1. INTERPRETATION

1.1 This By-law is made pursuant to section 18(1) of the Regulation.

1.2 Unless the context otherwise requires, the *Interpretation Act* (Alberta) and the *Environmental Protection and Enhancement Act* (Alberta), as amended, apply to this By-law.

1.3 Words importing persons include individuals, bodies, corporate, partnerships, trusts and unincorporated associations.

1.4 The headings used throughout this By-law are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions of any article of thisBy-law nor to be deemed in any way to qualify, modify or explain the effect of any such terms or provisions.

2. DEFINITIONS

2.1 In this By-law:

2.1.1 "Arbitration Hearing" means a hearing before an Arbitration Panel in accordance with the procedures set out in Part 12 of this By-law;

2.1.2 "Arbitration Panel" means a three-person panel meeting the criteria set out in Schedule "C" to this By-law and appointed by the Board to arbitrate Handling Commissions;

2.1.3 "BCMB" means the Beverage Container Management Board. The BCMB is a management board within the meaning of the Environmental Protection and Enhancement Act (Alberta) whose mandate is to regulate and enhance a leading beverage container system that protects Alberta's environment;

2.1.4 "Board" means the Board of Directors of the BCMB;

2.1.5 "Board Hearing" means a hearing before the Board in accordance with the procedures set out in part 12 of this By-law;

2.1.6 "Board Meeting" means the meeting of the Board held in accordance with section 11.1;

2.1.7 "By-laws" means by-laws made by the Board in accordance with the Regulation;

2.1.8 Class D Depot" means a Depot that has been issued a Permit to operate a Class "D" Depot in Alberta;

2.1.9 "Collection Service Provider" or "CSP" means a Manufacturer that collects empty refillable Registered Containers that contained a beverage manufactured by that Manufacturer or a person contracted by a Manufacturer to collect empty refillable Registered Containers that contained a beverage manufactured by that

Manufacturer;

2.1.10 "Collection System Agent" or "CSA" means the collection system agent appointed by Manufacturers and approved by the BCMB in accordance with the Regulation and By-laws;

2.1.11 "Container" means a bottle, can, plastic cup or paperboard carton or a package made of metal, plastic, paper, glass or other material, or a combination of them, that contains or has contained a beverage;

2.1.12 "Container Stream Cost Allocation" means the allocation of the Revenue Requirement to each of the Material Stream identified in the Handling Commission Review after accounting for the portion of the Revenue Requirement to comprise the Depot Viability Handling Commission;

2.1.13 "Data Collection Agent" or "DCA" means the person appointed by the BCMB for the purpose of collecting and analyzing information about the beverage containersystem in Alberta and reporting on that information;

2.1.14 "DCA Annual Update Report" means the report or reports prepared by the Data Collection Agent for the purpose of determining whether an adjustment will be made to the Handling Commissions between Handling Commission Reviews;

2.1.15 "DCA HCR Report" means the report or reports prepared by the Data Collection Agent for the purpose of a Handling Commission Review;

2.1.16 "Deposit Refund" means a refund provided by a Depot to a person returning an empty Registered Container to the Depot in accordance with the Regulation and includes a cash refund or any equivalent method of refund agreed to by the person receiving the refund;

2.1.17 "Depot" means a place operated as a business for the collection of empty Containers.

2.1.18 "Depot Viability Handling Commission" is the amount payable to a Depot in accordance with section 4.3 of this By-law;

2.1.19 "Designated Registered Participant" means the Alberta Bottle Depot Association as the representative of the majority of Depot permit holders, the Alberta Beverage Container Recycling Corporation as the representative of the majority of registered manufacturers of non-refillable containers and the Alberta Beer Container Corporation as the representative of the majority of registered manufacturers of refillable containers;

2.1.20 "Facilitated Negotiations" means the negotiations between the Participants with the assistance of a Facilitator in accordance with these Rules in an effort to reach an agreement setting Handling Commissions;

2.1.21 "Facilitator" means a person meeting the criteria set out in Schedule "B" to this By-

law and appointed by the Board to facilitate the negotiations between Participants during a Handling Commission Review;

2.1.22 "Facilitator's Report" means the Report described in rule 2.29;

2.1.23 "Handling Commission" means the amount payable for each container collected from a Depot in accordance with section 13(b) of the Regulation;

2.1.24 Handling Commission Review" means a review of Handling Commission amounts directed by the Board pursuant to section 7.1 of this By-law;

2.1.25 "Indices Report" means the most recent Alberta Consumer Price Index forecast published quarterly by the Conference Board of Canada, or such other Alberta consumer price index forecast(s) as the DCA, in its sole discretion, considers equivalent and appropriate to use in forecasting Depot labour, building, equipment and vehicle and overhead costs for the purpose of a Handling Commission Review and all annual adjustments to the next HCR;

2.1.26 "Interested Parties" means those parties directly affected by a Handling Commission Review and includes any or all of the Manufacturers and their respective associations and any or all of the Depots and their respective associations, the Collection System Agent and any Collection Service Provider;

2.1.27 "Interim Handling Commission" means an interim handling commission pursuant to Part 6 of this By-law;

2.1.28 "Manufacturer" means a person who manufactures a beverage and includes:

2.1.28.1 a person who carries on the business of filling containers with a beverage; and

2.1.28.2 a person who imports a beverage in a container into Alberta for the purpose of distribution or sale in Alberta;

2.1.29 "Material Stream" means each category of Container for which a specific handling commission is payable as identified in the By-law;

2.1.30 "Proceedings" means any proceedings under this By-law and includes Facilitated Negotiations, the Board Meeting, the Board Hearing and the Arbitration Hearing;

2.1.31 "Participants" means all of the Designated Registered Participants and all the Registered Participants, collectively;

2.1.32 "Regulation" means the *Beverage Container Recycling Regulation* AR 101/97, as amended;

2.1.33 "Registered Participant" means an Interested Party who is granted the ability to

participate in a particular Handling Commission Review by the Registered Participant Committee, in accordance with this By-law.

2.1.34 "Registered Participant Committee" means the committee appointed by the Board for the purpose of considering any application for Registered Participant status submitted in accordance with this By-law.

2.1.35 "Revenue Requirement" means the amount of money that all Depots as a group must collect through Handling Commissions and Depot Viability Handling Commissions in a given period of time in order to recover prudently incurred costs and expenses and to earn a fair pre-tax return;

2.1.36 **"**Rules" means Schedule "A" to this By-law.

2.1.37 "Time and Motion Report" means the report obtained by the DCA recommending the time and space requirements for handling each Container Stream for the purpose of the Container Stream Cost Allocation;

2.1.38 "Uniform Code of Accounts" or "UCA" means the series of forms identified as such and provided to each Depot by the Data Collection Agent for the purpose ofcollecting financial and operational data on an annual basis;

2.2 Notwithstanding anything else in this By-law or the Rules:

2.2.1 A Designated Registered Participant's participation rights and obligations include, without limitation, all of the participation rights or obligations that are or could be granted or imposed under this By-law and the Rules;

2.2.2 The participation rights and obligations of a Registered Participant are limited to those participation rights and obligations specifically granted to or imposed upon it by the Registered Participant Committee; and

2.2.3 Where this By-law and the Rules refer to a participation right of a Participant or an obligation of a Participant the provisions are to be interpreted as applying only to a Registered Participant who has been granted the ability to exercise that right or has had that obligation imposed upon it by the Registered Participant Committee.

2.3 Unless otherwise indicated, terms that are defined in the Regulation have the same meaning when they are used in this By-law.

