

Membership Agreement

Please read the following Membership Agreement carefully.

It contains very important information about your rights and obligations, as well as limitations and exclusions that may apply to you.

By signing this Agreement, you are consenting to be bound by and are becoming a party to this Agreement.

Please contact us at stewards@autostewardship.ca or 1-888-575-4870 for any queries about this agreement or your obligations related to Automotive Materials in Ontario.

“**You**” or “**Your**” means the person or company whose address and contact information appears at the end of this Agreement and who intends to become a member of Automotive Materials Stewardship and Your Affiliates. “**We**”, “**Our**” and “**Us**” means **Automotive Materials Stewardship Inc. (AMS)** and includes AMS’s administrative service provider.

WHEREAS the Legislation (defined below) permits You to participate in an approved Industry Stewardship Plan (defined below) and comply with that plan;

AND WHEREAS under the Legislation, on October 5, 2016, the Resource Productivity and Recovery Authority or RPRA (formerly Waste Diversion Ontario), has approved AMS to operate an Industry Stewardship Plan for Automotive Materials starting on April 1, 2017;

AND WHEREAS AMS has entered into a Program Agreement with RPRA confirming that it will operate in accordance with the approved ISP;

WHEREAS You are a Member under the Legislation and appoint AMS as Your agency to carry out Your duties as a Member under the Legislation by having Us perform or continue to perform duties as described below; and

WHEREAS You therefore wish to become or are already a Member of Our Industry Stewardship Plan which has received acceptance from RPRA on the terms and conditions contained herein;

AND WHEREAS AMS is duly appointed by You given You comply in all respects with the terms contained in this Agreement;

AND WHEREAS such appointment and compliance with the terms of this Agreement will place You in compliance under the Legislation;

AND WHEREAS by letters dated April 12, 2018, December 11, 2018 and July 2, 2019 (the “**Wind Up Letter(s)**”), the Minister of Environment, Conservation and Parks (“**MECP**”) directed Stewardship Ontario to wind up the MHSW Program for Automotive Materials by June 30, 2021 (the “**Wind Up Date**”) in accordance with a Wind Up Plan approved by the Resource Productivity and Recovery Authority (“**RPRA**”) and the MECP (the “**Wind Up Plan**”);

AND WHEREAS by letter dated April 12, 2018, the MECP advised RPRA to take any necessary or appropriate actions in respect of the termination of the ISP agreements between the Authority and persons operating approved ISPs in respect of MHSW under the WDTA;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants contained herein, You and AMS agree as follows:

Revised December 2019 with an effective date of June 30, 2020

1. DEFINITIONS

1.1. Definitions. Capitalized terms in this Agreement will have the following meanings:

“Affiliate” means a Member that controls another Member or is controlled by an entity that also controls another Member as provided in Section 2 of the Business Corporations Act (Ontario) as amended from time to time.

“Agreement” means this Membership Agreement between Us and You, and as may be amended from time to time;

“Antifreeze” has the meaning set out in Appendix B of the ISP

“Automotive Materials Stewardship” or **“AMS”** means the not-for-profit stewardship agency incorporated under the Canada Not-for-profit Corporations Act;

“Automotive Materials” or **“AMS Materials”** or **“AMSM”** means Antifreeze, Oil Containers and Oil Filters as defined in Appendix B of the ISP;

“Brand Owner” with respect to a specific product or good that is AMSM, where such product or good, or its packaging bears a trademark means during any time in any Data Period:

- (a) a Person Resident in Ontario who is the holder of the registered trademark, or
- (b) a Person Resident in Ontario who is the licensee, in respect of the registered trademark, or
- (c) a Person Resident in Ontario, who owns the intellectual property rights to the unregistered trademark, or
- (d) a Person Resident in Ontario, who is the licensee, in respect of the intellectual property rights of the unregistered trademark.

Where “licensee” includes a Person who packages goods and the products or goods are AMSM or AMSM Packaging, and bear a trademark, other than a packer, producer or filler of Private Label Goods, and includes any Person whose corporate name or business name registration contains the trademark;

“Business Day” means any day of the week other than a Saturday, Sunday or statutory holiday observed in Ontario;

“Data Period” means the calendar quarter that the Member Supplied Automotive Materials in Ontario;

“Fee Obligation Quarter” means the calendar quarter for which a member is required to discharge its obligation to remit fees to AMS;

“Fees” means those fees payable by the Member to AMS pursuant to this Agreement;

“Filing” means submit document through the WeRecycle Portal;

“First Importer” means a Person Resident in Ontario, who imports into Ontario, a specific product or good that is AMSM, for which a Brand Owner does not exist in Ontario and includes a Person Resident in Ontario who is the first to take control of such product or good, upon or after arrival in Ontario from elsewhere during the Data Period.

“Franchise” means a right to engage in a business where the Franchisee is required by contract or otherwise to make a payment or continuing payments, whether direct or indirect, or a commitment to make such payment or payments, to the Franchisor, or the Franchisor’s associate, in the course of operating the business or as a condition of acquiring the Franchise or commencing operations and,

- a) in which,
 - i) the Franchisor grants the Franchisee the right to sell, offer for sale or distribute goods or services that are substantially associated with the Franchisor’s, or the Franchisor’s associate’s, trade-mark, service mark, trade name, logo or advertising or other commercial symbol, and
 - ii) the Franchisor or the Franchisor’s associate exercises significant control over, or offers significant assistance in, the Franchisee’s method of operation, including building design and furnishings, locations, business organization, marketing techniques or training, or
- b) in which,
 - i) the Franchisor, or the Franchisor’s associate, grants the Franchisee the representational or distribution rights, whether or not a trade-mark, service mark, trade name, logo or advertising or other commercial symbol is involved, to sell, offer for sale or distribute goods or services supplied by the Franchisor or a supplier designated by the Franchisor, and
 - ii) the Franchisor, or the Franchisor’s associate, or a third person designated by the Franchisor, provides location assistance, including securing retail outlets or accounts for the goods or services to be sold, offered for sale or distributed or securing locations or sites for vending machines, display racks or other product sales displays used by the Franchisee;

