



Mattress Recycling Council Participant Agreement

This Participant Agreement (the "Agreement") is entered into on the day that the Participant affirms acceptance by clicking upon the "Yes-Continue" in MRC's Participant Portal and is by and between:

Mattress Recycling Council, Inc., ("MRC")
A Delaware nonprofit corporation having its headquarters at:
501 Wythe Street
Alexandria, VA 22314
and its Affiliates

And:

The "Participant" (details as provided through the MRC online registration system)

Individually referred to as a "Party", collectively referred to as the "Parties"

This legally enforceable Agreement governs participation in the mattress stewardship programs for which MRC or one of its affiliate organizations have been selected to serve as steward in various U.S. states ("State" or "States"), including, but not limited to:

- i. [California](#)
- ii. [Connecticut](#)
- iii. [Rhode Island](#)
- iv. [Oregon](#)

Definitions

Distributor: A person or entity that has a contractual relationship with one or more Manufacturers to market and Sell Included Products to Retailers.

End User: A person (also referred to as a consumer) or other purchaser of Included Products (including but not limited to a hotel, dormitory or other institution). In California, a lessee of an Included Product is considered an End User.

Foundation (including box spring): A ticking or fabric-covered structure used to support a Mattress or sleep surface and may be comprised of a frame, foam, springs or other structure, or other materials, used alone or in combination, regardless of whether the product is stationary or adjustable. This includes new, used and renovated products.

Futon: Futons are included in California's definition of "Mattress". For these purposes, a futon must meet the general definition of a Mattress (see definition below). The Recycling Fee and obligations apply only to the Futon mattress. They do not apply to the Futon frame or base.

Included Products: Products included in the approved mattress recycling Program under the mattress recycling law of that State. These products are subject to the Recycling Fee and are

eligible for recycling through MRC's network. Click here to see a list of [Included Products](#).

Institutional Seller: A person or entity that Sells or offers for sale Included Products for public or corporate use (such as hotel or other lodging establishment, school, dormitory, hospital, nursing home, correctional institution, military facility, rental company or other non-residential End User) in one or more of the States that have enacted mattress recycling laws through any means.

Manufacturer: A person or entity who manufactures or imports Included Products in one or more of the States that have enacted mattress recycling laws. Under MRC's Connecticut and Rhode Island Programs, a Distributor is considered a Manufacturer.

Mattress: Any sleep surface covered with ticking or fabric that contains resilient material, such as steel innersprings, foam, fiber, or other filling or upholstery materials, used alone or in combination, regardless of size or shape, except for those products listed on the [excluded products](#) list. This includes new, used and renovated products. Futons are included in the definition of Mattress under the California Program.

Program (or Mattress Recycling Program): A mattress recycling plan approved by a State.

Records: The documentation required to confirm the quantities of Included Products sold during a Reporting Period to calculate the Fees to be remitted in accordance with that State's Program (e.g., sales invoices, statements, bills of lading and other financial documentation).

Recycling Fee (Fee, Charge or Stewardship Assessment): An amount set by MRC that must be collected on each [Included Product](#) sold to an End User in one or more of the States that have enacted mattress recycling laws. In Oregon, the Fee is called a Stewardship Assessment.

Renovator: A person or entity that alters a used Mattress (including Futon Mattresses in California) or Foundation for later resale by replacing the outer cover or filling, adding filling, rebuilding the used Mattress or Foundation, or replacing components with new or post-consumer components. This does not include stripping a Mattress or Foundation of its ticking without adding new material, sterilizing or sanitizing the used materials, or altering a Mattress or Foundation for a party that will retain the product for lease, rental or personal use (and not for resale).

Reporting Period: A calendar month.

Retailer: A person or entity that offers for sale [Included Products](#) to an End User through any means, including, but not limited to, through a physical store, or by remote offering, including sales outlets or catalogs, electronically through the Internet, by telephone, via a television sales channel, or through the mail. This includes Institutional Sellers. A Manufacturer, Distributor, brand owner, importer, Renovator or other entity selling directly to an End User are also considered a Retailer and must register with MRC as a Retailer.

Sell: The transfer of title of an [Included Product](#) (by a Manufacturer, Renovator, Distributor, Institutional Seller or a Retailer) for consumption by an End User, including but not limited to: through a physical store, by remote offering including sales outlets or catalogs, electronically through the Internet, by telephone, via a television sales channel, or through the mail.

State: A jurisdiction that has enacted a law that provides for the collection and recycling of discarded Included Products.

State Regulatory Agencies: The State agency with regulatory oversight for approving and administering the mattress recycling Program in that State including:

- California's Department of Resources Recycling and Recovery (CalRecycle)
- Connecticut's Department of Energy and Environmental Protection (DEEP)
- Oregon's Department of Environmental Quality (Oregon DEQ)
- Rhode Island Resource Recovery Corporation (RIRRC).

URN: The Uniform Registry Number (URN) is a number that is issued by individual states to Manufacturers and Renovators. The URN allows states to track Mattresses and Foundations to a specific manufacturing plant and enable cross-state sales. It is typically found in the Registration Number field on the bedding law label.

The number should follow this format:

- The "Prefix" is a two-letter abbreviation of the state that the number is issued in.
- The "Middle" is the record identity number assigned by the state and allows it to "manage" the URN.
- The "Suffix" is a two-letter abbreviation of the state or the country in which the physical manufacturing plant is located in.
 - Example - VA 12345 (CA)

General Participant Obligations

This Agreement applies to the named entity on the account associated with MRC reporting portal or website access or participation in the Programs by Participant. Participant covenants that such Participant, or the person agreeing to this Agreement on behalf of such Participant, is at least eighteen (18) years of age (or the legal age of majority (whichever is greater)) and will, at all times, provide true, accurate, current, and complete information when submitting information as a part of the Programs, or to MRC.

Participant agrees that it shall be responsible and liable for its own reporting and remittance obligations, data accuracy, business rules, and requirements as well as any acts or omissions of Participant and its designated employee(s).

Program Authority and Rules

Participant acknowledges MRC's authority to establish Program policies, procedures and rules for administering and enforcing the Program is granted by these State Regulatory Agencies, as well as their authority to modify these Program policies, procedures and rules. MRC's policies, as may be updated from time to time and located at <https://mattressrecyclingcouncil.org/reporting-resources/policies/>, are incorporated into this Agreement by reference. MRC will provide Participant with at least thirty (30) days' written notice of any update that materially affects Participants rights or obligations under this Agreement and will obtain acknowledgement and acceptance of policy(ies) updates from Participant. If Participant objects to such material update, Participant shall communicate to MRC their objections and the parties shall engage in good faith negotiations to enter into an

Addendum to this Agreement.

Confidentiality

As used herein, “Confidential Information” means non-public, confidential, or proprietary information about a party’s business, assets or operations deemed by such party to be of commercial or competitive value and not commonly known to others within such party’s industry and specifically includes, without limitation, the terms and conditions of this Agreement. Examples of Confidential Information include, without limitation, any information regarding a party’s marketing techniques, pricing, sales, product purchases, product evaluations, business prospects, customers, employees and relationships with vendors, e-commerce partners and suppliers. Confidential Information shall not include information which the receiving party demonstrates by documentary evidence: (i) was known to the public at the time of its disclosure, or becomes known to the public after the disclosure through no fault of the receiving party; (ii) as evidenced by prior written documentation, was rightfully in its possession prior to the time of the disclosure; (iii) as evidenced by prior written documentation, was developed by the receiving party independent of the disclosure by the disclosing party; or (iv) is required by law to be disclosed; provided that the receiving party gives the disclosing party prior written notice thereof and ensures that such information is disclosed only under conditions in which its confidentiality is maintained and so as to provide the disclosing party the opportunity to obtain such protective orders or other relief as may be available in the circumstances. As a part of the Programs, MRC or Participant may obtain or have access to Confidential Information of the other party. With respect to the Confidential Information of the other party, MRC and Participant shall, and shall cause each of their respective employees, contractors, and agents to: (a) keep in confidence all such Confidential Information and limit the disclosure of such Confidential Information only to those individuals or entities who “need to know” such information for purposes of the performance of this Agreement or for participation in or operation of the Programs; (b) not use any such Confidential Information for any purpose other than the performance of this Agreement; (c) not disclose any such Confidential Information to any third party unless such disclosure is necessary for performance of this Agreement or for participation in or operation of the Programs and further, only when such disclosure is subject to an obligation of confidentiality meeting the requirements of this Agreement; and (d) return all such Confidential Information, including all tangible, electronic copies and analyses thereof, to the other party promptly upon termination of this Agreement or upon written request of the other party. The protection afforded by this Agreement to Confidential Information is not intended to limit, and does not limit, in any way any of the protection provided to such Confidential Information under any applicable State law. Subject to the foregoing, Participant acknowledges and agrees that certain disclosures by MRC of information of Participant to another party (as a Participant), which may constitute the Confidential Information of Participant, will be a necessary part of participation in the Programs and Participant hereby acknowledges and agrees to such disclosures or information sharing.

Registration with MRC

Participant shall register with MRC by utilizing MRC’s online registration portal and providing the required information. Participant assumes responsibility for promptly updating the information it provides through MRC’s online registration portal (such as contact information, contact person, store locations, etc.) if it changes or learns that information previously provided is incomplete, erroneous or no longer accurate.

MRC may be required by applicable State law or upon request from State Regulatory Agencies

to provide information regarding a Participant's name, address, brand(s), contact information, store locations and uniform registry number (URN) to confirm that a given party is complying with applicable State law. Those State Regulatory Agencies may have authority to release some or all such information to the public.

Recycling Fees and Reporting

In accordance with State law, a Participant Retailer must display the Recycling Fee as a separate line item on the invoice or receipt provided with regard to the sale of each Included Product to an End User.

- In California, a Distributor, Retailer, or Seller seeking to remit the Recycling Fee on behalf of the consumer or ultimate end user to MRC in lieu of making the Recycling Fee clearly visible on the invoice, receipt, or in a functionally equivalent document must enter into a separate Addendum to this Agreement with MRC prior to adopting this practice.
- For each State in which a Participant Retailer Sells Included Products, the Participant Retailer must report to MRC (or MRC's designee) true and accurate quantities of each specific Included Product category that it sold in each State during a specified Reporting Period using the method and format specified by MRC.
- No later than the thirtieth (30th) day following the close of a Reporting Period, the Participant Retailer will remit to MRC, using a process specified by MRC, total Recycling Fees equal to the Recycling Fee multiplied by the net number of Included Products sold during the Reporting Period.
- Any requests to adjust previously submitted reports must be submitted in writing to MRC within ninety (90) days of the close of that Reporting Period. Adjustment requests are subject to review and approval by MRC.
- Any delinquent Recycling Fees, late fees and interest owed by the Participant Retailer to MRC that are not paid within thirty (30) days of written notice by MRC to the Participant Retailer shall be treated as a debt owed to MRC. MRC may pursue any and all rights and remedies available to it under contract or at law, including interest, fees and monetary penalties, and report Retailers in non-compliance to the State Regulatory Agencies.

Recordkeeping Requirements

Participant shall maintain Records of all Included Products sold in each State to End Users in a manner that will allow MRC (or MRC's designee) to confirm the net quantities of Included Products sold during a given Reporting Period and the amount of Recycling Fees to be remitted to MRC on such sales for a period of at least four years following such sales.

Participant shall allow MRC (or MRC's designee) to access and inspect all Records to verify that Recycling Fees were accurately collected and remitted to MRC.

Compliance Review by MRC

Participant agrees that MRC, at its discretion, may from time to time conduct a compliance review of the Records with respect to the sale, purchase, distribution and importation of Included Products to verify the accuracy of Participant's Recycling Fee remittances to MRC.

In the event of a compliance review, Participant shall make available to MRC (or MRC's designee) any and all Records relating to the sale, purchase, distribution and importation of Included Products and Recycling Fee remittances to MRC and shall provide any information requested by MRC with respect to transactions relating to such included Products.

If, as a result of a compliance review, MRC concludes that Participant has under-remitted Recycling Fees to MRC, the terms of the MRC Fee Policy shall apply to the Participant's payment of the under-remitted amount, as well as any applicable interest, compliance review and/or auditor's costs and other penalties.

Breach of this Agreement

Participant Retailer acknowledges and agrees that it is in breach of this Agreement if it does not:

- Comply with the terms of this Agreement,
- Maintain a valid and accurate registration with MRC,
- Maintain the required Records,
- Accurately report sales of Included Products in a timely manner, or
- Remit Recycling Fees when due.

Upon MRC's notification to Participant Retailer that it has breached this Agreement, Participant Retailer will have thirty (30) days to cure all problems identified by MRC. Interest on outstanding Recycling Fees will continue to accrue during this period. Failure to timely cure such problems shall not excuse or otherwise affect the Participant Retailer's continuing obligation under State law to collect and remit Recycling Fees to MRC on Included Products that the Participant Retailer Sells to End Users in one or more States, to submit timely reporting to MRC in connection with such sales, or to comply with any other obligations under applicable State law.

Participant Retailer acknowledges and agrees that should it fail to cure problems identified by MRC in a timely manner, MRC may report such breach to the appropriate State Regulatory Agencies for further administrative and other action. Any fees and penalties imposed by a State in such actions are separate and apart from all debt owed to MRC and are not applied towards the satisfaction of the Retailer's debt owed to MRC.

Term and Termination of Agreement

This Agreement is in force for as long as MRC administers the Program(s) and as long as the Participant Sells or offers for sale Included Products in one or more States. Participant may terminate this Agreement upon ninety (90) days written notice that it no longer sells or offers for sale Included Products in any of the Program States. This Agreement will terminate automatically with respect to a specific State if that State's mattress recycling law is no longer in effect.

Termination of this Agreement shall not excuse or otherwise affect the Participant's obligation under State law to collect and remit Recycling Fees to MRC on Included Products that the Participant sells to End Users in one or more States, to report to MRC such sales, to remit to

MRC any Recycling Fees or other money that the Participant owes to MRC as of the effective date of termination, or to comply with any other obligations under applicable State law up to the effective date of termination. In the event of termination of this Agreement, for whatever reason, MRC shall immediately notify the State Regulatory Agencies of such termination.

Indemnification

MRC and Participant each hereby agree to defend, indemnify, and hold harmless each other, and such other party's respective employees, agents, directors, officers, shareholders, attorneys, successors, assigns, and sole members/wholly-owned parent/subsidiary/affiliate companies from and against all third-party claims and the associated losses, costs (including reasonable attorney's fees), damages, or demands (such claims and losses, costs, damages, or demands, collectively, "Claims") arising out of a breach by the other party of an express term or condition of this Agreement. Participant shall further indemnify MRC, its sole member, affiliate organizations and their officers, directors, employees and agents, from any Claims arising out of a failure by a Participant to pay required fees or provide required reports pursuant to this Agreement and applicable State law in a timely manner. With respect to any Claim, MRC and Participant shall use reasonable efforts to cooperate with the other party in defense of any Claim. Participant further acknowledges and agrees that MRC reserves the right, in its sole discretion, to participate in any Claim for which indemnification is owed by Participant and assume for such Claim, at Participant's expense or such other cost sharing arrangement agreeable to MRC, the control, defense, and/or settlement of any matter otherwise subject to such Claim or this indemnification obligation.

Warranty and Representations

Participant represents and warrants to MRC that (a) it is authorized to enter into the Agreement and perform its obligations; (b) the signatory for Participant is authorized to execute the Agreement on behalf of Participant; (c) to the best of Participant's knowledge, Participant has all required permits, licenses, and other governmental authorizations and approvals to participate in the Programs; and (c) to the best of Participant's knowledge, the reports and data provided by Participant to MRC in connection with the Agreement are (i) accurate and complete and (ii) provided to MRC with any necessary consent, right, permission, license, clearance, or authority (including any further reasonable proof thereof (if requested by MRC) to permit MRC to use such reports and data in connection with the performance of its obligations under the Agreement and the Programs.

MRC represents and warrants to Participant that (i) MRC has the full authority and right to enter into the Agreement, and that this Agreement constitutes a valid and binding agreement of MRC; (ii) MRC is and at all times during the Term of this Agreement, the Program(s) in all states covered by this Agreement; (iii) MRC will comply with all laws applicable to its performance of its obligations hereunder the Program(s); (iv) to the extent MRC is required to deliver to a State Regulatory Agency, information which MRC receives from Participant, MRC will faithfully, accurately, and completely disclose all such information received from Participant to the extent required by law; (v) MRC will not sell or otherwise distribute or use the Participant reports for any purpose other than to comply with the requirements of the relevant Programs or as otherwise permitted by this Agreement; and (vi) MRC is and shall at all times during the Term of the Agreement remain a nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code..

Disclaimer

EXCEPT FOR THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MRC MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE PROGRAMS, AND EXPRESSLY DISCLAIMS (TO THE FULLEST EXTENT OF THE LAW) ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. BECAUSE THE PROGRAMS ARE BASED IN LARGE PART ON PARTICIPANT'S REPORTS AND DATA, THE ENTIRE RISK AS TO THE QUALITY AND RESULTS OF PARTICIPATING IN THE PROGRAMS ARE WITH PARTICIPANT. IF THIS DISCLAIMER OF WARRANTY IS HELD TO BE UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION IN ANY MANNER, THEN ALL EXPRESS AND/OR IMPLIED WARRANTIES MANDATED BY SUCH COURT SHALL BE LIMITED IN DURATION AND SCOPE TO THE MAXIMUM EXTENT OF THE LAW.

Limitation of Liability

1. EXCEPT FOR THE BREACH OF THE CONFIDENTIALITY OBLIGATIONS, FRAUD, GROSS NEGLIGENCE, INTENTIONAL MISCONDUCT HEREIN, IN NO EVENT WILL MRC OR PARTICIPANT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROGRAMS OR THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF MRC OR PARTICIPANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT OR PRECLUDE THIRD PARTY INDEMNIFICATION CLAIMS. MOREOVER, EXCEPT FOR THE BREACH OF THE CONFIDENTIALITY OBLIGATIONS HEREIN, A PARTY'S INDEMNIFICATION OBLIGATIONS, A PARTICIPANT'S PAYMENT OBLIGATIONS UNDER THE PROGRAMS, OR AS OTHERWISE PROHIBITED BY APPLICABLE LAW. MOREOVER, TOTAL LIABILITY OF MRC FOR ANY REASON WHATSOEVER RELATED TO THE AGREEMENT OR A PARTICIPANT'S PARTICIPATION IN THE PROGRAMS SHALL NOT EXCEED TEN THOUSAND DOLLARS (\$10,000) (US).

Governing Law and Fee/Cost Recovery

This Agreement has been made in and will be construed and enforced in accordance with the laws of the State of Delaware without regard to its conflict of law principals to the extent that no State law applies to that issue; but otherwise will be construed in accordance with the laws specific to the applicable State Program(s) governing the issue.

If MRC prevails in any suit, action or counterclaim to collect or recover any fees or other amounts of money that the Participant owes or must remit to MRC under either this Agreement or one or more of the State law(s), the Participant will pay all fees, costs and expenses incurred by MRC in such suit, action or counterclaim including but not limited to reasonable attorney's fees, expert witness' fees, court costs and expenses, as well as any costs incurred prior to commencement of legal action, including but not limited to the cost of any services of a collection agency, auditors or attorneys to assist in the collection of such money.

The Parties further agree that in any other suit, action or counterclaim that arises in any way relating to or arising out of this Agreement, the non-prevailing party in such suit or action shall

pay to the prevailing party an award of its reasonable attorney's fees and costs, plus pre- and post-judgment interest.

Notice

All notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered in person, by prepaid courier service or by email to the addresses as follows:

To: Mattress Recycling Council, Inc.
501 Wythe Street
Alexandria, VA 22314
Telephone: 1-855-229-1691 or 1-888-646-6815
Email: <mailto:info@mrc-us.org> or support@mrc-us.org

To the Participant at:
(Contact details provided via the online registration system)

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

Either party may at any time and from time to time notify the other party of contact information including but not limited to change of address, phone number or email address, to which all notices will be given to it thereafter until further notice.

Waiver & Severability

Failure to insist on strict performance of any of the terms and conditions of this Agreement will not operate as a waiver of any subsequent default or failure of performance. No waiver by MRC of any right under this Agreement will be deemed to be either a waiver of any other right or provision or a waiver of that same right or provision at any other time. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and the liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most clearly matches the intent of the original provision and the remainder of this Agreement shall continue in effect.

Entire Agreement

No joint venture, partnership, employment, affiliate, or agency relationship exists between Participant and MRC as a result of this Agreement or participation in the Programs. This Agreement, in conjunction with represents the entire agreement between Participant and MRC with respect to the subject matter herein, and supersedes all previous Agreements and prior or contemporaneous communications, whether electronic, oral, or written between Party and MRC with respect to the Website. The rights and obligations of a Participant may not be assigned, transferred, or delegated without the prior written consent of MRC.

MRC IS WILLING TO ALLOW A PARTICIPANT TO JOIN AND BE A PART OF THE PROGRAMS ONLY ON THE CONDITION THAT SUCH PARTICIPANT ACCEPT AND AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND MRC'S [RELATED REPORTING POLICIES](#) BY CHECKING "YES-CONTINUE" OR BY ACCESSING, DOWNLOADING, COPYING, OR OTHERWISE USING AN MRC REPORTING PORTAL OR WEBSITE.