

# MANITOBA ASSOCIATION FOR RESOURCE RECOVERY CORP.

(A Non-Profit Corporation)

## **MEMBERSHIP AGREEMENT** *(updated effective February 15, 2022)*

### **Article 1 – Definitions and Interpretation**

1.01 In this Agreement, unless the context otherwise requires:

- (a) “Act” shall mean *The Waste Reduction and Prevention Act*, (Manitoba), as the same may be amended from time to time, and including any act of the legislature enacted in replacement thereof;
- (b) “Automotive Antifreeze Stewardship Program” shall mean the household hazardous material or prescribed material stewardship program in respect of automotive antifreeze and automotive antifreeze containers operated by the Corporation pursuant to the Regulations;
- (c) “Regulations” shall mean the *Regulations* pursuant to the Act, as the same may be amended from time to time, and including any successor or supplemental regulations enacted under the Act in replacement thereof;
- (d) “Designated Material” shall have the same meaning as in the Act and Regulations and, for greater certainty, includes oil, oil filters and containers, automotive antifreeze and automotive antifreeze containers, , as well as all Other MARRC Designated Materials from time to time;
- (e) “Steward” shall have the same meaning as in the Act and the Regulations;
- (f) “Used Oil Products & Material Stewardship Program” shall have the same meaning as in the Act and the Regulations;
- (g) “Board” means the Board of Directors of the Corporation;
- (h) “Chartered Accountants” means a firm of chartered accountants as selected by the Board from time to time;
- (i) “Corporation” means the Manitoba Association for Resource Recovery Corp. and, for certainty, whenever herein a decision, determination or election is to be made by the Corporation, such decision, determination or election shall be made by and through the Board;

- (j) “Member” shall mean a member of the Corporation;
- (k) “Membership Agreement” shall mean the membership agreement in place between a Member and the Corporation as amended from time to time pursuant to Article 14 hereof;
- (l) “EHC” shall mean the Environmental Handling Charge(s) assessed by the Corporation for the Designated Materials sold or supplied in Manitoba by a Member, as from time to time amended, save that no increase in EHC shall become effective unless and until it is approved by the Members, by ordinary resolution, at a duly convened meeting of the Membership;
- (m) “EHC Payment Schedule” shall mean the schedule periodically issued by the Corporation detailing the EHC payable on Designated Materials and the method of calculating EHC remittances to the Corporation;
- (n) “EHC Compliance Review” shall mean a review of the records of the Member, through the use of the firm of Chartered Accountants, with respect to the sale or supply of Designated Materials and remittance to the Corporation of EHC, as more particularly described in Article 7.01 hereof; and
- (o) “EHC Compliance Review letter” shall mean the written summary of the EHC Compliance Review sent to the Member by the Corporation that specifies the date(s) of the review, the findings of the review, the actions required of the Member to comply with the review and the date by which the actions must be completed by.
- (p) “Ordinary Resolution” means a resolution passed by a majority of the members present (in person or by proxy or by other approved means of communications pursuant to the Corporation’s by-laws) at a duly convened meeting of members;
- (q) “Other MARRC Designated Material” means each of those Designated Materials, other than used oil, oil filters and containers and automotive antifreeze and containers (as such terms are respectively defined under the Regulations), in respect of which the Corporation from time to time establishes and/or maintains a stewardship program pursuant to the Act and the Regulations or which otherwise falls within a stewardship program maintained by the Corporation from time to time, and includes Designated Materials under the Packaging and Printed Paper Stewardship Regulation and/or under the Household Hazardous Materials and Prescribed Material Stewardship Regulation in respect of which the Corporation from time to time establishes and/or maintains a stewardship program pursuant to the Act and the Regulations or which otherwise fall within a stewardship program maintained by the Corporation from time to time.
- (r) “Other MARRC Designated Material Stewardship Program” shall mean the stewardship program(s) in respect of Other MARRC Designated Material(s) operated by the Corporation from time to time pursuant to the Regulations;
- (s) “Stewardship Programs” means collectively, the Used Oil Products & Material Stewardship Program, the Automotive Antifreeze Stewardship Program, and all Other MARRC Designated Material Stewardship Programs.

- 1.02 Words importing the singular gender include the plural and vice versa; words importing gender include the masculine, feminine, and neuter gender; and words importing persons include individuals, bodies corporate, partnerships, and unincorporated organizations.

## **Article 2 - Statement of Intention**

- 2.01 The Member acknowledges to the Corporation that it is requesting membership in the Corporation because it is a Steward of Designated Materials and wishes to take advantage of membership in the Corporation in order to have access to one or more of the Stewardship Programs, and thereby meet the requirements of having such a program, as required of Stewards by the Regulations, or is a person or organization who purchases Designated Materials from a Steward and resells or otherwise supplies them in Manitoba and is interested in supporting the objectives of the Corporation.

## **Article 3 - Membership**

- 3.01 The Member, in consideration of being permitted to become a Member of the Corporation and, in that way, have access to one or more of the Corporation's Stewardship Programs, hereby agrees with the Corporation as follows:
- (i) to pay an initial membership fee of \$200.00 to be paid at the time of the signing of this Agreement;
  - (ii) to pay such annual membership fee as is from time to time set by the Board;
  - (iii) to pay to the Corporation the EHC on all Designated Materials sold or supplied by the Member, effective from the date such Member first began selling or supplying Designated Materials in Manitoba, and whether before or after such Member became a member of the Corporation, such payments to be in the amount set out by the Corporation in the EHC Payment Schedule, as amended from time to time; and
  - (iv) to pay to the Corporation the late payment and interest charges for failure to remit EHC to the Corporation as and when the same was due, as more particularly set out in Schedule "A" attached hereto, as the same may be amended, restated or revised by the Corporation from time to time.

## **Article 4 - Term of Membership**

- 4.01 The Member acknowledges that upon the signing of this Agreement and the payment of the initial membership fee that it will maintain membership in the Corporation, subject to cancellation, termination or suspension of the Member's membership by the Board or the Members pursuant to the By-laws, for a period of not less than three years from the date hereof. Subsequent to the initial three year term, membership in the Corporation, and the obligations flowing from membership, shall be considered renewed annually, unless the Member gives a written notice addressed to the Board by registered mail of its intention to withdraw from the Corporation. In that event, the Member shall be considered to have

withdrawn from the Corporation 180 days from the date of the notice. Subject to the initial three year membership obligation, a Member may give notice of its intention to withdraw from the Corporation at any time. The Member's membership may also be cancelled, terminated and/or suspended by the Corporation (acting through the Board) or the members of the Corporation in the manner and in the circumstance(s) set out in the By-Laws.

## **Article 5 - Remittance of Environmental Handling Charge**

- 5.01 The Member agrees with the Corporation to remit the applicable EHC for each Designated Material sold or supplied by the Member. The total of the EHCs with respect to the sale or supply of the Designated Materials are to be remitted quarterly, as scheduled by the Board, to the Corporation within 30 days of the end of the quarter in which the sale or supply of the Designated Materials took place. The remittance to the Corporation shall be in a form and fashion as from time to time determined by the Board.
- 5.02 If the total of a Member's EHCs remitted in the 4 quarters of the previous calendar year is less than \$2,000 and the Member has remitted all EHCs due to the Corporation in a manner and time satisfactory to the Corporation, then the Member shall have the option of providing the Corporation with notice in writing in the first quarter of the current calendar year that it shall make remittance of the EHCs for the current calendar year on an annual basis. In such event the remittance of the EHCs for the calendar year shall be remitted to the Corporation within 30 days of the end of the calendar year. The remittance to the Corporation shall be in the form and fashion as from time to time determined by the Board.
- 5.03 The EHC to be remitted by the Member with respect to the sale or supply of Designated Materials shall be in accordance with the EHC Payment Schedule, as the same may be amended, restated, or revised from time to time by the Corporation. The Member is solely responsible to ensure that the EHCs remitted by it (either to the Corporation or any of their suppliers) are calculated accurately including, without limitation, to have sufficient systems in place and exercise due diligence to ensure that they are not over-remitting as a result of calculating and remitting EHCs on Designated Materials sold to another Member of the Corporation or for use outside Manitoba. Except only as provided in section 7.04 below, the Corporation shall have no liability to a Member, nor shall the Corporation have any obligation to refund to a Member, any incorrect and/or over-remittance of EHCs made by the Member to the Corporation or to a supplier of the Member.
- 5.04 The Member shall remit the EHC on all Designated Materials sold or supplied by the Member, even if the Member is not a Steward of the Designated Material.
- 5.05 Notwithstanding 5.03 and 5.04, the Corporation and the Member acknowledge and agree that if a Member is selling Designated Materials to another Member of the Corporation in good standing or is selling Designated Materials for use outside Manitoba, then no assessment or remittance of EHC is required with respect to that sale or supply. It is the Member's obligation to ensure that it exercises due diligence and has proper systems in place to identify such sales and, except only as set out in section 7.04 hereof, the Corporation shall have no liability for over-remittances arising out of the Member's failure to properly identify or account for such sales in its calculation and remittance of EHCs to the Corporation or to any of its suppliers.