3. HANDLING COMMISSIONS

3.1 The Handling Commission payable for containers returned to Depots for the purposes of section 13(b) of the Regulation, effective May 1, 2026, shall be:

	Material Stream	**Handling Commission Effective May 1, 2026**
(a)	Aluminum 0-1 litre – per container	4.209 ¢
(b)	Bag in Box Over 1 Litre – per container	34.345 ¢
(c)	Bi Metal 0 - 1 Litre – per container	15.797 ¢
(d)	Bi Metal Over 1 Litre – per container	31.929 ¢
(e)	Specialty Containers– per container	3,149.000 ¢
(f)	Drink Pouch 0 - 1 Litre – per container	9.867 ¢
(g)	Gable Top 0 -1 Litre – per container	8.828 ¢
(h)	Gable Top Over 1 Litre – per container	14.957 ¢
(i)	Glass 0 - 1 Litre – per container	8.894 ¢
(j)	Glass Over 1 Litre – per container	19.979 ¢
(k)	HDPE Plastics Natural Over 1 Litre – per container	17.382 ¢
(l)	Industry Standard Bottle Refillable – per container	9.559 ¢
(m)	Liquor and Wine Ceramics – per container	180.715 ¢
(n)	Mixed Plastics/Aluminum 0 – 1 Litre – per container	13.491 ¢
(o)	Molson Coors MGD Refillable 355 ml – per container	9.642 ¢
(p)	Moosehead Refillable – per container	9.307 ¢
(q)	Other Plastics 0-1 Litre – per container	7.215 ¢
(r)	Other Plastics over 1 Litre – per container	17.737 ¢
(s)	PET 0 - 1 Litre (Clear & Light Blue Tint) – per container	5.740 ¢

(t)	PET Over 1 Litre (Clear & Light Blue Tint) – per container	14.390 ¢
(u)	Plastic one-way Keg Over 1 Litre – per container	167.868 ¢
(v)	Sleemans Refillable – per container	7.900 ¢
(w)	Sleeve-in-a-Box 0 – 1 Litre – per container	22.960 ¢
(x)	Steam Whistle Refillable – per container	9.519 ¢
(y)	Tetra Brik 0 - 1 Litre – per container	7.812 ¢
(z)	Tetra Brik Over 1 Litre – per container	19.554 ¢

4. PURPOSE OF HANDLING COMMISSIONS

4.1 Purposes for which Handling Commissions are to be calculated include:

4.1.1 to provide sufficient funds to enable Depots as a group to recover prudently-incurred costs and expenses and to earn a fair pre-tax return;

4.1.2 to maintain a viable Depot industry;

4.1.3 to minimize the net cost of handling commissions on Manufacturers and end-use consumers and any cross-subsidization between different container streams;

4.1.4 to share the benefits from more efficient handling or processing technologies implemented through the co-operation of Manufacturers and Depots, or from significant additions of new registered containers or from significant increases in volumes of certain types of existing containers equitably between the Manufacturers and the Depots;

4.1.5 to support the accessibility of Albertans to Depots in rural areas;

4.1.6 to recognize that cost per container is higher for Depots that process lower container volumes than for depots that process higher container volumes; and

4.1.7 to maximize beverage container return rates.

4.2 The BCMB shall set a single Handling Commission for each Material Stream.

4.3 In addition to the Handling Commission set for each Material Stream, every Depot other than a Class D Depot shall be paid a Depot Viability Handling Commission of 1.5 cents for each of the first 1.5 million containers shipped to the CSA by that Depot in every calendar year commencing January 1, 2022, excepting refillable containers and regardless of whether there is a change in effective control of the Depot or a change of Permit Holder at the Depot location.

4.4 It is a breach of this By-law for a Permit Holder, Depot Operator, Depot Manager or any of their agents or employees to accept a container from another Depot and claim payment of a Depot Viability Handling Commission for shipping that container to the CSA in circumstances where a Depot Viability Handling Commission would not have been payable for that container had it been shipped by the Depot at which the container was first presented for a refund. Such conduct is deemed to be conduct that seriously undermines the integrity of the beverage container management system.

5. CHANGES TO HANDLING COMMISSIONS

5.1 The BCMB may only set or change a Handling Commission in accordance with this By-law.

5.2 The BCMB may set an interim Handling Commission for a new container stream in accordance with this By-law.

5.3 Other than interim Handling Commissions, Handling Commissions may only be set or changed by motion of the Board carried by a majority of 2/3 of the Directors following a procedure set out in this By-law, unless otherwise agreed by all Participants.

5.4 The Board may refer the setting of Handling Commissions to an Arbitration Panel in accordance with this By-law.

6. INTERIM HANDLING COMMISSIONS

6.1 The following procedure applies to setting an Interim Handling Commission for a new container stream:

6.1.1 Following a request to the BCMB from a Manufacturer for a new container stream, the BCMB shall request that the Data Collection Agent collect relevant information from Manufacturers, Depots, the Collection System Agent and Collection Service Providers as applicable with respect to the new container stream. The Data Collection Agent shall obtain the necessary information in a confidential manner protecting the proprietary information of the Manufacturers and the Depots;

6.1.2 The BCMB shall request that the Data Collection Agent provide a report recommending an Interim Handling Commission;

6.1.3 Where the Data Collection Agent is of the opinion that it is appropriate for an Interim Handling Commission to be set without a Handling Commission Review the Data Collection Agent shall provide a report setting out the basis for that opinion and recommending an Interim Handling Commission;

6.1.4 Where the Data Collection Agent is of the opinion that a Handling Commission Review is required, the Data Collection Agent shall provide a report setting out the basis for that opinion;

6.1.5 Where the Data Collection Agent provides a report recommending an Interim Handling Commission to the BCMB, the BCMB shall provide a copy of that report to

the Manufacturer who has requested the new container stream and to the Alberta Bottle Depot Association, the Collection System Agent and any affected Collection Service Providers, who may provide comments to the BCMB with respect to the report; and

6.1.6 An Interim Handling Commission may be set by the BCMB based on the report from the Data Collection Agent and any comments received with respect to the report.

6.2 The Interim Handling Commission shall apply to the new container stream effective immediately and shall remain in effect until the next Handling Commission Review unless the Board sets a new Interim Handling Commission.

6.3 If any party directly affected by the interim Handling Commission is not satisfied with the Interim Handling Commission, that party may apply to the Board to request that the Board review the Interim Handling Commission.

6.4 If no party applies to the Board for a review of the Interim Handling Commission, the Board shall be informed of the Interim Handling Commission at the next regularly scheduled Board Meeting.

7. HANDLING COMMISSION REVIEWS

7.1 The Board shall initiate a Handling Commission Review in any of the following circumstances:

7.1.1 Three years have passed since the last Handling Commission Review, unless:

7.1.1.1 all Participants with the right to participate in an extension agreement have unanimously agreed to extend the commencement of the next Handling Commission Review for additional periods of time in accordance with Part 13 of this By-law; or

7.1.1.2 All Designated Registered Participants have unanimously agreed to extend the commencement of the next Handling Commission Review for additional periods of time in accordance with Part 13 of this By-law and the Board approves the extension by Board resolution carried by at least 2/3 of the Directors present and voting on the resolution.

7.1.2 Six years have passed since the last Handling Commission Review.

7.2 The Board may initiate a Handling Commission Review if there has been a systemic change to the beverage container system that in the opinion of the Board warrants a Handling Commission Review.

7.3 For the purposes of section 7.2, a change in the average cost per container that is more than +/- 5% from the average cost per container established in accordance with the last Handling Commission Review may be considered evidence of a systemic change to the beverage container system.

7.4 The Board shall not direct a Handling Commission Review more than once within a 12-month period.

7.5 The Board shall adjust Handling Commissions on an annual basis between Handling Commission Reviews in accordance with Part 13 of this By-law.

7.6 In conducting a Handling Commission Review, the Board must seek input from Manufacturers and Depots regarding Handling Commission amounts through fair process, negotiation and use of sound information having regard to the principles of natural justice. The procedures for gathering sound information for negotiations and submissions respecting Handling Commissions shall be determined by the Board.

7.7 The procedure to be followed during a Handling Commission Review is as set out in this By-law and in the Rules.

8. SPECIFIC CONSIDERATIONS IN CALCULATING HANDLING COMMISSIONS

Timing

8.1 To the extent possible and practicable, Handling Commissions are to be adjusted to reflect the forecast costs and return volumes anticipated during the period the Handling Commissions are to be in effect.

Depot Building Size Cap

8.2 The maximum building size of any Depot to be taken into account for the purpose of calculating the Revenue Requirement shall be calculated by the Data Collection Agent based on the Depot Building Size Cap Policy

Deemed Lease Rate

8.3 For the purpose of determining the Revenue Requirement, all Depot buildings shall be deemed to have been leased at a rate to be determined through the Handling Commission Review.

Rate Structure

8.4 Handling Commissions shall be determined using a variable rate structure with no fixed rate component.

Return Margin Methodology

8.5 For the purpose of determining the Revenue Requirement, fair return shall be determined in accordance with the Return Margin Methodology Policy that has been approved by the Board.

9. COMMENCEMENT OF HANDLING COMMISSION REVIEW

9.1 A Handling Commission Review is commenced by a resolution of the Board directing a Handling Commission Review.

9.2 After the Board resolution directing a Handling Commission Review, the Board shall:

9.2.1 Select a target date for the adoption and implementation of the new Handling Commissions (the "Target Date");

9.2.2 Select the last day of the 12-month period ("Cut-Off Date") to be used by the Data Collection Agent for the purposes of collecting information through the Uniform Code of Accounts submitted on behalf of each Depot; and

9.2.3 Identify the existing report or reports to be used by the Data Collection Agent for the purposes of the Data Collection Agent Report, if any, or identify the reports to be obtained by the Data Collection Agent for the purposes of the Data Collection Agent Report.

9.2.4 Appoint a Registered Participant Committee.

9.3 After the resolution of the Board directing a Handling Commission Review, the Board shall request that the BCMB:

9.3.1 Provide notice of the Handling Commission Review to the Designated Registered Participants and post notice of the Handling Commission Review on the BCMB website and by such other means as Management may consider appropriate

9.3.2 Direct the Data Collection Agent to prepare the Data Collection Agent Report for the purpose of assisting the Board in setting Handling Commissions and to obtain any reports identified under section 9.2.3 or that may be required by the Data Collection Agent in the preparation of the Data Collection Agent Report. The Data Collection Agent Report shall include:

9.3.2.1 the relevant data collected by the Data Collection Agent from the Uniform Code of Accounts, organized and analyzed as appropriate;

9.3.2.2 where the data collected by the Data Collection Agent from the Uniform Code of Accounts has been adjusted, an explanation as to how and why that data has been adjusted;

9.3.2.3 the Data Collection Agent's opinion as to the appropriate Revenue Requirements and Container Stream Cost Allocation for the 12-month period up to and including the Target Date;

9.3.2.4 the basis for the Data Collection Agent's opinion with respect to the Revenue Requirement and Container Stream Cost Allocation including any facts, assumptions or third-party reports or opinions relied upon and copies of any written reports relied upon;

9.3.2.5 confirmation that the Data Collection Agent has applied the relevant BCMB Handling Commission policies and where applicable, explanations as to the

manner in which the BCMB Handling Commission policies have been applied;

9.3.3 Appoint a Facilitator; and

9.3.4 Establish general time frames for the steps in the Handling Commission Review.

9.4 After the Board resolution directing a Handling Commission Review, any Interested Party that wishes to participate in the Handling Commission Review, other than a Designated Registered Participant, must apply to the BCMB for Registered Participant status in that Handling Commission Review.

9.5 An application for Registered Participant status may only be submitted to the BCMB up to and including one week after the Data Collection Agent provides the BCMB with the HCR Phase I and Phase II Reports.

9.6 An application for Registered Participant status must be in the form approved from time to time by BCMB Management for that purpose and shall include the following information:

9.6.1 a concise statement as to why the applicant may be directly and adversely affected by the Handling Commission Review;

9.6.2 whether the applicant seeks to represent more than one person in the Handling Commission Review, and if so, confirmation of that representation in the form required by the BCMB;

9.6.3 the particular issue or issues which the applicant wishes to address in the Handling Commission Review and whether the issue or issues are unique to the applicant;

9.6.4 how the applicant's participation will substantially contribute to a better understanding of the issue or issues with respect to which the applicant seeks to participate;

9.6.5 whether the applicant intends to submit information or material from an expert retained by the applicant, and if so, how such information or material will substantially contribute to a better understanding of the issue or issues with respect to which the applicant seeks to participate; and

9.6.6 the nature and extent of the participation sought by the applicant in the HCR process.

9.7 An application for Registered Participant status in a Handling Commission Review shall be considered and determined by the Registered Participant Committee. The Registered Participant Committee shall be composed of three BCMB Directors recommended by the Board Chair and the President of the BCMB. If reasonably possible, the Registered Participant Committee shall be composed of three Directors nominated to the Board by the General Membership Sector, however at their discretion the Board Chair and President of the BCMB may recommend that the Registered

Participant Committee consist of two BCMB Directors nominated to the Board by the General Membership Sector and a third BCMB Director nominated to the Board by one of the other nominating entities.

9.8 The Registered Participant Committee may request information from an applicant in addition to the information provided in the original application.

9.9 Any decisions of the Registered Participant Committee relating to Registered Participant status are in the sole discretion of the Registered Participant Committee.

9.10 If the Registered Participant Committee grants an applicant Registered Participant status, the Registered Participant Committee shall specify the nature and extent of the applicant's participation in the Handling Commission Review including:

9.10.1 whether the applicant's participation is limited to specific issues and if so, which issues;

9.10.2 the applicant's access to the record and any records classified as confidential under the Rules;

9.10.3 the applicant's entitlement to file documents or other material for the purpose of the Handling Commission Review;

9.10.4 the applicant's entitlement to file motions or respond to motions filed in the Handling Commission Review;

9.10.5 the applicant's participation in any meetings held by the Facilitator including the preliminary meeting to identify issues, establish dates for the exchange of information and schedule meeting dates;

9.10.6 the applicant's entitlement to file written statements and rebuttal statements;

9.10.7 the applicant's entitlement to make information requests of the Data Collection Agent or any other Participant and whether information requests can be made to the applicant;

9.10.8 whether the applicant's consent is required in relation to any procedural matter which, under this By-law or the Rules requires the consent of all Participants;

9.10.9 the applicant's entitlement to submit information or material from an expert retained by the applicant;

9.10.10 the entitlement of any expert retained by the applicant to participate in the Handling Commission Review and if entitled, any limitations on that participation as otherwise provided for in the Rules;

9.10.11 the applicant's entitlement to participate in any meetings or discussions directed by the Facilitator for the purpose of Facilitated Negotiations between the Participants;

9.10.12 the applicant's entitlement to attend at and participate in the Board Meeting;

9.10.13 the applicant's entitlement to participate in any or all of the HCR Annual Adjustments prior to the next Handling Commission Review initiated by the Board;

9.10.14 the applicant's entitlement to agree to an extension of time between Handling Commission Reviews as provided for in this By-law;

9.10.15 whether the applicant is entitled to participate in any Board Hearing or Arbitration held in accordance with this By-law; and

9.10.16 Any other matters that the Registered Participant Committee considers appropriate.

10. FACILITATED NEGOTIATIONS

10.1 At any time after the Facilitator is appointed, the Facilitator may direct the Participants entitled to participate in Facilitated Negotiations to enter into Facilitated Negotiations.

10.2 The Facilitated Negotiations are terminated:

10.2.1. when an agreement is reached:

10.2.1.1 on Handling Commissions by all of the Participants entitled to reach agreement on Handling Commissions, or by all of the Designated Registered Participants and the Facilitator concludes that continuing the negotiations is unlikely to result in an agreement on Handling Commissions with all of the Participants entitled to reach agreement on Handling Commissions; or

10.2.1.2 on one or more issues relevant to the setting of Handling Commissions by all of the Participants entitled to reach agreement on the issue, or by all of the Designated Registered Participants and the Facilitator concludes that continuing the negotiations is unlikely to result in any further agreement.

10.2.2 when no agreement has been reached on any issue and the Facilitator concludes that continuing the negotiations is unlikely to result in any agreement; or

10.2.3 when the Board directs the termination of a Facilitator and the Board determines it is appropriate to terminate the Facilitated Negotiations rather than appointing a new Facilitator; or

10.2.4 when 6 months have passed from the date of the receipt by the Board of the Data Collection Agent's Report, unless otherwise directed by the Board.

11. BOARD MEETING TO CONSIDER AGREEMENTS OR PROCESS

Timing

11.1 A meeting of the Board shall be called for a date no less than 15 days and no more than 60 days from the date of the receipt of the Facilitator's Report.

