

REMITTER'S AGREEMENT

Dated [date]

AMONG:

ONTARIO ELECTRONIC STEWARDSHIP, a corporation without share capital continued under the *Waste Diversion Act, 2002*

(“OES”)

- and -

Remitter Name., a corporation constituted under the laws of Jurisdiction

(the “Remitter”)

- and -

Steward Name, a Corporation constituted under the laws of Jurisdiction

(the “Steward”).

BACKGROUND

- A. OES has been designated as the Industry Funding Organization under the Act for EEE;
- B. The Steward is obligated to file a Steward's Report and pay fees to OES in respect of EEE for which it is the Steward under the Rules;
- C. The Remitter and the Steward have both registered with OES using the electronic system provided by OES for that purpose;
- D. The Steward and the Remitter agree that the Remitter shall file a EEE Remitter's Report and remit fees on EEE for which the Steward would otherwise report and remit;
- E. The purpose of this Agreement is to set out the terms and conditions under which the Remitter shall file EEE Remitter's Reports and pay fees and the rights of the Steward, the Remitter and OES in connection therewith.

THIS AGREEMENT WITNESSES

1. DEFINITIONS AND INTERPRETATION

1.1 Terms beginning with capital letters and used herein without definition shall have the meanings given to them in the Act and EEE Rules unless otherwise specified.

1.2 The following words and expressions have the meanings set out below:

- (a) “Act” means the *Waste Diversion Act, 2002*, S.O. 2002, c.6, as amended and in force from time to time;

Date of Remitter's Agreement

Steward
Remitter

- (b) **“Agreement”** means this Remitter's Agreement;
- (c) **“Brands”** means the specific brands of EEE with respect to which the Steward empowers the Remitter to file Remitter's Reports, as determined by the Steward from time to time in its sole discretion, and the initial list of which is contained in Appendix A;
- (d) **“Data Period”** means each calendar month in each calendar year, beginning on the first day of each month;
- (e) **“Effective Date”** means the first day of the month following the date first written above;
- (f) **“Electrical and Electronic Equipment”** (or its abbreviation **“EEE”**) means those goods and products set out in Appendix A of the Rules;
- (g) **“Steward's Report”** means a report prepared by the Steward containing the information set out in Appendix B to the Rules;
- (h) **“Interest Rate”** means the prime rate published by the Scotiabank as at the close of business on the first day of each month plus three percent;
- (i) **“Nil Report”** means a Steward's Report or Remitter's Report containing no data, filed by a Steward or Remitter in respect of a Data Period in which no EEE was supplied;
- (j) **“Plan”** means the Final Revised (Phase 1 and Phase 2) WEEE Program Plan dated July 10, 2009 and approved by the Minister of the Environment August 14, 2009, a copy of which is posted on OES's website;
- (k) **“Remitter's Fees”** means the amount which the Remitter agrees in Section to pay on behalf of an obligated Steward, being the relevant Steward's Fees at the applicable rates set out in the Rules from time to time;
- (l) **“Remitter Number”** means a unique identifying number assigned from time to time to Stewards and Remitters by OES;
- (m) **“Remitter's Report”** means a report prepared by the Remitter and filed with OES with respect to a particular Steward pursuant to this Agreement, describing the aggregate amount of EEE that was Supplied to the Remitter by the Steward (or to the Steward by the Remitter, if applicable) in the Data Period, containing the information prescribed in the form of Steward's Report as provided for in the Rules, as amended from time to time; if no EEE is Supplied in a Data Period, the Remitter's Report shall be a Nil Report;
- (n) **“Rules”** means EEE Steward's Rules in effect from time to time with respect to filing of Steward's Reports and payment of Steward's Fees made pursuant to the Plan, an up-to-date copy of which is posted on the OES website;

- (o) **“Steward’s Fees”** means fees payable by the Steward to OES pursuant to Section 4 of the Rules;
- (p) **“Sub-Remitter”** means a party to which a Remitter assigns rights and obligations under one or more Remitter’s Agreements pursuant to a Sub-Remitter’s Agreement;
- (q) **“Sub-Remitter’s Agreement”** means an agreement entered into between a Remitter, a Sub-Remitter, and OES, whereby such Remitter assigns rights and obligations under one or more Remitter’s Agreements to the Sub-Remitter, in the form appointed by OES from time to time for such Sub-Remitter’s Agreements; and
- (r) **“Supplied”** means sold or otherwise transferred (whether by transfer of possession or title), leased, donated, disposed of, used, or otherwise made available or distributed for use in the Province of Ontario, and includes an import of EEE for a purpose set out in Section 2(2)(b) of the Rules; **“Supply”** and **“Supplies”** have similar meanings.

2. **FILING OF REMITTER’S REPORTS AND PAYMENT OF REMITTER’S FEES**

- 2.1 The Remitter shall file an initial Remitter’s Report with respect to all EEE Supplied to the Remitter by the Steward or to the Steward by the Remitter during the Data Period beginning on the Effective Date. Thereafter, the Remitter shall file a Remitter’s Report with OES for all such EEE Supplied during each subsequent Data Period.
- 2.2 A Remitter’s Report shall be filed by the end of the next calendar month following the end of the Data Period to which it refers. Each such report shall be for an entire Data Period.
- 2.3 The Remitter shall file Remitter’s Reports with respect only to the Brands designated by the Steward from time to time in its absolute discretion.
- 2.4 Notwithstanding Section , by prior written agreement among a Steward, the Remitter and OES, the Remitter may file a Remitter’s Report for less than all of the EEE Supplied by the Steward to the Remitter in a Data Period, provided that the Steward files an Steward’s Report for the remaining EEE.
- 2.5 The Remitter will pay Remitter’s Fees to OES at the time of filing its Remitter’s Report in such manner as OES shall provide for payment of such Remitter’s Fees from time to time on the amount of EEE included in such Remitter’s Report. For greater clarity, the Remitter will pay Remitter’s Fees and file its Remitter’s Report based on the time of Supply of EEE to a third party.
- 2.6 Each of the Steward and Remitter shall provide their Remitter Number to OES at the time of entering into this Agreement.

3. **PENALTIES, INTEREST AND BACK FEES**

- 3.1 A Remitter who fails to pay Remitter's Fees by the dates set out in Section , shall pay such Remitter's Fees forthwith on demand by OES and shall pay in addition:
- (a) a penalty calculated at 10% of Remitter's Fees due and payable;
 - (b) Interest on unpaid Remitter's Fees from their due date at the Interest Rate per annum.
- 3.2 OES may waive all or part of any penalty or interest charges otherwise payable under this Agreement.
- 3.3 If the amounts reported in a Remitter's Report are inaccurate, any deficiency in Remitter's Fees paid resulting from such inaccuracies shall be immediately due and payable from the date on which the filing of the original Remitter's Report was due, together with interest to the date of payment as provided in Subsection , and, if not paid within 30 days from such filing, will be subject to a penalty equal to 10% of such deficiency in Remitter's Fees. OES will copy the Steward on any deficiency notice to Remitter.
- 3.4 Notwithstanding the foregoing, the Steward shall not be responsible under Section 7 of the Rules for penalties or interest accruing on amounts for which the Remitter is obligated under this Agreement, and such penalties and interest shall not begin to accrue, until 90 days after the date on which OES gives notice to the Steward of such unpaid Remitter's Fees, including the method of calculation of such Remitter's Fees and such other information and documents as may be reasonably expected to be required by the Steward to understand the basis for the determination of the amount of unpaid Remitter's Fees, which notice under this section for greater certainty is not the notice to the Steward referred to in Section above.
- 3.5 Remitter shall indemnify and save Steward harmless from and against all losses, costs, damages, demands or claims, including legal fees resulting from any breach by Remitter of the provisions of this Agreement, including but not limited to the failure to remit Remitter's Fees in accordance with this Agreement.

4. **RECORD PROVISION AND RETENTION**

- 4.1 The Remitter shall promptly provide to OES for review all relevant data, including calculation methodology, product data, list of brands reported and list of brands excluded from any Remitter's Report, and any applicable allocation percentages, used by the Remitter in the preparation of the Remitter's Report upon request from OES (such request and review a "**Data Request**").
- 4.2 The Remitter shall retain or make available to OES such information, data and records at an address in the Province of Ontario to substantiate and verify the amount set out in any Remitter's Report for a period of not less than five years from the date of the Remitter's Report to which they relate. The Remitter shall grant access to OES at such address upon its request to examine its books and records to enable OES to audit and inspect such

records (such audit and inspection an “**Audit**”) respecting a Remitter’s Report up to five years after the date of receipt of such Remitter’s Report by OES.

- 4.3 Only OES may make a Data Request or conduct an Audit of the Remitter.
- 4.4 Notwithstanding the above, the Steward may request in writing that OES make a Data Request or conduct an Audit of the Remitter, at the expense of the requesting Steward. If a Data Request or Audit of the Remitter within the 18 months previous to the date of the Steward’s request has revealed a deficiency in respect of which a deficiency notice has been sent in accordance with section , the Steward may request a Data Request or Audit once every six months. If no Data Request or Audit of the Remitter has revealed a deficiency within the 18 months previous to the date of the Steward’s request, the Steward may request a Data Request or Audit once every twelve months. The six-month or twelve-month period, as applicable, within which the Steward may request a Data Request or Audit is referred to as the “**Audit Request Period**”. If more than one Steward requests a Data Request or Audit of the Remitter within the same Audit Request Period, the requesting Stewards shall share equally the expense of the Data Request or Audit by OES. OES shall make the Data Request or commence the Audit within six months if the applicable Audit Request Period is six months, or within twelve months if the applicable Audit Request Period is twelve months, of receiving the request from the Steward. The requesting Steward or Stewards shall be responsible for the whole of OES’s costs in the Data Request or Audit. If the Data Request or Audit reveals no discrepancies, OES shall provide a certificate of compliance to the requesting Steward, which certificate may be relied upon by the Steward. If the Data Request or Audit does reveal a discrepancy, a deficiency notice will be issued by OES in accordance with Section above. For greater clarity, nothing in this section shall restrict the ability of OES to perform an Audit on its own initiative at any time.

5. **TERMINATION**

- 5.1 This Agreement shall come into effect on the Effective Date and shall remain in effect until terminated by any of the parties in accordance with Section , or either of the following provisions:
- (a) OES or the Steward give notice of termination of this Agreement at any time for cause, including non-filing of Remitter’s Reports or non-payment of Remitter’s Fees or penalty or interest charges assessed. Prior to such termination OES or the Steward, as the case may be, shall give the other parties notice of such default. Notice given by OES shall include the method of calculation of such fees and such other information and documents as may be reasonably expected to be required by the other parties to understand the basis for the determination of default. The Remitter and the Steward shall have a period (the “Cure Period”) of 15 days in which to effect a cure to such default, failing which OES or the Steward, as the case may be, may terminate this Agreement as of the first day of the month following the expiration of the Cure Period.
 - (b) Any party may terminate this Agreement on giving notice to the other parties prior to the expiry of a Data Period, and the termination shall be effective on the expiry of the next Data Period. If such notice is given, the Remitter shall file a

Remitter's Report for the Data Period ending on the date of termination and shall pay all Remitter's Fees payable pursuant to such Remitter's Report.

- (c) If this Agreement is terminated for any reason, the Remitter shall file a terminal Remitter's Report in respect of all EEE in its possession at the time of termination which would have been required to be reported in a subsequent Remitter's Report. Such terminal Remitter's Report shall be filed by the end of the calendar month after the calendar month in which the Agreement is terminated, and pay the required Remitter's Fees to OES at the time the terminal Remitter's Report is filed.

- 5.2 Notwithstanding the termination of this Agreement by any party, the Remitter shall remain liable to OES for any deficiency in Remitter's Fees paid, but in no case shall OES be entitled to fees, penalties or interest from the Remitter and Steward collectively that exceed the amounts that would have been payable by the Steward but for the existence of this Agreement. The provisions of Sections , and of this Agreement will survive termination and remain in effect for a period of five years from the date of termination.

6. EFFECT OF AGREEMENT

- 6.1 The Steward consents to the Remitter entering into this Agreement, filing Remitter's Reports and making payment of Remitter's Fees on behalf of and for the account of the Steward. Subject to Section , Steward acknowledges and agrees that it shall be relieved of reporting EEE and paying Steward's Fees on EEE under the Rules only to the extent to which the Remitter carries out its obligations under this Agreement.
- 6.2 The Remitter and the Steward acknowledge that OES is not obligated to enter into this Agreement and that, unless and until a copy of this Agreement signed by OES is delivered to each of them, this Agreement shall have no force and effect. OES is not bound to provide reasons for refusing to enter into this Agreement and neither the Steward nor the Remitter shall have any claim against OES for refusing to do so. If, within 30 days of submission of this Agreement signed by both the Steward and the Remitter, OES does not notify each of them of its acceptance, then this Agreement shall be deemed not to have been accepted by OES.
- 6.3 Nothing in this Agreement obligates the Steward to pay any fee or administrative charge, handling charge or other amount to the Remitter as consideration for the Remitter entering into and carrying out its duties under this Agreement.
- 6.4 The obligation of the Remitter to file a Remitter's Report and pay Remitter's Fees to OES shall not be subject to or affected in any way by any disputes, accounts or equities which may exist between the Remitter and the Steward. The Remitter agrees that it will file all such Remitter's Reports and pay all Remitter's Fees regardless of any such disputes, accounts or equities and shall look only to the Steward with respect thereto.
- 6.5 The Remitter agrees to the disclosure of information to the Steward by OES about the amount of EEE reported and Remitter's Fees paid for each Remitter's Report submitted.

- 6.6 OES retains the right to revise or amend the terms of this Agreement. OES will give notice to the Steward and Remitter of such change (the “**Change Notice**”). Unless the Steward and/or Remitter give notice to OES (the “**Rejection Notice**”) within 45 days of receipt of the Change Notice that the Steward and/or the Remitter do not accept the revisions or amendments in the Change Notice, the Agreement, as amended, remains in effect and is binding. If the Steward and/or Remitter give a Rejection Notice to OES, this Agreement shall be terminated as of the first day of the month following the delivery by the Steward and/or Remitter of the Rejection Notice.
- 6.7 The Steward acknowledges and agrees that nothing in this Agreement absolves the Steward from its obligation to file a Steward's Report report with OES each month as required, notwithstanding that such Steward's Report may be a Nil Report.

7. **DISPUTE RESOLUTION**

- 7.1 If any dispute arises between any of the parties as to the amount of EEE that is required to be included in a Remitter's Report:
- (a) The parties shall attempt to resolve the dispute through designated representatives from each of the parties within 30 days after written notice of the dispute was first given, or as otherwise agreed upon.
 - (b) If the parties are unable to resolve the dispute within the above period, the parties shall, within 30 days thereafter, jointly select an arbitrator to arbitrate the dispute. If a party does not nominate an arbitrator within the 30 day period, the other parties that have nominated an arbitrator shall nominate the arbitrator. The arbitration shall be conducted in accordance with the *Arbitration Act 1991*, as amended from time to time.
 - (c) OES may from time to time establish a panel of approved arbitrators for the purposes of this Section , whose names shall be published on the OES website. The arbitrator shall be chosen from this panel, unless the parties mutually agree otherwise.
 - (d) The arbitrator shall render a written decision on the dispute within 14 days after the arbitration hearing or submission. The decision of the arbitrator shall be final and binding on the parties and shall not be subject to appeal on any grounds whatsoever, and shall be enforceable against OES and the Remitter, as the case may be, immediately on the issue of such decision to the parties to the dispute.
- 7.2 Non-payment of Remitter's Fees or the requirement for a Remitter to file a Remitter's Report shall not be items subject to arbitration.

8. **CONFIDENTIALITY**

- 8.1 The Remitter agrees that its name and Remitter Number may be published on OES's website. The Remitter further agrees that the Steward may at any time obtain access to the state of the Remitter's account, such access to be restricted to the portion of the account for the Steward's EEE for which the Remitter has filed reports and paid

Remitter's Fees; and provided that such access shall not disclose to the Steward information with respect to other Stewards under the Act for which the Remitter may have entered into a Remitter's Agreement. OES shall take commercially reasonable and appropriate precautions to maintain the confidentiality of information in its database, but shall not be liable to the Steward or Remitter, or anyone claiming by, through or under either of them, for any losses, claims and damages arising out of inadvertent or negligent disclosure of any confidential information.

9. GENERAL

- 9.1 Assignment. The rights and obligations of the Steward and the Remitter under this Agreement are personal and may not be assigned in whole or in part, except pursuant to a Sub-Remitter Agreement with a Sub-Remitter and OES.
- 9.2 Agreement Binding. This Agreement shall enure to the benefit of and be binding on the parties, their heirs, legal personal representatives, successors and permitted assigns.
- 9.3 Notices. Any notice, determination, consent, request or other communication from one party to the other or others or other documents required or which may be given under this Agreement may be delivered or transmitted by means of electronic communication, personal service, facsimile with confirmation of transmission or by prepaid first class postage to the party at the addresses below and shall be deemed to have been received on the third day after posting and on the first day after the date of electronic or facsimile transmission, in each case which is not a Saturday, Sunday or public holiday in Ontario. In the event of a postal disruption, notices must be given by personal delivery or by a signed back facsimile and all notices delivered within one week prior to the postal disruption must be confirmed by a signed back facsimile to be effective. If OES makes available on its website a system or method for electronic communication of notices to OES, such notices may be given by clicking the applicable button.

To OES
 885 Don Mills Road, #301
 North York, ON M3C 1V9
 Attention: Executive Director
 Facsimile: 416-510-8043

To Remitter:
 Remitter name
 Address
 City, Prov/State
 Postal Code/ Zip Code

To Steward:
 Steward name
 Address
 City, Prov/State
 Postal Code/ Zip Code

- 9.4 Waiver. No failure by any of the parties to insist on strict performance of any covenant, agreement, term or condition (the “**provision**”) of this Agreement, or to exercise any right or remedy consequent on the breach of any provision, and no acceptance of partial payment during the continuance of any such breach, shall constitute a waiver of any such breach or provision. No waiver of any breach shall affect or alter this Agreement, but each and every provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach of such provision.
- 9.5 Severability. If any provision of this Agreement or the application of the provision to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application of them to other circumstances shall not be affected by the invalidity or unenforceability and shall be valid and enforceable to the fullest extent permitted by law.
- 9.6 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in it. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound by it, except that this Agreement may be modified in accordance with Section hereof. Notwithstanding the foregoing, nothing in this agreement shall prevent a Steward and Remitter from, between themselves, entering into one or more other agreements concerning the subject matter of this Agreement, provided that nothing shall affect the obligations of the Steward or Remitter, or the rights of OES, under this Agreement.
- 9.7 Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws in force in the Province of Ontario.
- 9.8 Headings. The headings used throughout this Agreement are solely for convenience of the parties and are not to be used as an aid in the interpretation of this Agreement.
- 9.9 Time of Essence. Time shall be of the essence of this Agreement and every part of it.
- 9.10 Limitations Act. The parties acknowledge that this Agreement constitutes a “business agreement” within the meaning of the *Limitations Act (Ontario)* and have agreed to vary the limitation period provided in Section 4 of that Act, as provided in Sections , and of this Agreement, to establish that the Remitter shall remain liable to pay Remitter's Fees for a term of five years from the end of the Data Period for which such Remitters Fees are applicable.
- 9.11 Electronic Commerce. Any execution or amendment of this agreement which is conducted electronically by any of the parties is made in accordance with and governed by the *Electronic Commerce Act, 2000*, S.O. 2000, c.17.
- 9.12 Authority to sign this Agreement. If this Agreement is executed on behalf of any party electronically, the individual who selects the “Confirm” button at the bottom of the “Contract Ratification” page on OES's web site on behalf of the executing party certifies

that by selecting the "Confirm" button, that individual represents and warrants that he or she is at least eighteen years of age, and has been duly appointed with the authority to bind the Steward or Remitter by signing the Agreement.

EXECUTION BY THE PARTIES.

ONTARIO ELECTRONIC STEWARDSHIP

Per: _____

Name: Carol Hochu
Title: Executive Director

I have authority to bind the Corporation

[REMITTER CORPORATE NAME]

Per: _____

Name: Legal Contact
Title: Legal contact

I have authority to bind the Remitter

[STEWARD CORPORATE NAME]

Per: _____

Name: Legal Contact
Title: Legal Contact

I have authority to bind the Steward

