

CESA MEMBERSHIP AGREEMENT

Membership in CESA is subject to the terms and conditions of this Agreement. This is a legal contract between you and CESA. Please read the entire Agreement carefully before agreeing to become a member of CESA.

THIS AGREEMENT ESTABLISHES THE TERMS AND CONDITIONS TO WHICH YOU AGREE AND TO WHICH YOU ARE SUBJECT AS A MEMBER OF CESA. BY APPLYING TO BECOME A MEMBER OF CESA YOU ARE ACCEPTING ALL OF THE TERMS OF THIS AGREEMENT, AND OF MEMBERSHIP IN CESA.

This Membership Agreement (the “**Agreement**”) is entered into as of the Appointment Date,

Between:

CANADIAN ELECTRICAL STEWARDSHIP ASSOCIATION (“CESA”)

a federal not for profit corporation having its head office at:
15 Allstate Parkway, Suite 601, Markham, Ontario, L3R 5B4

And:

THE MEMBER (the “MEMBER”)

an entity having an office at the address set out in its on-line registration to become a member of CESA

WHEREAS:

- A. Various provinces have established environmental stewardship programs, pursuant to which certain industries have been mandated to develop and manage a stewardship plan for specific types of products.
- B. The Regulations (as defined below) permit the Member to appoint an agent to develop, submit for approval and operate such a stewardship plan, on behalf of the Member.
- C. CESA has developed the Plan (as defined below), and the Plan has been approved by the Regulator (as defined below).
- D. CESA implements and operates the Plan in accordance with the Regulations.
- E. The Member wishes to appoint CESA as its agent for the purposes of carrying out its duties under the Regulations in respect of the Plan, and CESA is prepared to act as the

agent of the Member in carrying out those duties, all upon and subject to the terms and conditions of this Agreement.

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

1. Definitions and Interpretation

1.1 Definitions – In addition to any terms or phrases defined elsewhere in this Agreement, unless the context otherwise specifies or requires, for the purposes of this Agreement, including the Schedules hereto, capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

“Appointment Date” means the date on which the Member has properly completed the CESA on-line registration, subject to such on-line registration being accepted and approved by CESA.

“By-Laws” means the by-laws of CESA from time to time in effect, as the same may be modified, amended or replaced from time to time.

“CESA Web-Site” means ‘www.cesarecycling.ca’, or such other web-site as CESA may from time to time establish and maintain for the fulfillment of its objects and purposes.

“Confidential Information” means all information, know-how, trade secrets, ideas, technology or data concerning or related to products (including all hardware and/or software products) (including the discovery, invention, research, improvement, development, manufacture, marketing, or sale of products), processes, or general business operations (including sales, costs, profits, pricing, methods, organization, employee lists, and processes), which, if not otherwise described above, is of such a nature that a reasonable person would believe it to be confidential or proprietary.

“Regulator” means the director or other senior manager or official identified in the Regulations, or the relevant legislation pursuant to which the Regulations have been established, and identified as responsible for the management and operation of the relevant provincial environmental stewardship program(s).

“EHFs” means environmental handling fees or any similar fees or charges established pursuant to or in respect of the Regulations, or payable as a result of the management of any environmental stewardship plan for specific types of products and which are or become the subject of the Plan.

“Member” means the entity set out in the Member’s on-line registration.

“Plan” means the stewardship plan developed by CESA, as set out on the CESA Web-Site, as the same may be modified, amended or replaced from time to time.

“Products” means those products that fall within the product categories provided for in the Regulations, and as set out on the CESA Web-Site, as the same may be modified, amended or replaced from time to time.

“Regulations” means the relevant provincial extended producer responsibility regulations established by a province in connection with the establishment and implementation of the environmental stewardship programs contemplated in this Agreement.

“Rules and Policies” means all of the rules and policies established by CESA and in effect at the relevant time, as the same may be modified, amended or replaced from time to time.

1.2 Rules of Interpretation – In this Agreement the following rules shall apply to the interpretation thereof: words denoting the singular include the plural and vice versa and words denoting any gender include all genders; the words “include”, “includes” and “including” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”; any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided; when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency; the division of this Agreement into separate Articles, Sections, subsections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

2. CESA Membership and Agency Appointment

2.1 Membership in CESA – Upon completion of the CESA on-line registration, including the ‘check-the-box’ acceptance of the terms and conditions of this Agreement, the Member has applied to become a member of CESA. Such application is subject to acceptance by CESA, in accordance with the Rules and Policies. Upon notification to the Member of acceptance of such application, the Member shall be and shall be deemed to be a member of CESA as of and from the Appointment Date.

2.2 Appointment as Agent – The Member hereby appoints CESA as its sole and exclusive agent for the purposes of carrying out its duties under the Regulations in respect of the Plan during the Term, and, in particular and without limitation, to implement and operate the Plan for the collection, transportation and recycling of the Products for and on behalf of the Member.

3. Compliance with Rules and Implementation of Plan

3.1 Compliance – The Member covenants and agrees at all times during the Term to abide by the terms and conditions of this Agreement, the Bylaws and the Rules and Policies.

3.2 Amendments to Plan – The Member acknowledges and agrees that CESA may change, update, replace, restate or otherwise amend the Plan from time to time, subject only to the approval of the relevant Regulator(s). If CESA determines to amend the Plan in any manner, CESA shall provide the Member with not less than ninety (90) days prior written notice of such amendment.

3.3 Applicable Products – Notwithstanding anything to the contrary in this Agreement, CESA’s obligations hereunder shall not extend to any products manufactured, sold, distributed or

otherwise handled by the member the size, composition or other material characteristics of which have not been set out as acceptable in the relevant Regulations and approved by CESA in writing in advance, and which are not listed as Products.

3.4 External Resources – The Member acknowledges that CESA may use external resources to fulfill the Member’s obligations under the Regulations in respect of the Plan. CESA shall inform the Member not less than ninety (90) days in advance of any third-party which CESA intends to use for such purposes.

4. Confidentiality Obligations

4.1 Both the Member and CESA acknowledge and agree that one of the purposes of the Member being a member of CESA is to fulfill the Member’s compliance obligations under the Regulations in respect of the Plan. Subject to disclosure of information in accordance with this Agreement, the Bylaws and the Rules and Policies, the Member’s membership in CESA shall not provide the Member with access to, or any right in or to, any Confidential Information of any other member of CESA.

4.2 Both the Member and CESA shall comply with the requirements of the CESA Confidentiality Policy from time to time in effect, as the same may be amended by CESA.

4.3 Without limiting the foregoing provisions of this Article 4, CESA agrees to keep confidential any and all Confidential Information transmitted by the Member for any purpose, including the audit rights of CESA as set out in this Agreement, except as may be required by law. For certainty, and notwithstanding the foregoing, CESA is permitted to identify all CESA Members who are in good standing, and to identify any Member who is in arrears of the remittance of any EHF’s under the Plan, whether to CESA or to the relevant governmental authority.

4.4 CESA will, from time to time, provide the Member with a current list of all members of CESA and will reasonably cooperate with the Member to facilitate the identification of and interchange between members of CESA.

5. Covenants of the Member

5.1 Payment of EHF’s – The Member shall pay to CESA within the next calendar month following the end of each reporting period all EHF’s on the sale or distribution of Products for which the Member has obligations under the Regulations and Products for which the Member has agreed to assume the obligations under the Regulations, including the sale or distribution of Products which occurred prior to the Appointment Date, as are necessary to give effect to the Plan in respect of the Member, the Member’s Products or the Products for which the Member has agreed to assume the obligations under the Regulations. Such EHF’s shall be determined by CESA from time to time in accordance with the Plan and the Rules and Policies.

5.2 Overdue Payments – The Member agrees that any overdue EHF’s owing by the Member to CESA shall be treated by CESA as a debt owing to CESA. If such overdue EHF’s are not paid within thirty (30) days of written notice by CESA to the Member following any default in payment, CESA may pursue any remedies available to it in contract or at law, in addition to any other remedies available to CESA, including termination of the Member’s membership in CESA.

5.3 Financial Security – If the Member is or becomes in arrears with regards the payment of any EHF's under this Agreement, CESA may require the Member to provide financial security in a form that is acceptable to CESA, all in accordance with any applicable Rules and Policies.

5.4 Reporting – The Member agrees to provide to CESA all reports and other information from time to time as are requested by CESA, in accordance with the Rules and Policies, and to do so within the time frames set out in the Rules and Policies. Without limitation, the member acknowledges that such reports will include reporting monthly on the sales of the Member's Products on a participating province basis and the sales of any Products for which the Member has agreed to assume the obligations under the Regulations and for which the Member will be remitting EHF's to CESA.

6. Covenants of CESA

6.1 Acting as Agent – Provided that the Member is a member of CESA in good standing, CESA agrees to act as the Member's agent for the purposes of carrying out the Member's duties under the Regulations in respect of the Plan during the Term, and, in particular and without limitation, in respect of the implementation and operation the Plan for the collection, transportation and recycling of the Products for and on behalf of the Member.

6.2 Amendment of Plan – CESA agrees to provide to the Member a copy of all amendments made to the Plan within thirty (30) days of the later of (i) approval by the Board of Directors, and (ii) approval by the relevant Regulator(s), of each such amendment.

6.3 Implementation of Plan – CESA agrees to use all commercially reasonable efforts to:

- (a) implement and operate the Plan as submitted and approved by the Regulator(s) and in accordance with the Regulations;
- (b) ensure that the Plan continues to be in good standing with the Regulator(s) and that any requirements of the Regulator(s) are adhered to; and
- (c) submit any additional information or material to the Regulator(s) to which the Regulator is entitled and which the Regulator(s) request and consider relevant.

6.4 Reporting – CESA agrees to provide the Member with an annual report on the performance of the Plan, in a form and incorporating such content as the Board of Directors of CESA may from time to time approve.

6.5 CESA Rules and Policies – CESA agrees to provide not less than sixty (60) days prior notice to the Member of any amendment or change to any Rules and Policies, including of any new or additional Rules or Policies. In addition, CESA agrees to provide not less than ninety (90) days prior notice to the Member of any change to the EHF's to be charged to the Member under this Agreement.

6.6 Notice of Regulatory Issues – CESA agrees to provide prompt notice to the Member (a) in the event that the approval from any Regulator in respect of the Plan is suspended or cancelled, together with the stated reasons for the suspension or cancellation, to the extent CESA is or becomes aware thereof, or (b) of any hearing or similar meeting that is anticipated or pending, of which CESA is or becomes aware, in connection with a suspension or cancellation of any Regulator's approval of the Plan.

7. Audit by CESA

7.1 Audit Right – CESA may from time to time, at its discretion, audit and inspect the records of the Member with respect to the sale, supply, distribution and importing of Products in the relevant provinces where the Plan is being implemented and operated (the “**Records**”) in order to verify the accuracy of the remittances of EHF’s by the Member to CESA under this Agreement. The Member acknowledges that CESA may use a third-party designated by CESA to perform such audit and inspection.

7.2 Cooperation of Member – If CESA notifies the Member that it intends to conduct such an audit, the Member shall make available or cause to be made available to CESA, or its designee, within ten (10) days following a request therefor and during regular business hours, any and all information and material as may be reasonably requested by CESA, or its designee, for its purposes and otherwise give such cooperation as may be required by CESA, or its designee, including providing access to all Records and any other information in respect of transactions relating to the Products. The Member shall have the right to observe and be informed in respect of all audit activities conducted by CESA, or its designee, hereunder.

7.3 Notification of Results – Within thirty (30) days of completion of any audit or inspection under this Article 7, CESA shall provide to the Member a summary report of the results of such audit or inspection.

7.4 Under-Payment – If any audit discloses that the Member has under-paid EHF’s to CESA, such under-payment and the Member shall be subject to the applicable Rules and Policies. Without in any way limiting the foregoing, in such event, where the amount of the under-payment, for any period, exceeds the greater of either (i) five (5) of the Member’s total EHF’s payment obligations or (ii) five hundred dollars (\$500), then the Member shall in addition to any other liability at law, pay to CESA, within thirty (30) days of written notice, the following:

- (a) the EHF’s due;
- (b) interest at the rate established from time to time by CESA as set out in the applicable Rules and Policies; plus
- (c) where the Member is found to have under-paid it’s EHF’s on more than three (3) separate occasions, an administrative fee equal to twenty per cent (20%) of the aggregate amount of such under-payments.

7.5 Over-Payment – If any audit discloses that the Member has over-paid EHF’s to CESA, such over-payment shall be subject to the applicable Rules and Policies. Without in any way limiting the foregoing, in such event, CESA shall reimburse the Member within thirty (30) days of notifying the Member of such over-payment. If CESA fails to reimburse the Member within thirty (30) days of providing notice to the Member of its over-payment, the Member may offset the amounts over-paid against any future EHF’s payment or other amounts owing to CESA under this Agreement.

7.6 Refund Request – In addition, where a Member provides information to CESA that satisfies CESA, acting reasonably, that the Member has over-paid EHF’s to CESA, CESA shall either confirm the over-payment in writing (thus satisfying the notice requirement and triggering the

reimbursement obligation set out in Article 7.5) or, within 30 days of receiving such information from the Member, initiate an audit pursuant to this Article 7.

7.7 No Waiver – Any inspection, audit or review by CESA, or its designee, pursuant to this Article 7 shall not relieve the Member of any of its obligations to fulfil or comply with the terms of this Agreement. The performance by or on behalf of CESA of any inspection, audit or review hereunder is no assurance that the Member has complied with the provisions hereof which compliance shall remain the sole responsibility of the Member. The failure of CESA to conduct any inspection, audit or review hereunder shall not constitute a waiver of any of the rights of CESA under this Agreement.

