

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**GARRISON SOUTHFIELD PARK
LLC,**

Plaintiff,

v.

**CLOSED LOOP REFINING AND
RECOVERY, INC., et. al.**

Defendants.

OLYMBEC USA, LLC,

Plaintiff,

v.

**CLOSED LOOP REFINING AND
RECOVERY, INC., et. al.**

Defendants.

Case No. 2:17-CV-00783-EAS-EPD

Chief Judge Edmund A. Sargus, Jr.

**Chief Magistrate Judge Elizabeth
Preston Deavers**

Case No.: 2:19-CV-01041--EAS-EPD

Chief Judge Edmund A. Sargus, Jr.

**Chief Magistrate Judge Elizabeth
Preston Deavers**

**DEFENDANT ROCHESTER COMPUTER RECYCLING & RECOVERY, LLC'S
MEMORANDUM OBJECTING TO PLAINTIFFS' JOINT MOTION FOR
SETTLEMENT APPROVAL WITH SONY ELECTRONICS WITH ORAL ARGUMENT
REQUESTED**

This memorandum describes the basis for Defendant Rochester Computer Recycling & Recovery, LLC's ("RCRR") objection to Plaintiffs' Joint Motion for Settlement Approval with Defendant Sony Electronics Inc. ("SONY") [Olymbec Doc #484 and Garrison Doc #614]. RCRR believes Plaintiffs' proposed settlement with SONY (the "SONY Settlement Proposal") to be inequitable, unjust and unfair, and requests this Court enter an order denying Plaintiffs' motion for approval because the SONY Settlement Proposal is not "fair, reasonable, and faithful to the objectives of [CERCLA]"; or in the alternative, if the Court approves of the SONY Settlement

Proposal, to include language in the order finding that the response costs incurred by Plaintiffs associated with the volumes of cathode ray tube containing electronic material (collectively, “E-Waste”) shipped by RCRR and the other defendants to Defendant Closed Loop at SONY’s direction (“SONY-Related E-Waste”) are settled, and are not attributable to RCRR and any other similarly situated defendants who merely shipped the SONY-Related E-Waste to Closed Loop at SONY’s sole direction.

Pursuant to S.D. Ohio Civ. R. 7.1(b)(2), RCRR asserts that oral argument is essential to the fair resolution of this motion practice because of the importance and complexity of the factual and legal issues presented where SONY seeks a *pro tanto* settlement credit to the detriment of defendants like RCRR who have readily identifiable quantities of E-Waste transported specifically at SONY’s instruction to the locations at issue in this matter.

I. Introduction

If approved, the SONY Settlement Proposal would resolve SONY’s liability for all claims, by any party, including potential contract claims by RCRR and contribution claims by RCRR and the other similarly situated defendants, against SONY for response costs associated with the E-Waste at Plaintiff Garrison’s two contiguous warehouses located at 1655 and 1675 Watkins Road in Columbus, Ohio and at Plaintiff Olymbec’s warehouse located at 2200 Fairwood Avenue in Columbus, Ohio (collectively, the “Facility”). RCRR objects to the SONY Settlement Proposal because SONY directed that all SONY-Related E-Waste be brought to the Facility.

RCRR’s contracts with SONY expressly required “at SONY’s sole request Recycler will utilize Closed Loop Recycling & Recovery, Inc. (“CLRR”) as a downstream partner to process all CRT glass and/or CRT containing devices generated in direct relation to covered electronics

equipment (“CEEs”) per terms of this agreement.” See Exhibits 1-5 of the Affidavit of Michael Whyte (“Whyte Aff.”), attached hereto as Exhibit A.¹

As described in RCRR’s Answer to Garrison’s Second Amended Complaint [Doc # 550], RCRR’s Answer to Olymbec’s First Amended Complaint [Doc # 434], and as clearly shown in the documents RCRR provided to Plaintiffs, SONY, not RCRR, is responsible for arranging for the shipment of at least 11,040,671 pounds of E-Waste (out of the 16,417,553 pounds of the E-Waste that RCRR allegedly shipped to the Facility) to Closed Loop.

The SONY Settlement Proposal misapprehends that it is difficult to determine with any certainty the specific weights of E-Waste at the Facility attributable to any particular Original Equipment Manufacturer (“OEM”) – in this case, SONY. Based on this reasoning, instead of applying a straightforward cost recovery formula based upon pounds of E-Waste that a defendant arranged to be delivered to the Facility (as applied in other settlements this Court has approved), Plaintiffs and SONY instead use an unknown and ambiguous “market share” calculation with little relation to the actual pounds of E-Waste brought to the Facility to justify SONY’s proposed settlement amount.

Putting aside the unknown metrics that went into the market share calculation, the SONY Settlement Proposal completely ignores the discovery produced to date, which clearly demonstrates, at least in the case of RCRR, that there is a known, quantifiable weight of E-Waste that was arranged by SONY to be transported to the Facility by RCRR. More importantly, applying the straightforward cost recovery formula previously applied in this matter to other settling parties demonstrates that the SONY Settlement Proposal is unfair to RCRR (and likely

¹ Exhibits 1- 6, were originally marked and produced as “Confidential” pursuant to the terms of the Protective Order filed in this matter. These documents are being provided publicly with permission of SONY.

other remaining defendants), and will position Plaintiffs to double dip on their cost recovery while allowing SONY to not pay its fair share of response costs.

RCRR's discovery, and the shipment records, demonstrate that SONY is responsible for arranging at least 11,040,671 of the 16,417,553 pounds of E-Waste alleged to have been arranged by RCRR. *See Whyte Aff.*, ¶ 13. In other words, SONY is the arranger for at least sixty-seven percent of the E-Waste that Plaintiffs attribute to RCRR. SONY entered into a series of contracts with RCRR pursuant to which RCRR collected E-Waste from New York State to be processed, "at SONY's sole request," at the Facility to meet SONY's New York State electronic equipment manufacturer obligations. To allow SONY to settle this matter without consideration of the actual amount of E-Waste it directly arranged to be shipped to the Facility would be unfair under the circumstances to RCRR and the other alleged arranger defendants, and contrary to the goals of CERCLA. To then apply a *pro tanto* credit, as requested in the joint motion to approve the SONY Settlement Proposal, in determining the shares of defendants other than SONY, allows the Plaintiffs to completely ignore the evidence in front of them (through discovery completed to date) and knowingly financially disadvantage RCRR and other remaining defendants by means of double recovery.

In addition to SONY being an OEM with other potential CERCLA liability, the SONY Settlement Proposal completely disregards that SONY is the party that directly arranged for at least 11,040,671 of the 16,417,553 pounds of E-Waste alleged to have been arranged by RCRR. The SONY Settlement Proposal is therefore not "reasonable, fair, and consistent with the purposes that CERCLA is intended to serve." *United States v. Cannons Engineering Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) (internal citations omitted). Under the circumstances, this Court must deny the Motion to approve the SONY Settlement Proposal, or in the alternative, clarify that the settlement

with SONY settles all volumes of E-Waste that can clearly be shown to have been shipped to the Facility at SONY's direction, including the 11,040,671 pounds that Plaintiffs allege RCRR is responsible for based on CERCLA arranger liability.

II. SONY was the Arranger for 11,040,671 Pounds of the E-material Shipped to the Facility by RCRR

If CERCLA applies to the costs to remove E-Waste from inside the sound and weatherproof Facility, SONY, not RCRR, is liable as the "arranger" for all response costs associated with, at a minimum, the 11,040,671 pounds of E-Waste that SONY contracted with RCRR to collect and directed RCRR to ship to the Facility. As discussed further below, and as provided in the 2014, 2015 and 2016 Statements of Work ("SOWs") that were part of the contract between SONY and RCRR, RCRR was contracted by SONY to collect E-Waste for SONY to meet all of SONY's obligations under the New York State Electronic Equipment Recycling and Reuse, Article 17, Title 26 of the New York State Environmental Conservation Law ("New York EPR Law"); and, "[a]t SONY's sole request" RCRR was directed to ship that E-Waste to Closed Loop Recycling & Recovery, Inc. ("Closed Loop"). *See Whyte Aff.*, Exs. 2, 3, and 5. The only E-Waste that RCRR shipped to the Facility during the period 2014-2016 was done pursuant to the requirements of its contract with SONY. Therefore, SONY, by express contract, arranged for the SONY-Related E-Waste to be transported to the Facility, and conversely, RCRR did not arrange for the SONY-Related E-Waste to be transported to the Facility.

The Sixth Circuit has identified two key purposes of CERCLA: "(1) to provide the federal government with the tools immediately necessary for a swift and effective response to hazardous waste sites[,]" and (2) to hold "those responsible for the disposal of chemical poisons [accountable for] the cost and responsibility of remedying the harmful conditions they created." *Anspec Co., Inc. v. Johnson Controls, Inc.*, 922 F.2d 1240, 1247 (6th Cir. 1991) (internal citations omitted).

and see *United States v. Consolidation Coal Co.*, 345 F.3d 409, 413 (6th Cir. 2003). Liability under CERCLA Section 107 exists when four elements are shown: “1) the site involved is a “facility” within the meaning of CERCLA, 2) that a release or threatened release of a hazardous substance occurred there, 3) that the release caused the party to incur response costs, and 4) that the defendant falls into one of the categories of [PRPs] identified in § 107(a).” While RCRR does not concede to Plaintiffs’ assertions that the first three elements have been met, for purposes of this Objection to the SONY Settlement Proposal, only the fourth element is discussed further.

Relevant here is the third category of PRP, an “arranger.” Section 107(a)(3) provides that “any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances . . .” is liable for response costs under CERCLA. “In common parlance, the word ‘arrange’ implies action directed to a specific purpose . . . Consequently, under the plain language of the statute, an entity may qualify as an arranger under [Section 107(a)(3)] when it takes intentional steps to dispose of a hazardous substance.” *Burlington Northern & Santa Fe Ry. v. United States*, 556 U.S. 599, 611 (2009). See also, *United States v. Cello-Foil Prods.*, 100 F.3d 1227, 1231 (6th Cir. 1996); *GenCorp, Inc. v. Olin Copr.*, 390 F.3d 433, 445-446 (6th Cir. 2004).

The Supreme Court has found that “[i]t is plain from the language of the statute that CERCLA liability would attach under [Section 107(a)(3)] if an entity were to enter into a transaction for the sole purpose of discarding a used and no longer useful hazardous substance.” *Burlington Northern*, 556 U.S. at 609.

A party can be held liable as an arranger even if they did not own or physically possess the hazardous waste in question, “so long as they had the authority to control the handling and disposal of the hazardous substances.” *Am. Cyanamid Co. v. Capuano*, 381 F.3d 6, 24 (1st Cir. 2004) (internal references omitted). SONY, through the terms of its contract with RCRR and other similarly situated defendants, controlled the handling, transport, disposal and treatment of the SONY-Related E-Waste. “A party’s responsibility . . . must by necessity turn on a fact-specific inquiry into the nature of the transaction.” *Burlington Northern*, 556 U.S. at 610 (internal citations omitted).

In order to meet its New York EPR Law obligations for 2014, 2015, and 2016, SONY contracted with RCRR to collect E-Waste in New York, and directed RCRR to ship the SONY-Related E-Waste to Closed Loop and no other facility for treatment. Therefore, if CERCLA liability applies in this case to the SONY-Related E-Waste, defendant SONY is liable under CERCLA Section 107(a)(3), 42 U.S.C. §§ 9607(a)(3), as the person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at a facility owned or operated by another party or entity and containing such hazardous substances.

RCRR was the sole recycler in New York State with whom SONY contracted to meet all of its New York EPR Law obligations, and RCRR shipped only SONY-Related E-Waste to the Facility, from 2014-2016. SONY and RCRR entered into the following series of contracts: the Electronic Waste Recycling Services Agreement, which became effective on January 1, 2014 (the “Master Agreement”); Statement of Work #1 to Electronic Waste Recycling Services Agreement effective January 1, 2014 (“2014 SOW”); Statement of Work #1 to Electronic Waste Recycling

Services Agreement effective January 1, 2015 (“2015 SOW”); and, Statement of Work #3 to Electronic Waste Recycling Services Agreement effective January 1, 2016 (“2016 SOW”). Hereinafter, these agreements are collectively referred to as the “SONY/RCRR E-Waste Agreements”. *See* Whyte Aff., Exs. 1-5. Copies of the SONY/RCRR E-Waste Agreements were provided to Plaintiffs on July 7, 2020, in response to discovery requests dated May 27, 2020.

Among other obligations, and as explained in further detail below, each of the SOWs required RCRR (who is referred to in the SOWs as “RECYCLER”) to provide collection, transportation, recycling (treatment), and reporting services to SONY in the State of New York; included a Not To Exceed CEE Weight that RCRR would collect and ship to the Facility (based on New York State’s stated SONY obligation); the price to be paid by SONY per pound (based on Closed Loop CRT processing costs), and, wherein SONY required RCRR to utilize Closed Loop’s Facility to process all CRT glass and/or CRT containing devices collected per the agreement.

The relevant paragraphs of the SOWs (attached as Exs. 2, 3, and 5 of the Whyte Aff.) are transcribed below.

2014 SOW

Paragraph 5. Services and Expectations, provides:

RECYCLER will provide collection, transportation, recycling, and reporting services (“Services”) for SONY in the State of New York in addition to the minimum requirements in accordance to Article 27; Title 26. Entitled “Electronic Equipment Recycling and Reuse”.

Paragraph 7. Material Downstream, provides:

At SONY’s sole request RECYCLER will utilize Closed Loop Recycling & Recovery, Inc. (CLRR) as a downstream partner to process all CRT glass and/or CRT containing devices generated in direct relation to CEE’s per terms of this agreement. Should CLRR choose to increase prices to RECYCLER during Term of this SOW, RECYCLER reserves right to raise price to SONY at an equivalent rate.

Paragraph 9. Volume and Rates for Service, provides:

RECYCLER Not To Exceed CEE Weight Request: 6,050,000 LBS. (This is estimated number and will change when NYDEC assigns SONY is final obligation).

2015 SOW

Paragraph 5. Services and Expectations, provides:

RECYCLER will provide collection, transportation, recycling, and reporting services (“Services”) for SONY in the State of New York in addition to the minimum requirements in accordance to Article 27; Title 26. Entitled “Electronic Equipment Recycling and Reuse”.

Paragraph 7. Material Downstream, provides:

At SONY’s sole request RECYCLER will utilize Closed Loop Recycling & Recovery, Inc. (CLRR) as a downstream partner to process all CRT glass and/or CRT containing devices generated in direct relation to CEE’s per terms of this agreement. Should CLRR choose to increase prices to RECYCLER during Term of this SOW, RECYCLER reserves right to raise price to SONY at an equivalent rate.

Paragraph 9. Volume and Rates for Service, provides:

RECYCLER to recognize SONY’s carry-forward credit of 1,000,000 pounds from year 2013-2014 and will work with SONY to consume these pounds over a 2-year period.

RECYCLER Not To Exceed CEE Weight Request: 3,000,000 LBS. (This is estimated number and will change when NYDLC assigns SONY its final obligation). The final number shall be calculated by subtracting 500,000 pounds from the 2013-2014 carryover from the DEC assigned weight for 2015.

2016 SOW

Paragraph 4. Services and Expectations, provides:

RECYCLER will provide collection, transportation, recycling, and reporting services (“Services”) for SONY in the State of New York in addition to the minimum requirements in accordance to Article 27; Title 26. Entitled “Electronic Equipment Recycling and Reuse”.

Paragraph 6. Material Downstream, provides:

At SONY’s sole request RECYCLER will utilize Closed Loop Recycling & Recovery, Inc. (CLRR) as a downstream partner to process all CRT glass and/or

CRT containing devices generated in direct relation to CEE's per terms of this agreement. CLRR to process and ship CRT glass received from RECYCLER to downstream consumers within 90 days. Should CLRR choose to increase prices to RECYCLER during Term of this SOW, RECYCLER reserves right to raise price to SONY at an equivalent rate.

Paragraph 8. Volume and Rates for Service, provides:

RECYCLER to recognize SONY's carry-forward credit of approximately 1,000,000+/- pounds from year 2014 and will work with SONY to consume these pounds over a 2-year period, ending 12/31/2016.

RECYCLER Not to Exceed CEE Weight Request: 2,000,000 LBS. (This is estimated number and will change when NYDEC assigns SONY its final obligation). The final number shall be defined as: Subtraction of 1,000,000+/- pounds from the DEC assigned weight for 2016.

All E-Waste shipped by RCRR to the Facility from at least February 20, 2014 to March 24, 2016 was shipped at the specific and sole direction of SONY so that SONY could meet its New York EPR obligations. Whyte Aff., ¶ 11. RCRR did not ship any other E-Waste to the Facility during the SONY contract period (2014-2016) for any other purpose. As explained by Michael Whyte, and as evidenced in the shipping documents, approximately 11,040,671 pounds of SONY-Related E-Waste was transported by RCRR at SONY's sole request to the Facility. Whyte Aff., ¶ 13.

This information was readily available to Plaintiffs (and SONY) in a chart attached as Exhibit 6 to the Whyte Aff., which was created by Michael Whyte at the direction and request of SONY September 14, 2018 and provided to Plaintiffs during initial discovery. Moreover, RCRR provided specific interrogatory responses explaining that SONY directed RCRR to deliver the SONY-Related E-Waste to the Facility. Therefore, it is clear that, if CERCLA liability applies, SONY, not RCRR, is the arranger responsible for any response costs associated with the 11,040,671 pounds of SONY-Related E-Waste. RCRR's role as the shipper of the SONY-Related E-Waste to the Facility was akin to that of a common carrier who was required by its contract to

ship “all CRT glass and/or CRT containing devices” collected for SONY’s benefit to “Closed Loop Recycling & Recovery, Inc.”

Since SONY contractually arranged for RCRR to transport 11,040,671 pounds of E-Waste to the Facility, pursuant to CERCLA Section 107(a)(3), 42 U.S.C. §§ 9607(a)(3), SONY is liable for response costs associated with at least that 11,040,671 pounds of SONY-Related E-Waste. *See Burlington Northern*, 556 U.S. at 609-610; *Cello-Foil*, 100 F.3d at 1231; *GenCorp*, 390 F.3d at 445-446. Sony is also potentially liable to RCRR, based on contract and common law claims, for costs associated with this material.

In order to preserve its rights, in addition to RCRR’s filing of this Objection to the Plaintiffs’ motion to approve the SONY Settlement Proposal, RCRR also, simultaneously, is filing a motion with the Court to amend its August 28, 2020 answers to Plaintiff Garrison’s Second Amended Complaint [Doc # 550] and Plaintiff Olymbec’s First Amended Complaint [Doc # 434]. The request to amend its answers is to add CERCLA, contract and common law crossclaims against SONY. RCRR could not add SONY as a party or include these crossclaims earlier in the litigation based on confidentiality provisions included in Article IV of the Master Agreement with SONY.

III. The Market Share Settlement Formula Used in the Proposed SONY Settlement Agreement is Not Fair, Reasonable, or Consistent with CERCLA

A court, in determining whether to approve a proposed settlement under CERCLA, must decide whether the settlement is “fair, reasonable, and adequate[,] in other words, consistent with the purposes that CERCLA is intended to serve.” *Garrison Southfield Park LLC v. Closed Loop Ref. & Recovery, Inc.*, 2019 U.S. Dist. LEXIS 143838, *6 (S.D. Ohio, 2019) (internal citations omitted). Moreover, a district court should neither “mechanistically rubberstamp” a settlement proposal, nor conduct a *de novo* review of the underlying merits of the settlement. *U.S. v. Akso*

Coatings of America, Inc., 949 F.2d 1409, 1424 (6th Cir. 1991) (internal citations omitted). The court's review must be "thorough and penetrating" and it must perform a "searching review of the evidence and determine if the settlements represent a reasonable compromise." *United States v. Cantrell*, 92 F.Supp. 2d 718, 723 (S.D. Ohio 2000) (internal citations omitted). The court must ensure that the proposed settlement is not "arbitrary, capricious, and devoid of a rational basis." *Id.* at 724. Thereafter, a reviewing court must "consider whether the decision was based on consideration of the relevant factors and whether there has been a clear error of judgment." *Akso Coatings*, 949 F.2d at 1426 (internal citations omitted).

With respect to fairness, the court should evaluate this factor from the standpoint of both signatories and nonparties to the settlement. *See In re Eagle-Pitcher Indus.*, 1997 U.S. Dist. LEXIS 15436, *19 (S.D. Ohio 1997) (internal citations omitted). While procedural and substantive fairness are both relevant factors, substantive fairness is a key issue in this matter. "Substantive fairness introduces into the equation concepts of corrective justice and accountability: a party should bear the cost of the harm for which it is legally responsible." *Cannons*, 899 F.2d at 87 (internal referenced omitted). It requires that "settlement terms be based upon, and roughly correlated with, some acceptable measure of comparative fault . . ." *Id.*

Because the SONY Settlement Proposal as currently written does not take into account SONY's arranger liability for the SONY-Related E-Waste that SONY directed RCRR to ship to the Facility, it is not fair, not reasonable, and is inconsistent with CERCLA. The Sony Settlement Proposal also sets up for Plaintiffs to over-collect settlement funds in contravention of CERCLA. Therefore, this Court should deny the motion to approve the settlement, or in the alternative, clarify in its order approving the SONY Settlement Proposal that all of the SONY-Related E-

Waste shipped to the Facility (by RCRR) at SONY's direction is included in the SONY settlement.

A. The Market Share Formula Does Not Properly Account for E-Waste that SONY Directly Arranged to Have Shipped to the Facility.

As noted by Plaintiffs in their Joint Motion for Settlement Approval with Defendant Sony Electronics Inc. Memoranda ("Joint Memoranda"), the settlement formula used in the settlement agreements that have been approved by this Court to date [Garrison Docs # 312, 400, 536, Olymbec Docs # 239, 311, 420] were with PRPs alleged to be "arrangers" that shipped E-Waste to the Facility and were based on Closed Loop records that identify the total weight of E-Waste that a settling party arranged to be shipped to the Facility, as compared to the total weight of the E-Waste shipped to the Facility by all parties. Joint Memoranda, pp. 7-8. Plaintiffs then applied this percentage to the cleanup cost estimate of \$21,933,193 to determine the settlement amounts. *Id.* at p. 7. The majority of the settlements approved by this Court to date have equated to the settling party paying \$0.14/pound alleged to have been shipped to the Facility. The recent proposed settlement with Compupoint equates to approximately \$0.1691/pound. [Garrison Doc # 559, Olymbec Doc # 440].

In stark contrast, here Plaintiffs state that because SONY is an OEM that did not directly ship material to the Facility, the settlement formula used in the SONY Settlement Agreement ought to be based solely on SONY's national market share, its Extended Producer Responsibility ("EPR") obligations, and other non-quantitative factors. Plaintiffs and SONY state that this alternative settlement formula results in a settlement payment by SONY of \$1.2 million, and that this amount and formula is appropriate due to the difficulty in ascribing specific weights of E-Waste shipped to the Facility to specific OEMs. According to Plaintiffs, the difficulty in ascribing a specific weight to an OEM is because the bill of lading for specific loads shipped to the Facility

do not identify the OEM that claimed credit for all or a part of the shipment. Joint Memoranda, p 8.

However, as discussed above, it is not too difficult to determine the specific weight of the SONY-Related E-Waste that RCRR shipped to the Facility at the direction of SONY. Documentation provided by RCRR to both SONY and Plaintiffs clearly establishes that, at least 11,040,671 pounds of the E-Waste shipped to the Facility by RCRR was for SONY, that SONY selected the Facility, and contractually required RCRR to collect and then ship this material to the Facility. Whyte Aff., Exs. 2, 3, and 5. There is no legwork for the Plaintiffs (or the Court) to undertake, the documents provided by RCRR to Plaintiffs in discovery speak for themselves. *See* Whyte Aff. Ex. 6.

Utilizing solely the proposed market share formula for a SONY settlement would contravene the requirement for a settlement to ensure substantive fairness as to non-settling parties, including RCRR and the other similarly situated defendants, and would be unreasonable under the present circumstances where the specific amounts of SONY-Related E-Waste RCRR was contracted by SONY to collect and directed by SONY to have transported to the Facility is easily determined.

While this market share formula may be appropriate for other OEMs and/or other recycler defendants where there is not sufficient documentation showing that the OEM is directly responsible as the arranger for a specific weight of E-Waste shipped to the Facility, it is not appropriate for this proposed settlement with SONY.

Based on the documentation provided by RCRR to SONY and Plaintiffs, it is clear that, if CERCLA arranger liability for this material applies, SONY is the actual arranger with respect to, and responsible for any response costs associated with, at least 11,040,671 pounds of SONY-

Related E-Waste currently attributed to RCRR. Allowing SONY to skirt its responsibility for more than two-thirds of the E-Waste attributable to RCRR would be inconsistent with the goals of CERCLA, which puts the onus on the responsible party to shoulder the clean-up costs.

The SONY Settlement Agreement is not based on the specific weight of E-Waste SONY is potentially responsible for, would release SONY from liability for all cleanup costs associated with the Facility, and would take away the ability of other defendants to whom arranger liability is falsely attributed for the SONY-Related E-Waste to seek contribution from SONY. Further, the extremely broad claim bar requested by Plaintiffs and SONY would not only bar CERCLA Section 107 and 113 claims against SONY, but also could operate to bar RCRR's crossclaims against SONY under contract and common law, including its claim for contractual indemnification, which is not supported by CERCLA or appropriate in this matter. Therefore, the SONY Settlement Proposal as currently proposed is not fair, reasonable, or consistent with CERCLA, and the Court should deny the Motion of Plaintiffs and SONY; or, in the alternative, state in its order that the settlement with SONY settles 11,040,671 pounds of SONY-Related E-waste shipped by RCRR to the Facility at the direction of SONY.

B. Allowing SONY to Settle Without Attributing the E-Waste it Arranged for RCRR to Transport to the Facility Sets Up Plaintiffs to Over-Collect Clean-Up Costs

Further underpinning the inequities of the approach in the instant SONY Settlement Proposal, the Court should also consider that allowing Plaintiffs to settle with SONY without fairly attributing the actual amount of E-Waste arranged by SONY to be transported to the Facility for treatment will set up the Plaintiffs to effectively collect twice for the same E-Waste. By way of explanation, the SONY Settlement Proposal allows SONY to walk away from this litigation without any measure or acknowledgement of known quantities of SONY-Related E-Waste transported to the Facility, i.e., at the explicit direction of SONY. Thereafter, the remaining

defendants – including RCRR – are left without recourse for the E-Waste that SONY arranged for them to ship to the Facility. Plaintiffs are then free to continue pursuing RCRR and other defendants for the “total amount” of all shipments by a recycler to the Facility, including recovering twice for shipments of the SONY-Related E-Waste.

CERCLA section 114 (42 U.S.C. § 9614) is intended to prohibit such double-recovery of cleanup costs. The statute specifically provides:

Any person who receives compensation for removal costs or damages pursuant to this chapter shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this chapter.

42 U.S.C. § 9614 (b) (emphasis added). Simply stated, allowing SONY to settle out of this litigation without appropriately attributing the amount of E-Waste it arranged for RCRR to transport to the Facility creates the exact scenario that CERCLA Section 114 seeks to avoid – double-recovery by plaintiffs for cleanup costs.

In *Ashtabula River Corporation Group II v. Conrail, Inc.*, the Northern District of Ohio granted the defendant’s motion to dismiss because the complaint sought to recover the same damages under Ohio common law as it sought under CERCLA. 549 F. Supp. 2d 981 (N.D. Ohio 2008). The Court noted that § 114(b) prohibits recovery of the same costs, damages, or claims. *Id.* at 985. The Court reasoned that because the complaint asserted that *all* the costs were recoverable under CERCLA § 107(a), that the state common law claims were seeking the same costs recovery and, therefore, were dismissed.

The *Ashtabula River* court, in its support, cited *K.C. 1986 L.P. v. Reade Mfg.* In *K.C.*, the Eighth Circuit reviewed the trial court’s decision not to amend the Allocation Order in light of a

pretrial settlement. 472 F.3d 1009 (8th Cir. 2007). The Appeals Court determined that the trial court abused its discretion because private settlements are relevant to the allocation of liability. The Court noted that CERCLA directs courts to allocate response costs among liable parties using equitable factors, which includes the policy against double recovery. *Id.* at 1017. The Court concludes that crediting the amount of settlements reached with private parties is necessary to avoid double recovery. *Id.*

Given the explicit requirements of CERCLA Section 114, it is respectfully submitted that any agreement allowing SONY to settle in this matter should ensure that the specific amounts of E-Waste that SONY arranged for RCRR and other similarly situated defendants to transport to the Facility should not be included in any future cost recovery calculation to the benefit of Plaintiffs. Furthermore, RCRR's total share of E-Waste transported to the Facility should be recalculated so that the 11,040,671 pounds of SONY-Related E-Waste arranged by SONY are no longer allocated by Plaintiffs to RCRR.

IV. The *Pro Tanto* Approach is Not Appropriate and the Court Should Apply the Proportional Share Approach

Of additional concern to RCRR is the SONY Settlement Proposal's suggestion to apply *pro tanto* any credit as against the remaining PRPs in this matter. Under the *pro tanto* approach, Plaintiffs' claims are reduced "against the non-settling defendants by the dollar value of the settlement. Under this scenario, if the plaintiff settle for too little, all non-settling PRPs bear the risk of being held liable for more than their fair share of the response costs." *Hobart Corp. v. Dayton Power & Light Co.*, 2016 U.S. Dist. LEXIS 202349, **63-64 (S.D. Ohio 2016). Putting aside the fact that RCRR has already demonstrated that the SONY Settlement Proposal is entirely too low because it is not based upon the amount of E-Waste that SONY arranged to be shipped to

the Facility, the *pro tanto* approach very specifically disadvantages RCRR more than any other defendant.

Because SONY is settling for far less than its fair share of the E-Waste it arranged for RCRR to transport to the Facility, the *pro tanto* approach leaves RCRR and other defendants to make up the difference in shortfall of Plaintiffs' monetary recovery. The financial arrangement proposed in the SONY Settlement Proposal is already manifestly unjust as to RCRR. However, if the *pro tanto* approach is applied, not only does RCRR have to account for over eleven million pounds of E-Waste that SONY obligated RCRR to transport to the Facility, RCRR does not even receive appropriate credit for the SONY-Related E-Waste under a *pro tanto* arrangement. RCRR should instead receive the entire benefit of the SONY settlement arrangement, as it can prove it is demonstrably harmed by Plaintiffs' abrupt departure from a weight-based approach to settlement and the consequent pre-mature departure of SONY from this litigation. Because approval of the SONY Proposed Settlement could also bar all of RCRR's claims against SONY going forward, including not only CERCLA claims, but also its contract and common law claims, RCRR would be further harmed and have no recourse.

Therefore, it would only be fitting for this Court to depart from its prior application of the *pro tanto* approach and instead employ the proportionate share approach to the SONY Settlement Proposal. Under this mechanism, Plaintiffs' claims are reduced "against the non-settling defendants by the amount of the settling defendant's proportionate share of fault, as later determined at trial. Because the non-settling defendants are held responsible only for their own proportionate share, the plaintiffs must absorb any shortfall if they settle for too little." *Hobart*, 2016 U.S. Dist. LEXIS at *63. As RCRR has demonstrated herein, and as the Plaintiffs could

have easily confirmed before they proposed the SONY Settlement Proposal, SONY is underpaying in this matter as compared to previous settlers.

Since Plaintiffs choose to look away from readily available documents produced in discovery, they should not benefit from their failure to ensure that SONY, as another alleged arranger, contributes equitably to the clean-up costs at the Facility. In the event the SONY Settlement Proposal is approved, Plaintiffs, and not RCRR and the other defendants, should be responsible for any shortfall in contribution from SONY, by application of the proportional share approach.

V. Since the SONY Settlement Proposal is Not Fair, Reasonable, or Consistent with CERCLA, RCRR requests this Court Deny Plaintiffs' Motion for Approval, or in the Alternative Specify that the Settlement Includes the SONY-Related E-Waste that SONY Arranged to be Shipped to the Facility for Treatment

As currently proposed, RCRR objects to the SONY Settlement Proposal. It is arbitrary and capricious to allow SONY to settle out of this litigation solely based on a "market share" calculation when the other defendants who settled in this matter did so based on a straightforward cost recovery formula that took into consideration the amount of E-Waste allegedly arranged to be transported to the Facility, particularly where, as here, specific amounts of E-Waste can be attributed to the actions of SONY. If the Court is nevertheless inclined to approve the SONY Settlement proposal over RCRR's objections, RCRR requests that the amount of SONY-Related E-Waste it transported to the Facility, at the direction of arranger SONY, be removed from RCRR's share of E-Waste currently alleged by Plaintiffs, or failing that, that a proportionate share approach to the settlement be applied.

In other words, RCRR would not oppose a settlement between SONY and Plaintiffs, if the Court clarifies that claims related to E-Waste shipped to the Facility by defendants at SONY's direction are all also settled, including 11,040,671 pounds of the E-Waste that are currently

allocated to RCRR, leaving RCRR responsible for no more than the remaining 5,376,882 pounds of E-Waste allegedly attributed by Plaintiffs to RCRR. This would prevent a potential double recovery for clean-up costs on the part of Plaintiffs. Moreover, such reduction would be consistent with the purpose of CERCLA to ensure that responsible parties pay their fair share of clean-up costs. *See Cannons*, 899 F.2d at 87; *cf. ITT Indus. v. BorgWarner, Inc.*, 700 F.Supp. 2d 848, 877 (W.D. Michigan, 2010) (explaining the legal defense of divisibility and stating that “[d]ivisibility seeks to apportion liability based on relative contribution to harm, if such is reasonably ascertainable. Divisibility can be based on a variety of factors including volumetric, chronological, or geographic considerations, as well as contaminant-specific considerations.” (internal references omitted)).

VI. Conclusion

For all of the foregoing reasons, RCRR requests the Court to (1) deny the SONY Settlement Proposal; or in the alternative, (2) include in the order approving the SONY Settlement Proposal a statement that the settlement with SONY settles all volumes of E-Waste that are shown to have been shipped to the Facility at SONY’s direction, including the 11,040,671 pounds of SONY-Related E-Waste that Plaintiffs allege RCRR is responsible for based on a theory of CERCLA arranger liability. Including such an alternative statement in an order approving the SONY Settlement Proposal would clarify the scope of the SONY Settlement Proposal, and appropriately and consistent with a proportionate share approach to a settlement based on the dubious “market share” calculation, preserve this Court’s otherwise *pro tanto* approach to settlements in this matter.

Respectfully submitted,

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**COUNSEL FOR ROCHESTER COMPUTER
RECYCLING & RECOVERY, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's CM/ECF system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Christopher A. LaRocco
Christopher A. LaRocco

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GARRISON SOUTHFIELD PARK LLC,)	
)	
Plaintiff,)	Case No. 2:17-CV-00783-EAS-EPD
)	Chief Judge Edmund A. Sargus, Jr.
v.)	
)	Chief Magistrate Judge Elizabeth
CLOSED LOOP REFINING AND RECOVERY, INC., et. al.)	Preston Deavers
)	
Defendants.)	
)	
OLYMBEC USA, LLC,)	Case No.: 2:19-CV-01041--EAS-EPD
)	Chief Judge Edmund A. Sargus, Jr.
Plaintiff,)	
)	Chief Magistrate Judge Elizabeth
v.)	Preston Deavers
)	
CLOSED LOOP REFINING AND RECOVERY, INC., et. al.)	
)	
Defendants.)	

AFFIDAVIT OF MICHAEL WHYTE

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

MICHAEL WHYTE , being duly sworn deposes and says that:

1. I am, and at all relevant times was, the President of Rochester Computer Recycling & Recovery, LLC ("RCRR").
2. I am familiar with facts set forth herein, and respectfully submit this Affidavit in opposition to the Plaintiffs' Joint Motion for Settlement Approval with Defendant Sony Electronics Inc. ("SONY").

3. It is my understanding that SONY contracted with RCRR to satisfy all of its obligations under the New York State Electronic Equipment Recycling and Reuse law between 2014 and 2017.

4. Effective January 1, 2014, SONY and RCRR entered into an Electronic Waste Recycling Services Agreement (“Master Agreement”), under which RCRR agreed to provide collection, transportation and recycling of electronic waste services for Sony, and further agreed that Sony would submit to RCRR more particular Statements of Work (“SOWs”), to be executed by both parties, for the services to be performed by RCRR. Attached hereto as Exhibit 1 is a true and accurate copy of the Master Agreement between RCRR and SONY, bearing bates numbers RCRR004255-276.

5. At the same time, RCRR entered into Statement of Work #1 to Electronic Waste Recycling Services Agreement Dated January 1, 2014 Between Sony and Company, effective January 1, 2014 (“2014 SOW”), under which RCRR would provide “collection, transportation, recycling, and reporting services (“Services”) for SONY in the State of New York”, and to clarify that it was SONY and not RCRR that selected the Closed Loop Facility, the 2014 SOW directed RCRR, “at SONY’s sole request,” to “utilize Closed Loop Recycling & Recovery, Inc. (CLRR) to process all CRT glass and/or CRT containing devices generated in direct relation to [covered electronics equipment] per terms of this agreement.” Attached hereto as Exhibit 2 is a true and accurate copy of the 2014 SOW, bearing bates numbers RCRR004277-280.

6. Effective January 1, 2015, SONY and RCRR entered into Statement of Work #1 to Electronic Waste Recycling Services Agreement Dated January 1, 2014 Between Sony and Company (“2015 SOW”) under which RCRR would continue to provide “collection, transportation, recycling, and reporting services (“Services”) for SONY in the State of New York” and again, the 2015 SOW directed RCRR, “at SONY’s sole request,” to “utilize Closed Loop Recycling & Recovery, Inc. (CLRR) to process all CRT glass and/or CRT containing devices generated in direct relation to [covered electronics equipment] per terms of this agreement.” Attached hereto as Exhibit 3 is a true and accurate copy of 2015 SOW, bearing bates numbers RCRR004281-284.

7. Effective January 1, 2016, SONY and RCRR agreed to extend the terms of the Agreement through December 31, 2016 through the Amendment to Electronic Waste Recycling Services Agreement Dated January 1, 2014 Between SONY and Recycler (“Amendment”). Attached hereto as Exhibit 4 is a true and accurate copy of the Amendment, bearing bates number RCRR004285.

8. Effective January 1, 2016, SONY and RCRR entered into Statement of Work #3 to Electronic Waste Recycling Services Agreement Dated January 1, 2014 Between Sony and Recycler (“2016 SOW”) under which RCRR would continue to provide “collection, transportation, recycling, and reporting services (“Services”) for SONY in the State of New York” and again , the 2016 SOW directed RCRR, “at SONY’s sole request,” to “utilize Closed Loop Recycling & Recovery, Inc. (CLRR) to process all CRT glass and/or CRT containing devices generated in direct relation to [covered electronics equipment] per terms of this agreement.” Attached hereto as Exhibit 5 is a true and accurate copy of the 2016 SOW, bearing bates numbers RCRR004286-289.

9. In addition to the SOWs' contractual requirement to utilize Closed Loop, Doug Smith, Director at SONY, also communicated to me several times that all cathode ray tube containing electronic waste material ("E-Waste") collected by RCRR for SONY was to be delivered to Closed Loop for recycling.

10. Sony intended for RCRR to bring all of the Sony-related, New York sourced E-Waste to Closed Loop. RCRR, certainly, did not intend to arrange for treatment or disposal of hazardous substances by shipping E-Waste per Sony's instruction, to Closed Loop for recycling.

11. From February 20, 2014 through March 29, 2016, all E-Waste delivered by RCRR to 1655 and 1675 Watkins Road in Columbus, Ohio (the "Facility") was delivered per the terms of the Agreement, the Amendment, 2014 SOW, 2015 SOW, and 2016 SOW. In other words, *all* of the E-Waste transported by RCRR to the Facility from February 20, 2014 through March 29, 2016 was at the direction and arrangement of SONY per the terms of the cited contracts.

12. From February 20, 2014 through March 24, 2016, RCRR did not deliver E-Waste to the Facility on behalf of, or at the request of, any entity other than Sony.

13. RCRR delivered at least 11,040,671 pounds of E-Waste to the Facility from February 20, 2014 through March 24, 2016 at the direction of SONY.

14. At SONY's request, I created a table with the amount of E-Waste that RCRR transported to the Facility on behalf of SONY per year during the years 2014, 2015, and 2016. This table was provided to SONY on September 14, 2018. Attached hereto as Exhibit 6 is true and accurate copy of the table created for and provided to SONY.

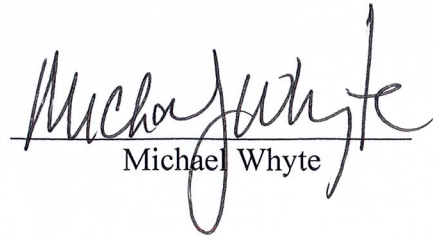
15. Upon information and belief, the table was produced to Plaintiffs and other parties in this matter on July 7, 2020.

16. As demonstrated by invoices, bills of lading, and other documents produced in this matter, and summarized in the table, RCRR shipped 11,040,671 pounds of E-Waste to the Facility at SONY's direction from February 20, 2014 through March 24, 2016. RCRR had no choice in the selection of the Facility. It was the arrangement that SONY required.

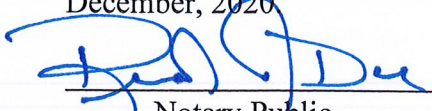
17. RCRR advised Plaintiffs in its Responses to the First Set of Interrogatories and First Request for Production of Documents by Plaintiff Garrison Southfield Park LLC, served on July 7, 2020, that SONY played a role related to the transportation of E-Waste to the Facility, and that SONY "arranged" for RCRR to transport E-Waste to the Facility per the terms of the contracts between RCRR and SONY.

WHEREFORE, it is respectfully requested that the Court deny the Plaintiffs' Joint Motion for Settlement Approval with Defendant Sony Electronics Inc. in its entirety, or in the alternative, require that the 11,040,671 pounds of E-Waste that SONY arranged to be brought to Closed Loop Recycling & Recovery, Inc. be deducted from the amount of E-Waste that RCRR is alleged to have brought to the Facility, together with such other and further relief as the Court deems just and proper.

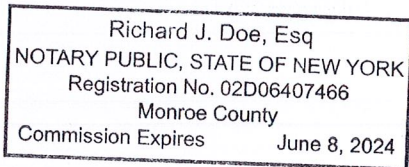
DATED: December 3, 2020


Michael Whyte

Subscribed and sworn to
before me this ___ day of
December, 2020



Notary Public



ELECTRONIC WASTE RECYCLING SERVICES AGREEMENT

THIS ELECTRONIC WASTE RECYCLING SERVICES AGREEMENT (the “**Agreement**”) entered into and effective as of January 1, 2014 (the “**Effective Date**”), is by and between Sony Electronics Inc., with offices at 16530 Via Esprillo, San Diego, CA 92127 (“**Sony**”) and Regional Computer Recycling & Recovery LLC, d/b/a RCR&R with offices at 7318 Victor Mendon Road, Victor, NY 14564 (“**Company**”).

WHEREAS, Company is in the business of collection, management and recycling of electronic waste materials; and

WHEREAS, Sony is in the business of manufacturing, distributing and selling various electronic products, accessories and components; and

WHEREAS, Company has the experience, equipment, facilities and personnel to collect, transport (or cause to be transported), sort and recycle scrap electronic products, accessories and components and Sony wishes to retain Company to perform such services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the signing and delivery hereof, Company and Sony hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. As used in this Agreement the following words and phrases have the definition shown:

- (a) Certificate of Destruction or Recycling: The term “**Certificate of Destruction or Recycling**” shall apply to the form of attestation provided by Company as outlined in Section 3.5 of this Agreement.
- (b) Destroy or Destruction: For avoidance of doubt, the words “**destroy**” or “**destruction**” shall mean to damage (including shredding, drilling through hard drive or other storage media) and render the Waste Products (defined below) irreparable. Destruction shall include NAID Certification destruction protocol or DOD wiping protocol or some other protocol rendering previously stored data irrecoverable.
- (c) Facility: The term “**Facility**” shall refer to Company’s electronic waste recycling facility or facilities where the Services are to be performed. As of the Effective Date, the Facility locations are as set forth in any attached Statement of Work and may be updated by Company from time to time.

- (d) Purchase Order: The term “**Purchase Order**” shall refer to Sony’s standard purchase order form.
- (e) Recycle or Recycling: For avoidance of doubt, the words “**recycle**” or “**recycling**” shall refer to the receipt, sorting, and disassembling of Waste Materials and sale of salvaged parts and residual commodities therefrom.
- (f) Services: Services shall refer to those electronic waste services performed by Company or its contractors and subcontractors to collect, transport, reclaim, process, disassemble and recycle the Waste Materials in accordance with the terms and conditions of this Agreement (the “**Services**”). Company shall perform certain services as more particularly described in Statements of Work (each an “**SOW**” and collectively, “**SOWs**”) entered into from time to time, to be attached to this Agreement and incorporated herein by this reference upon execution by Sony and Company. The SOWs will be in a form substantially similar to Exhibit A attached hereto and shall make specific reference to this Agreement.
- (g) Source Documentation: The term, “**Source Documentation**” shall refer to the information collected when specifically required which describes the last registered collection site with sufficient detail. Required detail will enable follow up confirmation that entity receiving free collection/recycling system under this Agreement was a legitimate participant.
- (h) Waste Materials: The term “**Waste Material**” shall include consumer electronic products, accessories and components containing metals, plastics, glass. Such consumer electronic products, accessories and components include, without limitation, stand alone/component audio and video products, desk-top and lap-top computers, cathode ray tube (“**CRT**”) displays; flat panel and rear projection displays, optical and magnetic media hard drives and various handheld electronic products including but not limited to product accessories, portable music cassette and CD and DVD players and MP3 players. The Waste Material expressly excludes any product, part or component with a lamp containing mercury. It is inherent that some products containing fluorescent lamps do contain small amounts of mercury. Fluorescent lamps that are utilized or taken from a video display device are considered Waste Materials. Fluorescent lamps not meeting this criterion shall not be processed under this contract (e.g. traditional fluorescent bulbs used for lighting).

ARTICLE II

TERM & TERMINATION

Section 2.1. Term. The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date of this Agreement, unless earlier terminated in accordance with the provisions of this Agreement (the “**Term**”). Upon expiration of the Term, the parties may mutually

agree to extend the term for another one (1) year period upon the same terms and conditions contained herein.

Section 2.2. Termination. Either party may terminate this Agreement as follows:

(a) without cause, at any time, upon one-hundred eighty (180) days after the terminating party mails (by certified mail, return receipt requested or recognized overnight carrier), or personally delivers written notice of such termination, to the other party, provided that Company shall complete the Services with respect to any Waste Materials delivered to and accepted by Company prior to the termination date and Sony shall pay Company its full charges for such Services; or,

(b) immediately upon a party's breach of any covenant, duty or obligation of such party hereunder; or,

(c) immediately in the event a party becomes insolvent, makes an assignment for benefit of creditors, or seeks protection under any federal or state bankruptcy or insolvency laws, or if a bankruptcy petition is filed by or against such party.

ARTICLE III

SERVICES

Section 3.1. Non-Exclusive Services. This Agreement shall be non-exclusive to each party such that Sony may retain similar services from other vendors and Company may perform similar services for other customers.

Section 3.2. Services/Statements of Work. When Sony desires to request Services from Company, Sony shall submit a new SOW to Company. Once the SOW is fully executed by both parties, Company shall issue in writing a quotation of the Services to be performed and the costs to either party to be charged in connection with the Services. If Sony accepts Company's quotation, it shall issue a Purchase Order for the Services. Notwithstanding the foregoing, the terms and conditions of this Agreement shall supersede any conflicting terms and conditions of the Company's quotation and the Purchase Order and except for the description of Services and pricing therefore additional terms in the quotation and Purchase Order(s) shall be of no force or effect.

Section 3.3. Transportation and Title to Waste Materials.

(a) If Company transports the Waste Material or arranges for transportation of the Waste Material by a designated contractor or subcontractor then in either case:

(i) Unless otherwise provided in an SOW, Company shall be responsible for loading the Waste Materials onto transport vehicles. In loading vehicles, Company shall comply in all respects with all applicable federal, state, and local laws, regulations, and orders.

(ii) Company shall transport and deliver the Waste Material in full compliance with all applicable federal, state and local laws, regulations, and orders and in a manner which will not create an undue risk of harm to public health, Sony or the environment.

(iii) In the event of any emergency or accident during transport of the Waste Materials, Company shall immediately notify Sony and take all steps required to comply in all respects with applicable federal, state and local laws, regulations, and orders.

(d) Ownership in and title to the Waste Materials shall transfer and vest in Company upon receipt of the Waste Materials by Company.

Section 3.4 Processing and Documentation of Waste Materials. Company agrees to the following:

(a) Sony-Branded Waste Materials from Sony Operations: Unless otherwise set forth in the SOW, Company shall sort, disassemble and either recycle or destroy all Sony-branded Waste Materials as set forth herein. Unless otherwise set forth in the SOW, Company shall not sell, or offer to sell Sony-branded Waste Materials, other than for the express and sole purpose of the recycling of Waste Materials provided herein or the recovery of raw materials such as plastics, metals, and various pieces and components contained in the Waste Materials.

All Sony-Branded Waste Materials, except from sources outlined in 3.4(b), are to be processed as follows:

1. remove Waste Materials from Sony-branded packaging
2. original packaging and paperwork (e.g. manual, warranty card, etc.) to be discarded
3. If Sony branded, remove or deface Sony name/logo; by grinding off or physically removing any and all "Sony" insignia, no matter the location on or within the device. (Note: Covering "Sony" marking over, and/or inhibiting view of "Sony" on the Waste Materials is not considered "removal").
4. remove or deface serial number, model number and related information (e.g. bar code), as described in Section 3.4, subsection (a) (3) above;
5. the following reusable components may be sold "as is":

Power supply cords* (ex: AC adaptors)
Carrying cases*
Printed circuit boards
Optical readers
Video cards IC's and chip sets

*all references to Sony name/logo to be removed or defaced

(b) Processing of Other Waste Materials. Non-Sony branded Waste Materials from Sony Operations and Waste Materials received from third parties as part of a voluntary takeback/recycling program sponsored by Sony as set forth in an SOW (each a **"Take-Back Program"**) and Waste Materials received or managed as part of a Sony compliance program (ex: extended producer responsibility laws in multiple states) shall be processed per the following conditions:

Company shall:

1. Complete necessary documentation in reasonable detail certifying that for each pallet, shipment or load of Waste Materials, Waste Materials have been properly handled/processed. Issue Certificate of Destruction or Recycling.
2. Destroy or wipe clean any stored data contained on any Waste Materials' hard drive or other storage device upon receipt of same.
3. Issue Certificate of Destruction or Recycling as set forth in Section 3.5 below.
4. Process, sort, disassemble and/or destroy Waste Materials.
5. Store or manage Waste Materials in a covered area protected from rain water run-off.
6. Not sell, resell, transfer, convey, ship or otherwise allow the Waste Materials to be exported to any country except in strict compliance with all applicable U.S. and country of destination laws and regulations. Such compliance includes, without limitation, obtaining documentation of appropriate regulatory approvals from receiving countries where such approvals are necessary.
7. If Company is retained by Sony to administer a voluntary Take-Back Program (pursuant to a duly executed SOW), Waste Material received shall be limited and documented per the following criteria:
 - (i) Customer must reside in State not covered by any existing Extended Producer Responsibility Law (list of applicable states to be identified on SOW)
 - (ii) Limit customer to no more than 5 units per day;
 - (iii) Obtain Source Documentation of each customer. Include name, address and telephone number or email address, unless otherwise defined for special events;
 - (iv) No recycling fees to be assessed to customer (premium service, such as reasonable pick up charges are acceptable);
 - (v) Company to accept non-Sony products at a reasonable charge; and
 - (vi) Company to maintain Source Documentation in easily retrievable format and provide to Sony upon request.

All Waste Materials delineated by Sony as subject to a current recall received by Company are to be destroyed unless the SOW provides otherwise.

All Company employees and/or contractors shall be trained on the proper procedure for handling and processing of Waste Materials and shall be subject to disciplinary action for any violation of this Agreement.

Section 3.5. Certificate of Destruction or Recycling. Company shall supply to Sony a Certificate of Destruction or Recycling (as defined in Section 1.1 (a) above) in a form reasonably acceptable to Sony containing a description of the Waste Materials destroyed and the date on which Waste Materials were destroyed and shall maintain a record or log of such disposition of the Waste Materials. Certificates of Destruction or Recycling shall consist of certification by manager documenting receipt and preparation of Waste Materials for recycling in accordance with this Agreement and post-processing disposition including, when appropriate, digital photographs, copies of which shall be attached to the Certificate of Destruction or Recycling. With each invoice submitted by Company, one copy of the Certificate of Destruction or Recycling shall be sent to Sony.

Section 3.6. Internal Audits. Company senior management will conduct internal audits at regular intervals to ensure adherence to the requirements and obligations of this Agreement.

Section 3.7. Compliance. Company shall obtain and maintain certification with either EPA R2 or R2/RIOS standards, or BAN's E-Stewards ("**Commitment**"). Accordingly, Company's operations, policies, and programs shall comply with the following standards:

- a) Export: All exports and imports of hazardous electronic waste will comply with International Waste Trade Agreements (as defined below) designed to prevent Developed Countries from dumping hazardous electronic waste on Developing Countries (as defined below), regardless of whether or not these agreements are in legal force in any particular country concerned;
- b) Prison Labor: Locations established and designated for the exclusive purpose of detaining persons charged with or convicted of an offense shall not be utilized in obligation fulfillment;
- c) Disposal: Every reasonable effort will be made to control all hazardous electronic wastes and manage their disposal as hazardous waste and therefore prevent them from entering solid waste landfills or incinerators, including waste-to-energy incinerators.
- d) Downstream Auditing: In addition to carrying out the obligations set forth in R2/steward standard, auditing of downstream recyclers/processes shall be conducted through the process until the recyclable is rendered as a usable commodity at an end processor. Additionally, the EICC Supplier Code of Conduct* shall be used to measure downstream processors.

**EICC: Electronics Industries Citizenship Coalition organization. The EICC Code of Conduct was established to ensure worker safety and fairness, environmental responsibility, and business efficiency. The Code of Conduct provides guidelines for*

performance and compliance with critical CSR policies and conflict minerals traceability. EICC provides tools to audit compliance with the code, and helps companies report progress. The Code of Conduct provides guidance in five critical areas of CSR performance: Environment, Ethics, Health and Safety, Labor, Management System

For the purposes of this Commitment the following definitions apply:

“Hazardous Electronic Waste” means electronic equipment, parts and materials derived from them destined for recycling or disposal but not for direct reuse, that consists of lead- or beryllium-containing circuit boards, cathode ray tubes (CRTs), CRT glass (processed and unprocessed), as well as computers, monitors, peripherals and other electronics containing such circuit boards and/or CRTs. It will also include batteries and battery packs containing lead, cadmium and mercury; as well as mercury-, beryllium- and PCB-containing components, lamps and devices. The definition of “hazardous electronic waste” will not include non-hazardous wastes such as copper unless it is contaminated with a Basel Convention hazardous waste such as lead, cadmium, beryllium, PCBs, mercury, etc. (constituents listed in Basel Annex I). The definition of “hazardous electronic waste” includes non-working parts or devices exported for repair unless assurances exist that hazardous components (such as CRTs or circuit boards) will not be disposed of in the importing country as a result. The definition of “hazardous electronic waste” does not include working equipment and parts that are fully tested, certified and labeled as working, and that are not intended for disposal or recycling, but for donation, re-use and resale. The term ‘hazardous electronic waste’ as used in this Commitment does not pertain to, nor is synonymous with any current legal U.S. or other national definitions of ‘hazardous waste’, but is meant for the purposes of this Commitment only. If the electronic equipment is to be used as a direct feedstock in manufacturing without further processing or preparation (e.g., cleaned CRT cullet), then a Competent Authority of the importing country may make a determination that the material is not a waste, and therefore not a hazardous electronic waste. Such a determination provided in writing by the legitimate Competent Authority and provided to the holders of this Commitment will be required to exercise this exemption.

“International Waste Trade Agreements” means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and the Basel Convention Decision III/1, known as the Basel Ban Amendment. With respect to the Basel Convention, signing this Commitment will mean, among other things, ensuring environmentally sound management and consent from the recipient country prior to export of hazardous electronic waste except in those instances where the Basel Ban Amendment applies. With respect to the Basel Ban Amendment, signing this Commitment will mean that all exports of hazardous electronic waste (as defined above) must not be allowed to be exported from developed (as defined below) to developing countries (as defined below) for any reason.

“Developed Country” means any member country of the Organization for Economic Cooperation and Development (OECD), the European Union (EU) and Liechtenstein.

“Developing Country” means all countries not belonging to the Organization for Economic Cooperation and Development (OECD), the European Union (EU) and Liechtenstein.

“**Competent Authority**” means the entity (usually a government agency) in any country that has ratified the Basel Convention, and that is responsible for overseeing their country’s compliance with the Basel Convention.

Company agrees to permit Sony to regularly audit Company’s operations to assess conformity with these requirements.

Section 3.8. Use of Sony Logo.

(a) Sony hereby grants to Company a limited, non-exclusive, royalty-free, non-transferable right and license to use certain names, marks and logos of Sony in the form attached hereto as **Exhibit B** (the “**Marks**”), as follows: (i) only in connection with the purposes of providing Services under this Agreement during the Term of this Agreement; and (ii) only upon prior approval from Sony. Except as expressly provided herein, no property, license, permission or interest of any kind in or to the use of the Marks owned or used by Sony is intended to be given or transferred to or acquired by Company by the execution, performance or nonperformance of the Agreement or any part thereof.

(b) Any advertisement, collateral, or other material to be produced or provided by Company in accordance with the Services provided under the Agreement shall be of high standard and shall be subject to the prior written approval of Sony, which approvals will not be unreasonably withheld or delayed. No material shall be used, which in the opinion of Sony: (i) is inconsistent with Sony’s overall image; (ii) might jeopardize any proprietary rights of any party or a third party; (iii) violates any contractual obligation of the parties; or (iv) does not comply with any relevant laws.

(c) All such use of the Marks shall be in accordance with Sony’s reasonable policies regarding advertising and trademark usage as shall be established or changed from time to time in Sony’s sole discretion, upon written notice to Company. All usage by Company of the Marks shall include the appropriate registered or unregistered trademark symbol and, where space reasonably permits, a legend stating that the Marks are registered trademarks of Sony.

ARTICLE IV

CONFIDENTIALITY

Section 4.1. Mutual Confidentiality.

(a) Both parties agree to hold in trust and confidence all of the information regarding the other party’s business, products, services, technologies, methodologies and processes: (i) disclosed by either party, its agents or employees to the other party; or, (ii) obtained from either party or otherwise learned or created as a result of the this Agreement (collectively, the “**Confidential Information**”). The existence and terms and conditions hereof will be considered part of the Confidential Information. Each party will restrict access to the Confidential Information to only such of its employees and permitted subcontractors who: (i) require such information for the purpose of performing the Services; and, (ii) have agreed in writing with the receiving party to maintain the confidential nature of all information (including that of third parties) received by them in the course of their engagement. Neither party will use the Confidential Information for any purpose other than to perform the Services, and will protect the

Confidential Information against unauthorized use or disclosure with at least the same degree of care as each party normally exercises to protect its own information of like character and importance, but in no event less than reasonable care or such higher standard of care as is justified by the facts and circumstances of the disclosure. Each party will take all reasonable measures including, but not limited to, court proceedings, at its own expense, to restrain its employees or contractors or former employees or contractors from unauthorized disclosure or use of the Confidential Information.

(b) The Confidential Information expressly excludes any information that the receiving party can demonstrate: (i) was already known by such party; (ii) is obtained by the receiving party from a third party lawfully in possession thereof without any obligation of confidentiality; (iii) is or becomes part of the public domain through no fault of the receiving party; (iv) is independently ascertained or developed by or for the receiving party by its employees or any third party without use of any of the Confidential Information; or, (v) is approved for public release by written authorization of the disclosing party.

(c) If the receiving party is required by law, regulation or court order to disclose any of the Confidential Information, such party shall give the other party prompt notice thereof and prior to making any such disclosure in order to allow the disclosing party to seek a protective order or other appropriate remedy from the proper authority. The receiving party will cooperate with the disclosing party in seeking such order or other remedy or in defining the scope of any required disclosure.

(d) Upon termination of this Agreement, or earlier upon either party's request, a party shall deliver all items containing any of the Confidential Information to the requesting party or make such other disposition thereof as a party may direct; provided, however, that receiving party (i) may retain one copy thereof in the confidential, restricted access files of its Law Department for use only in the event a dispute arises between the parties hereunder and only in connection with that dispute, and (ii) shall have no obligations to destroy or purge electronic copies generated for back-up or disaster recovery purposes and maintained in accordance with receiving party's ordinary operating procedures ("Archives"). Receiving party shall not retrieve or access Archives for any purpose inconsistent with the subject matter of this Agreement and in no event whatsoever after the Term of this Agreement. Receiving party's obligations of confidentiality under this Agreement shall survive and shall continue to apply to Archives pending destruction.

(e) Each party shall maintain all materials relating to or containing the Confidential Information in a restricted access area and plainly marked to indicate the secret and confidential nature thereof and to prevent unauthorized use or reproduction thereof.

(f) Either party's disclosure of the Confidential Information to the other party shall not constitute any option, grant or license to the receiving party under any patent or other rights now or hereinafter held by the disclosing party, its parents, subsidiaries or other affiliates.

(g) To the extent Company receives Personal Information (as defined in the attached Exhibit C), Company will comply with the terms and conditions of the Confidentiality Regarding the Receipt of Personal Information Exhibit attached to this Agreement and made a part hereof with respect thereto.

(h) Company gives assurance to Sony that it shall not knowingly, unless it has obtained prior written authorization from the U.S. Department of Commerce or is otherwise permitted by the U.S. Department of Commerce Export Administration Regulations, either export or otherwise disclose,

directly or indirectly, any technology received from Sony or allow the direct product thereof to be shipped, either directly or indirectly, to any destination that is proscribed under Part 740 of the U.S. Department of Commerce Export Administration Regulations or to any national of any one of those countries and will give Sony prior notice if it employs as an employee or engages as a permitted subcontractor any such national to perform the Services.

ARTICLE V

COMPANY'S REPRESENTATIONS AND WARRANTIES

Section 5.1. Representations and Warranties. Company represents and warrants that:

- (a) it understands such currently known hazards which are presented to persons, property and the environment in the disposal of the Waste Materials;
- (b) it shall render the Services in accordance with this Agreement and in accordance with any and all applicable federal, state, and local laws, rules, regulations and orders;
- (c) it shall at all times be licensed and permitted to perform the Services;
- (d) in the event Company loses its permitted status during the Term hereof, Company will immediately notify Sony of such loss;
- (e) Company is engaged in the business of collecting, transporting, managing, disposing and recycling the Waste Material and has the requisite experience, skill, expertise, facilities (or access thereto), equipment, qualified personnel, all applicable permits and approvals and the legal right for performance of all aspects of this Agreement;
- (f) Company represents and warrants to Sony that, with respect to any of its employees who will perform the Services in the United States, it has properly executed a current Form I-9 and, if such employee is on visa status, that employee is in full compliance with such status and that, where applicable, Company has a valid Labor Condition Application on file covering each and every Sony location where the Services are to be performed. Company also represents and warrants to Sony that it will be solely responsible for the employment and remuneration of its employees and permitted subcontractors and any claims with respect thereto, and will be solely responsible for the withholding and payment of all federal, state, and local income taxes as well as all FICA and FUTA taxes applicable to Company, or such employees and subcontractors. Company acknowledges that, as an independent contractor, neither Company nor any of such employees or subcontractors will be eligible for any Sony employee benefits including, but not limited to, vacation, medical, dental, or pension benefits.
- (g) Company's subcontractors shall have all necessary permits, licenses, certificates or approvals required for performance of all subcontracted Services under this Agreement in full compliance with all applicable federal, state and local laws and regulations; and

(h) any transport or working vehicles used by Company or its subcontractors to perform Services hereunder shall be licensed and permitted as required for full compliance with all applicable federal, state and local laws and regulations.

Section 5.2. Survival. Company acknowledges and agrees that all Company's representations and warranties made in this Agreement are material in every respect and shall survive the termination of this Agreement and that time is of the essence in Company's performance of its representations, warranties, duties and obligations hereunder.

ARTICLE VI

REPORTS FROM COMPANY

Section 6.1. Written Reports. In addition to written reports and documentation required by the attached SOWs, Sony may periodically make reasonable requests for other written reports concerning Company's Services and other matters pertaining to the Services and Company shall promptly provide such reports to Sony at no additional charge.

ARTICLE VII

FEES AND EXPENSES

Section 7.1. Fees. As full and complete consideration for the Services to be performed by Company, and for the rights granted/assigned by Company to Sony under this Agreement, Sony shall pay Company such fees as are set forth in the applicable SOW (the "**Fees**"). All Fees will be invoiced in the manner specified in the applicable SOW and Company will submit invoices therefor that conform to Sony's reasonable requirements. Any of the Fees payable on a per diem/per hour basis will only be for those days/hours Company actually performs the Services. Payment of the Fees is subject to completion of the Services covered thereby to the reasonable satisfaction of Sony. Company represents to Sony that such Fees are at least as favorable as those charged to other clients of Company for the performance of services similar to the Services.

Section 7.2. Expenses. Sony will reimburse Company for reasonable expenses incurred in connection with performance of the Services of the type set forth on the applicable SOW (the "**Expenses**"). Such expenses must either be set forth in detail on the applicable SOW or approved in advance in writing by Sony. Reimbursement of such expenses will be conditioned upon providing Sony with an invoice issued in accordance with the applicable SOW and itemized receipts and supporting documentation submitted in accordance with Sony's instructions. Any of the Expenses paid on a per diem basis will only be for days that Company actually performs the Services.

Section 7.3. Invoices. Sony will have no obligation to pay any invoice submitted more than ninety (90) days from when such invoice should have been issued according to the applicable SOW. Sony will pay undisputed invoices from Company within sixty (60) days of Sony's receipt thereof.

Confidential

Section 7.4. Amounts Due. If Company has any inquiries or problems or believes there are errors or discrepancies with respect to any amounts due it pursuant to this Agreement, Company shall give Sony notice thereof within ninety (90) days from the date that the Services which gave rise to the inquiry, problem and/or discrepancy, etc. were performed. Company's failure to give Sony such notice or Company's failure to invoice Sony for any Fees or Expenses within ninety (90) days after such Fee is earned or Expense is incurred will constitute a waiver of any and all rights which Company may have to any payment, adjustment, charge or reimbursement by reason thereof.

Section 7.5. Accounting Records. Company shall maintain complete and accurate accounting records concerning the Services in accordance with United States generally accepted accounting principles, and will retain such records for a period of seven (7) years following their date of creation. Sony, or its designated auditor, will have the right, upon reasonable notice, to audit, at any time during the term of this Agreement, and for a period of up to one (1) year after payment of its final invoice, Company's records relating to the performance of the Services and the Fees and Expenses and the Company's controls in connection therewith. Company will repay Sony for any amount Sony overpaid, or should not have paid, to Company hereunder discovered as a result of such audit or otherwise, and for the reasonable cost of such audit if such overpayment is discovered as a result thereof. In this regard, Company represents and warrants to Sony that, with respect to the Services and the Fees and Expenses, it has established and maintains internal accounting and operating controls designed to ensure that the Services performed, and the Fees and Expenses charged, and its other obligations hereunder, are accurately documented in accordance with generally accepted accounting principles and the other requirements hereof.

ARTICLE VIII

INDEMNIFICATION

Section 8.1. Indemnification by Company. Company shall indemnify and hold harmless Sony (and Sony's employees, directors, officers and agents) against all claims, lawsuits, actions, causes of action, liabilities, losses, damages, injuries, demands, costs and expenses (including, but not limited to, court costs, reasonable attorney's fees, costs of settlement, investigation costs and other defense costs), fines, penalties and other charges resulting from:

- (a) Company's breach of or failure to perform any of Company's covenants, representations, warranties, duties or obligations contained in this Agreement; or
- (b) any negligent acts or omissions or willful misconduct of Company.

Section 8.2 Indemnification by Sony. Sony shall indemnify and hold harmless Company (and Company's employees, directors, officers and agents) against all claims, lawsuits, actions, causes of action, liabilities, losses, damages, injuries, demands, costs, and expenses (including, but not limited to, court costs, reasonable attorneys' fees, cost of settlement, investigation costs and other defense costs), fines, penalties and other charges resulting from:

- (a) Sony's breach of or failure to perform any of Sony's covenants, representations, warranties, duties or obligations contained in this Agreement; or

- (b) any negligent acts or omissions or willful misconduct of Sony.

Section 8.3. Survival of Indemnification. The obligations and representations set forth in this Section VIII shall survive termination of this Agreement for any reason.

ARTICLE IX

INSURANCE

Section 9.1. Insurance Coverages. Throughout the term of this Agreement, Company shall maintain the following coverages with carriers having a Best's rating of A-VII or above:

(a) Workers' Compensation, minimum statutory limits, and Employer's Liability with limits of \$1,000,000/ accident, \$1,000,000/ disease each employee, \$1,000,000/ disease aggregate;

(b) General Liability, including blanket contractual and products liability, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate and will extend to the indemnification provided above;

(c) Commercial Automobile Liability Insurance with limits of liability not less than \$1,000,000 for bodily injury and property damage (the Commercial Automobile Liability coverage must include coverage for all owned, leased, non-owned and hired automobiles);

(d) Umbrella Liability/Excess Liability with a limit of liability of not less than \$4,000,000 each occurrence and in the aggregate, combined single limit for bodily injury and property damage (the Umbrella Liability Policy must be in excess of the General Liability, Commercial Automobile Liability, and Employer's Liability coverages and follow form from them); and

(e) Environmental Impairment \$1,000,000

Section 9.2. Certificates. Simultaneously with the execution hereof, Company will furnish to Sony an insurance certificate evidencing that it maintains the coverages required by this Section. Sony, its parent company(ies), subsidiaries, and their employees, directors, officers and agents will be identified as additional insureds for each policy, with the exception of the Workers Compensation, required by this Section.

Section 9.3. Continued Coverage. If any policy is written on a claims made basis, any renewal policies and/or any subsequent policies issued by the same or another carrier shall continue to provide coverage for claims arising out of the Agreement during the Term and all Renewal Terms or, at termination of any such policy, the vendor shall purchase 3-year extended reporting period.

Section 9.4. Notice; Primary Coverage. The insurance policies and certificates required above shall contain a provision that coverage will not be non-renewed, materially changed, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to Sony. Such policies will provide that the insurance provided for therein are primary insurance over any other valid and collectible insurance that the additional insureds may have with respect to a loss arising out of Company's operations; that other insurance of any additional insured applicable to a loss is excess over the obligations under such policy; and, that the carrier's liability under such policy will not be reduced by the existence of such other insurance.

ARTICLE X

INSPECTIONS AND AUDITS

Section 10.1. Inspections and Audits. With or without prior notice, Sony shall have the right to inspect the Facility and to audit Company's books and records pertaining to the Services and to obtain copies of all written licenses, permits, approvals, operations, plans, or other documents issued by or required by any governmental entity or agency to Company or its subcontractors which relate to the performance of the Services. This shall also include the right to inspect the handling, loading, transportation, storage, recycling, reclamation or disposal operations conducted by Company or the specified treatment, storage, recycling, reclamation, or disposal Facility in the performance of the Services. Such inspections shall not operate to relieve Company of its responsibility or liability under this Agreement, and shall not imply Sony's agreement with the practice and procedures of Company which are observed.

ARTICLE XI

NOTICES

Section 11.1 All notices and other communications required or permitted to be given under this Agreement shall be in writing and will be delivered personally, or mailed by registered or certified mail, return receipt requested, postage prepaid, or other recognized overnight carrier or by telex, telecopy or other form of rapid transmission, confirmed by mailing or recognized overnight carrier as described above, addressed as follows:

If to Sony: Sony Electronics Inc.
16530 Via Esprillo
San Diego, CA 92127
Attention: Doug Smith
Facsimile # (858) 942-0779

With a copy to: Sony Electronics Inc.
16530 Via Esprillo, MZ1105
San Diego, CA 92127
Attention: General Counsel

If to Company: Regional Computer Recycling & Recovery LLC
7318 Victor Mendon Road, Victor, NY 14564
Attention: Mike Whyte
Email: Mike@ewaste.com
Facsimile # 585-924-3841

Any notice so addressed and delivered personally will be deemed given upon receipt. Any notice so addressed and mailed will be deemed given upon deposit in the United States mails, and if sent by rapid transmission followed promptly by mailing or sent via recognized overnight carrier, upon receipt of such transmission. Either party may change its address by giving the other notice thereof in the manner provided in this Section.

ARTICLE XII

MISCELLANEOUS

Section 12.1. No Sale of Goods. This Agreement constitutes a contract for Services only and the passage of possession and/or title of the Waste Materials between the parties shall not cause the transaction to be deemed a sale of goods or this Agreement to be a contract for the sale of goods.

Section 12.2. Independent Contractor. Company shall be completely independent in rendering the Services hereunder and performing any other duty and obligation hereunder and shall not act as an agent, employee or other representative of Sony. Company shall perform all Services and any other duties and obligations hereunder as an independent contractor and, therefore, shall maintain complete control over Company's employees, agents, subcontractors, representatives and methods of operations (including, but not limited to, the Services).

Section 12.3. Entire Agreement. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between Company and Sony regarding the subject matter hereof. Company and Sony acknowledge that there are no oral or other written understandings, agreements and/or arrangements between the parties relating to the subject matter of this Agreement. This Agreement shall not be modified or amended except by written instrument signed by both parties.

Section 12.4. Amendments. This Agreement may be periodically amended only by written document signed by both Sony and Company.

Section 12.5. Waiver. No course of dealings between the parties, no waiver by Company or Sony, and no refusal or neglect of Company or Sony to exercise any right hereunder or to enforce compliance with the terms of this Agreement shall constitute a waiver of any provision herein with respect to any prior or subsequent breach, actions or omissions hereunder, unless such waiver is expressed in writing and signed by the waiving party.

Section 12.6. Force Majuere. The failure to perform or delay in performance of either party is excusable only to the extent that such failure or delay is due to the following specified causes entirely

beyond the control of such party: acts of God, acts of war, riot, sabotage, strikes, fires, explosions, or floods that are not caused in whole or in part by the negligence of the nonperforming party and provided the party claiming delay provides the other party with notice of same.

Section 12.7. Governing Law and Venue. This Agreement shall be deemed to have been made and executed in the State of Delaware and any dispute arising hereunder will be resolved in accordance with the laws of the Delaware, without reference to its conflict of laws principles. The parties hereby consent to and submit to the jurisdiction of the federal and state courts located in the State of Delaware. Any action or suit under this Agreement or otherwise arising from the relationship between the parties will only be brought: (a) by Company in any federal or state court with appropriate jurisdiction over the subject matter hereof established or sitting in the State of Delaware; or, (b) by Sony in any federal or state court with appropriate jurisdiction over the subject matter hereof established or sitting in the State of Delaware or any other federal or state court with appropriate jurisdiction over Company and such subject matter. In the event of any dispute related to this Agreement, the prevailing party will be entitled to recover all its expenses related to such dispute including reasonable attorneys' and experts' fees and court costs. **THE PARTIES WILL NOT RAISE IN CONNECTION HEREWITH, AND HEREBY WAIVE, TRIAL BY JURY AND/OR ANY DEFENSES BASED UPON THE VENUE, THE INCONVENIENCE OF THE FORUM, THE LACK OF PERSONAL JURISDICTION, THE SUFFICIENCY OF SERVICE OF PROCESS OR THE LIKE IN ANY ACTION OR SUIT ARISING FROM SUCH DISPUTE.**

Section 12.8. Assignment. Company shall not have the right to assign its rights or obligations under this Agreement without the consent of Sony. Subject to this limitation, the benefits and obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, legal representatives, successors and assigns.

Section 12.9. Dispute Resolution. The parties shall attempt in good faith to resolve any controversy or claim arising out of or in connection with this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy (but who do not have direct responsibility for the administration of this Agreement). The disputing party will give the other party written notice of the dispute. Within twenty (20) days after receipt of such notice, the receiving party will submit to the other a written response. Such disputing party notice and such receiving party response will include: (i) a statement of its position and a summary of the evidence and arguments supporting its position; and, (ii) the name and title of the executive who will represent it in the negotiations. Such executives will meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the dispute is not resolved pursuant to such procedure within sixty (60) days of the disputing party's notice, or if either party will not meet within thirty (30) days, then either party may initiate litigation by giving thirty (30) days prior notice to the other party. Notwithstanding the foregoing, either party may initiate litigation immediately with respect to any matter arising out of or in connection with this Agreement for which equitable relief is sought. All dates specified in this Section may be extended by the mutual written agreement of the parties.

Section 12.10 . Non-Exclusive Performance. This Agreement shall be for the nonexclusive performance of the Services.

Section 12.11. Limitation of Liability. Except as specifically provided in this Agreement, in no event shall Company or Sony or their affiliates be liable to the other or its affiliates for any special, incidental or consequential damages or losses of any kind which may be suffered by the other relating to the subject matter of this Agreement. Such damages include, but are not limited to, prospective profits, expenditures, investments or commitments, whether made in the establishment, development or maintenance of business reputation or goodwill, or for any other reason whatsoever, including, but not limited to, the claims of any third party. Company and Sony acknowledge that this limitation of liability will in no way affect either party's right to seek appropriate relief at law for any death, personal injury or damage to tangible property due to the other's negligence, willful misconduct, strict liability in tort with respect to the subject matter hereof or breach or default of this Agreement.

Section 12.12. Public Announcement Consent. Subject to any applicable laws, regulations or ordinances, including, without limitation, securities laws or regulations, neither party shall make or cause to be made, whether orally or in writing or otherwise, any public announcement or statement to the news media or the investment or business communities with respect to the transactions contemplated by this Agreement without the prior written consent of the other as to the form, content and timing; of such announcement or disclosure, which approval will not be unreasonably delayed or withheld.

Section 12.13. Invalidity. If any term or condition of this Agreement (or portion thereof) is held to be invalid or otherwise unenforceable by a court of competent jurisdiction, such term or condition (or part thereof) shall be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be deleted from this Agreement, while the remaining provisions of this Agreement will remain in full force and effect.

Section 12.14 Executions - This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together will be deemed to constitute the Agreement when a duly authorized representative of each party has signed a counterpart. The parties may sign and deliver this Agreement by facsimile or electronic (i.e. .PDF) transmission. Each party acknowledges that the delivery hereof by facsimile or electronic transmission will have the same force and effect as delivery of original signatures.

IN WITNESS WHEREOF, Sony and Company have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

SONY ELECTRONICS INC.:

COMPANY: RCR&R

By: 
(Authorized Signature)
Name: DOUGLAS SMITH

By: 
Name: Mike Whyte

Title: Director

Title: President

Electronic Waste Recycling Services Agreement
SONY CONFIDENTIAL 04-15-10

EXHIBIT A: SOW

Attachment B: Tier 1, 2 and 3 E-waste recycler certifications

Tier 1: First facility to receive e-waste from consolidation point

Tier 2 and 3: downstream locations that receive Focus Materials (lead, batteries, mercury-containing lamps, etc.). Facilities that do not receive Focus Materials do not need to be listed.

RECYCLER COLLECTION LOCATIONS

See separate spreadsheet attachment

Confidential

EXHIBIT B

SONY LOGO

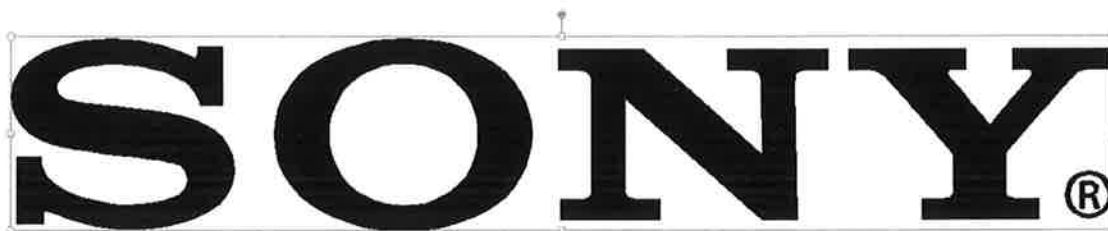


EXHIBIT C
CONFIDENTIALITY REGARDING THE RECEIPT
OF PERSONAL INFORMATION

The provisions of this Exhibit C shall apply in the event that Company shall receive Personal Information (as defined below) in connection with its performance of the Services.

1. Personal Information Defined.

As used herein, the term "Personal Information" shall mean any and all information pertaining to a specific person, including without limitation, a person's e-mail address, name, mailing address, telephone number, social security number, credit card number, or persistent identifier (such as a customer number held in a cookie) which is associated with a person's individually identifiable information, which is (A) disclosed or furnished, in any form, by Sony, its affiliates, agents or employees to Company in connection with Company's performance of the Services or (B) collected on behalf of Sony by Company in connection with Company's performance of the Services. Personal Information also includes information that can, together with the information supplied by Sony or collected or to be collected by Company, identify a specific individual, even if such information cannot, by itself, identify a specific individual.

2. Confidentiality of Personal Information.

Company agrees that it shall not, without the prior written consent of Sony (except as may be required in connection with any judicial or administrative proceeding or inquiry or to such of Company's officers and employees who have a need-to-know) disclose to any person, other than the Sony employee(s) who are directing the activities of the Company in connection with this Agreement, any Personal Information. If Sony consents to the disclosure of Personal Information to a person other than as provided in the preceding sentence, Company agrees that if such person is not an employee of Sony, then Company shall require that such person first execute an agreement with Company on terms substantially similar to the provisions of this Exhibit. Personal Information shall be considered "confidential information" as that term is defined in the Agreement and shall be treated in accordance therewith, provided, however, that Company's obligations of confidentiality regarding Personal Information shall be perpetual. In addition, Personal Information shall be treated in accordance with the following requirements:

- A. Company shall strictly keep in confidence and not disclose or disseminate to any third party the Personal Information and shall not use the Personal Information without Sony's prior written consent for any purpose other than the performance of the Services.
- B. In order to protect the Personal Information as required in Section 2A, Company shall:
 - 1. except as is necessary to perform the Services, not make any copies of the Personal Information without Sony's prior written consent; and

Confidential

2. without limiting any of the confidentiality obligations under the Agreement: i) use a secure method when transmitting, storing and/or processing Personal Information; ii) ensure that Sony Personal Information is not commingled with any other company's data; iii) have an effective business continuity/disaster recovery plan in place; and iv) notify Sony of any suspected, potential or actual breach of security or other exposure involving Personal Information.
3. if credit card data is collected, processed, stored or transmitted, Company is responsible for the security of cardholder data in its possession. Specifically, Company maintains appropriate administrative, physical and technical safeguards reasonably designed to protect the security of cardholder information in Company's custody, in compliance with the PCI Cardholder Data Security Standards. Company will provide proof of compliance with PCI standards upon request.

3. Audit Rights.

Company shall permit personnel designated by Sony to review the security of Company's systems and Company's security procedures for the protection of Personal Information at least annually (during normal business hours or otherwise at Company's request). At Sony's option, such review may include, without limitation, performing penetration testing and vulnerability scans, observing operations, perusing documents and other materials, and interviewing relevant personnel of Company. If, upon such review, Sony determines that Company is not in compliance with the terms of this Exhibit Sony shall so notify Company in writing of such non-compliance.

4. Preservation of Records.

Company shall keep all logs used in connection with its security procedures for the protection of Personal Information in a secure location for a period beginning as of the Effective Date and ending two (2) years after the termination of the Agreement.

5. Indemnification.

Company acknowledges that Sony is relying on Company's representations, warranties and covenants contained herein and in the Agreement for purposes of Sony's commitments and representations made in its privacy policy. Therefore, Company agrees, at its own expense, to defend or settle any claim against Sony, its affiliates, and their respective officers, directors, employees and agents (collectively, "Sony Indemnitees") and fully indemnify the Sony Indemnitees to the fullest extent permitted by law for any damages, losses or expenses (including attorneys' fees, experts' fees, court costs and expenses) incurred by any Sony Indemnitee related to any breach of said representations, warranties and covenants by Company or its representatives or employees.

6. Term; Survival.

The provisions of this Exhibit shall become effective as of the Effective Date and shall continue in full force and effect until (A) Company returns any and all Personal Information to Sony or (B) Company makes such other disposition of the Personal Information as Sony may direct.

Notwithstanding the foregoing, the provisions of Sections 2, 4 and 5 of this Exhibit shall survive the expiration or earlier termination of the Agreement.

**STATEMENT OF WORK # 1
TO ELECTRONIC WASTE RECYCLING SERVICES AGREEMENT
DATED JANUARY 1, 2014 BETWEEN SONY AND COMPANY**

This is Statement of Work # 1 ("SOW"), effective January 1, 2014, (the "SOW Effective Date"), to the Electronic Waste Recycling Services Agreement dated January 1, 2014 (the "Agreement") between Sony Electronics Inc. ("Sony") and Regional Computer Recycling & Recovery LLC, d/b/a RCR&R ("RECYCLER"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

This SOW is in accordance to the State of New York Article 27; Title 26. Entitled "Electronic Equipment Recycling and Reuse".

WHEREAS, SONY WISHES TO ENGAGE RECYCLER to perform certain services as more fully described in this SOW and SONY desires to accept association with RECYCLER in such capacity.

NOW THEREFORE, the parties, in consideration of the mutual covenants and agreements contained herein, and constituting good and valuable consideration, and intending to be legally bound, agree as follows:

1. Definitions:

"Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

"Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, including a laptop computer and desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include both a computer central processing unit and a monitor; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, server, or other similar device.

"Computer peripheral" means a monitor; electronic keyboard; electronic mouse or similar pointing device; facsimile machine, document scanner, or printer intended for use with a computer; and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product. Computer peripheral shall not include any document scanner or printer which weighs one hundred pounds or more.

"Consumer" means a person located in the state who owns or uses covered electronic equipment, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school or board of cooperative educational services or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

"Covered electronic equipment" (CEE) means: a computer; computer peripheral; small electronic equipment; small-scale server; cathode ray tube; or television

"Electronic waste" means covered electronic equipment that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling system.

“Electronic waste collection site” means a facility at a fixed or temporary site at which electronic waste is accepted from consumers and temporarily stored for more than five days in a calendar year before such waste is transported to an electronic waste consolidation facility or electronic waste recycling facility. Electronic waste collection sites include, but are not limited to, dedicated sites and facilities for the acceptance of electronic waste, and retail stores and outlets, municipal or private electronic waste collection sites and not-for profit donation sites that have agreed to accept electronic waste.

“Electronic waste recycling facility” means a facility at which electronic waste is recycled.

“Monitor” means a separate visual display component of a computer, whether sold separately or together with a computer central processing unit, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image projection technology, greater than four inches when measured diagonally, and its case, interior wires and circuitry, and any cable cord or wiring permanently affixed thereto or incorporated into such product.

“Recycle” means to separate, dismantle or process the materials, components or commodities contained in electronic waste for the purpose of preparing the materials, components or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means. Recycling includes the manual and mechanical separation of electronic waste to recover materials, components or commodities contained therein for the purpose of reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for purposes of recycling those components.

“Small electronic equipment” means any portable digital music player that has memory capability and is battery-powered, video cassette recorder, a digital video disc player, digital video recorder, digital converter box, cable or satellite receiver, or electronic or video game console, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product.

“Small-scale server” means a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers. To be considered a small-scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box or product; intended to be operational twenty-four hours per day and seven days a week, and unscheduled downtime is extremely low, such as on the order of hours per year; is capable of operating in a simultaneous multi-user environment serving several users through networked client units; and designed for an industry accepted operating system for home or low-end server applications.

“Television” means a display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, cable or satellite transmission, having a viewable area greater than four inches when measured diagonally.

2. Term

The term of this SOW shall commence on January 1, 2014 and remain in effect until December 31, 2014.

3. Credentials and Operational Requirements

RECYCLER must exhibit and operate according to the minimum requirements detailed herein in order for this SOW to remain in effect. SONY reserves the right to request additional credentials and documentation at any time with 15 days advanced written verification.

4. Applicable Laws

RECYCLER will collect and recycle CEE's in compliance with all applicable federal, State, and local laws, regulations, and ordinances, and shall not export for disposal in a manner that poses a significant risk to the public health or the environment.

RECYCLER shall, at a minimum, demonstrate compliance with the United States Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or State law.

RECYCLER shall list 3rd party certifications for tier 1, 2 and 3 processors. (Tier 1 is first to receive from point of collection is required to have obtained R2 or equivalent certification). Attachment B: Tier 1, 2 and 3 E-waste recycler certifications.

RECYCLER shall maintain its status as a State of New York "NYS DEC Registered Recycler"

5. Services and Expectations

RECYCLER will provide collection, transportation, recycling, and reporting services ("Services") for SONY in the State of New York in addition to the minimum requirements in accordance to Article 27; Title 26. Entitled "Electronic Equipment Recycling and Reuse".

6. Plan Submittal

On behalf of Sony, RECYCLER shall submit an update to the NYDEC detailing the following:

- Methods that will be used to collect CEEs.
- The processes and methods that will be used to recycle CEEs with a description of the recycling processes that will be used.

Means that will be utilized to publicize the collection services, including specification of a website or toll-free telephone number that provides information about the recycling program in sufficient detail to allow consumers to learn how to return their used CEEs for recycling,

7. Material Downstream

At SONY's sole request RECYCLER will utilize Closed Loop Recycling & Recovery, Inc. (CLRR) as a downstream partner to process all CRT glass and/or CRT containing devices generated in direct relation to CEE's per terms of this agreement. Should CLRR choose to increase prices to RECYCLER during Term of this SOW, RECYCLER reserves right to raise price to SONY at an equivalent rate.

8. Downstream Reporting

RECYCLER will report quarterly on mass balances and ultimate destination of recovered materials. It is expected that CLRR will prepare supporting information for CRT glass management.

9. Volume and Rates for Service

RECYCLER Not To Exceed CEE Weight Request: 6,050,000 LBS. (This is estimated number and will change when NYDEC assigns SONY is final obligation)

RECYCLER Price for Services Rendered: \$0.15/LB

No more than 1/4th total contracted amount shall be billed per quarter.

10. Payment Terms

Invoices submitted by RECYCLER will be calculated upon submission. RECYCLER will be paid by SONY within sixty (60) days upon completion of services, expectations, credentials and operational requirements detailed.

11. Notices

Notices pursuant to this SOW shall be sent via first class mail or overnight carrier.

Notice in regards to this SOW shall be addressed to:

RECYCLER Contract Manager
Mike Whyte
RCR&R
7318 Victor Mendon Rd.
Victor, NY 14564
Phone: 585-924-3840
Cell: 585-739-1717
E-mail: mike@ewaste.com

SONY Contract Manager
Douglas Smith
Sony Electronics Inc.
16530 Via Esprillo
San Diego, CA 92127
Phone: (858) 775-5464
E-mail: Douglas.smith@am.sony.com

Except as specifically otherwise provided in this SOW, all of the other terms and conditions of the Agreement remain unchanged. In the event of any inconsistency between the terms and conditions of this SOW and the terms and conditions of the un-amended portions of the Agreement, the terms and conditions of this SOW shall prevail.

By signing below, this SOW has been duly executed by the parties hereto effective as of the SOW Effective Date.

RECYCLER:

Name: Mike Whyte

Title: President



Date: 3-28-14

Sony Electronics Inc.:

Name: DOUGLAS SMITH

Title: Director

Signature: 

Date: 3-28-14

**STATEMENT OF WORK # 1
TO ELECTRONIC WASTE RECYCLING SERVICES AGREEMENT
DATED JANUARY 1, 2014 BETWEEN SONY AND COMPANY**

This is Statement of Work # 1 ("SOW"), effective January 1, 2015, (the "SOW Effective Date"), to the Electronic Waste Recycling Services Agreement dated January 1, 2014 (the "Agreement") between Sony Electronics Inc. ("Sony") and Regional Computer Recycling & Recovery LLC, d/b/a RCR&R ("RECYCLER"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

This SOW is in accordance to the State of New York Article 27; Title 26. Entitled "Electronic Equipment Recycling and Reuse".

WHEREAS, SONY WISHES TO ENGAGE RECYCLER to perform certain services as more fully described in this SOW and SONY desires to accept association with RECYCLER in such capacity.

NOW THEREFORE, the parties, in consideration of the mutual covenants and agreements contained herein, and constituting good and valuable consideration, and intending to be legally bound, agree as follows:

1. Definitions:

"Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

"Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, including a laptop computer and desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include both a computer central processing unit and a monitor; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, server, or other similar device.

"Computer peripheral" means a monitor; electronic keyboard; electronic mouse or similar pointing device; facsimile machine, document scanner, or printer intended for use with a computer; and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product. Computer peripheral shall not include any document scanner or printer which weighs one hundred pounds or more.

"Consumer" means a person located in the state who owns or uses covered electronic equipment, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school or board of cooperative educational services or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

"Covered electronic equipment" (CEE) means: a computer; computer peripheral; small electronic equipment; small-scale server; cathode ray tube; or television

"Electronic waste" means covered electronic equipment that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling system.

“Electronic waste collection site” means a facility at a fixed or temporary site at which electronic waste is accepted from consumers and temporarily stored for more than five days in a calendar year before such waste is transported to an electronic waste consolidation facility or electronic waste recycling facility. Electronic waste collection sites include, but are not limited to, dedicated sites and facilities for the acceptance of electronic waste, and retail stores and outlets, municipal or private electronic waste collection sites and not-for profit donation sites that have agreed to accept electronic waste.

“Electronic waste recycling facility” means a facility at which electronic waste is recycled.

“Monitor” means a separate visual display component of a computer, whether sold separately or together with a computer central processing unit, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image projection technology, greater than four inches when measured diagonally, and its case, interior wires and circuitry, and any cable cord or wiring permanently affixed thereto or incorporated into such product.

“Recycle” means to separate, dismantle or process the materials, components or commodities contained in electronic waste for the purpose of preparing the materials, components or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means. Recycling includes the manual and mechanical separation of electronic waste to recover materials, components or commodities contained therein for the purpose of reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for purposes of recycling those components.

“Small electronic equipment” means any portable digital music player that has memory capability and is battery-powered, video cassette recorder, a digital video disc player, digital video recorder, digital converter box, cable or satellite receiver, or electronic or video game console, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product.

“Small-scale server” means a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers. To be considered a small-scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box or product; intended to be operational twenty-four hours per day and seven days a week, and unscheduled downtime is extremely low, such as on the order of hours per year; is capable of operating in a simultaneous multi-user environment serving several users through networked client units; and designed for an industry accepted operating system for home or low-end server applications.

“Television” means a display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, cable or satellite transmission, having a viewable area greater than four inches when measured diagonally.

2. Term

The term of this SOW shall commence on January 1, 2015 and remain in effect until December 31, 2015.

3. Credentials and Operational Requirements

RECYCLER must exhibit and operate according to the minimum requirements detailed herein in order for this SOW to remain in effect. SONY reserves the right to request additional credentials and documentation at any time with 15 days advanced written verification.

4. Applicable Laws

RECYCLER will collect and recycle CEE's in compliance with all applicable federal, State, and local laws, regulations, and ordinances, and shall not export for disposal in a manner that poses a significant risk to the public health or the environment.

RECYCLER shall, at a minimum, demonstrate compliance with the United States Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or State law.

RECYCLER shall list 3rd party certifications for tier 1, 2 and 3 processors. (Tier 1 is first to receive from point of collection is required to have obtained R2 or equivalent certification). Attachment B: Tier 1, 2 and 3 E-waste recycler certifications.

RECYCLER shall maintain its status as a State of New York "NYS DEC Registered Recycler"

5. Services and Expectations

RECYCLER will provide collection, transportation, recycling, and reporting services ("Services") for SONY in the State of New York in addition to the minimum requirements in accordance to Article 27; Title 26. Entitled "Electronic Equipment Recycling and Reuse".

6. Plan Submittal

On behalf of Sony, RECYCLER shall submit an update to the NYDEC detailing the following:

- Methods that will be used to collect CEEs.
- The processes and methods that will be used to recycle CEEs with a description of the recycling processes that will be used.

Means that will be utilized to publicize the collection services, including specification of a website or toll-free telephone number that provides information about the recycling program in sufficient detail to allow consumers to learn how to return their used CEEs for recycling.

7. Material Downstream

At SONY's sole request RECYCLER will utilize Closed Loop Recycling & Recovery, Inc. (CLRR) as a downstream partner to process all CRT glass and/or CRT containing devices generated in direct relation to CEE's per terms of this agreement. Should CLRR choose to increase prices to RECYCLER during Term of this SOW, RECYCLER reserves right to raise price to SONY at an equivalent rate.

8. Downstream Reporting

RECYCLER will report quarterly on mass balances and ultimate destination of recovered materials. It is expected that CLRR will prepare supporting information for CRT glass management.

9. Volume and Rates for Service

RECYCLER to recognize SONY's carry-forward credit of 1,000,000 pounds from year 2013-2014 and will work with SONY to consume these pounds over a 2-year period.

RECYCLER Not To Exceed CEE Weight Request: 3,000,000 LBS. (This is estimated number and will change when NYDEC assigns SONY its final obligation). The final number shall be calculated by subtracting 500,000 pounds from the 2013-2014 carryover from the DEC assigned weight for 2015.

RECYCLER Price for Services Rendered: \$0.15/LB

No more than 1/4th total contracted amount shall be billed per quarter.

10. Payment Terms

Invoices submitted by RECYCLER will be calculated upon submission. RECYCLER will be paid by SONY within sixty (60) days upon completion of services, expectations, credentials and operational requirements detailed.

11. Notices

Notices pursuant to this SOW shall be sent via first class mail or overnight carrier.

Notice in regards to this SOW shall be addressed to:

RECYCLER Contract Manager
Mike Whyte
RCR&R
7318 Victor Mendon Rd.
Victor, NY 14564
Phone: 585-924-3840
Cell: 585-739-1717
E-mail: mike@ewaste.com

SONY Contract Manager
Douglas Smith
Sony Electronics Inc.
16530 Via Esprillo
San Diego, CA 92127
Phone: (858) 775-5464
E-mail: Douglas.smith@am.sony.com

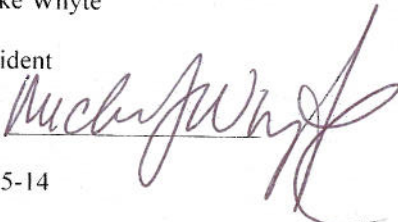
Except as specifically otherwise provided in this SOW, all of the other terms and conditions of the Agreement remain unchanged. In the event of any inconsistency between the terms and conditions of this SOW and the terms and conditions of the un-amended portions of the Agreement, the terms and conditions of this SOW shall prevail.

By signing below, this SOW has been duly executed by the parties hereto effective as of the SOW Effective Date.

REGIONAL COMPUTER RECYCLING & RECOVERY LLC:

Name: Mike Whyte

Title: President

Signature: 

Date: 12-15-14

SONY ELECTRONICS INC.:

Name: _____

Title: _____

Signature: _____

Date: _____

**AMENDMENT TO ELECTRONIC WASTE RECYCLING SERVICES AGREEMENT
DATED JANUARY 1, 2014 BETWEEN SONY AND RECYCLER**

THIS AMENDMENT ("Amendment"), effective January 1, 2016, is attached to and made a part of that certain Electronic Waste Recycling Services Agreement dated January 1, 2014 (the "Agreement") between Sony Electronics Inc. ("Sony") and Regional Computer Recycling & Recovery LLC, d/b/a RCR&R ("RECYCLER"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

WHEREAS, Sony and RECYCLER (hereinafter sometimes referred to as "the parties") are desirous of amending the Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises hereinafter contained, the parties agree as follows:

1. The Term of the Agreement is hereby extended to December 31, 2016.

2. Article XI, Section 11.1 is hereby amended as follows:

If to Sony: Sony Electronics Inc.
16535 Via Esprillo
San Diego, CA 92127
Attention: Doug Smith
Facsimile: (858) 942-0779

With a copy to: Sony Electronics Inc.
16535 Via Esprillo
San Diego, CA 92127
Attention: General Counsel

3. The SOW attached hereto is hereby incorporated into and made a part of the Agreement.

4. Except as specifically provided hereinabove, all other provisions of the Agreement remain in full force and effect. Only with respect to the subject matter set forth herein, to the extent that the terms and conditions of this Amendment add to or are in conflict with the terms and conditions of the Agreement, the terms of this Amendment will be deemed to control.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Amendment as of the date first above written.

REGIONAL COMPUTER RECYCLING & RECOVERY LLC

By: _____

Print Name: Michael J. Whyte

Title: President

SONY ELECTRONICS INC

By: _____

Print Name: DOUGLAS SMITH

Title: Director

**STATEMENT OF WORK # 3
TO ELECTRONIC WASTE RECYCLING SERVICES AGREEMENT
DATED JANUARY 1, 2014 BETWEEN SONY AND RECYCLER**

This is Statement of Work # 3 ("SOW"), effective January 1, 2016, (the "SOW Effective Date"), to the Electronic Waste Recycling Services Agreement dated January 1, 2014 (the "Agreement") between Sony Electronics Inc. ("Sony") and Regional Computer Recycling & Recovery LLC, d/b/a RCR&R ("RECYCLER"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

This SOW is in accordance to the State of New York Article 27; Title 26. Entitled "Electronic Equipment Recycling and Reuse".

WHEREAS, SONY WISHES TO ENGAGE RECYCLER to perform certain services as more fully described in this SOW and SONY desires to accept association with RECYCLER in such capacity.

NOW THEREFORE, the parties, in consideration of the mutual covenants and agreements contained herein, and constituting good and valuable consideration, and intending to be legally bound, agree as follows:

1. Definitions:

"Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

"Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, including a laptop computer and desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include both a computer central processing unit and a monitor; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, server, or other similar device.

"Computer peripheral" means a monitor; electronic keyboard; electronic mouse or similar pointing device; facsimile machine, document scanner, or printer intended for use with a computer; and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product. Computer peripheral shall not include any document scanner or printer which weighs one hundred pounds or more.

"Consumer" means a person located in the state who owns or uses covered electronic equipment, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school or board of cooperative educational services or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

"Covered electronic equipment" (CEE) means: a computer; computer peripheral; small electronic equipment; small-scale server; cathode ray tube; or television

"Electronic waste" means covered electronic equipment that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling system.

“Electronic waste collection site” means a facility at a fixed or temporary site at which electronic waste is accepted from consumers and temporarily stored for more than five days in a calendar year before such waste is transported to an electronic waste consolidation facility or electronic waste recycling facility. Electronic waste collection sites include, but are not limited to, dedicated sites and facilities for the acceptance of electronic waste, and retail stores and outlets, municipal or private electronic waste collection sites and not-for profit donation sites that have agreed to accept electronic waste.

“Electronic waste recycling facility” means a facility at which electronic waste is recycled.

“Monitor” means a separate visual display component of a computer, whether sold separately or together with a computer central processing unit, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image projection technology, greater than four inches when measured diagonally, and its case, interior wires and circuitry, and any cable cord or wiring permanently affixed thereto or incorporated into such product.

“Recycle” means to separate, dismantle or process the materials, components or commodities contained in electronic waste for the purpose of preparing the materials, components or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means. Recycling includes the manual and mechanical separation of electronic waste to recover materials, components or commodities contained therein for the purpose of reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for purposes of recycling those components.

“Small electronic equipment” means any portable digital music player that has memory capability and is battery-powered, video cassette recorder, a digital video disc player, digital video recorder, digital converter box, cable or satellite receiver, or electronic or video game console, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product.

“Small-scale server” means a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers. To be considered a small-scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box or product; intended to be operational twenty-four hours per day and seven days a week, and unscheduled downtime is extremely low, such as on the order of hours per year; is capable of operating in a simultaneous multi-user environment serving several users through networked client units; and designed for an industry accepted operating system for home or low-end server applications.

“Television” means a display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, cable or satellite transmission, having a viewable area greater than four inches when measured diagonally.

1. Term

The term of this SOW shall commence on January 1, 2016 and remain in effect until December 31, 2016. Option to extend this SOW to December 31, 2017 will be considered provided elements of this SOW are updated and found agreeable to both parties.

2. Credentials and Operational Requirements

RECYCLER must exhibit and operate according to the minimum requirements detailed herein in order for this SOW to remain in effect. SONY reserves the right to request additional credentials and documentation at any time with 15 days advanced written verification.

3. Applicable Laws

RECYCLER will collect and recycle CEE's in compliance with all applicable federal, State, and local laws, regulations, and ordinances, and shall not export for disposal in a manner that poses a significant risk to the public health or the environment.

RECYCLER shall, at a minimum, demonstrate compliance with the United States Environmental Protection Agency's Plug-In to eCycling Guidelines for Materials Management as issued and available on the United States Environmental Protection Agency's Internet website in addition to any other requirements mandated by federal or State law.

RECYCLER shall list 3rd party certifications for tier 1, 2 and 3 processors. (Tier 1 is first to receive from point of collection is required to have obtained R2 or equivalent certification). Attachment B: Tier 1, 2 and 3 E-waste recycler certifications.

RECYCLER shall maintain its status as a State of New York "NYS DEC Registered Recycler"

4. Services and Expectations

RECYCLER will provide collection, transportation, recycling, and reporting services ("Services") for SONY in the State of New York in addition to the minimum requirements in accordance to Article 27; Title 26. Entitled "Electronic Equipment Recycling and Reuse".

5. Plan Submittal

On behalf of Sony, RECYCLER shall submit necessary updates to the NYDEC detailing the following:

- Methods that will be used to collect CEEs.
- The processes and methods that will be used to recycle CEEs with a description of the recycling processes that will be used.

Means that will be utilized to publicize the collection services, including specification of a website or toll-free telephone number that provides information about the recycling program in sufficient detail to allow consumers to learn how to return their used CEEs for recycling.

6. Material Downstream

At SONY's sole request RECYCLER will utilize Closed Loop Recycling & Recovery, Inc. (CLRR) as a downstream partner to process all CRT glass and/or CRT containing devices generated in direct relation to CEE's per terms of this agreement. CLRR to process and ship CRT glass received from RECYCLER to downstream consumers within 90 days. Should CLRR choose to increase prices to RECYCLER during Term of this SOW, RECYCLER reserves right to raise price to SONY at an equivalent rate.

7. Downstream Reporting

RECYCLER will report quarterly on mass balances and ultimate destination of recovered materials. It is expected that CLRR will prepare supporting information for CRT glass management.

8. Volume and Rates for Service

RECYCLER to recognize SONY's carry-forward credit of approximately 1,000,000+/- pounds from year 2014 and will work with SONY to consume these pounds over a 2-year period, ending 12/31/2016.

RECYCLER Not to Exceed CEE Weight Request: 2,000,000 LBS. (This is estimated number and will change when NYDEC assigns SONY its final obligation). The final number shall be defined as: Subtraction of 1,000,000+/- pounds from the DEC assigned weight for 2016.

RECYCLER Price for Services Rendered: \$0.175/LB

No more than 1/4th total of the contracted amount shall be billed per quarter.

9. Payment Terms

Invoices submitted by RECYCLER will be calculated upon submission. RECYCLER will be paid by SONY within sixty (60) days upon completion of services, expectations, credentials and operational requirements detailed.

10. Notices

Notices pursuant to this SOW shall be sent via first class mail or overnight carrier.

Notice in regards to this SOW shall be addressed to:

RECYCLER Contract Manager
Mike Whyte
RCR&R
7318 Victor Mendon Rd.
Victor, NY 14564
Phone: 585-924-3840
Cell: 585-739-1717
E-mail: mike@ewaste.com

SONY Contract Manager
Douglas Smith
Sony Electronics Inc.
16535 Via Esprillo
San Diego, CA 92127
Phone: (858) 775-5464
E-mail: Douglas.smith@am.sony.com

Except as specifically otherwise provided in this SOW, all of the other terms and conditions of the Agreement remain unchanged. In the event of any inconsistency between the terms and conditions of this SOW and the terms and conditions of the un-amended portions of the Agreement, the terms and conditions of this SOW shall prevail.

By signing below, this SOW has been duly executed by the parties hereto effective as of the SOW Effective Date.

RECYCLER:

Name: Mike Whyte

Title: President

Signature: _____

Date: 12-14-2015



Sony Electronics Inc.:

Name: DOUGLAS SMITH

Title: Director

Signature: B Smith

Date: 1-4-16

EWASTE+ Material Shipped to Closed Loop on behalf of SONY during the period 2/20/14-3/24/16

Closed Loop - Shipment Breakdown

	<u>QTY</u>	<u>% Glass</u>	
Recycling Exp (Material Recycling Expense)			
CRT Glass - Broken (CRT Glass - Broken (lbs.) For Recycling)	18,045	100.00%	18,045.00
CRT Glass - Whole (CRT Glass - Whole for recycling)	801,184	100.00%	801,184.00
Monitor/ Term (Monitor Recycling/Processing)	618,939	58.00%	358,984.62
TV Recycling (TV Recycling Expense)	9,281,144	58.00%	5,383,063.52
TV Recycling-Rear Projection (TV Recycling Expense- Rear Projection (lbs.))	321,359	10.00%	32,135.90
Total Recycling Exp (Material Recycling Expense)	<u>11,040,671</u>		<u>6,593,413.04</u>

Year	SONY NY Goal	Additional Pounds placed in Escrow	Total Pounds Collected	Escrow Pounds		CRT Pounds Sent to Closed Loop	CRT Pounds Sent to URT	Non-CRT Pounds Sent Elsewhere	Total Pounds Processed
				Used (25% of Goal)					
2014	4,420,621	1,000,000	5,420,621			5,420,621			5,420,621
2015	3,611,520	1,427,799	5,039,319			4,528,005		511,314	5,039,319
2016	3,421,029	1,978,705	5,399,734	855,254		1,092,045	3,196,310	1,111,379	5,399,734
2017	3,868,608	2,621,262	5,522,718	967,152			3,187,566	2,335,152	5,522,718
Total	15,321,778	7,027,766	21,382,392	1,822,406		11,040,671	6,383,876	3,957,845	21,382,392