

Mattress Recycling Council Participant Agreement

This agreement (the “Agreement”) is entered into on the day that the Participant completed the online registration.

Between:

Mattress Recycling Council (MRC)
A non-profit corporation having its head office at:
501 Wythe Street
Alexandria, VA 22314

And:

The “Participant” (details as provided through the MRC online registration system.)

Whereas:

- a. Various states have enacted used mattress recycling laws (the State or States), including, but not limited to:
 - i. [California](#)
 - ii. [Connecticut](#)
 - iii. [Rhode Island](#)
- b. Each State’s law requires an industry-led non-profit organization to propose to the State a plan to establish a mattress recycling program (the “Program”). That organization will then implement and administer the Program, once approved by the State. The Program may be modified or amended from time to time in accordance with State laws.
- c. The Mattress Recycling Council (“MRC”) is a non-profit corporation formed by the International Sleep Products Association to establish, implement and administer the Program in each of the States.
- d. State law requires certain companies to participate in the Program if they sell mattresses and foundations to Consumers in one or more States.
- e. Therefore, in order to comply with the applicable State law(s), Participant desires to participate in one or more of the Program(s) administered by MRC, and accordingly agrees to be registered with MRC. In consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged by each party hereto, Participant agrees to comply with the terms and conditions set out in this Agreement.

1 Definitions

“Box Spring” (also commonly called a “foundation”) means 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, and includes both adjustable bases or foundations and stationary foundations.

“Consumer” means a person or entity (including, but not limited to, a hotel, dormitory, etc.) that is the ultimate purchaser or lessee of a Mattress or Box Spring in a State.

“Mattress” means any sleep surface covered with ticking or fabric that contains resilient material, including, but not limited to, 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 under the [Excluded Products List](#), which MRC may update from time to time.

“Mattress Unit” means an individual Mattress or Box Spring.

“Participant” means a person or entity that:

- a. Is a Producer, or
- b. Sells Mattress Units to Consumers in a State.

“Producer” means a person or entity that:

- a. Manufactures, renovates or imports Mattresses or Box Springs, and
- b. Sells, offers for sale, or distributes those products in a State.

“Program” means a mattress recycling plan approved by a State.

“Records” means the documentation required to confirm the quantities of Mattress Units sold during a given month and to calculate the Fees to be remitted (e.g., sales invoices, statements, bills of lading and other financial documentation).

“Recycling Fee” or “Fee” means an amount set by MRC that must be collected on each Mattress Unit sold to a Consumer in a State.

“Reporting Period” means a calendar month.

“Retailer” means a person or entity that Sells, or offers for sale, a Mattress Unit to a Consumer for use in a State 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, or through the mail. For these purposes, the term Retailer may also include a Producer, or other party that sells Mattresses or Box Springs to an entity (including, but not limited to, a hotel, dormitory, etc.).

“Sell” means the transfer of title of a Mattress Unit (by a Producer, a Retailer, or other party) for consumption by a Consumer in a State, including, but not limited to, through a physical store or by remote offering through sales outlets or catalogs, electronically through the Internet, by telephone, or through the mail.

2 Registration with MRC

- 2.1 Participant elects to register with MRC by using MRC's online registration portal, and to provide the information requested.
- 2.2 Participant assumes responsibility for updating the information it provides through MRC's online registration portal in the event that such information (such as contact information, contact person, etc.) changes or if it learns that information previously provided is incomplete, erroneous or no longer accurate.
- 2.3 MRC may be required by applicable state law or upon request from state authorities to provide information regarding a registrant's name, address, brand(s), contact information and uniform registry number (URN) to state government agencies to confirm that a given party is complying with applicable state law. Those agencies may have authority to release some or all of such information to the public.

3 Fees and Reporting

- 3.1 According to each State's law, a Retailer must display the Fee as a separate line item on the invoice or receipt provided with regard to each sale of a Mattress Unit to a Consumer.
- 3.2 Pursuant to State law, MRC sets (and if necessary modifies) the amount of the Fee, subject to approval by the State.
- 3.3 For each State in which a Retailer Sells Mattress Units, Retailer agrees to submit to MRC (or MRC's designee) the net quantity of Mattress Units that it sold in each State during a specified Reporting Period using the method and format specified by MRC.
- 3.4 No later than the thirtieth (30th) day following the close of a Reporting Period, Retailer will remit to MRC, using a process specified by MRC, total Fees equal to the per-unit Fee multiplied by the net number of Mattress Units sold during the Reporting Period.
- 3.5 Any overdue Fees owing by Retailer to MRC shall be treated by MRC as a debt and MRC may pursue any remedies available to it in contract or at law, in addition to any other remedies available to MRC or enforcement actions that a State may take, in the event that such overdue Fees are not paid within thirty (30) days of written notice by MRC to Retailer in respect of the default in payment.

4 Recordkeeping Requirements

- 4.1 Participant agrees:
 - 4.1.1 To maintain Records of all Mattress Units sold in each State to Consumers in a manner that will allow MRC (or MRC's designee) to confirm the net quantities of Mattress Units sold during a given Reporting Period and the amount of Fees to be remitted to MRC on such sales.

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

4.1.3 For each Reporting Period, Participant must maintain Records for all Mattress Unit sales for a period of at least four years following such sales.

5 Program Authority and Rules

5.1 Participant acknowledges MRC's authority to establish Program policies and procedures for administering and enforcing the Program, and agrees to be bound by all policies and procedures established by MRC.

5.2 Participant acknowledges that MRC may, in its sole discretion, modify the policies and procedures or the provisions of this Agreement from time to time.

6 Breach of this Agreement

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

- Comply with the Terms and Conditions of this Agreement,
- Maintain a valid and accurate registration with MRC,
- Maintain the required Records,
- Submit reporting in a timely manner, or
- Remit Fees when due.

6.2 Upon MRC's notification to Retailer that it has breached this Agreement, Retailer will have thirty (30) days to cure all problems identified by MRC. Interest on outstanding Fees will continue to accrue during this period.

6.3 Failure to timely cure such problems shall not excuse or otherwise affect Retailer's continuing obligation under State law to collect and remit Fees to MRC on Mattress Units that Retailer sells to Consumers 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.

6.4 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 authorities for further administrative and other action.

6.5 Retailer releases MRC from any and all liability, including, without limitation, liability for any costs, expenses, fines, penalties, assessments, judgments, lost profits, injury to property or reputation, or other damages of any kind, resulting from any action taken by any governmental agency against Participant in connection with one or more of the Programs.

7 Term and Termination of Agreement

7.1 This Agreement is in force for as long as MRC administers the Program(s) and as long as Participant sells or offers for sale Mattress Units 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 Mattress Units in any of the States.

- 7.2 This Agreement will terminate automatically with respect to a specific State if that State's mattress recycling law is no longer in effect.
- 7.3 Termination of this Agreement shall not excuse or otherwise affect Participant's obligation under State law to collect and remit Fees to MRC on Mattress Units that Participant sells to Consumers in one or more States, to submit reporting to MRC in connection with such sales, to remit to MRC any fees or other money that 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.
- 7.4 In the event of termination of this Agreement, for whatever reason, MRC shall immediately notify the appropriate State authorities of such termination.

8 Audit by MRC

- 8.1 Retailer agrees that MRC, at its discretion, may from time to time audit Retailer's Records with respect to the sale, purchase, distribution and importation of Mattress Units to verify the accuracy of Retailer's Fee remittances to MRC.
- 8.2 In the event of an audit, Retailer shall make available to MRC any and all Records relating to the sale, purchase, distribution and importation of Mattress Units and Fee remittances to MRC, and shall provide any information requested by MRC respecting transactions relating to such Mattress Units.
- 8.3 If, as a result of an audit, MRC concludes that Retailer has under-remitted Fees to MRC, the terms of the MRC Fee Policy shall apply to Retailer's payment of the under-remitted amount, as well as any applicable interest, audit costs and other penalties.

9 Trademarks, Service Marks and Trade Names

- 9.1 MRC and Participant each acknowledge and agree that all trade names, service marks, and trademarks of the other party are, and will remain proprietary and that nothing in this Agreement constitutes the grant of a general license to the other party to use said trade names, service marks, and trademarks, except as expressly agreed to in writing.

10 No Agency Relationship

- 10.1 The parties acknowledge and agree that the relationship arising from this Agreement does not constitute or create a general agency, joint venture, partnership, employee relationship or franchise between MRC and Participant of any kind.

11 Choice of Law and Disputes

- 11.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its conflicts of laws rules.

- 11.2 The parties agree that the federal or state courts in the Commonwealth of Virginia shall have exclusive jurisdiction over any disputes arising under this Agreement.
- 11.3 If MRC prevails in any suit, action, or counterclaim to collect or recover any Fees or other amounts of money that Participant owes or must remit to MRC under either this Agreement or one or more of the State law(s), Participant will pay all 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 or attorney to assist in the collection of such money.
- 11.4 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.

12 Notice

- 12.1 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, by e-mail or by facsimile to the addresses or facsimile number as follows:

To: Mattress Recycling Program

501 Wythe Street
Alexandria, VA 22314
Telephone: 1-855-229-1691
Email: info@mattressrecyclingcouncil.org

And: Product Care Association
105 West 3rd Ave
Vancouver, BC, V5Y 1E6
Telephone: 1-888-646-6815
Email: support@mattressrecyclingcouncil.org
Fax #: 604-592-2982

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

- 12.2 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 facsimile or 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.
- 12.3 Either party may at any time and from time to time notify the other party of a change of address,

facsimile number or email address, to which all notices will be given to it thereafter until further notice.

13 General Provisions

- 13.1 MRC may in its discretion assign its rights and obligations under this Agreement without the consent of the Participant to any entity responsible for administering the Program or another stewardship plan approved by a State for Mattresses and Box Springs.
- 13.2 Entire Agreement. This Agreement contains the entire agreement between the parties regarding the matters herein contained, and supersedes any prior agreements or understandings between the parties, whether oral or written.
- 13.3 Enurement. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 13.4 Waiver. Any waiver by a party or any failure on a party's part to exercise any of its rights in respect of this Agreement shall be limited to the particular instance and shall not extend to any other instance or matter in the Agreement or in any way otherwise affect the rights or remedies of such party.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

Mattress Recycling Council

MRC agrees to be bound by the terms of this Agreement upon the Participant's receipt of an email verifying the Participant's registration.

Participant

The Participant agrees to be bound by the terms of this Agreement upon acknowledging acceptance of its terms in the course of completing their registration through MRC's online registration portal.