Purpose

11.2 The purpose of the Board Meeting is for the Board to consider whether to approve any agreement that has been reached by some or all of the Participants and, if necessary, to consider and determine the process to be followed for the setting of Handling Commissions or the process for determining the outstanding issues between the Participants.

Information before the Board

11.3 The record for the purposes of the Board Meeting shall be the record created by the BCMB up to the termination of the Facilitated Negotiations and any other information contained in the Facilitator's Report.

11.4 The Participants who are entitled to attend, the BCMB and the Data Collection Agent shall be invited to attend the Board Meeting. The Participants and the BCMB may be represented by counsel at the Board Meeting.

11.5 The Participants shall have the opportunity to submit materials to the BCMB to be provided to the Board prior to the Board Meeting. Those materials are to be provided to the BCMB and circulated to the Board and the Participants in accordance with deadlines set by the BCMB but in any event no less than 7 days before the Board Meeting. The Participants may make oral submissions before the Board. Unless otherwise directed by the Board, these oral submissions shall be no longer than one half hour each, and all oral submissions shall not exceed one day. The Board may ask questions of the Participants, the Data Collection Agent and the BCMB.

11.6 The Board may not consider an issue raised by a Participant in its materials or submissions that is not contained in the written submissions that were provided to the Facilitator in the course of the Facilitated Negotiations, unless the Board orders otherwise and unless the other Participants and the Data Collection Agent have a reasonable opportunity to address the issue.

Where Agreement Reached on Handling Commissions

11.7 Where an agreement on Handling Commissions has been reached in the Facilitated Negotiations by all Participants entitled to participate in an agreement on Handling Commissions or by all of the Designated Registered Participants, the following resolution shall be put to the Board at the Board Meeting:

11.7.1 That the agreement was the result of fair negotiations and the Board has considered any submissions received from Registered Participants not parties to the agreement and is satisfied that the agreement is fair and reasonable and consistent with the public interest, the mandate of the BCMB, and the applicable legislation and BCMB by-laws; and

11.7.2 That the Handling Commissions set forth in the memorandum of agreement arising from the Facilitated Negotiations are adopted as amendments to section 3.1 of this By-law, effective on the date specified in the memorandum of agreement (the "Handling Commission Resolution").

11.8 If the Handling Commission Resolution is carried by at least 2/3 of the Directors present and voting on the resolution, the Handling Commissions set forth in the memorandum of agreement shall be effective as of the date set out in the Facilitator's Report.

11.9 If the Handling Commission Resolution is not carried by at least 2/3 of the Directors present and voting on the resolution, the Board shall then proceed to consider and determine the process to be followed for the setting of Handling Commissions.

Where Partial Agreement Reached on Handling Commissions

11.10 Where an agreement has been reached on any issue relevant to the setting of Handling Commissions by all Participants entitled to participate in the agreement with respect to that issue or by all of the Designated Registered Participants, but there has been no agreement reached on all of the Handling Commissions, the following resolution shall be put to the Board at the Board Meeting with respect to each issue:

11.10.1 That the agreement with respect to the issue was the result of fair negotiations and that the Board has considered any submissions received from Registered Participants and is satisfied that the agreement is fair and reasonable and consistent with the Public Interest, the mandate of the BCMB and the applicable legislation and BCMB by-laws; and

11.10.2 That the agreement is to be adopted as part of the findings of the Board in any Board Hearing or Arbitration Hearing and the material in the Facilitator's Report in support of the agreement shall form part of the record before the Board or the Arbitration Panel [The "Partial Agreement Resolution"].

11.11 If the Partial Agreement Resolution is carried by at least 2/3 of the Directors present and voting on the resolution :

11.11.1 the agreement is to be adopted as part of the findings of the Board or of the Arbitration Panel in any Hearing by the Board or by the Arbitration Panel and the material in the Facilitator's Report in support of the agreement shall form part of the record before the Board or the Arbitration Panel; and

11.11.2 The Board shall then proceed to consider and determine the process to be followed

for the determination of the outstanding issues between the Participants.

11.12 If the Partial Agreement Resolution is not carried by at least 2/3 of the Directors present and voting on the resolution the Board shall then proceed to consider and determine the process to be followed for the setting of Handling Commissions.

Where no Agreement has been reached in relation to Handling Commissions

11.13 Where no agreement was reached by the Designated Registered Participants during the Facilitated Negotiations, the Board shall proceed to consider and determine the process to be followed for the setting of Handling Commissions.

Process to be followed for the Setting of Handling Commissions or Outstanding Issues

11.14 Where the Board is to consider and determine the process to be followed for the setting of Handling Commissions or for the determination of the outstanding issues between the Participants, the Board shall decide whether the process is to involve a Board Hearing in the first instance or whether the process is to involve an Arbitration Hearing in the first instance.

11.15 The decision of the Board that the process is to involve a Board Hearing must be passed by a Board resolution carried by at least ¾ of the Directors present and voting on the resolution, failing which the process to be followed is an Arbitration Hearing.

12. HEARING BEFORE ARBITRATION PANEL OR BOARD

12.1 If the Board determines that the process to be followed is an Arbitration Hearing, the Board shall appoint an Arbitration Panel.

12.2 The parties for the purposes of the Arbitration Hearing or the Board Hearing shall be the Designated Registered Participants and any Registered Participant entitled to participate in those Hearings, however, each Member of the BCMB representing the General Membership Sector as defined in the bylaws of the BCMB may apply to the Arbitration Panel or to the Board for a person or organization to be accepted as a party to the arbitration for the purposes of making submissions. Such person or organization may be added as a Registered Participant entitled to participate in the Arbitration Hearing or Board Hearing, in the discretion of the Arbitration Panel or the Board and upon such conditions as the Arbitration Panel or Board may provide.

12.3 The procedure set out in Schedule "A" shall be followed in any Arbitration Hearing and any Board Hearing and shall be interpreted as such, with reference to the Board being substituted for reference to the Arbitration Panel as required.

12.4 If the Board proceeds to a hearing before the Board, and if the Board cannot pass a resolution carried by at least 2/3 of the Directors present and voting on the resolution with respect to any of the matters referred to it for that purpose, the Board shall refer all the matters before the Board to an Arbitration Hearing.

12.5 An Arbitration Hearing pursuant to section 12.4 of this By-law shall proceed as a hearing de novo with respect to all matters that were before the Board, on the basis of the record established

during the Facilitated Negotiations, and in accordance with the procedure set out in Schedule "A".

12.6 An award of an Arbitration Panel with respect to Handling Commissions shall be final and binding upon the Board and the Board shall pass a resolution approving the Handling Commissions determined by Arbitration.

13. ANNUAL ADJUSTMENT

13.1 For the purpose of this Part of the By-law, "error" means a demonstrable mistake in a DCA HCR Report or DCA Annual Update Report resulting from:

13.1.1 incorrectly transcribing data from its original source into another document;
13.1.2 applying a different mathematical formula or operation to particular data than the mathematical formula that was clearly intended to be applied to that data;
13.1.3 a miscalculation while applying a specific mathematical formula or operation;
13.1.4 a failure in typing or printing a word or number that results in a word or number appearing that was not intended to be typed or printed; or
13.1.5 any combination of two or more of these events; and

does not include any exercise of professional judgment or discretion by the DCA or experts retained by the DCA in calculating Handling Commissions for the purpose of such a report.

13.2 Following the completion of a Handling Commission Review, the DCA shall provide the BCMB with the DCA Annual Update Report on an annual basis for each of the following two years, no later than November 15 of each year.

13.3 The BCMB shall distribute the DCA Annual Update Report to all Participants with the right to participate in the HCR Annual Adjustment process.

13.4 The Participants provided with the Annual Update Report by the BCMB in accordance with this part may provide comments to the BCMB within a period of 7 days from the date of delivery of the DCA Annual Update Report with respect to any errors, which comments will be provided by the BCMB to the Data Collection Agent.

13.5 If, after making any changes for any errors, the DCA Annual Update Report prepared by the Data Collection Agent determines the average Handling Commission which, when compared to the average Handling Commission currently in effect, differ in amount by more than +/- 0.3 of 1% , the Board shall approve the updated Handling Commissions effective as of May 1 of the year following the DCA Annual Update Report to remain in effect until new Handling Commissions are approved in accordance with this By-law.

