

DISTRIBUTOR TAKE BACK SCHEME

AGREEMENT RELATING TO NON CA SITES

Introduction

- 1 This Agreement only applies to sites (whether operated by or on behalf of a local authority or privately): (a) other than CA Sites; (b) with or without public access; (c) which want to collect WEEE from private households; and (d) which want to be considered for approval by the Secretary of State as a designated collection facility ("**Non CA Site**").
- 2 In this Agreement: (a) "**CA Site(s)**" means a place/places (as appropriate) provided by a local authority under relevant legislation at which persons resident in its area may deposit their own household waste free of charge (which are often referred to as household waste recycling centres); (b) "**WEEE from private households**" has the same meaning as in the WEEE Regulations; and (c) "**WEEE Regulations**" means the Waste Electrical and Electronic Equipment Regulations 2013 (as may be amended from time to time).
- 3 Valpak Retail WEEE Services Limited ("**Valpak**") has been given approval by the Secretary of State as the operator of the WEEE distributor take back scheme under the WEEE Regulations.
- 4 Under the WEEE Regulations the Secretary of State may approve any establishment or undertaking carrying out collection operations as a designated collection facility.
- 5 Valpak has agreed to assist the Secretary of State by compiling and submitting lists to the Secretary of State of those establishments or undertakings that wish to be considered for approval by the Secretary of State as a designated collection facility.
- 6 In this Agreement "**DTS**" means the WEEE distributor take back scheme operated by Valpak that has been approved by the Secretary of State under the WEEE Regulations.
- 7 In this Agreement the "**Operator**" means the operator and/or owner of the relevant Non CA Site as set out on the relevant application form submitted to Valpak. The Operator would like Valpak to include the Operator on the lists to be submitted under clause 5 certain Non CA Site(s) operated by or on behalf of the Operator (each such Non CA Site being a "**Nominated Site**").

Interpretation

- 8 In this Agreement words and expressions defined in the WEEE Regulations shall (where the context so permits) have the meanings set out in the WEEE Regulations unless differently defined in this Agreement and words and expressions defined in any clause shall (where the context so permits) have the meanings set out in such clause.
- 9 Any communication or notification in writing by Valpak to the Operator required for the purposes of this Agreement may be sent by Valpak by e-mail to the contact details provided by the Operator on the relevant application form.

Commencement and duration

- 10 This Agreement shall commence on the date Valpak notifies the Operator in writing that the Operator's application form has been received (together with the Fee (where

appropriate in accordance with clause 12) and accepted by Valpak ("**Commencement Date**") and shall (unless terminated earlier in accordance with the terms of this Agreement) continue in force until the end of the term of the appointment of the DTS or 31 December 2009 (whichever is the earlier).

Application for approval as a designated collection facility

- 11 The Operator shall set out on the relevant application form submitted to Valpak each Nominated Site together with such information in relation to each Nominated Site as Valpak may reasonably request.
- 12 Where the Nominated Site is not operated by or on behalf of a Local Authority, the Operator shall pay to Valpak £100 for each Nominated Site or £500 (whichever is the lesser) ("**Fee**"). The Operator shall pay the Fee to Valpak when the Operator submits the relevant application form to Valpak.
- 13 The Fee shall be exclusive of VAT (where and to the extent that this is applicable) and shall only be refundable at Valpak's discretion where Valpak does not include the Nominated Sites on the lists in accordance with clause 15.
- 14 The Operator shall ensure that each and every Nominated Site shall (on the date such Nominated Site is notified to Valpak under clause 11) meet the criteria for approval as a designated collection facility as set out in Schedule 12 of the WEEE Regulations.
- 15 Valpak shall (subject to clause 12) include all Nominated Sites on the lists referred to in clause 5 and Valpak shall submit such lists to the Secretary of State in accordance with the proposal submitted by Valpak to the Department for Environment, Food and Rural Affairs ("**DEFRA**") as part of the process for approval of the DTS.
- 16 Valpak shall notify the Operator of any decision made by the Secretary of State under clause 4 in relation to each Nominated Site where and to the extent that Valpak has received written notification from the Secretary of State of such decision.

Approval as a designated collection facility

- 17 No payments shall be made by Valpak under this Agreement in relation to any Nominated Site that has been approved as a designated collection facility by the Secretary of State under the WEEE Regulations.
- 18 Valpak shall publish details of each Nominated Site that has been approved as a designated collection facility by the Secretary of State under the WEEE Regulations together with details of the associated Operator. This may be achieved through such means as Valpak may from time to time decide including but not limited to (where appropriate) on the <http://www.recycle-more.co.uk/>.

Operator's obligations

- 19 In relation to the collection of WEEE at Nominated Sites the Operator shall provide such co-operation, assistance, information, records and reports as Valpak may reasonably require from time to time and the Operator shall comply with all reasonable instructions and requirements given and requests made by Valpak from time to time. The Operator shall promptly notify Valpak of any change in any of the information supplied by the Operator to Valpak in connection with this Agreement.

- 20 The Operator warrants to Valpak that: (a) it has authority to enter into this Agreement and that by entering into this Agreement it shall not be in breach of any other agreement; and (b) the person responsible for completing the relevant application form and submitting this to Valpak has authority to enter into this Agreement for and on behalf of the Operator.

Intellectual property rights

- 21 The Operator acknowledges and agrees that Valpak is and shall remain the owner of any database created by or on behalf of Valpak in relation to this Agreement and any and all intellectual property rights arising from and/or created under or in relation to such database and/or this Agreement.

Limitation of liability

- 22 Nothing in the Agreement shall exclude or restrict either parties liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation, or for breach of the terms (if any) implied by section 17 of the Consumer Rights Act 2015 or for any act, omission or matter, liability for which may not be excluded or limited as a matter of law.
- 23 (Subject to clause 22) Valpak shall not be liable to the Operator (in contract, tort (including but not limited to negligence), misrepresentation or otherwise) for any loss or damage suffered or incurred by the Operator (or its employees, agents, sub-contractors or any third party) (even if the loss or damage is reasonably foreseeable or the possibility of such loss or damage occurring has been advised) arising from: (a) any circumstances outside Valpak's reasonable control; (b) the Operator's failure to comply with the Agreement; (c) loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings; and/or (d) consequential, special or indirect loss or damage.
- 24 (Subject to clauses 22 and 23) Valpak's entire liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise for all matters arising out of or in connection with this Agreement shall not exceed the Fee paid by the Operator to Valpak under this Agreement. Where no Fee is payable by the Operator to Valpak under this Agreement Valpak's services under this Agreement are provided free of charge and as such Valpak's entire liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise for all matters arising out of or in connection with this Agreement shall be excluded to the fullest extent permitted by law.
- 25 The provisions of clauses 22 and 25 (inclusive) shall survive the expiry or the termination of this Agreement for whatever reason.

Variation

- 26 This Agreement may be varied by Valpak in whatever way reasonably required by Valpak to: (a) conform to the requirements of the WEEE Regulations and/or any appropriate non-statutory guidance; and/or (b) comply with any undertaking requested of Valpak by any appropriate agency, governmental authority and/or any other appropriate regulatory and/or competition authority.

Termination

- 27 Either party may terminate this Agreement with immediate effect by giving written notice to the other party in the following circumstances: (a) if the other party commits any material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the other party being notified of the breach; (b) where the approval of the DTS is withdrawn for any reason and Valpak has not successfully appealed (for whatever reason) such decision to withdraw such approval; (c) where Valpak ceases (for whatever reason) to operate the DTS and/or the DTS otherwise ceases to exist (d) where the Operator knowingly and/or recklessly supplies false information to Valpak; and/or (e) where DEFRA withdraws its approval of the Nominated Site and/or the Operator.
- 28 Termination or expiry (for whatever reason) shall not: (a) affect any provision of the Agreement which is expressed to survive or operate (or which by implication survives or operates) in the event of such termination or expiry (as appropriate) which shall remain in full force and effect; and (b) shall not prejudice or affect the accrued rights and/or liabilities of either party including but not limited to the rights of either party against the other in respect of any breach of the Agreement.

General

- 29 This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral agreements, understandings or arrangements between the parties relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement that is not expressly set out in this Agreement save for any representation made fraudulently.
- 30 (Subject to clause 26) no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties. A waiver of any term, provision or condition of this Agreement shall be effective only if given in writing and signed by the waiving party.
- 31 No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.
- 32 Each provision of this Agreement is severable and distinct from every other provision. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, this shall not affect the other provisions of this Agreement or the remainder of the affected provision, which shall remain in full force and effect.
- 33 Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute or be deemed to constitute a partnership, association, joint venture, agency or any other co-operative entity.
- 34 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 35 All rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and/or remedies, provided under this Agreement and/or by law.
- 36 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.