



Membership Agreement New Brunswick

Make every drop count

(New Brunswick January 01, 2014 v.2)

(Including the modifications to Schedule I as of July 1st, 2018)

MEMBERSHIP AGREEMENT:

BETWEEN : **SOCIÉTÉ DE GESTION DES HUILES USAGÉES de l'Atlantique – Atlantic USED OIL MANAGEMENT ASSOCIATION**, a company constituted under Part I of the *Companies Act*, having its principal place of business at 277 Main Street, Second Floor, Fredericton, New Brunswick, represented by Jean Duchesneau, its General Manager, duly authorized to act herein;

(hereinafter called “UOMA NB”)

AND : _____ a legal person duly constituted under the _____ [or a partnership or unconstituted entity] having its principal place of business at _____, represented herein by _____, its _____, duly authorized to act herein as he/she so declares;

(hereinafter called the “**Member**”)

PREAMBLE

THE PARTIES DECLARE AS FOLLOWS:

WHEREAS UOMA NB has been constituted and recognized by Recycle New Brunswick to represent its Members that are subject to the new Regulation and for the purposes of implementing and managing a Oil & Glycol Product Stewardship Plan within the territory of the Province of New Brunswick, in accordance with this new Regulation;

WHEREAS the Member is a Brand Owner in New Brunswick (as defined herein); and

WHEREAS the Member wishes to join UOMA NB for the purposes of satisfying the requirements of the Regulation (as defined herein)

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THE PARTIES AGREE AS FOLLOWS:

1. Definitions

The following words mean or define:

- (i) **Act:** means the New Brunswick Clean Environment Act (O.C. 2012 – 333), as amended or replaced and the regulations made thereunder;
- (ii) **Approval:** means the Approval entered between Recycle New Brunswick and UOMA NB, recognizing UOMA NB as a body authorized to implement and manage a Product Stewardship Plan on behalf of its Members for the purposes of the applicable legislation and regulations;
- (iii) **Brand Owner:**
 - manufactures oil, oil filters or glycol in the Province and sells, offers for sale or distributes the oil, oil filters or glycol in the Province,
 - is the owner or licensee in the Province of a registered or unregistered trademark under which oil, oil filters or glycol is sold, offered for sale or distributed in the Province,
 - brings oil, oil filters or glycol into the Province for sale or distribution, or
 - brings oil, oil filters or glycol into the Province for use in a commercial enterprise
- (iv) **Container:** means a container with a capacity of 50 liters or less, made of plastic or other material, including aerosol containers, as described in the Regulation;
- (v) **Environmental Handling Charge:** means the contribution paid to UOMA NB by its Members, as established by UOMA NB ;
- (vi) **Environmental Handling Charges Schedule:** means the amounts of Environmental Handling Charges that must be paid quarterly on the Products, and all conditions pertaining thereto, the whole as described in Schedule 1 hereof, which Schedule may be amended from time to time, as stipulated in the Membership Agreement;
- (vii) **Filter:** “oil filter” means
 - (a) a spin-on style or element style fluid filter that is used in hydraulic, transmission or internal combustion engine applications, and
 - (b) an oil filter, a diesel fuel filter, a storage tank fuel filter and a household furnace oil filter other than a gasoline filter.
- (viii) **Mandatory Contributor:** means an entity which, although not subject to the Regulation, is a Member of UOMA NB , both in its own name and on behalf of the enterprises that it represents which must be registered with UOMA NB , reports the quantities of products described in the Approval that are offered on

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the New Brunswick market, and pays the System-related fees on behalf of the enterprises and municipalities that are subject to the Regulation;

(ix) **Member:**

- manufactures oil, oil filters or glycol in the Province and sells, offers for sale or distributes the oil, oil filters or glycol in the Province,
- is the owner or licensee in the Province of a registered or unregistered trademark under which oil, oil filters or glycol is sold, offered for sale or distributed in the Province,
- brings oil, oil filters or glycol into the Province for sale or distribution, or
- brings oil, oil filters or glycol into the Province for use in a commercial enterprise

Note: Mandatory Contributors that join UOMA NB in accordance with their own internal bylaws are also Members.

(x) **Membership Agreement:** means this Membership Agreement entered into between the Member and UOMA NB , including any Product Addendum or other addendum or schedule made in accordance with the terms and conditions of the Membership Agreement;

(xi) **Minister and Department:** means, as the case may be, the Minister of the New Brunswick Department of the Environment and Local Government, or any other successor Minister or Department;

(xii) **Products:** means all the products put on the market in New Brunswick, acquired and made by the Members and mentioned in the New Brunswick *Clean Environment Act* ((O.C. 2012-33) – Designated Material – Oil, Oil Filters and Glycol) as well as by the Approval ;

(xiii) **Product Addendum:** means a supplemental agreement whereby UOMA NB and a Member identify any other Product that they agree to include in the Membership Agreement and any applicable conditions, as the case may be, (subsequent to the signing of this Agreement);

(xiv) **Regulation:** means the Regulation as cited as the *Designated Materials Regulation – Clean Environment Act*, and

(xv) **Supplier:** means a person who, in the course of doing business, supplies the Products.

2. Obligations of UOMA NB

2.1 UOMA NB undertakes to implement and manage an Oil & Glycol Product Stewardship Plan and any other program, plan or measure in compliance with the Act, the Regulation or any other applicable legislation and regulations, working with Collectors who are duly registered with UOMA NB.

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- 2.2 UOMA NB undertakes to implement and manage a recovery and reclamation system for any other Product, as determined by the Regulation and/or its Board of Directors in respect of which a Member has signed the Membership Agreement or a *Product Addendum* with UOMA NB.
- 2.3 UOMA NB undertakes to implement and manage an information, awareness and education program for users and consumers about the Products, in compliance with the Regulation.
- 2.4 Except as provided herein, UOMA NB undertakes not to disclose any confidential document or information received from Members. UOMA NB may, however, transmit any document or information to Recycle New Brunswick or to the Minister or to people authorized by the Department, or when such transmission is required by any legislation or by a judicial or quasi-judicial authority.

3. *Obligations of the Member*

- 3.1 Unless otherwise authorized by UOMA NB the Member agrees to transmit to UOMA NB electronically, within thirty (30) days of the end of each quarter of the year, the detailed quantities for each Product it markets in the Province of New Brunswick, as required by UOMA NB in the course of each of these periods.
- 3.2 In consideration of its membership in UOMA NB the Member agrees to remit the following amounts to UOMA NB:
 - a) membership fees in the amount of \$200 (plus applicable taxes) as they may be set or amended from time to time by the Board of Directors of UOMA NB;
 - b) the Environmental Handling Charges (plus applicable taxes), based on the volume of Products sold or supplied or imported for its use by the Member in the Province of New Brunswick, as determined by UOMA NB in Schedule 1 hereof and amended from time to time. UOMA NB will send the Member ninety (90) days' written notice of any amendment to Schedule 1 hereof with respect to the Environmental Handling Charges.
 - c) any other charge and interest that UOMA NB may bill to the Member under this Membership Agreement.
- 3.3 The Environmental Handling Charges are to be paid by the Member and received by UOMA NB on a calendar year quarterly basis within thirty (30) days of the end of the quarter, unless otherwise authorized by UOMA NB.
- 3.4 In the event that the Member omits or fails to pay the amounts due hereunder when due, the Member will have to pay the charges and interest on the arrears as determined in Schedule 1 hereof respecting the Environmental Handling Charges, in accordance with paragraph 3.2(c).
- 3.5 In the event that a Member's total Environmental Handling Charge during the calendar year for which an Environmental Handling Charge is payable to UOMA NB is \$2,000.00 or less, and no arrears are due to UOMA NB, in subsequent years, the Member may pay the Environmental Handling Charge in a single

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payment to UOMA NB, provided the Member has given prior notice to UOMA NB of its intention to do so. Such prior notice must be received by UOMA NB no later than March 31 following the year when the amount of the Environmental Handling Charges paid was less than \$2,000.00. The Member must pay the Environmental Handling Charge in a single payment within thirty (30) days after the end of the applicable calendar year.

