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## **AGREEMENT**

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**IN RELATION TO MEMBERSHIP OF TRANSFORM**

**BETWEEN**

**BIFFA WASTE SERVICES LTD**

**AND**

Full Name:

Whose [registered office is situated at] address is:

The following are the rules and regulations to be observed by the Members of the Scheme known as Transform operated by Biffa.

## 1. DEFINITIONS

1.1 In these Conditions the following words and expressions unless the context otherwise dictates shall have the following meanings:

<b>"Accounts"</b>	means the approved audited profit and loss account and balance sheet of the Member for the latest accounting period available;
<b>"Adverse Market Condition"</b>	means either (i) conditions of the market for the Treatment of" WEEE and/ or for recovered or recycled WEEE which the Operator of the Scheme considers are uneconomic or impractical for the purposes of running the Scheme or (ii) any change in Law;
<b>"Agency Fee"</b>	means a Fee payable annually by a Member in respect of each Scheme Year representing any fee payable during that Scheme Year to the Agency by the Operator of the Scheme in respect of or on behalf of the Member;
<b>"Agency"</b>	means any of the Department of Trade and Industry, the Environment Agency, the Scottish Environmental Protection Agency and the Environment and Heritage Service or any successor body from time to time;
<b>"Annual Fee"</b>	means an administrative Fee payable annually by a Member in respect of each Scheme Year or part of a Scheme Year;
<b>"Application"</b>	means in respect of Producers applying for membership of the Scheme within the timeframe prescribed by the Regulations, the provision of a completed data form, application form, signed Conditions and payment of the Annual Fee and the Agency Fee; and in respect of Producers applying for membership of the Scheme outside the timeframe prescribed by the Regulations, any late submission charges in addition to the aforementioned items;
<b>"Biffa"</b>	means Biffa Waste Services Limited whose registered office is at Coronation Road, Cressex Industrial Estate, High Wycombe, Buckinghamshire HP12 3TZ;
<b>"Business WEEE"</b>	means WEEE other than WEEE From Private Households;
<b>"Category"</b>	means a Category of EEE Listed in Schedule 1 of the Regulations;
<b>"Categories"</b>	means all Categories of EEE listed in Schedule 1 of the Regulations, display equipment, cooling appliances containing refrigerants, and gas discharge lamps;
<b>"Category Rate"</b>	means the Treatment Fee per tonne payable by a Member in respect of a specific Category;
<b>"Category Tonnage"</b>	means the Obligated Tonnage for a Category;
<b>"Conditions"</b>	means these rules and regulations as amended from time to time by the Operator of the Scheme;

<b>"EEE"</b>	means Electrical and Electronic Equipment;
<b>"Electrical and Electronic Equipment"</b>	has the same meaning as contained in the Regulations;
<b>"Estimated Tonnage"</b>	means the amount of EEE by reference to which a Member's Tonnage Fee is estimated for a Scheme Year or part of a Scheme Year;
<b>"Evidence Note"</b>	has the same meaning as contained in the Regulations;
<b>"Fee"</b>	means any fee or other charge or levy payable under these Conditions;
<b>"First Compliance Period"</b>	means the period commencing on 1 July 2007 and ending on 31 December 2007;
<b>"Laws"</b>	means all laws, regulations, common law, directives and other measures imposed or issued by any relevant body insofar as they relate to or apply to any of the Scheme, the Operator of the Scheme, the Members, EEE and WEEE,
<b>"Member"</b>	means Member of the Scheme;
<b>"Obligated Tonnage"</b>	means the tonnage of WEEE for which the member is obligated under the Regulations to Treat;
<b>"Operator of the Scheme"</b>	means Biffa or its successors or assignees from time to time;
<b>"Previous Quarter"</b>	means the three month period immediately preceding the three month period for which a Fee is payable under these Conditions;
<b>"Producer"</b>	has the same meaning as contained in the Regulations;
<b>"Regulations"</b>	means the Waste Electrical and Electronic Equipment Regulations 2006 No. 3289;
<b>"Scheme"</b>	means the producer compliance scheme under the name "Transform" registered with the Agency under the Regulations;
<b>"Scheme Year"</b>	means the First Compliance Period or any calendar year following the First Compliance Period beginning on 1 <sup>st</sup> January;
<b>"Secretary of State"</b>	means the Secretary of State for Trade and Industry or his successors from time to time;
<b>"Treatment Fee"</b>	means a fee calculated by reference to the costs, charges and expenses incurred by the Operator of the Scheme in Treating WEEE in accordance with the Regulations;
<b>"Treatment" and/or "Treat"</b>	means collecting, reusing, recycling, treating or sustainable disposal of WEEE;
<b>"Tonnage Fee"</b>	means a fee calculated by reference to the amount of EEE put on the market;

- "Turnover"** means the aggregate turnover as disclosed by the Accounts adjusted for any period of greater or lesser duration than 12 months;
- "WEEE"** has the same meaning as contained in the Regulations;
- "WEEE from Private Households"** has the same meaning as contained in the Regulations;

1.2 In these Conditions the singular unless the context otherwise dictates includes the plural and vice versa and reference to any gender shall include any other gender.

1.3 Any reference to any statute, byelaw or regulation shall include any modification or re-enactment thereof.

## **2. MEMBERSHIP OF THE SCHEME**

2.1 A Producer shall become a Member of the Scheme when the Producer submits a completed Application to the Operator of the Scheme and the Operator of the Scheme countersigns the application form applicable to such Producer in relation to the Scheme.

## **3. OBLIGATIONS OF THE MEMBER**

3.1 The Member will observe and perform the obligations imposed upon the Member under these Conditions.

3.2 The Member will comply with its obligations under the Regulations.

3.3 The Member will not whilst a member of the Scheme in respect of WEEE from Private Households be a member of any other producer compliance scheme under the Regulations in respect of WEEE from Private Households or seek to comply with its obligations in respect of WEEE from Private Households under the Regulations otherwise than through the Scheme;

3.4 If a Member contracts with the Operator of the Scheme for the Treatment of Business WEEE in accordance with Condition 8, the Member will not join another producer compliance scheme or seek to comply with its obligations under the Regulations in respect of Business WEEE other than through the Scheme.

## **4. PROVISION OF INFORMATION**

4.1 The Member shall provide the Operator of the Scheme with all relevant information (including without limitation computer data on C.D or via electronic transmission or other suitable media in such form as the Operator of the Scheme may require) and within such time limits in each case as may be prescribed by the Operator of the Scheme to enable the Operator of the Scheme to observe and perform its obligations under the Regulations in a timely manner.

4.2 The Member shall promptly notify the Operator of the Scheme of any change in any information provided to the Operator of the Scheme under these Conditions.

4.3 The Member shall immediately upon request provide the Operator of the Scheme with any information requested by the Agency.

- 4.4 All information provided by the Member shall be as accurate as reasonably possible. The Member warrants that all information provided to the Operator of the Scheme under these Conditions or otherwise shall be as accurate as reasonably possible.
- 4.5 The Operator of the Scheme shall be entitled to disclose information provided by the Member to the Agency or any governmental public national international or European Agency for the purposes of the operation of the Scheme or to any other party for the purpose of compliance with Laws.
- 4.6 The Member shall permit the Operator of the Scheme and the Agency to inspect any of its accounts and records as may be required in order to satisfy the requirements of the Regulations or the Conditions.

## **5. DISPUTES WITH THE AGENCY**

- 5.1 The Member shall use its best endeavours to assist the Operator of the Scheme in addressing any enquiries raised by the Agency concerning compliance with the Regulations or the Scheme by either the Member or the Operator of the Scheme including, but without limitation, providing the Operator of the Scheme with copies of any records kept by the Member in accordance with the Regulations and such other information and / or assistance as the Operator of the Scheme requests within the timeframe set by the Operator of the Scheme .
- 5.2 At the request of the Operator, the Member shall use its best endeavours to challenge and to assist the Operator of the Scheme in challenging any assessment or notification made by the Agency and notified to the Member by the Operator of the Scheme which appears to the Operator of the Scheme to be inaccurate, including but not limited to any notification of Obligated Tonnage within the period of time prescribed by the Regulation.

## **6. PAYMENT PROVISIONS GENERALLY**

- 6.1 All sums payable under these Conditions will be exclusive of Value Added Tax or any similar impost or levy.
- 6.2 All sums payable by any Member shall be free of any deduction set-off or counterclaim.
- 6.3 Any Fee payable shall become due and payable in accordance with the provisions of Condition 7. Time of payment shall be of the essence of these Conditions.
- 6.4 Any sum due and payable by the Member which has not been paid by the date upon which the same shall be due and payable shall carry interest at a rate of 4% per annum above Barclay's Bank Plc base rate from time to time from the due date of payment until the date of actual payment.
- 6.5 If any Member shall during a Scheme Year become liable for a Fee calculated on a structure different from that pertaining at the commencement of the Scheme Year such adjustments to the Fee shall be made by the Operator of the Scheme as shall be appropriate and any additional Fee shall become due and payable within 30 days of demand by the Operator of the Scheme.

## 7. FEES

- 7.1 The Member shall be liable for the following Fees in respect of each Scheme Year or part thereof which shall comprise:

### Annual Fee

- 7.1.1 the Annual Fee at the rate for the time being determined by the Operator of the Scheme which shall become due and payable upon Application and thereafter in relation to successive Scheme Years within 30 days of the date of the invoice.

### Agency Fee

- 7.1.2 An Agency Fee payable annually at a time to be determined by the Operator of the Scheme which shall be due and payable within 30 days of the date of the Invoice.

### Business WEEE

- 7.1.3 In respect of any Business WEEE treated by the Operator of the Scheme in accordance with a request made by a Member under Condition 8, a fee calculated by reference to the cost of Treating such Business WEEE payable within 30 days of an invoice from the Operator of the Scheme.

### Tonnage Fee

- 7.1.4 During the First Compliance Period, a Tonnage Fee payable quarterly in advance at a rate and at a time determined by the Operator of the Scheme and calculated by reference to the Obligated Tonnage estimated from the amount of EEE intended for use by private households put on the market by the Member during 2006 ("**2006 Estimated Tonnage**").
- 7.1.5 If at the end of the First Compliance Period a Member's Obligated Tonnage is greater than its 2006 Estimated Tonnage, that Member shall pay an additional Tonnage Fee at the end of the First Compliance Period calculated using the following formula:

$$(O - E2006) \times R = A$$

Where:

E2006 = the 2006 Estimated Tonnage

O = the Obligated Tonnage

R = the Tonnage Fee per tonne

A = the additional Tonnage Fee

The Tonnage Fee shall be payable within 30 days of the date of the invoice.

- 7.1.6 If at the end of the First Compliance Period a Member's Obligated Tonnage is less than its 2006 Estimated Tonnage, the Operator of the Scheme shall pay a rebate to the Member calculated using the following formula:

$$(E2006 - O) \times R = \text{Sum}$$

Where:

E2006 = the 2006 Estimated Tonnage

O = the Obligated Tonnage

R = the Tonnage Fee per tonne

Sum = the rebate to be paid to the Member

The Operator of the Scheme shall pay the rebate to the Member within a period of 40 days following 31 May in the Scheme Year following the Scheme Year for which the Tonnage Fee is payable.

7.1.7 During each Scheme Year other than the First Compliance Period, a Tonnage Fee payable quarterly in advance at a rate and at a time determined by the Operator of the Scheme and calculated quarterly by reference to the amount of EEE put on the Market by the Member during the Previous Quarter.

7.1.8 If at the end of any Scheme Year (other than the First Compliance Period) for which the Tonnage Fee is to be paid, a Member's Obligated Tonnage is greater than its Estimated Tonnage, that Member shall pay an additional Tonnage Fee at the end of the Scheme Year for which the Tonnage Fee is Payable according to the following formula:

$$(O - E) \times R = A$$

Where:

E = the Estimated Tonnage

O = the Obligated Tonnage

R = the Tonnage Fee per tonne

A = the additional Tonnage Fee

The Tonnage Fee shall be payable within 30 days of the date of the invoice.

7.1.9 If at the end of a Scheme Year (other than the First Compliance Period) a Member's Obligated Tonnage is less than its Estimated Tonnage, the Operator of the Scheme shall pay a rebate to the Member calculated using the following formula:

$$(E - O) \times R = \text{Sum}$$

Where:

E = the Estimated Tonnage

O = the Obligated Tonnage

R = the Tonnage Fee per tonne

Sum = the rebate to be paid to the Member

The Operator of the Scheme Shall Pay the rebate to the Member within a period of 40 days following 31 May in the Scheme Year following the Scheme Year for which the Tonnage Fee is payable

### **Treatment Fee**

7.1.10 During the First Compliance Period, an estimated Treatment Fee payable quarterly in advance at a rate and at a time determined by the Operator of the Scheme and calculated by reference to the amount of EEE intended for use by private households and put on the market by a Member of the Scheme during 2006. The estimated Treatment Fee shall be payable within 30 days of the date of the invoice.

7.1.11 During a Scheme Year other than the First Compliance Period, an estimated Treatment Fee payable quarterly in advance at a rate and at a time determined by the Operator of the Scheme and calculated by reference to the amount of EEE intended for use by private households and put on the market by a Member of the Scheme in the Previous Quarter. The estimated Treatment Fee shall be payable within 30 days of the date of the invoice.

7.1.12 As soon as practicable following the end of a Scheme Year, The Operator of the Scheme shall calculate the actual Treatment Fee payable by the Member in respect of such Scheme Year by using the following formula for each Category:

$$\frac{\text{Member's Obligated Tonnage for the Scheme Year}}{\text{Category Tonnage}} \times \text{Category Rate} = \text{Category Fee}$$

The Treatment Fee payable by the Member in respect of a Scheme Year shall be the sum total of Category Fees for all Categories of WEEE Treated by the Operator of the Scheme on behalf of the Member (**Final Treatment Fee**).

7.1.13 If the Member has paid an estimated Treatment Fee in excess of the Final Treatment Fee, the Operator of the Scheme Shall pay the Member a rebate in accordance with the Following Formula:

$$\text{Estimated Treatment Fee} - \text{Final Treatment Fee} = \text{Rebate}$$

Where "Rebate" is the amount to be paid to the Member by the Operator of the Scheme. The Operator of the Scheme will pay the rebate to the Member within 40 days of 31 May in the Scheme Year Following the Scheme Year for which the Treatment Fee was paid.

7.1.14 If the Final Treatment Fee exceeds the amount of the estimated Treatment Fee paid by the Member during a Scheme Year, the Member shall pay an additional Treatment Fee in accordance with the Following Formula:

$$\text{Final Treatment Fee} - \text{Estimated Treatment Fee} = \text{Additional Fee}$$

Where "Additional Fee" is the amount to be paid by the Member to the Operator of the Scheme within 30 days of the invoice.

7.2 A Producer who applies for membership of the Scheme after the deadline for registration with a producer compliance scheme prescribed by the Regulations shall pay upon application for membership of the Scheme an additional fee equivalent to late submission charges prescribed by the Environment Agency.

## 8. TREATMENT OF BUSINESS WEEE

If a Member of the Scheme makes a request in writing to the Operator of the Scheme for the Treatment of Business WEEE and provides the following information to the Operator of the Scheme:

- 8.1 the type of Business WEEE requiring Treatment;
- 8.2 the quantity of Business WEEE requiring Treatment;

- 8.3 the address at which the Business WEEE is located; and
- 8.4 the contact name and telephone number of the owner of the Business WEEE, the Operator of the Scheme shall, within ten working days of being provided with all the information contained in this clause 9.1, make arrangements with the Member for Treatment of the relevant Business WEEE.

## **9. INDEMNITY**

The Member hereby agrees to indemnify the Operator of the Scheme from and against all demands claims liabilities losses damages costs and expenses whatsoever (including all legal and other costs and expenses) and from and against all actions and proceedings which may be commenced taken or made against the Operator of the Scheme arising in relation to or in connection with:-

- 9.1 any failure by the Member duly and punctually to provide any information which the Member is obliged to provide under the Conditions;
- 9.2 any of the information provided by the Member under the Conditions being false inaccurate misleading or incomplete in any respect; or
- 9.3 Any failure by the Member to comply with its obligations under the Regulations or under these Conditions.

## **10. TERM OF MEMBERSHIP AND TERMINATION OF MEMBERSHIP**

- 10.1 Membership shall continue unless terminated as follows:
  - 10.1.1 by the Operator of the Scheme forthwith by notice in writing to the Member in the event that the Member:
    - (A) for any reason fails to perform or suspends performance of all or any part of the obligations under the Conditions;
    - (B) fails to pay any sum properly due in accordance with these Conditions;
    - (C) is in breach of any of its obligations under the Conditions which if capable of remedy is not remedied within the time specified by, and to the satisfaction of, the Operator of the Scheme;
    - (D) goes into liquidation whether compulsory or voluntary (except for the purpose of a bona fide reconstruction or amalgamation with the consent of the Operator of the Scheme);
    - (E) has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator;
    - (F) convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up; or
    - (G) fails to become registered by the Agency in accordance with the Regulations for any reason or has its registration cancelled or suspended by the Agency at any time;
  - 10.1.2 by the Operator of the Scheme by not less than 30 days' notice in writing to the Member; or
  - 10.1.3 by the Member by not less than 30 days' notice in writing to the Operator of the Scheme to take effect at the start of the Scheme Year immediately following the Scheme year in which such notice is given, such notice to be

received by the Operator of the Scheme no later than 1 September in the Scheme Year in which it is given.

- 10.2 Where a Member's membership of the Scheme is terminated during a Scheme Year, the Operator of the Scheme shall retain all Evidence Notes in its possession or control which are required by the Operator of the Scheme to satisfy its obligations under the Regulations in respect of that Member.
- 10.3 The termination of membership of the Scheme for whatever cause shall not affect any provision of the Conditions which is expressed to survive or operate in the event of such termination and shall not prejudice or affect the rights of either party against the other in respect of any breach of the Conditions or any monies payable by one party to the other in relation to any period prior to termination.

## **11. PURCHASE OF EVIDENCE NOTES**

A Member shall offer to sell any Evidence Notes in its possession at any time to the Operator of the Scheme before offering to sell such Evidence Notes to any third party. The Operator of the Scheme shall have [14 days] from the date the offer is made by the Member to agree a price with the Member. If the Operator of the Scheme agrees a price with the Member within the aforementioned period, the Operator shall purchase and the Member shall sell the Evidence Notes. The Operator of the Scheme shall pay to the Member within 30 days of receipt of a valid invoice (such invoice not to be issued before Biffa has acknowledged receipt of the Evidence Notes) recording the price agreed between the Operator of the Scheme and the Member. If the Operator of the Scheme and the Member are unable to agree a price within 14 days of the date the offer is made by the Member, the Member shall be entitled to sell the Evidence Notes to a third party.

## **12. PROVISION OF PRODUCER COMPLIANCE SCHEME**

- 12.1 Subject to the Member complying with all the Conditions and there being no Adverse Market Conditions, the Operator of the Scheme shall use reasonable endeavours to provide the services of a producer compliance scheme in accordance with the Regulation.
- 12.2 The obligations contained in this Condition 12 shall cease on cancellation of the Scheme under the Regulations.

## **13. CONFIDENTIALITY**

- 13.1 The Member and the Operator of the Scheme undertake to each other that they shall not at any time disclose any confidential information concerning the financial, business or contractual arrangements or dealings of the other party which have come into their possession under the terms of these Conditions save as may be necessary for conducting their business or to the extent:
- 13.1.1 such information is already in the public domain;
  - 13.1.2 disclosure is permitted under the terms of these Conditions; or
  - 13.1.3 the Member or the Operator of the Scheme is required by the Regulations or any other Laws, any court, tribunal, regulatory or administrative body to disclose such information.
- 13.2 The provisions of this Condition 13 shall survive the termination of the Conditions.

## **14. GENERAL**

- 14.1 The provisions of the Conditions shall be binding on and enure to the benefit of the successors and personal representatives of each party hereto and the Member shall not be entitled to assign or transfer any of its rights or obligations under the Conditions.
- 14.2 Except as provided in this Condition 13, these Conditions may not be altered modified or amended other than by the mutual written agreement of the Operator of the Scheme and the Member.
- 14.3 The Operator of the Scheme may at any time amend modify or add to any provision of the Conditions if the Operator of the Scheme has a valid reason or if required by or as a consequence of any statute directive of the European Union byelaw regulation order or guidance from the Agency or its successor. Any such amendment modification or addition shall become binding upon the Member and the Operator of the Scheme 30 days (or such lesser time as specified in the notice) after the Operator of the Scheme has published or otherwise notified the Member of such amendment modification or addition.
- 14.4 The Operator of the Scheme shall give to the Member at least 30 days' notice of any change to the Conditions which shall become binding upon the Member and the Operator of the Scheme from the commencement of the next Scheme Year unless membership of the Scheme is terminated in accordance with Condition 10.1.3.
- 14.5 Any change in the quarterly charge, levy or Fees payable under Condition 7 shall not be deemed to be an amendment modification or addition under this Condition 13 and shall not require any notice to the Member.

## **15. NOTICES**

- 15.1 Any notice given or made under the Conditions shall be in writing and may be delivered to the relevant party or sent by first class prepaid letter to the address of that party specified in the Conditions or such other address in the United Kingdom as may be notified under the Conditions by that party from time to time for the purpose shall be effectual notwithstanding any change of address not so notified. Any notice given or made under the Conditions to the Operator of the Scheme shall be addressed to the Company Secretary.
- 15.2 Each such notice or communication shall be deemed to have been given or made and delivered if by letter 48 hours after posting or if by delivery when left at the relevant address.

## **16. GOVERNING LAW**

- 16.1 These Conditions shall be governed by and construed in all respects in accordance with English law and the parties agree to submit to a non-exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Conditions.

Signed by the authorised representative of the Member

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Signature

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Name (print)

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Occupation

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Date

Signed by the authorised representative of Biffa

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Signature

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Name (print)

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Occupation

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Date