

SUB-REMITTER'S AGREEMENT

Dated [**date**]

AMONG:

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

(**"OES"**)

- and -

Sub-Remitter name, a corporation constituted under the laws of Jurisdiction

(the **"Sub-Remitter"**)

- and -

Remitter Name, a corporation constituted under the laws of Jurisdiction

(the **"Remitter"**).

BACKGROUND

- A. OES has been designated as the Industry Funding Organization under the Act for EEE;
- B. The Remitter has entered into one or more Remitter's Agreements with Stewards, under which the Remitter files Remitter's Reports and remits fees on EEE for which Stewards would otherwise report and remit;
- C. The Remitter and the Sub-Remitter have both registered with OES using the electronic system provided by OES for that purpose;
- D. The Remitter and the Sub-Remitter agree that the Sub-Remitter shall file reports and remit fees on EEE for which the Remitter would otherwise be required to report and remit under the Remitter's Agreements to which it is a party;
- E. The purpose of this Agreement is to set out the terms and conditions under which the Sub-Remitter shall file reports and pay fees, and the rights of the Remitter, the Sub-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:

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Remitter
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- (a) “**Act**” means the *Waste Diversion Act, 2002*, S.O. 2002, c.6, as amended and in force from time to time;
- (b) “**Agreement**” means this Sub-Remitter’s Agreement;
- (c) “**Brands**” means the specific brands of EEE with respect to which the Remitter empowers the Sub-Remitter to file Sub-Remitter’s Reports, as determined by the Remitter from time to time in its sole discretion, and the initial list of which is contained in Appendix B hereto;
- (d) “**Data Period**” means each calendar month in each calendar year, beginning on the first day of each month;
- (e) “**Electrical and Electronic Equipment**” (or its abbreviation “**EEE**”) means those goods and products set out in Appendix A off the Rules;
- (f) “**Remitter’s Report**” means a report prepared by the Remitter containing the information set out in Appendix B to the Rules;
- (g) “**Effective Date**” means the first day of the month following the date first written above;
- (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 Remitter’s Report or Sub-Remitter’s Report containing no data, filed by a Remitter or Sub-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 **Error! Reference source not found.** 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 Remitters and Sub-Remitters by OES;
- (m) “**Rules**” means EEE Stewards’s Rules in effect from time to time with respect to filing of EEE Steward’s Reports and payment of Remitter’s Fees made pursuant to the Plan, an up-to-date copy of which is posted on the OES website;
- (n) “**Sub-Remitter’s Fees**” means all fees payable by a Sub-Remitter pursuant to a Sub-Remitter’s Agreement on behalf of a Remitter, at the applicable rates set out

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in the Rules from time to time, the requirement for payment of which has been assigned to the Sub-Remitter pursuant to this Agreement;

- (o) **“Sub-Remitter’s Report”** means a report prepared by the Sub-Remitter and filed with OES, in the form of a Steward’s Report with respect to EEE designated by the Remitter pursuant to this Agreement, describing the aggregate amount of EEE with respect to which the Sub-Remitter is reporting in the Data Period, containing the information prescribed in the form as amended from time to time; if no EEE is Supplied in a Data Period, the Sub-Remitter’s Report shall be a Nil Report;

“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 SUB-REMITTER’S REPORTS AND PAYMENT OF SUB-REMITTER’S FEES**

- 2.1 The Sub-Remitter shall file an initial Sub-Remitter’s Report with respect to EEE Supplied to the Sub-Remitter by the Remitter, or as designated by the Remitter in its sole discretion during the Data Period beginning on the Effective Date. Thereafter, the Sub-Remitter shall file a Sub-Remitter’s Report for all such EEE Supplied during each subsequent Data Period with OES (including nil reports).
- 2.2 A Sub-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 Sub-Remitter’s Report shall be for an entire Data Period.
- 2.3 Sub-Remitter’s Reports shall be filed by the Sub-Remitter only with respect to the Brands designated by the Remitter from time to time in its absolute discretion.
- 2.4 The Sub-Remitter will pay Remitter’s Fees to OES at the time of filing its Sub-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 Sub-Remitter’s Report (including nil reports). For greater clarity, the Sub-Remitter will pay Remitter’s Fees to OES and file its Sub-Remitter’s Report based on the time of Supply of EEE by the Sub-Remitter.
- 2.5 Each of the Remitter and Sub-Remitter shall provide their Participant Number to OES at the time of entering into this Agreement.

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

- 3.1 A Sub-Remitter who fails to pay Remitter’s Fees by the dates set out in Section 2, 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;

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- (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 Sub-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 Sub-Remitter's Report was due, together with interest to the date of payment as provided in Section 3.1(b), 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 Remitter on any deficiency notice to Sub-Remitter.
- 3.4 Sub-Remitter shall indemnify and save Remitter harmless from and against all losses, costs, damages, demands or claims, including legal fees resulting from any breach by Sub-Remitter of the provisions of this Agreement, including but not limited to the failure to remit Remitter's Fees in accordance with this Agreement.
- 3.5 Notwithstanding the above, nothing in this Agreement shall diminish the Remitter's liability to OES or the Steward under any Remitter's Agreements to which the Remitter is a party.
4. **RECORD PROVISION AND RETENTION**
- 4.1 The Sub-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 Sub-Remitter's Report upon request from OES (such request and review a "**Data Request**").
- 4.2 The Sub-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 Sub-Remitter's Report for a period of not less than five years from the date of the Sub-Remitter's Report to which they relate. The Sub-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 Sub-Remitter's Report up to five years after the date of receipt of such Sub-Remitter's Report by OES.
- 4.3 Only OES may make a Data Request or conduct an Audit of the Sub-Remitter.
- 4.4 Notwithstanding the above, the Remitter may request in writing that OES make a Data Request or conduct an Audit of the Sub-Remitter, at the expense of the requesting Remitter. If a Data Request or Audit of the Sub-Remitter within the 18 months previous to the date of the Remitter's request has revealed a deficiency in respect of which a deficiency notice has been sent in accordance with section **Error! Reference source not found.**, the Remitter may request a Data Request or Audit once every six months. If no

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Data Request or Audit of the Sub-Remitter has revealed a deficiency within the 18 months previous to the date of the Remitter's request, the Remitter may request a Data Request or Audit once every twelve months. The six-month or twelve-month period, as applicable, within which the Remitter may request a Data Request or Audit is referred to as the "**Audit Request Period**". If more than one Remitter requests a Data Request or Audit of the Sub-Remitter within the same Audit Request Period, the requesting Remitters 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 Remitter. The requesting Remitter or Remitters 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 Remitter or Remitters, which certificate may be relied upon by such Remitter. If the Data Request or Audit does reveal a discrepancy, a deficiency notice will be issued by OES in accordance with Section **Error! Reference source not found.** 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 6.6, or either of the following provisions:

- (a) OES or the Remitter give notice of termination of this Agreement at any time for cause, including non-filing of Sub-Remitter's Reports or non-payment of Remitter's Fees or penalty or interest charges assessed. Prior to such termination OES or the Remitter, 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 Sub-Remitter and the Remitter shall have a period (the "Cure Period") of 15 days in which to effect a cure to such default, failing which OES or the Remitter, as the case may be, may thereupon 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 Sub-Remitter shall file a Sub-Remitter's Report for the Data Period ending on the date of termination and shall pay all Remitter's Fees payable pursuant to such Sub-Remitter's Report.
- (c) If this Agreement is terminated for any reason, the Sub-Remitter shall file a terminal Sub-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 Sub-Remitter's Report. Such terminal Sub-Remitter's Report shall be filed by the

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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 Sub-Remitter's Report is filed.

5.2 Notwithstanding the termination of this Agreement by any party, the Sub-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 Sub-Remitter and Remitter collectively that exceed the amounts that would have been payable by the Remitter but for the existence of this Agreement. The provisions of Sections 3, 4 and 5 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 Remitter consents to the Sub-Remitter entering into this Agreement, filing Sub-Remitter's Reports and making payment of Remitter's Fees on behalf of and for the account of the Remitter. Remitter acknowledges and agrees that it shall be relieved of reporting EEE and paying Remitter's Fees on EEE only to the extent to which the Sub-Remitter carries out its obligations under this Agreement.

6.2 The Sub-Remitter and the Remitter 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 Remitter nor the Sub-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 Remitter and the Sub-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 Remitter to pay any fee or administrative charge, handling charge or other amount to the Sub-Remitter as consideration for the Sub-Remitter entering into and carrying out its duties under this Agreement.

6.4 The obligation of the Sub-Remitter to file a Sub-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 Sub-Remitter and the Remitter. The Sub-Remitter agrees that it will file all such Sub-Remitter's Reports and pay all Remitter's Fees regardless of any such disputes, accounts or equities and shall look only to the Remitter with respect thereto.

6.5 The Sub-Remitter agrees to the disclosure of information to the Remitter by OES about the amount of EEE reported and Remitter's Fees paid for each Sub-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 Remitter and Sub-Remitter of such change (the "**Change Notice**"). Unless the Remitter and/or Sub-Remitter give notice to OES (the "**Rejection Notice**") within 45 days of receipt of the Change Notice that the Remitter and/or the Sub-Remitter do not

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accept the revisions or amendments in the Change Notice, the Agreement, as amended, remains in effect and is binding. If the Remitter and/or Sub-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 Remitter and/or Sub-Remitter of the Rejection Notice.

- 6.7 The Remitter acknowledges and agrees that nothing in this Agreement absolves the Remitter from its obligation to file a Remitter's Report with OES each month as required, notwithstanding that such Remitter'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 Sub-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 7, 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 Sub-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 Sub-Remitter to file a Sub-Remitter's Report shall not be items subject to arbitration.

8. CONFIDENTIALITY

- 8.1 The Sub-Remitter agrees that its name and any identifying number may be published on OES's website. The Sub-Remitter further agrees that the Remitter may at any time obtain access to the state of the Sub-Remitter's account, such access to be restricted to the portion of the account for the Remitter's EEE for which the Sub-Remitter has filed reports and paid Remitter's Fees; and provided that such access shall not disclose to the Remitter information with respect to other Remitters under the Act for which the Sub-

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Remitter
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Remitter may have entered into a Sub-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 Remitter or Sub-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 Remitter and the Sub-Remitter under this Agreement are personal and may not be assigned in whole or in part.
- 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 Sub-Remitter
[data from system]

To Remitter
[data from system]

- 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.

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Remitter
Sub-Remitter

- 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 6.6 hereof. Notwithstanding the foregoing, nothing in this agreement shall prevent a Remitter and Sub-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 Remitter or Sub-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 3, 4 and 5 of this Agreement, to establish that the Sub-Remitter shall remain liable to pay Sub-Remitter’s Fees for a term of five years from the end of the Data Period for which such Sub-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 Remitter or Sub-Remitter by signing the Agreement.

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Remitter
Sub-Remitter

EXECUTION BY THE PARTIES.

ONTARIO ELECTRONIC STEWARDSHIP

Per: _____

Name:

Title:

I have authority to bind the Corporation

[SUB-REMITTER CORP. NAME]

Per: _____

Name:

Title:

I have authority to bind the Sub-Remitter

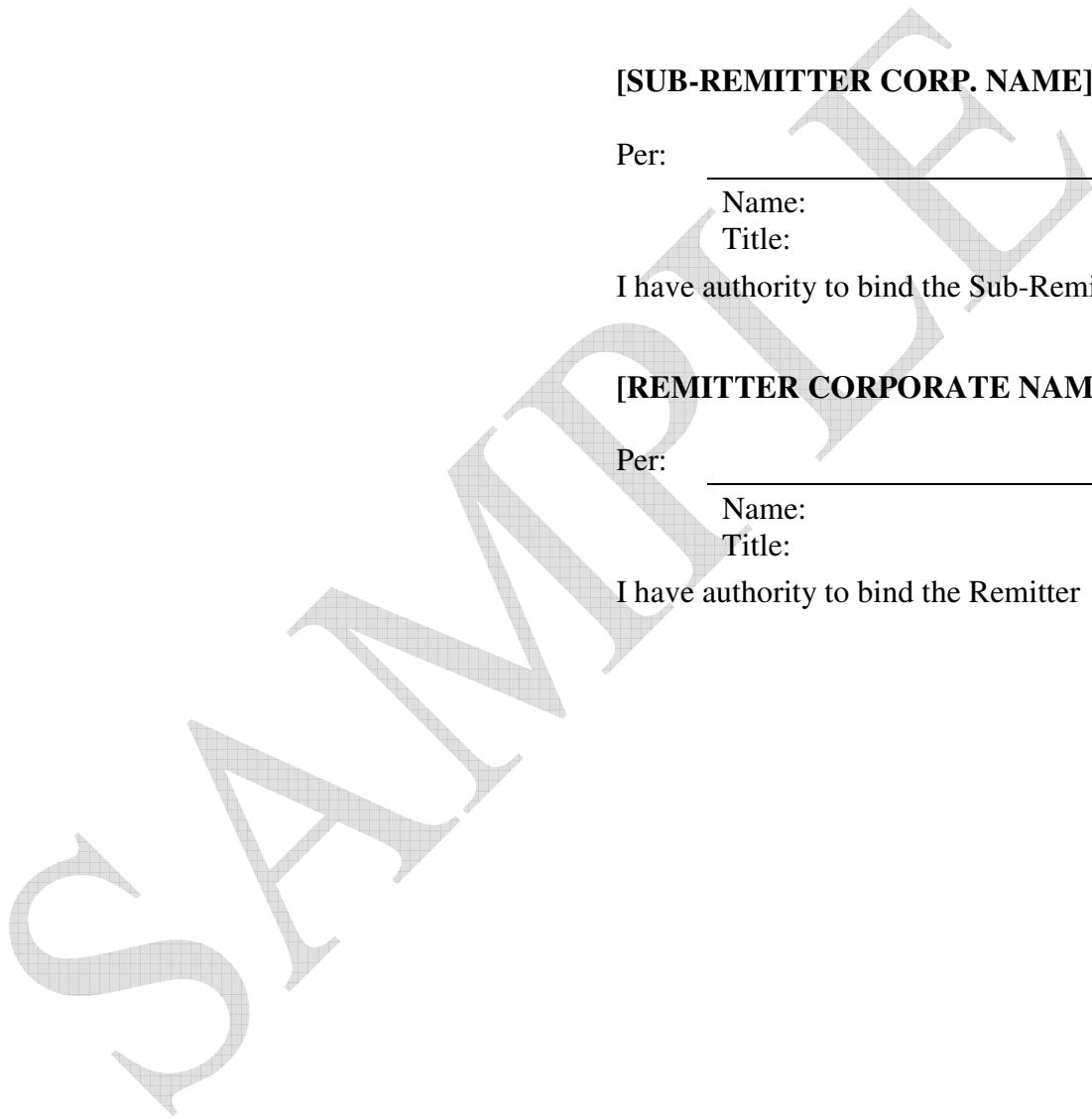
[REMITTER CORPORATE NAME]

Per: _____

Name:

Title:

I have authority to bind the Remitter



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