

## GENERAL TERMS AND CONDITIONS

### PREAMBLE

Pursuant to the Regulation, Producers of Materials marketed in Quebec must develop, implement and contribute financially to a curbside recycling system in Quebec (the “**System of Selective Collection**” or the “**System**”) based on an extended producer responsibility (“**EPR**”) approach.

Thus, EPR places full responsibility for the System on the Producers, who must ensure that the Materials, until their reclamation, are managed across the entire value chain, in cooperation with the other Producers, within a single System. However, the Regulation provides that this responsibility is entrusted to a designated management organization (“**DMO**”), in other words a Producer Responsibility Organization. Thanks to the support of over 2,000 Producers, Éco Entreprises Québec (“**ÉEQ**”) was designated in that capacity as of October 24, 2022 to represent and act in the place and stead of the Producers.

The Regulation also provides that the Producers must become Members of ÉEQ, pay the contributions required to finance the System and provide the documents and information requested by ÉEQ so it can assume the responsibilities and obligations incumbent on it in the framework of the Regulation.

With this management approach, the Ministry is focused on the following objectives:

- Enabling the establishment of the conditions necessary to rethink the System of Selective Collection and facilitate the circularity of Materials;
- Promoting the reduction of Materials at source, and fostering the eco-design of products so as to ensure their compatibility with the System;
- Enabling improved oversight of the curbside recycling value chain and the establishment of partnerships with the concerned actors;
- Offering Producers flexibility in the means used to reach the performance targets of the System.

The EPR approach for selective collection will come into force gradually between now and December 31, 2024 and will be fully effective as of January 1, 2025. In the meantime, the existing compensation plan of municipal costs will continue to apply concurrently. This compensation plan will be repealed on December 31, 2024; however, the effects of its application might persist after that date, for example, in regard to the Materials generated or the costs incurred prior to the date of its repeal.

The Contract governing the relationship between the Producers and ÉEQ in the EPR framework was developed by ÉEQ having regard to the following main principles (the “**Main Principles**”):

- Formalizing ÉEQ’s responsibilities and commitments to its Members and those of the Members to ÉEQ;
- Agreeing on the commitment of the Members and ÉEQ to the proactive continuous improvement of practices involving the Materials, going beyond the responsibilities and obligations stipulated in the Regulation so as to promote eco-design, recyclability and a circular economy and enhance the environmental benefits, in line with ÉEQ’s purpose and its commitment values;
- Emphasizing activities involving the eco-design and circular economy of Materials;
- Fostering partnerships with other EPR bodies with a view to the optimization of resources.

The Contract, these General Terms and Conditions and the Policies set out the responsibilities of ÉEQ and its Members in the framework of the Regulation, as well as the commitments that will be required from all parties in order to meet the objectives of the Regulation and satisfy the Main Principles.

These General Terms and Conditions complete the Contract and the Policies submitted to the Members and form an integral part thereof.

## 1. DEFINITIONS

All capitalized terms are defined in either the Contract, the Regulation or these General Terms and Conditions. For the reader's convenience, the definitions in the Regulation in force on the date of adoption of these General Terms and Conditions are reproduced or summarized below. These definitions are also used in the Policies. The following terms and expressions have the meanings set out below:

- (a) **"Audit Policy"** means the policy describing the internal and external audit procedures, the grounds for a modification request, the frequency and time frame for their performance, the conditions leading to a listing in the internal registry of the Members in default and the resulting actions;
- (b) **"Banner"** means, broadly speaking, any form of affiliation between two or more businesses that differentiates them from other businesses, including, without limitation, being part of a franchise agreement, a chain of Establishments, a grouping of businesses, being a direct or indirect subsidiary, a division, or through the use of a common name or Trademark or the partial or total interlinking of operations or supply;
- (c) **"Banner Owner"** means a person with decision-making power and actual control over a Banner. Franchisors, controlling shareholders and owners of a common name or Trademark are respectively deemed to be Banner Owners;
- (d) **"Confidentiality Policy"** means the policy governing the treatment of Information gathered from Producers, municipal bodies and Aboriginal communities, sorting centers, and recyclers/conditioners;
- (e) **"Container"** and **"Packaging"** are defined in the Regulation; briefly, these terms refer to a product made of flexible or rigid material such as paper, cardboard, plastic, glass or metal, and any combination of such materials, which, as the case may be:
  - Is used to contain, protect, wrap, support or present Products at any stage in the chain from the producer to the user or End Consumer; and
  - Is intended for a single or short-term use of less than 5 years and designed to:
    - Contain, protect or wrap Products, such as storage bags, wrapping paper and paper or Styrofoam cups, or
    - Used by the user or End Consumer to prepare or consume a food Product, such as straws and utensils;
- (f) **"Contract"** means the membership contract between ÉEQ and a Member, including the General Terms and Conditions and the Policies which form an integral part thereof;
- (g) **"Date of Request for Internal Records"** means the date on which a Producer receives ÉEQ's request to send in its Internal Records pertaining to one or more given Reports. Such request is deemed to have been received on the date it is sent by ÉEQ;
- (h) **"Eco-Modulated Financial Participation Schedule"** means the list of rates established by ÉEQ for each of the Materials, accounting for the type of material, its recovery, and recycling performance. Additional eco-modulation measures may be added to improve the schedule and result in the application of credits or penalties. This Eco-Modulated Financial Participation Schedule is presented in the Producers' Financial Participation Policy;
- (i) **"ÉEQ General By-laws"** means the general by-laws pertaining to the governance and general conduct of the affairs of ÉEQ, adopted by its board of directors and ratified at the meeting of its members in accordance with the *Companies Act* (CQLR c C-38), as same may be updated or amended;

- (j) “**ÉEQ Portal**” means the online platform through which the Members join ÉEQ, file their Report, are informed of their Financial Participation, access their invoices and, as the case may be, pay the Financial Participation;
- (k) “**End Consumer**” means the end recipient or end user of a Product or Service;
- (l) “**Establishment**” means a physical place where one or more persons carry on an organized economic activity, of a business nature or otherwise, consisting of the production, administration or disposal of goods or the provision of services. The places referred to as establishments in Schedule A of the General Terms and Conditions are deemed to be Establishments;
- (m) “**First Supplier**” means a supplier that is domiciled or has an Establishment in Quebec and is the first to take ownership, possession or control in Quebec of a Material or Product that is covered by the Regulation;
- (n) “**General Terms and Conditions**” means the general terms and conditions that form an integral part of the Contract, as amended or updated;
- (o) “**Information**” means confidential, professional or personal information within the meaning of the Confidentiality Policy;
- (p) “**Interest, Penalties and Sanctions Policy**” means the policy describing the administrative sanctions, monetary sanctions, penalties, administrative fees and any interest that may be imposed on a Member in the event of failure to comply with the obligations or time frames stipulated in the Contract, the General Terms and Conditions, the Policies or the Regulation;
- (q) “**Internal Records**” means the documents, work files, books, records and other data in support of the Producer’s obligations under the Contract, the General Terms and Conditions, the Policies and the Regulation;
- (r) “**Materials**” means Containers, Packaging and Printed Matter;
- (s) “**Member**” means a Producer that becomes a member of ÉEQ and maintains that status in accordance with the Contract, the General Terms and Conditions, the Policies and the ÉEQ General By-laws;
- (t) “**Ministry**” means the *Ministère de l’Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs*, as its name may be updated or amended from time to time;
- (u) “**Obligation Year**” means the year for which a Producer is required to pay a Financial Participation pursuant to the terms and conditions set forth in the Producers’ Financial Participation Policy;
- (v) “**Policies**” means the Confidentiality Policy, the Producers’ Financial Participation Policy, the Interest, Penalties and Sanctions Policy, the Audit Policy, the Small Producers’ Policy, the Voluntary Producers’ Policy and any other policies adopted by ÉEQ in accordance with the provisions of the Contract, in each case as same may be updated or amended;
- (w) “**Printed Matter**” is defined in the Regulation; briefly, this term means any product made of paper or other cellulosic fibres, whether or not used as a medium for text or images, except books with a lifespan meant for more than 5 years. “**Printed Matter**” includes newspapers;
- (x) “**Producer**” is defined in the Regulation; briefly, this term means any person that commercializes, markets or otherwise distributes Materials in Quebec that are designated in Section 4, 5(1), 5(2), 6, 8, 9(1), 9(2) or 10 of the Regulation. The Regulation applies to all Producers, regardless of the quantity of Materials put on the market or the Financial Participation paid;

For greater certainty, the term “**person**” has a broad meaning and includes individuals, corporations, businesses, associations, groups, trusts, legal persons and government bodies;

