



# Processors Agreement

REGISTERED WITH UOMA NB

Make every drop count

Version of January 1<sup>st</sup>, 2014

**PROCESSORS AGREEMENT:**

**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 st, 2<sup>nd</sup> floor, Fredericton, Nouveau-Brunswick, represented by Jean Duchesneau, its General Manager, duly authorized to act herein;

(hereinafter called "UOMA NB")

**AND:**

\_\_\_\_\_  
(print complete legal entity name)

having its principal place of business at:

\_\_\_\_\_  
(address)

herein represented by:

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

duly authorized to act herein, as he/she so declares:

(hereinafter called the "**Processor**")

**PREAMBLE**

**WHEREAS** UOMA NB has been constituted and recognized by Recycle NB to represent its members that are subject to the Regulation and for the purposes of implementing and managing a recovery and reclamation system for designated materials within the territory of the Province of New Brunswick; in accordance with this Regulation;

**WHEREAS** UOMA NB has set up a process for selection and registration of the Processors who will reclaim designated materials in accordance with the Regulation;

**WHEREAS** the Processor wishes to register with UOMA NB so that it can participate in the reclamation system for designated materials within the territory of the province of New Brunswick in accordance with the Regulation;

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THE PARTIES AGREE AS FOLLOWS:

## 1. Definitions

The following words and expressions mean or define:

- (i) **Act:** means the Clean Environment Act (O.C. 2008-180) and the regulations enacted pursuant to it;
- (ii) **Aerosol** containers means aerosol lubricant and brake cleaner containers;
- (iii) **Applicant** means any Processor who wants to register with UOMA NB, does whatever is necessary, and submits all documents and information required for that purpose;
- (iv) **Collection Facility** means a collection facility that accepts used oils, used glycol (antifreeze), used oil containers and used glycol (antifreeze) containers of 50 liters or less, used oil filters as well as used aerosol lubricant containers for all kinds of lubricants and used aerosol brake cleaners from people who wish to return them, which is identified as such under an approved oil and glycol stewardship plan as described in section 50.1 of the Regulation;
- (v) **Collector** means a business registered with UOMA NB to pick up the products governed by the Regulation from Generators or Collection Facilities and deliver them to a Processor registered with UOMA NB;
- (vi) **Collectors and Processors Manual** means the manual supplied by UOMA NB to Collectors and Processors which describes the management system set up by UOMA NB and the details of the systems and procedures that relate to their businesses, as amended from time to time by UOMA NB;
- (vii) **Designated materials** means used oils, used oil containers with a capacity of 50 liters or less including used aerosol lubricant containers for all kinds of lubricants, used glycol (antifreeze) and its containers with a capacity of 50 liters or less, used aerosol containers for brake cleaners and used filters throughout the territory of the province of New Brunswick, in accordance with Part 5.1 of the Regulation;
- (viii) **Generators** means the users of the designated materials in the normal course of business or as a private consumer;
- (ix) **Glycol (antifreeze)** means ethylene or propylene glycol used or intended for use as a vehicle or commercial engine coolant, but does not include the following: plumbing antifreeze, windshield washer antifreeze, lock de-icers and antifreeze, gasoline and diesel fuel antifreeze (glycol), as described in section 2 of the Regulation;
- (x) **Glycol (antifreeze) container** means a container with a capacity of 50 liters or less that contained glycol as described in section 50.1 of the Regulation;

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- (xi) **Minister** means the Minister of the Environment and Local Government;
- (xii) **Oil** means any petroleum or synthetic derived crankcase oil, engine oil and gear oil, hydraulic fluid, transmission fluid and heat transfer fluid, machinery or equipment lubricants, as described in section 2 of the Regulation;
- (xiii) **Oil container**: means a container with a capacity of 50 liters or less designed to contain oil as described in section 50.1 of the Regulation;
- (xiv) **Oil filters** means any spin-on style or element style fluid filters used in hydraulic systems, transmissions or internal combustion engines; oil filters, diesel fuel filters, storage tank fuel filters and household furnace oil filters, except for gasoline filters, as described in section 2 of the Regulation;
- (xv) **Processor** means a business registered with UOMA NB to reclaim designated materials governed by the Regulation;
- (xvi) **Processors Agreement or Agreement** means this Agreement entered into between the Processor and UOMA NB;
- (xvii) **Reclamation** means an activity for reuse, recycling, including biological treatment, any other operation whereby residual materials are processed for use as substitutes for raw materials, and energy recovery recognized by the Department of the Environment and Local Government, or any other activity authorized by the Department that involves cleaning, decontaminating or declassifying products as hazardous residual materials. Bulking, shredding and bundling are not considered reclamation activities;
- (xviii) **Reclamation Incentive** means the financial incentive disbursed by UOMA NB to certain registered Processors for reclamation of plastic oil and antifreeze containers (cleaning for reuse, shredding, decontamination, reducing the plastic into pellets for transformation into finished goods, etc.) in recognition of the fact that this activity is not yet profitable;
- (xix) **Regulation** means the *Designated Materials Regulation, NB Reg. 2008-54 – Clean Environment Act (O.C. 2008-180)*;
- (xx) **Used glycol (antifreeze)** means glycol which through use, storage or handling can no longer be used for its original purpose, as described in section 50.1 of the Regulation;
- (xxi) **Used oil** means oil which, through use, storage or handling, can no longer be used for its original purpose, as described in section 50.1 of the Regulation;
- (xxii) **Used oil filters** means oil filters which through use, storage or handling can no longer be used for their original purpose, as described in section 50.1 of the Regulation.

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## 2. Conditions of registration and maintenance of registration

- 2.1. Applicants must send the Registration Application Form (available on UOMA NB's website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section), together with the documents required on the form and all other documents or information that UOMA NB might reasonably request.
- 2.2. All registrations end on December 31 of each year. They must therefore be renewed by January 1, as per the conditions specified on the Processor Registration Renewal Form (available on UOMA NB's website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section), and all other documents or information that UOMA NB might reasonably request. The said Registration Renewals automatically renew the previously signed Processors Agreement.
- 2.3. The Processor and its respective activities and facilities must be in compliance at all times with the applicable laws and regulations, in particular with regard to management of the products and their traceability, risk management and the safety of their operations, as well as training and information for the employees and executives responsible for or the people assigned to such activities.
- 2.4. The Processor must promptly send UOMA NB a copy of any notice of infraction, investigation, complaint or other request from a government or other authority relating to any order, statement of offence, pecuniary administrative penalty or notice of non-compliance with any regulation or legislation, especially any environmental legislation or regulation governing its UOMA NB related activities.
- 2.5. The Processor agrees not to use the UOMA Atlantic-Atlantique logo or any other designation prescribed as such by UOMA NB in any form of communication without written authorization by UOMA NB describing the terms and conditions of such use. However, the Processor may mention that it is registered with UOMA NB. If authorized to use UOMA NB's name, the Processor undertakes to specify that it is doing so as a partner and not as an associate.

## 3. Obligations of the Processor

### 3.1.a) Used oils

- i) The Processor agrees that it is responsible for checking the volume of the used oils received from the Collector.
- ii) **If the reclamation activity is not the end use or does not result in the creation of a new product, the person or business that will use the product and the purpose of that use must be known. The Processor will be responsible for proving such transactions on a quarterly basis by producing confirmation of delivery to such person or business**

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- iii) The Processor must provide UOMA NB with an Annual Statement showing the total volume reclaimed, including the quantities received from Collectors registered with and recognized by UOMA NB, as well as the total quantities reported by UOMA NB and the inventories at the beginning and end of the year, etc. (form available on UOMA NB's website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section).

3.1.b) Used antifreeze

- i) The Processor agrees that it is responsible for checking the volume and quality of the used antifreeze received from the Collector.
- ii) The Processor has to take samples and submit all loads of used antifreeze for analysis to measure the percentage of antifreeze and water, then it has to submit the results to UOMA NB with the signed receiving document. The Processor agrees that all samples must be representative of the total load received.
- iii) The Processor agrees to hold harmless and indemnify UOMA NB and its employees and agents against all liability and all claims and suits relating to the reclaimed products or their use.
- iv) The Processor must confirm the quality of the reclaimed antifreeze to UOMA NB in accordance with one of the following methods:
  - a) Conductivity (below 1,000)
  - b) ASTM D7713
  - c) ASTM E1177
  - d) other tests acceptable to UOMA NB

**Note: If the reclamation activity is not the end use or does not result in the creation of a new product, the person or business that will use the product and the purpose of that use must be known. The Processor will be responsible for proving such transactions to UOMA NB on a quarterly basis by producing confirmation of delivery to such person or business.**

