

Société de gestion des huiles usagées (SOGHU)



Membership Agreement

MEMBERSHIP AGREEMENT, entered into at _____ on _____, _____.

BETWEEN:

SOCIÉTÉ DE GESTION DES HUILES USAGÉES, a company constituted under Part III of the *Companies Act* having its principal place of business at 1101, Brassard Blvd., Suite 214, Chambly, Québec, J3L 5R4, represented by Mr. Gilles Goddard, its General Manager, duly authorized to act herein;

(hereinafter called “*SOGHU*”)

AND:

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

(hereinafter called the “*Member*”)

PREAMBLE

THE PARTIES DECLARE THE FOLLOWING:

WHEREAS SOGHU has been constituted for the purposes of implementing a recovery and recycling system for used oil, oil or fluid containers and used filters within the territory of the Province of Québec;

WHEREAS the Member is a Brand Owner or Leading Supplier in Québec (such as these terms are defined herein); and

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

THE PARTIES AGREE AS FOLLOWS:

1. Definitions

The following words and terms shall be interpreted unless there is an implicit or explicit exception in the text, according to the definitions ascribed to them hereinafter:

- (i) **Act:** means the *Environment Quality Act* (R.S.Q., c. Q-2) and the Regulations adopted thereunder;
- (ii) **Brand Owner:** means any business which markets lubricating oils and/or filters under a trademark of which it is the owner or user;
- (iii) **Certification Agreement:** means the agreement entered into between RECYC-QUÉBEC and SOGHU, appended to the Agreement as Schedule 3, recognizing SOGHU as an organization authorized to implement a recovery and recycling system, as described in Section 14 of the **Regulation**;
- (iv) **Container:** means a container of 50 litres or less, made of plastic or other material, including aerosol containers, as described in Section 3 of the Regulation;
- (v) **Environmental Handling Charge:** means the contribution paid to SOGHU by its Members;
- (vi) **Filter:** means oil filters, antifreeze filters and diesel filters, and filters for heating systems using light heating oil and for oil storage tanks, as described in Section 4 of the Regulation;
- (vii) **Leading Supplier in Québec:** means a business which markets lubricating oils and/or filters for which the Brand Owner has neither a domicile nor a place of business in Québec;
- (viii) **Lubricating oil:** means a mineral, synthetic or vegetable oil, as identified in Section 2 and Schedule I of the Regulation;
- (ix) **Member:** means a Brand Owner, Leading Supplier or User in Québec which is a Member of SOGHU;
- (x) **Membership Agreement or Agreement:** means this Agreement entered into between the Member and SOGHU;
- (xi) **Minister:** means the Minister of the Environment of Québec;
- (xii) **Prime Rate:** means, for each day, the annual interest rate which the principal business bank of SOGHU establishes for that day in respect of the market situation and based on which it determines the interest rates on the loans it grants in Canada in Canadian dollars;
- (xiii) **Product:** means the Products identified in the Regulation;

- (xiv) **Regulation**: means the Regulation respecting recovery and recycling of used oils, oil or fluid containers and used filters, Order-in-Council 166-2004, published in the Gazette officielle du Québec on March 24, 2004, as amended on August 11, 2004, and as it may be further amended from time to time thereafter;
- (xv) **Schedule of Environmental Handling Charges (EHCs)**: means the amounts of EHCs which must be disbursed monthly on the oils, filters and containers contemplated by the Regulation, all as described in Schedule 1 hereof, which Schedule may be amended from time to time; and
- (xvi) **SOGHU**: means Société de gestion des huiles usagées, an organization created to implement the recovery and recycling system, as described in Section 14 of the Regulation.

2. Obligations of SOGHU

- 2.1 SOGHU undertakes to implement a recovery system for used oils, containers holding 50 litres or less, aerosol containers and used filters in collaboration with the collectors it will have certified.
- 2.2 SOGHU undertakes to implement a recycling system for the recovered Products in collaboration with the recyclers using these products in accordance with the Act and any other applicable legislation and regulations.
- 2.3 SOGHU undertakes to implement an information and awareness program for users and consumers regarding used oils in the industrial, commercial and private fields in accordance with Section 11 of the Regulation.
- 2.4 Except as provided herein, SOGHU undertakes not to disclose any confidential document or information received from the Member, in accordance with the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q., c. A-2.1). However, SOGHU may transmit any document or information to RECYC-QUÉBEC or to the Minister or to the authorized persons of the Ministère de l'Environnement du Québec, or when such transmission is required by any legislation or required by a judicial or quasijudicial authority. RECYC-QUÉBEC, under the terms of the Certification Agreement, has committed itself to SOGHU for the same obligations.
- 2.5 SOGHU shall send the Member ninety (90) days' advance written notice of any amendment to Schedule 1 hereof regarding the EHCs.

3. Obligations of the Member

- 3.1 The Member agrees to transmit to SOGHU, in writing, including electronically or by way of a spreadsheet, within thirty (30) days of the end of each month, the details of the quantities of lubricating oils and filters contemplated by the Regulation which it markets in the Province of Québec and the total capacity of oil or fluid containers holding 50 litres or less marketed during each of these

- periods. The Member shall annually transmit to SOGHU, the details of its sales of oils, by Lubricating oil types.
- 3.2 In consideration of its membership in SOGHU, the Member agrees to remit the following amounts to SOGHU:
- a) membership fees in an amount of \$200 and the taxes pertaining thereto;
 - b) an annual duty, as determined from time to time by SOGHU;
 - c) the EHCs and the taxes pertaining thereto, based on the volume of products sold or supplied by the Member in the Province of Québec, as determined by SOGHU in Schedule 1 hereof, as amended from time to time.
- 3.3 The EHCs shall be disbursed by the Member to SOGHU on a monthly basis, within 30 days of the end of each month and shall be accompanied by the Form which must accompany the monthly payment of the EHCs, appended hereto as Schedule 2, as amended from time to time by SOGHU.
- 3.4 In the event that the Member omits to pay the amounts due hereunder when due, the Member shall pay interest equivalent to the Prime Rate on the arrears effective from the due date. The interest shall be payable on request and, in all cases, no later than the date the next payment becomes due.
- 3.5 The Member agrees to remit to SOGHU within 30 days of the signing hereof, the EHCs on all the products sold or supplied by it between December 1, 2004 and the date when the Member actually becomes a Member of SOGHU.
- 3.6 The Member agrees to remit to SOGHU, upon signing and execution hereof, an up-to-date list including the name and address of its directors and officers, and its name, address and registration number, as the case may be. This information shall be transmitted to RECYC-QUÉBEC under the terms of Section 9 of the Certification Agreement. SOGHU shall remit the said information to RECYC-QUÉBEC.
- 3.7 The Member agrees to collaborate with SOGHU in its efforts to inform consumers of the existence and operation of the recovery system, its accessibility and the advantages of the recovery and recycling system of the products described in the Regulation.
- 3.8 The Member also agrees to collaborate with SOGHU in order to favor the implementation of the Certification Agreement.
- 4. Term of the Agreement**
- 4.1 The Member agrees that upon the signing and execution of the Membership Agreement and the payment of the membership fees, it shall become a Member of SOGHU, subject to its By-laws.

- 4.2 A Member may give 30 days' prior written notice of its intention to withdrawal from SOGHU at any time.
- 4.3 In the event that the Member gives SOGHU written notice of its intention to withdraw, the Member shall be considered to have withdrawn from SOGHU 180 days after the date of receipt of the notice. Upon receipt of the notice, SOGHU shall request an audit of the Member's books and records.
- 4.4 The Member agrees that SOGHU shall transmit a list of the enterprises which have signed a Membership Agreement with SOGHU or which have withdrawn from SOGHU to RECYC-QUÉBEC, which may transmit the said information to the Minister in accordance with the Act.
- 4.5 SOGHU shall be entitled to terminate a Member's Membership Agreement unilaterally in the event of the Member's bankruptcy or insolvency or in the event of non-payment of the EHC for a period of two (2) consecutive months or in the event of a material or repeated breach of its obligations hereunder.

5. Funding of the Costs

- 5.1 The Member acknowledges and agrees that the sums collected by SOGHU from its Members shall serve to fund all of the costs, programs and activities established by SOGHU, in particular:
- a) the information, awareness and education campaigns;
 - b) the return incentives to be disbursed to the collection points or the collectors;
 - c) the recycling incentives to be disbursed for the recycling of the recovered oils, containers and filters, research and development;
 - d) SOGHU's management fees;
 - e) SOGHU's annual financial contribution to RECYC-QUÉBEC.

6. Audit

- 6.1 The Member agrees to keep complete, accurate and up-to-date books and records of all the transactions and information required under the terms of the Regulation regarding the Products and the payments of EHCs.
- 6.2 The Member agrees that SOGHU and/or RECYC-QUÉBEC, their auditors or other duly authorized representatives, in order to meet the requirements of the Regulation regarding auditing of the information required by the Regulation, shall have full access, during normal business hours, to the place of business and to the books and records of the Member or to the place where the books and records of the Member are kept and to any other document or information required to complete the audits required by the Regulation and the Certification Agreement

and shall have the right to take a copy of these documents at the Member's expense, for the duration of the Agreement, and for a period of two (2) years following the termination, rescission or cancellation of this Agreement or of any renewal thereof, as the case may be.

6.3 This audit shall be conducted at SOGHU's expense, unless considerable errors (over 10%) of any amount paid by or any information given by the Member are proved following this audit. The Member shall immediately disburse the following amounts to SOGHU, to which shall be added the taxes pertaining thereto:

- a) the EHCs due;
- b) the audit expenses (if the errors are over 10%); and
- c) administration expenses over and above the audit expenses, as the case may be, corresponding to 20% of the EHCs due.

7. Posting

7.1 In compliance with the principle of the producer's expanded responsibility, the Member undertakes to observe the provisions of the Consumer Protection Act (R.S.Q. c. P-40.1) regarding the posting of the selling price of the oils, fluids and filters they market, and to inform the retailers which offer their products to consumers.

8. Final Provisions

8.1 This Agreement shall bind the Parties and their successors, heirs, legatees, assigns and other respective legal representatives and their beneficiaries.

8.2 The Member may not assign, encumber, alienate or subcontract, in whole or in part, the rights and obligations resulting from this Agreement, in any manner, for a purpose not specifically prescribed in the Agreement without the written consent of SOGHU. In the event of any assignment, the Member shall remain liable for the obligations incumbent on it under the terms of this Agreement, jointly and severally with any assignee, even in the event of bankruptcy or insolvency of the assignee. All the documents transmitted by the Member to SOGHU shall be submitted for information, review and verification purposes.

8.3 All the rights mentioned herein are cumulative and not alternative. The Member cannot be discharged from its obligations under the terms of this Agreement by the fact that SOGHU remains silent or delays the execution of a right or a remedy granted to it under this Agreement, which shall never be interpreted against SOGHU as an exemption or a waiver of the full execution of its rights and remedies, as long as the legal prescription provided for the exercise of such a right or remedy has not expired.

- 8.4 The preamble and any document appended to this Agreement are an integral part thereof.
- 8.5 Any contested claim arising from the Agreement, any disagreement regarding its performance, including its nullification, and any dispute arising from a problem of interpretation of the Agreement shall be submitted to arbitration, to the exclusion of the law courts.
- 8.6 The Parties hereto agree that the provisions currently in force of the Code of Civil Procedure (R.S.Q., c. C-25) shall govern any arbitration held hereunder.
- 8.7 Any notice required hereunder shall be sufficient if it is recorded in a writing and sent by a mode 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 which the latter may make known in accordance with this section.
- 8.8 This Agreement may be changed or amended in whole or in part, by mutual agreement between the Parties. As the case may be, any change or amendment thus made shall take effect only as of the date it is recorded in a writing duly signed and executed by the Parties and appended to the Agreement.
- 8.9 The Agreement, its interpretation, its performance, its application, its validity and its effects shall be subject to the applicable laws in force in the Province of Québec and in Canada, which govern all of the provisions it contains in whole or in part.
- 8.10 Any provision of the Agreement not in accordance with the laws shall be deemed null and void to the extent that it is prohibited by any of them. The same principle applies for all subordinate or related clauses of such as provision to the extent that their applicability depends on the said provision.

THE PARTIES HAVE SIGNED AND EXECUTED THIS AGREEMENT AT
 _____ this _____, _____.

SOCIÉTÉ DE GESTION DES HUILES USAGÉES

Per: _____
 Gilles Goddard, General Manager

THE MEMBER

Per: _____

SCHEDULE 1

Schedule of Environmental Handling Charges (EHCs)

- \$0.05 per litre for lubricating oils;
- \$0.05 per litre of capacity of oil containers of 50 litres or less;
- \$0.25 per aerosol container;
- \$0.50 per filter or less than 8 inches or 203 mm, and \$1.00 per filter of 8 inches or 203 mm or more;
- \$0.50 per sump type automatic transmission filter, regardless of size.

SCHEDULE 3

Certification Agreement Entered into Between SOGHU and RECYC-QUÉBEC

AGREEMENT ENTERED INTO AT MONTREAL ON NOVEMBER 1, 2004,

BETWEEN: **SOCIÉTÉ QUÉBÉCOISE DE RÉCUPÉRATION ET DE RECYCLAGE**, a government corporation created under the *Act respecting the Société québécoise de récupération et de recyclage*, R.S.Q., c. S-22.01, having its head office at 675 Rue Saint-Amable, Suite 300, Québec (Québec) G1R 2G5, hereinafter represented by Mr. Robert Lemieux, its President and General Manager, who declares that he is duly authorized for this purpose,

(hereinafter “RECYC-QUÉBEC”)

AND: **SOCIÉTÉ DE GESTION DES HUILES USAGÉES**, a non-profit corporation created under Part III of the *Companies Act*, R.S.Q., c. C-38, having its head office at 1 Place Ville-Marie, 37th floor, Montréal (Québec), H3B 3P4 and its principal place of business at 1101 Brossard Blvd., Suite 214, Chambly (Québec) J3L 5R4, hereinafter represented by Mr. Gilles Goddard, its General Manager, who declares that he is duly authorized for this purpose,

(hereinafter “SOGHU”)

WHEREAS the Government of Québec, on September 30, 2000, published in the *Gazette officielle du Québec* the Québec Residual Materials Management Policy, 1998-2008 (hereinafter the “Policy”), which thus became the official policy of the Government under subsection 53.4 of the Environment Quality Act (R.S.Q., c. Q-2, hereinafter the “Act”);

WHEREAS, under subsection 53.30 of the Act, the Government may, by regulation, regulate the recovery and reclamation of residual materials in all or part of the territory of Québec;

WHEREAS, by Order-in-Council 166-2004, adopted on March 10, 2004, the Government decreed the *Regulation respecting recovery and reclamation of used oils, oil or fluid containers and used filters*, as amended from time to time (hereinafter the “Regulation”), in accordance with subparagraph 7 of the first paragraph of subsection 53.30 of the Act;

WHEREAS the different rates of recovery and schedules determined by the Regulation were determined by the Government after consultation of industry representatives, taking into account the situation in 1999-2000 and according to the data available at that time, and these rates have not been adjusted to account for the information available at the time of adoption of the Regulation of 2004;

WHEREAS the rates and schedules determined by the Regulation were not updated upon the adoption of the Regulation so as not to delay the coming into force of the Regulation any further, and this, with the consent of the industry representatives, it being agreed that this situation will be considered subsequently and that adjustments may subsequently be discussed and agreed;

WHEREAS Société de gestion des huiles usagées (hereinafter “SOGHU”) wishes to enter into a certification agreement with Société québécoise de récupération et de recyclage (hereinafter “RECYC-QUÉBEC”) under Section 14 of the Regulation;

WHEREAS SOGHU was created in 2004 by businesses in the oil and oil filter industry for the purpose, in particular, of acting as an approved organization;

WHEREAS SOGHU brings together several businesses which market oils or filters in Québec;

WHEREAS the purposes for which SOGHU was constituted are to promote responsible management of used oils, oil and fluid containers and used filters, and to create and manage, in collaboration with partners, a management structure for these materials, allowing it to provide for the implementation of a recovery and reclamation system for used oils, oil or fluid containers and used filters, all in accordance with the Regulation and this Agreement;

WHEREAS in the Regulation, in particular, any business that markets oils or filters under a trademark it owns or uses is required, through a recovery system that meets the minimum specifications described in Schedule III of the Regulation, to recover or to see to the recovery of used oils, oil or fluid containers and used filters deposited at the collection points provided for in the system and that are of the same type as those it markets, as well as any container or packaging used in the transport of these oils back to the collection points;

WHEREAS in the Regulation, a business subject to the recovery requirements is also required to reclaim or see to the reclamation of all the used oils and filters it has recovered. It is also required to reclaim or see to the reclamation of the oil or fluid containers recovered, to the extent that their reclamation is technically possible and the costs associated with the reclamation do not threaten its competitiveness;

WHEREAS the Regulation stipulates that any business subject to it may be exempted from the requirements under Sections 5 to 7 and 10 to 13 of the Regulation if the business is a member of an organization one or more of the functions of which is to implement or contribute financially toward the implementation of a system to recover or reclaim residual materials, in accordance with the conditions fixed by an agreement entered into between the organization and RECYC-QUÉBEC and if the name of such an organization appears on a list drawn up by RECYC-QUÉBEC and published in the *Gazette officielle du Québec*;

WHEREAS the provisions of any agreement contemplated in subparagraph 7 of the first paragraph of subsection 53.30 of the Act should allow achievement of a level of recovery and reclamation equal to or greater than the one which would have been reached by the application of the regulatory standards, as stipulated in the second paragraph of subsection 53.30 of the Act;

WHEREAS the Policy designates RECYC-QUÉBEC to coordinate the activities of the approved industrial organizations and, more specifically, to monitor the implementation of the certification agreements;

WHEREFORE the Parties establish the following:

Section 1: Interpretation

1. For the purposes of this Agreement:
 - 1.1. “consumer” means a consumer such as this term is defined in subsection 1(e) of the *Consumer Protection Act*, R.S.Q., c. P-40.1;
 - 1.2. “container” means any container contemplated by the Regulation;
 - 1.3. “Agreement” means this Certification Agreement;
 - 1.4. “business” means any person that markets oils, fluids or filters contemplated by the Regulation in Québec under a trademark it owns or uses. In the event that such a person has neither a domicile nor a place of business in Québec, this term means the leading supplier in Québec of this product, regardless of whether this person is the importer;
 - 1.5. “filter” means any type of filter contemplated by the Regulation;
 - 1.6. “oil” means any oil contemplated by the Regulation;
 - 1.7. “Act” means the *Environment Quality Act* (R.S.Q., c. Q-2);
 - 1.8. “Minister” means the Minister of the Environment of Québec;
 - 1.9. “Regulation” means the *Regulation respecting recovery and reclamation of used oils, oil or fluid containers and used filters*, as amended from time to time;
 - 1.10. “reclamation” means reclamation as defined in subsection 53.1 of the Act.

Section 2: Purpose of the Agreement

2. The main purpose of this Agreement is to supervise the recovery and reclamation system established by SOGHU and determine the minimum rates of recovery and reclamation of oils, oil or fluid containers and used filters that this system must assure, and to define specifically the role, obligations and responsibilities of the parties, and the terms and conditions of operation of the Agreement.

Section 3: SOGHU Structure and Business Membership

- 3.1. SOGHU's business is administered by a Board of Directors, the formation of which is governed by its General By-laws, appended in Schedule 1. Any amendment to the General By-laws shall be transmitted to RECYC-QUÉBEC within 10 days. RECYC-QUÉBEC shall designate a representative to the Board of Directors who serves as a non-voting member.
- 3.2. The Board of Directors appoints a General Manager who is responsible for the management of SOGHU's business. The General Manager reports on his management to the Board of Directors.
- 3.3. A Vigilance Committee is formed in the following manner:
 - one person appointed by the Minister;
 - one person appointed by RECYC-QUÉBEC;
 - two persons appointed by the groups of municipalities designated in Section 53.31.8 of the Act;
 - one representative of the recovery businesses concerned;
 - one representative of the reclamation businesses concerned;
 - one person appointed by an environmental association representative of the community;
 - one person appointed by a Québec consumer association; and
 - one person appointed by the Conseil québécois du commerce de détail.

The Vigilance Committee's mandate is to make recommendations to the Board of Directors on the development and implementation of measures intended to improve the operation of the recovery and reclamation system pertaining to SOGHU.

- 3.4. For the purpose of enabling the businesses subject to the recovery and reclamation requirements stipulated in the Regulation to join SOGHU, it makes available to them a Membership Agreement, which is approved by RECYC-QUÉBEC and appended in Schedule 4. Any business which signs this Agreement and which pays the contribution stipulated in subsection 4.5 becomes a member in good standing of SOGHU and is exempt from the requirements prescribed Sections 5 to 7 and 10 to 13 of the Regulation, in accordance with Section 14 thereof.
- 3.5. Within 60 days of the coming into force of the Agreement, SOGHU shall forward to RECYC-QUÉBEC the list of businesses which have signed a Membership Agreement with SOGHU. Any addition of a business to this list during the term of this Agreement or any renewal thereof, and any withdrawal of a business from the list, shall be communicated periodically to RECYC-QUÉBEC.

