

# Producer Services Agreement

With Company Name



**CIRCULAR**  
M A T E R I A L S

**CONFIDENTIAL**

Draft & Privileged



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**THIS PRODUCER SERVICES AGREEMENT** (the “**Agreement**”) is made effective as of the Effective Date.

**BETWEEN:**

**COMPANY NAME** (“**Company**”, “**You**” or “**Your**”)

AND

**CIRCULAR MATERIALS**

a federal not-for-profit corporation having its head office at 1881 Yonge Street, Suite 800, Toronto ON M4S 3C4, operating as Circular Materials Atlantic (“**Circular Materials**”, “**CMA**”, “**We**”, “**Our**” or “**Us**”)

**WHEREAS** You are a brand owner under the Designated Materials Regulation made under the *Clean Environment Act* (New Brunswick) (as amended from time to time, the “**Regulation**”) for Packaging and Paper and subject to certain obligations set out therein;

**AND WHEREAS** the Regulation permits You to designate an agent to act on Your behalf in respect of certain obligations thereunder;

**AND WHEREAS** You wish to appoint Circular Materials as Your exclusive agent in respect of Your obligations as a brand owner under the Regulation.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

## **1.0 DEFINITIONS**

**1.1 Definitions.** Capitalized terms in this Agreement have the following meanings:

“**Affiliate**” has the meaning assigned to it in section 1(1) of the *Business Corporations Act* (S.N.B., 1981, c B-9.1), as such act may be amended from time to time;

“**Annual Producer Report**” means the report submitted each Report Obligation Year by You to Circular Materials in accordance with the terms of this Agreement;

“**Business Day**” means any day on which commercial banks are open for business in the City of Fredericton, New Brunswick but does not include a Saturday, Sunday or a statutory holiday observed in the Province of Ontario;

“**CMA Subscribers**” means Producers who have entered into an agreement with Circular Materials for the purposes of carrying out the responsibilities set out in this Agreement;

“**Consumer**” means an individual who is an end user of Packaging or Paper who obtained the packaging or paper for personal, family or household purposes;

“**Effective Date**” has the meaning assigned on the signature page of this Agreement;

**“Eligible Source”** has the meaning assigned in the Stewardship Plan;

**“Fee Obligation Year”** means the calendar year for which a Producer is required to remit Fees to Circular Materials;

**“Fee Rates”** means the fee for each Packaging and Paper material or group of similar Packaging and Paper materials payable by You to Circular Materials pursuant to this Agreement;

**“Fees”** means the total of the Fee Rates applied to the quantity of Packaging and Paper material You supplied to Consumers in New Brunswick in the Report Data Year payable by You to Circular Materials pursuant to this Agreement;

**“Legislation”** means the *Clean Environment Act*, O.C. 2008-180, as may be amended from time to time;

**“Packaging”** has the meaning assigned in the Regulation, as may be further defined in any applicable Stewardship Plan;

**“Paper”** has the meaning assigned in the Regulation, as may be further defined in any applicable Stewardship Plan;

**“Party”** means either the Company or CMA and **“Parties”** means both the Company and CMA;

**“Portal”** means the web-based portal established by Circular Materials for registration and reporting;

**“Primary Contact”** means an individual appointed in Your organization as Your authorized representative under whose authority Your Annual Producer Report is filed;

**“Producer”** has the meaning assigned to “brand owner” in the Regulation, as may be further defined in any applicable Stewardship Plan;

**“Public space”** means provincial or local government property that is not industrial, commercial or institutional property and that is an outdoor area in a park, playground or sidewalk or a public transit station or stop under municipal or provincial jurisdiction to which the public is normally provided access;

**“Recycle New Brunswick”** means the stewardship board established pursuant to the Regulation, as such board is modified, replaced or succeeded from time to time;

**“Regulation”** means the Designated Materials Regulation made under the *Clean Environment Act* (RSNB 1973, c C-6), as amended from time to time;

**“Report Data Year”** means the calendar year preceding the calendar year in which a Producer is required to file an Annual Producer Report in accordance with the terms of this Agreement;

**“Report Obligation Year”** means the calendar year in which a Producer is required to file an Annual Producer Report in accordance with the terms of this Agreement;

**“Stewardship Plan”** means the stewardship plan required to be prepared and submitted to Recycle New Brunswick pursuant to section 50.55, section 50.57 (2) and section 50.58 of the Regulation;

**“Supply”** means sell, offer for sale or distribute to a person in New Brunswick as may be further defined in any applicable Stewardship Plan. “Supplies” and “Supplied” have a corresponding meaning.

All capitalized terms used but not otherwise defined in this Agreement shall have the meanings assigned to such terms in the Regulation and/or the Legislation, as applicable.

## 2.0 YOUR OBLIGATIONS

- 2.1 Subject to the provisions in this Agreement, You hereby appoint CMA, and CMA hereby agrees to act, as Your exclusive agent solely in respect of the obligations set out in Sections 3.3.1 to 3.3.4 inclusive.
- 2.2 During the Term of this Agreement, You shall not enter into an agreement with another entity to act as Your agent in respect of Your obligations as a Producer under the Regulation.
- 2.3 You shall successfully complete and maintain registration with Recycle New Brunswick as a Producer in accordance with the Regulation. You shall inform CMA in writing, as soon as practicable and in any event within thirty (30) days of making any changes to Your registration, including changes to the registered company name, address or contact information previously provided to CMA or Recycle New Brunswick. Notwithstanding the foregoing, You shall notify CMA if your registration with Recycle New Brunswick is suspended or cancelled within five (5) Business Days of such suspension or cancellation.
- 2.4 You acknowledge and agree that any requirement to provide security or pay any administrative fee to Recycle New Brunswick under the Regulation is Yours and will not be an obligation of CMA.
- 2.5 You shall submit an Annual Producer Report containing the information set out in this Section (which information may be modified from time to time) in respect of Packaging and Paper material that You Supplied to Consumers in New Brunswick for each Report Data Year to CMA through the Portal:
  1. The total weight of Packaging and Paper material in each material category set out in the Portal that was Supplied in the Report Data Year (the current list of material categories is attached in Appendix A hereto);
  2. The weight of Packaging and Paper material in each material category required to be submitted under paragraph 2.5(1.), above, that was:
    - (a) deposited into a receptacle at a location that is:
      - (i) not an Eligible Source; and

(ii) where the product related to the Packaging and Paper Material was Supplied and used or consumed; and

(b) collected from an Eligible Source at the time a related product was installed or delivered.

You shall report the information by the dates in Column C of the following table.

Column A	Column B	Column C
Report Data Year	Report Obligation Year	Deadline for Producer to submit Annual Producer Report to CMA
2021	2022	By October 31
2022	2023	By April 1
Each subsequent year	Each subsequent year	By April 1 of the Report Obligation Year

**2.6** You shall keep and retain records, in paper or electronic format, related to the weight of Packaging and Paper material You Supplied to Consumers in New Brunswick for five years from the date of Supply.

**2.7** With respect to the information required to be submitted under Section 2.5, You shall also provide, upon request by CMA, any substantiation required to verify the quantities, brands and Affiliates, the methodology and validation data, which may include:

1. Product categorization data such as SKU or UPC;
2. Descriptions of each product item or group;
3. Product sizes;
4. Packaging and Paper materials and weight;
5. Sales volumes;
6. Reasonable evidence to support the deduction of Packaging and Paper material that was: (a) deposited into a receptacle at a location that is not an Eligible Source and where the product related to the Packaging and Paper material was Supplied and used or consumed; and (b) collected from an Eligible Source at the time a related product was installed or delivered; and
7. Any other information reasonably requested by CMA or Recycle New Brunswick.

**2.8** You shall inform CMA within five (5) Business Days upon becoming aware that any information submitted to CMA under this Agreement or to Recycle New Brunswick under the Regulation is not accurate or complete for any reason and shall, within twenty (20) Business Days thereafter, supply to CMA by email to support@circularmaterials.ca a statement in writing explaining the inaccuracy or incompleteness together with the corrected or completed information.

**2.9** You shall pay the applicable Fees determined by CMA in respect of each Fee Obligation Year. An invoice for the Fees for each Fee Obligation Year will be emailed to the person identified in the Portal to receive invoices upon submission of the Report. The invoice shall be payable by You in either one (1) annual payment due on June 30<sup>th</sup> or four (4) equal

instalments, with such instalments due on May 31<sup>st</sup>, July 31<sup>st</sup>, September 30<sup>th</sup> and November 30<sup>th</sup> of the respective Fee Obligation Year (**“Fee Payment Dates”**). All sums payable under this Agreement are exclusive of any applicable taxes which shall be added to such sum to the extent applicable. All sums payable under and in accordance with the Agreement by You shall be paid in full without any deduction, withholding, counterclaim or set off.

- 2.10** Where a correction under subsection 2.8 results in additional Fees payable by You to CMA for a certain Fee Obligation Year, the additional Fees will be added to the amount due on the next Fee Payment Date. Where the additional Fees payable by You to CMA pursuant to such a correction represent five per cent (5%) or more of the total Fees due for the Obligation Year, the additional Fees above five per cent (5%) are subject to the interest and late payment obligations of Section 2.12. Where a correction under subsection 2.8 results in a decrease in Fees payable (and actually paid) by You in the current or either of the two (2) previous years, You will be credited for such difference in Your subsequent invoice.
- 2.11** You are obligated to pay Fees corresponding to the period from the Effective Date of this Agreement until the date of expiry or earlier termination of this Agreement. Fees are due in the Fee Obligation Year on the Fee Payment Dates and are calculated using data reported by You in the Report Obligation Year representing Packaging and Paper material Supplied to Consumers in the Report Data Year, as set out as examples in the table below.

Fee Obligation Year	Report Obligation Year	Report Data Year
2023	2023	2022
2024	2024	2023
2025	2025	2024

- 2.12** If You fail to pay any Fees by the applicable Fee Payment Date, then, in addition to all other remedies available under this Agreement or at law (which CMA does not waive by the exercise of any right under this Section), all such payments bear interest at the rate of five percent (5%) per annum, calculated daily and compounded monthly (for a net compounded rate of 5.11619% per annum), starting on the date such Fees are due until and including the date the overdue amount plus interest is paid. You shall also reimburse CMA for all reasonable costs incurred in collecting any overdue payments and related interest, including, without limitation, legal fees, legal costs, court costs and collection agency fees.
- 2.13** In the event that Recycle New Brunswick exercises its authority to (i) modify the Stewardship Plan or (ii) impose a different stewardship plan pursuant to subsection 50.59(2)(a) of the Regulation, You agree to negotiate in good faith with CMA to make any requisite modifications to this Agreement.



### 3.0 CIRCULAR MATERIALS OBLIGATIONS

#### 3.1 CMA Warranties

CMA shall:

1. Comply in all material respects with all applicable laws (including privacy laws, the *Competition Act* (Canada), the Legislation, and the Regulation); and
2. Exercise the skill and expertise reasonably expected of an agent under the Regulation.

#### 3.2 Unique Identifier

CMA shall assign to You the following unique identifying number: **[CMXXXXXX]**.

#### 3.3 CMA's Services

##### 3.3.1 **Company Obligations to Minister of Local Government and Local Government Reform, Regional Services Commissions and Local Governments**

3.3.1.1. CMA shall, on behalf of the Company, consult with the government entities identified in section 50.54 (a) and (b) of the Regulation and shall consider the interests of the government entities identified in section 50.54 (c) and (d) of the Regulation during development of the Stewardship Plan.

##### 3.3.2 **Company Obligations to Submit Stewardship Plan**

3.3.2.1. CMA shall, on behalf of the Company, prepare and submit the Stewardship Plan as set out in section 50.55, section 50.57 (2) and section 50.58 of the Regulation.

##### 3.3.3 **Company Obligations to Implement Stewardship Plan**

3.3.3.1 Subject to approval by the Recycle New Brunswick Board of the Stewardship Plan submitted under section 3.3.2.1, CMA shall, on behalf of the Company, implement the Stewardship Plan as set out in section 50.6, section 50.61, section 50.62 and section 50.63 of the Regulation.

3.3.3.1.CMA shall, on behalf of the Company, comply with section 50.65 of the Regulation if requested by a retailer.

3.3.3.2.CMA shall, on behalf of the Company, pay to Recycle New Brunswick the fees levied by Recycle New Brunswick on the Company under section 50.67, section 50.68 and section 50.69 of the Regulation and shall recover the amount of the fees paid to Recycle New Brunswick on the Company's behalf from the Company as part of the fees levied under section 2.9 of this Agreement.

3.3.3.3. In the event that Recycle New Brunswick exercises its authority to (i) modify the Stewardship Plan or (ii) impose a different stewardship plan pursuant to subsection

50.59(2) of the Regulation, CMA agrees to negotiate in good faith with You to make any requisite modifications to this Agreement.