- 3.6 If the Member did not honor its recovery and reclamation obligations as set out in the Regulation before joining UOMA NB, the Member agrees to remit to UOMA NB within thirty (30) days of signing this Agreement and/or any *Product Addendum*, the Environmental Handling Charges on all Products sold or supplied since the effective date of the *Regulation (Designated Materials Regulation – Clean Environment Act respecting recovery and recycling of used oils, oil or fluid containers and used filters*, under the New Brunswick Regulation 2012-92 - Clean Environment Act (O.C. 2012-333) filed October 31, 2012, and/or the date when the Member becomes a Member of UOMA NB with respect to such Product(s). However, the calculation of such payment will be retroactive for no longer than seven (7) years from the date the Member joins UOMA NB with respect to such Product(s).
- 3.7 Despite the foregoing conditions concerning the transmission of data on the quantities for each Product marketed by Members in the Province of New Brunswick and the total capacity of Containers used for the Products and the data on the payment of the Environmental Handling Charge, UOMA NB and the Member acknowledge and agree that no data transmission and no Environmental Handling Charge will be required when a Member sells a Product to another Member in good standing for marketing in New Brunswick, or when the Product is sold and shipped out of New Brunswick for use outside of New Brunswick, provided the Member observes the following conditions:
- a) Members who are parties to such a Product sale between them must agree in writing on which Member will be responsible for transmitting data and paying the Environmental Handling Charge to UOMA NB when the Product is marketed or intended to be marketed in New Brunswick, (the choice being up to the downstream Member, since the regulatory obligation is incumbent on the upstream Member), with the Members acknowledging that in the absence of proof of such agreement, UOMA NB is entitled, at its sole discretion, to require transmission of the data and to collect the applicable Environmental Handling Charge from any Member who has marketed the Product in New Brunswick, or any other Member who is a party to such sale of the Product (see the model agreement between Members at www.uoma-atlantic.com, New Brunswick Member section, dropdown pdf); and
 - b) when the Product which is the object of such sale in New Brunswick is to be used in another province that has a similar regulatory Product recovery and reclamation program, the Member making such sale must ensure that its agreement with the purchaser of the Product provides for data transmission and payment of any Environmental Handling Charge to the appropriate management body, as applicable.

- 3.8 UOMA NB manages its funds in such a way that a separate accounting is maintained for the revenues and expenses for each Product category. UOMA NB's objective is to use the Environmental Handling Charges disbursed *for each product* to fund compliance with the Act and the applicable Regulation, including its recovery, collection, recycling and reclamation and its proportional share of UOMA NB's administration and program costs. However, the Member acknowledges that UOMA NB, while maintaining a separate accounting, may use the Environmental Handling Charges generated by one Product to fund the recovery and reclamation of another Product to the extent authorized by its Board of Directors, in the best interests of UOMA NB and of all of its Members and for protection of the environment.
- 3.9 UOMA NB must also set up a reserve fund equivalent to one year of operations. The said fund is to be constituted gradually over the years from accumulated surpluses while the system is being implemented and developed.

4. **Funding of the Costs**

- 4.1 The Member acknowledges and agrees that the amounts collected by UOMA NB from its Members will be used to fund all costs, programs, creation of a Reserve Fund and activities set up by UOMA NB, in particular:
- a) information, awareness and education campaigns;
 - b) subsidies payable to Collection Facilities and/or Collectors and/or Processors;
 - c) subsidies payable for reclamation of the Products, research and development;
 - d) UOMA NB's management fees and any other UOMA NB administration fees covered by this Membership Agreement and any financial contribution, tax or duty imposed by a government authority;
 - e) UOMA NB's annual financial contribution to Recycle New Brunswick or to any other successor body, government corporation, government department or government authority; and
 - f) any other plan or program provided for by the Regulation.

5. **Compliance review:**

- 5.1 The Member agrees to keep complete, accurate and up-to-date books and records of all the operations and information required under the terms of the Regulation regarding Products and payment of the Environmental Handling Charges, for seven (7) years or any other time period provided in the Regulation and any applicable legislation.
- 5.2 The Member agrees that, in order to meet the requirements of the Regulation regarding the compliance review of the information required by the Regulation, UOMA NB and/or Recycle NB, or any other body, government corporation, government department or government authority having jurisdiction, their

auditors or other duly authorized representatives, shall have full access, during normal business hours, to the place of business and to the books and records of the Member or to the place where the books and records of the Member are kept and to any other document or information required to complete the compliance review required by the By-Laws, and the Member also agrees that UOMA NB or the government authority shall have the right to take a copy of such documents at the Member's expense, for the duration of the Agreement, and for two (2) years following the termination, resiliation or cancellation of the Membership Agreement or of any renewal thereof, as the case may be.

- 5.3 Subject to subsection 5.2, compliance reviews are to be conducted at UOMA NB's expense, unless significant errors or omissions (representing 10% or more of any amount paid or any information given by the Member) are demonstrated to UOMA NB's satisfaction following such compliance review, in which case the Member will have to immediately pay the following amounts to UOMA NB, to which all applicable taxes will be added:
- a) the Environmental Handling Charges due;
 - b) the compliance review expenses (if the error or omission is over 10%);
 - c) administration charges over and above the compliance review expenses, as the case may be, corresponding to 20% of the Environmental Handling Charges due; and
 - d) in cases where the Member delays the settlement of amounts due to UOMA NB to the calendar year following the compliance review, administration charges and interest will be charged to the Member.

6. **Term of the Agreement**

- 6.1 The Member agrees that upon signing the Membership Agreement and paying the membership fees, it will become a Member of UOMA NB, in good standing, in compliance with the Regulation and the terms and conditions of the Agreement.
- 6.2 If the Member gives UOMA NB written notice of its intention to withdraw, the Member's withdrawal will take effect at the end of the last day of the 3rd full month after receipt of the notice. Upon receipt of the notice of withdrawal, UOMA NB, may request a compliance review of the Member's books and records.
- 6.3 The Member agrees that UOMA NB will send a list of the enterprises which have signed a Membership Agreement with UOMA NB, or which have withdrawn from UOMA NB, to Recycle New Brunswick or any other successor body, government corporation or government authority having jurisdiction. Such body, government corporation or government authority may transmit the said information to the Minister, if applicable, in accordance with the Act.
- 6.4 UOMA NB, has the right to terminate the Membership Agreement unilaterally in the event of the Member's bankruptcy or insolvency, or if the Member fails to pay the Environmental Handling Charge for two (2) consecutive quarters, or in the event of a material or repeated breach of its obligations hereunder.

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7. **Posting and Internalization**

In compliance with applicable legislation and the Regulation, the Member undertakes to obey the provisions of the New Brunswick Regulation 2012-92 - Clean Environment Act (O.C. 2012-333) with regard to the posting of the selling price of the Products it markets and the rules respecting the internalization of the Environmental Handling Charge. Thus, no retailer, brand owner or wholesaler shall charge a consumer, or make visible on a consumer's receipt of sale, a separate fee with respect to the costs associated with implementing or operating an oil and glycol stewardship plan. A brand owner is not prohibited from showing the fee referred to a retailer or wholesaler.

8. **Amendments**

- 8.1 The Membership Agreement and any *Product Addendum* attached thereto may be changed or amended in whole or in part, with the sole consent of the directors of UOMA NB. Any change or amendment will come into effect following a 90-day notice to the Members. To remain in effect, however, all amendments will have to be ratified at the next General Meeting of the Members, duly called. In the event that such amendments are not ratified at that meeting they will cease to be in effect, but only as of the date of the General Meeting of the Members.

9. **Final Provisions**

- 9.1 The Membership Agreement binds the Parties and their successors, heirs, legatees, assigns and other respective legal representatives and their beneficiaries.
- 9.2 The Member may not in any way assign, encumber, alienate or subcontract, in whole or in part, the rights and obligations resulting from the Membership Agreement for a purpose not specifically set out in the Membership Agreement without the written consent of UOMA NB . In the event of an assignment the Member will remain liable for the obligations incumbent upon it under the terms of the Membership Agreement, jointly and severally with any assignee, even in the event of bankruptcy or insolvency of the assignee. All documents transmitted by the Member to UOMA NB will be submitted for information, review and verification purposes.
- 9.3 All the rights described herein are cumulative and not alternative. Members cannot be discharged from their obligations under the terms of the Membership Agreement by the fact that UOMA NB remains silent or delays the exercise of a right or remedy granted to it under the Membership Agreement; such silence or delay is never to be interpreted against UOMA NB as an exemption or waiver of the full exercise of its rights and remedies, provided the legal prescription period for the exercise of any such right has not expired.
- 9.4 The preamble and any document appended to the Membership Agreement form an integral part thereof.
- 9.5 Any contested claim arising from the Membership Agreement, any disagreement with regard to its performance, including its nullification or termination, and any

dispute arising from a problem of interpretation of the Membership Agreement is to be submitted to arbitration, to the exclusion of the law courts.

- 9.6 The Parties hereto agree that, subject to any written agreement to the contrary between the parties providing for a dispute resolution process, the provisions currently in effect of the New Brunswick *Arbitration Act*, SNB 1992, c A-10.1, will govern any arbitration held hereunder.
- 9.7 Any notice required under the Membership Agreement will be sufficient if it is in writing and sent by a method of communication which allows the sending party to prove that the said notice was actually delivered to the addressee party at the address indicated at the beginning of the Agreement or at any other address or electronic address which the latter may make known in accordance with this section.
- 9.8 The Membership Agreement, its interpretation, performance, application, validity and effects shall be subject to the applicable laws in effect in the Province of New Brunswick and in Canada, which govern all of the provisions it contains in whole or in part.
- 9.9 Any provision of the Membership Agreement not in accordance with the legislation shall be deemed null and void to the extent that it is prohibited by any law. The same applies for all clauses subordinated or related to such provision to the extent that their applicability depends on the said provision.

THE MEMBER :

(print company name)

Signature :

(print representative's name)

(print representative's title)

Date : _____

**SOCIÉTÉ DE GESTION DES HUILES USAGÉES
de l'Atlantique – Atlantic USED OIL
MANAGEMENT ASSOCIATION**

(UOMA NB) :

Signature :

Jean Duchesneau
(print representative's name)

General Manager
(print representative's title)

Date : _____

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SCHEDULE 1

(Including the modifications of July 1st, 2018)

Schedule of Environmental Handling Charges

Amounts of Environmental Handling Charges

- a) \$0.03 (as of July 1st, 2018) per liter for lubricating oils
- b) \$0.10 per liter of capacity of oil containers containers of 50 liters or less
- c) \$0.25 per aerosol container
- d) \$0.50 per filter of less than 8 inches or 203 mm, and \$1.00 per filter of 8 inches or 203 mm or more
- e) \$0.50 per sump type automatic transmission filter, regardless of size
- f) \$0.08 (as of July 1st, 2018) per liter of mixed antifreeze
- g) \$0.12 (as of July 1st, 2018) per liter of concentrated antifreeze
- h) \$0.10 per liter of capacity of antifreeze containers of 50 liters or less
- i) \$0.17 per liter of capacity of non-Metal or non HDPE oil containers and antifreeze (glycol) containers of 50 liters or less

Remittances of Environmental Handling Charges on the Electronic Form at www.uoma-atlantic.com

- 1) The Member must pay the Environmental Handling Charges to UOMA NB every quarter, using the electronic form at www.uoma-atlantic.com, Member section, on the following dates:
 - a) January to March by April 30
 - b) April to June by July 30
 - c) July to September by October 30
 - d) October to December by January 30
- 2) The Member must send to UOMA NB their Environmental Handling Charges as indicated on the electronic form, in the Member section of the website at www.uoma-atlantic.com.
 - a) by cheque payable to UOMA NB

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- b) by electronic transfer from the Member's account to Société de gestion des huiles usagées de l'Atlantique / Atlantic used oil management association (details available from UOMA NB)

NOTE: Please indicate for which province

- 3) Remittance forms and the amounts remitted are to be kept strictly confidential.

Administration charges and interest will apply as follows on late payments:

- a) First level of administration charges – \$100.00 will be charged for any reminder letter sent to the late payers after the 30th day when the Environmental Handling Charge is due.
- b) Second level of administration charges – \$200.00 will be added to the first level amount and included in the notification letter to be sent 10 business days after the reminder letter.
- c) Third level – \$625.00 will be added to the first and second level amounts and included in the notice to institute proceedings in Small Claims Court (up to its maximum amount) or more, if necessary. Interest of 1% per month will be charged on the late amount of Environmental Handling Charges, which is equivalent to 12.68% interest compounded annually.

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**PRODUCT ADDENDUM (subsequent to the signing of the Membership Agreement
on “Designated Material Regulation - Clean Environment Act ”)**

Product Addendum made at _____ on _____, _____.

BETWEEN : **SOCIÉTÉ DE GESTION DES HUILES USAGÉES de l’Atlantique – Atlantic USED OIL MANAGEMENT ASSOCIATION**, a company constituted under Part III of the *Companies Act*, having its principal place of business at 277, Main Street, Second Floor, Fredericton, New Brunswick, represented by Jean Duchesneau, its General Manager, duly authorized to act herein;

(hereinafter called «UOMA NB»)

AND : _____ a legal person duly constituted under the _____ [or a partnership or unconstituted entity] having its principal place of business at _____, represented herein by _____, its _____, duly authorized to act herein as he/she so declares;

(hereinafter called the “**Member**”)

WHEREAS UOMA NB has been constituted and recognized by Recycle New Brunswick to represent its members that are subject to the new Regulation and for the purposes of implementing and managing a Oil & Glycol Product Stewardship Plan within the territory of the Province of New Brunswick, in accordance with this new Regulation;

WHEREAS the Member has already made a Membership Agreement with UOMA NB dated _____, (the “**Membership Agreement**”), which is still in effect;

WHEREAS UOMA NB is willing and able to offer its Members the recovery and reclamation of Products other than those already set out in the Membership Agreement;

WHEREAS the Member is a Brand Owner in New Brunswick (as defined in the Membership Agreement); and wishes UOMA NB to assume the management of a recovery and reclamation system similar to the one set out in the Membership Agreement for other Products;

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THE PARTIES AGREE AS FOLLOWS:

1. **Addition of a Product:** The definition of the word “*Product*” in section 1 of the Membership Agreement is amended to include the following Product or Products:

2. **Terms and Conditions:** Subject to any special condition set out in this *Product Addendum* that is specifically contrary to one of the conditions of the Membership Agreement, the terms and conditions of the Membership Agreement apply in their entirety to the Products designated in Section 1 above as if they had been so designated when the Membership Agreement was made.
3. **Special Conditions (if applicable):**

4. **Coming into Effect:** For the purposes of the Product identified in section 1 of this *Product Addendum*, the date set out in this *Product Addendum* is deemed to be the date the Member joined UOMA NB, and the rights and obligations of the parties with respect to such Product will apply as of the coming into effect of the amendment to the Regulation, in accordance with the provisions of subsection 3.6 of the Membership Agreement.

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS PRODUCT ADDENDUM AS FOLLOWS:

UOMA NB

Per:

Jean Duchesneau, General Manager

Date:

THE MEMBER, per its representative(s) fully authorized for this purpose:

Signature:	_____	Signature:	_____
Name and title:	_____	Name and title:	_____
Date:	_____	Date:	_____

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