



## AGREEMENT AND UNDERTAKING

national consumer agency  
gníomhaireacht náisiúnta tomhaltóirí

The National Consumer Agency (“the Agency”)

putting consumers first

-and-

**Greyhound Household (“Greyhound”)**

This Agreement and Undertaking is made by and between the National Consumer Agency and **GREYHOUND HOUSEHOLD** on the date set forth below. The Undertaking of **GREYHOUND** contained herein is accepted by the Agency pursuant to section 73 of the Consumer Protection Act, 2007. The Agency and **GREYHOUND** are referred to collectively herein as the “Parties”.

### WHEREAS FOR THE PURPOSES OF THIS UNDERTAKING:

- A. Greyhound is engaged in the waste collection and disposal of domestic waste. It provides a complete set of written terms and conditions for consumers who engage with the services of the company. These terms have been drawn up by the trader in advance and are presented as a standard form. The consumer is not presented with an option as to the terms upon which s/he may contract. None of the terms are individually negotiated.
- B. It is the function of the Agency pursuant to section 8(1) of the Consumer Protection Act 2007 (“the Act”) to, *inter alia* –
- i. Promote and protect the interests and welfare of consumers;
  - ii. Enforce the relevant statutory provisions, including by the prosecution of offences, by way of summary proceedings
  - iii. Encourage compliance with the relevant statutory provisions,
  - iv. Investigate instances of suspected offences under any of the relevant statutory provisions.
- C. The Agency has examined the standard contract terms described at “A” herein and considered whether any of the terms and conditions as presented by Greyhound constitute an unfair term in a contract concluded between a seller or supplier and a consumer as measured against the provisions contained within the EC Directive 93/13 on Unfair Terms in Consumer Contracts given effect in Ireland by S.I. 27 of 1995.
- D. As a result of the findings of its examination, the Agency has reason to believe that particular terms and conditions of the standard form contract as presented by Greyhound to consumers are unfair. The particular terms and conditions are as follows;

- i) ***'10.5 Any credit balance in the Customer's account will be forfeit and will not be refunded in the event that the contract is terminated by the Customer within the 12 month period.'***

The NCA consider this to be unfair as it considers such a term to have the object or effect of permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract (as listed in Schedule 3, 1(d) to the Regulations).

- ii) ***'11.2 The Customer agrees that GRR may amend these terms and conditions from time to time.'***

The NCA consider this to be unfair as it considers such a term to have the object or effect of enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract (as listed in Schedule 3, 1(j) to the Regulations).

The NCA additionally considers this to be unfair as it considers such a term to have the object or effect of enabling the seller or supplier to alter unilaterally without a valid reason any of the characteristics of the product or service to be provided (as listed in Schedule 3, 1(i) to the Regulations).

- iii) ***'11.3 GRR may, from time to time issue to the Customer further terms and conditions in respect of the Service, and/or the cost of the Service and the Customer is deemed to be bound by these terms and conditions from the date of issuance of the further terms and conditions by GRR. These further terms and conditions, if issued to the Customer, shall be described as plans or choices ("Plans/Choices").'***

The NCA considers this to be unfair as it considers such a term to have the object or effect of allowing a seller of goods or supplier of services to increase their price without giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded (as listed in Schedule 3, 1(l) to the Regulations).

- iv) ***'12 Termination of this contract by the Customer, for any reason, within the 12 month period, will result in administration charges and/or Bin recovery charges in the sum of €45.00, being charged to the Customer. Termination of the contract must be done so by the account holder in writing, by post or email.'***

The NCA considers this to be unfair as it considers such a term to have the object or effect of inappropriately excluding or limiting the legal rights of the consumer vis-a-vis the seller or supplier or another party in the event

of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations (as listed in Schedule 3, 1(b) to the Regulation).

The NCA does not consider this to be a liquidated damages clause as the quantum cannot be considered to be a genuine pre-estimate of the loss that would be suffered by Greyhound in the event of a breach. The NCA considers this to be a penalty clause and notes the absence of a counterbalancing sanction on the company if it does not comply with its obligations.

- v) *'6 The customer accepts, acknowledges and agrees that the Bins are, and shall remain, the property of GRR and hereby authorises GRR and grants a license to GRR to enter onto the premises on which the Bins are situate for the purposes of inspection and examination of the Bins and/or repairing or recovering possession of the Bins.'*
- vi) *'7 GRR reserves the right to remove the Bins from the Customer's premises without prior notice in certain circumstances (e.g. non-payment of an account or in circumstances where the Bins are used for purposes other than the Service).'*
- vii) *'13 GRR reserves the right to terminate this contract at any time. On termination of this contract, GRR reserves the right, without notice to the Customer, to take possession of the Bins and the Customer agrees with GRR that GRR may enter upon the premises upon which the Bins are stored for the purposes of recovery of the Bins.'*

The NCA considers these to be unfair as it considers such a term to have the object or effect of authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer (as listed in Schedule 3, 1(f) to the Regulation). The NCA is particularly concerned that Greyhound has sought a facility of free entry to the consumer's property.

- E. As a result of the findings of its examination, the Agency is contemplating an application to the High Court wherein the Agency would seek an order prohibiting the use of the terms and conditions as outlined at 'D' herein.
- F. As a result of this investigation, the Parties have reached an agreement, as more particularly described below, wherein the Agency accepts Greyhound's undertaking of certain obligations in respect of its use of the subject terms and conditions.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. Greyhound undertakes that:-
  - a) It will refrain from using terms and conditions in its standard form contract which are non-negotiated and cause a significant imbalance in the parties rights and obligations under the contract to the detriment of the consumer.
  - b) By 18<sup>th</sup> January 2013, it will amend its standard form contract so as to address the unfair aspects of the terms and conditions contained at 'D' herein.
  - c) It will refund those consumers who have already had their credit balances forfeited.
  - d) It will refund those consumers who have already paid the €45 penalty.
  - e) It will communicate the changes to its standard contract to its consumers at the earliest opportunity but no later than 18<sup>th</sup> January 2013.
2. In consideration of the undertakings furnished by Greyhound as set out herein, the Agency agrees that it will not institute an application to the High Court under S.I. 27 of 1995 for an order prohibiting the use of the terms and conditions described at "D" herein. Nothing in this agreement shall be construed so as to impair the Agency's right to institute civil or criminal proceedings for any matter not specifically described herein.
3. This Agreement and Undertaking shall be and is intended by the Parties to be a binding and enforceable agreement which may be enforced by action in any Court of competent jurisdiction in the State.
4. The Undertakings provided herein shall be binding on the directors, officers, employees, servants, agents, and successors and assigns of Greyhound.
5. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.

Dated this 19<sup>TH</sup> day of Dec., 2012 in Dublin, Ireland.

**AGREED AND ACCEPTED BY:**

Signed \_\_\_\_\_



Mr/Ms PAUL MOLONEY (Block Capitals)  
~~Director~~ / Manager / ~~Secretary~~ / other officer /\* on behalf of Greyhound

Signed \_\_\_\_\_



John Shine  
Director of Commercial Practices for and on behalf of the National Consumer Agency

\* Delete where appropriate