“Franchisee” means a person to whom a Franchise is granted and includes,

- (a) a sub franchisor with regard to that sub franchisor’s relationship with a Franchisor, and
- (b) a sub franchisee with regard to that sub franchisee’s relationship with a sub franchisor;

“Franchisor” means one or more persons who grant or offer to grant a Franchise and includes a sub franchisor with regard to that sub franchisor’s relationship with a sub franchisee;

“Industry Funding Organization” or **“IFO”** means the organization designated by regulation with responsibility for implementing the MHSW Program plan including collection of fees from Members to cover the costs of developing, implementing and operating the diversion program and to cover associated costs of WDO and Ministry of the Environment.

“Industry Stewardship Plan” or **“ISP”** means Our Industry Stewardship Plan for Automotive Materials as approved by RPRA as posted on the AMS website;

“Industry Stewardship Plan Agreement” means the Program Agreement which is entered into between AMS and RPRA and includes all attached schedules and any amendments thereto.

“Legislation” means the Waste Diversion Transition Act, 2016 (Ontario), and includes any replacement or amended Act and any Regulations made thereunder, and any Rules approved thereunder;

“Members” means the members of Our Industry Stewardship Plan collectively, and **“Member”** means a member of Our Industry Stewardship Plan;

“MHSW Plan” means the Municipal Hazardous or Special Waste plan developed and approved in accordance with Section 23 of the Waste Diversion Act, 2002 operated by Stewardship Ontario as referenced in the ISP.

“Ministry” means the Ministry of Environment and Climate Change (MOECC) for Ontario or any successor ministry;

“Oil Containers” has the meaning set out in Appendix B of the ISP;

“Oil Filters” has the meaning set out in Appendix B of the ISP;

“Primary Contact” means the individual designated by You as authorized to submit reports to AMS under this Agreement;

“Reporting Obligation Quarter” means the calendar quarter for which a member is required to discharge its obligation to file a Member Report;

“Resource Recovery and Productivity Authority” or **“RPRA”** is a corporation which oversees the operation of Stewardship Ontario and the MHSW Program in accordance with the *Waste Diversion Transition Act, 2016*. RPRA is the successor to Waste Diversion Ontario.

“Member” is a person or classes of persons designated or obligated in respect to Automotive Materials pursuant to the provisions outlined below, in the order in which they are set out:

If two or more Persons are designated as a Member pursuant to the following provisions, then the earlier provision shall prevail:

- 1.1. A Brand Owner is designated as a Member with respect to all AMSM, for which it is the Brand Owner and Supplied such AMSM during the Data Period.

- 1.2. A First Importer is designated as a Member with respect to all AMSM for which it is the First Importer and Supplied such AMSM during the Data Period.
- 1.3. A Franchisor which is Resident in Ontario is designated as a Member with respect to all AMSM Supplied within the relevant Franchise System during the Data Period.
- 1.4. In the event there is more than one Brand Owner for the same AMSM, the Brand Owner more directly connected to the production of the AMSM shall be designated as the Member, but where the Brand Owner is a Franchisor that is Resident in Ontario, the Franchisor shall be designated as the Member.
- 1.5. In the event there is no identifiable brand on a particular AMSM product or good and if the manufacturer of the AMSM is Resident in Ontario, the manufacturer of such AMSM shall be designated as the Member for such AMSM, otherwise the First Importer shall be designated as the Member for such AMSM;

“Member Obligations” means those obligations for Automotive Materials which a Member or Voluntary Reporter, as applicable, is responsible pursuant to the Legislation;

“Member Report” means that report submitted each Reporting Obligation Quarter by You to AMS in accordance with the terms of this Agreement;

“Stewardship Ontario” means the not-for-profit corporation incorporated under the *Ontario Corporations Act* and continued by *Regulation 542/2006* under the *Waste Diversion Act, 2002* as the Industry Funding Organization (“IFO”) for the MHSW program. Stewardship Ontario is also the IFO for designated blue box waste.

“Supply” means sold, leased, donated, disposed of, transferred the possession or title of, or otherwise made available or distributed for use in the Province of Ontario; **“Supplied”** and **“Supplies”** have similar meanings;

“Visible Fees” means a fee advertised or displayed in a retail store separate from the shelf price of the product, as a way to recover the rate paid by an AMS Member to AMS.

“Voluntary Reporter” means an organization who has signed a Voluntary Reporter Agreement for the purpose of reporting quantities Supplied of one or more Automotive Materials on behalf of an obligated Member as per Schedule B to this Agreement.

“WeRecycle Portal” means the internet portal that must be used by all Members when submitting their Quarterly AMS Member Reports.

2. TERMINATION OF ISP

- 2.1. Termination of ISP. The terms of this Agreement are modified, where necessary, by any terms imposed by RPRA or the MECP with respect to the termination of the AMS ISP agreement between AMS and RPRA.

3. YOUR OBLIGATIONS AS A MEMBER OF THE AMS PLAN

- 3.1.1. New Membership. By both registering with AMS and filing this signed Agreement on the WeRecycle Portal you are hereby becoming a Member of the class of persons described in the ISP as participants in the ISP and agree with AMS to participate in and to be bound by

the ISP. In connection therewith, You agree that, while a Member, You are prohibited from fulfilling your Member Responsibility Obligations under the Legislation other than pursuant to Your membership in Our Industry Stewardship Plan (such as by fulfilling those obligations yourself, or by contracting with a third party, or by joining another Industry Stewardship Plan approved by WDO for Automotive Materials, or by participating in the MHSW Program operated by Stewardship Ontario).

3.2. Provision of Information.

- 3.2.1. You shall file a Member Report within the time limits set out in this Agreement, including any brands and affiliates You reported on a description of your methodology (i.e. how You have collected data and calculated your quantities of Automotive Materials), as well as rationale for any deductions You have applied to Your reported amounts.
- 3.2.2. You shall provide AMS with all relevant Member contact details (telephone numbers, and email addresses) of Your Primary Contact for the service of notices and other communications, under and in connection with the Agreement.
- 3.2.3. You shall inform AMS promptly upon becoming aware that any information originally supplied is not accurate or complete for any reason and shall as soon as practicable thereafter supply to AMS a statement in writing explaining the inaccuracy/incompleteness, together with the corrected/completed information.
- 3.2.4. In order to ensure that AMS maintains accurate data for its Members, You shall inform AMS in writing, as soon as practicable and in any event within twenty eight (28) business days of the happening of any of the following events:
 - 3.2.4.1. The sale or acquisition of all or part of Your business including the sale or acquisition of any subsidiary/brands that form(s) part of the Member's company and the sale or acquisition date and any impact on Your obligation to pay Fees;
 - 3.2.4.2. A change in the registered office address or in the details provided to AMS pursuant to the Member Report or telephone, email address and/or address provided for the purpose of Your membership in the AMS ISP, or any factor that impacts your membership in the AMS ISP or Your ability to pay fees.

3.3. Member Report.

- 3.3.1. You must submit your Member Report by no later than each of January 31, April 30, July 31 and October 31 each year and reporting sales quantities for the three month preceding period ending December 31, March 31, June 30 and September 30 respectively in accordance with the table in Schedule A.
- 3.3.2. If You become a Member on or after any Reporting Obligation Quarter, You must submit your Member Report as soon as reasonably practical, but in any event no later than twenty (20) business days from the date you became a Member. For all subsequent Reporting Obligation Quarters, You shall submit the Member Report to AMS by no later than then the quarterly reporting deadline of each respective Reporting Obligation Quarter in accordance with the table in Schedule A.

- 3.4. Disclosure of Information. You agree that AMS shall be entitled to obtain from You and provide copies and/or details of information You have provided to AMS to WDO, or to any other governmental authority to which AMS is obligated, in each case pursuant to Legislation. Where practical in the circumstances, AMS agrees to use reasonable effort to provide You with prior notice of any such disclosure out of the ordinary course of AMS's operations.

- 3.5. Records Retention. You shall maintain and store in either electronic or written form all documents, data and/or records in respect of Your membership in AMS and obligations under the Agreement to substantiate and verify the amount of Automotive Materials set out in each Member Report for a period of five (5) years from the filing date of each Member Report. This includes all supporting data and/or records (as applicable) for each Member Report.
- 3.6. Verification and Audit. In order for AMS to ensure a level playing field among all Members and to minimize costs associated with AMS conducting audits or reviews related to Your fulfillment of Your obligations (primarily, submission of Member Reports and payment of Fees), You shall:
- 3.6.1. As the first step, take measures to assess that your data is accurate and then provide assurance to the accuracy of your data as per the attestation on the WeRecycle Portal when you submit your data;
- 3.6.2. As a second step, on request by AMS, following report validation, primary contact must provide any additional information as requested by AMS in an effort to ensure the accuracy of your report. You may also be required provide confirmation from a senior officer in your organization that the data contained in submitted reports is accurate; and
- 3.6.3. As the final step, participate in an audit or review at the request of AMS. If AMS makes such a request, You shall, within thirty (30) business days of such request and during normal business hours, afford to AMS (or its authorized agent(s)) reasonable access to Your premises and key personnel and to all of Your relevant documents, data, records and reports howsoever maintained and stored and permit AMS (or its authorized agent(s)) to make and take copies of such documents, data and records. This Section 3.6.3 shall survive termination or expiration of this Agreement. AMS will not require You to participate in an audit or review of an activity associated with obligation fulfilled during a calendar year for which You are no longer expected to retain records (see Section 3.5).
- 3.7. Fees.
- 3.7.1. Amount and Principles. You shall pay Fees to AMS in respect of each Fee Obligation Quarter for which you are obligated on the invoice due date. By no later than October 1 of the preceding year, AMS shall post the Fees for the subsequent year on the AMS website. In computing the costs and expenses, AMS will be required to estimate such costs and expenses as it shall consider reasonable and appropriate and shall take into account in calculating the Fees any surplus or deficit in AMS as a result of its operations.
- 3.7.2. Recalculation. Notwithstanding the foregoing, AMS may further recalculate the Fees on the basis set out in this Agreement and may adjust (either upwards or downwards) the Fees subject to a notice period of at least 90 days.
- 3.7.3. Payment Terms. The Fees for each Fee Obligation Quarter shall be payable by within 30 days of the invoice due date in accordance with the table in Schedule A. All sums payable under this Agreement are exclusive of any applicable taxes which shall be added to such sum to the extent applicable. All sums payable under and in accordance with the Agreement by the Member shall be paid in full without any deduction, withholding, counterclaim or set off.
- 3.7.4. Interest. If any sum payable by You to AMS under this Agreement remains unpaid for more than thirty (30) calendar days from the date of the invoice, AMS may charge You interest on such sum at four percent (4%) per annum above the Canadian Imperial Bank of Commerce's (CIBC) prime lending rate. Interest will be calculated on a daily basis from the date upon which such sum became due and compounded monthly and is payable on demand.

- 3.7.5. Member Report Adjustments. If report corrections or revisions to Your Member Report are identified by either AMS or You, an adjustment request must be prepared by You in accordance with the Adjustment Policy posted on the AMS website. If AMS approves all or part of the Member's adjustment request, the Member shall be invoiced or credited any difference in fees paid. AMS reserves the right to review the adjustment requests for accuracy and compliance with the Adjustment Policy and apply such other reasonable adjustment principles and issue an invoice or credit note as is applicable in AMS' sole discretion.
- 3.7.6. Visible Fees. In accordance with the approved AMS ISP, You will not levy a Visible Fee.