13.6 The methodology to determine the difference between the average Handling Commission calculated using updated data and the average Handling Commission currently in effect will involve the following:

13.6.1 The Data Collection Agent shall collect data from Depots through the UCA as adjusted per the Handling Commission Rate Setting Policy;

13.6.2 The data will be introduced into the Revenue Requirement as identified in the DCA HCR Report with all other variables unchanged except as provided for in this Part or as otherwise agreed to by the Participants and the DCA following a request from the BCMB to consider changes to other variables;

13.6.3 The Data Collection Agent shall use the most recently obtained final Time and Motion Report as the basis to allocate the Revenue Requirement to Material Streams for that Annual Update, unless the final Report is obtained by the DCA less than 60 days before the Annual Update, in which case the previously obtained Time and Motion Report shall be used for this purpose;

13.6.4 The Data Collection Agent shall obtain the Indices Report to be used by the DCA in forecasting Depot costs for the relevant time period;

13.6.5 The Data Collection Agent will calculate both the average Handling Commission for the DCA Annual Update Report and the average Handling Commission currently in effect by dividing the Revenue Requirement by the reported volume of containers for that period;

13.6.6 The difference of the average Handling Commission associated with the DCA Annual Update Report and the average Handling Commission currently in effect will determine if the average Handling Commission has changed more than +/-0.3 of 1%.

13.7 If, after following the methodology in section 13.6 and if after making any changes for any errors, the DCA Annual Update Report prepared by the Data Collection Agent determines the average Handling Commission which, when compared to the average Handling Commission currently in effect, does not differ in amount by more than +/- 0.3 of 1% no adjustmentshall be made to the existing Handling Commissions.

13.8 Within 30 days of receipt of the second DCA Annual Update Report following a Handling Commission Review, the Participants entitled to agree to an extension of time between Handling Commission Reviews shall advise the BCMB whether they agree to extend the time for the next Handling Commission Review for a further one-year period.

13.9 In the event that all Participants entitled to agree to an extension of time between Handling Commission Reviews unanimously agree to a one-year extension period in accordance with section 13.8, the procedure set out in sections 13.1 to 13.8 shall apply to that one-year extension period, and to any following one-year extension periods unanimously agreed to by the Participants in accordance with those sections.

13.10 In the event that the Participants entitled to agree to an extension of time between Handling Commission Reviews do not unanimously agree to a one-year extension in accordance with section 13.8, but the Designated Registered Participants unanimously agree to such an extension, the Board may approve the extension by resolution carried by a least 2/3 of the Directors present and voting on the resolution and the procedure set out in sections 13.1 to 13.8 shall apply to that

one-year extension period, and to any following one-year extension periods unanimously agreed to by the Designated Registered Participants in accordance with those sections.

13.11 There can be no more than four consecutive one-year extensions by agreement under this Part between Handling Commission Reviews.

13.12 In each DCA Annual Update Report, the DCA shall determine the annual average Handling Commission and compare that amount to the annual average Handling Commission determined during the last Handling Commission Review. If the difference between the annual average Handling Commission in the DCA Annual Update Report and the annual average Handling Commission determined during the last Handling Commission Review is +/- 5%, the Board shall be advised for the purpose of determining whether or not a Handling Commission Review is required.

13.13 If a Registered Participant discovers an error in the most recent DCA HCR Report or in an Annual Update Report issued following that DCA HCR Report, and the Board has already approved Handling Commissions based on that Report, the Registered Participant shall give written notice of the alleged error to the BCMB within a reasonable time from the discovery. The BCMB shall provide the DCA and any other Registered Participants with notice of the alleged error.

13.14 If the DCA confirms that an error was made, the DCA shall either issue an addendum to the DCA HCR Report or DCA Annual Update Report or revise the Report as the DCA considers appropriate. The addendum or revised Report shall identify the error and correct the Handling Commission calculations in the Report as required. The DCA may also issue an addendum or revise a previously issued Report to correct the same error. Notwithstanding any corrections that may be made, there shall be no retroactive adjustment to Handling Commissions which have already been approved by the Board.

13.15 If changes are made to Reports in accordance with s. 13.14, the DCA shall incorporate those changes in the next DCA Annual Update Report as appropriate.

14. TIME AND MOTION REPORT

14.1 The Board shall direct the DCA to obtain a Time and Motion Report if no Time and Motion Report has been obtained by the DCA for a period of 6 years since the date of the last Time and Motion Report;

14.2 The Board may direct the DCA to obtain a Time and Motion Report if 3 years have passed since the date of the last Time and Motion Report and:

14.2.1.1 The DCA provides a written recommendation to the Board to obtain a new Time and Motion Report; or

14.2.1.2 BCMB Management provides a written recommendation to the Board to obtain a new Time and Motion Report; or

14.2.1.3 A Designated Registered Participant makes a written request to BCMB Management that the DCA obtain a new Time and Motion Report.

14.3 The process and timelines for the RFP relating to the Time and Motion Report and Information Requests and Responses relating to the Time and Motion Report shall be as determined by the DCA and BCMB Management and approved by the Board.

SCHEDULE "A"

HANDLING COMMISSION REVIEW RULES OF PRACTICE AND PROCEDURE

1. RULES OF GENERAL APPLICATION

1.1 Participants may be represented by counsel at a Handling Commission Review.

1.2 The Board, the Facilitator and the Arbitration Panel may make orders with respect to the procedure and practices that apply to the Handling Commission Review. Every Participant shall comply with all applicable procedural orders.

1.3 The Board, the Facilitator and the Arbitration Panel may dispense with, vary or supplement all or any part of these Rules including rules relating to time limits if it is satisfied that it is just and reasonable in all of the circumstances and is in accordance with the requirements of procedural fairness.

1.4 If a Participant fails to comply with a procedural order by the Board, the Facilitator or the Arbitration Panel, the Board, the Facilitator or the Arbitration Panel may take any measure it considers appropriate including any one or more of the following:

1.4.1 give directions to the non-complying Participant to rectify the failure;

1.4.2 dismiss evidence or other documents made or submitted by the non-complying Participant;

1.4.3 continue the Board Meeting or Board Hearing or Arbitration Hearing and make a determination on the evidence before it;

1.4.4 impose conditions on the non-complying Participant; and

1.4.5 direct that the non-complying Participant pay costs to any Participants.

1.5 Proceedings other than the Board Hearing and the Arbitration Hearing shall be open only to the BCMB and its counsel, the Participants and their counsel and the Data Collection Agent. Any other person will require the express consent of all the Participants and the BCMB to be present.

1.6 The Arbitration Act applies to an Arbitration conducted in accordance with these rules, except if there is a conflict between these rules and the Arbitration Act, in which case these rules prevail.

1.7 Reference to "days" in these rules means business days and non-business days unless otherwise provided.

Filing and Service of Documents

1.8 The Facilitator, the Participants, the BCMB and the Data Collection Agent shall file all documents and any other material with the BCMB in acceptable electronic form.

1.9 The filing of any document or material with the person designated by the BCMB for that purpose shall constitute filing with the BCMB, the Board, the Facilitator or the Arbitration Panel for the purposes of these rules.

1.10 Participants shall serve copies of documents and any other material filed by them with the BCMB on the other Participants and the Data Collection Agent and may do so by hand delivery, mail, courier, electronic delivery or facsimile.

Record

1.11 The BCMB shall be responsible for organizing and maintaining the record and all exhibits in the Handling Commission Review process, including the filings and documents from the Data Collection Agent, the BCMB and Participants prior to, during and after the Facilitated Negotiations, Board Meeting, Board Hearing or Arbitration Hearing.

1.12 The BCMB shall provide an index of the documents comprising the record and exhibits to the Participants, the Data Collection Agent, the Facilitator, the Board and the Arbitration Panel and shall make available on request, a copy of all written statements and other filed documents and materials to the Participants, the Data Collection Agent, the Facilitator, the Board and the Arbitration Panel as appropriate prior to, during and after the Facilitated Negotiations, Board Meeting, Board Hearing and Arbitration Hearing.

