

Background

On August 14, 2017, the Minister of the Environment and Climate Change sent a letter to the Resource Productivity and Recovery Authority (the Authority) and Stewardship Ontario directing the two parties to develop a proposal for an amended Blue Box Program Plan (a-BBPP). This direction was issued under S. 13(1) of the *Waste Diversion Transition Act, 2016* (WDTA), which allows the Minister to “require the Authority and an industry funding organization to develop a proposal for a change to a waste diversion program”. The Minister issued the direction after receiving a letter from a number of municipalities and producers requesting an opportunity to amend the Blue Box Program Plan.

Following receipt of this direction, the Authority and Stewardship Ontario agreed that Stewardship Ontario would lead consultations on a draft a-BBPP proposal. The Authority has monitored these consultations and worked closely with Stewardship Ontario, providing guidance on the content of the draft a-BBPP.

On December 19th, Stewardship Ontario posted a draft a-BBPP proposal for consultation. It can be found here: <https://stewardshipontario.ca/draft-a-bbpp/>.

Read the Authority’s a-BBPP Commentary for information related to the process, timelines and ongoing a-BBPP consultations published on December 19th on its website at: <https://rpra.ca/amended-blue-box-program/>

Subsection 10(4) of the WDTA requires that a Program Agreement between the Authority and Stewardship Ontario be included with the a-BBPP. This Agreement governs the role of Stewardship Ontario in the operation of the program and the exercise of Stewardship Ontario’s powers under the WDTA. In parallel with Stewardship Ontario’s consultations and development of its draft a-BBPP proposal, the Authority, in negotiation with Stewardship Ontario, has prepared a draft Program Agreement for consultation. A final Program Agreement will be included with the a-BBPP if approved by the Authority’s Board of Directors for submission to the Minister by February 15, 2018.

This introduction to the draft a-BBPP Program Agreement provides information on the Agreement including an overview of the Authority’s role under the WDTA and a summary of the terms of the draft Agreement.

Program Agreement Within the Context of the WDTA

With respect to the a-BBPP, under the WDTA the Authority is responsible for:

- Overseeing the operation by Stewardship Ontario of the a-BBPP in accordance with the WDTA and monitoring the effectiveness and efficiency of the a-BBPP;
- Exercising the powers and performing the duties given to the Authority with respect to a waste diversion program under the WDTA;
- Seeking to enhance public awareness of and participation in the a-BBPP;
- Seeking to ensure that the a-BBPP affects Ontario’s marketplace in a fair manner;
- Determining the amount of money required by Stewardship Ontario to carry out its responsibilities under the WDTA; and

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- Establishing a dispute resolution process for disputes between Stewardship Ontario and:
 - a municipality with respect to payments to the municipality under the a-BBPP; or
 - a person in respect of the application of rules made by Stewardship Ontario.

In developing the draft Program Agreement for the a-BBPP, the Authority, working with Stewardship Ontario, has taken into consideration that the WDTA provides the Authority with specific powers and requires Stewardship Ontario to undertake certain activities. These statutory requirements cannot be overridden by the Program Agreement and have not been repeated in the draft Program Agreement. As such, stakeholders should consider the draft Program Agreement within the context of the WDTA.

In addition to the Authority's powers and certain Stewardship Ontario's activities, the WDTA also sets out actions for which an industry funding organization may be subject to administrative penalties, as set out in Ontario Regulation 414/17, and/or that are offences. These are summarized in Appendix A.

Key Components of the Draft Program Agreement

Key components of the Program Agreement include:

- The Authority's oversight of Stewardship Ontario's operation of an a-BBPP;
- The Authority's oversight of changes to the a-BBPP;
- Transparency requirements for Stewardship Ontario; and
- Governance of the relationship between Stewardship Ontario and the Authority.

Oversight of Stewardship Ontario's Operation of an a-BBPP

The Program Agreement will establish the processes associated with the Authority's oversight of the operations of the a-BBPP. The draft Program Agreement states that the Authority must notify Stewardship Ontario if the Authority finds that Stewardship Ontario has:

- Failed to comply with the terms of the a-BBPP, the WDTA or its regulations; or
- Operated the a-BBPP so as to affect the marketplace in an unfair manner, including failing to provide parties equitable opportunities to compete in support of a fair and open marketplace for Blue Box services.



WDTA S. 31 – The Authority may request, in accordance with any prescribed requirements, that an industry funding organization provide the Authority with information, and the industry funding organization shall provide the information.

If the Authority gives this notice to Stewardship Ontario, the Authority may direct Stewardship Ontario to take specific actions in order to resolve such issues.

