

# LUBRICANTS PACKAGING MANAGEMENT ASSOCIATION

## Participation Agreement *Oregon*

December 19th, 2024

1. **Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

- (a) **“Act”** means the Oregon Plastic Pollution and Recycling Modernization Act (SB 582, 2021).
- (b) **“Administrative Rules”** means Oregon Administrative Rules (OAR) 340-090-610 to 0710;
- (c) **“Agreement”** means this Participation Agreement.
- (d) **“Brand”** means any mark, word, name, symbol, design, device or graphical element, or a combination thereof, including a registered or unregistered trademark, that identifies a product and distinguishes the product from other products.
- (e) **“Business Day”** means any day other than a Saturday, Sunday, State of Oregon holidays or federal legal holidays.
- (f) **“Licensee”** means a Person that is licensed by a Brand and manufactures a Program Material or packaged Program Material under that Brand.
- (g) **“LPMA”** means the Lubricants Packaging Management Association.
- (h) **“Notice”** is defined in section 6.1.
- (i) **“Packaging”** means materials used for the containment or protection of products, including materials used in storage, shipping or moving.
- (j) **“Participant”** means the undersigned Producer who is a participant in the Program pursuant to this Agreement.
- (k) **“Person”** means the United States, the State or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.
- (l) **“Plan”** means the plan for the development and implementation of the Program, as may be amended from time to time.
- (m) **“Producer”** means, in relation to a Person:
  - (i) For Program Materials sold in Packaging at a physical retail location in the State:
    - (1) If the Program Material is sold in Packaging under the manufacturer’s own Brand or is sold in Packaging that lacks identification of a Brand, the Producer of the Packaging is the Person that manufactures the packaged Program Material;
    - (2) If the Program Material is manufactured by a Person other than the Brand owner, the Producer of the Packaging is the Person that is the Licensee of a Brand or trademark under which a packaged Program Material is used in a commercial enterprise, sold, offered for sale or distributed in or into the State, whether or not the trademark is registered in the State; or
    - (3) If there is no Person described in subparagraphs (1) and (2) of this paragraph within the United States, the Producer of the Packaging is the Person that

imports the packaged Program Material into the United States for use in a commercial enterprise that sells, offers for sale or distributes the Program Material in the State.;

(ii) For Program Materials sold or distributed in Packaging in or into the State via remote sale or distribution:

(1) The Producer of Packaging used to directly protect or contain the Program Material is the same as the Producer for purposes of paragraph (i) of this definition, above.

(2) The Producer of Packaging used to ship the Program Material to a consumer is the Person that packages and ships the Program Material to the consumer.

For all other Packaging in respect of a Program Material, the Producer of the Packaging is the Person that first distributes the packaged Program Material in or into the State.

“Producer” does not include any category of producer exempt from the requirements of the Act pursuant to section 5 of the Act.

(n) **“Producer Responsibility Fees”** means any assessments, charges, levies, dues, membership fees, surcharges or other fees payable by a the Participant in respect of the Program or the Program Materials, in the amounts set out in the LPMA Fee Schedule (posted on the LPMA website) as determined from time to time by the LPMA’s Board of Directors.

(o) **“Program”** means the statewide producer responsibility program for the responsible management of Program Materials operated and administered in the State in accordance with the Plan.

(p) **“Program Material”** means any “covered product” or “specifically identified material” (as such terms are defined in section 2 of the Act), that are identified in the LPMA Applicable Products List for the State as posted on the LPMA website, as determined from time to time by the LPMA’s Board of Directors.

(q) **“Proprietary Information”** is defined in section 4.1.

(r) **“Rules”** means any of the LPMA’s and/or a Subsidiary’s plans, policies, procedures, fee schedules, bylaws, or other terms or conditions governing the Plan, the Program or the Participant, as each may be amended from time to time by the LPMA’s Board of Directors, setting out the terms and conditions of the Program.

(s) **“State”** means the State of Oregon.

(t) **“Subsidiary”** means any corporation or other unincorporated entity of which LPMA possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of that corporation or unincorporated entity, whether through ownership of voting securities; membership in an unincorporated entity; the power to appoint or remove members of such corporation or unincorporated entity’s board of directors; by contract or otherwise.

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

## 2. **Terms of Participation**

2.1 The Participant acknowledges that it is a Producer and is hereby permitted to participate in the Program pursuant to this Agreement in accordance with the Plan.

2.2 The Participant in consideration of being permitted to become a Participant in the Program, hereby agrees:

- (a) To comply with this Agreement, the Plan and any Rules applicable to the Program;
- (b) To pay to the LPMA any Producer Responsibility Fees as set out and calculated in accordance with the Fee Schedule (as posted on the LPMA website) as determined from time to time by the LPMA's Board of Directors. Producer Responsibility Fees include the fees for planning and implementation of the Program and notwithstanding the date the Participant accepts this Agreement for participation in the Program, such fees shall be payable from the respective effective date for each set out on the Fee Schedule; and
- (c) To comply provide information to the LPMA in accordance with section 5;
- (d) That the LPMA has the authority to make Rules, policies or procedures in relation to the Plan, the Program, and any Program Materials. The Participant agrees to be bound by any applicable Rules, policies or procedures applicable to it and made by LPMA so long as such Rules, policies, or procedures comply with applicable state and/or federal law. This Agreement and/or LPMA's Rules may be amended from time to time by the LPMA's Board of Directors.

2.3 The Participant shall not charge any kind point-of-collection fee in respect of Program Materials to users of any depot or drop off services, collection events or collection services.

## 3. **Term and Termination**

3.1 **Term.** Participant agrees that upon the Participant's delivery to the LPMA of a copy of this Agreement executed by an authorized signing officer of the Participant, the term of this Agreement and the Participant's participation in the Program will commence on the Participant's receipt of written confirmation from the LPMA that the Participant has been approved, at the LPMA's sole discretion, to participate into the Program, and will continue thereafter for a period of not less than 3 years. Subsequent to the initial 3 year term, this Agreement and the obligations flowing therefrom, shall be considered renewed annually on the anniversary date of signing this Agreement, unless the Participant gives written Notice of termination to the LPMA.

### 3.2 **Termination.**

- (a) Where the Participant has given written Notice of its intention to withdraw from the Program, this Agreement shall terminate 180 days from the date of receipt of such Notice by the LPMA. Subject to the initial 3 year term, a Participant may give Notice of its intention to terminate this Agreement at any time.
- (b) The LPMA may terminate this Agreement immediately by written Notice to the Participant:
  - (i) if the Participant ceases to carry on business; or

- (ii) if the Participant fails to comply with the LPMA's Rules and terms of this Agreement and such failure remains after 30 days of from the delivery of a Notice of non-compliance to the Participant by the LPMA.

#### 4. **Confidentiality**

- 4.1 **"Proprietary Information"** means information protected as a trade secret under the Uniform Trade Secrets Act, excluding information that is already publicly available and where any potential economic value is derived solely from compilation, and any other information that is not proprietary pursuant to Administrative Rule, section 710.
- 4.2 The LPMA shall:
  - (a) Keep confidential any properly identified Proprietary Information provided by the Participant; and
  - (b) Exclude from release to the public or any unauthorized entity any properly identified Proprietary Information provided by the Participant to the LPMA in connection with the Program or the Plan.
- 4.3 **Burden to demonstrate information is proprietary.** The Participant submitting the information to the LPMA: (a) has the burden to identify and demonstrate the submitted information is Proprietary Information at the time of submission; and (b) must describe with particularity which information it considers Proprietary Information and why. If part of a document is Proprietary Information and part is not, the Participant must submit two copies of the document, one unredacted and marked confidential and one redacted. The LPMA need only protect or withhold Proprietary Information clearly and properly identified at the time of submission.
- 4.4 Notwithstanding anything to the contrary, the LPMA shall be permitted to disclose any information or records related to the Participant as is required to be disclosed by the LPMA pursuant to and in accordance with any applicable provisions of applicable law, including, without limitation, the Act and the Administrative Rules.

#### 5. **Recordkeeping, Production of Records, and Audits**

- 5.1 **Duty to preserve and maintain records.** The Producer must preserve all books and records in accordance with State and federal laws. The Producer must maintain all documents and records necessary to determine compliance with the Program for a period of 5 years. Such records must be open to inspection by the LPMA at any time.
- 5.2 **Duty to produce records.** If requested by the LPMA the Producer must, within 10 Business Days, submit records or other information necessary for the LPMA to meet its obligations under sections 1 to 43 of the Act.
- 5.3 **Audits and inspections.** With respect to the Program compliance or the sale and/or supply of Program Materials, the Producer agrees that the LPMA may, from time to time, conduct in-person site inspections

of the Participant's premises, and, through the use of a firm of chartered accountants, may otherwise audit the records of the Producer.

6. **General**

6.1 **Notice.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each a "**Notice**") shall be in writing and is deemed to have been given:

- (a) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);
- (b) on the date sent by e-mail if sent during normal business hours of the recipient, and on the next Business Day is any day that if sent after normal business hours of the recipient; or
- (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

6.2 Notices shall be delivered to a party at the address for Notice it designates from time to time by Notice delivered to the other party or, if a party has not designated an address for Notice, to last known registered office address on the public records for such party.

6.3 **Assignment.** In order to facilitate the management and administration of the Program, or as may otherwise be required for compliance with local or state-level laws, LPMA reserves the right to assign any of its rights arising under this Agreement, any Plans or Rules, in whole or in part, to a Subsidiary, including, but not limited to, the creation, management and administration of any Plan or Rule or the collection of any fees or other amounts owing by the Participant to LPMA, subject to thirty (30) days advance written Notice of the assignment to the Participant. The Participant agrees to be bound by and comply with any such Plans or Rules, or parts of them, that are created, managed administered, delegated to, or otherwise carried out by a Subsidiary.

6.4 **Severability.**

- (a) If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- (b) If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision in place of the provision so deleted.

6.5 **No assignment by Participant.** The Producer shall not assign or otherwise transfer this Agreement without the prior written consent of the LPMA.

6.6 **No partnership.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties.

6.7 **No waiver.** No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by the party waiving its right. Any waiver authorized on one occasion is effective

only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

6.8 **Counterparts.** Transmission of an executed copy of this Agreement by email (in PDF) or other electronic or digital transmission (including by transmission over an electronic signature platform acceptable to the LPMA such as DocuSign or the equivalent thereof) shall take effect as the transmission of an executed by handwritten signature of this Agreement.

In consideration of the mutual promises set out above the Participant and LPMA have caused this Participation Agreement to be executed under the hands of their respective officers.

**Participant Name:**

\_\_\_\_\_

Per: \_\_\_\_\_

Authorized Signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT