



PROCESSOR INCENTIVE AGREEMENT

THIS AGREEMENT made in duplicate as of 1 October 2012 (the “**Effective Date**”)

BETWEEN:

ONTARIO ELECTRONIC STEWARDSHIP, a corporation without share capital continued under the *Waste Diversion Act, 2002*, with a principal office address of 885 Don Mills Road, Toronto, Ontario M3C 1V9 (“**OES**”)

-and-

a corporation constituted under the laws of Ontario, with a principal office address of

(the “**Processor**”)

RECITALS:

- A.** OES has been designated as the industry funding organization under the *Waste Diversion Act* to be responsible for the collection and environmentally responsible recycling of WEEE;
- B.** The Processor carries on the business of processing WEEE;
- C.** OES administers the Processor Incentive Program, under which certain processors can receive incentives to encourage the processing of certain WEEE;
- D.** The Processor has received a Statement of Verification from the Recycler Qualification Office;
- E.** The Processor wishes to receive incentives in accordance with the Processor Incentive Program;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 **Definitions.** In this Agreement:

- (a) “**Acceptable WEEE**” means Ontario-Sourced material listed in Schedule A of the Rules, as be amended by OES from time to time;
- (b) “**Act**” means the *Waste Diversion Act, 2002* (Ontario);
- (c) “**Agreement**” means this Agreement, all schedules attached hereto and all instruments supplemental hereto or in amendment or confirmation thereof;
- (d) “**Audit**” has the meaning given to that term in Section 5.2;
- (e) “**Approved Status**” means that the Processor and/or a Recycling Facility has been confirmed by the RQO to be operating in accordance with the ERS;
- (f) “**Change Notice**” has the meaning given to that term in Section 11.2;
- (g) “**Claimed WEEE**” means any WEEE with respect to which any Incentive Payment is claimed at any time;
- (h) “**Default**” has the meaning given to that term in Section 6.1;
- (i) “**Downstream Processors**” means recyclers other than the Processor, which receive WEEE or components or constituents thereof from the Processor for further processing or recycling;
- (j) “**Effective Date**” means the date first written above;
- (k) “**ERS**” means the current version from time to time of the Electronic Recycling Standards implemented by the RQO, also known as the Recycling Qualification Standard approved by OES and included in the Plan and available on line at www.rqp.ca;
- (l) “**Generator**” means any person for which the Processor provides collection, transportation or processing services for Acceptable WEEE that is eligible for the payment of Incentives; for greater clarity, no individual shall be a “Generator” who does not carry on Generator activities as an active, *bona fide*, business, or who is carrying on Generator activities in a private capacity, in OES’s sole judgement;
- (m) “**Incentive**” has the meaning given to that term in Section 4.1;
- (n) “**Ineligible**” has the meaning given in Section 2.2(a);
- (o) “**Logo Use Protocol**” means the document provided by OES that outlines the rules that must be followed in order to have permission of OES logo use;
- (p) “**Notice of Default**” has the meaning given to that term in Section 6.2;
- (q) “**Notice of Major Non-Conformance**” means a “Notice of “Major Non-Conformance” issued by the RQO;
- (r) “**OES**” has the meaning given on the first page of this Agreement;

- (s) “**Ontario-Sourced**” with respect to WEEE means WEEE which was originally sold or otherwise distributed to its end-user in Ontario, and which was discarded by its end-user and taken into the waste stream in Ontario;
- (t) “**Other Agreement**” has the meaning given to that term in Section 7.2(b);
- (u) “**Plan**” means the most recent version of the Waste Electrical and Electronic Equipment Program Plan submitted by Waste Diversion Ontario on behalf of Ontario Electronic Stewardship and approved by the Minister of the Environment, as posted on the OES website, as revised by Waste Diversion Ontario;
- (v) “**Processor Incentive Program**” means the program whereby a Processor collects, packages, transports and recycles WEEE from Generators that the Processor registers with OES, and in return receives payment from OES in accordance with this Agreement;
- (w) “**Processor**” means the processor named in the recitals to this Agreement, who has been approved by the RQO for recycling of WEEE in accordance with the Plan and the ERS, subject to this Agreement;
- (x) “**Province**” means the Province of Ontario;
- (y) “**Public**” means household residents and the Industrial, Commercial and Institutional sectors;
- (z) “**Public-facing Generator**” means a Generator who accepts Ontario-Sourced WEEE from the Public;
- (aa) “**Recycler Qualification Office**” or “**RQO**” means the organization appointed by OES to audit and monitor processors’ compliance with the ERS;
- (bb) “**Recycling**” and “**Recycled**” means the processing of WEEE, which may include the segregating and bulking of WEEE and/or partial disassembly of WEEE and the mechanical separation of some WEEE through to a point of final processing;
- (cc) “**Recycling Facility**” has the meaning given to that term in Section 3.1(b);
- (dd) “**Rejection Notice**” has the meaning given to that term in Section 11.2;
- (ee) “**Related Person**” has the meaning given to that term in the *Income Tax Act* (Canada);
- (ff) “**Rules**” means the “Rules for Stewards with Respect to Payment of EEE Fees” as issued by OES under the Plan from time to time;
- (gg) “**RYE**” means the Recycle Your Electronics website operated by OES at www.recycleyourelectronics.ca or such other URL as OES may in its sole discretion determine from time to time;
- (hh) “**Self-Generated WEEE**” means WEEE which:
 - (i) has been owned at any time by the Processor or any Related Person;

- (ii) has been consigned to the waste stream by, the Processor or any Related Person;
 - (iii) has been received by the Processor through a collection event organised in whole or in part by the Processor;
 - (iv) has been deposited by any person at the Processor's premises or any Related Person's premises; or
 - (v) is received by the Processor through any other means designated from time to time by OES as being Self-Generated WEEE;
- (ii) "**Statement of Verification**" has the meaning given in Section 2.1;
 - (jj) "**WDO**" means Waste Diversion Ontario;
 - (kk) "**WEEE**" means waste electrical and electronic equipment, more particularly a device which is waste and which requires an electric current to operate.

