

## PAINTCARE REMITTER AGREEMENT

### AMONG:

**PAINTCARE**, Inc. (“**PaintCare**”), a not for profit corporation incorporated under the laws of Delaware for the purpose of the Oregon Pilot Program under *Enrolled House Bill 3037*(the “*Act*”) and

\_\_\_\_\_ (the “**Remitter**”), a corporation incorporated under the laws of \_\_\_\_\_ and

\_\_\_\_\_ (the “**Producer**”), a corporation incorporated under the laws of \_\_\_\_\_.

### BACKGROUND

- A. PaintCare intends to serve as the “Stewardship Organization” defined by the Act at Section 2(12) as *a corporation, nonprofit organization or other legal entity created by a producer or group of producers to implement the architectural paint stewardship pilot program;*
- B. Pursuant to the Act, *no later than March 1, 2010, a stewardship organization must submit a plan for a statewide architectural paint stewardship pilot program to the Director of the Department of Environmental Quality for approval. The Plan must include a funding mechanism whereby each architectural paint producer remits to the stewardship organization payment of an architectural paint stewardship assessment for each container of architectural paint the producer sells in this state.*
- C. The Producer and the Remitter have agreed that the Remitter shall file with PaintCare reports on paint sales and remit fees for which the Producer would otherwise report and remit;
- D. The purpose of this Agreement is to set out the terms and conditions under which the Remitter shall file the reports and pay fees and the rights of the Producer, the Remitter and PaintCare in connection therewith.

### 1.0 DEFINITIONS

In this Agreement, the following terms shall have the meanings indicated:

1.1 “**Agreement**” means this remitter agreement.

1.2 “**Architectural Paint Stewardship Assessment**” means the amount added to the purchase price of architectural paint sold in this state necessary to cover the cost of collecting, transporting and processing the post-consumer architectural paint managed through a statewide architectural paint stewardship pilot program, as defined in section 2(2) of the act.

1.3 “**Data Period**” means each calendar month commencing May 2010;

**1.4 “Producer”** means *a person that manufactures architectural paint that is sold or offered for sale in Oregon*, as defined in Section 2(6) of the Act.

**1.5 “Participant Report”** means a report prepared by a Participant and filed with PaintCare containing the sales quantity information and such other information as PaintCare may require, with respect to the Program Product that was sold by the Producer in Oregon in the Data Period;

**1.6 “Participant”** means an obligated Producer that has joined the Program to satisfy its statutory obligations under the Act and is obligated to pay the paint stewardship assessment on the quantity of Program Product sold in Oregon, to the stewardship organization, under Section 4(2)(c) of the Act.

**1.7 “Program Product”** means the architectural paint included in the Program, and defined *as interior and exterior architectural coatings sold in containers of five gallons or less, but does not mean industrial, original equipment, or specialty coatings* under Section 2(1)(a) and (b) of the Act, and as further described in the Program Plan.

**1.8 “Program Plan”** means the Program Plan filed by PaintCare with Oregon Department of Environmental Quality (DEQ) as required under Section 4(1) of the Act.

**1.9 “Program Start Date”** means May 1, 2010 or such other date as PaintCare shall determine.

**1.10 “Remitter Fees”** means all fees payable by a Remitter to PaintCare pursuant to this Agreement at the applicable Architectural Paint Stewardship Assessment rates, the initial rates being set out Appendix A, but subject to change upon notice.

**1.11 “Remitter Report”** means a report prepared by a Remitter and filed with PaintCare containing the sales quantity information as outlined in Appendix A, and such other information as PaintCare may reasonably require to implement the architectural paint stewardship pilot program pursuant to the Act, with respect to the Program Products that were sold by the Remitter in Oregon in the Data Period which were manufactured by the Producer;

**1.12 “Supplied”** means sold, leased, transferred the possession or title of, or otherwise made available or distributed for sale in the State of Oregon.

## **2.0 FILING OF REMITTER REPORTS AND PAYMENT OF FEES**

2.1 The Remitter shall file an initial Remitter Report with respect to all Program Products sold by the Remitter in Oregon, including all Program Products supplied to the Remitter by the Participant, during the first Data Period after commencement of this Agreement. Thereafter, the Remitter shall file a Remitter Report for all such Program Products Supplied during each subsequent Data Period.

2.2 A Remitter Report for the entire Data Period shall be filed by the end of the calendar month following the Data Period to which it refers.

2.3 Notwithstanding Section 2.1, by prior written agreement among a Participant, the Remitter and PaintCare, the Remitter may file a Remitter Report for less than all of the Program Products Supplied by the Participant to the Remitter in a Data Period, provided that the Participant files a Participant's Report for the remaining Program Products.

2.4 The Remitter will pay Remitter Fees to PaintCare at the time of filing its Remitter Report so that they are received by PaintCare before the end of the Data Period on the amount of Program Products included in such Remitter Report. For greater clarity, the Remitter and the Participant shall jointly elect, and give notice thereof to PaintCare, that the Remitter will pay Remitter Fees and file its Remitter Report based on either: (a) the time of Supply of Program Products by the Participant to the Remitter; or (b) the time of Supply of Program Products to a third party.

2.5 The Participant and Remitter shall provide at the time of entering into this Agreement the following information to PaintCare:

- (a) The legal name of the Participant and the Remitter as well as the contact information required herein; and
- (b) A list of all Program Products for which the Remitter is reporting on behalf of the Participant.

### **3.0 BACK FEES**

3.1 A Remitter who fails to pay Remitter Fees by the dates set out in Article 1, shall pay such Remitter Fees forthwith on demand by PaintCare.

3.2 If the amounts reported in a Remitter Report are inaccurate, any deficiency in Remitter Fees paid resulting from such inaccuracies shall be immediately due and payable from the date on which the filing of the original Remitter Report was due.

3.3 Remitter shall indemnify and save Participant harmless from and against all losses, costs, damages, demands or claims, including legal fees resulting from any breach by Remitter of the provisions of this Agreement, including but not limited to the failure to remit Remitter Fees in accordance with this Agreement.

### **4.0 RECORD PROVISION AND RETENTION**

4.1 The Remitter shall promptly provide to PaintCare or its authorized agent with regard to all sales reported in a Remitter Report, and to the Participant with respect to the Program Products manufactured by the Participant only, data, including calculation methodology, audit reports, list of brands included in the aggregate quantities reported and list of brands excluded from any Remitter Report, used by the Remitter in the preparation of the Remitter Report upon request from PaintCare or the Participant.

4.2 The Remitter shall retain or make available to PaintCare and the Participant such information, data and records at an address in the United States to substantiate and verify the amount set out in any Remitter Report for a period of not less than five years from the date of the Remitter Report to which they relate. The Remitter shall grant access to PaintCare and the

Participant at such address upon its request to examine its books and records to enable PaintCare or the Participant, as the case may be, to audit and inspect such records respecting a Remitter Report up to five years after the date of receipt of such Remitter Report by PaintCare.

## **5.0 TERMINATION**

5.1 This Agreement shall come into effect on the date set out above and shall remain in effect until terminated by any of the parties in accordance with Section 6.3, or either of the following provisions in Section 5.1 (a) or 5.1 (b):

- (a) PaintCare or the Participant may terminate this Agreement at any time for cause, including non-filing of Remitter Reports or non-payment of Remitter Fees. Prior to such termination PaintCare or the Participant, as the case may be, shall give the other parties notice of such default. Notice given by PaintCare shall include the method of calculation of such fees and such other information and documents as may be reasonably expected to be required by the other parties to understand the basis for the determination of default. The Remitter and the Participant shall have a period of 30 days in which to effect a cure to such default, failing which PaintCare or the Participant, as the case may be, may thereupon terminate this Agreement without further notice.
- (b) Any party may terminate this Agreement on giving notice to the other parties prior to the expiration of a Data Period, and the termination shall be effective on the expiration of the next Data Period. If such notice is given, the Remitter shall file a Remitter Report for the Data Period ending on the date of termination and shall pay all Remitter Fees payable pursuant to such Remitter Report.
- (c) If this Agreement is terminated for any reason, the Remitter shall send a final Remitter Report to PaintCare and the Participant for all Program Products in its possession at the time of termination which would have been required to be reported in a subsequent Remitter Report. Such final Remitter Report shall be filed by the end of the calendar month after the Data Period in which the Agreement is terminated, and pay the required Remitter Fees to PaintCare at the time the terminal Remitter Report is filed.

5.2 Notwithstanding the termination of this Agreement by any party, the Remitter shall remain liable to PaintCare for any deficiency in Remitter Fees paid, but in no case shall PaintCare be entitled to fees from the Remitter and Participant collectively that exceed the amounts that would have been payable by the Participant but for the existence of this Agreement. The provisions of Articles 3, 4 and 5 of this Agreement will survive termination and remain in effect for a period of five years from the date of termination.

## **6.0 EFFECT OF AGREEMENT**

6.1 The Participant consents to the Remitter entering into this Agreement, filing Remitter Reports and making payment of Remitter Fees on behalf of and for the account of the Participant. Subject to Section 3.4, Participant acknowledges and agrees that it shall be relieved

of reporting Program Products and paying Participant's Fees on Program Products under the Act only to the extent to which the Remitter carries out its obligations under this Agreement.

6.2 The Remitter agrees to the disclosure of information to the Participant by PaintCare of any information available to PaintCare about the amount of Program Products sold by the Remitter and manufactured by the Participant.

6.3 PaintCare retains the right to revise or amend the terms of this Agreement. PaintCare will give notice to the Participant and Remitter of any such change, which will take effect 45 days after notice is given; provided, however, that Participant or Remitter shall have the right to terminate this Agreement upon notice prior to such effective date of such change.

## **7.0 DISPUTE RESOLUTION**

7.1 If any dispute arises between any of the parties as to the amount of Program Products that is required to be included in a Remitter Report:

- (d) The parties shall attempt to resolve the dispute through designated representatives from each of the parties within 30 days after written notice of the dispute was first given, or as otherwise agreed upon.
- (e) If the parties are unable to resolve the dispute within the above period, the parties shall, within 30 days thereafter, jointly select an arbitrator to arbitrate the dispute. If a party does not nominate an arbitrator within the 30 day period, the other parties that have nominated an arbitrator shall jointly select the arbitrator. The arbitration shall be conducted in accordance with Commercial Arbitration Rules of the American Arbitration Association (or the rules of another mutually acceptable impartial organization).
- (f) The decision of the arbitrator shall be final and binding on the parties and shall not be subject to appeal on any grounds whatsoever, and shall be enforceable against PaintCare and the Remitter, as the case may be, immediately on the issuance of such decision to the parties to the dispute.

7.2 Non-payment of Remitter Fees (except with respect to amounts of Program Products in dispute and subject to arbitration) or the requirement for a Remitter to file a Remitter Report for undisputed amounts of Program Products shall not be items subject to arbitration.

## **8.0 CONFIDENTIALITY**

8.1 The Remitter agrees that PaintCare or its authorized agent, may at any time provide the Participant with information available to PaintCare regarding sales by the Remitter of Program Products manufactured by the Participant and provided that such access shall not disclose to the Participant information with respect to other Participants under the Act for which the Remitter may have entered into a Remitter Agreement.

8.2 PaintCare shall take commercially reasonable and appropriate precautions to maintain the confidentiality of information in its database, but shall not be liable to the Participant or

Remitter, or anyone claiming by, through or under either of them, for any losses, claims and damages arising out of inadvertent or negligent disclosure of any confidential information.

8.3 Section 8.2 does not apply to information that (a) at the time of disclosure is in the public domain; (b) is authorized in writing by the owner to be disclosed; (c) is required to be disclosed under applicable law, including the Act; or (d) is reasonably necessary for PaintCare to disclose to its contractors or agents solely for the purpose of carrying out the rights and obligations of PaintCare as a Stewardship Organization under the Act.

## 9.0 GENERAL

9.1 Assignment. The rights and obligations of the Participants and the Remitter under this Agreement are personal and may not be assigned in whole or in part.

9.2 Notices. Any notice, determination, consent, request or other communication from one party to the other or others or other documents required or which may be given under this Agreement may be delivered or transmitted by means of electronic communication, personal service, facsimile with confirmation of transmission or by prepaid first class postage to the party at the addresses below. If PaintCare makes available on its website a system or method for electronic communication of notices to PaintCare, such notices may be given by clicking the applicable button.

To PaintCare  
1500 Rhode Island Ave., NW  
Washington, DC 20005  
202-462-6272

To Remitter

\_\_\_\_\_  
\_\_\_\_\_

To Participant

\_\_\_\_\_  
\_\_\_\_\_

9.3 Waiver. No failure by any of the parties to insist on strict performance of any provision, term, or condition of this Agreement, or to exercise any right or remedy under the Agreement shall constitute a waiver of any term or condition and each and every provision of this Agreement shall continue in full force and effect.

9.4 Severability. If any provision of this Agreement or the application of the provision to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application of them to other circumstances shall not be affected by the invalidity or unenforceability and shall be valid and enforceable to the fullest extent permitted by law.

9.5 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in it. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound by it. Notwithstanding the foregoing, nothing in this agreement shall prevent a Participant and Remitter from, between themselves, entering into one or more other agreements concerning the subject matter of this Agreement, provided that nothing shall affect the obligations of the Participants or Remitter, or the rights of PaintCare, under the Act and this Agreement.

9.6 Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws in force in the District of Columbia.

**EXECUTION BY THE PARTIES.**

**PAINTCARE**

Per: \_\_\_\_\_

Name:

Title:

We have authority to bind the Corporation

**REMITTER**

Per: \_\_\_\_\_

Name:

Title:

We have authority to bind the Corporation

**PARTICIPANT**

Per: \_\_\_\_\_

Name:

Title:

We have authority to bind the Corporation

## APPENDIX A

<i>Container Size</i>	<i>Units of Latex Paint</i>	<i>Units of Alkyd Paint</i>	<i>Total Units</i>	<i>Assessment Rate</i>	<i>Total Fees</i>
<i>1/2 pint container or less</i>				\$ 0	\$
<i>more than 1/2 pint to gallon</i>				\$ 0.35	\$
<i>1 gallon container</i>				\$ 0.75	\$
<i>more than 1 gallon to 5 gallon</i>				\$ 1.60	\$
<i>Totals</i>					\$