

**Caution:**

*This draft Operating Agreement with proposed amendments is provided solely to facilitate public consultation under section 16 of the Environmental Bill of Rights, 1993. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the amended and restated Operating Agreement. The content, structure, form and wording of the draft Operating Agreement are subject to change as a result of the consultation process and as a result of review, editing and correction.*

**CONSULTATION DRAFT**

**OPERATING AGREEMENT BETWEEN :**

**HER MAJESTY THE QUEEN in Right of Ontario  
as represented by the Minister of the Environment,  
Conservation and Parks**

**- and -**

**RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY**

**as amended and restated**

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## OPERATING AGREEMENT

This Operating Agreement made in duplicate,

BETWEEN:

**HER MAJESTY THE QUEEN in Right of Ontario  
as represented by the Minister of the Environment, Conservation and Parks**

- and -

**RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY,**

WHEREAS the Minister of the Environment, Conservation and Parks and the Resource, Productivity and Recovery Authority,

- A. entered into the Agreement, as required under section 28 of the *Resource Recovery and Circular Economy Act, 2016*;
- B. reviewed the Agreement in accordance with section 28 of the *Resource Recovery and Circular Economy Act, 2016* and wish to make certain amendments;
- C. are restating the Agreement, as amended, for convenience and ease of use;

**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. **DEFINITIONS AND INTERPRETATION**

1.1 When used in this Agreement, the following words and expressions have the following meanings:

- (a) "Acts" means both the *Resource Recovery and Circular Economy Act, 2016* and the *Waste Diversion Transition Act, 2016*;
- (b) "Agreement" means this operating agreement which is entered into pursuant to section 28 of the *Resource Recovery and Circular Economy Act, 2016* and includes all attached schedules and, as of the Amendment and Restatement Effective Date, the amendments contained in this amendment and restatement;

- (c) "Agreement Effective Date" means March 27, 2017.
- (d) "Amendment and Restatement Effective Date" means the date that this amendment and restatement has been executed by both parties.
- (e) "Authority" means the Resource Productivity and Recovery Authority, a corporation without share capital continued under Part III of the Resource Recovery and Circular Economy Act, 2016;
- (f) "Board" means the board of directors of the Authority;
- (g) "CEO" means the chief executive officer of the Authority;
- (h) "Chair" means the chair of the Board;
- (i) "Crown" means the Queen in right of Ontario;
- (j) "Deputy Registrar" means an individual appointed under section 46 of the *Resource Recovery and Circular Economy Act, 2016*;
- (k) "Fiscal Year" has the meaning as set out in section 32 of the *Resource Recovery and Circular Economy Act, 2016*, namely, the period from January 1 to December 31 in each year;
- (l) "FIPPA" means the *Freedom of Information and Protection of Privacy Act*;
- (m) "Government" means the Government of Ontario;
- (n) "Industry Funding Organization" has the meaning set out in section 2 of the *Waste Diversion Transition Act, 2016*, namely a corporation continued under section 15 of the *Waste Diversion Transition Act, 2016* as an industry funding organization that is designated for a waste diversion program;
- (o) "Industry Stewardship Organization" means an organization that operates an industry stewardship plan continued under section 36 of the *Waste Diversion Transition Act, 2016* or approved under section 37 of the *Waste Diversion Transition Act, 2016*;
- (p) "Minister" means the Ontario Minister of the Environment, Conservation and Parks or any other member of the Executive Council to whom responsibility for the Acts is assigned or transferred under the *Executive Council Act*, acting for and on behalf of the Crown;
- (q) "Ministry" means the Ontario Ministry of the Environment, Conservation and Parks, as may be renamed or reorganized from time to time;

- (r) “Personal Information” has the meaning set out in FIPPA;
- (s) “Registrar” means an individual appointed under section 45 of the *Resource Recovery and Circular Economy Act, 2016*;
- (t) “Registry” means the Resource Productivity and Recovery Registry established under section 50 of the *Resource Recovery and Circular Economy Act, 2016*;
- (u) “RRCEA” means the *Resource Recovery and Circular Economy Act, 2016*;
- (v) “WDTA” means the *Waste Diversion Transition Act, 2016*.

1.2 In this Agreement,

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the word “including” or “includes” shall mean “including [or includes] without limitation”;
- (c) all references to days in this Agreement are to calendar days, unless expressly set out otherwise;
- (d) 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;
- (e) the division of this Agreement into separate sections and subsections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (f) this Agreement should be read together with the Acts. In the event of conflict between this Agreement and any act or regulation under which the Authority has powers or duties, the act or regulation prevails.

**2. PURPOSE OF THE AGREEMENT**

2.1 The purpose of this Agreement is to:

- (a) clarify the roles, duties and responsibilities of the Minister and the Authority in relation to the Acts and any administrative matters under the Acts;

- (b) set out matters that the Minister considers advisable in the public interest relating to the Authority's carrying out of its objects, including matters relating to governance and operations, as well as any matters required to be included under any other act;
- (c) set out the accountability framework between the parties and clarify the administrative, financial, working and reporting relationships between the parties; and
- (d) promote openness and transparency to serve the public interest.

### **3. NOT CROWN AGENTS**

- 3.1 As per section 37 of the RRCEA, the Authority and its members, officers, employees and agents are not agents of the Crown in right of Ontario and shall not hold themselves out as such.

### **4. MANDATE**

- 4.1 The objects of the Authority as set out in section 24 of the RRCEA form the mandate of the Authority which includes performing the duties and exercising the powers given to the Authority under the RRCEA and WDTA, as well as any other act.
- 4.2 The Authority shall not carry out any activities other than those that are within its mandate as set out in section 4.1 of this Agreement.

### **5. ACCOUNTABILITY RELATIONSHIPS**

- 5.1 The Minister is accountable to the Legislative Assembly of the Province of Ontario for the statutes that the Minister administers, including the Acts and has a legislative oversight role with respect to the Authority.
- 5.2 The Board is accountable to the Minister through the Chair for the performance of the Authority.

### **6. ROLES AND RESPONSIBILITIES OF THE PARTIES**

- 6.1 The Minister:
  - (a) will fulfil the roles and responsibilities as outlined in this Agreement and the Acts in a responsible, complete and thorough manner, and on a timely basis;

- (b) is responsible for overseeing the performance of the Authority with respect to its mandate as articulated in section 4 of this Agreement and for administering the Acts under which the Authority has duties and powers. For this purpose, the Minister requires timely access to information from the Authority as set out in the Information Sharing Protocol in Schedule “A”;
- (c) is responsible for developing statutes, regulations and policies on matters related to resource recovery or waste reduction;
- (d) will inform the Board, through the Chair, of the Government’s priorities and broad policy directions relating to the Authority;
- (e) may provide direction to the Authority as authorized in the Acts, such as issuing policy direction to the Authority, requiring a review of the Authority or of its operations, or requiring the Authority to establish one or more advisory councils;
- (f) will not disclose information supplied in confidence by the Authority where that information satisfies section 17 of FIPPA except with the consent of a person whose interest could be affected by the disclosure or where otherwise required by law;
- (g) shall make best efforts to meet with the Chair from time to time;
- (h) will post the Authority’s annual report on the registry established under the Environmental Bill of Rights, 1993 for public information;
- (i) shall make reasonable efforts to consult with or engage the Authority:
  - (i) during the policy development process, including with respect to any relevant proposed statutes or regulations;
  - (ii) in coordinating public and stakeholder communications regarding any proposed statutes, regulations or policies; and
  - (iii) in the development of communication strategies for both critical and on- going issues; and
- (j) may work with other ministries in facilitating agreements and relationships with the Authority.