ARTICLE 2

RQO APPROVED STATUS AND ELECTRONICS RECYCLING STANDARD

- 2.1 **RQO Statement of Verification.** The Processor must obtain and maintain in effect at all times during the term of this Agreement a Statement of Verification of the Recycler Qualification Program operated by the RQO ("**Statement of Verification**").
- 2.2 **Suspension, etc., of Statement of Verification.**
- (a) At any time and for such period when the Processor's Statement of Verification is suspended or lapses or expires or is revoked, or the Processor has received a Notice of Major Non-Conformance from the RQO which has not been discharged (such a Processor referred to as "**Ineligible**"):
 - (i) OES reserves the right, in its sole discretion, to refuse to accept, either during the period in which the Processor is Ineligible or at any time after, invoices for Incentives with respect to Acceptable WEEE received by the Processor while the Processor is Ineligible; and
 - (ii) the Processor's name will be removed from RYE and/or the OES website.
 - (b) When the Processor's Statement of Verification is reinstated or the Notice of Major Non-Conformance discharged, OES will resume accepting invoices for Incentives from Processor, provided that the subject Acceptable WEEE was not received by the Processor while it was Ineligible.
- 2.3 **Repayment of Improperly Disbursed Incentives.** If any Incentive Payment is made to Processor while that Processor is Ineligible, Processor shall have no entitlement to such Incentives, and agrees to repay all such amounts in full, within 30 days of the earlier of discovering that it has received a payment while Ineligible, and OES giving notice to the Processor requiring repayment.

- 2.4 **Administrative Fee.** If a Notice of Major Non-Conformance is issued to Processor, OES will apply an administrative fee of \$1,000 to offset the additional internal and third party costs to OES of RQO's activities to resolve a Major Non-Conformance. Such fee may be charged separately or reconciled against future Incentive payments.

ARTICLE 3 OBLIGATIONS OF PROCESSOR

3.1 Recycling Operations

- (a) The Processor shall ensure that all Acceptable WEEE with respect to which Incentives are claimed is eligible under the Plan.
- (b) The Processor shall maintain one or more electronics recycling facilities approved by the RQO for processing WEEE (each a “**Recycling Facility**”), and shall notify OES within ten business days of receiving authorisation from the Ministry of the Environment for any changes to the location or capacity of any Recycling Facility.
- (c) The Processor will not process any WEEE in any facility other than a Recycling Facility approved by the RQO.
- (d) The Processor will process all WEEE in accordance with the ERS.
- (e) The Processor agrees to comply with all procedures and policies established by OES or the RQO regarding the management and administration of the Processor Incentive Program.
- (f) The Processor agrees to notify OES of any change to any Downstream Processor and agrees that WEEE may only be shipped to Downstream Processors who are in compliance with the ERS.
- (g) The Processor is responsible for all costs associated with ensuring compliance with the ERS of the Processor, Generators, and Downstream Processors.
- (h) The Processor shall operate each Recycling Facility, in full compliance with applicable national, federal, provincial, regional and municipal laws, by-laws, regulations, ordinances and other similar provisions, including without limitation in full compliance with all environmental laws, standards, policies or codes of practice of government which apply to any aspect of the handling of WEEE, and in accordance with such policies and/or rules OES or the RQO may reasonably establish from time to time in accordance with industry standards, including the Plan.

3.2 Generators and Downstream Processors.

- (a) The Processor will ensure that the Public-facing Generators from which it receives Claimed WEEE comply with all applicable provisions of the ERS as it relates to the operations of the Generator and with the Generator Standard included in Schedule A, and will verify this by regular reviews of the operations of each Public-facing Generator. Processor will ensure that OES is able, upon one business day’s notice, to inspect all Public-facing Generators for compliance with the ERS if OES deems it

necessary, in its sole and absolute discretion. The Processor may accompany OES during such an inspection, at its option.

