

PCA MEMBERSHIP AGREEMENT

Membership in PCA is subject to the terms and conditions of this Agreement. This is a legal contract between you and PCA. Please read the entire Agreement carefully before accepting.

THIS AGREEMENT ESTABLISHES THE TERMS AND CONDITIONS TO WHICH YOU AGREE AND TO WHICH YOU ARE SUBJECT AS A MEMBER OF PCA.

This Membership Agreement (the “**Agreement**”) is entered into as of the Agreement Date (defined herein),

Between:

PRODUCT CARE ASSOCIATION OF CANADA (“PCA”)

a federal not for profit corporation having its head office
at: 420 - 2238 Yukon St., Vancouver, BC, V5Y3P2

And:

THE MEMBER (the “MEMBER”)

an entity having an office at the address set out in the on-line member registration system

WHEREAS:

- A. Various provinces have environmental stewardship regulations, pursuant to which certain industries have been mandated to develop and manage a stewardship plan for specific types of products.
- B. The Regulations (as defined below) permit the Member to appoint an agent to develop, submit for approval and operate the required stewardship programs, on behalf of the Member.
- C. PCA has developed the Programs (as defined below), and the Programs have been approved by the Regulator (as defined below).
- D. PCA develops, implements and operates the Programs in accordance with the Regulations.
- E. The Member wishes to appoint PCA as its agent for the purposes of carrying out its duties under the Regulations in respect of the Programs, and PCA is prepared to act as the agent of the Member in carrying out those duties, all upon and subject to the terms and conditions of this Agreement.

In consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged by each party hereto, the parties agree as follows:

1. Definitions and Interpretation

1.1 Definitions – In addition to any terms or phrases defined elsewhere in this Agreement, unless the context otherwise specifies or requires, for the purposes of this Agreement, including the Schedules hereto, capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

“Agreement Date” means the date on which the Member has properly completed the PCA registration system and indicated acceptance of this Agreement, subject to acceptance and approval by PCA.

“By-Laws” means the by-laws of PCA from time to time in effect, as the same may be modified, amended or replaced from time to time.

“Confidential Information” means all information, know-how, trade secrets, ideas, designs, technology, applications, methodologies or data concerning or related to products (including all hardware and/or software products) (including the discovery, invention, research, improvement, development, manufacture, marketing, or sale of products), processes, or general business operations (including any business, financial and legal information, corporate strategies, reports, plans, technical documentation, information relating to existing, previous and potential suppliers, customers and contracts, sales, costs, profits, pricing, methods, organization, employee lists and processes), whether relating to the Member (or other member of PCA, as applicable) or its directors, officers, shareholders, employees, contractors, suppliers or customers, whether such information is conveyed verbally or in written or other tangible form and which, if not otherwise described above, is of such a nature that a reasonable person would believe it to be confidential or proprietary.

“EHFs” means environmental handling fees or any similar fees or charges established pursuant to or in respect of the Regulations, or payable as a result of the management of any environmental stewardship plan for specific types of products and which are or become the subject of the Programs.

“Guidelines” means any directives, procedure manuals, administrative guidance, or other document regarding or relating to any Plan or the implementation of any Program, as published by PCA from time to time on the PCA Web-site.

“Member” means the entity set out in the Member’s on-line registration.

“PCA Web-Site” means ‘www.productcare.org’, or such other program specific web-sites as PCA may from time to time establish and maintain for the fulfillment of its objects and purposes, including www.lightrecycle.ca and www.recycflu.ca.

“Plan” or “Plans” mean the stewardship plans or plans developed by PCA in response to the Regulations, as set out on the PCA Web-Site, as the same may be amended or replaced from time to time.

“Products” means those products that fall within the product categories provided for in the Regulations as further defined in the Plans of the Programs, and as set out on the PCA Web-Site, as the same may be modified, amended or replaced from time to time, in accordance with this Agreement.

“Program” or “Programs” means the program or programs developed by PCA in response to Regulations and as outlined in the relevant Plans (as applicable), in which the Member indicates its participation, as modified from time to time through the online registration process, in accordance with this agreement.

“Regulations” means the relevant provincial extended producer responsibility regulations established by a Canadian province in connection with the establishment and implementation of the Programs contemplated in this Agreement.

“Regulator” means the director or other senior manager or official identified in the applicable Regulations, or the relevant legislation pursuant to which the Regulations have been established, and identified as responsible for the management and operation of the relevant provincial environmental stewardship program(s).

“Rules, Guidelines and Policies” means all of the rules, Guidelines and policies established by PCA and in effect at the relevant time, as the same may be modified, amended or replaced from time to time, in accordance with this Agreement.

- 1.2 Rules of Interpretation – In this Agreement the following rules shall apply to the interpretation thereof: words denoting the singular include the plural and vice versa and words denoting any gender include all genders; the words “include”, “includes” and “including” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”; any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided; when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency; the division of this Agreement into separate Articles, Sections, subsections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

2. PCA Membership and Program Participation

- 2.1 Membership in PCA – Upon completion of the PCA on-line registration, including the ‘check-the-box’ acceptance of the terms and conditions of this Agreement, the Member applies to become a member of PCA or for an existing member of PCA, to reaffirm its membership in PCA. In addition the Member shall indicate in the

registration process the Products and Programs in which the Member is participating, as modified by the Member from time to time. Such application, including modification of selected Programs or Products, is subject to acceptance by PCA, in accordance with the Rules, Guidelines and Policies. Upon notification to the Member of acceptance of such application, the Member shall be and shall be deemed to be a member of PCA as of and from the Appointment Date or in the case of an existing member, the membership of the Member in PCA is reaffirmed and becomes subject to the terms of this Agreement as of the Agreement Date. The Member acknowledges the requirement to update the Member's registration from time to time with respect to the Products and Programs in which the Member is participating and any other applicable information.

- 2.2 By-laws, Rules, Guidelines and Policies – The parties agree that the membership of the Member in PCA is subject to the By-laws of PCA and the Rules, Guidelines and Policies in effect from time to time, and the Member shall be required at all times to conduct itself in accordance with the By-laws and all applicable Rules, Guidelines and Policies. In any case where there is a difference between this Agreement and any Rules, Guidelines and Policies, such Rules, Guidelines and Policies shall govern. PCA will use reasonable commercial efforts to consult with and to provide Member with as much advance notice of any contemplated amendment to the By-laws, Rules, Guidelines or Policies as possible.
- 2.3 Program Participation – PCA operates a number of Programs, pursuant to Plans made in connection therewith, and in accordance with the Regulations relating thereto. The Member hereby agrees to participate in the Programs identified by it pursuant to Section 2.1, and agrees that PCA shall implement and operate the Programs for the collection, transportation and recycling of the Products relating to such Programs for and on behalf of the Member.

3. Compliance with Rules and Implementation of Programs

- 3.1 Compliance – The Member covenants and agrees at all times during the Term to abide by the terms and conditions of this Agreement, the Bylaws and the Rules, Guidelines and Policies.
- 3.2 Amendments to Plans – The Member acknowledges and agrees that PCA may, subject to consultation with the Member as required in section 6.2, change, update, replace, restate or otherwise amend the Plans from time to time, subject to compliance with the Regulation and the approval of the relevant Regulator(s).
- 3.3 Applicable Products – PCA shall have no obligation with respect to any item manufactured, sold, distributed or otherwise handled by the Member which is not a designated Product under a Program in which the Member participates.

4. Confidentiality Obligations

- 4.1 Both the Member and PCA acknowledge and agree that one of the purposes of the Member being a member of PCA is to fulfill the Member's compliance obligations under the Regulations in respect of the Programs. Subject to disclosure of information

in accordance with this Agreement, the Bylaws and the Rules, Guidelines and Policies, the Member's membership in PCA shall not provide the Member with access to, or any right in or to, any Confidential Information of any other member of PCA.

