



EPEAT, Inc.

One World Trade Center  
121 SW Salmon St., Suite 210  
Portland OR 97204

www.epeat.net  
Voice: (503) 279-9382  
Fax: (503) 279-9381

## LICENSE AND SUBSCRIBER AGREEMENT

THIS AGREEMENT, including all Schedules and Exhibits attached hereto (this “**Agreement**”), is entered into as of the date indicated below (the “**Effective Date**”), between EPEAT, Inc. (“**EPEAT**”), an Oregon non-profit corporation and

\_\_\_\_\_, a \_\_\_\_\_ corporation (“**Subscriber**”).

### RECITALS:

EPEAT represents that it is the owner of certain valuable trademarks as defined in Section 6 (below) (the “**Marks**”), including the name EPEAT and stylized marks EPEAT Bronze, EPEAT Silver, EPEAT Gold, and the EPEAT logos, as shown on Exhibit 6. EPEAT provides Subscribers a facility to enter their product information, as appropriate, onto a register or database of EPEAT registered products that is available to the public without charge at URL www.epeat.net (the “**Website**”). Subscriber is in the business of manufacturing, selling or reselling desktop computers, laptop computers and/or monitors. EPEAT desires to license use of the Marks to Subscriber as provided herein, and Subscriber desires to purchase a license for such use of the Marks and subscribe to the facility to enter product information into the Website’s database on the terms and subject to the conditions set forth in this Agreement.

### AGREEMENT:

NOW, THEREFORE, the parties agree as follows:

1. Term and Termination.

(a) Term. The term of this Agreement shall start on the Effective Date and continue for a period of one (1) year (“**Term**”). The Agreement shall automatically renew for successive one (1) year terms subject to the conditions set forth in Section 1(b) below, each such renewal commencing on the one year anniversary of the Effective Date (“**Renewal Date**”).

(b) Renewal. The Agreement shall automatically renew for successive one year Terms under EPEAT’s then-current License and Subscriber Agreement (the “**Renewal Agreement**”) on Subscriber’s payment of the then-current renewal fee. The fee for renewal (“**Renewal Fee**”) shall be at the then-current rate, which, along with an electronic copy of the Renewal Agreement, will be posted on the Website. Subscriber’s payment of the Renewal Fee to EPEAT shall constitute Subscriber’s acceptance of the terms and conditions of the Renewal Agreement. Subscriber understands and agrees that the Renewal Agreement and Renewal Fee in any given year may differ from the terms of this Agreement and its associated Fee. The Renewal Agreement and Renewal Fee posted on the Website and identified as being effective as of Subscriber’s Renewal Date shall apply to any renewal period.

(c) Termination. Subscriber may at any time and without cause terminate this Agreement by giving thirty (30) days advance written notice of termination to EPEAT. In case of Subscriber's voluntary termination Subscriber is not entitled to a refund of any Fee or Renewal Fee. EPEAT may terminate this Agreement for cause by giving thirty (30) days' advance written notice for Subscriber's (i) nonpayment of the applicable Fee or Renewal Fee, (ii) breach of or noncompliance with this Agreement which remains uncured for more than (30) thirty days after written notice thereof from EPEAT to Subscriber, (iii) bankruptcy or general assignment for the benefit of creditors, (iv) disqualification, as determined by and recommended to EPEAT, by the Product Verification Committee in accordance with Section 7 (below), or (v) disqualification, as determined by EPEAT, for causes not otherwise here described, the criteria for which are approved by the EPEAT Board of Advisors and made known to all Subscribers 30 days before any such disqualification. A termination of this Agreement "for cause" shall not entitle Subscriber to all or any portion of the Fee or Renewal Fee.

2. Fee, Renewal Fee, and Invoicing. Subscriber agrees to pay the applicable Fee or Renewal Fee for each one (1) year term in the amount that is posted on the Website and identified as effective as of the Effective Date or Renewal Date of this Agreement. In the case of renewal, EPEAT should invoice Subscriber for the Renewal Fee forty five (45) days before the Renewal Date.