4. OUR OBLIGATIONS

- 4.1. Assumption of Responsibilities. We will operate the ISP for Automotive Materials approved by WDO on October 5, 2016 and abide by the requirements of the Industry Stewardship Plan Agreement.
- 4.2. Guiding Principles. AMS shall:
- 4.2.1. Act in the best interests of all Members as a whole;
- 4.2.2. Use reasonable commercial efforts to carry out its obligations diligently and in a reasonable, proper and cost effective manner having regard to the interests of all Members in securing compliance with the Legislation in future as well as in each Reporting and Fee Obligation Quarter, and the cost of such compliance in the current and future years; and
- 4.2.3. Exercise the skill and expertise to be reasonably expected of an organization whose plan is approved by WDO pursuant to the Legislation.
- 4.3. Notice Requirements. We shall notify You in the event one of the following occurs:
- 4.3.1. If We receive any written notices, or written reasons provided by WDO, alleging non-compliance with one or more requirements of the ISP;
- 4.3.2. If We are charged or convicted with an offence under the Legislation;
- 4.4. Insurance. We will possess comprehensive or commercial general liability insurance, including coverage for bodily injury, property damage, complete operations and contractual liability with combined single limits of not less than \$2,000,000 per occurrence, \$5,000,000 general aggregate. AMS shall cause a certificate(s) of existing insurance executed by the insurer to be posted to its website.

5. LIMITATION OF LIABILITY AND REMEDIES

- 5.1. Limitation of Liability. In no event will either party be liable for any indirect, incidental, special, exemplary or consequential losses or damages, including lost or anticipated profits, savings, interruption to business, loss of business opportunities, loss of business information, the cost of recovering such lost information, or any other like pecuniary loss arising out of this Agreement, whether you have advised us or we have advised you of the possibility of such damages. Each party's aggregate liability in respect of any and all claims will be limited to the amount of Fees paid by you to AMS in the most current Fee Obligation Quarter. The foregoing limitations apply regardless of the cause or circumstances giving rise to such loss, damage or liability, even if such loss, damage or liability is based on negligence or other torts or breach of contract (including fundamental breach or breach of a fundamental term).

- 5.2. A party may not institute any action in any form arising out of this Agreement more than one (1) year after the cause of action has arisen. Some provinces do not allow the exclusion of limitation of incidental or consequential damages so the above exclusions may not apply. Sections 5.1 and 5.2 shall survive termination or expiration of this Agreement.

6. SUCCESSORS AND ASSIGNS

- 6.1. Successors and Assigns. You may not assign Your rights and duties under this Agreement to any party at any time without our consent which will not be unreasonably withheld. This Agreement will enure to the benefit of and will be binding on Us and our respective successors and permitted assigns. In the event of Our corporate merger, amalgamation, divestiture or asset sale, We will have the right to transfer and assign Our rights and obligations hereunder to any third party (the "Assignee"), upon written notice to You.

7. CONFIDENTIALITY

- 7.1. Confidentiality. Subject to section 3.4, the Member and AMS (which includes any service provider to AMS) each acknowledge that all customer, technical, financial and other business information received from the other in connection with this Agreement is considered private and confidential. Both the Member and AMS will use reasonable diligence and care to prevent the unauthorized disclosure, reproduction or distribution of such confidential information to any other person.
- 7.2. In accordance with section 3.4, AMS will use reasonable effort to provide you with prior notice before disclosing information to WDO or to any other governmental authority. In all other cases, unauthorized disclosure, reproduction or distribution of such confidential information to any other person or association will first have to be consented to in writing by the disclosing party.
- 7.3. Such confidential information will exclude:
- 7.3.1. Information that is already in the public domain;
 - 7.3.2. Information already known to the receiving party, as of the date of the disclosure, unless the receiving party agreed to keep such information in confidence at the time of its original receipt;
 - 7.3.3. Information hereafter obtained by the receiving party, from a source not otherwise under an obligation of confidentiality with the disclosing party; and
 - 7.3.4. Information that the receiving party is obligated to produce under order of a court of competent jurisdiction, provided that the receiving party promptly notifies the disclosing party of such an event so that the disclosing party may seek an appropriate protective order.
- 7.4. Notwithstanding anything to the contrary contained herein, You acknowledge that We may be required to disclose Your confidential information in the circumstances referred to in Section 3.4 above (Disclosure of Information).
- 7.5. This Section 7 shall survive termination or expiration of this Agreement.

8. TERM

- 8.1. Term. The term of this Agreement will commence on the date of Your submission to Us of this Agreement as set out at the end of this Agreement, either as an amendment to Your existing

Agreement with Us or as a new Agreement pursuant to these terms and shall continue until terminated as follows:

- 8.1.1. By RPRA pursuant to the MOECC's direction to RPRA by letter dated April 2, 2019 to "take any necessary or appropriate actions in respect of the termination of the ISPs in respect of MHSW under the WDTA."
- 8.1.2. By AMS: by notice in writing to You to take effect either forthwith or at such time as may be specified in such notice on or after the occurrence of any of the following events:
 - 8.1.2.1. Any material breach by You of any of Your obligations under this Agreement which, if capable of remedy, shall not have been remedied to the reasonable satisfaction of AMS within thirty (30) calendar days of receipt by You of a written request from AMS for such breach to be remedied;
 - 8.1.2.2. Notwithstanding Section 8.1.2.1 above, any failure by You to comply with the provisions of the clause Provision of Information (Section 3.2) by the quarterly reporting due dates as specified in Section 3.3.1 of this Agreement;
 - 8.1.2.3. Deliberate falsification of data or a pattern of providing false or misleading data in relation to Your Member Report;
 - 8.1.2.4. Notwithstanding anything to the contrary contained herein, any failure by You to pay to AMS any sum due hereunder within thirty (30) calendar days of the due date for payment thereof;
 - 8.1.2.5. If a petition in bankruptcy is filed and a judgment is entered against You or if You are adjudged a bankrupt, or if You are insolvent or unable to make payments to creditors when due or You take advantage of any insolvency act or debtor's relief act, or You make an assignment for the benefit of Your creditors, or if You pass any resolutions or take any other actions for Your liquidation, winding up or dissolution.
- 8.1.3. By the Member:
 - 8.1.3.1. You may terminate this Agreement by giving 60 days' notice to AMS and fulfilling any of your applicable reporting and payment obligations.
- 8.1.4. By Either Party:
 - 8.1.4.1. Forthwith by notice in writing to the other if the Industry Stewardship Plan Agreement between WDO and AMS is terminated for any reason.
- 8.2. The termination of this Agreement for whatever reason shall not affect any provision of this Agreement which is expressed to survive or operate in the event of such termination and shall not prejudice or affect the rights of either party against the other in respect of any breach of this Agreement or any monies payable by one party to the other in relation to any period prior to the effective date of termination. Without limiting the generality of the foregoing, all payment obligations in respect of monies payable by one party to the other shall survive termination or expiration of this Agreement.

9. GENERAL

- 9.1. Captions. The Article and paragraph headings used herein are for convenience only and are not a part of this Agreement and will not be used in construing it.
- 9.2. Disputes. Disputes between AMS and You as to Your obligations under this Agreement shall be made under the dispute resolution process that is published on the AMS website. Referral of any disputed matter shall not act to stay or defer Your obligations under this Agreement.
- 9.3. Entire Agreement. This Agreement constitutes the entire Agreement between You and Us relating to the subject matter contained in this Agreement.
- 9.4. Equitable Relief. Each party agrees that any breach of Section 7 by such party would cause irreparable damage to the other party for which money damages would not be a sufficient remedy, and that, in event of such breach, in addition to any and all remedies at law, the harmed party will have the right to an injunction, specific performance or other equitable relief to prevent the continuous violations of Section 7 without the necessity of proving actual damages or posting any bond or other security.
- 9.5. Force Majeure. Notwithstanding anything herein to the contrary, other than obligations to make payments pursuant to this Agreement, neither party shall be liable for any delay or failure in performance caused by circumstances beyond its reasonable control.
- 9.6. Relationship of the Parties. This Agreement does not constitute a partnership or joint venture, and nothing herein contained is intended to constitute, nor will it be construed to constitute, such a partnership or joint venture. Except as expressly provided in this Agreement, neither We nor You will have any power or authority to act in the name or on behalf of the other party, or to bind the other party to any legal agreement.
- 9.7. Severability. The provisions of this Agreement are to be considered separately, and if any provision hereof should be found by any court of competent jurisdiction to be invalid or unenforceable, this Agreement will be deemed to have effect as if such provision were severed from this Agreement.
- 9.8. Notices. All notices and communications required or permitted under this Agreement will be in writing and will be sent by electronic mail to Us or You at the respective addresses we provide to each other or to such other address as We or You may from time to time specify by notice to the other given as provided in this paragraph.
In Our case, Our address is: stewards@autostewardship.ca.
In Your case, Your address is the address and contact particulars provided to AMS pursuant to the Provision of Information clause (Section 3.2) set forth in this Agreement.
Each such notice or communication shall be deemed to have been given or made and delivered within one Business Day of email transmission.
- 9.9. Jurisdiction. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the province of Ontario with respect to any dispute arising hereunder.

- 9.10. Governing Law. This Agreement shall be deemed to have been made in the province of Ontario and shall be construed and interpreted according to the laws of the province of Ontario and the applicable laws of Canada.
- 9.11. Revisions to this Agreement. Revisions to this Agreement will be considered in Q4 of each year. We will provide written electronic notice of those changes not less than sixty (60) calendar days before June 30th of any calendar year. Revisions to this Agreement shall be automatically effective on June 30th of any calendar year. Notwithstanding the foregoing, if any such revision is necessary to comply with the Legislation, such revision shall have effect from the date specified in the notice.
- 9.12. Execution of this Agreement. This Agreement may be executed in any number of counterparts and may be delivered by Portable Document Format or other electronic means ("PDF") and each original, PDF copy, when executed and delivered, shall be deemed to be an original and all of which taken together then construe one and the same instrument.

THIS AGREEMENT submitted for acceptance and is effective this [_____] day of
[_____], 20__.

Company Name (please print): _____

Per (please sign): _____
Authorized Signing Officer
(I have authority to bind the Corporation)

Name of Signing Officer (please print): _____

Title:

Address:

Email address:

Telephone Number: ()

SCHEDULE A

The annual reporting schedule will be quarterly in accordance with the table below.

AMS Member Quarterly Reporting and Payment Obligation Periods	Annual Reporting Due Dates	Data Period to Inform Member Reports (from the preceding quarter)
Q1 Obligation (January 1 – March 31)	Q1 - January 31	October 1 – December 31
Q2 Obligation (April 1 – June 30)	Q2 - April 30	January 1 – March 31
Q3 Obligation (July 1 – September 30)	Q3 - July 31	April 1 – June 30
Q4 Obligation (October 1 – December 31)	Q4 - October 31	July 1 – September 30

SCHEDULE “B”

VOLUNTARY REPORTER’S AGREEMENT effective as of [__] day of [_____], 20__.

AMONG:

AUTOMOTIVE MATERIALS STEWARDSHIP, a not for profit corporation incorporated under the laws of Canada (“AMS”)

- and -

(the “Voluntary Reporter”)

a corporation incorporated under the laws of _____
(jurisdiction)

- and -

(the “Member”)

a corporation incorporated under the laws of _____
(jurisdiction)

BACKGROUND

- A. AMS is the designated as the Industry Funding Organization under the Legislation for the Automotive Materials Stewardship Program;
- B. Pursuant to the Membership Agreement the Member is obligated to file an AMS Member Report and pay fees to AMS in respect of AMS Materials (AMSM) for which it is the Member under the Membership Agreement
- C. The Member and the Voluntary Reporter have agreed that the Voluntary Reporter shall file an AMSM Reporter’s Report for which the Member would otherwise report;
- D. The purpose of this Agreement is to set out the terms and conditions under which the Voluntary Reporter shall file an AMSM Voluntary Reporter’s Reports and the rights of the Member, the Voluntary Reporter and AMS in connection therewith.

THIS AGREEMENT WITNESSES

1. DEFINITIONS AND INTERPRETATION

- 1.1. Terms beginning with capital letters and used herein without definition shall have the meanings given to them in the Legislation and AMS Membership Agreement unless otherwise specified.
- 1.2. The following words and expressions have the meanings set out below:
- (a) **“Agreement”** means this Voluntary Reporter’s Agreement;
 - (b) **“Automotive Materials Stewardship”** or **“AMS”** means the not-for-profit stewardship agency incorporated under the Canada Not-for-profit Corporations Act;
 - (c) **“AMS Materials”** (or its abbreviation **“AMSM”**) means those goods and products set out in Appendix B to this Agreement and the ISP;
 - (d) **“Data Period”** means the calendar quarter that the Member supplied AMSM in Ontario;
 - (e) **“Fees”** means fees payable by the Member to AMS pursuant to the Membership Agreement;
 - (f) **“Legislation”** means the *Waste Diversion Act, 2002, S.O. 2002, c.6*, and includes any amended or replacement Act and any Regulations made thereunder;
 - (g) **“Plan”** means the **“Industry Stewardship Plan”** or **“ISP”** for Automotive Materials as approved by RPRA, a copy of which is posted on AMS’s website as amended from time to time;
 - (h) **“Member”** is a person or classes of persons designated or obligated in respect to AMSM pursuant to the provisions in the Membership Agreement;
 - (i) **“Member Report”** means a report prepared by the Member containing the information set out in the Membership Agreement;
 - (j) **“Supplied”** means sold, leased, donated, disposed of, transferred the possession or title of, or otherwise made available or distributed for use in the Province of Ontario; **“Supply”** and **“Supplies”** have similar meanings;
 - (k) **“Voluntary Reporter’s Report”** means a report prepared by the Voluntary Reporter and filed with AMS with respect to the Member pursuant to this Agreement, describing the aggregate amount of AMSM that was Supplied to the Voluntary Reporter by the Member in the Data Period, and containing the information set out in Appendix B of this Agreement;

1.3. FILING OF VOLUNTARY REPORTER’S REPORTS

- 1.3.1. The Voluntary Reporter shall file an initial Voluntary Reporter’s Report with respect to all AMSM Supplied by the Member to the Voluntary Reporter during the first Data

Period after commencement of this Agreement. Thereafter, the Voluntary Reporter shall file a Voluntary Reporter's Report for all such AMSM Supplied during each subsequent Data Period during which this Agreement is in effect.

1.3.2. A Voluntary Reporter's Report shall be filed by the end of the calendar month immediately following the end of the Data Period to which it refers in accordance with the Membership Agreement. Except for the initial Voluntary Reporter's Report, each such report shall be for an entire Data Period.

1.3.3. Notwithstanding Section 2.1 of Schedule "B" of this Agreement, by prior written agreement among a Member, the Voluntary Reporter and AMS, the Voluntary Reporter may file a Voluntary Reporter's Report for less than all of the AMS Supplied by the Member to the Voluntary Reporter in a Data Period, provided that the Member files an AMS Member's Report for all other remaining AMSM Supplied by the Member.

1.3.4. The Member will pay to AMS an amount equal to the Fees due to be paid by the Member in accordance with the Membership Agreement based on the contents of the Voluntary Reporter's Report. The Member and Voluntary Reporter shall provide at the time of entering into this Agreement the following information to AMS as set out in Appendix A of this Agreement including:

(a) The legal name of each of the Member and the Voluntary Reporter as well as the contact information required herein;

(b) Trading name or legal names of all entities for whom the Voluntary Reporter is reporting on behalf of the Member ;

(c) Corporation number or Canada Revenue Agency business numbers for the Member and the Voluntary Reporter.

2. PENALTIES, INTEREST AND BACK FEES

2.1. If the amounts reported in a Voluntary Reporter's Report are inaccurate, any deficiency in Fees paid resulting from such inaccuracies will be subject to the same penalties and payment interest outlined in the Membership Agreement but shall be paid by the Voluntary Reporter to AMS. AMS will notify the Member and the Voluntary Reporter of any deficiency notices issued by it to the Voluntary Reporter;

2.2. The Member shall not be responsible for penalties or interest under Section 2.1 of Schedule "B" of this Agreement accruing on amounts for which the Voluntary Reporter is obligated under this Agreement. Such penalties and interest shall accrue against the Voluntary Reporter. Penalties and interest shall accrue against the Member only after notification has been provided to the Member of such unpaid Fees, which notice shall set out the calculation of such Voluntary Reporter's Fees and such information as may reasonably be required to inform the Member of the facts giving rise to the amount of unpaid Voluntary Reporter's Fees. Payment by either the Member or the Voluntary Reporter shall constitute payment by the other for such amount.

- 2.3. Voluntary Reporter shall indemnify and save Member harmless from and against all losses, costs, damages, demands or claims, including legal fees resulting from any breach by Voluntary Reporter of the provisions of this Agreement, including but not limited to the failure to file a Voluntary Reporter Report in accordance with this Agreement.

3. RECORD PROVISION AND RETENTION

- 3.1. The Voluntary Reporter shall promptly provide to AMS and the Member all data, including calculation methodology, product and packaging data, audit reports, list of brands reported and list of brands excluded from any Voluntary Reporter's Report, and any applicable allocation percentages, used by the Voluntary Reporter in the preparation of the Voluntary Reporter's Report upon request from AMS or the Member.
- 3.2. The Voluntary Reporter shall retain or make available to AMS and the Member such information, data and records at an address in the Province of Ontario to substantiate and verify the amount set out in any Voluntary Reporter's Report for a period of not less than five years from the date of the Voluntary Reporter's Report to which they relate. The Voluntary Reporter shall grant access to AMS and the Member at such address upon its request to examine its books and records to enable AMS or the Member, as the case may be, to audit and inspect such records respecting a Voluntary Reporter's Report up to five years after the date of receipt of such Voluntary Reporter's Report by AMS.
- 3.3. This Agreement shall not relieve the Member from the Record Provision and Retention provisions of the Membership Agreement.

4. TERMINATION

- 4.1. This Agreement shall come into effect on the date set out above and shall remain in effect until terminated by any of the parties in accordance with Section 5.5 of Schedule "B", or either of the following provisions:
 - (a) AMS or the Member may terminate this Agreement at any time for cause, including non filing of Voluntary Reporter's Reports or non payment of Voluntary Reporter's Fees or penalty or interest charges assessed following notice as provided below. Prior to such termination AMS or the Member, as the case may be, shall give the other parties notice of such default. Notice given by AMS shall include the method of calculation of such fees and such other information and documents as may be reasonably expected to be required by the other parties to understand the basis for the determination of default. The Voluntary Reporter and the Member shall have a period of 15 days in which to effect a cure to such default, failing which AMS or the Member, as the case may be, may thereupon terminate this Agreement without further notice.
 - (b) Any party may otherwise terminate this Agreement on giving notice to the other parties prior to the expiry of a Data Period, and such termination notice shall be effective on the expiry of the next Data Period. If such notice is given, the Voluntary Reporter shall file a Voluntary Reporter's Report for the Data Period ending on the date of termination.
- 4.2. Notwithstanding the termination of this Agreement by any party, the Voluntary Reporter shall remain liable to AMS for any penalties or interest outstanding under this Agreement, but in no case shall AMS be entitled to penalties or interest from the Voluntary Reporter that exceed the amounts that would have been payable by the Member but for the existence of this

Agreement. The provisions of Articles 3, 4 and 5 of this Agreement will survive termination and remain in effect for a period of five years from the date of termination.

5. EFFECT OF AGREEMENT

- 5.1. The Member consents to the Voluntary Reporter entering into this Agreement, filing Voluntary Reporter's Reports on behalf of and for the account of the Member. Subject to Section 3.3 of Schedule "B" of this Agreement, Member acknowledges and agrees that it shall be relieved of reporting AMSM under the Membership Agreement only to the extent to which the Voluntary Reporter carries out its obligations under this Agreement.
- 5.2. The Voluntary Reporter and the Member acknowledge that AMS is not obligated to enter into this Agreement and that, unless and until a copy of this Agreement signed by AMS is delivered to each of them, this Agreement shall have no force and effect. AMS is not bound to provide reasons for refusing to enter into this Agreement and neither the Member nor the Voluntary Reporter shall have any claim against AMS for refusing to do so. If, within 15 days of submission of this Agreement signed by both the Member and the Voluntary Reporter, AMS does not notify each of them of its acceptance, then this Agreement shall be deemed not to have been accepted by AMS.
- 5.3. The obligation of the Voluntary Reporter to file a Voluntary Reporter's Report shall not be subject to or affected in any way by any disputes, accounts or equities which may exist between the Voluntary Reporter and the Member. The Voluntary Reporter agrees that it will file all such Voluntary Reporter's Reports regardless of any such disputes, accounts or equities and shall look only to the Member with respect thereto.
- 5.4. The Voluntary Reporter agrees to the disclosure of information to the Member by AMS about the amount of MHSM reported.
- 5.5. AMS retains the right to revise or amend the terms of this Agreement. AMS will give notice to the Member and Voluntary Reporter of such change (the "Change Notice"). Unless the Member and/or Voluntary Reporter give notice to AMS (the "Rejection Notice") within 45 days of receipt of the Change Notice that the Member and/or the Voluntary Reporter do not accept the revisions or amendments in the Change Notice, the Agreement, as amended, remains in effect and is binding. If the Member and/or Voluntary Reporter give a Rejection Notice to AMS, this Agreement shall be terminated 10 days after the delivery by the Member and/or Voluntary Reporter of the Rejection Notice.

6. DISPUTE RESOLUTION

- 6.1. If any dispute arises between any of the parties as to the amount of AMSM that is required to be included in a Voluntary Reporter's Report:
 - (a) The parties shall attempt to resolve the dispute through designated representatives from each of the parties within 30 days after written notice of the dispute was first given, or as otherwise agreed upon.
 - (b) If the parties are unable to resolve the dispute within the above period, the parties shall, within 30 days thereafter, jointly select an arbitrator to arbitrate the dispute. If a party does not nominate an arbitrator within the 30 day period, the other parties that have nominated

an arbitrator shall nominate the arbitrator. The arbitration shall be conducted in accordance with the Arbitration Act, 1991, as amended from time to time.

- (c) AMS may from time to time establish a panel of approved arbitrators for the purposes of this Section 6 of Schedule "B", whose names shall be published on the AMS website. The arbitrator shall be chosen from this panel, unless the parties mutually agree otherwise.
- (d) The arbitrator shall render a written decision on the dispute within 14 days after the arbitration hearing or submission. The decision of the arbitrator shall be final and binding on the parties and shall not be subject to appeal on any grounds whatsoever, and shall be enforceable against AMS and the Voluntary Reporter, as the case may be, immediately on the issue of such decision to the parties to the dispute.

6.2. The requirement for a Voluntary Reporter to file a Voluntary Reporter's Report shall not be an item subject to arbitration.

7. CONFIDENTIALITY

7.1. The Voluntary Reporter agrees that its name and the Voluntary Reporter's number assigned to it by AMS may be published on AMS's website. The Voluntary Reporter further agrees that the Member may at any time obtain access to the state of the Voluntary Reporter's account, such access to be restricted to the portion of the account for the Member's AMSM for which the Voluntary Reporter has filed reports; and provided that such access shall not disclose to the Member information with respect to other Members under the Act for which the Voluntary Reporter may have entered into a Voluntary Reporter's Agreement. AMS shall take commercially reasonable and appropriate precautions to maintain the confidentiality of information in its database, but shall not be liable to the Member or Voluntary Reporter, or anyone claiming by, through or under either of them, for any losses, claims and damages arising out of inadvertent or negligent disclosure of any confidential information.

8. GENERAL

- 8.1. Assignment. The rights and obligations of the Member and the Voluntary Reporter under this Agreement are personal and may not be assigned in whole or in part.
- 8.2. Waiver. No failure by any of the parties to insist on strict performance of any covenant, agreement, term or condition (the "**provision**") of this Agreement, or to exercise any right or remedy consequent on the breach of any provision, and no acceptance of partial payment during the continuance of any such breach, shall constitute a waiver of any such breach or provision. No waiver of any breach shall affect or alter this Agreement, but each and every provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach of such provision.
- 8.3. Severability. If any provision of this Agreement or the application of the provision to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application of them to other circumstances shall not be affected by the invalidity or unenforceability and shall be valid and enforceable to the fullest extent permitted by law.

- 8.4. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in it. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound by it. Notwithstanding the foregoing, nothing in this Agreement shall prevent a Member and Voluntary Reporter from, between themselves, entering into one or more other agreements concerning the subject matter of this Agreement, provided that nothing shall affect the obligations of the Member or Voluntary Reporter, or the rights of AMS, under this Agreement.
- 8.5. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws in force in the Province of Ontario.
- 8.6. Headings. The headings used throughout this Agreement are solely for convenience of the parties and are not to be used as an aid in the interpretation of this Agreement.
- 8.7. Time of Essence. Time shall be of the essence of this Agreement and every part of it.
- 8.8. Agreement Binding. This Agreement shall enure to the benefit of and be binding on the parties, their heirs, legal personal representatives, and successors and permitted assigns.

Notices. Any notice, determination, consent, request or other communication from one party to the other or others or other documents required or which may be given under this Agreement may be delivered or transmitted by means of electronic communication, personal service, facsimile with confirmation of transmission or by prepaid first class postage to the party at the addresses below and shall be deemed to have been received on the third day after posting and on the first day after the date of electronic or facsimile transmission, in each case which is not a Saturday, Sunday or public holiday in Ontario. In the event of a postal disruption, notices must be given by personal delivery or by a signed back facsimile and all notices delivered within one week prior to the postal disruption must be confirmed by a signed back facsimile to be effective. If AMS makes available on its website a system or method for electronic communication of notices to AMS, such notices may be given through such website.

AMS
1 St. Clair Avenue West Suite 700
Toronto, Ontario M4V 1K6
Attention: Chief Executive Officer
Facsimile: 416-594-3463

(the "Voluntary Reporter")
attention to and mailed/faxed to:

(primary contact)

(mailing address)

(phone number)

(fax number)

(email)

CRA BIN Number

(the "Member")
attention to and mailed/faxed to:

(primary contact)

(mailing address)

(phone number)

(fax number)

(email)

CRA BIN Number

EXECUTION BY THE PARTIES.

AMS

Per: _____
Name

Title

Date

We have authority to bind the Corporation

VOLUNTARY REPORTER

Per: _____
Name

Title

Date

We have authority to bind the Corporation

MEMBER

Per: _____
Name

Title

Date

We have authority to bind the Corporation

This information must be validated by a senior officer of the company

APPENDIX A

Information for the Voluntary Reporter's Agreement (as set out in Section 1.7 of Schedule "B" of this Agreement)

Legal Name of Voluntary Reporter

Voluntary Reporter's General Phone

Primary Contact

Phone

Email

Legal Name of Member

Member's General Phone

Primary Contact

Phone

Email

APPENDIX B

AMSM Voluntary Reporters Report (as set out in Section 1.2 of Schedule “B” of this Agreement)

Name of Voluntary Reporter

Mailing address

Billing address

Primary Contact Person for AMSM Voluntary Reporter’s Report

Email address

Designated Materials		
Material Category	Reporting Category	Unit of Measure
Automotive Antifreeze Fluid	Premix	Volume in litres
	Concentrate	Volume in litres
Antifreeze Containers (Containers with a volume equal to or less than 30 litres)	Container	Volume in litres
Oil Containers (Containers with a volume equal to or less than 30 litres)	Oil Containers	Volume in litres
Oil Filters	Filters measuring less than or equal to 8"	Number of units Supplied
	Filters measuring greater than 8"	Number of units Supplied

Required information to be included in the AMSM Voluntary Reporter’s Report:

1. Description of methodology and data used to prepare this AMSM Voluntary Reporter’s Report
2. Description of Excluded Waste deductions from AMSM Voluntary Reporter’s Report;
3. List of brands or trademarks covered in this AMSM Voluntary Reporter’s Report;
4. List of all Members that this Voluntary Reporter’s Agreement includes; and
5. Declaration of accuracy of contents of this AMSM Voluntary Reporter’s Report.