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## **WASTE-MANAGEMENT FEE AGREEMENT**

between

**Stakeholders**

and

**OPEN Foundation**

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regarding WEEE

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This Waste-management fee Agreement (the **Agreement**) has been entered into since 1 April 2020

## **BETWEEN**

1. **Stichting Belangen A/V Producenten en Importeurs**, having its registered office in 's-Hertogenbosch, at De Baken 68, 5231 HS 's-Hertogenbosch, and registered with the Chamber of Commerce under number 28079527;
2. **Stichting ICT Milieu**, having its registered office in Woerden, the Netherlands, at De Corridor 5, 3621 ZA Breukelen, and registered with the Chamber of Commerce under number 30174849;
3. **Stichting Lightrec Nederland**, having its registered office in Zoetermeer, at Baron de Coubertinlaan 7, 2719 EN Zoetermeer, and registered with the Chamber of Commerce under number 27264457;
4. **Stichting Metalektro Recycling**, having its registered office in Zoetermeer, at Baron de Coubertinlaan 7, 2719 EN Zoetermeer, and registered with the Chamber of Commerce under number 27186445;
5. **Stichting Verwijdering Elektrische Gereedschap**, having its registered office in Pijnacker, at Baron de Coubertinlaan 7, 2719 EN Zoetermeer and registered with the Chamber of Commerce under number 27184005;
6. **Stichting Witgoed**, having its registered office in Zoetermeer, at Voorburgseweg 35, 2264 AC Leidschendam, and registered with the Chamber of Commerce under number 27174030;
7. **Stichting Zonne-energie Recycling Nederland**, having its registered office in Utrecht, at Arthur van Schendelstraat 550, 3511 MH Utrecht, and registered with the Chamber of Commerce under number 63913658,

which Stakeholders represent the interests of the producers with regard to WEEE; and

8. **Stichting Organisatie Producentenverantwoordelijkheid E-waste Nederland**, having its registered office in Zoetermeer, at Baron de Coubertinlaan 7, 2719 EN Zoetermeer, and registered with the Chamber of Commerce under number 76846563 (OPEN Foundation).

The Stakeholders and the OPEN Foundation are hereinafter jointly referred to as the **Parties**.

## **RECITALS**

- A. The European Directive 2012/19/EU on Waste from Electrical and Electronic Equipment (**WEEE Directive**) aims to contribute to sustainable production and consumption, firstly through the prevention of waste electrical and electronic equipment (**WEEE**). In the second place by

by encouraging re-use, recycling and other forms of recovery of WEEE, having regard to the waste hierarchy of the European Union. The WEEE Directive also seeks to improve the environmental performance of all operators directly involved in WEEE's life cycle. With respect to this, the WEEE Directive provides for an obligation on producers for the collection and processing of WEEE that they put on the market.

- B. The WEEE Directive has been implemented into Dutch law by the Waste from Electric and Electronic Equipment Regulation (**WEEE Regulation**).
- C. The Stakeholders represent the interests of the Producers with regard to WEEE. To this end, they have set up the Waste-Management Structure in cooperation with the OPEN Foundation with a view to achieving the environmental objectives adopted in the WEEE Regulation.
- D. The WEEE Management Regulations impose obligations on producers to achieve environmental objectives and to bear the associated costs. Through the Waste-Management Structure, Producers fulfil their obligations pursuant to the WEEE Regulation collectively in the most cost-efficient way.
- E. In the light of the waste hierarchy applied in the European Union and in the Netherlands in the National Waste-Management Plan 3, Article 11 of the WEEE Management Regulations stipulates that treatment facilities must carry out appropriate treatment in accordance with the minimum recovery targets set out in Appendix V of the WEEE Directive. The waste-management structure therefore consists, inter alia, of appropriate treatment by processors of WEEE with respect to the recovery and product and material re-use of WEEE and in compliance with the provisions of Article 11 of the WEEE Management Regulation.
- F. This agreement constitutes the financial basis for the realisation of the waste-management structure and the execution of the obligations of the OPEN Foundation, provided that this agreement is declared universally binding by virtue of section 15.36 of the Environmental Management Act.
- G. This agreement is counter-signed by the OPEN Foundation, as the OPEN Foundation is responsible for the collective execution of the waste-management structure instead of the individual Producers associated with the OPEN Foundation.

**AGREE**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following terms starting with a capital letter shall have the meanings hereby assigned, unless expressly indicated otherwise:

<b>Waste from Electric and Electronic Equipment or WEEE</b>	EEE which is waste within the meaning of Article 3, item 1, of Directive 2008/98/EC, including all parts, sub-units and
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	consumables that are part of the product at the time it is scrapped, to the extent that they are covered by the WEEE Regulations.
<b>Waste-management fee</b>	The amount that each producer is obliged to pay to the OPEN Foundation on the basis of this agreement to cover the costs of the Waste-management structure.
<b>Waste-management structure</b>	The collective structure as referred to in Article, financed by the Waste-management fee as provided for in this Agreement.
<b>Management organisation</b>	Organisation to which the OPEN Foundation has assigned the implementation of the Waste-Management Structure in whole or in part in accordance with article 2.8.
<b>Stakeholders</b>	The parties mentioned under the undersigned nos. 1 to 7.
<b>Terms of payment</b>	The payment terms as determined by the OPEN Foundation at any given time. The payment terms applicable at the time this agreement is entered into are attached to this Agreement as Appendix 2.
<b>Appendices</b>	The Appendices to this Agreement.
<b>Penalty regulations</b>	The penalty regulations determined by the OPEN Foundation at any given time. The penalty regulations applicable at the time this agreement is entered into are attached to this agreement as Appendix 3.
<b>Electrical and Electronic Equipment or EEE</b>	Apparatus which depends on electric currents or electromagnetic fields in order to work properly and apparatus 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.
<b>Operational Costs</b>	The net cost as referred to in article 1.3 of Appendix 1.
<b>Agreement</b>	This Waste-management fee agreement.
<b>Party/ies</b>	A Party or Parties to this Agreement.
<b>Producer</b>	Producers as referred to in Article 1(1)(p) of the WEEE Regulations.
<b>Product category</b>	A product category as set out in Appendix III

	of the WEEE Directive.
<b>WEEE Regulation</b>	Has the meaning assigned to it in the Recitals under B.
<b>System costs</b>	The costs incurred by the OPEN Foundation and the Management Organisations in setting up, executing and maintaining the waste-management structure, as referred to in article 5, paragraph 1, are to be borne by the OPEN Foundation and the Management Organisations. 1.4 of Appendix 1.
<b>WEEE Directive</b>	Has the meaning assigned to it in the Recitals under A.
<b>Fixed Fee</b>	The Fixed Fee as defined in Schedule 1.
<b>Statutory Obligations</b>	The legal obligations referred to in Article 2.1.

- 1.2 No provision of this Agreement shall be construed to the detriment of any of the Parties solely because that Party was responsible for drafting the provision in question.
- 1.3 A reference in this Agreement to an Article is a reference to an Article of this Agreement, unless the context requires otherwise.
- 1.4 The Appendices form part of this Agreement.
- 1.5 In this Agreement, any reference, express or implied, to legislation also refers to legislation as amended, extended or applied before or after the date of this Agreement by or pursuant to other legislation.
- 1.6 The titles in this Agreement are for identification purposes only and do not affect the interpretation of this Agreement.
- 1.7 Terms in singular have the same meaning in plural and vice versa.

## **2. WASTE-MANAGEMENT STRUCTURE**

- 2.1 Through the Waste-Management Structure, Producers collectively meet their obligations to:
- 2.1.1 the provisions of Article 6 of the WEEE Management Regulations regarding the possibility for producers to set up and operate take-back systems for WEEE from private households provided that these systems are in line with the objectives of the WEEE Management Directive;
- 2.1.2 the provisions of Article 7 of the WEEE Management Regulations regarding the possibility of refusing to accept the collection and leaving behind, as referred to in Articles 3 to 5 of the WEEE Management Regulations, if the WEEE has been contaminated during use and consequently poses a risk to the health and safety of employees of the party collecting it;
- 2.1.3 the provisions of Article 8 of the WEEE Management Regulations regarding the separate collection of WEEE other than WEEE from private households;
- 2.1.4 the provisions of Article 9 of the WEEE Management Regulations regarding separate

- Collection of WEEE and the transport of such separately collected WEEE;
- 2.1.5 the provisions of Article 10(c) of the WEEE Management Regulations regarding the collection of WEEE;
- 2.1.6 appropriate financial arrangements for the collection, treatment, recovery and environmentally sound disposal of WEEE;
- 2.1.7 reporting to the competent minister on the treatment results achieved with the Waste-Management Structure for the purposes of the Statutory Obligations, which includes recording, providing information and reporting in accordance with Article 19 of the WEEE Management Regulations, whether or not by providing the necessary information to the Register as referred to in Article 18 of the WEEE Management Regulations.
- 2.2 To this end, the Waste-Management Structure consists of:
  - 2.2.1 a nationwide separate collection system for WEEE, without restricting it to those areas where collection and management of waste is most profitable. The said separate collection system shall be available throughout the year in an appropriate way and shall enable anybody wishing to dispose of WEEE to do so free of charge at the collection point;
  - 2.2.2 sorting of collected WEEE;
  - 2.2.3 appropriate treatment of WEEE as regards recovery and product and material re-use of WEEE and with due regard for the provisions of Article 11 of the WEEE Management Regulations;
  - 2.2.4 monitoring the collection, recovery and material reuse of WEEE;
  - 2.2.5 reporting and notification obligations;
  - 2.2.6 Provision of data to processors;
  - 2.2.7 collection of the Waste-management fee to finance the establishment, maintenance and implementation of the waste-management structure;
  - 2.2.8 enforcement of the Waste-management structure to ensure the effectiveness of the structure and prevent free-rider behaviour. Within this framework, an adequate self-management mechanism is provided for, supported by regular independent audits for the assessment of the financial management and the quality of data for reporting, notification and monitoring purposes;
  - 2.2.9 information on the waste-management structure and on the environmental objectives to be achieved by the waste-management structure, including the provision of a website explaining the functioning of the waste-management structure and the role of the parties involved in the waste-management structure;
  - 2.2.10 Research and other activities for the implementation of the WEEE Regulation and Directive;
- 2.3 The Waste-management structure covers WEEE, regardless of whether they are in household or commercial waste flows.
- 2.4 Producers provide the OPEN Foundation with the information referred to in article 16 paragraph 1 and 2 of the WEEE Regulation, in a way prescribed by the OPEN Foundation and within the term mentioned in the WEEE Regulation. The information referred to in the previous sentence is

published by the OPEN Foundation in the form of manuals or by means of electronic media to establishments as referred to in Article 16(3) of the WEEE Management Regulations.

- 2.5 This Agreement provides the financial basis for the establishment, maintenance and implementation of the Waste-management structure.
- 2.6 Producers participate in the waste-management structure and join the OPEN Foundation. Membership of the OPEN foundation takes place through a written report to OPEN according to the rules set by the OPEN foundation.
- 2.7 Through the waste-management structure, the OPEN Foundation, instead of its member producers, collectively fulfils the legal obligations of individual producers.
- 2.8 The OPEN Foundation can entrust the execution of the waste-management structure in whole or in part to one or more management organisations designated by the OPEN Foundation.
- 2.9 The OPEN Foundation can set further rules in its policy to elaborate on the agreement.
- 2.10 For the duration of the current declaration of universal applicability granted pursuant to Article 15.36 of the Environmental Management Act for the product category 3 Lamps as referred to in Appendix III to the WEEE Directive, the Waste-management structure will not cover WEEE as referred to in the aforementioned product category.

### **3. WASTE-MANAGEMENT FEE**

- 3.1 The Waste-management fee payable by the Producers to the OPEN Foundation is based on the following components:
  - (a) Operational Costs;
  - (b) System costs; and,
  - (c) Fixed Fee.
- 3.2 The OPEN Foundation determines the amount of the Waste-management fee for the Producers on the basis of the formulas included in Appendix 1 (Calculation of Waste-management fee).
- 3.3 If studies give rise to this, the method of calculating the Waste-management fee as described in this article 3 and its appendix 1 can be adapted by the Stakeholders and the OPEN Foundation together.
- 3.4 For the duration of the current declaration of universally binding effect issued under article 15.36 of the Environmental Management Act for the product category 3 Lamps as referred to in Appendix III of the WEEE Directive, Producers will not owe any waste-management contribution to the OPEN Foundation for EEE in the aforementioned product category.

### **4. BASIS AND TERMS OF PAYMENT**

- 4.1 Producers are liable to paying a waste management fee on their EEE placed on the market per calendar year.
- 4.2 Producers pay their Waste-management fee to the OPEN Foundation.
- 4.3 The conditions for payment of the Waste-management fee are laid down in the Terms of Payment.
- 4.4 All payments to the OPEN Foundation mentioned in this agreement are subject to the Payment Terms (Attachment 2).



4.5 Contrary to the provisions in article 4.4, the Penalty Regulations are applicable to fines imposed by the OPEN Foundation.

## **5. INFORMATION, ADMINISTRATION AND VERIFICATION**

5.1 Producers provide the OPEN Foundation and the Management Organisation(s) with the requested information necessary for the realisation and execution of this Agreement or the Waste-management structure within the set term.

5.2 The OPEN Foundation has the right at all times to have the accuracy and completeness of the information verified and can make use of external and independent advisors, such as accountants. Producers are obliged to allow the persons appointed by the OPEN Foundation access to their business and administration and to provide all information requested within the set term with a view to verifying the correct payment of the waste-management fee.

5.3 Producers have a duty to report to the OPEN Foundation for the execution of article 2.6.

5.4 All registered Producers that are liable to pay the Waste-management fee for a certain calendar year are listed on the OPEN Foundation's website, with the exception of the sole proprietorships. Per calendar year, an overview will be published containing the company names of the Producers and, if applicable, Chamber of Commerce numbers, as well as any schemes or branch agreements used in the calendar year concerned. In case of a fiscal unity for VAT, it can be agreed with the OPEN Foundation that only a part of the company names and Chamber of Commerce numbers within that fiscal unity are mentioned.

5.5 If a Producer does not comply with the obligation under 5.1, the OPEN Foundation can impose a fixed Waste-management fee, which is determined as much as possible on the basis of information provided in the past by the relevant Producer.

5.6 The Producer shall provide OPEN Foundation and/or the Management Organisation, upon request, with all reasonably necessary information and shall provide all reasonably necessary cooperation which is required in connection with the fulfilment of the obligations under this Agreement or the Waste-management structure.

## **6. PENALTY CLAUSE**

6.1 If a Producer fails to pay the imposed Waste-management fee or does not comply with the obligations set out in articles 4 and 5, as further described in the Appendix "Calculation of Waste-management fee" (Appendix 1) and the Terms of Payment (Appendix 2), the OPEN Foundation can, by means of a written notification, summon the Producer to comply with his obligations within a reasonable term. In case the Producer fails to comply with his obligations within that term, the OPEN Foundation can impose a fine according to the Penalty Regulation (Appendix 3).

6.2 Continuing or repeated non-compliance with the agreement can lead to exclusion from membership of the OPEN Foundation. The OPEN Foundation then no longer collectively complies with the obligations of the relevant producer under the WEEE Regulation. This producer can then be subjected to enforcement under or pursuant to the Environmental Management Act or this agreement, or this producer must apply for the release from the universally binding declaration at

the competent minister in order to comply individually with the WEEE Regulation.

## **7. SECRECY AND CONFIDENTIALITY**

- 7.1 The OPEN Foundation, the Management Organisation(s) and all persons referred to in article 5.2 are obliged to observe confidentiality with regard to all business confidential information provided to them on the basis of or in connection with the Agreement.
- 7.2 The OPEN Foundation and the Management Organisation(s) see to it that members of the board of the OPEN Foundation and/or the Management Organisations and other persons involved with them who work for or are appointed by individual Producers, are not given access to data providing insight into the volumes of EEE placed on the market by individual Producers.
- 7.3 The provisions of paragraph 7.1 do not apply to the OPEN Foundation and the Management Organisations with regard to:
  - 7.3.1 the exchange of data between the OPEN Foundation and the Management Organisation(s), where necessary for a proper execution of the Agreement;
  - 7.3.2 Use of or disclosure to, among others, the Environment and Transport Inspectorate and the Ministry of Infrastructure and Water Management of business-confidential information provided to the OPEN Foundation and the Management Organisation(s) on the basis of or in connection with the Agreement in order to ensure compliance with the Agreement and the WEEE Regulation;
  - 7.3.3 disclosure of business-confidential information provided to OPEN Foundation and the Management Organisation(s) on the basis of or in connection with the Agreement to a court, an arbitral tribunal or mediator in proceedings related to the Agreement;
  - 7.3.4 Use or disclosure of business-confidential information provided to OPEN Foundation and the Management Organisation(s) on the basis of or in connection with the Agreement, which OPEN Foundation or a Management Organisation is obliged to do pursuant to the law or a decision by the court or another competent government body.
- 7.4 Subsection 7.1 does not apply to the persons referred to in subsection 5.2 with respect to the persons referred to in subsection 5.3.  
7.3.1 and 7.3.4.
- 7.5 Producers shall not exchange information on individual tasks or other competitively sensitive topics.

## **8. TERM, EXTENSION AND TERMINATION**

- 8.1 The term of the Agreement is ten years. The term of the Agreement, including any amendments, will be extended when another universally binding declaration of this Agreement is applied for and enters into force.
- 8.2 The Agreement shall not enter into force until a decision declaring this Agreement to be universally binding enters into force.
- 8.3 The Agreement shall enter into force on the day the decision referred to in Article 8.2 takes effect.
- 8.4 The Agreement shall end prematurely in the absence of a decision declaring the Agreement to be universally binding.
- 8.5 The OPEN Foundation has the right to unilaterally terminate the agreement if it finds that a

waste-management structure no longer exists because certain WEEE is (partly) withdrawn from it.

- 8.6 If the Agreement ends or is terminated as referred to in article 8.4 or 8.5, a transitional phase starts in which the OPEN Foundation will settle the matter where possible. During this transitional phase, articles 5 (with exception of article 5.3), 6, 7, 8, 9 and 11 and the Appendices to the Agreement remain in force. Article 7 will also remain in force after this transitional phase.

## **9. APPLICABLE LAW**

- 9.1 This Agreement is exclusively governed by Dutch law.

## **10. DISPUTE RESOLUTION**

- 10.1 All disputes arising in connection with this Agreement, including disputes concerning the existence and validity thereof, shall be settled by the competent court in The Hague, unless the parties involved have agreed to arbitration or mediation. If a dispute does not lead to a solution acceptable to the parties concerned by means of mediation, the dispute will still be settled by arbitration or by the competent court in The Hague.

## **11. TRANSFER OF RIGHTS AND OBLIGATIONS**

- 11.1 Rights or obligations or the legal relationship from this agreement can only be transferred to or taken over by a third party with prior written permission of the OPEN Foundation. The OPEN Foundation may attach conditions to such permission.

## **12. BINDING FORCE, COMPLETENESS OF AMENDMENTS**

- 12.1 If part of this agreement is or becomes invalid or non-binding, the parties and Producers shall remain bound by the remaining part. The Stakeholders and the OPEN Foundation will replace the invalid or non-binding part by provisions that are valid and binding and of which the legal consequences are, considering the contents and purport of this Agreement, as much as possible in keeping with those of the invalid or non-binding part.

- 12.2 The Appendices to this Agreement constitute part of this Agreement.

- 12.3 This Agreement may only be amended or supplemented with the prior written consent of the Stakeholders and the OPEN Foundation.

- 12.4 If any amendment to any part of this Agreement:

12.4.1 must take place because of a change in the law, including an amendment to the WEEE Management Regulations, or other government intervention; or,

12.4.2 is desirable as a result of research or other activities within the waste-management structure;

the Stakeholders and the OPEN Foundation are obliged to negotiate in good faith with each other in order to achieve a result that is as much as possible in keeping with the intentions of the Stakeholders and the OPEN Foundation in this agreement, with due allowance for the changed

circumstances as referred to in this article under article 12.4.1 and 12.4.2.

- 12.5 An amendment to this Agreement referred to in this Article 12 shall enter into force on the day on which the decision on the universally binding declaration of the amendment in question enters into force (where possible, through an accelerated procedure).

[FOLLOWED BY SIGNATURE PAGE]

**AGREED AND SIGNED BY:**

**Stichting Witgoed**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

**Stichting Belangen A/V Producenten en Importeurs**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

**Stichting ICT Milieu**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

**Stichting Metalektro Recycling Milieu**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

**Stichting Electrischel Gereedschappen**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

**Stichting Lightrec Netherlands**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

**Stichting Zonne-energie Recycling Nederland**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

**OPEN Foundation**

*Signed*

By: [REDACTED]  
Title: [REDACTED]

## APPENDIX 1 CALCULATION OF THE WASTE-MANAGEMENT FEE

Pursuant to Article 3 of the Agreement, the OPEN Foundation applies the following method of calculation of the Waste-management fee. Terms used in this Appendix starting with a capital letter have the meaning set out in article 1.1 of the Agreement, unless explicitly stated otherwise.

### 1. Tariffs

- 1.1 The OPEN Foundation periodically determines the tariffs and amounts for the Waste-management fee.
- 1.2 According to Article 3 of the Agreement, the tariff set by the OPEN Foundation per type of EEE (the **Tariff**) is a sum of the tariff for Operational Costs of that type of EEE (**Tariff OK**) and the tariff for System Costs attributed to that type of EEE (**Tariff System Costs**). For each Tariff the OPEN Foundation sets the tariff base, being the number of pieces of EEE or a weight quantity of EEE (the **Tariff Base**).
- 1.3 The Operational Costs are related to:
  - 1.3.1 payments to third parties, including municipalities;
  - 1.3.2 collection and sorting;
  - 1.3.3 transport (including collection methods);
  - 1.3.4 processing, net of any proceeds; and,
  - 1.3.5 other operational activities.
- 1.4 The System Costs are related to:
  - 1.4.1 personnel and organisation;
  - 1.4.2 communication;
  - 1.4.3 research;
  - 1.4.4 controls and audits;
  - 1.4.5 setting up an appropriate risk and continuity provision;
  - 1.4.6 setting up a guarantee fund; and,
  - 1.4.7 reporting and accountability.
- 1.5 The Waste-management fee may also be based on a fixed amount per Producer to cover certain fixed costs not included in the Operational Costs and the System Costs (the **Fixed Fee**), such as the contribution to the National (W)EEE Register.
- 1.6 The OK Tariff and the System Charge Tariff are determined on the basis of the following formulas.
  - 1.6.1 For the Operational Costs a Tariff per type of EEE is determined as follows:  
Tariff OK for a type of EEE = budgeted total of Operational Costs for that type of EEE in a calendar year divided by - depending on the Tariff Base - the estimated total number of items or the total weight quantity of that type of EEE put on the market in the Netherlands in the respective calendar year;
  - 1.6.2 For the System Costs, a Tariff per type of EEE is determined as follows:

Tariff for a type of EEE = budgeted total system costs for that type of EEE in a calendar year divided by - depending on the tariff base - the estimated total number of items or the total weight quantity of that type of EEE put on the market in the Netherlands in that calendar year.

- 1.7 For the determination of the tariff for a certain type of EEE, budgeted operational and system costs are included, which are related to that type of EEE in the waste stage. In case certain Operational Costs or System Costs have to be borne by more than one type of EEE, keys are set by the OPEN Foundation to come to a reasonable allocation of those costs to each type of EEE concerned.
- 1.8 In view of the Legal Obligations, the OPEN Foundation may apply a further differentiation in setting the tariffs - in deviation of the provisions in article 1.6 and article 2.1 - with due allowance for sustainability, the intended form of recovery and the presence of hazardous substances. Where possible, systems applied in other Member States of the European Union should be linked up with.
- 1.9 The OPEN Foundation does not aim to build up equity. However, annually a deficit or a surplus will arise, as a result of the difference between the actual Operational and System Costs incurred in a calendar year and the Waste-management fee as levied from Producers in the same calendar year. Where possible, deficits or surpluses are offset against surpluses or deficits from previous years.
- 1.10 In case a deficit cannot be offset against surpluses over previous years, a claim arises. After having determined the deficit, the OPEN Foundation can offset this claim against and factor it into the tariff to be determined on the basis of article 1.6.
- 1.11 If a surplus cannot be offset against deficits in previous years, a debt is created. After determination of the surplus, the OPEN Foundation is obliged to offset this debt as soon as reasonably possible, yet no later than spread over the next three calendar years, against the tariff to be determined on the basis of article 1.6.
- 1.12 If the universally-binding declaration of the Agreement has lapsed and no subsequent, similar agreement comes into effect between the Parties, any outstanding claims shall be collected and any outstanding debts repaid. Claims and debts shall be collected and repaid in proportion to the average waste-management fee owed per individual Producer over the last three calendar years of the Waste-management fee under the universally-binding declaration due per individual Producer to the extent this is based on the Tariff established pursuant to Article 1.6.
- 1.13 In order to build up a risk and continuity provision as referred to in Article 1.4.5, as well as a provision for settlement costs during the period referred to in Article 8.6 of the Agreement, these provisions together shall not exceed 1.5 times the budgeted Operating Costs for a calendar year.

## **2. Waste-management fee**

- 2.1 The Waste-management fee due from an individual Producer shall be calculated as follows. The Waste-management fee due per Producer is the sum of the following components:
  - 2.1.1 per type of EEE of that Producer, the Tariff Base of the individual Producer in a

- calendar year multiplied by the determined Tariff OK;
- 2.1.2 per type of EEE of that Producer, the Tariff Base of the individual Producer in a calendar year multiplied by the established Tariff for System Costs; and,
  - 2.1.3 The Fixed Fee, if determined by the OPEN Foundation.
- 2.2 If subsections 1.8 through 1.12 are applied, the rates adjusted in accordance with the relevant subsection shall be used for the application of subsection 2.1.
  - 2.3 In the event that article 3.1 of the Terms of Payment (Appendix 2) has been applied, no fee or part of the fee will be calculated when determining the Waste-management fee per Producer for the EEE of those Products below the applied lower limit - whether or not per type of EEE.
  - 2.4 The OPEN Foundation can allow for a refund of the Waste-management fee for export, among other things, in its policy. The OPEN Foundation can take third-party fees into account when determining a Waste-management fee for a certain type of EEE. The OPEN Foundation can, in regulations, in sector agreements and in tailor-made agreements, and in mutual consultation with (representatives of) the relevant Producers, provide for a shift of the obligation to contribute and for an additional fee of Producers that have contributed insufficiently to the realisation of the Statutory Obligations of the Producer in the years preceding the declaration of the agreement as universally binding. The provisions of this article shall apply only insofar as they are not reasonably incompatible with the interests of a level-playing field, proportionate contributions to the costs of the Waste-management structure and the accuracy of the information provided.



## APPENDIX 2 TERMS OF PAYMENT

These terms of payment are an attachment to article 4 of the Agreement. Capitalised terms used in this Appendix will have the meaning assigned to them in article 1.1 of the Agreement, unless explicitly stated otherwise.

### 1. **Manufacturer**

- 1.1 Producers are liable to pay the Waste-management fee on their EEE placed on the market in the Netherlands per calendar year.
- 1.2 If a Producer belongs to a fiscal unity for turnover tax, Producer shall also be understood to mean all Producers belonging to that fiscal unity for turnover tax. This implies that:
  - (a) the total EEE placed on the market on an annual basis of the entire fiscal unit for turnover tax purposes forms the basis for the payable Waste-management fee;
  - (b) each Producer belonging to a fiscal unit for turnover-tax purposes is obliged to fulfil the obligations arising from the Agreement on behalf of the entire fiscal unit, unless this obligation has already been fulfilled by another Producer belonging to the same fiscal unit.
- 1.3 The OPEN Foundation can, on joint request of two or more Producers who do not belong to a fiscal unity but do belong to a group, decide to treat these Producers according to the previous article. The OPEN Foundation can also decide, upon determination by the OPEN Foundation of whether the conditions of a fiscal unity (as laid down in the Turnover Tax Act) are fulfilled, to treat two or more Producers according to the previous paragraph, despite the absence of a decision issued by the tax authorities in that respect.

### 2. **Period**

- 2.1 The period on which the Waste-management fee must be paid is the calendar year.
- 2.2 A Waste-management fee is due from the moment the Agreement takes effect.

### 3. **Lower limit**

- 3.1 The OPEN Foundation can set a lower limit pursuant to which Producers can be fully or partially exempted from the obligation to pay the Waste-management fee, whether or not per type of EEE.

### 4. **Entry**

- 4.1 Producers must submit an annual statement to the OPEN Foundation, no later than 1 April after the end of a calendar year, of the weight quantity and the number of EEE put on the market in that last expired calendar year (the **Statement**).
- 4.2 The submission takes place in a way to be specified by the OPEN Foundation.
- 4.3 The OPEN Foundation can request a Producer to give an estimate of the

EEE weight quantity and the number of EEE to be placed on the market for the current or next calendar year, if:

- (a) The OPEN Foundation anticipates that the weight quantity of EEE and/or the number of items of EEE of a Producer for the current or upcoming calendar year will significantly deviate from the last Statement of the Producer; or,
- (b) the Producer has placed a minimum weight quantity of EEE and/or number of items of EEE on the market during the previous calendar year, to be further determined in policy.

The Producer submits the estimate referred to in this paragraph to the OPEN Foundation by 1 October at the latest, as determined by the OPEN Foundation.

## **5. Advance payment for the Waste-management fee**

- 5.1 Producers shall be due to the OPEN Foundation an advance on the Waste-management fee (an **Advance amount**). The OPEN Foundation determines an Advance amount on the basis of (i) the last Statement of the Producer and (ii) the tariffs and amounts set for the Waste-management fee under Article 3 and Appendix 1 of the Agreement.
- 5.2 Payment of an Advance amount is made in instalments to be determined by the OPEN Foundation (the **Advance payments**). Payment of an Advance amount must be made no later than 30 calendar days after the invoice date.
- 5.3 If the estimate referred to in article 4.3 shows a significant deviation from the last Statement of the Producer, the Advance amount of the Producer is determined by the OPEN Foundation while the significant deviation will be taken into account.
- 5.4 Producers who are required to pay a Waste-management fee for the first time on a calendar year shall submit a Statement of the estimated weight quantity and number of items of EEE to be put on the market during that calendar year (the **Initial Statement**). In deviation from the provisions of the last sentence of Article 5.1, an Advance amount for Producers as referred to in the first sentence of this article will be determined on the basis of the Initial Statement.
- 5.5 The OPEN Foundation may give permission to make Advance payments of a different amount and can also adjust the amount of an Advance payment.

## **6. Final payment of Waste-management fee and checks**

- 6.1 The Waste-management fee due from a Producer for a calendar year as referred to in article 4.1 of the Agreement shall be determined after the end of that calendar year on the basis of (i) the Producer's Statement for that calendar year and (ii) the tariffs and amounts set for the Waste-management fee for the calendar year in question pursuant to Article 3 and Appendix 1 of the Agreement.
- 6.2 In case the final Waste-management fee for a calendar year exceeds the total of the Advance payments made by the Producer in relation to that calendar year, the Producer concerned shall pay the difference between the total of the Advance payments already made and the final Waste-management fee to OPEN Foundation. This payment must be made within 30 calendar days of the invoice date.
- 6.3 If the final Waste-management fee for a calendar year is lower than the total of the Advance Payments made by the Producer in relation to that calendar year, the OPEN Foundation will pay back the amount paid in excess

within a reasonable period of time to the relevant Producer.

- 6.4 The OPEN Foundation can check the accuracy and completeness of a Statement up to five years after the moment on which the statement was made and, if this check gives cause to do so, impose a subsequent charge, in accordance with an audit protocol set up by the OPEN Foundation, unless otherwise stated by the OPEN Foundation.

## **7. Late payment**

- 7.1 If an Advance payment as referred to in article 5 or a payment as referred to in article 6 is not paid on time, the OPEN Foundation will offer a reasonable term in writing to the producer to proceed with payment. After this reasonable term has passed, the OPEN Foundation is allowed to transfer the claim to a collection agency and/or to take legal action. All this shall not affect the possibility for the OPEN Foundation to impose fines according to the Penalty Regulation (Appendix 3).
- 7.2 The OPEN Foundation may grant a producer postponement of payment, in case a Producer requests the OPEN foundation in writing.

## **8. Collection costs**

- 8.1 All costs incurred by the OPEN Foundation in or out of court with regard to the collection of the Waste-management fee due by a Producer and not paid on time, including advance payments, shall be for the account of the Producer concerned.
- 8.2 The compensation to be paid by the relevant Producer for the costs referred to in Clause 8.1, insofar as these are related to extrajudicial collection, shall be determined on the basis of the Extrajudicial Collection Costs Decree.

## **9. Different payment terms for fines**

- 9.1 For fines imposed by the OPEN Foundation, different terms of payment apply than those included in this Attachment. The terms of payment for fines are included in the Penalty Regulations (Appendix 3).

## **10. Objection**

- 10.1 A Producer may, within four weeks after the submission of the Statement, or after a subsequent charge as referred to in article 6.4, lodge a written objection against the Waste-management fee due by him on the basis of the said Statement with the OPEN Foundation. The OPEN Foundation will decide on the written objection of the Producer within a reasonable period of time.
- 10.2 An objection to an imposed Waste-management fee shall not release a Producer from his obligations as set out in this Appendix.

## **11. Change**

- 11.1 The OPEN Foundation has the right to change the payment terms in this Appendix at all times.
- 11.2 The OPEN Foundation shall give timely notification of a change as described in article 11.1.

## APPENDIX 3 PENALTY REGULATIONS

These Penalty Regulations are an Appendix to article 6 of the Agreement. Capitalised terms used in this Appendix have the meaning assigned to them in article 1.1 of the Agreement, unless explicitly stated otherwise. Pursuant to these Penalty Regulations, the OPEN Foundation can impose fines on Producers who have not fulfilled the obligations set out in articles 4 and 5 of the Agreement, as detailed in the Payment Conditions (Appendix 2) and the Waste-management fee Calculation (Appendix 1).

### 1. The Default Penalty

- 1.1 If a Producer does not, not timely or not fully comply with his obligations under articles 4 and 5 of the agreement, the Terms of Payment and the Calculation of Waste-management fees, the OPEN Foundation can demand the relevant Producer for compliance, granting him a reasonable term to comply.
- 1.2 The reasonable period of time which a Producer is given in accordance with Article 7.1 of the Payment Terms in respect of the obligation to make payments under Articles 5 and 6 of the Payment Terms shall serve as a demand as referred to in Article 1.1.
- 1.3 If, within the reasonable term mentioned in article 1.1, a Producer has not fulfilled his obligations under articles 4 and 5 of the Agreement and the Terms of Payment, the relevant Producer shall be liable for a penalty (the **Default Penalty**), which the OPEN Foundation may charge to the relevant Producer through an invoice (the **Initial Default Payment Penalty Invoice**), in compliance with article 2.

### 2. Amount of the Default Penalty

- 2.1 The Default Penalty shall not exceed 10% of the Waste-management fee due from the relevant Producer in the year to which the default is related, with a minimum of EUR 500 and a maximum of EUR 10,000.
- 2.2 The OPEN Foundation can deviate from the minimum and maximum Default Penalty as referred to in article 2.1, depending on the gravity of the omission.
- 2.3 In case the OPEN Foundation is unable to determine the Waste-management fee due by a Producer on the basis of a recent and correct statement which the Producer has to provide to the OPEN Foundation under the terms of payment (Appendix 2), the OPEN Foundation will determine the Waste-management fee on the basis of the weight quantity estimated by the OPEN Foundation and the number of EEE to be put on the market per calendar year of the relevant Producer.

### 3. Punitive penalty

- 3.1 If the OPEN Foundation finds that a Producer, due to intent or gross negligence on the part of the relevant Producer, has not, not timely or not fully fulfilled his obligations under articles 4 and 5 of the Agreement and the Terms of Payment, that Producer is liable to pay a fine (the **Punitive penalty**).

- 3.2 The amount of the Punitive Penalty shall be set at a maximum of 100% of the Waste-management fee that the relevant Producer would be due on the calendar year in which the breach occurred.
- 3.3 The OPEN Foundation determines the Punitive penalty and charges it with an invoice (the **Initial Punitive Penalty Invoice**). Before the OPEN Foundation proceeds with charging the Punitive penalty, it notifies the relevant Producer of the intention to charge the Punitive penalty. The relevant Producer is given the opportunity to respond to this intention in writing within fourteen calendar days after the date of the notification by the OPEN Foundation.
- 3.4 In case the OPEN Foundation is unable to determine the Waste-management fee due by a producer on the basis of a recent and correct statement by the producer, the OPEN Foundation determines the Waste-management fee on the basis of the weight quantity and/or the number of EEE of the producer put on the market, estimated by the OPEN Foundation.
- 3.5 A Punitive penalty can also be imposed on a person who, due to intent or gross negligence, has submitted an incorrect request for restitution for indirect export, to the extent that the OPEN Foundation's policy provides for the possibility of such a request. In this case, the amount of the Punitive penalty is set at a maximum of 100% of the wrongfully claimed Waste-management fee.
- 4. Obligations under the Agreement**
- 4.1 Payment of a fine imposed in accordance with these Penalty Regulations shall not release the Producer from his obligations under Articles 4 and 5 of the Agreement and the Terms of Payment (Appendix 2).
- 5. Increase of penalties**
- 5.1 The Default penalty and the Punitive penalty can be increased:
- (a) By 50% if:  
a Producer fails to fulfil his obligations under Articles 4 and 5 of the Agreement and the Terms of Payment (Schedule 2) within 30 calendar days; or,  
The OPEN Foundation has not received payment of the Default penalty or the Punitive penalty within 30 calendar days after the date of the Initial Default Penalty Invoice or the Initial Punitive Penalty Invoice.
- (b) By 200 % of the original penalty if:
- (i) a Producer does not fulfil his obligations under Articles 4 and 5 of the Agreement and the Terms of Payment (Schedule 2) within 45 calendar days; or,
- (ii) the OPEN Foundation has not received payment of the fine within 60 calendar days after the date of the Initial Default Penalty Invoice or the Initial Punitive Penalty Invoice.
- 5.2 If payment of a penalty is not received by the OPEN Foundation within 60 calendar days after the date of the Initial Default Payment Penalty or the Initial Punitive Payment Penalty, the claim can be transferred for collection. All the respective costs made by the OPEN Foundation, both judicial and extrajudicial, will be charged to the producer concerned.

## **6. Exclusion from connection**

- 6.1 In case of continued or repeated non-compliance with the obligations of the agreement, the OPEN Foundation may exclude a Producer from membership of the OPEN Foundation as referred to in article 6.2 of the Agreement.
- 6.2 Continued or repeated non-compliance as referred to in Article 6.1 shall in any case exist if:
- (a) a Punitive penalty has been imposed on the Producer for the second time and/or a Default penalty for the third time; or
  - (b) after 120 calendar days after an obligation under the Agreement arose for the relevant Producer, the Producer still has not fulfilled the relevant obligation; or,
  - (c) for the third time in a period of two years, the relevant Producer has failed to fulfil an obligation under the Agreement, or has failed to fulfil it in full or on time.
- 6.3 The Producer in question may file a written objection against a decision of the OPEN Foundation to exclude a Producer from membership within four weeks after receiving the decision, with the board of the OPEN Foundation. The board of the OPEN Foundation will reconsider the decision for exclusion of membership based on the objections made by the relevant Producer and take a new decision within six weeks after receiving the objection. Lodging an objection as referred to in this paragraph does not suspend the effect of the decision for exclusion. If, after having filed an objection, the OPEN Foundation is of the opinion that the relevant Producer is not excluded from membership in the OPEN Foundation after all, the OPEN Foundation may set further requirements to the continued membership in the OPEN Foundation, such as, for example, the demand for a bank guarantee or a continuous guarantee fund.
- 6.4 If a producer is excluded from membership of the OPEN Foundation, the OPEN Foundation shall no longer meet the Statutory Obligations on behalf of that producer. The relevant Producer then has to fulfil his Statutory Obligations individually. This Producer may be subjected to enforcement under or by virtue of the Environmental Management Act or the Agreement, or this Producer has to apply for exemption from the universally binding declaration in order to fulfil his Statutory Obligations individually.
- 6.5 If a Producer is excluded from membership of the OPEN Foundation, the OPEN Foundation will report this to the Living Environment and Transport Inspectorate. The OPEN Foundation is allowed to transfer the data in its possession regarding the relevant Producer, including business-confidential data as referred to article 7 of the agreement, to the Living Environment and Transport Inspection.
- 6.6 Exclusion from the OPEN Foundation does not relieve the relevant Producer of the obligation to fulfil his legal obligations.