

ADOPTION AGREEMENT

regarding the Integrated Battery and Accumulator Waste Management System managed by Electrão

Between

Electrão – Associação de Gestão de Resíduos, NIPC 509300421, with its head office at the Restelo Business Center, Block 5 – 4th – A, Av. Ilha da Madeira, no. 351, 1400-203 LISBON, hereinafter referred to as “Amb3E”,

and

_____,
tax number _____, with its registered office at _____

_____,
hereinafter referred to as the “**ADHERENT**”,

hereinafter jointly referred to as the “**Parties**”,

Whereas:

- A)** Decree-Law no. 152-D/2017, of 11 December approved the legal framework governing the management of waste streams subject to extended producer liability, which include the Battery and Accumulator Waste referred to therein;
- B)** The ADHERENT is deemed to be a Producer of Batteries and Accumulators (hereinafter referred to as “BA”) within the meaning of the definitions in article 3 of the said Decree-Law;
- C)** Producers may, according to the provisions of the said Decree-Law and for the purposes of compliance with the obligations laid down therein, choose to transfer liability for the management of BA waste to a duly licensed manager of an integrated system;
- D)** Electrão is a management body, which is licensed by Order no. 11275-D/2017, of 19 December, of the Secretary of State of the Environment, to manage an Integrated BA Waste Management System;
- E)** The ADHERENT wishes to join the Integrated BA Waste Management System managed by Amb3E and to transfer its liability for the management of its BA waste to it, in accordance with Decree-Law no. 152-D/2017;

- F) No. 3 of article 10 of the said Decree-Law provides that the transfer of liability of each Producer shall be the subject of a written agreement;

This **Agreement** is made freely and in good faith and is governed by the following clauses:

Clause 1.
(Subject Matter)

1. The ADHERENT hereby and subject to the provisions of this Agreement and in its capacity as a Producer of BA, joins the Integrated BA Waste Management System managed by Electrão, the material scope of which is portable batteries and accumulators and industrial batteries and accumulators, and transfers to it its liability for the management of the corresponding BA waste within the said scope, in accordance with Decree-Law no. 152-D/2017, of 11 December.
2. Unless otherwise provided in this Agreement, this Agreement concerns BA, which are placed on the domestic market by the ADHERENT, for the first time, as from the beginning of the calendar year during which this Agreement comes into force, the characteristics and segments of which are described in **Annex I** of this Agreement, which is an integral part hereof.
3. It is deemed that the BA are placed on the domestic market for the first time by the ADHERENT on the dates of the invoices, or other accounting documents, that are issued to support the supply thereof or, in its absence, on the date they are offered.
4. Adoption of the Integrated BA Waste Management System managed by Electrão and the liability transferred by the ADHERENT to Electrão pursuant to this Agreement is limited to Portugal and to the BA that are placed on the market of that territory, which is referred to in this Agreement as the domestic market.

Clause 2.
(Declaring duties)

1. The ADHERENT shall deliver the Annual BA Report to Electrão by 15 March every year, which shall state the quantities of BA placed on the domestic market during the preceding calendar year and the characteristics thereof, i.e. in terms of weight, units, type and chemical system.
2. By signing this agreement the ADHERENT is obliged to provide Electrão with the Initial BA Report, identifying the quantity of BA placed on the domestic market in the previous calendar year, according to its characteristics, in regard to weight, units, type and chemical system.

3. Whenever, at the discretion of Electrão, there is a significant difference between the Initial BA Report and the first Annual BA Report, or between the Annual BA Reports of successive years, this shall be explained by the ADHERENT and be subject to subsequent validation by Electrão.
4. If the ADHERENT has not placed BA on the domestic market during the year preceding the year (i) of the deadline for the delivery of the Annual BA Report or (ii) of the signing of this Agreement and, if applicable, the year of the submission of the Initial BA Report, as referred to in paragraphs 1 and 2 of this clause, the said reports shall be replaced by the best annual estimate of the BA to be placed on the market, stating the characteristics thereof, i.e. the weight, units, type and chemical system.
5. The Annual BA Report may be submitted by some other date prior to the date referred to in no. 1 of this Clause, as communicated to by Electrão, whenever such earlier date is determined by any of the Proper Authorities, which are currently the Agência Portuguesa do Ambiente, I.P. and the Direcção-Geral das Actividades Económicas (hereinafter referred to as the "Proper Authorities") or for the purposes of compliance by Electrão with its legal obligations.
6. The standard forms of the Annual BA Report and the Initial BA Report shall be defined by the Proper Authorities or, in the absence thereof, by Electrão. The submission of the Annual Report shall be in the format and on the platform stipulated by Electrão for that purpose.
7. Whenever so requested, whether by decision of any of the Proper Authorities, or in order to enable Electrão to comply with its obligations to them, or to verify compliance by the ADHERENT with its obligations, the ADHERENT shall provide Electrão with additional information regarding the BA and the characteristics thereof.
8. The ADHERENT may also report back-dated information to Electrão regarding the BA placed on the national market in the years immediately prior to the year of the coming into force of this Agreement, if it has not previously transferred its liability for the management of the said waste, in accordance with the law, subject to the following backdate time limits: i.e. the previous 2 (two) or 4 (four) years, depending on whether portable batteries and accumulators, or industrial batteries and accumulators, are reported.
9. The liability for the management of the BA waste shall only be deemed to be transferred to Electrão solely and with regard to such BA as is covered by the Integrated BA Waste Management System managed by the Electrão, which is reported by the ADHERENT and when the corresponding fee due pursuant to this Agreement has been duly paid.
10. The data contained in the Annual BA Report shall be certified by a Certified Accountant, or by an Official Auditor, if this is required by any of the Proper Authorities, unless some other certification mechanism is agreed between the ADHERENT and Electrão and approved by the entity that imposed the said requirement. The ADHERENT shall submit the said certification within no more than 30 days of being requested so to do by Electrão.
11. All amendments of the Annual BA Report that the ADHERENT wishes to make shall be duly explained and be accepted in advance by Electrão.

Clause 3.
(Information duties)

1. The ADHERENT warrants the quality and veracity of the information transmitted in accordance with this Agreement, and shall be solely liable with regard thereto and agrees to act in such a way as not to prejudice the reporting of the said information by Electrão to the Proper Authorities.
2. The ADHERENT shall, whenever so requested, provide Electrão or third parties indicated by it (including processing facilities) with information concerning compliance with the legal obligations regarding the essential requirements of BA and other information regarding BA that is required by law, Electrão, the said third parties, or by any of the Proper Authorities, free of charge and in Portuguese, or such other language as is accepted by Electrão.
3. The ADHERENT shall provide Electrão with information regarding the preventive and reuse measures adopted, on an annual or more frequent basis communicated to it by decision of any of the Proper Authorities, or in order to enable Electrão to comply with its obligations to them, and prove them in accordance with the existing rules and such rules as may, in the future, come into force regarding the same, as well as with regard to the design of new BA.
4. The ADHERENT hereby expressly authorises Electrão to make all information declared or provided by the ADHERENT pursuant to this Agreement, available to the Proper Authorities, even if the same is confidential.
5. The information duties provided in the preceding clause and numbers shall remain in force, in relation to the period in which this Agreement was in force, to the extent necessary to comply with the obligations of Electrão, as a BA waste manager, notwithstanding the termination of this Agreement, for any reason, and even after the expiry of the term hereof.

Clause 4.
(Payments)

1. The ADHERENT shall pay an annual fee, hereinafter referred to as the Annual Fee, to Electrão, in consideration of the management of BA waste, and according to the quantity and characteristics of the BA placed on the domestic market, as established in accordance with the provisions of this Agreement.
2. The Annual Fee of any year corresponds to the application of the fees provided in the table, which is **Annex II** of this Agreement, to the BA placed on the domestic market by the ADHERENT according to the characteristics of the said BA.

