



MEMBERSHIP CONTRACT

Compliance for Portable Batteries and Accumulators in France

BETWEEN:

SCRELEC, Limited company with share capital of 352,515 euros with a registered office at 52 Boulevard du Montparnasse, 75015 PARIS (FRANCE) registered with the Paris trade and companies register under the number 422 582 072,

Represented by its Managing Director, Mr Emmanuel Toussaint-Dauvergne, duly authorised for the purposes hereof in that capacity,

Hereafter “**SCRELEC**”

ON THE ONE HAND,

AND:

Company [company name] , [legal form].....,
with capital of , with a registered office at [address]
.....
.....

Registered under the number

Represented by its [capacity] , [Title, first name, surname]
..... duly authorised to enter into this contract,

Acting on its own behalf and/or in its capacity as a representative of the natural persons or legal entities subject to the obligations referred to in Article R 543-128-3 of the French Environmental Code, as listed in Appendix 1, when appropriate,

Hereafter “the **Member**”

ON THE OTHER HAND.

SCRELEC and the Member shall be referred to hereinafter separately as a “**Party**” and together as the “**Parties**”.

WHEREAS:

Pursuant to Articles R 543-124 to R 543-134 of the Environmental Code, any natural person or legal entity located on the national territory that places portable batteries or accumulators on the market on the national territory for the first time in a professional capacity (“the Producer”), regardless of the sale techniques used, including means of distance communication, shall be obliged to take back or cause to be taken back waste batteries and accumulators and to treat them or arrange for their treatment.

This obligation also applies to any person that incorporates portable batteries or accumulators in electrical or electronic equipment.

Producers satisfy their obligations, prorata the tonnage of portable batteries and accumulators that they place on the market on the national territory, either by setting up an individual system or by joining and contributing financially to an authorised environmental body.

SCRELEC was created on 13 April 1999 by operators in the electrical and electronics sectors to organise the collection and treatment of used portable batteries and accumulators.

SCRELEC was authorised by an interministerial order of the Minister of Ecology, Sustainable Development and the Sea in charge of green technologies and negotiations on climate and of the Minister of the Economy, Industry and Employment for a period from 22 December 2009 until 31 December 2015.

By an interministerial order of 24 December 2015 published in the French Official Journal dated 30 December 2015, SCRELEC’s authorisation was renewed for the period from 1 January 2016 to 31 December 2021.

Consequently, SCRELEC offers to discharge Producers’ collection and treatment responsibilities on their behalf, in exchange for a financial contribution.

SCRELEC, which obtained its ISO 14001 certification on 27 July 2015, aims to be a responsible operator in the portable battery and accumulator sector, working in partnership with all other stakeholders. SCRELEC’s environmental policy is available on its website at www.screlec.fr (the “Site”).

The Member wishes to join and contribute financially to an approved body, both on its own behalf and on behalf of any of the natural persons or legal entities listed, when appropriate in Appendix 1 (the “Principals”), and has selected SCRELEC to discharge its waste collection and treatment responsibilities.

It is in this context that the Parties came together to enter into this contract (the “Contract”).

WHEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

ARTICLE 1 - CONTRACT PURPOSE

The purpose of the Contract is to allow the Member to discharge its legal obligations in accordance with the provisions of Article R. 543-128-3 of the Environmental Code, provided it reports the quantities of the Products placed on the market and subject to full payment of its Contribution to SCRELEC.

“Products” shall mean new portable batteries and accumulators placed on the national market, namely, according to the wording of Article R 543-125 of the Environmental Code, *“any battery, button cell, battery pack or accumulator that is sealed and that can be hand-carried and is neither an industrial battery or accumulator nor an automotive battery or accumulator”*.

“Contribution” shall mean the financial contribution paid by a Member to SCRELEC in year N under the terms of Article 4 of the Contract.

An additional purpose of the Contract is to set out the respective obligations of the Parties and determine the rules for use of the “Omega” extranet (the “Extranet”) made available to the Member on the Site.

ARTICLE 2 - OBLIGATIONS OF THE PARTIES

2.1 The Member’s obligations

2.1.1 During its membership and during the entire term of the Contract, the Member undertakes to provide SCRELEC with complete and accurate information and to keep it updated immediately, namely as regards the list of Principals listed in Appendix 1, when appropriate.

“Report” shall mean the Member’s reports regarding the quantity of Products placed on the market in year N-1 (and in years N-2 and N-3 if the provisions of Article 2.1.3 apply to the Member) by the Member and, if applicable, by its Principals.

2.1.2 The access codes provided to the Member to enable it to log in to the Extranet are private and confidential.

Consequently, the Member shall be fully responsible and liable for the use of the access codes provided to it.

Any log-in to the Site and/or data transmission using the Member’s access codes shall be deemed to have been performed by the Member itself.

2.1.3 When the Member joins, it undertakes to provide SCRELEC with a Report stating the quantities of Products placed on the market in year N-1, within a period of 30 days as from the date the Member signs the Contract.

In addition, the Member must, if the provisions below are applicable to it:

- (i) also provide SCRELEC, within the same 30-day period referred to in the above paragraph, with the Reports regarding Products placed on the market in years N-2 and N-3 that it has not previously reported, and
- (ii) pay the corresponding Contributions, calculated on the basis of the scale in force on the date on which they should have been effectively paid by the Member.

This obligation shall not apply to the quantity of contributing Products that are the subject matter of a contract with another authorised environmental body or covered by an individual system approved for the Sector.

2.1.4 For the following years, the Member shall use the Extranet to submit its Report stating the quantities of Products placed on the market in year N-1 , in accordance with the procedure and instructions given to it by SCRELEC by no later than the date in year N indicated by SCRELEC.

2.1.5 Following each Report, the Member shall arrange for a certificate of compliance to be drawn up by one of its duly authorised legal representatives, its statutory auditor or its chartered accountant, certifying the quantity of the Products reported.

2.1.6 The Member undertakes to pay the Contribution according to the terms of Article 4 of the Contract.

2.1.7 The Member undertakes to comply with the applicable regulations, and in particular with the regulations on employment, health and safety.

The Member also undertakes to comply with all its obligations contained in SCRELEC's Specifications (*cahier des charges*), and represents that it is fully aware thereof.

2.1.8 It also undertakes to use its best efforts to adhere to the guidelines of the SCRELEC's environmental policy that is presented on the Site.

2.2 SCRELEC's obligations

During the entire term of performance of the Contract, SCRELEC undertakes to:

- Make available to the Member a specific Extranet to enable it *inter alia* to monitor the performance of the Contract and to facilitate exchanges between the Parties. The Extranet also includes a dedicated space for the Member to access various information and documents applicable to it.
- Satisfy the obligations arising from its approval, as reiterated in its Specifications.

Consequently, SCRELEC must register the Member in the register maintained by ADEME (the French environment and energy management agency) in accordance with Article R. 543-132 of the Environmental Code.

SCRELEC also undertakes to provide ADEME, on behalf of the Member, with all the information that the latter is obliged to provide it with pursuant to the order of 18 November 2009, as amended, on the registration and reporting procedure with the national register for batteries and accumulators, adopted to implement Article R. 543-132 of the Environmental Code, and in particular with the information on the placing of the Products on the market.

- Keep confidential and therefore not to disclose to any third party, any documents, information or data that the Member may have disclosed to it in connection with the Contract. Any disclosure may only take place with the joint, written agreement of the parties unless such disclosure is required pursuant to the provisions related to statistical reporting contained in SCRELEC's Specifications or by the law or regulations or for the purposes of legal proceedings.
- Provide the Member with confirmation of payment of its Contribution each year.
- Inform the Member of SCRELEC's actions as an authorised body.

ARTICLE 3 - TERM AND ENTRY INTO EFFECT OF THE CONTRACT

3.1 The Contract shall be entered into for a fixed term, beginning retroactively on 1 January of the year in which the Contract is signed by the Member and expiring on 31 December of the same year.

