



# **General Operating Plan**

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# **Section 1. Introduction**

## **A. Description of Organization**

The Washington State Legislature passed the Electronic Products Recycling Act in 2006 to establish a manufacturer-financed system for the collection, transportation, and recycling of discarded covered electronic products. The legislation established the Washington Materials Management and Financing Authority (hereinafter the “Authority”) as a quasi-public agency. As such, the Authority is an instrumentality of the State of Washington, exercising essential government functions. Under its statutory mandate, the Authority acts as a business management organization on behalf of the citizens of the state to manage the collection, transportation and recycling of covered electronic products. The Authority is directed to develop and implement the Standard Plan on behalf of its member manufacturers who must finance the operations of the Authority.

Membership in the Authority is comprised of registered participating manufacturers who sell their electronic products in Washington. Every manufacturer must place its brand name on covered electronic products sold in Washington. Every manufacturer also must participate in a plan that finances the collection, transportation and recycling of covered electronic products. The Authority has developed a Standard Plan, which includes all registered manufacturers that are not covered by an independent plan approved by the Washington State Department of Ecology (hereinafter “Ecology”). Any registered manufacturer who does not qualify or is not approved to submit an independent plan, or whose independent plan has not been approved by Ecology, is a member of the Authority. By law, all new market entrants and “white box” manufacturers are deemed members of the Authority. Authority members are assessed a share of, and under threat of penalties must pay, the Authority’s administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products in Washington.

A Board of Directors governs the Authority (hereinafter the “Board”). By statute, the Board is comprised of eleven participating manufacturers, and includes representation from both television and computer manufacturers, as well as a retailer who sell its own private label products in the state. Members of the Board are appointed by the Director of Ecology.

## **B. Mission of the Authority**

"The mission of the WMMFA is to provide responsible end of life recycling for the citizens of Washington State in compliance with state law and Department of Ecology direction, and in the most cost-effective manner for our members. The WMMFA is committed to being the lowest cost plan provider for mandated electronics recycling in Washington State, to provide fair and equitable expense allocation to our members, and to treat all stakeholders and service providers fairly and reasonably."

### **C. Authority Objectives**

The objectives of the Authority are as follows:

1. Plan and implement an effective and efficient collection, transportation, and recycling program on behalf of member manufacturers.
2. Manage financial resources provided by member manufacturers to:
  - Contract for services for the collection, transportation, and processing of covered electronic products;
  - Pay for the Authority's operating costs; and
  - Establish a minimum financial reserve to secure the Authority's financial stability.
3. Assure to the extent possible that the sum of the equivalent shares of each member manufacturer are managed effectively.
4. Develop innovative approaches to improve materials management efficiency in order to ensure and increase the use of secondary material resources within the economy.
5. Continually develop innovative tools and techniques to make the program cost-effective for manufacturers.

### **D. General Operating Plan**

The Authority's Operating Plan is required to include, but is not limited to: (a) appropriate minimum financial reserve requirements to ensure the Authority's financial stability; (b) appropriate standards for contracting for collection, transportation and recycling and/or processing services; and (c) minimum environmental and regulatory standards for contractors providing such services. The Operating Plan must also report on the Authority's activities since the commencement of Authority operations via Standard or Operating Plan updates. Once adopted, the Authority will conduct its programs in observance of the objectives established in the Operating and Standard Plans. The Authority will update the Operating Plan periodically, but no less than once every four years.

### **E. Public Comment**

The Authority sought public comment on the Operating Plan before it was formally adopted by resolution of the Authority's Board. The Authority's update of the Operating Plan is limited to approved changes included within the Authority's Standard Plan and the updated Operating Plan is available at [www.wmmfa.net](http://www.wmmfa.net). The Authority will respond to all verbal or written comments concerning the Operating Plan verbally or in writing.

## **Section 2. Internal Governance and Organization**

### **A. Board of Directors**

The Authority is governed by an eleven member Board of Directors. The Board is responsible for assuring that all manufacturers participating in the Standard Plan compensate the Authority for the administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products within the State of Washington incurred during the operation of the Standard Plan.

The Board will assess charges on and collect funds from each manufacturer participating in the Standard Plan for that portion of the manufacturer's costs, as determined by the Authority's approved financing policy. The Board will adjust the charges to manufacturers participating in the Standard Plan as necessary in order to ensure that all costs associated with the identified activities are covered.

The Board is responsible for approving the use of Authority funds to:

- Contract and pay for collecting, transporting, and recycling of covered electronic products and other services (outreach) as identified in the Standard Plan;
- Pay for the expenses of the Authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space, and other expenses related to the costs associated with operating the Authority;
- Pay into the electronic products recycling account amounts billed by Ecology to the Authority for any deficit in reaching the Standard Plan's equivalent share as required by statute; and
- Pay Ecology for the fees for submitting the Standard Plan and any subsequent plan revisions.

The Board will appoint an Executive Director to serve as chief executive officer and chief financial officer to carry out the Authority's duties. The Board will also hire professional, technical and support staff as necessary.

### **B. Executive Director**

The Executive Director of the Authority will perform the functions of a chief executive officer and a chief financial officer and will oversee all program operations and Authority staff. The Executive Director will be responsible for cost effective implementation of the Authority's operations in accordance with all applicable statutory and regulatory requirements. The Executive Director will direct and execute all activities of the Authority, either directly or through delegated authority, and will provide financial oversight of the Authority's operations.

The Executive Director will provide leadership in these and other areas:

- The creation of strategic, tactical, and financial plans;
- Development of goals and measuring performance to the approved goals;

- Organizational development;
- Liaison to the public, government, affiliated organizations, and other stakeholders;
- Development of member services, and member development; and
- Development of the Authority's staff.

The Executive Director will communicate key messages to stakeholders, including the public, government, non-governmental organizations, potential members, and existing Authority members. The Executive Director will also be responsible for managing the Authority's relationships with government agencies, collectors, transporters, processors, the public, third party organizations, counsel, and consultants.

### **C. Compliance Organization**

The Authority will seek guidance and oversight for financial, operational, and reporting requirements as outlined in the Standard and Operating Plans.

## **Section 3. Report on Authority Activities**

In February 2007, Ecology appointed the initial Board of Directors for the Authority. During 2007, the Board established the Authority's governance structure, secured funding to support Authority operations, and began developing the Operating and Standard Plans. In January 2008, Ecology reappointed the Board to two-year terms, as specified in the bylaws. The Authority's formal operations begin on January 1, 2009, this section of the Operating Plan describes the Authority's efforts and activities to date.

Development of plans for formal operations has been the responsibility of the Authority's Board. The Board's initial activities involved the drafting and approval of bylaws to govern Authority operations and provide internal governance structure and procedures. The bylaws (available for viewing at the WMMFA website [www.wmmfa.net](http://www.wmmfa.net)) provide details about Authority membership; the function, role and composition of the Board of Directors; and general decision-making and meeting procedures. The Board has also formed working committees to aid in the development and implementation of relevant Authority documents and policies, such as development of the Authority's financing plans. Current committees include an Executive Committee.

The Authority Board has approved a formal financing policy and procedure that allocates costs among its member manufacturers based on (1) a member's return share, and (2) the weight (in pounds) of current electronic products sold by each member manufacturer in Washington. The finance policy of the WMMFA was implemented as originally described at plan start up in 2009. As of January 2016 the financing policy will reflect equivalent share allocation of 100% market share as required by legislation passed in 2013. The Board also approved several strategic operational decisions, including a policy to work case-by-case with potential collectors of covered electronic products to ensure appropriate operational and collector compensation arrangements. The Board has also developed and submitted the Standard Plan to Ecology on February 1, 2008. After a period of review, Ecology conditionally approved the Standard Plan on July 17, 2008. The Standard Plan was approved by Ecology on June 25<sup>th</sup>, 2009 with a required revision approved November 19<sup>th</sup>, 2013.

In 2007 the Board hired and contracted with several entities to provide additional support for Authority operations. The Board hired Van Ness Feldman PC to serve as legal counsel to the Authority and contracted with Cascadia Consulting to help develop the Standard Plan. The Board also engaged Alcorn Consulting to identify and signup collectors throughout Washington to ensure that the Authority satisfies the collection requirements specified in state law and regulations. The Board hired John Friedrich as the Executive Director in March of 2008. The Executive Director has performed the functions of chief executive officer and chief financial officer, as required by law, and reports to the Board.

A summary of past and future milestones and key activities is outlined in the table below.

August 1, 2007	Ecology issues final return shares for determination of each manufacturer's share of cost responsibility for return share.
December 20, 2007	Distribute processor contracts and review processor availability.
December 20, 2007	Distribute transporter contracts and determine interest level of transporters.
January 1, 2008	Manufacturers must declare Plan (Independent or default to Standard).
February 1, 2008	Standard Plan and other CEP recycling plans due to Ecology.
April 10, 2008	Authority holds Manufacturers' Forum on Standard Plan financing.
April 22, 2008	Authority issues start-up invoices.
May-June 2008	Refine Standard Plan with input from Ecology.
Throughout 2008	Negotiate agreements with collectors, transporters, and direct processors and prepare for public outreach campaign, including website development. Work from largest to smallest service providers. Work within Standard and Operating Plan compensation requirements and recommendations.
July 17, 2008	Authority receives conditional approval (conditional on completion of collector network, outreach and operation plan fulfillment). Authority issues request for reports on pounds of CEPs sold for period from July 1, 2007, through June 30, 2008 from manufacturers and pursues independent market share data as available.
August 2008	Authority finalizes Operating Plan addressing financing, reserve requirements, service standards and operating procedures for service providers. September selected as target for Operations Plan public hearing. Transporters and collectors being contacted, informed and contracted.



August 18, 2008	Authority posts proposed Operating Plan for public comment. Authority posts hearing date in state and public media outlets.
Weeks of September 15, 2008 September 22,2008	Authority publishes public notices state wide of public hearing location, date, and time and solicits comments.
October 3, 2008	Public Hearing on General Operating Plan held in Tukwila, WA
October 10, 2008	Deadline for acceptance of comments on the proposed General Operating Plan
October 20, 2008	All public comments addressed in writing and posted at the Authority's web site.
October, 2008	Authority issues invoices and conducts additional media relations for launch of collection.
January 1, 2009	Statewide collection of CEPs begins.
March 2009	Authority issues invoices.
June 30, 2009	Authority repays initial \$500,000 loan from Ecology.
January 1, 2010	First full year of operations completed. Quarterly budgets created. Manufacturers invoice quarterly
March 2009	Legislation passed allowing "part for part" exchange within computer equipment by collectors and processors – enhancing reuse opportunities
2009-2013	Volume of CEP collection grows. Collection site network expands from approximately 200 to 330+
February 2013	Legislation requiring market share as the share basis for all manufacturers passed – effective January 2016
July 2013	Legislation requiring additional reporting by the WMMFA to include pounds by CEP type by county, complete financials for the WMMFA, and recovered materials disposition of all collected materials.
2013 - current	CEP products collected increasingly comprised of CRT products

## Section 4. Statement of Results

The Standard Plan includes a detailed financing plan, which is available for review at the Authority's website ([www.wmmfa.net](http://www.wmmfa.net)) at the "Plans:" link – Standard Plan – Finance section. Minimum reserve requirements, the collection of funds for operations, and standards for contracting are described within this Operating Plan.

The Collector's Operations Guidelines and the associated sample bill of lading, attached as Appendices A and B respectively, demonstrate how the movement of covered electronic products are monitored and documented. The data required to be collected, as specified in the Standard Plan, is generated from source documents, such as the required bills of lading, and verified by the receiving processor. Materials handling and disposition reports will be provided by the processors and verified by annual audits, site visits, and sampling as outlined in the Standard Plan. The performance standards and terms and conditions for each of the Authority's agreements with its service providers are attached, as Appendices C through G.

## Section 5. Summary of Financing Policy

### A. Authority Financing Policy

Initially, in order to implement and sustain operations the Authority considered methods for apportioning responsibility for Authority costs based on current market share of product sales and on return share of used products collected. Many factors influence market share, including the number of units sold over time, their retail unit weight and the useful life of the product.

To apportion costs fairly among participants, the Authority agreed to assess fees to finance its operations based on a combination of current market share (see Section 0) and return share (see Section 0), as described below. During the first operational year (2009), the Authority Costs were financed as follows:

1. Half (50%) based upon Member pounds of CEPs sold into Washington (a Member's "market share"); and
2. Half (50%) based on pounds of a Member's brand collected in Washington (a Member's "return share").

In subsequent years a basis for assessing Authority Costs was devised to transition gradually, on an annual basis, toward financing based solely on market share of pounds of CEPs sold into Washington. For the period 2009 through 2013 this approach was used and was intended to be fair to participating manufacturers and to provide a stable, sustainable funding source over time to maintain and operate the Authority and its Standard Plan. The Authority forecasted and has used the transition schedule assessment based on market and return share as indicated in **Table 0-1**. There have been no changes to the financing policy initially adopted to date. Starting with 2016 and thereafter the authority must use market share by weight as the sole metric for determination of share responsibility for its members and for its plan per passage of SB 5699.

Therefore, beginning with 2016, the authority's standard plan obligation will be the sum of its member's market shares. Independent plans (none at this writing) shares will also be determined by the sum of their member's market shares beginning with plan year 2016.

**Table 0-1. Actual and Proposed Cost Apportionment by Market Share and Return Share**

<b>Year</b>	<b>Percentage of Authority Costs Financed by Member CEPs Sold, by Weight</b> <i>Weighted Distribution of Responsibility – Market Share (WDR<sub>m</sub>)</i>	<b>Percentage of Authority Costs Financed by Member CEPs Collected, by Weight</b> <i>Weighted Distribution of Responsibility – Return Share (WDR<sub>r</sub>)</i>
2009	50%	50%
2010	55%	45%
2011	60%	40%
2012	65%	35%
2013	70%	30%
2014	80%	20%
2015	90%	10%
2016 and future years	100%	0%

### **Member Fees and Collection Process**

Consistent with the Authority’s financing policy, member fee assessments to cover Authority costs will be based on a combination of market share and return share through plan year 2015 (as shown in **Table 0-1.**), at which time the Authority transitions to financing based solely on market share, as required by the passage of SB 5699 in May of 2013.

### **Return Share in Financing Policy Allocation**

$$\text{Rtn Sh} = A/B$$

Rtn Sh = Member’s Return Share Factor

A = Member’s brand CEP weight collected as determined via ongoing sampling

B = Total plan CEP weight collected via ongoing sampling

As administered by the Department of Ecology, weights are based upon sampling as described in WAC 173-900-900 and in the Authority’s Operating Plan utilizing approved 3rd party observers. The sample size is statistically determined with a maximum margin of error of .005 at the 95% confidence level. Member’s brand CEP weight collected is an accumulation of the pounds collected of the member’s respective brand(s) in a calendar year. The total plan CEP weight collected is the sum of the pounds collected for all Member brands in the Standard Plan in the

prior full year. Typically, a current plan year's return share factors for each member manufacturer will be obtained via results of the full year sampling data of the prior year. A nine month sample (January through September) may be used for the 1st quarter of an annual invoice set, if available, as invoices for the 1st quarter must be issued prior to the conclusion of the prior year and full year sampling results would not yet be available. The complete sampling results (set) used for recent manufacturer invoices have been, and will continue to be posted at the Authority's web site before the issuance of manufacturer's invoices. For small or new manufacturers for which return share data are unavailable, the return share will be assumed to be zero until sampling data or information from Ecology indicates that a return share exists.

## **Market Share in Financing Policy Allocation**

$$\text{Mkt Sh} = C/D$$

Mkt Sh = Member's Market Sales Share Factor

C = Member's CEP Sales Weight

D = Total Member CEP Sales Weight

## **Market Share Information Request**

Prior to August 1 of each year through 2015, a request for the amount of respective CEPs sold into Washington State during the previous 12-month period of July 1 through June 30 will be sent to all WMMFA member manufacturers. Data requested will include pounds and number of units for each covered electronic product category sold into Washington State as described in RCW 70.95N.020. Covered entities referenced in sales data request will include households, charities, school districts, small businesses, and small governments located in Washington. Additionally, the request for market share data will seek overall national sales numbers (units and pounds sold) for each respective CEP category. For plan year 2016 and beyond the Authority may maintain or discontinue the annual request for market share information dependent on interpretations and rules established by that time. A decision as to the market share information request is pending based upon Ecology's interpretation of SB 5699 as passed. The definition of the term "market share" for purposes of member share allocation may imply that the Authority use market share information as determined by the department of Ecology. If the Authority utilizes market share information as provided by the department of Ecology the WMMFA request to manufacturers for market share information may be discontinued.

For years in which data is requested and obtained from member manufacturers calculations will be required to support the information submitted. The Authority, or a third party, will consider all available information as necessary to corroborate member reporting, including independent reports of market share. Washington State sales should be consistent with national sales, sales trends, or both unless acceptable justification is provided showing a different result. If the Authority and a manufacturer cannot reach agreement on reported market share, the Department of Ecology will review all relevant and reasonably available information and determine a final resolution.

By October 1 of each year, each Standard Plan Member will report to the Authority the total pounds of CEPs sold into Washington during the preceding July 1 through June 30 period. The Authority will not be able to include self-reported data as part of the corroboration of other data sources described within this finance policy unless received by the October 1st deadline as one manufacturer's change in shares would require a re-issue of all member's invoices.

Using manufacturer reported data, data purchased and obtained from other independent sources such as independent market research organizations and/or the ERCC (Electronics Recycling Coordination Clearinghouse) and as obtained via research on unit weights of CEP's sold, the Authority will determine the total pounds of CEPs sold for each Standard Plan Member. Authority staff will analyze and compare the information from all sources and make a reasonable effort to corroborate all data sources to arrive at a market share percentage for use in market share allocation. The Authority will calculate and assign a percentage of the total pounds sold in Washington to each Member. This percentage of the total reported pounds sold will be used to calculate and assess individual Member fees based upon market share (i.e., CEP pounds sold) as described herein. **Table 0-2** shows the historical, current and future market share data sources used and anticipated to be used in determining market share and return share for manufacturers participating in the Standard Plan.

**Table 0-2. Source Data for Determining Market Share and Return Share**

	<i>Invoice Date</i>		
	<b>2008</b>	<b>2009-2015</b>	<b>2016 +</b>
<b>Market Share</b>	Tier apportionment as provided by Ecology results, divided by number of members in that Tier	Market share data as available from manufacturers and third parties	Market share data as available from manufacturers and third parties or as provided by Ecology (TBD)
<b>Return Share</b>	As provided by Ecology - obtained via extrapolation from other state's data	As provided by annual Washington State sampling results conducted by 3rd parties, funded by the WMMFA, with Ecology oversight	Equivalent share = 100% market share beginning with 2016. Return share sampling not necessary after 2014 as 2015 return share data will be based on 2014 full year sampling

## Disputed Market Sales Information (through 2015)

The Authority Board will direct authorized staff or a designated contractor to receive information on CEP pounds sold and calculate market share. Pounds-sold information (or other market-sensitive data) from individual Members will not be shared with Authority Board Members, other Authority Members, or any other manufacturer of CEPs.

The Authority will consider reliable, available information as necessary to corroborate Member reports on market sales, including independent reports of market share. Any disagreement between the Authority and a Member regarding sales reported will be reviewed by the Authority. If the Authority and a Member cannot reach agreement on the reported figures, the dispute shall be referred to Ecology. Ecology will review all relevant and reasonably available information and determine a final resolution.

Disputed market share information will be resolved as soon as possible and no later than the next billing cycle after a dispute arises. The manufacturer will be responsible for payment of the disputed market sales-related amount until the resolution process is complete. The revised market share allocation, if any, will be used for the period in which the revision is determined, retroactive to the quarter in which the dispute arose. Payments will be adjusted to that quarterly date in the form of a credit on future invoices. If the revised market share data results in a credit a refund will be issued to that manufacturer.

## Member Percentage of Authority Cost Responsibility

$$\text{Mem Sh} = [ (\text{Mkt Sh}) (\text{WDRm}) + (\text{Rtn Sh}) (\text{WDRr}) ] / 100$$

Mem Sh = Member Share Factor (ultimate percentage of responsibility for individual Member)

Rtn Sh = Member's Return Share Factor

Mkt Sh = Member's Market Sales Share Factor

WDRm = Weighted Distribution of Responsibility for Market Share (see Section 0)

WDRr = Weighted Distribution of Responsibility for Return Share (see Section 0)

The Weighted Distribution of Responsibility (WDR) refers to the Standard Plan's allocation of financial responsibility based on a combination of market share and return share, as shown in [Table 0-1](#). The Authority forecasts a transition to full market-share financing as illustrated in [Table 0-1](#). For years 2016 and beyond the Authority will be required to utilize 100% market share as the equivalent share of each manufacturer, the total of all members' shares equaling the entire plan's equivalent share.

## **B. Member Fee and Collection Process**

The Member Fee shall be calculated by multiplying the Authority's budgeted Costs covered by the invoice period by the Member Share Factor for allocation of responsibility. Each invoice will have a component that represents a floating "reserve". The reserve is intended to cover volume fluctuations (increases) not forecasted in the budgeting process. Excess reserves will be credited to all member manufacturers in their equivalent shares in the quarter following their discovery.

$$\text{Mem Fee} = \text{Mem Sh} * \text{Authority Costs}$$

Mem Fee = Member Fee

Mem Sh = Member Share Factor

### **Manufacturer Fees Payment Period**

The Authority will send invoices to all Members on or about 45 days prior to each calendar quarter (November 15th, February 15th, May 15th, and August 15th). Invoice terms are 60 days from the invoice date to submit payment. The Authority may modify this schedule with Board approval.

### **Procedure for Member Non-Payment of Fees**

Members for whom payment has not been received within 60 days of the invoice date will be subject to a (3%) penalty assessment for failure to pay within 60 days. For payments not received within 90 days, the Member will receive a letter warning of imminent enforcement action with a past due invoice with the 3% finance charge payable upon receipt by the manufacturer. Ecology will be notified that the manufacturer is not participating in the Standard Plan due to non-payment when payment terms are not met by a manufacturer. Payments not received within 120 days will be assumed delinquent, and the Member will be assessed an additional 10% late fee and reported to Ecology for enforcement action. The Authority may modify these procedures for non-payment with Board approval. Fees that ultimately are not collected will be apportioned to other Members as part of the invoice process for the following year if necessary to maintain the reserve requirements, as discussed in Section 0, C. Reserve Requirements.

The reserve funds are intended to cover contingencies including delayed payment and non-payment by some members. Any revenue shortfall due to a non-collectible invoice will be apportioned to the other members in the next available billing cycle after the billing cycle in which it was determined the invoice would not be paid. If a past due account is settled and ultimately collected late, after the burden of non-payment has already been distributed among other manufacturers, that amount collected will be credited back to all previously burdened manufacturers in the next billing cycle via a reserve reduction.

### C. Reserve Requirements

The minimum total reserve amount is set at 9% of projected costs by quarter. This reserve is intended to cover contingencies including delayed payment and non-payment by some members, as covered in Section 0, *Procedure for Member Non-Payment of Fees*.

**Table 0-3** shows reserve fund goals and fund composition for various reserve amounts, based on a percentage of projected quarterly costs.

**Table 0-3. Reserve Funds Goals**

		Reserve Composition	Reserve Guide Comments	Percentage of Projected Quarterly Costs
<b>Total Reserve</b>	<b>Working Reserve</b>	Cash	Reserve should normally not exist in this region.	25%
		Cash	Trigger zone of concern	15%
		Cash	Acceptable region	10%
		Cash	Optimal region	9%
	<b>Minimum Total Reserve</b>	Cash	Optimal region	9%
		Cash	Not intended for spending	5%
<p><i>Note: Reserve will be a "floating" value adjusted quarterly through credits to manufacturers or increased to cover unforeseen volume or cost increases.</i></p>				



## **E. Financing Timeline**

- August 1, 2007 – Ecology issues final return shares.
- January 1, 2008 – Manufacturers must declare Plan.
- February 1, 2008 – Standard Plan and other recycling plans due to Ecology.
- April 2008 – Authority issues start-up invoices.
- July 2008 – Authority issues request for reports on pounds of covered electronic products sold for period from July 1, 2007, through June 30, 2008.
- September 1, 2008 – Members report on pounds of covered electronic products sold during period from July 1, 2007, through June 30, 2008.
- October 2008 – Authority issues invoices.
- December 2008 – Authority issues invoices.
- January 1, 2009 – Statewide collection of covered electronic products begins.
- March 2009 – Authority issues invoices.
- June 30, 2009 – Authority repays initial \$500,000 loan from Ecology.
- 2009- current – Authority creates quarterly budgets and issues quarterly invoices to members

## **F. Flex Plan Terms, Rules, and Conditions**

The “Flex Plan” is intended to give some flexibility to manufacturers with existing national or corporate recycling plans in place to enhance their brand or improve their efficiencies as an organization actively embracing producer responsibilities using a different format for collection of their products than adopted under the Standard Plan. Flex plan participants will be responsible for their own marketing and outreach programs. Flex Plan applications are available at the Authority Web site. Board approval is required for participation as a flex member.

Flex Plan Members are members of the Standard Plan that shall:

- As a single manufacturer seeking Flex Plan status, comprise at least 2% of the member equivalent share within the state as determined by the Standard Plan.
- As a group of manufacturers, members must collectively comprise at least 2% of the member equivalent share within the state as determined by the Standard Plan.
- Assume all responsibility for payment of all costs associated with the collection, transportation, and processing of their collected items.
- Not use, or make compensation offers to secure pounds from collectors under contract to or currently operating as part of the existing site collection network of the Standard Plan.
- Assume all responsibility for their equivalent share of the Authority’s administrative costs.
- Flex plan members may use their flex operations to fulfill a maximum of 25% of their equivalent share pounds obligation.
- Use collectors, transporters, and processors registered with Ecology and currently approved per all requirements of the Standard Plan.
- Must satisfy equivalent share pounds obligations via Flex and General participant operations.

- If a Flex Plan Member’s “equivalent share” of the pounds collected is not met invoices will be adjusted to allow the member to reach their obligation. Quarterly invoices to flex members will reflect Flex and Standard Plan obligations reconciling expenses and credits with a net amount due.
- The “base” for determining equivalent share pounds will be that quarter’s total pounds collected by all manufacturers including Flex Plan Members.
- May opt out of the Flex Plan by submitting an application to the board to opt out prior to October 1 of the current year for an effective opt-out date in January of the following year.
- Flex member status and participation will be reviewed annually and participation as a flex participant will require annual board approval.
- Report all pounds collected using the WMMFA’s bill of lading system. This WMMFA document for recording collections will be used by Flex Plan Members to ensure accuracy and to allow the authority to capture all data necessary to comply with WMMFA legal reporting requirements. Collectors must report data to the WMMFA to allow the WMMFA to input the collection data into its document system prior to transport of Flex Plan collected CEPs to a qualified processor. Each trailer or transported load will require preparation of a separate bill of lading. Reported pounds will be verified by the processor and pounds tendered to a processor are subject to the Standard Plan sampling and audit requirements. Special events, such as mail-back programs, will require a detailed manifest with weights of shipments identified.
- Invoices for administrative and operational expenses (pounds) shortfall will be issued to the Flex Plan as a single entity. The WMMFA will not invoice separate manufacturers within a Flex Plan group.
- Flex Plans must notify the WMMFA of any changes or additions to its list of service providers (e.g., processors, transporters) to insure continued standard plan compliance.

2. Pounds collected in urban areas will be discounted from actual pounds collected. Pounds credited towards a Flex Plan Member’s equivalent share will be determined based on the following schedule

<u>WA State County</u>	<u>Population by County (2007 estimate)</u>	Actual Lbs. collected by Flex participant	Credited Lbs. towards meeting share obligation for Flex participant
King	1,861,300	1	0.67
Pierce	790,500	1	0.67
Snohomish	686,300	1	0.67
Spokane	451,200	1	0.67
Clark	415,000	1	0.67
Kitsap	244,800	1	0.67
Thurston	238,000	1	0.67
Yakima	234,200	1	0.67
Whatcom	188,300	1	0.67
Benton	162,900	1	0.67
Skagit	115,300	1	0.67
Cowlitz	97,800	1	0.67
Grant	82,500	1	0.67
Island	78,400	1	0.67
Lewis	74,100	1	0.67
Chelan	71,200	1	0.67
Grays Harbor	70,800	1	0.67
Clallam	68,500	1	0.67
Franklin	67,400	1	0.67
Walla Walla	58,300	1	0.67
Mason	54,600	1	0.67

Stevens	43,000	1	1.00
Whitman	42,700	1	1.00
Okanogan	39,800	1	1.00
Kittitas	38,300	1	1.00
Douglas	36,300	1	1.00
Jefferson	28,600	1	1.00
Pacific	21,600	1	0.67
Asotin	21,300	1	0.67
Klickitat	19,900	1	1.00
Adams	17,600	1	1.00
San Juan	15,900	1	0.67
Pend Oreille	12,600	1	1.00
Skamania	10,700	1	1.00
Lincoln	10,300	1	1.00
Ferry	7,550	1	1.00
Columbia	4,100	1	1.00
Wahkiakum	4,000	1	1.00
Garfield	2,350	1	1.00

## Section 6. Minimum Financial Reserve Requirements

### A. Minimum Reserve Requirement

Consistent with the statutory requirement located at RCW 70.95N.320(2)(a), the Authority will maintain a minimum reserve to help assure the Authority's financial stability. Specific to the Authority, this minimum reserve is designed to ensure adequate cash flow to pay expenses between invoicing periods and to provide a reserve to pay unexpected expenses not included in the annual budget.

Members of the Authority are required by law to finance Authority operations, thus the minimum reserve requirements established in this Operating Plan are less than those that would be required of a comparable organization lacking mandatory financing authority. Furthermore, these minimum reserve requirements are consistent with the Authority's "pay as you go" approach that will avoid the need to carry over significant funding for use in future years.

### B. Amount Maintained as Minimum Reserve

The Authority Board's financing policy establishes one primary account. Moneys deposited into this Operating and Administrative Cost Account will be used by the Authority to fund the Authority's general operations and administrative costs. Beginning January 2014, the Authority's financing policy requires that total cash reserves equal at least 9%, but not more than 25%, of that fiscal quarter's projected Authority Costs. Quarterly cash reserve requirements will be subject to

executive evaluation and Board review. The Executive Director, or an executive financial officer, may seek Board approval to revise cash reserve requirements if necessary to ensure the Authority's financial stability. Such revision of cash reserve requirements may result in additional assessments to Authority member manufacturers.

The Executive Director may seek Board approval to revise invoice amounts to member manufacturers on a quarterly basis if needed to address a projected deficit. A projection of a cash reserve below 5% of the projected annual Authority cash requirements for the current year will be deemed a "deficit" in cash reserve requirements.

### **C. Operating Procedures for Collecting Funds from Manufacturers**

The Authority Board has adopted a financing policy that addresses how fees will be apportioned and funds collected from participating covered electronic manufacturers. The financing policy was included in the Standard Plan submitted to Ecology. The fees collected pursuant to the financing policy will provide funding for the Authority's administrative costs as well as the costs associated with implementing the Standard Plan.

## Section 7. Standards for Services

The Authority requires that all providers of services under the Standard Plan comply with the relevant standards promulgated by Ecology under Chapter 173-900 WAC. For processing services, the Authority requires that direct processors comply with Ecology's "Environmentally Sound Management and Performance Standards for Direct Processors," effective as of November 2007.

### A. Performance Standards

#### 1) *Performance Standards for Collectors*

The Authority will accept covered electronic products from any collector that is listed as "in compliance" on Ecology's designated website. To receive "in compliance" status, a collector must: 1) be registered with the Department of Ecology, and 2) meet the collector performance standards. The applicable collector performance standards are codified at WAC 173-900-450, and are included in Appendix C. Operational service procedures and guidelines for collectors are provide as an attachment to this document in Appendix A. The operations guidelines provide practical instruction and information on operating a collection site, arranging transportation of covered electronic products, and invoicing the Authority for payment.

#### 2) *Performance Standards for Transporters*

The Authority will utilize transporters for covered electronic products that are listed as "in compliance" on Ecology's designated website. To receive "in compliance" status, a transporter must: 1) be registered with the Department of Ecology, and 2) meet the transporter performance standards. The applicable transporter performance standards are codified at WAC 173-900-550, and are included in Appendix D.

#### 3) *Performance Standards for Processors*

The Authority will contract with any processor that is listed as in "preferred status" on Ecology's designated website. To receive "preferred status," the direct processor must: 1) be registered with the Department of Ecology; 2) meet the minimum performance standards, codified at WAC 173-900-550; and 3) meet the preferred performance standards contained in the Department of Ecology's "Environmentally Sound Management and Performance Standards for Direct Processors." The minimum and preferred processor performance standards are included in Appendix E.

### B. Penalty Standards

Ecology can issue penalties for plan violations to collectors or transporters as identified in WAC 173-900. It is the responsibility of the entity found to be in violation to remedy the identified deficiencies and document such remedial action to the satisfaction of both Ecology and the Authority. If the Authority is assessed a penalty based upon a violation on the part of a collector, transporter, or processor, the Authority may seek to recover the penalty amount from such entity.

If a direct processor is found to be in violation of the preferred processing standards, as contained in Ecology's "Environmentally Sound Management and Performance Standards for Direct Processors," the processor will no longer be in "preferred status." If a direct processor loses preferred status, and is still providing services to the Standard Plan, the direct processor must remain in compliance with the minimum performance standards in WAC 173-900-650. If the direct processor is not in compliance with the preferred processing standards, the processor must notify the Authority immediately and submit a corrective action plan. The non-conformity must be remedied, and the processor must submit documentation to the Authority demonstrating compliance within 60 days of discovering the non-conformity. If the non-conformity is not remedied within 60 days, the Authority will discontinue use of the processor and submit an update to the Standard Plan removing the direct processor and explaining how the Standard Plan will replace the processing services provided by that processor.

### **C. Submission of Audit Reports**

The Authority is required to submit an annual report to Ecology by March 1, 2010, and each program year thereafter. WAC 173-900-800. The annual report must include audit reports for each direct processor used by the Authority's Standard Plan. To enable the Authority to meet these deadlines, each direct processor must submit its audit report to the Authority one month prior to the time the annual report is due to Ecology. As such, audit reports will be due to the Authority by February 1 in 2010, and in each year thereafter.

### **D. Return Share Sampling**

The Authority implemented and financed an auditable, statistically significant sampling of covered electronic products for the first 6 years of plan operations. The sampling was conducted in accordance with the requirements specified in WAC 173-900-900. Sampling was discontinued January 1, 2015 as manufacture equivalent shares will be based upon market share only beginning with the 2016 plan year.

### **E. Policy on Data Destruction and Removable Media**

Covered entities will be solely responsible for any and all data stored on covered electric products provided to the Authority. Before covered entities provide covered electric products to Authority collectors for recycling, covered entities are responsible for: (a) deleting the data on the hard-disk drives and any other storage devices in the products; (b) backing up or transferring any data prior to deletion; and (c) removing any removable media, such as diskettes, CDs, or PC Cards. The Authority does not accept liability for lost or confidential data or any software.

All authorized collectors of covered electric products were notified of this policy prior to the commencement of collection operations. Each collector will be given an operational guideline manual as well as handouts that describe this policy.

## **Section 8. Standards for Contracting for Services**

The Authority may make and execute all manner of contracts, agreements, and financing documents with public and private parties as necessary, useful, or convenient to accomplish its purposes. In implementing and operating the Standard Plan, the Authority will enter into contracts or written agreements with all contractors who desire to provide collection, transportation, and processing services on behalf of the Authority under the Standard Plan. All service providers must meet the standards for service described in this Operating Plan and required by applicable law and regulations.

### **A. Standards for Contracting**

The Authority will also advertise all contracting opportunities on its webpage ([www.wmmfa.net](http://www.wmmfa.net)) and in other locations as appropriate. All contracts and agreements for collection, transportation, and processing services will require the demonstration of qualifications established by the Authority under the Standard Plan. All providers that desire to work for the Authority must execute the Authority's standard contracts and agreements and meet the requisite qualifications. The Authority will not set minimum or maximum fees for services provided, but will make every attempt to pay fair compensation for services based upon the nature and scope of services performed. Each provider will submit its pricing and service rates to the Authority, which shall be maintained in strict confidence. Service providers will be selected based upon service quality, competitive rates and overall best value to the Authority.

The Authority may give preference to businesses located in Washington State; however, this factor is not a guarantee of a contract or actual work with the Authority. The Authority will enter into a contract with service providers who meet the requisite qualifications as established by the Authority and applicable law and regulations. When evaluating and awarding contracts, the Authority does not discriminate on the basis of race, creed, color, disability, age, religion, national origin, sex, marital status, disabled-veteran's status, Vietnam-era veteran's status or sexual orientation.

### **B. Compensation for Services**

The Authority will compensate collectors for their reasonable costs associated with the collection of covered electronic products for the Standard Plan. Collectors will be paid an agreed upon "fair" level of compensation for the CEPs collected. The Authority encourages all collectors to combine CEP collection with other activities to reduce the burden borne by collectors and to promote efficient collection operations. In no event will the Authority allow collectors that have stockpiled discarded equipment for long periods to "dump" their stockpile into the Authority's program and seek a "windfall" payment for stockpiled volumes. Further, the Authority will not compensate collectors for the additional costs associated with premium or curbside services, unless the service provider receives the Authority's prior written authorization. Collectors may be required to maintain collection site drop off logs in order for the Authority to ensure that the devices being dropped off are "covered" by the program (received from covered entities as defined in the law).

The Authority will compensate transporters and processors for the reasonable costs of the services provided based upon a number of different factors, such as the labor, equipment and expertise required to perform a service. Each service provider will be able to submit rates for particular services when contracting with the Authority under the Standard Plan. The Authority will determine which service providers to use and at what level of service based upon the quality of service offered, the competitiveness of the submitted rates and the overall best value to the Authority.

### **C. Delegation of Powers and Duties**

The Authority is authorized to delegate, through contract, any of its powers and duties. To maximize administrative efficiencies and avoid creation of redundant administrative structures across state programs, the Authority may engage a third-party compliance organization for key functions such as vendor procurement, management and auditing.

## **Section 9. Adoption of Authority Policies**

As necessary, the Authority Board will develop and implement additional policies and/or procedures (as defined below) governing the management and operation of the Authority. New policies or procedures, and changes to existing policies or procedures, may be initiated by the Board at any time in order to assure the smooth and ongoing operations of the Authority. Any such documents will be developed, discussed, and adopted by vote of the Board during either a regular or special meeting that is open to the public. Upon adoption, the policy or procedure will become binding on the Authority. These policies and procedures, as adopted from time to time, will supplement the Operating Plan and become a part of the Authority administrative record.

**Policies** are guiding or governing principles, formally approved to provide assistance in the conduct of Authority affairs. Only those policies approved in accordance with this policy will have the force of Authority policy.

**Procedures** are statements that provide for orderly implementation of established policies through specific, prescribed actions and generally are more detailed than a policy statement.



## **Appendix A. Collector's Operations Guidelines and Compensation Agreement.**

(Due to regular updating please refer to a current copy available at [wmmfa.net](http://wmmfa.net) at the collector's page- Listed as "Collector Manual")

# Appendix B. Bill of Lading – Required for transport of CEP’s

## SAMPLE - NOT ACTUAL BILL OF LADING



### Bill of Lading

Date 3/10/2015

B/L or Pro # 32792

**NOTE TO COLLECTORS:**  
**1. ATTACH A COPY OF THIS BOL TO EACH PALLET**  
**2. USE ENOUGH SHRINK WRAP TO KEEP MATERIALS FROM FALLING OVER**

<b>County:</b>	Spokane
<b>WMMFA Toll Free: 1-866-779-6632</b>	
<b>Collector: (Shipper)</b>	
RECYCLE TECHS-SPOKANE VALLEY Attention: Erik Bisiar 8810 E. Appleway Spokane, WA 99212	
<i>*As a collector I agree to abide by the service and operations guidelines provided in the Collectors Manual for this shipment.</i>	

<b>WMMFA Fax#: 360-225-6225</b>		
<b>Ship To: ( Processor)</b>		
IMS ELECTRONICS RECYCLING 2401 Saint Francis Lane Vancouver, WA 98660 PH: (360)750-8883		
Ship Date	Ship Via	Liftgate Required ?
3/10/2015	REDDAWAY	

Item	Description	Pallet Count	Estimated Pounds
HHTV	Household TV's Palletized and shrunk wrapped. Weight to be verified by processor upon receipt	6	3,600
HHM	Households: Monitors palletized and shrunk wrap estimated weight verified by processor upon receipt	2	1,200
HHC	Household Computers: Desktop and CPU units palletized and shrunk wrapped - does not include peripherals. Weight to be verified by processor upon receipt	4	2,400
REDDAWAY	FOR PICK UP CALL USF REDDAWAY: (888)420-8960 3rd Party Bill to Washington Materials Acct # 0907633 - 1 to 8 pallets(PR) or RQ# 1153334 for 9 pallets or more (TL) REQUESTED BY: RICH EST WT: 7200		
ALL FREIGHT CHARGES BILL TO: WMMFA			

E-mail: [info@wmmfa.net](mailto:info@wmmfa.net)      Web Site: [www.wmmfa.net](http://www.wmmfa.net)

Uniform straight Bill of Lading terms as specified in the NMF 100 series apply.  
 All freight charges bill to: WMMFA, PO Box 779, Woodland, WA 98674

Shipper Sign Here: \_\_\_\_\_ Date: \_\_\_\_\_

Carrier Sign Here: \_\_\_\_\_ Date: \_\_\_\_\_

\*I certify under penalty of law that I have reviewed the above information and believe it to be true, accurate, and complete.  
 \*I am aware that there are significant penalties for knowingly submitting false information.  
 \*Collector will be charged by the WMMFA for transportation on any items shipped other than Monitors, TVs, Computers, Laptops, E-readers and Tablets\*  
 \*The WMMFA is not responsible for handling or shipping of anything other than Monitors, TVs, Computers, Laptops, E-readers and Tablets\*

## Appendix C. Performance Standards for Collectors

### WAC 173-900-450:

- (1) CEPs collected for a plan must be collected from covered entities free of charge except for the following services:
  - (a) Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans;
  - (b) Curbside collection services to cover the costs not paid by the standard or independent plans; or
  - (c) Collection of large quantities of CEPs from small businesses, small governments, charities, and school districts as defined in WAC 173-900-355(7).
- (2) A registered collector must not process CEPs, or components, for purposes of recycling or disposal, unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.
- (3) In addition to the requirements in this chapter, all registered collectors must comply with all applicable environmental laws, rules, and local ordinances.
- (4) When providing collection services for a plan, the registered collector must:
  - (a) Staff the site during operating hours.
  - (b) Notify the authority and/or authorized party of any changes in hours and days of operation and types of CEPs accepted if the collection services provided are identified in an ecology approved plan.
  - (c) Cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter.
  - (d) Provide enclosed storage areas with impervious floors so that the CEPs and components collected are protected from the weather.
  - (e) Collectors must post, in a readily visible location, information that can be shared with covered entities about how and where CEPs received into the program are recycled. Recycling information is provided by the plan(s) for which the collector is providing services.
  - (f) If a registered collector also gleans CEPs or components for reuse, they must notify the covered entity.
- (5) A registered collector must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.
- (6) A registered collector must allow access to ecology for inspections to determine compliance with the requirements in this chapter.
- (7) No entity shall claim to be collecting CEPs for a plan unless the entity is registered as a collector and submits all collected CEPs to a plan. Except fully functional CEPs and components may be gleaned for reuse. Collectors shall not include gleaned CEPs and components for reuse in the weight totals for plan compensation.
- (8) A registered collector must notify the authority and authorized parties for all plans that the collector submits CEPs if the collector's days/hours of operations change or the collector changes the CEPs collected.

## **Appendix D. Performance Standards for Transporters**

### **WAC 173-900-550:**

- 1) All registered transporters must comply with all applicable laws, rules, and local ordinances.
- (2) A registered transporter must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.
- (3) A registered transporter must allow access to ecology for inspections to determine compliance with the requirements in this chapter.
- (4) Transporters must deliver CEPs for a plan to registered direct processors.
- (5) Transporters must agree to provide sufficient documentation of transportation services provided including shipper name, consignee name and address, and the quantity and type of products (CEP's) delivered.
- (6) Transporters must be registered with ecology and have a contract with the Authority before transporting CEP's under the plan.
- (7) Transporters may contract with collectors and processors outside of the plan to transport non-covered devices as a separate enterprise.

## **Appendix E. Performance Standards for Processors**

Categories one through nineteen identify all of the performance standards a direct processor must conform with in order to receive "preferred status" from Ecology on the direct processor registration list posted on Ecology's web site.

### **1. Responsible Management Priorities**

#### ***Minimum Performance Standards from WAC 173-900-650***

A direct processor must periodically evaluate its management strategies to assure it takes advantage of new more effective technologies and is otherwise continuously improving its practices and processes.

#### ***Preferred Performance Standards***

No additional performance standards.

### **2. Legal Requirements**

#### ***Minimum Performance Standards from WAC 173-900-650***

- (a) A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in

which it engages related to the processing of CEPs, components, parts, and materials and disposal of residuals. These include but are not limited to applicable legal requirements relating to:

- (i) Waste and recyclables processing, storage, handling, and shipping; and
- (ii) Air emissions and waste water discharge, including storm water discharges; and
- (iii) Worker health and safety; and
- (iv) Transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, recycling, or disposal.

(b) Upon request by a covered entity, a direct processor must make available information to that covered entity about any financial penalties, regulatory orders, or violations the direct processor received in the previous three years. If the direct processor receives subsequent penalties or regulatory orders, the direct processor must make that information available within sixty days after any subsequent penalties or regulatory orders are issued.

#### ***Preferred Performance Standards***

No additional performance standards.

### **3. Environmental, Health, and Safety Management Systems (EHSMS)**

#### ***Minimum Performance Standards from WAC 173-900-650***

(a) A direct processor must develop, document, fully implement, and update at least annually a written EHSMS that includes all of the following:

- (i) Written goals and procedures that require the direct processor to systematically manage its environmental, health, and safety matters.
- (ii) Utilization of a "plan, do, check, act" model that identifies environmental aspects, implements operational controls, and provides corrective action procedures. Elements of this model must include:

#### **(A) Plan**

- (I) Identification of environmental impacts, and legal and regulatory requirements;
- (II) Establishment of environmental goals, objectives and targets;
- (III) Plan actions that work toward achieving identified goals;
- (IV) Plan for emergency preparedness and response; and
- (V) Commitment of management support.

#### **(B) Do**

- (I) Establish roles and responsibilities for the EHSMS and provide adequate resources;
- (II) Assure that staff are trained and capable of carrying out responsibilities; and
- (III) Establish a process for communicating about the EHSMS within the business.

#### **(C) Check**

- (I) Monitor key activities and track performance;

- (II) Identify and correct problems and prevent recurrence; and
- (III) Provide a measurement system that quantifies the application of the model.

**(D) Act**

- (I) Conduct annual progress reviews;
- (II) Act to make necessary changes to the EHSMS; and
- (III) Create and implement an action plan for continual improvement.

(iii) A worker safety and health management plan that conforms to a consensus-based standard covering worker health and safety such as ANSI Z10 or to a similarly rigorous in-house standard.

(iv) A plan for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment. Such releases include emergencies such as accidents, spills, fires, and explosions. The direct processor must submit this plan to all appropriate emergency responders, e.g., police, fire department, hospitals.

(v) A plan is conformable with ISO 14001, Institute of Scrap Recycling Industries' Recycling Industry Operating Standards ("RIOS"), the International Association of Electronic Recyclers' ("IAERs") standard, or other standards designed at a level appropriate for processing at the facility.

(b) A direct processor must ensure all employees understand and follow the portions of the EHSMS relevant to the activities they perform.

***Preferred Performance Standards***

- (c) The EHSMS must also include a procedure for:
  - (i) Identifying and evaluating the environmental, health, and safety impacts of downstream vendors, and
  - (ii) Utilizing the information in (a) in the selection of downstream vendors.

## **4. Recordkeeping**

***Minimum Performance Standards from WAC 173-900-650***

- (a) A direct processor must maintain documentation such as commercial contracts, bills of lading, or other commercially accepted documentation for all transfers of CEPs, components, parts, materials, and residual into and out of its facilities.
- (b) A direct processor must retain documents required for at least three years.

***Preferred Performance Standards***

- (c) The direct processor must also maintain records for any brokering transactions for at least three years.

## **5. On-site Requirements**

***Minimum Performance Standards from WAC 173-900-650***

- (a) **General**
  - (i) Direct processors must take all practicable steps to maximize recycling.

(ii) A direct processor must have the expertise and technical capability to process each type of CEP and component it accepts in a manner protective of worker safety, public health, and the environment.

(iii) A direct processor must use materials handling, storage and management practices, that assure that all work and storage areas are kept clean and orderly.

(iv) Speculative accumulation:

(A) "Speculative accumulation" means holding, storing or accumulating CEPs, components, parts, materials, or residual derived therefrom for more than one hundred eighty days.

(B) Generators and facilities holding, storing, or accumulating CEPs, components, parts, materials, or residual derived therefrom for more than one hundred eighty days will be considered holding, storing, accumulating solid or hazardous waste and subject to applicable treatment, storage or disposal regulations or equivalent.

(v) A direct processor must use a certified scale to weigh CEPs and components counted towards a plan's equivalent share.

#### **(b) Storage**

A direct processor must store materials of concern removed from CEPs, components, parts, materials, or residuals in accordance with WAC 173-900-650(11) in a manner that:

(i) Protects them from adverse atmospheric conditions and floods and, as warranted, includes a catchment system;

(ii) Is secure from unauthorized entrance; and

(iii) Is in clearly labeled containers and/or storage areas.

#### **(c) Exceptional releases posing risks**

A direct processor must be prepared to immediately implement the practices set forth in its EHSMS for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment, including emergencies such as accidents, spills, fires, and explosions.

### ***Preferred Performance Standards***

#### **(d) Workforce and Environmental Protection**

(i) **Hazards identification and assessment:** A direct processor must conduct on an ongoing basis (as new types of CEPs, components, parts and materials are processed or new processes are utilized) a hazards identification and assessment of occupational and environmental risks that exist or could reasonably be expected to develop at the facility.

Such risks could result from any sources, including but not limited to:

- Emissions of and/or exposure to substances<sup>1</sup>
- Noise
- Ergonomic factors

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<sup>1</sup> Risks posed by exposure to substances may arise in a variety of situations – sometimes involving substances that do not under ordinary conditions pose a risk to worker safety or the environment. Such substances may include mercury, lead, beryllium, cadmium, PCBs, some phosphor compounds, certain brominated flame retardants (i.e., polybrominated biphenyls, pentabrominated diphenyl ether, and octabrominated diphenyl ether), silica dust, chlorinated or brominated dibenzodioxins and dibenzofurans, and hexavalent chromium.

- Thermal stress
- Substandard machine guarding
- Cuts and abrasions

(ii) The hazards identification and assessment is captured in writing and incorporated as a component of the direct processor's EHSMS.

(iii) A direct processor must manage the hazards and minimize the releases it identifies using an appropriate combination of strategies in the following order of priority:

- **Engineering controls**
- **Administrative and work practice controls**
- **Personal protection equipment**

**(A) Engineering controls:**

(I) A direct processor must use at least one of the following:

- Substitution (e.g., replacing a toxic solvent with one less toxic),
- Isolation (e.g., automating a process to avoid employee exposure), or
- Ventilation and, if appropriate, capture (e.g., fume hood),

**And**

(II) All of the following:

- Dust control, capture, and clean up, and
- Emergency shut-off systems, and
- Fire suppression systems.

**(B) Administrative and work practice controls:**

A direct processor must use administrative and work practice controls including appropriate combinations of:

(I) Regular, documented health and safety training that covers information from the hazardous assessment, safe management handling, spill prevention, engineering controls, equipment safety, and use and care of personal protection equipment; with training for new hires and refresher courses for all employees that is understandable to them given language and level-of-education considerations,

(II) Job rotation, as feasible, given workforce size,

(III) Safe work practices,

(IV) Medical monitoring,

(V) Safety meetings.

(C) Personal protective equipment, including respirators, protective eyewear, cut-resistant gloves, etc. as appropriate for the risks involved in the tasks being performed.

(iv) A direct processor must use and document monitoring and sampling protocols according to state and federal standards and provide assurances that the practices it employs are effective and continuously managing the risks it has identified. This includes complying with all applicable



Federal or State (Occupational Safety and Health Administration) OSHA standards and sampling and/or monitoring protocols.

(v) A direct processor must treat anyone performing activities in its facilities, using the standard of care established in this section. Direct processors are not required to provide medical monitoring for short-term, temporary and volunteer workers.

(vi) A direct processor must designate a qualified employee or consultant to coordinate its efforts to promote worker health and safety. This individual is identified to all employees and two-way communication is encouraged between employees and this individual regarding potential hazards and how best to address them.

## **6. Materials of Concern**

### ***Minimum Performance Standards from WAC 173-900-650***

Materials of concern must be handled according to the standards in this section. "Materials of concern" are any of the following:

- (a) Any devices, including fluorescent tubes, containing mercury or PCBs;
- (b) Batteries;
- (c) CRTs and leaded glass; and
- (d) Whole circuit boards.

### ***Preferred Performance Standards***

No additional performance standards.

## **7. Recycling**

### ***Minimum Performance Standards from WAC 173-900-650***

#### **(a) Recycling**

(i) A direct processor must remove from CEPs and components destined for recycling any parts that contain materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.

(ii) A direct processor must remove any parts that contain materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with the regulatory requirements that apply to the items, or any substances contained therein. Circuit boards and materials derived therefrom will be allowed to be shredded prior to separating.

### ***Preferred Performance Standards***

#### **(b) Recycling:**

(i) A direct processor must dismantle, separate, and/or mechanically process, as appropriate, CEPs, components, and parts from which materials are to be recovered for recycling into separate "material streams" to generate value, recover materials and minimize waste, and to enable safe management through to final disposition.

## 8. Reuse

### *Minimum Performance Standards from WAC 173-900-650*

#### (a) Reuse

- (i) "Reuse" means any operation by which an electronic product or component of a covered electronic product changes ownership and is used, as is, for the same purpose for which it was originally purchased.
- (ii) For a CEP, component or part to be put to reuse it must be fully functioning.
- (iii) CEPs, components and parts gleaned for reuse shall not be included in the weight totals submitted to a plan for compensation.

### *Preferred Performance Standards*

#### (b) Reuse:

- (i) Before shipping CEPs, components, or parts for reuse, the direct processor must:
  - (A) Test and ensure that the CEPs, components, and parts are functioning properly for the same purpose for which they were originally purchased.
  - (B) Accurately label, package, and ship the CEPs, components, and parts in a manner that will minimize damage during transport.
- (ii) A direct processor must verify a legitimate end-use market for the intended purpose of any CEPs, components or parts shipped for reuse.

## 9. Disposal of Residuals

### *Minimum Performance Standards from WAC 173-900-650*

#### (a) Disposal of residuals

- (i) "Residuals" are leftover materials from processing CEPs, components, parts and materials. Residuals are materials that cannot be used for their original function or cannot be recycled and are sent by a processor to a disposal facility.
- (ii) Residuals must be properly designated and managed under applicable solid waste and hazardous waste laws at the location where disposal occurs.
- (iii) A direct processor must not send residuals containing materials of concern to incinerators or solid waste landfills if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.
- (iv) Residuals from processing of materials of concern must not be mixed with other residuals for the purpose of disposal.

### *Preferred Performance Standards*

- (b) Residuals must be disposed of in a regulated solid waste disposal facility. Residuals containing materials of concern must be disposed in a regulated hazardous waste disposal facility.

## 10. Refurbishment

### *Minimum Performance Standards from WAC 173-900-650*

No minimum performance standards from WAC 173-900-650.

### *Preferred Performance Standards*

#### (a) **Refurbishment:**

- (i) A direct processor must adhere to all the performance standards in this document for all on-site activities relating to CEPs, components, and parts destined for refurbishment.
  - (A) A direct processor must conform to all performance standards in this document for its onsite and downstream vendors' refurbishment operations, and when shipping CEPs, components, or parts to downstream vendors for refurbishment.
- (ii) CEPs, components and parts gleaned for refurbishment shall not be included in the weight totals submitted to a plan for compensation.
- (iii) A direct processor must verify a legitimate end-use market for the intended purpose of any CEPs, components or parts shipped for refurbishment.

## 11. Transport

### *Minimum Performance Standards from WAC 173-900-650*

- (a) A direct processor must ensure that all CEPs, CEP components and materials to be transported are packaged in compliance with all applicable transport laws and rules.

### *Preferred Performance Standards*

- (b) A direct processor must ensure all CEPs, components, parts, materials, and residuals to be transported are packaged appropriately in light of the risk they could pose during transportation to public health or the environment and the level of care warranted by their intended use.
- (c) A direct processor must obtain written documentation or a third-party certification indicating that their transporters have all the necessary regulatory authorizations and no significant violations of relevant legal requirements during the past three years.

## 12. Prison Labor

### *Minimum Performance Standards from WAC 173-900-650*

Direct processors may not use federal or state prison labor for processing.

### *Preferred Performance Standards*

No additional performance standards.

## 13. Facility Access

### *Minimum Performance Standards from WAC 173-900-650*

- (a) Direct processors must allow access to the facility and the documentation required in this section for the purposes of assessing compliance with the requirements in this chapter and for sampling to:

- (i) Ecology and ecology's designee(s);
- (ii) Third-party observers for the purposes of sampling;
- (iii) For processors used by the standard plan:
  - (A) The authority;
  - (B) The authority's designee(s);
- (iv) For processors used by an independent plan:
  - (A) That plan's authorized party;
  - (B) The authorized party's designee(s) for that plan.

***Preferred Performance Standards***

No additional performance standards.

## **14. Notification of Penalties and Violations**

***Minimum Performance Standards from WAC 173-900-650***

Each direct processor must notify ecology within thirty days if the direct processor receives any penalties, violations or regulatory orders related to processing activities.

***Preferred Performance Standards***

No additional performance standards.

## **15. Due Diligence Downstream**

***Minimum Performance Standards from WAC 173-900-650***

No minimum performance standards in WAC 173-900-650.

***Preferred Performance Standards***

- (a) For materials of concern and residuals containing materials of concern a direct processor must only use downstream vendors who conform with all of the performance standards in this document.
  - (i) A direct processor must review its downstream vendors' conformity to these standards at least every two years and more frequently as changes in circumstances warrant. The direct processor must provide the verification and documentation to Ecology upon request.
  - (ii) A direct processor must document the chain of custody of all materials of concern and their residuals through final disposition.
  - (iii) A direct processor does not need to conduct the due diligence for downstream vendors certified to the performance standards in this document by an accredited body.

## **16. Exporting**

***Minimum Performance Standards from WAC 173-900-650***

No minimum performance standards in WAC 173-900-650.

### ***Preferred Performance Standards***

- (a) A direct processor that exports materials of concern must ensure that each transit and recipient country legally accepts such imports. For each country that is not a member of the Organization for Economic Co-operation and Development (OECD), this entails either:
- (i) Requesting and receiving documentation, prior to shipping, from the Competent Authority<sup>2</sup> of each such transit and/or import country, that clearly verifies in English that the country legally accepts such imports, or
  - (ii) Requesting and receiving, prior to shipping, confirmation—that the country(ies) legally accepts such imports—from the United States Environmental Protection Agency, which in turn will communicate with the other country’s Competent Authority to get a determination.

## **17. Insurance**

### ***Minimum Performance Standards from WAC 173-900-650***

No minimum performance standards in WAC 173-900-650.

### ***Preferred Performance Standards***

- (a) A direct processor possesses adequate Comprehensive or Commercial General Liability Insurance including coverage for:
- (i) Bodily injury,
  - (ii) Property damage,
  - (iii) Pollutant releases,
  - (iv) Accidents and
  - (v) Other emergencies.

## **18. Closure Plan and Financial Responsibility**

### ***Minimum Performance Standards from WAC 173-900-650***

No minimum performance standards in WAC 173-900-650.

### ***Preferred Performance Standards***

A direct processor must develop and keep current a closure plan and a sufficient financial instrument that assures proper closure of the facility and assures against abandonment of any CEPs, components, parts, materials or residuals.

## **19. Facility Security**

### ***Minimum Performance Standards from WAC 173-900-650***

No minimum performance standards in WAC 173-900-650.

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<sup>2</sup> In countries that have ratified the Basel Convention, the “Competent Authority” is the entity that provides documentation concerning the legality of transboundary transactions involving equipment or components that the country classifies as Basel wastes. In countries that have not ratified this treaty, responsible recyclers acquire the necessary documentation from the national government entity legally responsible for determining the legality of such transboundary transactions.

## *Preferred Performance Standards*

A direct processor must have a functioning security program that controls access to all or parts of the processing facility in a manner and to a degree appropriate given the type of CEPs, components, parts, materials, and residuals handled and the needs of the customers served and may include such items such as indoor and outdoor lighting, secured facilities, and perimeter fencing.

## **Appendix Ea.**

### **Definitions per RCW 173-900-030 as referenced in the WMMFA Standard and Operating Plans**

#### **173-900-030 Definitions.**

"**Authority**" means the Washington materials management and financing authority.

"**Authorized party**" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

"**Board**" means the board of directors of the Washington materials management and financing authority.

"**Brand**" means a name used to identify an electronic product in the consumer marketplace which attributes the electronic product to the owner of the name as the manufacturer.

"**Brand label**" typically includes but is not limited to name, logos, trademarks, and other visual elements including fonts, color schemes, shapes, symbols, and icons, which, when set in a special typeface or arranged in a particular way, differentiate electronic products by their manufacturers and brand owners.

"**Cathode ray tube**" or "**CRT**" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"**Certified**" means certified by signature on a form or other "hard copy," or by electronic signature or certification by a means implemented and approved by ecology, to be sent by mail or faxed or otherwise submitted to ecology.

"**Charity**" means an organization that qualifies for a taxation exemption under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)).

"**Collection services**" include drop-off collection sites or alternative collection services such as residential at-home pick-up services, curb-side collection, or premium services such as those provided when performing system up-grades at small businesses.

"**Collector**" means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets the registration and collector performance standard requirements in Part IV, WAC [173-900-400](#) through [173-900-490](#).

"**Component**" includes but is not limited to televisions, computers, laptops, portable computers, monitors, keyboards, mice, and external hard drives.

"**Computer**" means a machine, used by one user at a time, designed for manipulating data according to a list of instructions known as a program, and are generally known as desktops, laptops, and portable computers. "**Computer**" does not include any of the following:

- (a) A machine capable of supporting two or more work stations simultaneously for computing;
- (b) Computer servers marketed to professional users; or

(c) Retail store terminals or cash registers, used at customer checkout in the retail industry.

**"Contract for services"** means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, processing and recycling services, in whole or in part, that will be provided to the citizens of Washington state within service areas as described in the approved standard plan.

**"Covered electronic product"** or **"CEP"** includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase:

- (a) Any monitor having a viewable area greater than four inches when measured diagonally;
- (b) A desktop computer;
- (c) A laptop or a portable computer; or
- (d) Any video display device having a viewable area greater than four inches when measured diagonally.

**"Covered electronic product"** does not include:

- (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;
- (b) Monitoring and control instruments or systems;
- (c) Medical devices;
- (d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;
- (e) Equipment used in the delivery of patient care in a health care setting;
- (f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or
- (g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

**"Covered entity"** means any household, charity, school district, small business, or small government located in Washington state.

**"Curbside service"** means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

**"Desktop"** is a computer designed for nonportable use.

**"Direct processor"** means a processor contracted with a CEP recycling plan to provide processing services for the plan.

**"Ecology"** means the department of ecology.

**"Electronic product"** includes any monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or portable computer; or any video display device having a viewable area greater than four inches when measured diagonally.

**"Equivalent share"** means the weight in pounds of covered electronic products identified for an individual manufacturer as described in Part IX, WAC [173-900-930](#), [173-900-940](#), and [173-900-950](#).

**"Existing manufacturers"** are those entities whose covered electronic products are offered for sale or sold in or into Washington state, through any sales method, as of December 8, 2006.

**"Household"** means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

**"Implement"** or **"plan implementation"** means that collection, transportation, processing, and recycling services and other plan requirements are fully operational as described in the approved CEP recycling plan.

**"Independent plan"** means a plan for the collection, transportation, processing and recycling of unwanted covered

electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

**"Laptop"** is a computer.

**"Manufacturer"** means the person who:

(a) Has legal ownership of the brand, brand-name or cobrand of covered electronic products sold in or into Washington state;

(b) Imports an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America; or

(c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer.

**"Manufacturers whose CEPs are not directly sold in or into Washington state"** are those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose CEP brand names are identified on the return share list or their CEPs are returned for recycling by a covered entity.

**"Manufacturers who previously manufactured"** are those entities that previously manufactured covered electronic products but no longer do so and whose brand names of CEPs are identified on the return share list or their CEPs are returned for recycling by a covered entity.

**"Market share"** means a percent of covered electronic products sold in Washington state representing the manufacturer's share of all covered electronic products sold in Washington state assigned to a registered manufacturer based on the calculations in WAC [173-900-280](#).

**"Material"** means processed CEPs, components, and parts.

**"Materials of concern"** are any of the following:

(a) Any devices, including fluorescent tubes, containing mercury or PCBs;

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

**"Monitor"** is a video display device without a tuner that can display pictures and sound and is used with a computer.

**"New entrant"** means:

(a) A manufacturer of televisions that have been sold in Washington state for less than ten consecutive years; or

(b) A manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in Washington state for less than five consecutive years;

(c) However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is considered an existing manufacturer and not a new entrant for purposes of this chapter.

**"New manufacturers to Washington State"** are those entities whose covered electronic products are offered for sale or sold in or into Washington State for the first time after December 8, 2006. These manufacturers become existing manufacturers for all program years after participation the first year.

**"Nonprofit organization"** means an organization that qualifies for a taxation exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)).

**"Offering for sale"** means providing electronic products for purchase, in or into Washington State, regardless of sales method.

**"Orphan product"** means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest, or is a brand for which ecology cannot identify an owner.

**"Part"** means whole pieces out of CEPs, or components such as but not limited to processors, chips, or cathode ray tubes.



"**Person**" means any individual, business, manufacturer, transporter, collector, processor, retailer, charity, nonprofit organization, or government agency.

"**Plan**" means a CEP recycling plan.

"**Plan's equivalent share**" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

"**Plan's return share**" means the sum of the return shares of each manufacturer participating in that plan.

"**Portable computer**" is a computer.

"**Preferred status**" means that a direct processor is conforming with the performance standards for electronic product recycling as described in ecology's publication "*Environmentally Sound Management and Performance Standards for Direct Processors*."

"**Premium service**" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households or any handling requirements imposed by the covered entity in excess of those required in this chapter.

"**Premium service**" does not include curbside service.

"**Processing facility**" means a facility where the processing of CEPs for a plan is conducted by a direct processor.

"**Providing processing services**" means disassembling, dismantling, or shredding electronic products to recover materials contained in the CEPs received from registered collectors or transporters and preparing those materials for reclaiming or reuse in accordance with processing standards established by this chapter.

"**Processor**" means an entity:

(a) Engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and preparing those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter; and

(b) That may salvage CEPs, components, and parts to be used in new products.

"**Product type**" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

"**Program**" means the collection, transportation, processing and recycling activities conducted to implement an independent plan or the standard plan. Programs can vary for different areas of the state.

"**Program year**" means each full calendar year after the program has been initiated.

"**Recycling**" means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. "**Recycling**" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

"**Residual**" means leftover materials from processing CEPs, components, parts and materials. Residuals cannot be used for their original function or cannot be recycled and are sent by a processor to a disposal facility.

"**Retailer**" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is either reused products or a wholesale transaction with a distributor or a retailer.

"**Return share**" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by ecology.

"**Reuse**" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used, as is, for the same purpose for which it was originally purchased.

"**Sell**" or "**sold**" means an electronic product is purchased regardless of sales method.

**"Small business"** means a business employing less than fifty people.

**"Small government"** means a city in Washington state with a population less than fifty thousand, a county in Washington State with a population less than one hundred twenty-five thousand, and special purpose districts in Washington state.

**"Standard plan"** means the plan for the collection, transportation, processing and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

**"Television"** is an enclosed video display device with a tuner able to receive and output frequency waves or digital signals to display pictures and sounds.

**"Transporter"** means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

**"Unwanted electronic product"** means a covered electronic product that has been discarded or is intended to be discarded by its owner.

**"White box manufacturer"** means a person who manufactured unbranded covered electronic products offered for sale in Washington State within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

**"Video display devices"** include units capable of presenting images electronically on a screen, with a viewable area greater than four inches when measured diagonally, viewed by the user and may include cathode ray tubes, flat panel computer monitors, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that exist or may be developed. Televisions and monitors are video display devices.

# Appendix F. Contract for Processors

**CONTRACT FOR DIRECT PROCESSING SERVICES 2015  
BETWEEN THE  
WASHINGTON MATERIALS MANAGEMENT AND FINANCING AUTHORITY  
AND**

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This Contract for Processing Services (“Contract”) is made and entered into by and between the Washington Materials Management and Financing Authority, hereinafter referred to as the “AUTHORITY,” and the below-named firm, hereinafter referred to as “CONTRACTOR.”

CONTRACTOR Name:

Address:

City, State & Zip Code:

Phone:

E-mail Address:

Washington State UBI No.:

Federal ID No.:

## **SECTION 1: SERVICES**

1.1 Scope of Work. CONTRACTOR agrees to provide services and staff, and otherwise do all things necessary for or incidental to processing covered electronic products (or “CEPs”) provided by the AUTHORITY or an authorized representative. This Contract is not a guarantee of Work or any level of Work during the term hereof. The AUTHORITY reserves the right to procure services from any qualified CONTRACTOR on the basis of the price, quality and convenience of services provided. The scope of this Agreement shall be interpreted to be consistent with applicable law, now and during the term of this CONTRACT.

### 1.2 Definitions.

1.2.1 Collector. The term “collector” means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets the registration and collector performance standard requirements set forth in WAC 173-900.

1.2.2 Covered Electronic Products. The term “covered electronic products” includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase: (a) any monitor having a viewable area greater than four inches when measured diagonally; (b) a desktop computer; (c) a laptop or portable computer; or (d) any video display device having a viewable area greater than four inches when measured diagonally including a portable DVD player, e-reader or tablet device.

The term “covered electronic products” does not include: (a) a motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner,

dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or (g) hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

1.2.3 Covered Entity. The term "covered entity" means any household, charity, school district, small business, or small government located in Washington state.

1.2.4 Direct Processor. The term "direct processor" means a processor contracted with a CEP recycling plan to provide processing services for the plan.

1.2.5 Processing Facility. The term "processing facility" means a facility where the processing of CEPs for a plan is conducted by a direct processor.

1.2.6 Processor. The term "processor" means an entity: (a) engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and preparing those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter; and (b) that may salvage CEPs, components, and parts to be used in new products.

1.2.7 Processing. The term "processing" means disassembling, dismantling, or shredding electronic products to recover materials contained in the CEPs received from registered collectors or transporters and preparing those materials for reclaiming or reuse in accordance with the performance standards for direct processors set forth in this Contract.

1.2.8 Transporter. The term "transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

## **SECTION 2: PERIOD OF PERFORMANCE**

The period of performance under this Contract will be from January 1, 2015, through [December 31, 2015]. The AUTHORITY shall have the option of renewing the Contract for additional annual periods.

## **SECTION 3: RECEIPT OR DELIVERY OF COVERED ELECTRONIC PRODUCTS**

3.1 Delivery. The AUTHORITY shall deliver covered electronic products to CONTRACTOR at those times and places, in those quantities, and in the manner agreed to by AUTHORITY and CONTRACTOR. CONTRACTOR's receipt of covered electronic products at its processing facilities and CONTRACTOR's taking of possession and control of covered electronic products at the point of delivery shall constitute acceptance of covered electronic products for the purpose of processing.

3.2 Examination of Materials. The AUTHORITY shall permit CONTRACTOR reasonable access to delivered covered electronic products for purposes of examining and sampling prior to accepting the covered electronic products. CONTRACTOR shall accept conforming covered electronic products which have been tendered and delivered in conformance with this Contract.

3.3 Documents. For each delivery of covered electronic products to the CONTRACTOR, the AUTHORITY or its authorized representative shall provide CONTRACTOR those completed documents, shipping papers or manifests as are required for lawful transfer of the covered electronic products to CONTRACTOR at the point of delivery. Such documents shall meet applicable federal, state or local rules and regulations, including, but not limited to, the Electronic Products Recycling Act, RCW 70.95N, et seq., Hazardous Materials Transportation Act, 49 U.S.C. §§1801, et seq., as amended, the Toxic Substances Control Act, 15U.S.C. §§ 2601 et seq., as amended, and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., as amended.

3.4 Rejection or Revocation of Acceptance of Non-Conforming Covered Electronic Products. If CONTRACTOR determines that any unit of the delivered covered electronic products is non-conforming for any reason, within a reasonable time after actually discovering the non-conformity, CONTRACTOR may, in its sole discretion, reject or revoke acceptance of the non-conforming covered electronic product or accept it for processing. If CONTRACTOR accepts non-conforming covered electronic products, CONTRACTOR shall

process the covered electronic products at its then prevailing rates for materials of like character and description. CONTRACTOR shall give prompt notice of the nature of the non-conformity to AUTHORITY within five (5) business days of the discovery of the non-conformity.

3.5 Return of Non-Conforming Covered Electronic Products. If CONTRACTOR rejects or revokes acceptance, of any units of covered electronic products and, at the time of such rejection or revocation, such covered electronic products are in CONTRACTOR's possession or control, CONTRACTOR shall, within a reasonable time after such rejection or revocation, prepare such covered electronic products for lawful transportation and return, or cause the return of such covered electronic products to the AUTHORITY or to such other location as the AUTHORITY may direct. In such case, the AUTHORITY shall pay to CONTRACTOR the cost of return transportation to the AUTHORITY's facility (or such other location as AUTHORITY may direct), and other reasonable charges incurred by CONTRACTOR for testing, storage, and other reasonable actions to manage the covered electronic products.

3.6 Title and Risk of Loss. Title to and liability for the covered electronic products shall transfer from the AUTHORITY to the CONTRACTOR upon delivery and acceptance. If CONTRACTOR revokes its acceptance of covered electronic products, title, risk of loss, and all other incidents of ownership to the covered electronic products, to the extent same were transferred to CONTRACTOR, shall be transferred from CONTRACTOR and re-vest in AUTHORITY at the time of notice of such revocation of acceptance is received by the AUTHORITY, provided that CONTRACTOR shall exercise reasonable care as long as it has possession of such rejected covered electronic products.

#### **SECTION 4: PERFORMANCE STANDARDS FOR DIRECT PROCESSORS**

4.1 Performance Standards. CONTRACTOR must be in compliance, at all times during the performance of this Contract, with both the minimum performance standards, as stated in WAC 173-900-650, and the preferred performance standards as developed by the Washington State Department of Ecology. The applicable performance standards are included in Exhibit A, attached hereto and incorporated by reference.

4.2 Noncompliance. CONTRACTOR may be excused from complying with a specific performance standard when the national, state, or local laws or rules where CONTRACTOR is located and a performance standard conflict. When a conflict exists, CONTRACTOR's compliance audit report must document the conflict and CONTRACTOR's compliance with the corresponding laws or rules.

#### **SECTION 5: COMPLIANCE AUDIT REPORT**

5.1 Compliance Audit Report. CONTRACTOR must submit an annual compliance audit report to the AUTHORITY. The compliance audit report must demonstrate and certify that CONTRACTOR is in conformance with all of the performance standards required by this Contract. CONTRACTOR shall submit the compliance audit report to AUTHORITY at the time of entering into this Contract and annually, at such time as agreed to by AUTHORITY and CONTRACTOR, but before the date specified in WAC 173-900-800.

5.2 Contents of Compliance Audit Report. The compliance audit report must include the following information:

- (a) A list of all the performance standards in this Contract;
- (b) Documentation that the CONTRACTOR meets each of the performance standards, including a list of all applicable national, state, and local laws, rules, and ordinances, related to processing activities;
- (c) Documentation of noncompliance with a performance standard: CONTRACTOR may be allowed to not comply with a specific performance standard in this Contract when the national, state, or local laws or rules where CONTRACTOR is located and a performance standard conflict. When a conflict exists, the audit report must include:
  - (i) Identification of which performance standard(s) is in conflict.
  - (ii) Documentation of the conflict and CONTRACTOR's compliance with the corresponding national, state, or local laws or rules that apply at that location;
- (d) Documentation of the compliance auditor's accreditation through:
  - (i) ISO Guide 66;
  - (ii) ISO/IEC Standard 17021:2006; or
  - (iii) Another body approved by the Washington State Department of Ecology.
- (e) Signature of the auditor certifying the accuracy of the report.

5.3 Proprietary Information. Proprietary information contained in the compliance audit report is exempt from public disclosure under RCW 42.56.270.

5.4 Statement of Certification. The compliance audit report shall contain a statement of certification from the auditor. The statement of certification shall be attached to this Contract as Exhibit C.

## **SECTION 6: REGISTRATION**

To qualify as a direct processor of covered electronic products for the Authority, the CONTRACTOR must: (a) submit an initial registration form to the Washington State Department of Ecology; (b) update registration information if it changes; (c) renew registration annually; (d) be listed as in "in compliance" on the "direct processor registration list" on the Washington State Department of Ecology's covered electronic products recycling website; and (e) maintain compliance with the performance standards throughout the program year.

## **SECTION 7: FEES AND BILLING**

7.1 Payment. The AUTHORITY agrees to pay CONTRACTOR for satisfactory performance of the services under the Contract at the fees or rates set forth in this Contract.

7.2 Fees or Rates. CONTRACTOR's payment for services rendered shall be based on the fees or rates specified in Exhibit B, attached hereto and incorporated by reference.

7.3 Payment Due. The AUTHORITY will pay CONTRACTOR upon satisfactory performance of services provided and receipt of properly completed invoices, which shall be submitted to the AUTHORITY Contract Manager.

7.4 Invoices. CONTRACTOR shall invoice the AUTHORITY on a monthly basis for the services performed, and the AUTHORITY shall pay such invoice within thirty (30) days after receipt and approval of the invoice. In the event that AUTHORITY has a good-faith objection to an invoice, AUTHORITY shall pay any undisputed amount pursuant to the terms of this Contract and notify CONTRACTOR of the objection and the deficiencies noted.

7.5 Timely Payment. Payment shall be considered timely if made by the AUTHORITY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR in this Contract.

## **SECTION 8: TERMINATION**

8.1 Termination. The AUTHORITY may, in its sole discretion, terminate the Contract, without incurring any termination charges or penalties to the AUTHORITY, by giving CONTRACTOR thirty (30) days' written notice of cancellation. The notice of termination shall specify the date when this Contract or services terminates. The AUTHORITY shall have no responsibility to CONTRACTOR for any services performed by CONTRACTOR after the effective termination date.

8.2 Termination for Breach. Either party may terminate this Contract or any services under this Contract upon five (5) days prior written notice if the other party (i) has breached any material provision of this Contract, including non-payment and/or improper partial payment of invoices; or (ii) has violated applicable federal, state, or local laws, ordinances, or regulations. The notice of termination shall specify the date when this Contract terminates and the reason for termination.

## **SECTION 9: CONTRACT MANAGEMENT**

The Contract Manager designated below for each party shall be the contact person for all communications and billings regarding the performance of this Contract.

CONTRACTOR Contract Manager	AUTHORITY Contract Manager
[INSERT]	John Friedrich, Executive Director Washington Materials Management and Financing Authority P.O. Box 779 Woodland, WA 98674 Phone (360) 225-6222 Fax: 360-225-6225 Cell: (360) 442-1106 E-mail: <a href="mailto:info@wmmfa.net">info@wmmfa.net</a> or <a href="mailto:jfriedrick@wmmfa.net">jfriedrick@wmmfa.net</a>

**SECTION 10: NOTICE**

Except where otherwise expressly authorized, notice shall be by fax, by first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery and addressed as set forth above, unless changed in writing by the party to whom the notice is being sent. Notice shall be effective upon delivery.

**SECTION 11: INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the AUTHORITY, the State, agencies of State and all officials, agents and employees of State from all liability of any nature or kind, including costs, expenses, and attorney’s fees, for all actions or claims, losses, personal injuries or property damages sustained by any person or property, resulting from or arising out of, directly or indirectly, any error, omission, or negligent or wrongful acts of CONTRACTOR, or any SUBCONTRACTOR, employee, agent, or representative of CONTRACTOR or anyone directly or indirectly employed by them, in the performance of this Contract.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the AUTHORITY and State for any claim, expense, fee or penalty arising out of or incident to CONTRACTOR’s or any subcontractor’s performance or failure to perform the Contract. CONTRACTOR’s obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

**SECTION 12: INSURANCE**

At its sole expense during the term of this Contract, CONTRACTOR shall procure, maintain and provide certificates evidencing at least the following insurance:

COVERAGE	LIMITS
Worker’s compensation	Statutory \$500,000 each occurrence
Commercial General Liability	\$2,000,000 each occurrence/aggregate
Commercial Automobile Liability	\$1,000,000 combined single limit
Pollution Legal Liability (Gradual, Sudden or Accidental)	\$1,000,000 each occurrence \$2,000,000 combined single limit

CONTRACTOR shall give the AUTHORITY thirty (30) days notice of cancellation or material alteration of such insurance coverage. In no event shall CONTRACTOR’s liability under this Contract, including the indemnity obligations contained herein, exceed the amount of the above-referenced coverages.

**SECTION 13: ADDITIONAL WORK OR MATERIAL**

AUTHORITY will not pay for additional work or material not specified in the scope of work or required under this Contract, unless the extra work or material is authorized in writing by AUTHORITY prior to commencing such work.

#### **SECTION 14: AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by persons actually authorized to bind each of the parties.

#### **SECTION 15: ASSIGNMENT**

CONTRACTOR may not assign or delegate this Contract, or any part of it, or any right to any of the compensation to be paid under it, except upon the prior written consent of AUTHORITY.

#### **SECTION 16: ATTORNEY'S FEES**

If legal action is brought in connection with any dispute arising out of this Contract, the prevailing party shall be entitled to its reasonable attorney's fees, court costs, collection agency fees, and all other reasonable costs incurred in connection with the legal action.

#### **SECTION 17: AUDITS**

AUTHORITY has the right to audit, at reasonable times, the accounts, books, and facilities of CONTRACTOR. CONTRACTOR shall maintain all accounts under the Contract in accordance with generally accepted accounting principles.

#### **SECTION 18: AUTHORITY OFFICIALS NOT TO BENEFIT**

No officer, director or employee of the AUTHORITY or the State of Washington and no legislator of the state shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom. CONTRACTOR must comply with all applicable laws regulating ethical conduct of public officers and employees.

#### **SECTION 19: COMPLIANCE WITH ALL LAWS AND REGULATIONS**

CONTRACTOR agrees that in the performance of this Contract it will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and statutes, and will hold AUTHORITY harmless from any claims, losses, fines, penalties or damage arising from CONTRACTOR's violation or alleged violation of such laws, rules, regulations, and statutes.

#### **SECTION 20: CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

CONTRACTOR acknowledges and agrees that information, data, figures, projections, estimates, reports, and the like, received, obtained, or generated by CONTRACTOR in the performance of this Contract shall be considered and kept as the private, confidential and privileged records of AUTHORITY and will not be divulged to any person, firm, corporation, or regulatory agency, or any other entity except upon the prior express written consent of AUTHORITY.

#### **SECTION 21: CONFLICT OF INTEREST**

CONTRACTOR shall act to prevent any actions or conditions which could result in a conflict with AUTHORITY's best interests. This obligation shall apply to the activities of CONTRACTOR's employees and agents in their relationships with AUTHORITY members, their families, vendors, subcontractors and third parties accomplishing work under this Contract. CONTRACTOR's efforts shall include, but shall not be limited to, establishing precautions to prevent its employees or agents from making, providing or offering gifts, entertainment, payments, loans or other considerations to AUTHORITY members, directors, agents or representatives for any purpose whatsoever.

#### **SECTION 22: CONFORMANCE**



If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

**SECTION 23: DISALLOWED COSTS**

The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its SUBCONTRACTORS.

**SECTION 24: DISPUTES**

All disputes arising under this Contract that are not resolved by mutual agreement shall be resolved in a formal mediation conducted by a mediator with the appropriate knowledge and experience selected by mutual agreement of the parties.

**SECTION 25: ENTIRE AGREEMENT**

This Contract, including the referenced Exhibits A and B, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

**SECTION 26: EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood, insofar as required by applicable law. CONTRACTOR shall take affirmative action to ensure that applicants are considered for employment without unlawful regard to their race, color, religion, national origin, physical or mental disability, age, sex, marital status, changes in marital status, pregnancy or parenthood, insofar as required by applicable law. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

CONTRACTOR shall state, in all solicitations or advertisements for employees to work on the AUTHORITY Contract work, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical or mental disability, sex, marital status, changes in marital status, pregnancy or parenthood, insofar as required by applicable law.

CONTRACTOR shall cooperate fully with AUTHORITY efforts that seek to deal with the problem of unlawful discrimination, and with all other AUTHORITY efforts to guarantee fair employment practices under this Contract, and promptly comply with all requests and directions from any federal, state, or local civil rights enforcement agency with appropriate jurisdiction over this project or any of its officers or agents, relating to the prevention of discriminatory employment practices.

**SECTION 27: FORCE MAJEURE**

Neither AUTHORITY nor CONTRACTOR shall be responsible for failure to perform the terms of this Contract when performance is prevented by force majeure, provided that notice and reasonably detailed particulars are given to the other party and the cause of such failure or omission is remedied so far as possible within a reasonable time. In no event shall the term force majeure include normal or reasonably foreseeable or reasonably avoidable delays or the expenditure of additional sums to complete proper performance of services hereunder.

**SECTION 28: GOVERNING LAW; VENUE**

The interpretation and enforcement of this Contract shall be governed by the laws of the State of Washington and any federal law where applicable. All disputes arising under this Contract shall be decided in King County, Washington.

## **SECTION 29: INDEPENDENT CONTRACTOR; NO PARTNERSHIP OR JOINT VENTURE**

CONTRACTOR and all of its agents and employees act in an independent capacity and are not officers, employees, or agents of the AUTHORITY in the performance of this Contract. This Contract shall not be interpreted or construed to create an association, joint venture or partnership between the parties or impose any partnership obligations or liability upon either party.

## **SECTION 30: INSPECTION AND REPORTS**

AUTHORITY may inspect all CONTRACTOR facilities and activities under this Contract. CONTRACTOR shall make progress reports as required by the AUTHORITY.

## **SECTION 31: INTERNAL CONTROLS AND RECORDKEEPING**

CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including, without limitation, reasonable substantiation of all expenses incurred and all property procured hereunder. In addition, CONTRACTOR shall require or cause its affiliated or associated subcontractors, agents and employees to maintain such records and controls.

CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the AUTHORITY, personnel duly authorized by the AUTHORITY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6)-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## **SECTION 32: PERMITS AND LICENSES**

CONTRACTOR shall, at its own expense, obtain all necessary permits, licenses, certifications, and any other similar authorizations required or which may become required by the government of the United States or the State of Washington or by any political subdivision of the state, except where laws, rules or regulations expressly require that AUTHORITY obtain the same.

## **SECTION 33: SEVERABILITY**

The provisions of this Contract are intended to be severable. If any term or provision is illegal, invalid, or unenforceable for any reason whatsoever, such illegality, invalidity, or unenforceability shall not affect the validity of the remainder of the Contract.

## **SECTION 34: SUBCONTRACTING**

Neither the CONTRACTOR nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the AUTHORITY. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to the AUTHORITY for any breach in the performance of the CONTRACTOR's duties. This clause does not include contracts of employment between the CONTRACTOR and personnel assigned to work under this Contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AUTHORITY or as provided by law.

## **SECTION 35: WAIVER**

AUTHORITY's failure to insist upon strict performance of any provision of this Contract, or to exercise any rights or remedies provided by this Contract, shall not release or relieve CONTRACTOR from any of its obligations or warranties under this Contract, and shall not be deemed a waiver of any right of AUTHORITY to insist upon strict performance of this Contract or any of the rights or remedies of AUTHORITY. The rights and

remedies of AUTHORITY set forth in any provision of this Contract are in addition to any other rights or remedies afforded to AUTHORITY by any other provisions of this Contract or by law.

**SECTION 36: APPROVAL**

This Contract shall be subject to the written approval of the AUTHORITY's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT is executed by the persons signing below, who warrant they have the authority to execute the Contract.

CONTRACTOR

Washington Materials Management and Financing Authority

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# Appendix G. Contract for Transporters

## CONTRACT FOR TRANSPORTATION SERVICES BETWEEN THE WASHINGTON MATERIALS MANAGEMENT AND FINANCING AUTHORITY AND

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This Contract for Transportation Services (“Contract”) is made and entered into by and between the Washington Materials Management and Financing Authority, hereinafter referred to as the “AUTHORITY,” and the below-named firm, hereinafter referred to as “CONTRACTOR.”

CONTRACTOR Name:

Address:

City, State & Zip Code:

Phone:

E-mail Address:

Washington State UBI No.:

Federal ID No.:

### SECTION 1: SERVICES

1.1 Scope of Work. CONTRACTOR agrees to provide services and staff, and otherwise do all things necessary for or incidental to the transport of covered electronic products (or “CEPs”) collected by the AUTHORITY to processing facilities designated by the AUTHORITY or an authorized representative.

#### 1.2 Definitions.

1.2.1 Collector. The term “collector” means an entity that is licensed to do business in Washington State and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets the registration and collector performance standard requirements set forth in WAC 173-900.

1.2.2 Covered Electronic Products. The term “covered electronic products” includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase: (a) any monitor having a viewable area greater than four inches when measured diagonally; (b) a desktop computer; (c) a laptop or portable computer; or (d) any video display device having a viewable area greater than four inches when measured diagonally.

The term “covered electronic products” does not include: (a) a motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or (g) hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

1.2.3 Covered Entity. The term “covered entity” means any household, charity, school district, small business, or small government located in Washington state.

1.2.4 Direct Processor. The term "direct processor" means a processor contracted with a CEP recycling plan to provide processing services for the plan.

1.2.5 Processor. The term "processor" means an entity: (a) Engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and preparing those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter; and (b) That may salvage CEPs, components, and parts to be used in new products.

1.2.6 Transporter. The term "transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

## **SECTION 2: PERIOD OF PERFORMANCE**

The period of performance under this Contract will be from January 1, 2009, through December 31, 2009. The AUTHORITY shall have the option of renewing the Contract for additional a periods.

## **SECTION 3: RECEIPT OR DELIVERY OF COVERED ELECTRONIC PRODUCTS**

3.1 Delivery. The AUTHORITY shall deliver covered electronic products to CONTRACTOR at those times and places, in those quantities, and in the manner agreed to by AUTHORITY and CONTRACTOR. CONTRACTOR's receipt of covered electronic products at AUTHORITY-designated collection sites and CONTRACTOR's taking of possession and control of covered electronic products at the point of delivery shall constitute acceptance of covered electronic products for transport.

3.2 Documents. For each delivery of covered electronic products to the CONTRACTOR, the AUTHORITY or its authorized representative shall provide CONTRACTOR those completed documents, shipping papers or manifests as are required for lawful transfer of the covered electronic products to CONTRACTOR at the point of delivery. Such documents shall meet applicable federal, state or local rules and regulations, including, but not limited to, the Electronic Products Recycling Act, RCW 70.95N, et seq., Hazardous Materials Transportation Act, 49 U.S.C. §§1801, et seq., as amended, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., as amended, and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., as amended.

3.3 Risk of Loss. CONTRACTOR shall be liable for all covered electronic products accepted in accordance with this Contract for the duration of transport from the point of delivery to designated processing locations.

## **SECTION 4: PERFORMANCE STANDARDS FOR TRANSPORTERS**

4.1 Compliance. CONTRACTOR must be in compliance, at all times during the performance of this Contract, with all applicable laws, rules, and local ordinances.

4.2 Access. CONTRACTOR must permit the Washington State Department of Ecology or its authorized third party representative access to CONTRACTOR's equipment and all AUTHORITY-related documents for purposes of conducting sampling to determine return share.

4.3 Inspections. CONTRACTOR must permit the Washington State Department of Ecology to inspect CONTRACTOR's equipment and documentation for compliance with regulations applicable to the transport and management of covered electronic products, including requirements of WAC 173-900. It is the CONTRACTOR's responsibility to properly prepare all covered electronic products for transport (or ensure that such covered electronic products have been properly prepared for transport), and to maintain all AUTHORITY-related documents in good order with all necessary information completed prior to transport.

4.4 Delivery. CONTRACTOR must deliver covered electronic products to a registered direct processor designated by the AUTHORITY or authorized representative of the AUTHORITY.

## **SECTION 5: REGISTRATION**

To qualify as a transporter of covered electronic products for the AUTHORITY, the CONTRACTOR must: (a) submit an initial registration form to the Washington State Department of Ecology; (b) update registration information if it changes; (c) renew registration annually; and (d) be listed as in "in compliance" on the "transporter registration list" on the Washington State Department of Ecology's covered electronics products recycling website.

## **SECTION 6: FEES AND BILLING**

6.1 Payment. The AUTHORITY agrees to pay CONTRACTOR for satisfactory performance of the services under the Contract.

6.2 Fees or Rates. CONTRACTOR's payment for services rendered shall be based on the fees or rates specified in the attached Exhibit A, attached hereto and incorporated by reference.

6.3 Payment Due. The AUTHORITY will pay CONTRACTOR upon satisfactory performance of services provided and receipt of properly completed invoices, which shall be submitted to the AUTHORITY Contract Manager.

6.4 Invoices. CONTRACTOR shall invoice the AUTHORITY on a monthly basis for the services performed, and the AUTHORITY shall pay such invoice within thirty (30) days after the receipt and approval of the invoice. In the event that AUTHORITY has a good-faith objection to an invoice, AUTHORITY shall pay any undisputed amount pursuant to the terms of this Contract and notify CONTRACTOR of the objection and the deficiencies noted.

6.5 Timely Payment. Payment shall be considered timely if made by the AUTHORITY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR in this Contract.

## **SECTION 7: TERMINATION**

7.1 Termination. The AUTHORITY may, in its sole discretion, terminate the Contract, without incurring any termination charges or penalties to the AUTHORITY, by giving CONTRACTOR thirty (30) days' written notice of cancellation. The notice of termination shall specify the date when this Contract terminates. The AUTHORITY shall have no responsibility to CONTRACTOR for any services performed by CONTRACTOR after the effective termination date.

7.2 Termination for Breach. Either party may terminate this Contract or any services under this Contract upon five (5) days prior written notice if the other party (i) has breached any material provision of this Contract, including non-payment and/or improper partial payment of invoices; or (ii) has violated applicable federal, state, or local laws, ordinances, or regulations. The notice of termination shall specify the date when this Contract terminates and the reason for termination.

## **SECTION 8: CONTRACT MANAGEMENT**

The Contract Manager designated below for each party shall be the contact person for all communications and billings regarding the performance of this Contract.

CONTRACTOR Contract Manager	AUTHORITY Contract Manager
[INSERT]	John Friedrich, Executive Director Washington Materials Management and Financing Authority P.O. Box 779 Woodland, WA 98674 Phone & FAX: (360) 225-6222 Cell: (360) 442-1106 E-mail: <a href="mailto:info@wmmfa.net">info@wmmfa.net</a> or <a href="mailto:jfriedrick@wmmfa.net">jfriedrick@wmmfa.net</a>

**SECTION 9: NOTICE**

Except where otherwise expressly authorized, notice shall be by fax, by first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery and addressed as set forth above, unless changed in writing by the party to whom the notice is being sent. Notice shall be effective upon delivery.

**SECTION 10: INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the AUTHORITY, the State, agencies of the State and all officials, agents and employees of the State from all liability of any nature or kind, including costs, expenses, and attorney’s fees, for all actions or claims, losses, personal injuries or property damages sustained by any person or property, resulting from or arising out of, directly or indirectly, any error, omission, or negligent or wrongful acts of CONTRACTOR, or any subcontractor, employee, agent, or representative of CONTRACTOR or anyone directly or indirectly employed by them, in the performance of this Contract.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the AUTHORITY and State for any claim, expense, fee or penalty arising out of or incident to CONTRACTOR’s or any subcontractor’s performance or failure to perform the Contract. CONTRACTOR’s obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

**SECTION 11: INSURANCE**

At its sole expense during the term of this Contract, CONTRACTOR shall procure, maintain and provide certificates evidencing at least the following insurance:

COVERAGE	LIMITS
Worker’s compensation	Statutory \$500,000 each occurrence
Commercial General Liability	\$2,000,000 each occurrence/aggregate
Commercial Automobile Liability	\$1,000,000 combined single limit

CONTRACTOR shall give the AUTHORITY thirty (30) days notice of cancellation or material alteration of such insurance coverage. In no event shall CONTRACTOR's liability under this Contract, including the indemnity obligations contained herein, exceed the amount of the above-referenced coverages.

**SECTION 12: ADDITIONAL WORK OR MATERIAL**

AUTHORITY will not pay for additional work or material not specified in the scope of work or required under this Contract, unless the extra work or material is authorized in writing by AUTHORITY prior to commencing such work.

**SECTION 13: AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by persons actually authorized to bind each of the parties.

**SECTION 14: ASSIGNMENT**

CONTRACTOR may not assign or delegate this Contract, or any part of it, or any right to any of the compensation to be paid under it, except upon the prior written consent of AUTHORITY.

**SECTION 15: ATTORNEY'S FEES**

If legal action is brought in connection with any dispute arising out of this Contract, the prevailing party shall be entitled to its reasonable attorney's fees, court costs, collection agency fees, and all other reasonable costs incurred in connection with the legal action.

**SECTION 16: AUDITS**

AUTHORITY has the right to audit, at reasonable times, the accounts, books, and facilities of CONTRACTOR. CONTRACTOR shall maintain all accounts under the Contract in accordance with generally accepted accounting principles.

**SECTION 17: AUTHORITY OFFICIALS NOT TO BENEFIT**

No officer, director or employee of the AUTHORITY or the State of Washington and no legislator of the state shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom. CONTRACTOR must comply with all applicable laws regulating ethical conduct of public officers and employees.

**SECTION 18: COMPLIANCE WITH ALL LAWS AND REGULATIONS**

CONTRACTOR agrees that in the performance of this Contract it will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and statutes, and will hold AUTHORITY harmless from any claims, losses, fines, penalties or damage arising from CONTRACTOR's violation or alleged violation of such laws, rules, regulations, and statutes.

**SECTION 19: CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

CONTRACTOR acknowledges and agrees that information, data, figures, projections, estimates, reports, and the like, received, obtained, or generated by CONTRACTOR in the performance of this Contract shall be considered and kept as the private, confidential and privileged records of AUTHORITY and will not be divulged to any person, firm, corporation, or regulatory agency, or any other entity except upon the prior express written consent of AUTHORITY.



## **SECTION 20: CONFLICT OF INTEREST**

CONTRACTOR shall act to prevent any actions or conditions which could result in a conflict with AUTHORITY's best interests. This obligation shall apply to the activities of CONTRACTOR's employees and agents in their relationships with AUTHORITY members, their families, vendors, subcontractors and third parties accomplishing work under this Contract. CONTRACTOR's efforts shall include, but shall not be limited to, establishing precautions to prevent its employees or agents from making, providing or offering gifts, entertainment, payments, loans or other considerations to AUTHORITY members, directors, agents or representatives for any purpose whatsoever.

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If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

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The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

## **SECTION 23: DISPUTES**

All disputes arising under this Contract that are not resolved by mutual agreement shall be resolved in a formal mediation conducted by a mediator with the appropriate knowledge and experience selected by mutual agreement of the parties.

## **SECTION 24: ENTIRE AGREEMENT**

This Contract, including the referenced Exhibit A, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

## **SECTION 25: EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood, insofar as required by applicable law. CONTRACTOR shall take affirmative action to ensure that applicants are considered for employment without unlawful regard to their race, color, religion, national origin, physical or mental disability, age, sex, marital status, changes in marital status, pregnancy or parenthood, insofar as required by applicable law. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

CONTRACTOR shall state, in all solicitations or advertisements for employees to work on the AUTHORITY Contract work, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical or mental disability, sex, marital status, changes in marital status, pregnancy or parenthood, insofar as required by applicable law.

CONTRACTOR shall cooperate fully with AUTHORITY efforts that seek to deal with the problem of unlawful discrimination, and with all other AUTHORITY efforts to guarantee fair employment practices under this Contract, and promptly comply with all requests and directions from any federal, state, or local civil rights enforcement agency with appropriate jurisdiction over this project or any of its officers or agents, relating to the prevention of discriminatory employment practices.

## **SECTION 26: FORCE MAJEURE**

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CONTRACTOR and all of its agents and employees act in an independent capacity and are not officers, employees, or agents of the AUTHORITY in the performance of this Contract. This Contract shall not be interpreted or construed to create an association, joint venture or partnership between the parties or impose any partnership obligations or liability upon either party.

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AUTHORITY may inspect all CONTRACTOR facilities and activities under this Contract. CONTRACTOR shall make progress reports as required by the AUTHORITY.

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CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the AUTHORITY, personnel duly authorized by the AUTHORITY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6)-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### **SECTION 31: PERMITS AND LICENSES**

CONTRACTOR shall, at its own expense, obtain all necessary permits, licenses, certifications, and any other similar authorizations required or which may become required by the government of the United States or the State of Washington or by any political subdivision of the state, except where laws, rules or regulations expressly require that AUTHORITY obtain the same.

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Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the AUTHORITY or as provided by law.

**SECTION 34: WAIVER**

AUTHORITY's failure to insist upon strict performance of any provision of this Contract, or to exercise any rights or remedies provided by this Contract, shall not release or relieve CONTRACTOR from any of its obligations or warranties under this Contract, and shall not be deemed a waiver of any right of AUTHORITY to insist upon strict performance of this Contract or any of the rights or remedies of AUTHORITY. The rights and remedies of AUTHORITY set forth in any provision of this Contract are in addition to any other rights or remedies afforded to AUTHORITY by any other provisions of this Contract or by law.

**SECTION 35: APPROVAL**

This Contract shall be subject to the written approval of the AUTHORITY's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT is executed by the persons signing below, who warrant they have the authority to execute the Contract.

CONTRACTOR

Washington Materials Management and Financing Authority

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date