



Responsible Innovation Acknowledgment Program Innovator 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 1001 G Street, NW, Suite 500, Washington, DC 20001, and Berry Plastics Corporation, a Delaware corporation (“Innovator”), having its principal place of business at 101 Oakley Street, Evansville, IN 47710 as of _____ (“Effective Date”).

WHEREAS, the APR Responsible Innovation Acknowledgment Program (Program) acknowledges innovation materials as meeting a set of testimonials and disclosures; and

WHEREAS, the parties desire to enter into an agreement governing Innovator’s participation in the Responsible Innovation Acknowledgment 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 three (3) years from the effective date unless otherwise terminated or amended pursuant to this Agreement.

4. Fees—Innovator agrees to promptly pay to APR designee an application fee within thirty (30) days after execution of this Agreement. Innovator acknowledges that review of Innovator’s application will not commence until the application fee is received.

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.

Notwithstanding the foregoing provisions, no indemnity obligation shall exist under this or any other provision of this Agreement unless the Indemnified Party: (a) promptly notifies the Indemnifying Party in writing of the commencement of a claim that could lead to liability under this paragraph; (b) gives Indemnifying Party the option to pursue the defense of such claim; (c) renders to Indemnifying Party, all reasonable assistance for the defense or settlement of such claim;

and (d) regardless of whether Indemnifying Party chooses to pursue the defense of such claim, does not settle or compromise any such claim without the prior written consent of Indemnifying Party. This provision shall survive the expiration or earlier termination of this Agreement.

6. Participation and Testing—

- a. Innovator’s participation conducted under the Program will be performed in accordance with the most current versions of this Agreement and the Program Operating Procedures.
- b. For purposes of receiving acknowledgment in accordance with the most current versions of the aforementioned document, Innovator is obligated to fully comply with the Program Operating Procedures.
- c. Innovator is under no obligation to submit future applications.

7. Confidentiality of Information –

The information requested in the Responsible Innovation Acknowledgement 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 acknowledgment. APR agrees not to publicize decisions to not grant acknowledgment; however, APR reserves the right to respond to public inquiries on the results of a responsible innovation

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 acknowledgment, Innovator authorizes APR to use the Innovator’s name or trademark in a directory of Innovators whose product or products have been acknowledged 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.

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 certified or registered mail, return receipt requested, to the following persons:

For APR:

David Cornell
Responsible Innovation Acknowledgment
Program Administrator
dave@plasticsrecycling.org
230 Hammond Avenue
Kingsport, Tennessee 37660
(423) 245-3648

For Innovator:

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.

APR Responsible Innovation Acknowledgment Program Innovator Agreement

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
Executive Director
Association of Plastic Recyclers
1001 G Street, NW, Suite 500,
Washington, DC 20001
Telephone: 202-316-3046
Email: salexander@cmrgroup4.com

Innovator

By:

Name:
Title:
Company:
Address:
Telephone:
E-mail: