and

“**Term**” means the period of time from the effective date first above written up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of this Contract in accordance with its terms, subject to extension to the expiry of any Transition Period pursuant to section 6.3.

1.2 No Indemnities

Any express or implied reference to the Ministry or BRI providing an indemnity or any other form of indebtedness or contingent liability (other than in respect of remedies available at law or in equity) that would directly or indirectly increase the indebtedness or contingent liabilities of, in the case of the Ministry, Ontario or, in the case of BRI, BRI, whether at the date hereof or at any time during the Term, shall be void and of no legal effect.

1.3 Entire Agreement

This Contract embodies the entire agreement between the parties with regard to the provision of Deliverables and the subject matter of this Contract and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables and the subject matter of this Contract, existing between the parties at the date hereof.

1.4 Severability

If any term or condition of this Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of this Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. The parties shall engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic and substantive effect of

which shall come as close as possible to that of the invalid or unenforceable provision which it replaces.

1.5 Interpretive Value of Headings

The headings in this Contract are for convenience of reference only and in no manner modify, interpret or construe this Contract.

1.6 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the Ministry Address to the attention of the Ministry Representative and to BRI Address to the attention of BRI Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph. Changes to any one or more of the BRI Address, BRI Representative, Ministry Address and Ministry Representative shall be given by notice by the applicable party to the other party.

1.7 Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 2

NATURE OF RELATIONSHIP

2.1 Appointment of BRI

The Ministry hereby appoints BRI as the exclusive service provider in the Province of Ontario to operate the Deposit System, including for the purpose of dealing with Agency Stores, on and subject to the terms and conditions provided in this Contract (including section 3.6).

2.2 Acceptance of Appointment

BRI hereby accepts its appointment in accordance with the terms of this Contract.

2.3 BRI's Power to Contract

BRI represents and warrants that it has the full right and power to enter into this Contract and there is no agreement with any other Person to which BRI is a party or by which BRI is bound that would in any way interfere with the obligations of BRI under this Contract.

2.4 Representatives May Bind the Parties

The parties represent and warrant that their respective representatives have the authority to legally bind them.

2.5 Contract Binding Against BRI

BRI represents and warrants that this Contract constitutes a valid and legally binding obligation of BRI enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights and to the fact that equitable remedies are available only in the discretion of the court.

2.6 Contract Binding Against Ministry

The Ministry represents and warrants that the Ministry has all necessary capacity, power and authority to enter into and to carry out the provisions of this Contract and this Contract has been duly authorized, executed and delivered by the Ministry and constitutes a legal, valid and binding obligation enforceable against the Ministry in accordance with the terms of this Contract, subject to the availability of equitable remedies and the *Proceedings Against the Crown Act* (Ontario), including the qualifications that a court of Ontario may not against the Ministry grant an injunction, make an order for specific performance, make an order for recovery or delivery of real or personal property or issue execution or attachment or process in the nature thereof other than garnishment in limited circumstances.

2.7 BRI Not a Partner, Agent or Employee

BRI shall have no power or authority to bind the Ministry or to assume or create any obligation or responsibility, express or implied, on behalf of the Ministry. BRI shall not hold itself out as an agent, partner or employee of the Ministry. Nothing in this Contract shall have the effect of creating an employment, partnership or agency relationship between the Ministry and BRI (or any of BRI's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors) or constitute an appointment under the *Public Service Act*, R.S.O. 1990, c. P.47, as amended.

2.8 Responsibility of BRI

BRI agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and, except as otherwise expressly limited by Schedule 1, subcontractors. This paragraph is in addition to any and all of BRI's liabilities under this Contract and under the general application of law. BRI shall advise these individuals and entities of their obligations under this Contract. This paragraph shall survive the termination or expiry of this Contract.

2.9 Subcontracting, Assignment and Other Government Functions

For greater certainty, nothing in this Contract restricts either party's right to subcontract or in any way restricts any pre-existing rights of the Ministry or of the Government of Ontario or

any of its Agencies to: (a) exercise any regulatory and statutory powers or functions; (b) procure or re-procure the same or similar services from any other Person, except as expressly limited by the provisions of this Contract; (c) set bottle and container deposit rates, subject to the express terms of this Contract; (d) subcontract or outsource the management of all or part of this Contract to any Person; (e) assign this Contract to any other Ministry, Agency or government body; provided that, in the case of (d) or (e), Her Majesty the Queen in right of Ontario shall in no way be released from any of its obligations hereunder. The Ministry agrees that it shall not subcontract or outsource the management of all or any part of this Contract, or assign the Contract, to a Person, Agency or government body who may have a conflict with BRI (for purposes of this sentence, a Person, Agency or government body who may have a conflict with BRI refers to a person or entity such as a competitor of BRI or an entity created pursuant to the *Waste Diversion Act* (Ontario) and its successors).

2.10 Duty to Disclose Change of Control

In the event that BRI undergoes a change in control BRI shall disclose such change in control to the Ministry promptly following the occurrence thereof.

2.11 Conflict of Interest

BRI shall: (a) avoid any Conflict of Interest in the performance of its obligations under this Contract; (b) disclose to the Ministry without delay any Conflict of Interest of which it is aware, or ought reasonably be aware, that arises during the performance of its obligations under this Contract; and (c) comply with any reasonable requirements prescribed by the Ministry, to resolve any Conflict of Interest, subject to the Internal Escalation procedures in Part H of Schedule 1 should BRI not agree, acting reasonably, with any such requirements. The Ministry may terminate this Contract pursuant to section 6.1 hereof upon giving notice to BRI where: (a) BRI fails to disclose a Conflict of Interest of which it is aware, or ought reasonably be aware; (b) BRI fails to comply with any reasonable requirements prescribed by the Ministry to resolve a Conflict of Interest following resolution of any disagreement in respect thereof pursuant to the Internal Escalation procedures in Part H of Schedule 1; or (c) BRI's Conflict of Interest cannot be resolved, in each case, subject to the rectification period set forth in section 6.1. Notwithstanding the foregoing, the Ministry hereby acknowledges and agrees that, for all purposes of this Contract, a Conflict of Interest shall not include any conflict of interest (including that which would be a Conflict of Interest but for this proviso) arising as a result of (i) the business conducted by BRI which is in direct competition to the business of the LCBO and the sale and distribution of liquor in the Province of Ontario, including the ownership and operation of a system for the sale and distribution of beer products in the Province Ontario, through BRI Stores and otherwise, (ii) BRI's operation of the BRI Beer Container Recovery System, and/or (iii) the competition between the shareholders of BRI and between such shareholders and the LCBO, nor shall the Conflict of Interest provisions of this Contract apply in any way to BRI's shareholders or its affiliates. The Ministry further acknowledges and agrees that nothing in this Contract shall in any way or at any time or from time to time preclude or in any way inhibit (i) BRI from engaging in business ventures or from having business interests which compete with the LCBO and the sale and distribution of liquor in the Province of Ontario, and/or (ii) BRI, its shareholders, their respective affiliates, or the industry in which they operate, from lobbying or otherwise advancing or advocating a position to any Agency or any governmental authority, body or department, whether federal, provincial or municipal, on

matters affecting any one or more of BRI, its shareholders, affiliates or such industry. BRI shall ensure adherence to commonly accepted norms of ethical business practices, which shall include BRI not providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by Her Majesty the Queen in right of Ontario. This paragraph shall survive any termination or expiry of the Contract.

2.12 Contract Binding

This Contract shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 3 PERFORMANCE

3.1 Commencement of Performance

Within two weeks of commencement of the Term, and every two weeks thereafter until the Commencement Date, BRI shall provide a report to the Ministry indicating its progress relative to the milestones contained in its LCBO Deposit Project Charter document, as the same may be modified, supplemented or replaced from time to time.

3.2 Performance

BRI covenants and agrees to perform the services and functions to be performed by it hereunder in accordance with the terms of this Contract and in accordance with the Requirements of Law in all material respects. In providing the Deliverables, BRI shall exercise that degree of timeliness, care, diligence and skill that a competent Person who is experienced in performing like services and functions would exercise in comparable circumstances and shall provide the Deliverables through individuals who are competent, qualified and duly trained.

3.3 Notification

During the Term, (i) BRI shall advise the Ministry promptly of any omissions or other faults of which it is aware, the occurrence of which would give the Ministry the right to terminate this Contract pursuant to section 6.1 upon notice or with the passage of time; and (ii) the Ministry shall advise BRI promptly of any omissions or other faults of which it is aware, the occurrence of which would give BRI the right to terminate this Contract pursuant to section 6.5 upon notice or with the passage of time.

3.4 Condonation Not a Waiver

Any failure by any party to insist in one or more instances upon strict performance by the other party of any of the terms or conditions of this Contract shall not be construed as a waiver by the performing party of its right to subsequently require strict performance of any such terms or conditions, and the obligations of the non-performing party with respect to such subsequent performance shall continue in full force and effect.

3.5 Changes and Further Appendices By Written Agreement Only

The parties may, in writing, request changes to this Contract, which may include altering, adding to, or deleting any of the Deliverables. Any changes to this Contract shall be by written agreement signed by the parties. No changes shall be effective unless formalized in writing and signed by the parties.

3.6 Limited Exclusivity, Work Volumes

BRI shall, subject to the Ministry's Step in Rights, be the exclusive provider of the Deliverables for the duration of the Term. The Ministry makes no representation regarding the volume of goods and services required under this Contract or the Fees payable under this Contract. Beyond the Term, the Ministry reserves the right to contract with other Persons for the same or similar goods and services as those provided by BRI under this Contract.

3.7 Communications

The parties will cooperate in communications relating to this Contract and shall each bear their own internal costs with respect to any such communications. Furthermore, the Ministry, either directly or through its Agencies or other government bodies, shall spend \$7.5 million over the first two (2) years of the Term to promote the Deposit System.

3.8 Rights and Remedies

The express rights and remedies of the parties set out in this Contract are in addition to and shall not limit any other rights and remedies available to the parties at law or in equity.

ARTICLE 4

PAYMENT FOR PERFORMANCE

4.1 Payment According to Contract Fees

The Ministry shall pay BRI for the Deliverables provided at the Fees established under this Contract and shall refund Deposits, all in accordance with the procedures established under Schedule 1, including the adjustment protocols established pursuant to Part G of Schedule 1.

4.2 Billing and Payment Process

The billing and payment process shall be in accordance with Schedule 1.

4.3 Performance Audit and Review

In accordance with Part G of Schedule 1, BRI shall maintain all necessary records to substantiate all charges and payments under this Contract and shall permit and assist the Ministry in conducting the audits and performance reviews specified under Part G of Schedule 1. BRI and the Ministry acknowledge and agree that the report and response and adjustment protocols established under Part G of Schedule 1 shall apply where such Ministry audits or performance reviews result in the finding of discrepancies in Fees charged or Deposits refunded, whether such

discrepancies are in favour of BRI or in favour of the Ministry. BRI hereby agrees to establish and maintain (and regularly provide to the Ministry copies of) empty container return policies applicable to BRI Beer Containers and Program Containers accepted or collected by BRI pursuant to the Deposit System that include procedures for employees to identify and not accept the return of containers that are not Program Containers. The Ministry acknowledges that any discrepancy as a result of BRI collecting or accepting the return of alcohol containers that were not purchased in the Province of Ontario provided policies containing the above-referenced procedures are established and maintained, shall not be the subject of adjustment, nor shall it constitute a breach by BRI of its obligations hereunder.

4.4 No Expenses or Additional Charges

Except as expressly set out in this Contract and except for any remedies available to BRI at law or in equity, there shall be no funds payable by the Ministry under this Contract to BRI other than the Fees established under this Contract and the Deposit refunds payable to BRI pursuant to Schedule 1.

4.5 Payment of Taxes and Duties

Unless otherwise stated, BRI shall pay all applicable taxes, including excise taxes incurred by or on BRI's behalf with respect to this Contract.

4.6 Ministry GST Exempt

The Ministry hereby certifies that the Deliverables are required for the use of the Crown in right of Ontario and are therefore not subject to the federal Goods and Services Tax; provided, however, the Deliverables shall be subject to Federal Goods and Services Tax payable by the Ministry should such certification cease to be true. This paragraph shall survive any termination or expiry of this Contract.

4.7 Withholding Tax

The Ministry shall withhold any applicable withholding tax from amounts due and owing to BRI under this Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of this Contract.

4.8 Interest on Late Payment

If a payment is in arrears through no fault of BRI, the interest charged by BRI, if any, for any late payment shall not exceed the pre-judgment interest rate established under section 127(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C45, in effect on the date that the payment went into arrears.

4.9 Additional Audit Rights

For the applicable period of time specified in Part G of Schedule 1, following the Expiry Date, BRI shall maintain all necessary records to substantiate all charges and payments under this Contract. During the applicable period of time specified in Part G of Schedule 1, following the Expiry Date, BRI shall permit and assist the Ministry in conducting audits of the operations

of BRI to verify the above in accordance with, and limited to, the audit and review rights set forth in Part G of Schedule 1. The Ministry shall provide BRI with at least ten (10) Business Days prior notice of its requirement for such audit. BRI's obligations under this paragraph shall survive any termination or expiry of this Contract.

ARTICLE 5

CONFIDENTIALITY AND FIPPA

5.1 OPS Confidential Information

During and following the Term, BRI shall: (a) keep all OPS Confidential Information confidential and secure; (b) limit the disclosure of OPS Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by BRI to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any OPS Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Ministry and (ii) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party; (d) provide OPS Confidential Information to the Ministry with reasonable notice; and (e) return all OPS Confidential Information to the Ministry before or at the end of the Term, with no copy or portion kept by BRI except for that information required to satisfy the post-Term audit obligations set out under this Contract or for its other rights or obligations hereunder or at law or in equity.

5.2 Restrictions on Copying

BRI shall not copy any OPS Confidential Information, in whole or in part, unless copying is needed for the purposes of this Contract. On each copy made by BRI, BRI must reproduce all notices which appear on the original.

5.3 Injunctive and Other Relief

BRI acknowledges that the breach of any provisions of this Article may cause irreparable harm to the Ministry or to any third-party to whom the Ministry owes a duty of confidence, and that the injury to the Ministry or to any third-party may be difficult to calculate and be inadequately compensable in damages. BRI agrees that the Ministry is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

5.4 Ministry Notice and Protective Order

If BRI or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any OPS Confidential Information, BRI will, to the extent it is aware of same, provide the Ministry with prompt notice to that effect in order to allow the Ministry to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Ministry and its legal counsel to the extent reasonably required thereby. If such protective orders or other remedies are not

obtained, BRI will disclose only that portion of OPS Confidential Information which BRI is legally compelled to disclose, only to such person or persons to which BRI is legally compelled to disclose, and BRI shall provide notice to each such recipient (in co-operation with legal counsel for the Ministry) that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Contract and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

5.5 FIPPA Records and Compliance

BRI and the Ministry acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third-parties. Furthermore, BRI agrees:

- (a) to keep Records secure;
- (b) to provide Records to the Ministry within seven (7) calendar days of being directed to do so by the Ministry for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless provided by the Ministry or the Ministry determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not required to provide the Deliverables or are not authorized by the Ministry;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the Ministry Representative to have such access for the purpose of providing the Deliverables;
- (g) to implement other reasonable specific security measures that in the reasonable opinion of the Ministry would improve the adequacy and effectiveness of BRI's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to the Ministry may be disclosed by the Ministry where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this paragraph shall prevail over any inconsistent provisions in this Contract.

5.6 BRI Confidential Information

BRI shall identify any information supplied in confidence for which confidentiality is to be maintained by the Ministry. FIPPA applies to BRI Confidential Information provided to the Ministry, the confidentiality of such information will be maintained by the Ministry, except as otherwise required by law or by order of a court or tribunal. BRI acknowledges that BRI Confidential Information will, as necessary, be disclosed on a confidential basis, to the Ministry's external advisers who have a need to know it for purposes of this Contract, to whom said confidentiality obligations shall also apply. During and following the Term, the Ministry shall: (a) keep all BRI Confidential Information confidential and secure; (b) limit the disclosure of BRI Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of this Contract and who have been specifically authorized by the Ministry to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any BRI Confidential Information (except for the purpose of this Contract, or except if required by order of a court or tribunal). The Ministry shall not copy any BRI Confidential Information, in whole or in part, unless copying is needed for the purposes of this Contract.

5.7 BRI Notice and Protective Order

If the Ministry or any Agency or their respective employees, agents, volunteers or subcontractors become legally compelled to disclose any BRI Confidential Information, the Ministry will, to the extent it is aware of same, provide BRI with prompt notice to that effect in order to allow BRI to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure (including pursuant to FIPPA), and it shall co-operate with BRI and its legal counsel to the extent reasonably required thereby. If such protective orders or other remedies are not obtained, the Ministry will disclose only that portion of BRI Confidential Information which the Ministry is legally compelled to disclose, only to such person or persons to which the Ministry is legally compelled to disclose, and the Ministry shall provide notice to each such recipient (in co-operation with legal counsel for BRI) that such BRI Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Contract and, if possible, shall obtain each recipient's written agreement to receive and use such BRI Confidential Information subject to those terms and conditions.

5.8 Survival

The provisions of this Article shall survive any termination or expiry of this Contract.

ARTICLE 6

TERMINATION, EXPIRY AND EXTENSION

6.1 Ministry Termination of Contract

The Ministry may immediately terminate this Contract upon giving notice to BRI where:

- (a) an Event of Insolvency occurs;
- (b) BRI breaches any of section 5.1, section 5.2, section 5.4 or section 5.5 of this Contract;
- (c) BRI breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship) of this Contract and fails to rectify same within thirty (30) Business Days of receiving a rectification notice from the Ministry in accordance with the terms of such paragraph;
- (d) BRI assigns this Contract without first obtaining the written approval of the Ministry; or
- (e) BRI's acts or omissions constitute a substantial failure of performance and BRI then fails to rectify such non-performance within thirty (30) Business Days of receiving a rectification notice from the Ministry;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

6.2 Contract Management

The Internal Escalation procedures in Part H of Schedule 1 shall apply to the management of this Contract.

6.3 Obligations on Termination

On termination of this Contract for any reason (including, without limitation, termination by BRI pursuant to section 6.5), BRI shall, in addition to its other obligations under this Contract and at law, upon the Ministry's request and in accordance with the terms of this Contract, for a period of up to ninety (90) days (or such other period as may then be agreed by the parties) ("**Transition Period**") from the effective date of termination, continue to provide any Deliverables and all assistance reasonably requested by the Ministry to internalize the Deliverables, or to facilitate the retention by the Ministry of a third party to provide all or some of the Deliverables, in an efficient and orderly manner and the Ministry shall, during such Transition Period, pay to BRI the Fees and refund Deposits required pursuant to this Contract in accordance with the terms of this Contract. Upon any termination or expiry of the Term, BRI shall deliver a final invoice in accordance with Schedule 1 within ninety (90) days from the effective date of termination or expiry, setting out all Fees and refunded Deposits that remain owing, and the parties hereto shall make all required financial adjustments and payments required by this Contract within thirty (30) days following the receipt of such account.