Section 4: Obligations of SOGHU

- 4.1. SOGHU shall implement a system assuring recovery and reclamation of the oils, containers and filters contemplated in the Regulation.
- 4.2. It shall recover, without restriction as to trademark, all types of oils, containers and filters received, including, in particular, used oils brought in non-original containers and unused residues of oils normally consumed or lost during use, according to the objectives indicated in Section 7.
- 4.3. It shall make its services available free of charge to the general public, throughout the territory of Québec, in accordance with the criteria established in Section 6.
- 4.4. It shall specify the terms and conditions and implement a recovery system and promote the development of markets for reclamation of oils, containers and filters in accordance with the criteria stipulated in this Agreement. These terms and conditions shall make it possible, in particular, to consider the methods of recovery already in place, particularly regarding collection of hazardous household residues organized by the municipalities.
- 4.5. It shall establish a rate determining the contribution of its members. It shall establish a collection system for the contributions payable by the member businesses, it being understood that the amounts coming from the contributions shall serve to fund all of the costs, programs and activities contemplated by the Agreement, in particular:
 - Information, awareness and education campaigns;
 - Subsidies payable to the collection points or the recovery businesses;
 - Subsidies payable for reclamation of recovered oils, containers and filters, research and development;
 - SOGHU's management fees;
 - The financial contribution which SOGHU must pay annually to RECYC-QUÉBEC.
- 4.6. SOGHU undertakes to notify RECYC-QUÉBEC and the Minister of the rate of the contribution it establishes for its members and any change it introduces thereto, within 30 days before they come into force. The contribution imposed by SOGHU on its members shall respect the principle of the producer's expanded responsibility as set out in the Policy. The members of SOGHU shall observe the provisions of the *Consumer Protection Act* (R.S.Q., c. P-40.1) regarding the posting of the selling price of the oils, fluids and filters they market. SOGHU shall prescribe its members' commitment in this regard in the Membership Agreement stipulated in subsection 3.4. Two years after the signing of the Agreement, SOGHU shall review the criteria taken into account to determine the rate, so as to make the member businesses responsible for the environmental consequences of the products they market or distribute, taking into consideration, among other factors, the characteristics of the oils, containers and filters with regard to their potential for reuse, recovery and reclamation.
- 4.7. It may enter into any contract, agreement or covenant with organizations, businesses, municipalities or other stakeholders in order to achieve the recovery

and reclamation objectives stipulated in the Agreement, in accordance with the applicable laws and regulations.

- 4.8. It shall pay an annual financial contribution to RECYC-QUÉBEC intended to defray all of the costs arising from the functions and responsibilities assumed under the Agreement, including coordination, monitoring of the agreement, assistance in achieving the objectives, participation in information, education and awareness, development of markets for recovered and reclaimed materials, development of recovery and reclamation technologies, analysis of results, and auditing. The amount of the annual contribution shall be established in accordance with Schedule 2 and payable in two equal installments, no later than September 30 of each year for the months of January to June of the current year, and March 31 of each year for the months of July to December of the previous year; the financial contribution for the year 2004 shall be payable in full to RECYC-QUÉBEC on March 31, 2005;
- 4.9. It shall allow any external auditor, authorized by RECYC-QUÉBEC, to proceed with the audit and validation of any document or any information submitted to it or which must be submitted to it for the performance of the functions entrusted to it under the Agreement and give him the necessary access to any book, document or information belonging to SOGHU or to its member businesses. SOGHU shall prescribe its members' commitment in this regard in the Membership Agreement stipulated in Section 6. The external audit fees billed to RECYC-QUÉBEC in accordance with the contracted awarded following the call for tenders stipulated in subsection 5.5 shall be discharged by SOGHU, in addition to the contribution stipulated in subsection 4.8.
- 4.10. SOGHU undertakes to negotiate service agreements with RECYC-QUÉBEC, as needed, pertaining in particular to the performance of common studies regarding pilot projects, research and development projects, market analyses or information, awareness and education campaigns.

Section 5: Roles and Responsibilities of RECYC-QUÉBEC

- 5.1. RECYC-QUÉBEC undertakes not to disclose any confidential document or information received from SOGHU or a member business, in accordance with the *Act respecting access to documents held by public bodies and the protection of personal information* (R.S.Q., c. A-2.1). However, it may transmit any document or information to the Minister or to the authorized persons of the Ministère de l'Environnement du Québec, or when such transmission is required by any law or required by a judicial or quasijudicial authority.
- 5.2. RECYC-QUÉBEC shall assure monitoring of the Agreement and coordination with the other organizations which have entered into a similar agreement pertaining to the recovery and reclamation of residual materials. It shall promote concerted actions between these organizations and shall give SOGHU the benefit of its expertise, particularly concerning the establishment of a recovery network, information, education and awareness, research and development.
- 5.3. RECYC-QUÉBEC shall account to the Minister for the monitoring of the Agreement and, in particular, the performance of the recovery and reclamation system put in place by SOGHU. RECYC-QUÉBEC shall make the appropriate recommendations to SOGHU and the Minister in this regard.
- 5.4. RECYC-QUÉBEC shall proceed with the analysis and validation of the information transmitted by SOGHU under the Agreement.
- 5.5. RECYC-QUÉBEC shall mandate an external auditor to proceed annually, or in any other period agreed with SOGHU, with the audit of the results and achievement of the recovery and reclamation objectives of SOGHU, the recovery businesses, the reclamation businesses and a sample of no more than fifteen percent (15%) of SOGHU's members. The external auditor shall be chosen by RECYC-QUÉBEC following a call for tenders process. SOGHU shall participate in the selection procedure for the tenders deposited by designating a member of the selection committee. The sample of the SOGHU members for audit purposes shall be determined by RECYC-QUÉBEC, by consensus with SOGHU.
- 5.6. RECYC-QUÉBEC shall report, in its annual report, on the utilization of the financial contributions stipulated in the Agreement.
- 5.7. RECYC-QUÉBEC shall register SOGHU on the list it has published in the *Gazette officielle du Québec* and shall transmit this Agreement to the Minister, in accordance with subparagraph 7 of the 1st paragraph of subsection 53.30 of the Act. This publication shall take place within 60 days of the signing of the Agreement.

Section 6: Establishment of SOGHU's Recovery and Reclamation System

- 6.1. The collection points established by SOGHU shall, by their nature, location and number, be capable of reasonably guaranteeing the achievement of the recovery objectives stipulated in the Agreement, by applying the following criteria.
- 6.2. SOGHU shall establish collection points for each regional municipality within whose territory a member business markets oils, fluids or filters contemplated in the Regulation. A regional municipality is any municipality contemplated in the 2nd paragraph of subsection 53.5 of the Act.