- (b) The Processor shall not permit any unprocessed Acceptable WEEE for which an Incentive claim has been submitted to be diverted or remarketed. The Processor, its Generators and its Downstream Processors shall not resell, reuse or refurbish any Acceptable WEEE, components or equipment to a component or equipment reseller for the purposes of reuse unless the Processor or its Downstream Processors or Generator has requested and received OES approval to resell, reuse or refurbish any Acceptable WEEE, components or equipment to a component or equipment reseller.
- (c) Processors shall ensure that Public-facing Generators do not divert or remarket Acceptable WEEE units collected from members of the public without first obtaining written consent to the diversion or remarketing from the member of the public from whom such Acceptable WEEE was collected. Processor must cause all Public-facing Generators to retain for OES review such signed consent documentation, listing the name of the member of the public and serial numbers, for all Acceptable WEEE so diverted or remarketed. All Acceptable WEEE collected for destruction must be destroyed and the resulting materials sent to approved Downstream Processors. Remarketing of subcomponents, stripping of materials or any other action in contravention of the spirit of the Plan or the Processor Incentive Program by the Processor's Generators or subcontractors is not permitted.
- (d) Processor shall provide to OES and keep current information regarding each Public-facing Generator. All Generator information submitted by Processor for listing shall be true and accurate, to the best of Processor's knowledge, as of the date it is submitted. Processor shall submit updated information regarding a Generator within five business days of such updated information coming to Processor's attention. Processor acknowledges and agrees that OES may, at any time and for any reason, limit or terminate the RYE listing service, modify or remove any listed information, and/or take any technical and legal steps to limit or prevent access to the RYE site. Processor acknowledges and agrees that Processor shall at all times bear sole responsibility for the accuracy of Public-facing Generator information posted by Processor, and that OES shall not be responsible and will not verify the accuracy of any information posted on RYE.
- (e) Processors are required to obtain the written consent of Generators to permit OES or OES agents or representatives to enter Generator premises upon one business day's notice, and to review and copy documents such as bills of lading and receiving reports evidencing the use and source of the WEEE delivered to Processors and for the purpose of verifying compliance with the ERS and the requirements of this Agreement. The Processor may accompany OES during such an inspection, at its option.
- (f) Processors are required to maintain a Public-facing Generator site review protocol in the form attached as Schedule A, and must provide evidence to OES, on request, that Public-facing Generator sites have been reviewed for compliance against the protocol. OES reserves the right to reject Incentive payment claims or demand repayment of Incentives paid with respect to Claimed WEEE originating at Public facing Generator sites with non-compliant site conditions or for which supporting documentation is inadequate.

3.3 **Reporting**

- (a) The Processor shall maintain and update the information provided in the Processor Incentive registration system in a timely manner.
- (b) The Processor shall report and invoice OES for Incentives in accordance with Schedule B: Data and Documentation Requirements of Processor, the terms of this Agreement and the requirements of the OES reporting system, and OES procedures and practices as adopted from time to time. All invoices rendered by Processor to OES shall be supported by complete, accurate, and timely background documentation in accordance herewith. Incomplete, inaccurate or inordinately delayed invoices or waybills will result in delay or non-payment of Incentives.

3.4 **Other Requirements**

- (a) The Processor agrees to comply with the Logo Use Protocol, as amended from time to time by OES or use such signage or information materials which conform substantially, in OES's sole judgement, to materials prepared by OES.
- (b) The Processor will comply, abide by and carry into effect, as may be required, the objectives of, and the obligations imposed upon the Processor contained in and set out in this Agreement and the Plan, provided that to the extent any provision of the Plan may conflict with a term or terms of this Agreement, then the Plan shall prevail.
- (c) The Processor shall provide notice to OES of: (i) any criminal convictions against it in the past five years, and (ii) any fines or regulatory orders made against it in the previous five years under any applicable law relating to environmental, employment standards or taxation matters; and
- (d) The Processor shall provide notice to OES within sixty (60) days after any fine or regulatory order relating to the substance of this Agreement made against it after the date hereof.

ARTICLE 4 INCENTIVES

- 4.1 **Incentives.** OES agrees to pay incentives to the Processor with respect to the recycling of Acceptable WEEE ("**Incentives**"). The Incentives in effect at the Effective Date are set out in Schedule C.
- 4.2 **Required Information.** The Processor shall invoice OES for Incentives at least twice per month. All invoices shall include a summarized statement of waybills itemizing all Acceptable WEEE recycled by the Processor, and shall be in accordance with such standards, practices and forms outlined in Schedule B, or as OES may establish or prescribe from time to time.
- 4.3 **Timeliness of Invoices.** Incentive claims must be invoiced to OES no later than 90 days from the date of the waybill documenting the receipt by the Processor of the Claimed WEEE. Incentive invoices relating to Claimed WEEE received by the Processor under a waybill dated more than 90 days before the date the invoice is submitted will not be paid;

- 4.4 **Payment.** OES will pay the Incentives to the Processor within 60 days of the date the invoice is submitted to OES.
- 4.5 **Restrictions.**
- (a) No Incentives shall be payable with respect to any WEEE processed by the Processor which, in the reasonable determination of OES, is not Acceptable WEEE or is not processed at an approved Recycling Facility;
 - (b) The levels of Incentives payable from time to time are subject to adjustment by OES, through the issue of a Change Notice, to reflect inflation, efficiencies achieved, market conditions, additional services provided, changes to the Plan or the Processing Incentive Program and/or other factors.
 - (c) No Incentives shall be paid with respect to Claimed WEEE not originating from a Generator.
 - (d) Processors may not claim an Incentive transportation component with respect to shipments between facilities owned or operated by a Processor.
 - (e) Processors may not claim an Incentive transportation component with respect to Self-Generated WEEE.
- 4.6 **Suspension of Payment.** If the Processor commits an act of Default under this Agreement, OES may, upon providing written notice to the Processor, withhold any and all monies payable to the Processor as Incentives or other monies otherwise payable for any reason to the Processor; such withholding shall continue until the Default is cured to OES's satisfaction.
- 4.7 **Transportation Component.** In order to receive payment of a transportation Incentive, as described in Schedule "C", with respect to WEEE, the invoice containing the claim must be supported by copies of bills of lading, pro-bills, manifests, freight receipts or combined or multimodal transport documents, as applicable evidencing shipment origin and destination.

ARTICLE 5 AUDITS AND INSPECTION

- 5.1 **Access.** The Processor agrees to permit OES or its agents to inspect the Processor's business site or sites, including any Recycling Facility, upon one business day's notice, during normal business hours, from time to time as may be required by OES or its representatives.
- 5.2 **Audit.** The Processor agrees that OES may, from time to time, audit any records of the Processor maintained in support of the Processor's claims, and further, may examine and review, and audit records relating to the Processor's compliance with the terms of this Agreement and the Plan (hereinafter referred to as the "**Audit**").
- 5.3 **Business Records.** The Processor shall provide OES's auditor with any and all records requested and shall cooperate with the Audit at no expense to OES. It is agreed that OES shall pay the costs of the Audit. Where OES has engaged an independent auditor, OES reserves the right to recover out of pocket costs where the auditor determines that the Processor has not complied with the terms of this Agreement, the ERS or the Plan.

- 5.4 **Audit of WEEE.** OES may, from time to time, audit WEEE handled under the Processor Incentive Program, data records and procedures to ensure that the claims for Incentives are accurate and representative of the intent of the Processor Incentive Program. This may include validating WEEE materials to ensure that they originated in Ontario and are otherwise Approved WEEE.
- 5.5 **Records Regarding Incentive Claims.** The Processor agrees to provide OES any and all records of the Processor maintained in support of the Processor's Incentive claims. Processor agrees that OES or its designate may examine and audit Processor's records, and may review Processor's operations. Processor agrees to provide access to all facilities where Recycling occurs to OES and/or its agents.
- 5.6 **Generator Audits.** OES may, pursuant to the consent which Processor will secure in accordance with Section 3.2(e), inspect any Generator facility from which Processor obtains WEEE material which is the subject of Incentive claims. The Processor shall provide support and assistance during these inspections should it be requested.

ARTICLE 6 DEFAULT

- 6.1 **Events of Default.** The following circumstances constitute a default under this Agreement (each a "Default"):
- (a) Processor's Statement of Verification is suspended or revoked by the RQO for any reason;
 - (b) Processor is in receipt of a Notification of Major Non-Conformance which has not been remedied in the manner and within the time required by the RQO;
 - (c) Processor fails to comply with any requirement set out in Article 3 hereof;
 - (d) Processor fails to provide any report or document required by OES in accordance with this Agreement or the ERS;
 - (e) Processor is convicted of an offense under the Ontario *Environmental Protection Act* or *Occupational Health and Safety Act*;
 - (f) Either party demonstrates a pattern of conduct which, in the judgment of the other party acting reasonably, indicates an intention to circumvent or avoid the proper application of the Plan;
 - (g) Either party fails to fulfil or comply with any obligation under this Agreement.
- 6.2 **Notice of Default.** If either party commits a Default, the other party may send a written notice of default ("**Notice of Default**") to the defaulting party, requiring that the defaulting party rectify the Default.

ARTICLE 7 TERM AND TERMINATION

- 7.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue to the first anniversary of the Effective Date. Thereafter, the term shall automatically be extended for successive consecutive one-year terms, unless either party gives written notice to the other that it does not wish to renew the Agreement, no less than 60 days prior to the expiry of the then-current initial term or renewal term in which case the Agreement shall terminate upon such expiry.
- 7.2 **Termination.** This Agreement shall be terminated in the following circumstances:
- (a) If a Notice of Default has been issued by one party to the other, and the breaching party has not cured the default to the non-breaching party's satisfaction within 30 days after the Notice of Default is sent, the non-breaching party may terminate this Agreement for cause by written notice of termination with immediate effect;
 - (b) If any other agreement between OES and the Processor (each an "**Other Agreement**") is terminated by OES as a result of a default by Processor under the terms of the Other Agreement, OES may terminate this Agreement for cross-default by written notice of termination with immediate effect;
 - (c) If either party receives three or more Notices of Default in a calendar year, the other party may terminate this Agreement for cause by written notice of termination with immediate effect;
 - (d) If OES determines, in its sole discretion acting reasonably, that the Processor has submitted invoices or received Incentives in respect of WEEE which is not directly and wholly Ontario-Sourced, OES may terminate this Agreement for cause by written notice of termination with immediate effect;
 - (e) If either party becomes insolvent or files a petition in bankruptcy, or if a temporary or permanent receiver, trustee or custodian is appointed by a court, or if a petition in bankruptcy is filed against a party and is not dismissed within 90 days, the other party may terminate this Agreement by written notice of termination with immediate effect;
 - (f) Thirty days after the delivery of a Rejection Notice under Section 11.2, this agreement shall be terminated automatically, with no requirement for further notice or action by either party;
 - (g) If any one of the conditions listed in Section 8.2 no longer applies, OES may terminate this Agreement by written notice of termination with immediate effect;
 - (h) If notice of non-renewal is given as contemplated in Section 7.1, this Agreement shall be terminated on the expiry date of the then-current initial or renewal term; or
 - (i) Upon mutual agreement in writing between the parties to terminate this Agreement, this Agreement shall terminate on the agreed termination date.
- 7.3 **Termination for Convenience.** In addition to the methods of termination set out in Section 7.2, either party may, following the initial one-year term of this Agreement, terminate this Agreement for convenience upon at least 90 days' written notice to the other party, and this Agreement shall terminate upon the later of the date specified in such notice of termination, or the 90th day after the notice was given.