This paragraph shall survive any termination or expiry of this Contract.

6.4 BRI's Payment Upon Termination

On termination of this Contract, the Ministry shall only be responsible for the payment of the Deliverables provided under this Contract up to and including the effective date of any termination (or the end of the Transition Period, if applicable). Termination shall not relieve

BRI of its warranties and other responsibilities relating to the Deliverables performed or money paid.

6.5 BRI Termination of Contract

BRI may immediately terminate this Contract upon giving notice to the Ministry where:

- (a) The Ministry breaches any of section 5.6 or section 5.7 of this Contract;
- (b) The Ministry outsources, subcontracts or assigns this Contract, as a result of, or following, which Her Majesty the Queen in right of Ontario is in any way released from any of its obligations hereunder; or
- (c) The Ministry's acts or omissions constitute a substantial failure of performance and the Ministry then fails to rectify such non-performance within thirty (30) Business Days of receiving a rectification notice from BRI; provided, for greater certainty, each of the following shall be deemed to be a substantial failure of performance and, notwithstanding the foregoing, will be subject to the notice requirements and cure periods set out below, if any:
 - (i) the Ministry fails to make any payment, or cause any payment to be made, when due as required under Part E of Schedule 1 of this Contract, if such failure is not remedied within ten (10) Business Days after receipt by the Ministry of notice of such failure from BRI;
 - (ii) any applicable law or policy of the Government of Ontario shall have been amended, rescinded, repealed or enacted (whether by statute, regulation, order-in-council, notice of ways and means motion, by-law, court decision or otherwise) which (x) impairs or affects the implementation or operation of the Deposit System as contemplated to be implemented or operated under this Contract in any respect which is material and adverse to BRI, and/or (y) materially and adversely changes the retail sale and/or distribution of beer, wine, spirits or other beverage alcohol in the Province of Ontario that causes or results in the board of directors of BRI resolving to undertake the contraction or restructuring, or otherwise change, its business operations in any material respect; or
 - (iii) the Ministry fails at any time during the Term to obtain all required appropriation approvals, including under the Financial Administration Act (Ontario), in order to pay, or caused to be paid, to BRI all monies payable to it under this Contract, if such failure is not remedied within thirty (30) days after receipt by the Ministry of notice of such failure from BRI;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

6.6 Termination in Addition to Other Rights

The express rights of termination in this Contract are in addition to and shall in no way limit any rights or remedies of the Ministry or BRI under this Contract, at law or in equity.

6.7 Expiry of and Extension of Contract

Unless extended by mutual written agreement of the parties, this Contract shall expire on the original Expiry Date.

**ARTICLE 7
FORCE MAJEURE**

7.1 Force Majeure

No party hereunder shall be responsible to the other for any delay or failure to fulfill the terms of this Contract if such failure or delay results from: (a) a strike, lockout, slow-down or other combined action of workmen; (b) an act of God; (c) an act of public enemy, an act of sabotage, riot, fire, flood, explosion, or other catastrophe, an accident, a freight embargo; or (d) any other cause beyond the reasonable control of the party whose failure or delay is to be excused.

IN WITNESS WHEREOF the parties hereto have executed this Contract effective as of the date first above written.

**Her Majesty the Queen in right of Ontario
as represented by the Minister of Public
Infrastructure Renewal**

Signature: _____
Name: Carol Layton
Title: Deputy Minister, Ministry of Public
Infrastructure Renewal
Date of Signature:

Brewers Retail Inc.

Signature: _____
Name: Ted Clarke
Title: President
Date of Signature:

I have authority to bind BRI.

SCHEDULE 1

SCHEDULE OF DELIVERABLES, FEES AND SUPPLEMENTARY PROVISIONS

PART A: DEFINITIONS

When used in this Contract, in addition to the definitions set forth elsewhere in this Schedule 1, the following words or expressions have the following meanings:

“Agency Stores” means private businesses in communities not serviced by LCBO Stores and BRI Stores, and authorized by the LCBO to sell beverage alcohol to the public in the Province of Ontario but excludes Winery and Distillery Retail Stores;

“BRI Beer Container Recovery System” means the deposit and collection arrangements between BRI and brewers regarding BRI Beer Containers and refillable beer containers;

“BRI Beer Containers” means the non-refillable beer containers subject to the BRI Beer Container Recovery System;

“BRI Distribution Centers” means distribution/warehouse centers designated from time to time in BRI’s discretion, owned and operated, directly or indirectly, by BRI in the Province of Ontario for the warehousing and distribution of beer products;

“BRI Return Locations” means collectively, BRI Stores, BRI Distribution Centers and any additional locations assigned by BRI in accordance with section 1.1.1.3 of this Schedule 1;

“BRI Stores” means the retail outlets, from time to time in BRI’s discretion, owned and operated, directly or indirectly, by BRI in the Province of Ontario for the sale of beer products to the public;

“Bulk Return” means the return on one day by one Person of one hundred and twenty (120) empty Program Containers or more;

“Commencement Date” means February 5, 2007, or such other earlier or later date as may be mutually agreed to by the parties in writing;

“Deposit Categories” means the categories of Program Containers as specified in Part F of this Schedule 1, and **“Deposit Category”** means any one of them;

“Deposit System” means the deposit-refund system established pursuant to this Contract for all Program Containers sold in the Province of Ontario that are not subject to the BRI Beer Container Recovery System, as described in the Memorandum of Understanding and as described herein, and including import and domestic beer containers sold exclusively by the LCBO and its agents;

“Deposits” means deposits applied to Program Containers for each Deposit Category as specified in government regulation or policy from time to time which, as of the date of this Contract, are as specified in Part F of this Schedule 1;

“**EBDs**” mean empty bottle dealers authorized from time to time by BRI in BRI’s discretion, to provide container return services to customers who have purchased products sold through BRI Stores, BRI Distribution Centers, Agency Stores and the LCBO;

“**Existing LCBO Agreements**” means the (i) sale agreement for foreign beer dated September 1, 1993 between BRI and the LCBO; (ii) the sale agreement for foreign draught beer dated February 14, 1995 between BRI and the LCBO; and (iii) the Framework Agreement;

“**Framework Agreement**” means the agreement described as: Serving Ontario Beer Consumers: A Framework for Improved Co-Operation & Planning Between The LCBO & BRI dated June 1, 2000 between BRI and the LCBO;

“**Higher Order Recycling Uses**” means any legal use other than landfill, incineration or road aggregate;

“**LCBO**” means the Liquor Control Board of Ontario, a Government of Ontario Crown corporation continued under the *Liquor Control Act* (Ontario), and its successors;

“**LCBO Stores**” means government stores, warehouses and distribution centers established from time to time by the LCBO for the sale of liquor to the public in the Province of Ontario, but does not include Agency Stores;

“**Licensees**” mean bars, restaurants, taverns, special event locations and other establishments licensed to sell beverage alcohol to the public for consumption thereat by the Alcohol and Gaming Commission of Ontario, or other Agency, and to which BRI delivers full BRI Beer Containers and/or full refillable beer containers and collects empty BRI Beer Containers and/or empty refillable beer containers;

“**Processor**” means a third party that receives and physically treats and/or processes recovered Program Containers and Secondary Packaging such that they can be reused (*i.e.* refilled), recycled (*i.e.* used as feedstock in a manufacturing process or otherwise directed for beneficial use) or disposed of (on land, by incineration or otherwise);

“**Program Containers**” means all beverage alcohol (including beer) containers greater than one hundred (100) mL in size sold in the province of Ontario that are not subject to the BRI Beer Container Recovery System;

“**Responsible Stewardship Report**” means the annual packaging report prepared by BRI pursuant to section 35 of the *Waste Diversion Act* (Ontario);

“**Reviewable Stores**” means, collectively, (a) each LCBO Store having annual liquor (as defined in the *Liquor Control Act* (Ontario)) sales (excluding beer sales) to retail consumers calculated monthly on a trailing 12-month basis of more than 550,000 litres, where a BRI Return Location is in excess of 1.5 kilometres from such LCBO Store; (b) the LCBO Store located at Queen’s Quay, 2 Cooper Street, Toronto (currently also known as LCBO Store 217) and the LCBO Store located at Bayview Village, 2901 Bayview Avenue, Toronto (currently also known as LCBO Store 355), and (c) each BRI Store where a BRI Return Location that accepts Bulk Returns from retail consumers is in excess of 15 kilometres from such BRI Store;

“**Secondary Packaging**” means boxboard and corrugated cardboard cases, plastic and paper bags and hi-cone rings accompanying Program Containers; and

“**Winery and Distillery Retail Stores**” means the retail outlets from time to time owned and operated, directly or indirectly, by wineries that manufacture Ontario wines or manufacturers of spirits in the Province of Ontario for the sale of such wineries’ or manufacturers’ beverage alcohol to the public in the Province of Ontario.

PART B: DELIVERABLES (RESULTS BASED PERFORMANCE)

BRI agrees to provide the following services set forth in section 1.1 of this Schedule 1, from and after the Commencement Date, during the Term of this Contract (collectively, the “**Deliverables**”), on and subject to the following terms and conditions:

1.1 Empty Program Container Deliverables

1.1.1 BRI Return Locations – Consumer Returns

1.1.1.1 **Acceptances and Refunds** – subject to section 1.1.6 of this Schedule 1, BRI agrees to accept at all BRI Stores that accept returns of empty BRI Beer Containers and/or empty refillable beer containers, during normal business hours of operation, returns of empty Program Containers and Secondary Packaging, except for Bulk Returns, and to refund in full Deposits in cash.