- (y) “**Producers’ Financial Participation**,” “**Financial Participation**” or “**PFP**” means the contribution paid and to be paid by the Members under the Regulation pursuant to the Eco-Modulated Financial Participation Schedule and the other terms and conditions set forth in the Producers’ Financial Participation Policy;
- (z) “**Producers’ Financial Participation Policy**” means the policy describing Reporting terms and conditions, the Eco-Modulated Financial Participation Schedule and other conditions that determine the amount and the terms of the PFP to be paid by the Members;
- (aa) “**Product**” means a material good intended for an End Consumer, regardless of whether it is sold or otherwise directly or indirectly provided;
- (bb) “**Reference Year**” means the period from January 1 to December 31 preceding the Reporting Year in which a Producer generated quantities of Materials in Quebec;
- (cc) “**Regulation**” means the *Regulation respecting a system of selective collection of certain residual materials* (CQLR c Q-2, r 46.01), as it may be amended, pursuant to which ÉEQ was appointed a designated management organization in order to take charge of the obligations of the Producers referred to therein and to develop, establish and finance a system of selective collection of Materials in Quebec;
- (dd) “**Report**” or “**Reporting**” refers to the reporting of the Materials that a Member has generated and that it must report to ÉEQ under the Regulation, completed in accordance with the terms and conditions and for the Reference Year indicated in the Producers’ Financial Participation Policy or the Small Producers’ Policy, where applicable;
- (ee) “**Reporting Year**” means the year for which a Producer is required to submit a Report within the time set forth in the Producers’ Financial Participation Policy;
- (ff) “**Retailer**” means a business whose primary activity consists in operating one or more points of sale intended for the End Consumer;
- (gg) “**Service**” means a service that is not a material good and is intended for an End Consumer, regardless of whether it is sold or otherwise directly or indirectly provided;
- (hh) “**Small Producer**” means any Producer that meets the criteria regarding the quantity of Materials marketed in Quebec or the surface area of a Retailer, making them eligible for a payment exemption or simplified Reporting in accordance with the Small Producers’ Policy;
- (ii) “**Small Producers’ Policy**” means the policy applicable to Small Producers, defining the eligibility criteria for a payment exemption or a simplified Report;
- (jj) “**Trademark**” is defined in the Regulation; briefly, this term means a sign or combination of signs that is used by a person for the purpose of distinguishing or so as to distinguish Products or Services manufactured, sold, leased, hired or performed by that person from those manufactured, sold, leased, hired or performed by others. However, “trademark” does not include a certification mark within the meaning of section 2 of the *Trademarks Act* (R.S.C. 1985, c T-13);
- (kk) “**Voluntary Producer**” means a person domiciled or having an Establishment outside Quebec who owns a name or a Trademark and decides to assume the obligations, undertakings and responsibilities for and on behalf of all its First Suppliers in Quebec by signing an agreement to become a Voluntary Producer and subsequently a Member of ÉEQ.
- (ll) “**Voluntary Producers’ Policy**” means the policy describing the conditions whereby a producer not covered by the Regulation can assume the obligations, undertakings, and responsibilities for and on behalf of all of its First Suppliers in Quebec.

## **2. ÉCO ENTREPRISES QUÉBEC: A DMO COMMITTED TO A SUSTAINABLE WORLD**

2.1 Aware of the importance of the changes brought by EPR and the responsibilities attributed to Producers, ÉEQ has adopted a purpose, a mission and ethical values that will be central to its conduct in its role as DMO. As of the adoption date of the Contract and these General Terms and Conditions, they are as follows:

- (a) Purpose: "From curbside recycling to the circular economy: Together for a sustainable world;"
- (b) Mission:

"Since 2005, Éco Entreprises Québec (ÉEQ), a private non-profit organization, has represented producers of containers, packaging and printed materials regarding their financial responsibilities for curbside recycling. Named as designated management organization (DMO) in 2022, ÉEQ manages the curbside recycling system in Quebec from a sustainable development perspective.

As a leader in extended producer responsibility (EPR), ÉEQ develops, manages and provides circular economy solutions to its member producers so they can reduce their environmental footprint. ÉEQ places eco-design, recyclability and traceability at the core of all actions with its partners.

ÉEQ will continue its role as the designated organization throughout the transition period from the compensation plan to EPR curbside recycling."

- (c) Core Values:

ÉEQ's purpose is based on three ethical values that inform its decisions, to ensure stakeholder confidence. These three values are:

- (i) Empowerment: ÉEQ is committed to acting in a leadership capacity, making the choices that have to be made as part of its mission, even the hard ones, using all of the means at its disposal and being accountable for its actions.
- (ii) Fairness: "The fair share owed by each party." ÉEQ is committed to assessing situations in their entirety, without overlooking the blind spots, before deciding what will be most fair under the circumstances.
- (iii) Vigilance: ÉEQ is committed to exercising careful oversight to institute appropriate measures on a timely basis from a circular economy perspective, for a sustainable world.

2.2 The challenges of moving towards a circular economy are numerous and this progress can only be achieved through the efforts of all stakeholders, from the Producers to the citizens, including the value chain service providers. To achieve the EPR objectives and make its purpose a reality, ÉEQ encourages its Members and other System stakeholders to subscribe to its commitment values and contribute to the mission and the realization of its purpose.

## **3. UNDERTAKINGS OF ÉCO ENTREPRISES QUÉBEC TO ITS MEMBERS**

3.1 ÉEQ undertakes to aim for the ongoing proactive improvement of practices to go beyond compliance and enhance the environmental benefits, in line with ÉEQ's mission, purpose, commitment values and the Main Principles, while still being financially responsible and accordingly:

- (a) ÉEQ undertakes to assume, for and on behalf of its Members, the responsibilities and obligations set out in the Regulation;

- (b) ÉEQ undertakes to manage the System in the place and stead of the Producers in an optimal manner, while considering the impacts of the System (over and above the economic impacts);
- (c) ÉEQ undertakes to manage all the Materials in the System and, failing that, to guide its Members in the eco-design process according to the “No Material left behind” principle;
- (d) ÉEQ undertakes to provide guidance to its Members in the continuous improvement process through transparency and access to information: all results of individual guidance approaches and pilot projects shall be communicated, so the Members can move forward in their own considerations;
- (e) ÉEQ undertakes to provide support to answer the questions of the Members relating to the System and the Materials managed, including periodic training;
- (f) ÉEQ undertakes to set up an information process and, in certain cases, a consultation process, as per section 13;
- (g) ÉEQ undertakes to specifically consult the Small Producers regarding the simplified administrative measures intended for them when such changes have an impact on their Financial Participation or Reports;
- (h) ÉEQ undertakes to deploy the necessary efforts to make its purpose and the transition to a circular economy a reality, notably through the eco-modulation of its Eco-Modulated Financial Participation Schedule;
- (i) ÉEQ undertakes in the long term, in its relations with recyclers, to facilitate access to recycled materials for the Producers that have commitments in that regard;
- (j) ÉEQ undertakes to foster partnerships, notably with other EPR organizations, with a view to the optimization of resources in accordance with its Main Principles;
- (k) ÉEQ undertakes to collaborate on national and international initiatives in the definition, identification and/or adoption of standards (e.g., Canada Plastics Pact);
- (l) ÉEQ undertakes to provide information and conduct awareness campaigns for citizens, as per the Regulation;
- (m) As regards the Eco-Modulated Financial Participation Schedule, the Producers’ Financial Participation Policy and the Small Producers’ Policy, ÉEQ undertakes to:
  - (i) Maintain an annual consultation process where all Members will be invited and communication process;
  - (ii) Collect the Financial Participation and use same in accordance with the Regulation, these General Terms and Conditions and the applicable Policies;
  - (iii) Charge, collect and remit the taxes that apply on the Financial Participation.
- (n) ÉEQ undertakes to issue an annual report to the Members and to present, at the annual general meeting of the Members, the information required by the Regulation and applicable laws; and
- (o) ÉEQ commits to comply with laws that apply to it.

#### **4. BECOMING A MEMBER OF ÉEQ**

4.1 To become a Member of ÉEQ, the Member must:

- (a) Be a Producer;
  - (b) Consent to and submit the online membership documents via ÉEQ Portal;
  - (c) Check the box accepting the Contract, the General Terms and Conditions and the Policies. For this purpose, the individual delegated to confirm such acceptance must make sure to have obtained the requisite corporate consents and have authority to bind the Producer (corporation, firm or other entity).
- 4.2 ÉEQ will send the Member written confirmation that it has been accepted as a Member, where applicable.
- 4.3 A Producer that becomes a Member agrees that its name may be included in the public list of the ÉEQ Members.

## **5. UNDERTAKINGS OF THE ÉEQ MEMBERS**

- 5.1 Each Member of ÉEQ agrees to:
- (a) Comply with the Contract, the General Terms and Conditions, the Policies and the ÉEQ General By-laws;
  - (b) File its Report in ÉEQ Portal within the required time frame and conditions as stipulated in the Producers' Financial Participation Policy or the Small Producers' Policy, when applicable;
  - (c) Provide accurate and complete information, both in its Member profile in ÉEQ Portal and when filing its Report, and keep valid and up-to-date contact information at all times on ÉEQ Portal ;
  - (d) Pay the PFP and the applicable taxes for the financing of the System, on the conditions described in the Producers' Financial Participation Policy or the Small Producers' Policy, when applicable;
  - (e) Notify ÉEQ of any breach or alleged breach of the Regulation involving the Member or, if it becomes aware that it has failed to perform an obligation provided for in the Contract, the General Terms and Conditions, the Policies or the Regulation;
  - (f) Support ÉEQ in aiming for the ongoing proactive improvement of practices so as to promote eco-design, recyclability and a circular economy, going beyond compliance and enhancing the environmental benefits, in line with ÉEQ's purpose, its commitment values and the Main Principles. In concrete terms, Members could be encouraged to:
    - (i) In conjunction with ÉEQ, devote the necessary efforts to achieve the recycling and reclamation targets for Materials;
    - (ii) Inform its suppliers about the tools developed by ÉEQ or by the Member to promote the 5Rs (reduction at source, reuse, recycling, valorization and disposal) and the use of eco-designed Materials;
    - (iii) Communicate publicly the steps accomplished through ÉEQ's eco-design guidance.

## **6. FINANCING OF THE COSTS OF THE SYSTEM**

- 6.1 The PFP collected by ÉEQ from the Members will be used to finance all of the costs related to:
- (a) The System of Selective Collection;
  - (b) The reclamation and recovery of Materials;

- (c) The reserve fund enabling ÉEQ to assume the obligations that are incumbent on it, as required by the Regulation;
  - (d) The financing of any required restructuring plan and the institution of the measures set out therein where the recovery and reclamation targets described in the Regulation are not reached;
  - (e) The Quebec Fund for the Protection of the Environment and Waters maintained by the Ministry or any similar contribution imposed on ÉEQ in the event of failure to achieve the rate of recovery or reclamation for five consecutive years;
  - (f) Informational, awareness and educational activities as well as research and development;
  - (g) The management fees of ÉEQ as set out herein and in the Regulation;
  - (h) The management fees borne by RECYC-QUÉBEC in connection with the System of Selective Collection.
- 6.2 The PFP shall be set based on the conditions and frequency defined in the Producers' Financial Participation Policy and the attendant Eco-Modulated Financial Participation Schedule, or, as per the Small Producers' Policy, if applicable.
- 6.3 Payments shall be made in accordance with the terms and the timetable set out in the Producers' Financial Participation Policy or the Small Producers' Policy, when applicable. All overdue amounts shall bear interest at the rate indicated in the Interest, Penalties and Sanctions Policy and may lead to costs and penalties.

## **7. AUDITING**

- 7.1 ÉEQ may audit the internal records of the Member to verify the information transmitted in its Reports in accordance with its Audit Policy. The Member agrees to keep and maintain up-to-date and accurate documentation, books, records and other data in support of its obligations under the Regulation, the Contract, the General Terms and Conditions and the Policies for a period of five years from the filing of its Report and to make them available to ÉEQ upon request.
- 7.2 Any audit or inspection by ÉEQ shall not release the Member from its obligations under the Regulation, the Contract, the General Terms and Conditions or the Policies. The Member shall be responsible for compliance at all times.
- 7.3 The Audit Policy provides additional information about the procedures, undertakings and obligations of the Members and ÉEQ in the framework of an audit and the consequences or sanctions associated with any non-compliance identified during such an audit.

## **8. NON-COMPLIANCE**

- 8.1 Producers that do not become Members or that do not maintain their Membership shall be subject to the penalties, sanctions and remedies provided for in the *Environment Quality Act*, CQLR c Q-2 and in the Regulation.
- 8.2 ÉEQ will notify the Ministry of a Member's non-compliance with its obligations under the Contract, the General Terms and Conditions, the Policies or the Regulation and may cooperate with the Ministry on their enforcement and the exercise of their respective remedies.
- 8.3 ÉEQ shall also notify the Ministry if it becomes aware of any third party (non-member) non-compliance and commits to establish a platform for receiving information on this matter from Producers or others who wish to voluntarily provide such information.



- 8.4 Where ÉEQ is, as a DMO, subject to sanctions, fines or penalties under the Regulation, each Member individually shall not be liable for such sanctions, fines or penalties. Such sanctions, fines or penalties shall be considered by ÉEQ in the aggregate with respect to the System and funded from the Producers' Financial Participation.

## **9. TERM AND END OF MEMBERSHIP**

- 9.1 Within 30 days from the date on which a Member ceases to qualify as a Producer, such Member shall send ÉEQ a notice of termination of membership, stating:
- (a) The date on which membership is terminated;
  - (b) The reasons for the termination; and
  - (c) If the Member wishes to avoid the imposition of a PFP under section 9.4(b) below, a Report regarding Materials generated up to the date of termination of membership.

For greater certainty, a Member is deemed to no longer qualify as a Producer if it makes an assignment of its assets for the benefit of its creditors, becomes insolvent or bankrupt, or ceases to carry on business as a going concern without another Producer authorized by ÉEQ assuming its obligations.

- 9.2 ÉEQ may also terminate the membership of a Member who ceases to qualify as a Producer by prior written notice of 30 days during which period the Member may provide ÉEQ with any relevant information.
- 9.3 Upon receipt by ÉEQ of the notice of termination set forth in section 9.1 above or upon expiry of the prior notice period set forth in section 9.2 above:
- (a) The Member shall lose its eligibility to any applicable credit under current or previous eco-modulation measures; and
  - (b) The Member has 30 days to submit a request, if applicable, to amend its Report within the meaning of the Producers' Financial Participation Policy and the Audit Policy.
- 9.4 Within 60 days of receipt by ÉEQ of the notice of termination of membership referred to in section 9.1 above or upon expiry of the prior notice period set forth in section 9.2 above, ÉEQ shall send the Member a final statement of account, payable within 30 days, listing all amounts owed by the Member, including:
- (a) The amount of unpaid PFPs, including any applicable penalties under the Eco-modulated Financial Participation Schedule calculated up to the membership termination date;
  - (b) An imposed PFP for Materials that were not declared in a Report as at the date of termination of membership, based on (1) an estimate of quantities of Materials based on all the items in the possession of ÉEQ, which items shall remain confidential and, in the case of a detailed Report, (2) the Eco-Modulated Financial Participation Schedule in effect on the date of termination of membership. The PFP imposed is deemed to be valid and, in the event of a dispute, it is the Member's responsibility to establish that the PFP is inaccurate; and
  - (c) Any unpaid interest, charges, penalties, sanctions or amounts imposed as at the membership termination date.
- 9.5 The Contract shall apply to all applicable procedures and remedies between ÉEQ and the Member pertaining to any period during which it was in force, even if Membership is discontinued.

- 9.6 Termination of the Contract (including the General Terms and Conditions and the Policies) shall not terminate any provision which, by its nature, must remain in force.

## **10. LIABILITY**

- 10.1 ÉEQ shall maintain reasonable commercial insurance to cover the risks associated with its operations, which shall include, at a minimum, the following coverages with a reputable insurer (grade A or A- or better from an independent agency such as A.M. Best or Standard & Poor):
- (a) Civil liability: \$5,000,000;
  - (b) Property: \$700,000;
  - (c) Cyber security: \$1,000,000;
  - (d) Directors and Officers: \$10,000,000 (of which \$5,000,000 is excess coverage); and
  - (e) Professional Liability: \$1,000,000.

The Member shall not be covered by ÉEQ's insurance under any circumstances, notwithstanding the Member's status as a Member and its obligations in connection with the System of Selective Collection. The Member must therefore ensure that its commercial insurance is adequate and sufficient and shall without a non-recourse against ÉEQ with respect to the Materials placed on the market and with respect to its obligations under the Regulation and this Contract.

- 10.2 ÉEQ and the Members shall be liable to each other for damages caused by their fault, including reasonable lawyers' fees and the resulting legal proceedings. However, such liability shall be limited and no indemnity shall be due in connection with collateral or punitive damages, loss of revenue, loss of value or business interruption, unless specifically permitted by the Regulation.
- 10.3 ÉEQ assumes no obligation with respect to the raw materials and the products manufactured, sold or distributed, or which are managed by the Member in any way, if they do not constitute Materials. Nor shall ÉEQ be liable for damages due to interruptions, outages or other unavailability of ÉEQ Portal.
- 10.4 Where permitted by the applicable laws, the liability that ÉEQ may incur toward a Member shall at all times be limited to (a) the amount of the Financial Participation paid by the Member for the year preceding the first act or first omission giving rise to the liability; or (b) the amount of ÉEQ's insurance coverage per event, whichever is less.

## **11. CONFIDENTIALITY**

- 11.1 Both the Member and ÉEQ agree to abide by the Confidentiality Policy. Except as provided in this Contract, the Confidentiality Policy or the Regulation, both the Member and ÉEQ agree not to disclose publicly or to third parties (other than advisers and representatives) any Information received from each other.
- 11.2 ÉEQ may transmit any documents or information the Member has conveyed to it in the framework of the Contract, the General Terms and Conditions or the Policies to the Ministry and to any other governmental authority where such transmission is required or as provided in the Regulation, the Contract, the General Terms and Conditions, the Policies or the ÉEQ General By-laws, or any law or order of a judicial or quasi-judicial authority, including any express request from the Ministry.
- 11.3 ÉEQ may also use the information conveyed to it in the exercise of its rights and obligations under this Contract, the General Terms and Conditions, the Policies, the Regulation or the ÉEQ General By-laws.

- 11.4 ÉEQ may use the information the Member has conveyed to it for the purpose of developing, implementing, supporting and improving the System. For example, ÉEQ will conduct studies and analyses and compile statistics and may publish reports or compilations of data. However, except as provided herein, ÉEQ undertakes and agrees that no publication or disclosure shall be nominative, in other words, allow the Member to be identified, directly or by logical deduction, in connection with the Information.
- 11.5 Information provided to ÉEQ will be handled in accordance with the Confidentiality Policy and the Member consents to the uses indicated therein. Before transmitting any Information to ÉEQ, the Member shall ensure that it has obtained all necessary consents for this purpose, including for the purposes and processing set out in the Confidentiality Policy. The Member shall also expressly notify ÉEQ when Information is transmitted to it, as well as the restrictions and uses that apply to it.
- 11.6 The Member agrees to use the Information of ÉEQ only for the purpose of carrying out its rights and obligations under the Contract, the General Terms and Conditions, the Policies, the General By-laws of ÉEQ, the Regulation or in accordance with any order of a competent governmental authority, unless it obtains the prior written consent of ÉEQ. It shall be disclosed only to those representatives of the Member who have a need to know for such purposes and who have entered confidentiality undertakings. The Member shall use reasonable safeguards and cyber security measures with respect to ÉEQ's Information and the Member agrees to destroy any copies thereof upon request by ÉEQ.
- 11.7 The confidentiality obligations in this Section 11 shall be in effect for the term of the Contract and an additional 5 years thereafter.

## **12. INTELLECTUAL PROPERTY**

- 12.1 No licence or assignment of rights is created between the Member and ÉEQ under the Contract, the General Terms and Conditions or the Policies, except as per this Section 12. Each party shall retain its intellectual property rights to the information, documents and other material shared with each other.
- 12.2 The Member authorizes ÉEQ to use the member's data to perform its undertakings and carry out its mission. From a legal point of view, this means that subject to ÉEQ's confidentiality undertakings, the Member grants ÉEQ a non-exclusive, worldwide, royalty-free right to use, copy, record and transmit the information in its Report. This right is limited to such as may be necessary for developing, implementing and financially supporting the system and the undertakings stipulated in the Contract, the General Terms and Conditions, the Policies and the Regulation.
- 12.3 ÉEQ is the exclusive holder of the rights associated with the ÉEQ Portal and the material made available to the Members. Any use, modification or communication thereof shall be in conformity with this Contract or the Policies or be consented to by ÉEQ in advance. The video clips and other content made available to the Members and the public on ÉEQ Portal and its website may be used for non-commercial purposes only, while respecting the copyright of ÉEQ or of other concerned persons.

## **13. AMENDMENTS**

- 13.1 ÉEQ reserves the right to make amendments to the Contract, the General Terms and Conditions and the Policies at any time at its sole discretion, including when the Regulation or other circumstances require a review or an update. Any such amendments shall form an integral part of the Contract, subject to the application of Section 13.2 of these General Terms and Conditions and in accordance with the following:

- (a) Any amendment shall be approved by ÉEQ's Board of Directors before being adopted;

- (b) Members shall be notified in writing 60 days prior to the effective date of any changes. During this 60-day period, Members may contact and provide comments to ÉEQ;
  - (c) Changes affecting the Materials to be included in the Report and affecting the associated Producer Financial Participation shall take effect no earlier than the next reporting period to allow Members to adjust their practices; and
  - (d) Not all changes will be subject to a consultation process.
- 13.2 Any «major» amendment to the Contract, the General Terms and Conditions and the Policies that increase the Members', reduce ÉEQ's obligations or modify the amendment process provided in this Section, shall be presented to the Members, as the case may be, during special consultations or annual or special meetings called in accordance with the ÉEQ General By-laws.
- 13.3 The Members may initiate discussions with ÉEQ about amendments to the Contract, the General Terms and Conditions or the Policies by calling a special meeting for that purpose in accordance with the ÉEQ General By-laws.
- 13.4 The adoption of the Eco-Modulated Financial Participation Schedules shall be subject to the provisions of Section 3.1(m)(i) of these General Terms and Conditions.
- 13.5 On an annual basis upon delivery of the Report, each Member shall confirm that it accepts the modifications, if any, made to the Contract, the General Terms and Conditions and the Policies by ÉEQ.

#### **14. DISPUTE RESOLUTION AND GOVERNING LAW**

- 14.1 Any disputes concerning the Contract, the General Terms and Conditions, the Policies or further to a contestation shall be the subject of written notice to the other party. The Member and ÉEQ shall both then attempt to resolve the dispute through discussions between its respective representatives within 90 days of receipt of such notice.
- 14.2 This delay shall not delay the enforcement by ÉEQ of the sanctions provided for in the Interest, Penalties and Sanctions Policy or the Audit Policy and shall not limit the right of ÉEQ or the Member to seek injunctive relief or other forms of enforcement.
- 14.3 If the dispute is not resolved within 90 days or if the Member fails to participate in the settlement process, then the dispute shall be subject to the exclusive jurisdiction of the courts of general jurisdiction in the Province of Quebec, District of Montreal.
- 14.4 Where ÉEQ is exercising remedies against the Member, it shall be responsible for the reasonable costs (including lawyers' and experts' fees, judicial costs, collection agency costs, etc.) and the other losses and damages sustained and incurred by ÉEQ, for which the Member shall be invoiced.