- v) The Processor must provide UOMA NB with an Annual Statement showing the total volume reclaimed, including the quantities received from Collectors registered with and recognized by UOMA NB, as well as the total quantities reported by UOMA NB and the inventories at the beginning and end of the year, etc. (form available on UOMA NB's website at

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3.1.c) Used filters

- i) The Processor agrees that it is responsible for checking the total weight of the container and/or the number of full or partly filled barrels or bins and for weighing all incoming loads and supplying a scale ticket to the Collector, not including the weight of the containers. **The Processor must also make sure that the designated materials have been recovered for UOMA NB. If a load contains materials designated for UOMA NB and materials that are outside UOMA NB there have to be separate weighings.**
- ii) The Processor must deduct the weight of the waste received and note the corrected weight on its bill of lading, giving a copy to the Collector.

**Note: If the reclamation activity is not the end use or does not result in the creation of a new product, the person or business that will use the product and the purpose of that use must be known. The Processor will be responsible for proving such transactions to UOMA NB on a quarterly basis by producing confirmation of delivery to such person or business.**

- iii) The Processor must provide UOMA NB with an Annual Statement showing the total volume reclaimed, including the quantities received from Collectors registered with and recognized by UOMA NB, as well as the total quantities reported by UOMA NB and the inventories at the beginning and end of the year, etc. (form available on UOMA NB's website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section).

3.1.d) Used oil and antifreeze containers (including used aerosol lubricant and brake cleaner containers)

- i) The Processor agrees that it is responsible for checking the total weight of the containers recovered and the degree of contamination. The Processor must also make sure that the designated materials have been recovered for UOMA NB. If a load contains materials designated for UOMA NB and materials that are outside UOMA NB there have to be separate weightings.
- ii) The Processor must weigh all incoming loads and supply a scale ticket to the Collector. The Processor must deduct the

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weight of the waste received and note the corrected weight on its bill of lading, giving a copy to the Collector.

- iii) The Processor is required to assist UOMA NB's field auditor in characterizing plastic containers and aerosols.

**Note: if the reclamation activity is not the end use or does not result in the creation of a new product, the person or business that will use the product and the purpose of that use must be known. The Processor will be responsible for proving such transactions to UOMA NB on a quarterly basis by producing confirmation of delivery to such person or business. Bulking, shredding and bundling are not considered reclamation activities;**

- iv) The Processor must provide UOMA NB with an Annual Statement showing the TOTAL volume reclaimed, including the quantities received from Collectors registered with and recognized by UOMA NB, as well as the total quantities reported by UOMA NB and the inventories at the beginning and end of the year, etc. (form available on UOMA NB's website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section).

#### 4. General payment information

The Processor acknowledges and agrees that it is responsible for keeping proper documentation for the purposes of preparing invoices to be sent to UOMA NB and for the purposes of obtaining the Reclamation Incentive. The Processor agrees to send UOMA NB any invoice for payment of the Return Incentives for used plastic containers with the "Used Plastic CONTAINER Processor Return Incentives Claim Form" (available on UOMA NB's website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section), and all of the information or documents indicated therein.

4.1 The Processor agrees to submit monthly statements with each claim describing:

- (a) the quantity of used plastic oil and antifreeze containers received from UOMA NB registered Collectors and recovered FOR UOMA NB (separate weighings);
- (b) the current inventories of used plastic oil and antifreeze containers (quarterly);
- (c) the amount of sales and payments of plastic containers reduced into plastic pellets or products for transformation into finished goods or the equivalent (quarterly); and
- (d) in the case of reuse, production reports, purchase reports of covers and the inventory of containers and covers, the

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amount of sales, and any other documents UOMA NB deems necessary.

UOMA NB undertakes to pay the Return Incentives within thirty (30) days of receipt of the “Used Plastic CONTAINER Processor Return Incentives Claim Form” (available on UOMA NB’s website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section), duly completed with all the required vouchers attached.

## **5. Obligations of UOMA NB**

- 5.1. UOMA NB undertakes to disburse to the Processor the Return Incentives corresponding to the quantities of used plastic oil containers that have been reused, reduced to pellets or products for transformation into finished goods or the equivalent, based on the amount set out in Appendix I hereof.
- 5.2. Except as stipulated herein, UOMA NB undertakes not to disclose any confidential document or information received from the Processor, in compliance with the *Right to Information and Protection of Privacy Act*, (SNB 2009, c R-10.6). However, UOMA NB may transmit any document or information to Recycle New Brunswick – including the information included in its annual report and its business plan – or to the Minister or to any authorized person at the Department of the Environment and Local Government, or when such transmission is required by law or by any judicial or quasi-judicial authority. .
- 5.3. UOMA NB will send the Processor ninety (90) days’ written notice of any amendment to Appendix I about the Return Incentives, unless such amendments clearly benefit the Processors.

## **6. Term of the Agreement**

- 6.1. This Agreement has a term of one (1) year as of the date it is signed by UOMA NB, or until the Processor registration renewal date on or before January 1 after the Agreement is signed.
- 6.2. In the event that the Processor gives UOMA NB written notice of its intention to terminate this Agreement, it shall be deemed cancelled within 60 days of the date of receipt of the notice. Upon receipt of the notice, UOMA NB may request a compliance review of the Processor’s books and records.
- 6.3. The Processor hereby acknowledges and agrees that UOMA NB may suspend or revoke the Processor’s registration if the Processor contravenes the law or the applicable regulations or the instruments set out below in subsection 7.3 and in this Agreement, or upon any false, misleading or inaccurate representation made, in particular in the application for registration or in a claim form for the purposes of payment of the Return Incentives by UOMA NB. The Processor also acknowledges and agrees that UOMA NB may suspend or revoke the Processor’s registration certificate if (a) the Processor retires from business, (b) the Processor requests revocation of its registration certificate with UOMA NB, (c) the Processor becomes bankrupt or insolvent, or (d) there are significant or

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repeated breaches of the Processor's obligations under the terms hereof or those outlined in the Collectors and Processors Manual.

- 6.4. The Processor agrees to surrender its registration certificate promptly to UOMA NB if the Processor's registration is revoked or suspended. The Processor agrees not to participate in UOMA NB's programs or carry on a business under the banner of such programs if it is not registered or if its registration is suspended or revoked.

## **7. General conditions**

- 7.1. The Processor hereby confirms that all information transmitted to UOMA NB is true and accurate, and undertakes to supply UOMA NB with any change thereto promptly or upon renewal of its Agreement. The Processor also undertakes that any document or information to be transmitted to UOMA NB in the future will be in compliance and accurate.
- 7.2. The Processor agrees to indemnify and hold harmless UOMA NB, its officers, employees and its agents or mandataries against all liability of any nature whatsoever relating to its operations, costs, expenses, claims and suits, including judicial and extra-judicial fees, as well as reasonable attorney fees and other expenses, that may result from any false, misleading or inaccurate or untrue statement provided by the Processor.
- 7.3. The Processor acknowledges UOMA NB's authority to adopt, amend or withdraw regulations, programs, policies and procedures, and agrees to be bound by this Agreement, by the Collectors and Processors Manual, and by UOMA NB's bylaws, programs, policies and procedures and to honour the obligations contained therein.
- 7.4. Without restricting the obligations prescribed in Section 8 hereof, the Processor agrees to provide UOMA NB with any particulars, certificate of insurance, document, receipt, registration or other information required for the purposes of its registration or a claim for Reclamation Incentives that UOMA NB may reasonably request.
- 7.5. The Processor agrees that UOMA NB will create and maintain an up-to-date database of Processors registered with UOMA NB, which may be consulted by Recycle New Brunswick, and the information it contains may be transmitted to the Minister and published in the *New Brunswick Royal Gazette*, in accordance with the Act.
- 7.6. In the event that a registration is granted and/or a payment is made by UOMA NB and the information provided by the Processor is false, misleading or inaccurate, it is understood that such registration or payment was made without right or in error. Any such registration will therefore be null and void and any such payment must be promptly reimbursed to UOMA NB upon discovery of the misstatement or error.

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7.7. UOMA NB retains the right, in its sole discretion, to withhold any payment or registration application until it completes verification or obtains verification or information it deems sufficient from the Processor.

## **8. Independent auditor: compliance review**

8.1. The Processor acknowledges and agrees to keep for at least 6 years complete, accurate and up-to-date books and records of all operations and information required under the terms hereof and the Regulation with regard to the reclaimed designated materials and the Reclamation Incentives.