## **Article 6 - Record Keeping**

- 6.01 The Member agrees to keep a record of all transactions respecting Designated Materials, in the form and fashion approved by the Board, for a period of no less than seven (7) years.
- 6.02 The Member agrees to include in its invoices to customers, respecting Designated Materials, such information as the Corporation may reasonably require.

## **Article 7 – EHC Compliance Review by Corporation**

- 7.01 The Member agrees that the Corporation may, from time to time and as approved by the Board, review the records of the Member, through the use of the firm of Chartered Accountants, with respect to the sale or supply of Designated Materials by the Member and remittance to the Corporation of EHC in relation to such sale or supply of such Designated Materials. The Member further agrees that such review may extend back to the period of time when such Member first began selling or supplying Designated Materials, whether or not the Member was a member of the Corporation at such time.
- 7.02 In the event of an EHC Compliance Review, the Member shall make available to the Corporation's Chartered Accountants any and all records relating to the sale or supply of the Designated Materials and remittances to the Corporation of EHC by the Member, and the Member shall further provide to the Corporation's Chartered Accountants any information respecting transactions relating to Designated Materials, provided that such records and information are reasonably required in order to perform an accurate EHC Compliance Review.
- 7.03 In the event a Member is found, after an EHC Compliance Review, to have under-remitted EHC to the Corporation in an amount in excess of \$500.00 for the period subject to the EHC Compliance Review, then the Member shall, in addition to any other liability to the Corporation hereunder, be liable to pay to the Corporation immediately the following:
- (a) the EHC due plus interest thereon at the rate of 1% per month, compounded monthly (12.68% per year) from the time(s) the EHC was due to the time it is paid;
  - (b) the costs of the EHC Compliance Review; plus
  - (c) 20% of the EHC due, by way of an administrative fee to the Corporation.
- 7.04 In the event that a Member is reviewed and it is found that the Member has over-remitted EHC to the Corporation then, provided that (and only provided that) such over-remittance was not caused or contributed to by the negligence of the Member, or a supplier to the Member, in the application or calculation of EHCs resulting in such over-remittance, the Corporation shall, as soon as practicable, including over a term of up to 3 years, reimburse the Member for the amount of EHC over-paid by it to the Corporation in the 12 months immediately preceding the date of such finding, without any provision for interest thereon. For greater certainty, and notwithstanding anything else to the contrary in this Agreement, in no event shall the Corporation be liable for, or obligated to reimburse any Member for, EHCs over-remitted or remitted in error by or for the account of the Member or by any supplier to the

Member in respect of Designated Materials supplied by it to the Member and which, in each case, were remitted or paid to the Corporation more than twelve (12) months prior to the Corporation being made aware in writing of such over-remittance or incorrect remittance, including as to the specific amount thereof.

- 7.05 In the event that an EHC Compliance Review is initiated by the Corporation in respect of a Member as a result of either: (a) the Corporation having good faith reason to believe that the Member has under-remitted EHC to the Corporation; or (b) the Member having, in the past, demonstrated poor performance in calculating and/or remitting EHCs to the Corporation or having more than once failed to comply with the terms of an EHC Compliance Review Letter, then the cost of such EHC Compliance Review shall be borne by the Member, who shall, in addition to any other liability hereunder to the Corporation, be required to pay the cost of same to the Corporation immediately upon being invoiced by the Corporation, and regardless of the results of such EHC Compliance Review.

### **Article 8 - Corporation By-laws Govern**

- 8.01 The Member agrees that its membership in the Corporation will be governed by this Agreement and the By-laws of the Corporation, as the same may be amended, supplemented or restated from time to time.

### **Article 9 - Obligations of the Corporation**

- 9.01 The Corporation shall create and maintain a Used Oil Products & Materials Stewardship Program as well as an Automotive Antifreeze Stewardship Program with respect to the sale or supply of Designated Materials, which program shall meet the requirements of the Act and Regulations for so long as the Corporation is approved for same pursuant to the Act. The Corporation may also maintain a Stewardship Program for such other Designated Materials as the Board may approve and for which the Corporation's proposed stewardship program is approved under the Act and the Regulations from time to time. The Corporation shall give the Member notice, as soon as reasonably possible, in the event that the Corporation is no longer approved for, or will otherwise cease to maintain, any Stewardship Program then maintained by the Corporation.
- 9.02 The Corporation covenants with the Member to keep confidential any and all information received by it from the Member for any purpose, including the EHC Compliance Review, except as required by law, saving that it is permitted for the Corporation to identify a Member who is in arrears of EHC remittance in the Corporation's public annual report.
- 9.03 The Corporation shall provide to all Members a ninety day advance notice, in writing, of any change to the EHC Payment Schedule.
- 9.04 The Corporation may retain the firm of Chartered Accountants to provide the following services for the Corporation:
- (a) Receive, deposit and account for all EHC remittances from the Members on a confidential basis; and

- (b) Advise the management of the Corporation from time to time of the aggregate EHC remittances from Members.
- 9.05 The Corporation shall retain the firm of Chartered Accountants to provide the following services for the Corporation:
- (a) Prepare and present annual financial statements as required under the Act or *The Corporations Act* (Manitoba) and as required by the Corporation;
  - (b) Conduct regular EHC Compliance Reviews as approved by the Board under 7.01;
  - (c) Review EHC remittances and recommend EHC Compliance Reviews for Board approval without disclosure of confidential information;
  - (d) Maintain strictest confidentiality of Member information, except as required by law.
- 9.06 The Corporation will provide non-proprietary information to Members, as required for Member's annual report to the Manitoba Minister of Conservation.
- 9.07 The Corporation will provide to each Member documentary proof of Membership and will from time to time provide Members with a current list of all Members in good standing of the Corporation and generally cooperate with the Membership so as to facilitate easy identification of Members of the Corporation.

## **Article 10 - Limited Liability**

- 10.01 No Member shall be liable for a debt or obligation of the Corporation merely by reason of membership in the Corporation.

## **Article 11 - Personal Information**

- 11.01 This Membership Agreement requires the Member to provide certain personal information to the Corporation. Such information is being collected by the Corporation for the purposes of admitting the Member as a member of the Corporation, for general administrative purposes, for the purpose of enabling the Corporation to comply with legal and regulatory requirements including for the purpose of communicating with Members of the Corporation and completing and delivering to regulatory authorities any reports required to be filed by the Corporation under the Act, *The Corporations Act* (Manitoba) or as may be required as a consequence of such Member holding a membership in the Corporation, and for such other purposes as are elsewhere identified in this Agreement. The undersigned acknowledges and agrees that such personal information may be used and disclosed by the Corporation for the foregoing purposes and to governmental and regulatory agencies, departments or authorities responsible for administration of corporate and environmental legislation in the Province and Canada Revenue Agency and any similar provincial taxation authority. By agreeing to be bound by this Membership Agreement, the Member is deemed to be consenting to the foregoing collection, use and disclosure of the Member's personal information.

## **Article 12 - Facsimile and Electronic Communication**

12.01 The Corporation shall be entitled to rely on delivery by electronic mail or by facsimile of an executed copy of this Membership Agreement and acceptance by the Corporation of such electronic or facsimile copy shall be legally effective to create a valid and binding agreement between the Member and the Corporation in accordance with the terms hereof. The Membership Agreement may be executed in any number of counterparts, each of which when delivered, either in original, electronic or facsimile form, shall be deemed to be an original and all of which shall constitute one in the same document. More generally, for the purpose of facilitating communication between the Corporation and its Members, the Member hereby consents to the Corporation delivering to the Member, by facsimile or electronic mail, at the fax number or email address provided by the Member to the Corporation, any notices, documents or other written communication that the Corporation may now or hereafter be required pursuant to applicable legislation, this Agreement or the By-laws, or that the Corporation may otherwise elect to send to its Members, and this shall constitute a continuing consent of the Member for that purpose. The Member agrees to advise the Corporation of its mailing address, email address or phone or facsimile numbers and any changes thereto from time to time.

## **Article 13 - Meetings of Members**

13.01 The Member consents to the Corporation holding such annual general or special meetings of Members as the Board of the Corporation may determine from time to time, at such times and such place, whether within or outside of Manitoba, as the Board, in its discretion, may decide.

## **Article 14 – Change in Terms of This Agreement**

14.01 The Member acknowledges that the Board can change the terms of this Membership Agreement at any time, and in the Board's sole discretion, regardless of whether the Member is using one or more of the Stewardship Programs at such time, by adding, deleting, or modifying any provision hereof. The Board's right to add, delete, or modify provisions hereof includes financial terms, such as the amount of EHC to remit (provided that any increase to EHC shall not be effective until approved by the Members by way of Ordinary Resolution at a duly convened meeting of members), the schedule of remittance dates, late remittance fees and interest requirements, and other terms such as the nature, extent, and enforcement of the rights and obligations the Member or the Corporation may have relating to this Agreement. Modifications, additions, or deletions are referred to herein as "Changes" or a "Change". The Corporation will notify each existing Member of any material Change to this Agreement and the effective date of such change(s). Such Change(s) may be given retroactive or retrospective effect. However, unless otherwise stated in such notice, any Change(s) relating to terms of payment will apply to any unremitted EHC or other amounts owing to the Corporation and to any new amounts owing to the Corporation thereafter. The notice referred to herein may be delivered personally or mailed to the last address of the Member as shown on the register of Members and, if mailed, shall be deemed to be received 3 business days following the mailing.



All Members shall be bound by the Membership Agreement, as so amended, when adopted by the Board and without any further action or signature required from the Member. Provided however, that should a Member not be prepared to accept or be bound by any of the Changes to the Membership Agreement, such Member may, by written notice to the Corporation given within 60 days of such Member having received the Corporation's notice of the Change(s), withdraw as a Member. In such a case, such Member shall not be bound by the Change(s) to the Membership Agreement and his/her/its membership shall come to an end on the 60th day following the Member's receipt of the Corporation's notice of the Change(s). If the Member does not notify the Corporation in writing within the said 60 day period, or if the Member notifies the Corporation but then uses the services of the Corporation after the said 60th day following the notice, the Member will be deemed to accept all Changes in the notice and to accept, confirm and be bound by, all terms of the Membership Agreement, as amended by the Change(s)

IN CONSIDERATION OF THE MUTUAL PROMISES set out above, the Member and the Corporation have caused this Agreement to be executed under the hands of their respective proper officers.

MANITOBA ASSOCIATION FOR RESOURCE RECOVERY  
CORP.

PER: \_\_\_\_\_  
Authorized Officer

PER: \_\_\_\_\_  
Authorized Officer

MEMBER

\_\_\_\_\_  
(Print name of Corporation)

\_\_\_\_\_  
(Date)

PER: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
(Print name)

PER: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
(Print name)

## **Schedule “A”**

Late payment administration fees and interest will be applied to late remittance of EHC as follows:

- Level I - \$100: To be applied on all Reminder Letters sent to late remitters following the 30<sup>th</sup> day of the month in which the EHC was due;
- Level II - \$200: To be applied on all Warning Letters sent out to late remitters ten (10) business days following failure of a Member to comply with the direction in a Reminder Letter; and
- Level III - \$625.00: To be applied on all Membership Continuation Assessment Letters sent out to late remitters ten (10) business days following failure of a Member to comply with a Warning Letter.
- Interest shall be charged at the rate of 1% per month, compounded monthly (12.68% per year), on any amounts owed by a Member to the Corporation from the date that such amount was due and owing to the Corporation.

This schedule in effect from: November 5, 2018.