1.12.1 Subject to this section, all records filed with the BCMB for the purpose of a Handling Commission Review shall be made available to the public in the manner determined by the BCMB.

1.12.2 If a Participant objects to a record or information contained in a record that Participant is filing being made available to the public, the Participant may submit a request for confidentiality along with the record. The request for confidentiality:

1.12.2.1 must be in writing;

1.12.2.2 must describe the nature of the record or information that is the subject of the request; and

1.12.2.3 must provide the reasons for the request, including the potential harm that might result if the record or information were made available to the public.

1.12.3 A record which a Participant requests not be made available to the public in accordance with this section will not be made available to the public by the BCMB unless otherwise directed by the Board or by an Arbitration Panel, following a motion to the Board or the Arbitration Panel by any individual in accordance with sections 1.13 to 1.16 interpreted with the changes necessary to give effect to this section.

1.12.4 Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or records.

Motions

1.13 If a matter arises in a Handling Commission Review that requires a decision or ruling of the Board or the Arbitration Panel, a Participant may bring the matter before the Board or the Arbitration Panel by filing a motion.

1.14 Unless otherwise directed by the Board or the Arbitration Panel, a motion must be in writing, be signed by the authorized representative of the Participant, and contain a concise statement of the facts, the decision or ruling sought and the grounds for the motion.

1.15 A Participant shall serve a copy of it on all other Participants.

1.16 A Participant who wishes to respond to a motion shall file and serve a response on all Participants, within the time limits directed by the Board or the Arbitration Panel.

2. FACILITATED NEGOTIATIONS

2.1 After the Facilitator is appointed and prior to receipt of the Data Collection Agent Report, the Facilitator may meet with the Participants and may set timelines for and assist in the exchange of written material between those Participants and the Data Collection Agent in relation to any of the reports obtained by the Data Collection Agent as directed under section 9.2.3 of this By-law and filed by the Data Collection Agent prior to the filing of the Data CollectionAgent Report.

2.2 Upon the filing of the Data Collection Agent Report the Facilitator shall hold a preliminary meeting with the Participants and the Data Collection Agent to identify the issues related to the setting of Handling Commissions that are to be negotiated, to establish dates for the exchange of information, and to schedule meeting dates for the Facilitated Negotiations.

2.3 The BCMB and its counsel are entitled to attend any meeting between the Facilitator and the Participants to observe and provide assistance where required.

2.4 Any dates scheduled by the Facilitator for the purposes of the Facilitated Negotiations are to fall within the general time frames established by the BCMB in accordance with section 9.3.4 of this By-law.

Role of the Facilitator

2.5 The Facilitator shall:

2.5.1 assist the Participants entitled to participate in negotiations in determining the issues to be negotiated;

2.5.2 oversee the Facilitated Negotiations, including the exchange of written material in accordance with these rules;

2.5.3 endeavor to foster an environment of cooperation and trust among the Participants;

2.5.4 provide the Participants with an opportunity to express their views on those issues that affect them and that they are entitled to address;

2.5.5 assess the progress being made in the Facilitated Negotiations and whether further progress is likely to occur;

2.5.6 if an agreement is reached on all or some of the issues in dispute, prepare a memorandum of agreement on those issues which is acceptable to the Participants involved in the agreement; and

2.5.7 if no agreement is reached on some or all of the issues in dispute or if only the Designated Registered Participants have agreed to an issue in dispute, prepare a list of the outstanding issues which list is acceptable to the Participants and which contains a description of each issue which has not been agreed to by all Participants, the position of each of the Participants with respect to each of those issues and an explanation for the basis for the position of each of the Participants.

2.6 Where the Participants have reached an agreement on an issue that differs from the recommendation contained in the Data Collection Agent Report, the memorandum of agreement must include an explanation for the difference and any calculation associated with that agreement.

2.7 The Facilitator shall be and remain at all times impartial, neutral and independent from the parties and is not a compellable witness in any subsequent proceedings related to Handling Commissions.

2.8 The Board may direct the BCMB to terminate the appointment of a Facilitator during the course of the Facilitated Negotiations.

Role of the Data Collection Agent in the Facilitated Negotiations

2.9 All information collected by the Data Collection Agent for the purposes of a Handling Commission Review is to be subject to confidentiality guidelines established by the Board. All information shall be reported in aggregate form only and all raw data shall be treated as strictly confidential by the Data Collection Agent, and shall not be published, circulated or distributed by the Data Collection Agent unless the parties providing the information provide consent.

2.10 The Data Collection Agent may attend the Facilitated Negotiations to provide information and assistance to the Facilitator and the Participants as appropriate. The participation of the Data Collection Agent in the Facilitated Negotiations does not preclude the Data Collection Agent from appearing before the Board or the Arbitration Panel in the Proceedings or in any subsequent proceedings related to Handling Commissions.

2.11 The Data Collection Agent shall be and remain at all times impartial, neutral and independent from the Participants.

Role of BCMB Management in the Facilitated Negotiations

2.12 The BCMB and its counsel are entitled to attend the Facilitated Negotiations.

2.13 The role of the BCMB is to make relevant information available to the Facilitator and the Participants and to ensure that the Facilitated Negotiations are carried out in a fair manner with meaningful participation by the Participants.

2.14 The BCMB shall be and remain at all times impartial, neutral and independent from the Participants.

Written Statements and Other Material

2.15 As directed by the Facilitator, each of the Participants shall file with the BCMB and provide a written statement to the Facilitator respecting the position of that Participant on the relevant issues that are the subject of the Facilitated Negotiations.

2.16 Written statements shall contain all documents, data, studies, expert reports or other written materials upon which the Participant intends to rely in the Facilitated Negotiations, at the Board Meeting and in any subsequent Board Hearing or Arbitration Hearing.

2.17 Each Participant may provide written statements in rebuttal to the written statements of another Participant.

2.18 With the consent of all of the Participants and at the direction of the Facilitator, the Data Collection Agent may file with the BCMB and provide a written statement clarifying matters raised by the Participants that were not addressed in the Data Collection Agent's Report.

2.19 With the consent of all of the Participants and at the direction of the Facilitator, the BCMB may file documentation containing factual information relevant to the issues being negotiated in the Facilitated Negotiations, material regarding the jurisdiction of the BCMB and copies of BCMB policies, procedures and guidelines which have been approved by the Board.

2.20 Prior to the conclusion of the Facilitated Negotiations, the Facilitator may request that the Participants provide a written statement containing their proposed Handling Commissions.

2.21 Prior to the conclusion of the Facilitated Negotiations, the Facilitator may request that the Participants provide a list of outstanding issues upon which they have been unable to reach an agreement which contains a description of each outstanding issue, the position of each of the Participants with respect to each of the outstanding issues and an explanation of the basis for the position of each of the Participants.

Information Request

2.22 A Participant may request the Data Collection Agent provide information necessary to clarify the Data Collection Agent Report or to simplify the issues or to otherwise permit a full and satisfactory

understanding of a matter in issue in the Handling Commission.

2.23 A Participant may request another Participant to provide information necessary to clarify any written statement filed by such other Participant or to simplify the issues or to otherwise permit a full and satisfactory understanding of a matter in issue in the Handling Commission Review.

2.24 A request for information in accordance with rule 2.22 or 2.23:

2.24.1 shall be in writing;

2.24.2 shall be filed with the BCMB and directed to the Data Collection Agent or to the Participant from whom a response is sought;

2.24.3 shall contain specific questions requesting clarification about the evidence, documents or other material in the possession of the Data Collection Agent or the Participant and which is relevant to the matters in issue in the Handling Commission Review; and

2.24.4 shall be filed and served no later than 14 days after the Data Collection Agent's report or written statement has been filed, unless a different timeline is established under rule 2.4 or is otherwise directed by the Facilitator.

Response to Information Request

2.25 The Data Collection Agent or a Participant who is served with an information request in accordance with rules 2.22 or 2.23 shall provide a response with respect to each question either;

2.25.1 providing a full and adequate response; or

2.25.2 objecting to the question and setting out the basis for the objection; or

2.25.3 where the Data Collection Agent or the Participant contends that the information necessary to provide a response is not available, setting out of the reasons for the unavailability of the information, and providing any alternative available information that the Data Collection Agent or Participant considers might be of assistance.

2.26 The response to an information request shall be filed and served no later than 21 days after the information request is filed, unless a different timeline is established under rule 2.4 of these Rules or is otherwise directed by the Facilitator.

Expert consultation

2.27 During the course of the Facilitated Negotiations, and with the consent of the Data Collection Agent and the Participants, the Facilitator may arrange for the Data Collection Agent, experts retained by the Data Collection Agent and experts retained by those Participants to consult on a without prejudice basis in an effort to reach agreement on matters of expert opinion.

2.28 Subject to any agreement reached between the Data Collection Agent, the Participants and their

counsel, all matters that form part of the consultations between the Data Collection Agent and the experts are entirely without prejudice to the position of all parties, and no evidence as to what took place during the consultations is admissible in any subsequent proceedings relating to the Handling Commission.

Facilitator's Report

2.29 Upon the termination of the Facilitated Negotiations, the Facilitator shall provide a report to the Board, which report shall contain the following information:

2.29.1 the Data Collection Agent Report;

2.29.2 any Information Requests and Responses to Information Requests;

2.29.3 any written statements and rebuttal statements of the Participants;

2.29.4 any written statement from the Data Collection Agent in accordance with rule 2.18;

2.29.5 any material filed by BCMB Management in accordance with rule 2.19;

2.29.6 any other material that has been filed during the course of the Facilitated Negotiations as part of the record in accordance with rules 1.11 and 1.12;

2.29.7 any memoranda of agreement prepared by the Facilitator setting out the agreement reached on an issue by the Participants;

2.29.8 where an agreement has been reached on an issue relevant to the setting of Handling Commissions, the material in support of the agreement that has been reached, including explanations and calculations as appropriate, but only such material, explanations or calculations as are agreed to and approved by the parties to the agreement;

2.29.9 where an agreement has been reached on all of the Handling Commissions, the Handling Commissions that have been agreed to with respect to each of the material streams referenced in the By-law;

2.29.10 where an agreement has been reached on all of the Handling Commissions, material in support of the Handling Commissions that have been agreed to, including explanations or calculations as appropriate, but only such material, explanations and calculations as are agreed to and approved by the parties to the agreement;

2.29.11 Where an agreement has been reached on any issue or on all of the Handling Commissions, an explanation from each of the parties to the agreement or from all of those parties jointly as to why, in their opinion, the agreement is in accordance with the Public Interest, the mandate of the BCMB and this By-law.

2.29.12 Where an agreement has been reached on any issue or on all of the Handling Commissions, a statement from each of the parties to the agreement that they are

satisfiedwith the fairness of the process by which the agreement was reached;

2.29.13 Where an agreement has been reached on any issue or on all of the Handling Commissions, a statement from the BCMB and a statement from the Facilitator stating either that they are satisfied with the fairness of the process by which the agreement was reached or that they or either of them did not have sufficient involvement in the process by which the agreement was reached to state that they are satisfied with the fairness of the process by which the agreement was reached; and

2.29.14 Where an agreement has not been reached on all of the Handling Commissions, a list of the outstanding issues between the Participants prepared by the Facilitator in accordance with rule 2.5.7.

2.30 The Facilitator, the Participants, counsel for the Participants, the BCMB, counsel for the BCMB and the Data Collection Agent shall treat as confidential:

2.30.1 all documents and other information produced for, or arising in relation to the Facilitated Negotiations, other than the documents and information referred to in rule 2.29; and

2.30.2 all admissions, concessions, offers and related discussions in the course of the Facilitated Negotiations;

2.30.3 and no documents or other information or evidence with respect to the Facilitated Negotiations other than the documents and information referred to in rule 2.29 are admissible in any subsequent proceedings related to the setting of Handling Commissions.

2.31 All discussions between the Participants, counsel for the Participants, the BCMB Management, counsel for the BCMB, the Data Collection Agent and the Facilitator including any bargaining positions, admissions or concessions are entirely without prejudice to the position of any of those parties, and no evidence as to what took place during the Facilitated Negotiations isadmissible in any subsequent proceedings relating to the Handling Commission Review.

3. HEARING PROCEDURE BEFORE THE ARBITRATION PANEL OR BOARD

Pre-Hearing Conference

3.1 The Arbitration Panel shall hold a pre-hearing conference in order to:

3.1.1 identify the issues in dispute in the Arbitration where the issues have not been identified by the Board;

3.1.2 determine whether any additional written material may be submitted other than the material contained in the report from the Facilitator, notwithstanding Rule 4.30;

3.1.3 establish any timelines that may be required;

3.1.4 set a hearing date; and

3.1.5 consider any other matter that will aid in the efficient and expeditious disposition of the Arbitration.

3.2 The Arbitration Panel may convene additional pre-hearing conferences as required from time to time.

Hearing Evidence

3.3 The evidence before the Arbitration Panel at the hearing shall consist of the materials contained in the report from the Facilitator, any additional material directed by the Arbitration Panel at a pre-hearing conference, the oral evidence of the Data Collection Agent and the oral evidence presented on behalf of the Participants. The Arbitration Panel may also hear oral submissions from the Participants

3.4 Notwithstanding rule 3.3, the Arbitration Panel may allow the introduction of new evidence if the Arbitration Panel determines that the inclusion of that evidence will not prejudice any Participant and the new evidence is relevant and of assistance to the Arbitration Panel in reaching its decision.

3.5 The Arbitration Panel may make any direction necessary to facilitate the expeditious and efficient hearing of the arbitration.

3.6 The oral evidence presented on behalf of the Participants may include evidence from the expert whose expert opinion was contained in the written statements and rebuttal statements provided in the course of the Facilitated Negotiations, but unless otherwise allowed by the Arbitration Panel, such expert shall not provide additional opinion evidence not contained in those written statements and rebuttal statements.

3.7 The Arbitration Panel may, in its discretion, limit the time allowed for presentation of evidence.

Dispensing with Oral Hearing

3.8 The Arbitration Panel, with the agreement of the Participants, may dispense with the holding of a hearing and may conduct the Arbitration on the basis of written material submitted by each Participant. In that case, reference to the "hearing date" in these Rules shall be the date on which all documents are to be submitted by the Participants.

Conduct of the Hearing

3.9 The Arbitration Panel may administer oaths, affirmations and declarations.

3.10 The Arbitration Panel is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine:

3.10.1 the admissibility, relevance and weight of any evidence; and

3.10.2 the manner in which evidence is to be admitted;

however, nothing is admissible before the Arbitration Panel that would be subject to privilege.

3.11 Any fact that is to be proved by the oral or written evidence of a witness shall be proved on oath or affirmation or by solemn declaration.

3.12 All oral evidence is to be taken in the presence of the Arbitration Panel and the Participants or their counsel, unless a Participant or their counsel is absent by default or has waived his or her right to be present.

3.13 A Participant may require that any witness whose evidence is received other than orally bemade available for cross-examination at an oral hearing.

3.14 The Arbitration Panel may ask that evidence be called by the BCMB in relation to matters specifically identified by the Arbitration Panel.

3.15 The Arbitration Panel may ask questions of any witnesses and of the BCMB and the Data Collection Agent if the Arbitration Panel considers the answers to those questions to be reasonably necessary to disclose fully and fairly all matters relevant to the issues, provided that the Arbitration Panel does not prevent a Participant from presenting its case.

3.16 The Arbitration Panel may request that the Data Collection Agent address any matter for clarification, including matters that arise in the evidence or testimony of Participants which relate to data or evidence brought forward by the Data Collection Agent, or any new matter that arises and which was not dealt with in the Data Collection Agent's Report.

3.17 Except in the course of examination or cross examination, there shall be no communication between any counsel and a witness under examination or cross-examination from the time that the witness has been sworn or affirmed until that witness has been excused except with leave of the Arbitration Panel or with the consent of all Participants entitled to participate in the cross-examination.

3.18 BCMB counsel may participate in the Arbitration and in particular, may:

3.18.1 present the evidence of the Data Collection Agent;

3.18.2 at the request of the Arbitration Panel, present evidence from the BCMB;

3.18.3 provide clarification, background information and assistance with jurisdictional issues; and

3.18.4 with leave of the Arbitration Panel, call additional witnesses where reasonably required for the full and fair disclosure of all matters relevant to the issues in the proceeding.

3.19 The Arbitration Panel shall give the Participants the opportunity to submit argument, either orally or in writing or both.

3.19.1 The proceedings before the Arbitration Panel shall be voice recorded until the Arbitration Panel commences deliberations.

3.20 If a Participant wishes to obtain a recording or transcription of the proceedings before the Arbitration Panel, the Participant may, at its own cost, receive such recording or transcription through the BCMB.

Adjournment

3.21 In order to avoid prejudice to any party participating in the Arbitration, the Arbitration Panel may:

3.21.1 grant an adjournment; and

3.21.2 impose other terms as the Arbitration Panel deems appropriate.

Close of Hearing

3.22 The Arbitration Panel shall close the hearing when:

3.22.1 the Participants advise they have no further evidence to give or submissionsto make; or

3.22.2 the Arbitration Panel considers further hearings to be unnecessary or inappropriate.

3.23 The Arbitration Panel may reopen hearings if it considers it appropriate to do so.

Deliberations

3.24 All deliberations of the Arbitration Panel shall be in confidence and the matter and substance thereof shall remain confidential.

3.25 During its deliberations, the Arbitration Panel may request information or calculations from the Data Collection Agent. Where new facts or issues arise from these requests that may affect the Arbitration Panel's decision, the Arbitration Panel shall provide full disclosure to the relevant Participants and the BCMB regarding the new facts or issues and give those Participants the opportunity to make representations with respect to the new facts or issues orally or in writing.

4. DECISION OF THE ARBITRATION PANEL OR BOARD

4.1 The Arbitration Panel shall make its award in writing and give reasons for the award. Where the decision is not unanimous, a decision and reasons may also be provided by the minority.

4.2 After preparing its reasons regarding the matters at issue before the Arbitration Panel, the Arbitration Panel shall provide the reasons to the Participants, the BCMB and the Data Collection Agent for review, prior to delivering its final award to the Board.

4.3 Participants, the BCMB and the Data Collection Agent may provide comments to the Arbitration Panel within a period of 14 days from the date of delivery of the reasons to them as to any clerical

or typographical errors, errors of calculation, or similar or other errors made in any of the Arbitration Panel's reasons.

4.4 The Arbitration Panel may correct typographical errors, errors of calculation and similar or other errors made in its reasons.

4.5 All awards of the Arbitration Panel shall be made by the Arbitration Panel and provided to the BCMB no later than 25 days after the last day of the hearing. The BCMB shall forward the award to the Participants promptly after receipt.

4.6 Where the Arbitration Panel is setting Handling Commissions, the Award shall state a final and binding Handling Commission for all containers.

4.7 Awards of the Arbitration Panel setting Handling Commissions must utilize the form attached hereto as Schedule "D."

4.8 Where the Arbitration Panel is determining the outstanding issues between the Participants, the Award shall provide a determination with respect to each of the outstanding issues. The Award shall direct that the Data Collection Agent calculate Handling Commissions using these determinations together with any agreement reached by the Participants and approved by the Board in accordance with section 11.11 of this By-law.

4.9 The Data Collection Agent shall provide its calculations and the resulting Handling Commissions prepared in accordance with rule 4.8 to the Arbitration Panel, the Participants, and the BCMB for review.

4.10 The Participants may provide comments to the Arbitration Panel regarding the calculations and resulting Handling Commissions prepared in accordance with rule 4.8 within a period of 14 days from the date of delivery of them to the Arbitration Panel and the Arbitration Panel may resolve any disputes between Participants by way of a supplemental Award after following a process established by the Arbitration Panel for that purpose.

5. COSTS

5.1 In this section of the By-law, "Costs" means the direct costs or expenses associated with the Handling Commission Review and includes:

5.1.1 remuneration to the Facilitator;

5.1.2 remuneration for members of the Arbitration Panel and the Board;

5.1.3 the expenses of the Facilitator;

5.1.4 the expenses of the Arbitration Panel and the Board;

5.1.5 the expenses related to the Facilitated Negotiations and Board Hearing and Arbitration Hearing including the cost of the venue for the Facilitated Negotiations and the Hearings; and

5.1.6 the costs of the Participants in participating in the Handling Commission Review, aside from any regulatory costs that have been taken into account by the Board or the Arbitration Panel for the purpose of determining Handling Commissions.

5.2 Unless otherwise directed by the Arbitration Panel, each Participant shall be responsible for its own costs of participating in the Handling Commission Review.

5.3 The Arbitration Panel may direct that a Participant participating in the Hearing pay Costs to another Participant or Participants or to the BCMB if the Arbitration Panel considers such a direction to be fair and reasonable.

5.4 In determining whether Costs should be directed to be paid by a Participant, and the amount of those Costs, the Arbitration Panel may consider the conduct of the Participant in the Handling Commission Review, including the following conduct:

5.4.1 whether the Participant engaged in conduct that unnecessarily lengthened the proceedings or that resulted in unnecessary costs to the other Participants orthe BCMB;

5.4.2 whether the Participant failed to comply with a direction of the Facilitator or the Arbitration Panel; or

5.4.3 whether the Participant failed to comply with these Rules.

5.5 Where the Arbitration Panel directs costs to be paid, it shall provide written reasons.

5.6 Where the Arbitration Panel directs costs to be paid, the direction may be appealed to the Board and may be overturned, varied or confirmed by a majority vote of 2/3 of the Board.

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SCHEDULE "B"

Facilitator Selection Criteria

The following criteria should be used to assess the suitability of individual candidates to act as Facilitator:

1. Candidates should preferably be residents of the Province of Alberta.

2. Candidates will be of the age of majority.

3. Individual candidates should demonstrate a familiarity with and commitment to the purposes and principles espoused in the Environmental Protection and Enhancement Act.

4. Individual candidates should display a high degree of personal integrity, be held in high regard in their professional community and should possess leadership abilities such that confidence would be placed in their decisions.

5. Individual candidates should demonstrate a record of commitment to purposes and projects which further the public interest.

6. Individual candidates should be familiar with fields of study and practice relevant to alternative dispute resolution or to the application of the rules of natural justice in administrative tribunal settings.

7. Candidates must possess an understanding of rate-setting methods used in another regulated industry.

8. Candidates must have the ability to dedicate sufficient time, on a priority basis, to the work required by the BCMB of the Facilitator.

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SCHEDULE "C"

Arbitration Panel Selection Criteria

The following criteria should be used to assess the suitability of individual candidates for membership on the Arbitration Panel:

1. Candidates should preferably be residents of the Province of Alberta.

2. Candidates will be of the age of majority.

3. Individual candidates should demonstrate a familiarity with and commitment to the purposes and principles espoused in the Environmental Protection and Enhancement Act.

4. Individual candidates should display a high degree of personal integrity, be held in high regard in their professional community and should possess leadership abilities such that confidence would be placed in their decisions.

5. Individual candidates should demonstrate a record of commitment to purposes and projects which further the public interest.

6. Individual candidates should be familiar with fields of study or practice relevant to alternative dispute resolution and to the application of the rules of natural justice in administrative tribunal settings.

7. At least one member of the Arbitration Panel must possess an understanding of rate setting methods used in another regulated industry.

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SCHEDULE "D"

Determination/ Decision for the Settling of Handling Commissions

1. The Arbitration Panel/ Board is authorized to set the handling commission rates payable by Manufacturers or a Collection System Agent to a Depot for the purposes of section 13(b) of the Beverage Container Recycling Regulation (Alberta).

2. **(If not applicable, delete this paragraph)** The issues to be determined by the Arbitration Panel/Board were limited to the following:

3. **(if not applicable, delete this paragraph)** The decision of the Arbitration Panel/Board on the issues stated in paragraph #2 is/are as follows:

4. In accordance with the Handling Commission Review Rules of Practice and Procedure, the Arbitration Panel sets the handling commission rates for the period commencing _____ for each Material Stream.

5. The reasons of the Panel/Board are attached.

Signed and submitted to the BCMB this_____day of_____,
_____.

_____
Name:

_____
Name:

_____
Name: