

## Participation Agreement to BEBAT

### **BETWEEN THE UNDERSIGNED:**

1. The non-profit organization under Belgian law, **FONDS OPHALING BATTERIJEN**, abbreviated « **BEBAT** », with registered office at 3300 Tienen, Walstraat 5, with enterprise number 0456.561.776, duly represented for the purposes of the present Agreement by Mr Peter Coonen, in his capacity as Managing Director, being duly authorized thereto.

hereinafter referred to as « **BEBAT** ».

### **AND:**

2. The natural/legal person<sup>1</sup> \_\_\_\_\_ [legal form, identity, name], company under \_\_\_\_\_ law [only for companies], with registered office at /with residential address at \_\_\_\_\_ [address], with enterprise number \_\_\_\_\_ [number], duly represented for the purposes of this Agreement by Mr/Mrs/Ms \_\_\_\_\_ [identity of the legal representative], in his/her capacity as \_\_\_\_\_ [capacity], being duly authorized thereto.

hereinafter referred to as the « **Participant** ».

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<sup>1</sup> All applicable information is communicated to BEBAT by the Participant in the manner stipulated by BEBAT and is mentioned by BEBAT in the confirmation sent to the Participant on the conclusion of the Participation Agreement.

**THE FOLLOWING IS AGREED:**

By signing this Participation Agreement, the Participant declares that he has taken note of all its stipulations, as well as of the Regulation to the Participation Agreement to BEBAT (hereinafter referred to as the « **Regulation** », Appendix 1), and to join the BEBAT System unconditionally under the terms and conditions stipulated in the Participation Agreement and the Regulation.

**Article 1 – Framework and context**

In the three Belgian Regions, a legal acceptance obligation regarding Waste batteries is applicable (possibly being part of the extended producer responsibility), which may be satisfied by an Environmental policy agreement as well as by joining a collective system.

As a managing organization BEBAT has established a collective system that allows the Participant to comply with this acceptance obligation and its financial funding. By the conclusion of this Participation Agreement, the Participant adheres to the BEBAT System for the management of Waste batteries, which is applicable for the Batteries he puts on the Belgian market.

BEBAT collects Waste batteries through an extensive network of collection points spread over the entire Belgian territory, and is responsible for their removal. Afterwards, BEBAT ensures that these Waste Batteries are sorted in an optimal way, with the result that they can be recycled and processed to the maximum. BEBAT may, in this respect, enter into contracts with third parties. Beyond these operational tasks, BEBAT performs various other tasks as managing organization such as, among other things, reporting and information obligations to the authorities, as well as missions regarding prevention, awareness raising, management tasks and financial management, and so on.

This Participation Agreement takes account of the abolition of the environmental tax on batteries. If the Participant has already concluded a Participation Agreement with BEBAT prior to the conclusion of this Agreement, this preceding agreement automatically loses its legal force, as a result of the conclusion of the present Participation Agreement.

This Participation Agreement is entered into by BEBAT in its capacity of managing organization for the implementation of the acceptance obligation regarding Waste batteries. The present text is a standard contract to which no individual changes are made.

**Article 2 – Definitions – Subject - Participation Agreement and Regulation**

Definitions can be found in Article 1 of the Regulation.

The Regulation forms an integral part of the Agreement and is included in the Appendix of this Participation Agreement. Both documents should always be read together and form a whole. The conclusion of the Participation Agreement also involves acceptance of the Regulation.

The Participant agrees to pay the Financing contributions allowing BEBAT to perform its mission.

The Regulation further determines the conditions under which the Participant adheres, as well as the rights and obligations of the Participant and BEBAT.

The Participant agrees to join the BEBAT System for all its Batteries and will therefore include in its statements all Batteries put on the market. This does not apply to Batteries bought in Belgium with Environmental or Administrative contribution.

### **Article 3 - Scope**

The Agreement applies to all Batteries put on the market by the Participant on the Belgian territory and for which an acceptance obligation is applicable under the legislation in force in Belgium. It applies to both Batteries supplied apart and Batteries supplied with another product or that are included in another product (for example, in/with a device or vehicle).

Exceptionally, and only under the conditions stipulated in article 10 of the Regulation, a Participation Agreement may apply to Batteries that have been put on the market by a third person.

### **Article 4 – Terms of conclusion: in an electronic way**

This Agreement is entered into electronically. The Participant signs the Agreement by registering on <http://www.bebat.be/> and accepts in this way the available version of the Participation Agreement and Regulation. After registration, the Participant first receives an electronic confirmation of registration. Thereafter, the Participant receives a letter from BEBAT by which the Participation Agreement is entered into, as well as the invoice for the Participation contribution. The Participation Agreement is only concluded and only takes effect under the express confirmation of BEBAT by letter. The parties acknowledge that the registration and acceptance are equivalent to the signature of the Agreement and that it complies with the requirements of the electronic signature.

The Agreement entered into by the Participant is available for consultation on the BEBAT Website (<https://batbase.bebat.be/>), via the “Help/Information for participants” tab, the letter of BEBAT, by which this agreement is entered into, at his assigned personal account on this Website.

### **Article 5 - Mandate to BEBAT**

By joining the BEBAT System, the Participant mandates BEBAT to fulfill all relevant and necessary acts in order to accomplish its mission, including the implementation of the BEBAT System for managing Waste batteries, as well as the conclusion of contracts with third parties in this context, and all the tasks performed by BEBAT as managing organization. By this mandate the Participant also authorizes BEBAT to enter all appropriate and necessary contacts with relevant authorities and to negotiate and conclude binding Environmental policy agreements on behalf of the Participant.

The Participant is also bound to Environmental policy agreements already entered into by BEBAT on the day of the conclusion of the Agreement.

The Participant himself remains responsible for compliance with legal/regulatory obligations, including Environmental policy agreements, whose execution is not expressly conferred to BEBAT.

**Article 6 - Duration – Entry into force**

This Agreement is concluded for an indefinite period. It is concluded and enters into force on the date confirmed in writing by BEBAT (see article 4).

**Article 7 - Obligations of the Participant**

The obligations of the Participant are further specified in the Regulation in appendix.

The Participant is, among other things, required to submit the Statements as specified in the Regulation and to pay the Financing contributions.

The Participant shall forward the information requested by BEBAT, prior to the conclusion of this Participation Agreement, and in the manner stipulated by BEBAT.

**Article 8 : Obligations of BEBAT**

BEBAT undertakes to perform all acts to implement the acceptance obligation of the Participant regarding Waste batteries and to fulfill its mission of mandated managing organization. This includes among others the implementation of the BEBAT System referred to in article 1, in accordance with the legal requirements and the agreements with the three Regions included in the Environmental policy agreements.

BEBAT agrees to treat the Statements submitted in compliance with the Regulation and to collect the Financing contributions.

On its Website, BEBAT provides the Participant with a personal account, to which the Participant has exclusive access.

BEBAT keeps a list of Participants and makes it available for the Participant. Each Participant may at any time inquire the possible involvement of a third party to the BEBAT System. BEBAT is authorized to use this list in its entirety or in part in its own publications and/or notices, or as part of awareness raising campaigns and information.

BEBAT undertakes to treat as strictly confidential all financial or commercial information entrusted by the Participant or which BEBAT is informed of in the context of the implementation of the Agreement (see also the more specific stipulations on confidentiality in the Regulation).

**Article 9 : Modifications and/or additional stipulations**

Given BEBAT's mission regarding the implementation of the acceptance obligation regarding Waste batteries and for a proper management of the BEBAT System, BEBAT is authorized to modify unilaterally the conditions and characteristics of the BEBAT System, regardless of whether the adaptation is related or not to any right or obligation under the Participation Agreement concluded with the Participant or under the Regulation.

Parties expressly agree that adaptations that only concern the implementing modalities or procedural aspects (for example, the procedure for Statements), or do not affect the rights or obligations of the Participant, shall not be considered as modifications of the Participation Agreement or the Regulation. Such adaptations can therefore be made at any time by BEBAT, without applying the procedure described below.

Changes or additions to this Participation Agreement or to the Regulation may be made unilaterally by BEBAT provided that they are notified to the Participant, by electronic message sent to the e-mail address communicated to BEBAT by the Participant. The Participant shall have 30 calendar days as from the date of notification by BEBAT to contest such a modification or additional stipulation, by registered mail specifying the reason of the contestation. Should there be no contestation within the aforementioned period, changes/additions are to be considered as an integral part of the Participation Agreement. In case of contestation, BEBAT reserves the right to terminate the Participation Agreement.

Done at Tienen, on the date confirmed in writing by BEBAT.

For the Participant<sup>2</sup>

For BEBAT<sup>3</sup>

**APPENDIX :**

1. Regulation to the Participation Agreement BEBAT (version 2015.01).

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<sup>2</sup> The identity and capacity of the person signing on behalf of the Participant (authorized signatory) are communicated in advance to BEBAT by the Participant. By appointing an authorized signatory, the Participant confirms that that person enters a legally valid agreement and has the necessary powers for that purpose.

<sup>3</sup> Regarding BEBAT, the Participation Agreement is signed by the Managing Director.

# **Annex 1: Regulation**

## **to the Participation Agreement to BEBAT**

**Version 2015.01**

**15/01/2015**

This "Regulation to the Participation Agreement to BEBAT" (hereinafter referred to as the "**Regulation**") is an annex to the "Participation Agreement to BEBAT" (hereinafter referred to as the "**Participation Agreement**") and is an integral part thereof.

The Participation Agreement and the Regulation, together with the other documents or information to which reference is made, contain the conditions pursuant to which the Participant joins the BEBAT System, and the rights and obligations of the Participant and BEBAT thereto.

This Regulation has a version number and a date. If BEBAT sets forth a later version of the Regulation, it replaces the present Regulation.

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### **Article 1 - Definitions**

**Administrative Contribution:** Contribution due by the Participant in compensation of the costs associated with BEBAT's various missions pursuant to the acceptance obligation regarding Waste batteries (including reporting mission and communication of information to the authorities, prevention, awareness raising missions, management tasks, financial management, etc.), for the Batteries determined by BEBAT (announced on [www.bebat.be](http://www.bebat.be)) (see article 2.3 of the Regulation).

**Agreement or Participation Agreement:** The "Participation Agreement to BEBAT", including this Regulation and all documents to which reference is made in this Regulation, as well as any future amendment and addition;

**Automotive Battery :** A Battery or accumulator used for automotive starter, lighting or ignition power of a vehicle.

**Battery:** Any Battery or accumulator referred to in the Legislation, more in particular a source of electrical energy generated by direct conversion of chemical energy, consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable), excluding batteries and accumulators in equipment designed to be sent into space and Batteries and accumulators in equipment connected with the protection of the essential security interests of Member States, arms, munitions and war material (with the exception of products that are not intended for specifically military purposes);

**Battery Pack or “Pack”:** Set of Batteries or accumulators that are interconnected and/or encapsulated within an outer casing so as to form a complete unit and that is not intended to be split up or opened by the end-user.

**BEBAT System:** The system set up by BEBAT to organize services for the collection, removal, sorting, transport, treatment and recycling of Waste batteries (including contracting with third parties in this respect), and the various tasks as managing organization, such as the reporting and the communication of information to the authorities, prevention, awareness rising, management tasks, financial management missions, etc ;

**Button cell:** Small round Portable battery or accumulator whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches, small portable equipment or as a back-up power equipment;

**Decision diagram:** Flowchart available for consultation on the Website, which allows to determine whether a Battery is a Portable battery, an Industrial battery or an Automotive battery;

**Environmental Contribution:** Contribution due by the Participant for each Battery or Battery Pack (Pack) placed on the market and for Batteries determined by BEBAT (announced on [www.bebat.be](http://www.bebat.be)). Collection services, removal, sorting, recycling and processing are included in it (see article 2.3 of the Regulation);

**Environmental policy agreements:** The environmental policy agreements entered into by or on behalf of BEBAT with the Flemish Region, the Walloon Region and/or the Brussels-Capital Region for the implementation of the acceptance obligation regarding waste Portable and Industrial batteries.

**Financing Contributions:** The Participation Contribution, the Environmental Contribution and the Administrative Contribution ;

**Industrial Battery:** Battery or accumulator designed for exclusively industrial or professional uses or used in any type of electric vehicle. These include, among other things, batteries for emergency power supplies (e.g. UPS) as well as traction batteries or accumulators of hybrid vehicles, plug-in hybrid and electric vehicles (car, truck, bus, coach and agricultural and horticultural vehicles) and traction batteries of wheelchairs, boats, bicycles, mopeds, motorcycles, construction vehicles, forklifts, cranes or golf carts;

**Interest on arrears:** The interest calculated on the basis of the legal interest rate, plus two (2) %, with a minimum of 6%. Such interest is legally due without formal notice or other formality as from the date or in the period determined by the Regulation;

**Legislation:** European Directive 2006/66 of 6 September 2006 on (waste) Batteries and accumulators and the regional decrees/ordinances related to the acceptance obligation regarding Waste batteries, including the implementation regulations and measures, and including the Environmental policy agreements. More information is available for the Participant on [www.bebat.be](http://www.bebat.be).

**Nomenclature:** List of Batteries placed on the market that fall within the scope of the BEBAT System, as defined and if appropriate amended/modified by BEBAT;

**Participant:** Party that entered into a Participation Agreement to BEBAT;

**Participation Contribution:** Fixed annual contribution due by the Participant regardless of the number of Batteries placed on the market (see article 2.2 of the Regulation).

**Placing on the market:** The operation whereby the Battery imported or produced in Belgium, is, whether free of charge or against payment, for the first time in Belgium,

- (i) offered for sale, sold, rented, leased or made available to a third party, or
- (ii) is intended for personal use.

**Portable Battery:** Any Battery, Button cell, Battery Pack or accumulator that:

- a. is sealed; and
- b. can be hand-carried; and
- c. is neither an Industrial Battery or accumulator nor an Automotive Battery or accumulator;

**Producer of Batteries:** Any person that, irrespective of the selling technique used, including by means of distance communication (e.g. distance selling, such as on the Internet), places Batteries, including those incorporated into appliances or vehicles, on the market for the first time on a professional basis for personal use or not;

**Registered mail:** Registered mail sent by post with an acknowledgment of receipt;

**Statements:** The monthly statements and the final statements (regularization) as provided in this Regulation, or, if applicable, the annual simplified statements (see article 3 of the Regulation);

**Waste battery:** Any Battery that the holder discards, intends to discard or is required to discard.

**Website:** The BEBAT platform for Statements named "myBatbase" <https://batbase.bebat.be>, with a direct and secure connection with the BEBAT server on which the Participant has an account with private access. If it is referred to a "website" other than myBatbase, this site is expressly mentioned;

## **Article 2 – Financing Contributions**

### **2.1 General**

The Participant shall pay to BEBAT as from the entry into force of the Participation Agreement and throughout its entire duration, the Financing Contributions in accordance with the conditions stipulated in the present Regulation. There are two types of Financing Contributions that are due



by the Participant: the Participation Contribution (see 2.2) on the one hand, and the Environmental and Administrative Contributions (2.3), on the other hand.

In addition, the participation of the Participant also takes effect retroactively for a period of three years. This period begins on January 1 of the third year preceding the year of Participation.

With regard to the retroactive period, (i) the Participant owes Environmental and/or Administrative Contributions, unless he demonstrates that during this period he complied himself with the acceptance obligation regarding Waste batteries or that he paid the environmental taxes and (ii) the Participant is not entitled to any reimbursement.

The amount, method of calculation and the date of entry into force of the Financing Contributions are determined by BEBAT in accordance with the stipulations of the Environmental policy agreements.

The amount of the applicable Financing Contribution is announced by BEBAT on [www.bebat.be](http://www.bebat.be).

## 2.2 Participation Contribution<sup>4</sup>

The Participation Contribution is a fixed annual contribution that each Participant must pay as a compensation for general costs and for using the BEBAT System. It is due indivisibly per started calendar year and is therefore independent of the date of participation.

The Participation Contribution must be paid immediately after the conclusion of the Participation Agreement and from then on an annual basis at the beginning of each year. The Participant receives a separate invoice from BEBAT regarding the Participation Contribution.

## 2.3 Environmental Contribution and Administrative Contribution<sup>5</sup>

The Participant shall pay, for each Battery or Battery Pack (Pack) he places on the market in Belgium, an Environmental or an Administrative Contribution. These contributions are due per calendar year (this, if applicable, after deducting the take-back of Batteries put on the market that have been subject to a credit note).

Environmental and Administrative Contributions are monthly invoiced by BEBAT, based on the Statements submitted by the Participant.

To determine on which date Batteries are put on the market, the following is considered:

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<sup>4</sup> For information and without any commitment to the future, the contribution applicable for the calendar year 2015 (excluding VAT) amounts to: **Participation Contribution:** EUR 60.00 per Participant.

<sup>5</sup> For information and without any commitment to the future, contributions applicable for the calendar year 2015 (excluding VAT) amount to: **Environmental Contribution:** EUR 0.075 per Battery or Battery Pack (Pack), 12 EUR per Battery or Battery Pack (Pack) li-ion for electric bicycles from July 1<sup>st</sup> 2015 ; **Administrative Contribution:** EUR 0.075 by Battery or Battery Pack (Pack) only for lead Batteries over 3 kg and Automotive Batteries for electrical or hybrid vehicles (EFV).

- (i) the date of invoice of the Batteries, or
- (ii) in the absence of such date, the date of delivery to a third party. Insofar as the Participant acts, either as a retailer or as a final seller, without an invoice being required, it is understood by the date of placing on the market, the date on which the Participant purchases these Batteries or, failing this, when these Batteries are supplied to him (e.g. free batteries, samples, etc.).

### **Article 3 - Statements**

#### **3.1 Monthly Statements**<sup>6</sup>

The Participant establishes monthly Statements with regard to all Batteries placed on the market during the past statement period (one month), by quantities, weight and type of Battery, including the Batteries supplied or made available free of charge (e.g. free samples).

Batteries which are demonstrated to have been exported abroad (outside Belgium), should not be included in the Statement. If a contribution has been paid on exported Batteries, it must be reported negatively in the Statement.

The Statement must be submitted no later than the last day of the month following the Statement period to which it relates. In case of a late Statement, Interests on arrears are due on the amount of the Statement as from the last aforementioned day until the day the Statement is submitted.

The Participant is required to comply with his Statement obligation electronically, on the Website. For the establishment of Statements, the Participant shall comply with all instructions given by BEBAT.

Each Statement is based on the numbers of the BEBAT Nomenclature. The Batteries will at least be identified by the following criteria: the chemical system (zinc-carbon, alkaline, etc.), the type of battery (identification I.E.C., J.I.S., USA, etc.), the weight per battery (in grams), size (length x width x height in millimeters). If the Participant places a new type of Battery on the market, he must establish a new description in the way determined by BEBAT. If the Participant places a Battery on the market that is not yet included in the Nomenclature, he must immediately inform BEBAT.

The Participant who demonstrates that he is unable to submit the Statements via the Website, is liable to BEBAT for a fixed compensation for the manual processing of the Statement<sup>7</sup>.

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<sup>6</sup> For Participants who annually place a limited number of Batteries on the market, a simplified annual Statement may apply (see article 3.3 below).

<sup>7</sup> For information and without any commitment to the future: for the calendar year 2015, this compensation amounts to EUR 12.50 (excluding VAT). This amount also applies to the final annual Statement under article 3.2 and the simplified Statement under article 3.3.

The way the Statement must be submitted and the information that must be provided by the Participant in the Statement regarding the quantities placed on the market may be modified by BEBAT at any time. This may be necessary in order to ensure the good execution of its mission and its obligations under the Participation Agreement.

### 3.2 The final annual Statement

The final annual Statement aims to regularize the intermediary monthly Statements and the intermediary invoicing by an invoice or a credit note. The final Statement is issued by BEBAT based on the monthly Statements made by the Participant.

As from 1<sup>st</sup> January of each year, and provided that the Participant has completed all monthly Statements, he can check his final Statement on the Website. The Participant must perform this check and make possible corrections no later than 28 February of the year following the year of Statement, using the option "13<sup>th</sup> month" on the Website. Failing to do so within the time elapsed, the final Statement provided by BEBAT is deemed to be declared correct by the Participant.

Before 5 February, the Participant receives from BEBAT, as a reminder, a final Statement by e-mail sent to the address he provided to BEBAT. This Statement covers the Batteries placed on the market that he has declared, including the samples he has made available for free.

If the Participant introduces a "13<sup>th</sup> month" Statement after 28 February, he owes Interests on arrears that are calculated on the amount thereof, from 1<sup>st</sup> March until the date of the introduction of the Statement. These interests are cumulative with Interests on arrears determined in the last paragraph of this article.

If the amount of Environmental and/or Administrative Contributions due by the Participant, calculated on the Batteries actually placed on the market as established in the approved final Statement, is lower than the total contributions already paid for the same period, BEBAT confirms to the Participant the balance in his favor and communicates the corresponding credit note. The Participant is entitled to deduct the balance from the next invoice to be received from BEBAT. In this way, the established balance will be credited to the account of the Participant. The Participant may also choose to apply in writing to BEBAT for the reimbursement of the balance, with a mention of the account number to which payment is to be made.

If the amount of the Environmental and/or Administrative Contributions due by the Participant, calculated on the Batteries actually placed on the market as established in the approved final Statement, is higher than the total amount of contributions already paid for the same period, the difference established will be subject to an additional invoice from BEBAT.

In case of such a deviation in more : if for a calendar year the number of Batteries placed on the market, as established in the approved final Statement, exceeds the total of the monthly Statements by more than 5%, Interests on arrears are due. These are then calculated over a period

of 6 months, based on the difference between the Environmental and/or Administrative Contributions actually due that year and the Environmental and/or Administrative Contributions already paid. These interests are taken into account in the abovementioned additional invoice.

### 3.3 The simplified Statement

BEBAT may establish simplified Statement terms for Participants who place a limited number of Batteries on the market each year. The terms and conditions of application are published on [www.bebat.be](http://www.bebat.be)<sup>8</sup>. If the threshold is exceeded, Interests on arrears are due and calculated over a period of 6 months on the amount of the Environmental and/or Administrative Contributions relating to the number of Batteries that exceed the threshold.

If the Participant meets the conditions of application, it is the responsibility of the Participant himself, to submit a request for applying the simplified procedure. The use of the simplified Statement always takes place under all reservation, more in particular with respect to the conditions of application and to the control by BEBAT.

A simplified Statement must be submitted no later than 28 February of the year following the Statement period. In case of late introduction, Interests on arrears are due and calculated on the amount of the Statement, from 1<sup>st</sup> March until the day of submission.

After submission of the simplified Statement, the Participant receives the invoice in accordance with the amounts reported.

In case of incorrect application of this simplified procedure, the sanction provided in article 7.2 applies. Notwithstanding this sanction, the Participant shall, as from the next calendar year, submit monthly Statements.

If the Participant has chosen the simplified Statement but finds out during the year that the threshold will be exceeded, he must inform BEBAT, so that he can be switched on time to a monthly Statement and that the applicable sanction can be avoided.

## **Article 4 – Billing and payment terms**

4.1 BEBAT's invoices addressed to the Participant and related to monthly Statements must be paid no later than 60 days after the end of the Statement period, regardless of the date of submission of the Statement or the invoicing date.

Other invoices of BEBAT to the Participant must be paid within 60 days after the invoice date.

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<sup>8</sup> For information and without commitment to the future: in 2015 this threshold was estimated to 10,000 pieces of Batteries.

Payments to BEBAT shall only be made by bank transfer, on the account BE10 3300 5827 2604 (BIC BBRUBEBB) or by another method of payment expressly approved by BEBAT. Payments by cheque or in cash are excluded and are therefore not accepted. The structured communication indicated on the invoice must always be mentioned upon payment.

- 4.2 In case of late payment, Interests on arrears are due and calculated as from the due date of the amounts until payment in full thereof.

Without prejudice to the application of Interests on arrears, a fixed compensation of 10% of the invoice amount is due in case of non-payment within 10 calendar days as from the last payment reminder sent by Registered mail, with a minimum of EUR 100.00 and a maximum of EUR 2,500.00. In addition, if a judicial recovery procedure is necessary, all associated costs are at the expense of the Participant.

Without prejudice to these sanctions for late payment, the measures against non-fulfilment provided for in article 12, also apply.

#### **Article 5 - Confidentiality**

BEBAT undertakes to treat confidentially any financial or business information entrusted by the Participant or that BEBAT becomes aware of during the execution of the Agreement and not to disclose this to third parties. This commitment also applies to employees of BEBAT and third parties which BEBAT appeals to for controls provided in article 6.

The Participant undertakes to treat confidentially and not to disclose to third parties the contents of the Participation Agreement and any information or documents provided by BEBAT under its execution.

This confidentiality obligation does not affect any requirement under a law/regulation, an Environmental policy agreement, or an administrative or judicial decision, to provide information to an administrative authority, a judicial instance or a third party.

#### **Article 6 – Control – incorrect Statement**

- 6.1 All data provided by the Participant in Statements are provided without prejudice to posterior control by BEBAT. Participants must maintain a clear accounting regarding the Batteries placed on the market.

BEBAT has the right, at any time, to carry out a control to ensure the accuracy of the Statements and the information provided to BEBAT. With regard to the control, the Participant agrees to keep a file containing all duly constituted accounting elements and documents necessary for the preparation of Statements.

The control refers to the previous calendar year. BEBAT also has the right to control the three calendar years preceding the aforementioned year.

The Participant agrees to fully cooperate during those controls, including giving access to his premises and all relevant documents, whether stored electronically or not. In the absence of cooperation, the sanction provided in article 7.4 applies, notwithstanding the termination of the contract pursuant to article 12.5 and without prejudice of charging the Participant with all costs (see article 6.2 hereafter).

If the Participant is unable to provide certain documents or information at the time of control, they must be made available to BEBAT within the time specified by the performer of the control. Any lack of compliance in this regard is considered a default of collaboration or as an obstruction of the control.

The controls are conducted by an agent of BEBAT or a third party designated by BEBAT. They are all bound by the confidentiality obligation stipulated in article 5.

- 6.2 Controls may be conducted both on site at the premises of the Participant, and remotely. In case of remote controls, the Participant must provide the documents requested by BEBAT within the specified time-limit. BEBAT sovereignly chooses if a control is conducted remotely or on-site .

The costs of control are at the expense of BEBAT, unless they result in an adaptation of Environmental and/or Administrative Contributions paid by at least EUR 1,000.00 or if such adaptation represents at least 5% (five percent) of the Environmental and Administrative Contributions set as owed for that period. In the latter case, the costs are at the expense of the Participant at the tariff determined by BEBAT, with a maximum of EUR 1,000.00. If the aforementioned adaptation is less than 5%, a compensation is payable by the Participant at the tariff determined by BEBAT, with a maximum of EUR 150.00.

The costs are also at the expense of the Participant, should he be responsible for the fact that a control cannot be terminated (e.g. due to a failure to communicate the required information/documentation).

If the control is conducted outside the Belgian territory, the Participant shall bear the costs of the trip/travel and accommodation expenses at the tariffs determined by BEBAT or at actual costs. The control itself is at the expense of BEBAT, except as provided in the preceding paragraph.

The Participant has the right to request that the Statement is monitored by an recognized auditor, appointed by BEBAT, instead of BEBAT's agent or a third party designated by BEBAT thereof (other than an recognized auditor). The costs incurred by this control are at the expense of the Participant at the tariff determined by BEBAT.

- 6.3 If, upon a control, it is found that the Participant has made an incorrect Statement (e.g., he mentioned a number of Batteries inferior to the number of Batteries actually placed on the market; he has included in his Statement Batteries that were exported; Batteries part of a Battery Pack (Pack) were wrongly declared as individual Batteries), BEBAT sends a correction of the Statement to the Participant, for the year to which the control/audit relates, without prejudice to the right of BEBAT to control the three preceding calendar years (see article 6.1) and the bearing of costs of control (see article 6.2).

If an error or an inaccuracy is identified in the Statement, it is the Participant's responsibility to rectify it within the time limit determined by BEBAT.

The Participant may not invoke his error in the Statement to claim any adjustment for the period prior to the year of control. For a fraudulent or an intentionally incorrect Statement, BEBAT reserves the right to rectify and to regularize the three calendar years preceding the controlled year.

#### **Article 7 – Indemnification provisions and specific compensation**

- 7.1 If the Participant fails to submit his monthly Statement or simplified Statement in the specified period he shall owe BEBAT a fixed compensation of EUR 2.48 in case of second reminder letter and EUR 12.50 in case of third letter of reminder sent by Registered Mail.
- 7.2 If the Participant makes a manifestly misuse of the simplified Statement, the Participant shall owe BEBAT a fixed compensation of EUR 50.00.
- 7.3 In case of an incorrect Statement detected by a control, the Participant shall owe Interests on arrears on the unreported amount, from 1<sup>st</sup> July of the year to which the control is related until the date of control.

If the errors detected in the Statement do not result in changes of the amounts owed or unpaid, but are of administrative nature (e.g. systematic use of wrong Nomenclature numbers), a fixed compensation of EUR 150.00 per error is due by the Participant, without prejudice to the application of article 12.5 in the event of recurrence, and without prejudice to compensation for damages suffered by BEBAT.

- 7.4 In case of lack of collaboration during a control, because of which it cannot be carried out at all, cannot be carried out completely or cannot be finished, a fixed compensation of EUR 1,000.00 is due by the Participant to BEBAT, without prejudice to the application of articles 12.5 and 6.2, and without prejudice to compensation for damages suffered by BEBAT.
- 7.5 If BEBAT is liable for a fine, a tax, a contribution or any other amount due to non-compliance with the percentages or the legal standards set by the Legislation (or the former legislation on environmental taxes) or due to a legal/regulatory measure of an authority concerning Waste batteries, BEBAT will pay such amount to the extent that it does not endanger its operation or the

BEBAT System. In the event that such payment exceeds the financial capacity of BEBAT or the BEBAT System, BEBAT is entitled to charge the Participant with the amount, in proportion with the Batteries he placed on the market during that year. If the Agreement is terminated, the aforementioned rule also applies to the period until the date of termination.

- 7.6 In case of fraud in the Statement, the Participant is liable to BEBAT, in addition to Environmental and/or Administrative Contributions evaded, for an additional amount equivalent to the amounts evaded, plus Interests on arrears on the amounts due and unpaid, from 1<sup>st</sup> July of the controlled year until the date of control, without prejudice to the application of article 12.5.

### **Article 8 - Registration of Data - Information**

- 8.1 Prior to the conclusion of the Participation Agreement, the Participant shall communicate to BEBAT, all administrative data requested by BEBAT, in the manner determined by BEBAT. BEBAT may always make changes to the list of data required to be communicated or to be registered by the Participant. This is communicated to the Participant by e-mail, via the Website or while establishing the Statement, and does not constitute a modification in the meaning of article 9 of the Participation Agreement.

If the data registered by the Participant undergo changes, the Participant must himself inform BEBAT in making the necessary adjustments via the Website, so that the recorded data are kept complete and accurate at any time. This can be done when establishing a new Statement: for each new Statement, the data must be confirmed or modified by the Participant. BEBAT cannot be held responsible for the consequences of a failure to communicate changed data by the Participant. Modified data are only binding for BEBAT if they were reported in the aforementioned manner and BEBAT is not responsible for the consequences of a lack of compliance by the Participant with its predefined information obligation. In case of modification of the VAT number, a new Participation Agreement must be concluded under the new number.

The recorded data are used by BEBAT for its missions of reporting to the relevant authorities. The Participant agrees that they are registered by BEBAT in a database.

Prior to the first Statement and then upon each Statement, the Participant must declare that the data provided reflect the truth and are complete.

- 8.2 The Participant shall provide at any time all information reasonably related to the execution of the Participation Agreement and requested by Bebat.
- 8.3 The Participant who organizes for his own account the collection and treatment of Waste batteries, is obliged to provide BEBAT with the data relating thereto in the manner determined by BEBAT. These data must be reported in accordance with the Environmental policy agreements.



## **Article 9 – Foreign suppliers**

9.1 Anyone placing Batteries on the market has the possibility to transfer his Statement obligations (see article 3) and his obligation to pay Financing Contributions (see article 2) to one or more foreign supplier(s) of Batteries or products containing Batteries, provided that the latter is established in an EEA country or in Switzerland. The foreign supplier acts on a voluntary basis and has no obligation in this respect.

The aforementioned person must expressly mandate the foreign supplier so that he can enter into a Participation Agreement with BEBAT regarding Batteries he places on the market or in order to extend the Participation Agreement previously entered into with BEBAT to this effect.

In this case, the person placing Batteries on the market does not sign himself the Participation Agreement, but agrees, pursuant to the signature of a document provided by BEBAT, inter alia that:

- (a) he is co-responsible with respect to BEBAT of compliance with the obligations mentioned in this document and more in particular if the foreign supplier fails in this regard;
- (b) he is jointly and severally liable with the foreign supplier for any due Financing Contribution;
- (c) he will fully cooperate in the correct execution of the Participation Agreement entered into by the foreign supplier, especially with regard to the control provided in article 6.

9.2 The transfer to the foreign supplier is only effective if:

- (a) the person placing the Batteries on the market expressly mandated the foreign supplier and informed BEBAT in this matter by the use of the document provided by BEBAT for this purpose; and
- (b) the foreign supplier entered into a Participation Agreement with BEBAT and confirmed, in particular, by using the document provided by BEBAT for this purpose that :
  - a. this Agreement applies to Batteries placed on the market by the above mandator;
  - b. he shall annually provide BEBAT with a list of mandators whose obligations he took over in accordance with this article;
- (c) BEBAT expressly agreed to the transfer.

## **Article 10 - Statement by the Participant of Batteries placed on the market by third parties**

Exceptionally, provided that an objective justification is communicated in advance to BEBAT and subject to the express acceptance of BEBAT under the conditions that it determines, a Participation Agreement entered into by a Participant or to be entered into by a Participant may relate to Batteries put on the market by a third party. This is only accepted by BEBAT if the Participant and the third party signed a written agreement on the matter, and only for the following cases:

- (i) associated companies (parent/subsidiary, franchisor/franchisee, holding or central purchasing body),
- (ii) production of Batteries, assembly of equipment or vehicles and Battery Packs (Packs),
- (iii) private label,

- (iv) companies reporting more than 2 million pieces per year to BEBAT,
- (v) companies that achieve more than 50% of their sales through exports, and
- (vi) a person acting, in accordance with the applicable regulations, as the holder of a proxy of a remote seller.

BEBAT always reserves the right to refuse such a request.

#### **Article 11 – Competent jurisdiction**

In case of dispute concerning the Participation Agreement, the courts of the Brussels district shall have exclusive territorial jurisdiction.

#### **Article 12 - Suspension - Termination**

- 12.1 The Participation Agreement may be terminated by either party with effect from 31 December of each year, subject to a notice period of 4 months. The termination shall be notified to the other party by Registered mail. Prior to the termination, the Participant shall establish a Statement of Batteries placed on the market until the month in which the termination notice has been given (and including this month). All outstanding invoices must be paid. After the effective date of termination, the Participant shall remain liable for obligations relating to the control of Statements that were established before this date.
- 12.2 The termination of the Participation Agreement can be established by either party, to the detriment of the other, if the latter has failed to comply with an obligation under the agreement, notwithstanding a prior notice by Registered mail, and if the defaulting party has not taken action to correct his non-fulfilment of the agreement within two weeks as from the date of the notice or within each other period as determined by the formal notice of breach, which period may not be less than two weeks. Notwithstanding verification of the courts, the establishment of the termination takes effect without judicial intervention.
- 12.3 The Participation Agreement is automatically terminated, without judicial intervention if (a) BEBAT is definitively no longer mandated to act as a managing organization or to fulfill its mission, or if BEBAT is liquidated or ended its activities and (b) in case of bankruptcy, dissolution or liquidation of the Participant or if the Participant terminates or has to terminate its activities.

In the cases referred to in (a) of the preceding paragraph, BEBAT determines the allocation of the Financing Contributions paid to BEBAT by the Participant, insofar as these contributions have not yet been assigned, and in order to find, if applicable, an intermediate solution that does not prejudice the respective interests of the parties and allows the Participant to meet his legal obligations.

- 12.4 BEBAT reserves the right to suspend the execution of the Participation Agreement in the event that a breach of a contractual obligation is established on the part of the Participant whether by/on

behalf of BEBAT or by a competent authority, as well as if the Participant fails to comply with a legal/regulatory obligation regarding the acceptance obligation of Waste batteries.

12.5 BEBAT reserves the right to terminate the Participation Agreement with immediate effect in the following cases:

- (i) If the Participant obstructs or prevents a control, or fails to communicate specific documents/information to BEBAT or to the third party in charge of controlling, within the specified time-limit required in a formal notice;
- (ii) If the Participant commits fraud in the execution of the agreement, including the consciously incorrect establishment of a Statement.

The application of this stipulation shall be notified to the Participant by Registered mail. The date of the Registered mail is considered the date of immediate termination, unless BEBAT mentions another date in the notification.

12.6 In case of termination of the Participation Agreement, the Participant himself is responsible for compliance with all his legal/regulatory obligations arising from the acceptance obligation regarding Waste batteries, as from the date of effect of the termination of the contract.

Any suspension or termination of the agreement takes effect without prejudice to the right of BEBAT for compensation for the damages suffered, neither to the application of sanctions, indemnification provisions or measures provided in this Regulation.

BEBAT reserves the right to inform the competent regional authorities on the termination or suspension of the Participation Agreement. BEBAT also reserves the right to proceed to the control defined in article 6 in the event of suspension or termination of this Agreement (including termination by the Participant).

In case of suspension or termination of the agreement, the Participant shall not be entitled to reimbursement of Financing Contributions.

Upon termination of the Participation Agreement, there shall be an adjustment of amounts due between the parties, with compensation, if any, between the amounts owed to each other.

### **Article 13 - Notifications**

Communications or instructions from BEBAT concerning the implementation of the agreement or relating to practical terms are validly made/given by electronic mail to the e-mail address the Participant provided to BEBAT. BEBAT's instructions for the establishment of Statements may be given via the Website, upon the establishment of the Statement.

General communications addressed to the attention of all Participants or to a large category of them, can be validly made by publication on the Website, whether or not accompanied by an e-mail referencing it.

Any notification by mail (regular or registered mail) to a Participant under the Participation Agreement, may be validly sent at the address of the registered office of the Participant or at the address known, unless expressly provided otherwise.

**Article 14 – Language of the Agreement**

The Agreement is set forth in Dutch or in French. An unofficial English translation is available but is not legally binding.

**Article 15 - Transferability**

The Participant is under no circumstances entitled to transfer the Participation Agreement and/or his rights or obligations under the agreement, or outsource the performance of his obligations to a third party, without the prior and express consent of BEBAT.

BEBAAT may transfer the Participation Agreement and its rights and obligations under the contract, in whole or in part, to another entity if the latter takes over the BEBAT's mission or part of it.

**Article 16 – Amendments and additions**

BEBAAT has the right to unilaterally amend this Regulation in accordance with article 9 of the Participation Agreement.

The Participant can always take notice on the Website of the conditions that apply to his participation.

**Article 17 - Applicable law**

Belgian law is applicable to this Agreement.

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