

PRODUCER WEEE SCHEME MEMBERSHIP (TERMS & CONDITIONS)

1 DEFINITIONS

"AATF" - means an authorised treatment facility which is approved under regulation 61 of the Regulations;

"Agency" - means the relevant environment agency in England, Wales, Scotland and Northern Ireland acting as the "appropriate authority" under the Regulations;

"Agency Fees" – means any fees required by the Agency in respect of the Member, including for registration with the Agency and any fees charged by the Agency for late registration, or resubmission of data;

"Agreement" - means the agreement between the Member and Comply Direct, which shall incorporate these Conditions, and which is constituted by completion of a successful Application by the Member organisation and the issue by Comply Direct to the Member organisation of a Comply Direct WEEE scheme membership registration number;

"Application" - is the provision by the proposed member to Comply Direct of a completed WEEE data form and membership application form, each in the form specified by Comply Direct from time to time;

"Appropriate Person" – means the person required to sign information submitted under regulation 18(2) of the Regulations, being for companies registered in the UK, a director or the company secretary; for partnerships, a partner; or for sole traders, the individual; or for businesses which are not registered in the UK, the person who has control or management of the business;

"B2B" - means WEEE which is not B2C;

"B2C" - means WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households, and waste from EEE likely to be used by both private households and users other than private households shall in any event be considered to be B2C;

"Comply Direct" or the "Operator" - means Comply Direct Limited, a company incorporated in England and Wales under company number 05695937 and whose registered office address is at Chandler House, 7 Ferry Road Office Park, Riversway, Preston, Lancashire, PR2 2YH;

"Conditions" - means these standard terms and conditions applicable to the WEEE scheme operated by Comply Direct, as they may be amended from time to time on accordance with these Conditions;

"EEE" - means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

"Evidence Notes" – means an evidence note issued, in the format specified under regulation 73 of the Regulations, by an operator of an AATF, as evidence of the receipt of tonnage of WEEE specified in the note for (i) reuse as a whole appliance; or (ii) treatment at an authorised treatment facility; or by an approved exporter, as evidence of the receipt of tonnage of WEEE for export specified in the note for reuse as a whole appliance outside the United Kingdom;

"Fees" – means any fee or other charge or levy payable by the Member under the Agreement, including the Registration Fees and Agency Fees and the Member's apportioned contribution to the costs of the Operator satisfying the obligations of the Scheme, including Material Levy Fees;

"Force Majeure Event" - means any event beyond the reasonable control of a party and shall include but shall not be limited to acts of God or war or terrorism, fire, floods, earthquakes, storms, epidemic, pandemic, defaults by suppliers, insufficient recycling evidence generated, strikes, lock out, industrial disturbances, riots, civil commotion or unrest, interference by civil or military authorities and compliance with the acts, regulations or orders of any local, governmental or other regulatory authority insofar as these have been implemented or modified since the date of the Agreement;

"Large Producer" - means an EEE producer placing over 5 tonnes of EEE on the market per Scheme Year;

"Material Levy Fee" – means the fees payable by the Member to Comply Direct in respect of the costs associated with the recycling and treatment of B2C and obtaining of Evidence Notes required to satisfy the obligations of the Scheme together with Comply Direct's margin on these costs, as such fees are calculated from time to time in accordance with the Agreement;

"Member"- means a member of the Scheme;

"Producer" - means any natural or legal person who, irrespective of the selling technique used (including by means of distance communication (a) is established in the United Kingdom and manufactures EEE under his own name or trademark, or has EEE designed or manufactured and markets it under his own name or trademark within the United Kingdom; (b) is established in the United Kingdom and resells within the United Kingdom, under his own name or trademark, equipment produced by other suppliers, a reseller not being regarded as the "producer" if the brand of the producer appears on the equipment, as provided for in sub-paragraph (a); (c) is established in the United Kingdom and places on the market, on a professional basis, EEE from a country other than the United Kingdom; (d) sells EEE by means of distance communication directly to private households or to users other than private households in the United Kingdom and is established in a country other than the United Kingdom;

"Quarter" - means a period: commencing on 1 January and ending on 31 March; commencing on 1 April and ending on 30 June; commencing on 1 July and ending on 30 September; or commencing on 1 October and ending on 31 December and the term "Quarterly" shall be construed accordingly;

"Recovery" - has the meaning given by Article 3 of and Annex II of the Waste Directive;

"Recycling" - has the meaning given by Article 3 of the Waste Directive;

"Registration Fee" - means the annual scheme registration fee payable by the Member in accordance with clause 8.1.1, calculated in accordance with Comply Direct's standard fee schedule applicable from time to time (and which can be obtained directly from Comply Direct where requested by the Member from time to time), as that fee is notified by Comply Direct to the Member from time to time;

"Regulations" – means the Waste Electrical and Electronic Equipment Regulations 2013 and any subsequent amendments to or replacements for these regulations from time to time;

"Reuse" - has the meaning given by Article 3 of, and Annex I of, the Waste Directive;

"Scheme" - means the Comply Direct WEEE compliance scheme, as registered with the Agency;

"Scheme Year" – means a year running from 1 January until 31 December of any year in which the Member is a member of the Scheme;

"Small Producer" - means a Producer placing less than 5 tonnes of EEE on the market per year;

"Turnover" – means the turnover of the Member originating in the United Kingdom covering the latest accounting period ending (last audited accounts) before the commencement of the Agreement;

"Waste Directive" - means Directive 2008/98/EC of the European Parliament and of the Council on waste, as last amended by Council Regulation (EU) 2017/997 and as read in accordance with regulation 2B of the Regulations and any amendments to or replacements for it from time to time; and

"WEEE" - means electrical or electronic equipment which is waste within the meaning of Article 3 of Directive 2008/98/EC, including all components, subassemblies and consumables which are part of the product at the time of discarding.

By completing the Application, the proposed Member, as detailed in the Application, is accepting and shall be bound by these Conditions.

2 INTERPRETATION

- 2.1 Any reference to an enactment is a reference to it as already amended or replaced and includes a reference to any repealed enactment which it may re-enact with or without amendment and to any future re-enactment and/or amendment of it and to any enactment that may replace it from time to time, whether taking effect before or after the date of the Agreement. Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 2.2 A reference to the Agreement or to any other agreement or document (or any part of them) is a reference to the Agreement or such other agreement or document (or the relevant part of them), in each case as varied from time to time.
- 2.3 Words and expressions used herein importing the singular number shall include the plural number and vice versa; and importing one gender shall include any other.
- 2.4 Any reference to a clause or condition shall be a reference to a clause of these Conditions. The headings to the Conditions are for convenience only and shall not affect their interpretation or construction.
- 2.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.6 The Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective permitted assigns, and references to any party shall include that party's permitted assigns.

3 INTRODUCTION

- 3.1 The Agreement constitutes a contract between Comply Direct and the Member. The Agreement shall comprise the Application and these Conditions.
- 3.2 The Agreement shall take effect and be binding on the parties with effect from the date that the Operator has received and accepted the Member's Application and has issued the Member with a Comply Direct WEEE scheme registration number. For the avoidance of doubt, the Operator is not obliged to accept any Application. The Agreement shall continue until it is terminated in accordance with this Conditions.
- 3.3 The Agreement is intended to ensure that the Member complies fully with the Regulations and that the Operator is able to operate the Scheme as required by the Regulations and any statutory guidance pertaining to the Regulations.

4 OBLIGATIONS OF THE OPERATOR

- 4.1 Subject in the case of each Member, to that Member complying with the Conditions, and whilst the Scheme remains registered for the purposes of the Regulations, the Operator shall use its reasonable endeavours to perform its obligations in accordance with the Regulations for the purpose of satisfying the obligations of each Member for the duration of the Member's membership of the Scheme using such skill and expertise reasonably to be expected from an operator of a scheme registered under the Regulations.
- 4.2 The Operator agrees upon reasonable request from a Member to supply to the Member within a reasonable time, a summary of the costs that form part of the Fees.
- 4.3 For the avoidance of doubt, the Member hereby agrees that the sum resulting from the calculation of Fees specified by the Operator to the Member shall be final and binding upon the Member.
- 4.4 The Operator shall allow for Members to sign up to the Scheme for either or both B2B and B2C obligations but with it being possible for a Member with only either B2B or B2C WEEE to sign up to a maximum of one approved scheme.
- 4.5 The Operator shall provide records and reports to the Agency, in compliance with the Regulations.
- 4.6 The Operator shall only cancel a Member's membership with effect from the end of the current Scheme Year.
- 4.7 The obligations on the Operator contained in Clause 4.1, 4.2, and 4.5 of these Conditions shall be conditional upon the Member complying with the Conditions in full.
- 4.8 The obligations on the Operator contained in this Clause 4 of these Conditions shall cease upon the cancellation of the Scheme under the Regulations.
- 4.9 The Operator reserves the right to refuse membership to the Scheme at its own discretion.