- 7.4 **Liability for Breach.** No termination shall relieve a defaulting party of any liability to the non-defaulting party for breach of its obligations hereunder.
- 7.5 **Non-immediate Termination.** In the event of termination without immediate effect pursuant to any provision of this Agreement, the parties shall perform their obligations to the date of termination.
- 7.6 **Incentives.** OES shall pay to the Processor the amount of Incentives properly due and owing as of the date of termination, subject to any valid claim or right of offset OES may have.

ARTICLE 8 RELATIONSHIP BETWEEN THE PARTIES

- 8.1 **No Exclusivity.** The parties acknowledge and agree that:
- (a) OES makes no representation or warranty as to the quantity or quality of WEEE that may be available to the Processor and, further, that the Processor is responsible for collecting WEEE for Recycling;
 - (b) this Agreement is a non-exclusive agreement in every way, and that OES may enter into an unlimited number of agreements for the Recycling of WEEE with any other processor which meets the criteria set out in the Plan and the Processor Incentive Program;
 - (c) Title and risk of loss of all WEEE which is transferred to the Processor passes to the Processor when it leaves the Generator's premises; and
 - (d) Processor is not processing WEEE for OES's account, but is receiving Incentives from OES for processing Acceptable WEEE in compliance with the processing requirements set out in the Plan and the Processing Incentive Program.
- 8.2 **Industry Funding Organisation Status.** Each of the following shall be a condition of this Agreement for the sole benefit of OES, any or all of which may be waived in whole or in part by OES in its sole discretion. If any of the following cease to apply, OES may terminate this agreement with immediate effect in its sole discretion, in accordance with Section 7.2(g):
- (a) OES is able to continue to receive sufficient funding to support the costs of operating the Plan and/or Processor Incentive Program, including, but not limited to, the payment of the Incentives provided for in this Agreement; and
 - (b) OES remains the industry funding organisation for the Plan and Processor Incentive Program.
- 8.3 **Publication Of Information.**
- (a) The Processor understands that its name, main contact information, and the registration number assigned to it by OES, as well as additional information regarding the Processor's operation if Processor gives its consent in writing to the publication of such additional information, may be published by OES on OES's website or other publically-accessible websites.

- (b) OES will take commercially reasonable and appropriate precautions to maintain the confidentiality of information in its database, but will not be liable to the Processor, or anyone claiming by, through or under it for any losses, claims and damages arising out of negligent disclosure of any confidential information.

**ARTICLE 9
PROCESSOR'S REPRESENTATIONS AND WARRANTIES**

9.1 **Representations and Warranties.** In order to induce OES to enter into this Agreement and to pay the Processing Incentive, the Processor hereby represents and warrants to OES as follows:

- (a) The Processor is duly constituted or incorporated and is validly existing and in good standing under the statute that governs the Processor's corporate existence and has the necessary corporate or other powers, authority and capacity to own its property and assets and to carry on the business as presently conducted and contemplated by the terms of this Agreement;
- (b) The Processor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act*;
- (c) The Processor holds all permits, licences, consents and authorities issued by all government or governmental authorities of Canada or any province of Canada, or any municipal, regional or other authority, including, without limitation, any governmental department, commission, bureau, board or administrative agency which are necessary and/or desirable in connection with the conduct and operation of the Processor's business and is not in breach of or in default of any term or condition thereof;
- (d) The Processor possesses the knowledge, skill and technical expertise required to collect, transport, process and Recycle WEEE in accordance with this Agreement, and further has the management skills, expertise and knowledge and the necessary personnel required to deliver these services and operate its facilities; and
- (e) All documentation and other instruments provided to OES by the Processor are complete and correct.

9.2 **Deemed Warranties.** All statements contained in any documents or other instruments delivered by or on behalf of the Processor to OES pursuant to this Agreement shall be deemed to be representations and warranties of the Processor of the facts therein contained.

9.3 **Reliance by OES.** The Processor acknowledges and agrees that OES has entered into this Agreement relying on the warranties, representations and other terms and conditions set out in this Agreement notwithstanding independent searches or investigations that may have been undertaken by or on behalf of OES and that no information which is now known or should be known or which may hereinafter become known to OES or its officers, directors or professional advisors shall limit or extinguish any right of indemnification contained herein or otherwise limit, restrict, negate or constitute a waiver of any of the rights or remedies of OES hereunder.

ARTICLE 10

RISK MANAGEMENT

- 10.1 **Indemnity.** The Processor covenants and agrees with OES to indemnify and hold harmless OES, its directors, officers, employees and agents against all costs, charges, expenses, legal fees and any other losses or claims (in this Section 10.1, “Claims”) which OES may hereinafter suffer, sustain or may incur or be compelled to pay as a result of any performance, partial performance or non-performance by the Processor of its obligations hereunder, including without limitation: (a) any Claim arising from or related to the publication on RYE of any information supplied by the Processor including without limitation any Claim made by a Generator or member of the public which is related or attributable in whole or in part to any information posted by Processor on RYE, including without limitation any and all claims related to inaccurate Generator information, misuse of personal information or personal injury; and (b) any claim, action or proceeding which is brought, prosecuted or threatened against OES, its directors, officers, employees and agents for any act, deed or omission of the Processor arising from or related to the breach by the Processor or those for whom it is in law responsible of this Agreement, the Plan, or any applicable law.
- 10.2 **Release.** The Processor, for itself, its successors and assigns, agrees to release OES and its officers, directors, employees and agents from all manners of action, causes of action, claims, demands, losses, damages, charges, expenses and the like of any nature whatsoever arising out of or in connection with this Agreement (in this Section 10.2, “Claims”), which the Processor may have at any time against OES or those for whom it is in law responsible, unless such Claims arise from the bad faith or fraudulent act of OES or those for whom it is in law responsible.
- 10.3 **Insurance—Processor.** Processor shall maintain comprehensive “occurrence” general liability insurance, including personal injury liability, property damage, contractual liability insurance and employer’s liability coverage, with minimum limits of liability of \$2,000,000, containing a severability of interests and cross-liability clause, and deliver to OES on request a certificate thereof with OES named as an additional insured thereon.
- 10.4 **Insurance—Public-facing Generators.** Processor shall ensure that Public-facing Generator sites maintain comprehensive “occurrence” general liability insurance, including personal injury liability, property damage, contractual liability insurance and employer’s liability coverage, with minimum limits of liability of \$1,000,000, containing a severability of interests and cross-liability clause, and Processor shall deliver to OES on request a certificate thereof with the Processor named as an additional insured thereon.
- 10.5 **Title to WEEE.** Processor acknowledges and agrees that at no time shall OES take possession or title of any WEEE or any component or constituent parts or substances thereof, and that OES shall not, in any event, be liable under any theory of liability to Processor, the previous owner(s) or user(s) of any WEEE or any other party or parties for any damages, losses, expenses, liabilities and/or other amounts of any nature or kind whatsoever, including without limitation, any direct, indirect, incidental, special, consequential, exemplary and/or punitive damages, arising out of or related to any loss, loss or misuse of data, improper collection, transport, use, processing, recycling, transfer, sale or disposal, or environmental degradation resulting, proceeding or connected in any way to WEEE.
- 10.6 **Limitation on Liability.** Processor further acknowledges and agrees that OES shall have no liability for: (a) any content posted on RYE by the Processor or any other person; (b) any claims or negative consequences sustained by the Processor or any other person as a result of

use of RYE. Processor agrees that OES shall not be liable for any loss to any person, whether of money (including profit), goodwill, or reputation, or any special, indirect, or consequential damages arising out of use of RYE.

ARTICLE 11 AMENDMENTS TO PLAN OR AGREEMENT

11.1 Amendments to Plan.

- (a) The parties agree and understand that the Plan may be revised from time to time, subject to the provisions of the Act. The Processor shall be bound by each revision, the same as each revision may be issued as though each was set out herein and formed a contractual obligation upon the Processor and the Processor covenants and agrees to abide by, comply with and satisfy such revised Plan.
- (b) In the event of the Plan or any part of it being cancelled or altered, then OES shall issue notice to that effect.

11.2 Amendments to Agreement. OES retains the right to revise or amend this Agreement, including any Schedule or Appendix hereto. OES will give notice to the Processor describing and/or including the text of any such revision or amendment (such notice the “**Change Notice**”). Unless the Processor gives notice to OES (the “**Rejection Notice**”) within 30 days of receipt of the Change Notice that the Processor does not accept the revisions or amendments in the Change Notice, this Agreement, as amended upon the terms set out in the Change Notice, remains in effect and is binding. Sixty days after the Change Notice is given, either the revision or amendment as set out in the Change Notice shall be effective, or if a Rejection Notice has been given by the Processor to OES, this Agreement shall be terminated.

ARTICLE 12 GENERAL CONTRACT PROVISIONS

12.1 Independent Contractors. The Processor and OES acknowledge and confirm that, in entering into this Agreement, they are doing so as independent contractors, and without restriction, nothing herein or otherwise shall constitute the parties as principal agent, subcontractors, joint ventures or partners. The Processor shall not represent that it is owned or in any way related to OES except that it may, during the term of this Agreement, represent that it is authorized by OES to collect, transport, process and Recycle WEEE as set out herein.

12.2 Force Majeure. Neither party shall be liable to the other in respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of force majeure, namely circumstances beyond the control of either party which shall include (but shall not be limited to) acts of God or the Queen’s enemies, perils of sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority, including acts of local government and parliamentary authority.

12.3 Assignment.

- (a) This Agreement, or any portion thereof, may not be assigned by the Processor without first having obtained the written consent of OES. For the purpose of this subparagraph, an assignment includes:

- (i) any arrangement that results in a change in control of the Processor for any purpose where control means: (i) the right to exercise a majority of the votes which may be put at a general meeting of a corporation; and, (ii) the right to elect or appoint directly or indirectly a majority of the directors of a corporation or other persons who have the right to manage or supervise the management of the affairs and business of the corporation; or,
 - (ii) any arrangement by the Processor to sub-contract any portion of the terms or services which are the subject matter of this Agreement.
 - (b) OES shall have the right to assign its rights and obligations under this Agreement without the consent of the Processor.
- 12.4 **Counterparts.** This Agreement may be executed and delivered in one or more counterparts by facsimile, email, or otherwise, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 12.5 **Schedules.** Schedules “A”, “B”, and “C” are parts of this Agreement and bind the parties to the same extent as if they were included in the main body of the Agreement. When there is a conflict between any schedule and the main body of this agreement, the main body of the agreement shall govern.
- 12.6 **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.
- 12.7 **Dispute Resolution.** Should any dispute arise between OES and the Processor as to their respective rights and obligations, the following dispute resolution procedures will be used to resolve the problem:
- (a) Designated representatives from each of OES and the Processor shall attempt to resolve the dispute 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 period specified above, OES and the Processor shall, within 30 days thereafter, jointly select an arbitrator to arbitrate the dispute or, if the parties are not able to select an arbitrator, either party may by motion request that a judge of the Superior Court of Justice in Ontario select an arbitrator to adjudicate the dispute;
 - (c) The arbitrator shall decide the dispute and make any award arising therefrom;
 - (d) The arbitration shall be conducted in all respects in accordance with the *Arbitration Act, 1991*.
 - (e) The process outlined in this Section will not apply to any dispute involving an application for injunctive relief.
- 12.8 **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 shall be given in writing and may be delivered or transmitted by means of electronic communication with confirmation of transmission, personal service, facsimile with

