

SERVICES AGREEMENT

TO: Multi-Material Stewardship Western Inc., a not-for-profit agency incorporated under the *Non-profit Corporations Act, 1995* (Saskatchewan) ("**MMSW**")

By execution and delivery of this Agreement, the undersigned municipality, First Nation or Regional Waste Authority (the "**Contractor**") hereby offers to provide the Services upon and subject to the terms and conditions set forth in "Terms and Conditions" attached hereto as Schedule "A" (collectively with this cover page and the appendices to Schedule "A", this "**Agreement**"). Capitalized terms used but not otherwise defined on this face page shall have the meanings ascribed thereto in Schedule "A".

If you wish to enter into this Agreement, please complete and execute this cover page and deliver a fully executed copy of this Agreement to MMSW:

- a) if by email, to info@multimaterialsw.ca
- b) if by facsimile, to 306-546-0478

Please confirm that (a) Appendix 1 contains a complete and accurate list of each municipality or First Nation that the Contractor is authorized to represent in respect of this Agreement and (b) all other information in Appendix 1 is complete and accurate.

Please confirm that the information in Appendix 4 and Appendix 5 is complete and accurate.

| | |
|------------------------------------|-----------------------------------|
| Name of Contractor: | |
| Address: | |
| Contact Person: | |
| Email Address of Contact Person: | |
| Phone # of Contact Person: | |
| Name of Authorized Signatory: | |
| Title of Authorized Signatory: | |
| Signature of Authorized Signatory: | SAMPLE - NOT FOR SIGNATURE |
| Date: | |

| | |
|--------------------------------|-----------------------|
| To be completed by MMSW | |
| Payment Contract #: | Reporting Contract #: |

Subject to MMSW's acceptance of the Contractor's offer to provide the Services upon and subject to the terms and conditions set forth in "Terms and Conditions" attached hereto as Schedule "A" by delivery of a fully executed copy of this Agreement to the Contractor at the email address or facsimile number set forth above, this Agreement shall be legally effective and binding upon MMSW and the Contractor as of the Effective Date.

ACCEPTANCE: MMSW hereby accepts the offer of the Contractor to provide the Services upon and subject to the terms and conditions set forth in "Terms and Conditions" attached hereto as Schedule "A".

Dated as of _____ (the "Effective Date")

MULTI-MATERIAL STEWARDSHIP WESTERN INC.

By: SAMPLE - NOT FOR SIGNATURE

SAMPLE

Schedule "A"
Terms and Conditions

WHEREAS:

- A. MMSW represents companies and organizations (the "**Stewards**") that supply products in packaging and paper to residents of Saskatchewan and who have joined MMSW as members to discharge their regulatory obligations;
- B. Pursuant to the *Household Packaging and Paper Stewardship Program Regulations* (the "**Regulations**"), enacted under the authority of the *Environmental Management and Protection Act, 2010* (Saskatchewan), the Stewards have certain obligations with respect to the collection and recycling of packaging and paper in Saskatchewan;
- C. MMSW has developed the Waste Packaging and Paper Stewardship Plan (the "**Stewardship Plan**"), as revised by MMSW on September 24, 2015 and as may be further revised from time to time, in order to assist the Stewards with the discharge of their obligations under the Regulations;
- D. Whereas the Saskatchewan Ministry of Environment approved the Stewardship Plan on October 14, 2015; and
- E. In connection with the implementation of the Stewardship Plan, MMSW wishes to engage the Contractor to provide the Services upon and subject to the terms and conditions set out in this Agreement.

In consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MMSW and the Contractor agree as follows:

SECTION 1: DEFINITIONS

1.1 Definitions. In this Agreement, the following terms will have the following meanings:

"**Agreement**" has the meaning set out on the cover page of this Agreement.

"**Applicable Law**" means any domestic or foreign law, rule, statute, subordinate legislation, regulation, by-law, order, ordinance, protocol, code, guideline, treaty, policy, notice, direction or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline published or in force at any time during the Term which applies to or is otherwise intended to govern or regulate any person (including any party), property, transaction, activity, event or other matter, including any rule, order, judgment, directive or other requirement or guideline issued by any governmental or regulatory authority.

"**Confidential Information**" means information of or relating to a party (the "**Disclosing Party**") and its business and affairs disclosed by or on behalf of the Disclosing Party to the other party (the "**Receiving Party**"), whether in oral, written, graphic, electronic or any other form or medium, which the Disclosing Party designates as confidential or should reasonably be considered to be confidential; provided, however, that "Confidential Information" does not include information that: (i) was already known to the Receiving Party, without obligation to keep it confidential, at the time of its receipt from the Disclosing Party; or (ii) is or becomes available to the public other than as a result of a breach hereof by the Receiving Party.

"**Contractor**" has the meaning set out on the cover page of this Agreement.

“Curbside Household” means a household in the Service Area that receives curbside or multi-family building WPP collection services from the Contractor.

“Depot” means depots operated by or on behalf of the Contractor which accept and recycle Residential WPP.

“Depot Only Household” means a household in the Service Area that: (i) does not receive curbside or multi-family building WPP collection services from the Contractor; and (ii) satisfies the other requirements of a Depot Only Household set forth in the Stewardship Plan (including without limitation the requirement that the household is located within a 45 minute drive of a Depot).

“Dispute” has the meaning set out in Section 11.1 of this Agreement.

“Effective Date” has the meaning set out on the cover page of this Agreement.

“Industrial, Commercial and Institutional” or **“ICI”** means industrial facilities including but not limited to warehouses, distribution centres, manufacturing facilities; commercial facilities including but not limited to retail stores, offices, strip malls and vacation facilities, such as hotels, motels, cottages, cabins and rental, co-operative, fractional ownership, time-share or condominium accommodation associated with sports and leisure activities (e.g. ski resorts); and institutional facilities including but not limited to schools, churches, community buildings, local government buildings, arenas, libraries, fire halls, police stations and residences at which medical care is provided, such as nursing homes, long-term care facilities and hospices.

“ICI Locations” means ICI Locations that receive WPP collection services from the Contractor.

“ICI WPP” means WPP collected from ICI Locations.

“MMSW” has the meaning set out on the cover page of this Agreement.

“MMSW Policies and Procedures” means the “Collector and Processor Policies and Procedures” attached as Appendix 2, as amended by MMSW from time-to-time.

“Notice of Delegation” has the meaning set out in Section 4.1 of this Agreement.

“Recycling End Market” means a brokerage or other end market where Residential WPP collected pursuant to this Agreement is delivered and processed into recycled materials.

“Regulations” has the meaning set out on the first page of Schedule “A” of this Agreement.

“Reports” means the written reports and other information required to be delivered by the Contractor pursuant to and in accordance with the terms of this Agreement, including without limitation the reports specified under in Appendix 3.

“Representatives” has the meaning set out in Section 10.1 of this Agreement.

“Residential WPP” means WPP collected from (i) single-family dwellings inhabited year round or seasonally (excluding vacation facilities such as hotels, motels, cottages and cabins which are considered commercial operations) and (ii) multi-family dwellings, including rental, cooperative, fractional ownership, time-share, condominium (excluding vacation facilities, such as rental, cooperative, fractional ownership, time-share, condominium accommodation associated with sports and leisure facilities (e.g. ski resorts) which are considered commercial operations) and seniors residences (excluding residences at which medical care is provided, such as nursing homes, long-term care facilities and hospices, which are considered institutions) in each case, excluding for the avoidance of doubt, ICI WPP.

“Residue” means WPP that remains from sorting (including quality control) and processing of WPP received (including picked-up) from Serviced Households that is not directed to recycling or recovery and non-WPP.

“Service Area” means the area under (i) the jurisdiction of the Contractor or (ii) if the Contractor is a Regional Waste Authority, the jurisdiction of each municipality listed in Appendix 1.

“Serviced Households” means, at any time, all Curbside Households and Depot Only Households.

“Services” means the collection of Residential WPP from Curbside Households in the Service Area, the operation of Depots in the Service Area, any related activities required to be performed in connection therewith, including without limitation receiving, classifying, packing, storing, weighing, transporting and processing WPP pursuant to and in accordance with the terms and conditions of this Agreement, and any other obligations required to be performed pursuant to this Agreement, including delivering to MMSW all Reports required to be delivered to MMSW pursuant to Section 7.2 of this Agreement.

“Stewards” has the meaning set out on the first page of Schedule “A” of this Agreement.

“Stewardship Plan” has the meaning set out on the first page of Schedule “A” of this Agreement.

“Sub-Contractor” means a waste management or utility company that provides the Services on behalf of the Contractor.

“Term” has the meaning set out in Section 3.1 of this Agreement.

“Work Product” means the deliverables to be created or delivered by the Contractor to MMSW pursuant to this Agreement, including any Reports or other data, records and reports that have been prepared, created, written or recorded in performance of the Services of this Agreement.

“WPP” means waste packaging and paper, as defined in the Regulations and Stewardship Plan.

1.2 Appendices. As of the Effective Date, the following Appendices form part of this Agreement:

| <u>Appendix</u> | | <u>Description</u> |
|-----------------|---|------------------------------|
| Appendix 1 | – | Service Area Information |
| Appendix 2 | – | MMSW Policies and Procedures |
| Appendix 3 | – | Reporting |
| Appendix 4 | – | Payment |
| Appendix 5 | – | Notice of Delegation |

SECTION 2: REPRESENTATIONS AND WARRANTIES

2.1 MMSW Representations and Warranties. MMSW represents and warrants to the Contractor that:

- (a) it has full power, authority and right to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with its terms; and

- (b) this Agreement has been validly executed by an authorized representative of MMSW and constitutes a valid and legally binding obligation of MMSW.

2.2 Contractor Representations and Warranties. The Contractor represents, warrants and covenants to MMSW that:

- (a) it has full power, authority and right to execute and deliver this Agreement and to perform its obligations under this Agreement in accordance with its terms;
- (b) this Agreement has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of the Contractor; and
- (c) if the Contractor is a Regional Waste Authority, the Contractor has the authority to enter into this Agreement and perform its obligations hereunder for and on behalf of each municipality listed on Appendix 1 and will provide such evidence of such authority as MMSW may reasonably request from time to time.

SECTION 3: TERM

3.1 Duration. The term of this Agreement (the “**Term**”) will commence on the Effective Date and will continue until termination of this Agreement in accordance with its terms.

3.2 Termination for Convenience. Either party may, at any time and without cause, terminate this Agreement for convenience upon giving the other party 30 days prior written notice (or such shorter amount of notice if agreed in writing).

3.3 Termination by MMSW for Cause. MMSW may terminate this Agreement by providing written notice of such termination, effective immediately or at such other time set out in the notice of termination, to the Contractor in the event that:

- (a) the Contractor commits a material breach of this Agreement and does not cure such breach within 30 days of receipt of notice thereof from MMSW;
- (b) the Contractor fails to provide all or a material portion of the Services for a consecutive period of more than 14 days; or
- (c) the performance by the Contractor of the Services creates a hazard to public health or safety or to the environment.

3.4 Termination by the Contractor for Cause. The Contractor may terminate this Agreement:

- (a) by providing written notice of such termination, effective immediately or at such other time set out in the notice of termination, to MMSW in the event that MMSW fails to pay undisputed fees as they become due to the Contractor and MMSW does not cure such non-payment within 60 days of receipt of notice thereof from the Contractor; or
- (b) by providing written notice of such termination, effective 14 days after delivery of such written notice or at such other time set out in the notice of termination, in the event that the Contractor disagrees with any adjustment to the amount of fees payable to the Contractor under this Agreement made pursuant to Appendix 4 of this Agreement.

3.5 Change in Applicable Law. MMSW may terminate this Agreement by providing written notice of such termination, effective immediately or at such other time set out in the notice of termination, to the Contractor in the event there is a change to Applicable Law (including the Regulations), or

any new plan (whether submitted by MMSW or any other person) is approved under the Regulations, that has a material impact on the rights and obligations of the parties hereto or the performance of the Services.

SECTION 4: SUB-CONTRACTOR

- 4.1 Subject to MMSW's approval, the Contractor shall be permitted to delegate its responsibility to perform the Services to a Sub-Contractor. The Contractor shall make a request to delegate its responsibility to perform all or some of the Services by delivering to MMSW a duly completed and signed "Notice of Delegation" in the form attached hereto as Appendix 5 (the "**Notice of Delegation**") and such other information as MMSW may reasonably request (including without limitation evidence that the proposed Sub-Contractor has the ability, and has agreed, to perform such Services in accordance with the terms hereof). Without limiting the generality of the foregoing, the Notice of Delegation will:
- (a) specify whether the responsibilities to be delegated to the Sub-Contractor include the responsibility to deliver the Reports the Contractor is otherwise required to deliver to MMSW pursuant to the terms of this Agreement; and
 - (b) include a representation and warranty that the Sub-Contractor has the ability, and has agreed in writing, to perform the Services delegated to the Sub-Contractor in accordance with the terms hereof.

MMSW shall confirm that the Sub-Contractor proposed by the Contractor is acceptable to MMSW by returning to the Contractor a counter-signed copy of such Notice of Delegation.

- 4.2 In the event that the Contractor delegates its responsibility to perform the Services to a Sub-Contractor pursuant to Section 4.1 of this Agreement:
- (a) the Contractor shall use reasonable best efforts (including through appropriate supervision and inspection) to cause the Sub-Contractor to perform the Services delegated to the Sub-Contractor in accordance with the terms hereof; and
 - (b) the Contractor shall remain the sole contact for MMSW; and
 - (c) the Contractor shall remain solely liable to MMSW for the performance or non-performance of the Services or any breach of this Agreement and, for the avoidance of doubt, any failure of the Sub-Contractor to perform the Services delegated to the Sub-Contractor shall constitute a breach of such obligation by the Contractor.

SECTION 5: CONTRACTOR OBLIGATIONS

- 5.1 Performance. Beginning on the Effective Date, the Contractor will perform the Services and otherwise fulfill its obligations hereunder honestly and in good faith, exercising reasonable skill, care and diligence, in accordance with recognized professional and industry standards, practices and methods, in a timely manner and in accordance with the terms and conditions of this Agreement, having regard for the concerns, needs, and interests of residents and the environment. Without limiting the generality of the foregoing, the Contractor shall adopt and implement a recycling program acceptable to MMSW which ensures that all or substantially all of the Residential WPP collected by the Contractor pursuant to this Agreement is delivered to a Recycling End-Market following collection.
- 5.2 Compliance with MMSW Policies and Procedures. The Contractor will comply at all times with the MMSW Policies and Procedures.

- 5.3 Compliance with Applicable Law. The Contractor will perform its obligations under this Agreement in a manner that complies with all Applicable Law (including, without limitation, holding all permits, certificates and licenses required by Applicable Law for the performance of the Services).
- 5.4 Spillage. The Contractor will use its best efforts not to spill or discharge any WPP, liquid waste or oil during the performance of the Services. Any spillage or discharge of WPP, liquid waste or oil that occurs during the performance of the Services will be immediately cleaned up and removed by the Contractor at its sole cost and expense. The Contractor will keep accurate records of each material spillage or discharge of WPP, liquid waste or oil and will make such records available to MMSW on request. The Contractor acknowledges and agrees that it is solely responsible for any violations of Applicable Law that may result from any spillage or discharge of WPP, liquid waste or oil.
- 5.5 Employment and Training. The Contractor shall use commercially reasonable efforts to deliver the Services in a manner that utilizes persons, bodies or other entities that provide employment and training to persons with disabilities.

SECTION 6: MMSW OBLIGATIONS

- 6.1 Payments for Services.
- (a) Subject to adjustment in accordance with Section 6.1(b), in consideration for the Services, MMSW will make the payments to the Contractor (or, if applicable, the Sub-Contractor) specified in Appendix 4.
 - (b) Once every two years or with such other frequency as MMSW may in its sole discretion consider appropriate, the amount paid to the Contractor for the performance of the Services will be reviewed and, if MMSW considers it appropriate, adjusted by MMSW in accordance with Section 4.4.5 of the Stewardship Plan.
- 6.2 Fee Exclusion. For the avoidance of doubt, MMSW shall not be required to make any payments to the Contractor in consideration for the Services except for payments made pursuant to Section 6.1 of this Agreement. Without limiting the generality of the foregoing, MMSW shall not make any payments to the Contractor for expenses, costs of travel, personnel, fuel, equipment, or facilities relating to the performance of the Services or this Agreement.
- 6.3 Electronic Funds Transfer. MMSW will make payments to the Contractor via electronic funds transfer to a bank account specified by the Contractor in writing. If the Contractor has appointed a Sub-Contractor pursuant to Section 4.1 of this Agreement, the Notice of Delegation shall specify whether MMSW shall direct payments directly to the Sub-Contractor via electronic funds transfer to a bank account specified by the Sub-Contractor in writing.
- 6.4 Suspension of Payment. Without prejudice to its right to terminate this Agreement pursuant to Section 3.3 of this Agreement, MMSW may suspend or withhold payment to the Contractor in the event that the Contractor fails to comply with the MMSW Policies and Procedures or any other term of this Agreement, including without limitation its reporting obligations under Section 7 of this Agreement, and fails to cure such non-compliance within 30 days.

SECTION 7: REPORTING AND AUDIT

- 7.1 Record Keeping. During the Term and for three years thereafter (or such longer period as may be required by Applicable Law) or the date all disputes or other matters relating to this Agreement are resolved, the Contractor will keep and maintain complete and accurate data, records, and documents relating to the performance of the Services and compliance with the Contractor's obligations under this Agreement.

7.2 Reporting.

- (a) During the term, the Contractor will provide MMSW with:
- (i) all reports and other information set forth in Appendix 3;
 - (ii) such reports or information with respect to performance of the Services as MMSW may reasonably request in order to monitor compliance by the Contractor with its obligations hereunder;
 - (iii) such reports or information as MMSW may reasonably request in order to determine the amount of Residential WPP and ICI WPP collected by the Contractor from Curbside Households or at Depots in the Service Area; and:
 - A. For purposes of determining the total tonnes of Residential WPP collected from Curbside Households (including without limitation for the purpose of complying with its reporting obligations to the Saskatchewan Ministry of Environment under Applicable Law), the amount of Residential WPP collected will be determined on a proportionate basis based on (x) the number of ICI Locations in the Service Area as a percentage of (y) the aggregate number of Curbside Households and ICI Locations in the Service Area. The Contractor must provide complete and accurate information to MMSW with respect to the number of Curbside Households and ICI Locations in the Service Area; and
 - B. For purposes of determining the amount of Residential WPP collected at Depots (including without limitation for the purpose of complying with its reporting obligations to the Saskatchewan Ministry of Environment or under Applicable Law), the parties shall assume that 20% of WPP collected from Depots is ICI WPP; provided, however, that MMSW may adopt a different methodology for determining the amount of Residential WPP collected at a particular Depot if it determines, acting reasonably, that the amount of ICI WPP collected at a particular Depot is more or less than 20% of WPP collected from such Depot. In addition, the Contractor may apply to have the ICI Amount for a particular depot adjusted if the Contractor:
 - (1) adopts policies consistent with Appendix C of the Stewardship Plan to ensure that WPP from ICI sources is not collected at the applicable depot and provides supporting documentation to MMSW with respect to the implementation and enforcement of such policies; or
 - (2) provides evidence in accordance with Appendix C of the Stewardship Plan that less than 20% of WPP collected at the applicable depot is from ICI sources.
 - (iv) such reports or information as MMSW may reasonably request in order to comply with its reporting obligations to the Saskatchewan Ministry of Environment or under Applicable Law.
- (b) The Contractor will provide to MMSW such emissions data as MMSW may reasonably require in order to comply with its obligation to track and measure greenhouse gas emissions associated with the collection and recycling of WPP by the Contractor pursuant to Section 4.6.2 of the Stewardship Plan.

7.3 Audit.

- (a) During the Term, MMSW (or its audit representative) will have the right, upon reasonable prior written notice to the Contractor, to audit and inspect any site, vehicle or equipment used by the Contractor (or, if applicable, the Sub-Contractor) to provide the Services and any data, records, documentation and other information of the Contractor (or, if applicable, the Sub-Contractor) relating to this Agreement or the performance of the Services hereunder, in each case in order to monitor compliance by the Contractor with its obligations hereunder or to verify the amount of Residential WPP collected by the Contractor or otherwise comply with its reporting obligations to the Saskatchewan Ministry of Environment or under Applicable Law.
- (b) Without limiting any other audit right, during the Term, MMSW (or its audit representative) may conduct composition studies, without notice, of any materials collected, transported, processed or otherwise handled under this Agreement at any stage of the Services and regardless of the location of such materials.
- (c) The Contractor will co-operate with and provide to MMSW (or its audit representative) such reasonable assistance as MMSW (or its audit representative) requires in order to exercise the audit rights set out in this Section 7.3. If the Contractor has appointed a Sub-Contractor pursuant to Section 4.1 of this Agreement, the Contractor will ensure that the Sub-Contractor provides MMSW (or its audit representative) such reasonable assistance as MMSW (or its audit representative) requires in order to exercise the audit rights set out in this Section 7.3.