## 6.2 The Authority:

- (a) shall conduct its operations in an efficient and economical manner, in accordance with the law, including but not limited to the Acts, and this Agreement and shall advance the principle of maximizing resource recovery and waste reduction to support a circular economy as defined in the RRCEA;



- (b) shall carry out its objects in accordance with the Acts, including operating the Registry and exercising powers and performing duties in relation to compliance and enforcement activities;
- (c) is responsible for ensuring that it has adequate resources, including financial resources, to comply with this Agreement, the Acts, and other relevant law, in accordance with the business plans that it submits to the Minister pursuant to section 33 of the RRCEA;
- (d) will ensure that the terms and conditions of this Agreement, its powers and duties under the Acts, and its responsibilities under its by-laws or other agreements entered into with the Minister are carried out in a responsible, complete and thorough manner, and on a timely basis;
- (e) will follow direction provided by the Minister as authorized in the Acts, such as policy direction issued to the Authority, a requirement for a review of the Authority or of its operations, or a requirement to establish one or more advisory councils, in a responsible, complete and thorough manner, and on a timely basis;
- (f) is responsible for developing and maintaining up-to-date written policies and procedures for each functional area of its business including but not limited to Registry establishment and maintenance, as well as compliance and enforcement activities;
- (g) shall protect the information in the Registry with technological, administrative and physical safeguards that represent best practices in respect of the sensitivity of the information, the format in which it is held and the related privacy risks and secure such information against theft, loss and unauthorized use or disclosure;
- (h) is responsible for exercising powers and performing duties with respect to compliance and enforcement of the Acts;
- (i) when able and appropriate, shall coordinate its compliance and enforcement activities with the compliance and enforcement activities of other provincial, federal and municipal compliance and enforcement authorities;
- (j) shall immediately report to the Minister any reason for concern about the financial state of the Authority or the ability of the Authority to fulfill its mandate as articulated in section 4 of this Agreement;
- (k) is responsible for developing, maintaining and making publicly available on the Registry up-to-date written procurement policies and procedures in keeping with the spirit of the most recent Ontario Public Service *Procurement Directive* to ensure that goods and services, including consulting services

and information technology, are acquired through a process that is fair, open, transparent, geographically neutral, competitive and accessible to qualified vendors;

- (l) is responsible for developing, maintaining and making publicly available on the Registry up-to-date written travel, meal and hospitality expenses policies and procedures in keeping with the spirit of the most recent Ontario Public Service *Travel, Meal and Hospitality Expenses Directive* in order to set out principles for the reimbursement of expenses to ensure fair and reasonable practices, and to provide a framework of accountability to guide the effective oversight of resources in the reimbursement of expenses;
- (m) is responsible for developing, maintaining and making publicly available on the Registry up-to-date written perquisite policies and procedures in keeping with the spirit of the most recent Broader Public Sector *Perquisites Directive* to ensure that a privilege that is provided to an individual or to a group of individuals and provides a personal benefit but is not generally available to others is handled in an accountable and transparent manner;
- (n) is responsible for developing, maintaining and making publicly available on the Registry an up-to-date written access and privacy code which shall be consistent with the principles set out in the access and privacy principles in Schedule "B" as well as a data collection, records retention and destruction policy;
- (o) is responsible for ensuring that the Registrar and Authority staff carry out their duties in a manner consistent with the access and privacy code referred to in subsection 6.2 (n) of this Agreement;
- (p) is responsible for developing, maintaining and making publicly available a French language services delivery plan to ensure compliance with section 56 of the RRCEA. This plan shall describe measures by which the French language services are being offered by the Authority;
- (q) is responsible for appointing the Registrar, who is responsible for establishing, maintaining and operating the Registry;
- (r) is responsible for developing and maintaining by-laws, policies and other tools that establish appropriate performance measurements, governance, and financial management processes with sound internal controls to conduct the Authority's operations effectively and efficiently;
- (s) is responsible for maintaining an effective system, including protocols, for responding to public feedback and complaints received by the Authority related to performing its duties and exercising its powers under the Acts;

- (t) is responsible for providing the Minister with timely information in relation to any matter requested by the Minister and shall also provide the information prescribed in the Information Sharing Protocol in Schedule "A";
- (u) is subject to the confidentiality of information provisions in the Acts when exercising its powers and duties;
- (v) shall provide timely information to the Minister of any issues or concerns related to performing its duties and exercising its powers under the Acts that may require legislative, regulatory, policy or operational changes to resolve;
- (w) shall keep the Minister informed in a timely manner of issues or events that may concern the Ministry or the Government;
- (x) shall provide advice to the Minister on potential or proposed legislative / regulatory changes on matters related to resource recovery or waste reduction.

## **7. BOARD COMPOSITION, APPOINTMENTS AND ELECTIONS**

### **Member Qualifications and Eligibility Criteria**

7.1 Unless superseded by a regulation made under subsection 25 (6) of the RRCEA, when the Board elects individuals to the Board, and when the Minister appoints individuals to the Board, the Board and the Minister shall endeavor to select persons who will:

- (a) assist the Authority in effectively carrying out its objects;
- (b) collectively form a Board that has experience and practical expertise in the following areas:
  - (i) resource recovery and waste reduction;
  - (ii) supply chain management;
  - (iii) compliance and enforcement, including compliance auditing;
  - (iv) data management systems and analysis, information technology issues and trends;
  - (v) information management, including privacy, security and data collection;
  - (vi) finance and auditing;
  - (vii) business and risk management;
  - (viii) corporate governance and management;
  - (ix) public administration and government relations
  - (x) stakeholder engagement and communications; and

(xi) subject to 7.4, experience working for a corporation or other entity, or an individual, with respect to a product, primary packaging, convenience packaging or transport packaging as set out in sections 61 and 62 of the RRCEA.

- 7.2 When the Minister appoints members and when the Board elects members, attention will be given to ensuring that the collective mix of skills and experience supports the Board's ability to add strategic value to the Authority. The Minister and the Board will also seek to achieve diversity in the Board's membership composition.

### **Disqualifications**

- 7.3 A person shall not be appointed by the Minister or elected by the Board to the Board if the person has been or would be upon the termination of their current term of appointment, a member of the Board for a total of more than nine years.

- 7.4 A member appointed by the Minister or elected by the Board to the Board shall not, currently or within six months prior to the appointment or election, be:

- (a) an employee of the Authority;
- (b) a director, officer or employee of a steward designated under the WDTA or an association representing stewards;
- (c) a director, officer or employee of an Industry Funding Organization or an Industry Stewardship Organization;
- (d) a director, officer or employee of a corporation or other entity who on behalf of a steward remitted fees or other valuable consideration to an Industry Funding Organization or an Industry Stewardship Organization in the current calendar year or in the preceding 12 months;
- (e) a director, officer or employee of a corporation or other entity or an individual who has responsibilities with respect to a product, primary packaging, convenience packaging or transport packaging as set out in sections 61 or 62 of the RRCEA;
- (f) a director, officer or employee of a corporation, association or other entity who is retained for the purpose of meeting a person's responsibilities with respect to a product, primary packaging, convenience packaging or transport packaging as set out in sections 61 or 62 of the RRCEA, such as a producer responsibility organization;
- (g) a director, officer or employee of an association representing the interests of a

person described in paragraph (e) with respect to resource recovery and waste reduction;

- (h) a director, officer or employee of a corporation that is an owner or operator of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act*;
- (i) an individual who is an owner or operator of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act*;
- (j) a director, officer or employee of an association representing the interests of waste management service providers;
- (k) a member of a municipal council or an officer or employee of a municipality or of an association representing municipalities, members of municipal councils or officers or employees of municipalities;
- (l) an officer or employee of a local board as defined in the *Municipal Act, 2001* or the *City of Toronto Act, 2006*;
- (m) a director, officer or employee of a corporation or other entity established by a municipality where the corporation or entity's mandate relates to resource recovery and waste reduction;
- (n) a director, officer or employee of a local services board established under the *Northern Services Boards Act*;
- (o) a Member of Parliament or Member of Provincial Parliament; or
- (p) a lobbyist required to register under the *Lobbyists Registration Act, 1998* as a result of activities related to the RRCEA, WDTA or the *Environmental Protection Act*.

7.5 Despite section 7.4, a member appointed by the Minister or elected by the Board is not disqualified if he or she is:

- (a) an employee of a registered charity, university, college or hospital;
- (b) a public servant as defined under the *Public Service of Ontario Act, 2006*; or,
- (c) a person who has been approved, in writing, by both the Minister and the Chair.

## **Performance Evaluation**

- 7.6 The Board shall maintain and periodically update a skills profile of current Board members, including a gap assessment of the kinds of skills that would be needed on the Board. The Board shall provide the Board skills profile to the Minister, upon request.
- 7.7 No less than once by March 31, 2020, and every two years thereafter, the Board shall conduct a performance evaluation for each individual Board member and shall conduct a full Board evaluation. The results of the full Board evaluation shall be summarized in a report and a copy of the report shall be provided to the Chair. The Chair shall provide a copy of the report to the Minister on request.