Upon expiry of that period, it shall be renewed tacitly for one or more periods of 12 (twelve) months each, unless it is terminated by either Party by registered letter with acknowledgement of receipt sent no later than 3 (three) months before expiry of the current period.

If the Contract is not renewed, the Parties expressly agree that notwithstanding its expiry, the Member must report and pay the Contribution corresponding to the Products placed on the market during the last year of the Contract's performance.

3.2 It is expressly agreed that non-renewal of the Contract on any expiry date shall not entitle either party to any compensation whatsoever.

ARTICLE 4 - CONTRIBUTION

4.1 General principle

The Member shall report the quantities of the Products placed on the market in year N-1 by itself and, if applicable, by all of its Principals, and shall pay a Contribution therefor.

The Reports shall be submitted by the Member via the Extranet according to the procedure indicated by SCRELEC. A category (battery or accumulator) and an electro-chemical pair shall be applied to each Product, with a corresponding Contribution according to a scale of unit contributions (the "Scale").

For the following years, the Scale may be modified by SCRELEC under the terms of Article 4.2.

4.2 Scale review

The Scale shall be set by SCRELEC's Board of Directors based on the resources it requires to achieve the objectives set out in its Specifications.

It may be reviewed for each Contribution year. If the Scale is modified, the new Scale shall apply to the Member from 1 January of the relevant Contribution year.

The new Scale shall be made public after it has been communicated to the Ministries that signed SCRELEC's authorisation and to the government controller (*le Censeur d'Etat*), by displaying it on the Site at least 3 (three) months before it comes into effect, together with the reasons for its modification.

4.3 Contribution payment procedure

4.3.1 General principle

The Contribution shall be paid in part as quarterly advances calculated by application of the Scale in effect in year N to a base representing one-quarter of the quantities of Products reported by the Member in its last Report sent to SCRELEC.

The provisional Contribution calculated according to the above method for each calendar year shall be invoiced by SCRELEC to the Member in accordance with the following timetable:

- no later than 31 December in year N-1 for quarterly advance no 1
- no later than 31 March in year N for quarterly advance no 2
- no later than 30 June in year N for quarterly advance no 3
- no later than 30 September in year N for quarterly advance no 4

As an express exception to the provisions of the above two paragraphs and regardless of the quantity of Products reported, the Member's Contribution may not be less than 150 (one hundred fifty) euros exclusive of tax ("the Flat Contribution"). In that case, the Member shall be invoiced a one single annual advance by no later than 30 June in year N.

4.3.2 Adjustment

When SCRELEC receives in the first quarter of year N the Report stating the quantities of Products placed on the market in year N-1, it shall adjust the amount of the Contribution owed by the Member for year N after deduction of the quarterly advances already paid or the annual advance of the Flat Contribution.

An invoice shall be issued when the amount of the Contribution is adjusted in this way.

If the total amount of quarterly advances received by SCRELEC is greater than the amount actually owed by the Member, the excess shall be charged against the amount of quarterly advances for the next year.

However, if the Member is no longer required to pay any further advances to SCRELEC, the latter undertakes to issue it a refund for the excess within a period of 30 days as from receipt of its request for a refund.

4.3.3 Due date

SCRELEC shall issue separate invoices for the quarterly advances, the Flat Contribution and the annual adjustment of the Contribution; the Member must pay them within 30 (thirty) days of the end of the month.

4.3.4 Terms of payment

As a rule, the invoices issued by SCRELEC shall be paid by bank transfer.

However, the Member may make payments by cheque with the prior written agreement of SCRELEC.

No discount shall be granted for cash payment.

4.3.5 Member's failure to pay

If the invoices are not paid when due, SCRELEC reserves the right to suspend the Member's membership automatically, in which case suspension shall not constitute a tort incurring SCRELEC's liability or entitling the Member to any discount or compensation.

In addition, any amount not paid as from the due date of the corresponding invoice shall give rise to the automatic application, without prior formal notice, of:

- late-payment interest at a rate corresponding to three times the current legal interest rate, pursuant to the provisions of Article L 441-6 of the French Commercial Code (*Code commercial*). Interest shall accrue as from the payment date stated on the invoice until payment in full. Any month begun shall be owed in full.
- a fixed payment of 40 euros to cover collection expenses, without prejudice to SCRELEC's right to require additional compensation if the collection costs incurred by it exceed the fixed amount.

Article 5 below may, if need be, apply in addition to and without prejudice to the provisions of this article.

4.3.6 Late Reports

In the event Reports are filed late, the Member shall be required to pay, by way of the adjustment, the Contributions owed up to the last three financial years (i.e. the financial year during which the Member files a Report for the tonnage of Products placed on the market during the previous year plus the two previous financial years).

4.4 Audits

To ensure fairness between Members, SCRELEC may, at any time during the performance of the Contract and for a period of (1) year after its expiry or termination for any reason whatsoever, verify the Member's Reports directly or arrange for an auditor to do so; the Member must provide SCRELEC or its auditor with all the necessary documents for the audit, namely all statements, invoices, accounting documents and certificates that prove compliance by the Member with the provisions of Article 2.1.

Any audit that identifies a difference, regardless of its amount, with the figures communicated by the Member in its Reports, shall require SCRELEC to invoice an additional adjustment.

In the event of the Member's bad faith, the late-payment interest referred to in Article 4.3.5 shall be added to said adjustment; the late-payment interest shall accrue from the date on which said payment should have been made until it is paid in full.

ARTICLE 5 - EARLY TERMINATION OF THE CONTRACT

5.1 Failure by either Party to comply with any of the clauses of the Contract shall entitle the other Party to terminate the Contract automatically without the need for legal action, 30 (thirty) days after it has sent a demand to comply by registered letter with acknowledgement of receipt that has remained without effect; the injured Party may also petition the courts for compensation for loss or damage suffered.

The Contract shall also be terminated as of right in the event of the withdrawal or non-renewal of SCRELEC's authorisation, without any compensation of any kind being owed by either party.

5.2 If the Contract is terminated early for any reason whatsoever and regardless of the Party terminating it, the Parties expressly agree that termination shall only take effect on the date of payment by the Member of the Contributions for the Products placed on the market up to the termination date of the Contract.

ARTICLE 6 – INTELLECTUAL PROPERTY

6.1 SCRELEC is the sole owner of the intellectual property rights to its brands and logos.

However, the Member shall have the right, during the term of performance of the Contract only, to mention on its Products and packaging that they are collected and recycled by SCRELEC.

If the Member wishes to exercise this right, it must inform SCRELEC thereof and obtain its prior written consent.

6.2 The Member authorises SCRELEC to cite the Member's company name and logo in its institutional communications and as a business reference (in its presentation brochures, annual reports, etc.) during the entire term of performance of the Contract.

ARTICLE 7 – INTUITU PERSONAE

7.1 The Contract is entered into with the Member only; consequently, it may not be assigned or transferred in any manner whatsoever without SCRELEC's prior written consent.

However, the Contract shall be transferred automatically in the event of the transfer of all the Member's assets and liabilities, namely by merger or de-merger, to the merging company or to the beneficiary companies.

7.2 The Parties expressly agree and the Member accepts that any amendment of any kind whatsoever relating to SCRELEC shall have no impact on the validity or performance of the Contract.

ARTICLE 8 - PROOF OF TRANSACTIONS

It is expressly agreed that the e-mails and their attachments sent and received by the Parties and the data uploaded by the Member via the Extranet shall also constitute proof of the transactions conducted between the Member and SCRELEC.

ARTICLE 9 – ACCESS TO THE EXTRANET SITE

SCRELEC shall use its best efforts to secure access to and viewing and use of the Extranet and the Site in accordance with Internet usage rules, namely regarding protection against viruses.

The Extranet may be accessed 24/7 except in the event of force majeure or the occurrence of an event beyond the control of SCRELEC, and subject to any failures affecting the Site and the maintenance operations necessary for it to operate properly.

Maintenance operations may be carried out without first notifying the Member thereof.

The Member represents that it accepts the characteristics and limits of the Internet; in particular, it acknowledges that:

- it is responsible for taking all the necessary steps to ensure that the technical characteristics of its equipment enable it to view the Extranet and the Site and upload and download data;
- it is familiar with the nature of the Internet, in particular, its technical performance and the response times necessary to view, query or upload and download information;
- it is responsible for taking all the steps necessary to protect its own data and/or software against contamination by any virus circulating throughout the Extranet and the Site;
- it shall be solely liable for its use of the Extranet and the Site; the Extranet and the Site are accessible “as is” and depending on their availability;
- it shall be solely liable for its uploads and downloads and any harm caused to its computer and/or any loss of data caused by its uploads and downloads or, generally, viewing of the Extranet and the Site;
- it shall be liable for the disclosure of its access codes or, generally, of any information deemed confidential.

ARTICLE 10 – PERSONAL DATA

SCRELEC complies strictly with the laws in force on privacy and individual freedoms.

However, the Member agrees that its personal information and data are necessary to manage its membership and perform the Contract and that they may therefore be stored by SCRELEC.

For this purpose, the personal data and information disclosed by the Member are intended solely for SCRELEC’s members and accounting departments, without prejudice to the application of Article 2.2.

They shall under no circumstances be shared with third parties for advertising or promotional purposes without the Member’s prior consent.

Pursuant to the provisions of the French Data Protection Act no 78-17 of 6 January 1978, as amended by the Data Protection Act no 2004-801 of 7 August 2004, the Member has the right to object to,

access, rectify and delete its personal data. The Member may exercise this right at any time by sending an e-mail to SCRELEC at adherents@screelec.fr.

ARTICLE 11 - GENERAL PROVISIONS

11.1 By express agreement between the Parties, the Contract supersedes any prior agreement, arrangement or contract, whether written or oral, concluded between the Parties that relates to the purpose hereof.

11.2 The Contract's recitals and appendice 1, when applicable, are an integral part hereof and are inseparable herefrom.

11.3 In the event of the nullity of any one of the Contract's provisions, the Parties shall strive in good faith to agree on an equivalent lawful provision. In any event, all the other provisions shall remain in effect.

11.4 Any amendment to any stipulation contained in the Contract must be recorded in writing and signed by both Parties.

11.5 Any acquiescence or repeated acquiescence on the part of SCRELEC shall not constitute its waiver of any of the provisions stipulated above.

ARTICLE 12 – FORCE MAJEURE

Neither Party shall be liable if the performance of the Contract is suspended, delayed or prevented owing to an event of force majeure or an unforeseen event, by the other Party or a third party for reasons beyond its control, such as labour disputes, intervention by civil or military authorities, natural disasters, fire, water damage or the failure of the telecommunications or electricity networks.

The Party that intends to rely on such an event of force majeure must immediately inform the other Party thereof by any method, confirming said information by registered letter with acknowledgement of receipt within 15 (fifteen) days.

If, owing to an event of force majeure, one of the Parties must suspend performance of the Contract, suspension may not last more than 30 (thirty) days; otherwise, the other Party shall be entitled to terminate the Contract as of right without payment of compensation by either Party.

ARTICLE 13 – GOVERNING LAW - JURISDICTION

13.1 The Contract shall be governed by French law.

13.2 The courts within the remit of the Paris Court of Appeal shall have sole jurisdiction over any dispute to which the Contract may give rise, including in the event of introduction of third parties or multiple defendants.



ARTICLE 14 – ADDRESS FOR SERVICE

For the performance hereof and for any proceedings to which the Contract may give rise, the Parties elect their registered office or the address stated at the beginning hereof as their address for service.

Changes of address shall only be binding as from receipt of notice by registered letter with acknowledgement of receipt.

Executed in two originals, in Paris, on

For SCRELEC
Mr Emmanuel Toussaint Dauvergne
Managing Director

For The Member
Surname, Name
Position.....