

## Preferred Design Recognition Review Program

### HDPE Base Resin Used for Blow Molded Containers Program Agreement and Manufacturing Change and Records Agreement

## Preferred Design Recognition Agreement

This subject agreement is specific to the APR's Preferred Design Recognition Review Program for HDPE base resin used for blow molded containers. The subject agreement should be signed and uploaded in the PDR submission portal of the APR website with all other required information at the time of application.

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 \_\_\_\_\_ ("Supplier") having its principal place of business at \_\_\_\_\_ as of \_\_\_\_\_ ("Effective Date").

**WHEREAS**, the APR Design® Recognition Program for Preferred Design Recognition ("PDR Program") allows materials, components, and complete packages used in PET packaging to be recognized as meeting APR Preferred Guidance for plastic recycling; and

**WHEREAS**, the parties desire to enter into an agreement governing Supplier'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. APR's PDR Program can involve an engineering assessment of the technical compatibility of either a package design feature, or a complete package, with today's industrial plastics recycling processes. PDR Recognition of a design feature by itself does not qualify a finished package that employs the design feature to be described or marketed as recyclable. APR's complete Definition of Recyclability can be found here: (<https://plasticsrecycling.org/recycling-definitions>). Additional critical aspects of the complete package, beyond technical compatibility of a single design feature, must be considered when making recyclability claims to the public and marketing a product. These additional aspects may include consumer access to recycling, specific container design features that impact sortation steps, and the consideration whether the container is commonly accepted by the recycling industry to be sorted correctly into a marketable bale.
2. **Voluntary Participation** – Supplier acknowledges that participation in the Program is voluntary.

3. **Non-Exclusive** – Supplier acknowledges that this Agreement is non-exclusive, and APR may enter into this agreement with other parties.
4. **Future Obligation** - Supplier is under no obligation to submit future applications.
5. **Effective Date and Duration** – This agreement shall take effect on the Effective Date upon execution of the agreement with both designated signatures and shall terminate three (3) years from the Effective Date unless otherwise terminated or amended pursuant to this Agreement.

This agreement can be renewed for additional three-year time increments by mutual agreement of the parties. A renewal fee is required for each three-year renewal.

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

If an initial PDR Review is not successful, the applicant will have a 120-day grace period to take corrective action and re-apply without paying a new application fee. After the 120-day grace period, ½ of the application fee can be applied as credit against a new application for Guidance Recognition at the APR.

7. **Indemnification** – APR and Supplier (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 Supplier 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.

#### 8. **Participation and Testing**

- a. All testing conducted under the Program will be performed in accordance with the most current versions of the Program Operating Procedures, and published test protocols.
- b. Eligible products must be compatible with the APR Design® Guide for Plastics Recyclability Guidelines.

- c. Products marketed as Meeting Preferred Guidance require that the Supplier conduct certain tests and maintain records of those tests that can be made available for inspection by APR representatives upon request. Testing and recording requirements are detailed in the PDR Program Application Instructions and documents submitted by the supplier as part of the application for PDR Review.
- d. Annex One to this Agreement contains additional testing and record keeping requirements. Annex One is incorporated in this Agreement.
- e. Supplier is obligated to conduct testing as indicated in the Program Operating Procedures at their own expense.

9. **Confidentiality of Information** – The information requested in the APR Design® Recognition Program for Preferred Design Recognition is the type of information that is not considered confidential. Therefore, such information is not entitled to confidential protection. With respect to any other information voluntarily supplied, the Supplier waives confidentiality protection for all such submissions.

10. **Names and Trademarks** —

- a. After a successful PDR Review, the APR will issue a letter confirming PDR Recognition. APR will also provide the applicant with a separate license agreement required to use APR's Preferred Design Recognition Badge in the sales and marketing materials.
- b. Except as provided in this agreement, neither party shall use the name, badge, or other trademarks or service marks ("Marks") of the other party without written permission.
- c. Supplier grants APR permission to publicly release the decision to grant recognition, and 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.
- d. For purposes of publicly releasing the decision to grant recognition, Supplier authorizes APR to use the Supplier's name and trademark in a listing of Suppliers whose product or products have been recognized under the Program. This listing will be maintained on the APR's web site.

11. **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 APR upon the default or a breach of the Agreement by Supplier.

12. **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.

13. **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.
14. **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.
15. **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.
16. **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.
17. **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 signatories below. 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.

The following individuals are authorized to sign this program agreement and are designated as primary contacts for this application:

**For APR:**

**Signature:** \_\_\_\_\_

**Printed name:** \_\_\_\_\_

**Title:** APR Program Administrator

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**For Supplier:**

**Signature:** \_\_\_\_\_

**Printed name:** \_\_\_\_\_

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

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

# Annex 1: Manufacturing Change and Records Agreement

## Introduction

It is likely that after receiving initial recognition for a particular family of HDPE base resins used for blow molded containers, a supplier may want to market new specific resin compositions under the same trade name. This Manufacturing Change Agreement details the procedures and documentation that a company that has received PDR recognition will maintain to allow for such a situation.

## Test requirements to support inclusion of new resins to a trade named family

Supplier will maintain documentation that the new base resin composition intended for sale under the existing trade name meets the following criteria:

- Melt index between 0.20 and 1.61 g/10min and density between 0.941 to 0.970 g/cm<sup>3</sup>.
- Ethylene derived from either petroleum or natural renewable products is suitable for manufacture of HDPE.
- Packages produced with the highest possible level of postconsumer HDPE content are encouraged.

## Documentation requirements

Suppliers will maintain laboratory notebook records and reports documenting the above guidance criteria that can be reviewed by APR staff. APR staff will generally not ask to review or audit these test results and records. We are relying that those who have received Recognition will follow these agreed procedures on their own as part of good manufacturing practice.

But should there be reason for concern that a PET resin being marketed as Meeting Preferred Guidance may not in fact meet Guidance Criteria, APR will bring that concern to the attention of the supplier. APR may become aware of recycling performance weaknesses in a PET resin through:

- Occasional audits of products performed by the APR.
- Reports from others in the supply chain who might evaluate product recycling performance.
- Reports from PET reclaimers who might observe results for a given package that are not satisfactory.

Should APR contact a company with PDR Recognition, and the supplier is not able to provide records supporting a materials addition, the APR and the supplier will co-operate to find a mutually agreeable remedy. However, it is understood that there may be cases where the remedy is that APR removes a given product family from the PDR Recognition Program and terminates this agreement.

## **Notification to the APR**

A company can make their own decisions to add a material providing there is test data supporting technical equivalence of the new material, and a record of the change is maintained for inspection if necessary. There is no need to notify APR of these changes when they are made.

PDR Recognition for a given product is maintained for a three-year period. The three-year term can be renewed for a new three-year term by mutual agreement of the supplier and the APR. This three-year term renewal is an opportunity for suppliers to refresh documentation description details of the PDR Review for their product.

## **In the event APR Guidance changes**

Should APR Guidance change after a supplier receives PDR Recognition, these changes will not impact PDR Recognition during the three-year period of the Recognition.

Should there be Guidance changes that are favorable to the supplier, the supplier can request that APR amend the Recognition letter and web site posting to reflect that favorable change.