

SERI R2™ FACILITIES AGREEMENT

Version 2

THIS SERI R2™ FACILITIES AGREEMENT (“Agreement”) is entered into by and between Sustainable Electronics Recycling International (“SERI”), a District of Columbia nonprofit corporation and Applicant (“Applicant”), a legal business entity engaged in activities that are (1) covered by and (2) involve electronic equipment as defined in, the R2 Standard. This Agreement governs Applicant’s responsibilities, obligations, and benefits; the terms under which SERI grants Applicant the right to promote its R2™ Certified facility or facilities, or R2™ Certified brokering activities, using the R2™ logo (the “Mark”); and SERI’s right to perform certain activities and take certain actions for the Term of the Agreement.

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. PREREQUISITE AND APPLICABILITY OF AGREEMENT. Applicant must have submitted to SERI, and SERI must have approved, a complete SERI R2™ Facilities Agreement Application (the “Application”) prior to entering into this Agreement. This Agreement applies only to the facility or facilities identified on the Application and listed on the Applicant’s R2™ Certificate, or to the specific entity, identified as a broker on the Application and listed on the Applicant’s R2™ Certificate. It does not grant any rights to any other facilities owned or operated, or activities undertaken at any location other than the location identified on the R2™ Certificate, by Applicant or any other entity.

2. TERM OF AGREEMENT. This Agreement shall take effect on the date it is signed by Applicant (“Effective Date”). This Agreement shall be valid for a period of one (1) year from the Effective Date. It may be renewed upon written agreement of SERI and Applicant.

3. MEMBERSHIP FEE. In consideration of this Agreement, Applicant shall pay to SERI: (i) an Annual Membership Fee of \$1,500 USD per facility; or (ii) an Annual Membership Fee of \$1,000 USD per facility if Applicant is recognized as a tax-exempt organization by the national taxing entity of the nation in which Applicant is located; or (iii) \$15,000 USD if Applicant is certifying ten (10) or more facilities that it owns. The Annual Membership Fee shall be paid in full each year prior to Applicant’s Stage 2 audit, surveillance audit, or recertification audit. Failure to pay the Annual Membership Fee by this deadline may result in the termination of this Agreement and/or the suspension or revocation of Applicant’s R2™ Certification. All fee amounts set forth herein are subject to change at any time.

4. SERI AUTHORITY TO OVERSEE CONFORMANCE.

4.1 SERI Conformance Oversight: Authority and Notice. Applicant agrees to SERI’s use of any method or technology to monitor and assure conformance to the R2™ Standard by Applicant’s R2™ Certified Facility or Facilities or brokering activities. This includes SERI’s use of tracking technology to ascertain the destination of electronic equipment that may pass through Applicant’s R2™ Certified Facility or Facilities or, if Applicant is a broker, electronic equipment the movement of which the broker directs or facilitates. Applicant further agrees that this provision of the Agreement constitutes sufficient notice of SERI’s use of such methods and technologies and SERI need not provide any additional notice.

4.2 SERI Spot and Witness Audits. Applicant agrees that SERI, at its sole discretion and for any reason, may at any time enter the premises of a certified facility or office, with or without advance notice, to conduct SERI spot audits. If an Applicant facility is selected for a SERI spot audit, Applicant agrees to cooperate fully with SERI's auditor. Failure to cooperate fully with SERI's auditor, including but limited to the matters set forth in 4.3 below, shall constitute a material breach of this Agreement. Applicant also agrees that SERI may witness Certification Body audits of Applicant's facility or facilities.

4.3 Photographs, Copies of Documentation. Applicant shall provide SERI access to all documentation and recordkeeping, without limitation, that SERI believes may be relevant to SERI's conformance oversight efforts. Applicant further agrees that SERI's auditor can take photographs at Applicant's R2™ Certified Facility or Facilities, or brokering offices, and agrees to provide photocopies or electronic copies of any documentation SERI's auditor requests. SERI shall keep all such information and documentation confidential, sharing it only with the Applicant's Certifying Body (if at all), except as provided in Section 4.4.

4.4 SERI Communication to Government Authorities and/or the Public in Certain Situations. Applicant agrees that SERI may, at its sole discretion, communicate with government authorities concerning Applicant's activities if SERI believes such activities constitute a signification violation of a law or regulation. Applicant also agrees that SERI may, at its sole discretion, communicate with the public concerning Applicant's activities if SERI believes such activities constitute an egregious nonconformity with a significant provision (including but not limited to Provisions 3, 5, 6, and 7) of the R2 Standard.

5. CERTIFICATION MARK LICENSE.

5.1 Grant. For so long as Applicant holds a current, valid R2 certificate from a SERI-approved Certification Body, SERI grants Applicant a non-exclusive, non-transferable, non-sublicenseable personal license to SERI's rights in the R2 Mark, 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 or brokering activities. Applicant may use the Mark on promotional displays and in advertising materials ("Materials") in accordance with the guidelines in Appendix A.

5.2 Mark Ownership. Applicant agrees that the Mark is SERI's valuable property, and SERI is the exclusive owner of all rights, 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.

5.3 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.

5.4 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 or in its brokering activities, including, but not limited to, changes in address, management, ownership, or closure.

5.5 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 or its constituent parts of "R2"™ and "Responsible Recycling".

5.6 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 its constituent parts of "R2"™ and "Responsible Recycling", 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.

6. TERMINATION.

6.1 Termination Rights. Applicant may terminate this Agreement at any time by providing SERI with written notice. **SERI may terminate this Agreement immediately upon written notice to Applicant if SERI determines, at its sole discretion and through whatever means it deems appropriate, that Applicant, an officer of Applicant, or an Affiliate of Applicant, has committed fraud or other wrongful acts, or otherwise has engaged in conduct that SERI believes impairs the goodwill associated with the Mark or SERI; or that Applicant has committed a material breach of this Agreement or is not in conformance with a requirement of the R2™ Standard or R2™ Code of Practices.**

6.2 Effect of Termination. **Upon termination of this Agreement, 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 R2™ Certification Body must revoke Applicant's R2™ certification in accordance with the R2™ Code of Practices.** Applicant will not be entitled to any full or prorated refund of its Annual Licensing Fee.

6.3 Survival. The following provisions will survive termination or expiration of this Agreement for any reason: Sections 5.2 (Mark(s) Ownership), 5.5 (No Confusing Use or Registration), 5.6 (No Confusing Domain Names or Keywords), 6.2 (Effect of Termination), 6.3 (Survival), Section 7 (Indemnification), and Section 8 (General). The termination or expiration of this Agreement will not affect Applicant's or SERI's accrued rights or liabilities.

7. **INDEMNIFICATION.** Applicant agrees to hold SERI, its officers, members of its Board of Directors (individually or collectively), employees, and representatives harmless for any claim, including but not limited to claims of loss of business, personal injury, death or property damage that results from any action or inaction on SERI's part relating to the termination of, or refusal to enter into, this Agreement, any other matter relating to this Agreement, or any action or inaction on SERI's part in connection with its oversight and administration of the R2™ Certification Program. Applicant further 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 or the R2™ Standard. SERI promptly will notify Applicant in writing of any claim or proceeding for which SERI seeks indemnification under this Agreement.

8. GENERAL PROVISIONS.

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 Disputes. Applicant and SERI agree that all disputes relating to this Agreement shall be resolved solely and exclusively by means of *SERI's Policy and Procedures for Making Determinations and Resolving Disputes Relating to the SERI R2™ Certified Facilities Agreement*.

8.7 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.

8.8 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 Mark¹



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 R2TM Certified and who remain in good standing to use the Mark in connection with providing electronics refurbishing, recycling, or brokering 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 R2TM Certified facility or facilities and in order to publicize the standing of Applicant’s R2TM 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 RECYCLINGTM; and (c) the TM 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 RECYCLINGTM 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 R2TM 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 without 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.

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