

GREEN ELECTRONICS COUNCIL UL ECOLOGO/EPEAT JOINT CERTIFICATION LICENSE AND PARTICIPATING MANUFACTURER AGREEMENT

THIS AGREEMENT, including all Schedules and Exhibits attached hereto (this “**Agreement**”), is entered into as of the date indicated below (the “**Effective Date**”), between Green Electronics Council (“**GEC**”), an Oregon, U.S.A., non-profit corporation and _____, a _____ (state or country) corporation (“**Participating Manufacturer**”). GEC and Participating Manufacturer may be referred to as the “**Parties.**”

RECITALS:

GEC operates an on-line database or registry of environmentally and/or socially preferable electronic products (the “**EPEAT Registry**”) that is available to the public without charge at URL www.epeat.net (the “**Website**”). Participating Manufacturer may enter products (once so entered, “**Products**”) into the EPEAT Registry by 1) entering into this Agreement, and 2) successfully certifying their product’s performance against the UL 110 Standard for Sustainability for Mobile Phones under the UL ECOLOGO/EPEAT joint certification program specific requirements. After receiving the UL ECOLOGO/EPEAT joint certification, Participating Manufacturer shall purchase an EPEAT license for use of the UL ECOLOGO/EPEAT joint certification program mark and enter information related to the environmental and social characteristics of their products (“**Product Information**”) into the EPEAT Registry subject to the conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, the Parties agree as follows:

1. Term and Termination.

(a) Term. The term of this Agreement shall begin on the Effective Date, upon condition of payment of the EPEAT license fee for use of the UL ECOLOGO/EPEAT joint certification mark (the “**Fee**”), and continue until July 1, 2018 (the “**Term**”).

(b) Termination. Participating Manufacturer may at any time and without cause terminate this Agreement by giving thirty (30) days advance written notice of termination to GEC. In case of Participating Manufacturer’s voluntary termination Participating Manufacturer is not entitled to a refund of any Fee. GEC may terminate this Agreement for cause by giving thirty (30) days’ advance written notice for Participating Manufacturer’s (i) nonpayment of the applicable Fee, (ii) breach of or noncompliance with this Agreement which remains uncured for more than thirty (30) days after written notice thereof from GEC to Participating Manufacturer, (iii) bankruptcy or general assignment for the benefit of creditors, (iv) disqualification, as determined by GEC, for causes not otherwise described herein, the criteria for which shall be made known to all Participating Manufacturers thirty (30) days before any such disqualification. A termination of this Agreement for cause shall not entitle Participating Manufacturer to the return of any portion of the Fee.

2. Fee and Invoicing. Participating Manufacturer agrees to pay the applicable Fee in the amount that is posted on the Website and identified as effective as of the Effective Date of

this Agreement, as applicable. At GEC's request, Participating Manufacturer shall provide data to substantiate, in GEC's sole judgment, that Participating Manufacturer is paying the correct Fee.

3. Payment. The Fee shall be paid to GEC within thirty (30) days of the Effective Date of this Agreement, as applicable. Failure to pay the Fee within thirty (30) days shall authorize GEC, in its sole discretion, to revoke and terminate Participating Manufacturer's License and any other rights afforded Participating Manufacturer under this Agreement.

4. Obligations of Participating Manufacturer. During the Term of this Agreement, Participating Manufacturer will bear sole responsibility to and shall:

(a) Appoint a liaison (the "**Participating Manufacturer Liaison**") to interact with GEC on behalf of the Participating Manufacturer as respects this Agreement;

(b) Use the Mark only subject to the terms of Section 6 of this Agreement.

(c) Keep all Product Information declared to UL up to date, inform UL of any changes to the Product and to withdraw the UL ECOLOGO/EPEAT certification when the Product is no longer available or if the product does not continually meet the conditions for certification. "**Up to date**" means that the entered Product Information shall be accurate in all material respects for all units of Product sold by Manufacturer in the indicated country(ies) while the Product Information is in the EPEAT Registry. Participating Manufacturer shall remove any materially incorrect Product Information within fourteen (14) days of discovery.

(d) Authorize UL to provide to GEC the UL ECOLOGO/EPEAT certificate for any Product. Failure to comply with such request may result in removal of the Product Information from the EPEAT Registry.

(e) Inform GEC of any changes to Participating Manufacturer's organization or operations that may affect its ability to meet the requirements of the EPEAT system.

(f) Promptly respond to any new or revised requirements for participation in the EPEAT system as posted on the Website. Comply with the requirements outlined in the EPEAT Program Guidelines and EPEAT Program requirements referenced therein and as posted on the Website.

Participating Manufacturer also understands and agrees that:

(a) The EPEAT Registry supports Product Information as related to the sale of Products in only certain countries. GEC is solely responsible for determining which countries are supported by the EPEAT Registry. GEC may add or remove countries to/from the list of supported countries from time to time.

(b) Participating Manufacturer is solely responsible for ensuring and hereby represents and warrants that all Product Information uploaded in the EPEAT Registry is accurate in all material respects and that all units that are sold by Participating Manufacturer of

the subject Product in the applicable country(ies) conform with each of the criteria set forth in the standard(s) adopted by EPEAT (the “**Criterion(a)**”) and entered for the Product in that country by the Participating Manufacturer.

(c) According to the Product Information declared by Participating Manufacturer, GEC shall assign each Product as registered in each country the designation as EPEAT Gold, EPEAT Silver, or EPEAT Bronze (each, a “**Designation**”) corresponding to the appropriate level identified in the standard(s) adopted by EPEAT applicable to the Product. Because Participating Manufacturer may specify conformance to different Criteria in different countries, Participating Manufacturer understands that a Product may have different Designations in different countries.

(d) The Product Information provided by the Participating Manufacturer shall include a clear description of the subject Product that conforms to the Criteria indicated.

(e) Participating Manufacturer shall remove the Product and its Product Information from the EPEAT Registry when the Product is no longer available for sale in the countries specified with the Product Information.

5. Obligations of GEC. During the Term of this Agreement, GEC will bear sole responsibility to and shall:

(a) Fulfill all material obligations as described in “EPEAT Program Guidelines” available on the Website, by providing and maintaining the Website and the EPEAT Registry,

(b) Develop, maintain, and implement the processes necessary, in such manner and using such methodology as it reasonably determines, to maintain the credibility and consistency of the EPEAT Registry,

(c) Publicize and market, in such manner and using such methodology as it reasonably determines, the EPEAT program and UL ECOLOGO/EPEAT joint certification;

(d) Estimate and publicly report, in such manner and using such methodology as it reasonably determines, the environmental benefit of purchasing EPEAT-registered Products.

6. License.

(a) Subject to the terms and conditions of this Agreement, GEC grants to Participating Manufacturer, and Participating Manufacturer accepts, a non-exclusive, non-transferable (and without the right to sublicense) license (the “**License**”) to use the Mark displayed on Exhibit 1, with the promotion of the Products for the term of this Agreement. GEC warrants that it is authorized to grant this license. Participating Manufacturer affirms that it has no ownership interest in the Mark and agrees that it will do nothing inconsistent with GEC’s ownership of the Marks. Nothing in this Agreement shall give Participating Manufacturer or any third party any right, title or interest in the Mark other than as is expressly provided in this Agreement.

(b) All advertising, promotional, marketing and related uses of the Mark by Participating Manufacturer shall conform to standards set by UL. Claims made by Participating Manufacturers about the EPEAT System and Registered products that do not use the UL ECOLOGO/EPEAT joint certification Mark shall conform to standards set by GEC as posted on the Website. Participating Manufacturer will cooperate with GEC in facilitating GEC's control of the nature and quality of the use of the Mark. At GEC's reasonable request, Participating Manufacturer will submit representative examples of any of its advertising and promotional materials utilizing the Mark or claims about EPEAT to GEC for GEC's review in order to verify compliance with this License.

(c) The License granted herein shall automatically terminate upon the termination of this Agreement for any reason. Upon termination of the License, Participating Manufacturer shall immediately terminate its use of the Mark.

(d) The Mark may only be associated with Products which appear as active on the EPEAT Registry.

(e) Participating Manufacturer shall not in any way imply that EPEAT or the Green Electronics Council endorses, approves, or rates Participating Manufacturer.

(f) Notwithstanding anything to the contrary in this Agreement, Participating Manufacturer acknowledges that GEC may not have registered or otherwise sought or obtained legal protection for the use of the Mark, and therefore GEC cannot and does not warrant or represent that it or any of its licensees may enforce common law or statutory rights against infringers.

7. **Warranty.** GEC warrants to Participating Manufacturer that, at all times during the Term of this Agreement ("**Warranty Period**"), the Website will substantially achieve the functionality described herein and that such functionality will be substantially maintained in subsequent upgrades to the Website. GEC does not warrant the Website's performance or that any Website application will be error-free. GEC's sole liability for any breach of this warranty shall be, in GEC's sole discretion, to use commercially reasonable efforts to modify the Website to substantially achieve the functionality described herein or to refund the pro-rated portion of the Fee. GEC shall have no obligation with respect to a warranty claim subject to this Section 7 unless written notice of such claim within the Warranty Period is sent to the EPEAT Liaison. **EXCEPT AS PROVIDED IN THIS SECTION 7, GEC DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE WEBSITE OR ANY WEBSITE APPLICATION. GEC MAKES NO OTHER WARRANTY OF ANY KIND WITH REGARD TO THE WEBSITE OR ANY WEBSITE APPLICATION, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE. GEC WILL NOT BE LIABLE FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE OR INDIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER OR NOT FORESEEABLE.**

GEC'S LIABILITY WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, MAY NOT EXCEED UNDER ANY CIRCUMSTANCES THE LATEST FEE OR RENEWAL FEE

PAID BY MANUFACTURER. THIS LIMITATION OF LIABILITY SHALL APPLY TO GEC'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT.

8. Indemnification.

(a) Subject to the terms of this Agreement, Participating Manufacturer shall protect, defend, indemnify, and hold GEC, and its executors, successors and assigns, and their respective officers, directors, agents, shareholders and employees, if any (each, a "**GEC Indemnatee**") harmless from and against any claims, losses, damages, costs and expenses, including reasonable attorneys fees, suffered by a GEC Indemnatee to the extent that the claims, losses, damages, costs and expenses, including reasonable attorneys fees, result from or relate to any breach of any of the representations, warranties, covenants or agreements of Participating Manufacturer in this Agreement.

(b) Subject to the terms of this Agreement, GEC shall protect, defend, indemnify, and hold Participating Manufacturer, and its executors, successors and assigns, and their respective officers, directors, agents, shareholders and employees, if any (each, a "**Participating Manufacturer Indemnatee**") harmless from and against any claims, losses, damages, costs and expenses, including reasonable attorneys fees, suffered by a Participating Manufacturer Indemnatee to the extent that the claims, losses, damages, costs and expenses, including reasonable attorneys fees, result from or relate to any breach of any of the representations, warranties, covenants or agreements of GEC in this Agreement.

9. Confidentiality

(a) Disclosure by Participating Manufacturer. It is anticipated that Participating Manufacturer in performance of this Agreement may disclose certain confidential and/or proprietary information to GEC.

(b) Confidential Treatment. GEC will treat as confidential any information disclosed to or obtained by it from Participating Manufacturer, whether disclosed or obtained before or after the Effective Date, which relates to Participating Manufacturer and/or any of its subsidiaries or affiliates, including, information relating to the services, software, products, sales data, customers, potential customers, procedures, strategies or other business information respecting Participating Manufacturer and/or any of its subsidiaries or affiliates (the "**Confidential Information**").

(c) Definition of Confidential Information. "Confidential Information" as defined in Section 9(b) above shall include only that written documentation clearly marked "Confidential" on the face thereof, and shall not include (i) information which is publicly available at the time of GEC's receipt thereof from Participating Manufacturer, (ii) information which, after GEC's receipt thereof from Participating Manufacturer becomes publicly available through no act or fault of GEC; (iii) information which GEC can show was lawfully in GEC's possession prior to the receipt thereof from Participating Manufacturer; (iv) information which was lawfully received by GEC from a third party who was lawfully in possession of such information and under no obligation of secrecy with respect thereto; (v) information which Participating Manufacturer has approved in writing to GEC for release by GEC without

restriction (vi) Product Information Participating Manufacturer declares to UL, and (vii) any data obtained pursuant to Section 4(d).

(d) Disclosure Restrictions. GEC shall not disclose Confidential Information except to the EPEAT Liaison, and managers, directors, officers, or employees having a need-to-know, or to agents of or contractors to GEC (such as members of the Conformity Decision Panel, product auditors, internal auditors, accreditation bodies and public relations firms) having a need-to-know who are also subject to a written obligation of confidentiality with respect to such information. Moreover, GEC shall not confirm, deny or otherwise respond to any inquiries, rumors or speculation that relates to or may result in the disclosure of Confidential Information. When GEC is required by law or authorized by contractual commitments to release Confidential Information, Participating Manufacturer shall, unless prohibited by law, be notified of the information provided.

(e) Compliance Procedures. GEC agrees to advise any Parties to whom Participating Manufacturer's Confidential Information is disclosed of their obligations hereunder and to ensure compliance by such Parties with the terms hereof.

(f) Retention and Return. Upon termination of this Agreement by either party, GEC may destroy, retain or return to Participating Manufacturer, at GEC's option, all documents and materials provided by Participating Manufacturer, together with any copies or notes derived therefrom.

(g) Indemnification. Subject to the terms of this Agreement, GEC shall indemnify and hold Participating Manufacturer harmless from and against all losses and damages of any nature and kind suffered by Participating Manufacturer (including legal costs and attorneys' fees) as a result of any breach by GEC or any individual or entity described in Section 9(e) (above) of the terms and covenants of this Section 9.

(h) Injunctive Relief. As monetary damages may be insufficient to remedy any breach of this Section 9, or any breach of Section 6, Participating Manufacturer and GEC shall be entitled to immediate equitable relief, including injunctive relief and specific performance, as remedies for any such breach. Such remedies shall not be the exclusive remedies for any breach but shall be in addition to all other remedies available at law or equity.

10. Dispute Resolution.

(a) Informal Dispute Resolution. Subject to Section 9(h) above, in the event that any dispute, controversy or claim arises under or in connection with this Agreement (a "**Dispute**"), the Participating Manufacturer Liaison and the EPEAT Liaison each shall notify the other in writing describing the Dispute. Thereafter the Participating Manufacturer Liaison and the EPEAT Liaison shall meet or converse to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute. If the Participating Manufacturer Liaison and the EPEAT Liaison are unable to resolve the Dispute within fifteen (15) days after the referral of the Dispute to them, then each party will appoint one (1) senior executive who is not involved on a day-to-day basis with the subject matter of this Agreement. Such senior executives will meet to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute. If the senior

executives are unable to resolve the Dispute within fifteen (15) days, the dispute will be submitted for arbitration.