#### **15. FINAL PROVISIONS**

- 15.1 Unless otherwise expressly stipulated, the remedies provided in this Contract, the General Terms and Conditions, the Regulation and the Policies shall be cumulative. This means that a party may exercise more than one remedy at a time.
- 15.2 Any notices required under the Contract, the General Terms and Conditions or the Policies shall be valid if given in writing and sent by a means of electronic communication. For this purpose, the email address of the Member shall be the one supplied via ÉEQ Portal and that of ÉEQ is [service@eeq.ca](mailto:service@eeq.ca). Such notice shall be deemed to have been received on the same day or, if transmitted outside the business hours of ÉEQ, on the next business day. Notices shall also be valid if given in accordance with the *Code of Civil Procedure* (Québec) using the contact information the Member entered in ÉEQ Portal.

- 15.3 Any failure by ÉEQ to exercise any of its rights or remedies under the Regulation, this Contract, the General Terms and Conditions, the Policies or the ÉEQ General By-laws shall not be deemed to be a waiver of those rights and remedies. If ÉEQ tolerates a breach, such tolerance shall not constitute a waiver in respect of any subsequent breach. No waiver by ÉEQ with respect to the Contract, the General Terms and Conditions or the Policies shall be effective unless expressly described as being a waiver and issued in writing.
- 15.4 ÉEQ as well as the Member and its respective successors, legatees, and other legal representatives shall be bound by the Contract. The Member may not assign or otherwise transfer its membership or its obligations under the Contract without the prior written consent of ÉEQ. As part of a sale, purchase or corporate amalgamation, the purchaser may be required to complete the necessary formalities for a new subscription as a Member, unless ÉEQ or the Policies do not allow a transfer of the relevant information and the obligations related to the file. ÉEQ may assign its rights and obligations under this Contract and the Regulation to any successor to its activities, in whole or in part, whether by order-in-council, amalgamation, business transfer or other transaction.

## **Schedule A - Examples of Establishments in Quebec**

A Producer whose head office is not in Quebec (and is therefore domiciled in Quebec) may have one or more Establishments in the province. Below are a few non-exhaustive examples, provided for information purposes only, to determine whether a Producer has an Establishment in Quebec for the purposes of Financial Participation.

1. A Producer states in its registration with the *Registraire des entreprises du Québec*, under the heading “Establishments” that it has an address in Quebec or in its Articles of Incorporation.
  - Note: A person acting as “attorney-in-fact” for a legal person registered with the *Registraire des entreprises du Québec* is not a sufficient basis for considering such legal person to have an Establishment in Quebec.
2. Insurance Companies or Financial Institutions
  - A company offering insurance or financial products in Quebec under a permit issued by the *Autorité des marchés financiers* (AMF) is deemed to have an Establishment in Quebec.
3. Owner of Immovable Property in the Province
  - Where a company owns immovable property in Quebec, such property is deemed to be an Establishment.
4. Businesses Using Equipment or Machinery in the Province
  - Where a business has no fixed place of business in the province, it may have an Establishment at a location where it uses a significant quantity of machinery or equipment at any given time in a Reference Year. It is then deemed to have an Establishment at that location.
5. Business Activities Involving Raw Materials in the Province
  - Where any of the activities of a business consist in producing, growing, excavating, mining, creating, manufacturing, improving, transforming, preserving or constructing, in whole or in part, anything in Quebec, regardless of whether the sale of such thing takes place in Quebec or elsewhere, it can be concluded from such activity that the business has an Establishment in Quebec in the year in which the activity occurred.
6. Representative in Quebec
  - A business’s Establishment is a fixed place of business or its principal place of business. An Establishment can also be an office, residence, branch, mine, oil or gas well, farm, woodlot, factory, warehouse or workshop.
  - A business which is operated or represented by an employee, agent or mandatary who is based at a given place, who is generally authorized to contract on behalf of his or her employer or principal, or who has at his or her disposal a supply of goods owned by such employer or principal and used to regularly fill orders received by the employee, agent or mandatary, is deemed to have an Establishment at such location, even though orders may sometimes be placed at a distribution centre located outside Quebec.
7. Commission Agent, Broker, Other Independent Agent or Subsidiary:
  - A business is not deemed to have an Establishment merely because it has a business relationship with a third party through a commission agent, broker or other independent agent or because it maintains an office or warehouse for the sole purpose of purchasing goods; nor is it deemed to have an Establishment at any given place merely because it controls a subsidiary which runs a business in the province.