## **Term**

- 7.8 The term of a person appointed by the Minister and the term of a person elected by the Board shall be in writing and shall not exceed three years.
- 7.9 Members of the Board appointed by the Minister are appointed at pleasure.

## **Vacancy, Resignations, Dismissal, Absence**

- 7.10 A member of the Board immediately ceases to hold office in the following situations:
- (a) the member is deceased;
  - (b) the member resigns;
  - (c) on appointment of an administrator under section 54 of the RRCEA unless the order provides otherwise;
  - (d) a member is incapable of continuing to act as a member and the Board by resolution declares the membership to be vacated;
  - (e) a member becomes a person described under section 7.4 of this Agreement;  
or
  - (f) an elected member has been removed from office by resolution of the Board, where the Board's by-laws provide for this, or in accordance with the provisions regarding removal of directors under the *Corporations Act* or the *Not for Profit Corporations Act, 2010*, if prescribed by regulation.
- 7.11 The Board may elect a member to the Board to fill a vacancy resulting from the application of section 7.10 of this Agreement, if the member's predecessor was elected by the Board.

- 7.12 If there is a vacancy or an anticipated vacancy of an elected member of the Board, the Board shall, as soon as possible, provide the Minister with notice of such vacancy.
- 7.13 If there is a vacancy or an anticipated vacancy of an appointed member of the Board the Minister shall, as soon as possible, provide the Board with notice of such vacancy.
- 7.14 No person shall act for a member of the Board except in accordance with subsection 25 (11), subsection 25 (12) and section 54 of the RRCEA.
- 7.15 The Minister and the Board shall endeavour to fill vacancies in a timely manner, in keeping with the Acts and any applicable regulations.

### **Observers**

- 7.16 A representative from the Ministry may serve as an observer at the Authority's Board meetings.

### **Open Annual Meeting**

- 7.17 The Board shall hold an annual meeting. Each annual meeting held by the Board shall be open to the public and the Board shall make reasonable efforts to inform the public of such meetings, including posting information about the annual meeting on the Registry. At each annual meeting, the Board shall present its annual report and audited financial statements, and report on the affairs of the Authority for the immediately preceding year.

## **8. GOVERNANCE**

- 8.1 The Authority shall demonstrate good corporate governance.
- 8.2 The Authority shall develop by-laws and other tools establishing:
- (a) appropriate performance measurements, governance and financial management processes with sound internal controls to conduct the Authority's operations effectively and efficiently; and
  - (b) an effective system, including protocols, for responding to public feedback and complaints received by the Authority related to performing its duties and exercising its powers under the Acts.
- 8.3 The Authority shall provide its proposed by-laws to the Minister for information purposes prior to submitting them to the Board for approval. The Authority shall also provide the Minister with reasonable advance notice of any by-law changes.

## **Regulatory Governance**

- 8.4 When performing its duties and exercising its powers under the Acts, the Board shall:
- (a) develop and maintain a risk-based compliance framework to support compliance and enforcement with the Acts;
  - (b) implement and report on the risk-based compliance framework; and
  - (c) regularly review the adequacy and effectiveness of the risk-based compliance framework to support compliance and enforcement with the Acts.

## **Independent Decision-Making**

- 8.5 The Authority acknowledges that the Registrar, Deputy Registrar and inspectors exercising statutory and regulatory duties require independent decision-making and, for that purpose, the Authority agrees that the Board and the CEO shall not interfere with the independent exercise of these statutory functions but reserves the right to review how those functions are carried out, consistent with its duty to supervise the management of the business affairs of the Authority and ensure it is consistent with the Authority's objects.

## **Code of Conduct**

- 8.6 The Board shall develop and maintain a code of conduct for the members of the Board, consistent with but not limited to the principles set out in Schedule "C", which addresses the conduct of members and the possibility of any member advancing their personal or business interests or the interests of another person or organization ahead of the interests of the Authority. The Authority shall enable the Minister to review and comment on the code of conduct, as it may be amended from time to time, by providing the Minister with a copy of the code of conduct at least four weeks prior to final approval by the Board. The Authority will also make the code of conduct available to the public on the Registry.

## **9. CORPORATE PLANNING AND REPORTING**

### **Business Plan**

- 9.1 The Authority shall:
- (a) in accordance with subsection 33 (1) of the RRCEA, adopt and submit to the Minister a business plan for the implementation of its objects during that Fiscal Year at least 90 days before the beginning of the Fiscal Year. The



business plan shall be consistent with subsection 33 (2) of the RRCEA and include information in accordance with Schedule “D”. In accordance with subsection 33 (3) of the RRCEA, the Authority shall make each business plan available to the public on the Registry after submitting it to the Minister; and

- (b) enable the Minister or the Ministry to review and comment on the business plan referred to in paragraph (a) of this Agreement by providing the Minister with a copy of the business plan and briefing the Minister or Ministry on the business plan at least six weeks prior to final approval by the Board.

9.2 The Authority’s business plan shall set out the means by which the Authority shall ensure compliance with section 56 of the RRCEA with respect to delivery of French language services.

### **Annual Report**

9.3 The Authority shall:

- (a) not later than June 1 each year, prepare a report in accordance with section 44 of the RRCEA and section 6 of the WDTA on its activities during the previous Fiscal Year; provide a copy of the report to the Minister; and make the report available to the public on the Registry. The annual report shall include information in accordance with the annual report requirements in Schedule “D”;
- (b) and enable the Minister or the Ministry to review and comment on the annual report referred to in section 44 of the RRCEA by providing the Minister with a copy of the annual report at least six weeks prior to final approval by the Board.

9.4 The Authority’s annual report shall account for how the Authority complied with section 56 of the RRCEA with respect to delivery of French language services.

9.5 The Authority’s annual report shall account for how complaints related to the activities of the Authority were responded to and resolved.

9.6 The Authority shall report in its annual report the per diem remuneration rates for Board members and the total remuneration for the Board as a whole that Fiscal Year.

### **Canvassing Stakeholders**

9.7 Upon request by the Minister, the Authority shall conduct activities (e.g. surveys) that canvass stakeholders relating to the effectiveness of the Authority’s activities under the Acts. The Minister may specify that the Authority undertake a competitive procurement for the services of an independent third party to

facilitate these activities. The Authority shall share a detailed summary of the results of the activities with the Minister.

### **Advisory Councils**

- 9.8 If required by the Minister under section 30 of the RRCEA, the Authority shall establish one or more Advisory Councils which can provide advice to the Authority on matters related to carrying out its objects.

### **Disclosure of compensation and other payments**

- 9.9 The Authority shall comply with any order issued by the Minister under s. 53.1 of the RRCEA in respect of the disclosure of compensation and other payments.

### **Report on procurements relating to the Registry**

- 9.10 Within 30 days after the Authority has concluded any procurement for a value over \$300,000 related to the Registry, the Authority shall provide to the Ministry an anonymized summary of the Authority's business case for the procurement.

### **Quarterly Updates**

- 9.11 The Authority will meet with Ministry staff every quarter to provide updates on the Authority's key activities, any significant changes from its intended plan as set out in the Business Plan, and issues that may be of concern to the ministry. Additional information shall be provided if significant changes are occurring between updates or if requested by the Minister.

