

## Rules of Membership



**WEEE Ireland  
Suite 18 The Mall  
Beacon Court  
Sandyford  
Dublin 18  
Ireland**

**January 2012**

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THIS AGREEMENT IS MADE THE [                    ] DAY OF [                    ] 2012

**BETWEEN:**

1. **WASTE ELECTRICAL ELECTRONIC EQUIPMENT IRELAND**, a company incorporated in Ireland with registered number 393724 and registered office at Suite 18, The Mall, Beacon Court, Sandyford, Dublin 18 ("**WEEE Ireland**" which expression includes its successors and assigns) of the first part;

**And**

2. **[INSERT]**, a person or organisation with its principal residence or place of business, as the case may be, at **[INSERT]** ("Member" which expression includes its successors, heirs and permitted assigns) of the second part,

(Collectively called the "**Parties**" and individually called a "**Party**").

**RECITALS:**

- A. WEEE Ireland is an "approved body" operating a compliance scheme for Producers under the WEEE Regulations and the Battery Regulations on a not for profit basis.
- B. All Producers have a legal responsibility to comply with the regulations.
- C. The Scheme, is open to Producers of EEE & Batteries who are registered with, and report through the "Blackbox" to, the Registration Body.
- D. The Member named above is a Producer under the WEEE Regulations and/or Battery Regulations and wishes to join the Scheme to help fulfil certain Producer Responsibility obligations as provided for under article 31 of the WEEE Regulations to EEE Producers and article 34 of the Battery Regulations to Battery Producers.
- E. The Member named above has applied to the WEEE Ireland compliance scheme for membership in relation to their Producer Responsibility Obligations as a Producer of the following:

Please tick as appropriate

- Business to Business EEE Producer
- Business to Consumer EEE Producer
- Producer of Batteries and/or Accumulators

- F. This Agreement sets out the standard terms and conditions of membership of the Scheme. The Member wishes to join the Scheme, and WEEE Ireland is willing to accept the Member into the Scheme, subject to, and in accordance with, the terms and conditions of this Agreement

## **NOW IT IS AGREED BY EACH PARTY:**

### **1. Interpretation**

1.1 In this Agreement, the following terms and expressions mean the following:

**“Agreement”** means this agreement comprising of the clauses.

**“Annual Fee”** means the annual membership fee payable by the Member to WEEE Ireland in accordance with clause 15 and 16;

**“Back-Fees”** mean all outstanding membership and recycling fees (if any) payable by the Member to WEEE Ireland as determined by WEEE Ireland at its discretion, acting reasonably, in accordance with clauses 15 and 16, in respect of the Member’s share of WEEE and/or Waste Batteries which, prior to the Effective Date, has been placed on the Irish market.

**“Batteries”** means “battery” and “accumulators” as defined in the Battery Regulations.

**“Battery Regulations”** mean the Waste Management (Batteries and Accumulators) Regulations 2008.

**“Category”** refers to the categories into which various types of EEE or Batteries, as the context admits or requires, are categorised under the WEEE Regulations and/or Battery Regulations, as the case may be and as further broken down by the Registration Body from time to time.

**“Certificate”** means the certificate issued by WEEE Ireland pursuant to clause 5.5.

**“Deposit”** has the meaning given to it in clause 16.6.

**“EEE”** means “electrical and electronic equipment” as defined in the WEEE Regulations.

**“Fees”** means, as the context admits or requires the Joining Fee, Back-Fees and/or the Annual Fee.

**“Law”** means all law applicable in Ireland and the European Union and includes, without limitation, common law, statutes, regulations, acts, bylaws, rules, codes, decisions, proclamations, notices, statutory instruments, orders, directives, instruments, rules of court and/or delegated legislation.

**“Losses”** means any and all fines, awards, demands, claims, liabilities, losses, damages, costs and expenses whatever (including all reasonable legal and other costs and expenses, together with value added and other similar taxes thereon (if applicable)).

**“Members”** means persons or entities who are participating in the Scheme subject to, and in accordance with, WEEE Ireland’s membership terms and conditions. Members are classed as either Founding Members; the original members who formed WEEE Ireland and whose initial funding loan to WEEE Ireland was fully paid up on or before 13 August 2005; or Ordinary Members; all other members.

**“Producer”** means, as the context admits or require, a “producer” as defined in the WEEE Regulations and/or a “producer” as defined in the Battery Regulations.

**“Project Manager”** means the person appointed from time to time as the Member’s project manager in accordance with clause 6.

**“Recycling Costs”** means the recycling management costs payable by the Member to WEEE Ireland in accordance with clauses 15 and 16 in respect of the costs incurred by WEEE Ireland in arranging for the environmentally sound management of the Member’s share of WEEE and/or Waste Batteries (including, where applicable, “environmental management costs” as that term is defined in the WEEE Regulations).

**“Registration Body”** means, as the context admits or requires, the “registration body” as defined in the WEEE Regulations and/or the “registration body” as defined in the Battery Regulations; the current “registration body” being the WEEE Register Society Limited for the purposes of both of the WEEE Regulations and the Battery Regulations.

**“Regulatory Bodies”** means, *as the context admits or requires*, any or all of the Registration Body, Environmental Protection Agency, and Department of the Environment, Community and Local Government and/or local authorities.

**“Scheme”** means the scheme operated by WEEE Ireland subject to, and in accordance with, this Agreement as an “approved body” for the purposes of the WEEE Regulations and the Battery Regulations with a view to achieving the objective set out in clauses 2.

**“Services”** means the services which WEEE Ireland is required to provide to members of its Scheme with a view to achieving the objective set out in clause 2 as a condition of its appointment as an “approved body” under the WEEE Regulations and/or Battery Regulations, as the context admits or requires, which may include collection, recovery, recycling, treatment and/or reporting services.

**“Waste Batteries”** means “waste batteries or accumulators” as defined in the Battery Regulations.

**“WEEE”** means “waste electrical and electronic equipment” as defined in the WEEE Regulations.

**“WEEE Regulations”** mean the European Communities (Waste Electrical & Electronic Equipment) Regulations 2011

1.2 In this Agreement, the following terms apply:

1.2.1 Any reference to any provision of any legislation includes any modification, amendment, re-enactment, extension or consolidation of the legislation together with any secondary legislation made under it for the time being in force.

1.2.2 The masculine gender includes the feminine and neuter and the singular number include the plural and vice versa and words importing persons include firms or companies.

1.2.3 The section headings to the clauses in this Agreement are inserted for convenience of reference only and are not a part of and/or do not affect the construction or interpretation of this Agreement.

1.2.4 This Agreement is effective only upon the same being executed and delivered by or on behalf of each Party. This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when executed and delivered constitute an original; all such counterparts together constituting but one and the same instrument.

1.2.5 The provisions of this Agreement may only be waived by a Party in writing by express reference to this sub-clause. A waiver by a Party of any breach by any other Party of any of the provisions of this Agreement does not constitute a general waiver of such provision or of any subsequent act contrary to it. The failure or neglect by a Party to enforce any provision of this

Agreement is not (and will not be deemed to be) a waiver of that Party's rights under this Agreement and does not prejudice that Party's right to take subsequent action in respect of such provision.

1.2.6 this Agreement does not constitute any Party, the legal representative, employee, employer, joint venturer, partner or agent of the other Party nor, except to the extent expressly provided by this Agreement, does any Party or any successor of any Party have the right or authority to assume, create or incur any liability or obligation of any kind expressed or implied against or in the name of or on behalf of any other Party.

1.2.7 this Agreement represents the entire of the understanding of the Parties concerning the subject matter of this Agreement and overrides and supersedes, in particular, all prior and contemporaneous oral and written promises, representations, understandings, arrangements, agreements and letters of intent concerning the same which are hereby revoked by mutual consent of the Parties.

The Member confirms that it has not relied on, and has no remedies in respect of, any representations, conditions and terms except those expressly set out in the Agreement. Nothing in this sub-clause 1.2.7 excludes any liability;

- a) which one Party would otherwise have to the other Party in respect of any statements made fraudulently or
- b) to which a party is subject under the law

## **2. Objective of WEEE Ireland**

- 2.1 It is the objective of WEEE Ireland to assist members of the Scheme, in their capacity as Producers, meet their obligations under the Batteries Regulations and the WEEE Regulations, by operating a compliance scheme for the collection, treatment and recovery of WEEE and waste batteries

## **3. Confirmations**

- 3.1 The Member warrants, represents, confirms and agrees to WEEE Ireland that:

- 3.1.1 it is registered with, or will as soon as possible register with, the Registration Body and will at all times maintain such registration;
- 3.1.2 it has provided full, accurate and non-misleading information to WEEE Ireland in relation to its application to join the Scheme and to the Registration Body in relation to its application to register with the Registration Body;
- 3.1.3 it has provided, and will provide where requested, full, accurate and non-misleading information in relation to the quantity of EEE and/or Batteries which it has placed on the Irish market prior to the date of the execution of this Agreement to the extent properly required by:
  - (a) the Registration Body in connection with registration with the Registration Body under the WEEE Regulations and Battery Regulations; and/or
  - (b) any other relevant body or bodies.

- 3.1.4 it is, and will remain for the Term, an organisation duly organised, validly existing and in good standing under the laws of its country of establishment and it has full power and authority to become a member of the Scheme and to carry on its business as intended by this Agreement;
- 3.1.5 the execution and performance of this Agreement by the Member does not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Member is a party or any consent, judgment, order, or Law which is applicable to the Member;
- 3.1.6 The Member is not aware of any matter or conflict or circumstance which might restrict or impede it from entering into and performing this Agreement; and
- 3.1.7 The Member is fully familiar with, and will fully comply with its obligations, under this Agreement, the WEEE Regulations and the Battery Regulations and all Laws.

#### **4. Eligibility**

4.1 The Member acknowledges and understands that membership of the Scheme is, subject to compliance with law, in particular article 33(3)(l) of S.I. No. 335 of 2011 and article 36(3)(l) of S.I. No. 268 of 2008, at the absolute discretion of WEEE Ireland. The Member warrants, represents, confirms and agrees that:

- 4.1.1 it is a Producer under the WEEE Regulations and/or the Battery Regulations;
- 4.1.2 it, insofar as its operations in Ireland are concerned, is joining the Scheme for compliance under the WEEE and / or Battery Regulations

and acknowledges and agrees that this is a requirement and condition of membership of the Scheme.

4.2 The Member will immediately notify WEEE Ireland in writing of any change of events related to compliance by the Member with clause 4.1.

#### **5. Membership**

5.1 WEEE Ireland warrants that the Scheme is an approved scheme in respect of WEEE under the WEEE Regulations and Waste Batteries under the Batteries Regulations.

5.2 WEEE Ireland hereby accepts the Member as a member of the Scheme subject to, and in accordance with, the terms and conditions of this Agreement and the Member agrees to be a member and participate in the Scheme subject to, and in accordance with, the terms and conditions of this Agreement.

5.3 WEEE Ireland will, subject to payment of all relevant Fees and completion of any other relevant documentation (including this Agreement), issue the Member with an individual membership number and both WEEE Ireland and the Member will use such membership number as a reference number in all dealings between WEEE Ireland and the Member.

5.4 The Member, for so long as it is a member of the Scheme in accordance with this Agreement, is entitled to use its WEEE Ireland membership number and certificate when dealing with the

Registration Body as proof of membership of the Scheme. The Member will cease to use its WEEE Ireland membership number and certificate if this Agreement is terminated or suspended or expires.

5.5 WEEE Ireland will issue a Certificate to the Member declaring that the Member is satisfactorily participating in a scheme for the environmentally sound management of WEEE and/or Waste Batteries subject to:

5.5.1 full compliance by the Member with all the terms and conditions of this Agreement; and

5.5.2 full and timely payment of all Fees, Back-Fees and Recycling Management Costs by the Member which are due and payable under this Agreement; and

5.5.3 full compliance by the Member with its obligations under the WEEE Regulations and Battery Regulations.

WEEE Ireland may, subject to compliance with law, in particular Article 33(3) (l) of S.I. No. 355 of 2011 and article 36(3) (l) of S.I. No. 268 of 2008, at its absolute discretion, revoke, terminate or suspend the Certificate at any time and from time to time without notice.

5.6 The Member is required at all times to safely keep and maintain the Certificate issued to it by WEEE Ireland at the Member's premises confirming that it is a member of the Scheme.

5.7 The Member will immediately notify WEEE Ireland, WEEE Register Society and where appropriate EPA, in writing of any change in the Member's registered address.

5.8 The Member acknowledges that any breach by it of this Agreement may cause loss, damage or harm to WEEE Ireland not only directly but by liability to others, and acknowledges that it will be liable for such loss, damage or harm.

5.9 The Registration Body, the EPA and each relevant local authority will be informed by the Scheme if a producer's membership of WEEE Ireland has been terminated.

## **6. Project Manager**

6.1 The Member has appointed an authorised contact (or main contact) to act as its duly authorised representative, for the purposes of this Agreement, the Member's participation in the Scheme and any matter arising out of or in relation to this Agreement or membership or implementation of the Scheme.

6.2 The Contact will (and the Member will procure that the Project Manager will):

6.2.1 act as WEEE Ireland's primary point of contact for the purposes of this Agreement and the Scheme;

6.2.2 be available to WEEE Ireland and use its best endeavours to resolve any issues which WEEE Ireland may have from time to time in relation to this Agreement and/or the Scheme;

6.2.3 liaise and fully co-operate with WEEE Ireland in relation to this Agreement and the Scheme as WEEE Ireland may require from time to time;

6.2.4 attend such meetings as may be reasonably required by WEEE Ireland;

6.2.5 comply with the reasonable requirements and recommendations of the WEEE Ireland provided such requirements and recommendations are consistent with this Agreement.

- 6.3 WEEE Ireland may, at its discretion, liaise and engage with any other persons within the Member in such manner as WEEE Ireland considers appropriate despite the appointment of the authorised contact
- 6.4 The Member will notify WEEE Ireland in writing or by e-mail of any changes in the authorised contact from time to time including in the annual renewal of membership

## **7. WEEE Ireland Obligations**

- 7.1 WEEE Ireland will use reasonable endeavours to facilitate the achievement of the objective in clause 2 by providing the Services to the Member with reasonable care in accordance with (a) the WEEE Regulations and Battery Regulations and (b) the conditions of approval of the Scheme under the WEEE Regulations and Battery Regulations.
- 7.2 WEEE Ireland will use reasonable endeavours to:
  - 7.2.1 develop and agree strategies to facilitate meeting the achievement of WEEE Ireland's objective outlined in clause 2.1 ("**Strategies**") and implement the Strategies;
  - 7.2.2 raise and disburse funds through the operation of the Scheme to contribute towards the cost of implementation of the Strategies;
  - 7.2.3 maintain recycling, recovery and treatment records in respect of WEEE and Waste Batteries collected and processed on behalf of the members pursuant to the Scheme;
  - 7.2.4 where it enters into discussions with appropriate authorities in the interests, and on behalf, of the Scheme [and its members] in relation to the discharge of obligations under the WEEE Regulations and Battery Regulations through the Scheme, to keep the Member reasonably informed about such discussions; and
  - 7.2.5 promote the take back of WEEE and Waste Batteries; and
  - 7.2.6 provide, on an annual basis, a copy of WEEE Ireland's annual environmental report to Members and the Minister for the Environment, Community and Local Government (or its successor) as part of WEE Ireland's approval under this Ministry

## **8. Member's General Obligations**

- 8.1 The Member agrees at all times to:
  - 8.1.1 fully comply with, and adhere to, the WEEE Regulations and the Battery Regulations;
  - 8.1.2 fully co-operate with, and assist, WEEE Ireland and its employees, and, where appropriate, its contractors, sub-contractors, representatives and agents;
  - 8.1.3 fully comply with, and adhere to, any recommendations, guidance, instructions, codes of practice, directions or similar matters issued from time to time by any Relevant Bodies in relation to the WEEE Regulations, Battery Regulations and/or the Scheme;
  - 8.1.4 to fully co-operate with, and assist, any Relevant Bodies in relation to membership of the Scheme and the Member's obligations under the WEEE Regulations and/or Battery Regulations.

8.2 The Member will use its reasonable endeavours in relation to the operation of its own business, insofar as it is both reasonably practicable and economically appropriate, to maintain good environmental practices.

## **9. WEEE / Waste Batteries**

9.1 The Member will procure that all WEEE and Waste Batteries stored by or on behalf of the Member are stored securely and safely and in full compliance with the WEEE Regulations, Battery Regulations and all Laws.

9.2 The Member will register each Category of EEE and Batteries which the Member places on the Irish market from time to time with the Registration Body.

9.3 The Member will at all times, in accordance with any guidance issued from time to time by WEEE Ireland, the Registration Body, the Department of the Environment, Community and Local Government and/or the Environment Protection Agency,:

9.3.1 display visibly on all invoices, credit notes and delivery dockets, the registration number issued to it by the Registration Body; and

9.3.2 display visibly on all invoices an amount corresponding to the current "visible environmental management cost" (as defined in the WEEE Regulations), greater than zero, applicable to each Category of EEE as validated by the Registration Body from time to time: and

9.3.3 shall not communicate in any form, at any point in the supply chain, any amount that purports to cover either in whole or in part any cost associated with the collection, treatment and recovery of WEEE and waste batteries except as provided for in clause 9.3.2.

9.4 The Member will procure the provision of full and safe access to WEEE Ireland (and its contractors, sub-contractors, employees, representatives and agents) as appropriate to any WEEE and/or Waste Batteries stored by or on behalf of the Member (and the related premises where they are stored) which is required from time to time by WEEE Ireland (and its contractors, sub-contractors, employees, representatives and agents) in connection with the implementation of this Agreement and/or the Scheme.

9.5 The Member hereby irrevocably agrees that WEEE Ireland may reuse, process, recycle, dispose or sell any WEEE and/or Waste Batteries (and any parts, scrap, components, derivatives and/or fractions of or deriving from them) collected or processed by WEEE Ireland in the implementation of this Agreement and/or the Scheme in such manner as WEEE Ireland, at its absolute discretion, considers appropriate.

9.6 The Member hereby irrevocably appoints WEEE Ireland (and its nominees) with power of attorney for the term of this Agreement to do all such acts, matters or things to sell to any third party whatever any WEEE and/or Waste Batteries (and any parts, scrap, components, derivatives and/or fractions of or deriving from them) collected or processed by WEEE Ireland in the implementation of this Agreement and/or the Scheme, in such manner as WEEE Ireland, at its absolute discretion, considers appropriate

9.7 The Member agrees that it has no right, claim or entitlement to receive any revenue, money or money's worth derived or generated by or on behalf of WEEE Ireland arising out of or in connection with the processing, recycling, re-use, disposal or sale of any WEEE and/or Waste Batteries (and any parts, scrap, components, derivatives and/or fractions of or deriving from them) by WEEE Ireland on behalf of the members of the Scheme, the Member or otherwise.

10. **WEEE / Battery Information**

- 10.1 The Member acknowledges and understands that:
- 10.1.1 the Registration Body requires information and data from the Member in connection with the implementation of the WEEE Regulations and Battery Regulations and
  - 10.1.2 WEEE Ireland requires information and data from the Member in connection with the implementation and effective management of the Scheme;
  - 10.1.3 the Member shall provide that information.
- 10.2 The Member agrees at all times to keep complete, separate, detailed true, accurate and non-misleading books and records of all EEE and/or Batteries which the Member places on the Irish market from time to time detailing the types of the EEE and/or Battery per Category by unit and/or weight.
- 10.3 The Member agrees at its own expense at all times, subject to and in accordance with this Agreement, on and from the date of execution of this Agreement, to:
- 10.3.1 provide complete, accurate and non-misleading data and information to the Relevant Bodies in such manner and form and for such period as any of them may require from time to time;
  - 10.3.2 report and declare on a monthly basis (or such other period as may be specified) all EEE and Batteries which the Member placed on the Irish market during the previous month to the Registration Body (by unit and/or weight per Category) in such manner and form as the Registration Body require from time to time and
  - 10.3.2 such further information or data as may be required by the Scheme and any of the organisations and bodies identified in this clause 10.3 in order to verify, complete and/or support any information and/or data provided by the Member under this clause 10. This will include direct reporting to the Scheme where agreed with the relevant sector and approved by the Board for the purposes of cost allocation.
- The Member will present such information and data in the form and by the dates reasonably specified by the organisation requesting such information. Time is of the essence in the provision of such information and data and making of such declaration and reports.
- 10.4 The Member, upon request, will supply to the Registration Body and or WEEE Ireland, within such period and in such form and manner as either may reasonably require, a declaration by the Member's auditors and/or authorised signatories:
- 10.4.1 certifying the amount of EEE and/or Batteries declared and reported by the Member in accordance with clause 10.3.2;
  - 10.4.2 detailing the types and the Categories of EEE and/or Batteries by unit and/or weight placed on the Irish market by the Member during the year in question (or such period as WEEE Ireland and/or the Registration Body may require) and any divergence in this regard between the amounts declared and reported in accordance with clause 10.3.2; and
  - 10.4.3 confirming the completeness and accuracy of any information or statement accessed by WEEE Ireland's personnel or nominees, in accordance with clause 12, or provided by the Member to the Registration Body, WEEE Ireland or its nominees.