3. Payment. The Fee or any Renewal Fee shall be paid to EPEAT in immediately available funds upon the Effective Date or Renewal Date of this Agreement. Failure to pay the Renewal Fee within 30 days of the Renewal Date shall enable EPEAT, in its sole discretion, to de-list Subscriber's Products from the Website and revoke and terminate Subscriber's License and any other rights afforded Subscriber under this Agreement or any Renewal Agreement

4. Obligations of Subscriber. During the Term of this Agreement, Subscriber will bear sole responsibility to:

(a) Appoint a liaison (the "**Subscriber Liaison**") to interact with EPEAT on behalf of the Subscriber as respects this Agreement and to whom will be granted access to the mechanism provided by EPEAT through which Subscriber may upload information to the Website (the "**Upload Portal**"). Subscriber's Liaison will bear sole responsibility to further delegate and manage responsibilities within Subscriber's organization for uploading such information, using the facility provided by EPEAT as the Upload Portal;

(b) Upload onto the Website via the Upload Portal the product name, model number(s) or similar product identifier of Subscriber's qualifying Desktop, Notebook or Monitor products which Subscriber elects, in its sole discretion, to register under this Agreement (each, once so registered, a "**Product**" and cumulatively "**Product[s]**") and certain other Product and company information specified in Exhibit 4(b) (all such information, as uploaded onto the Website by Subscriber "**Product Information**");

(i) In uploading Product Information, Subscriber is solely responsible for ensuring and hereby represents and warrants that all Product Information so uploaded is accurate in all material respects and that all units that are sold by Subscriber of the subject

Product conform with each of the criteria set forth in IEEE 1680 (the “**Criterion[a]**”) entered for the Product by the Subscriber in the uploading process.

(ii) According to the Criteria to which Subscriber specifies conformance for the Product during the upload process, EPEAT shall assign each Product the designation (each, a “**Designation**”) as EPEAT Gold, EPEAT Silver, or EPEAT Bronze corresponding to the appropriate level identified in IEEE 1680, section 1.4.

(iii) The uploaded Product Information shall include a clear description of any Product configurations or options that do not conform to the Criteria indicated.

(iv) By uploading the Product Information, Subscriber acknowledges that all such Product Information relating to the Criterion[a] claimed for such Product is subject to Product Verification, as described in Section 7 (below).

(c) Keep all Product Information on the Website up to date and to remove the Product from the Website when the Product is no longer available. “**Up to date**” means that the uploaded Product Information shall be accurate in all material respects for all units of Product shipped by Subscriber while the Product Information appears on the Website. Subscriber shall remove any materially incorrect Product Information within thirty (30) days of discovery. Subscriber may also remove from the Website, at any time and in Subscriber’s sole discretion, any Product registered by Subscriber.

(d) Within thirty (30) days of EPEAT’s request, as respects any Product and any Criterion[a] claimed by Subscriber for such Product, provide to EPEAT the information identified in the Verification Requirements (as defined within IEEE 1680) to enable Product Verification as further described in Section 7 (below). Failure to provide such information within thirty days of a request under this subsection may result in delisting of the affected Product[s] from the Website.

(e) Provide data on the sale of Products to a mutually agreed third party for consolidation and reporting to EPEAT in an aggregate form only (i.e. totals for all Products for all Subscribers) in order to enable EPEAT to estimate and publicly report the environmental benefits and general effectiveness of EPEAT. The quantity, frequency, and format of this data will be as the parties mutually agree. Such data may include, if and as available to each Subscriber:

(i) the total number of units of each Product shipped by Subscriber for sale in the U.S.;

(ii) the type of customer (e.g., government, other public institution, private/corporate institution, private individual) to whom such Products were sold; and

(iii) the percent of Subscriber’s total unit shipments of Desktops, Notebooks or Monitors, as applicable, for sale in the U.S. that are Products.

5. Obligations of EPEAT During the term of this Agreement, EPEAT will bear sole responsibility to:

- (a) Appoint an EPEAT liaison (“**EPEAT Liaison**”) to interact with the Subscriber on behalf of EPEAT,
- (b) Fulfill in all material respects the obligations of a Product Registration Entity as described in IEEE 1680, by establishing and maintaining an independent product verification committee, verifier qualification program and list of qualified verifiers, and providing Product Verification pursuant to Section 7 (below),
- (c) Fulfill the obligations of a Market Surveillance Entity in all material respects as described in IEEE 1680, by providing and maintaining the Upload Portal, the Website and the Website Product registry,
- (d) Publicize and market, in such manner and using such methodology as it reasonably determines, the EPEAT program and the value and benefit of purchasing Products that have been registered by Subscribers and appear on the Website,
- (e) Estimate and publicly report, in such manner and using such methodology as it reasonably determines, the environmental benefit of purchasing EPEAT registered Products,
- (f) Maintain a Board of Advisors comprised of EPEAT stakeholders that will be responsible to oversee the operations of the EPEAT program and for developing operations policies relating thereto and recommending those policies to be adopted by the EPEAT Board of Directors. The roles and responsibilities of the EPEAT Board of Advisors and the operations policies of EPEAT shall be maintained on the Website and any major changes to the operations policies and or roles and responsibility will be communicated to all Subscribers, and
- (g) At certain times as determined by EPEAT, review with the Subscriber Liaison or other responsible party identified by Subscriber the Product Information that Subscriber has uploaded to the Website, in order to ensure that Subscriber understands the criteria and the declaration process and fully intends to make the declarations that are being made (“**Desk Review**”). During Desk Reviews EPEAT may prevent Subscriber’s Product Information or changes to the Product Information from appearing on the Website for a period not to exceed 48 hours after Subscriber instructs EPEAT to activate the Product Information on the Website. This Desk Review shall in no way diminish Subscriber’s sole responsibility for the accuracy of Product Information as set forth in Section 4(b)(i) (above) and is entirely independent of Product Verification as set forth in Section 7 (below).

6. License.

(a) Subject to the terms and conditions of this Agreement, EPEAT grants to Subscriber, and Subscriber accepts, a non-exclusive, non-transferable (and without the right to sublicense) license (the “**License**”) to use the Marks displayed on Exhibit 6, in connection with the promotion of the Products for the term of this Agreement. EPEAT represents and warrants that EPEAT is the exclusive owner of the Marks, and EPEAT warrants that it is authorized to grant this license. Subscriber affirms that it has no ownership interest in the Marks and agrees that it will do nothing inconsistent with EPEAT’s ownership of the Marks. Nothing in this Agreement shall give Subscriber or any third party any right, title or interest in the Marks other than as is expressly provided in this Agreement.

(b) All EPEAT-related advertising, promotional, marketing and related uses of the Marks by Subscriber shall conform to standards set by EPEAT as posted on the Website. Subscriber will cooperate with EPEAT in facilitating EPEAT’s control of the nature and quality of the use of the Marks. At EPEAT’s reasonable request, Subscriber will submit representative examples of any of its advertising and promotional materials utilizing the Marks to EPEAT for EPEAT’s review in order to verify compliance with this License.

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

(d) The Marks may only be associated with Products and may only be used in a manner consistent with the level assigned by EPEAT pursuant to Section 4(b)(ii) (above). For example, Products qualifying for the EPEAT Bronze Designation may only use the appropriate Mark for that Designation and may not use the marks associated with the EPEAT Silver or Gold Designations.

(e) In no event shall Subscriber be required to use any of the Marks.

(f) Subscriber shall not in any way imply that EPEAT, Green Electronics Council, or the U.S. Environmental Protection Agency endorses, approves, or rates Subscriber. In addition, Subscriber shall not imply that EPEAT is owned, controlled, or operated by the U.S. Environmental Protection Agency. Subscriber shall follow the guidelines for describing EPEAT and Subscriber’s relationship to EPEAT as posted on the Website by EPEAT.

7. Product Verification. According to the provisions of IEEE 1680, in order to maintain high credibility of the EPEAT system EPEAT maintains and operates a program to verify that Products meet the Criteria as indicated by Subscriber on the Website (such verification, individually and collectively, is termed “**Verification**” or “**Product Verification**”). EPEAT policies related to Verification, as approved by the EPEAT Board of Advisors, are maintained on the Website. In addition, if and when Subscriber’s Product(s) are selected for Verification then EPEAT will communicate all related policies and procedures to Subscriber. These procedures will include the specific steps, time frames, communications, and other details that Subscriber must follow to successfully support Verification. These procedures will be consistent with the following clauses.

(a) All declared Criteria of all units of all Products are subject to Verification.

(b) Subscriber is obligated to provide only the information identified in the Verification Requirements (as defined for each Criterion of IEEE 1680), but EPEAT may use any information in performing Verifications. Subscriber must provide to EPEAT the information in Verification Requirements within 30 days of EPEAT request in accordance with IEEE 1680 and Section 4(d), above.

(c) EPEAT will maintain an independent product verification committee (“**Product Verification Committee**”) that will make all final decisions regarding Verifications (“**Decisions**”). Decisions are not subject to further appeal and are specifically not subject to any legal action or conflict resolution process. At Subscriber request and Product Verification Committee concurrence Subscriber may present their case to the Product Verification Committee before the Decision.

(d) Once a Product is selected for Verification in a verification plan approved by the Product Verification Committee, Verification will proceed based on the selected Products’ Product Information on the Website at the time the plan was approved by the Product Verification Committee. Subscriber may change or remove the Product from the Website at any time but all Verification activities and reporting on the related Decisions shall be based on the Product Information on the Website at the time the verification plan is approved by the Product Verification Committee.

(e) If the Decision of the Product Verification Committee regarding one of Subscriber’s Products is of nonconformance to (a) Criterion(a) then EPEAT will instruct Subscriber to change the Product Information on the Website or to otherwise resolve the nonconformance. If Subscriber does not comply within the prescribed time then EPEAT shall remove the Product from the Website.

(f) EPEAT may publicly report information regarding Decisions and regarding significant changes to Product Information on the Website made by Subscriber or EPEAT, potentially including the addition of Products, changes to a Product’s Designation (Gold, Silver, Bronze), or removal of Products from the Website. This reporting may include aggregated statistical reports on the results of the Verifications contained in each verification plan, maintaining lists of Products that have changed status, and/or email alerts to interested parties.

(g) If Subscriber is found by the Product Verification Committee to have repeated instances of nonconformance then they may recommend to EPEAT that Subscriber be disqualified from further participation in EPEAT. On receiving such recommendation EPEAT may terminate Subscriber for cause as provided in Section 1(b)(iv), above.

8. Warranty. EPEAT warrants to Subscriber that, at all times during the Term of this Agreement (“**Warranty Period**”), the Website will substantially achieve the functionality described herein and that such functionality will be substantially maintained in subsequent upgrades to the Website. EPEAT does not warrant the Website’s performance or that any Website application will be error-free. EPEAT’s sole liability for any breach of this warranty

shall be, in EPEAT's sole discretion, to use commercially reasonable efforts to modify the Website to substantially achieve the functionality described herein or to refund the pro-rated portion of the Fee. EPEAT shall have no obligation with respect to a warranty claim subject to this Section 8 unless written notice of such claim within the Warranty Period is sent to the EPEAT Liaison. EXCEPT AS PROVIDED IN THIS SECTION 8, EPEAT DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE WEBSITE OR ANY WEBSITE APPLICATION. EPEAT MAKES NO OTHER WARRANTY OF ANY KIND WITH REGARD TO THE WEBSITE OR ANY WEBSITE APPLICATION, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE. EPEAT WILL NOT BE LIABLE FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE OR INDIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER OR NOT FORESEEABLE.

9. Indemnification.

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

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

10. Confidentiality

(a) Disclosure by Subscriber. It is anticipated that Subscriber in performance of this Agreement may disclose certain confidential and/or proprietary information to EPEAT or to third parties engaged in Product Verification.

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

(c) Definition of Confidential Information. "Confidential Information" as defined in Section 9(b) above shall include only that written documentation clearly marked

“Confidential” on the face thereof, and shall not include (i) information which is publicly available at the time of EPEAT’s receipt thereof from Subscriber, (ii) information which, after EPEAT’s receipt thereof from Subscriber becomes publicly available through no act or fault of EPEAT; (iii) information which EPEAT can show was lawfully in EPEAT’s possession prior to the receipt thereof from Subscriber; (iv) information which was lawfully received by EPEAT from a third party who was lawfully in possession of such information and under no obligation of secrecy with respect thereto; (v) information which Subscriber has approved in writing to EPEAT for release by EPEAT without restriction (vi) information Subscriber uploads or affirmations Subscriber makes during the uploading of Product Information to the Website as specified in Exhibit 4b; (vii) any data obtained pursuant to Section 4(e), and (viii) Decisions of the Product Verification Committee and information described in Section 7.

(d) Disclosure Restrictions. EPEAT shall not disclose Confidential Information except to the EPEAT Liaison, and managers, directors, officers, or employees having a need-to-know, or to agents of or contractors to EPEAT having a need-to-know (such as members of the Product Verification Committee and product verifiers on contract to EPEAT) who are also subject to a written obligation of confidentiality with respect to such information. Moreover, EPEAT shall not confirm, deny or otherwise respond to any inquiries, rumors or speculation that relates to or may result in the disclosure of Confidential Information. EPEAT covenants and agrees to use the Confidential Information only for Product Verification in accordance with the terms of this Agreement, and agrees that none of the Confidential Information shall be used except as expressly permitted by this Agreement.

(e) Compliance Procedures. EPEAT agrees to advise any parties to whom Subscriber’s Confidential Information is disclosed of their obligations hereunder and to ensure compliance by such parties with the terms hereof.

