

THIS AGREEMENT made in duplicate this 11 day of June, 2024

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE
PROVINCE OF NOVA SCOTIA, as represented by the Minister of Environment and Climate
Change,

(hereinafter referred to as "Minister")

and

RESOURCE RECOVERY FUND BOARD INCORPORATED,

a not for profit corporation limited by guarantee, incorporated under the laws of Nova Scotia
(hereinafter referred to as the "Board")

WHEREAS in accordance with the *Extended Producer Responsibility for Packaging, Paper Products and Packaging-Like Products Regulations* N.S. Reg. 139/2023 approved by Order in Council 2023-209, the Board was appointed as Administrator pursuant to Section 11 to carry out certain functions assigned to the Administrator in accordance with the *Regulations*;

AND WHEREAS subsection 12(1) of the *Regulations* requires the Board to enter into an operating agreement with the Minister respecting the Administrator's activities;

NOW WITNESS IN CONSIDERATION of the sum of One Dollar (\$1.00) and other good and valuable consideration the parties hereto covenant and agree as follows:

1.00 DEFINITIONS AND INTERPRETATIONS

1.01 In this Agreement:

- (a) "Act" means the *Environment Act*, SNS 1994-95, c 1, as amended from time to time;
- (b) "Administrator" means Administrator as defined in the *Regulations*;
- (c) "Business Plan" means an annual action plan as defined in the *Regulations*;
- (d) "CEO" means the Chief Executive Officer of the Board;
- (e) "Chair" means the Chair of the Board;

- (f) "Department" means the Department of Environment and Climate Change;
- (g) "Designated Material" means designated material as defined in the *Regulations*;
- (h) "Executive Director" means the Executive Director of the EPR Oversight Division of the Board;
- (i) "Implementation Date" means the implementation date under section 5 of the *Regulations*, December 1, 2025.
- (j) "inspectors" means pursuant to s. 21 of the Act who are appointed by the Minister to support the Board in conducting inspections and ensuring compliance with the *Regulations*.
- (k) "FOIPOP" means the *Freedom of Information and Protection of Privacy Act*, SNS 1993 c 5, as amended from time to time;
- (l) "Minister" means the Minister of Environment and Climate Change;
- (m) "Municipality" means a municipality as defined in the *Regulations*;
- (n) "Personal Information" means personal information as defined in FOIPOP;
- (o) "Producer" means a producer as defined in the *Regulations*;
- (p) "Producer Responsibility Organization" means a producer responsibility organization as defined in the *Regulations*;
- (q) "Province" means the Province of Nova Scotia;
- (r) "Registry" means the registry as defined in the *Regulations*; and
- (s) "*Regulations*" means the *Extended Producer Responsibility for Packaging, Paper Products and Packaging-Like Products Regulations*, NS Reg 139/2023, as amended from time to time.

1.02 Unless modified in this Agreement, words defined in the *Act* or *Regulations* have the same meaning.

1.03 In this Agreement, words in the singular include the plural and vice versa.

1.04 This Agreement is made subsequent to the incorporation of the Board and the Articles of Incorporation of the Board are hereby modified, governed and interpreted by the terms of this Agreement. Where there is inconsistency between the Agreement and the Articles of Incorporation, this Agreement shall govern.

- 1.05 A separate operating agreement between the Board and the Minister sets out the Board's roles and responsibilities as required pursuant to Section 5(2)(b) of the *Solid Waste-Resource Management Regulations*.

2.00 PURPOSE AND SCOPE

- 2.01 The purpose of this Agreement is to:

- (a) clarify the roles, duties and responsibilities of the Minister and Board in relation to the *Act* and *Regulations*;
- (b) set out matters that the Minister considers advisable in the public interest relating to the Board's activities under the *Regulations*;
- (c) provide for an accountability framework between the parties;
- (d) clarify the administrative, financial, working and reporting relationships between the parties; and
- (e) promote openness and transparency to serve the public interest.

3.00 MANDATE

- 3.01 The objectives of the Board as set out in Section 10 of the *Regulations* form the mandate of the Board with respect to these regulations.

4.00 ACCOUNTABILITY

- 4.01 The Minister is accountable to the Legislative Assembly of Nova Scotia for the statutes that the Minister administers, including the *Act*, and has a legislative oversight role with respect to the Board.
- 4.02 The Board is accountable to the Minister through the Chair for the performance of the Board in its capacity as Administrator.
- 4.03 The Executive Director is accountable to the Board through the CEO for the performance of the EPR Oversight Division.

5.0 ROLES AND RESPONSIBILITIES

- 5.01 The Minister:

- (a) is responsible for overseeing the performance of the Board with respect to its mandate as Administrator under the *Regulations* and this Agreement;
- (b) is responsible for developing statutes, regulations and policies on matters related to resource recovery or waste reduction;

- (c) will inform the Board, through the Chair, of the Province's policy objectives relating to the Board;
- (d) will not disclose information supplied in confidence by the Board in carrying out its duties under the *Regulations* and this Agreement except with the consent of a person whose interest could be affected by the disclosure or as otherwise required by law, including but not limited to FOIPOP;
- (e) shall make best efforts to consult with or engage with the Board during the policy development process, including with respect to any relevant proposed statutes or regulations; and
- (f) may work with other departments of the Province in facilitating agreements and relationships with the Board.

5.02 The Board:

- (a) shall carry out its objects in accordance with the *Regulations* and this Agreement, including operating the Registry and exercising powers and performing duties in relation to compliance and enforcement activities;
- (b) is responsible for ensuring that it has adequate resources, including financial resources, to comply with the *Regulations* and this Agreement, in accordance with the Business Plans that it submits to the Minister pursuant to Section 13(1) of the *Regulations*;
- (c) shall immediately report to the Minister any reason for concern about the financial state of the Board or the ability of the Board to fulfill its mandate as Administrator;
- (d) is responsible for developing and maintaining written policies and procedures for each functional area of its business, including but not limited to Registry establishment and maintenance as well as compliance and enforcement activities;
- (e) is responsible for developing, maintaining and making publicly available the following written policies on the Registry:
 - i. conflict of interest policy; and
 - ii. privacy policy.
- (f) is responsible for developing and maintaining policies and procedures that establish appropriate governance and financial management processes with sound internal controls to conduct the Board's operations as they relate to its capacity as Administrator;
- (g) is responsible for appointing the Executive Director, who is responsible for establishing, maintaining and operating the Registry;

- (h) is responsible for ensuring that the Board's directors, officers, and employees carry out their duties in a manner consistent with all policies and procedures established by the Board;
- (i) is responsible for providing the Minister with timely information of any issues or concerns related to performing its duties and exercising its powers under the *Regulations* and this Agreement that may require legislative, regulatory, policy or operational changes to resolve;
- (j) is responsible for reporting and meeting the performance targets required under Section 10 of this Agreement.
- (k) will provide advice to the Minister on matters related to resource recovery and waste reduction, including but not limited to proposed legislative or regulatory changes.

6.0 ADVISORY COUNCILS

- 6.01 A Transition Advisory Working Group with staff from the Department and Board will be established to provide advice to the Board related to implementation of the *Regulations* and this Agreement during the transition period between the date on which the *Regulations* come into force and the Implementation Date.
- 6.02 Notwithstanding clause 6.01, the Board may establish one or more Advisory Councils during the term of this Agreement, to provide advice to the Board on matters related to carrying out its mandate under the *Regulations* and this Agreement.
- 6.03 Where a Transition Advisory Working Group or Advisory Council(s) are established under Sections 6.01 or 6.02, a Terms of Reference must be drafted and approved by the Board, including a reporting structure to the Board.

7.0 GOVERNANCE

- 7.01 When carrying out its mandate under the *Regulations*, the Board shall:
 - (a) develop and maintain a compliance framework to support compliance and enforcement with the *Regulations*;
 - (b) implement and report on the compliance framework; and
 - (c) regularly review the adequacy and effectiveness of the compliance framework to support compliance and enforcement with the *Regulations*.

8.0 FINANCIAL MATTERS

8.01 In fulfillment of Section 14 of the *Regulations* and Clause 5.02(d) of this Agreement, the Board shall develop, maintain and publish a Fee Setting Policy that is based upon the following objectives and principles:

- (a) the amount of the fee, cost or charge is reasonable and reflects the costs incurred by the Board in performing the function for which the fee, cost or charge is established;
- (b) the process and criteria used to set the fee, cost or charge is clear and available to the public on the Board's website; and
- (c) the fee, cost or charge must relate to the Board's mandate under the *Regulations* and this Agreement.

8.02 Before establishing or amending a fee, the Board shall:

- (a) provide notice of the proposed fee in writing on the Board's website;
- (b) contact persons registered in the Registry to inform them of the notice of the proposed fee and directing them to the Board's website;
- (c) receive comments on the proposed fee during a comment period of at least forty-five (45) business days after the proposed fee is posted on the Board's website;
- (d) following the conclusion of the comment period:
 - i. provide notice of the proposed fee in writing to the Minister at least seven (7) business days before the Board approves the proposed fee; and
 - ii. publish a final version of the proposed fee on the website, along with an overview of how feedback received from impacted parties was considered in determining the final version of the fee and inform persons registered in the Registry of the final fee and direct them to the website;
- (e) put the fee into effect on a date specified by the Board, which shall be not less than thirty (30) business days after the final version of the fee is published on the website; and
- (f) each fee that is or has been established by the Board shall be publicly available on the Board's website, along with the effective date of the fee, even if that fee has been subsequently amended, repealed, subsumed or otherwise changed.

8.03 Any income or gains from the fees collected by the Board must be reported to the Minister and must be used by the Board to administer its roles and responsibilities under this Agreement.

- 8.04 Where in the opinion of the Minister, the income or gains from the fees collected by the Board in two consecutive years, amount to more than nominal or reasonably incurred gains or income for the purposes of administering the Board's roles and responsibilities under this Agreement, the Minister may notify and require that the Board reduce its fee to an amount which better reflects the cost of the Board's administration under these regulations.
- 8.05 Where a notice pursuant to 8.04 is provided by the Minister, the Board must act to reduce its fees as required.

9.0 COMPLAINTS

- 9.01 The Board shall develop, maintain, and make publicly available a process for receiving, investigating and responding to complaints on matters related to the Board's capacity as Administrator under the *Regulations* and this Agreement.
- 9.02 A summary of any complaints that were found to have merit, including how the complaints were resolved or addressed, will be posted on the Board's website.

10.0 REPORTING AND PERFORMANCE MANAGEMENT

- 10.01 The Board shall prepare and submit to the Minister for approval by February 28 of each year a Business Plan for the following fiscal year as required under subsection 13(1) of the *Regulations*.
- 10.02 By January 31 each year, the Board will provide a draft of the Business Plan described in section 10.01 to the Minister for review, comment and approval.
- 10.03 The annual Business Plan, once approved by the Minister, must be followed by the Board.
- 10.04 In fulfillment of Section 13(3) of the *Regulations*, the Business Plan must include all of the following:
- (a) a description of the Board's major activities and objectives for the fiscal year to fulfill the role of Administrator;
 - (b) a description of the Board's plan to achieve the objectives referred to in subsection (a), including but not limited to planned activities related to registration, compliance and enforcement, and setting fees;
 - (c) performance measures that establish targets for the fiscal year, including targets related to registration and compliance;
 - (d) projected revenues and expenditures;
 - (e) short-term (1 year) projections and a three-year strategic outlook and associated financial forecasting, including a description of any planned actions to support the efficiency and continuous improvement in the role as Administrator;

(f) any other information that is required by this Agreement, the *Regulations* or at the Minister's request.

10.05 The Board shall prepare and submit to the Minister by July 31 of each year an Annual Report for the previous fiscal year.

10.06 In fulfillment of the annual reporting requirement, the Annual Report must include all of the following:

- (a) audited financial statements;
- (b) a summary on the achievement of performance targets and performance measurements as outlined in the Business Plan.
- (c) a summary of the compliance framework and how it was implemented including a summary of enforcement activities;
- (d) a summary of any Advisory Council(s) established, including the purpose and membership of the council;
- (e) a report on any non-compliance of members of the Board with the code of conduct with regards to the role of Administrator; and
- (f) a link to the information described in section 9.02.
- (g) any other information that is requested by the Minister.

11.0 INSURANCE

11.01 The Board shall at all times maintain adequate insurance against liability arising out of the Board's carrying out of its mandate under the *Regulations* and this Agreement.

11.02 The Board shall take all reasonable steps to protect itself from and against all claims which might arise from the carrying out of its duties under the *Regulations* and this Agreement by the Board, its directors, officers, employees and agents.

11.03 The Board shall arrange for the completion and submission of a certificate of liability insurance to the Minister, which shall include a provision requiring the insurer to give prior notice to the Minister in the manner set forth in the policy conditions in the event that the policy is changed or cancelled.

11.04 The Board shall provide the Minister with certificates of insurance or other proof as may be requested by the Minister, that confirms the insurance coverage, and renewal replacements on or before the expiry of any such insurance.

11.05 If the Crown imposes an obligation on the Board by obtaining the enactment of legislation, making a regulatory change or otherwise, which gives rise to exposure to liability on the part of the Board for which the Board cannot reasonably obtain appropriate liability insurance, the Board shall provide immediate notice to the Minister in writing of the

uninsured risk and subject to Government approvals that may be required, if any, the Board and the Minister shall identify appropriate measures to resolve the issue to the satisfaction of both parties. Where Government approval is required, the Minister shall make best efforts to obtain the necessary approvals.

12.0 INDEMNITY AND LIABILITY

12.01 The Board agrees to indemnify and hold harmless the Minister, its employees and agents against and from any and all third-party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from:

- (a) the Board's breach of this Agreement; or
- (b) the negligence, other tortious act or wilful misconduct of the Board, or its employees, agents or subcontractors, in relation to the performance of its obligations under this Agreement.

12.02 The Minister agrees to indemnify and hold harmless the Board, its directors, officers, employees and agents against and from any and all third-party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from:

- (a) the Minister's breach of this Agreement; or
- (b) the negligence, other tortious act or wilful misconduct of the Minister, its employees, or agents, in relation to the performance of its obligations under this Agreement.

12.03 The parties hereby agree and confirm that the provisions of Section 143 of the *Act* apply to members of the Board and its directors, officers, employees and agents while carrying out their functions pursuant to the *Regulations* or this Agreement. Nothing in this Agreement is intended as a contractual waiver or modification of the statutory protections from liability of the Minister and the Board under section 143 of the *Act*.

13.00 DISPUTE RESOLUTION

13.01 The Parties will use reasonable efforts to find a satisfactory resolution to any conflict regarding the interpretation of this Agreement or matters related to the application of this Agreement.

13.02 The Parties will in good faith endeavor to resolve differences, conflicts or disagreement through direct dialogue and discussion.

13.03 In the event that the parties are unable to resolve a dispute, they shall promptly be referred by each party to their respective senior management representatives who have the authority to resolve and settle such disputes.

13.04 If the dispute cannot be resolved at the senior management level, then the respective parties should refer the dispute to the Board and the Minister to consider resolution and settlement of the dispute.

- 13.05 In the event that such representatives cannot resolve the dispute within twenty (20 days), or such longer period as the parties may agree in writing, the dispute may be submitted to selected mediation mutually agreed upon by the parties.
- 13.06 If the parties are unable to resolve the dispute through selected mediation, either party may elect upon giving prior written notice to the other party, to resolve the matter through litigation proceedings or provide written notice that they will submit the dispute arbitration under the *Commercial Arbitration Act*, SNS, 1999, c. 5.

14.0 LITIGATION

- 14.01 The Minister or the Crown shall keep the Board informed, in a timely manner, of any litigation by or against the Crown or in which the Crown is an interested party that may affect the interests of the Board.
- 14.02 The Board shall keep the Minister informed, in a timely manner, of any litigation by or against the Minister or in which the Minister is an interested party that may affect the interests of the Crown.

15.00 COMPLIANCE

- 15.01 In accordance with section 10(c) of the *Regulations* and to provide additional clarity, the Board may request and recommend individuals for appointment as inspectors by the Minister for the purposes of ensuring enforcement of the *Regulations*. The Board will be fully responsible for overseeing compliance with and enforcement of the *Regulations*.
- 15.02 The Minister commits to review appointment requests under clause 15.01 and will appoint inspectors in accordance with the *Act* to support the Board in conducting inspections and ensuring compliance with the *Regulations*.
- 15.03 The Minister may modify the Board's powers in relation to enforcement and compliance by amendment to the *Regulations* or this agreement.
- 15.04 The Minister in their sole discretion may revoke the appointment of an inspector made under 15.01 and will notify the individual and the Board when a revocation of an appointment has been made.

16.00 DATA COLLECTION AND INFORMATION MANAGEMENT

- 16.01 The Board shall protect Personal Information and commercially sensitive information (including any commercially sensitive information that relates to the Producer's supply of, or management of, Designated Material) with safeguards that represent best practices in respect to the sensitivity of the information, the format in which it is held and the related privacy risks, and secure such information against theft, loss and unauthorized use or disclosure.
- 16.02 The Board shall only collect such information in its capacity as Administrator as is necessary to fulfill its mandate under the *Regulations* and this Agreement.

16.03 In fulfilment of Clause 5.02(e) of this Agreement, the Board's privacy policy shall address at a minimum:

- (a) public access to information;
- (b) protection of Personal Information and commercially sensitive information; and
- (c) effective procedural remedies.

16.04 The Board shall continue to monitor the effectiveness of its privacy policy and determine whether any amendments are needed.

16.05 The Board shall designate a person to be responsible for FOIPOP, data collection and information management matters arising from the Board's activities acting in its capacity as Administrator.

17.00 TERM OF AGREEMENT

17.01 This Agreement shall commence on the effective date and shall continue until [November 14, 2028], unless terminated or cancelled earlier in accordance with Clauses 18.00 or 19.00.

17.02 This Agreement may be renewed for a further term of five years, with the option of two one-year renewals, upon the written consent of both parties.

17.03 If the parties agree to renew this Agreement, any such renewal shall be on such terms and conditions as the parties may agree, and any amendment to this Agreement reflecting such renewal shall be signed by the parties prior to the expiration of the Term. Nothing in this Article shall constitute or be deemed to constitute any assurance or representation by the Minister to the Board that this Agreement will be renewed.

18.00 TERMINATION

18.01 If, in the reasonable opinion of the Minister or the Board, as the case may be, there has been a breach or default by the other party, the Minister or the Board, as the case may be, may terminate this Agreement after giving the other party notice of the breach or default and thirty (30) business days to remedy the same.

18.02 If the Board assigns or sublets this Agreement or any part thereof except as is expressly provided herein or if the Board becomes bankrupt or insolvent or if a receiver or trustee is appointed for any part of the assets of the Board or if any assignment is made for the benefit of the creditors of the Board, or if the Board is wound up or goes into liquidation, the Minister may immediately terminate this Agreement.

19.00 CANCELLATION

19.01 The Minister reserves the right, at any time, to cancel this Agreement for any reason upon giving one year's written notice to the Board.

20.00 INDEPENDENT CONTRACTOR

- 20.01 The relationship of the Minister and the Board hereinafter shall be that of independent contractors, and without restriction, nothing herein or otherwise shall constitute the parties as principal agent, joint ventures or partners.
- 20.02 The Board shall be responsible for making all the necessary arrangements and payments for its employees and consultants.

21.00 ASSIGNMENT

- 21.01 The Board shall not assign or subcontract this Agreement or any part thereof without prior written consent of the Minister.
- 21.02 Notwithstanding Clause 21.02, the Board may utilize third party providers for the purposes of invoicing and collecting fees from Producers or Producer Responsibility Organizations.

22.00 NOTICES

- 22.01 All notices to or upon the respective parties hereto shall be in writing and shall be deemed to have been duly given immediately when delivered by hand/fax or five (5) business days after posting by prepaid registered post to the party to which such notice is required to be given under this Agreement as follows:

To the Province

Minister of Environment and Climate Change
Province of Nova Scotia
P.O. Box 442
Halifax, Nova Scotia
B3J 2P8

To the Board

Chair, Resource Recovery Fund Board
35 Commercial Street, Suite 400
Truro, Nova Scotia
B2N 3H9

- 22.02 Either party may by written notice designate a new address for notices given hereunder.

23.00 WHOLE AGREEMENT/AMENDMENTS

- 23.01 This Agreement shall constitute the whole Agreement between the parties in respect of this arrangement and supersedes all prior negotiations, communications and other agreements

whether written or oral, relating to the subject matter hereof. Any amendment or modification to this agreement shall have no force or effect unless it is in writing and signed by both parties.

- 23.02 The Parties may amend this agreement at any time, in whole or in part, by mutual written agreement.

24.00 LAWS

- 24.01 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Nova Scotia.

- 24.02 The Board shall comply with all laws, ordinances, rules and regulations which apply to the services it is rendering under this Agreement.

25.00 ENUREMENT

- 25.01 This Agreement ensures to the benefit of and is binding upon the parties hereto and their respective permitted successors and assigns.

26.00 WAIVER

- 26.01 No term, condition or provision hereof shall be or be deemed to have been waived by reason of any act, forbearance, indulgence, omission, or event. Only an express written waiver by the Minister shall be binding and each such waiver shall be conclusively deemed to be limited to the circumstances, right or remedy therein specified.

27.00 SEVERABILITY

- 27.01 In the event that any provision of this Agreement, or any part of such a provision, shall be determined to be invalid, unlawful or enforceable to any extent, such provision or part thereof shall be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

28.00 GENERAL

- 28.01 The Board shall make this Agreement available to the public on the Board's website.

IN WITNESS WHEREOF the parties have hereunto set their hands and affixed their seals of the day and year first above written.

**SIGNED, SEALED AND
DELIVERED** in the presence of

Lou MacEul

Witness

) **HIS MAJESTY THE KING IN RIGHT**
) **OF THE PROVINCE OF**
) **NOVA SCOTIA**
)
)

) Per: T. Halman
) Honourable Tim Halman
) Minister of Environment and Climate
) Change

Date: June 18, 2024

) **RESOURCE RECOVERY FUND**
) **BOARD INC.**
)
)

Stacy Brean

Witness

) Per: K. Meech
) Ken Meech
) Chair, Resource Recovery Fund Board Inc.
)

Date: June 11, 2024