Time is of the essence in the provision of such declaration. The provision of such a declaration is without prejudice to WEEE Ireland's rights of audit and inspection under this Agreement.

10.5 The Member warrants that all information and data provided by the Member under or in connection with this Agreement and/or the Scheme is accurate, complete and non-misleading.

10.6 The Member will notify in writing:

10.6.1 the Scheme, WEEE Register Society and where appropriate EPA, of any material change in the information or data provided under this clause 10 within ten (10) days of the occurrence of any such change; and

10.6.2 the Scheme, WEEE Register Society and where appropriate EPA, of any inaccuracy in any information or data provided under this clause 10 as soon as reasonably possible after discovering the inaccuracy, and will provide details of the inaccuracy and replacement information and data as soon as possible.

10.7 Any breach whatever of this clause 10 by the Member is a material breach of this Agreement.

## **11. Members' Regulatory Obligations**

11.1 The Member understands, acknowledges and agrees that it may have residual obligations under the WEEE Regulations and Battery Regulations as a Producer, retailer and/or distributor despite its membership of the Scheme and that it will fully comply with such obligations.

11.2 Without prejudice to the generality of clause 11.1, the Member acknowledges and agrees that, despite its membership of the Scheme,

11.2.1 WEEE Ireland is not responsible under this Agreement and/or the WEEE and Battery Regulations in relation to any:

- (a) EEE or Batteries not declared to the scheme as part of the membership application or Blackbox or other reporting system
- (b) EEE put on the market outside Ireland and/or WEEE that has arisen outside Ireland; and/or
- (c) equipment or waste arising from equipment which is outside the scope of the WEEE and Battery Regulations; and

11.2.2 the Member at all times is and remains responsible under the WEEE Regulations for the waste electrical and electronic equipment he is responsible for but which is not managed under the Member's membership of the Scheme, EEE and WEEE referred to in clause 11.2.1 and, in particular:

- (a) the collection, treatment, recovery and environmentally sound management of waste electrical and electronic equipment he is responsible for but which is not managed under cover of the Scheme; and
- (b) financing the costs of the collection, treatment, recovery and environmentally sound management of waste electrical and electronic equipment he is responsible for but which is not managed under cover of the Scheme.

The Member agrees to all times have its own arrangements in place for dealing with such EEE and waste electrical and electronic equipment and to carry out such arrangements in a way that is consistent with the obligations placed on it under the WEEE Regulations.

11.3 Any breach of clause 11.1 and/or 11.2.2 is a material breach of this Agreement.

## **12. Audit**

- 12.1 WEEE Ireland is entitled from time to time to (or appoint a third party to) inspect or audit the information and data supplied by the Member to the Registration Body and/or WEEE Ireland pursuant to this Agreement in order, in particular, to verify its accuracy and completeness. The Member will fully co-operate with any person in relation to any such audit and/or inspection and will promptly provide them with, and procure the prompt provision to them of, such assistance, access, records, information, explanations and other things as they may require.
- 12.2 WEEE Ireland will procure that any third party it appoints to undertake an audit and/or inspection agrees to obligations of confidentiality on a similar basis to that set out in clause 13.
- 12.3 If an audit and/or inspection indicates that the volumes of EEE and/or Batteries declared or reported by the Member in accordance clause 10 and/or in connection with the Member's application to join the Scheme or register with the Registration Body are not accurate or complete, the Member will on demand immediately pay to WEEE Ireland on an indemnity basis:
- 12.3.1 all Back-Fees and Recycling Costs which are payable in relation to any quantity or volume of EEE and/or Batteries which were not declared and/or reported by the Member in accordance with clause 10 and/or in connection with the Member's application to join the Scheme or register with the Registration Body.

The Member may also be liable for cost of audit and any subsequent audit to verify the validity of the data and information produced.

## **13. Treatment of Information by WEEE Ireland**

- 13.1 WEEE Ireland acknowledges that information furnished to it by a Member or the Registration Body in respect of a Member shall be confidential and will take all usual steps to procure all confidential and commercially sensitive information is not, without the prior written consent of the Member, disclosed to a third party save as expressly permitted by this Agreement and the WEEE and Battery Regulations.
- 13.2 The Member will use all reasonable endeavours to ensure all WEEE Ireland's confidential and/or commercially sensitive information (including information relating to the constitution, business and operational plans, fees, price lists and commercial and contractual arrangements of the Scheme) is not, without the prior written consent of WEEE Ireland, disclosed to a third party (except on a need to know basis).
- 13.3 Clause 13.1 and clause 13.2 does not apply to information which:
- 13.3.1 is in or comes into the public domain other than by reason of any breach by the receiving Party of its obligations under this Agreement;
- 13.3.2 is in the possession of the receiving Party prior to receipt of such information from the disclosing Party; and/or
- 13.3.3 is received by the receiving Party from a third party who did not receive such information directly or indirectly from the other Party.
- 13.4 Nothing in this Agreement prevents either Party from disclosing, or granting access to, any information or data which is required by any governmental agency, department, authority, relevant body or bodies or other regulatory body or which it is otherwise required to disclose by Law.
- 13.5 This clause 13 survives the expiration or termination of this Agreement for whatever reason.

## **14. WEEE Ireland Accounts**

- 14.1 WEEE Ireland operates on a not for profit basis and seeks to use money received from its members of the Scheme for the purpose of running the Scheme with a view to achieving WEEE Ireland's objective set out in clause 2.
- 14.2 WEEE Ireland will maintain Scheme books of accounts with respect to:
- 14.2.1 all sums of money received and expended by WEEE Ireland and the matters in respect of which such receipt and expenditure takes place;
  - 14.2.2 all sales and purchase of goods and services by WEEE Ireland; and
  - 14.2.3 the assets and liabilities of WEEE Ireland,
- and will arrange for such Scheme books of accounts to be audited annually by WEEE Ireland's auditors.
- 14.3 The Member is entitled to a copy of WEEE Ireland's income and expenditure account and balance sheet for each financial year upon request within six (6) months of the end of each financial year of WEEE Ireland.
- 14.4 WEEE Ireland will provide the Member with an annual environmental report detailing the units/tonnage of WEEE and Waste Batteries collected and treated through the Scheme
- 14.5 WEEE Ireland endeavours, to the extent reasonably practicable, to ring fence any deferred incomes and/or contingency funds on a Category by Category basis and to avoid any cross subsidisation by one Category of the recycling costs of another Category of WEEE and/or Waste Batteries.

## **15. Fees and Costs**

### **15.1**

#### **Joining Fee**

The Board of Directors will decide on the joining fee for WEEE Ireland. The fee will take account of costs incurred to date in setting up and developing the compliance scheme. The fee may be adjusted by the Board annually.

#### **Annual Fee**

The annual membership will be set by the Board of Directors. This fee will be set annually and will be renewed on or before the 1<sup>st</sup> January each year.

- 15.2 The Recycling Costs may be set and revised by WEEE Ireland periodically and are subject to increase or decrease from time to time. The Recycling Costs shall include any applicable environmental management costs (as such term is defined in the WEEE Regulations) that have been validated by the WEEE Register.
- 15.3 WEEE Ireland will endeavour to notify the Member one (1) month in advance of any increase or decrease in the Joining Fee, Annual Fee and/or Recycling Costs from time to time and will provide such information to the Member upon request.
- 15.4 The Back-Fees, if any:
- 15.4.1 will be determined by WEEE Ireland at its absolute discretion acting reasonably based upon the cost of the environmentally sound management of the Member's share of EEE

and/or Batteries which the Member placed on the Irish market, prior to the execution of this Agreement;

- 15.4.2 may include any applicable environmental management costs (as such term is defined in the WEEE Regulations) considered relevant by WEEE Ireland; and
  - 15.4.3 will be notified to the Member by WEEE Ireland in advance of the execution of this Agreement, subject to the provision of accurate, complete and non-misleading information by the Member to WEEE Ireland in relation to the relevant historic EEE and/or Batteries it placed on the Irish market.
- 15.5 The Member irrevocably and unconditionally agrees to abide by all decisions made by WEEE Ireland in relation to the quantum or basis for any Back-Fees, Recycling Costs, the Joining Fee and/or Annual Fee.
- 15.6 WEEE Ireland will invoice the Member on a monthly basis (or other periodic basis determined by WEEE Ireland) in arrears in respect of Recycling Costs based upon the Member's share of EEE and Batteries placed on the Irish market during the period in question.
- 15.7 The Member's share of EEE and Batteries that it placed on the Irish market during the period in question is determined, for the purposes of clause 15.6, is determined by reference to the quantity and volume of EEE and Batteries which:
- 15.7.1 according to the Member, the Member placed on the Irish market in the period in question, as declared or reported by the Member in accordance with clause 10; or
  - 15.7.2 if the Member has failed to make its declaration or report on time in accordance with clause 10.3.2 WEEE Ireland may either
    - (i) Make an estimates that the Member placed on the Irish market during the period in question or
    - (ii). initiate procedures to terminate the agreement in accordance with Clause 19.

## **16. Payment**

- 16.1 The Member agrees to pay in full in euro to WEEE Ireland in cleared funds by bank transfer to WEEE Ireland's nominated bank account:
- 16.1.1 the Joining Fee upon execution of this Agreement; and
  - 16.1.2 the Annual Fee upon execution of this Agreement and at the start of each calendar year before 31 January; and
  - 16.1.3 the Back-Fees, if any, upon execution of this Agreement; and
  - 16.1.4 the Recycling Costs, if any, specified in each invoice issued in accordance with clause 15.6 within thirty (30) days of receipt of the invoice,
- on or before the due date without any set-off, counter-claim, abatement or withholding of any kind.
- 16.2 The Joining Fee, Back-Fees, Annual Fee and Recycling Costs are exclusive of value added tax, which, if chargeable, is payable by the Member in the manner and at the rate for the time being prescribed by Irish law.
- 16.3 Interest accrues daily on late payments from the date the payment first fell due both before and after judgement in accordance with the European Communities (Late Payments in Commercial Transactions) Regulations 2002.

16.4 WEEE Ireland may change the terms of payment set out in this clause 16 from time to time on a generally applicable basis or in respect of a specific member (including the Member).

## **17. Indemnification**

17.1 The Member will fully and effectively indemnify and keep indemnified WEEE Ireland from and against all Losses suffered or incurred by WEEE Ireland arising out of, in relation to or in connection with any:

17.1.1 material breach whatever (whether repudiatory or not) by the Member of this Agreement; and/or

17.1.2 failure by the Member to comply with the WEEE Regulations, Batteries Regulations and/or Laws; and/or

17.1.3 death or personal injury suffered and/or incurred by WEEE Ireland and/or its employees, contractors, sub-contractors, agents and/or representatives arising out of and/or in connection with any breach or failure to comply with clause 9.1 and/or 9.4.

This clause 17 survives any expiry, termination or other determination of this Agreement however occurring.

## **18. Liability**

18.1 The Member acknowledges and agrees that:

18.1.1 WEEE Ireland operates the Scheme on a not for profit basis for the sole purpose of assisting members of the Scheme meet their compliance responsibilities as provided for under Article 30 of the WEEE Regulations and Article 34 of the Batteries Regulations to Producers who are certified by an approved body to be participating in a satisfactory manner in a scheme for the environmentally sound management of waste electrical and electronic equipment and batteries.

18.1.2 accordingly, it is fair, reasonable and appropriate for WEEE Ireland to exclude its liability in the manner set out in this clause 18.

18.2 Nothing in this Agreement excludes either Party's liability for:

18.2.1 death or personal injury caused by breach of this Agreement;

18.2.2 fraud; and/or

18.2.3 intentional breach of the warranty contained in clause 5.1; and/or

18.2.4 anything which it is unlawful for a Party to exclude.

18.3 Subject to clause 18.2, WEEE Ireland (including its directors, officers and employees) is not liable under or in relation to this Agreement (whether for breach of contract, negligence, breach of statutory duty or for any other reason) for any special, direct, indirect or consequential damages and/or losses even if advised in advance of the possibility of them.

18.4 WEEE Ireland, subject to clauses 18.2, excludes all terms, conditions, warranties and representations, whether expressed or implied by statute or common law, to the fullest extent permitted by applicable law including, without limitation, all terms, conditions, warranties and

representations implied by section 39 of the Sale of Goods and Supply of Services Act 1980 and the Member agrees that this is fair and reasonable in the circumstances.

## **19. Term and Termination**

- 19.1 This Agreement commences, subject to its prior execution by the Member, upon the date of its execution by WEEE Ireland and continues after that until terminated in accordance with this clause 19.
- 19.2 Either Party may terminate this Agreement with six (6) months prior written notice which notice will take effect at, and not before, the end of the next calendar year falling after the expiry of the full six (6) month notice period.
- 19.3 WEEE Ireland may terminate this Agreement immediately without liability if:
- 19.3.1 the Member breaches any term whatever of this Agreement;
  - 19.3.2 the Member fails to pay any sums owing to WEEE Ireland under this Agreement on the date they first fall due for payment;
  - 19.3.3 the Member provides false or misleading information or data to any Relevant Body;
  - 19.3.4 the Member is bankrupt, has a petition presented for its winding up, has a liquidator appointed to it or has a receiver or an examiner appointed to it or over part or all of its assets or enters into a composition with its creditors (save for the purposes of a bona fide reconstruction or amalgamation), is unable to pay its debts as they fall due within the meaning of section 214 of the Companies Act 1963 or any event similar to the foregoing occurs in any other jurisdiction; and/or
  - 19.3.5 WEEE Ireland ceases to have any necessary approval, consent or authorisation which it requires to operate as an “approved body” under the WEEE Regulations and/or the Battery Regulations.
- 19.4 The exercise by WEEE Ireland of its rights of termination in this clause 19 is without prejudice to any other rights and remedies of WEEE Ireland.
- 19.5 The Member will upon the termination or expiration of this Agreement for whatever reason immediately:
- 19.5.1 cease to be a member of the Scheme and cease to refer to itself as a member of the Scheme;
  - 19.5.2 notify the Registration Body in writing that it is no longer a member of the Scheme;
  - 19.5.3 cease using its membership number of the Scheme;
  - 19.5.4 return its Certificate to WEEE Ireland; and
  - 19.5.5 pay in full and in euro all Fees, Back-Fees and Recycling Costs and other sums due and owing to WEEE Ireland in cleared funds to WEEE Ireland’s nominated account without any set-off, counter-claim, abatement or withholding of any kind.
- 19.6 WEEE Ireland, once it has informed all Relevant Bodies, will cease to perform any Services or any other obligations under this Agreement upon the termination or expiration of this Agreement (for whatever reason).

- 19.7 Any expiration or termination (for any reason whatever) of this Agreement does not affect any accrued rights or liabilities of either Party under this Agreement nor the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into, or continue, in force on or after such expiration or termination.
- 19.8 Notwithstanding the above where WEEE Ireland proposes to terminate the membership of the member, it shall give notice in the writing to the member stating the reasons for the proposal and shall specify a period of not less than four (4) weeks within which the member may make a submission to the Board of WEEE Ireland who shall consider such submission before deciding whether or not to terminate this Agreement.

## 20. Miscellaneous

- 20.1 The Member is entering into this Agreement for and on behalf of itself only. The Member may not assign or otherwise transfer any of its rights or obligations under this Agreement, whether in whole or in part, without the prior written consent of WEEE Ireland and subject to any conditions of such consent.
- 20.2 WEEE Ireland may with the consent of the Minister, amend, revise, update and/or replace this Agreement (or any part of it) from time to time and the Member, in consideration of its acceptance to and membership of the Scheme, hereby agrees to this provided it is given prior notice of the amendment, revision, update or replacement at least one (1) month prior to its taking legal effect.
- 20.3 Any notice or communication under the Scheme or this Agreement:
- 20.3.1 by WEEE Ireland to a Member will be addressed to the Member's address as recorded in the membership register;
- 20.3.2 By the Member to WEEE Ireland must be addressed to the Compliance Department at WEEE Ireland Ltd., Suite 18, The Mall, Beacon Court, Sandyford, Dublin 18.

Each such notice or communication is deemed to have been received forty-eight (48) hours after posting or delivery by hand to the above addresses.

- 20.4 WEEE Ireland may at any time with the consent of the Minister and at its own discretion sub-contract any or all of its obligations under this Agreement and/or the whole or any part of the Scheme
- 20.5 WEEE Ireland may disclose on its website or otherwise that the Member is a member of the Scheme.
- 20.6 If any provisions of this Agreement is held by any court of competent jurisdiction or other competent authority to be unenforceable, illegal or void in whole or in part, then such part may be severed by the relevant court or competent authority from the remainder of this Agreement which will remain in full force and effect to the fullest extent permitted by applicable law.
- 20.7 Neither Party is liable for any loss or damage incurred or suffered by the other Party arising from the first Party's delay in performing or failure to perform its obligations under this Agreement to the extent that (and for so long as) such delay or failure results from any cause or circumstance beyond the affected Party's reasonable control other than the insolvency of that Party ("**Force Majeure Event**"), provided the Force Majeure Event arises without the fault or negligence of the affected Party and the affected Party notifies the other Party immediately upon becoming aware of such Force Majeure Event and the manner and extent to which its obligations are likely to be prevented or delayed. If any Force Majeure Event occurs the date(s) for performance of the obligations affected shall be postponed for so long as is made necessary by the Force Majeure Event provided that if any Force Majeure Event continues for a period of, or exceeding, ninety (90) calendar days

the non-affected Party shall have the right to terminate this Agreement Each Party shall use all reasonable endeavours to minimise the effects of any Force Majeure Event.

- 20.8 The Member agrees to act reasonably and in good faith in relation to its rights and obligations under this Agreement and any of WEEE Ireland's rights and obligations.
- 20.9 WEEE Ireland and the Member will use all reasonable endeavours to resolve any dispute arising in connection with this Agreement in a prompt and amicable manner. Any dispute arising between the Parties in any way related to connected with or arising out of this Agreement will be referred initially to the Authorised Contact in the case of the Member and Compliance Manager WEEE Ireland for the purposes of this Agreement who will then try in good faith to resolve the dispute as soon as possible. If they fail to resolve the dispute within fourteen (14) calendar days of the dispute having been referred to them, they will then promptly refer the dispute to the General Manager (or equivalent) of each Party who will then try in good faith to resolve the dispute as soon as possible.
- 20.10 This Agreement, the Scheme and any matter or dispute related to or in any way connected with or arising out of this Agreement or the Scheme is governed by and construed in accordance with Irish law and, subject to clause 20.9, each Party hereby submits to the exclusive jurisdiction of the Irish Courts for the purposes of any proceedings arising out of or in any way relating to or connected with this Agreement and/or the Scheme. Nothing in this Agreement prevents WEEE Ireland or the Member from obtaining protective or provisional relief in, or enforcing a judgment in, Ireland or any jurisdiction other than Ireland.

**The Authorised Contact is:**

**In Witness whereof each Party has executed this Agreement the date and year set out below:**

Signed for and on behalf of:

Company name

.....

Trading as

.....

By Authorised Signatory

.....

Position/title

.....

Dated:

.....

Signature:

**Signed for and on behalf of Waste Electrical  
and Electronic Equipment Ireland by**

Name

.....

Position:

.....

Dated:

.....