

## APR Design® Recognition Program Critical Guidance Agreement

This Agreement ("Agreement") is made by and between the Association of Plastic Recyclers ("APR"), a District of Columbia corporation having its principal place of business at 2050 M Street NW, Washington, DC 20036, and \_\_\_\_\_ ("Innovator"), having its principal place of business at \_\_\_\_\_ as of \_\_\_\_\_ ("Effective Date").

**WHEREAS**, the APR Design® Recognition Program for Critical Guidance (Program) allows innovation materials used in PET, HDPE, PP, and PE film packaging to be recognized as meeting APR Guidelines for Recycling; and

**WHEREAS**, the parties desire to enter into an agreement governing Innovator's participation in the recognition program.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations set forth herein, the parties agree as follows:

1. **Voluntary Participation** -Innovator acknowledges that participation in the Program is voluntary.
2. **Non-Exclusive** -Innovator acknowledges that this Agreement is non-exclusive, and APR may enter into this agreement with other parties.
3. **Effective Date and Duration** -This agreement shall take effect upon its execution and shall terminate five (5) years from the effective date unless otherwise terminated or amended pursuant to this Agreement.
4. **Fees** -Innovator agrees to promptly pay to APR designee 25% of the application fee at the time of pre-approval (\$6000 fee for APR members and \$9000 fee for non-members) within thirty (30) days after execution of this Agreement. The balance of the application fee is due after testing is complete. Innovator acknowledges that review of Innovator's application will not commence until the application fee is received in full.
5. **Indemnification** -APR and Innovator (each, as applicable, the "Indemnifying Party") agree to indemnify, defend and hold the other party (each, as applicable, the "Indemnified Party") harmless against any liability relating to property damage,

personal injury or death of the Indemnified Party, its officers, directors, employees, agents or invitees, to the extent resulting from the negligence or intentional misconduct of the Indemnifying Party, or that of such party's officers, directors, employees, agents or invitees, in connection with this Agreement; provided, however, that neither APR nor Innovator shall have any liability under this Agreement for special, indirect, incidental, consequential, punitive or exemplary damages, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages, and regardless of whether the Indemnified Party's claim is based upon breach of contract, breach of warranty, negligence, strict liability, or any other legal theory. This provision shall survive the expiration or earlier termination of this Agreement.

## **6. Participation and Testing**

- a. APR Design<sup>®</sup> Recognition Program for Critical Guidance Innovator Agreement conducted under the Program will be performed in accordance with the most current versions of this Agreement, the Program Operating Procedures, Critical Guidance, and Specific Applications Guidance.
- b. Innovations must be compatible with the APR Design<sup>®</sup> Guide for Plastics Recyclability Guidelines.
- c. For purposes of receiving Critical Guidance Recognition in accordance with the most current versions of the aforementioned documents, Innovator is obligated to conduct testing as indicated in the Program Operating Procedures.
- d. Innovator is under no obligation to submit future applications.

7. **Confidentiality of Information** -The information requested in the APR Design<sup>®</sup> Recognition Program for Critical Guidance application is the type of information that is not considered confidential under the Food and Drug Administration's {FDA's} regulations (e.g., 21 C.F.R. § 170.102). Therefore, such information is not entitled to confidential protection. With respect to any other information voluntarily supplied, the Innovator waives confidentiality protection for all such submissions.

## **8. Names and Trademarks -**

- a. Except as provided in this agreement, neither party shall use the name, logo, or other trademarks or service marks {"Marks"} of the other party without written permission.
- b. Innovator grants APR permission to publicly release the decision to grant recognition, APR agrees not to publicize decisions to not grant recognition; however, APR reserves the right to respond to public inquiries on the results of a recognition review. An application that is withdrawn prior to the conclusion of a review will be indicated to be "withdrawn" in response to public inquiries.
- c. For purposes of publicly releasing the decision to grant recognition, Innovator authorizes APR to use the Innovator's name or trademark in a

directory of Innovators whose product or products have been recognized under the Program.

**9. Termination -**

- a. Either party may terminate this Agreement at any time and for any reason provided that written notice is sent at least thirty (30) days prior to the effective date of termination.
- b. This Agreement may be terminated immediately by either party upon the default or a breach of the Agreement by the other party.
- c. Where APR terminates the Agreement for convenience or where Innovator terminates for cause, APR shall either complete any pending certification or refund the application fee.
- d. APR reserves the right to rescind recognitions at its discretion.

**10. Arbitration** – The parties agree that disputes arising under this Agreement shall be settled through the appointment of an arbitrator selected by the parties. Should the parties not be able to agree on an arbitrator, each may select one arbitrator, and the two arbitrators will choose a third. Arbitration will be conducted under the Commercial Rules of Arbitration of the American Arbitration Association in the District of Columbia, and any appropriate statutes of limitations will also apply to claims for arbitration. The parties agree that arbitration will be the sole and exclusive remedy.

**11. Entire Agreement and Amendments** - This Agreement constitutes the entire agreement between the parties, relating to this subject. Amendments to this Agreement must be in writing and signed by both parties.

**12. Severability** – If any provision(s) of this Agreement or the application of them to either party is held illegal, unenforceable, or otherwise invalid by government promulgation or court decree, such holding shall not affect the other provisions or applications of this Agreement which can be given effect without the invalid provision, provided that the parties shall promptly negotiate in good faith to make adjustments in this Agreement as may be necessary to make it fair and equitable to both parties.

**13. Controlling Law** - This Agreement shall be governed by and construed in accordance with the internal laws of the District of Columbia, without application of the principles of conflicts of law.

**14. Headings** - The headings of the paragraphs and subparagraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

**15. Notice** - Any notice or communication required to be given or permitted under this Agreement shall be sent by email to the following persons:

**For APR:**

Rebecca Mick, APR Design® Recognition Program Administrator  
[rebecca@plasticsrecycling.org](mailto:rebecca@plasticsrecycling.org)

**For Innovator:***Name:**Job Title:**Email:**Phone:**Address:**City:**State/Province:**Postal Code:**Country:*

Either party, by written notice to the other conforming with this paragraph, may change the person or persons designated to receive notices on behalf of that party and/or the address or addresses to which any notice is to be sent.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the Effective Date. This Agreement may be executed in counterparts, which together shall constitute one and the same instrument, and by receipted facsimile.

**APR**

By:



Stephen Alexander President & CEO  
Association of Plastic Recyclers  
2050 M Street NW  
Washington, DC 20036  
Telephone: 202-316-3046  
Email: [steve@plasticsrecycling.org](mailto:steve@plasticsrecycling.org)

**Innovator**

By:

Name:  
Job Title:  
Company:  
Date: