



# LUBRICANTS PACKAGING MANAGEMENT ASSOCIATION

## Participation Agreement *California*

FEBRUARY 21, 2025

1. **Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

- (a) **“Agreement”** means this Participation Agreement.
- (b) **“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 Program Product and distinguishes the Program Product from other products.
- (c) **“Business Day”** means any day other than a Saturday, Sunday, State of California holidays or federal legal holidays.
- (d) **“Fees/Dues Schedule”** means the LPMA’s Fees/Dues Schedule as posted on the LPMA website, as determined from time to time by the LPMA’s Board of Directors.
- (e) **“LPMA”** means the Lubricants Packaging Management Association.
- (f) **“Notice”** is defined in section 6.1.
- (g) **“Packaging”** means any separable and distinct material component used for the containment, protection, handling, delivery, or presentation of goods by the Participant for the user or consumer, ranging from raw materials to processed goods. “Packaging” includes, but is not limited to, all of the following:
  - (i) sales Packaging or primary Packaging intended to provide the user or consumer the individual serving or unit of a Program Product and most closely containing the Program Product;
  - (ii) grouped Packaging or secondary Packaging intended to bundle, sell in bulk, Brand, or display a Program Product;
  - (iii) transport Packaging or tertiary Packaging intended to protect a Program Product during transport; and/or
  - (iv) Packaging components and ancillary elements integrated into Packaging, including ancillary elements directly hung onto or attached to a Program Product and that perform a Packaging function.
- (h) **“Participant”** means the undersigned Producer who is a participant in the Program pursuant to this Agreement.
- (i) **“Producer”** means:
  - (i) a Person who manufactures a Program Product that uses Packaging and who owns or is the licensee of the Brand or trademark under which the Program Product is used in a commercial enterprise, sold, offered for sale, or distributed in the State.
  - (ii) If there is no Person in the State who is the Producer for purposes of paragraph (i), the Producer of the Packaging is the owner or, if the owner is not in the State, the exclusive licensee of a Brand under which the Program Product is used in a commercial enterprise, sold, offered for sale, or distributed in the State. For purposes of this paragraph, a “licensee” is a Person holding the exclusive right to use a Brand in the State

in connection with the manufacture, sale, or distribution of the Program Product packaged in Packaging.

- (iii) If there is no Person in the State who is the Producer for purposes of paragraph (i) or (ii), the Producer of the Packaging is the Person who sells, offers for sale, or distributes the Program Product that uses the Packaging in or into the State
  - (j) **“Participant Fees/Dues”** means any participant fees or dues payable by a Participant in respect of Program Products in the amounts set out in the Fees/Dues Schedule.
  - (k) **“Person”** means any individual, public or private corporation, partnership, association, firm, trust or estate, franchisee or franchisor; or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
  - (l) **“Plan”** means the LPMA’s Producer responsibility plan for Program Products in the State.
  - (m) **“Program”** means the system, method, or other mechanisms implemented by the LPMA respecting the Program Products in the State.
  - (n) **“Program Product”** means any product identified in the LPMA Applicable Products List as posted on the LPMA website, as determined from time to time by the LPMA’s Board of Directors.
  - (o) **“Proprietary Information”** is defined in section 4.1.
  - (p) **“Rules”** means this Agreement and any of the LPMA’s and/or a Subsidiary’s plans, policies, procedures, fees/dues 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.
  - (q) **“State”** means the State of California.
  - (r) **“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 and the Rules.
- 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 Participant Fees/Dues set out on the Fees/Dues Schedule in accordance with the Plan. Participant Fees/Dues shall be payable from the respective effective date for each set out on the Fees/Dues Schedule;

- (c) to 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 Products. 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.

### 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 that, if made public would divulge competitive business information or trade secrets of the entity that developed the information; or would reasonably hinder the entity's competitive advantage in the market.

4.2 Subject to section 5.2, 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 relation to 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.

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

5.1 **Duty to preserve and maintain records.** The Participant must preserve all books and records in accordance with State and federal laws. The Participant 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 report on Program Products**

(a) The Participant shall maintain records and provide reports to the LPMA at intervals determined by the LPMA and containing any information necessary for the LPMA to fulfill its reporting obligations respecting information required to be reported on or disclosed by applicable law, and/or any information that is reasonably required for the LPMA to carry out the Plan.

(b) Records and reports provided to the LPMA by the Participant shall be kept confidential; provided that the LPMA may disclose such records and reports and any information contained in them as required by applicable laws.

5.3 **Duty to produce records.** The Participant must submit documents and records related to the calculation and payment of Participant Fees/Dues and any other information and materials necessary for to determine compliance with the Program to the LPMA within 10 Business Days of a written request for such documents and records from the LPMA.

5.4 **Material Audits.** The Participant agrees that the LPMA may, from time to time, audit the records of the Participant, through the use of a firm of chartered accountants with respect to the sale, offering for sale, or distribution in the State of Program Products. Audits may include random bale tracking to verify chain of custody of materials.

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 dues,

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 Participant 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.

[signature page follows]

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: \_\_\_\_\_