Under S. 31 of the WDTA, the Authority may request information from Stewardship Ontario and Stewardship Ontario must provide the information. While the Authority may request information at any time, the Program Agreement lists specific documents to be routinely submitted by Stewardship Ontario to the Authority, including steward data and transitioned municipal data such as collected and managed tonnes.

As well, the draft Program Agreement requires Stewardship Ontario to submit certain documents for the Authority's approval, including:

- The steward fee setting methodology;
- Steward fee rates;
- Rules for stewards;
- The InKind Guide for non-transitioned municipalities¹;
- The dispute resolution procedures for stewards, transitioned municipalities and service providers; and,
- Stakeholder consultation plans.

WDTA S. 12(2) – The Authority and the industry funding organization ...shall consult about any proposed material change...

WDTAS.s 12(3) – If the Authority approves the proposed material change, it shall submit it to the Minister for his or her consideration.

Oversight of Changes to the a-BBPP

The draft Program Agreement states that any change Stewardship Ontario wishes to make to the a-BBPP must be submitted to the Authority for approval. The Authority can direct Stewardship Ontario to consult on the proposed change.

The Authority can also undertake consultation directly on a change proposed by Stewardship Ontario and, if approved by the Authority, can decide to forward the change to the Minister of the Environment and Climate Change for consideration as a material change. Any material change must be approved by the Minister.

WDTA S. 29 – Each industry funding organization shall appoint an independent auditor...The auditor shall, for each fiscal year, audit the accounts and financial transactions of the industry funding organization and shall prepare a report on each audit.

WDTA S. 30 – Each industry funding organization shall, not later than April 1 in each year, provide a copy of the report to the Authority and make the report available to the public.

Transparency Requirements for Stewardship Ontario

In addition to requiring Stewardship Ontario to consult on any proposed changes to the a-BBPP, the Authority can direct Stewardship Ontario to consult on the manner in which the a-BBPP is delivered with those who may be affected.

While it is expected that Stewardship Ontario will publish information related to the a-BBPP, the Authority can also publish information related to the a-BBPP (e.g., performance) and can cause Stewardship Ontario to publish non-confidential information.

The WDTA requires Stewardship Ontario to conduct a financial audit (including the money held in trust as the Continuous Improvement Fund) and make the results of the audit public. In addition, under the draft Program Agreement, the Authority can conduct a Program Performance Audit to audit data pertaining to performance objectives such as recycling targets. Under the draft Program Agreement, the Authority may make changes to the

¹ Under the a-BBPP, Stewardship Ontario will be responsible for administration of the InKind Program.

Agreement if a Program Performance Audit reveals Stewardship Ontario has failed to achieve targets.

Governance of the Relationship Between Stewardship Ontario and the Authority

The draft Program Agreement outlines:

- Requirements for periodically reviewing the Program Agreement and the a-BBPP;
- The process, including consultation, to change the Program Agreement if there are changes to law or if Stewardship Ontario has failed to achieve performance targets set out in the a-BBPP;
- The process by which the Authority and Stewardship Ontario will resolve disputes between each other;
- A process to share draft communications and draft public announcements; and
- A requirement that Stewardship Ontario notify the Authority of any complaints made about Stewardship Ontario or the operation of the a-BBPP.

The Role of the Authority and of Stewardship Ontario

In addition to the roles described above, the Authority will:

- Continue to be responsible for the Datacall² including determining the rules for reporting (i.e., information required), developing and maintaining the Datacall platform, verifying and auditing the data, creating and administering a dispute resolution process, and determining each municipality's net program cost;
- Create any stakeholder committees or groups it deems appropriate to support the Datacall and the a-BBPP; and
- Administer the governance and operations of the Continuous Improvement Fund.

Stewardship Ontario will:

- Comply with the terms of the a-BBPP, the WDTA and its regulations, and operate the a-BBPP so as to affect the marketplace in a fair manner, including providing parties with equitable opportunities to compete to support a fair and open marketplace for Blue Box services;
- Take all steps reasonably required by the Authority to enable the Authority to implement policy directions established by the Minister and ensure activities under the a-BBPP are consistent with all applicable policy statements;
- Administer the InKind program for non-transitioned municipalities; and
- Hold the Continuous Improvement Fund in trust and disburse funds as determined by the Continuous Improvement Committee in accordance with its budget as approved by the Authority.

Next Steps

The Authority will be consulting on the draft Program Agreement until January 15, 2017.

Stakeholders are encouraged to submit comments to the Authority through written submissions sent to consultations@rpra.ca.

Stakeholders can also contact the Authority at consultations@rpra.ca to request a meeting.