3. The Annual Fee of a certain year, payable by the ADHERENT to Electrão shall be calculated as an estimate of the product of the quantities of BA declared in the Annual BA Report submitted in that year, but with regard to the BA placed on the domestic market in the previous year, multiplied by the amounts in the table **Annex II** of this Agreement, and also according to the characteristics of the BA in question.
4. Electrão shall calculate the real Annual Fee of a certain year, after the BA placed on the market in that year is reported in terms of the characteristics thereof by the ADHERENT, i.e. when the Annual BA Report is submitted in the following year.
5. If the Annual BA Report is, for any reason, not submitted by the ADHERENT, Electrão may estimate the Annual Fee on the basis of the Initial BA Report, or the Annual BA Reports of previous years.
6. The payment for the management of BA waste, with regard to BA declared retroactively and placed on the domestic market in the years immediately prior to the year in which this Agreement came into force, shall be calculated by the application of the payments in force on the date on which the BA were actually placed on the domestic market.
7. The payment amounts indicated in the table, which is **Annex II** of this Agreement, may be subject to ordinary or extraordinary updates, prior notice of which shall be given to the ADHERENT by Electrão.
8. In no circumstances however shall the Annual Fee payable by the ADHERENT pursuant to this Agreement be less than the highest of the annual fees payable by a Small Adherent in accordance with no. 9 of the present Clause.

9. Small Adherent: When the ADHERENT becomes a small adherent, as proved by it to Electrão, or as decided by Electrão, in accordance with the schemes established from time to time by Electrão for this type of adherent, this Agreement shall be suspended for such time as the ADHERENT continues to be a small adherent, when the special conditions stipulated by Electrão for the small adherents shall apply to the ADHERENT. The small adherents' scheme includes, but is not limited to, the exemption provided for small producers in article 78 of Decree-Law no. 152-D/2017, of 11 December.

Clause 5. (Invoicing)

1. In the absence of contrary provision in this Agreement, or agreement otherwise between the Parties, the Annual Fee, when calculated as an estimate in accordance with no. 3 of the preceding Clause, shall

be invoiced in full at the beginning of each calendar or contractual year, and shall be paid by the ADHERENT within 60 (sixty) days of the invoice issue date.

2. After the calculation of the Annual Fee, Electrão shall effect such settlement of accounts as is required, and any credits that are due to the ADHERENT, shall, in the absence of a decision otherwise by Electrão, be set-off in the subsequent invoice or invoices issued pursuant to this Agreement, and the said settlement of accounts shall not give rise to the payment of interest. Any credit payable to Electrão as a consequence of this settlement of accounts shall be invoiced to the ADHERENT and shall be paid by it within 30 (thirty) days of the corresponding invoice issue date.

3. The Parties may agree to an invoicing frequency other than that referred to in no. 1 of this clause.

4. The invoicing of the Annual Payments shall not imply acceptance or recognition by Electrão of the BA and the characteristics thereof on which the said invoicing is based.

5. Failure to pay any invoice within the corresponding payment period shall place the ADHERENT in default, and interest shall accrue thereon at the legal rate of interest applicable to sums owed to commercial enterprises.

6. Any alterations of Annual BA Reports, or in the case of section II of the preceding clause, quarterly reports, which have already been submitted, which the ADHERENT wishes to make and which are accepted by Electrão, shall not, per se, give rise to any credit owed to the ADHERENT.

Clause 6. (Electronic Invoicing)

1. The Parties agree that Amb3E may issue invoices or equivalent documents electronically, in accordance with Article 36, no. 10 of the VAT Code and Decree-Law no. 28/2019, of 15 February.

2. The email address stipulated by the ADHERENT, to which electronic invoices should be sent is as indicated in 14th Clause ("Email Address"). The ADHERENT shall communicate all alterations of the Email Address, at which it receives electronic invoices and shall keep its mail box in the condition necessary in order to receive the invoices correctly. The Email Address is personal, non-transferable and for exclusive use of the ADHERENT, and it shall accordingly ensure and protect the confidentiality thereof, in all circumstances.

3. The electronic invoices are accessed via the email box indicated by the ADHERENT and referred to in the preceding paragraph of this clause. Whenever Electrão sends an electronic invoice to the ADHERENT, a notification of the delivery of the new invoice will be sent to the Email Address, together with the electronic invoice in PDF format, signed digitally with a qualified electronic signature.

4. Electrão may, at any time, suspend or cancel the issue of electronic invoices, and resume the issue of invoices in paper format, e.g. when delivery to the email box indicated by the ADHERENT is not possible.

Clause 7.
(Declaration of the Transfer of Liability)

The Declaration of Transfer of Liability for the management of BA waste in a given period shall be issued by Electrão whenever the ADHERENT has (i) made the payments corresponding to that period and (ii) its contractual situation is regular and without any type of breach.

Clause 8.
(Audit and control)

1. The ADHERENT is solely liable with regard to the quality and veracity of the information provided by it to Electrão in accordance with its reporting and information duties provided in this Agreement and in the law, i.e. with regard to the information regarding the quantities of BA placed on the domestic market and the characteristics thereof.

2. Electrão may arrange the conduct of audits and any other control measures, via external and independent entities, in order to confirm the quality and veracity of the information provided to it by the ADHERENT, and compliance by the ADHERENT with the obligations arising from this Agreement.

3. The ADHERENT shall cooperate with the independent entity that conducts the audit or control measure, and shall make all information and documents requested of it available to Electrão at the ADHERENT's registered office in Portugal, or at the registered office of Electrão, if the ADHERENT does not have a registered office in Portugal.

4. The audit report shall be sent to the ADHERENT by the entity that has performed the audit within five days. Electrão shall notify the ADHERENT of the deadlines for the implementation of the proposed corrections foreseen or arising from the audit report.

5. The costs inherent in the conduct of the audits or control measures provided in the preceding paragraphs shall be borne by Electrão, unless the same have to be conducted outside of Portugal, or where the said audits or control measures are a consequence of omissions in or defects of information provided by the ADHERENT, which result in a variation of the amount determined in excess of 5%, when the ADHERENT shall bear the said charges, in addition to the corrections arising with regard to the weight/units/ type/ chemical system and other characteristics declared and the corresponding payments resulting from the application of the fee, without prejudice to the right of Electrão to rescind this Agreement, in accordance with the provisions of the following clause.

Clause 9.
(Coming into force and term)

1. This Agreement shall automatically come into force on 1st of January 2020.
2. The person(s) who sign(s) this Agreement on behalf of the ADHERENT hereby warrant(s) and declare(s) that he/she/they is/are duly authorised to sign on behalf thereof and that all authorisations necessary for that purpose have been obtained.
3. This Agreement shall remain in force while the licence referred to in recital D) above is in force, but either Party may terminate it by a notice sent by recorded delivery mail with advice of receipt addressed to the other Party at least of three months prior to the end of each calendar year.
4. Notwithstanding the provisions of the preceding numbers of this clause, serious or reiterated failure by one of the Parties to comply with the obligations provided in this Agreement, shall entitle the other Party to rescind this Agreement forthwith and notice of the said rescission shall be given in writing and be sent by recorded delivery mail with advice of receipt. It is expressly agreed that failure on the part of the ADHERENT to provide reports, or the provision of incorrect reports or information, in the performance of its reporting or information duties pursuant to this Agreement, or delay in excess of 60 (sixty) days in the payment of charges invoiced to it, shall be just cause for the rescission of this Agreement by Electrão.
5. This Agreement shall lapse in the event of the waiver, suspension, termination, revocation or non-renewal of the licence of Electrão referred to in recital D), or if Electrão becomes unable to pursue its company objects.
6. In the event that this Agreement is terminated, Electrão shall settle accounts as at the termination date.
7. The termination of this Agreement necessarily involves the automatic cancelation of the ADHERENT's adoption of the Integrated BA Waste Management System managed by Electrão, notice of which will be given by Electrão to the Agência Portuguesa do Ambiente, I.P.

Clause 10.
(Record System)

1. The ADHERENT is required to communicate the information necessary to monitor the application of the provisions of no. 1 of article 5 of Decree-Law no. 152-D/2017, of 11 December, i.e. the type and quantity of BA placed on the national market and the management system for which it has opted, to the

Agência Portuguesa do Ambiente, I.P., via the integrated electronic waste registration system, and is also required to record the information referred to in Annex VI of the said decree-law.

2. The ADHERENT may, with the prior agreement in writing of Electrão, delegate to it the responsibility for the completion of the report regarding placement on the market to Electrão, but shall however be responsible for the recording thereof, without prejudice to such support as is provided to the ADHERENT by Electrão with regard to this activity, with the prior written agreement of Electrão.

3. The ADHERENT undertakes to provide Electrão with all information necessary in order to comply with the obligations referred to in the preceding paragraph.

Clause 11.
(Confidentiality and disclosure)

1. The Parties shall, while this Agreement is in force and thereafter, not disclose any information of which they become aware during the performance, or in consequence, of this Agreement, save to the extent necessary in order to comply with legal obligations or court orders, as well as, in the case of the Electrão, to the strict extent necessary for the performance of its obligations in the capacity of a BA waste manager.

2. The ADHERENT authorises Electrão to use and disclose its name or business name, as well as its contact details and the date it became an adherent of the Integrated BA Waste Management System managed by Electrão, on its website (www.electrao.pt) and also in any articles, information or publications of Electrão.

Clause 12.
(Other obligations)

1. The ADHERENT agrees to participate in and cooperate with preventive measures arranged by Electrão, i.e. those envisaged in its prevention plan.

2. The ADHERENT warrants and declares that it complies and will continue to comply with its legal obligations regarding the requirements affecting BA, in accordance with the legislation applicable from time to time.

3. Electrão shall provide the ADHERENT with information regarding measures taken by it with regard to BA waste management and its results. This information may be provided, inter alia, on Electrão website (www.electrao.pt), by sending newsletters or be included in its annual report of activities.

Clause 13.
(Validity of the Agreement and amendments)

1. The following annexes are an integral part of this Agreement:

- a) **Annex I** (Characteristics of the BA covered by the Agreement);
- b) **Annex II** (Table of Payments).

2. In the event that any clause in this Agreement is or becomes invalid or unenforceable, this shall not affect the validity of the Agreement as a whole. In such a case, the Parties shall apply their best efforts to replace the invalid or unenforceable provisions with other valid and enforceable provisions of similar financial effect.

3. This Agreement contains the entire agreement between the Parties with regard to the subject matter hereof, and may therefore, failing contractual or legal provision otherwise, only be amended by a document in writing signed by both Parties.

Clause 14.
(Communications)

1. All communications between the Parties required by this Agreement shall be sent to the following contacts:

a) Electrão – Associação de Gestão de Resíduos

Address: Restelo Business Center, Bloco 5 – 4ª, Av. Ilha da Madeira, 35 I, 1400-203 Lisboa

E-mail address: aderentes@electrao.pt

b) ADHERENT:

Address:

Email address for invoice to be sent: _____

2. The alteration of any of the Parties' contacts shall be communicated to the other Party immediately, failing which communications sent to the contacts in this Agreement shall be deemed to be effective and the defaulting party shall be wholly liable for any loss arising from breach of the said obligation.

Clause 15.
(Law and Venue)

1. This Agreement shall be governed by Portuguese law, with the exception of the rules regarding conflict of laws.

2. The court of the Lisbon judicial district shall have exclusive jurisdiction with regard to all questions arising from the interpretation, resolution of lacunae, performance or termination of this Agreement.

Lisbon, the _____ of _____ 20_____

For and on behalf of Electrão

For and on behalf of the ADHERENT

Signature(s) of the representative(s)

Signature(s) of the representative(s)

Annex I

(Characteristics of the Batteries and Accumulators)

This Agreement concerns the BA waste management responsibilities arising from the BA placed on the domestic market by the ADHERENT in the following segments:

Segments	Select
Portable	[]
Industrial	[]

Annex II
(Table of basic payments)

The Annual Charges are available on the Electrão website

Segments	Form title	Payment [€/kg]
Portable	Alkaline	
	Zinc Carbon	
	Lithium	
	Button battery	
	Lithium ion	
	NiMH	
	NiCad	
Industrial	Lead-acid	
	Lithium ion	
	NiCad	
	Lead-acid and others	

- The amounts indicated are subject to VAT at the applicable legal rate
- The amounts indicated may be reduced according to the incentive arrangements that are applicable by Amb3E.

The Parties acknowledge and accept that the basic payments in the present Annex II are provisional, being subject to the approval of the Agência Portuguesa do Ambiente, I.P., for they can be changed through communication of Electrão to the ADHERENT but the ADHERENT MAY terminate, without any penalty, the present agreement within 15 (fifteen) days counted from the day on which said communication is received.