SECTION 8: INDEMNITY

- 8.1 Indemnity. The Contractor will indemnify and save harmless MMSW and its affiliates, and its and their respective directors, officers, contractors, employees, volunteers and agents, from and against any and all manner of actions or causes of action, damages, costs, losses or expenses of whatever kind which may directly or indirectly result or arise out of any act or omission of the Contractor, or any of its contractors, employees, volunteers and agents, in relation to this Agreement or the performance of the Services, including without limitation any loss of life, personal injury and/or damage to property or the environment in any way related to the performance or non-performance of the Services.

SECTION 9: PROPRIETARY RIGHTS

- 9.1 Collected WPP. Except as otherwise agreed to by the parties in writing, all WPP collected by the Contractor will belong to the Contractor from the time of collection.
- 9.2 Work Product. Except as otherwise agreed to by the parties in writing, the Work Product delivered to MMSW pursuant to and in accordance with this Agreement will be owned by MMSW and may be used by MMSW for any purpose.

SECTION 10: CONFIDENTIALITY

- 10.1 Confidentiality. The Receiving Party will: (i) take all measures reasonably required to maintain the confidentiality and security of the Confidential Information of the Disclosing Party; (ii) not use or reproduce Confidential Information for any purpose, other than as reasonably required to exercise or perform its rights or obligations under this Agreement; (iii) not disclose any Confidential Information other than to employees, agents or subcontractors of the Receiving Party (the "**Representatives**") to the extent, and only to the extent, they have a need to know the Confidential Information in order for the Receiving Party to exercise its rights or perform its

obligations under this Agreement; and (iv) be responsible for any breach of this Agreement by any of its Representatives.

- 10.2 Legal Requirement. Notwithstanding Section 10.1 of this Agreement, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by Applicable Law.

SECTION 11: DISPUTE RESOLUTION

- 11.1 Disputes. Any dispute that touches upon the validity, construction, meaning, performance or effect of this Agreement or the rights or liabilities of the parties or any matter arising out of, or in connection with, this Agreement (a “**Dispute**”), between MMSW and the Contractor will be addressed as follows:

- (a) Senior representatives of the parties will attempt in good faith to resolve the Dispute within 15 days after the Dispute first arises or such longer period as the parties may otherwise agree.
- (b) If the Dispute is not resolved pursuant to clause (a) within 15 days after the Dispute first arises, the parties will attempt in good faith to resolve the dispute with the assistance of a third party facilitator within a further 15 days or such longer period as the parties may otherwise agree. The third-party facilitator will be jointly selected by the parties acting reasonably.
- (c) If the Dispute is not resolved pursuant to clause (b) within such further 15 day period, either party may escalate the Dispute to non-binding third party mediation within a further 60 day or such longer period as the parties may otherwise agree. The mediation will take place at a time and place mutually agreed upon by the parties and will be led by a third party mediator jointly selected by the parties acting reasonably. If the parties cannot agree upon a third party mediator, the third party mediator will be selected by MMSW in its sole discretion.
- (d) If the Dispute is not resolved pursuant to clause (c) within such further 60 day period, the Dispute will be conclusively settled by means of private and confidential binding arbitration, to the exclusion of courts of law. The decision of the arbitrator will be final and binding on the parties and will not be subject to appeal on any grounds whatsoever, and will be enforceable against MMSW and the Contractor, as the case may be. The arbitration will take place at a time and place mutually agreed upon by the parties and will be led by an arbitrator jointly selected by the parties acting reasonably. If the parties cannot agree upon an arbitrator, the arbitrator will be determined pursuant to *The Arbitration Act, 1992* (Saskatchewan), as amended.

Notwithstanding anything to the contrary in this Section 11.1, either party may start litigation proceedings in a court of law at any time for an application for a temporary restraining order or other form of injunctive relief and each party hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Saskatchewan for such a purpose.

SECTION 12: GENERAL PROVISIONS

- 12.1 Assignment. This Agreement may not be assigned by either party, in whole or in part, without the other party’s prior written consent, except that MMSW may assign this Agreement without the Contractor’s consent to: (a) a person with an approved plan under the Regulations; (b) a person who otherwise has obligations similar to those of MMSW; or (c) a successor to MMSW under a

corporate reorganization of MMSW. Any attempt by a party to assign all or any part of this Agreement without prior written consent (where such consent is required) is void.

- 12.2 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination will not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct. To the extent that any such provision is found to be invalid, illegal or unenforceable, the parties hereto will act in good faith to substitute for such provision, to the extent possible, a new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.
- 12.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein without regard to conflicts of law that would apply a different body of law. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Saskatchewan for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.
- 12.4 Notices. All notices, requests or demands made pursuant to this Agreement will be made in writing, in the English language, and will be deemed duly given: (i) when delivered by hand; (ii) when sent by facsimile or e-mail; (iii) on the designated day of delivery, when delivered by express overnight courier with a reliable system for tracking delivery; or (iv) six (6) days after the day of mailing, when mailed by Canada Post, registered or certified mail, return receipt requested and postage prepaid. Notices, requests or demands shall be delivered to the Contractor in accordance with the information set forth on the cover page. Notices, requests or demands shall be delivered to MMSW at:
- Multi-Material Stewardship Western Inc.
401-333 3rd Avenue North
Saskatoon, SK S7K 2M2
- Attn: Director, Field Services
- Email: info@multimaterialsw.ca
Fax: 306-546-0478
- 12.5 Waiver. A waiver of any provision of this Agreement will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement, or to exercise any right hereunder, will not act as a waiver of any right, promise or term, which will continue in full force and effect.
- 12.6 Amendment. This Agreement may only be amended by written agreement duly executed by authorized representatives of the parties (it being understood, for the avoidance of doubt, that the Stewardship Plan or the MMSW Policies and Procedures may be amended at any time by MMSW, subject to receipt of any required governmental approvals).
- 12.7 Entire Agreement. This Agreement will constitute the entire agreement between the parties with respect to the subject matter hereof and will replace all prior promises or understandings, oral or written (including, if applicable, any prior services agreement between the Contractor and MMSW). There is no representation, warranty, collateral term or condition or collateral agreement affecting this Agreement, other than as expressed in writing in this Agreement.
- 12.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Appendix 2

MMSW Policies and Procedures

Policies and Procedures for Household Collection Services

The Contractor shall ensure that:

- WPP in the following categories is collected from residents in the Service Area:
 - Packaging as defined in Clause 2(1)(e) of *The Household Packaging and Paper Stewardship Program Regulations* supplied by MMSW Members; and
 - Paper as defined in Clause 2(1)(f) of *The Household Packaging and Paper Stewardship Program Regulations* supplied by MMSW Members.
- Packaging that contains hazardous or special waste is not accepted in the WPP collection system.
- Residents are informed that items that are not packaging or paper are not accepted in the WPP collection system and collectors ensure that these items do not represent more than 3% of the WPP collected by the Contractor from Curbside Households.
- All collected Residential WPP is accounted for under the WPP program and may not be directed for separate management outside of the WPP product management program.
- WPP is collected and stored in a manner that maximizes material quality and commodity revenue.
- WPP collection occurs on a regular schedule on the same day and as close to a consistent time as possible.
- Collection containers provided to residents provide sufficient volume to accommodate generation within the context of collection frequency and shall not limit participation and WPP capture.
- Limits are not placed on the volume of WPP accepted from residents, except in the case where the WPP is considered to be ICI WPP.
- Residents receive uninterrupted collection service with the exception of statutory holidays.
- Residents are regularly informed about how to participate in the collection service.
- WPP collection services are delivered in a manner that contributes to a positive view of WPP recycling and encourages continued participation by residents.
- Collection vehicles
 - Are maintained in a satisfactory condition and have appropriate safety markings in accordance with current statutes, rules and regulations.
 - Are operated in compliance with all rules of the road including weight-related laws and regulations, such as axle bridging and loading requirements.
 - Are operated in compliance with applicable federal, provincial, local government laws, statutes, rules, regulations or ordinances, including those of agencies having jurisdiction over any aspect of the collection of WPP.
 - Are permitted as required by local, provincial or federal governments or any other regulatory body required in order to collect WPP.
 - Are operated in compliance with all environmental standards and regulations including local government noise bylaws.
 - Are operated in compliance with the *Workers Compensation Act, 2013* (Saskatchewan) and all worker health and safety requirements and shall provide a safe working environment.
 - Are operated with the following insurance coverage:
 - Automobile liability insurance coverage with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident;
 - Commercial general liability insurance coverage with limits no less than \$5,000,000 each occurrence and \$5,000,000 general aggregate;

- Workers Compensation coverage as required by the *Workers Compensation Act, 2013* (Saskatchewan); and
- Pollution liability insurance with limits no less than \$3,000,000 each occurrence and \$3,000,000 annual aggregate.

Policies and Procedures for Depot Collection Services

The Contractor shall ensure:

- WPP in the following categories is accepted from residents:
 - Packaging as defined in Clause 2(1)(e) of *The Household Packaging and Paper Stewardship Program Regulations* supplied by MMSW Members; and
 - Paper as defined in Clause 2(1)(f) of *The Household Packaging and Paper Stewardship Program Regulations* supplied by MMSW Members.
- ICI WPP is kept separate from Residential WPP and is not included in tonnes of WPP reported under the product management program.
- Packaging that contains hazardous or special waste is not accepted in the WPP collection system.
- Residents are informed that items that are not packaging or paper are not accepted in the WPP collection system and collectors ensure that these items do not represent more than 3% of the WPP collected by the Contractor at Depots.
- All collected Residential WPP is accounted for under the WPP program and may not be directed for separate management outside of the WPP product management program.
- WPP is collected and stored in a manner that maximizes material quality and commodity revenue.
- Limits are not placed on the volume of WPP accepted from residents, except in the case where the WPP is considered to be ICI WPP.
- Residents are regularly informed about how to utilize the depot collection service.
- WPP depot collection services are delivered in a manner that contributes to a positive view of WPP recycling and encourages continued participation by residents.
- Depots:
 - Are maintained in a satisfactory condition and have appropriate safety signage in accordance with current statutes, rules and regulations.
 - Are operated in compliance with applicable federal, provincial, local government laws, statutes, rules, regulations or ordinances, including those of agencies having jurisdiction over any aspect of the collection of WPP.
 - Are permitted as required by local, provincial or federal governments or any other regulatory body required in order to collect WPP.
 - Are operated in compliance with all environmental standards and regulations including local government noise bylaws.
 - Are operated in compliance with the *Workers Compensation Act, 2013* (Saskatchewan) and all worker health and safety requirements and shall provide a safe working environment.
 - Are operated with the following insurance coverage:
 - Commercial general liability insurance coverage with limits no less than \$5,000,000 each occurrence and \$5,000,000 general aggregate;
 - Workers Compensation coverage as required by the *Workers Compensation Act, 2013* (Saskatchewan); and
 - Pollution liability insurance with limits no less than \$3,000,000 each occurrence and \$3,000,000 annual aggregate.

Policies and Procedures for Processing Services

The Contractor shall ensure:

- All collected Residential WPP is accounted for under the WPP program and WPP may not be directed for separate management outside of the WPP product management program.
- WPP is received and stored in a manner that maximizes material quality.
- WPP is processed and marketed in a timely, efficient and diligent manner.
- WPP is processed to meet Recycling End-Market specifications, maximize the quantity of WPP shipped to Recycling End-Markets and minimize the quantity of Residue requiring disposal.
- The quantity of Residential WPP collected by the Contractor which is directed to disposal does not represent more than 10% of such Residential WPP including Residue.
- WPP is marketed to Recycling End-Markets to maximize commodity revenue received.
- Non-WPP received and Residue from processing WPP are disposed in a facility that is operated in compliance with applicable provincial, local government laws, statutes, rules, regulations or ordinances.
- WPP processing services are delivered in a manner that utilizes persons, bodies or other entities that provide employment and training to persons with disability and operate efficient and effective programs where this is determined to be practical, effective, efficient and without risk to the persons involved or other processing staff.
- Processing facilities
 - Are maintained in a satisfactory condition and have appropriate safety signage in accordance with current statutes, rules and regulations.
 - Are operated in compliance with applicable federal, provincial, local government laws, statutes, rules, regulations or ordinances, including those of agencies having jurisdiction over any aspect of the collection of WPP.
 - Are permitted as required by local, provincial or federal governments or any other regulatory body required in order to collect WPP.
 - Are operated in compliance with all environmental standards and regulations including local government noise bylaws.
 - Are operated in compliance with the *Workers Compensation Act, 2013* (Saskatchewan) and all worker health and safety requirements and shall provide a safe working environment.
 - Are operated with the following insurance coverage:
 - Commercial general liability insurance coverage with limits no less than \$5,000,000 each occurrence and \$5,000,000 general aggregate;
 - Workers Compensation coverage as required by the *Workers Compensation Act, 2013* (Saskatchewan); and
 - Pollution liability insurance with limits no less than \$3,000,000 each occurrence and \$3,000,000 annual aggregate.

Appendix 3

Reporting

The Contractor shall report¹ the following information to MMSW. All such information shall be complete and accurate, and shall include such supporting documentation as MMSW may reasonably request from time-to-time.

Annual Information

- The following information no later than June 30 of each calendar year:
 - The number of Curbside Households in the Service Area.
 - The number of Depot Only Households in the Service Area.
 - The population of the Service Area (or, if the Contractor is a Regional Waste Authority, each municipality or other region in the Service Area).
 - The number of WPP material streams collected and the types of packaging and paper included in each stream (i) collected from Curbside Households and (ii) accepted at depots.
 - The number of ICI Locations in the Service Area (or, if the Contractor is a Regional Waste Authority, each municipality or other region in the Service Area).
 - Frequency of collection service provided and type of set-out container used by residents.
 - Locations of depots accepting Residential WPP.

Quarterly Information

- The following information within 30 calendar days following the end of each calendar quarter:
 - Tonnes² of Residential WPP (for each stream) collected from Curbside Households (or, if the Contractor is a Regional Waste Authority, each municipality or other region in the Service Area).
 - Tonnes³ of Residential WPP (for each stream) received at each Depot.
 - Tonnes⁴ of Residential WPP shipped to Recycling End-Markets by (i) type of packaging and type of paper and (ii) Recycling End-Market.⁵
 - Tonnes⁶ of Residential WPP which are not accepted at Recycling End-Markets due to issues of poor or unacceptable commodity quality (i.e. contamination, dampness, etc.), including the reason such WPP was not accepted.
 - Amount of money received by the Contractor from the sale of Residential WPP shipped to Recycling End-Markets (by type of packaging and type of paper).

General

The Contractor will promptly communicate any significant or material changes to its WPP collection program to MMSW.

¹ All information reported by the Contractor is subject to review by MMSW's accountant (in addition to the information described in Section 4.4.5 of the Stewardship Plan) if the municipality is selected as a representative municipality for the municipal group of which it is part.

² Based on weigh scale tickets. Estimates and projections are not acceptable.

³ Based on weigh scale tickets. Estimates and projections are not acceptable.

⁴ Based on weigh scale tickets. Estimates and projections are not acceptable.

⁵ Recycling End-Market information will be considered confidential.

⁶ Based on weigh scale tickets. Estimates and projections are not acceptable.

Appendix 4

Payment

1. In consideration for providing the Services, MMSW will pay the Contractor (or, if applicable, the Sub-Contractor):
- (a) The selected (as indicated by an x in the associated check box) annual amount in the table below *times* the Collection Type indicated as set forth on Appendix 1 (as updated from time-to-time in accordance with this Appendix 4).

| Population Band | E&E ⁷ Tier | Collection Type | Annual Payment | Contractor Rate |
|-----------------|-----------------------|-----------------------|----------------|--------------------------|
| 5,000 – 50,000 | > 50 KG/Household | Curbside Households | \$42.00 | <input type="checkbox"/> |
| | | Depot Only Households | \$28.00 | <input type="checkbox"/> |
| | 30-50 KG/Household | Curbside Households | \$36.00 | <input type="checkbox"/> |
| | | Depot Only Households | \$24.00 | <input type="checkbox"/> |
| | < 30 KG/Household | Curbside Households | \$28.00 | <input type="checkbox"/> |
| | | Depot Only Households | \$23.00 | <input type="checkbox"/> |
| <5,000 | > 50 KG/Household | Curbside Households | \$50.00 | <input type="checkbox"/> |
| | | Depot Only Households | \$31.00 | <input type="checkbox"/> |
| | 30-50 KG/Household | Curbside Households | \$42.00 | <input type="checkbox"/> |
| | | Depot Only Households | \$26.00 | <input type="checkbox"/> |
| | < 30 KG/Household | Curbside Households | \$31.00 | <input type="checkbox"/> |
| | | Depot Only Households | \$24.00 | <input type="checkbox"/> |

- (b) If selected (as indicated by an x in the associated check box), in the table below (which may be none) the following amount as set out in the table below *times* the Total Number of Serviced Households as set forth on Appendix 1 (as updated from time-to-time in accordance with this Appendix 4)

| Top Up | Annual Payment per Total Number of Serviced Households | Contractor Rate |
|------------------------------|--|-------------------------------------|
| Promotion & Education Top Up | \$0.75 | <input checked="" type="checkbox"/> |

⁷ Reference to Section 4.4.1 of the Stewardship Plan whereby the manner in which payments are distributed is intended to "Reimburse municipalities for up to 75% of the net costs to operate **efficient and effective** programs to manage household WPP supplied by MMSW Members."

If the Contractor selects to receive the Promotion & Education Top Up, all amounts received in respect must be used for the purpose of providing resident education in respect of the collecting of WPP.

2. All annual payments set forth will be payable in arrears, in equal quarterly payments within 30 days of the last day of each quarter (subject to pro ration of any amount is payable in respect of a partial period). If the amount of any annual payment is adjusted during the course of a year, MMSW will make such adjustment as it in good faith considers necessary to account for such adjustment.
3. Each of the parties acknowledges and agrees that the payments made pursuant to this Appendix 4 will be based on the Total Number of Serviced Households as set forth in Appendix 1. Appendix 1 may be updated effective as of January 1 of each year on the basis of updated information regarding the number of Serviced Households provided to MMSW by the Contractor by no later than June 30 of the immediately preceding year. MMSW may from time to time request, and the Contractor will promptly provide upon such request, documentation to validate the number of Serviced Households in respect of which the Contractor is entitled to receive payment. Based on such information, MMSW will work in good faith to mutually agree on the Total Number of Serviced Households at such time.

SAMPLE

Appendix 5

Notice of Delegation

TO: MULTI-MATERIAL STEWARDSHIP WESTERN INC. ("MMSW")

Pursuant to Section 4.1 of the services agreement between MMSW and the undersigned (the "**Contractor**") to which this Appendix 5 is attached (the "**Agreement**"), the Contractor hereby provides written notice to MMSW that it proposes to delegate its responsibility to perform the Services to the Sub-Contractor specified below. Capitalized terms used but not defined in this Notice of Delegation shall have the meaning ascribed thereto in the Agreement. The Contractor represents and warrants that the proposed Sub-Contractor has the ability, and has agreed in writing, to perform the Services delegated to the Sub-Contractor in accordance with the terms of the Agreement.

The Contractor acknowledges and agrees that the Contractor (i) shall remain the sole contact for MMSW and (ii) shall remain solely liable to MMSW for the performance or non-performance of the Services or any breach of this Agreement (it being understood, for the avoidance of doubt, that any failure of the Sub-Contractor to perform the Services delegated to the Sub-Contractor shall constitute a breach of such obligation by the Contractor).

Pursuant to the terms of the sub-contracting arrangements between the Contractor and the Sub-Contractor (*check each box that applies*):

- Sub-Contractor to **deliver Reports** directly to MMSW
- Sub-Contractor to **receive Payments** directly from MMSW

| | |
|---|--------------------------------|
| Name of Contractor | |
| Name and Title of Contractor's Authorized Signatory | |
| Signature of Contractor's Authorized Signatory | Date |
| Company Name of Sub-Contractor | |
| Address of Sub-Contractor | |
| Contact Person of Sub-Contractor | |
| Email of Contact Person | Phone Number of Contact Person |

Confirmed and agreed as of _____

MULTI-MATERIAL STEWARDSHIP WESTERN INC.

SAMPLE - NOT FOR SIGNATURE