## **10. FINANCIAL ARRANGEMENTS**

- 10.1 The Authority shall ensure that it has adequate resources to comply with this Agreement and the Acts in accordance with the business plan that it has submitted to the Minister under subsection 33 (1) of the RRCEA.
- 10.2 The Authority acknowledges it cannot collect or retain as revenue any fines imposed by a court further to prosecutions taken by the Authority under the Provincial Offences Act.
- 10.3 In setting fees, costs or other charges in accordance with section 41 of the RRCEA, the Authority shall consider the following principles:
- a) the amount of the fee, cost or charge is reasonable and reflects the costs incurred by the Authority in performing the function for which the fee, cost or charge is established;

- b) the process and criteria used to set the fee, cost or charge is clear and available to the public on the Registry; and
  - c) the fee, cost or charge must relate to the Authority's objects.
- 10.4 The Authority shall advise the Ministry, in writing, when it intends to update its fees or fee-setting approach and shall provide a summary of the results of its stakeholder consultations. The update and summary of stakeholder consultation should be provided 7 days before the fees are provided to the Authority's Board of Directors for approval.
- 10.5 The Authority should also:
- (a) demonstrate value for money and effective operations;
  - (b) adhere to a commitment to cost control for its operations;
  - (c) if establishing contingency reserves, not allow such reserves to exceed 50% of the Authority's annual operating costs;
  - (d) consider incentives to encourage compliance with the Acts; and
  - (e) consider multi-year cost trends.
- 10.6 Where an Order for defrayal of the Crown's costs is being prepared, as per Schedule "E", the Ministry will make reasonable efforts to provide an advance estimate to the Authority of the Crown's costs in order to facilitate the Authority's business planning and budget process.

### **Board Remuneration and Expenses**

- 10.7 Pursuant to section 27 of the RRCEA, the Board may pass by-laws providing for payment of the remuneration and reimbursement of the expenses of Board members.
- 10.8 Such by-laws with respect to remuneration for the Board shall be consistent with the following principles:
- a) per diem rates of remuneration for the Board should be in keeping with the spirit of the per diem rates of remuneration for part-time appointees to regulatory agencies as set out in the most recent Ontario Public Service *Agencies & Appointments Directive*;
  - b) Board members appointed by the Minister shall be paid by the Authority in an amount and on a basis that is equivalent to all other Board members; and
  - c) where Board members are employed by the Crown, including as a public

servant pursuant to the *Public Service of Ontario Act, 2006*, those Board members shall not receive any remuneration from the Authority.

## **11 RECORDS, PRIVACY AND ACCESS**

- 11.1 The Authority is responsible for all records obtained by it from any source and all such records shall be maintained in keeping with the data collection, records retention and destruction policy established by the Authority and any requirements under the Acts and applicable regulations.
- 11.2 The Authority shall develop and maintain an access and privacy code addressing issues of access to information, protection of all confidential information, including Personal Information and commercially sensitive information (including any commercially sensitive information that relates to the producer's supply of, or management of, a regulated material), and effective procedural remedies. This code shall protect privacy and provide access in accordance with the principles of relevant privacy and access legislation and shall provide effective procedural remedies in support of these principles. The Authority shall ensure that this code is consistent with the principles set out in Schedule "B". The Authority shall continue to monitor the effectiveness of its code and determine whether any amendments are needed. The Authority shall also make the code publicly available on the Registry, including revised versions as it is updated from time to time.
- 11.3 In addition to the requirements set out in section 57 of the RRCEA, section 70 of the WDTA and any regulations related to privacy, access or the provision of information under the Acts, the Authority shall comply with the access and privacy code referred to in section 11.2 of this Agreement.
- 11.4 The Authority will provide the Minister with notice of, and a copy of, any proposed changes to the access and privacy code for review and comment at least four weeks prior to final approval by the Board.

## **12 LITIGATION**

- 12.1 In any civil or administrative litigation, including inquests, related to the Acts in which the Crown is a party, either as a result of any alleged act or omission of the Authority in performing its duties and exercising its powers under the Acts or otherwise, Ministry of the Attorney General counsel will represent the Crown unless the Ministry of the Attorney General agrees otherwise. The Authority shall be responsible for all costs of the litigation, and for the payment of any settlement costs agreed to and payable by the Authority and any damages awarded against the Authority, as a result of any act, omission or fault of the Authority, subject to order of the court or agreement of the parties otherwise.

- 12.2 In any civil or administrative litigation, including inquests, not related to the Authority performing its duties and exercising its powers under the Acts, in which the Crown is a party, arising from or in any way connected with any activity undertaken by, or alleged act or omission of the Authority, Ministry of the Attorney General counsel will represent the Crown unless the Ministry of the Attorney General agrees otherwise. The Authority shall be responsible for all costs of the litigation and for the payment of any settlement costs agreed to and payable by the Authority and any damages awarded against the Authority, subject to order of the court or agreement of the parties otherwise.
- 12.3 When carrying out prosecutions related to the Acts, the Authority shall do so on its own behalf and in its own name, all in accordance with, pursuant to and in furtherance of the obligations of the Authority to exercise its powers and perform its duties under the Acts.
- 12.4 In carrying out prosecutions related to the Acts, the Authority shall conduct its prosecutions in the public interest and in a manner consistent with applicable Practice Memoranda for Regulatory Prosecutors, dated 2007, and as may be updated and any prosecution-related policies, guidelines, codes or similar documents provided to it by the Ministry.
- 12.5 The Minister or the Crown shall keep the Authority informed, in a timely manner, of any litigation by or against the Crown or in which the Crown is an interested party that may affect the interests of the Authority.
- 12.6 The Authority shall keep the Minister informed, in a timely manner, of any litigation by or against the Authority or in which the Authority is an interested party that may affect the interests of the Crown.

### **13 INDEMNIFICATION**

- 13.1 Section 39 of the RRCEA requires the Authority to indemnify the Crown in respect of damages and costs incurred by the Crown for any act or omission of the Authority or its members, officers, employees or agents and, for this purpose, the Authority shall, at all times, have an adequate amount of insurance or bonding, as appropriate, and shall provide the Minister with a current proof of same.

### **14 INSURANCE**

- 14.1 In addition to the requirement in section 13.1 of this Agreement, the Authority shall at all times maintain adequate insurance against liability arising out of the Authority's carrying out of its duties and exercising its powers under the Acts and this Agreement.

- 14.2 Prior to the execution of this Agreement, the Authority shall arrange for the completion and submission of a certificate of liability insurance to the Ministry, which shall include a provision requiring the insurer to give prior notice to the Minister in the manner set forth in the policy conditions in the event that the policy is changed or cancelled.
- 14.3 The Authority shall take all reasonable steps to protect itself from and against all claims which might arise from the carrying out of its duties under the Acts by the Authority, its directors, appointees, officers, employees and agents. The Authority shall at all times maintain adequate insurance against liability arising out of the Authority's carrying out its duties under the Acts and this Agreement including, but not limited to, commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than ten million dollars (\$10,000,000) per occurrence including ten million dollars (\$10,000,000) for products and completed operations in the aggregate.

The policy is to include the following:

- Her Majesty the Queen in Right of Ontario, her directors, officers, advisors, agents, appointees and employees and the members of the Executive Council of Ontario as additional insureds with respect to liability arising in the course of performance of the Authority's obligations under, or otherwise in connection with, the Acts;
  - cross-liability clause;
  - Directors and Officers Liability insurance in the amount of not less than \$2,000,000 (two million) per claim and per policy period;
  - thirty (30) day written notice of cancellation, termination or material change; and,
  - non-owned automobile coverage with blanket contractual coverage for hired automobiles.
- 14.4 The Authority shall provide the Minister with certificates of insurance or other proof as may be requested by the Minister, that confirms the insurance coverage as provided for above, and renewal replacements on or before the expiry of any such insurance.
- 14.5 If the Crown imposes an obligation on the Authority by obtaining the enactment of legislation, making a regulatory change or otherwise, which gives rise to exposure to liability on the part of the Authority for which the Authority cannot reasonably obtain appropriate liability insurance, the Authority shall provide

immediate notice to the Minister in writing of the uninsured risk and subject to Government approvals that may be required, if any, the Authority and the Minister shall identify appropriate measures to resolve the issue to the satisfaction of both parties. Where Government approval is required, the Minister will make best efforts to obtain the necessary approvals.

## **15 MEMORANDA OF UNDERSTANDING**

- 15.1 The Minister and the Board may enter into one or more memoranda of understanding.
- 15.2 A memorandum of understanding shall not form part of the Operating Agreement and, to the extent of any conflict, the Operating Agreement shall prevail.