5 OBLIGATIONS OF THE MEMBER

- 5.1 The Producer must complete the Application and also confirm that it has read and shall abide by these Conditions, as updated from time to time in accordance with these Conditions.
- 5.2 Subject to clause 5.3, when submitting an Application to the Operator the Member is committing to membership for at least one full Scheme Year.
- 5.3 When a Member joins part way through a Scheme Year, the Member is committing to membership for at least the remainder of the relevant Scheme Year.
 - 5.3.1 If the Member is registered as a Small Producer and exceeds the 5 tonne threshold during a Scheme Year, the Member shall advise Comply Direct of its requirement to register as a Large Producer in line with the Regulations.
 - 5.3.2 If the Member is registered as a Small Producer, it shall advise the Operator of any changes to the categories of EEE it places on the market within 28 days of the EEE being placed on the market.
- 5.4 The Member must provide the Operator with the information needed to register that Member with the Agency including a fully completed and signed Application and the Member hereby declares that the information submitted by it is accurate. The Member shall ensure that all information submitted by the Member to the Operator from time to time shall at the date that it is submitted be true, complete and accurate.
- 5.5 The Member shall observe and perform the obligations imposed upon the Member under these Conditions. The Member shall also observe and perform any obligations imposed directly on the Member under the Regulations.
- 5.6 The Member shall not, whilst a member of the Scheme, be a member of any other scheme under the Regulations, except under and in accordance with clause 4.4 of these Conditions, which allows for a Member to join a maximum of one Scheme for each of their B2B and B2C obligations respectively.
- 5.7 Where a Member becomes aware of, or reasonably ought to have become aware of any changes to, inaccuracies in, or omissions in the information previously provided to Comply Direct in accordance with these Conditions (including but not limited to changes in information contained or referred to in its last data submission, ownership type, places of business and contact details and any other changes which may render the information previously provided to Comply Direct as being false, misleading, inaccurate or incomplete), then the Member shall immediately notify Comply Direct of such changes so as to enable Comply Direct to comply with its obligations under the Regulations to notify the Agency of any changes within 28 days.
- 5.8 The Member shall not seek to comply with its Producer obligations otherwise than through the Scheme, except as permitted under clause 4.4 of these Conditions or if the Producer is a Small Producer.
 - 5.8.1 If the Member is defined as a Small Producer then it is still able to be a member of the Scheme, although this is no longer a legal requirement under the Regulations as Small Producers can register directly with the Agency.

- 5.8.2 If a Small Producer chooses to be registered by the Operator as a member of the Scheme for a given Scheme Year then a Material Levy Fee does apply but except as provided for under clause 5.8.3, such Material Levy Fee is covered by the annual Registration Fee.
- 5.8.3 If a Small Producer who is a Member of the Scheme in a given Scheme Year, during the Scheme Year, begins for the first time to place EEE on the UK market in WEEE categories 11 (Display Equipment), 12 (Cooling Equipment), 13 (Gas Discharge Lamps and LEDs) or 14 (PV Panels), the Member shall have to pay the appropriate Material Levy Fee in relation to its market share of UK WEEE coming back for Recycling for these stated categories and must notify the Operator of this occurrence within 28 days of the such EEE tonnages being placed on the market.
- 5.8.4 If a Member is registered with the Scheme as a Small Producer for a given Scheme Year and during the Scheme Year the levels of EEE being placed on the UK market by the Small Producer exceed 5 tonnes, then the Member must notify the Operator that it is no longer a Small Producer and at that point must become a Large Producer within 28 days of the date on which it placed 5 tonnes of EEE onto the UK market. At this point the Member is required to pay the higher relevant Fees that apply to Large Producers, as such Fees are specified by the Operator in writing from time to time.
- 5.9 The Member shall, within such reasonable time limits as the Operator may specify, provide the Operator with such documentation and information as the Operator reasonably requests from time to time (in such format as the Operator specifies) to enable the Scheme to comply with the Regulations together with such documentation and information as may be required by the Agency from the time to time.
- 5.10 The Member shall comply with all reasonable requests and instructions given by the Operator from time to time in connection with the operation of the Scheme.
- 5.11 The Member shall pay Fees as set out in these Conditions.
- 5.12 The Member shall permit the Operator to inspect any of the Member's accounts and records as may be required in order to satisfy the requirements of the Regulations or these Conditions.
- 5.13 The Operator shall be entitled to disclose information provided by Members to the Agency for the purpose of the operation of the Scheme.
- 5.14 The Member shall submit EEE data for each Quarter online to the Operator, by the 15th of the month following the end of each Quarter.
- 5.15 The Member must also provide a copy of its EEE data signed by an Appropriate Person, to the Operator, annually within 60 days of the end of the Scheme Year.
- 5.16 Following submission of the Application, each Member shall be required to have an Appropriate Person sign off all data submitted online by the Member in the format requested by the Operator from time to time.
- 5.17 All Members of the Scheme shall keep records of all documents relating to compliance under the Regulations for a period of at least 4 years.
- 5.18 Each B2B Member acknowledges and agrees that it shall be responsible for the collection, treatment, Recovery and Recycling of WEEE from B2B users and for financing the costs of

such activity and shall have its own arrangements in place for dealing with such WEEE. Such arrangements shall be carried out in such a way that is consistent with the obligations placed on the Operator by the appropriate authorities. A B2B Member is able to request that the Operator undertakes part or all of such arrangements on the behalf of the Member.

- 5.19 B2B Members who choose to use their own arrangements for the collection, treatment and Recycling of WEEE at end of life from B2B users shall enable the Operator to undertake an audit of their arrangements and shall pay the required Fee for this mandatory audit specified by the Operator from time to time. If any improvements are required by the Operator to the arrangements in place by the B2B Member then these improvements shall be implemented, otherwise the Operator reserves the right to terminate the membership to the Scheme of such a B2B Member.
- 5.20 B2B Members who choose to have the Operator collect from their B2B users do not require a mandatory audit.
- 5.21 The Member must provide its annual re-registration information signed by an Appropriate Person, to the Operator, at least 60 days before the start of the next Scheme Year. The re-registration information to be provided shall be as specified by the Operator from time to time.

6 MEMBERSHIP

- 6.1 For the avoidance of doubt a Member can be Member of the Scheme by either being a B2B, B2C or both B2B and B2C Member, but shall only receive a single Operator unique membership reference number.
- 6.2 The Operator reserves the right to refuse to register the Member with the Agency or to refuse to notify the appropriate Agency that it has become a Member of the Scheme if the Member: (i) does not provide all the information required under these Conditions and all information required in the Application; or (ii) does not provide information that is deemed to have been to the required standard of accuracy; or (iii) fails to provide payment for any or all outstanding Fees. For the avoidance of doubt, while the Agreement shall take effect as described in clause 3, the Member shall not become a member of the Scheme for the purposes of the Regulations until it has been registered as such by the Operator with the appropriate Agency.
- 6.3 The Member hereby authorises the Operator to publish or disclose all information provided by the Member for such purposes as the Operator thinks fit in connection with the Scheme and the Member hereby acknowledges and agrees that any advice provided to it by the Operator pursuant to the Scheme is for the Member's use only and the Operator shall not be responsible to any other person except the Member in respect thereof.

7 MEMBERSHIP RENEWAL

- 7.1 The Agreement shall automatically renew on expiry of each Scheme Year for each subsequent new Scheme Year unless otherwise terminated in accordance with the Agreement.

8 FEES

- 8.1 The Member shall be liable for and shall pay the Operator the following fees in respect of each Scheme Year:

- 8.1.1 an annual registration fee which is a flat rate annual fee payable upon joining the Scheme, and then on an annual basis in respect of each Scheme Year thereafter. The initial Registration Fee shall be payable on acceptance by the Operator of the Member's Application. Registration Fees for each subsequent Scheme Year shall be payable on or before 31 October in the year prior to the start of the Scheme Year to which it relates. The prevailing Registration Fee for each category of Member shall be determined by the Operator and notified to the Member from time to time in writing. The Operator shall be entitled to change the Registration Fees payable by Members (and the methodology used to calculate them) at any time by giving notice to the Member. Changes shall apply to Members for the Scheme Year that begins after the change has been made. Where the Operator changes the Registration Fee for a Scheme Year after the date on which the Member has paid the Registration Fee for that Scheme Year then: (i) if the Registration Fee has been increased, the Member shall pay the Operator the difference between the amount that the Member has paid for registration and the amount of the revised Registration Fee; and (ii) if the Registration Fee has been reduced, the Operator shall repay the Member the difference between the amount it has received from the Member for its registration and the amount of the revised Registration Fee, in each case within 30 days after the date that the change is notified to the Member. If the Member or the Operator terminate this Agreement for convenience at the end of a Scheme Year in accordance with clauses 12.3 or 12.5 and the Member has already paid the Registration Fee for the subsequent year at the point of termination, then the Operator shall refund that Registration Fee to the Member;
- 8.1.2 the latest fees payable to the Agency in respect of the Member for registration upon commencement of each Scheme Year as set out in the Regulations and any fees charged by the Agency in respect of the Members' late registration or resubmission of data (the "Agency Fees"). The Operator shall be entitled to invoice the Member for any Agency Fees before or after the date on which the fees concerned become payable to the Agency;
- 8.1.3 monthly WEEE Collection, transportation, Recovery and Recycling fees as determined by Comply Direct and notified to the Member from time to time. Such fees are payable no later than 30 days from end of the month of invoice; and
- 8.1.4 except to the extent that the generation of its own Evidences Notes offsets such fees, Member shall pay a Material Levy Fee for the cost for meeting the Member's proportion of the actual cost of collection, treatment, Recovery, Recycling and disposal of WEEE allocated to the Scheme as stated under the Regulations, including such costs incurred for B2B obligations as stated under the Regulations together with a margin determined by the Operator. Such Material Levy Fees shall include all costs incurred by the Operator in fulfilling the Member's obligations under the Regulations. The Operator shall determine the Material Levy Fee in accordance with such methodology as it may specify from time to time and shall invoice its Members in advance for the four quarterly periods of each Scheme Year. The Operator reserves the right to undertake a reconciliation at the end of the Scheme Year of payments received against the actual costs of complying with and acquiring the necessary evidence for the Scheme's compliance with the Obligations on behalf of the Member together with the Operator's margin and to adjust the Material Levy Fee accordingly and invoice the Member for any shortfall as determined by the Operator (and the Member shall pay such invoice).
- 8.2 Fees shall be notified to the Members upon joining the Scheme and prior to the commencement of each Scheme Year. The prevailing Fees are available on request. For the avoidance of doubt, the Operator may change the Fees and the methods by which they are calculated at any time on written notice to the Member.

- 8.3 The Member shall pay all Fees to the Operator due under this Agreement in full, without deduction within 30 days of the issue of an invoice in respect thereof by the Operator.
- 8.4 The Member shall, where its Application takes effect after the commencement of a Scheme Year, be invoiced for all relevant Fees for the entire Scheme Year and Fees shall not be pro-rated down for any part of a Scheme Year.
- 8.5 If any sum payable by the Member to the Operator remains unpaid more than 30 days after: (i) the date specified in clause 8.1.1 (in the case of Registration Fees); or (ii) the date of invoice (for all other payments), then without prejudice to the Operator's other rights and remedies, the Member shall pay interest on that sum at the rate of 4 percent per annum above Barclays Bank's interest rate from time to time, or at 4 percent where the base rate falls below zero, such interest to be calculated and compounded on a daily basis from the date on which such sum became due until the date on which payment is received.
- 8.6 If sums payable by the Member to the Operator are late and a debt recovery service is instructed by the Operator, the Member shall be liable for the additional fees incurred. The Operator shall make reasonable attempts to resolve outstanding payments directly and shall only consider debt recovery if the Member is unresponsive.
- 8.7 If any Fees remain unpaid for a period of 15 days after the due date for payment, the Operator retains the right to terminate the membership of the Member as detailed with clause 12 of these Conditions.
- 8.8 No payments made by a Member that leaves the Scheme in the course of any Scheme Year shall be refunded.
- 8.9 Fees paid, whether paid as a deposit or otherwise, are non-refundable (save for any repayment specified in clause 8.1.1).
- 8.10 B2C members registered as Small Producers may be subject to Material Levy Fees.

9 B2C MEMBERS EVIDENCE POLICY

- 9.1 This B2C Member's evidence policy is applicable to all B2C Members of the Scheme who have the intention and ability to supply to the Operator evidence of Reuse and/or evidence of treatment and Recycling generated from handling B2C WEEE through the course of their normal business activities.
- 9.2 Within 30 days of initial Scheme membership, such B2C Members are required to supply estimated tonnes of whole appliances by category and for each Quarter to be reused through their normal business activities and the estimated tonnes of WEEE by category and for each Quarter generated through the course of their normal business activity to be sent directly by the Member or specifically on behalf of the Member for treatment and Recycling at an AATF or accredited exporter.
- 9.3 For any years of membership of the Scheme following the initial Scheme Year, Members shall submit estimated tonnages to the Operator on or before the 30th November, applicable for the following Scheme Year.
- 9.4 The Member shall give priority to the maximum Reuse of whole appliances comprising B2C WEEE that they have gained access to through the course of their normal business activities.

- 9.5 All B2C WEEE generated by the Member as per Regulation 43 is to be allocated to the Operator via B2C Evidence Notes within the WEEE settlement centre (SC).
- 9.6 The Member shall convert all WEEE generated through the course of its normal business activities that is not suitable for Reuse into Evidence Notes generated from approved exporters or AATFs.
- 9.7 The Member shall immediately notify the Operator of any significant deviations from its Quarterly tonnage estimates of Reuse and treatment.
- 9.8 The Member shall provide all documentary Evidence Notes generated in each Scheme Year to the Operator on a Quarterly basis by email to such address as the Operator specifies from time to time in writing.
- 9.9 The Member shall at all times keep the Operator fully up to date in writing of any possible delay to the provision of Evidence Notes or any possible concern that the Member has of not being able to supply the necessary Evidence Notes in line with its original or amended estimations.
- 9.10 In such an instance of the non-supply of Reuse or treatment Evidence Notes by the Member then the Operator shall invoice the Member for Evidence Notes to replace such shortfall and to also cover any additional costs, charges and expenses incurred in securing such additional Evidence Notes.
- 9.11 The Operator may give notice to terminate the B2C Member evidence policy arrangement in writing with immediate effect due to the non-supply of valid Evidence Notes. The Operator shall also be entitled to issue an invoice, payable by the Member within 30 days of issue, for an amount equivalent to the costs of obtaining replacement Evidence Notes together with such additional reasonable handling charge as the Operator may specify.
- 9.12 Subject to ongoing provision within the Regulations any Member that acquires acceptable Evidence Notes through the collection, treatment, Reuse, Recovery, and Recycling I of WEEE is able to deliver the evidence to the Scheme and subject to the Operator being satisfied with the Evidence Notes shall give the Member a credit against the Member's proportionate share of the obligations of the Scheme.
- 9.13 The Member shall ensure that all Evidence Notes supplied to the Operator are properly and correctly completed in a form acceptable to the Agency and to the satisfaction of the Operator.
- 9.14 The obligation for ensuring that Evidence Notes are not fraudulent and meet the Producer's full obligations under the Regulations shall remain with the Member and failure to supply such Evidence Notes shall result in the Member being liable. The Operator accepts no liability in this regard.
- 9.15 Any dispute regarding the supply of Evidence Notes between the Operator and the Member shall be determined by the Operator acting reasonably.
- 9.16 The Member shall fully indemnify and keep fully indemnified the Operator against all actions, costs, claims, demands, expenses (including legal fees), liabilities, losses and proceedings suffered by the Operator from a breach by the Member of the B2C Member's evidence policy under these Conditions.

10 CONFIDENTIALITY

10.1 Each party shall hold all documents and information of a confidential nature received from the other party in connection with the performance of the Agreement (the "**Confidential Information**") in strict confidence and shall not disclose it to any third party except where the recipient party is permitted to disclose such documents and information under the Agreement or where agreed between the parties.

10.2 Each party shall be entitled to disclose the other party's Confidential Information:

10.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

In addition, the Operator shall be entitled to: (i) publish information as described in clause 6.3 notwithstanding the fact that it may include the Member's Confidential Information; (ii) use and disclose the Member's Confidential Information where and to the extent that the Operator reasonably considers appropriate in the course of the operation of the Scheme or where requested by the Agency; and (iii) combine data obtained from the Member with other data to create aggregated data sets and freely use and disclose such aggregate data for the Operator's own purposes (and such aggregate data shall belong to and be treated as part of the Operator's Confidential Information).

10.3 The provisions of this clause 10 shall not apply to any Confidential Information that:

10.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party in breach of this clause);

10.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

10.3.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or

10.3.4 the parties agree in writing is not confidential or may be disclosed; or

10.3.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

10.4 Comply Direct shall adhere to all requirements of the Data Protection Act 2018 and the UK GDPR. Comply Direct's members' privacy notice details further information about Comply Direct's processing of personal data and is available on the Comply Direct [website](#).

11 INDEMNITY & LIMITS ON OPERATOR'S LIABILITY

11.1 The Member hereby agrees to indemnify and keep indemnified the Operator from and against all demands, claims, liabilities, losses, damages, (for loss of profit or otherwise) costs and expenses (including all legal and other costs and expenses) whatsoever: (i) in connection with any failure by the Member to comply with the Conditions and/or the Regulations; and/or (ii) in connection with the provision by the Member to the Operator of any false, inaccurate, misleading, late or incomplete information or information failing to the standard of accuracy required by the Agency.

11.2 Subject to clause 15.1, the Operator shall not be liable to the Member by reason of any representation or any implied warranty, condition, or other term, or under any duty at common law, or under the express terms of the Agreement or in tort (including negligence), breach of statutory duty or otherwise howsoever for any:

11.2.1 loss of goodwill, contracts, profits or revenue (whether direct or indirect);

11.2.2 failure to achieve savings or wasted costs (whether direct or indirect);

11.2.3 consequential, special or indirect loss, damage costs, expenses or other claims for consequential compensation whatsoever,

which arise directly or indirectly out of or in connection with the Agreement or its subject matter.

11.3 Subject to clause 15.1, Comply Direct's total liability to the Member for all claims arising (regardless of when they may be asserted) in any Scheme Year (in aggregate and not per claim) in connection with the Agreement and whether in contract, tort (including negligence) or otherwise howsoever shall not exceed:

11.3.1 in the case of claims arising during the first Scheme Year of the Agreement, an amount equal to the estimated Fees for that Scheme Year payable by the Member as calculated and notified by Comply Direct to the Member; and

11.3.2 in the case of claims arising during any subsequent Scheme Year, an amount equal to the Fees payable by the Member in respect of the immediately preceding Scheme Year.

11.4 The provisions of clause 11.1 shall continue to apply notwithstanding termination of the Agreement however caused.

12 TERMINATION

12.1 The Operator may terminate the Agreement and the Member's membership of the Scheme by notice in writing in the event of any material breach by the Member of any of its obligations under the Agreement with effect from the end of the then current Scheme Year.

12.2 The Operator shall also be entitled to terminate the Agreement and the Member's membership of the Scheme by notice in writing to take effect from the end of the then current Scheme Year in the following circumstances:

12.2.1 failure by a Member to pay to the Operator any sum due to the Operator under this Agreement within 15 days of the due date for payment thereof; or

- 12.2.2 the Operator (acting reasonably) believes it is in the best interests of the other members as a whole to terminate the Member's membership of the Scheme.

These termination provisions are without prejudice to the general rights of termination contained in Clauses 12.1, 12.3 and 12.4.

- 12.3 The Operator may terminate the Agreement and the Member's membership of the Scheme for convenience with effect from the end of any Scheme Year by giving notice in writing to the Member at least 30 days prior to 15th November in the Scheme Year.
- 12.4 The Operator may terminate the Agreement and the Member's membership of the Scheme by notice in writing with immediate effect (or on such later date as may be specified by the Operator) in the event that the Member (or in the case of Group Membership any company within that Group) becomes insolvent or applies for, consents to or suffers the appointment of a liquidator, receiver or administrative receiver, or administrator, or is unable to pay its debts as they fall due in accordance with Section 268 of the Insolvency Act 1986 or where a Member is a partnership, and one or more of the partners becomes insolvent.
- 12.5 The Member may terminate the Agreement and the Member's membership of the Scheme of convenience with effect from the end of any Scheme Year by giving notice in writing to the Operator at least 120 days prior to 15th November in the Scheme Year.
- 12.6 If the approval of the Scheme is withdrawn by the Agency during a Scheme Year then any Evidence Notes related to a specific Member shall be allocated back to a particular Member by category of EEE as stated under the Regulations.
- 12.7 Upon termination of membership of the Scheme, the Member forfeits the right to any claim a refund for any Fees paid previously including Registration Fee and Agency Fees (save for any repayment specified in clause 8.1.1).
- 12.8 For the avoidance of doubt, termination of membership shall terminate the Agreement. However, the termination of membership for whatever cause shall not affect any provision of the Conditions which is expressed or impliedly intended to survive or operate in the event of such termination and shall not prejudice or affect the right 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.
- 12.9 The Operator shall not be liable for any loss, damage, delay, loss of market, costs or expenses of whatsoever nature sustained by the member by virtue of the termination of membership from the Scheme.

13 FORCE MAJEURE

- 13.1 Neither the Operator nor the Member shall be liable each to the other for any delay, hindrance in the performance of or failure to perform its obligations under these Conditions (other than the Member's obligation to make any payment) provided that the failure, delay or hindrance arises directly or indirectly from a Force Majeure Event and provided also that the affected party promptly notifies the other of the reason for the default or delay and makes all reasonable efforts to overcome it.

14 ANTI-CORRUPTION

- 14.1 Each party is and shall remain in compliance with the laws of England and Wales applicable to the services it shall perform under this Agreement, including the Bribery Act 2010.
- 14.2 Neither party shall, and nor shall any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of these Conditions which:
- (i) would violate any applicable anti-corruption laws or regulations;
 - (ii) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;
 - (iii) is made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or
 - (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper.
- 14.3 For the purposes of this Agreement, "Public Official" includes, without limitation, any person holding or acting on behalf of a person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a state owned or public enterprise, a public international organisation, any federal or regional government department or agency, any political party, any candidate for political office or a relative or associate of any such person.
- 14.4 Each party warrants that to the best of its knowledge and belief, it:
- (i) has not at any time been found by a court in any jurisdiction to have engaged in any corrupt act (or similar conduct), prohibited by the Bribery Act 2010 ("Corrupt Act");
 - (ii) has not at any time admitted to having engaged in any Corrupt Act; or
 - (iii) has not at any time been investigated or been suspected in any jurisdiction of having engaged in any Corrupt Act.

15 GENERAL DECLARATIONS

- 15.1 Please note that nothing in these Conditions excludes or restricts liability for fraud (including fraudulent misrepresentation) or death or personal injury resulting from negligence or any other liability that it is not lawful to exclude.
- 15.2 These Conditions together with the Application constitute the entire agreement between Comply Direct and the Member relating to the Scheme. All conditions, warranties and other terms implied by statute or common law are hereby excluded from the Agreement to the fullest extent permitted by law.

- 15.3 All sums payable under the Agreement by the Member are stated to be exclusive of VAT or any similar impost or levy which the Member shall be obliged to pay in addition to all such sums.
- 15.4 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Agreement.
- 15.5 The Member shall not be entitled to assign, hold on trust or transfer in any way the Agreement or any of its rights or obligations under the Agreement without the prior consent of the Operator.
- 15.6 The Operator may at any time amend any provision of the Conditions and any such amendment shall become binding upon the Member and the Operator (and the Agreement shall be deemed amended accordingly): (i) immediately in the case of the amendment that the Operator considers is required in order to comply with the Regulations and/or any other legislation or regulations; or (ii) in the case of any other change, 30 days after the Operator has published or otherwise notified the Member of such amendment.
- 15.7 No other variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16 WEBSITE POLICY

- 16.1 The services of the Operator under the Scheme shall be provided through the Comply Direct website located at www.complydirect.co.uk.
- 16.2 Please refer to the Comply Direct website privacy policy (available online) for details on the use of any personal data collected on the website.

17 SEVERANCE

- 17.1 If any provision of the Agreement is held to be invalid or unenforceable in whole or in part under any enactment or rule of law such term or provision (or part) shall to that extent be deemed not to form part of the Agreement but the validity and enforceability of the remainder of the Agreement shall not be affected.

18 WAIVER

- 18.1 No payment accepted by either party and no neglect, failure, delay or indulgence on the part of either party in exercising any right in connection with or enforcing this Agreement or any term or clause of the Agreement shall operate as a waiver of that party's rights, powers or privileges.

19 NOTICES

- 19.1 Any notice given or made under these Conditions shall be in writing and may be delivered to the relevant party or sent by post to the address of that party as shall have last been notified in writing by that party to the other party.
- 19.2 Each notice or communication shall be deemed to have been given or made and delivered if by a letter 48 hours after posting or if by delivery when left at the relevant address.

20 GOVERNING LAW

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