- 4.2 Both the Member and PCA shall comply with the requirements of the PCA Confidentiality Policy from time to time in effect, as the same may be amended by PCA.
- 4.3 Without limiting the foregoing provisions of this Article 4, PCA agrees to keep confidential and prevent disclosure to any third-party of any and all Confidential Information transmitted by the Member (or on behalf of the Member) for any purpose, including the audit rights of PCA as set out in this Agreement, except as may be required by law or permitted pursuant to this Agreement, the By-laws, Rules and Policies, any Guideline, or any consent given or deemed to be given by the Member. For certainty, and notwithstanding the foregoing, PCA is permitted to identify all members of PCA who are in good standing, and to identify any member of PCA who is in arrears of the remittance of any EHF's under the Programs, to the relevant governmental authority, if required.
- 4.4 PCA will, from time to time, provide the Member with a current list of all members of PCA and PCA and the Member will reasonably cooperate to facilitate the identification of suppliers or customers of the Member or other persons who are or may be obligated under the Regulations, to ensure completeness with respect to the reporting and payment to PCA of EHF's for the Programs in which the Member is participating.

5. Covenants of the Member

- 5.1 Payment of EHF's – During the Term, the Member shall pay to PCA within the next calendar month following the end of each reporting period (as described in Article 5.3 below) all EHF's on the sale or distribution of Products by the Member for each Program in which the Member is participating, including the sale or distribution of such Products which occurred prior to the Appointment Date. The rates of such EHF's shall be reasonably determined by PCA from time to time in accordance with the applicable Programs and the Rules, Guidelines and Policies and Program budgets including any requirements relating to reserve funds or potential penalties for non-performance by the Program. PCA will waive the Member's obligation to remit EHF's on any Products, when permitted by applicable Regulations, where the Member can provide evidence satisfactory to PCA that another member has agreed to remit the required EHF's on its behalf.
- 5.2 Overdue Payments – The Member agrees that any overdue EHF's owing by the Member to PCA shall be treated by PCA as a debt owing to PCA, and subject to interest at the rate and upon the terms set out in the Rules, Guidelines and Policies. If such overdue EHF's are not paid within thirty (30) days of written notice by PCA to the Member following any default in payment, PCA may pursue any remedies available to it in contract or at law, in addition to any other remedies available to PCA, including termination of the Member's membership in PCA.
- 5.3 Reporting – The Member agrees to provide to PCA all reports and other information from time to time as are reasonably requested by PCA, in accordance with the

Programs and the Rules, Guidelines and Policies, and to do so within the time frames set out in the Rules, Guidelines and Policies. Without limitation, the Member acknowledges that such reports will include reporting monthly, or such other reporting period as permitted by PCA, on the sales of the Member's Products relating to the Programs in which the Member is participating, on a participating province basis and the sales of any Products for which the Member has agreed to assume the obligations under the Regulations and for which the Member will be remitting EHF's to PCA, with respect to the Programs in which the Member is participating.

6. Covenants of PCA

- 6.1 Administration of Programs – Provided that the Member is a member of PCA in good standing, PCA agrees to permit the Member to participate in the Programs chosen by it during the Term, on the terms set out herein, in the applicable Program Plans, and in the Rules, Guidelines and Policies.
- 6.2 Amendment of Plans – PCA agrees to provide to the Member a copy of all amendments made to the Plans in accordance with this Agreement within thirty (30) days of the approval by the relevant Regulator(s), of each such amendment. The Member agrees and understands that a Plan may be revised from time to time, and the Member shall be bound by each revised version of the same as each revision may be issued, as though each was set out originally in the Plan and the Member covenants and agrees to abide by, comply with and satisfy such revised Plan. PCA will use reasonable commercial efforts to consult with and to provide Member with as much advance notice of any new Plan or amendment to an existing Plan as possible.
- 6.3 Implementation of Programs – PCA agrees to use all commercially reasonable efforts to:
- (a) implement and operate the Programs as submitted and approved by the Regulator(s) and in accordance with the Regulations;
 - (b) ensure that the Programs continue to be in good standing with the Regulator(s) and in compliance with the Regulations, and that any requirements of the Regulator(s) are adhered to; and
 - (c) submit any additional information or material to the Regulator(s) to which the Regulator is entitled and which the Regulator(s) request and consider relevant.
- 6.4 Reporting – PCA agrees to provide the Member with annual reports on the performance of the Programs, in a form and incorporating such content as the Board of Directors of PCA may from time to time approve, by posting the annual reports on the PCA Web-site.
- 6.5 Changes to Rules, Guidelines and Policies and EHF rates – PCA shall strive to provide not less than ninety (90) days prior written notice to the Member of any amendment or change to any Rules, Guidelines and Policies, made in accordance with this Agreement, including any new or additional Rules or Policies. In addition, PCA shall strive to provide not less than ninety (90) days prior written notice to the Member of any change to the EHF's to be charged to the Member under this Agreement.

- 6.6 Notice of Regulatory Issues – PCA agrees to provide prompt written notice to the Member
- (a) in the event that the approval from any Regulator in respect of the Programs is suspended or cancelled, together with the stated reasons for the suspension or cancellation, to the extent PCA is or becomes aware thereof, or
 - (b) of any hearing or similar meeting that is anticipated or pending, of which PCA is or becomes aware, in connection with a suspension or cancellation of any Regulator’s approval of the Programs.

7. Audit by PCA

- 7.1 Audit Right – PCA may from time to time, at its discretion, audit and inspect the records of the Member with respect to the sale, supply, distribution and importing of Products in the relevant provinces where the Programs are being implemented and operated (the “**Records**”) in order to verify the accuracy of the remittances of EHF’s by the Member to PCA under this Agreement. The Member acknowledges that PCA may use a third-party designated by PCA to perform such audit and inspection.
- 7.2 Cooperation of Member – If PCA notifies the Member that it intends to conduct such an audit, the Member shall make available or cause to be made available to PCA, or its designee, within ten (10) days following a written request therefor and during regular business hours, any and all information and material as may be reasonably requested by PCA, or its designee, for the purposes described in Article 7.1 above and otherwise give such cooperation as may be required by PCA, or its designee, including providing access to all Records and any other information in respect of transactions relating to the Products. The Member shall have the right to observe and be informed in respect of all audit activities conducted by PCA, or its designee, hereunder.
- 7.3 Notification of Results – Within sixty (60) days of completion of any audit or inspection under this Article 7, PCA shall provide to the Member a summary report of the results of such audit or inspection.
- 7.4 Under-Payment – If any audit discloses that the Member has under-paid EHF’s to PCA, such under-payment and the Member shall be subject to the applicable Rules, Guidelines and Policies. Without in any way limiting the foregoing, in such event, where the amount of the under-payment, for any period, exceeds the greater of either (i) two percent (2%) of the Member’s total EHF’s payment obligations or (ii) five hundred dollars (\$500), then the Member shall in addition to any other liability at law, pay to PCA, within thirty (30) days of written notice, the additional EHF’s due and interest and/or administrative fees for under-payments in accordance with the Rules, Guidelines and Policies.
- 7.5 Over-Payment – If any audit discloses that the Member has over-paid EHF’s to PCA, such over-payment shall be subject to the applicable Rules, Guidelines and Policies. Without in any way limiting the foregoing, in such event, PCA shall promptly notify in writing the Member of such over-payment and reimburse the Member within thirty (30) days of such notice.

- 7.6 Refund Request – In addition, where a Member provides information to PCA that satisfies PCA, acting reasonably, that the Member has over-paid EHF to PCA, PCA shall either confirm the over-payment in writing (thus satisfying the notice requirement and triggering the reimbursement obligation set out in Article 7.5) or, within 30 days of receiving such information from the Member, initiate an audit pursuant to this Article 7.
- 7.7 No Waiver – Any inspection, audit or review by PCA, or its designee, pursuant to this Article 7 shall not relieve the Member of any of its obligations to fulfil or comply with the terms of this Agreement. The performance by or on behalf of PCA of any inspection, audit or review hereunder is no assurance that the Member has complied with the provisions hereof which compliance shall remain the sole responsibility of the Member. The failure of PCA to conduct any inspection, audit or review hereunder shall not constitute a waiver of any of the rights of PCA under this Agreement.

8. Term and Termination

- 8.1 Term – This Agreement shall commence on the Appointment Date, shall have no set expiry date and shall remain in full force and effect until terminated in accordance with this Article 8 (the “**Term**”).
- 8.2 Termination – If the Member is participating in more than one Program, the Member has the option of terminating this Agreement for all Programs, or for one or more but not all Programs, provided that this Agreement may only be terminated for all Programs, or partially terminated for one or more but not all Programs, in accordance with the Bylaws or the provisions of this Article 8.
- 8.3 Termination following Amendment – PCA retains the right to revise or amend this Agreement. PCA will give notice to the Member of such change (the “Change Notice”). Unless the Member gives notice to PCA (the “Rejection Notice”) within 45 days of receipt of the Change Notice that the Member does not accept the revisions or amendments in the Change Notice, this Agreement, as amended, remains in effect and is binding. If the Member gives a Rejection Notice to PCA, this Agreement shall remain in force unamended for one year from the date of the Rejection Notice, and following one year, shall be terminated.
- 8.4 Termination for Insolvency – This Agreement will terminate automatically if: (i) the Member makes an assignment for the benefit of its creditors, consents to the appointment of a receiver for all or substantially all of the property of the Member, files a petition in bankruptcy or for a reorganization under the appropriate bankruptcy legislation, or is adjudicated bankrupt or insolvent; or (ii) if a court order is entered, without the consent of the Member, appointing a receiver or trustee for all or substantially all of the property of the Member, or approving a petition or for a reorganization pursuant to the appropriate bankruptcy legislation or for any other judicial modification or alteration of the rights of creditors of the Member.
- 8.5 Termination for Default—PCA may terminate this Agreement, by written notice to the Member with immediate effect, if the Member commits a Default.

If personally delivered or delivered via pre-paid courier, a Notice will be deemed to have been given and received on the date of actual delivery and, if by facsimile or e-mail, a Notice will be deemed to have been given and received on the date sent if sent during normal business hours on a business day and otherwise on the next business day.

Either party may at any time and from time to time notify the other party in accordance with this Article 10 of a change of address, facsimile number or e-mail address, to which all notices will be given to it thereafter until further notice in accordance with this Article 10.

- 10.2 Assignment – This Agreement is assignable by PCA without the consent of the Member to any corporate entity incorporated for the purpose of carrying out the Programs in replacement of or succession to PCA or another stewardship plan for the Products as approved by the Regulator, provided that ninety (90) days prior written notice is provided to the Member of such assignment. Except as provided above, neither this Agreement nor the rights or obligations of either party are assignable, except with the prior written consent of the other party, which consent cannot be unreasonably withheld or delayed.
- 10.3 Enurement – This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 10.4 Entire Agreement – This Agreement supersedes any prior agreements or understandings between the parties, whether oral or written.
- 10.5 Amendment – The Member acknowledges that the board of directors of PCA may amend, change or modify this Agreement from time to time.
- 10.6 Waiver – Any waiver by a party or any failure on a party's part to exercise any of its rights in respect of this Agreement shall be limited to the particular instance and shall not extend to any other instance or matter in this Agreement or in any way otherwise affect the rights or remedies of such party.
- 10.7 Further Assurances – The parties agree to execute and deliver all such other and additional instruments or documents and to do all such other acts and things as may be reasonably necessary to give full effect to this Agreement.
- 10.8 Applicable Law. This Agreement shall be governed and interpreted in accordance with the laws in force in the province in which the Member has its head office. Any dispute arising from this Agreement shall be brought before a court of competent jurisdiction in such province and each party irrevocably accepts the jurisdiction of such court. Notwithstanding the foregoing, if any Program Plan contains alternative dispute resolution provisions which are applicable to participants in such Program, any dispute arising from this Agreement shall be resolved in accordance with such provisions.

By clicking the phrase “[Yes, Continue] Yes, I have read and accept the PCA Membership Agreement” in the on-line member application process, you agree: (1) that you have read the terms and conditions of the Membership Agreement; (2) you understand the terms and conditions of the Membership Agreement; (3) you intend to form a legally binding contract; (4) a printout of the terms and conditions of the Membership Agreement will constitute a “writing” under any applicable law or regulation; and (5) you agree to abide by all the terms and conditions of the Membership Agreement.