## **16 COMPLIANCE AND ENFORCEMENT POLICIES, GUIDELINES, CODE OF CONDUCT FOR COMPLIANCE AND ENFORCEMENT PERSONNEL**

- 16.1 The Authority shall develop and maintain a code of conduct, policies and guidelines for its compliance and enforcement personnel for use when exercising its powers and meeting its responsibilities with respect to compliance and enforcement under the Acts. In addition, the Authority shall develop and maintain up-to-date compliance and enforcement policies and procedures relating to the issuance of orders to pay an administrative penalty under the RRCEA or the WDTA and in relation to determining the amount of the administrative penalty, subject to any regulations made under the Acts. To the extent possible, such codes, policies, guidelines and procedures shall be consistent with the OPS Regulator's Code of Practice: *Integrity in Pursuit of Compliance* (2015), the Ministry's *Compliance Policy: Applying Abatement and Enforcement Tools* (2007), the Ministry's *Guideline for Implementing Environmental Penalties* (2012) and any other government compliance and enforcement documents provided to the Authority by the Minister. The Authority shall make its risk-based compliance framework, guideline for implementing administrative penalties, and any codes of conduct publicly available. Any other codes, policies, and guidelines for compliance and enforcement personnel shall be made publicly available on the Registry, except to the extent the Registrar determines that confidentiality is in the best interests of the compliance and enforcement program. The Authority shall provide a list of compliance and enforcement codes, policies and guidelines to the Minister. The Minister may require a copy of these documents.

## **17 DISPUTE RESOLUTION**

- 17.1 The parties agree to use reasonable efforts to resolve disputes that may arise between the parties out of or in connection with this Agreement, or in relation to the Acts.

- 17.2 In the event of any such dispute between the parties, the parties may each identify a representative for the purpose of dispute resolution. If the representatives are unable to resolve the dispute within a reasonable time, the parties may agree to refer the dispute to a single mediator or to a three-member mediation panel jointly selected by the parties. In the case of a three-member mediation panel, each of the parties shall select one member and the third member shall be a neutral member jointly selected by the parties. Any recommendation of the mediator(s) for resolution of the dispute will not be binding on a party without its consent. If the parties do not accept the recommendation of the mediator(s), and the parties are unable to resolve the dispute, the parties may agree to resolve the dispute by arbitration pursuant to the *Arbitration Act, 1991*.

## **18 INFORMATION SHARING**

- 18.1 Each of the parties shall designate an individual who will be the primary contact for all issues and communications related to this Agreement and the Acts.
- 18.2 The Ministry and Authority agree to follow the information sharing protocols outlined in Schedule "A".

## **19 ENTIRE AGREEMENT**

- 19.1 The parties agree that this Agreement and any schedules hereto, as amended from time to time in accordance with section 21 of this Agreement, form the entire agreement between the parties with regard to the operation of the Authority and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of this Agreement.
- 19.2 This Agreement is effective as of the Agreement Effective Date.
- 19.3 The amendments to the Agreement contained in this amendment and restatement become effective on the Amendment and Restatement Effective Date.
- 19.4 The amendment and restatement of the Agreement does not limit or alter any of the provisions of the Agreement that were not amended, even though these provisions have been restated.

## **20 JURISDICTION**



20.1 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereby agree that any dispute arising out of or in relation to this Agreement shall be determined in Ontario. Where the parties appear before the courts of the Province of Ontario, the Crown does not waive any immunity or privilege that it enjoys in relation to the jurisdiction of those courts.

## **21 AMENDMENT OF AGREEMENT, AGREEMENT REVIEW**

21.1 Pursuant to subsection 28 (6) of the RRCEA, the Minister may serve notice on the Authority that an amendment to this Agreement is required and shall provide such notice in writing to the Chair.

21.2 Notwithstanding subsection 21.1 of this Agreement, the parties agree that the Authority shall be able to suggest appropriate amendments to the terms of this Agreement to the Minister at any time.

21.3 Any changes to the terms of this Agreement shall be by written amendment signed by both parties. No changes shall be effective or shall be carried out in the absence of such an amendment.

21.4 The parties agree to commence a review of this Agreement no later than five years after the Amendment and Restatement Effective Date.

## **22 GENERAL**

22.1 No term, condition or provision hereof shall be or be deemed to have been waived by the Minister by reason of any act, forbearance, indulgence, omission, or event. Only an express written waiver by the Minister shall be binding and each such waiver shall be conclusively deemed to be limited to the circumstances, right or remedy therein specified.

22.2 In the event that any provision of this Agreement or any part of such provision shall be determined to be invalid, unlawful or unenforceable to any extent, such provision or part thereof shall be severed from the remaining terms and conditions of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

22.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto.

22.4 Pursuant to subsection 28 (8) of the RRCEA, the Authority shall make the Agreement available to the public on the Registry.

**IN WITNESS WHEREOF** the parties hereto have executed this amendment and restatement

of the Agreement on the dates set out below.

**Her Majesty the Queen in right of Ontario as  
represented by the Minister of the Environment,  
Conservation and Parks**

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
The Honourable Jeff Yurek  
Minister of the Environment, Conservation and Parks

**Resource Productivity and Recovery Authority**

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Robert Poirier, Chair  
I have authority to bind the Authority

## **SCHEDULE “A”**

### **to the Operating Agreement between the Minister of the Environment, Conservation and Parks and the Resource Productivity and Recovery Authority**

#### **INFORMATION SHARING PROTOCOL**

This Schedule “A” outlines information sharing protocols recognizing that the Authority shall respond in an expeditious manner to all the requests made by the Minister pursuant to section 53 of the RRCEA or otherwise, including requests related to:

- a) the governance of the Authority;
- b) the Authority’s carrying out of its duties and exercising its powers under the Acts;
- c) the Agreement; or
- d) a policy direction issued by the Minister under section 29 of the RRCEA.

This Schedule “A”, including the chart below, outlines information sharing protocols relating to key areas; however, the Authority is expected to respond promptly to all requests made by the Minister. The Ministry will make reasonable efforts to promptly share information with the Authority that is necessary to allow the Authority to carry out its mandate under the Acts.

Unless specifically outlined in this Schedule “A”, when making information requests of the Authority, the Minister shall inform the Authority of the timeframe in which the information is required.

Each of the parties shall designate an individual who will be the primary contact for all issues and communications related to the Agreement and the Acts.

In addition, the Authority’s and the Crown’s designated individuals shall meet, as necessary, to discuss and review any necessary changes related to the proper administration of this Schedule “A” and to discuss any other matters.

Item	Description	Ministry Responsibility	Authority Responsibility
<b>Information Requests</b>	Information requests made by the Minister or Ministry of the Authority.	The Minister or Ministry shall make reasonable efforts to share with the Authority the context in which the request for information is being made.	The Authority shall respond in an expeditious manner to all requests made by the Minister or Ministry.
<b>Annual Reports</b>	Annual report for Minister review and comment prior to final approval by the Board.	Once the Minister receives the annual report, the Minister or the Ministry shall make reasonable efforts to review and provide comments to the Authority as soon as reasonably possible.	Pursuant to section 9.3 of the Agreement, the Authority shall enable the Minister to review and comment on the Authority's annual report by providing the Minister with a copy of the annual report at least six weeks prior to final approval by the Board.
<b>Business Plans</b>	Business plan for Minister review and comment prior to final approval by the Board.	Once the Minister receives the business plan, the Minister or the Ministry shall make reasonable efforts to review and provide comments to the Authority as soon as reasonably possible.	Pursuant to section 9.1 of the Agreement, the Authority shall enable the Minister to review and comment on the Authority's business plan by providing the Minister with a copy of the business plan at least four weeks prior to final approval by the Board.

Item	Description	Ministry Responsibility	Authority Responsibility
<b>Fee Development</b>	Updates on the fees as they are developed, including the Authority's approach, consultation and proposed changes to fees or fee-setting approach. A summary of proposed changes and stakeholder consultations should be provided 7 days before the Authority's Board of Directors approves the fees.	The Ministry will review the updates and follow up with the Authority, as needed.	The Authority informs the Ministry and provides relevant details.
<b>By-Laws</b>	By-laws for Minister information prior to submitting to the Board for approval.	N/A	Pursuant to section 8.3 of the Agreement, the Authority shall provide its by-laws to the Minister for information purposes prior to submitting them to the Board for approval, unless the by-law contains the Code of Conduct for Members of the Board. In that case, the Authority's responsibility is

			described in section 8.6.
<b>Code of Conduct for Members of the Board</b>	Code of conduct for members of the Board for Minister review and comment prior to final approval by the Board.	Once the Minister receives the code of conduct, the Minister shall make reasonable efforts to review and provide comments to the Authority as soon as possible.	Pursuant to section 8.6 of the Agreement, the Authority shall provide the Minister with a copy of the code of conduct for review and comment at least four weeks prior to final approval by the Board.
<b>Access and Privacy Code</b>	Access and privacy code for Minister review and comment prior to final approval by the Board.	Once the Minister receives the access and privacy code, the Minister shall make reasonable efforts to review and provide comments to the Authority as soon as possible.	Pursuant to section 11.2 of the Agreement, the Authority shall provide the Minister with a copy of the access and privacy code for review and comment at least four weeks prior to final approval by the Board.

Item	Description	Ministry Responsibility	Authority Responsibility
<b>Correspondence</b>	Correspondence directed to the Minister or the Ministry.	The Ministry may: <ol style="list-style-type: none"> <li>1. redirect to the Authority to take action; or</li> <li>2. draft reply indicating referral to Authority for direct response; or</li> <li>3. reply to be sent by the Ministry.</li> </ol>	Responds directly under the Authority's signature and copies the Minister as appropriate, or supplies the Minister with information required for the Minister to reply.
<b>Meetings Stakeholders</b>	For Authority meetings with Ministry stakeholders with respect to issues specifically identified by either party to be of interest to the Ministry.	N/A	The Authority notifies the Ministry prior to the meeting, discusses the outcome with the Ministry, and provides a summary upon request.
<b>Issues Management</b>	Issues of public concern or other possible contentious issues.	When the Ministry is informed by the Authority or through media reports, the Ministry's Communications Branch may engage and obtain information from the Authority in order to develop Ministry key messages and response strategy.	The Authority informs the Ministry and provides relevant details, and shares its key messages and response strategy.

Item	Description	Ministry Responsibility	Authority Responsibility
<b>Public Complaints</b>	Public complaints relating to the Acts.	When a public complaint first comes to the Ministry concerning the Authority, the Ministry may address the issue directly, or refer the issue to the Authority and the Authority will deal with the complaint and explain to the Ministry how it dealt with it, upon request.	When a public complaint comes to the Authority concerning the Ministry, the Authority will refer the complaint to the Ministry in an expeditious manner and notify the complainant.
<b>Media Relations</b>	Requests made to the Ministry for interviews and background material on Authority operational issues.	The Ministry's Communications Branch refers request to the Authority or obtains required information from the Authority as appropriate.	The Authority provides the required information or responds directly and advises the Ministry of the outcome from the media engagement.
	Media releases issued by the Authority.	A copy of the Authority's media release is given to the Ministry's Communications Branch for information and review and the Ministry provides comments, if any, to the Authority as soon as reasonably possible.	The Authority prepares and shares a copy of its media release with the Ministry at its earliest opportunity and will make best efforts to allow for review or feedback by the Ministry before the release is issued to the media.



## **SCHEDULE “B”**

### **to the Operating Agreement between the Minister of the Environment, Conservation and Parks**

#### **ACCESS AND PRIVACY PRINCIPLES**

##### **1.0 Purpose**

The Authority is committed to protecting the privacy and confidentiality of information it receives or creates in the course of conducting its business operations and performing its regulatory functions.

The Authority fulfills this commitment to privacy and confidentiality by complying with its statutory obligations under the Acts and the regulations made under them, and by developing and implementing an access and privacy code in accordance with the principles set out in this Schedule “B”.

##### **2.0 Legislation**

The Authority is subject to the RRCEA and the WDTA and has specific obligations under each statute to maintain the privacy and confidentiality of information.

The Authority will collect, use, disclose and retain information for purposes related to the performance of its duties or exercise of its powers, and in compliance with its confidentiality obligations contained in section 57 of the RRCEA and section 70 of the WDTA. Specifically, those provisions require that the Authority, including the members of the Board and its officers, employees and agents, preserve secrecy and not communicate any information, including Personal Information, obtained in the course of performing a duty or exercising a power under the Acts, except in specified circumstances. Both section 57 of the RRCEA and section 70 of the WDTA contain a number of exceptions, which allow the Authority and people acting on behalf of the Authority to disclose information in specific circumstances, including:

- (a) as may be required in connection with a proceeding under the Acts or in connection with the performance of its duties and exercise of its powers under the Acts;
- (b) to the Minister, the Ministry or an employee or agent of the Ministry;
- (c) to a peace officer, as required under a warrant, to aid an inspection, investigation or similar proceeding undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

- (d) with the consent of the person to whom the information relates;
- (e) to the counsel of the person to whom the information relates;
- (f) to the extent that the information is required or permitted to be made available to the Minister or the public under the Acts or any other act; or
- (g) under further circumstances that are prescribed.

### **3.0 Policy**

In developing its access and privacy code, the Authority should apply the principles in this Schedule “B” to all information that the Authority receives or creates while performing its regulatory functions under the Acts. The access and privacy code should apply to the Authority, including its employees, contractors, subcontractors and any other individual with access to the information or Personal Information.

### **4.0 Purposes for which information is collected, used or disclosed**

The Authority may collect, use, disclose or retain information in order to perform its regulatory functions and fulfill its objects or where it is permitted or required to do so by law.

Examples of regulatory functions that may result in the collection, use, disclosure or retention of information, including commercially sensitive and Personal Information, include, but are not limited to, acquiring evidence related to enforcement of the Acts, receiving and reviewing complaints about alleged contraventions of the Acts, and collecting and using information and Personal Information to facilitate the performance of its duties and exercise of its powers.

At the time of collection, the Authority shall inform persons of the purpose for which the information, including commercially sensitive and Personal Information is being collected and could be used or disclosed. Personal Information is collected, wherever possible, directly from the individual to whom it belongs, but under certain circumstances and consistent with its duties and powers, the Authority may also collect Personal Information from third parties who have the authority to disclose the Personal Information.

### **5.0 Consent**

The Authority respects and values an individual’s right to provide or withhold consent in relation to his or her Personal Information. Except where the law authorizes collection and use of Personal Information without consent, and prior to collecting and using such Personal Information, the Authority will obtain the consent of the individual to whom the Personal Information belongs or from someone duly authorized to act on that individual’s behalf.

Where the Authority requires access to Personal Information in the course of fulfilling its statutory obligations, the duty to obtain consent rests with the Authority at the point of collection, such that the Authority will not have to obtain an additional consent.

## **6.0 Accuracy**

Accurate information is vital to the Authority's ability to carry out its objects. In recognition of this fact, the Authority will take reasonable steps to ensure that the information, including commercially sensitive and Personal Information that it collects, uses, discloses and retains is accurate. This may include contacting individuals who have provided the Authority with information or Personal Information in order to verify accuracy, and correcting the information as required.

## **7.0 Access to Information**

In accordance with the Authority's legal obligations under the Acts, the Authority is obliged to keep confidential all information that it acquires while performing its duties and exercising its powers under the Acts. The Authority should not communicate any information to any other person unless a specific statutory exception or requirement applies.

The Authority shall provide the public with access to information that is published on the Registry, subject to any regulations under the RRCEA.

Examples of the type of information published on the Registry include:

- (a) information and activities related to persons with responsibilities under Part IV of the RRCEA as provided in the regulations made under the RRCEA;
- (b) information for consumers looking to return end-of-life products for resource recovery;
- (c) information about orders issued by the Registrar, Deputy Registrar or inspectors;
- (d) procedures for submitting information to the Registry;
- (e) governance documents of the Authority including its by-laws, the Agreement, business plans and annual reports;
- (f) fees, costs, charges established by the Authority;
- (g) agreements between the Authority and Industry Funding Organizations that form part of waste diversion programs under the WDTA.

Individuals who wish to access information not published on the Registry should be informed to contact the Authority directly.

## **8.0 Access to Personal Information**

In developing its access and privacy code, the Authority should develop policies and procedures related to written requests for Personal Information by the person to whom the information relates. Such policies and procedures should include:

- (a) a timeframe and policies for responding to such requests;
- (b) the form of the request in order to provide sufficient information to allow the Authority to identify the requester and his or her Personal Information;
- (c) providing information to a requester before responding to the request with respect to the cost, if any, and confirming that the requester still wishes to proceed with the access request;
- (d) the procedure for providing written reasons to the requester where access is denied; and
- (e) providing the ability to a requester to file a complaint and request for reconsideration with the Authority where access has been refused.

## **9.0 Complaints and Remedies**

The Authority's access and privacy code should include procedures and practices that establish a mechanism to deal with complaints regarding the release of information, including commercially sensitive and Personal Information or the refusal to release such information or Personal Information to a requester. If a complaint is found to be justified, the Authority shall take appropriate measures to rectify the problem, including where necessary, amending its access and privacy code and relevant procedures and practices.

Where a requester challenges the accuracy and completeness of his or her Personal Information, the Authority shall review the Personal Information and amend the Personal Information where appropriate. The Authority shall record any challenge that has not been resolved to the satisfaction of the requester.

## **10.0 Administration**

The Authority shall implement policies and practices required to give effect to its access and privacy code, including those relating to,

- (a) the procedure for receiving and responding to requests or complaints, and the form requests and complaints should take;
- (b) advising Board members, management and staff about its access and privacy code, and providing appropriate training to ensure compliance

- with the code's provisions; and
- (c) the development of communications materials or other documentation describing its access and privacy code and its related procedures and practices.

Individuals may make a written request for access to their Personal Information that is under the custody or control of the Authority. The Authority will disclose or grant access to this Personal Information unless there is a compelling reason against disclosure.

Examples of situations where the Authority may refuse to disclose Personal Information are as follows:

- a legal privilege restricting disclosure applies;
- another law prohibits the disclosure;
- the Personal Information was collected or created for a proceeding under the Acts;
- the information was collected or created during an inspection, investigation or similar procedure; or
- access could result in harm to an individual.

Requests for access to Personal Information should be made in writing to the Authority.

### **11.0 Limiting Collection**

The Authority will only collect Personal Information as required to fulfill the principles identified in this Schedule "B" and its access and privacy code, and will do so only by fair and lawful means.

### **12.0 Limiting Use, Disclosure and Retention**

The Authority's access and privacy code shall provide that the Authority shall not use or disclose Personal Information in its custody or control or to which it has access in the course of performing its duties and exercising its powers under the Acts except as necessary in the course of performing those duties. The Authority will only use and disclose the minimum amount of Personal Information necessary to fulfill the purpose for which it was collected.

The Authority will not disclose Personal Information to a third party without the consent of the individual whose Personal Information it is, unless it is required or authorized by law and the disclosure is necessary for the Authority to perform its duties and exercise its powers under the Acts.

### **13.0 Safeguards**

The Authority recognizes that appropriate safeguards are fundamental to maintaining the privacy and confidentiality of information, including commercially sensitive and Personal Information. The Authority's access and privacy code should provide that the Authority will take reasonable steps to protect the information and Personal Information it receives or creates against theft, loss, misuse, unauthorized access, disclosure, modification or destruction. These steps include using appropriate physical, organizational and technological measures to protect the confidentiality of all information and/or Personal Information that the Authority retains or collects. Specifically, the Authority will adopt security measures, locked cabinets, restricted access, data networks protected by industry-standard firewalls, encryption and password protection systems in order to protect the information and Personal information in its possession.

Any data or other information and materials provided by the Authority to the Minister and the Ministry which are confidential and are to remain confidential shall be clearly marked as confidential by the Authority. The Authority's access and privacy code will include policies and procedures to maintain confidentiality of such information while it is in the custody and control of the Authority.

#### **14.0 Openness, Accountability and Compliance**

In developing its access and privacy code, the Authority will commit to implementing the principles described in this Schedule "B", and to ensuring that stakeholders and members of the public are aware of the Authority's privacy practices. Any additional documents or policies that are developed in relation to its access and privacy code will be made available on the Registry by the Authority.

The Authority will oversee consistency with these principles, compliance with its access and privacy code and any related policies and procedures, as well as to receive access or privacy complaints.

In addition, the Authority will provide for the necessary advice and training of the Authority's employees on its access and privacy code, in order to ensure compliance with the code's provisions and will provide for the development of communications materials or other documentation describing its access and privacy code and its related procedures and practices.

The Authority will provide an email contact for any questions about its access and privacy code or concerns that the Authority is not abiding by the terms of its access and privacy code.

## **SCHEDULE “C”**

### **to the Operating Agreement between the Minister of the Environment, Conservation and Parks and the Resource Productivity and Recovery Authority**

#### **PRINCIPLES FOR CODE OF CONDUCT AND CONFLICT OF INTEREST FOR MEMBERS OF THE AUTHORITY BOARD OF DIRECTORS**

1. Members shall at all times use their best efforts to provide progressive, collective leadership and direction to the Authority in support of its mandate as articulated in section 4 of the Agreement.
2. Members shall adhere to the Authority’s governance policies and by-laws, and shall exercise due care and diligence.
3. Members shall develop by-laws and other tools establishing requirements with respect to conflict of interest; avoid, in fact and perception, conflicts of interest; and immediately disclose possible conflicts to the Board;
4. Members should consider how to deal with conflicts of interests if members are shareholders/owners of corporations or entities with regulated requirements under the Acts.
5. Members shall conduct themselves with a sense of fairness, ethics and personal integrity.
6. All members, both elected and appointed, shall direct the activities of the Authority as a whole rather than in their own interest or that of any specific group.
7. Members shall maintain the confidentiality of the details and dynamics of Board discussions, as well as those items designated as confidential.
8. Regardless of their personal viewpoint, members shall not speak against, or in any way undermine Board solidarity once a Board decision has been made.
9. Members are expected to attend all Board meetings. Members shall be prepared to commit sufficient time and energy to attend to the Authority’s business.
10. Members’ contributions to discussions and decision-making shall be positive and constructive and members’ interactions in meetings shall be courteous, respectful and free of animosity.
11. Members shall be prepared for meetings.
12. In addition to attending Board meetings, the members shall participate in additional Board functions (e.g. sub-committees).

13. Members shall adhere to the principle that the CEO is accountable to the entire Board and consequently that no single member or committee, task force, working group or advisory group has authority over the CEO.
14. Members shall adhere to the principle that the Chair is the communications link between the Board and the CEO, and the Chair is the communications link between the Board and the Minister.
15. Members shall not attempt to exercise individual authority or undue influence over the Authority. The official spokespersons for the Authority are the Chair, the CEO and the Registrar and consequently, all public requests for comment on the Authority's policies shall be referred to them.
16. The Chair may make public statements on corporate policy matters that are within the scope of a policy, decision or action approved by the Board, or a reasonable extension of a policy, decision or action.
17. The Registrar should be responsible for speaking to enforcement-based decisions and actions.



## **SCHEDULE “D”**

### **to the Operating Agreement between the Minister of the Environment, Conservation and Parks and the Resource Productivity and Recovery Authority**

#### **CORPORATE PLANNING AND REPORTING**

The Authority’s corporate planning and reporting documents are essential for demonstrating responsible stewardship of the Authority in achieving resource recovery and waste reduction in Ontario. As such, the Authority will strive to continuously improve and strengthen the link between business planning and reporting.

Recognizing that corporate planning and reporting documents have a broad audience including the Government, industry stakeholders and the public, the Authority will use plain language so that the objectives and performance of the Authority are clear and easy for the average reader to understand.

The corporate planning and reporting documents should allow for easy comparison between years and a means of measuring performance against plans. For example, commitments in the business plan and outcomes in the annual report, over the course of the Authority’s carrying out of its duties and exercising its powers under the Acts, should be comparable.

The Authority’s corporate planning and reporting documents will support the accountability framework as laid out in the Agreement and the Acts.

In addition to any requirements specified directly in section 9 of the Agreement and the Acts, the Authority’s corporate planning and reporting documents shall include the following information, but shall not be limited to these requirements.

#### **BUSINESS PLAN REQUIREMENTS**

Pursuant to section 33 of the RRCEA, the Authority will annually draft a business plan for the next three Fiscal Years that identifies a coordinated set of activities to achieve the Authority’s strategic objectives under each of the Acts. The business plan will state specific activities to be undertaken in each Fiscal Year, and identify resources to achieve the Authority’s strategic objectives and successful delivery of its mandate. The Authority shall clearly separate out in its business plan those activities, revenues, expenditures and items that relate to the RRCEA and the WDTA respectively.

In addition to including the content specified in subsection 33 (2) of the RRCEA, as well as fulfilling other requirements specified directly in the Agreement, the business plan shall also include the following information but shall not be limited to these requirements.

## **1.1 Corporate Overview**

The corporate overview shall be a general overview of the Authority, including its mandate, mission, vision or values. It will also describe the Authority's structure, services, regulated sectors / industries and include a description of the nature and scope of the relationship between the Authority, the Government and the Ministry.

## **1.2 Business Planning Overview**

The business planning overview shall be an explanation of the connection / linkages between the business plan and the annual report.

## **1.3 Major Activities and Objectives**

This section of the business plan shall set out:

- (a) major activities and objectives (key goals or outcomes that the Authority proposes to achieve) for the next three Fiscal Years. Should the Authority's major activities and objectives for the planning period change at any point during a given Fiscal Year, the Authority will notify the Ministry prior to the start of the next Fiscal Year;
- (b) a plan that describes the Authority's strategy to implement the major activities and achieve the major objectives related to its mandate;
- (c) a performance measures report that establishes targets for the upcoming Fiscal Year. Such targets should be quantifiable, where possible, and link to the major activities and objectives proposed for the reporting period. The performance measures report will also indicate the statistics and outcomes to be reported in the annual report, and where possible, establish baselines for each performance measure.

Targets should allow for measurement of the Authority's effectiveness in implementing its major activities and achieving its major objectives, organizational effectiveness and cost-effectiveness. These measures will be based on a stable set of performance metrics that will reflect all regulated sectors and enable a year to year comparison. Where a year to year comparison is not possible because of a change in performance metrics, the Authority shall provide sufficient information to enable a proximate comparison or rationale regarding the change. Targets shall relate to, but not be limited to, the following:

- management times for registrations required under the RRCEA;
- compliance and enforcement activities;

- compliance and enforcement related education initiatives for the regulated community; and
  - financial management goals.
- (d) a description of any measures the Authority intends to take in the Fiscal Year with respect to the efficient and effective management of the Authority, taking into account the performance measures report and whether the Authority has met its major activities and objectives, organizational effectiveness and cost-effectiveness targets in the preceding Fiscal Year; and
- (e) the means to be used by the Authority for providing French language services to the public in accordance with section 56 of the RRCEA.

#### **1.4 Registry**

The business plan shall also state that the following information is available on the Registry:

- (a) information on the Authority's committees of the Board; and
- (b) information on performance reporting, including compliance and enforcement.

#### **1.5 Resources Needed To Meet Objectives**

The business plan shall include a budget for the Authority that provides a forecast of anticipated revenues and planned expenditures for the next three Fiscal Years. It should also address the adequacy of financial, human and other resources required by the Authority to undertake its major activities and meet its objectives over the planning horizon and indicate how the resources will be acquired.

In the planning and budgeting process, the Authority will take an approach of carrying out its mandate in an efficient and cost-effective manner. The business plan will also include an explanation of how the Authority will be doing this, particularly describing how this cost-effective approach will be undertaken for any planned procurements over \$300,000.

## **2. ANNUAL REPORT REQUIREMENTS**

Pursuant to section 44 of the RRCEA, the Authority will report annually on its performance. The Authority is to clearly separate out in its annual report those activities, revenues, expenditures and items that relate to the RRCEA and the WDTA. In addition to including the content specified in subsection 44 (3) of the RRCEA and subsections 6 (2) and (3) of the WDTA, the following items will also be included in the Authority's annual report but shall not be limited to these requirements. An explanation of the items is given for clarity where necessary.

## 2.1 Corporate Overview

This section of the annual report shall set out:

- Introduction
- Mandate, mission, visions or values
- Overview of the organization
- Message from the Chair
- Message from the CEO
- Message from the Registrar

## 2.2 Report on Performance

The Authority shall report on how successful it has been at meeting the targets set out in its performance measures report for the planning / reporting period as set out in the business plan. The Authority shall indicate if the targets have been met for the previous Fiscal Year. The performance measures report will also explain, if applicable, any significant variances between the targets for the preceding Fiscal Year and the actual results for that Fiscal Year.

### a) Performance Statistics

Statistical reports shall be clearly set out in chart form to indicate how the major activities and objectives as well as targets contained in the performance measures report were met over the previous Fiscal Year. In this section, the Authority may include any statistics it considers relevant to carrying out its duties and exercising its powers under the Acts; however, statistics should also include:

- compliance and enforcement measures, including registering, inspections, administrative penalties, investigations, prosecutions;
- efficiency measures, including management times for registrations, complaints, inspections; and
- outcome measures such as compliance and enforcement related education initiatives and handling of public complaints.

### b) Authority's By-Laws and Policy Changes

Outline any changes made to by-laws or the Authority's policies during the previous Fiscal Year.

### c) Compliance and Enforcement Activities

Outline a summary of the compliance and enforcement activities carried out by the Authority, such as number of inspections, compliance orders issued, investigations or prosecutions undertaken during that reporting period. The Authority shall also outline the total number and type of administrative penalties issued by the Authority, the

number that were appealed to the Environmental Review Tribunal and the outcome of these appeals, the amounts of administrative penalties paid to the Authority during that reporting period, and how such revenue has been or will be used by the Authority.

d) French Language Services

Report on the provision of services pursuant to section 56 of the RRCEA, including how those with need for services in French were provided for, the total number of inquiries that were received in the French language during the reporting period, and any other statistics the Authority considers relevant.

e) Complaint Handling Process And Outcomes

Review of the Authority's complaint handling system including outcomes and information to the public on how to make complaints against others in the regulated community and against the Authority.

## **2.3 Corporate Governance**

This section of the annual report shall include a summary of how the Authority is governed. It will also provide the following information, which may alternatively be posted on the Registry:

- role of the Board
- election / appointment process of the Board
- basic qualifications of the Board
- committees of the Board
- information on where to access the code of conduct for the members of the Board
- outline of members of the Board (including biographies)
- members of the Board terms of appointment / election
- officers (including biographies)
- organization chart
- the Authority's contact information.

## **2.4 Financial Statements and Notes**

Pursuant to subsection 44 (3) of the RRCEA, the annual report shall include audited financial statements for the Authority and a copy of the auditor's report. The audited financial statements shall be segregated for the WDTA and RRCEA, respectively. The audited financial statements shall include but not be limited to the following:

- the auditor's report;
- statement of financial position;
- statement of operations;
- statement of changes in net assets;

- statement of cash flows; and
- notes and supporting schedules to the financial statements including:
  - schedules of segment revenues and expenses. Examples of segments would include key activities such as: registration, compliance and enforcement, and WDTA program oversight.

## **2.5 Management Discussion and Analysis**

A discussion and analysis intended to assist with an understanding of the material financial changes in the Authority's operations over the past Fiscal Year, to be read along with the financial statements and accompanying notes. The discussion and analysis shall identify the amounts drawn on the loans and credit facilities the Authority is currently holding, and their purposes.

### **3. RISK MANAGEMENT FRAMEWORK AND RISK MANAGEMENT PLAN REQUIREMENTS**

The Authority will conduct a risk assessment and develop a risk management plan that will:

- (a) state the Authority's major activities and objectives;
- (b) identify and assess risks to the achievement of stated major activities and objectives;
- (c) identify a risk mitigation strategy;
- (d) establish and maintain a system of internal controls to minimize risk; and
- (e) document policies and procedures to manage risk.

A summary of the risk management plan shall be provided to the Ministry annually for review at least 90 days before the beginning of the Fiscal Year.

## **SCHEDULE “E”**

### **to the Operating Agreement between the Minister of the Environment, Conservation and Parks and the Resource Productivity and Recovery Authority**

#### **DEFRAYAL OF CROWN COSTS**

Pursuant to section 40 of the RRCEA and section 42 of the WDTA, the Minister may, by order, fix an amount to be paid by the Authority to defray the Crown’s costs in administering the Acts and their regulations. This includes the Crown’s oversight costs. The Ministry will make reasonable efforts to notify the Authority when it is considering such an order. The Ministry will share with the Authority the information regarding the calculation of the costs of such oversight.

Where the Minister has by Order fixed an amount to be paid by the Authority, the Ministry will notify the Authority.