

concluded between

and

ERA Elektro Recycling Austria GmbH  
Mariahilfer Straße 123  
1060 Vienna  
Austria

hereinafter "ERA"

Contract number
Contracting partner
hereinafter "CP"

## AGREEMENT TO JOIN A COMPLIANCE SCHEME FOR ELECTRICAL AND ELECTRONIC EQUIPMENT AS WELL AS FOR BATTERIES

### PREAMBLE

1. The Austrian Ordinance on waste electrical and electronic equipment ("WEEE Ordinance") and the Batteries Ordinance require producers of electrical and electronic equipment (EEE) and producers of batteries to set up collection sites for waste electrical and electronic equipment (WEEE) and used batteries, accept returned WEEE and used batteries free of charge, organise the transport of WEEE and used batteries from the collection sites to an authorised treatment facility, and ensure their reuse or treatment. The affected enterprises may free themselves from these obligations by joining a collection and recovery scheme for all their electrical and electronic equipment as well as their batteries belonging to a specific collection and treatment category and by transferring their legal obligations under the WEEE Ordinance and the Batteries Ordinance to this scheme (participation in a compliance scheme).
2. Producers of EEE for private households who do not fulfil their obligations to take back returned WEEE individually, as well as producers of EEE for private households which was placed on the market before 13 August 2005, as well as producers of appliance and vehicle batteries shall transfer their obligations to take back returned WEEE and their other obligations of the respective ordinances to an approved collection and recovery scheme.
3. ERA is an approved collection and recovery scheme for waste electrical and electronic equipment from private households and commercial sources as well as for appliance, vehicle and industrial batteries in keeping with the Austrian Federal Waste Management Act (AWG). By signing this Agreement, the CP joins this collection and recovery scheme with his electrical and electronic equipment and with his batteries, thereby making use of his right to transfer to the ERA Compliance

Scheme his obligations regarding the set-up of collection sites, the take-back (not including the non-transferable obligation of final distributors to take back returned WEEE on a one-to-one basis), reuse and treatment of such equipment, the supply of information to end users as well as specific reporting duties in keeping with the provisions of this Agreement and the WEEE Ordinance and the Batteries Ordinance.

4. For the purposes of this Agreement, the following terms and definitions shall apply:
  - a) **Ordinance on waste electrical and electronic equipment (WEEE Ordinance) and Batteries Ordinance:**  
Ordinance of the Federal Minister for Agriculture, Forestry, Environment and Water Management concerning waste prevention, collection and treatment of waste electrical and electronic equipment, Federal Law Gazette II No. 121/2005 and concerning waste prevention, collection and treatment of spent batteries and accumulators, Federal Law Gazette II No. 159/2008 in their currently valid version.
  - b) **Electrical and electronic equipment (EEE):**  
Equipment falling under the WEEE Ordinance for which the obligations regarding take-back, collection and treatment in keeping with the WEEE Ordinance need to be fulfilled.
  - c) **Historical electrical and electronic equipment:**  
Electrical and electronic equipment placed on the market before 13th August 2005.
  - d) **Participation in a compliance scheme:**  
The transfer of obligations of producers of electrical and electronic equipment and of batteries or of the obligations of the self-importers of appliance and

vehicles batteries under the WEEE Ordinance and the Batteries Ordinance to an approved collection and recovery scheme by way of contract, thereby passing on these obligations to the operator of the scheme.

**e) Producer:**

Anyone who is affected by the duties concerning take-back, collection and treatment in keeping with the provisions of the WEEE Ordinance, the Batteries Ordinance and the Federal Waste Management Act. Self-importers of appliance and vehicle batteries who decide to take part in the collection and recovery scheme of ERA apply as producers in terms of this agreement as well.

**f) Batteries:**

Batteries according to the Batteries Ordinance, as far as they are included by the take-back, collection, treatment and labeling obligations standardized according to the Batteries Ordinance for appliance, vehicle and industrial batteries.

All terms which are used in the WEEE Ordinance, the Batteries Ordinance as well as in this Agreement shall have the same meaning in this Agreement as under the WEEE Ordinance and the Batteries Ordinance in their currently valid version.

5. ERA is a non-profit organisation whose activities are not intended to yield a profit.

## **I. TRANSFER OF OBLIGATIONS TO A COMPLIANCE SCHEME**

1. ERA operates a collection and recovery scheme for waste electrical and electronic equipment as well as for portable, automotive and industrial batteries in keeping with the provisions of the WEEE Ordinance and the Batteries Ordinance. ERA shall be responsible for the set-up of a comprehensive network of collection sites, the take-back (not including the take-back of WEEE on a one-to-one basis falling under the responsibility of the final distributors), transport and treatment of WEEE as well as used batteries. As long as ERA is officially approved as a collection and recovery scheme for waste electrical and electronic equipment as well as for portable, automotive and industrial batteries, it shall be entitled to take over the legal obligations of its contracting partners, thereby fully accomplishing the tasks it has adopted in the framework of this Agreement.
2. For the life of this Agreement, the CP participates in the ERA collection and recovery scheme with all his electrical and electronic equipment and portable, automotive and industrial batteries. The following types of EEE and batteries are excluded:
  - a) EEE belonging to one specific collection and treatment category which the CP places on the market from 13 August 2005 and for the total amount of which he can prove that he meets his take-back obligations in accordance with the provisions of the WEEE Ordinance individually.
  - b) EEE as well as portable, automotive or industrial batteries belonging to one specific collection and treatment category for the total amount of which the CP can prove that he participates in a different approved collection and recovery scheme.
  - c) Industrial batteries for which the CP demonstrably fulfils his entire take-back, treatment and information obligations himself in accordance with the provisions of the Batteries Ordinance.

Those EEE for commercial use for which ERA offers a compliance scheme are listed in the fact sheet relating to commercial users. Concurrently with signing this

Agreement, and whenever an amendment is made, the CP will provide ERA with all (up-to-date) company data necessary for his registration via the ERA online tool. In this "customer data sheet" the CP shall also indicate the collection and treatment categories with which he intends to join the ERA compliance scheme and, if applicable, the collection and treatment categories with which he intends to fulfil his obligations under the WEEE Ordinance and the Batteries Ordinance individually or by joining a different collection and recovery scheme. The CP shall provide this information with a breakdown by portable, automotive and industrial batteries, EEE from households and EEE from commercial users. The CP shall only make changes to these data and switch between collection and recovery schemes at the end of a calendar quarter.

3. By continuously participating in the ERA collection and recovery scheme with EEE of a specific collection and treatment category which the CP has placed on the market from 13 August 2005, the EEE of this collection and treatment category which he placed on the market in the past is also covered by ERA's compliance service.
4. Upon the CP's request, ERA shall issue a written certificate once a year to confirm that the CP participates in the ERA compliance scheme for WEEE and for portable, automotive and industrial batteries. The certificate shall also specify the collection and treatment categories covered.
5. In accordance with the provisions of the WEEE Ordinance and the Batteries Ordinance, the CP shall meet all obligations that cannot be transferred individually; for the EEE he placed on the market, he is therefore obliged to submit the necessary information concerning reuse and treatment in particular to the operators of treatment facilities and to observe the labelling obligations and material bans set out in the WEEE Ordinance and the Batteries Ordinance. Should ERA suffer any damage from the CP's failure to meet these obligations, the CP shall compensate ERA for the resulting damage and indemnify and hold ERA harmless.

## II. COMPLIANCE FEES

1. The CP shall pay a fee to ERA for the transfer of his legal obligations concerning his electrical and electronic equipment and his batteries. The level of this fee shall be calculated on the basis of the currently valid tariff rates as officially announced by ERA for the amount of EEE and batteries which the CP puts on the domestic market. The contracting parties agree upon an annual minimum fee. ERA may set a flat-rate fee for CPs who place below-threshold amounts of EEE or batteries on the market in a given calendar year. A list of tariff rates, which are set by ERA, is published at [www.era-gmbh.at](http://www.era-gmbh.at).
2. The CP shall compile data on all EEE subject to this Agreement which he places on the market from 1 July 2005 and all batteries which he places on the market from 1 July 2008. He shall submit a report to ERA on the respective amounts and collection and treatment categories, and he shall calculate the fee due for the respective billing period and transfer it to ERA's account. The fee shall be calculated on the basis of the annexes, fact sheets and instructions provided by ERA in their currently valid version.