It shall also establish collection points for every town within whose territory a member business markets oils, fluids or filters, which has 25,000 or more inhabitants and whose territory is not part of a regional municipality.

- 6.3. The minimum number of collection points the recovery system must include and their type and location shall be determined according to Option B of Schedule III of the Regulation.
- 6.4. The recovery system shall include collection points where the materials contemplated by the Regulation can be deposited and which are of the same type as the materials marketed by the member businesses located within the territory served by each collection point concerned, as well as the containers and packaging used in the transport of these materials back to the collection points.
- 6.5. A collection point shall consist either of a permanent and fixed depot or a temporary, fixed or mobile depot.

A permanent depot is a depot that is accessible year round during regular business hours for a period of at least 24 hours per week in which at least six of these hours are during the weekend. The opening hours of the depot must be posted in an appropriate location.

A temporary depot is one that is accessible or available periodically and at least once per season.

A fixed depot must be located so as to minimize travel distances for the majority of the persons served by the collection point in the territory concerned.

- 6.6. The use of the recovery system shall be free of charge for every citizen.

- 6.7. SOGHU shall establish a partnership with the various stakeholders for the establishment of several collection points of various types. In particular, it shall seek to establish a partnership with:
- 6.7.1. commercial sector operators, for the establishment of collection points in automobile mechanical repair shops, service stations which have a mechanical repair shop and retail stores offering motor vehicle repair and maintenance services;
 - 6.7.2. industrial sector operators, for the establishment of collection points in factories where there is substantial consumption of oil;
 - 6.7.3. municipal sector, agricultural sector and forest sector organizations, for the integration of the existing collection points into its recovery system, for studies of the complementary relationship between these collection points and its own collection points, or to collaborate in the establishment of new collection points.
- 6.8. SOGHU shall review each year the number of collection points in its recovery system and their location if the system established does not allow the achievement of the recovery and reclamation objectives determined by the Agreement.
- 6.9. SOGHU shall establish a selection and accreditation process for the recovery businesses of the system it operates under the Agreement. The recovery business selection process shall be transparent and favour free enterprise. SOGHU shall give RECYC-QUÉBEC written notice of the selection criteria and process followed, the terms and conditions of operation of the recovery businesses, and the measures taken to assure monitoring of the quality and quantities of recovered oils, containers and filters and their traceability.
- 6.10. SOGHU shall adopt a selection and accreditation process for the reclamation businesses which will proceed with treatment of the oils, fluids, containers and packaging and the recovered filters. SOGHU shall take reasonable measures to assure that the reclamation businesses hold all the permits, licences, certificates, approvals, attestations, accreditations, acquired rights and consents issued, granted or signed by any public authority, required for the accomplishment of the reclamation activities. If a reclamation business proceeds with the processing of recovered materials from outside Québec, this processing must be authorized by the authorities who have jurisdiction and must not be prohibited in Québec. SOGHU shall give RECYC-QUÉBEC written notice of the selection criteria and process followed, the terms and conditions of operation of the reclamation businesses, and the measures taken to assure monitoring of the quantities of reclaimed oils, containers and filters and their traceability.

Section 7: Recovery and Reclamation Objectives

- 7.1. The recovery and reclamation system stipulated in Section 6 shall assure the following rates of recovery and reclamation:
 - 7.1.1. for used oils, the minimum rate of recovery shall be 70% of the recoverable oils effective from 2005 and 75% of the recoverable oils effective from 2008. For the purposes of calculation of the years 2005 and 2006, the recoverable oil rate in relation to the oils marketed annually shall be 67%. The Parties agree to review the recoverable oil rate according to analyses to be performed by SOGHU or any other study. However, these analyses and studies shall be submitted to RECYC-QUÉBEC for approval;
 - 7.1.2. for the oil or fluid containers, the minimum rate of recovery shall be 50% effective from 2005 and 75% effective from 2008. The Parties agree to study the possibility of establishing a recoverable container rate for the calculation of the rate of recovery, following analyses or studies performed by SOGHU and approved by RECYC-QUÉBEC;
 - 7.1.3. for used filters, the minimum rate of recovery shall be 50% effective from 2005 and 75% effective from 2008;
 - 7.1.4. for all recovered materials, the rate of reclamation shall be 100% effective from 2005. However, the reclamation requirement shall apply to oil or fluid containers only to the extent that their reclamation is possible and that the costs associated with this reclamation do not represent an economic constraint such that they threaten the competitiveness of SOGHU's member businesses.
- 7.2. The minimum rates of recovery and reclamation stipulated in subsection 7.1 shall be calculated according to the total number of metric tonnes of recoverable oils, containers and filters marketed annually by SOGHU's member businesses. For the purposes of calculation of the quantities of filters recovered, they shall be drained of all free-flowing oil or fluid.
- 7.3. For each of the materials contemplated, the quantities of materials sold annually by all of SOGHU's member companies combined shall be established by SOGHU, accounting for all the declarations of its members on the quantities sold. The data furnished by SOGHU, according to the declarations made to it by its members, shall be verified by its external auditor. These quantities shall be corrected, as the case may be, on the basis of any audit performed in accordance with subsection 5.5.

- 7.4. For each of the materials contemplated, the quantities recovered shall be established in metric tonnes and measured according to the compilation produced by SOGHU of the official weighings performed by the recovery businesses accredited by SOGHU, which shall be corrected following any audit of the accredited recovery businesses.
- 7.5. For each of the material contemplated, the quantities reclaimed shall be established in metric tonnes and measured according to the compilation produced by SOGHU of the confirmations of quantities received for each of the materials by the accredited reclamation businesses. These data shall be corrected following any audit of the accredited reclamation businesses.
- 7.6. SOGHU shall also furnish the quantities of litres of oil and fluid and the number of filters and containers marketed, recovered and reclaimed.
- 7.7. In the event that the recovery and reclamation objectives established in subsection 7.1 for any of the materials contemplated in the Regulation are not achieved, SOGHU, following a written notice from RECYC-QUÉBEC notifying it of the situation, undertakes to take all reasonable measures to achieve the said objectives as soon as possible. In view of the time limits and the data available at the time of adoption of the Regulation, RECYC-QUÉBEC reserves the right to intervene to assure that amounts in addition to SOGHU's budget are allocated with a view to further promotion of recovery and reclamation of the materials for which the recovery or reclamation objectives have not been achieved.
- 7.8. For the purpose of promoting the achievement and even the exceeding of the objectives mentioned in subsection 7.1, a lump sum as established in Schedule 3 shall be paid by SOGHU to RECYC-QUÉBEC as liquidated damages. The lump sum shall be calculated according to the combined performance of the oils, containers and filters, based on the objective stipulated in subsection 7.1 for each of the materials. In the event of a combined performance equal to or greater than the contemplated objectives, no lump sum shall be paid by SOGHU. RECYC-QUÉBEC, at its discretion, may use up to fifty percent (50%) of the lump sum to analyze the recovery and reclamation performances with SOGHU, propose means to achieve the objectives, establish any activity, research, or information, awareness and education campaign for the purpose of achieving the recovery and reclamation objectives.

Section 8: Communication with Consumers

SOGHU undertakes to take the appropriate measures to inform consumers of the existence and operation of the recovery system established under the Agreement, in particular, the access to the collection points and the environmental advantages resulting from recovery and reclamation of discarded used oils, oil or fluid containers and used filters. Those measures shall include, in addition to information campaigns, providing consumers with free information booklets.

Section 9: Annual Report and Transmission of Information and Documents

- 9.1. SOGHU undertakes to transmit the following documents to RECYC-QUÉBEC within the time indicated, as the case may be:
 - 9.1.1. the names, addresses and registration numbers, when they are registered in the register of sole proprietorships, partnerships and legal persons, of the member businesses, and the names and addresses of their officers, within 60 days of the coming into force of the Regulation;
 - 9.1.2. the names, addresses and registration numbers, when they are registered in the register of sole proprietorships, partnerships and legal persons, of any business which becomes or ceases to be a member, and the names and addresses of its officers, within 30 days of membership, withdrawal or resignation of a business;
 - 9.1.3. the name, address and contact information of any business the services of which are retained by SOGHU for mobile collection or fixed collection of the products contemplated by the agreement, and the service zones, within 30 days of the signing, amendment, resiliation or cancellation of an agreement to this effect with a business;
 - 9.1.4. any guideline, directive, study, report or other administrative, technical or economic tool developed to promote the implementation of SOGHU's recovery and reclamation system.
- 9.2. SOGHU undertakes to transmit the following documents to RECYC-QUÉBEC and to the Minister within the time limit indicated:
 - 9.2.1. a copy of SOGHU's letters patent and business plan, within sixty days of the signing of the Agreement. The business plan shall be approved in advance by RECYC-QUÉBEC;
 - 9.2.2. the description of the recovery system it establishes, in particular, the number and location of collection points, the names and addresses of the persons responsible for recovery, in the case of third parties, and the terms and conditions of transport, storage and processing of the recovered products, according to the different types of oil, containers, packaging or filters, when the Regulation comes into force. This description shall be updated annually and transmitted to RECYC-QUÉBEC and to the Minister no later than the anniversary date of the coming into force of the Regulation;
 - 9.2.3. a description of the information campaigns and the other measures foreseen to promote recovery and reclamation of the products concerned to consumers and obtain their cooperation, within 90 days of the coming into force of the Regulation;

- 9.2.4. the presentation of the means implemented for reclamation of the recovered products, in particular, the reclamation methods chosen, the names and addresses of the persons responsible for reclamation, in the case of third parties, and the efforts projected so that the means of reclamation used conform to the 4R hierarchy (reduce at source, reuse, recycle and reclaim) and to develop the markets or techniques of reclamation or the markets for reclaimed products. This presentation shall be made when the Regulation comes into force. It shall be updated annually and transmitted to RECYC-QUÉBEC and to the Minister no later than the anniversary date of the coming into force of the Regulation;
- 9.2.5. the presentation of the methods of elimination envisioned for recovered products which are not reclaimed, if any, indicating the name and address of the person responsible for elimination, in the case of a third party, within 90 days of the coming into force of the Regulation.
- 9.3. SOGHU shall keep available to the Minister and transmit to RECYC-QUÉBEC the annualized data on the quantities of oil, containers or filters marketed by its members, according to the different types of oils, containers or filters.
- 9.4. Effective from the expiry of the first full year of operation of SOGHU and no later than March 1 of each subsequent year, SOGHU shall transmit to the Minister and to RECYC-QUÉBEC a report of the results of SOGHU's recovery and reclamation activities. This report shall contain at least the items stipulated in this section and all other information agreed between the parties to this Agreement.
- 9.5. The annual report produced by SOGHU under this section shall include:
 - 9.5.1. the list of members in good standing of SOGHU and, as the case may be, of the withdrawals or resignations of members registered during the year;
 - 9.5.2. the names, addresses and contact information of the persons responsible to SOGHU for the recovery, reclamation and elimination activities;
 - 9.5.3. for each type of material contemplated, the quantities recovered and subsequently reclaimed or, if any, the quantities eliminated due to a lack of reclamation alternatives, with an indication of the methods of reclamation or elimination chosen; for oils, these quantities shall be indicated by weight and volume, and for containers and filters, by weight and number of units;

- 9.5.4. the means adopted to promote the development of reclamation techniques for recovered oils, oil or fluid containers and filters, particularly for the purposes of reuse and recycling, and the results of the research conducted;
- 9.5.5. the description of the information campaigns conducted and the other measures taken to promote recovery and reclamation of used oils, oil or fluid containers and used filters;
- 9.5.6. SOGHU's audited annual financial statements and the calculation method that served to establish the contributions and subsidies, and the costs generated during the period covered by the report, by the implementation of SOGHU's recovery and reclamation system, the information, awareness and education campaigns, and the research and development activities;
- 9.5.7. any change occurring during the period shall be the object of the report on information transmitted to the Minister or to RECYC-QUÉBEC under the Agreement;
- 9.5.8. SOGHU's budget forecasts for the next three years after the year covered by the annual report;
- 9.5.9. the information contemplated in subsection 9.3 and in paragraphs 9.5.3, 9.5.4 and 9.5.6 of the Agreement shall be audited by an external auditor who shall certify its veracity, as the case may be. This certificate shall accompany SOGHU's annual report transmitted to the Minister and to RECYC-QUÉBEC.

Section 10: Term, Amendment, Resiliation, Cancellation and Renewal of the Agreement

- 10.1. This Agreement shall take effect on the date it is signed and end on December 31, 2008.
- 10.2. Unless one of the Parties transmits a written notice of non-renewal no less than 180 days before the end of the Agreement, it shall be renewed automatically for a 12-month period. The terms of the Agreement shall remain the same for this new period, with the necessary adjustments. However, the Agreement may not be renewed automatically more than three times.
- 10.3. If either Party gives a notice of non-renewal within the time stipulated in subsection 10.2, the Parties shall undertake the negotiation of a new agreement no later than October 1 of the year when the Agreement ends. However, such negotiation shall not be necessary if SOGHU's notice indicates that it is terminating its operations or if RECYC-QUÉBEC's notice indicates that it does not wish to renew the approval given to SOGHU.

- 10.4. Notwithstanding the foregoing, RECYC-QUÉBEC may terminate the Agreement at any time, on thirty days' written notice, without the possibility of any recourse on the part of SOGHU, if the latter is in default of compliance with its obligations under the terms of the Agreement, the Regulation or any applicable legislation or regulations. However, if the default can be corrected, SOGHU shall be given 30 days' notice to remedy it or to take any action allowing it to be remedied as soon as possible.

Section 11: Final Provisions

- 11.1. The Agreement binds the Parties and their respective successors, heirs, legatees, assigns and other legal representatives and their beneficiaries.
- 11.2. SOGHU may not assign, encumber, alienate or subcontract, in whole or in part, the rights and obligations resulting from the Agreement, in any manner, for a purpose not specifically stipulated in the Agreement, without the written consent of RECYC-QUÉBEC. Notwithstanding any assignment, SOGHU shall remain liable for the obligations incumbent upon it under the terms of the Agreement, jointly and severally with the assignee, even in the event of bankruptcy or insolvency of the assignee.
- 11.3. All the documents transmitted by SOGHU to RECYC-QUÉBEC or to the Minister shall be submitted to them for information, review and audit purposes. SOGHU shall not be discharged from its obligations under the terms of the Agreement by the fact that RECYC-QUÉBEC or the Minister has not insisted on the full performance of one of the commitments contained in the Agreement, and such a fact shall not be considered an exemption from or a waiver of the full performance of this commitment.
- 11.4. In the event of an amendment to the Act or the regulations applicable to the materials contemplated in the Agreement or regarding the legal obligations of the Parties to the Agreement or SOGHU's member businesses, the Parties agree to negotiate in good faith the amendments to be made to the Agreement so that it is always in compliance with the applicable rules.

- 11.5. The Agreement is governed by the laws of Québec, and any dispute arising from the application or performance of the Agreement, directly or indirectly, shall be brought before the competent court of the Judicial District of Québec, excluding any other jurisdiction.

AND THE PARTIES HAVE SIGNED AND EXECUTED THIS AGREEMENT AT QUÉBEC CITY THIS 25TH DAY OF NOVEMBER 2004

RECYC-QUÉBEC

per: (sgd) R.Lemieux
Robert Lemieux
President and General Manager

SOGHU

per: (sdg) Gilles Goddard
Gilles Goddard
General Manager

SCHEDULE 2

(ref.: subsection 4.8)

The financial contribution which SOGHU pays to RECYC-QUÉBEC shall be established each year according to the revenue SOGHU collects from its members from January 1 to December 31 of that year. It shall be composed of a basic contribution of \$240,000 for revenue up to \$8 million and a marginal contribution equivalent to 1.5% for any revenue in excess of \$8 million.

By way of illustration, reference can be made to the following table:

SOGHU REVENUE (in millions of \$)	1 to 8	9	10	11	12	13	14	15	16
% marginal contribution		1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
CONTRIBUTION TO RECYC-QUÉBEC (in thousands of \$)	240	255	270	285	300	315	330	345	360

As stipulated in subsection 4.8, this contribution shall be payable in two installments: the first covering the first 6 months of the current year, and the second covering the last 6 months of the year.

However, for the year 2004, the basic amount of \$240,000 shall not apply and SOGHU's financial contribution to RECYC-QUÉBEC shall be established at 3% of SOGHU's revenue.