² The Datacall collects information and data from Ontario municipalities and First Nations on their Blue Box programs. Data collected via the Datacall is managed according to the Authority's Access and Privacy Code.

Appendix A – Provisions Related to Industry Funding Organizations under the WDTA

| WDTA Section | Summary Description | Administrative Penalty | Offence |
|-------------------|---|------------------------|---------|
| Subsection 15 (6) | Shall not deal with money or any other assets in a way that is inconsistent with the purposes of the Act | | √ |
| Subsection 24 (2) | No subsidiary corporation | | √ |
| Subsection 24 (3) | No commercial activity through an individual, corporation or other entity that is related to the organization, to a member of its board of directors or to an officer of the organization | | √ |
| Section 30 | Submit annual report by April 1 | √ | |
| Section 31 | Provide information requested by the Authority | √ | √ |
| Subsection 33 (8) | Make rules available on the internet without charge | √ | |
| Subsection 35 (2) | Use of the fund for prescribed purposes | √ | √ |
| Subsection 35 (3) | Fees, voluntary contributions and investment income paid into fund | √ | √ |
| Subsection 35 (4) | Payment of Authority's costs | | √ |
| Subsection 42 (3) | Payment of Crown's costs | | √ |
| Section 49 | Respond to reasonable inquiries by an inspector | √ | |

|Blue Box Program Plan Agreement

THIS AGREEMENT is made and effective as of _____, 2018

BETWEEN:

RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY

a corporation without share capital continued under Part III of the
Resource Recovery and Circular Economy Act, 2016
(hereinafter referred to as the “**Authority**”)

-and-

STEWARDSHIP ONTARIO

a corporation without share capital continued under the *Waste Diversion Transition Act, 2016*
(hereinafter referred to as “**Stewardship Ontario**”)

Recitals

Stewardship Ontario is designated as the industry funding organization under section 15(a) of the *Waste Diversion Transition Act, 2016* (Ontario) for the waste diversion program for blue box waste;

The Minister of the Environment and Climate Change has requested that the parties develop a proposal to amend the Blue Box Program Plan, in a letter dated August 14, 2017;

Subsection 10(4) of the *Waste Diversion Transition Act, 2016* (Ontario) requires that the waste diversion program for blue box waste must include an agreement between the Authority and Stewardship Ontario governing the role of Stewardship Ontario in the operation of the program and governing the exercise of Stewardship Ontario’s powers under the *Waste Diversion Transition Act, 2016* (Ontario);

Nothing in this Agreement is intended to or shall be construed or interpreted as restricting or fettering the exercise by the Authority of its powers and discretion under the *Waste Diversion Transition Act, 2016* (Ontario);

Therefore, the parties agree as follows:

1. Definitions and Interpretation

1.1 Terms beginning with capital letters and used herein without definition shall have the meanings given to them in the *Waste Diversion Transition Act, 2016* (Ontario), the Rules made under the Blue Box Program Plan, the Blue Box Program Plan or in subsection 1.2 below. In the event of any conflict or inconsistency between or among such definitions, such conflict or inconsistency shall be resolved by reference to the first-mentioned of the foregoing sources in which such definition is found.

1.2 When used in this agreement, the following words and expressions have the following meanings:

- (a) “**Act**” or “**WDTA**” means the *Waste Diversion Transition Act, 2016* (Ontario), as the same may be amended from time to time.
- (b) “**Agreement**” means this program agreement which is entered into pursuant to subsection 10(4) of the WDTA and includes all attached schedules and any amendments thereto.
- (c) “**Blue Box Program Plan**” or “**BBPP**” means the waste diversion program approved by the Minister of the Environment and Climate Change on _____, 2018, of which this Agreement forms a part, as the same may be amended from time to time.

- (d) **“Business Day”** means any working day, Monday to Friday inclusive, excluding statutory and other holidays.
- (e) **“Community”** or **“Communities”** means a municipality or an indigenous community.
- (f) **“Datacall”** means the annual process of soliciting cost data from non-transitioned Communities that is used to determine the net blue box system cost and to allocate funding.
- (g) **“Documentation”** means, for purposes of section 8 of this Agreement, correspondence, documentation pertaining to public consultations, minutes of meetings of the Stewardship Ontario Board of Directors and subcommittees, internal reports, consultants’ reports, agendas and other information and data obtained, created or maintained by Stewardship Ontario, and all records relating to the Fund.
- (h) **“Fund”** means a fund held by Stewardship Ontario as described in section 35 of the WDTA.
- (i) **“Minister”** means the Ontario Minister of the Environment and Climate Change.
- (j) **“Program Performance Audit”** means an audit by the Authority of Stewardship Ontario’s performance under the BBPP.
- (k) **“Program Request Letter”** means the letter dated August 14, 2017 from the Minister to the Authority and Stewardship Ontario.
- (l) **“Registry”** means the Registry established under section 50 of the *Resource Recovery and Circular Economy Act, 2016* (Ontario).
- (m) **“Rules”** means the Stewardship Ontario Rules for Stewards created pursuant to the BBPP and section 33 of the WDTA, including all prior Rules made pursuant to the *Waste Diversion Act, 2002* (Ontario). The 2018 BBPP Rules for Stewards are appended hereto as Schedule A.
- (n) **“Steward”** or **“Stewards”** means the persons or classes of persons designated under the Rules as responsible for paying fees to Stewardship Ontario.

1.3 In this Agreement:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender shall include all genders;
- (b) the word “including” or “includes” shall mean “including [or includes] without limitation”;
- (c) any reference to a statute shall mean the statute in force as of 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;
- (d) when calculating the period of time within which or following which any act is to be done or step taken:
 - (i) the date which is the reference date in calculating such period shall be excluded; and
 - (ii) if the last day of such period is not a Business Day, the period shall end on the next Business Day;
- (e) all dollar amounts are expressed in Canadian dollars;
- (f) any tender of notices or documents under this Agreement shall be made upon the relevant party at the address set out in section 11;

- (g) the division of this Agreement into separate sections and subsections and insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (h) except as specifically defined or provided for in this Agreement, words and abbreviations which have well-known or trade meanings are used in accordance with the recognized meanings.

2. Roles of the Parties

2.1 The Authority represents and warrants that it has approved the Blue Box Program Plan.

2.2 The Authority will:

- (a) Ensure that the terms and conditions of this Agreement are carried out in a responsible, complete and thorough manner, and on a timely basis;
- (b) Provide estimates to Stewardship Ontario no later than August 1 of each calendar year of the costs incurred or expected to be incurred by the Authority in carrying out its responsibilities under the WDTA and the costs incurred or expected to be incurred by the Crown in administering the WDTA and the regulations, all of which are to be charged to Stewardship Ontario under section 33 of the WDTA;
- (c) Invoice Stewardship Ontario monthly for the Authority's costs;
- (d) Oversee the implementation of the Blue Box Program Plan by Stewardship Ontario;
- (e) Give written notice to Stewardship Ontario if the Authority has determined that Stewardship Ontario has (i) failed to comply with the terms of the Blue Box Program Plan, the WDTA, or (ii) operated the Blue Box Program Plan so as to affect the marketplace in an unfair manner, including failing to provide parties equitable opportunities to compete to support a fair and open marketplace for Blue Box services;
- (f) Give written notice to Stewardship Ontario of any applicable policies established by the Minister as soon as reasonably practicable following communication thereof by the Minister to the Authority;
- (g) Use reasonable efforts to facilitate the collection of information required by Stewardship Ontario to transition Communities and to operate the Blue Box Program Plan;
- (h) Administer and verify the Datacall, including developing the technology platform and all reporting rules related to the Datacall;
- (i) Make changes to the Datacall User Guide to incorporate eligible and ineligible costs as defined in Appendix A to the Blue Box Program Plan;
- (j) Determine the net cost of each non-transitioned Community for each calendar year as the data for each such Community is verified;
- (k) Administer and oversee the governance and operations of the Continuous Improvement Fund ("CIF"), including establishing a CIF Committee which will report to the Authority as outlined in section 6.3 of the Blue Box Program Plan;
- (l) Create stakeholder groups related to the Datacall with representation from Stewardship Ontario and Communities and others without affiliation to either Stewardship Ontario or Communities, as appropriate;

- (m) Create and administer a dispute resolution process for non-transitioned Communities;
- (n) Receive, comment or decide on approval, as the case may be, the documents referenced in section 3; and
- (o) Conduct Program Performance Audits in accordance with the protocol developed by the parties pursuant to subsection 2.5 at times the Authority deems appropriate acting reasonably.

2.3 Stewardship Ontario will:

- (a) Implement the Blue Box Program Plan;
- (b) Administer the Canadian Newspaper Association and Ontario Community Newspaper Association in-kind contribution to non-transitioned Communities;
- (c) Pay invoices from the Authority within 30 days;
- (d) Take all steps reasonably required by the Authority to enable the Authority to implement policy directions established by the Minister;
- (e) Take all reasonable steps to ensure activities under the Blue Box Program are consistent with all applicable policy statements;
- (f) Comply with the terms of the Program Request Letter, the Blue Box Program Plan, the WDTA;
- (g) Operate the Blue Box Program Plan so as to affect the marketplace in a fair manner including providing parties equitable opportunities to compete to provide supply chain services and refraining from engaging in any anti-competitive behavior or other acts prohibited by the Competition Act (Canada) under the guise of carrying out its duties under the Blue Box Program Plan;
- (h) Provide all documents required by section 3 in the time reasonably required by the Authority, or as specified in this Agreement as the case may be;
- (i) Comply and shall require its officers, directors, staff and subcontractors to comply, with all laws, ordinances, rules and regulations which apply to the operation of Stewardship Ontario, any activities of Stewardship Ontario and the responsibilities of Stewardship Ontario under the WDTA;
- (j) Cooperate with the Authority's Program Performance Audits and implement the Authority's recommendations from such audits; and
- (k) Hold the Continuous Improvement Fund in trust in accordance with the *Trustee Act, 1990* (Ontario) and adhere to all policies and procedures as developed by the Authority in relation to the Continuous Improvement Fund.

2.4 If the Authority has given notice of a determination pursuant to clause 2.2 (e) above, the Authority shall provide written reasons for such determination to Stewardship Ontario. The parties shall thereafter enter into good faith negotiations in an effort to resolve the issues identified by the Authority as soon as reasonably possible. The Authority may recommend actions that are required to be taken by Stewardship Ontario in order to resolve such issues. Stewardship Ontario shall comply with any such recommendations or provide written reasons to the Authority if it refuses to do so. If Stewardship Ontario disagrees with the Authority's determination or refuses to comply with any actions recommended by the Authority, either party shall be free to pursue dispute resolution in accordance with the procedures set out below.

2.5 The parties will negotiate in good faith and agree upon a protocol for the Program Performance Audit within six (6) months of the date of this Agreement.

3. Required Documents and Reporting Requirements

- 3.1 Stewardship Ontario shall provide the following documents and information to the Authority for the Authority's approval, such approval not to be unreasonably withheld:
- (a) BBPP fee methodology;
 - (b) Blue Box material fee rates to ensure they are set in accordance with the approved methodology and provide sufficient funds for Stewardship Ontario to perform its obligations under the BBPP;
 - (c) Recycling efficiency rates, in accordance with the BBPP, to be utilized in calculating performance against targets;
 - (d) In-Kind Guide for non-transitioned Communities;
 - (e) Rules for Stewards which shall, upon approval by the Authority, be signed by the parties for identification and appended to this Agreement as Schedule A, in place of or in addition to any current Rules;
 - (f) Dispute Resolution Procedure for Stewards;
 - (g) Dispute Resolution Procedures for transitioned Communities and service providers;
 - (h) Stakeholder consultation plans;
 - (i) Code of Conduct and Conflict of Interest Policy for Stewardship Ontario board members, committee members, officers, and employees;
 - (j) Confidentiality Policy;
 - (k) Templates for the annual business performance plan and quarterly performance report; and
 - (l) Proposed changes to the BBPP.
- 3.2 Stewardship Ontario shall provide the following documents in draft form to the Authority for the Authority's review and comment and will give due consideration to any comments of the Authority prior to finalizing the relevant document:
- (a) Procurement documents for supply chain services (e.g. requests for expressions of interest, requests for qualifications, requests for proposals, tenders, master services agreements, statements of work etc.) and the form of an agreement between Stewardship Ontario and a service provider, including Communities;
 - (b) Regarding catchments, prior to consultation, the catchment design criteria and catchment boundary proposal and following consultation, the catchment boundary map with explanation of any changes as a result of consultation, the proposed transition schedule for each catchment and the proposed transition schedule for each Community within each catchment;
 - (c) Stewardship Ontario Annual Report to be provided no later than March 1 of each calendar year;
 - (d) Draft annual business performance plan not later than four weeks prior to the date upon which Stewardship Ontario approves it;

- (e) Policies that materially affect stakeholders including Stewards or that materially affect the public interest; and
- (f) Steward and stakeholder consultation reports.

3.3 Stewardship Ontario shall provide the following documents to the Authority for the Authority's information:

- (a) Information on the transition schedule by Community (i.e. when a Community and Stewardship Ontario reach agreement on the date of transition);
- (b) Final annual business performance plan, not later than 30 days before end of the fiscal year;
- (c) Draft Quarterly Performance Reports not later than 45 days following the completion of each calendar quarter during the term of this Agreement;
- (d) Final Quarterly Performance Reports not later than 90 days following end of each calendar quarter during the term of this Agreement;
- (e) Steward data as submitted under the Rules for stewards;
- (f) Quantity recycled in relation to quantity supplied for all categories reported by stewards under the Rules for stewards;
- (g) Communications material, including, if applicable, communications plans, advertising plans, news releases, media advisories, media backgrounders, and schedules of upcoming media events or releases, to be shared as soon as the material is ready to be submitted to the Authority for review or seven days prior to release, whichever is earlier, and if timely response to events does not allow for seven days lead time, Stewardship Ontario agrees to provide the materials to the Authority as soon as available; and
- (h) Transitioned Community information, including but not limited to:
 - (i) Description of collection services;
 - (ii) Collected tonnes (in categories reported under agreements between Stewardship Ontario and communities);
 - (iii) Managed tonnes (in material categories reported under agreements between Stewardship Ontario and post-collection contractors).

4. Transparency

4.1 Stewardship Ontario will maintain an Internet website accessible by the public and will post every policy that affects stakeholders and every rule for Stewards made pursuant to the WDTA on its website. Stewardship Ontario's website shall include the Blue Box Program Plan and Stewardship Ontario's annual report pursuant to Section 30 of the WDTA.

4.2 The Authority can cause Stewardship Ontario to publish additional non-confidential documents on Stewardship Ontario's website if the Authority deems it to be in the public interest.

4.3 The Authority may publish Stewardship Ontario performance data on the Registry including but not limited to performance against the accessibility, collection, 75% recycling and material specific targets and quantity recycled in relation to quantity supplied for all categories reported by Stewards under the Rules for stewards. The Authority will provide seven days' notice prior to publication of this information.

5. Review and Amendment

5.1 The parties agree to conduct a review of this Agreement not later than one year following the date of this Agreement and every two years thereafter.

5.2 Notwithstanding Section 5.1, either party may request a review of this Agreement and/or the BBPP at any time:

- (a) to address changes in applicable law including the impact of legislative or regulatory changes on this Agreement or the BBPP;
- (b) to implement the terms of any policy direction given by the Minister to the Authority pursuant to the WDTA, including direction to wind up; or
- (c) if an annual report provided by Stewardship Ontario to the Authority, an Authority Program Performance Audit or an inspection carried out by the Authority reveals that Stewardship Ontario has failed to achieve recycling targets or accessibility targets established for the BBPP.

5.3 As part of the review process, either party may suggest amendments to the terms of this Agreement or the BBPP. In the event that amendments have been requested by the Authority and, following 30 days of good faith negotiations, the parties have been unable to agree upon the terms of an amendment to this Agreement or the Blue Box Program Plan, the Authority shall have the right to settle the terms of such amendment if such amendment is required for one of the reasons specified in paragraphs 5.2(a) – (c) above.

Notwithstanding the foregoing, the parties shall engage in consultations with Stewards and any other stakeholders who would be affected prior to the implementation of any amendment to the terms of the BBPP.

6. Public Announcements and Media

6.1 Neither the Authority nor Stewardship Ontario shall make any press release or other formal public announcement which refers to the role of the other in the development and implementation of the Blue Box Program Plan without first consulting the other concerning the contents of such proposed press release or public announcement. The parties agree that prior consultation shall not be required in respect of routine communications or other general information provided by either of the parties to the public with respect to the implementation of the Blue Box Program Plan.

6.2 The Authority and Stewardship Ontario agree to give each other at least seven days' notice regarding any planned events and public appearances (media interviews, etc.) by its officers and representatives. If event planning does not allow for seven days lead time, the parties agree to advise each other as soon as possible.

6.3 Stewardship Ontario and the Authority must share information about inbound calls from the media as soon as possible.

7. Stakeholder and Public Consultation

7.1 The Authority may require Stewardship Ontario to provide opportunities for consultation with stakeholders, including the public, who may be affected by the Blue Box Program Plan or changes to the Blue Box Program Plan. Such consultation is to be open, accessible and responsive to concerns expressed.

8. Stewardship Ontario's Responsibility for Documentation and Audit

8.1 Stewardship Ontario shall be responsible for maintaining Documentation in carrying out its responsibilities under this agreement, the Blue Box Program Plan and the WDTA, in a responsible and complete manner. Documentation may be maintained in paper or electronic format, as permitted by

applicable law.

8.2 Receipt into and disbursements from the Fund, including the Continuous Improvement Fund, will be reflected in the audited financial statements of Stewardship Ontario. The audited financial statements are to be prepared in accordance with Accounting Standards for Not-for-Profit Organizations (ASNPO) and accompanied by the auditor's report thereon.

