



Interchange
Recycling

Participation Agreement

Yukon

June 2024

1. Definitions

1.1 In this Participation Agreement, unless the context otherwise requires:

- (a) **Approved Plan** means an Interchange stewardship plan approved under the Regulation.
- (b) **Agreement** means this agreement between the Participant and Interchange, as may be amended from time to time by Interchange.
- (c) **Brand** means a mark, word, name symbol, design, device or graphical element, or any combination of these, including a registered or unregistered trademark that identifies a product and distinguishes it from other products.
- (d) **Brand Holder** means a person who owns or licenses a Brand or who otherwise has rights to market a Material under the Brand.
- (e) **Environmental Fees** means any environmental fees, levies, charges or other amount assessed by Interchange in respect of Materials.
- (f) **End User** means, in relation to a Material,
 - (i) a person who uses the Material for its intended purpose; or
 - (ii) a person who supplies the Material by means of gift to a person who uses the Material for its intended purpose.
- (g) **Marketplace Seller** means a person who contracts with a marketplace facilitator to supply their products.
- (h) **Marketplace Facilitator** a person who:
 - (i) contracts with a Marketplace Seller to facilitate the supply of the Marketplace Seller's products by
 - (1) owning or operating an online consumer-facing marketplace or forum in which the Marketplace Seller's products are listed or advertised for supply; and
 - (2) transmitting or otherwise communicating the offer or acceptance between the Marketplace Seller and a purchaser;and
 - (ii) provides for the physical distribution of the Marketplace Seller's products to the purchaser, such as by the storage, preparation or shipping of the products.
- (i) **Material** means those materials, products and packaging prescribed as designated materials under the Regulation that are listed in Schedule "A" of this Agreement, as may be amended from time to time by Interchange.
- (j) **Importer** means a person who imports a Material into Yukon for sale, offer for sale or distribution, or for use in the course of business.
- (k) **Interchange** means Interchange Recycling Yukon.
- (l) **Interchange Participant** means a Steward, other than the undersigned, who is a participant in an Interchange Stewardship Program.

- (m) **Participant** means the undersigned Steward who is a participant in a Stewardship Program pursuant to this Agreement.
- (n) **Participation** means the Participant's participation in a Stewardship Program.
- (o) **Regulation** means the *Extended Producer Responsibility Regulation* (Yukon).
- (p) **Resident** means, with respect to a person, for the person to have a permanent establishment in a location.
- (q) **Retailer** means a business that supplies Materials to End Users, whether online or at a physical location.
- (r) **Steward** means a "steward" of Materials within the meaning of section 6 of the Regulation, including:
 - (i) A Brand Holder of Material that is Resident in Canada;
 - (ii) An Importer of Material that is Resident in Yukon;
 - (iii) A Retailer who supplies Material to an End User in Yukon, including a Marketplace Seller or Marketplace Facilitator; or
 - (iv) A franchisor any business described in paragraphs (i), (ii), (iii) above, if the business operated wholly or in part as a franchise with one or more franchisees that are Resident in Yukon.
- (s) **Stewardship Program** means one or more stewardship programs adopted by Interchange for the collection and recovery of Materials and operated under an Approved Plan.

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.

1.3 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. Terms of Participation

2.1 The Participant acknowledges to Interchange that it is a Steward and it hereby appoints Interchange as a producer responsibility organization to carry out its duties in accordance with section 8 of the Regulation and with any Approved Plan.

2.2 The Participant in consideration of being permitted to become a Participant of Interchange, hereby agrees with Interchange as follows:

- (a) to pay an initial Participation fee of \$200 payable at the time of signing of this Agreement;
- (b) to pay the annual Participation fee as from time to time set by Interchange;
- (c) to pay to Interchange the Environmental Fee on all Materials as determined by Interchange from time to time and in accordance with the Regulation;
- (d) to remit to Interchange the Environmental Fee for each Material used, sold or supplied by the Participant in Yukon. If the Participant is located outside of Yukon but sells or supplies

Material to a Steward located in Yukon, the Environmental Fee is to be remitted to Interchange. If the Participant is located in Yukon but sells or supplies Material to a Steward that is located in another Canadian jurisdiction with a similar stewardship program to Interchange's Stewardship Program, the Environmental Fee is to be remitted to the local authority responsible for the Material.

- 2.3 Interchange may require a Participant to provide security from time to time to Interchange, or provide Interchange with evidence of security, in a form that is acceptable to Interchange for the purpose of ensuring that the Participant exercises the powers and carries out the duties of a Steward in accordance with the *Environment Act* (Yukon), the Regulation, and this Agreement.