confirmation of transmission or by prepaid first class postage to the party at the addresses, in the case of the Processor at the address on the registration form completed by the Processor and in the case of OES at the address noted at the top of page 1 of this Agreement, to the attention of the “OES Program Manager”. Such notifications 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, e-mail or by a signed back facsimile and all notices delivered by post within one week prior to the postal disruption must be confirmed by a signed back facsimile to be effective.

- 12.9 **Waiver**. No failure by any of the parties to insist on strict performance of any covenant, agreement, term or condition (a “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.
- 12.10 **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.
- 12.11 **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, including all previous Processor Incentive Agreements between 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. Except as specifically provided herein, no supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound by it.
- 12.12 **Remedies**. No remedy herein conferred upon or reserved in favour of any party hereto shall exclude any other remedy herein or existing at law or in equity or by statute, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereinafter existing.
- 12.13 **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.
- 12.14 **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.
- 12.15 **Time of Essence**. Time shall be of the essence of this Agreement and every part of it.
- 12.16 **Survival**. All provisions of this Agreement which are expressed or which by their nature are intended to survive termination of this Agreement shall survive termination, and continue to bind the parties.

- 12.17 **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*, (Ontario). If this Agreement is executed on behalf of any party electronically, the natural person who selects the “Agree” button at the bottom of the “Agreement Ratification” page on Ontario Electronic Stewardship's web site on behalf of the executing party certifies that by selecting the “Agree” button, the natural person 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 executing party.

[Intentionally blank below this line; signature pages follow]

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

SIGNED, SEALED AND DELIVERED
in the presence of

Witness

PROCESSOR:

Per:

Name:

Title:

(please print)

ONTARIO ELECTRONIC STEWARDSHIP:

Per: _____

Name:

Title:

I have authority to bind the Corporation

SCHEDULE A

GENERATOR SITE CHECKLIST AND GENERATOR STANDARD

Generator Site Checklist



Date		Generator Name	
Gen #		Address	

This checklist is to be used in verifying compliance of public-facing generator sites with the OES generator standards.

Site Approval	Y/N	Assessment Notes
Accessibility		
1. Area for loading WEEE directly onto trucks		
2. Adequate access for a tractor trailer / straight truck / roll-off		
Site Configuration		
3. Indoor Storage/Shelter for WEEE		
4. Sufficient area for preparing and storage of WEEE		
5. Handling equipment to move WEEE		
6. Collection method Bulk / Palletized		
Safety, Security & Ops Procedures		
7. Safe for all users to enter & drop-off material.		
8. Dedicated public drop-off		
9. Adequate security to protect from tampering/alternate use		
10. Privacy protection signage/disclaimer		
Trainer		
11. Evidence of adequate PPE & material handling training		
12. Protocol to ensure eligibility of material		
Documentation		
13. Documentation from Site Owner (if different than Operator)		
14. General liability coverage inclusive of accepted WEEE		
15. RYE information (hours, restrictions, etc)		

Site Approval Comments (Include item #)

Processor Representative

Generator Site Representative

COPY 1: Generator Site Representative COPY 2: Processor COPY 3: OES

Generator Standard

Requirements for Public-Facing Generator Sites Collecting Acceptable WEEE Materials under the Processor Incentive Program

All public-facing generator sites—businesses that intend to collect or receive Acceptable WEEE materials from the general public under the Processor Incentive Program (“PI Program”), in preparation for final disposal at an approved processor’s facility—must meet the requirements outlined in this document.

Eligible generator sites must be registered with OES. Prior to registration with OES, a Generator Site Checklist must be completed and provided to OES. Material collected prior to registration with OES as a generator is not eligible under the PI Program. Once approved, a generator will be issued an OES Generator ID number.

Site operators must confirm that each location which is registered with OES as a generator site meets the requirements set out below.

OES reserves the right to audit and inspect public-facing generator sites upon one business day’s notice to generator sites to ensure compliance and material eligibility.

Acceptable WEEE Material

Acceptable WEEE material is defined as electrical and electronic equipment which are supplied in Ontario that result in the generation of WEEE, being all goods and products set out in the relevant Table of Appendix A of the Rules for Stewards in effect from time to time. The list of acceptable material can be found here, in Appendix A: http://www.ontarioelectronicstewardship.ca/sites/all/files/pdf/rules/2011_rules.pdf

Materials collected must be whole units and have no evidence of tampering, dismantling or recovery of high value materials. All material collected at the site must be reported under the PI Program and provided to the processor. No materials may be resold, re-used or refurbished. Sites that undertake commercial refurbishing, re-use or re-sale of electronics must provide evidence of policies and procedures that ensure all material collected under the PI Program is segregated and controlled.

Material must be received at no charge to the public.