(f) Destruction and Return. At any time upon the request of Subscriber, and in any event upon termination of this Agreement by either party, EPEAT shall destroy or return to Subscriber, at Subscriber’s option, all documents and materials provided by Subscriber, together with any copies or notes derived there from and provide written confirmation of same to Subscriber.

(g) Indemnification. EPEAT shall indemnify and hold Subscriber harmless from and against all losses and damages of any nature and kind suffered by Subscriber (including legal costs and attorneys fees) as a result of any breach by EPEAT or any individual or entity described in Section 10 (e) (above) of the terms and covenants of this Section 10.

(h) Injunctive Relief. As monetary damages may be insufficient to remedy any breach of this Section 10, or any breach of Section 6, Subscriber shall be entitled to immediate equitable relief, including injunction and specific performance, as remedies for any such breach. Such remedies shall not be the exclusive remedies for any breach but shall be in addition to all other remedies available at law or equity.

11. Dispute Resolution.

(a) Informal Dispute Resolution. Subject to Section 10(h) above, and except for any dispute related to the substance of a Verification or a Decision of the Product Verification Committee under Section 7, above, in the event that any dispute, controversy or claim arises under or in connection with this Agreement other than any dispute related to the substance of a Verification then in progress under Section 7 (above) (the “**Dispute**”), the Subscriber Liaison and the EPEAT Liaison each shall notify the other in writing describing the Dispute. Thereafter the Subscriber Liaison and the EPEAT Liaison shall meet or converse as promptly, as often, and for such duration as the parties deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute. If the Subscriber Liaison and the EPEAT Liaison are unable to resolve the Dispute within fifteen (15) days after the referral of the Dispute to them, then each party will appoint one (1) senior executive who is not involved on a day-to-day basis with the subject matter of this Agreement. Such senior executives will meet or converse as promptly, as often, and for such duration as the parties reasonably deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.

(b) Refund of the Fee. If the appointed senior executives are unable to resolve the Dispute within thirty (30) days after referral of the Dispute to them by the Subscriber Liaison and the EPEAT Liaison, this Agreement may be terminated by EPEAT or Subscriber and, in that event, the License will be revoked and EPEAT shall refund the prorated portion of the Fee or Renewal Fee, prorated over the remainder of the then Term of this Agreement. Upon termination, Subscriber shall immediately cease any further use of the Marks in any manner whatsoever.

(c) Arbitration. If the appointed senior executives are unable to resolve the Dispute within thirty (30) days after referral of the Dispute to them, and both parties agree to arbitrate the Dispute, then either party may submit the Dispute to binding arbitration in Portland, Oregon with a professional arbitration service selected by the parties and, in that event only, the further conditions set forth in this paragraph 11 (c) shall apply. If the parties do not otherwise agree on an arbitration service, arbitration services shall be provided in Portland, Oregon pursuant to the rules of the International Chamber of Commerce. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case. The parties agree that this section and the arbitrator’s authority to grant relief shall be subject to the United States Arbitration Act, 9 U.S.C. §§ 1-6, et seq. (“**USAA**”), the provisions of this Agreement, and the ABA-AAA Code of Ethics for Arbitration in Commercial Disputes. The parties agree that the arbitrator shall have no power or authority to make any award that provides for punitive or exemplary damages. The arbitrator’s decision shall be final, binding and non-appealable. The award may be confirmed and enforced in any court of competent jurisdiction. All post-award proceedings shall be governed by the USAA.

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

(e) Exclusive Remedy. The parties do not intend the remedies contained in this Section 11, to be exclusive of other remedies that may be available to them at law or equity, and to obtain damages or equitable relief. However, the parties intend that all controversies, disagreements and claims relating to or arising out of a Verification or a Decision, shall be finally and conclusively resolved by the Product Verification Committee pursuant to Section 7, above and such matters are not subject to arbitration or litigation in federal or state court.

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

12. Miscellaneous Provisions.

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

For EPEAT: Davis Wright Tremaine, LLP  
Attention: Coni Rathbone  
1300 SW Fifth Avenue, Suite 2300  
Portland, OR 97201  
Telephone: 503-241-2300  
Fax: 503-778-5299 E-mail: [conirathbone@dwt.com](mailto:conirathbone@dwt.com)

For Subscriber:

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

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

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

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

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

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

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

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

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

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

(l) Electronic or Facsimile Signatures. This Agreement may be executed by electronic or facsimile signatures, each of which shall be deemed an original and shall be binding upon each of the undersigned as if signed in the original.

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

13. Definitions.

For all purposes of this Agreement, the following terms have the following respective meanings:

“Agreement” means the body of this agreement and all Schedules and Exhibits annexed hereto at the time of execution by both parties.

“Confidential Information” has the meaning set forth in Section 10(b) and 10(c).

“Criteria” or “Criterion” has the meaning set forth in Section 4(b)(i).

“Decision” has the meaning set forth in Section 7(c).

“Desktop” as defined in IEEE 1680-2006 means a computer designed for use on a desk or table.

“Desk Review” has the meaning set forth in Section 5(g).

“Designation” has the meaning set forth in Section 4(b)(ii).

“Dispute” has the meaning set forth in Section 11(a), and does not include any controversies, disagreements or claims relating to or arising out of a Verification or a Decision.

“Fee” has the meaning set forth in Section 2.

“EPEAT Indemnitee” has the meaning set forth in Section 9(a).

“EPEAT Liaison” has the meaning set forth in Section 5(a)(i).

“IEEE 1680” refers to the standard whose full title is set out in Section 2 above. IEEE 1680 is a copyrighted standard which can be purchased from the IEEE standards store at <http://standards.ieee.org/>.

“License” has the meaning set forth in Section 6(a).

“Marks” means the following U.S. trademarks: The name EPEAT and the stylized marks EPEAT Bronze, EPEAT Silver, EPEAT Gold, and the EPEAT logos displayed on Exhibit 6(a).

“Monitor” as defined in IEEE 1680 means a video display unit used with a computer.

“Notebook” as defined in IEEE-1680 means a portable-style or laptop-style computer system

“Product[s]” has the meaning set forth in Section 4(b).

“Product Information” has the meaning set forth in Section 4(b).

“Product Verification” or Verification has the meaning set forth in Section 7.

“Product Verification Committee” has the meaning set forth in Section 7(c).

“Renewal Agreement” has the meaning set forth in Section 1(b).

“Renewal Date” has the meaning set forth in Section 1(a).

“Renewal Fee” has the meaning set forth in Section 1(b)..

“Subscriber Indemnatee” has the meaning set forth in Section 9(b)

“Subscriber Liaison” has the meaning set forth in Section 4(a).

“Upload Portal” has the meaning set forth in Section 4(a).

“Verification Requirements” means the documentation specified for each product criterion in IEEE 1680.

“Verification” has the meaning set forth in Section 7(c).

“Warranty Period” has the meaning set forth in Section 8.

“Website” means the register or database of registered Products that is available to the public without charge at the URL [www.epeat.net](http://www.epeat.net).

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of \_\_\_\_\_, 200\_\_ (the "Effective Date").

**EPEAT, Inc.**

**SUBSCRIBER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Jeff Omelchuck  
Executive Director  
One World Trade Center  
121 SW Salmon Street, Suite 210  
Portland, OR 97204  
Telephone: 503-574-3346  
E-mail: [jeff.omelchuck@greenelectronicscouncil.org](mailto:jeff.omelchuck@greenelectronicscouncil.org)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_







Exhibit 4(b)

Once a Subscriber is set-up in the system, the company and product information required to be uploaded to the Website in order to register a Product under this Agreement is as follows:

- Product identification (model name, number)
- Any specific product configurations that don't meet the declared criteria (text field in database)
- A yes/no response corresponding to Criteria that state a limit or attribute. Most criteria are of this type.
- In some cases, a Criterion requires a declaration by Subscriber of specific data. In these cases Subscriber must provide the specified data during upload. An example is criterion 4.1.3.1 which requires reporting on how many mercury-containing lamps are in the Product and the mercury content per lamp in 6 defined ranges; or criterion 4.2.3.1 which requires declaration of Product's weight (+/- 5%)

Exhibit 6

Marks

Preferred EPEAT Gold certification Marks	Optional EPEAT Gold certification Marks
 <p>Or</p> 	<p><b>EPEAT</b>GOLD™</p> <p>Or</p> <p><b>EPEAT</b>GOLD™</p>
Preferred EPEAT Silver certification Marks	Optional EPEAT Silver certification Marks
 <p>Or</p> 	<p><b>EPEAT</b>SILVER™</p> <p>Or</p> <p><b>EPEAT</b>SILVER™</p>
Preferred EPEAT Bronze certification Marks	Optional EPEAT Bronze certification Marks
 <p>Or</p> 	<p><b>EPEAT</b>BRONZE™</p> <p>Or</p> <p><b>EPEAT</b>BRONZE™</p>