3. Term

- 3.1 The Participant agrees that upon the signing of this Agreement, the payment of the initial Participation fee that this Agreement will remain in effect and the Participant will maintain Participation in the Stewardship Program, for a period not less than 3 years from the date of this Agreement. Subsequent to the initial 3 year term, this Agreement, the Participant's in the Stewardship Program 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 Interchange.

- 3.2 Where the Participant has given written notice of its intention to withdraw, this Agreement and the Participant's Participation shall be terminated 180 days from the date of receipt of notice. Subject to the initial 3 year term, a Participant may give notice of its intention to terminate this Agreement at any time.

4. Funds

- 4.1 The Participant acknowledges and agrees to the creation of one or more Interchange-managed funds, which shall be used to provide or pay for any or all of the following:

- (a) establishing and administering one or more Stewardship Programs;
- (b) education programs for the purpose of promoting the Stewardship Programs;
- (c) expenditures incurred in promoting the collection, transportation, storage, processing and disposal of Materials; and
- (d) salaries, fees, costs, expenses and liabilities incurred in the administration of the funds.

- 4.2 The following shall be deposited into the fund:

- (a) Environmental Fees and other fees collected by Interchange,
- (b) Gifts, donations, and bequests to the fund,
- (c) Investment income earned on deposits to the fund,
- (d) Participation fees, and
- (e) Other revenue Interchange might generate through its operations.

- 4.3 The total of the Environmental Fees with respect to the sale or supply of the Material is to be remitted by the Participant quarterly, as scheduled by Interchange, to Interchange within 30 days

of the end of each quarter. The remittance of Environmental Fees to Interchange shall be in the form and manner determined by Interchange from time to time.

- 4.4 Interchange manages the fund in such a manner that a separate accounting is maintained for revenue and expenses for each Material or Material category, as determined by Interchange from time to time. It is the goal to use the Participation fees, Environmental Fees and associated revenue generated on a particular Material category to fund the recovery, collection, recycling and administration of that Material category.
- 4.5 If the total of a Participant's Environmental Fees remitted in the 4 quarters of the previous calendar year is less than \$2,000 and the Participant has remitted all Environmental Fees due to Interchange in a manner and time satisfactory to Interchange, then the Participant shall have the option of providing Interchange with notice in writing in the first quarter of the current calendar year that it shall make remittance of the Environmental Fees for the current calendar year on an annual basis. In such event the remittance of the Environmental Fees for the calendar year shall be remitted to Interchange within 30 days of the end of the calendar year. The remittance to Interchange shall be in the form and fashion as determined and as amended from time to time by Interchange.
- 4.6 The Environmental Fee to be remitted by the Participant with respect to the use, sale or supply of Material shall be determined and from time to time amended by Interchange.
- 4.7 Notwithstanding sections 4.3 and 4.4, Interchange and the Participant acknowledges and agrees that if the Participant is selling a Material to another Interchange Participant in good standing, or is selling Material for use outside Canada or to a province without a program similar to the Stewardship Program, then no assessment or remittance of Environmental Fee is required in respect of that sale or supply. If the Participant is selling Material for use in a province with a similar program, the Environmental Fee is to be remitted to the local authority responsible for the similar program, as the case may be. When Material moves between two or more Interchange Participants, and there is a question about which party is responsible for remitting Environmental Fees, the Participants must agree between themselves in writing who shall be responsible for remittance of Environmental Fees. Without evidence of such agreement, Interchange shall be entitled to collect Environmental Fees from the Participant or any other Interchange Participant who has made a supply of a Material in Yukon or from any Interchange Participant from another jurisdiction supplying a Material to someone in Yukon.
- 4.8 It is the intent of Interchange that the Environmental Fee in respect of a specific Material sold or supplied be paid only once.
- 4.9 Interchange manages the fund in such a manner that a separate accounting is maintained for revenue and expenses for each Material. It is the goal to use the membership fees, Environmental Fees and associated revenue generated on a particular Material category to fund the recovery, collection, recycling and administration of that Material category.

5. Record Keeping

- 5.1 The Participant agrees to keep an accurate record of all transactions respecting the Materials, in the form and fashion that can be reasonably audited. If requested by Interchange, the Participant is to provide a record of all Environmental Fee sales and/or supplies of Material based on point of destination.

6. Audit by Interchange

- 6.1 The Participant agrees that Interchange may from time to time, and as approved by Interchange, audit the records of the Participant, through the use of a firm of chartered accountants, with respect to the sale and/or supply of Material and remittance to Interchange of the Environmental Fee.

- 6.2 In the event of an audit the Participant shall make available to Interchange's auditors any and all records relating to the sale and/or supply of those Materials for the Participant's own use, sold or supplied in, or from a Participant outside of Yukon to someone in Yukon and remittances to Interchange of the Environmental Fee and shall provide to the auditor any information respecting transactions relating to Material, provided that such records are reasonably required to perform an accurate audit. In cases where Interchange reasonably believes that a Participant, through action or omission, has delayed the provision to Interchange of such reasonably required records such that the audit extends beyond the calendar year in which the audit had commenced, Interchange may, in its sole discretion, assess additional administration fees and interest against that Participant.
- 6.3 Where Interchange has reason to believe the Participant has under-remitted Environmental Fee to Interchange, in an amount in excess of \$500.00 for any period or if previous audits have shown a Participant has poor performance in accurately remitting their Environmental Fees and has repeatedly failed to comply with the terms of an Environmental Fee compliance review letter, then the Participant shall, in addition to any other liability at law, be liable to pay Interchange immediately the following:
- (a) the Environmental Fee due;
 - (b) the costs of the audit; and
 - (c) 20% of the Environmental Fee due by way of an administrative fee to Interchange.
- 6.4 Where Interchange has reason to believe the Participant has over-remitted Environmental Fee to Interchange, then the Participant shall be reimbursed by Interchange as soon as practicable.

6.5 This section 6 shall survive termination of this Agreement.

7. Interchange by-laws and rules govern

- 7.1 The Participant agrees that this Agreement shall govern its Participation in Interchange.
- 7.2 Interchange has the authority to make policies, procedures and rules in relation to the Programs and Materials. The Participant agrees to be bound by this Agreement and any related policies, procedures and rules made by Interchange in connection with a Program.
- 7.3 This Agreement and any related policies, procedures and rules may be amended from time to time by the Board of Directors of Interchange.

8. Obligations of Interchange

- 8.1 Interchange agrees to accept and carry out the duties of the Participant under section 6(1) of the Regulation, and, shall notify the Minister responsible for the Regulation in writing the duties it will perform on behalf of the Participant under the Regulation.
- 8.2 Interchange shall provide the Participant with a Stewardship Program in respect of the sale/and or supply of Material, in accordance with an Approved Plan.
- 8.3 Interchange covenants with the Participant to keep confidential any and all information transmitted by the Participant for any purpose, including audit, except: (a) as required by applicable law, including section 10(i) of the Regulation, (b) to permit Interchange to identify a Participant who is in arrears of Environmental Fee remittance; and (c) for the purposes of the Participant listing in accordance with this Agreement.

- 8.4 Interchange shall provide to the Participant, a written, 90 day advance notice of any change to the Environmental Fees.
- 8.5 Interchange shall assign a registration number and issue a certificate of registration to the Participant and shall notify the Participant in writing of the number and effective date of registration with Interchange. Interchange will provide all Interchange Participants with a current website list of Interchange Participants in good standing and will generally cooperate with Interchange Participants so as to facilitate easy identification of Participants.
- 8.6 Interchange shall provide the following services:
- (a) retain chartered accountants to prepare and present annual financial statements as required under the *Canada Not-for-Profit Corporations Act* and the Regulation;
 - (b) conduct regular audits of all Participants, as described under section 6 of this Agreement; and
 - (c) review Environmental Fee remittances and recommend non-compliance audits, as necessary.

9. Notices

- 9.1 All notices, requests, consents, claims, demands, waivers, and other communications hereunder 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 (where “business day” means any day other than a Saturday, Sunday, or statutory holiday in British Columbia or Yukon) 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.
- 9.2 Notice must be sent to the respective parties at the following addresses (or at such other address for a party as is specified in a Notice given in accordance with this section):
- (a) if to the Participant, to the address set out on the execution page of this Agreement;
 - (b) if to Interchange, to:
Interchange Recycling Yukon
3rd Floor, 536 Broughton Street
Victoria, BC V8W 1C6
Attention: David Lawes, CEO
E-mail: dlawes@interchangerecycling.com

10. Governing Law and Choice of Forum

- 10.1 This Agreement and all matters arising out of or relating to any of the foregoing are governed by, and construed in accordance with, the laws of Yukon, and the federal laws of Canada applicable therein. Any action or proceeding arising out of or relating to this Agreement and all transactions and matters contemplated thereby, will be instituted in the courts of the Province of British

Columbia, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding.

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

Interchange Recycling Yukon

By _____

Title _____

Date _____

Participant: _____

By _____

Title _____

Date _____

Address _____

E-mail: _____

Attention: