BRAND OWNER AGREEMENT

encorp re
RECYCLE

APRIL 1, 2024

BRAND OWNER AGREEMENT

THIS BRAND OWNER AGREEMENT (the "**Agreement**") is entered into the _____day of

_____, 20_____ ,

BETWEEN:

ENCORP ATLANTIC/ENCORP ATLANTIQUE
a not-for-profit corporation incorporated under the
Canada Not-for-profit Corporations Act, having its
head office at 505 St George Street, Unit D,
Moncton NB E1C 1Y4 ("**Encorp**");

AND:

_____

_____

_____

(the "**Brand Owner**").

WHEREAS

A. The Brand Owner is a brand owner (as currently defined in the D*esignated Materials Regulation*, as may be amended from time to time (the "**Regulation**") under the *Clean Environment Act* (New Brunswick) (the "**Act**")), with respect to beverage containers ("**beverage containers**") sold in the Province of New Brunswick (either in its capacity as a manufacturer, distributor, importer, retailer, trademark owner or licensee of beverage containers, as applicable);

B. Beverage containers are designated materials for purposes of section 22.1 of the Act and brand owners of same are required to comply with certain obligations, which are outlined in the Regulation;

C. Section 50.93 of the Regulation permits a brand owner to designate an agent to act on behalf of the brand owner with respect to the brand owner's obligations under the Regulation;

D. The Brand Owner wishes to designate Encorp as its sole agent in relation to certain of its obligations under the Regulation in relation to the Brand Owner's non-refillable beverage containers in accordance with the terms of this Agreement and Encorp is qualified to act as an agent for the Brand Owner under the Regulation.

In consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged by each party hereto, the parties agree as follows:

1. INTERPRETATION

1.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick, and subject to Article 9, the parties to this Agreement submit and attorn to the exclusive jurisdiction of the Courts of the Province of New Brunswick.

1.2 Headings and References. The headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

1.3 References. Unless otherwise stated, a reference herein to a numbered or lettered article, section, subsection, clause or schedule refers to the article, section, subsection, clause or schedule bearing that number or letter in this Agreement. A reference to "this Agreement" means this Agreement including the schedules hereto, together with any amendments thereof.

1.4 Severability. Should any provision of this Agreement be void or unenforceable it shall be severed from this Agreement and the remainder of this Agreement shall remain in full force and effect and shall be interpreted and construed as if the stricken provision had never formed part of this Agreement.

2. APPOINTMENT AND STEWARDSHIP PLAN

2.1 Appointment. In accordance with the terms of the Regulation, the Brand Owner appoints Encorp as its sole and exclusive agent to act on its behalf for all duties under section 50.921 and 50.931 (save and except subsection (j) thereof) of the Regulation during the Term and, in particular and without limitation:

(a) to develop, submit and, subject to section 2.3, amend an extended producer responsibility plan as required by the Regulation for the collection, management and recycling of beverage containers for and on behalf of the Brand Owner (the "**Stewardship Plan**"); and

(b) to undertake the implementation of the Stewardship Plan in all respects including contracting with used beverage container return facilities (redemption centres) (or operating same, if applicable) and generally the collection and recycling of designated materials in accordance with the Regulation.

2.2 Stewardship Plan. The Brand Owner acknowledges and agrees that Encorp may replace, restate or otherwise amend the Stewardship Plan from time to time, provided Encorp shall first provide the Brand Owner with 60 days' prior written notice of each such amendment (if the amendment will impact the Brand Owner's obligations under this Agreement).

2.3 New Designated Materials. Notwithstanding anything else in this Agreement, Encorp's obligations hereunder shall not extend to any beverage containers the size, composition or other material characteristics of which have not been approved by Encorp in advance. A list of approved beverage container material composition is attached hereto as Schedule "A".

2.4 Changes to the Regulation or Stewardship Plan. The parties acknowledge that there may be changes to the Regulation or Stewardship Plan. In the event such changes warrant amendments to this Agreement (in Encorp's discretion), Encorp shall give written notice to the Brand Owner of such required amendments as soon as practical. In the event the Brand Owner does not agree to enter into the required amendments, Encorp shall have the right to immediately terminate this Agreement.

2.5 Obligations of Brand Owner. During the Term (as defined below) of this Agreement, the Brand Owner shall:

(a) permit Encorp to hold itself out as the authorized agent solely for purposes outlined in section 2.1 in respect of its beverage containers;

(b) work with Encorp to meet the obligations required pursuant to subsection 50.931(j) of the Regulation; and

(c) not produce containers (to be sold in New Brunswick) that do not meet recyclability standards (which are listed in Schedule "A" attached hereto), as may be amended from time to time by Encorp in its sole discretion. Encorp shall provide the Brand Owner with notice of any such amendments.

3. TERM

3.1 Term. The term of this Agreement shall commence on the _____ day of _____, 20_____, and continue indefinitely thereafter, subject to termination in accordance with Article 6 of this Agreement (the "**Term**").

4. PAYMENT

4.1 Fees. The Brand Owner shall pay to Encorp such deposit amounts and container recycling fees as are necessary to give effect to the Stewardship Plan in respect of the Brand Owner and the Brand Owner's beverage containers as determined by Encorp (the "**Fees**").

4.2 Security Payment. Encorp has determined that it will not require a security payment from the Brand Owner at the time this Agreement is entered into; however, Encorp reserves the right to require a security deposit to be paid by the Brand Owner at a later date (in the event the Brand Owner fails to comply with its obligations under this Agreement).

4.3 Monthly Beverage Container Remittance and Monthly Payment. Within the first ten business days of each calendar month during the Term (or within such other period of time as may be requested by Encorp (i.e. quarterly, semi-annually or yearly) based on the Brand Owner's anticipated annual volume (including, if applicable, Other Brand Owner(s)' anticipated volume) (the "**Reporting Period**"), and for the calendar month immediately after the Term, the Brand Owner shall deliver to Encorp a statement indicating the number of beverage containers sold by the Brand Owner (including, if applicable, the Other Brand Owner(s)' sales) in New Brunswick during the previous Reporting Period in the online form available on Encorp's website ("**Online Reporting System**") and shall pay to Encorp the corresponding Fees (as calculated by Online Reporting System) by cheque or electronic funds transfer within 30 days of the end of the Reporting Period. Encorp has the right to charge the Brand Owner a penalty for late payments as it considers appropriate from time to time.

4.4 Assignment by Brand Owner. In the event the Brand Owner is not going to be collecting and remitting the Fees associated with the Brand Owner's beverage containers, the Brand Owner shall enter into a remittance agreement in a form acceptable to Encorp (a "**Remittance Agreement**"). Notwithstanding the foregoing, for alcohol beverage containers that are sold by New Brunswick Liquor Corporation, operating as Alcool NB Liquor, ("**ANBL**") in the course of its operations, the Brand Owner hereby assigns its payment and reporting obligations (set out in sections 4.1-4.3 above) and its fee verification obligations (set out in Article 5 below) to ANBL to be covered by a *Brand Owner and Remittance Agreement* between Encorp and ANBL. For certainty, only the obligations associated with the alcohol beverage containers that are sold by ANBL in the course of its operations are assigned to ANBL; the Brand Owner's obligations with respect to all other sales of alcohol beverage containers remain the responsibility of the Brand Owner.

4.5 Assumption by Brand Owner. In addition to the Brand Owner's beverage containers, in the event the Brand Owner has agreed to take on the payment, reporting and fee verification obligations of one or more other brand owners ("**Other Brand Owner(s)**"), and has assumed those obligations by executing a Remittance Agreement in a form acceptable to Encorp, references to Fees in this Agreement shall be deemed to include the deposit amounts and container recycling fees collected for and on behalf of such Other Brand Owner(s).

4.6 Brand Owner container registration and labelling. Brand Owner shall provide a report to Encorp, in the manner and form required by Encorp, detailing specific characteristics of the Brand Owner's beverage containers, which Encorp is responsible to retrieve under the terms of this Agreement. All beverage containers covered under this Agreement must carry a refund notice advising consumers that the empty container carries a refund value. The label message must be in both official languages. The message must be placed on the container label in a readily visible area in a manner that permits its identification when returned for refund by the consumer.

5. FEE VERIFICATION

5.1 Independent Verification. The Brand Owner will provide Encorp with a declaration in the form available on Encorp's website (titled "**Brand Owner Declaration**"). Further, the Brand Owner will cause a third party (acceptable to Encorp) to provide an independent declaration confirming the specific procedures in the form available on Encorp's website (titled "**Independent Verification**") of the unit sales of beverage containers sold in New Brunswick and the Fees due and paid to Encorp (an "**independent verification**"). The independent verification shall be completed and provided to Encorp annually during the Term, either within 90 days of each calendar year end or the Brand Owner's fiscal year end, at the Brand Owner's option. Each independent verification shall cover the preceding calendar year or fiscal year, as applicable. An independent verification covering the period since the last independent verification shall also be provided to Encorp within 90 days of any termination of this Agreement. The cost of all independent verifications shall be borne by the Brand Owner. Encorp shall have the right to request that *additional* independent verifications be conducted in relation to the Brand Owner (and, as applicable, Other Brand Owner(s)). Any such additional independent verification shall be at Encorp's sole discretion and cost.

5.2 Discrepancies. If any independent verification identifies a shortfall in the Fees paid to Encorp, the Brand Owner shall pay to Encorp such shortfall at the same time as the Brand Owner provides the independent verification to Encorp. If the independent verification identifies an overpayment in the Fees paid to Encorp for the previous 12-month period, the Brand Owner may apply such overpayment against its next monthly payment to Encorp pursuant to Section 4.3. If the Brand Owner need not make any further monthly payments to Encorp hereunder, Encorp shall deliver to the Brand Owner a cheque or electronic funds transfer payable to the Brand Owner for the amount of the overpayment within 30 days of Encorp's receipt of the independent verification. Notwithstanding the foregoing, any claims for overpayment not made within 90 days of the Brand Owner fiscal year end or calendar year end will not be considered and any overpayment will be forfeited to Encorp.

5.3 Limitations. Notwithstanding the *Limitation of Actions Act*, SNB 2009, c. L-8.5, in the event that an independent verification finds that the Brand Owner has paid to Encorp an amount less than the Fees owing by the Brand Owner in connection with this Agreement (an "**underpayment**") in any previous fiscal period (including a fiscal period that is more than two years prior to the date of the verification), Encorp shall have the right to collect the underpayment from the Brand Owner and the Brand Owner agrees that it shall be estopped from raising the expiry of any limitation period as a defence to the exercise by Encorp of its right to collect the underpayment.

6. TERMINATION

6.1 Due Course Termination. Either party may terminate this agreement for convenience upon 90 days' prior written notice to the other.

6.2 Default Termination. If a party (the "**Defaulting Party**") breaches any term or condition of this Agreement, the other party may deliver notice of the breach to the Defaulting Party. In the event the breach is not cured within seven days of such notice, the party having delivered such notice may terminate this Agreement on notice to the Defaulting Party. For the avoidance of doubt, in the event the Brand Owner fails to deliver payment of the required Fees, Encorp shall have the right to terminate this Agreement and, following delivery by Encorp to the Brand Owner of notice of termination, Encorp shall no longer be considered to be acting as agent for the Brand Owner (and, if applicable, any Other Brand Owner(s)) and the Brand Owner shall be fully responsible for its obligations under the Regulation.

6.3 Other Termination. Unless the parties agree otherwise, this Agreement will terminate automatically if: (i) either party (in this Section, an "**Insolvent Party**") makes an assignment for the benefit of its creditors, consents to the appointment of a receiver for all or substantially all of the property of the Insolvent Party, files a petition in bankruptcy or for a reorganization under the appropriate bankruptcy legislation, or is adjudicated bankrupt or insolvent; or (ii) a court order is entered, without the consent of the Insolvent Party, appointing a receiver or trustee for all or substantially all of the property of the Insolvent Party, or approving a petition in bankruptcy or for a reorganization pursuant to the appropriate bankruptcy legislation or for any other judicial modification or alteration of the rights of creditors of the Insolvent Party.

6.4 Unpaid Fees. Section 4.3 and Article 5 shall survive termination of this Agreement.

6.5 Other Brand Owner. In the event this Agreement is terminated, the Brand Owner shall notify the Other Brand Owner(s) (as defined in Section 4.5 above) of such termination and advise them of their obligation to resume their Remittance Obligations (as defined in the Remittance Agreement entered into between the Brand Owner and the Other Brand Owner(s)).

7. INDEMNIFICATION

7.1 The Brand Owner agrees to indemnify and save harmless Encorp from and against any claims, demands, actions, causes of action, damage, loss, costs, liability or expense (the "**Claims**") which may be made or brought against Encorp or which Encorp may suffer or incur, directly or indirectly, as a result of, in respect of, or arising out of any non-fulfilment of any obligation on the part of the Brand Owner under this Agreement or breach of any obligation of the Brand Owner contained in this Agreement (except, in each case, to the extent any Claim is caused by or results from the gross negligence, wilful misconduct or illegal acts of Encorp).

7.2 Encorp agrees to indemnify and save harmless the Brand Owner from and against any Claims which may be made or brought against the Brand Owner or which the Brand Owner may suffer or incur, directly or indirectly, as a result of, in respect of, or arising out of any non-fulfilment of any obligation on the part of Encorp under this Agreement or breach of any obligation of Encorp contained in this Agreement (except, in each case, to the extent any Claim is caused by or results from the gross negligence, wilful misconduct or illegal acts of the Brand Owner).

8. NOTICE

8.1 Notice. All notices, or other communications required or permitted under this Agreement shall be in writing and shall be delivered in person or sent by facsimile to the address or fax number or email address provided related to this agreement:

To Encorp at:

Mailing Address: Encorp Atlantic / Encorp Atlantique
Attn: President
PO Box 65, Moncton, NB, E1C 8R9
Fax: (506) 389-7329
Email: epr-rep@encorpatl.ca

Office Location: Encorp Atlantic / Encorp Atlantique
505 St. George St., Unit D, Moncton, NB, E1C 1Y4

To the Brand Owner at: Address: _____

_____

Telephone:_____Fax: _____

Email:_____

Contact person:_____

If personally delivered, notices will be deemed to have been given and received on the date of actual delivery and, if given by facsimile or email, notices will be deemed to have been given and received on the date sent if sent during normal business hours on a business day and otherwise on the next business day.

Either party may at any time and from time to time notify the other party in accordance with this Section 8.1 of a change of address or fax number, to which all notices will be given to it thereafter until further notice in accordance with this Section 8.1.

9. DISPUTE RESOLUTION

9.1 Dispute. Any dispute or claim arising out of, or pursuant to, a breach of this Agreement (*other than* relating to failure by the Brand Owner to pay Encorp the Fees) (a "**Dispute**") shall be dealt with in accordance with this Article 9.

9.2 Informal Meeting To Resolve Dispute. party may at any time deliver written notice specifying in reasonable detail the nature of a Dispute (an "**Informal Dispute Notice**") to the other party, in which case representatives of both parties shall meet within 10 days of delivery of the Informal Dispute Notice to:

(a) clarify the nature of the Dispute;

(b) request any further documentation in relation to the Dispute; and

(c) attempt in good faith to resolve the Dispute (an "**Informal Discussion**").

9.3 Management Involvement.

(a) **Management**. If a Dispute is not resolved at an Informal Discussion, or the parties fail to have an Informal Discussion with the 10-day period provided for in Section 9.2, a party may deliver written notice (a "**Formal Dispute Notice**") to the other party summarizing the aspects of the Dispute that remain outstanding following the Informal Discussion and requesting the Dispute be discussed with senior representatives of both parties.

(b) Within 30 days of delivery of the Formal Dispute Notice, the parties shall arrange for and facilitate a meeting between senior representatives to attempt in good faith to resolve the Dispute (the "**Formal Meeting**").

9.4 Confidentiality. All negotiations conducted pursuant to Section 9.2 and Section 9.3 shall be treated as compromise and settlement negotiations between the parties and shall not be subject to disclosure through discovery or any other process and shall not be admissible as evidence in any proceeding. Notwithstanding the foregoing, the parties shall be permitted to disclose the negotiations with their respective boards provided they advise their boards of the confidential nature of the information being disclosed.

9.5 Arbitration.

(a) **Appointment of Arbitrator.** If the Dispute remains unresolved after the Formal Meeting, a party may deliver written notice (an "**Arbitration Notice**") to the other party requiring the Dispute go to arbitration, in which case the parties shall attempt to appoint a mutually acceptable arbitrator within 14 days of delivery of the Arbitration Notice, failing which either party may apply to have an arbitrator appointed pursuant to the *Arbitration Act* (New Brunswick).

(b) **Arbitration.** Arbitration shall be conducted in accordance with the *Arbitration Act* (New Brunswick) in accordance with its rules for commercial arbitration in effect at the time.

(c) Each party shall bear its own costs of the arbitration and shall share equally the fees and disbursements of the arbitral tribunal and any other related costs of the arbitration, regardless of the outcome. The decision of the arbitrator shall be final and binding.

9.6 Interim Relief. Either party may, despite this Article 9, seek from the New Brunswick Court of King's Bench any interim or provisional injunctive relief that may be necessary to protect the rights or the property of that party, or maintain the status quo until such time as a Dispute is otherwise resolved.

10. GENERAL PROVISIONS

10.1 Independent Contractor. The parties acknowledge, and it is expressly agreed, that the parties have entered into an arm's length independent contract. This Agreement shall not be deemed to constitute or create any partnership, joint venture, master/servant, employer/employee or similar relationship between Encorp and the Brand Owner.

10.2 Confidentiality. Each party agrees that it will, during the Term and for a period of three years after the termination of this Agreement, keep in the strictest confidence and not disclose to any other party or use for its own benefit, save and except in the performance of its obligations under this Agreement, any confidential information received or disclosed to it by the other party. Each party shall ensure that its employees are aware of the obligations of confidentiality owed to the other party and shall obtain the consent of the other party before confidential information is released to its contractors or consultants. The foregoing restrictions shall not apply to (a) information which, at the time of disclosure or afterwards is published or enters the public domain (otherwise than through a breach of the obligations set out herein); (b) information which was known to the recipient prior to disclosure; and (c) information that a party is required by law or judicial order to disclose.

10.3 Assignment. This Agreement is assignable by Encorp without the consent of the Brand Owner to any corporate entity incorporated for the purpose of carrying out the Stewardship Plan provided that notice is provided to the Brand Owner. This Agreement is assignable (in part) by the Brand Owner to another brand owner *provided that* (i) prior written notice is given to Encorp in relation to the proposed assignment; (ii) the parties have entered into a Remittance Agreement in a form acceptable to Encorp; and (iii) Encorp is agreeable to the proposed assignment and has so indicated by signing an acknowledgment and confirmation to that effect.

10.4 Entire Agreement. This Agreement contains the entire agreement between the parties regarding the matters herein contained and will supersede any prior agreements or understandings between the parties, whether oral or written. No change or modification of this Agreement shall be valid or effective unless it is in writing and signed by a representative of each party holding the position of President, Vice President or General Manager.

10.5 Enurement. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

10.6 Time of the Essence. Time is expressly declared to be of the essence of this Agreement.

10.7 Waiver. Any waiver by a party or any failure on a party's part to exercise any of its rights in respect of this Agreement shall be limited to the particular instance and shall not extend to any other instance or matter in this Agreement or in any way otherwise affect the rights or remedies of such party.

10.8 Further Assurances. The parties agree to execute and deliver all such other and additional instruments or documents and to do all such other acts and things as may be necessary to give full effect to this Agreement.

10.9 Counterparts and Electronic Execution and Delivery. This Agreement may be executed and delivered in any number of counterparts and by fax or other electronic means and all such counterparts and fax or other electronic executions, taken together, shall be deemed to constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

ENCORP ATLANTIC / ENCORP ATLANTIQUE

Per: _____
(Authorized Signatory)

_____
(Print Name, Title)

(BRAND OWNER)

Per: _____
(Authorized Signatory)

_____
(Print Name, Title)

SCHEDULE "A"- LIST OF ACCEPTED MATERIALS

Brand owners must ensure that their containers for deposit-bearing beverage products sold in New Brunswick conform to the specified list of Encorp's accepted container material types. The containers should also meet the additional requirements outlined below.

ACCEPTED CONTAINER MATERIAL TYPES	DEFINITION
Aluminum	All deposit-bearing beverage products that are packaged in aluminum containers.
PET 	All deposit-bearing beverage products packaged in plastic containers displaying the number 1 polyethylene terephthalate (PET or PETE) resin code.
HDPE 	All deposit-bearing beverage products packaged in plastic containers displaying the number 2 high-density polyethylene (HDPE) resin code.
Non-Refillable Glass (Green, Clear and Brown)	All deposit-bearing beverage products packaged in glass containers not intended to be reused. Glass beverage containers are always either green, clear, or brown.
Refillable Glass	All beer products packaged in refillable glass industry standard bottles (ISB) or refillable glass proprietary bottles. The bottles can be either brown, green, or clear in colour. For multi-packs, refillable glass bottles must be packaged in recyclable cardboard cases.
Cartons (Polycoat Containers & Wine Boxes)	All deposit-bearing beverage products packaged in polycoated containers (aseptic or gable top) plus all box (cardboard) packaging used for deposit-bearing boxed wine (wine sold in a bag inside a box). .
Steel	All deposit-bearing beverage products packaged in steel containers.
Other Plastics / Pouches 	All deposit-bearing beverage products packaged in plastics displaying the number 5 polypropylene (PP) symbol, number 6 polystyrene (PS) resin symbol, or number 7 (OTHER) resin symbol (meaning "other plastics," such as acrylic, nylon, polycarbonate, and polylactic acid and multilayer combinations of different plastics). This material sort/category also includes all deposit-bearing beverage products packaged in low-density polyethylene plastic pouches (resin symbol 4 - LDPE).

ADDITIONAL REQUIREMENTS

Brand owners must also consider the following requirements regarding labelling, as well as the size, composition and other material characteristics of their beverage containers sold in New Brunswick.

- Containers larger than 5 L are exempt from the Beverage Containers Program and will not fall under Encorp's responsibility.

- Encorp will not accept hybrid containers (with the exception of lids/caps/closures). For example, a container with a body made from PET and a top made from aluminum.

- Encorp does not encourage the use of plastic wraps on aluminum or steel cans. However, these will be accepted in limited quantities from small craft brewers.

- Same as in other Canadian provinces/territories, all deposit-bearing beverage products must carry a refund notice on their label advising consumers that the empty container carries a refund value. Multiple variations of wording are acceptable in New Brunswick, provided the concept of a refund is evident, and the message appears in both English and French. The message must be located on the container where it is readily visible and must remain on the container when empty. Note that the refund notice does not need to be included on the outer wrapping for multi-packs.