Site Requirements

- Site has adequate infrastructure to shelter material in inclement weather.
- Site has sufficient space to receive, sort, store and prepare pallets and/or gaylord boxes and/or bulk bags for shipment.
- Site has a work area to prepare the containers or pallets in accordance with OES collection standards.
- Site has adequate vehicle room for a tractor trailer or straight truck.
- Site has sufficient dock space or equivalent area for loading WEEE onto trucks

Safety, Security and Operating Procedures

- Site meets Ministry of Labour and Ministry of Environment requirements as well as general health and safety regulations required by governing jurisdictions
- Material drop off area is located so that users are not endangered by site equipment or other traffic.
- Site has adequate security measures in place to protect material from being tampered with by anyone at the site or using the collection facility as agreed to during the site assessment.
- Site is equipped with signage to advise users to wipe/remove confidential information from their computers before drop-off (signage to include visible disclaimer).

Training

- Staff will receive training from their affiliated processor to ensure proper material handling procedures are in place

Documentation

- General Liability Coverage (insurance) is in place for site operations to a minimum value of \$1,000,000 and the provisions are inclusive of Acceptable WEEE materials.
- Site operator has written permission from the site owner (if different from the operator) to collect WEEE at the site.
- Site operator agrees to provide copies of documentation evidencing required business licences upon request.

Declaration

TO: ONTARIO ELECTRONIC STEWARDSHIP

AND TO: [PROCESSOR]

I, name of signatory have the appropriate signing authority to bind name of organisation (the “Generator”).

The Generator accepts and agrees to the standards set out under the above Generator Standard. The Generator agrees to allow OES or its agents or representatives access to the Generator’s premises and locations for the purposes of approval and assessment as required.

The Generator hereby confirms that it conducts and that it will conduct its operations in full compliance with applicable national, federal, provincial, regional and municipal laws, by-laws, regulations, ordinances and other similar provisions, including without limitation all environmental laws, standards, policies or codes of practice of government which apply to any aspect of the handling of WEEE, and in accordance with such policies and/or rules OES or the RQO may reasonably establish from time to time in accordance with industry standards, including the Plan.

The Generator agrees to indemnify and hold harmless OES, its directors, officers and employees from and against all costs, expenses, claims, demands, actions, or any loss suffered or incurred by OES arising out of the performance or non-performance by the Generator of its obligations.

Signature _____

Print name _____

Date _____

SCHEDULE “B”

DATA AND DOCUMENTATION REQUIREMENTS OF PROCESSOR

Reporting Requirements

Quarterly Mass Balance Report

- OES will provide a reporting form to be completed by the Processor with the following information:
 - Total gross weight of WEEE collected in the month
 - Total net weight of WEEE collected in the month
 - Total weight of processed WEEE sent to each Downstream Processor
 - Total weight of unprocessed WEEE remaining at the facility
 - Total weight of processed WEEE remaining at the facility
- In addition to the Mass Balance Report, reporting will include, but is not limited to:
 - Unit count for TVs and monitors in the display device category
 - Unit count for desktop and portables in the computer category
 - Unit count for portable cellular equipment
 - Unit count for flooring standing copiers and printers

Invoicing Requirements

Processor Incentive Program

- Total weight, net of packaging materials, of each type of WEEE Recycled, in tonnes
- Billing rate, per tonne, for each type of WEEE Recycled, in Canadian dollars as per Schedule “C”
- Total cost for each type of WEEE Recycled

The following information will be provided:

- Lot number and/or OES waybill document number
- Date picked up and received
- OES assigned number of material source i.e., site number
- Description of material (A, B, C etc)
- Gross weight of WEEE
- Net weight of WEEE
- Total weight of non-program WEEE
- Total number of lots received
- Total gross weight of material collected
- Total net weight of material collected
- Completed waybill identifying each shipment

Certificates of Destruction

Certificates of Destruction will be provided to OES for each lot of WEEE collected. Certificates will be provided when each lot has been completely processed at the Primary Processor facility. Each certificate will reference the following information:

- Lot number
- Date received
- Date of final product end of life destruction

SCHEDULE “C”

Incentive Rates

Incentive Description

Table 1.0 describes four distinct material categories and the respective incentive payment levels for eligible Program Phase 1 and 2 WEEE materials. Eligible materials mean WEEE that was used in Ontario and are defined within the Phase 1 and 2 Program Plan. Non-program material includes products that were used outside of Ontario and transported into the province for recycling or refurbishment. Each material category has two distinct payment levels based on a range of recycling efficiency rates.

OES will not provide packaging materials such as pallets, gaylords or bulk bags to Processors accessing the Processor Incentive Program.

OES will provide Processors with a per tonne incentive comprised of processing and transport components:

Distance is measured from Generator pick up address to processing plant. Waybills must include pick up location to be eligible for Incentive. Invoices must include km count to be eligible for Incentive.

Processors will be subject to the completion of OES waybill for tracking purposes. The waybill process will verify and track program materials from the point of collection at the Generator through to the approved Processor.

Table 1

Material Categories	Level 1 Recycling Efficiency Rate	Level 1 \$/Tonne	Level 2 Recycling Efficiency Rate	Level 2 \$/Tonne	Collection Incentive
A) Display Devices	50% to 75%	\$400	>75%	\$600	\$150
B) Desktop & Portable Computers	60% to 85%	\$150	>85%	\$300	\$150
C) Other Program WEEE	60% to 85%	\$350	>85%	\$550	\$150
F) Floor standing printers & copiers	60% to 85%	\$350	>85%	\$500	\$150

Table 2.0 as follows:

Shipping distance from generator to processor facility	Transportation Incentive/tonne
0-50 kms	50.00
51-100 kms	70.00
101-250 kms	100.00

250+ kms	120.00
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