

## R2™ CERTIFIED FACILITIES AGREEMENT

**THIS R2™ CERTIFIED FACILITIES AGREEMENT** (“Agreement”) is entered into by and between Sustainable Electronics Recycling International (“SERI”), a District of Columbia nonprofit corporation and Applicant (“Applicant”). This Agreement governs Applicant’s responsibilities, obligations, benefits and the terms under which SERI grants Applicant the right to promote its R2™ Certified Facilities using the R2 logo (the “Mark”) and the right to perform certain activities for the Term (as defined below).

**READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN APPLICANT AND SERI.**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, SERI and Applicant, intending to be legally bound, agree as follows:

**1. APPLICABILITY OF AGREEMENT.** Applicant must have submitted a complete Facilities Agreement Application (the “Application”) and must comply with all terms and conditions set forth in the Application, which are incorporated into this Agreement by reference. This Agreement applies only to the facility or facilities identified on the Application and does not bind or grant any rights to any other facilities owned or operated by Applicant or any other entity.

### **2. CERTIFICATION MARK LICENSE.**

2.1 Grant. SERI hereby grants Applicant a non-exclusive, non-transferable, non-sublicenseable personal license to SERI’s rights in the Mark (R2 logo), as shown and defined in Appendix A, to use, reproduce and publicly display the Mark only in connection with Applicant’s promotion of Applicant’s R2™ Certified Facility or Facilities. Applicant may use the Mark on promotional displays and in advertising materials (“Materials”) in accordance with the guidelines in Appendix A.

2.2 Term. This Agreement shall take effect on its effective date and shall be valid for a period of one (1) year (the “Term”). This Agreement may be renewed upon written agreement of SERI and Applicant.

2.3 Licensing Fee. In consideration of this Agreement, Applicant shall pay to SERI: (i) an Annual License Fee of \$1,500 USD per facility; or (ii) an Annual License Fee of \$1,000 USD per facility if Applicant is recognized as a tax-exempt organization by the U.S. Internal Revenue Service or the national taxing entity of the nation in which Applicant is located; or (iii) \$15,000 USD if Applicant is licensing ten (10) or more facilities that it owns. The Annual License Fee shall be paid in full prior to Applicant’s facility’s R2™ Certification audit. Failure to pay the Annual License Fee by this deadline will result in Applicant’s R2™ certification not being issued. If after obtaining Applicant’s R2™ Certification, Applicant becomes delinquent in payment of the Annual License Fee, Applicant’s R2™ certification will be suspended and its listing on SERI’s website will be removed until payment is made. If Applicant fails to pay the Annual License Fee by the end of the suspension period, Applicant’s R2™ certificate will be revoked. All fee amounts set forth herein are subject to change at any time.

2.4 Mark Ownership. Applicant agrees that the Mark is SERI’s valuable property, and SERI is the exclusive owner of all right, title and interest in and to the Mark. Any and all past, present or future goodwill arising from Applicant’s use of the Mark will inure solely and exclusively to SERI’s benefit, and Applicant will not be compensated for the value, if any, that Applicant contributes to the goodwill of the Mark. Applicant has no ownership rights in the Mark and agrees not to represent in any manner that it has acquired any ownership rights in the Mark.

2.5 Prior Approval of Materials. Applicant will not use the Mark in any manner that would reflect adversely on the image or quality symbolized by the Mark. Upon SERI’s request, Applicant agrees to submit to SERI, for SERI’s written approval, samples of all Material(s) in which the Mark is being used. SERI’s approval pursuant to this Section may be withheld in-SERI’s sole and absolute discretion.

2.6 Notice of Changes in Circumstances. Applicant agrees to provide timely notice to SERI of relevant changes of circumstances at its R2 Certified facility or facilities, including, but not limited to, changes in address, management, ownership, or closure of the facility.

2.7 No Confusing Use or Registrations. Applicant agrees not to use or file for registration of any “Trade Names” (trademark, collective mark, service mark, certification mark, and/or trade name, in any

class and in any country) that, in SERI's sole opinion, is the same as, confusingly similar to, or likely to cause confusion with the Mark. Upon SERI's request, Applicant must disclose: (i) all Trade Names used by Applicant or its Affiliates that contain the Mark; and (ii) any domain names used by Applicant or Applicant's Affiliates in providing electronics recycling services. Upon SERI's request, Applicant will promptly notify SERI of any Trade Names that Applicant files or begins to use at any time during the Term.

**2.8 No Confusing Domain Names or Keywords.** Applicant agrees not to register or to use any Internet domain name, sponsored link/ad keyword or any other keyword search term that, in SERI's sole opinion, is: (i) confusingly similar to any of the Mark(s) or the domain name of the SERI Site; or (ii) implies any form of affiliation with SERI. If Applicant has already registered existing domain names that are in violation of this Section, Applicant may be required to transfer such domain names to SERI as a condition of entering into this Agreement. SERI will pay the reasonable administrative costs of any such transfers, which will not include any payments to Applicant for goodwill associated with such domain names.

### **3. COMPLAINTS, SERI AND/OR ADDITIONAL CERTIFICATION BODY AUDITS.**

**3.1 Complaints.** In the event that a reasonably credible complaint is made against Applicant's R2™ Certified facility or facilities in relation to Applicant's R2™ Certification, Applicant agrees to cooperate with SERI and/or Applicant's Certification Body should SERI or the Certification Body choose to investigate the complaint. Applicant agrees to preserve all relevant documentation and information and provide any and all documentation and other information reasonably requested in connection with such investigation in a timely manner. If it is determined that a site visit is required, Applicant agrees to provide SERI or Applicant's Certification Body with access to Applicant's R2™ Certified facility or facilities.

**3.2 SERI Witness and Spot Audits.** In accordance with SERI's quality control program, Applicant agrees that SERI may witness Certification Body audits of Applicant's facility or facilities. Applicant also agrees that SERI may conduct its own spot audits of Applicant's R2™ Certified facility or facilities at a time between the scheduled Certification Body audits. If an Applicant facility is selected for such an audit, Applicant agrees to cooperate fully with SERI's auditors.

### **4. TERMINATION.**

**4.1 Termination Rights.** Applicant may terminate this Agreement at any time by providing SERI with written notice. Applicant will not be entitled to any full or prorated refund of its Annual Licensing Fee. **If Applicant or an Affiliate of Applicant commits fraud or other wrongful acts, or otherwise engages in conduct that SERI believes materially impairs the goodwill associated with the Mark or SERI, or if Applicant is not in conformance with a requirement of the R2™ Standard, which is incorporated herein by reference, SERI has the right to revoke this Agreement immediately upon written notice to Applicant.** If Applicant commits some other material breach of this Agreement, SERI has the right to revoke this Agreement by notifying Applicant in writing and giving Applicant thirty (30) days to cure the breach. If Applicant does not so cure the breach, this Agreement will terminate automatically. If SERI revokes Applicant's Agreement, Applicant's rights under this Agreement will immediately terminate and Applicant will not be entitled to any full or prorated refund of its Annual Licensing Fee.

**4.2 Effect of Termination.** Upon termination, all rights SERI grants to Applicant under this Agreement immediately terminate and Applicant must immediately stop all display, advertising, and other use of the Mark. **Furthermore, Applicant's Certification will no longer be valid and will be revoked by its R2 Certification Body.**

**4.3 Survival.** The following provisions will survive termination or expiration (the "End Date") of this Agreement for any reason: Sections 2.4 (Mark(s) Ownership), 2.8 (No Confusing Use or Registration), 2.9 (No Confusing Domain Names or Keywords), 4.2 (Effect of Termination), 4.3 (Survival), Section 5 (Indemnification), and Section 6 (General). The termination or expiration of this Agreement will not affect Applicant's or SERI's accrued rights or liabilities.

**5. INDEMNIFICATION.** Applicant agrees to indemnify and hold SERI harmless against any loss, liability, damage, cost or expense (including reasonable legal fees) arising out of any claims or suits made by or against SERI by reason of Applicant's activities or performance or non-performance under this

Agreement. SERI promptly will notify Applicant in writing of any claim or proceeding for which SERI seeks indemnification under this Agreement.

## 6. GENERAL PROVISIONS.

6.1 Governing Law. This Agreement and Applicant's and SERI's rights and obligations shall be governed by, and construed and enforced in accordance with the laws of the District of Columbia, United States, regardless of the choice of law rules of such state or any other jurisdiction. Applicant and SERI irrevocably consent to the exclusive jurisdiction and venue of the federal and state courts located in the District of Columbia, United States.

6.2 No Assignment. Applicant may not assign or transfer this Agreement or any rights hereunder to any person or other entity, or substitute any other person or entity with respect to Applicant's rights or obligations hereunder.

6.3 Non-Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by Applicant or SERI shall be considered to imply or constitute a further waiver by Applicant or SERI of the same or any other condition, right or remedy.