The CP is obliged to submit data on the amount of EEE and batteries covered by the Agreement and which he placed on the market in the applicable reporting period (month, quarter, calendar year), by using the ERA online tool and the forms and procedures provided by ERA, and he shall pay the fee calculated on the basis of these data reports and the current ERA tariff rates.

The data reports submitted by the CP, specifically their accuracy and completeness, shall be subject to verification as set out in Article IV.

ERA shall calculate the fee for each reporting period based on the data submitted and the tariff rates valid during the reporting period. ERA shall issue one or more invoices to the CP. By default, the original electronic invoice shall be sent to the email address provided by the CP.

The deadlines for the submission of monthly or quarterly data reports shall be the tenth (10th) day of the second month following the reporting period, and the associated payment shall be due on the same day.

For instance,

- (a) the monthly data report and payment for January are due on 10 March of that year;
- (b) the quarterly data report and payment for the first calendar quarter are due on 10 May of that year.

The deadlines of annual data reports and the due dates of annual fees are set out in Article II item 4, the due dates of flat-rate fees are set out in Article II item 5.

If a CP's calculated fee for a calendar year falls below the level of ERA's basic or minimum fee, the CP shall be obliged to pay the minimum fee. ERA shall issue an invoice for the balance against the minimum fee following receipt of the last data report for that calendar year. Pay-

ment shall be made within fourteen (14) days of receipt of invoice. Article II item 10 shall apply in the case of late payments.

ERA shall have the right to adjust the deadlines and due dates at the beginning of each quarter or, in the event of changes to the requirements under the WMA, the WEEE Ordinance, the Batteries Ordinance or the EU Batteries Regulation, once these changes take effect. Such changes shall be published at [www.era-gmbh.at](http://www.era-gmbh.at) with adequate advance notice.

The applicable reporting period (month, quarter, calendar year) is determined on the basis of the CP's projected annual ERA fees and the threshold values specified in the list of tariff rates.

The following applies to EEE and batteries placed on the market by the CP:

- (a) If the ERA fee projected for a given year exceeds the threshold value specified for monthly reporting, the CP shall submit monthly data reports.
- (b) If the ERA fee projected for a given year is higher than the threshold value specified for monthly reporting but lower than that for annual reporting, the CP shall submit quarterly data reports.
- (c) If the ERA fee projected for a given year is lower than the threshold value specified for annual reporting, the CP shall submit annual data reports.

ERA shall have the right to adjust the threshold values at the beginning of each year or, in the event of changes to the requirements under the WMA, the WEEE Ordinance, the Batteries Ordinance or the EU Batteries Regulation, once these changes take effect. Such changes shall be published at [www.era-gmbh.at](http://www.era-gmbh.at) with adequate advance notice.

The data report covering the period from 1 July 2005 until the end of the year before the signing of the Agreement shall be submitted via the ERA online tool using the "Retroactive statement" form. The retroactive statement and payment of the respective fee shall be due within fourteen (14) days after signing the agreement. For retroactive statements, an interest factor of five (5) percent shall be added to the compliance fee calculated on the basis of the tariff rates.

The CP is obliged to evaluate his annual data projections on an ongoing basis.

The CP is obliged to notify ERA of changes to his projections that would lead to a change in his reporting period. If ERA becomes otherwise aware of such a change or of the applicable reporting period (for instance, based on the data submitted by the CP), ERA shall set the adequate reporting period even in the absence of explicit confirmation from the CP.

The criteria for determining the first reporting period following the signing of the Agreement are set out in Article V item 8.

If the agreement of an annual reporter takes effect on a date other than 1 January, the first reporting period is shortened, and if the agreement ends on a date other than 31 December, the last reporting period is shortened. In these cases, the data submission and payment deadlines for quarterly reporters shall apply.

3. Following receipt of the last data report for a given calendar year, an overview of the amount of EEE and batteries the CP reported for that year shall be made available to the CP via the ERA online tool (ERA overview of data submitted).

The CP shall have the right to submit a year-end statement (ERA year-end statement) by 31 March of the year immediately following the reporting year. This year-end statement, which the CP prepares on the basis of the ERA overview of data submitted, serves the purpose of revising the data reports submitted for the reporting year.

The CP shall not have the right to retroactively limit or cancel participation in ERA's collection and recovery scheme for all or specific collection and treatment categories on the grounds that he wishes to join a different scheme or because he claims that compliance has already been achieved.

ERA reserves the right to object to year-end statements in their entirety or for specific EEE and batteries within three (3) weeks of receipt.

A year-end statement shall be deemed accepted if and as long as ERA does not exercise this right or imports and processes the data of the year-end statement. ERA shall issue an invoice to the CP, which is based on the tariff rates valid during the reporting year and in which the over- or underpaid amount is specified. In case of an overpayment, the CP shall have the right to deduct the difference from the next payment due. In case of an underpayment, the CP shall be obliged to pay the outstanding amount within fourteen (14) days of receipt of invoice. Article II item 10 shall apply in the case of late payments.

Non-objection to, and even explicit acceptance of, a year-end statement shall not constitute acceptance of the data submitted in the year-end statement, especially with regard to their accuracy and completeness.

If the CP fails to submit his correction by 31 March of a given year, he accepts that the year-end statement sent to him by ERA for the previous year is accurate and complete, thereby waiving the right to retroactively correct the reports he submitted in the previous year.

4. The provisions of Article II item 4 shall apply only to CPs who submit annual data and are not subject to the flat-rate scheme under Article II item 5.

At the latest at the beginning of the year immediately following the reporting period, ERA shall make available an electronic form to the CP for the submission of annual data via the ERA online tool.

The CP is obliged to submit an annual data report by 15 January of the year immediately following the reporting year. The associated payment shall be due on 10 February of that year.

The original electronic invoice is made available for download from the ERA online tool.

If the annual fee calculated on the basis of the CP's annual data falls below the ERA minimum fee, the invoice issued by ERA shall specify the annual fee and the balance against the minimum fee.

If the CP fails to meet the deadline for submitting the annual data report, ERA, after having sent one (1) reminder, shall have the right to charge a standard fee in addition to the reminder fee and interest on overdue payment. The level of the standard fee, which is set by ERA, shall be published in the list of tariff rates at [www.era-gmbh.at](http://www.era-gmbh.at). ERA shall have the right to adjust the standard fee at the beginning of each year or, in the event of changes to the requirements under the WMA, the WEEE Ordinance, the Batteries Ordinance or the EU Batteries Regulation, once these changes take effect. Such changes shall be published at [www.era-gmbh.at](http://www.era-gmbh.at) with adequate advance notice.

If the CP submits his annual data report by 15 March of the year following the reporting period, ERA shall cancel the standard fee and issue a credit note for its amount minus a separate administrative charge. The CP shall have the right to deduct the resulting amount from his annual fee.

If the CP fails to submit his annual data by 15 March of the year following the reporting period, payment of the standard fee shall be final.

5. Article II item 5 applies only to CPs who place no more than 1000 kg of EEE or 500 kg of batteries on the market in a given calendar year.

CPs who are eligible for the flat-rate scheme do not fulfil their contractual obligations by submitting data on the amount of EEE and batteries they actually place on the market and paying the fee based on the relevant ERA tariff rates. Instead, they shall have to pay an annual flat fee (ERA flat fee) as outlined in Article 16 paragraph 3 WEEE Ordinance and Article 17 paragraph 9 Batteries Ordinance.

Article II item 4 does not apply to these CPs.

ERA shall have the right to adjust the weight limits specified above at the beginning of each year or, in the event of changes to the requirements under the WMA, the WEEE Ordinance, the Batteries Ordinance or the EU Batteries Regulation, once these changes take effect. Such changes shall be published at [www.era-gmbh.at](http://www.era-gmbh.at) with adequate advance notice.

The level of the flat-rate fee, which is set by ERA, shall be published in the list of tariff rates at [www.era-gmbh.at](http://www.era-gmbh.at). ERA shall have the right to adjust the flat-rate fee at

the beginning of each year or, in the event of changes to the requirements under the WMA, the WEEE Ordinance, the Batteries Ordinance or the EU Batteries Regulation, once these changes take effect. Such changes shall be published at [www.era-gmbh.at](http://www.era-gmbh.at) with adequate advance notice.

ERA shall issue an electronic invoice for the flat-rate fee to the CP at the beginning of the year immediately following the reporting year. Payment of the flat-rate fee shall be due on 10 February of that year. The original electronic invoice shall be made available to the CP via the ERA online tool. Article II item 10 shall apply in the case of late payments.