1.1.1.2 **Bulk Returns** – subject to section 1.1.6 of this Schedule 1, BRI agrees to accept at all BRI Distribution Centers and BRI Stores that accept Bulk Returns, during normal business hours of operation for returns of Bulk Returns, Bulk Returns of empty Program Containers and Secondary Packaging and to refund in full Deposits in cash, by cheque or by electronic funds transfer.

1.1.1.3 **BRI Return Locations** – BRI may, in consultation with the Ministry, assign any location, in addition to or instead of a BRI Store or BRI Distribution Center for the purpose of accepting returns of empty Program Containers and Secondary Packaging.

1.1.1.4 **Comparable Treatment** – subject to section 1.1.6 of this Schedule 1, in the provision of Deliverables at BRI Return Locations as contemplated in this section 1.1.1 of this Schedule 1, BRI agrees that consumers returning empty Program Containers will receive the same level of customer service BRI provides to consumers returning empty BRI Beer Containers at BRI Return Locations.

1.1.2 Collections – Licensee Returns

1.1.2.1 **Acceptances and Refunds** – subject to section 1.1.6 of this Schedule 1, BRI shall collect, at BRI’s cost, empty Program Containers and Secondary Packaging from Licensees and will refund to such Licensees the full Deposits, all in accordance with BRI’s usual and customary practices in effect with respect to the BRI Beer Container Recovery System.

1.1.2.2 **Comparable Treatment** – subject to section 1.1.6 of this Schedule 1, in the provision of Deliverables to Licensees as contemplated in this section 1.1.2 of this Schedule 1, BRI agrees that Licensees returning empty Program Containers will receive the same level of customer service BRI provides to Licensees returning empty BRI Beer Containers, including that BRI will adopt its dispute resolution process that exists with respect to the BRI Beer Container Recovery System regarding Licensees to address any complaints that affect such Licensees in connection with BRI’s obligations under this Contract.

1.1.2.3 **Idem** – subject to section 1.1.6 of this Schedule 1, nothing in section 1.1.2.1 of this Schedule 1 shall prevent a Licensee from entering into any arrangement with a third party to collect empty Program Containers and Secondary Packaging and return the same to a BRI Return Location for a refund in full of Deposits in cash or cash equivalents; however BRI shall have no responsibility for such arrangements and shall refund any Deposits in full to the Person who returns such Program Containers and Secondary Packaging at such location and not to the Licensee. BRI hereby agrees that the policies to be established and maintained by it pursuant to section 1.1.6 of this Schedule 1 will require all such third party commercial haulers to be registered with BRI such that they will be required to acknowledge and agree to BRI’s policies as a condition to such registration.

1.1.3 **EBDs**

1.1.3.1 **Acceptances and Refunds** – subject to section 1.1.6 of this Schedule 1, BRI shall cause EBDs to accept returns of empty Program Containers and Secondary Packaging, during their respective normal hours of operation and refund in full Deposits in cash.

1.1.3.2 **Compensation** – BRI shall pay EBDs reasonable compensation, as determined by BRI, for the services provided thereby described in section 1.1.3.1 of this Schedule 1 and section 1.1.5 of this Schedule 1.

1.1.3.3 **BRI Collection and Refund** – subject to section 1.1.6 of this Schedule 1, BRI will collect, at BRI’s cost, all empty Program Containers and Secondary Packaging from EBDs and will refund to EBDs the full Deposits, in accordance with BRI’s usual and customary practice.

1.1.3.4 **Comparable Treatment** – subject to section 1.1.6 of this Schedule 1, in the provision of Deliverables to EBDs as contemplated in this section 1.1.3 of this Schedule 1, BRI agrees that EBDs returning empty Program Containers will receive the same level of customer service BRI provides to EBDs returning empty BRI Beer Containers, including that BRI will adopt its dispute resolution process that exists with respect to the BRI Beer Container Recovery System regarding EBDs to address any complaints that affect such EBDs in connection with BRI’s obligations under this Contract.

1.1.4 Agency Stores

1.1.4.1 **Acceptances and Refunds** – the Ministry shall cause Agency Stores to accept returns of empty Program Containers and Secondary Packaging, during their respective normal hours of operation, and refund in full Deposits in cash and to deal with BRI as is necessary for BRI to perform its obligations hereunder.

1.1.4.2 **Compensation** – BRI shall pay Agency Stores reasonable compensation, as determined by BRI, for the services provided thereby as described in section 1.1.4.1 of this Schedule 1 and section 1.1.5 of this Schedule 1; such compensation to be determined in a manner similar to EBDs.

1.1.4.3 **BRI Collection and Refund** – subject to section 1.1.6 of this Schedule 1, BRI will collect, at BRI's cost, all empty Program Containers and Secondary Packaging from Agency Stores and will refund to Agency Stores the full Deposits, in accordance with BRI's usual and customary practice.

1.1.4.4 **Comparable Treatment** – subject to section 1.1.6 of this Schedule 1, in the provision of Deliverables to Agency Stores as contemplated in this section 1.1.4 of this Schedule 1, BRI agrees that Agency Stores returning empty Program Containers will receive the same level of customer service BRI provides to Agency Stores returning empty BRI Beer Containers, including that BRI will adopt its dispute resolution process that exists with respect to the BRI Beer Container Recovery System regarding Agency Stores to address any complaints that affect such Agency Stores in connection with BRI's obligations under this Contract.

1.1.5 Program Container and Secondary Packaging Sorting

1.1.5.1 **BRI Return Locations** – BRI will sort all Program Containers and Secondary Packaging accepted by it in a manner such that it can recover, consolidate and process for reuse and recycling consistent in all material respects with the performance of its obligations hereunder, including the environmental performance requirements in Part C of this Schedule 1.

1.1.5.2 **EBDs** – BRI shall cause EBDs to sort Program Containers and Secondary Packaging accepted by them in a manner determined by BRI, acting reasonably, such that BRI can recover, consolidate and process for reuse and recycling consistent in all material respects with the performance of its obligations hereunder, including the environmental performance requirements in Part C of this Schedule 1.

1.1.5.3 **Agency Stores** – the Ministry shall cause Agency Stores to sort Program Containers and Secondary Packaging accepted by them in a manner determined by BRI, acting reasonably, such that BRI can recover, consolidate and process for reuse and recycling consistent in all material respects with the performance of its obligations hereunder, including the environmental performance requirements in Part C of this Schedule 1.

1.1.6 **Policies**

1.1.6.1 **Policies** – BRI may in its discretion impose policies, from time to time, governing the return and sorting of Program Containers and Secondary Packaging, and the verification by BRI thereof, that it considers reasonable or necessary in the circumstances.

1.1.6.2 **Non-Acceptance** – without limiting section 1.1.6.1 of this Schedule 1, BRI need not accept a Program Container or Secondary Packaging, nor refund a Deposit, if: (a) the Program Container or Secondary Packaging is broken or contaminated (or inextricably mixed with contaminated material) or otherwise deemed unsuitable for processing or recycling; (b) the container can reasonably be identified by BRI as not being a Program Container; or (c) the policies in effect from time to time are not complied with in all material respects by the applicable consumer, Licensee, EBD and/or Agency Store.

1.1.6.3 **Additional BRI Fees/Reduction in Compensation** – BRI may, if it determines, in its discretion, to accept Program Containers and Secondary Packaging from Licensees, EBDs and/or Agency Stores that are not handled, sorted or otherwise prepared for collection in accordance with BRI's policies then in effect: (a) charge the applicable Licensee, EBD or Agency Store reasonable handling, sorting or other fees; or (b) reduce the compensation otherwise payable by BRI to such EBD or Agency Store in section 1.1.3.2 of this Schedule 1 and section 1.1.4.2 of this Schedule 1, respectively, determined by BRI in its discretion as consideration for additional services required to be provided by BRI in order for BRI to meet its obligations hereunder, including the environmental performance requirements in Part C of this Schedule 1.

1.1.6.4 **Decision Final** – all decisions with respect to accepting containers, refunding Deposits or charging additional fees or reducing compensation in accordance with section 1.1.6.3 of this Schedule 1 shall be made by BRI and shall be final, subject to BRI's dispute resolution process then in effect to address complaints affecting returns of Program Containers and BRI Beer Containers by Licensees, EBDs and/or Agency Stores.

1.1.7 **Communication of Policies** – BRI will provide copies of any policies (or amendments thereto), or otherwise communicate such policies, to the Ministry, the LCBO, Licensees, EBDs and Agency Stores and will ensure that such policies are not unduly onerous so as to materially impair the effectiveness of the Deposit System.

1.1.8 **EBDs and Agency Stores** – BRI and the Ministry shall cause EBDs and Agency Stores, respectively, to comply with such policies to the extent each is obligated to accept and sort empty Program Containers and Secondary Packaging and refund Deposits.

1.1.9 **Recycling Administration**

1.1.9.1 **Administration** – BRI shall arrange for, and administer the reuse, recycling or disposition of all Program Containers and Secondary Packaging

accepted or collected by BRI pursuant to this Contract, by one or more Processors, including transportation of such materials to Processors, in the manner described in the environmental performance requirements in Part C of this Schedule 1.

1.1.9.2 **Selection of Processor(s)** – Processor(s) shall be chosen by BRI in its discretion. Processors chosen by BRI shall process both BRI Cans and Program Cans and may process other BRI Beer Containers (and related secondary packaging) and Program Containers and Secondary Packaging.

