

**CONTRACT FOR DIRECT PROCESSING SERVICES  
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.

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, 2009, through [December 31, 2009]. 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 & 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 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

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Signature

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Signature

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Title

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Date

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Title

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Date

## EXHIBIT A

### PERFORMANCE STANDARDS FOR THE PROCESSING OF COVERED ELECTRONIC PRODUCTS

CONTRACTOR must be in compliance, at all times during the performance of this Contract, with both the minimum performance standards and the preferred performance standards as stated below.

#### 1. Responsible Management Priorities

##### 1.1 *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.

##### 1.2 *Preferred Performance Standards*

No additional performance standards.

#### 2. Legal Requirements

##### 2.1 *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.

##### 2.2 *Preferred Performance Standards*

No additional performance standards.

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

##### 3.1 *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.

**3.2 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

### 4.1 *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.

### 4.2 *Preferred Performance Standards*

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

## 5. On-site Requirements

### 5.1 *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.

### 5.2 *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
- 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,

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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.

- (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**

### **6.1 *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.

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

No additional performance standards.

## **7. Recycling**

### **7.1 *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.

### **7.2 *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**

### **8.1 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.

### **8.2 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**

### **9.1 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.

### **9.2 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**

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

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

### **10.2 *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**

### **11.1 *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.

### **11.2 *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**

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

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

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

No additional performance standards.

## **13. Facility Access**

### **13.1 *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.

**13.2 Preferred Performance Standards**

No additional performance standards.

**14. Notification of Penalties and Violations**

**14.1 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.

**14.2 Preferred Performance Standards**

No additional performance standards.

**15. Due Diligence Downstream**

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

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

**15.2 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**

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

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

**16.2 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**

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

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

### **17.2 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**

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

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

### **18.2 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**

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

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

### **19.2 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.

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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.

**EXHIBIT B**  
**RATES AND FEES**

[INSERT]

**EXHIBIT C**

**COMPLIANCE AUDIT REPORT STATEMENT OF CERTIFICATION**

[INSERT]