ERA shall inform the CP via the ERA online tool whether he is eligible for the flat-rate scheme based on the projected annual data for the current calendar year he provided at the start date of the Agreement, and shall assign the CP to the group of flat-rate reporters.

The CP shall be obliged to evaluate, on an ongoing basis, ERA's decision and his own projection of the total amount of EEE and batteries covered by the Agreement and, if necessary, provide ERA with corrected data via the ERA online tool. Unless the CP notifies ERA of a change, ERA shall assume that the CP continues to fulfil the eligibility criteria for the flat-rate scheme (also in subsequent years), and that the provisions of this section continue to apply.

If a CP who was eligible for the flat-rate scheme based on his projections exceeds the weight limits under Article II item 5 (so he is no longer eligible), he shall inform ERA of this fact by 15 January of a given year for the preceding year.

If a CP to whom the provision of Article II item 5 did not apply on the basis of the projections submitted (i. e. the CP submits data reports on the amount of EEE and batteries he actually placed on the market in accordance with Articles II items 2 or 4) falls below the weight limits under Article II item 5 on the basis of his annual data (adjusted by a year-end statement, if applicable), the provisions of Article II item 5 shall apply to him. Without prejudice to his obligation to evaluate his projections and notify ERA of his projected annual data, the CP shall inform ERA of this fact by 15 January of the year immediately following the reporting period.

If the CP fails to inform ERA of the new situation and ERA becomes otherwise aware of the CP's eligibility for the flat-rate scheme, for instance as a result of an inspection under Article IV, ERA shall have the right to consider this fact and apply the flat-rate scheme.

If, in retrospect, the CP did not fulfil the eligibility criteria for the flat-rate scheme, the provisions of Article II items 2 or 4 shall apply retroactively for the period(s) in question. Specifically, the CP shall be obliged to then provide a breakdown by categories of the amount of EEE and batteries he put on the market and pay the fees due on the basis of the applicable tariff rates after taking into account the flat-rate fees already paid. The late payment

charges set out in Article II item 10 shall apply.

CPs who wish to opt out of the flat-rate scheme may do so, even if the amount of EEE and batteries they put on the market falls below the weight limit under Article II item 5 and they meet the eligibility criteria. The flat-rate scheme shall no longer apply to them once they have notified ERA of their decision and ERA has acknowledged it. In this case, the provisions of this section do not apply. Instead, Article II item 4 applies.

6. The VP shall also notify ERA via the ERA online tool of the reporting and payment mode he expects to apply (monthly, quarterly, annual or flat-rate). In case of doubt, monthly reporting and payment shall be deemed to have been agreed. If the CP has not placed any EEE or batteries on the market in a billing period, he shall submit a zero report.

Data reports shall be exclusively submitted by using the currently valid forms provided by ERA. These reports are credit notes within the meaning of Article 11 paragraph 7 Umsatzsteuergesetz (Austrian VAT Act).

7. If the CP can prove that he collects WEEE or used batteries individually and ensures their reuse or treatment as required by law, he may request a refund from ERA. The eligibility criteria for such a refund, the amount and the refunding modalities shall be laid down in a separate agreement.
8. ERA shall have the right to modify the tariff rates based on which the fees are calculated, the tariff rate and reporting structures as well as the level of the minimum fees for all CPs from the start of each calendar quarter. If possible, ERA shall notify the CP of new tariff rates one month before they are applicable. The CP undertakes to use the new tariff rates, tariff rate and reporting structures as well as the latest versions of instructions and fact sheets as the basis for calculating his fees from the date they are applicable.
9. Any surpluses achieved despite the fact that ERA's rates are calculated to make no profit shall not be paid out to the CPs but, like shortfalls, shall be considered in the calculation of rates for the following periods.
10. If a fee payable under the agreement has not been paid by the due date at the latest, the CP's account shall be deemed in default after that day. In that case ERA shall be entitled to charge interest on arrears at a rate of four (4) percentage points above base rate. All fees shall be paid to ERA free and clear of any deductions or charges. In the event of late payment, ERA will invoice the CP for any reminder fees and postage charges. In case of a delay in payment, the CP shall be charged the reminder fee and postage costs.
11. The CP shall not be entitled to withhold or offset due payments against his own counterclaims unless his counterclaims asserted against ERA are deemed accepted and legally effective.
12. The CP shall submit all his data reports in writing and by



using the forms provided by ERA for this purpose. Any reports submitted electronically may only be filed in a

manner approved by ERA.

### III. DURATION OF AGREEMENT

#### 1. Ordinary termination:

This Agreement, which becomes effective as specified at the end of this document, shall be concluded for an indefinite period of time. It may be terminated by registered letter by either of the parties to the Agreement, without giving reasons, upon one month's notice before the end of each quarter of the calendar year.

#### 2. Termination due to changes in tariff rates:

The CP shall have the right to terminate this Agreement within fourteen (14) days after being notified of a change in tariff rates with effect from the end of the next calendar quarter. ERA shall be notified of this termination by registered letter. Should the CP not terminate the Agreement within fourteen (14) days of notification of a change in tariff rates, he shall have the right to terminate the Agreement in accordance with the provisions of Article III item 1 or, under certain circumstances, Article III item 3 (extraordinary termination).

#### 3. Extraordinary termination:

Each party shall have the right to terminate this Agreement by registered letter without notice for reasonable cause (extraordinary termination). Before sending a notice of termination, the party shall send a written request to remedy the matter within a reasonable grace period. Reasonable causes for termination include, but are not limited to, the following events:

a) The CP's participation in the compliance scheme becomes void as a result of the revocation of ERA's licence as a collection and recovery scheme for waste electrical and electronic equipment or as a result of the revocation of ERA's licence as a collection and recovery scheme for portable, automotive and industrial batteries (extraordinary termination initiated by the

CP). Should the revocation of ERA's licence only relate to individual collection and treatment categories, the extraordinary termination shall only become effective for these collection and treatment categories;

b) The CP seriously obstructs the collection process, such as by infringing the labelling and information requirements or violating the material bans pursuant to the WEEE Ordinance or the Batteries Ordinance (extraordinary termination initiated by ERA either for the entire Agreement or only with respect to the affected collection and treatment category);

c) The CP wilfully and knowingly, or with gross negligence, provides ERA with incorrect information in the context of his obligation to submit data reports and disclose information (extraordinary termination by ERA);

d) Obstruction of ERA's information and data verification rights under Article IV by the CP (extraordinary termination initiated by ERA);

e) The CP delays submitting his reports and/or paying his compliance fees (extraordinary termination initiated by ERA);

f) Opening of bankruptcy or winding-up proceedings or rejection of a bankruptcy petition due to lack of assets, provided that dissolution of the company is not prohibited (extraordinary termination initiated by the CP; no grace period);

g) Suspension of business operations (extraordinary termination by either party, no grace period).

### IV. INFORMATION AND INSPECTION RIGHTS/DUTIES

1. ERA shall have the right at any time to promulgate lists containing the names of its contracting partners. ERA shall furthermore be entitled to disclose information to third parties as to whether the CP has signed an agreement to join a compliance scheme for electrical and electronic equipment as well as for batteries with ERA and to which collection and treatment categories this agreement relates. ERA shall also be entitled to disclose the CP's data to the authorities, to the extent to which this is necessary for the fulfilment of any legal obligations. In support of the cooperation between ERA and Altstoff Recycling Austria AG (ARA) and the synergies resulting therefrom, the CP shall consent to the mutual exchange of his data between ERA and ARA.

2. ERA shall have the right to verify the correctness and completeness of the data reported by the CP on a regular basis. To the extent that this requires an inspection of the CP's books and records, ERA or any certified ac-

countant commissioned and paid by ERA shall be conceded this right of inspection. If necessary, the CP is obliged to provide additional information to the inspecting authority as well as prepare and submit copies of the inspected books and records. According to the WMA, the CP shall also grant these inspection rights to Elektroaltgeräte Koordinierungsstelle Austria GmbH (EAK), FN 263326w, established in accordance with Article 13b WMA. Further up-to-date information about the right of inspection granted to the EAK and about the CP's obligation to cooperate can be found on the EAK website ([www.eak-austria.at](http://www.eak-austria.at)).

3. To the extent that this is economically acceptable, ERA or a third party commissioned by ERA (in particular business trustees) shall – also upon a well-founded request from another CP – inspect the type and scope of the CP's reports/payments. If inspection reveals that the other CP's request was unfounded and that the inspected CP

has met all his obligations under the agreement, the CP who brought in the motion shall have to bear the cost of inspection.

4. If an inspection reveals that the CP has provided ERA with incorrect data reports on electrical and electronic equipment or batteries, the amount of the fee due shall be retroactively corrected. The cost of preparing copies in the course of inspection shall not be refunded. If the inspection reveals that the CP's reports understated the actual total annual mass by more than five (5) percent per tariff category, a penalty of twenty (20) percent of the shortfall will be added in the name and for the account of EAK. This penalty must be paid in addition to the additional compliance fees, regardless of any fault on the part of the CP, and cannot be reduced by a judge. This penalty can be claimed by ERA and EAK.

## V. FINAL PROVISIONS

1. Without prejudice to the provisions of Article I item 5 and Article IV item 4, damages for other breaches of contract shall apply only in the case of gross negligence or intent.
2. In addition to various other documents, ERA has provided the CP with the respective forms mentioned in this Agreement, the list of tariff rates, guidelines and assessment forms.
3. Any amendments or supplements to this Agreement shall be effective only if they are submitted in writing. Transmission by fax shall be deemed to satisfy the in-writing requirement. However, this shall not apply to documents which must additionally be submitted by registered mail.

ERA shall also be entitled to modify or amend this Agreement without the CP's consent, in particular with regard to the forms and other annexes to the Agreement. This shall be based on the understanding that ERA does not act in an obviously inequitable manner, and modifications or amendments do not affect any vital terms of the Agreement and are deemed necessary or suitable for a proper functioning of the ERA collection and recovery scheme for WEEE as well as for portable, automotive and industrial batteries. ERA reserves the right to alter the provisions of this Agreement at any time if this is deemed necessary or suitable for implementing requirements, recommendations or orders by ERA's authorising and supervisory authority. This simplified right to effect changes shall not apply to changes in tariff rates or rate structures. The provisions of Article III item 2 of this Agreement shall apply.

ERA shall notify the CP in writing of any modifications of, or amendments to, this Agreement by providing him with the modified or new terms of the Agreement as well as the date of their entry into force. Any modifications or amendments shall, however, become effective no earlier than the CP has been notified hereof.

5. The CP shall keep all books, records and supporting documents relating to the calculation of fees for a period of seven (7) years. Moreover, the CP shall keep these documents beyond that date for as long as an inspection of a respective calendar year requested by ERA prior to the expiration of this period has not been concluded. If the CP fails to meet his obligation to keep these records and ERA is therefore unable to verify the accuracy and completeness of the CP's calculation, ERA shall be entitled to estimate the amount that is actually due.
6. Employees of ERA, as well as anyone entrusted by ERA to carry out inspections on its behalf, shall be obliged to hold all information obtained in connection with carrying out such inspections as confidential. This confidentiality obligation does not apply to the transfer of data under Article IV item 1.

4. The present agreement shall be governed by Austrian law.  
Any disputes arising from, or relating to, this Agreement between the parties shall be subject to the exclusive jurisdiction of the competent court of the First Municipal District of Vienna.
5. If any of the provisions of this Agreement should be found to be ineffective or voidable, the remaining provisions shall remain unaffected hereof. In such cases, ERA and the CP shall jointly endeavour to replace the ineffective or voidable term by one which serves the principles of this Agreement as closely as possible.
6. Unless ERA has been notified in writing of a new address for the CP, ERA shall have the right to use the CP's address provided via the ERA online tool. Any notice or document sent by ERA to the CP shall be deemed served upon delivery to that address.
7. The present Agreement shall come into force on the day it has been signed by both parties.

Notwithstanding the above, the parties agree that for EEE, the start date of reporting shall be 1 July 2005 and payment shall be due from 13 August 2005, and for batteries, the start date of reporting shall be 1 July 2008 and payment shall be due from 26 September 2008. However, the CP may postpone the data reporting and payment start date via the ERA online tool, provided that he certifies that he has met his obligations under the WEEE Ordinance and the Batteries Ordinance for that period, either individually or by participating in a different collection and recovery scheme.

8. This Agreement shall be executed in two counterparts, of which each of the parties to the contract shall receive one.

Vienna,

Date

Date

ERA Elektro Recycling Austria GmbH

Contracting partner

SAMPLE