1.2 Processing Costs and Processing Revenue

Each of BRI and the Ministry hereby acknowledge and agree that:

1.2.1 **Processing Costs** – all processing costs, charges, expenses and other amounts charged by Processors to BRI for the processing, recycling or disposal of BRI Beer Containers, related secondary packaging, Program Containers and Secondary Packaging shall be for the sole account of BRI.

1.2.2 **Processing Revenue** – all revenues generated by or on behalf of BRI from recycling or otherwise processing BRI Beer Containers, related secondary packaging, Program Containers and Secondary Packaging (including any waste diversion incentives) shall be for the sole account of BRI.

1.3 BRI Beer Container System, Existing LCBO Agreements, etc.

For greater certainty, the Deliverables provided under this Contract do not include any services provided by BRI: (a) pursuant to, or in connection with, the BRI Beer Container Recovery System; (b) under the Existing LCBO Agreements, all of which remain in full force and effect, unamended; or (c) any other contracts between BRI and the LCBO existing as at the date of this Contract. Notwithstanding the foregoing, the Ministry acknowledges and agrees that, in the performance of the Deliverables hereunder and the performance of BRI's obligations under the BRI Beer Container Recovery System, Program Containers (and Secondary Packaging) and BRI Beer Containers (and related secondary packaging) will be commingled by BRI, EBDs, Licensees, Agency Stores and Processors; provided, however, such commingling shall not in any way limit BRI's obligations herein with respect to separate counts (by unit by Deposit Category) for Program Containers other than Program Cans.

1.4 Outsourcing

BRI may retain third party providers, as it considers necessary or desirable to assist in connection with the Deliverables provided under this Contract; provided BRI will remain primarily responsible for any such outsourcing; provided, however, BRI shall only be responsible for the Processors retained by it to the extent expressly set forth herein.

PART C: ENVIRONMENTAL PERFORMANCE REQUIREMENTS

The Ministry and BRI acknowledge and agree that environmental performance of the Deposit System is one of the principal indicators of the success of the Deposit System

established hereby. Furthermore, the Ministry has indicated its desire to ultimately achieve the goals of (i) ensuring that a significant percentage of glass Program Containers collected by BRI under this Contract will be recycled for Higher End Recycling Uses, (ii) ensuring that recycling of Program Containers and Secondary Packaging are only recycled for uses other than Higher End Recycling Uses as a last resort, (iii) significantly reducing the number of Program Containers that end up in landfill or are incinerated, including that 0% of glass Program Containers collected by BRI under this Contract will be disposed of through landfill, by incineration or otherwise, and (iv) ensuring that BRI and its Processors actively promote the recycling of Program Containers and Secondary Packaging collected by BRI under this Contract (the “**Desired Environmental Performance Goals**”), and BRI has indicated its desire to assist the Ministry in achieving such Desired Environmental Performance Goals. In recognition of the challenges of program implementation, the parties agree as follows:

- (a) BRI agrees that all Program Containers and Secondary Packaging collected by BRI under this Contract will be sent to Processors and that no such Program Containers or Secondary Packaging will be sent directly by BRI for disposal through landfill, by incineration or otherwise;
- (b) BRI agrees that no glass Program Containers collected by BRI under this Contract will be disposed of either by BRI or Processors through landfill, by incineration or otherwise;
- (c) BRI agrees, and shall require Processors to agree, to (i) actively promote the recycling of Program Containers and Secondary Packaging collected by BRI under this Contract; (ii) explore existing recycling markets for all Program Containers and Secondary Packaging collected by BRI under this Contract; and (iii) explore innovative or new recycling markets for Program Containers and Secondary Packaging collected by BRI under this Contract given BRI’s and the Processors’ respective experience in dealing with recyclable materials and the potential for influence by them by virtue of the quantity and types of materials collected by BRI pursuant to this Contract;
- (d) BRI shall require Processors with which it contracts pursuant to BRI’s obligations under this Contract to commit to the environmental performance requirements set out in this Part C of this Schedule 1 and shall also require them to acknowledge and support the Desired Environmental Performance Goals and, subsequently, the Actual Environmental Performance Goals;
- (e) the Ministry agrees that, subject to compliance with BRI’s obligations in paragraph (a) of this Part C of this Schedule 1, a breach by any such Processor of the environmental performance requirements set forth herein in any material respect shall not constitute a breach by BRI of its obligations under this Contract provided BRI is diligently enforcing its contractual rights against such Processor for any such breach;
- (f) BRI agrees that, in addition to the termination rights in favour of the Ministry set forth in section 6.1(e) of this Contract, should BRI breach in any material respect its obligations set forth in paragraph (a) of this Part C of this Schedule 1, BRI

shall not be entitled to receive the Fee otherwise chargeable under the terms of this Contract for such Program Containers not so sent to Processors (or, if such Fee had previously been charged, such Fee shall be credited against one or more of BRI's subsequent invoices). For greater certainty, Deposits shall, notwithstanding such event, be refunded by the Ministry to BRI in accordance with this Contract in respect of such Program Containers;

- (g) BRI and the Ministry agree that they shall, from and after the Commencement Date, undertake a joint effort to assess the environmental performance of the Deposit System with a view to establishing mutually agreeable environmental performance goals for the Deposit System that enhance or otherwise add greater certainty to the Desired Environmental Performance Goals (the “**Actual Environmental Performance Goals**”) in respect of Program Containers and Secondary Packaging collected by BRI under this Contract, but excluding New Program Containers and Secondary Packaging. The parties shall commence discussions no later than January 1, 2008 with a view to mutually agreeing to the Actual Environmental Performance Goals in writing as soon as practicable following the Commencement Date and, in any event, by no later than May 1, 2008 and such agreed upon Actual Environmental Performance Goals shall apply commencing no later than May 1, 2008. In each Responsible Stewardship Report prepared after the establishment of the Actual Environmental Performance Goals, BRI shall include the Actual Environmental Performance Goals and will report on the environmental performance of the Deposit System in relation thereto;
- (h) BRI agrees that Processors of glass Program Containers and Secondary Packaging collected by BRI under this Contract will be required to give priority to Higher Order Recycling Use markets for the receipts of such glass such that demand from all such Higher Order Recycling Use accessible markets is explored and, to the extent economically accessible, exhausted, before any such glass is used in lower order applications (i.e. the use of glass as aggregate replacement);
- (i) BRI agrees that Processors of non-glass Program Containers and Secondary Packaging collected by BRI under this Contract will:
 - (i) Identify markets for such non-glass Program Containers and Secondary Packaging as a condition of service to BRI and make arrangements for the receipt of such non-glass Program Containers and Secondary Packaging by those markets; and
 - (ii) Identify instances where markets for such non-glass Program Containers and Secondary Packaging are, in consultation with BRI, either unavailable or economically inaccessible;
- (j) From and after the date on which the Actual Environmental Performance Goals become effective, the Ministry agrees it will notify BRI of any proposed or pending introduction of new types of Program Containers and/or Secondary Packaging that are not, on such effective date, in the Deposit System (or changes to existing Program Containers and/or Secondary Packaging such that they

contain materials or are comprised of materials not in the Deposit System as of such effective date (or the relative composition of materials changes following such effective date)) (“**New Program Containers and Secondary Packaging**”) so as to enable Processors to identify recycling markets for these New Program Containers and Secondary Packaging;

- (k) BRI agrees that Processors of New Program Containers and Secondary Packaging collected by BRI under this Contract will:
 - (i) Identify markets for such New Program Containers and Secondary Packaging as a condition of service to BRI and make arrangements for the receipt of such New Program Containers and Secondary Packaging by those markets; and
 - (ii) Identify instances where markets for such New Program Containers and Secondary Packaging are, in consultation with BRI, either unavailable or economically inaccessible;
- (l) Only in the event BRI determines that recycling markets for non-glass Program Containers and Secondary Packaging referenced in paragraph (i) of this Part C of Schedule 1 and/or for New Program Containers and Secondary Packaging referenced in paragraph (k) of this Part C of this Schedule 1 are either unavailable or economically inaccessible will, following prior written notice to the Ministry (which shall include written documentation supporting BRI’s analysis of economic accessibility or economic inaccessibility, as applicable), it permit Processors to dispose of such containers and packaging through landfill, by incineration or otherwise; and
- (m) The Ministry agrees that nothing in this Contract, including the Desired Environmental Performance Goals and the Actual Environmental Performance Goals, will preclude the disposal by Processors through landfill, by incineration or otherwise of:
 - (i) The residual by-products obtained from the processing of Program Containers, Secondary Packaging and/or New Program Containers and Secondary Packaging collected by BRI under this Contract for reuse or recycling; and
 - (ii) A nominal amount (by weight and/or unit) of Program Containers, Secondary Packaging and/or New Program Containers and Secondary Packaging from time to time as a result of accidents or one or more unforeseen incidents or circumstances provided such accidents, incidents or circumstances (x) were not caused by the willful act or omission of either BRI or the applicable Processor, and (y) do not occur as part of the routine practice of either BRI or the Processor.

PART D: MINISTRY'S STEP IN RIGHTS

1.5 Initial Ministry Step-in Rights

1.5.1 Each of BRI and the Ministry agrees that, during the period from and after the Commencement Date and ending on the first anniversary of the Commencement Date, the parties shall monitor the communities serviced by the Reviewable Stores that exist as of the Commencement Date.

1.5.2 By no later than the expiry of the monitoring period referenced in section 1.5.1, BRI shall provide notice to the Ministry indicating whether it is willing to establish all or some additional locations such that all or some of such Reviewable Stores will cease to be such by virtue of a BRI Return Location (or a BRI Return Location that accepts Bulk Returns in the case of a Reviewable Store referenced in paragraph (c) of the definition thereof) being located within the applicable vicinity (such vicinity being the applicable number of kilometres specified in the definition of Reviewable Stores or, in the case of a Reviewable Store referenced in paragraph (b) of the definition thereof, within 1 kilometre of such store). If BRI indicates in such notice that it is willing to establish all or some of such locations, BRI shall establish such locations as soon as practicable and in any event within one hundred eighty days (180) of such notice and such location or locations shall be a BRI Return Location for all purposes hereof. If BRI fails to provide such notice within such time frame, or if such notice indicates that BRI is not willing to establish all such additional locations, the Ministry shall have the right in its discretion to establish and operate, or appoint a third party to do either or both, effective as of the expiry of the monitoring period referenced in section 1.5.1, such additional locations that BRI did not indicate it is willing to establish (or those that BRI fails to establish within the one hundred and eighty (180) day period referenced in this section 1.5.2 of this Schedule 1) to accept and collect empty Program Containers (or, if applicable, Bulk Returns) from retail consumers and Secondary Packaging and refund Deposits, all at the Ministry's cost and expense and, in such a case, BRI agrees to accept returns of empty Program Containers and Secondary Packaging from such locations, and refund Deposits paid thereby, all subject to section 1.1.6 of this Schedule 1. BRI shall be entitled to receive Fees and refunds of Deposits from the Ministry in accordance with the terms of this Contract for the Deliverables provided in respect of each additional return location established by BRI, the Ministry or such third party as contemplated in this section 1.5.2 of this Schedule 1.

1.6 Subsequent Ministry Step-in Rights

1.6.1 Each of BRI and the Ministry agrees that, from and after the first anniversary of the Commencement Date, the Ministry shall monitor the communities serviced by each Reviewable Store as may from time to time thereafter exist (excluding the Reviewable Stores referenced in paragraph (b) of the definition thereof) and may provide BRI with written notice of its intent to establish an additional return location within the applicable vicinity of each such Reviewable Store (such vicinity being the applicable number of kilometres specified in the definition of Reviewable Stores).

1.6.2 Within sixty (60) days following receipt of any notice from the Ministry referenced in section 1.6.1, BRI shall provide notice to the Ministry indicating whether it is

willing to establish additional locations such that all or some of such Reviewable Stores will cease to be such by virtue of a BRI Return Location (or a BRI Return Location that accepts Bulk Returns in the case of a Reviewable Store referenced in paragraph (c) of the definition thereof) being located within the applicable vicinity (such vicinity being the applicable number of kilometres specified in the definition of Reviewable Stores). If BRI indicates in such notice that it is willing to establish all or some of such locations, BRI shall establish such locations as soon as practicable and in any event within one hundred and eighty days (180) of such notice and such location or locations shall be a BRI Return Location for all purposes hereof. If BRI fails to provide such notice within such time frame, or if such notice indicates that BRI is not willing to establish all such additional locations, the Ministry shall have the right in its discretion to establish and operate, or appoint a third party to do either or both, such additional locations that BRI did not indicate it is willing to establish (or those that BRI fails to establish within the one hundred and eighty (180) day period referenced in this section 1.6.2 of this Schedule 1) to accept and collect empty Program Containers (or, if applicable, Bulk Returns) from retail consumers and Secondary Packaging and refund Deposits, all at the Ministry's cost and expense and, in such a case, BRI agrees to accept returns of empty Program Containers and Secondary Packaging from such locations, and refund Deposits paid thereby, all subject to section 1.1.6 of this Schedule 1. BRI shall be entitled to receive Fees and refunds of Deposits from the Ministry in accordance with the terms of this Contract for the Deliverables provided in respect of each additional return location established by BRI, the Ministry or such third party as contemplated in this section 1.6.2 of this Schedule 1.

1.7 Notice of Retail Consumer Complaints

The parties shall keep each other reasonably well informed as to the retail consumer complaints received by them (or, in the case of the Ministry) by the LCBO in respect of Reviewable Stores, including, where practicable, by providing copies of such complaints received in writing (or summaries of complaints received orally), as well as by providing information regarding the resolution thereof, if any, to the other party.

1.8 Changes in BRI Return Locations

Nothing in section 1.5 of this Schedule 1 or in section 1.6 of this Schedule 1 shall preclude BRI from opening, closing, or relocating one or more BRI Return Locations (including BRI Return Locations that accept Bulk Returns) from time to time or at any time in its discretion. The parties acknowledge, however, that should BRI open or relocate one or more BRI Return Locations within the applicable vicinity of a Reviewable Store (such vicinity being the applicable number of kilometres specified in the definition thereof), then the applicable LCBO Store or BRI Store, as the case may be, shall, following such opening or relocation, cease to be a Reviewable Store for all purposes hereof. The parties also acknowledge that, should BRI permanently close one or more BRI Return Locations within the applicable vicinity of a Reviewable Store (such vicinity being the number of kilometres specified in the definition thereof), then the applicable LCBO Store or BRI Store, as the case may be, shall, following such closure, be a Reviewable Store for all purposes hereof.

1.9 Co-location

The parties acknowledge that nothing in this Schedule 1 or this Contract shall be construed as an obligation on the LCBO to co-locate stores with BRI or as an obligation on BRI to co-locate stores with the LCBO.

PART E: MANNER, CALCULATION AND TIMING OF PAYMENTS

1.10 Invoices

Unless otherwise agreed to by the parties, BRI shall deliver an invoice to the Ministry on Friday of every second week after the first week following the Commencement Date, the date of the first such invoice being February 23, 2007 (assuming a Commencement Date of February 5, 2007), in respect of all Fees payable to BRI under this Contract and all Deposits refunded by BRI, in the preceding two week period (being the period commencing on Monday and ending on the second Sunday) (collectively, "**Program Charges**"). Each such invoice shall set out (i) the number of Program Non-Cans collected or accepted by BRI in such two week period, segregated by Deposit Category by BRI Return Location, (ii) until establishment of the Can Return Rate, the Aggregate DC Sold, the Aggregate DC Returned and the Return Rate DC for Program Cans and BRI Cans sold, collected or accepted by BRI in such two week period, as applicable, segregated by Deposit Category (including by deposit category for BRI Cans) by BRI Return Location, (iii) until establishment of the Can Return Rate, the number Program DC Returns, and after establishment of the Can Return Rate, the Program Can Returns, in each case, collected or accepted by BRI in such two week period, segregated by Deposit Category by BRI Return Location, (iv) the product of item (i) in this section 1.10 of this Schedule 1 multiplied by the applicable Fee and by the applicable Deposit, and (v) the product of item (iii) in this section 1.10 of this Schedule 1 multiplied by the applicable Fee and by the applicable Deposit.

1.11 Calculation of Program Charges

The Program Charges in respect of any invoice shall be equal to the sum of the Fees and Deposits for every Deposit Category, and shall be calculated according to the following methodology:

1.11.1 Program Containers – Non-Cans

The Program Charges in an applicable two week period with respect to Program Containers excluding any cans ("**Program Non-Cans**") for every Deposit Category, shall be equal to the product of the number of units of Program Non-Cans accepted or collected by BRI multiplied by the applicable Fee and by the applicable Deposit payable or earned, as the case may be, in that two week period ("**Program Non-Can Charge**").

1.11.2 Program Containers – Cans

1.11.2.1 Until establishment of the Can Return Rate, the Program Charges in an applicable two week period with respect to Program Containers that are cans ("**Program Cans**") shall be based on (a) the relative share of Program Cans and BRI Beer Containers which are cans ("**BRI Cans**") sold in any two week period,

and (b) the average aggregate rate of return of Program Cans and BRI Cans for every Deposit Category, and shall be calculated according to the following methodology:

1.11.2.1.1 BRI shall calculate the aggregate total number of Program Cans and BRI Cans sold by Deposit Category (including by deposit category for BRI Cans) in an applicable two week period (the “**Aggregate DC Sold**”), based in part on information provided under section 1.12 of this Schedule 1.

1.11.2.1.2 BRI shall calculate the aggregate total number of Program Cans and BRI Cans returned by Deposit Category (including by deposit category for BRI Cans) in an applicable two week period (the “**Aggregate DC Returned**”). The quotient of the Aggregate DC Returned divided by the Aggregate DC Sold constitutes the deemed rate of return for Program Cans in each such Deposit Category (“**Return Rate DC**”).

1.11.2.1.3 The number of Program Cans by Deposit Category returned in a two week period (the “**Program DC Returns**”) shall be deemed to be the product of Return Rate DC for the applicable Deposit Category for the applicable two week period multiplied by the number of Program Cans sold by such Deposit Category in such two week period, regardless of the actual number of returns.

1.11.2.1.4 Based on the Program DC Returns, the amount payable to BRI in respect of the Fees and Deposits for a Deposit Category for Program Cans shall be calculated by multiplying the applicable Program DC Return by the applicable Fee and by the applicable Deposit (“**DC Charge**”).

1.11.2.1.5 The applicable Program Charge in respect of Program Cans is then calculated by adding, for every Deposit Category, all DC Charges payable or earned, as the case may be, in that two week period (“**Program DC Can Charge**”).

1.11.2.2 Following establishment of the Can Return Rate, the Program Charges in an applicable two week period with respect to Program Cans shall be based on the Can Return Rate then in effect, and shall be calculated according to the following methodology:

1.11.2.2.1 The number of Program Cans by Deposit Category returned in a two week period (the “**Program Can Returns**”) shall be deemed to be the product of the Can Return Rate then in effect for the applicable Deposit Category multiplied by the number of Program Cans sold by such Deposit Category in an applicable two week period, regardless of the actual number of returns.

1.11.2.2.2 Based on the Program Can Returns, the amount payable to BRI in respect of the Fees and Deposits for a Deposit Category for Program Cans shall be calculated by multiplying the applicable Program Can Return by the applicable Fee and by the applicable Deposit (“**Can Charge**”).

1.11.2.2.3 The applicable Program Charge in respect of Program Cans is then calculated by adding, for every Deposit Category, all Can Charges payable or earned, as the case may be, in that two week period (“**Program Can Charge**”).

1.11.3 **Program Charge** – the applicable Program Charge is then calculated by adding the Program Non-Can Charge to the Program DC Can Charge or Program Can Charge, as applicable, payable or earned, as the case may be, in that two week period.

1.11.4 **Reconciliation** – reconciliation of container counts, shares and charges in this section 1.11 of this Schedule 1 is subject to the adjustment protocols described in Part G of this Schedule 1.

1.12 Information

The Ministry shall provide, or cause to be provided, to BRI all information reasonably required by BRI to calculate the Program Charges on a bi-weekly basis, to comply with any reporting obligations required under the Requirements of Law, including section 35 of the *Waste Diversion Act, 2002* (Ontario) and to otherwise perform its obligations and Deliverables as contemplated under this Contract. Without limiting the generality of the forgoing, such information shall include the number of Program Containers sold in each two week period, segregated by Program Non-Cans and Program Cans, each segregated by Deposit Category, and a monthly list of LCBO Stores, showing sales (excluding beer), by litre volume, at each such store to retail consumers, calculated on a trailing 12-month basis.

1.13 Timing

Unless otherwise agreed to between the Parties, the Ministry shall pay, or cause to be paid (including by the LCBO), the amounts owing to BRI shown on a complete invoice on or before the thirtieth (30th) day (or, if such day is not a Business Day, the immediately preceding Business Day) after delivery of the invoice for Program Charges set forth in the applicable invoice. All payments required to be made hereunder to BRI shall be paid to or to the order of BRI by electronic funds transfer in immediately available funds to such accounts at such banks in the Province of Ontario as BRI shall have notified the Ministry, or by such other method as BRI and the Ministry may from time to time agree.

PART F: DEPOSITS AND FEES

1.14 Deposits

1.14.1 **Refunds and Unredeemed Deposits** – the Ministry shall pay, or cause to be paid, to BRI the Deposits that BRI refunds through or to BRI Return Locations, EBDs, Agency Stores and Licensees calculated as set forth in Part E of this Schedule 1. The Ministry

acknowledges that the rate of Deposit refunds may exceed actual sales of Program Containers. Any unredeemed Deposits shall be for the sole account of the Ministry.

1.14.2 Initial Deposit-levels and Deposit Categories – the Deposit-levels and Deposit Categories are as follows (subject to section 1.14.3 of this Schedule 1, all such Deposit-levels and Deposit Categories shall apply until such Deposit-levels and/or Deposit Categories are amended by government regulation or policy):

<u>Deposit Category:</u>	<u>Deposit-level per Program Container:</u>
Glass Containers less than or equal to 630mL:	\$0.10
Glass Containers over 630mL:	\$0.20
Cans (aluminum or steel) less than or equal to 1L:	\$0.10
Cans (aluminum or steel) over 1L:	\$0.20
Tetra Pak (polycoat) and Bag-in-a-Box less than or equal to 630mL:	\$0.10
Tetra Pak (polycoat) and Bag-in-a-Box over 630mL:	\$0.20
PET (plastic) less than or equal to 630mL:	\$0.10
PET (plastic) over 630mL:	\$0.20

1.14.3 Change in Deposit-levels and Deposit Categories

The Ministry acknowledges that the Fees agreed upon by the parties are predicated on the Deposit-levels and Deposit Categories as set out herein. Unless otherwise agreed to by BRI in its discretion, any proposed decrease in the Deposit-levels and/or any changes to Deposit Categories shall require the Ministry to:

1.14.3.1 provide, or cause to be provided, to BRI at least one hundred and eighty (180) days prior notice (or such shorter period as the parties may agree) for any proposed change to Deposit-levels and/or Deposit Categories;

1.14.3.2 enter into good faith negotiations with BRI to adjust the Fees to reflect the proposed change and implications on BRI's operations and provision of Deliverables hereunder, with the aim to making a consensus on adjustments, if any, to the Fees prior to the effective date of the proposed change; and

1.14.3.3 if, after such one hundred and eighty (180) day period, BRI and the Ministry are unable to agree on adjustments, if any, to the Fees, the then current Deposit-levels and/or Deposit Categories shall remain in effect unless and until

such disagreement is resolved pursuant to the Internal Escalation procedures in Part H of this Schedule 1;

provided, however, there will be no change to the Fee where Program Containers of a type are introduced into the Deposit System after the date hereof (or changes to existing Program Containers such that they contain materials or are comprised of materials not in the Deposit System as of such date (or the relative composition of materials changes following such date)) are added to the existing Deposit Categories identified in section 1.14.2 of this Schedule 1 as either “Tetra Pak (polycoat) and Bag-in-a-Box less than or equal to 630mL” or “Tetra Pak (polycoat) and Bag-in-a-Box over 630mL”.

1.15 Fees

The Ministry shall pay, or cause to be paid, to BRI the Fees earned by BRI in respect of Program Containers accepted or collected pursuant to the Deposit System in the following amounts throughout the Term calculated as set forth in Part E of this Schedule 1. The Ministry acknowledges that the number of Program Containers accepted or collected may exceed actual sales of Program Containers.

<u>Effective Period:</u>	<u>Amount per Program Container:</u>
From and including the Commencement Date and for the first 104 weeks thereafter:	\$0.105
From and including the 105 th week following the Commencement Date and for the first 52 weeks thereafter:	\$0.104
From and including the 157 th week following the Commencement Date and for the first 52 weeks thereafter:	\$0.103
From and including the 209 th week following the Commencement Date to the original Expiry Date:	\$0.1025

PART G: VERIFICATION PROTOCOLS (VALUE FOR MONEY AND COMPLIANCE)

1.16 Auditor

The parties acknowledge that the Ministry may appoint, at its sole expense and discretion, an independent auditor (which may be the Provincial Auditor or an internal auditor of OPS, each of which shall be deemed to be independent for purposes hereof) to prepare an auditor’s report and undertake such verification activities as may be required by the Ministry in respect of this Contract and the Deposit System (including attestation of material flows and the auditing of recycled materials); provided, however, such auditor shall not undertake any audit of BRI and such auditor shall be limited in scope and access to that expressly set forth in this Part G of this Schedule 1. The Ministry agrees that it shall not appoint as its auditor or reviewer a Person or Agency who may have a conflict with BRI. The Ministry may also appoint, at its sole

expense and discretion, an independent external reviewer to undertake the non-audit activities set forth in this Part G of this Schedule 1, with such review being limited in scope and access to that expressly set forth in this Part G of this Schedule 1.

1.17 Review and Verification

In order to ensure the accuracy of Program Container counts and material recycled, BRI and the Ministry agree as follows:

1.17.1 Container returns and redemption of Deposits on Containers:

1.17.1.1 At BRI Return Locations where Deposits are redeemed, BRI agrees to retain for audit purposes and make available to the Ministry and/or its appointee appointed pursuant to section 1.16 of this Schedule 1:

- daily cash register tapes or bin count sheets, as applicable, listing number of Program Containers returned by Deposit Category;
- daily reconciliations of cash to all containers (i.e., BRI Beer Containers, refillable BRI beer containers and Program Containers) received at BRI Stores;
- weekly reconciliations of cash to all containers (i.e., BRI Beer Containers, refillable BRI beer containers and Program Containers) received at BRI Return Locations (other than BRI Stores);
- complete audit trail of the number of Program Containers returned by Deposit Category; and
- BRI policies and internal control procedures relating to the segregation of all containers (i.e., BRI Beer Containers, refillable beer containers and Program Containers) for recording purposes.

1.17.1.2 BRI agrees that all BRI Return Locations will be equipped with empty till registers capable of recording Program Container returns from retail consumers by December 31, 2007.

1.17.1.3 The parties agree that the Ministry and/or its appointee appointed pursuant to section 1.16 of this Schedule 1 may conduct the audits and other verifications as set out below:

- preparation of an auditor's report on the accuracy of the number of Program Containers redeemed for each reporting period of this Contract (such report to be prepared in accordance with the standards for assurance engagements

established by the Canadian Institute of Chartered Accountants (the “**Assurance Engagement Standards**”));

- perform analytical review of key performance indicators by BRI;
- conduct surprise store visits during non-peak hours of operation;
- implementation of an independent and impartial mystery shopper program performed periodically at the Ministry’s sole cost; and
- spot checks of returned Program Containers at BRI Return Locations during non-peak hours of operation.

1.17.2 **Recycled Material**

1.17.2.1 BRI agrees to retain for audit purposes and make available to the Ministry and/or its appointee appointed pursuant to section 1.16 of this Schedule 1:

- calculations by BRI Return Locations showing the conversion of Program Containers redeemed to weight using standard average weight by Deposit Category;
- monthly calculations to determine standard Deposit Category weights;
- complete audit trail of recycled material (e.g. retail/depot shipping bills of lading indicated by recycling category and by carrier);
- Processor receipts by Deposit Category; and
- verifiable written semi-monthly assurance from Processors that Processors are complying with environmental performance requirements set forth in Part C of this Schedule 1.

1.17.2.2 The parties agree that the Ministry and/or its appointee appointed pursuant to section 1.16 of this Schedule 1 may conduct audit verifications as set out below:

- Conduct surprise visits and perform substantive spot checks of Program Containers returned; and
- Verify material flows, including Processors.

1.17.2.3 Prior to finalization of each Responsible Stewardship Report, BRI agrees to provide a draft copy of the latest version of the Responsible Stewardship Report to the Ministry no later than two (2) weeks in advance of providing it to Waste Diversion Ontario.

1.17.3 **Billings**

1.17.3.1 BRI agrees to retain for audit purposes and make available to the Ministry and/or the appointee appointed pursuant to section 1.16 of this Schedule 1, the sales split (Program Cans and BRI Cans) and redemption adjustment for Deposit Categories based on sales. This obligation shall cease, subject to section 1.22 of this Schedule 1, upon establishment of the Can Return Rate.

1.17.3.2 BRI agrees to retain for audit purposes and make available to the Ministry and/or the appointee appointed pursuant to section 1.16 of this Schedule 1, the full audit trail and details for the invoices for Fees and Deposit refunds under this Contract.

1.17.3.3 The parties agree that the Ministry or its appointee appointed pursuant to section 1.16 of this Schedule 1 may conduct the audit verifications set out below:

- perform analytical review of key performance indicators by BRI;
- preparation of an auditor's report on the accuracy of BRI's billings recovered for each reporting period of this Contract (such report to be prepared in accordance with the Assurance Engagement Standards);
- pending establishment of the Can Return Rate, redemption split for Program Cans and BRI Cans by Deposit Category;
- perform substantive testing; and
- pending establishment of the Can Return Rate, perform compliance testing on sales splits by Program Cans and BRI Cans by Deposit Category.

1.17.4 **Determination of Can Return Rate**

1.17.4.1 BRI and the Ministry agree that they shall, from and after the Commencement Date, and periodically thereafter as contemplated by this section 1.17.4 of this Schedule 1, undertake a joint effort, each acting reasonably and in good faith, to determine a mutually agreeable methodology (each, an "**Agreed Return Rate Methodology**") for determining an estimated rate of return for Program Cans (each, a "**Can Return Rate**") by Deposit Category (each, a

“Program Can Return Rate Review”). The parties shall commence discussions no later than the Commencement Date with a view to establishing the first Agreed Return Rate Methodology in writing as soon as practicable following the Commencement Date and, in any event, by no later than August 1, 2007.

1.17.4.2 The first Program Can Return Rate Review, applying the first Agreed Return Rate Methodology, shall commence no earlier than August 1, 2007.

1.17.4.3 Each Program Can Return Rate Review shall be conducted by an impartial and independent Person mutually appointed by the parties, at the Ministry’s sole cost, applying the Agreed Return Rate Methodology then in effect. BRI shall be entitled to participate, at its sole cost, in each Program Can Return Rate Review.

1.17.4.4 The Can Return Rate shall be determined by Deposit Category upon completion of each Program Can Return Rate Review and such Can Return Rate shall be in effect for a period of twelve (12) months following its establishment.

1.17.4.5 Each Agreed Return Rate Methodology shall be in effect for twelve (12) months following the establishment of the related Can Return Rate. The parties shall, within sixty (60) days of the establishment of each such Can Return Rate, establish in writing a new mutually agreeable Agreed Return Rate Methodology that will be in effect for the subsequent year’s Program Can Return Rate Review.

1.17.4.6 Any disagreements with respect to this section 1.17.4 of this Schedule 1 shall be resolved by the parties in accordance with the Internal Escalation procedures of Part H of this Schedule 1.

1.18 Report and Response

The Ministry or its appointee appointed pursuant to section 1.16 of this Schedule 1 shall provide BRI with a written report (the **“Report”**) that outlines any deficiencies of BRI identified by the Ministry or its appointee as a result of any audit or review permitted under the verification protocols established pursuant to section 1.17 of this Schedule 1, and BRI shall, within thirty (30) days of receipt of such Report, develop and present to the Ministry a written response (**“Response”**) outlining:

1.18.1 timely corrective action with respect to such deficiencies, in which case BRI shall make all reasonable changes to address such deficiencies; or

1.18.2 disagreements with respect to the conclusions or recommendations in any Report, in which case the dispute shall be resolved by the parties in accordance with the Internal Escalation procedures of Part H of this Schedule 1.

1.19 Reasonable Access and Assistance

In connection with, and limited to, the verification protocols established pursuant to section 1.17 of this Schedule 1, BRI shall:

1.19.1 **Reasonable Access** – subject to compliance by the Ministry, auditor and/or appointee, as applicable, permit the Ministry, auditor and/or appointee, as applicable, to have reasonable access to its premises and facilities and BRI Return Locations (collectively, “**BRI Premises**”) as necessary with respect to the Deliverables described in this Contract, and will instruct its employees and advisors to cooperate with such Persons in connection with such access. The Ministry shall ensure that such Persons who access BRI Premises comply with any and all policies and guidelines of BRI related to the conduct of Persons on BRI Premises provided or communicated by BRI to the Ministry from time to time, or of which the Ministry otherwise has actual notice.

1.19.2 **Reasonable Assistance** – make available to the Ministry, auditor and/or appointee, as applicable, at reasonable times to be agreed between the applicable Persons and BRI, those employees who have the necessary knowledge, experience and expertise to provide reasonable assistance to such Persons in their examination of information and material, in accordance with, and limited to, the protocols described in section 1.18 of this Schedule 1.

1.20 Value-for-Money Audit

After the third year of this Contract, a value-for-money audit will be conducted by the Ministry or its appointee appointed pursuant to section 1.16 of this Schedule 1, at the Ministry’s sole cost. BRI agrees that it will enter into contracts with each of its Processors which will commit them to co-operate with information requests from the value-for-money auditors. For greater certainty, such value-for-money audit shall not increase the scope of the audit and verification rights set forth in section 1.17 of this Schedule 1.

1.21 Adjustment

The Ministry may make adjustments (up or down) to subsequent invoices for Program Charges where any audit or verification performed under this Contract reveals discrepancies in past payments, subject to section 4.3 of this Contract and subject to the Internal Escalation procedures in Part H of this Schedule 1 in the event of any disagreement in relation to such adjustment; provided, however, there shall be no adjustment for any variation, positive or negative, between the Return Rate DC and the Can Return Rate once established or for any variation, year-to-year, in the Can Return Rate.

1.22 Retention of Records

BRI shall retain all written or electronic records generated by or on behalf of BRI in respect of the Deliverables and any invoices for the following periods:

1.22.1 **BRI Return Locations** – a rolling period of twelve (12) months for written records and a rolling period of nine (9) months for electronic records, in each case, from the date such record was created; and

1.22.2 **BRI Corporate Records** – a rolling period of seven (7) years for written and electronic records maintained at BRI’s corporate offices (including summary records for all BRI Return Locations) from the date that such record was created.

PART H: DISPUTE RESOLUTION (ACCOUNTABILITY AND TRANSPARENCY)

1.23 Internal Escalation:

Any disputes related to performance of the obligations outlined in this Contract that the Ministry Representative and the BRI Representative are unable to resolve will be addressed through the following process (and, for clarity, neither party shall be entitled to exercise a termination right pursuant to Article 6 of the Contract or otherwise in respect of a default, the subject matter of which is the subject of this Internal Escalation process unless such default continues following completion or other abandonment of this process):

1. Relevant party initiates escalation process (the “**Initiator**”) by providing notice to their counterpart (i.e. Ministry Representative informs BRI Representative) that the Initiator intends to pursue this dispute resolution process.
2. Within three (3) Business Days of providing notice to their counterpart, the Initiator drafts a complete description of the issue including the preferred solution (the “**Issue**”) and circulates it to their counterpart.
3. Within three (3) Business Days of having received the Issue, the Ministry Representative and the BRI Representative must meet for an Issue resolution conference (the “**Escalation Meeting**”).
4. If the Ministry Representative and the BRI Representative come to an agreement on the resolution of the Issue, they jointly document the corrective action.
5. If the Ministry Representative and the BRI Representative are unable to come to agreement on the resolution of the Issue within five (5) Business Days of originally receiving the Issue, then they must forward the Issue including the minutes from the Escalation Meeting (which should clearly document the Issue, proposed corrective action, reason for inability to agree and other relevant information) to the Deputy Minister of the Ministry and the Chair of the Board of BRI.
6. The Deputy Minister of the Ministry and the Chair of the Board of BRI must have a meeting within twelve (12) Business Days, or such other time period as agreed to by the parties, to discuss the Issue, define the resolution, and issue a joint resolution document.

PART I: FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT RECORDS

The following chart lists recorded information that is to be included and excluded from the definition of “Record” contained in this Contract:

FIPPA Included and Excluded Records:

Items Included and Excluded from Definition of "Record"

The following shall be included in the definition of Record under this Contract:

Only that subject matter that would fall within the meaning of Record as defined under FIPPA.

The following shall not be included in the definition of Record under this Contract:

Any report, document or information prepared by BRI or any third party that is not in the physical possession of the Ministry or of the Government of Ontario or its Agencies. For greater certainty, nothing under this Contract is intended to contractually expand the scope or meaning of Records as defined under FIPPA or to create legal control over any such BRI or third party report, document or information.