

## Appendix E

### District of Columbia Architectural Paint Recovery Program

#### Paint Transportation and Processing Agreement

This Paint Transportation and Processing Agreement (the "Agreement"), effective as of the date of the later signature below, is between **[Insert Service Provider Legal Name]** located at **[Insert Service Provider Address]** (the "Service Provider") and PaintCare Inc., a Delaware corporation located at 901 New York Ave N.W., Suite 300 West, Washington, D.C. 20001 ("PaintCare").

#### RECITALS

**Whereas**, PaintCare is the representative organization of the District of Columbia Architectural Paint Stewardship Program (the "Program"), as set forth in the District of Columbia Paint Stewardship Act of 2014 (D.C. Law 20-205) as may be amended (the "Legislation"); and

**Whereas**, PaintCare has or will enter into agreements with retailers, reuse stores, solid waste facilities, household hazardous waste and other organizations to collect the post-consumer Architectural Paint that is accepted into the Program as a "PaintCare Product" (defined below); and

**Whereas**, PaintCare desires, as part of its obligations under the Legislation, to enter into agreements with Service Providers for both (i) the transportation of PaintCare Products from Drop-Off Sites to Processing Facilities and (ii) the end-of life management of post-consumer PaintCare Products; and

**Whereas**, the Service Provider desires to participate in the Program by providing the Services desired by PaintCare for the compensation set forth herein.

**Now, therefore**, for and in consideration of the terms of this Agreement and the mutual promises and covenants contained herein, the parties hereto agree as follows.

## ARTICLE 1 – DEFINITIONS

- 1.1 “Bulk/Bulking/Bulked” means opening individual containers of paint and combining the latex paint into 55-gallon or larger containers marked “Latex Paint” and the oil-based paint into separate 55-gallon or larger containers marked “Oil-Based Paint.”
- 1.2 “Bins” or “Collection Bins” means containers provided by or approved for use by PaintCare or its Service Providers to hold PaintCare Products. Bins include boxes and drums. In PaintCare’s sole and exclusive discretion, any Collection Bin may be fitted with a tracking device that uses technology to enable PaintCare to track the Collection Bin(s) when not in PaintCare’s possession and ensure compliance with Article 3.17 of this Agreement. The tracking device and all information PaintCare receives from the tracking device shall be PaintCare’s sole property. Service Provider agrees not to alter, disconnect, misuse or otherwise tamper with any such tracking device.
- 1.3 “Direct Pickup Site” means an eligible Program participant that has accumulated any amount of PaintCare Products, from which PaintCare will arrange to have a Service Provider pick up PaintCare Products directly.
- 1.4 “Disposal” means placing dry or solidified latex PaintCare Products into a landfill that possesses all required permits.
- 1.5 “Disposal Rate” means the total volume of latex PaintCare Products Processed via Disposal as a percentage of the total volume of latex PaintCare Products Processed under the Agreement.
- 1.6 “Drop-Off Sites” means a location authorized by the Program to collect Program Products including environmental service companies, household hazardous waste facilities and events, paint collection events, paint recyclers, retail stores, reuse stores, and solid waste facilities. Assignment of the Drop-Off Sites will initially be agreed to by the parties outside of this Agreement and thereafter may be amended by PaintCare from time to time to add or delete sites by providing Service Provider with at least ten (10) days’ notice.
- 1.7 “Effective Date” means the date that the parties’ obligations begin under this Agreement. The Effective Date for this Agreement is the date of the later signature below.
- 1.8 “Energy Recovery” means a Processing method whereby oil-based paint is blended into a fuel, the combustion of which generates heat or energy that is used in the operation of a cement kiln, a waste-to-energy facility, or another facility permitted under applicable state and federal law.

- 1.9 "Household Hazardous Waste (HHW) Event" means an event hosted by an entity other than PaintCare (typically, a state municipality or governmental agency or sometimes a Service Provider), to collect household hazardous waste, including PaintCare Products, from the public. An HHW Event may be added to or deleted from this Agreement by PaintCare by providing the Service Provider with at least thirty (30) days' notice.
- 1.10 "Incineration" means a Processing method whereby materials are burned to destroy them without recovering the generated heat or energy.
- 1.11 "Including" (whether or not capitalized) means "including but not limited to."
- 1.12 "Indemnified Parties" means (i) PaintCare and its affiliate and related companies, and their member companies, and the foregoing entities' respective officers, directors, stockholders, members, employees, successors, assigns, agents, and invitees, and (ii) any individual or entity who has signed a Drop-Off Site agreement with PaintCare relating to a Drop-Off Site from which the Service Provider picks up PaintCare Products under this Agreement (and, as the case may be, incidental Non-PaintCare Products), as well as that individual's/entity's elected officials, officers, directors, stockholders, members, employees, successors, assigns, agents and invitees.
- 1.13 "Law" means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, required permits and licenses, and orders, of any governmental authority, entity, or agency whether federal, state, municipal, local, or other government body or subdivision, including those relating to transportation, unemployment compensation, worker's compensation, disability, taxes, worker and public health and safety, the environment, and the Program.
- 1.14 "Large Volume Pickup" or "LVP" or "LVP Site" means a Direct Pickup Site that has accumulated at least 100 gallons, measured by container size, of PaintCare Products.
- 1.15 "Materials and Activities" mean Collection Bins including liners and pallets, Spill Kits, equipment, supplies, tools, vehicles, labor, supervision, and all other services, acts, activities, resources, and goods necessary for or otherwise used by the Service Provider to comply with and fully perform its obligations under the Agreement.
- 1.16 "Non-PaintCare Products" mean products that are not eligible to be collected through the Program in the State.
- 1.17 "PaintCare Event" means a paint collection event hosted by PaintCare to collect PaintCare Products only. Not all Service Providers will be asked to service a

PaintCare Event. Prior to servicing a PaintCare Event, Service Provider must execute an amendment to the applicable (i) Transportation and Processing Agreement and (ii) Drop-Off Site agreement.

- 1.18 “PaintCare Products” mean the materials that are eligible to be collected by the Program, which may change from time to time. Attachment A (PaintCare Products Definition) includes a list of such eligible Program Products and is current as of the date of this Agreement. PaintCare will notify Service Provider in writing of any changes to the types of materials that are eligible to be collected as Program Products.
- 1.19 “PaintCare Reporting Year” means the period from January 1 to December 31.
- 1.20 “Process,” “Processed,” or “Processing” means the end-of-life management as described in Attachment B (Processing Facility Scope of Work).
- 1.21 “Processing Facility” means a facility located within the United States or Canada and vetted and selected by the Service Provider, that is used to Process PaintCare Products or Non-PaintCare Products under this Agreement, as listed in Attachment B (Processing Facility Scope of Work). The list in Attachment B (Processing Facility Scope of Work) is subject to additions or deletions by the Service Provider as permitted hereunder.
- 1.22 “Quarter/Quarterly” refers to calendar quarters ending on March 31, June 30, September 30, and December 31 during each calendar year of the term of this Agreement.
- 1.23 “Recycling” means a Processing method by which materials that would otherwise be thrown away are transformed into new usable or marketable materials. This term excludes Incineration and Energy Recovery.
- 1.24 “Reuse” refers to a Processing method by which the collected PaintCare Products are sold or given away in the United States in their original containers with original labels and without any alteration of the container contents.
- 1.25 “Reuse/Recycling Rate” means the total volume of PaintCare Products Processed via some combination of Reuse and Recycling as a percentage of the total volume of PaintCare Products Processed under the Agreement.
- 1.26 “Services” mean the services described in this Agreement and in the Attachments hereto, including any and all Materials and Activities.
- 1.27 “Sorting Facility” means any physical location utilized by the Service Provider to separate, sort, consolidate, repack, and/or temporarily store PaintCare Products prior to transportation to a Processing Facility.

- 1.28 “Spill Kit” means a pair of safety glasses, two pairs of disposable nitrile gloves, absorbent, and a plastic bag with a capacity of at least five (5) gallons to place absorbent and other spill clean-up materials into, all packaged inside of a 5-gallon pail.
- 1.29 “State” means the District of Columbia.

## **ARTICLE 2 – TERM OF AGREEMENT**

- 2.1 The Services will commence on the Effective Date and, unless terminated sooner pursuant to the terms hereunder, will remain in full force and effect for an initial term ending on midnight, Washington, D.C. time, at the end of December 31, 2026 (the “Initial Term”).
- 2.2 Upon expiration of the Initial Term, the Agreement will automatically renew for successive 2 year terms (each, a “Renewal Term”) ending at midnight, Washington, D.C. time, at the end of December 31, unless (i) terminated sooner pursuant to the terms hereunder, or (ii) either party provides written notice of non-renewal to the other party so it is received (a) on or before October 1, 2026 for the Initial Term; or (b) on or before October 1 of the second year of the then-current Renewal Term. For clarification purposes, the first Renewal Term will begin January 1, 2027, and will end at midnight, Washington, D.C. time, at the end of December 31, 2028.
- 2.3 All pricing shall remain fixed for the Initial Term. Service Provider may request a price increase to commence January 1 of the next Renewal Term. PaintCare reserves the right to accept, negotiate or reject any proposed price increase. A request for a price increase must be made in writing pursuant to Article 14 (Notices) and received by PaintCare no later than August 1 prior to the commencement of the next Renewal Term. PaintCare will respond to Service Provider’s request by September 1 prior to the commencement of the next Renewal Term. If PaintCare approves the request for a price increase, then: (a) the price increase shall be set forth in a written amendment to this Agreement; and (b) the pricing shall remain fixed for the duration of the applicable Renewal Term.
- 2.4 If the Agreement is terminated or not renewed, the Service Provider, at no additional cost to PaintCare, shall cooperate fully in the orderly cessation of the Services and a smooth transition of the Services to a successor designated by PaintCare.

### **ARTICLE 3 – GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

In consideration of PaintCare's payments and obligations, the Service Provider agrees to:

- 3.1 Except as otherwise specified herein for Household Hazardous Waste Events and PaintCare Events or as otherwise authorized by PaintCare, Service Provider will pick up PaintCare Products from Drop-Off Sites on the date specified by the requesting Drop-Off Site; provided that, the Service Provider is not obligated to schedule a pickup to occur more quickly than 5 business days after the date on which Service Provider receives a pickup request. Any modification to this requirement must be approved in writing by PaintCare. Notwithstanding the foregoing, the parties will mutually agree on turnaround time requirements for scheduling pickups for Drop-Off Sites located in any island communities within the State. The Service Provider will pick up PaintCare Products from any Household Hazardous Waste Event and any PaintCare Event on the date specified by PaintCare or by the Drop-Off Site's staff; provided that PaintCare or the Drop-Off Site's staff gives at least 30 days' notice to the Service Provider.
- 3.2 The Service Provider is required to supply all Drop-Off Sites with Collection Bins. It is the responsibility of the Service Provider to ensure all Collection Bins delivered to a site are free of contamination and in working order. Reusable Collection Bins are preferred when shipping commingled paint and latex paint. Disposable Collection Bins (with liner and pallet) can be used for shipping oil-based paint. Used disposable Collection Bins, preferred over new disposable Collection Bins, must be in good condition (free of contamination and damage).
- 3.3 When setting up a retail store, a reuse store, and a solid waste facility as a new Drop-Off Site, Service Provider will, within 10 business days of the date on which the Service Provider receives a delivery request from PaintCare, deliver (i) empty Collection Bins to the retail store, reuse store, and solid waste facility; and (ii) to retail and reuse stores only, a Spill Kit. The Service Provider is responsible for setting up empty Collection Bins at the Drop-Off Site, including placing the Collection Bin in the exact spot designated by the Drop-Off Site, affixing the necessary labels and markings to the Collection Bin, and assembling the box (if a cardboard cubic yard box is provided). If the Drop-Off Site is on an island, Service Provider and site staff will mutually agree on a delivery date that may be more than 10 business days from the request, provided the date is communicated to PaintCare upon agreement.
- 3.4 Service Provider is responsible for Materials and Activities needed to load and unload Collection Bins onto and off the Service Provider's vehicles at all Drop-Off Sites and Direct Pickup Sites.

- 3.5 Within 3 business days of receiving a request from PaintCare to provide Services to a Direct Pickup Site, the Service Provider must contact the Direct Pickup Site and schedule a pickup date within the next 10 business days (unless the Site requests, and the Service Provider agrees, to a date beyond 10 business days).
- a. Direct Pickup Sites are not provided with Collection Bins prior to pick-up. When performing Services at a Direct Pickup Site, the Service Provider will bring a sufficient number of empty Collection Bins to package the volume of paint reported to be on site. The Service Provider shall not leave any Collection Bins (full or empty), or other materials at any Direct Pickup Site.
  - b. The Service Provider is responsible for all Materials and Activities needed for packing PaintCare Products into Collection Bins and loading PaintCare Products onto the Service Provider's vehicles at all Direct Pickup Sites.
- 3.6 Some business users at Direct Pickup Sites may be set up to pack their own Bins and have a pickup on a periodic or on call basis. For such a business, the Service Provider will deliver empty Collection Bins to the Direct Pickup Site within 10 business days of being asked by PaintCare to set up the Direct Pickup Site. The Service Provider is responsible for delivering empty Collection Bins, placing the Collection Bin in the exact spot designated by the business, affixing the necessary labels and markings to the Collection Bin, and assembling the box (if cardboard boxes are used).
- 3.7 PaintCare Products shall not be stockpiled. No longer than 90 days (or sooner, if required by Law) after picking up PaintCare Products at any Drop-Off Site or Direct Pickup Site, the Service Provider will sort the PaintCare Products, as needed, and then transport the PaintCare Products to a Processing Facility.
- 3.8 The Service Provider shall cause appropriate and timely (within 90 days, or sooner, if required by Law) Processing at Processing Facilities in accordance with Attachment B (Processing Facility Scope of Work) of all PaintCare Products and any incidental Non-PaintCare Products that Service Provider receives from any Drop-Off Site or Direct Pickup Site.
- 3.9 Upon request, the Service Provider agrees to provide a written description of the basis for its selection of any Processing Facility identified in Attachment B (Processing Facility Scope of Work). The Service Provider's written description shall discuss any basis including but not limited to price.
- 3.10 The Service Provider must track all PaintCare Products that the Service Provider accepts from Drop-Off Sites and Direct Pickup Sites to the final Processing Facilities.

- 3.11 The Service Provider shall prepare and supply all necessary manifests, bills of lading, Collection Bin labels and markings for PaintCare Products that the Service Provider accepts from Drop-Off Sites and Direct Pickup Sites in accordance with all applicable requirements of the United States Environmental Protection Agency, the United States Department of Transportation, and all other applicable Laws. Service Provider may be required to add additional language to the shipping document to denote that the Drop-Off Site is not the legal generator of the materials. PaintCare may work with Service Provider to provide such language if needed.
- 3.12 Upon PaintCare's request, the Service Provider shall provide PaintCare with written certification that appropriate and timely Processing has occurred in one or more of the manners described in Attachment B (Processing Facility Scope of Work) for the PaintCare Products that the Service Provider reports to PaintCare as Processed pursuant to this Agreement.
- 3.13 The Service Provider shall prepare and timely submit all items, as identified and described in Attachment D (Required Deliverables).
- 3.14 All PaintCare Products and Non-PaintCare Products picked up or received by Service Provider under this Agreement (i) will be packaged, labeled, transported, handled, received, stored, repackaged and Processed in accordance with the Service Provider's and Processing Facilities' operating permits and (ii) must be Processed as expeditiously as possible.
- 3.15 For all Processing of PaintCare Products and Non-PaintCare Products collected pursuant to this Agreement, the Service Provider will use the Processing Facilities listed by the Service Provider in Attachment B (Processing Facility Scope of Work). The Service Provider may add or delete Processing Facilities by giving PaintCare prior written notice for each such addition or deletion.
- 3.16 The Service Provider must, to the extent practicable, ensure that all PaintCare Products it accepts under this Agreement are Processed in accordance with the specifications in Attachment B (Processing Facility Scope of Work). Notwithstanding the foregoing, the Service Provider's commitment to achieve certain Processing outcomes specified in Attachment B (Processing Facility Scope of Work) is an integral component of this Agreement. Any failure by the Service Provider to achieve those Processing outcomes will constitute a material breach of this Agreement.
- a. Beginning once PaintCare has at least 6 months of reporting data from the Service Provider under this Agreement, PaintCare may terminate the Agreement if the Service Provider's cumulative Reuse/Recycling Rate for



the PaintCare Reporting Year is more than 10% lower than its Target Reuse/Recycling Rate for latex PaintCare Products as specified at Attachment B-3 (Processing Facility Scope of Work).

- b. Beginning once PaintCare has at least 6 months of reporting data from the Service Provider under this Agreement, PaintCare may terminate the Agreement if the Service Provider's cumulative Disposal Rate for the PaintCare Reporting Year is more than 10% higher than its Target Maximum Disposal Rate for latex PaintCare Products as specified at Attachment B-4 (Processing Facility Scope of Work).
  - c. Beginning once PaintCare has at least 6 months of reporting data from the Service Provider under this Agreement, PaintCare may terminate the Agreement if the Service Provider's cumulative Reuse/Recycling Rate for the PaintCare Reporting Year is more than 10% lower than its Target Reuse/Recycling Rate for oil-based PaintCare Products as specified at Attachment B-5 (Processing Facility Scope of Work).
  - d. Beginning once PaintCare has at least 6 months of reporting data from the Service Provider under this Agreement, PaintCare may terminate the Agreement if the Service Provider's cumulative Oil-Based Paint Incineration Rate for the PaintCare Reporting Year is more than 10% higher than its Target Maximum Incineration Rate as specified at Attachment B-6 (Processing Facility Scope of Work).
  - e. PaintCare will have 60 days to exercise any termination rights arising from this Article 3.16 by providing a written termination notice to the Service Provider. The 60 day window is measured from the date on which PaintCare receives the reported data from the Service Provider that gives rise to the termination option. The termination from a timely delivered termination notice under this Article 3.16 will take effect 90 days after the effective date of the termination notice (see Article 14 ("Notices")).
- 3.17 The Service Provider shall work directly with Processing Facility personnel to facilitate an efficient flow of full Collection Bins into each Processing Facility and the return of empty (if reusable) Collection Bins to Drop-Off Sites.
- 3.18 Service Provider shall provide a staffed call center for receiving pickup requests from retailers, reuse stores, and solid waste facilities. The call center shall (i) be staffed Monday-Friday from 8 am to 5 pm in the applicable State time zone; and (ii) have a message system for off-hours and weekends. Service Provider may supplement the call center with a web-based tool for receiving pickup requests.
- 3.19 The Service Provider shall ensure that an appropriate number of Collection Bins

are available to the Drop-Off Sites at all times.

- 3.20 The Service Provider shall provide a Spill Kit to each retailer and reuse store that is assigned to Service Provider at the time of the initial delivery of Collection Bins. The Service Provider shall provide a replacement for any used Spill Kits upon request.
- 3.21 The Service Provider shall promptly notify PaintCare if the Collection Bins are not in a safe condition to transport PaintCare Products and shall not use such unsafe Collection Bins.
- 3.22 The Service Provider shall ensure that all work conducted in connection with the Services is performed in conformance with this Agreement by competent and trained personnel employed by the Service Provider or working at the Service Provider's direction.
- 3.23 The Service Provider shall commit adequate resources to participate in the Program and meet Service Provider's obligations under this Agreement, including providing, at Service Provider's sole expense, any and all Materials and Activities except for reusable Collection Bins that are provided by PaintCare at PaintCare's sole expense.
- 3.24 The Service Provider shall undertake commercially reasonable efforts to avoid accepting any Non-PaintCare Products from the Drop-Off Sites. If the Service Provider inadvertently receives any Non-PaintCare Products, the Service Provider will:
  - a. arrange for appropriate packaging and storage of the Non-PaintCare Products; and
  - b. arrange for the transportation and Processing of any such Non-PaintCare Products in accordance with all Law (PaintCare will compensate the Service Provider for the Processing of such Non-PaintCare Products as set forth in Attachment C (Pricing); and
  - c. report the Non-PaintCare Products to PaintCare in accordance with Attachment D (Required Deliverables).
- 3.25 Notwithstanding anything to the contrary in this Agreement, Service Provider is solely responsible for any Non-PaintCare Products that Service Provider accepts and packages into a Collection Bin. Except when a Non-PaintCare Product is discovered inside an acceptable PaintCare Product container, PaintCare is not obligated to compensate Service Provider for any Non-PaintCare Products that Service Provider accepts and packages into a Collection Bin at a Drop-Off Site or Direct Pickup Site.

- 3.26 No employee or other individual performing work on behalf of the Service Provider may carry a firearm during the performance of the Services.

#### **ARTICLE 4 – REPRESENTATIONS AND WARRANTIES**

The Service Provider represents, covenants, and warrants that:

- 4.1 The Service Provider is a company in good standing and qualified to carry on business in the State and any other jurisdictions in which it transports PaintCare Products, and that it has the approval, capacity, and authority to enter into this Agreement and to fully perform its obligations under this Agreement.
- 4.2 This Agreement does not in any way conflict with any other agreements of the Service Provider.
- 4.3 The Service Provider possesses the business, professional, and technical expertise, training, and experience required to perform the Services.
- 4.4 The Service Provider possesses the equipment, facilities, and employees or agents required to perform its obligations under this Agreement.
- 4.5 The Service Provider shall perform the Services in a diligent, safe, and workmanlike manner that conforms with generally accepted industry and professional practices, and with the care and skill ordinarily exercised, for such Services.
- 4.6 The Service Provider and its facilities, employees, or agents have been issued as of the date of this Agreement, and shall maintain throughout the Initial Term and any Renewal Term of the Agreement, all permits, licenses, certificates, or approvals required by Law that are necessary to perform the Services.
- 4.7 Any Processing Facility used by the Service Provider under this Agreement has been issued as of the date of this Agreement, and shall maintain throughout the Initial Term and any Renewal Term of the Agreement, all permits, licenses, certificates, or approvals required by Law that are necessary to perform the Services.
- 4.8 The Service Provider possesses the requisite expertise and professional capabilities to select reputable Processing Facilities that will comply with all applicable Law and Process all materials collected pursuant to this Agreement in accordance with Attachment B (Processing Facility Scope of Work).
- 4.9 The Service Provider possesses the requisite expertise and professional capabilities to monitor the performance of the Processing Facilities to ensure that the Processing Facilities comply with all applicable Laws and meet all obligations applicable to them under this Agreement.
- 4.10 Service Provider will maintain an appropriate written agreement with all subcontractors permitted under this Agreement (including the Processing Facilities) to require that each such subcontractor complies in full with the terms and conditions set forth in this Agreement that apply to the services being

rendered by that subcontractor, including any reporting obligations and securing rights for PaintCare or its designee to monitor and verify compliance with this Agreement under Article 8 ("Audits").

## **ARTICLE 5 – GENERAL OBLIGATIONS OF PAINTCARE**

- 5.1 PaintCare agrees to compensate the Service Provider for its performance of the Services as set forth in Article 7 (Payment and Consideration), and Attachment C (Pricing).
- 5.2 PaintCare has no authority to manage, direct, or supervise employees, representatives, or agents of the Service Provider, including how they perform any work and achieve compliance with applicable Law. PaintCare has no responsibility for making day-to-day and critical decisions regarding the Services.
- 5.3 Nothing herein is intended nor shall it be construed as creating any exclusive arrangement with the Service Provider. The Service Provider shall not restrict PaintCare from contracting with other entities under the Program, nor shall PaintCare restrict the Service Provider from contracting with other entities outside of the PaintCare Program.

## **ARTICLE 6 – TITLE AND RISK OF LOSS**

- 6.1 The Service Provider (and not PaintCare) shall have title to and risk of loss and liability for any PaintCare Products and Non-PaintCare Products that the Service Provider receives through the Program, including any risk of loss and liability under the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, and other applicable Law. By accepting PaintCare Products or any Non-PaintCare Products for transportation at a Drop-Off Site or Direct Pickup Site, the Service Provider assumes title to and risk of loss and liability for those products.
- 6.2 PaintCare is in no way responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by the Service Provider or by any of its employees or contractors.
- 6.3 If in the course of rendering the Services and fulfilling its obligations under this Agreement, the Service Provider's personnel or equipment cause any damage to the property of PaintCare or any third party, the Service Provider, at its sole expense, shall promptly replace the damaged property or repair it to the condition existing before the damage. This paragraph does not apply to the extent that the damage to property owned by PaintCare, or a third party is caused by the negligence or willful misconduct of PaintCare or that third party.

## **ARTICLE 7 – PAYMENT AND CONSIDERATION**

- 7.1 Payment for all Services shall be made in United States currency. PaintCare shall pay the Service Provider in the manner set forth in Attachment C (Pricing).
- 7.2 The Service Provider will invoice PaintCare on a calendar month basis, with each invoice submitted to PaintCare no later than 30 days after the end of the calendar month in which the invoiced Services were performed. Service Provider acknowledges and agrees that timely and complete, accurate submission of invoices is a critical component of the Services provided under this Agreement. Invoices with multiple service dates, if any, shall not include Services provided in two different calendar months. Each shipment from Direct Pickup Sites, HHW facilities, HHW Events, and PaintCare Events must be on a separate invoice. The Service Provider must submit invoices in an acceptable form and with all required information pursuant to this Agreement. PaintCare, in its sole discretion, reserves the right to refuse payment of any deficient invoice or any portion thereof, until the invoice meets all of the requirements set forth in this Agreement. Additionally, invoices that are not complete or are inaccurate or are submitted later than 30 days after the end of the calendar month in which the invoiced Services were performed will be immediately and automatically subject to administrative fees of 5% of the total amount of the invoice for each month that the invoice is late. Invoices from PaintCare for administrative fees will be issued to Service Provider on a quarterly basis. The foregoing shall be in addition to, not in lieu of, PaintCare's rights under Article 11 (Termination) of this Agreement and applicable Law. PaintCare may set off any sums which the Service Provider owes PaintCare under this Article 7 (Payment and Consideration).
- a) Each invoice must include the information set forth below:
- i. Bill to address
  - ii. Service Provider name and address
  - iii. Payment remittance address
  - iv. Unique Invoice number
  - v. Invoice date
  - vi. Invoice due date
  - vii. Purchase order number issued by PaintCare (default value will be the PaintCare contract number)
  - viii. Itemized details of all Services provided to each Drop-Off Site and Direct Pickup Sites including:
    1. Site code and site name (e.g., B&Q Paints RETCA01564), provided by PaintCare and site address
    2. Date of shipment (i.e., service date)
    3. Pricing zone (if any)

4. Item description (description of each billable item)
  - a. Note: If the item describes paint, include the count of container(s), type of container(s), size of container(s), gross weight of container(s), paint type (latex, oil- based, or mixed), and packaging method (loose pack or Bulk)
5. Count of item(s)
  - a. Note: Labor hours for Direct Pickup Sites must be for time on-site only.
6. Unit of measure for each item (e.g., lbs., gal., each, hr., etc.)
  - a. Note: Processing must be invoiced per pound based on the scale weight for all Collection Bins, except that roll-offs or paint accepted directly from the public at the Service Provider's own drop-off location must be invoiced per net weight. If the amount of paint was tracked in gallons, as is typically done with Reuse, the gallons shall be converted to pounds using a conversion of 10 pounds per gallon unless previously agreed to in writing (e.g., there are 2 gallons of paint for Reuse and the negotiated rate is \$1.60 per gallon, the invoice would list 20 pounds at \$0.16 per pound.)
7. Unit price per item
8. Extended price per item
- ix. Total invoice amount
  - b) A one-page invoice summary sheet for each invoice with subtotals for each PaintCare expense account. The summary sheet is not required if the same information is shown on the first page of the vendor's invoice. A template of the cover sheet is provided in Attachment H (Invoice Cover Sheet).
  - c) As an attachment to each invoice, documentation to evidence the number of labor hours charged in the invoice for Direct Pickups and PaintCare Events, if applicable.
  - d) As an attachment to each invoice, a legible copy of each shipping document relating to transportation services charged in the invoice. Each such shipping document shall have (at a minimum) the following information:
    - i. The name, address, and telephone number of (if required on the shipping document) the originating Drop-Off Site, and the destination of the PaintCare Products (and/or Non-PaintCare Products, if applicable);
    - ii. The telephone number of the originating Drop-Off Site if the shipping document is a manifest (the telephone number is not required if the shipping document is a bill of lading);

- iii. The number of Collection Bins (by size) and the total weight (in pounds) of PaintCare Products (and/or Non-PaintCare Products, if applicable) being transported;
- iv. The date on which the Service Provider accepted the PaintCare Products (and/or Non-PaintCare Products, if applicable) for transportation from the originating location; and
- v. The signatures of a representative of the Service Provider and of the originating Drop-Off Site. If the site is a PaintCare Event site, the Service Provider staff shall sign as the shipper (PaintCare staff shall not sign as the shipper).

7.3 All amounts paid by PaintCare to the Service Provider are subject to audit by PaintCare or a third party retained by PaintCare for such purpose, as set forth in Article 8 (Audits).

7.4 The Service Provider shall submit all invoices to PaintCare by the method and/or at the address specified below.

To: PaintCare Inc.  
Attn: PaintCare Accounting  
E-mail: [paintcare@bill.com](mailto:paintcare@bill.com)  
Address: 901 New York Avenue NW, Suite 300 West Washington, DC 20001

PaintCare shall send all payments made to the Service Provider at the address specified below. Except as otherwise requested by Service Provider in writing, invoices for the administrative fees described above shall be sent to Service Provider at the address specified below.

To:  
Attn:  
Phone:  
E-mail:  
Address:

7.5 In the event PaintCare has a good-faith objection to an invoice, PaintCare will notify the Service Provider in writing of said objections and describe in reasonable detail the basis for the objections. Any disputes regarding an invoice (or any portion of an invoice) will be settled according to Article 16 (Dispute Resolution). During any such dispute, the Service Provider shall continue with its responsibilities under this Agreement and will not stop providing the Services or terminate the Agreement, and PaintCare shall be obligated to make all payments due to the Service Provider over which there is no good-faith dispute.

7.6 PaintCare's payment of all or a part of an invoice neither relieves the Service Provider of any of its obligations under this Agreement nor constitutes a waiver of any claims by PaintCare.

7.7 The Service Provider warrants that, to the best of its knowledge, all documents, including invoices, billings, back-up information for invoices, and reports, submitted by the

Service Provider to PaintCare to support amounts invoiced in connection with the Services truly reflect the facts about the activities and transactions to which they pertain. The Service Provider represents that PaintCare, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The Service Provider will promptly notify PaintCare upon discovery of any instances where the Service Provider becomes aware of any discrepancies in relation to documents under this Article.

## **ARTICLE 8 – AUDITS**

- 8.1 The Service Provider shall conduct periodic audits (at least every 4 years) of all Processing Facilities used to Process PaintCare Products under this Agreement in accordance with Attachment G (Processing Facility Audit Requirements).
- a. Upon request, the Service Provider must submit to PaintCare a written report promptly upon completion of each audit. Such written reports must include sufficient detail to verify Processing Facility compliance with each audit requirement identified in Attachment G (Processing Facility Audit Requirements).
  - b. If any Processing Facility fails to meet any of the audit requirements set forth in Attachment G (Processing Facility Audit Requirements), the Service Provider will promptly notify PaintCare and will immediately suspend use of that Processing Facility for PaintCare Products until the Processing Facility demonstrates to the Service Provider's satisfaction that it complies with all requirements in Attachment G (Processing Facility Audit Requirements). If the Service Provider needs to suspend use of a Processing Facility, the Service Provider remains responsible for meeting all of its obligations under this Agreement through use of one or more alternative Processing Facilities.
  - c. PaintCare may make reasonable changes to the list of audit requirements set forth in Attachment G (Processing Facility Audit Requirements) by providing the Service Provider at least 90 days' prior written notice of the changes.
  - d. Upon PaintCare's request, the Service Provider will provide a detailed flowchart and/or narrative that describes how all materials it receives pursuant to this Agreement are routed and Processed from the Drop-Off Sites to final disposition. The description shall include names and addresses of facilities by material type (latex PaintCare Products, oil-based PaintCare Products, and Non-PaintCare Products).
- 8.2 PaintCare and its representatives, and the Drop-Off Sites and Household Hazardous Waste Event staff with which PaintCare contracts, may (a) monitor and verify that the Service Provider, and Service Provider's contracted Processing Facilities, have complied with this Agreement and all applicable Law, and (b) consult with the Service Provider about such compliance, including the manifesting, transporting, storage, Processing and disposal of any PaintCare Products for which that particular Drop-Off Site is the generator or in any way legally responsible under applicable Law.



- 8.3 PaintCare, its designee, and/or a representative or designee of any Drop-Off Site serviced by the Service Provider pursuant to this Agreement may, with at least 1 week's prior notice, audit and inspect Service Provider's contracted storage, Processing and disposal facilities that handle the Drop-Off Site's PaintCare Products during the facilities' hours of operation. The Service Provider shall secure such audit and inspection rights, which must include reasonable access to all portions of the facilities at which PaintCare Products are received, stored, managed, Processed, or otherwise handled at the facility. Nothing in this section provides PaintCare with the right or ability to control, supervise, or manage (1) the employees of the Service Provider or any of its subcontractor(s); (2) the activities undertaken by the Service Provider or its subcontractor(s) in the performance of the Services; and (3) the means by which the Service Provider or its subcontractor(s) meet all requirements of this Agreement, including complying with applicable Law.
- 8.4 The Service Provider agrees to maintain and to make available to PaintCare, during regular business hours, accurate books and accounting records relating to its Services under this Agreement. PaintCare shall have the right to audit, examine, and make excerpts and transcripts, of any documents, books and records (financial or otherwise) related to the Services or to ensure compliance with the provisions of this Agreement, and to make audits of invoices, materials, records, or other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.
- 8.5 The Service Provider shall maintain records detailing:
- a. The quantity of paint given to it by the Drop-Off Sites to transport in the form of a shipping document (e.g., bill of lading or manifest). The shipping document shall include:
    - i. The name, address, and telephone number of the originating Drop-Off Site, and the destination of the PaintCare Products.
    - ii. The number and type of Collection Bins and the total weight (in pounds) of PaintCare Products being transported.
    - iii. The date on which the Service Provider accepted the PaintCare Products for transportation from the originating location.
    - iv. The signatures of a representative of the Service Provider and of the originating Drop-Off Site;
    - v. The printed name and signature of a representative from the destination facility and the date of receipt, if a manifest is used;
  - b. Any and all certificates of Recycling and/or disposition received by the Service Provider for Processing PaintCare Products; and
  - c. Records of any inspections required by Law.
- 8.6 The Service Provider shall maintain all data and records relating to this Agreement in an accessible location and condition for a period of not less than 3 years from the later of (i) the date of the written report required by Article 8.1.a. above, or (ii) after final payment under this Agreement; or (iii) until after final audit has been

resolved. The Service Provider will include this requirement in any subcontract for Services performed under this Agreement (including the Processing Facilities).

## **ARTICLE 9 – INDEMNIFICATION**

- 9.1 The Service Provider, and its successors and assigns, shall defend, indemnify, and hold harmless the Indemnified Parties from and against all claims, suits, demands, obligations (including any obligation for PaintCare to indemnify others), losses, damages (including punitive or exemplary damages), liabilities, expenses (including legal fees, expenses of litigation, court costs, and reasonable costs of investigation), and causes of action of every kind whatsoever, whether based in contract, tort, statute, common law, or strict liability, which are claimed in any way to result from, arise out of, or be connected with the performance of the Services, the operations of the Service Provider or its subcontractor(s), or the performance of the Service Provider's obligations under this Agreement. This indemnification does not apply to the extent any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action are proven to result from negligence, willful misconduct, or breach of this Agreement attributable to PaintCare.
- 9.2 The Service Provider (and not PaintCare) is responsible for any damages resulting in whole or in part from the Service Provider's acts or omissions or from the performance of the Services. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PAINTCARE WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES.** Nothing in this Agreement shall constitute a waiver or limitation of any rights that PaintCare may have under the applicable law.

## **ARTICLE 10 – INSURANCE**

- 10.1 The Service Provider shall comply with the requirements set forth in Attachment F (Insurance Requirements).
- 10.2 PaintCare at its own expense shall carry and maintain on a continuous basis the following insurance coverage during the term of this Agreement:
- a. Commercial General Liability insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate; and
  - b. Environmental Pollution Liability Insurance with limits not less than \$1,000,000 each occurrence, and \$1,000,000 in the aggregate.

## **ARTICLE 11 – TERMINATION OF AGREEMENT**

- 11.1 Either party may terminate this Agreement upon prior written notice if the other party:
- a. has breached any material provision of this Agreement, and has failed to cure such breach within 10 days of receiving written notification of such breach from the other party; or
  - b. has violated applicable Law material to the party's obligations under this Agreement.

Any notice of termination must specify the date on which this Agreement terminates if not cured and the reasons for termination.

- 11.2 At the time of termination of this Agreement, unless otherwise instructed by PaintCare, the Service Provider shall make all PaintCare Collection Bins, whether full or not full, available for pick up at a location reasonably determined by PaintCare.

## **ARTICLE 12 – ASSIGNMENT AND SUBCONTRACTING**

- 12.1 The Service Provider may not assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of PaintCare, which consent shall not be unreasonably withheld. Any change of control by the Service Provider constitutes an assignment that requires prior written consent. A "change of control" includes, among other items, any merger, consolidation, sale of all or substantially all of the assets or sale of a substantial block of stock of the Service Provider. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect.
- 12.2 Excluding use of a Processing Facility listed on Attachment B (Processing Facility Scope of Work), the Service Provider may not subcontract any part of the Services without prior written approval of PaintCare.
- a. As part of any permitted subcontract hereunder, the Service Provider is responsible for ensuring that any subcontractor is aware of and complies with all of the terms and conditions set forth in this Agreement that apply to the Services being rendered by that subcontractor.
  - b. If the Service Provider subcontracts out any portion of the Services as permitted under this Agreement, nothing contained in this Agreement or otherwise, will create any contractual relationship between PaintCare and the Service Provider's subcontractors. The Service Provider's obligation to pay its subcontractors is an independent obligation from PaintCare's obligation to make payments to the Service Provider. As a result, PaintCare has no obligation to pay or to enforce the payment of any moneys to any subcontractor of the Service Provider.

- c. No subcontract will relieve the Service Provider of its responsibilities and obligations hereunder. The Service Provider will be as fully responsible to PaintCare for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Service Provider.

### **ARTICLE 13 – FORCE MAJEURE**

- 13.1 Any delay or failure of either party to perform its obligations hereunder will be excused if, and to the extent, caused by the occurrence of a Force Majeure event. In the event that either party intends to rely upon the occurrence of a Force Majeure event to suspend or to terminate its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible (but no later than 3 business days from the date on which such party knew or reasonably should have known of the commencement of the Force Majeure event), setting forth the particulars of the circumstances. Written notices shall likewise be given after the effect of such occurrence has ceased.
- 13.2 An occurrence of a “Force Majeure” event means any of the following that prevent performance of this Agreement and are not within the reasonable anticipation and control of the affected party, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time: riots; wars; civil disturbances; insurrections; acts of terrorism; strikes and labor disputes; embargoes; state or federal orders; epidemics or pandemics; and acts of nature (or any threat of such occurrences) whose effects prevent safe passage of vehicles upon state or federal highways for a continuing period of not less than 14 days.

## ARTICLE 14 – NOTICES

- 14.1 Except where otherwise expressly authorized, notice will be by email, first-class certified or registered mail, or by commercial delivery service issuing a receipt for delivery and addressed as set forth below. Either party may update the information in this section by providing written notice to the other party.

To:	PaintCare Inc.
Attn:	PaintCare General Counsel
Fax:	(855) 385-2020
Email:	legal@paintcare.org
Address:	901 New York Avenue NW, Suite 300 West Washington, DC 20001

To:	
Attn:	
Fax:	
Email:	
Address:	

- 14.2 Notice is effective upon delivery. If delivery is refused, notice must be attempted by an alternate method hereunder. If delivery is refused for more than one method of notice hereunder, notice is deemed to be effective as of the date the second notice was attempted.

## ARTICLE 15 – INDEPENDENT CONTRACTOR STATUS

- 15.1 The parties intend that the Service Provider and its subcontractors (including the Processing Facilities), in performing the Services specified herein, are acting as independent contractors and that the Service Provider and/or its subcontractors, as applicable, will control all work relating to the Services and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.
- 15.2 The Service Provider is solely liable and responsible for providing all compensation and benefits to all persons performing work on its behalf pursuant to this Agreement. PaintCare has no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Service Provider or its subcontractors.
- 15.3 The Service Provider understands and agrees that all persons performing work on its behalf pursuant to this Agreement are, for purposes of Workers' Compensation

liability, solely employees of the Service Provider and not employees of PaintCare. The Service Provider is solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Service Provider pursuant to this Agreement.

## **ARTICLE 16 – DISPUTE RESOLUTION**

- 16.1 Both parties shall, in good faith, attempt to negotiate amicable resolutions to all disputes arising out of this Agreement.
- 16.2 Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement shall be exclusively settled by arbitration under the laws of the State of Delaware, in accordance with the rules of the American Arbitration Association.
- 16.3 The parties agree to the consolidation of any arbitration between them with any other arbitration involving, arising from or relating to this Agreement.
- 16.4 Each party hereto accepts the jurisdiction of the courts of Washington, D.C. for the purposes of commencing, conducting, and enforcing an arbitration proceeding pursuant to this Article. Each party hereto will accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party in accordance with Article 14 (Notices). Any such notice complying with this Article 16.4 will have the same effect as if the party had been personally served within Washington, D.C.
- 16.5 Any decision of an arbitrator engaged under this Article is final, binding, and enforceable upon both parties.
- 16.6 Subject to any termination rights otherwise provided under this Agreement, the parties shall continue with their respective responsibilities under this Agreement during any dispute.

## **ARTICLE 17 – COMPLIANCE WITH LAW**

- 17.1 The Service Provider shall comply with all Law applicable to this Agreement. The Service Provider shall thoroughly familiarize itself with the nature and scope of the Services under this Agreement and with matters which may affect the Services, including the Law governing the Services and this Agreement. Any failure by the Service Provider to thoroughly familiarize itself with such matters shall not relieve the Service Provider of its obligations under this Agreement.
- 17.2 The Service Provider shall promptly notify PaintCare in writing upon discovery of any failure, or any allegation of any failure, of the Service Provider or other persons or entities to comply with any applicable Law relevant to the performance of Services or any requirement of this Agreement.

- 17.3 Duties and obligations imposed by the Agreement, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed by applicable Law.

## **ARTICLE 18 – SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION; RELEASES OF HAZARDOUS SUBSTANCES; EMERGENCY RESPONSE**

- 18.1 The Service Provider is responsible for safety, health, and environmental protection related to and in the performance of the Services and shall take appropriate measures required by applicable Law and legal standards to ensure that it and its subcontractors:
- a. provide and maintain safe, health-protective, and environmental-protective working areas at or in proximity to where the Services are performed, including adjacent areas;
  - b. protect and safeguard (i) all persons at or in proximity to the Services, including those in adjacent areas, from risk or injury and danger to health, and (ii) property and equipment from damage or loss.
  - c. comply with all applicable Law governing the generation, handling, management, treatment, storage, and disposal of hazardous wastes, including licensing requirements, for HHW Drop-Off Sites pursuant to the applicable permits and State laws; and
  - d. comply with all other applicable health, safety and environmental Law, including the requirements of the U.S. Occupational Safety and Health Administration (“OSHA”), U.S. Environmental Protection Agency (“EPA”), and delegated State programs authorized by OSHA and EPA.
- 18.2 The Service Provider shall not allow the release of hazardous substances, hazardous wastes, or hazardous materials that require a notification cleanup, or response action under any applicable permit or Law, including the CERCLA, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, or other applicable Law.
- 18.3 The Service Provider shall immediately notify PaintCare of any circumstance or occurrence during the performance of the Services that require reporting to any governmental authority under any applicable permit or Law, including reporting to the National Response Center because of the release of a reportable quantity of hazardous substances pursuant to 42 U.S.C. § 9603 or under other applicable Law, and shall make such report immediately. The Service Provider shall ensure that any such reports are made within the applicable time limits and shall not delay making such reports because of any inability to notify PaintCare.
- 18.4 In the event of any action or occurrence during the performance of the Services which causes or threatens a release of a hazardous substance, hazardous waste, or hazardous material into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment and/or requires cleanup or a response action under applicable Law,

the Service Provider shall immediately notify PaintCare and shall take all appropriate action to prevent, abate, minimize, and cleanup such release and endangerment in conformance with applicable Law including applicable cleanup standards. As between the parties, the Service Provider is solely responsible for the costs of such action and any liability and damages of any type, including actual, incidental, consequential, and punitive. The Service Provider should not delay the undertaking of appropriate action because of any inability to notify PaintCare.

#### **ARTICLE 19 – CONFIDENTIALITY/PUBLICITY**

- 19.1 The Service Provider shall not disclose any details in connection with this Agreement to any person or entity except as may otherwise be provided hereunder or required by Law. PaintCare shall not, however, inhibit the Service Provider from publishing its role in the Program within the following conditions:
- a. The Service Provider may utilize and develop publicity material regarding the PaintCare Program only upon PaintCare's prior written consent and approval of the content and the manner of presentation and publication thereof; and
  - b. During the term of the Agreement, the Service Provider shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, social media posts, emails, videos, or other communications materials using the name of PaintCare or referring to Program activities without PaintCare's prior written consent and approval of the content and the manner of presentation and publication thereof.

#### **ARTICLE 20 – MISCELLANEOUS PROVISIONS**

- 20.1 **No Waiver.** The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted does not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.
- 20.2 **Selective Waiver.** Either party may waive any default by the other party under this Agreement by an instrument in writing to that effect, and no such waiver will extend to any subsequent or other default by the other party. No failure or delay on the part of either party to exercise any right hereunder operates as a waiver thereof. Either party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.
- 20.3 **Entire Contract.** This Agreement and all attachments and exhibits hereto constitute the entire agreement between the parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein.
- 20.4 **Amendment or Modification.** Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement will be effective unless in writing and signed by the respective duly authorized representatives of the parties hereto.



- 20.5 **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.
- 20.6 **Calendar Days.** Any reference to the word “day” or “days” herein shall mean calendar day or calendars days, respectively, including weekends and Federal Holidays unless otherwise expressly provided. If a deadline falls on a weekend or Federal Holiday, the next business day will be the applicable deadline.
- 20.7 **No Third-Party Beneficiary.** This Agreement is intended solely for the benefit of the parties hereto, and, other than the Indemnified Parties, no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction by any party in connection therewith.
- 20.8 **Authorization.** Each party represents and warrants that it has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representative signing this Agreement has the authority to execute this Agreement on behalf of the applicable party and to bind that party to its contractual obligations hereunder.
- 20.9 **Survivability.** All continuing obligations, rights, and remedies of the parties under this Agreement will survive the expiration or termination of this Agreement, including: Article 4 (Representations and Warranties); Article 6 (Title and Risk of Loss); Article 8 (Audits); Article 9 (Indemnification); Article 15 (Independent Contractor Status); Article 16 (Dispute Resolution); Article 17 (Compliance with Law); Article 18 (Safety, Health, and Environmental Protection; Releases of Hazardous Substances; Emergency Response); Article 19 (Confidentiality/Publicity); and Attachment D (Required Deliverables).

**IN WITNESS WHEREOF**, the parties have each caused this Agreement to be executed by its duly authorized representative.

By:

\_\_\_\_\_  
Authorized Signatory  
**PaintCare District of Columbia LLC**

\_\_\_\_\_  
Print Signatory's Name

\_\_\_\_\_  
Print Signatory's Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signatory  
**[Insert Service Provider's Legal Name]**

\_\_\_\_\_  
Print Signatory's Name

\_\_\_\_\_  
Print Signatory's Title

\_\_\_\_\_  
Date

## **ATTACHMENT A: PAINTCARE PRODUCTS DEFINITION**

- A. "PaintCare Products" means Architectural Paint as defined below.
- B. The following terms have the meanings indicated:
1. "Architectural Coatings" mean a coating recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs, but excluding adhesives and coatings recommended by the manufacturer or importer solely for shop applications or solely for application to non-stationary structures, such as airplanes, ships, boats, and railcars.
  2. "Architectural Paint" means interior and exterior architectural coatings, sold in containers of five gallons or less. Architectural Paint does not include Industrial Maintenance Coatings, Original Equipment Coatings or Specialty Coatings (defined below).
  3. "Industrial Maintenance Coatings" clearly labeled either (1) "For industrial use only" or (2) "For professional use only" or (3) "Not for residential use" or "Not intended for residential use" mean high performance architectural coatings, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions in an industrial, commercial, or institutional setting:
    - a. Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;
    - b. Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;
    - c. Repeated exposure to temperatures above 102°C (250° F);
    - d. Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or
    - e. Exterior exposure of metal structures and metal components.
  4. "Original Equipment Coatings" mean coatings that are applied to a product or a component of a product in a factory, shop, or other structure as part of a manufacturing production, finishing or repairing process (e.g., original equipment manufacturing coatings).
  5. "Specialty Coatings" mean coatings, as defined by the Federated Society of Coatings Technology's Coatings Encyclopedic, and includes arts and crafts, and automotive refinish coatings.
- C. PaintCare Products include the following non-exclusive listing of products in a maximum container of five (5) gallons:
1. Interior and exterior architectural paints: latex, acrylic, water-based, alkyd, oil-based, enamel (including textured coatings)

2. Deck coatings and floor paints (including elastomeric)
3. Primers, sealers, undercoaters
4. Stains
5. Shellacs, lacquers, varnishes, urethanes (single component)
6. Waterproofing concrete/masonry/wood sealers and repellents (not -tar or bitumen-based)
7. Metal coatings, rust preventatives
8. Field and lawn paints

D. PaintCare Products excludes, without limitation, the following, regardless of container size:

1. Paint thinners, mineral spirits and solvents
2. Aerosol paints (spray cans)
3. Auto and marine paints
4. Art and craft paints
5. Caulking compounds, epoxies, glues, adhesives
6. Paint additives, colorants, tints, resins
7. Wood preservatives (containing pesticides)
8. Roof patch and repair
9. Asphalt, tar and bitumen-based products
10. 2-component coatings
11. Deck cleaners
12. Traffic and road marking paints
13. Industrial Maintenance coatings
14. Original Equipment Manufacturer (shop application) paints and finishes

## ATTACHMENT B: PROCESSING FACILITY SCOPE OF WORK

B-1 The Service Provider's recipient Processing Facilities shall Process PaintCare Products in one of the manners set forth below and may not Process or manage PaintCare Products in any other manner unless authorized in writing in advance by PaintCare:

- a. The Processing Facilities must Process PaintCare Products as set forth below. In the case of any ambiguity or disagreement regarding how a particular Processing method is classified for the purposes of this Agreement, the classification will be made by PaintCare in its sole discretion. The methods are listed in order of PaintCare's preference for how the paint is to be Processed.

### Processing methods for latex PaintCare Products

1. Reuse
2. Recycling
3. Energy Recovery
4. Disposal

### Processing methods for oil-based PaintCare Products

1. Reuse
2. Recycling
3. Energy Recovery
4. Incineration

- b. The Processing Facilities shall manage Non-PaintCare Products in accordance with applicable federal, state and local Law.

B-2 **Reuse Restrictions.** PaintCare Products Processed via Reuse shall not be sold or donated to a Drop-Off Site or for export outside the United States without prior written consent from PaintCare and prior receipt of instructions from PaintCare on how to properly report to PaintCare the volume and disposition of such PaintCare Products. Additionally, Service Providers may not sell or donate more than 25 gallons of PaintCare Products for Reuse per day to a person or corporate entity without prior written consent from PaintCare.

B-3 **Target Reuse/Recycling Rate for latex PaintCare Products.** The Service Provider must ensure that at least XX% of all latex PaintCare Products collected pursuant to this Agreement are managed by some combination of Reuse and Recycling.

- B-4 **Target Maximum Disposal Rate.** The Service Provider must ensure that no more than XX% of all latex PaintCare Products collected pursuant to this Agreement are Processed via Disposal.
- B-5 **Target Reuse/Recycling Rate for oil-based PaintCare Products.** The Service Provider must ensure that at least XX% of all oil-based PaintCare Products collected pursuant to this Agreement are managed by some combination of Reuse and Recycling.
- B-6 **Target Maximum Incineration Rate.** The Service Provider must ensure that no more than XX% of all oil-based PaintCare Products collected pursuant to this Agreement are Processed via Incineration.
- B-7 The Service Provider shall require its Processing Facilities to recycle both plastic and metal empty PaintCare Product containers to the greatest extent practicable. PaintCare reserves the right to require Service Provider to recycle all empty paint containers. In such an event, PaintCare and Service Provider shall negotiate in good faith to determine a timeline for implementing such requirement and a price adjustment to reflect changes in the cost to provide such additional services. A copy of such unilateral modification and the accompanying negotiated terms will be memorialized in a written, signed amendment to the Agreement.
- B-8 The following is a list of Processing Facilities that Service Provider intends to utilize (including any downstream subcontractor) to Process PaintCare Products, Non-PaintCare Products, and paint containers, and the name and location of those Processing Facilities. Bidder may add additional lines to the table, as necessary, to identify additional Processing Facilities and/or Processing methods.

**Processing Facilities for PaintCare Products and Paint Containers**

Material	Processing Method	Facility Name	Facility Address
Latex paint	Paint-to-Paint Recycling		
Latex paint	Energy Recovery		
Latex paint	Disposal		
Oil-based paint	Paint-to-Paint Recycling		
Oil-based paint	Energy Recovery		
Oil-based paint	Incineration		
Metal paint containers	Recycling		
Plastic paint containers	Recycling		

- B-9 Any Service Provider that provides Services to retail, transfer stations, and/or HHW must add an entry for each Processing Facility that will be used for end-of-life management for Non-PaintCare Products collected in the Program. Service Provider may add additional lines to the table, as necessary.

Processing Facilities for Non-PaintCare Products

Material	Processing Method	Facility Name	Facility Address
Aerosols			
Pesticides/Toxic			
Corrosives (Acids/Bases)			
Non-RCRA			
Oxidizers			
Reactive (4.2, 4.3, 5.2)			
Flammable Liquids/Solids			
Used Spill Kit contents			

## Attachment C. Pricing for District of Columbia

### 1. Services offered by Service Provider

Y/N	Site Types	Y/N	Site Types
	Retailer, Reuse Store, and Solid Waste Facility Drop-Off Sites		HHW Facility and HHW Event
	Direct Pickup		PaintCare Event

### 2. Zone Descriptions (Enter the Zone number for each Ward in the table below.)

Ward	Zone
1	
2	
3	
4	
5	
6	

### 3. Transportation

Zone	Per Bin	Per Drum	Minimum Stop	Supply Delivery	Per Roll Off (Latex)
1					
2					
3					
4					
5					
6					

#### 4. Transportation, Other

Fuel Surcharge Description, if applicable

#### 5. Processing:

Note: Paint collected at (1) paint recycling facilities, (2) a Service Provider's own facilities that are serving as a public Drop-Off Site, or (3) in roll offs must be invoiced in net pounds. Paint collected at all other site types must be invoiced in gross pounds.

Description	Packing	Unit Price Per Pound
Combined LAT/OBP	Loose pack in Bins/drums	
Latex Paint (LAT)	Loose pack in Bins/drums	
Latex Paint (LAT)	Bulk	
Latex Paint (LAT)	Loose pack in roll off	
Oil-Based Paint (OBP)	Loose pack in Bins/drums	
Oil-Based Paint (OBP)	Bulk	

#### 6. Supplies

Description	Box Dimensions	Unit of Measure	Unit Price
Box with liner and pallet		Each	
Low profile box with liner and pallet		Each	
Used box with liner and pallet	N/A	Each	
55-gallon drum, metal	N/A	Each	
55-gallon drum, poly	N/A	Each	
30-gallon drum, poly	N/A	Each	
5-gallon pail, poly	N/A	Each	
55-gallon cardboard box		Each	
30-gallon cardboard box		Each	
20-gallon cardboard box		Each	
15-gallon cardboard box		Each	
Roll off rental	N/A	Day	
Roll off liner	N/A	Each	
Spill Kit	N/A	Each	

#### 7. Labor for LVP Direct Pickup Sites

Description	Units	Regular Hrs.	Overtime Hrs.
Technician	Hour		
Driver	Hour		



## 8. Non-PaintCare Products

Note: Choose either Option 1 or Option 2 for a method of charging PaintCare for Non-PaintCare Products:

Option 1: per pound pricing that will not include per container minimums

Option 2: per container pricing

Description	Option 1	Option 2		
	Per Pound with No Minimums	5-Gallon	30-Gallon	55-Gallon
Aerosol				
Pesticides and toxic				
Corrosive, acids or bases				
Non-RCRA				
Oxidizers				
Reactive (4.2, 4.3, 5.2)				
Flammable liquids				
Flammable Solids				
Used Spill Kit contents				

## 9. Other

Description	Unit	Unit Price
e-Manifest	Each	
Annual Sustainability Reports	Reporting Year	
Special and or Additional Report Requested by PaintCare (excludes reporting required by Attachment D (Required Deliverables) of the Agreement)	Hour	

## ATTACHMENT D: REQUIRED DELIVERABLES

**Tracking and Reporting:** The Service Provider shall provide PaintCare with the reports set forth below in a form and format acceptable to PaintCare. Monthly reports must be provided within 45 days after each month during the term of the Agreement. Quarterly reports must be provided within 45 days after each Quarter during the term of the Agreement. For the avoidance of doubt: after the expiration or termination of this Agreement, Service Provider must provide the required monthly and quarterly reporting for the period prior to expiration or termination of this Agreement.

- a. **Monthly Service Report:** Year-to-date monthly service reports are due no later than 45 days after the end of the month. Reports detail activity of each shipment from every Drop-Off Site and Direct Pickup Site for all Services from January 1 of the current year to the last day of the reporting month (e.g., for the report due on May 15, the report will include all Services from January 1 through March 31), regardless of the invoice date. Each monthly service report must include, at a minimum:
  1. Invoice number; and
  2. Invoice date; and
  3. Date of shipment; and
  4. Purchase order number issued by PaintCare (default value will be the PaintCare contract number); and
  5. Site information: site name and site code provided by PaintCare (e.g., Center Paint and Wallpaper – RETCA01234), site address; and
  6. Pricing zone (if any); and
  7. Item description (description of each billable item). Note: When the item description is paint (latex, oil-based, or mixed), the following items must be included in the report for each entry: number of containers (Bins or drums) type of collection containers, and size of collection container, tare weight of the collection containers, gross weight measured by a certified or calibrated scale, paint type (latex, oil-based, or mixed), and packaging method (loose pack or bulk). All this information must be on the same line in the report; and
  8. Units (billing quantity of items); and
  9. Unit of measure for each item (e.g., lb., gal., each, hr., etc.); and
  10. Unit price per item.

- b. **Monthly Non-PaintCare Product Report:** Year-to-date monthly Non-PaintCare Product reports are due no later than 45 days after the end of each month. These reports detail activity, per Drop-Off Site, during the month. Each monthly Non-PaintCare Product report must include:
1. Site information: site code (e.g., RETCA01564) provided by PaintCare, site name, and site address, city, and state; and
  2. Date of shipment; and
  3. Description of Non-PaintCare Product (e.g., solvents, acids); and
  4. Number of containers (by size) for each type of Non-PaintCare Product that the Service Provider picks up from each site during the reporting month.
- c. **Monthly Invoice Aging Report:** An invoice aging report detailing outstanding invoices that have not been paid to the vendor is due no later than 15 days after the end of each month. For each outstanding invoice, invoice aging reports must include:
1. Invoice number; and
  2. Invoice date; and
  3. Invoice due date; and
  4. Total amount due for each outstanding invoice; and
  5. The aging of the invoices.
- d. **Quarterly Processing Report:** The quarterly Processing report, detailing activity, per Processing Facility, for all materials Processed during the calendar quarter will be provided within 45 days after each calendar quarter during the term of the Agreement. The last day of each calendar quarter is March 31, June 30, September 30, and December 30. Quarterly Processing reports must include:
1. List of Processing Facilities, including name and address, type of paint Processed (latex or oil-based) and Processing method(s); and
  2. Summary of total gallons Processed by paint type and Processing method for the quarter for all Processing Facilities and total pounds of (A) empty plastic paint containers managed per method (Reuse, Recycling, Disposal) and (B) empty metal paint containers managed per method (Reuse, Recycling, Disposal).
  3. A copy of all Processing reports supplied by each Processing Facility displaying the data for all paint Processed in the quarter.

e. **Annual Sustainability Reports,**


1. **Background.** These reports detail the following information in a form and format acceptable to PaintCare. Reporting for the prior calendar year (including any partial calendar year in the first and last year of the Agreement term) shall be completed by May 1 of the following year (or on such other date(s) or schedule as PaintCare notifies Service Provider) and will include the information described below. **PaintCare, at its sole discretion and upon notice, shall have the right to change the reporting requirements and data parameters described in this Attachment D (Required Deliverables), Subsection e. (Annual Sustainability Reports) (including but not limited to requiring additional reporting requirements, data, reports, etc. not contemplated herein), for the purpose of accommodating, among other things, changes to applicable laws and regulations and/or then-current PaintCare sustainability goals.** In addition, if Service Provider enters into a Drop-Off Site contract with PaintCare similar reporting requirements may be applicable to that contract as well. As part of any permitted subcontract under this Agreement, Service Provider is responsible for ensuring that any subcontractor is aware of and complies with all the terms and conditions set forth in this Agreement that apply to the services being rendered by that subcontractor, including any reporting obligations.

**2. Reporting**

- 2A **Service Provider company sustainability initiatives and SmartWay Transport participation reporting.** This report must be specific to the company or division signing the Agreement and must contain the following information:
  - a) Link to, or copy of, the Service Provider's company sustainability report and list of any sustainability report updates made in the immediately preceding year. PaintCare will work with the Service Provider to develop an appropriate reporting mechanism.
  - b) Link to, or copy of, any specific verifiable information on internal sustainability initiatives commenced or implemented by the Service Provider in the immediately preceding year. PaintCare will work with the Service Provider to develop an appropriate reporting mechanism.
  - c) If Service Provider does not have a sustainability report available, then it must (i) explain the reasons for not having a sustainability report; and (ii) provide specific, verifiable information on Service Provider's internal sustainability initiatives implemented over the previous three years, including but not limited to low-emission vehicle purchases or retrofits, energy efficient equipment upgrades, waste reuse/reduction/recycling improvements, green purchasing and contracting, renewable energy installations, or other sustainability-related efforts.
  - d) A description of near-term sustainability goals and planned efforts related to sustainability that may directly benefit PaintCare.

- e) After registration as an EPA SmartWay Transport Carrier Partner, Service Providers must provide PaintCare with a copy of their SmartWay registration form annually, and the form must show that Service Provider registration is active. SmartWay partners can download the form from the “Resources” section of the Partner Portal of the SmartWay website.

- 2B. **Facility Energy Consumption.** Service Provider must submit reporting detailing the total amount of all energy consumed (including the energy source/fuel type and purpose of consumption) by Service Provider for (i) each Processing Facility and (ii) each Sorting Facility utilized by Service Provider in fulfilling its obligations under the Agreement, including a reasonable estimate of the percentage of time each dedicated to handling, sorting or Processing PaintCare Products, including:
- Information on each Processing Facility and Sorting Facility used by Service Provider, including name, address, and type of facility (e.g., Recycling facility, fuel blending facility, etc.);
  - Energy source/type, amount used/consumed, unit of measure, and purpose of consumption used by each Processing Facility and Sorting Facility; and
  - Estimated percentage of time each such Processing Facility and Sorting Facility is dedicated to fulfilling Services for the PaintCare Program.
  - Service Provider will submit this report using the template shown here or an alternative format as requested by PaintCare

		<b>Vendor Facility Energy Consumption Report Form</b>			
		INSTRUCTIONS – Complete the form and submit it to Steve Pincuspy and Fred Gabriel by clicking link below:			
		<a href="#">Click here to email form!</a>			
Reporting Year		Facility #1			
		Facility type	[select]		
		City, State			
Company Name		Zipcode			
Example Inc.					
		Energy Source/Fuel Type	Units		Provide a description, or reason, for this energy consumption (e.g. heat, specific equipment, lighting, etc.)
PaintCare States Served (enter all that apply)		Electricity	[select]		
		Natural gas	[select]		
Example: CO, IL		Fuel (gasoline)	[select]		
		Fuel (diesel)	[select]		
Number of facilities you operate that manage PaintCare materials		Fuel (propane)	[select]		
10		Amount of coal	[select]		
		[Other fuel - please type it in this box]	[select]		
		Percentage of facility time allocated to PaintCare			

NOTE: Changing the number above will create additional Facility Forms in the columns to the right.

- 2C. **Fleet Data.** This report will provide details on fleet data related to performance of the Services, including the following (PaintCare will work with Service Provider to develop an appropriate reporting format and mechanism):
- a) Count of vehicle types servicing the PaintCare Program, including primary fuel or energy source;
  - b) Facility address where vehicles are located;
    - i. Total miles driven to service PaintCare for each vehicle type;and
  - c) Total weight of PaintCare materials transported per vehicle type.

**ATTACHMENT E [PLACEHOLDER**

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## ATTACHMENT F: INSURANCE REQUIREMENTS

1. **Service Provider's Required Insurance.** The Service Provider must continuously carry (without interruption) the following types of insurance and ensure that any subcontractor (of any level or tier) that transports PaintCare Products pursuant to this Agreement carry the following types of insurance:
  - a. **Commercial General Liability** insurance written on an occurrence coverage basis covering claims for bodily injury, death, and property damage (including loss of use), personal injury, and advertising injury, at least as broad as the 1986 (or later) *Insurance Services Office Commercial General Liability Policy form CG 0001* ©, current edition occurrence form.
  - b. **Automobile Liability** insurance covering liability arising from the use or operation of any auto, including owned, hired, leased, rented and non-owned vehicles. The coverage must be at least as broad as the *Insurance Services Office Business Automobile Policy form CA 0001* ©, current edition. If the Services include transportation of "pollutants" (as defined in *Insurance Services Office Business Automobile Policy form CA 0001* ©, current edition), the Automobile Liability policy must include the MCS-90 endorsement and the CA99 48 endorsement and otherwise cover liability arising from all handling or release of the pollutants by the insured, including during transport and during loading/unloading.
  - c. **Contractor's Pollution Liability** insurance with limits that meet or exceed those limits outlined herein and that covers liability arising from (i) all handling or release of the pollutants by the insured, including during transport and during loading/unloading, and (ii) any storage, sorting, treatment, processing, recycling, disposal or other management of materials by any third-party Processing Facility pursuant to a contract with the insured.
  - d. **Workers' Compensation** insurance meeting or exceeding the requirements imposed by statute or law in (i) the State of the Project and (ii) all other States, if any, in which any of the Services are performed, including as may be available on a voluntary basis.
  - e. **Employer's Liability** insurance providing coverage for liability to employees for work-related bodily injury or disease, other than liability imposed by a workers' compensation law.
  - f. **Umbrella or Excess Liability** insurance providing excess limits over, at a minimum, the Commercial General Liability, Automobile Liability, and Employer's Liability policies. Such insurance must be on an occurrence basis in excess of the underlying insurance described in this Article and must be at least as broad as each and every one of the underlying policies.
2. **Insurance Requirements for Processing Facilities.** Service Provider must ensure that any Processing Facility or other facility used to store, sort, treat, process, recycle, handle or otherwise manage collected PaintCare Products or other materials pursuant to this Agreement carry the following types of insurance:
  - a. **Commercial General Liability** insurance meeting the specifications set out in Section 1(a) above. Any Processing Facility that creates a product that is sold or given away to others must also include product liability coverage through the longer of the applicable statute of repose or statute of limitations period;
  - b. **Commercial Automobile Liability** insurance meeting the specifications set out in Section 1(b) above;



- c. **Worker's Compensation** insurance meeting the specifications set out in Section 1(d) above;
- d. **Employer's Liability** insurance meeting the specifications set out in Section 1(e) above; and
- e. **Umbrella or Excess Liability** insurance meeting the specifications set out in Section 1(f) above.

Any Service Provider-owned or Service Provider-controlled facility used to store, sort, treat, Process, recycle, handle, or otherwise manage materials that are classified as "hazardous" under the Resource Conservation and Recovery Act and/or under applicable state or local law must also carry the following additional insurance:

- f. **Pollution Legal Liability** insurance applying to all locations at which Service Provider stores, consolidates, sorts, processes, recycles, handles, treats, or otherwise manages any materials received pursuant to this Agreement. This policy must also be broad enough to cover the pickup, transport, loading or unloading of materials, or other required work to fulfill this Agreement, and any releases from any of these activities, except to the extent such activities are covered by the Service Provider's (or a Processing Facility's or other subcontractor's) Automobile or Contractor's Pollution Liability policies meeting the requirements of this Agreement. The Pollution Legal Liability insurance must cover: bodily injury, sickness, disease, death or mental anguish or shock sustained by any person; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, on-site and off-site clean-up costs, natural resource damages, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims; and products and completed operations. The Pollution Legal Liability insurance must be maintained with at least minimum limits as outlined below under Minimum Limits of Insurance covering sudden and gradual pollution losses arising out of the operations and completed operations associated with work performed under this Agreement.

### 3. Minimum Limits of Insurance.

- a. All insurance that the Service Provider, the Processing Facilities, and any subcontractors of either are required to carry pursuant to this Agreement must meet the following minimum limits (or any higher limits that may be mandated by applicable law):

<b>Type of Insurance</b>	<b>Minimum Limits Required Per Claim/Occurrence</b>	<b>Minimum Limits Required Aggregate Policy Limits</b>
<b>1. Commercial General Liability</b>	\$ 1,000,000	\$ 2,000,000
<b>a. Bodily Injury/Property Damage</b>	\$ 1,000,000	\$ 2,000,000
<b>b. Products/Completed Operation</b>	\$ 1,000,000	\$ 2,000,000
<b>c. Personal and Advertising Injury</b>	\$ 1,000,000	\$ 2,000,000
<b>d. Loss of Use Insurance</b>	\$ 1,000,000	\$ 2,000,000
<b>2. Commercial Automobile Liability</b>	\$1,000,000 Combined Single Limit Each Accident	\$ N/A
<b>3. Worker's Compensation</b>	Statutory Limits	Statutory Limits

<b>Type of Insurance</b>	<b>Minimum Limits Required Per Claim/Occurrence</b>	<b>Minimum Limits Required Aggregate Policy Limits</b>
<b>4. Employer's Liability (Bodily Injury by Accident)</b>	\$ 1,000,000	\$ N/A
<b>a. By Disease</b>	\$ 1,000,000	\$ N/A
<b>b. Each Accident</b>	\$ 1,000,000	\$ N/A
<b>c. Each Employee</b>	\$ 1,000,000	\$ N/A
<b>5. Umbrella Excess Liability Insurance</b>	\$ 5,000,000	\$ 5,000,000
<b>6. Contractor's Pollution Liability</b>	\$ 2,000,000 (if managing only non-hazardous PaintCare Products)  \$ 5,000,000 (if managing oil-based paint or other hazardous PaintCare Products)	\$ 5,000,000
<b>7. Pollution Legal Liability Insurance (Facility Coverage)</b>	\$ 5,000,000	\$ 5,000,000

- b. Should any of the Service Provider's (or any subcontractor's or Processing Facility's) insurance be provided under a form of coverage that includes a general annual aggregate limit for a multi-year policy term, such general annual aggregate limit must be at least double the each-occurrence or each-claim limits specified above that are applicable to the type of insurance covered by such general annual aggregate limit.
  - c. Should the Service Provider's (or any subcontractor's or Processing Facility's) Commercial General Liability policy provide that claims investigation or legal defense costs be included in any each-occurrence, each-claim, or general aggregate limit, each such limit must be at least double the corresponding limit specified in the table above.
  - d. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement of the Services through the longer of the applicable statute of repose and statute of limitations periods. The policy must not include a reverse retroactive date.
4. Deductibles and Self-insured Retentions. As between PaintCare and the Service Provider, the funding of deductibles and self-insured retentions under all insurance maintained by the Service Provider (or any subcontractor or Processing Facility) is the sole responsibility of the Service Provider, including any amounts applicable to deductibles or self-insured retentions applicable to claims involving PaintCare as an additional insured. Any self-insured retentions in excess of \$100,000 must be declared to and approved by PaintCare in writing prior to the commencement of the Services.

## **5. Additional Insurance Requirements.**

- a. All insurance that the Service Provider is required to carry under this Agreement must contain the following additional provisions:
  - i. Additional Insured – The Indemnified Parties must be listed as additional insureds for full coverage and policy limits on all Commercial General Liability, Automobile Liability, Umbrella or Excess Liability, Pollution Legal Liability, and Contractor's Pollution Liability policies as respects claims or liabilities arising from, or connected with the Services, including completed operations. The additional insured endorsements must be at least as broad as the current editions of the Insurance Services Offices forms CG 20 10 and CG 20 37. The Service Provider shall provide the Indemnified Parties with proof of status as an additional insured under CG 20 10 during the term of the Agreement, and under CG 20 37 for completed operations through the expiration of the longest applicable statute of limitations or period of repose.
  - ii. Primary Coverage – All insurance coverage required by this Attachment F (Insurance Requirements) must be primary insurance, and any insurance or self-insurance maintained by PaintCare or the Indemnified Parties will be excess of and non-contributory with respect to such insurance.
  - iii. Severability of Interest - Except with respect to the limits of insurance, all insurance required by this Attachment F (Insurance Requirements) will apply separately to each insured or additional insured.
  - iv. Notice of Cancellation - Each insurance policy required by this Attachment F (Insurance Requirements) shall be endorsed to require insurer(s) to provide thirty (30) days' advance written notice (except ten (10) days' advance written notice for non-payment of premium) to PaintCare prior to any suspension, cancellation or non-renewal of the required insurance. This requirement is waived with respect to any insurance maintained by any Processing Facility if and to the extent that fulfilling this requirement is not commercially reasonable under the circumstances. For any such Processing Facility insurance policy that is not endorsed to provide notice to PaintCare, Service Provider must itself immediately notify PaintCare in writing of any contemplated or actual modification, suspension, nonrenewal, or cancellation of coverage that causes Service Provider (or any subcontractor or Processing Facility) to be out of compliance with its obligations hereunder.
  - v. Waiver of Subrogation – The Service Provider hereby agrees to waive, and to procure from its insurers waivers of, subrogation against any and all of the Indemnified Parties. The Service Provider further agrees to hold harmless, defend and indemnify the Indemnified Parties for any loss or expense incurred as a result of the Service Provider's failure to obtain such waivers of subrogation from the Service Provider's insurers.

6. **Acceptability of Insurers.** All insurance required under this Agreement must be placed with insurers with a current A.M. Best's rating of not less than A- VII, unless otherwise approved in writing by PaintCare.

## **7. Verification of Coverage.**

- a. Within thirty (30) days after the execution of this Agreement, and upon PaintCare's request thereafter, the Service Provider shall provide to PaintCare a certificate of insurance evidencing the coverage required of it under this Agreement. Likewise, upon PaintCare's request, the Service Provider shall procure and provide to PaintCare certificates of insurance from the Processing

Facilities and subcontractors evidencing the coverage required of them under this Agreement. Each certificate shall be signed by a person authorized by the insurer(s) to bind coverage on its/their behalf. The Service Provider shall provide renewal certificates to PaintCare prior to the expiration of any required insurance policy.

- b. Upon reasonable request, the Service Provider shall provide PaintCare with copies of all policies of insurance and endorsements thereto for all required insurance under this Agreement (including that of any subcontractors and Processing Facilities). Such copies may be excerpted or redacted to remove premium pricing or other confidential business information; provided, however, that any such excerpted/redacted copies must include sufficient information for PaintCare to verify the Service Provider's (and its subcontractors' and Processing Facilities') full compliance with the requirements of this Agreement and to evaluate actual, prospective, or denied claims as additional insured under such policies.
- c. Failure of PaintCare to request certificates or identify deficiencies will in no way limit or relieve the Service Provider of its obligations to maintain such insurance and require that its subcontractors and Processing Facilities maintain such insurance. Failure of the Service Provider (or any of its subcontractors or Processing Facilities) to maintain the required insurance constitutes a default under this Agreement and PaintCare may, at its option, terminate this Agreement for cause, withhold payment, and/or purchase the required insurance at the Service Provider's expense. PaintCare's acceptance of a non-conforming insurance certificate does not constitute a waiver, compromise or release of PaintCare's rights. If PaintCare is damaged by the failure of Service Provider (or its subcontractors or Processing Facilities) to purchase or maintain insurance required under this Agreement, the Service Provider shall bear all costs (including attorneys' fees, consultant fees and court and settlement expenses) attributable to such failure to purchase or maintain the required insurance.

**Subcontractor Insurance.** If the Service Provider uses a subcontractor to provide any portion of the Services, Service Provider may satisfy the foregoing requirements applicable to the subcontracted Services by ensuring that the subcontractor providing those Services satisfies each and all of the insurance requirements herein in the same manner as required had Service Provider maintained that insurance. To the extent the subcontractor fails to do so, however, Service Provider is responsible and shall defend, indemnify and hold harmless the Indemnified Parties to the same extent had all insurance required hereunder been properly procured and maintained by Service Provider or its subcontractor, as applicable.

## ATTACHMENT G – PROCESSING FACILITY AUDIT REQUIREMENTS

1. **Frequency of Audits.** The Service Provider must audit each Processing Facility before utilizing it to manage PaintCare Products for the Program. PaintCare, in its sole discretion, may waive the audit requirement (e.g., in cases where the Service Provider seeks to use a Processing Facility that is already managing PaintCare Products for the Program and has been audited by another Program partner). The Service Provider must also periodically re-audit each such Processing Facility at least once every 4 years.
2. **Audit Requirements.** To satisfy the requirements of this Agreement, the Service Provider's audits of Processing Facilities must include a review of the following issues:
  - a. **Regulatory Compliance** - The Service Provider must verify these requirements for each Processing Facility prior to execution of this Agreement and as part of each subsequent re-audit.
    - i. **Valid Permits** – the Service Provider must verify that the Processing Facility has valid permits in place for all activities to be performed by that Processing Facility in connection with the PaintCare Program.
    - ii. **Good Standing with Regulators** – the Service Provider must verify that the Processing Facility is in good standing with all applicable regulatory agencies.
    - iii. **Material Storage Handling** – the Service Provider must verify that the Processing Facility meets or exceeds industry-standard environmental compliance and applicable Law with respect to material storage and handling. This includes:
      1. Verifying that bins are stored properly at each Processing Facility:
        - a. On an impermeable surface; and
        - b. Protected from exposure to the elements; and
        - c. Stored safely based on applicable Law and industry standards and applicable packaging specifications.
  - b. **Health & Safety** - The Service Provider must verify these requirements for all Processing Facilities prior to execution of this Agreement and as part of each subsequent re-audit.
    - i. **Staff Training** – the Service Provider must validate that each Processing Facility has appropriate training programs in place; the Service Provider shall review Processing Facility staff training logs to verify that Processing Facility staff are appropriately trained for all activities to be conducted by the Processing Facility in connection with the PaintCare Program.
    - ii. **Personal Protective Equipment.** The Service Provider must verify that the Processing Facility utilizes appropriate PPE for each Processing activity.

- iii. **Safety Plans and Recordkeeping.** The Service Provider must verify that the Processing Facility has appropriate procedures in place for safety incidents, namely:
  - 1. **Documentation.** The Service Provider must verify that the Processing Facility keeps appropriate documentation of safety incidents in accordance with industry standards and applicable Law.
  - 2. **Safety Record.** The Service Provider must ensure that each Processing Facility's safety record meets or exceeds prevailing industry safety standards based on the Processing Facility's OSHA 300 log.
  - 3. **Safety Equipment.** The Service Provider must verify that the Processing Facility maintains appropriate safety equipment in accordance with industry standards and applicable Law (e.g., fire extinguishers, eye wash stations, etc.).
  - 4. **Contingency Plan.** The Service Provider must verify that each Processing Facility has a contingency plan (including emergency response procedures) that complies with all applicable Laws.
- c. **Insurance** – The Service Provider must provide PaintCare with a certificate of insurance for each Processing Facility within 30 days after executing this Agreement, demonstrating that the Processing Facility maintains all contractually required insurance types, limits, and additional insured endorsements.
- d. **Data Tracking/Reporting** – At least 30 days prior to utilizing any Processing Facility, Service Provider must verify such Processing Facility meets the following requirements.
  - i. **Receiving process**
    - 1. **Scales Certified/Calibrated.** The Service Provider must verify that all scales used for weighing PaintCare materials have been certified/calibrated within the last 12 months. Forklift scales are unreliable and shall not be used.
    - 2. **Documenting Weights.** The Service Provider must verify that weights are accurately documented by walking through the Processing Facility's documentation process.
    - 3. **Bin Storage Location.** The Service Provider must verify that Processing Facility has a dedicated space for inbound bins.
  - ii. **Quality Assurance/Control (for Processing Facilities that Process Latex PaintCare Products)** – The Service Provider must verify that Processing Facility has appropriate Quality Assurance/Quality Control process based on operating permits and applicable Law.

iii. **Processing**

1. **Validation of Processing Activity.** The Service Provider must verify that PaintCare Products received at the Processing Facility are being Processed or re-manufactured into marketable products (e.g., no stockpiling of input materials or of re-manufactured products).
2. **Separation of Program Products.** The Service Provider must verify the Processing Facility tracks Collection Bins from the Program separate from all other customers.
3. **Separation of PaintCare Program Products.** The Service Provider must verify the Processing Facility tracks the PaintCare Products separately for each different Program state (e.g., California PaintCare Products must be tracked and reported separately from Oregon PaintCare Products, etc.).
4. **Sorting by Hazard Class.** The Service Provider must verify that non-latex items are sorted by hazard class.
5. **Non-Latex Items.** The Service Provider must verify that non-latex items are packaged properly.
6. **Off-Site Management.** The Service Provider must verify storage times for received materials that cannot be managed by the site are acceptable based on operating permits and applicable Law.
7. **Labeling.** The Service Provider must verify that storage bins are appropriately labeled according to applicable Law.

iv. **Waste Tracking**

1. **Equipment and Processes.** The Service Provider must verify that the Processing Facility has appropriate equipment and processes to track bins of PaintCare Products from each PaintCare program state from receipt through Processing (e.g., California Program waste tracking must be reported separately from Oregon Program waste tracking, etc.).
2. **Shipping Documents.** The Service Provider must verify that inbound and outbound shipping documents are filled out correctly and are being retained for the period set forth in Article 8 of this Agreement. This audit requirement applies to all shipping documents, including those relating to shipments of PaintCare Products, non-PaintCare Products, and empty containers for recycling.

- e. **Housekeeping.** The Service Provider must verify that the general appearance of the Processing Facility meets or exceeds industry standards with respect to housekeeping.

## ATTACHMENT H – INVOICE COVER SHEET

Vendor	
State	
Invoice Number	
Invoice Date	
Month of Service	

Expense Group	Account Description	PaintCare Account#	Subtotal
Collection Support	Containers	6340	
Collection Support	Containers-Tax	6340	
Collection Support	Supplies/Materials (Spill Kits, Site Enclosures)	6342	
Collection Support	Labor charges (e.g., for Direct Pickups)	6346	
Collection Support	Mobilization Set-up (for Events)	6343	
Collection Support	e-Manifest Fee	6347	
Transportation	Transportation	6350	
Processing	Combined Latex/Oil – Loose pack	6383	
Processing	Latex – Loose pack	6381	
Processing	Oil-Based Paint – Loose pack	6382	
Processing	Latex - Bulk	6386	
Processing	Oil Based Paint – Bulk	6388	
Processing	Reuse (HHW Additional Activities)	6384	
Processing	Latex Paint Bulking (HHW Activities)	6387	
Processing	Oil-Based Paint Bulking (HHW Activities)	6389	
Processing	Reprocessing (HHW Activities)	6385	

Invoice Total	
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