

**Call2Recycle, Inc.**  
**Vermont Primary Battery Stewardship Plan Agreement**

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This Agreement ("Agreement") is entered into between \_\_\_\_\_ ("you"), a \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_ and Call2Recycle, Inc. ("Call2Recycle"). Call2Recycle is a Delaware corporation with its principal place of business at 1000 Parkwood Circle, Suite 200, Atlanta, Georgia, 30339. Call2Recycle and you are referred to herein collectively as the "Parties," and individually as a "Party."

**RECITALS**

A. WHEREAS, Call2Recycle has elected to expand the scope of its existing rechargeable battery stewardship program in the State of Vermont to include collection of primary batteries, as that term is defined in 10 V.S.A. § 7581(10), and seek to obtain approval of the primary-battery portion of Call2Recycle's expanded program as a primary battery stewardship program by the Vermont Secretary of Natural Resources, pursuant to 10 V.S.A. § 7586;

B. WHEREAS, Call2Recycle anticipates that at some future time it may expand its existing rechargeable battery stewardship program to other states, in which case this Agreement may be superseded by another agreement; and

C. WHEREAS, you are a primary battery producer, as defined in 10 V.S.A. § 7581(11), and desire to participate in Call2Recycle's approved Vermont primary battery stewardship program, but are not making at this time any agreement regarding Call2Recycle programs in other states.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. GENERAL DEFINITIONS.**

"*Agreement*" means this Agreement, including Attachment A.

"*Call2Recycle Website*" means the collection of web pages accessible via the Internet at the following URL: <http://www.Call2Recycle.org>.

"*Customer*" means you.

"*Effective Date*" means the first date on which this Agreement has been executed on behalf of both Parties.

"*Plan*" means the primary battery stewardship plan developed by Call2Recycle and submitted for approval to the Vermont Secretary of Natural Resources in accordance with 10 V.S.A. § 7584.

"*Program*" means the stewardship program approved by the Vermont Secretary of Natural Resources pursuant to 10 V.S.A. § 7586 after submission of Call2Recycle's Plan.

"*Secretary*" means the Vermont Secretary of Natural Resources.

**2. GENERAL OBLIGATIONS.**

a. Call2Recycle's Obligations.

(i) On or before June 1, 2015, Call2Recycle shall submit to the Secretary for approval a Plan which Call2Recycle believes, in good faith, meets the requirements of 10 V.S.A. § 7584. Call2Recycle shall undertake its best efforts to obtain approval of that Plan no later than ninety days after its submission to the Secretary.

(ii) Call2Recycle has established a Vermont Advisory Group. Through this group Call2Recycle shall keep you informed of discussions with the Secretary in response to the submission of Call2Recycle's Plan, and of any changes to the Plan required by the Secretary that will materially increase Call2Recycle's estimated cost of implementing the Plan. Call2Recycle shall also notify you no later than September 15, 2015, if Call2Recycle either: (A) has concluded that the Secretary will not approve the plan Call2Recycle submitted without amendments that are unacceptable to Call2Recycle; or (B) is uncertain that its plan can be approved in a form acceptable to Call2Recycle prior to January 1, 2016.

(iii) Upon approval by the Secretary of Call2Recycle's Plan, Call2Recycle shall implement the Program on January 1, 2016, in accordance with the approved Plan's terms. Call2Recycle may employ contractors in implementing the Program.

(iv) Call2Recycle shall comply with all applicable laws, rules, regulations, orders, and ordinances, as

they may be amended from time to time, in conjunction with the operation of its Program, and shall require that all of its contractors do so.

(v) In the event Call2Recycle determines it will cease operating its Program, Call2Recycle will provide you with no less than ninety (90) calendar days' prior notice of that decision.

(vi) Call2Recycle shall maintain complete and accurate records in connection with the operation of its Program.

(vii) Upon receipt from you of a sales estimate provided in accordance with Subparagraph 2(b)(iii), Call2Recycle shall review that estimate and determine whether it appears to be consistent with other information possessed by Call2Recycle. That estimate shall be used in the calculations required by Subsection 3(c) and Attachment A unless Call2Recycle, in its sole discretion, notifies you within fifteen (15) calendar days of receipt that it believes the sales estimate is unreasonably inaccurate. If Call2Recycle provides such notice, the parties shall promptly confer and seek to reach a mutually acceptable estimate for use in the calculations set forth in Subsection 3(c) and Attachment A. Unless Call2Recycle, in its sole discretion, accepts that estimate, either Party may terminate this Agreement with seven (7) calendar days' notice.

(viii) Call2Recycle shall comply with all of its other obligations arising under this Agreement.

b. Your Obligations.

(i) You shall pay the monies owed under this Agreement when due, except to the extent that there is a good faith dispute over the amounts owing, in which case you shall pay the undisputed amount when due;

(ii) You shall appoint an individual with appropriate skills and availability to participate in Call2Recycle's Vermont Advisory Group, inform Call2Recycle of that individual's name and contact information, and assure that that individual (or a successor you name) participates in or monitors the communications among and meetings of that group;

(iii) You shall provide Call2Recycle upon your payment of the deposit required by Subsection 3(a),

and no later than December 1 of each subsequent year this Agreement is in effect, with your estimate of the average annual weight of primary batteries sold into Vermont for which you are considered a "producer" under 10 V.S.A. § 7581(11) in the prior three calendar years. This estimate shall be provided by battery chemistry and weight in grams. Battery chemistry categories to be used in this estimate are set forth on Table 1 of Attachment A to this Agreement; and

(iv) You shall comply with all of your other obligations arising under this Agreement.

**3. FEES, BILLING, AND PAYMENT.**

a. You shall pay to Call2Recycle a one-time deposit of two thousand five hundred U.S. dollars (\$2,500.00) within thirty (30) days of the execution of this Agreement. This deposit will be applied against ongoing expenses associated with the implementation of the Vermont plan, as they are billed pursuant to Subsection 3(c).

b. In addition to the deposit required under Subsection 3(a) above, you shall pay to Call2Recycle a start-up fee no later than thirty (30) calendar days after your receipt of an invoice from Call2Recycle as follows:

(i) If you have executed this Agreement prior to September 15, 2015, the invoice shall be issued at the earlier of (A) the Secretary of Natural Resources' approval of Call2Recycle's Plan, or (B) November 1, 2015. The amount of the start-up fee due shall be an amount equal to Call2Recycle's good faith estimate of the costs it has incurred and will incur prior to the Secretary's approval of the Call2Recycle Plan to develop and implement the Call2Recycle Plan, multiplied by the percentage that is your estimated sales into Vermont reported to Call2Recycle pursuant to Subparagraph 2(b)(iii), divided by the total of such estimates provided to Call2Recycle by others who have signed substantially identical copies of this Agreement;

(ii) If you have executed this Agreement after September 15, 2015, the invoice shall be issued by Call2Recycle by the later of (A) when invoices are issued pursuant to Subparagraph 3(b)(i) to other entities, or (B) thirty (30) calendar days of your execution of the Agreement. The amount of the start up fee due shall be for an amount equal to the average amount invoiced to entities who were invoiced pursuant to Subparagraph 3(b)(i).

c. On a quarterly basis, Call2Recycle shall send you an invoice that itemizes your share of Call2Recycle's costs of collecting primary batteries in Vermont, as further specified in Attachment A (your "Quarterly Payment Obligation").

d. Unless you invoke the dispute resolution provisions of Section 5 of this Agreement, your payment of any invoice rendered per Subsection 3(c) shall be due within thirty (30) calendar days of your receipt from Call2Recycle of the invoice. If you do invoke the dispute resolution provisions as to any amounts, you may withhold until the dispute is resolved only the disputed portion of any invoice.

e. The following penalties shall apply in the event the undisputed portions of an invoice are not paid by the date due:

(i) You will accrue interest on the amount unpaid at the prime rate published by the Wall Street Journal on the day the payment was due plus 5%, calculated on an annualized basis and compounded monthly; and

(ii) If you fail to make a payment within sixty (60) calendar days of your receipt of an invoice, Call2Recycle will provide you notice and, if the invoice is not paid within ten (10) business days of such notice, Call2Recycle shall have the right to terminate all its obligations arising under this Agreement and to notify the Secretary that you are no longer participating in Call2Recycle's Program. You shall have no right to a refund of any amounts already paid, and you shall remain liable for the unpaid amount plus interest as permitted by this Subsection.

#### **4. INDEMNIFICATION, INSURANCE, AND LIABILITY.**

a. Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party and its successors, assigns, directors, officers, employees, agents, and representatives (the "Indemnified Party") from and against any and all liabilities, demands, causes of action, lawsuits governmental agency actions, losses and damages of all kinds, fines, penalties, costs and expenses, as well as any and all claims for any of the foregoing, including, but not limited to, reasonable attorneys' fees and costs of court, arising from or relating to the Indemnifying Party's: (i) breach of any provision of this Agreement; or (ii) negligence or willful misconduct.

Without limitation of the foregoing, you shall indemnify and hold harmless Call2Recycle and its successors, assigns, directors, officers, employees, agents, and representatives from and against any and all liabilities, demands, causes of action, lawsuits, governmental agency actions, fines and penalties other than those related to transportation of used batteries by Call2Recycle or a contractor to Call2Recycle, other losses and damages of all kinds, costs, expenses, and any and all claims for any of the foregoing, arising from the presence of mercury or any other constituent that results in the characterization as "hazardous waste" or "dangerous goods" of a battery for which you are producer, as that term is defined in 10 V.S.A. § 7581(11).

The Indemnifying Party shall (i) defend at its own cost and through counsel of its own choice or (ii) settle, subject to the approval of the other Party, such approval not to be unreasonably conditioned, withheld or delayed, any actions or suits against the other for which it is responsible hereunder and shall reimburse the other for reasonable attorneys' fees, interest, costs of suit, and all other expenses incurred by the other in connection therewith. The Indemnified Party shall (a) provide the Indemnifying Party with prompt written notice of any claim, suit, or proceeding for which the indemnified Party is seeking indemnity, and (b) reasonably cooperate with the defense or settlement negotiations, as the case may be, conducted by the Indemnifying Party.

b. Call2Recycle shall maintain comprehensive general liability insurance policies of at least one million U.S. dollars (\$1,000,000.00) per occurrence, two million U.S. dollars (\$2,000,000.00) aggregate, and pollution insurance coverage of at least five million U.S. dollars (\$5,000,000.00) per occurrence, seven million U.S. dollars (\$7,000,000.00) aggregate, or equivalent coverages in another form. Call2Recycle shall require all transporters with which it contracts to maintain vehicle insurance coverage of at least one million U.S. dollars (\$1,000,000) per occurrence, two million U.S. dollars (\$2,000,000.00) aggregate.

c. NOTWITHSTANDING CALL2RECYCLE'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION, CALL2RECYCLE SHALL NOT BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OR ALLEGED TO ARISE OUT OF THIS AGREEMENT OR ANY E-WASTE PROGRAM

OPERATED BY CALL2RECYCLE, EVEN IF CALL2RECYCLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 5. DISPUTE RESOLUTION.

a. If either Party disagrees with the amount of any fee paid or alleged to be due under this Agreement, or if either Party wishes to inform the other Party of a dispute arising under or connected with this Agreement, the Party will promptly notify the other Party in writing of the dispute. The Parties will seek to resolve the dispute informally. Any amounts not disputed shall be paid promptly.

b. If the dispute has not been resolved informally within thirty (30) calendar days after the receipt of written notice, either Party may refer the dispute to the American Arbitration Association for mediation. Any disputes that arise under or relate to this Agreement, and that are not resolved informally or by mediation, may only be decided by arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Any such arbitration will take place in the District of Columbia unless the Parties mutually agree on another location. To the extent the dispute is resolved in arbitration in Call2Recycle's favor, Call2Recycle shall be awarded interest on any delayed payment at the rate of the prime rate published by the Wall Street Journal on the day the payment was due plus 5%, calculated on an annualized basis and compounded monthly. Any judgment upon the award rendered by the arbitrator shall be final and binding and may be entered in any court with jurisdiction as provided in Section 13.

c. Nothing in this Agreement limits your right or the right of Call2Recycle to seek a preliminary injunction against the other Party pending the resolution of an arbitrable dispute.

d. If any arbitration or action is commenced by any Party to enforce or interpret the terms of this Agreement, the Party finally prevailing in such arbitration or action (after appeal, if any) shall be entitled to recover from the unsuccessful Party reasonable attorneys' fees, costs, and disbursements in addition to any other relief to which it may be entitled.

e. If any dispute arising hereunder shares common questions of law or fact with a separate dispute(s) between Call2Recycle and another entity(ies), you

consent to arbitration of the related disputes in a single, consolidated proceeding.

## 6. DURATION AND TERMINATION.

a. The Agreement shall be in effect from the Effective Date through the end of the calendar year following the second anniversary of that date (the "Initial Term"). This Agreement shall be automatically, annually renewed thereafter on a calendar year by calendar year basis (each a "Term"). Either Party may decline to renew this Agreement by providing to the other Party at least ninety (90) calendar days' notice prior to the expiration of the Agreement Term then in effect.

b. This Agreement may be terminated at any time as provided below:

(i) By you within ten (10) calendar days of your receipt of notification that (A) Call2Recycle's Plan has been approved by the Vermont Secretary of Natural Resources; (B) Call2Recycle has notified you that it has concluded that the Secretary will not approve the plan Call2Recycle submitted without amendments that are unacceptable to Call2Recycle; (C) Call2Recycle has notified you that it is uncertain that its plan can be approved in a form acceptable to Call2Recycle prior to January 1, 2016; or (D) Call2Recycle is proposing an amendment to Attachment A;

(ii) By Call2Recycle (A) within ten (10) calendar days' after your receipt of written notice that Call2Recycle has concluded that it is unable to submit a Plan to the Vermont Secretary of Natural Resources that is acceptable to both the Secretary and Call2Recycle, (B) upon your failure to return to Call2Recycle, within ten (10) calendar days after your receipt of a proposed amendment to Attachment A, of an executed copy of that amendment; or (C) ninety (90) calendar days' written notice to you;

(iii) By mutual agreement of the Parties; *provided*, however, that no such agreement shall be valid unless it is in writing and is signed by both Parties;

(iv) By Call2Recycle pursuant to Subparagraph 3(e)(ii); *provided*, however, that such termination shall not relieve you of your obligation to pay any amounts then due under this Agreement. For avoidance of all doubt, Call2Recycle shall not be obligated to continue collecting and recycling primary batteries on your behalf after the effective date of termination;

(v) By either Party pursuant to Section 8 or Subparagraph 2(a)(vii); and

(vi) By either Party following ten (10) calendar days' written notice in the event that:

(A) the other Party commits a material breach of this Agreement, and that breach is not cured within thirty (30) calendar days after that Party has received written notice of the breach (except that Call2Recycle's discontinuation of its efforts to obtain approval by the Secretary of its Plan or of the Program shall not constitute a material breach);

(B) A proceeding is filed by or against the other Party under any chapter of the federal bankruptcy laws;

(C) A trustee or receiver is appointed for the other Party; or

(D) There is a change of ownership of the other Party.

c. If this Agreement is terminated pursuant to the reasons set forth in Subsection 6(b):

(i) You are still obligated to pay to Call2Recycle all undisputed fees that were incurred prior to the effective date of termination. You shall have no right upon termination to the return of any amounts you have paid to Call2Recycle to which Call2Recycle was entitled under this Agreement; and

(ii) The provisions relating to confidentiality, governing law, dispute resolution, jurisdiction, indemnification, and liability shall remain in effect.

## **7. ASSIGNMENT.**

This Agreement and any or all of Call2Recycle's obligations hereunder may be assigned by Call2Recycle to any successor entity(ies). This Agreement may not be assigned by you other than to an entity controlled by or in common control with you.

## **8. UNFORESEEN OCCURRENCES.**

Any delay or failure by Call2Recycle or you in the material performance of its obligations arising under this Agreement shall be excused if and to the extent the

failure is due to a cause or causes beyond the reasonable control of Call2Recycle or you ("Force Majeure"); *provided*, however, that Call2Recycle or you must give the other Party prompt written notice of the delay and the Party affected by the Force Majeure must be diligent in attempting to remove such cause or causes. Force Majeure includes, but is not limited to, acts of God, strikes, action of regulatory agencies, fire, flood, wind storm, explosion, riot, war, and sabotage. If the Force Majeure is not rectified within sixty (60) calendar days of written notice, you or Call2Recycle (as the case may be) may terminate this Agreement. Such termination of the Agreement will be effective thirty (30) calendar days after you or Call2Recycle provide written notice of such termination.

## **9. NO AGENCY.**

You are not the agent of Call2Recycle for any purpose. Call2Recycle is not your agent for any purpose. Nothing in this Agreement shall be interpreted to create such an agency relationship between the Parties. Neither Call2Recycle nor you shall represent that you are an agent of the other Party.

## **10. AUTHORITY.**

By executing this document, each signatory represents that the entity on behalf of which he or she is signing is authorized to be bound by it, and that he or she has authority to bind that entity for purposes of this Agreement.

## **11. NOTICE.**

Any notice required under this Agreement must be in writing and delivered by hand, by certified or registered mail with the proper postage and return receipt requested, by a nationally-recognized overnight delivery service, or by confirmed electronic delivery. These notices must be sent to a Party at the address set forth below, unless that Party has provided a new address in writing:

### **TO CALL2RECYCLE:**

Roxane Peggs, Program Director  
Call2Recycle, Inc.  
1000 Parkwood Circle  
Suite 200  
Atlanta, GA 30334

Fax: 678-419-9986  
Email: rpeggs@call2recycle.org

**TO CUSTOMER:**

Customer Name: \_\_\_\_\_  
c/o Individual Name: \_\_\_\_\_  
Individual Title: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State & Zip: \_\_\_\_\_  
Email: \_\_\_\_\_

Notice shall be deemed effective only when it has been received by the intended recipient, or when the intended recipient refuses receipt. Either Party may change the notice address by following the procedure established by this Section.

**12. CONFIDENTIALITY.**

- a. The only information obtained from you pursuant to this Agreement that Call2Recycle shall be required to treat as “Confidential Information” is estimated sales information provided in response to Subparagraph 2(b)(iii) and any company-specific percentage sales allocations derived from that information.
- b. Your participation in the Call2Recycle Plan shall not be deemed Confidential Information. Call2Recycle may make use of your brand names and/or logos in statements related to the Plan that appear on the Call2Recycle Website and/or other print and electronic materials, including, but not limited to, banners, brochures, and press releases.
- c. Call2Recycle shall not, without your prior written consent, at any time (i) use any Confidential Information for any purpose other than in connection with this Agreement for the benefit of you, or (ii) disclose any portion of any Confidential Information to third parties except as may be required by law or except disclosure to auditors, attorneys, accountants or consultants retained by Call2Recycle in the course of business who agree to be bound by confidentiality obligations such as those provided in this Agreement. If Call2Recycle is required to disclose any Confidential Information pursuant to an order or requirement of a court, administrative agency, or other governmental body, Call2Recycle shall provide prompt written notice of such order or requirement to you so that you may seek a protective order, and Call2Recycle shall use reasonable efforts to cooperate with you in your efforts

to obtain a protective order.

d. Call2Recycle shall disseminate Confidential Information to its employees only on a “need-to-know” basis.

e. Call2Recycle shall only be obliged to return to you Confidential Information it received in writing from you if you request such a return within ten (10) calendar days of providing or receiving notice of termination of this Agreement.

**13. CONSTRUCTION, MODIFICATION, AND INTERPRETATION OF AGREEMENT.**

- a. This Agreement shall be interpreted pursuant to the laws of the State of Delaware (except that the conflict of laws rules of the State of Delaware shall not apply) and shall be deemed to have been entered into in the State of Delaware.
- b. The parties anticipate that this Agreement shall be modified by replacement of Attachment A within fifteen (15) calendar days after approval of the Call2Recycle Plan by the Secretary, and potentially on an annual basis thereafter. No modification of this Agreement shall be valid unless it is in writing and is signed by both Parties. No waiver of any provision of this Agreement shall be valid unless it is in writing and is signed by the Party against whom it is sought to be enforced. The failure of any Party at any time to insist upon strict performance of any condition, promise, agreement, or understanding set forth in this Agreement shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same or any other condition, promise, agreement, or understanding at a future time.
- c. Each Party hereto irrevocably consents to the jurisdiction of the courts of Georgia and the District of Columbia, and of any Federal court located in Georgia or the District of Columbia in connection with any action by Call2Recycle arising out of or relating to this Agreement, as well as in connection with any arbitration commenced in accordance with Section 5. In any such action, each Party waives personal service of any summons, complaint, or other process and agrees that the service thereof may be made by certified or registered mail directed to the Party at its address as set forth herein. Each Party also irrevocably waives any objection to the lack of venue of any action by Call2Recycle arising out of this Agreement in the

courts of the District of Columbia or Georgia of any Federal court located in Georgia or the District of Columbia, and irrevocably waives and agrees not to plead or claim in any such court that any such action brought in any such court has been brought in an inconvenient forum.

d. In the event that any particular provision of this Agreement is found to be invalid or unenforceable, it is the intent of the Parties that the Agreement be construed or reformed to the fullest extent possible so as to conform to the manner in which it was originally intended to operate.

e. This Agreement may be executed in identical counterparts which, taken together, shall be considered a single instrument.

f. All uses of the words "Section(s)," "Subsection(s)," and "Subparagraph(s)" in this Agreement are references to sections, subsections, and subparagraphs of this Agreement, unless otherwise specified.

g. The headings and captions contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The use of the word "including" herein shall mean "including without limitation."

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS THEREOF, the Parties hereto have executed this Agreement intending to be bound as of the Effective Date.

**Call2Recycle, Inc.**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Customer:**

Corporate Name: \_\_\_\_\_  
Corporate Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Financial Executive Responsible for Customer Fee Payment**

Printed Name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

**Person Responsible for Quarterly Reporting of Battery Sales by weight into the Vermont Marketplace**

Printed Name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_