6.4 Independent Contractors. Applicant and SERI are independent contractors in carrying out their respective obligations under this Agreement. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership or principal/agent relationship between SERI and Applicant, and neither Applicant nor SERI, by virtue of this Agreement, shall have the right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

6.5 Notices. All notices between Applicant and SERI must be in writing. Notices that are sent or dispatched will be deemed received by the addressee: (i) in the case of personal delivery, at the time of such delivery; (ii) in the case of communication by registered post, on the third business day after dispatch; (iii) in the case of overnight express service, on the date on which the overnight carrier confirms receipt by addressee; (iv) in the case of fax transmission, on the first business day after dispatch; or (v) in the case of electronic mail, on the date on which the electronic mail was sent by the sender.

6.6 Certification Disputes. Any and all disputes relating to this Agreement will be resolved solely and exclusively by means of SERI's policies and procedures, including this Agreement and SERI's appeals process.

6.7 Entire Agreement. This Agreement is the final, complete and exclusive agreement between Applicant and SERI with respect to the subject matter hereof and supersedes all prior discussions between Applicant and SERI.

6.8 Authority to Bind. **The "signatory" of this Agreement represents that he/she has all requisite power and authority to enter into and perform this Agreement on behalf of Applicant and to carry out the transaction(s) contemplated herein.**

## **Signature and Acknowledgement**

By electronically signing this Agreement, you accept all terms and conditions described above, and assert that you have the authority to bind Applicant to the terms and conditions in this Agreement.

## Appendix A—Mark and Guidelines for Use

### The Mark<sup>1</sup>



### The Guidelines

These guidelines describe the proper usage requirements for the above-displayed design mark and any associated logos or composite marks of SERI formed around this mark, which may be supplied to Applicant and as amended by SERI periodically.

- 1. GUIDELINES FOR PERMITTED USE.** SERI allows those recycling facilities that become R2<sup>TM</sup> Certified and who remain in good standing to use the Mark in connection with providing electronics refurbishing and recycling services (hereinafter, the “Services”). Applicant may use the Mark in promotional materials, including in electronic and print advertisements, which Applicant prepares in connection with services rendered by Applicant’s R2<sup>TM</sup> Certified facility or facilities and in order to publicize the standing of Applicant’s R2<sup>TM</sup> Certified facility or facilities. Use of the Mark is subject to the following formal requirements: (a) Applicant must use the logo form of the Mark in the manner in which SERI provides; (b) if use of the logo is not possible, use of the word form of the Mark may be used as follows: R2:2013 RESPONSIBLE RECYCLING<sup>TM</sup>, and (c) the <sup>TM</sup> notation (superscript, when available; otherwise, in parentheses) should always be used with the written portion of the Mark upon its first occurrence in a writing.
- 2. PROPER ATTRIBUTION.** Applicant must include proper ownership attribution of the Mark through a footnote or similar legend: R2:2013 RESPONSIBLE RECYCLING<sup>TM</sup> is a trademark of SERI. Any unauthorized use is strictly prohibited.”
- 3. PROHIBITED USES.** Applicant may not use the Mark in any way that would cause confusion among consumers as to which of Applicant’s facilities is R2<sup>TM</sup> Certified, and may only use the Mark in connection with the facility or facilities named in the Application. Applicant may not use the Mark in any way not permitted by SERI, including the following prohibited uses: (a) Applicant may not alter, cut apart or otherwise distort the Mark in perspective or appearance, such as varying the spelling, adding hyphens, changing the visual design aspect of the Mark, except as to remove the words “responsible recycling”, vary the size of the Mark, or the use of black and white instead of color; (b) Applicant may not combine the Mark with, within, or in conjunction with, any other material, words, phrases or designs without the prior written permission of SERI; (c) Applicant may not change the configuration or proportion of any artwork; (d) Applicant may not translate the Mark into other languages; (e) Applicant may not use Mark as part of or incorporated in the name of a business, URL, or sponsored link/ad keyword or any other key word search term (e.g., Applicant cannot register, without SERI’s approval, a domain name such as “www.r2recycling.com” or the like); (f) Applicant may not use the Mark on promotional items, such as t-shirts, coffee mugs, or similar merchandise with SERI’s prior written permission; and (g) Applicant may not use the Mark for any purpose that conflicts with this Agreement. Notwithstanding the foregoing, SERI may periodically develop composite logo designs around its Mark and may, at its sole discretion, make them available under the terms of this Agreement.

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<sup>1</sup>The Mark may be amended by SERI from time to time, e.g., to include new or revised composite marks built around the licensed Mark.