8. Term and Termination

8.1 Term – This Agreement shall commence on the Appointment Date, shall have no set expiry date and shall remain in full force and effect until terminated in accordance with this Article 8 (the “**Term**”).

8.2 Termination on Notice – Either party may terminate this Agreement without cause upon not less than ninety (90) days prior notice to the other party.

8.3 Termination for Default – If a party (the “**Defaulting Party**”) breaches any term or condition of this Agreement, the other party may deliver notice of the breach to the Defaulting Party. In the event such breach is not cured within thirty (30) days of such notice, the party having delivered such notice may immediately terminate this Agreement on further notice to the Defaulting Party to that effect.

8.4 Termination for Insolvency – This Agreement will terminate automatically if: (i) a party (in this Section 8.4, the “**Insolvent Party**”) makes an assignment for the benefit of its creditors, consents to the appointment of a receiver for all or substantially all of the property of the Insolvent Party, files a petition in bankruptcy or for a reorganization under the appropriate bankruptcy legislation, or is adjudicated bankrupt or insolvent; or (ii) if a court order is entered, without the consent of the Insolvent Party, appointing a receiver or trustee for all or substantially all of the property of the Insolvent Party, or approving a petition or for a reorganization pursuant to the appropriate bankruptcy legislation or for any other judicial modification or alteration of the rights of creditors of the Insolvent Party.

8.5 Effect of Termination – This Agreement shall terminate immediately and without notice upon the Member ceasing to be a member of CESA; and the Member’s membership in CESA shall terminate immediately and without notice upon the termination of this Agreement for whatever reason. In the event of termination of this Agreement, for whatever reason, CESA shall forthwith notify the relevant Regulator(s) that the Member is no longer a member of CESA and that CESA has ceased to act as the Member’s agent for the purposes of complying with the Regulations in respect of the Plan.

8.6 Survival – The provisions of Article 4, Sections 5.1 and 5.2, and Article 7 shall survive termination of this Agreement for whatever reason.

9. General Provisions

9.1 Notices – All notices or other communications required or permitted under this Agreement (each, a “Notice”) shall be in writing and shall be delivered in person, by prepaid courier service, by e-mail or by facsimile to the addresses or facsimile number as follows:

To CESA at: Canadian Electrical Stewardship Association
Attention: President
15 Allstate Parkway, Suite 601
Markham, Ontario, L3R 5B4
E-Mail: memberservices@cesarecycling.ca
Fax: 905-415-0332

To the Member at: the contact details provided by the Member in the CESA online registration system

If personally delivered or delivered via pre-paid courier, a Notice will be deemed to have been given and received on the date of actual delivery and, if by facsimile or e-mail, a Notice will be deemed to have been given and received on the date sent if sent during normal business hours on a business day and otherwise on the next business day.

Either party may at any time and from time to time notify the other party in accordance with this Article 10 of a change of address, facsimile number or e-mail address, to which all notices will be given to it thereafter until further notice in accordance with this Article 10.

9.2 Assignment – This Agreement is assignable by CESA without the consent of the Member to any corporate entity incorporated for the purpose of carrying out the Plan in replacement of or succession to CESA or another stewardship plan for the Products as approved by the Regulator, provided that ninety (90) days prior notice is provided to the Member of such assignment. Except as provided above, neither this Agreement nor the rights or obligations of either party are assignable, except with the prior written consent of the other party[, which consent cannot be unreasonably withheld or delayed].

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

9.4 Entire Agreement – This Agreement contains the entire agreement between the parties regarding the matters herein contained, and will supersede any prior agreements or understandings between the parties, whether oral or written.

9.5 Amendment – The Member acknowledges that the board of directors of CESA may amend, change or modify this Agreement from time to time, although not more often than once in any twelve (12) month period, by approving such amendments, changes or modifications at a meeting of the directors held for that purpose, if such amendments, changes or modifications are approved by not less than sixty-six per cent (66%) of the directors in attendance at the meeting, in which event such amendments, changes and modifications, and the resulting revised Agreement, shall be valid and effective and applicable to the Member from and after a date specified by the directors which is at least ninety (90) days following notification to the Member of such amendments, changes and modifications.

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

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

By clicking the phrase “[Yes, Continue] Yes, I have read and accept the CESA Membership Agreement” in the on-line member application process, you agree: (1) that you have read the terms and conditions of the Membership Agreement; (2) you understand the terms and conditions of the Membership Agreement; (3) you intend to form a legally binding contract; (4) a printout of the terms and conditions of the Membership Agreement will constitute a “writing” under any applicable law or regulation; and (5) you agree to abide by all the terms and conditions of the Membership Agreement.