



Changing habits. Inspiring action.™

## USED CONSUMER-TYPE PORTABLE BATTERY RECYCLING AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (the “**Commencement Date**”).

### **B E T W E E N:**

**CALL2RECYCLE CANADA, INC.**  
(hereinafter referred to as “**Call2Recycle**”)

- and -

**THE CORPORATION OF THE CITY OF CLARENCE-ROCKLAND**

(hereinafter referred to as the “**Local Government**”)

(hereinafter referred to as the “**Parties**” or singularly as a “**Party**”)

### **WHEREAS:**

- A. Call2Recycle is a not-for-profit, stewardship organization which carries on business nationally, collecting, transporting, and recycling consumer batteries;
- B. Call2Recycle operates a stewardship plan in the Province of Ontario (the “**Province**”) (such stewardship plan, as may be amended from time to time, being the “**Plan**”), and
- B. The Local Government collects Collected Materials (as defined below) for recycling and wishes to provide them in bulk to Call2Recycle for further handling.

**NOW THEREFORE** in consideration of the promises and mutual agreements contained herein and subject to the terms and conditions hereinafter set forth, the Parties covenant and agree as follows:

### **1.0. Definitions and Interpretation**

1.1 In this Agreement:

- (a) “**Agreement**” means this Agreement and includes all schedules and amendments hereto;

- (b) “**Business Day**” means Monday through Friday, excluding statutory holidays and any other day that the Government of the Province has elected to be closed for business;
- (c) “**Collected Materials**” means any Used Consumer-Type Portable Battery, and/or Used Cellphone provided under this Agreement and includes materials collected by the Local Government via depot collections, curbside collections and event days, among other methods;
- (d) “**Designated Facility**” means an approved Call2Recycle sorting facility;
- (e) “**Non-Conforming Battery(ies)**” means any Used Consumer-Type Portable Battery that: (i) weighs in excess of five (5) kilograms (eleven (11) pounds); or (ii) is not identifiable by Call2Recycle, in its sole discretion, as a battery or such battery’s chemistry is not identifiable, or (iii) is not intact, defective or otherwise damaged; or (iv) is corroded, or otherwise has been exposed to the elements; or (v) is considered non-confirming pursuant to the Plan; or (vi) is an Other Covered Battery, or (vii) has been recalled by the manufacturer or other distributor; or (viii) is otherwise deemed not safely recyclable or handled in accordance with standard protocols and procedures as determined by Call2Recycle in its sole discretion”;
- (f) “**Non-Conforming Materials**” means any liquids, refuse, litter, junk, trash, garbage, needles, medication, or any other materials deemed by Call2Recycle to be non-conforming materials;
- (g) “**Non-Conforming Shipment**” means any Shipment(s) made by the Local Government where any container included in that Shipment: (i) contains more than five (5%) percent by weight of materials that are Non-Conforming Materials; (ii) contains more than five (5%) percent by weight of materials that are Non-Conforming Batteries; or (iii) contains any amount of MHSW (other than hazardous waste comprising any eligible Used Consumer-Type Portable Battery), which is subject to any applicable laws or regulations in the Province, or any province where a Designated Facility may be located from time to time;
- (h) “**MHSW**” means municipal hazardous or special waste;
- (i) “**Other Covered Battery(ies)**” means batteries that are sold in or packaged with electric or electronic devices or equipment that are covered under any stewardship plan or extended producer responsibility plan, other than the Plan;
- (j) “**Regulation**” means the applicable recycling act or regulation as is in effect in the Province, as amended, including, but not limited to Ontario Regulation 30/20 under the *Resource Recovery and Circular Economy Act, 2016* (Ontario);

- (k) “**Service Provider**” means a third party that provides services to the Local Government in relation to MHSW;
- (l) “**Shipment**” means any conforming shipment of eligible Used Consumer-Type Batteries that are shipped by the Local Government to a Designated Facility;
- (m) “**Used Consumer-Type Portable Battery**” means a used battery or battery pack not considered to be a Non-Confirming Battery, including dry cell rechargeable and primary batteries weighing less than five (5) kilograms (eleven (11) pounds), that are sold for replacement purposes for use in electronic or electrical devices not as sold without batteries, containing no liquid electrolyte, and employing one of nickel cadmium, nickel metal hydride, lithium ion, nickel zinc, sealed lead, alkaline-manganese, zinc-carbon, zinc-air, silver oxide and/or and lithium; and

1.2 The Parties acknowledge that the recitals to this Agreement are true and correct.

## **2.0. Term of Agreement, Amendment and Assignment**

- 2.1 The term of this Agreement shall commence as of the Commencement Date and shall remain in effect for one year from date of signing, unless terminated in accordance with this Agreement or upon the termination of the Plan, in which case this Agreement shall automatically terminate. This Agreement shall automatically renew thereafter for subsequent one year terms, unless either Party notifies the other at least ninety (90) days in advance of any renewal term commencement date that the Agreement shall not be renewed.
- 2.2 If, in the reasonable opinion of either Party, there has been a breach of this Agreement by the other Party (the “**Defaulting Party**”), the non-Defaulting Party may give the Defaulting Party written notice to remedy the breach or default within sixty (60) days, failing which the Agreement may be terminated.
- 2.3 Unless agreed to in writing by the Parties, or as otherwise provided for in this Agreement, this Agreement may not be amended, provided that in the event of any changes to the Plan, Call2Recycle may unilaterally amend this Agreement as may be necessary to comply with the Plan.
- 2.4 Neither Party shall subcontract or assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of the other Party, which consent shall not unreasonably be withheld.

## **3.0. Shipments of Collected Materials**

- 3.1 Unless otherwise designated by Call2Recycle, the Local Government shall ship all Collected Materials to the Designated Facility in open top UN rated steel drums (1A) with a plastic liner and an open head and lever lock ring lid (“**Steel Drums**”), UN rated polyethylene drums (1H) with an open head and level lock ring lid (“**Polyethylene Drums**”), or any other Call2Recycle certified and/or approved box, receptacle, or containers, which may be

designated and/or changed from time to time (collectively, “**Approved Containers**”). All Steel Drums and/or Polyethylene Drums must be completely full and must be sealed with their corresponding lever locking ring lid, prior to any Shipment to a Designated Facility. Approved Containers may be placed on a pallet and should be properly secured with shrink wrap prior to any Shipment to a Designated Facility. All lithium, lithium ion, button cells, or lead acid batteries placed in any Steel Drums, Polyethylene Drums or Approved Containers shall be terminally protected by either placing each such battery in an individual plastic bag, or have their terminals securely covered with tape to prevent any possible short circuits. Packaging of any Used Consumer-Type Portable Batteries may not under any circumstance contain any Non-Conforming Batteries, Other Covered Batteries, or other Non-Conforming Material. All Steel Drums, Polyethylene Drums and Approved Containers used for Shipment must be provided or otherwise approved by Call2Recycle and properly secured by the Local Government prior to Shipment.

- 3.2 The Local Government shall ship all Used Consumer-Type Portable Batteries collected to Call2Recycle only. In order to participate in this reimbursement program, the Local Government cannot ship Used Consumer-Type Portable Batteries to another service provider, program, or entity. All Shipments to the Designated Facility by the Local Government shall use a Call2Recycle designated freight provider and shall comply with the shipping instructions to be provided to the Local Government prior to its first Shipment. Call2Recycle shall notify the Local Government of its list of designated freight providers on or before the Commencement Date.
- 3.3 If Call2Recycle or a Designated Facility determines within thirty (30) days after receipt of a Shipment from or on behalf of the Local Government that such Shipment is a Non-Conforming Shipment, Call2Recycle or its Designated Facility shall (i) arrange with the Local Government for the satisfactory disposition of the materials that are not Used Consumer-Type Portable Batteries, on mutually agreeable terms and conditions, or (ii) reject and return Non-Conforming Materials to the Local Government without further obligation. In either event, Call2Recycle shall invoice the Local Government for out of pocket costs and expenses of receiving and handling any Non-Conforming Materials in a Non-Conforming Shipment, and such invoice shall be paid by the Local Government within thirty (30) days of the date of issuance.
- 3.4 All Local Government collection sites, whether fixed or temporary, may accept up to 15 kilograms of Used Consumer-Type Portable Batteries per day from any one person. If any Local Government collection site accepts more than 15 kilograms of Used Consumer-Type Portable Batteries per day from any one person, the Local Government shall ensure that certain information be collected from such a person, including: the person’s name, contact information and the total weight of Used Consumer-Type Portable Batteries accepted.

#### 4.0. Financial Arrangements

- 4.1 For each Shipment of Collected Materials that is shipped by the Local Government to the Designated Facility:
- (a) Call2Recycle shall pay Local Government:
    - (i) a fee of \$0.55 per kilogram for Used Consumer-Type Portable Batteries or any other eligible battery under the Regulation which are collected by Local Government through bulk depot collections (“**Depot Collections**”), to cover the cost of materials required for Shipments, including: supplies, materials, and handling of Approved Containers; and
    - (ii) a fee of \$1.20 per kilogram for Used Consumer-Type Portable Batteries, or any other eligible battery under the Regulation which are collected by Local Government through any household hazardous waste event day performed by a contracted third party (“**HHWE Collections**”), to cover costs associated with running such events, including: supplies, materials, and handling of Approved Containers;
  - (b) Call2Recycle shall directly compensate the Local Government’s designated freight provider(s) for Shipment of bulk depot collections to the Designated Facility, provided that designated freight provider is approved by Call2Recycle, as set out in Subsection 3.2 herein.
- 4.2 For Collected Materials from Depot Collections, Local Government will receive a payment summary along with payment on a monthly basis within sixty (60) days following receipt and sorting of Collected Materials, and according to Call2Recycle payment terms. The Local Government is not required to submit an invoice to receive payment for Collected Materials from Depot Collections. Prior to payment, Call2Recycle may also take steps to verify that the Collected Materials shipped by the Local Government were received at the Designated Facility. The Local Government shall provide Call2Recycle, or such other parties as Call2Recycle shall direct, with all the necessary information as may be reasonably required by Call2Recycle or its designee(s) to verify any claim by the Local Government for reimbursement of expenses pursuant to this Agreement.
- 4.3 For Collected Materials from HHWE Collections, the Local Government must submit an invoice, including a bill of lading and/or any other applicable shipping documentation to Call2Recycle within thirty (30) days of any Shipment. Prior to payment, Call2Recycle may also take steps to verify that the Collected Materials shipped by the Local Government were received at the Designated Facility. The Local Government will receive a payment summary and payment for materials from HHWE Collections within (60) days following receipt of invoice, supporting documentation and receipt and sorting of Collected Materials. The Local Government shall provide Call2Recycle, or such other parties as Call2Recycle shall direct, with all the necessary information as may be reasonably required by Call2Recycle or its

designee(s) to verify any claim by the Local Government for reimbursement of expenses pursuant to this Agreement. HHWE Collections submitted without the necessary documentation will be compensated at the Depot Collections rate set out at Subsection 4.1(a)(i).

- 4.4 Local Government shall keep and preserve all applicable records and shipping documents for a period of not less than sixty (60) months following delivery of each applicable Shipment, as necessary to verify Shipments.

## **5.0. Regulatory and Compliance**

- 5.1 Authority. The Local Government hereby represents and warrants that it has the legal power and authority to enter into this Agreement, and that there are no outstanding contracts, commitments, or legal impediments which may limit, restrict or otherwise impair its ability to perform its obligations hereunder.
- 5.2 Title to products: The Local Government shall be the owner of all right, title, and interest in all Collected Materials from the time when the Local Government collects and/or accepts them until such point in time that title has been transferred, conveyed and assigned to any service provider or Designated Facility pursuant to a Shipment. At no time will Call2Recycle possess any right, title or interest in or to any Collected Materials unless possessed and handled directly by designated Call2Recycle employees, notwithstanding any Shipment made to a Designated Facility.
- 5.3 Regulatory compliance: In performing its obligations under this Agreement, the Local Government shall obtain all permits, licenses, authorizations and approvals required by applicable law and observe and comply with all applicable laws, including, if applicable in the Province, any certificates or approvals issued to the Local Government. The Local Government shall assist Call2Recycle, as required, in providing information and reports to satisfy regulatory and reporting requirements relating to the Plan. The Local Government shall take all reasonable steps to ensure any Service Providers meet the same requirements.
- 5.4 Site visits and audits: Upon reasonable notice, Call2Recycle or its agent shall have the right to enter upon any collection facility utilized by the Local Government for the purpose of conducting inspections or compliance audits. The Local Government shall take all reasonable steps to ensure that Call2Recycle has the same rights in respect of any Service Provider used by the Local Government. Call2Recycle or its agent shall be accompanied by a representative of the Local Government for any such visits or audits.

## **6.0. Indemnity and Insurance**

- 6.1 Indemnity: Each Party (the “Indemnifying Party”) hereby indemnifies and saves harmless the other Party (the “Indemnified Party”), its directors, officers, contractors, employees, and agents, from and against any and all manner of actions or causes of actions, damages (but not including consequential damages), costs, loss or expenses of whatever kind (including related legal fees on a full indemnity basis) which the Indemnified Party, its

directors, officers, contractors, employees, and agents may sustain, incur or be put to by reason of or directly or indirectly arising out of any willful misconduct or negligence of the Indemnifying Party or any person for whom the Indemnifying Party is, at law, responsible, in relation to matters arising out of this Agreement.

- 6.2 Limitations of Liability. In no event will either party claim any exemplary, aggravated or punitive damages in connection with this Agreement, and under no circumstances will a party be liable to the other party for any indirect, special or consequential damages, compensation or loss of profits, anticipated revenue, savings or goodwill, or any other economic loss arising out of or in any way related to this Agreement, even if advised of the possibility thereof.
- 6.3 Insurance. The Local Government shall, during the term of the Agreement, self-insure, maintain at its expense, and/or require its Service Provider to maintain at either the Local Government's or Service Provider's expense Comprehensive General Liability coverage with limits of not less than \$5,000,000 (five million dollars) per occurrence. Unless the Local Government wholly self-insures, the Local Government shall deliver a copy of Certificate(s) of Insurance maintained by the Local Government or a Service Provider pursuant to this Agreement, upon the Commencement Date, and annually upon renewal of the Local Government or Service Provider's insurance, naming Call2Recycle as an additional insured. The Certificate(s) of Insurance, referred to in this section must also provide that the Local Government shall provide Call2Recycle with thirty (30) days advance written notice of cancellation, termination, non-renewal, or material change.

## **7.0. Assignment**

- 7.1 During the term of this Agreement, the Local Government hereby expressly covenants and agrees that it shall not subcontract or assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of Call2Recycle, which consent shall not unreasonably be withheld.
- 7.2 The Local Government hereby expressly acknowledges and agrees that Call2Recycle may subcontract or assign any of its rights or obligations under this Agreement or any part thereof to any Affiliated Company or successor, or otherwise in connection with the sale of all or substantially all of its assets.

## **8.0. Notices**

- 8.1 Any notice, request, demand or other instrument or communication herein provided, permitted or required to be given by either Call2Recycle or the Local Government shall be in writing and sufficiently given if delivered personally, by facsimile transmission or other electronic means of written communication tested prior to transmission to the extent such testing is available, or if sent by registered mail to the following respective address hereinafter set out, namely:

Notices to Call2Recycle shall be delivered to:

Notices to the Local Government shall be delivered to:

100 Sheppard Avenue East  
Suite 800  
Toronto, Ontario  
M2N 6N5  
**Attention: President**

1560 Laurier Street  
Rockland Ontario  
K4K 1P7  
**Attention: Clerk**

- 8.2 Any such notice if delivered personally, by facsimile transmission or by other electronic means of written communication on a Business Day before 5:00 p.m. local time at place of receipt, shall be conclusively deemed to have been given on the day of personal delivery, or facsimile transmission or electronic communication (and if after 5:00 p.m. local time at place of receipt the next following Business Day), or, if mailed as aforesaid, shall be conclusively deemed to have been received on the fifth Business Day following the day on which such notice is mailed (except during a postal strike in which case such notice shall be delivered personally). Either Party may, at any time, give written notice to the other of any change of address of the Party giving such notice and from and after the giving of such notice the address therein specified shall (in the absence of knowledge to the contrary) be deemed to be the address of such Party for the giving of notices thereafter.

## **9.0. Dispute Resolution**

- 9.1 If any dispute arises between the Parties pursuant to this Agreement, the Parties shall attempt to resolve the dispute within 30 days upon which written notice of the dispute was first given, or as otherwise agreed upon. If the Parties are unable to resolve the dispute within 30 days, the Parties shall jointly select an arbitrator to arbitrate the dispute. The arbitrator shall render a decision on the dispute and the award arising therefrom, in accordance with the applicable arbitration legislation in effect in the Province, and as amended from time to time.

## **10.0. Term and Termination**

- 10.1 This Agreement is effective as of the Commencement Date and shall continue in full force and effect until otherwise terminated.
- 10.2 Either Party may terminate this Agreement for any reason whatsoever upon not less than one hundred and eighty (180) days prior written notice to the other Party.



- 10.3 Notwithstanding Section 10.2, Call2Recycle may terminate this Agreement immediately at any time, and without prior written notice to Local Government, if:
- (a) In any province that has an extended producer responsibility plan, in the event such a plan is cancelled, Call2Recycle may terminate this Agreement as it relates to that province;
  - (b) The Local Government subcontracts or assigns any rights or obligations under this Agreement, or any part thereof;
  - (c) Any Shipments made by Local Government are deemed by Call2Recycle or any Designated Facility, to be a Non-Conforming Shipment; or
  - (d) A receiver or trustee is appointed for any part of the assets of Call2Recycle.
- 10.4 Call2Recycle expressly reserves the right, in its sole discretion and without prior written notice, at any time, and for any reason whatsoever, to amend, suspend or terminate all or any portion of the Plan.
- 10.5 On the date of termination neither party shall have any obligations, financial or otherwise, hereunder save and except for matters arising prior to termination, which may involve obligations of the parties after termination. All sections of this Agreement which by their nature should survive termination, including, without limitation, accrued rights to payment, indemnities, and limitations of liability.

## **11.0. General Provisions**

- 11.1 This Agreement constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.
- 11.2 All of the terms, covenants, conditions, and other provisions contained herein, and all of the obligations under or pursuant to this Agreement, shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- 11.3 There are no representations, warranties, collateral agreements, or conditions affecting this Agreement, other than those expressed in writing herein.
- 11.4 This Agreement shall be governed by and construed in accordance with the laws of the Province. Each of the Parties attorn to the non-exclusive jurisdiction of the courts of the Province.
- 11.5 This Agreement may be executed in counterparts, the counterpart copies of this Agreement together constituting a full, valid, and binding Agreement among the Parties hereto.

- 11.6 In the event that any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or invalid or unenforceable for any reason whatsoever, such provision shall be severed from this Agreement and will not affect the legality or validity or enforceability of the remainder of this Agreement or any other provision hereof.
- 11.7 The rights, remedies, and privileges in this Agreement given to the Parties:
- (a) are cumulative, and any one or more may be exercised;
  - (b) are without prejudice to and are in addition to and apply notwithstanding any other provisions in this Agreement; and
  - (c) are not and shall not be dependent or conditional upon, or in any way lessened, restricted, or affected by any other provisions of this Agreement.
- 11.8 Either Party may, from time to time, waive the performance of the other Party of any provision of this Agreement, either before or after that performance is done, but a waiver is not effective or binding upon the Party providing the waiver, unless it is in writing and signed by the Party providing the waiver or under its authority, and does not limit or affect the Party providing the waiver's right with respect to any other breach or non-performance, whether prior or subsequent thereto.
- 11.9 Any Service Providers engaged by the Local Government to assist in providing MHSW services shall be required by the Local Government to comply with and adhere to the terms and conditions, as applicable, of this Agreement.
- 11.10 Each Party shall perform the acts, execute and deliver the writings, and give the assurances necessary from time to time to give full effect to this Agreement.
- 11.11 This Agreement supersedes and replaces all oral and written communications between the Parties relating to the subject matter of this Agreement.

*<Signature page follows>*

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement as of the date first written above.

**CALL2RECYCLE CANADA, INC.**

Per: \_\_\_\_\_  
Name:  
Title:  
*I have authority to bind Call2Recycle*

**The Corporation of the City of Clarence-Rockland**

Per: \_\_\_\_\_  
Name: Julian Lenhart  
Title: Director of Infrastructure and Planning.  
*I have authority to bind the Municipality*