8.2. The Processor acknowledges and agrees that, in order to meet the requirements of the Regulation and this Agreement in relation to the compliance review, UOMA NB, Recycle NB, their auditors, inspectors or other duly authorized representatives shall have full access during normal business hours to the Processor's place of business and books and records, or to the place where the Processors' books and records are kept, and to any other document or information required in order to complete the compliance reviews required by the Regulation, and have the right to take a copy of those documents at the Processor's expense throughout the term of this Agreement and for a period of six (6) years following the termination or cancellation of this Agreement or any renewal thereof, as the case may be. Accordingly, the Processor agrees to keep all its books and records and all other documents required for the purposes hereof in the same province in which it registered with UOMA NB.

8.3. Such compliance reviews are conducted at UOMA NB's expense, unless considerable errors (over 10%) of any amount paid and/or any data supplied by the Processor are discovered following the compliance review, in which case the Processor must immediately disburse the following amounts to UOMA NB, together with all applicable taxes:

- a) the amount of the incentives overpaid;
- b) the compliance review expenses; and
- c) administrative expenses over and above the compliance review expenses, as the case may be, equal to 20% of the overpaid incentive amounts.

## **9. Final provisions**

9.1 The Parties herein and their respective successors, heirs and legatees, assigns, and other legal representatives and their beneficiaries, agree to be bound by the provisions hereof and those of the Collectors and Processors Manual, and to honour the obligations incumbent upon them.

9.2 The Processor may in no way assign, encumber, alienate or subcontract, in whole or in part, the rights and obligations resulting from this Agreement for a purpose not specifically stipulated in the Agreement, without the prior written consent of UOMA NB. In the event of any assignment, the Processor will remain liable for the obligations incumbent upon it under the terms of this Agreement,

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- jointly and severally with any assignee, even in the event of bankruptcy or insolvency of the assignee. All documents transmitted by the Processor to UOMA NB will be submitted for information, review and verification purposes.
- 9.3 All of the rights described herein are cumulative and not alternative. The Processor cannot be released from its obligations under the terms of this Agreement by the fact that UOMA NB remains silent or delays the exercise of a right or remedy granted to it under this 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 limitation period for the exercise of such rights or remedies has not expired.
- 9.4 The preamble, the Collectors and Processors Manual and any document appended to this Agreement and any form to be completed (available on UOMA NB's website at [www.uoma-atlantic.com](http://www.uoma-atlantic.com) – New Brunswick province – in the Processors section) form an integral part hereof.
- 9.5 Any contested claim arising from the enforcement of this Agreement, any dispute with regard to its performance, including its cancellation or revocation, and any dispute arising from a problem of interpretation of this Agreement shall be submitted to arbitration, to the exclusion of the law courts.
- 9.6 The Parties hereto agree that the provisions of the *Arbitration Act*, LN-B 1992, c A-10.1 (the « Act ») currently in effect will govern any arbitration held hereunder. The parties agree that the said arbitration is to be held in the New Brunswick province City of Moncton or Fredericton before one arbitrator who will be chosen jointly by the parties within 10 days of the claim, failing which the arbitrator is to be appointed by a judge, on motion of one of the parties, pursuant to the provisions of the *Act*.
- 9.7 Any notice required under this 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 that the latter may make known in accordance with this section.
- 9.8 This Agreement may be amended, in whole or in part, only on UOMA NB's initiative. Subject to the Processor's right to terminate this Agreement, any amendment thus made will take effect only on the date stipulated in the written notice communicated to the Processors in accordance with this Agreement.
- 9.9 The Agreement and its interpretation, performance, application, validity and effects are 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.
- 9.10 Any provision of this Agreement not in compliance with the legislation shall be deemed to have no effect 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.

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**THE PROCESSOR:**

\_\_\_\_\_  
(print company name)

Signature:

\_\_\_\_\_

\_\_\_\_\_  
(print signatory's name)

\_\_\_\_\_  
(signatory's title)

Date: \_\_\_\_\_

**SOCIÉTÉ DE GESTION DES HUILES USAGÉES de  
l'Atlantique – Atlantic USED OIL MANAGEMENT  
ASSOCIATION (UOMA NB):**

Signature:

\_\_\_\_\_

\_\_\_\_\_  
Jean Duchesneau

\_\_\_\_\_  
Directeur général

Date: \_\_\_\_\_

**APPENDIX I**

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*Processor Incentives*

\$0.30 per kilogram for the processing of used oil and antifreeze plastic containers in recognition of the fact that this activity is not yet profitable (cleaning for reuse, decontaminating, shredding and transforming into pellets for the creation of a finished product). The Processor must supply proof of delivery to the final Processor. Under no circumstance is shredding alone to be considered a Processing activity.)

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