

## Electronics Recycling Agreement

### (DRAFT)

This Electronic Waste (E-waste) Recycling Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between **e-Recycling of California Inc.**, a California corporation, with offices at 7230 Petterson Lane, Paramount, California 90723 (“ERC”), , and Monterey Regional Waste Management District (MRWMD), a corporation, with offices at 14201 Del Monte Blvd., P.O. Box 1670 Monterey County, CA 93933-1670.

**Article 1. Term.** The term of this Agreement will be one (5) year term commencing \_\_\_\_\_ and expiring on \_\_\_\_\_. An initial one (5) year term will be automatically extended for additional one (1) term unless one of the parties provides written notice of termination to the other party at least thirty (30) days prior to the end of that current term. Notwithstanding the foregoing, either party may terminate this Agreement at any time by giving thirty (30) days’ written notice to the other party of its intent to terminate the Agreement. Further, the parties acknowledge and agree that the terms and conditions of this Agreement are subject to change based on regulations and fees established by CalRecycle and the Department of Toxic Substances Control (DTSC).

**Article 2. E-Waste Recycling.** During the term of this Agreement, (MRWMD) may, from time to time, provide to ERC certain business or consumer electronics products or items with an embedded battery, circuit board and/or plug that have reached the end of their useful lives (“E-waste Materials” (also referred to as “Universal Waste” by the DTSC)) for recycling. E-waste Materials to be handled pursuant to this Agreement shall be agreed upon in advance in writing by ERC.

**Article 3. Contractor Services.** ERC agrees to provide the following services to (MRWMD) (collectively referred to herein as the “Services”): (i) transportation from locations designated by (MRWMD) to ERC’s storage and recycling facility(ies); (ii) provision of e-racks in which to transport and store the E-waste Materials; (iii) handling, storage and recycling of the E-waste Materials; and (iv) reporting of E-waste Materials delivered to ERC’s storage and recycling facility(ies).

**Article 4. Covered Electronic Waste (CEW).** For purposes of this Agreement, the term “Covered Electronic Waste” (“CEW”) shall have the meaning ascribed to it under the California Electronic Waste Recovery Program (“CEWRP”) and shall include, among other things, cathode ray tube (CRT) devices (including televisions and computer monitors), LCD desktop monitors, laptop computers with LCD displays, LCD televisions, plasma televisions, portable DVD players with LCD screens greater than four inches in screen size and such other items as may be added from time to time under the CEWRP; provided that such items are “Source Documented”

**Article 5. Contractor Warranties.** ERC warrants (1) that it understands the currently known hazards which are presented to persons, property and the environment in the handling, treatment, storage and disposal of the E-waste Materials identified on the E-Waste Profile; (2) that it will exercise appropriate care in the handling, storage and recycling of the E-waste Materials; (3) that it will handle, store and recycle the E-waste Materials in compliance with all applicable federal, state and local laws, regulations and ordinances, including, without limitation, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Toxic Substances Control Act, as amended, and the Occupational Safety and Health Act of 1970, as

amended; (4) that ERC's facility(ies) are fully licensed and permitted to accept and recycle the E-waste Materials; (5) that ERC's facility(ies) are not on the US Environmental Protection Agency's list of "violating facilities;" and (6) that it shall break down to component level and scrap or recycle all products collected from (MRWMD) as E-waste Materials and shall not refurbish or resell any such (MRWMD) products.

**Article 6. Warranties.** (MRWMD) warrants to the best of its knowledge (1) that the description of the E-waste Materials on the E-Waste Profile is accurate and complete; (2) that E-waste Materials to be transferred to ERC will materially conform to such description; (3) that it holds clear title to all E-waste Materials to be transferred hereunder; (5) that it is under no legal restraint or order which would prohibit transfer of possession or title to such materials to ERC for transportation and disposal; (6) that it has communicated and will communicate to ERC during the term hereof any unusual or special hazards known by it to be associated with the handling, treatment, storage and disposal of the E-waste Materials; and (7) that E-waste Material submitted for payment must be verified from California sources only.

**Article 7. Records.** ERC shall maintain a complete set of records pertaining to its performance of the Services under this Agreement for a period of not less than three (3) years after completion of the Services. Upon reasonable notice, (MRWMD) may audit all such records as well as inspect ERC's facility(ies) at any time during the term of this Agreement or during the three (3) year period following acceptance of the final shipment of E-waste Materials hereunder.

**Article 8. Termination.** This Agreement may be immediately terminated, for cause, upon written notice by either party upon any of the following occurrences: (1) failure to make any payments due for at least thirty (30) days if non-payment continues for ten (10) business days after written notice of such late payment, (ii) material misrepresentation of E-waste Materials, products or payments, or (iii) material breach by either party of this Agreement. Either party, without cause, may terminate this Agreement with not less than thirty (30) days prior written notice to the other party.

**Article 9. Transfer of E-Waste and Title.**

**9.1** Title, risk of loss and all other incidents of ownership to the E-waste Materials shall be transferred from to ERC at the time ERC takes possession of and removes E-waste Materials from the place of transfer, or at the time ERC accepts delivery of the E-waste Materials at its facility(ies), whichever is applicable.

**9.2** E-waste Materials which are discovered to be Non-Conforming (as defined below) may be rejected by ERC. Notice of rejection of Non-Conforming E-waste Materials must be given to (MRWMD) in writing within five (5) days of receipt of the materials by ERC at which time title to such Non-Conforming E-waste Materials shall re-vest in (MRWMD). ERC shall forfeit its right to reject Non-Conforming E-waste Materials hereunder if it fails to give timely notice of rejection as required by this Article 9.2. E-waste Materials shall be considered Non-Conforming for purposes of this Agreement if: (1) the E-waste Materials are not packaged or labeled in accordance with applicable law; (2) the E-waste Materials contain constituents or have characteristics or properties not disclosed on the E-Waste Profile and such constituents, characteristics or properties materially increase the risk of hazard to human health or the environment from the recycling of such materials; or (3) ERC's facility(ies) is(are) not designed or permitted to dispose of E-waste Materials with such undisclosed constituents,

characteristics or properties. E-waste Materials discovered by ERC to be Non-Conforming, if in ERC possession, shall be prepared for lawful transportation by ERC and returned to (MRWMD) within ten (10) days after rejection by ERC, unless the parties agree to an alternative and lawful manner to dispose of the E-waste Materials. (MRWMD) shall pay ERC at rates agreed upon in advance for the handling, loading, preparing, transporting, storing and caring for and, if applicable, disposing of such Non-Conforming E-waste Materials.

The indemnifications set forth in this Article 10 shall survive the expiration, termination or cancellation of this Agreement.

**Article 10. Insurance and Indemnification.** ERC and (MRWMD) shall each procure and maintain throughout the term of this Agreement their own policies of commercial general liability insurance (which include contamination and pollution coverage) and commercial umbrella limits with a combined total of at least One Million Dollars (\$1,000,000.00), for each occurrence, naming each other as an additional insured to the extent of their respective obligations under this Agreement.

Each party hereto shall individually procure and maintain throughout the term of this Agreement workers compensation/employers' liability insurance in an amount not less than the statutory limits for the State of California. Each party hereto shall individually procure and maintain throughout the term of this Agreement automobile liability insurance in an amount equal to or greater than Two Million Dollars (\$2,000,000.00).

The insurance required under this Article 11 shall be issued by an insurance company or companies authorized to do business in the State of California and shall provide for at least thirty (30) days prior written notice to the other party hereto before any termination, cancellation, and/or non-renewal of such insurance.

It is expressly agreed that if an insurance claim is denied due to the failure of either party hereto to comply with any other requirement set forth in the relevant insurance policy, the party failing to comply will be solely responsible for, and shall pay directly to the other party hereto, the amount of the other party's loss within ten (10) business days. ERC shall indemnify and hold harmless (MRWMD), its owners, parents, subsidiaries, affiliates, agents, directors, and employees against all claims, liabilities, demands or actions to the extent they arise from or in connection with (1) the fault or negligence of ERC, its officers, employees, agents, subcontractors and/or representatives, in the performance of any duty or obligation created under this Agreement and/or (2) the breach by ERC, its officers, employees, agents, subcontractors and/or representatives of any provision of this Agreement.

(MRWMD) shall indemnify and hold harmless ERC, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against all claims, liabilities, demands or actions to the extent they arise from or in connection with (1) the fault or negligence of, its officers, employees, agents, subcontractors and/or representatives, in the performance of any duty or obligation created under this Agreement and/or (2) the breach by, its officers, employees, agents, subcontractors and/or representatives of any provision of this Agreement.

**Article 11. Excuse of Performance.**

The performance of this Agreement, except for the payment of money for Services already rendered or refunds for CEW already collected from (MRWMD), may be suspended by either party in

the event performance of this Agreement is prevented by a cause or causes beyond the reasonable control of such parties. Such causes shall include but not be limited to: acts of God, acts of war, riot, fire, explosion, accidents, sabotage; changes in government laws, regulations, orders, or defense requirements, restraining orders, labor disputes, strikes, lock-outs or injunctions (provided that neither party shall be required to settle a labor dispute against its own best judgment). If ERC is prevented from performing Services by a cause beyond its reasonable control, it shall use its best efforts to resume Services at the earliest possible date.

**Article 12. Notices.** Any notices regarding this agreement shall be sent via carrier to:  
e-Recycling of California  
7230 Petterson Lane  
Paramount, CA 90723-2022 Telephone:  
800-795-0993

**Article 13. Additional Provisions.**

**13.1 Independent Contractors.** The relationship of the parties shall be that of independent contractors and neither party is authorized or shall act as the agent of the other.

**13.2 Waiver.** Any waiver by either party of any provisions or conditions of this Agreement shall not be construed or deemed to be a waiver of any other provisions or conditions of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver is expressed in writing by the party to be bound.

**13.3 Amendment.** This Agreement, and the rights and obligations hereunder, may be modified only by a written amendment which is signed by both parties.

**13.4 Survival.** The provisions contained in Section 4, 6, 7, 8 and 10 shall survive indefinitely and remain in effect after termination of this Agreement.

**13.5 Law to Apply.** The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of California.

**13.6 Entire Agreement.** This Agreement represents the entire understanding and agreement between (MRWMD) and ERC relating to the transportation, storage, treatment, processing and disposal of the described E-waste Materials and supersedes any and all prior and contemporaneous agreements, whether written or oral, that may exist between the parties regarding same and supersedes terms contained in any purchase orders, preprinted forms or the documents issued to ERC by prior to or subsequent to this Agreement.

Additional, conflicting or different terms on any Purchase Order or other preprinted document issued by ERC shall be void and are hereby expressly rejected by the parties. IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

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

Monterey Regional Waste Management District

By:

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

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

e-RECYCLING OF CALIFORNIA a California corporation

By: Dennis Kazarian, Vice President

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