8.3 Stewardship Ontario agrees to implement and maintain measures to ensure the security and integrity of the Documentation and to protect the Documentation against loss, alteration and destruction.

9. Complaints

Stewardship Ontario shall be responsible for informing the Authority of all written complaints and other complaints from Stewards or other stakeholders regarding Stewardship Ontario's implementation or operation of the Blue Box Program Plan within two (2) Business Days.

10. Insurance

10.1 Stewardship Ontario shall put into effect and maintain for the duration of this Agreement all necessary and appropriate insurance for a prudent not-for-profit corporation.

10.2 Without limiting the generality of the foregoing, Stewardship Ontario shall obtain and maintain directors and officers liability insurance in amounts which are customary for a prudent not-for-profit corporation.

11. Assignment and Sub-Contracting

11.1 Stewardship Ontario shall not assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of the Authority.

11.2 Stewardship Ontario shall not subcontract any of its rights or obligations under this Agreement or any part thereof without the prior written consent of the Authority, which consent shall not be unreasonably withheld.

11.3 The Authority acknowledges that Stewardship Ontario continues to retain Canadian Stewardship Services Alliance Inc. to provide services to enable Stewardship Ontario to fulfil its operational obligations under this Agreement and the Blue Box Program Plan.

12. Notices

12.1 All notices to and upon the respective parties shall be in writing and shall be delivered to the party to which such notice is required to be given under this Agreement at the respective addresses set out below by courier or personal delivery, registered mail or email with confirmation of receipt.

12.2 Notices to the Authority sent by

- (l) mail, courier or personal delivery shall be delivered to:
Resource Productivity and Recovery Authority
4711 Yonge St., Suite 408
Toronto, ON
M2N 6K8

Attention: Chief Executive Officer

- (m) email shall be addressed to: fdenton@rpra.ca, or to the email address of the then current Chief Executive Officer

12.3 Notices to Stewardship Ontario sent by:

- (a) mail, courier or personal delivery shall be delivered to:

Stewardship Ontario
1 St. Clair Avenue West, Suite 700
Toronto, ON
M4V 1K6

Attention: Board Chair

- (b) email shall be addressed to: jcoyne@cssalliance.ca, or to the email address of the then current Board Chair.

12.4 All notices shall be deemed to have been duly given one (1) Business Day after such notice is received by the other party when delivered by personal delivery or by courier; five (5) Business Days after posting by prepaid registered post; or, in the case of email, upon confirmation of receipt. In the event of a postal disruption, notices must be given by personal delivery, courier or email and all notices delivered within one (1) week prior to the postal disruption must be confirmed to be effective.

12.5 Either party may, by written notice delivered to the other party, designate a new address or email address for these notices.

13. Waiver

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

14. Severability

14.1 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.

15. Dispute Resolution

15.1 Stewardship Ontario shall include a dispute resolution mechanism in all contracts to which Stewardship Ontario is a party with the exception of contracts for goods and services in the ordinary course of business.

15.2 If any dispute arises between Stewardship Ontario and the Authority as to the respective rights and obligations under this Agreement or the interpretation of the BBPP, the parties shall use the dispute resolution procedures to resolve such disputes:

- (a) The Chief Executive Officers of the parties shall attempt to resolve disputes in the spirit of mutual cooperation through discussions and negotiations within 14 days of the date upon which written notice of the dispute was first given by one party to the other or as otherwise agreed upon;
- (b) In the event that the Chief Executive Officers of the parties are unable to resolve such dispute, either party shall have the right, on notice in writing to the other, to require that such dispute be submitted to the Chair of the Board of Directors of the Authority and the Chair of the Board of Directors of Stewardship Ontario for discussion and resolution within 14 days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;
- (c) If the Chair of the Board of Directors of the Authority and the Chair of the Board of Directors of Stewardship Ontario are unable to resolve the dispute, either party shall have the right to refer the matter to mediation or to proceed directly to binding arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitration shall take place in

Toronto, Ontario, Canada, before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of an arbitrator within 30 days of the notice requiring such dispute to be submitted to arbitration, then the parties will each select an arbitrator who in turn will select a third arbitrator as soon as reasonably practicable following such 30 day period;

- (d) The parties may determine the procedure to be followed by the arbitrator(s) in conducting the proceedings, or may request the arbitrator(s) to do so. The arbitrator(s) shall issue a written decision within 30 days of completion of the hearing; and
- (e) All costs associated with the above process shall be borne by Stewardship Ontario in accordance with clause 33(5)(vi) of the WDTA.

15.3 The following matters shall not be the subject of dispute resolution between the parties:

- (f) payment by Stewardship Ontario of the Authority's costs in accordance with clause 33(5)(vi) of the WDTA; or
- (g) the Authority's determination of the net system cost for each non-transitioned Community, but in the event that Stewardship Ontario disagrees with the Authority's determination in this regard, the Authority shall provide Stewardship Ontario with the opportunity to be heard on this issue and shall reasonably consider Stewardship Ontario's submissions in reaching its final determination.

16. Term and Termination

16.1 This Agreement shall continue and shall remain in force as between the parties unless or until the Minister directs Stewardship Ontario to wind-up the BBPP and the Blue Box Program Plan and Stewardship Ontario have been wound-up in accordance with that direction.

16.2 If, in the reasonable opinion of the Authority, there has been a material breach of this Agreement by Stewardship Ontario, the Authority may terminate this Agreement if Stewardship Ontario fails to remedy such breach within 30 days following written notice from the Authority outlining the breach in reasonable detail.

16.3 Notwithstanding subsection 15.2, in the event that Stewardship Ontario reasonably requires more than 30 days, Stewardship Ontario so will advise the Authority without delay and provide a revised timeline to remedy such breach. The Authority shall notify Stewardship Ontario in writing as to whether the revised timeline is acceptable and, if it is, the revised timeline to remedy such breach will apply.

16.4 Notwithstanding subsection 15.2 or 15.3, the Authority may terminate this Agreement immediately upon written notice to Stewardship Ontario if:

- (a) Stewardship Ontario makes a voluntary assignment or a proposal under the Bankruptcy and Insolvency Act or a petition or any other proceeding shall be filed, instituted or commenced with respect to Stewardship Ontario under any bankruptcy, insolvency, debt restructuring, reorganization, liquidation, winding-up (other than the Minister's wind-up direction in accordance with section 14 of the WDTA) or similar law now or hereinafter in effect, unless such proceedings are contested by Stewardship Ontario and are stayed within 30 days from the date of notice of such proceedings being received by Stewardship Ontario;
- (b) a receiver or trustee is appointed for any part of the assets of Stewardship Ontario;
- (c) Stewardship Ontario ceases for any reason whatsoever to be the designated industry funding organization for the BBPP or the BBPP is terminated for any reason whatsoever; or
- (d) Stewardship Ontario has assigned any of its rights or obligations under this Agreement contrary to Section 11.

- 16.5 The parties acknowledge and agree that:
- (a) any determination by the Authority that Stewardship Ontario is in breach of this Agreement as set out in a written notice given pursuant to subsection 15.2 is subject to the dispute resolution provisions of this Agreement;
 - (b) if Stewardship Ontario disputes the Authority's right to terminate this Agreement pursuant to subsection 15.2, Stewardship Ontario shall be required to give written notice of the dispute to the Authority within 10 days of receiving written notice of breach from the Authority, in which case the dispute resolution shall be undertaken in accordance with subsection 15.2;
 - (c) if Stewardship Ontario has given the Authority a notice of dispute in accordance with paragraph 16.5b), the Authority's notice of termination shall be effective 90 days following the date of the Authority's notice, unless the arbitrator has issued a written decision nullifying such notice on or before this date (without prejudice to the Authority's right to appeal such decision on any basis provided for in the *Arbitration Act, 1991* (Ontario)); and
 - (d) the Authority's termination of this Agreement pursuant to subsection 16.4 is not subject to the dispute resolution provisions of this Agreement;

17. Agreement Binding

17.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

18. Entire Agreement

18.1 This Agreement, together with the BBPP, embodies the entire Agreement between the parties with regard to the operation of Stewardship Ontario and the implementation of the BBPP and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties with respect to such subject matter at the date of execution of this Agreement, without prejudice to any Rules for Stewards made prior to the date of this Agreement which shall continue in full force and effect.

19. Governing Law

19.1 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the applicable laws of Canada and the parties hereby agree that any dispute arising out of or in relation to this Agreement shall be determined in Ontario.

[Remainder of page intentionally left blank]

20. Signatures

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**RESOURCE PRODUCTIVITY AND
RECOVERY AUTHORITY**

Per: _____
Glenda Gies
Chair

I have authority to bind the Resource
Productivity and Recovery Authority.

STEWARDSHIP ONTARIO

Per: _____
John Coyne
Chair

I have authority to bind
Stewardship Ontario

SCHEDULE A
RULES FOR STEWARDS

The Rules will be inserted in this Schedule in compliance with subsection 33(6) of the WDTA when this Agreement takes effect.

Draft for Consultation