### 3.3.4 Company Reporting Obligations

3.3.4.1. Subject to the Company complying with the information and submission timeline obligations set out in Section 2.5, CMA shall prepare and submit to Recycle New Brunswick, on behalf of the Company, the annual report containing the information required to be submitted by a Producer described in sections 50.64 (1), (2) and (3) of the Regulation.

### 3.3.5 Record Keeping and Audit Obligations

3.3.5.1. CMA shall retain appropriate records for a period of five years from the date of creation, including records related to implementing the Stewardship Plan.

## 3.4 Reporting and Disclosure and Related Matters

3.4.1 CMA shall provide a summary of its annual business plan on the Portal for access by You and other CMA Subscribers.

3.4.2 Starting on July 1 in the first calendar year following the year during which implementation of the Stewardship Plan commences, CMA shall, during the Term of this Agreement, on or before July 1 in each year, provide an annual report to You and other CMA Subscribers on the Portal for access by You and other CMA Subscribers that includes the following information for the previous calendar year:

1. A narrative description of the Eligible Sources for which CMA is providing collection services on behalf of You and other CMA Subscribers in the following categories:
  - (a) Single-unit dwellings
  - (b) Multi-unit dwellings
  - (c) Schools
  - (d) First Nations
  - (e) Public spaces
2. A narrative description of promotional and educational materials and strategies used to communicate with Consumers regarding the services provided on behalf of You and/or other CMA Subscribers to Eligible Sources;
3. The total amount in weight of Packaging and Paper material Supplied to New Brunswick Consumers by You and/or other CMA Subscribers in the following categories:
  - (a) Paper
  - (b) Rigid Plastic
  - (c) Flexible Plastic
  - (d) Glass

- (e) Metal
  - 4. The recovery percentage achieved in the previous year in the following categories:
    - (a) Paper
    - (b) Rigid Plastic
    - (c) Flexible Plastic
    - (d) Glass
    - (e) Metal
  - 5. Independently audited financial statements.
- 3.4.3 CMA shall promptly, and in any event within three (3) Business Days, notify the Company in the event any one of the following occurs:

- 1. If Recycle New Brunswick:
  - (a) Issues a compliance order or administrative penalty to CMA or any of its contracted service providers under the Legislation or the Regulation; or
  - (b) Charges CMA or any of its contracted service providers with an offence under the Legislation or the Regulation; or
- 2. If CMA or any of its contracted service providers is under investigation by the Competition Bureau for a potential violation of the *Competition Act*.

### 3.5 **Fee Setting**

- 3.5.1 CMA shall establish a fee-setting methodology for the purposes of calculating Fee Rates based on the following assumptions and principles:

- 1. Fee Rates shall reflect the costs to deliver the services set out in Section 3.3 and the activities described in Section 3.4 based on the following:
  - (a) For the period from the filing of the Regulation to approval by Recycle New Brunswick of the Stewardship Plan:
    - (i) CMA's start-up costs shall be shared by You and other CMA Subscribers in proportion to the Packaging and Paper reported by each CMA Subscriber;
    - (ii) CMA's transition preparation costs shall be shared by You and other CMA Subscribers in proportion to the Packaging and Paper reported by each CMA Subscriber; and
    - (iii) CMA's start-up and transition preparation costs shall be recovered from CMA Subscribers over the 2023, 2024 and 2025 Fee Obligation Years.
  - (b) For the period beginning from the date on which Recycle New Brunswick approves the Stewardship Plan:
    - (i) CMA's overhead costs shall be shared by You and other CMA Subscribers in proportion to the Packaging and Paper reported by each CMA Subscriber;

(ii) CMA's costs to prepare for implementation and to implement the Stewardship Plan shall be shared by You and other CMA Subscribers in proportion to the Packaging and Paper reported by each CMA Subscriber;

(iii) CMA's share of the common collection costs shall be attributed to each Packaging and Paper material or group of similar Packaging and Paper materials and shared by You and other CMA Subscribers in proportion to the Packaging and Paper reported by each CMA Subscriber;

(iv) CMA's post-collection costs for Packaging and Paper shall be attributed to each Packaging and Paper material or group of similar Packaging and Paper materials and shared by You and other CMA Subscribers in proportion to the Packaging and Paper reported by each CMA Subscriber;

(v) There shall be no arbitrary cross subsidization of costs among Packaging and Paper materials; and

(vi) CMA's overhead, collection and post-collection costs shall be recovered from CMA Subscribers in the applicable Fee Obligation Year.

(c) For the period beginning from the date on which Recycle New Brunswick approves the Stewardship Plan:

(i) Where a CMA Subscriber elects to receive its proportionate share of Packaging and Paper material, the CMA Subscriber will pay Fees based on (a) plus (b);

(ii) Where a CMA Subscriber elects to have CMA market its proportionate share of Packaging and Paper material, the CMA Subscriber will pay Fees in the applicable Fee Obligation Year based on (a) plus (b) less commodity revenue received by CMA for the CMA Subscriber's proportionate share of Packaging and Paper material; and

(iii) There shall be no arbitrary cross subsidization of commodity revenue among Packaging and Paper materials.

2. As a not-for-profit company, CMA will aim to minimize or avoid:

(a) operational losses (which, if they do occur, will be recouped in fee adjustments in subsequent fee periods);

(b) operational surpluses (which, if they do occur, will be accounted for in fee adjustments in subsequent fee periods);

3. All CMA Subscribers shall pay Fees in a manner reasonably determined by CMA;

4. Cost and commodity revenue components and the allocation and fee setting process shall be transparent to You and other CMA Subscribers collectively.

3.5.2 Following approval of the Stewardship Plan by Recycle New Brunswick, by September 30 of the year prior to a Fee Obligation Year, CMA shall make a non-binding good faith estimate of the Fee Rates for each Packaging and Paper material or group of similar Packaging and Paper materials to be payable by CMA Subscribers in respect of the Fee Obligation Year.

3.5.3 We hereby warrant to You that the Fee Rates charged to You under this Agreement shall not exceed the Fee Rates charged to other CMA Subscribers for similar services. We agree that if, while this Agreement is in effect, We offer to another CMA Subscriber similar services at lesser Fee Rates, You shall be charged such lesser Fee Rates from the date the lesser Fee Rates were available to the other CMA Subscriber. We agree to notify You at the time We offer such lesser Fee Rates to another CMA Subscriber and to promptly provide You with any credit thereby created.

### **3.6 Insurance**

3.6.1 During the Term of this Agreement, CMA shall, at its own expense, procure and maintain insurance coverage with respect to the conduct of its business in such types and amounts as specified below. CMA must obtain the required insurance from reputable insurers that (i) are licensed to do business in New Brunswick and (ii) have a rating of at least "A-" from the AM Best rating service or its equivalent. Limits may be satisfied with evidence of Umbrella or Excess Insurance coverage.

1. Comprehensive or Commercial General Liability Insurance, including coverage for bodily injury, property damage, complete operations, tenant's legal liability, non-owned automobile liability and contractual liability with combined single limits of not less than \$5,000,000 per occurrence, \$5,000,000 general aggregate.
2. Professional Liability Insurance covering liability for damages caused by an error, omission, or negligent act in the performance of services with minimum limits of liability of \$5,000,000 per claim and \$5,000,000 in the aggregate.
3. Cyber Liability Insurance, including coverage for loss categories including Business Income (\$250,000), Information Assets (\$250,000), Cyber Breach Injury Expense (\$250,000), Cyber Extortion (\$250,000), Fines and Penalties (\$250,000), and CASL (\$100,000) that may arise from services provided under this Agreement, of not less than the limits identified in parentheses above for each individual claim and \$1,000,000 in the aggregate.

3.6.2 Each such insurance policy shall name You as an additional insured. The policies of insurance shall provide that the coverage is primary and without right of contribution, and, to the extent permitted by applicable law, CMA shall cause its insurers to waive subrogation in favour of You. The insurance coverage will be provided on an occurrence rather than a claims made basis.

3.6.3 Not later than thirty (30) days following execution of this Agreement, CMA shall cause its insurers (or insurance agents or brokers) to issue certificates of insurance evidencing that the coverages and policy endorsements required under this Agreement are in full force and effect. CMA shall provide to the Company not less than thirty (30) days' prior written notice of any cancellation, termination, non-renewal or material alteration of the policies.

3.6.4 The insurance limits set forth in this Agreement shall not be construed to be a limitation of CMA's potential liability arising out of this Agreement. Failure to secure the insurance coverage above, or failure to comply fully with any of the insurance provisions of this Agreement, shall be deemed to be a material breach of the Agreement.

### 3.7 **Information Technology Requirements**

- 3.7.1 **Security Safeguards:** Without limiting any other provisions of this Agreement, CMA shall maintain a comprehensive, written information security program that contains administrative, technical, and physical safeguards that are appropriate to: (a) the size, scope and type of CMA's operations; (b) the type and sensitivity level of information that CMA will process; and (c) the need for security and confidentiality of such information ("**Security Measures**").

CMA's Security Measures shall be designed to: (i) protect the confidentiality, integrity, and availability of the Confidential Information in its possession or control or to which CMA has access; (ii) protect against any anticipated threats or hazards to the confidentiality, integrity, and availability of the Confidential Information; (iii) protect against unauthorized or unlawful access, use, disclosure, alteration, or destruction of the Confidential Information; (iv) protect against accidental loss or destruction of, or damage to, Confidential Information; and (v) be applicable to its contractors and agents.

- 3.7.2 **Notification of Security Breach:** Without in any way limiting the generality of any other provision of this Agreement, each Party agrees to promptly notify the other Party of a breach that compromises the safeguarding of the other Party's Confidential Information, of which it becomes aware, including, without limitation, any unauthorized access to or entry into its premises, computer systems or databases.

## 4.0 **LIMITATION OF LIABILITY AND INDEMNITY**

### 4.1 **Limitation of Liability**

- 4.1.1 Except in the case of indemnity obligations pursuant to Sections 4.2 and 4.3 hereof, in no event shall either Party be liable for any consequential, indirect, incidental, special, exemplary, punitive or aggravated damages, lost profits or revenues or diminution in value arising out of or relating to any breach of this Agreement, whether or not the possibility of such damages has been disclosed by either Party in advance or could have been reasonably foreseen, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 4.1.2 Except in the case of indemnity obligations pursuant to Sections 4.2 and 4.3 hereof, claims based on gross negligence, breach of confidentiality, breach of Section 3.7 (Information Technology Requirements), intentional breach of this Agreement, or willful misconduct, each Party's aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, in respect of any and all claims in any Fee Obligation Year will be limited to the amount that is the greater of: (i) two times (2x) the Fees paid or payable by the Company to CMA in the previous Fee Obligation Year, (ii) if the Company was not a CMA Subscriber for the entire previous Fee Obligation Year, two times (2x) an estimate of the Fees that would have been paid or payable by the Company in the previous Fee Obligation Year if the Company had been a CMA Subscriber for the entire Fee Obligation Year, as reasonably determined by CMA, including using the Company's historical supply data, and (iii) one million dollars (\$1,000,000); provided, however, that nothing in this paragraph will limit the Company's



Fee obligations pursuant to Section 2.11 or any other payment obligations under this Agreement.

#### **4.2 Company Indemnity Obligations**

The Company shall indemnify, hold harmless and defend CMA and its parent and their respective officers, directors, partners, shareholders, members, employees, agents, affiliates, successors and permitted assigns (collectively, “**CMA Indemnified Parties**”) from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including legal fees (on a full indemnity basis), disbursements and charges, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, “**Losses**”), incurred by any CMA Indemnified Party arising out of, relating to or occurring in connection with:

1. any assessment, fine or penalty (including compliance orders and administrative penalties) against CMA under the Regulation or the Legislation attributable, in whole or in part, to the acts or omissions of the Company or its parent or their respective officers, directors, partners, shareholders, members, employees, agents, representatives, licensors, licensees, franchisors, franchisees, affiliates, successors and permitted assigns (collectively, including the Company, the “**Company Indemnifying Parties**”), except to the extent such assessment is attributable to the negligence, willful misconduct or breach of this Agreement by any of the CMA Indemnifying Parties (as defined below);
2. any cancellation or suspension of the Company’s registration with Recycle New Brunswick;
3. any failure by any of the Company Indemnifying Parties to submit the properly and accurately completed Annual Producer Report to CMA in accordance with the timelines established in Section 2.5; and
4. any failure by any of the Company Indemnifying Parties to comply with any applicable laws, including legislation, regulations, and any licensing, registration or certification obligations.

The Company shall not enter into any settlement for any of the above-noted indemnified claims without CMA’s prior written consent.

#### **4.3 CMA Indemnity Obligations**

CMA shall indemnify, hold harmless and defend the Company and its parent and their respective officers, directors, partners, shareholders, members, employees, agents, affiliates, successors and permitted assigns (collectively, “**Company Indemnified Parties**”) from and against any and all Losses incurred by any Company Indemnified Party arising out of, relating to or occurring in connection with:

1. any assessment, fine or penalty (including compliance orders and administrative penalties) against the Company under the Regulation or the Legislation directly attributable, in whole or in part, to the acts or omissions of CMA or its parent or their respective officers, directors, partners, shareholders, members, employees, agents,

representatives, licensors, licensees, franchisors, franchisees, affiliates, successors and permitted assigns (collectively, including CMA, the “**CMA Indemnifying Parties**”), except to the extent such assessment is attributable to the negligence, willful misconduct or breach of this Agreement by any of the Company Indemnifying Parties; and

2. any failure by any of the CMA Indemnifying Parties to submit the Annual Producer Report to Recycle New Brunswick in accordance with Section 3.3.4.1.

CMA shall not enter into any settlement for any of the above-noted indemnified claims without the Company’s prior written consent.

#### **4.4 Survival**

The provisions of this Article 4.0 shall survive termination or expiration of this Agreement.

### **5.0 REPRESENTATIONS AND WARRANTIES**

#### **5.1 CMA represents and warrants to the Company that:**

- 5.1.1 CMA is a not-for-profit corporation duly incorporated, existing under the laws of Canada, and has all necessary corporate power, authority and capacity to enter into this Agreement, to carry out its obligations under this Agreement, to own its assets and to carry on its business as presently conducted;
- 5.1.2 CMA is duly registered, licensed or otherwise qualified to conduct its business in the Province of New Brunswick and perform its obligations under this Agreement;
- 5.1.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of CMA. This Agreement constitutes, and each other agreement to be executed by CMA in connection with this Agreement will constitute, a valid and binding obligation of CMA enforceable against it in accordance with its terms; and
- 5.1.4 CMA is not a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter, by-law, order, judgment, decree, licence, law (including regulations) or governmental authorization that would be violated, breached by, or under which default would occur or an encumbrance would, or with notice or the passage of time would, be created as a result of the execution and delivery of, or performance of obligations under, this Agreement or any other agreement to be entered into under the terms of this Agreement.

#### **5.2 The Company represents and warrants to CMA that:**

- 5.2.1 The Company is duly formed, existing under the laws of the jurisdiction identified on the signature page below, and has all necessary corporate power, authority and capacity to enter into this Agreement, to carry out its obligations under this Agreement, to own its assets and to carry on its business as presently conducted;



- 5.2.2 The Company is duly registered, licensed or otherwise qualified to conduct its business in the Province of New Brunswick and perform its obligations under this Agreement;
- 5.2.3 The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Company. This Agreement constitutes, and each other agreement to be executed by the Company in connection with this Agreement will constitute, a valid and binding obligation of the Company enforceable against it in accordance with its terms; and
- 5.2.4 The Company is not a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, obligation, instrument, charter, by-law, order, judgment, decree, licence, law (including regulations) or governmental authorization that would be violated, breached by, or under which default would occur or an encumbrance would, or with notice or the passage of time would, be created as a result of the execution and delivery of, or performance of obligations under, this Agreement or any other agreement to be entered into under the terms of this Agreement.

## 6.0 SUCCESSORS AND ASSIGNS

- 6.1 Neither Party may assign or transfer any of its rights or obligations under this Agreement at any time without the prior written consent of the other Party, which consent may not be unreasonably withheld. Notwithstanding the foregoing, a Party may assign or transfer this Agreement without the consent of the other Party provided that such assignment or transfer is to a successor in interest by reason of merger, acquisition or amalgamation, and provided the transferee or assignee assumes all obligations of the transferring or assigning Party under this Agreement. Any purported assignment or transfer in violation of this Section shall be null and void.
- 6.2 This Agreement will enure to the benefit of and will be binding on each Party and its respective successors and permitted assigns.

## 7.0 CONFIDENTIALITY

- 7.1 The term “**Confidential Information**” means information of any kind, whether communicated directly or indirectly, orally or in writing or in any other form or medium, of a Party or any of its affiliates, customers, employees, franchisors, licensors, franchisees, licensees or suppliers (“**Disclosing Party**”) that has been or is obtained by or otherwise comes into the possession or knowledge of the other Party or any of its affiliates, customers, employees, franchisors, licensors, franchisees, licensees or suppliers (“**Receiving Party**”) in connection with this Agreement (whether such information was obtained by or came into the possession of Receiving Party prior to, on, or after the Effective Date), including any information concerning the Disclosing Party’s past, present or future business, finances, pricing, operations, sales, products, assets, employees, customers, suppliers, contracts, strategies, techniques, ideas, concepts, know-how or methodologies, including the subject matter of this Agreement and the terms of this Agreement itself.

Without limiting the foregoing, it is expressly agreed that “Confidential Information” includes any information provided by the Company in respect of Packaging and Paper Material including but not limited to the quantities, brands and Affiliates, the methodology and validation data which may include:

1. product categorization data such as SKU or UPC;
2. descriptions of each product item or group;
3. product sizes;
4. packaging materials and weight;
5. sales volumes; and
6. evidence to support the deduction of Packaging and Paper Material that was a) deposited into a receptacle at a location that is not an Eligible Source and where the product related to the Packaging and Paper Material was Supplied and used or consumed, and b) collected from an Eligible Source at the time a related product was installed or delivered.

**7.2** All Confidential Information of the Disclosing Party is confidential and may not be used, disclosed or copied by the Receiving Party except as permitted herein or as otherwise authorized by the Disclosing Party in writing. The Receiving Party shall: (i) take all reasonable precautions and measures to maintain the confidentiality and security of the Confidential Information of the Disclosing Party; (ii) not use, disclose or reproduce Confidential Information for any purpose other than as reasonably required to exercise or perform its rights or obligations under this Agreement; (iii) not disclose any Confidential Information other than to directors, employees, agents, subcontractors, consultants, representatives or professional advisors of the Receiving Party (collectively, “**Representatives**”) to the extent, and only to the extent, they have a need to know the Confidential Information in order for Receiving Party to exercise its rights or perform its obligations under this Agreement and who are bound by obligations of confidentiality, protection and non-use at least as stringent as those herein; and (iv) be liable for any breach of the confidentiality, protection and non-use obligations by any of its Representatives.

**7.3** Nothing in this Agreement shall preclude the Receiving Party from disclosing Confidential Information of the Disclosing Party to the extent required by a court of competent jurisdiction, other governmental authority of competent jurisdiction, Recycle New Brunswick or otherwise as required by applicable law, provided that the Receiving Party has given the Disclosing Party, or used its reasonable effort to give the Disclosing Party, prior to making any disclosure, notice of the requirement to disclose as promptly as practicable so that the Disclosing Party has an opportunity to oppose the disclosure or to seek a protective order protecting such Confidential Information (or similar relief). The Receiving Party may only disclose the minimum information required to be disclosed, whether or not the Disclosing Party seeks or obtains any such protective order or other relief.

**7.4** As used herein, the term “Confidential Information” shall not include: (i) information which, at the time of disclosure to the Receiving Party, is published, known publicly or is otherwise in the public domain through no fault of the Receiving Party or its Representatives; (ii)

information which, after disclosure to the Receiving Party, is published or becomes known publicly or otherwise becomes part of the public domain through no fault of the Receiving Party or its Representatives; (iii) information which, prior to the time of disclosure to the Receiving Party, is known to the Receiving Party (and not known by Receiving Party to be the subject of an obligation of confidence of any kind), as evidenced by its written records; (iv) information which becomes known to Receiving Party from a third party, where Receiving Party had no reason to believe that such third party had any obligation of confidence with respect to such information, but only until Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence; or (v) information which Receiving Party can demonstrate (through written records) was independently developed by it or by individuals employed or engaged by Receiving Party who did not have any access to, or the benefit of, the Confidential Information of Disclosing Party.

- 7.5** Upon expiry or earlier termination of this Agreement, CMA will promptly and in no event later than thirty (30) days following expiration or termination, return to You all Confidential Information of the Company (except for Confidential Information CMA is required to retain for legal or regulatory, or audit purposes, in which case such Confidential Information shall be returned as soon as is reasonably possible after such retention obligations cease) in its possession, together with all electronic copies thereof, and will immediately destroy all memoranda, notes, reports, documents, and software containing copies, extracts or reproductions thereof in its possession, power or control. CMA will certify the return and/or destruction of the Confidential Information by a certificate of one of its senior officers. The return of such Confidential Information shall in no event relieve CMA of its obligations of confidentiality set out in this Agreement. Notwithstanding the foregoing, CMA may retain a copy of the Company's Confidential Information to the extent electronically stored in an archived computer system in accordance with CMA's retention or back-up policies or procedures, provided: (i) CMA does not use, disclose or reproduce any such information and continues to comply with the confidentiality, protection and non-use obligations herein; and (ii) any such information is erased or destroyed in the ordinary course of CMA's data processing procedures and no later than 180 days after expiry or earlier termination of this Agreement.
- 7.6** This Article 7.0 (Confidentiality) shall survive expiration or earlier termination of this Agreement.
- 7.7** Any controversy, dispute, disagreement, or claim arising out of, relating to or in connection with this Article 7.0 or any breach thereof shall not be subject to the Dispute Resolution procedures described in Section 9.2. Each Party acknowledges that its obligations under this Article 7.0 are necessary and reasonable in order to protect the other Party's business and expressly agrees that monetary damages may be inadequate to compensate the other party for any breach of this Article. Accordingly, each Party agrees and acknowledges that any such violation may cause irreparable injury to the other Party and that, in addition to any other remedies that may be available (in law, in equity or otherwise), the injured Party shall be entitled to seek an injunction, specific performance or other equitable relief against the threatened breach of this Article or the continuation of any such breach, without the necessity of proving actual damages or posting any bond or other security.

## 8.0 TERM

**8.1 Term.** Subject to earlier termination as provided in this Agreement, the term of this Agreement commences on the Effective Date and continues until December 31, 2023, inclusive (the “**Initial Term**”). The Initial Term will automatically extend for successive one-year periods (each, a “**Renewal Term**”), unless either Party provides prior written notice of its election not to renew the Agreement on or before the first (1<sup>st</sup>) day of July immediately preceding expiry of the Initial Term or any Renewal Term, as applicable. The Initial Term and all Renewal Terms (if any) are collectively referred to as the “**Term**”. For greater clarity, notwithstanding the foregoing, delivery of the services set out in Sections 3.3.3 and 3.3.4 shall not commence until the later of the Effective Date or six months following approval of the Stewardship Plan by Recycle New Brunswick.

**8.2 Mutual Termination Rights.** Either Party may terminate this Agreement:

**8.2.1** immediately upon written notice, if the other Party is in material breach of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured within thirty (30) days following the other Party’s receipt of notice of such breach;

**8.2.2** immediately if the other Party:

**8.2.1.1.** becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;

**8.2.1.2.** files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;

**8.2.1.3.** seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts;

**8.2.1.4.** makes or seeks to make a general assignment for the benefit of its creditors; or

**8.2.1.5.** applies for or has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

**8.2.3** immediately upon written notice if the other Party materially breaches the confidentiality provisions of Article 7.0 hereunder; and

**8.2.4** immediately upon written notice if the Regulation is rescinded.

**8.3 Termination by CMA.** CMA may terminate this Agreement:

**8.3.1** immediately upon written notice if the Company deliberately falsifies data or, in CMA’s reasonable determination, exhibits a pattern of providing false or misleading data in relation to the Company’s Annual Producer Report;

8.3.2 immediately upon written notice on any failure by the Company to pay CMA any sum due hereunder within thirty (30) days of the due date for payment thereof; and

8.3.3 immediately upon written notice if the Company's registration with Recycle New Brunswick is cancelled or suspended and such registration is not reinstated within ten (10) Business Days of such cancellation or suspension.

**8.4 Termination by the Company.** The Company may terminate this Agreement:

8.4.1 immediately upon written notice if CMA deliberately falsifies data or, in the Company's reasonable determination, exhibits a pattern of providing false or misleading data in relation to any documentation to be provided by CMA under this Agreement (or of falsifying any data provided by the Company to CMA);

8.4.2 immediately upon written notice on a failure by CMA to ensure the Company remains in compliance with the Legislation and the Regulation, in respect of any material matters relating to the services provided by CMA to the Company pursuant to and in accordance with this Agreement, as evidenced through successful non-compliance action taken under the Legislation in relation to such a material matter, save for where the Company causes or contributes to such non-compliance; and

8.4.3 if the Company ceases to become a brand owner subject to the Regulation by virtue of subsection 50.52(1) of the Regulation.

## 9.0 GENERAL

**9.1 Headings.** The division of this Agreement into articles, sections, paragraphs, subsections and clauses and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

**9.2 Disputes.** Except for matters that are expressly excluded from arbitration hereunder, including matters related to an alleged breach of Article 7.0 (Confidentiality), any controversy, dispute, disagreement, or claim arising out of, relating to or in connection with this Agreement or any breach thereof, including any question regarding its existence, validity or termination (each, a "**Dispute**"), shall be finally and conclusively resolved by arbitration under the *Arbitration Act (New Brunswick), RSNB 2014, c 100*, provided that the following provisions shall govern any Dispute or arbitration hereunder:

9.2.1 If a Dispute occurs between the Parties, prior to any notice of arbitration being issued by either Party, the Parties shall in good faith attempt to resolve the Dispute pursuant to the following process (the "**Informal Dispute Resolution Process**"), referral to which shall not act to stay or defer the obligations of either Party under this Agreement:

9.2.1.1. If a Dispute arises which the staff representatives of each Party have been unable to resolve through discussion, the Party wishing to initiate the Dispute resolution procedures must raise the matter with the other Party in writing by (the "**Notice of Concern**");

- (a) If the Party is the Company, sending an email to the email address [disputes@circularmaterials.ca](mailto:disputes@circularmaterials.ca) with the subject line "Dispute Resolution Request" (and the Company's name and registration number) summarizing the nature of the Dispute and the key facts and attaching any relevant documentation; or
- (b) If the Party is CMA, sending an email to the email address of the Primary Contact for the Company (as identified in the Portal) with the subject line "Dispute Resolution Request" summarizing the nature of the Dispute and the key facts and attaching any relevant documentation;

9.2.1.2. Within thirty (30) days of receipt of the Notice of Concern, the Parties will meet to (the "**Informal Discussion**"):

- (a) Clarify the nature of the Dispute;
- (b) Request any further documentation in relation to the Dispute; and
- (c) Arrange for and facilitate a meeting to attempt in good faith to resolve the Dispute with representatives of the Company and CMA;

9.2.1.3. If the Dispute remains unresolved following the Informal Discussion, one of the Parties may, within thirty (30) days of the completion of the Informal Discussion (the "**Management Discussion Notice**"):

- (a) If the Party is the Company, send an email to the email address [disputes@circularmaterials.ca](mailto:disputes@circularmaterials.ca) with the subject line "Dispute Resolution Management Meeting Request" (and the Company's name and registration number) summarizing the aspects of the Dispute which remain outstanding following the Informal Discussion; or
- (b) If the party is CMA, send an email to the email address of the Primary Contact for the Company (as identified in the Portal) with the subject line "Dispute Resolution Management Meeting Request" summarizing the aspects of the Dispute which remain outstanding following the Informal Discussion;

9.2.1.4. Within thirty (30) days of receipt of the Management Discussion Notice, the Parties will arrange for and facilitate a meeting between senior representatives of the Company and CMA to attempt in good faith to resolve the Dispute (the "**Management Discussion**");

9.2.2 If a Party's concerns regarding a Dispute remain unresolved by the Informal Dispute Resolution Process, the Party who wishes to pursue resolution of the Dispute must within thirty (30) days of the completion of the Informal Dispute Resolution Process:

9.2.1.1. If the Party is the Company, send an email to the email address [disputes@circularmaterials.ca](mailto:disputes@circularmaterials.ca) with the subject line "Arbitration Request" and the Company's name and registration number summarizing the aspects of the Dispute that remain outstanding following the Management Discussion; or



9.2.1.2. If the Party is CMA, send an email to the email address of the Primary Contact for the Company (as identified in the Portal) with the subject line “Arbitration Request” summarizing the aspects of the Dispute that remain outstanding following the Management Discussion;

9.2.3 The legal seat and location of arbitration shall be Fredericton, New Brunswick, Canada, and the language of arbitration shall be English (including hearings, documentation and award);

9.2.4 The arbitral tribunal shall be comprised of one arbitrator. Within thirty (30) days of receipt of a Party's request for arbitration, the Parties shall jointly agree upon an arbitrator. If the Company and CMA cannot jointly agree on an arbitrator, each of CMA and the Company shall jointly submit two names of potential arbitrators, and the identity of the arbitrator shall be chosen from the four possible names by random draw observed by both Parties;

9.2.5 An arbitration lasting no more than four (4) hours, unless reasonably extended by the arbitrator in consideration of the nature of the Dispute, shall be scheduled to take place on a date to be determined by the arbitrator, in consultation with the Parties;

9.2.6 The Parties shall divide the time equally to present their positions to the arbitrator;

9.2.7 The Parties shall each be entitled to: (i) make submissions to the arbitrator, and (ii) submit documentary and other evidence to the arbitrator;

9.2.8 The decision of the arbitrator shall be final and binding. The Company and CMA shall have no right of appeal or review. For greater clarity, the court has no jurisdiction to hear an appeal from or any review of the arbitrator's decision;

9.2.9 Each Party shall bear its own costs of the arbitration and shall share equally the fees and disbursements of the arbitral tribunal and any other related costs of the arbitration, regardless of the outcome. The arbitrator shall have no jurisdiction to award costs in favour of either Party; and

9.2.10 In addition to any other confidentiality obligations under this Agreement, the Parties shall keep confidential and not disclose to any person the existence of the arbitration and any element of the arbitration (including submissions and any evidence or documents presented or exchanged and any awards thereunder), except to the arbitral tribunal, the parties' shareholders, auditors and insurers, legal counsel to the parties and any other person necessary to the conduct of the arbitration and except to the extent required by law, the rules of a stock exchange or securities regulatory authority having jurisdiction over a party or required for any application to set aside or enforce any award or decision made pursuant thereto. No individual shall be appointed as an arbitrator unless he or she agrees in writing to be bound by a confidentiality provision similar in form and substance to this paragraph.

**9.3 Entire Agreement.** This Agreement, including and together with any related exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and

contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

- 9.4 Currency.** All references in this Agreement to dollar amounts, “dollars” or “\$” are references to Canadian dollars (CAD).
- 9.5 Force Majeure.** Other than obligations to pay any amounts due pursuant to this Agreement, neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party’s control (which events may include natural disasters, pandemics, embargoes, explosions, riots, wars or acts of invasion or terrorism, requirements of law, or national or regional emergency) (each, a “**Force Majeure Event**”). A Party shall give the other Party prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. An affected Party shall use all commercially reasonable efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement. Notwithstanding the foregoing, labour strikes, work slowdowns, or other job actions of the affected Party’s employees or unexpected costs borne by the affected Party do not constitute Force Majeure Events. The Parties acknowledge this Agreement is being entered into in the midst of a pandemic generally referred to as the “**COVID-19 Pandemic**”. In this regard, the Parties agree circumstances relating to the COVID-19 Pandemic shall not be regarded as a Force Majeure Event unless circumstances arising in connection with the COVID-19 Pandemic change materially (from the circumstances as of the Effective Date) in a manner that causes a new failure or delay in a Party’s fulfillment or performance of any term of this Agreement that would otherwise constitute a Force Majeure Event.
- 9.6 Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Except as expressly provided in this Agreement, nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties. Except as expressly provided in this Agreement, neither Party shall have any power or authority to act in the name or on behalf of the other Party or to bind the other Party in any manner whatsoever.
- 9.7 Severability.** Every provision or part of this Agreement is to be considered severable. If any provision or part hereof should be found by any court of competent jurisdiction to be invalid or unenforceable, that determination shall not impair the other provisions or parts of this Agreement, which will be deemed to have effect as if such provision or part were severed from this Agreement.
- 9.8 Notices.** All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and sent by electronic mail to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given 24 hours following confirmation of email transmission.



The person registered by You in the Portal as the Primary Contact shall be the primary contact for the purposes of this Section.

Notice to CMA: info@CircularMaterials.ca

Notice to Company: The email address provided for the Primary Contact in the Portal.

- 9.9 Choice of Forum.** Subject to Section 9.2, any legal suit, action, litigation, or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, the services provided hereunder, and all contemplated transactions, shall be instituted in the courts of the City of Toronto, Ontario, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation or proceeding. Service of process, summons, notice, or other document by mail or personal service to such Party's address set forth herein shall be effective service of process for any suit, action, litigation or other proceeding brought in any such court. Each Party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
- 9.10 Governing Law.** This Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the province of New Brunswick and the federal laws of Canada applicable therein without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of such province.
- 9.11 Waiver.** No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 9.12 Survival.** All obligations under this Agreement, including obligations of indemnity, which expressly or by their nature survive the expiration, termination or assignment of this Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration, termination or assignment and until they are satisfied or by their nature expire. The expiration, termination or assignment of this Agreement for whatever reason shall not prejudice or affect the rights of either Party against the other in respect of any breach of this Agreement or any monies payable by one Party to the other in relation to any period

prior to the effective date of expiration, termination or assignment. Without limiting the generality of the foregoing, all payment obligations in respect of monies payable by one Party to the other shall survive expiration, termination or assignment of this Agreement.

**9.13 Further Assurances.** Each Party shall, at its expense, do, execute and deliver, or cause to be done, executed and delivered, such further acts and documents as the other Party may reasonably request from time to time for the purpose of giving effect to this Agreement or carrying out the intention or facilitating the performance of the terms of this Agreement.

**9.14 Revisions to this Agreement.** Except as otherwise expressly stated in this Agreement, no amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing and signed by an authorized representative of each Party. Notwithstanding the foregoing, CMA may make any revisions to this Agreement necessary to align with the Stewardship Plan (as approved by Recycle New Brunswick) or to comply with amendments to the Regulation or other notices, interpretations, rulings, directives or other communications issued pursuant to the Regulation (collectively, “**Communications**”), and CMA will provide the Company with written electronic notice of such revisions as soon as reasonably practicable. Such revision shall automatically have effect from the date specified in the notice, which date shall be the date CMA reasonably determines is necessary to comply with the Regulation, as so amended, or with such Communications. CMA shall make commercially reasonable efforts to consider and respond to (and, if appropriate, as reasonably determined by CMA, accommodate) reasonable written feedback related to such revisions received from the Company within thirty (30) days of receiving such feedback.

## 10.0 EXECUTION OF THIS AGREEMENT

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall have the force and effect of an original, but all such counterparts shall constitute one and the same instrument. This Agreement, to the extent signed and delivered by means of a facsimile machine, PDF via electronic mail or other electronic means, will be treated in all manners and respects as an original and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

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**CIRCULAR**  
MATERIALS

**THIS AGREEMENT** is submitted for acceptance and is effective as of: \_\_\_\_\_  
(the “**Effective Date**”).

**I ATTEST** the Company Supplies Packaging and Paper to Consumers in New Brunswick. |

Company Full Corporate Name: \_\_\_\_\_

Per: \_\_\_\_\_

Authorized Signing Officer

(I have authority to bind the Corporation.)

Name of Signing Officer: \_\_\_\_\_

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

Company Head Office Address: \_\_\_\_\_

Company Jurisdiction of Incorporation: \_\_\_\_\_

Signing Officer's Email address: \_\_\_\_\_

Signing Officer's Telephone number: \_\_\_\_\_

**AND AGREED TO BY CMA:**

Per: \_\_\_\_\_

Authorized Signing Officer

(I have authority to bind the Corporation.)

Name of Signing Officer: Allen Langdon

Title: Chief Executive Officer

Address: 1881 Yonge Street, Suite 800, Toronto Ontario M4S 3C4

Email address: info@circularmaterials.ca

Telephone number: 1 (844) 328-7149

Draft & Privileged

## Appendix A – Packaging and Paper Material Categories

Paper Products	Newspapers	Paper
	Newsprint (inserts and circulars)	
	Magazines and Catalogues	
	Directories	
	Paper for General Use	
	Purchased Posters, Calendars, Greeting Cards and Envelopes	
	Other Printed Materials	
Paper Packaging	Gable Top Containers	
	Aseptic Containers	
	Paper Laminates	
	Kraft Paper Carry-Out Bags	
	Kraft Paper - Non-Laminated	
	Corrugated Cardboard	
	Boxboard and Other Paper Packaging	
Rigid Plastic Packaging	PET Bottles, Jars and Jugs < 5 Litres	Rigid Plastic
	PET Bottles, Jars and Jugs >= 5 Litres	
	PET Thermoform Containers < 5 Litres	
	HDPE Bottles, Jars and Jugs < 5 Litres	
	HDPE Bottles, Jars and Jugs >= 5 Litres	
	Expanded Polystyrene	
	Non-Expanded Polystyrene - Other	
	PLA, PHA, PHB	
	Other Plastic Packaging (not listed Above) < 5 Litres	
	Other Plastic Packaging (not listed Above) >= 5 Litres	
Flexible Plastic Packaging	LDPE/HDPE Film	Flexible Plastic
	LDPE/HDPE Film Carry-Out Bags	
	PLA, PHA, PHB - Plastic Film	
	PLA, PHA, PHB Carry-Out bags	
	Plastic Laminates	
Steel Packaging	Steel Aerosol Containers	Metal
	Other Steel Containers and Packaging	
Aluminum Packaging	Aluminum Aerosol Containers	
	Aluminum Food Containers	
	Other Aluminum Packaging	
Glass Packaging	Clear Glass	Glass
	Coloured Glass	