

DRAFT DATED 12/18/2003
DO NOT DISTRIBUTE

This draft document is intended as a working document only for use of the NEPSI participants and should not be relied upon by either the NEPSI Participants or any third party for any purposes other than within the context of the NEPSI negotiations. This document is subject to change by the NEPSI participants.

A Memorandum of Understanding on Electronics Stewardship

This Memorandum of Understanding (MOU) is entered into between the undersigned consumer electronic manufacturers (hereinafter electronics manufacturers), state and local governmental units (hereinafter collectively referred to as government Entities), Processors/Recyclers, Retailers and non-governmental organizations (hereinafter collectively referred to as NGOs) as an expression of their good faith agreement to develop a national system, with a sustainable financing mechanism to collect and process used consumer electronics (hereinafter referred to as the NEPSI System). This MOU sets forth the roles and responsibilities of the parties to this MOU in the development of the NEPSI System.

Whereas, _____ becomes obsolete and available for disposal annually;

Whereas, these pieces of consumer electronics contain heavy metals and plastics some of which are hazardous to the environment if they are improperly handled;

Whereas, the nature of this material is such that the present solid waste system was not designed to nor can it handle or finance the collection and processing of certain consumer electronics;

Whereas, a system that is designed to recapture and recycle the component parts of consumer electronics has the potential to reduce the life cycle impact of consumer electronics on the environment by conserving resources and reducing pollution;

Whereas, a number of states across the country have begun to adopt state legislation to address the problems posed by the collection and disposal of consumer electronics and these legislative solutions are or have the potential to be inconsistent and place inconsistent obligations on consumers, retailers and consumer electronic manufacturers;

Whereas, to address the challenges imposed by the disposal of consumer electronics a group of stakeholders representing manufacturers of consumer electronics, retailers, processors, reuse organizations, NGOs and federal state, and local government

(hereinafter collectively referred to as the NEPSI Participants) met in good faith to craft the elements of a national consumer electronics end of life management system;

Whereas, it is the desire of the NEPSI Participants to establish a national system to collect, transport and process consumer electronics in a manner that is protective of human health and the environment, is economically sustainable and market driven;

Whereas, it is the intent of the NEPSI Participants that said national system be premised on the principles of Product Stewardship and shared responsibility; and

Whereas, the NEPSI Participants further recognize that the system must be premised upon creating a level playing field among all manufacturers of consumer electronics that sell consumer electronics to persons residing within the United States.

Now, therefore, the parties agree as follows:

Section 1 Nature of this MOU

1.1. This is a voluntary agreement between the parties. Nothing contained in this MOU is intended to create a legally binding obligation or to convey rights in or to any signatory hereto or any third party that is not a signatory to this MOU notwithstanding any language used herein that may give rise to a contrary implication.

Section 2 Definitions

For purposes of this MOU and its Exhibits and unless otherwise specified, the terms used herein shall have the definitions set forth in Exhibit 1 which is attached hereto and made a part hereof.

Section 3 National NEPSI System and Implementing Legislation

3.1 Long Term Goal. The purpose and intent of the NEPSI System is to establish an economically viable, market driven, uniform, national infrastructure and financing system to recycle consumer electronics (hereinafter NEPSI Products) from households in the United States as said equipment becomes obsolete. To fully capture the bulk of orphaned and historic NEPSI Products the NEPSI Participants agree that an ARF driven system, which is flexible enough to allow for an Alternative System that permits individual manufacturer responsibility as set forth in Section 3.3 of this MOU, should be implemented on a national basis. It is further the intent of the NEPSI System that the ARF Financed System transition to a PCI System pursuant to an agreed upon time schedule and process as set forth in Section 3.3.d

3.2 Federal Legislation. It is the intent of the NEPSI Participants that the National NEPSI System should be enacted through federal legislation.

a. Effective Date. The NEPSI System shall not become effective until Federal Legislation has been enacted implementing the NEPSI System as set forth in Section 3. This MOU shall expire within five (5) years after the execution of this MOU unless expressly extended by a written amendment to this MOU which has been executed by the signatories to this MOU.

b National Uniform System. The NEPSI System is intended to provide national uniformity for the collection, transportation and processing of NEPSI Products and the financing for said system. Except as provided in the National Uniformity Document, which is attached hereto as Exhibit 2 and made a part hereof, all state legislation regarding the financing, collection, transportation and processing of NEPSI Products shall become null and void upon implementation of Federal Legislation implementing the NEPSI System.

c Federal Legislation. *The Agreement Group has been wrestling with how to accomplish the drafting of the model legislative language that reflects the NEPSI Agreement which will be incorporated in Paragraph 1 below. We have had extensive discussions about a couple of models but have come to no conclusions. Below you will find a list of parameters which we agree are constituents of this section.*

Deleted: *rereflects*

Deleted: *constituents*

(1) Model Legislation:

- *We need model legislation that incorporates the NEPSI Agreement*
- *Drafting of the model should be managed by a small (no more than 7-8) group of NEPSI Stakeholders that reflect the following constituencies (Industry, government, NGOs, Processors/Recyclers, Retailers)*
- *This group could hire an independent third party to draft the legislation but the contractor would truly need to be independent without vested interest in the outcome of the legislation*
- *The legislation must be drafted within 6 months of the execution of the MOU*
- *Financing the drafting of legislation – grant, contributions...*

(2) All signatories to this MOU shall exercise due diligence to effect the passage of the Federal Legislation to implement the National NEPSI System as set forth in this MOU.

3.3 National NEPSI System. The National NEPSI System shall initially be an ARF Financed System and transition into a PCI.

a. ARF Financed System.

(1) Fee. The NEPSI System shall be financed with an ARF not to exceed \$10 per unit of NEPSI ARF Product. *(Data reviewed by Consolidation work group and Gordon Hue indicate that \$10 per unit should be more than sufficient to cover the system. This has been confirmed by data run by the TV industry folk; however, we will need to attach an exhibit documenting our work in this area.)*

Deleted: *folk,*

Exhibit 3. The ARF shall be assessed on and paid at the point of sale of any NEPSI ARF Product to the consumer. *See generally, Exhibit 4 which is attached hereto and made a part hereof.* The ARF shall be set by Federal Legislation per unit of NEPSI ARF Product sold, provided, however, that the Federal Legislation shall grant the TPO the authority to evaluate and adjust the fee if the TPO determines that the fee will be adequate to cover the cost of financing the NEPSI System, provided, however, that under no circumstances shall the fee exceed the cap established by Congress. The ARF shall be assessed in a manner that it is visible to the consumer and in such a way that the consumer is aware that it is an environmental fee to cover the cost of recovering and recycling NEPSI Products at the end of their useful life.

(2) Level Playing Field and Flexibility. The ARF shall be assessed on all NEPSI ARF Products sold in the United States regardless of the type of sale and manufacturer. NEPSI ARF Products shall not be exempt from the ARF unless the manufacturer of said NEPSI Product has met all applicable requirements to participate in the NEPSI System under the Alternative Participation System set forth in the NEPSI Alternative System Document set forth in Exhibit 5 which is attached hereto and made a part hereof provided, however, that an Alternative System is incorporated into the applicable Federal Legislation. Provided further, that the Alternative System shall incorporate at a minimum individual manufacturing responsibility equivalent to the level of service provided by the ARF and that the manufacturer using the Alternative System assure the TPO that it will not assess a visible fee on the consumer.

(3) Setting the ARF. The actual ARF for each class of NEPSI ARF Product shall be set by Federal Legislation. The TPO may, however, lower the fee below the limit set forth in Federal Legislation. The ARF shall be set at a level to cover the collection, transportation and processing of NEPSI Products as set forth in the Base Service Level Document which is set forth in Exhibit 6 which is attached hereto and made a part hereof. In no event shall the fee exceed the ARF set by Federal Legislation as described in Section 3.2.a (1) of this MOU.

(4) Trust Account. Upon collection the ARF shall be deposited in a private/public trust account that is separate from the National Treasury. The proceeds from the Trust Account shall be used exclusively to finance the NEPSI System. The account shall be subject to an annual audit by an independent auditor. A copy of the audit shall be submitted to the TPO, EPA, and Congress on June 30 of each year. In conjunction with the annual audit the TPO shall prepare an independent report assessing the balance of the Trust Fund in light of the volume of NEPSI Products collected and processed; make recommendations to Congress regarding the ability of the fund to meet the processing needs; advise Congress of its intent to adjust the fee within the cap; make recommendations to Congress regarding the need, if any to expand the list of NEPSI ARF Products; and advise the Congress of its intent to modify the scope of NEPSI Products covered by the NEPSI System.

b. Third Party Organization (TPO).

(1) **TPO composition.** The NEPSI System shall be managed by a not for profit TPO as set forth in Federal Legislation. The TPO shall be a non-government organization managed by a Board of Directors appointed by the EPA Administrator. The Board of Directors shall be composed primarily of representatives from the Consumer Electronics manufacturers with representation from government and NGOs as set forth in Exhibit 7 which is attached hereto and made a part hereof. The Board of Directors shall have, at a minimum, the power to hire an Executive Director and staff which shall constitute the TPO.

(2) **Management and Powers of TPO.** The TPO shall operate pursuant to the terms set forth in the TPO Document which is attached hereto as Exhibit 7 and is made a part hereof. The TPO shall be empowered by Federal Legislation to manage the NEPSI System pursuant to the parameters of the Base Service Level Document which is attached hereto as Exhibit 6 and made a part hereof.

For purposes of managing the NEPSI system the TPO shall be empowered to enter into contracts as necessary to accomplish the collection, transportation and processing of NEPSI Products and to audit said collection, transportation and processing contractors.

(3) **Alternative System Applications.** The TPO shall also be empowered to receive applications made by individual Consumer Electronics Manufacturers to participate in the Alternative System described in Section 3.3.a (2) herein. All applications received by the TPO shall be forwarded to the EPA for evaluation. If the EPA determines that the applicant meets the requirements to operate an Alternative System as set forth in the Alternative System Document attached hereto as Exhibit 5, the EPA shall notify the applicant and the TPO that the applicant is authorized to operate an Alternative System as part of the NEPSI System.

(4) **Environmentally Sound Management:** Any contract entered into by the TPO with a processor must meet the requirements of the NEPSI Environmentally Sound Management Protocol as set forth in Exhibit 8 which is attached hereto and made a part hereof.

c. **Performance Measures.** The TPO shall operate the NEPSI System to meet the collection and processing rates set forth in the Performance Measures Document which is attached hereto as Exhibit 9 and made a part hereof. The TPO shall annually prepare a report to the EPA and Congress documenting the progress made toward accomplishing the Performance Measures. EPA shall submit a biannual report to Congress evaluating the progress made under the NEPSI System to recapture historic and orphan NEPSI Products.

d **Transition to PCI.** It is the intent of the NEPSI Participants that the NEPSI System transition from an ARF system to a PCI System that recovers NEPSI Products at the end of their useful life in a manner that is protective of the environment.

(1) After the ARF has been in effect for seven years the EPA shall convene a multi stakeholder panel to review and assess the demonstrated benefits of the ARF pursuant to the requirements set forth in the Transition Document which is attached hereto as Exhibit 10 which is made a part hereof. The multi stakeholder panel shall also make a recommendation to EPA regarding whether the system shall transition into a PCI System.

(2) Should either the EPA or the multi stakeholder panel fail to act within ____ months after the formation of the stakeholder panel, the NEPSI System will automatically transition into a PCI System. *(there currently is no time line in the Transition Document, we have asked the Finance/Transition Group to address this issue and advise us on how they wish to proceed)*

Section 4 Interim System

4.1 Effective Date. The NEPSI System shall not become effective until federal legislation implementing the NEPSI System has become effective. This Memorandum of Understanding shall become effective upon execution by ____ number NEPSI Participants.

Interim System. Prior to enactment of federal legislation implementing the NEPSI System an interim system shall be established on a state by state basis to collect, transport and process used NEPSI Products as set forth in the Interim System Document which is attached hereto as Exhibit 11 and which is attached hereto and made a part hereof. All signatories to this MOU agree to participate in the Interim System.

MOU EXHIBIT LIST

- Exhibit 1:** Definitions
- Exhibit 2:** National Uniformity Document
- Exhibit 3:** **Table Documenting the Fee structure at \$10 per unit per Gordon Hui's work et al**
- Exhibit 4:** ARF System Document
- Exhibit 5:** Alternative System Document
- Exhibit 6:** Base Level Service Document
- Exhibit 7:** TPO *(this document should identify makeup of the TPO membership and a description of the responsibilities of the TPO)*
- Exhibit 8:** Environmentally Sound Management Protocol
- Exhibit 9:** Performance Measures
- Exhibit 10:** Transition System
- Exhibit 11:** Interim System Doc
- Exhibit 12:** NEPSI Products and Consumer Electronics *(should identify the products covered in each scenario or how the TPO will determine which products are covered.)*

EXHIBIT 1: DEFINITIONS

For purposes of this MOU and its attached Exhibits the following terms shall have the following definition, unless otherwise, expressly specified:

2.1 Alternative System shall mean a system where by a consumer electronic manufacturer's products may be exempt from the ARF upon demonstration that said consumer electronics manufacturer has met the individual manufacturer responsibility requirements set forth in Exhibit 5, the Alternative Systems document which is attached hereto and made a part hereof. Any Electronics Manufacturer opting to participate under the Alternative System shall be responsible for providing an equivalent level of service equal to that covered by the ARF and shall not charge a visible fee to the consumer.

2.2 ARF shall mean advanced recovery fee as set forth in Section 3.3 of this MOU.

2.3 Base Level of Service shall mean the maximum collection, transportation and processing covered by the NEPSI System as set forth in the Base Level of Service document which is attached hereto as Exhibit 6 and made a part hereof.

2.4 Board of Directors shall mean the appointed representatives who oversee the management of the TPO.

2.5 Consumer shall mean private households and conditionally exempt small quantity generators as defined by the Resource Conservation and Recovery Act.

2.6 Consumer Electronics Manufacturer shall mean any manufacturer or importer of NEPSI Products that sells said Products in the United States for use by consumers

2.7 EPA shall mean the U.S. Environmental Protection Agency

2.8 Historic Consumer Electronics shall mean consumer electronics that reach the end of their useful life at a time which predates the date of execution of this MOU.

2.9 Interim System shall mean the collection, transportation and processing of NEPSI Products that will occur prior to the passage of the Federal legislation needed to implement the NEPSI System as set forth in Section 4.2 of this MOU.

2.10 NEPSI shall mean the National Electronics Product Stewardship Initiative.

2.11 NEPSI Environmentally Sound Management Protocol shall mean the protocol for the environmentally sound management of used NEPSI Products as set forth in Exhibit 8 which is attached hereto and made a part hereof.

2.12 NEPSI Participants shall mean those parties that participated in the NEPSI Negotiations and developed the NEPSI System.

2.13 NEPSI Processor shall mean a processor or recycler of used NEPSI Products that has met NEPSI Environmentally Sound Management (ESM) protocol and has entered into a contract with the TPO for the processing of said products.

2.14 NEPSI Products shall mean all TVs and monitors, CPUs, and laptops *(this is a placeholder list pending final deliberations by the NEPSI Stakeholders)* whose collection and processing is covered by the national NEPSI System as set forth in Section 3 of this MOU.

2.15 NEPSI ARF Product shall mean all consumer electronics on which the ARF is charged as set forth in Exhibit 12 which is attached hereto and made a part hereof.

2.16 NEPSI System shall mean the national system developed through the NEPSI negotiation process and established through federal legislation for the collection, transportation and processing of consumer electronics and the financial mechanism established to finance said system as set out in Section 3 of this MOU.

2.18. Orphan Consumer Electronics shall mean consumer electronics for which the original manufacturer or a successor in interest to the parent manufacturer is no longer in business at the time said product reaches its end of life.

2.19 Partial Cost Internalization (PCI) *Cat did we ever decide what partial cost internalization was. My notes indicate that under the PCI model the manufacturers would internalize the cost of processing and transporting Consumer Electronics from a consolidation point and that collection would be handled on the local level by either government, non-profits, private businesses or retailers. Is this correct. Who covers the cost of managing the consolidation centers?*

2.20 Product Stewardship shall mean that all parties who have a role in producing; selling or using a product shall also have a role in managing the product at the end of its useful life.

2.21 Shared Responsibility shall mean that every stakeholder (including consumers, manufacturers, recyclers, government and NGOs) has a role to play in the proper lifecycle management of products.

2.22 Third Party Organization (TPO) shall mean the national third party organization established to manage the NEPSI System as set for in Section 3.3 of this MOU.

EXHIBIT 2: NATIONAL UNIFORMITY DOCUMENT

EXHIBIT 3: DOCUMENT RE. CALCULATION OF ARF

EXHIBIT 4: ARF SYSTEM DOCUMENT

EXHIBIT 5: ALTERNATIVE SYSTEM DOCUMENT

EXHIBIT 6: BASE LEVEL SERVICE DOCUMENT

EXHIBIT 7: TPO DOCUMENT

**EXHIBIT 8: ENVIRONMENTALLY SOUND MANAGEMENT
PROTOCOL**

EXHIBIT 9: PERFORMANCE MEASURES

EXHIBIT 10: TRANSITION SYSTEM DOCUMENT

EXHIBIT 11: INTERIM SYSTEM DOCUMENT

EXHIBIT 12: NEPSI ARG PRODUCTS & CONSUMER ELECTRONICS