(b) Arbitration. Either party may submit the Dispute to binding arbitration in Portland, Oregon with a professional arbitration service selected by the Parties and, in that event only, the further conditions set forth in this paragraph 11 (c) shall apply. If the Parties do not otherwise agree on an arbitration service, arbitration services shall be provided in Portland, Oregon pursuant to the rules of the International Chamber of Commerce. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case. The Parties agree that this section and the arbitrator's authority to grant relief shall be subject to the United States Arbitration Act, 9 U.S.C. §§ 1-6, et seq. ("USAA"), the provisions of this Agreement, and the ABA-AAA Code of Ethics for Arbitration in Commercial Disputes. The Parties agree that the arbitrator shall have no power or authority to make any award that provides for punitive or exemplary damages. The arbitrator's decision shall be final, binding and non-appealable. The award may be confirmed and enforced in any court of competent jurisdiction. All post-award proceedings shall be governed by the USAA.

(c) Equitable Relief. The provisions of this Section will not be construed to prevent a party from seeking a temporary restraining order or injunctive or other equitable relief in appropriate cases or instituting litigation to compel compliance with this informal dispute resolution process.

(d) Exclusive Remedy. The Parties do not intend the remedies contained in this Section 10 to be exclusive of other remedies that may be available to them at law or equity, and to obtain damages (subject to the limitations herein) or equitable relief.

(e) Court. The Parties agree to submit to the jurisdiction of the U.S. District Court for the District of Oregon. If the U.S. District Court for the District of Oregon refuses to take jurisdiction, then the Parties agree to submit to the jurisdiction of the state and/or federal courts where jurisdiction and venue is proper.

11. Miscellaneous Provisions.

(a) Notices. All notices required or permitted to be given under this Agreement shall be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; or personally. Mailed notices shall be deemed delivered five (5) days after mailing, properly addressed. Couriered notices shall be deemed delivered on the date that the courier warrants that delivery will occur. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the Parties at the addresses set forth below with a copy to:

For GEC: Green Electronics Council
 227 SW Pine Street, Suite 300
 Portland, OR 97204

For Participating Manufacturer:

(b) Section Headings. The section headings in this Agreement are for convenience only; they do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, U.S.A., without respect to New York's rules governing conflicts of laws.

(d) Survival. Notwithstanding any provision to the contrary contained in this Agreement, Sections 8, 9, 10 and 11 shall survive any termination of this Agreement.

(e) Severability. Any provision of this Agreement that is deemed invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Agreement.

(f) Integration; Amendment. This Agreement constitutes the entire agreement of the Parties relating to the subject matter of this Agreement. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement. This Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the Parties relating to the subject matter of this Agreement. This Agreement may not be amended except in writing executed by the Parties.

(g) Waiver. No provision of this Agreement shall be waived unless the waiver is in writing signed by the waiving party. No failure by any party to insist upon the strict performance of any provision of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach, of such provision or of any other provision. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.

(h) Attorneys' Fees. If any suit, action or arbitration proceeding arising out of or related to this Agreement is brought by any party, the prevailing party or Parties shall be entitled to recover reasonable attorneys' fees and costs incurred by such party or Parties in such suit, action or proceeding, including without limitation any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit, action or proceeding.

(i) Binding Effect. This Agreement shall bind and inure to the benefit of, and be enforceable by, the Parties and their respective successors, heirs, and permitted assigns. Neither party may assign its rights and obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

(j) No Third-Party Beneficiary Rights. No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

(k) Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall constitute one agreement binding on both Parties, notwithstanding that both Parties are not signatories to the same counterpart.

(m) Authorized Signature. Each individual signing this Agreement below represents and warrants, on behalf of their respective principals, that they are duly authorized to sign this Agreement and to bind GEC or Participating Manufacturer, as applicable, to the terms and conditions of this Agreement as set forth herein.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of _____, 20__ (the "Effective Date").

Green Electronics Council

PARTICIPATING MANUFACTURER

By: _____

By: _____

Nancy Gillis
Chief Executive Officer
Green Electronics Council
227 SW Pine St., Suite 300
Portland, OR 97204
Telephone: 503-279-9383
E-mail: ngillis@greenelectronicscouncil.org

Name: _____

Title: _____

Address: _____

Telephone: _____

E-mail: _____

Date: _____

Date: _____

EXHIBIT 1

Mark



MARKS SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY.