

# valpak CRC service terms and conditions



## BETWEEN:

- (1) **VALPAK LIMITED** (registered company number 3331057) of Unit 4, Stratford Business Park, Banbury Road, Stratford-upon-Avon, Warwickshire, CV37 7GW (“Valpak”); and
- (2) \_\_\_\_\_ (registered company number [ \_\_\_\_\_ ]) of (address) \_\_\_\_\_ (“Client”).

## INTRODUCTION

- A The CRC Energy Efficiency Scheme “CRC” is a mandatory scheme that will affect organisations that meet qualification criteria detailed in the CRC Order (defined below).
- B Valpak has developed various services to assist the Client to meet its obligations under the CRC Order, as detailed in this agreement.

## 1 INTERPRETATION

In this agreement the following words and expressions shall (where the context permits) have the following meanings:

“Administrator” has the meaning detailed in the CRC Order;

“Agency” means the Environment Agency in respect of England and Wales, the Scottish Environment Protection Agency in respect of Scotland and the Northern Ireland Environment Agency in respect of Northern Ireland;

“Baseline Year” means 1 April 2010 - 31 March 2011;

“CRC Order” means the CRC Energy Efficiency Scheme Order 2010 made pursuant to the Climate Change Act 2008;

“Charge” means any charge or fee charged by the Administrator and that is payable by the Client under the CRC Order from time to time;

“Client Data” means any information and data that the Client is required to submit in accordance with the CRC Order, including where appropriate any information relating to its Group, and other data relating to the Client or the Client’s business as is reasonably required by Valpak to provide the Services, including but not limited to, during the relevant period, relevant energy bills or access to energy suppliers to obtain energy bills, direct meter readings, and/or access to meters, all invoices relation to the supply of energy, details of fuels used by the Client together with any other information Valpak may specify from time to time either in writing to the Client or on its website [www.valpak.co.uk](http://www.valpak.co.uk);

“Commencement Date” has the meaning detailed in clause 8.1;

“Confidential Information” means any and all information relating to the Services, this agreement, business, technical, sales, product, financial or other information relating to Valpak or the Client or arising out of or in connection with this agreement (including but not limited to Valpak’s calculation methods, operating practices in relation to any application for registration);

“Fee” means the relevant fees charged by Valpak for providing the Service as detailed and calculated in accordance with the Schedule;

“Footprint Report” has the meaning detailed in the CRC Order;

“Full Compliance Service” means the full compliance service as described more fully in the Services;

“Group” has the meaning detailed in the CRC Order;

“Legislation” means all statutes, enacting instruments, common law, delegated legislation, regulations, directives, bye-laws, codes of practice, circulars, guidance notes, decisions, recommendations and the like;

“Materials” means the works, reports, products and materials developed or prepared by or on behalf of Valpak in relation to the Services;

“Phase One” means the first of the seven phases of the CRC Scheme detailed in the CRC Order, being 1 April 2010 to 31 March 2013;

“Participant” has the meaning detailed in the CRC Order;

“Primary Contact” has the meaning designated by the Registry;

“Registry” has the meaning detailed in the CRC Order;

“Registration Fee” means the then current registration fee payable for registration as a Participant in accordance with the CRC Order;

“Registrant” has the meaning designated by the Registry;

“Registration Service” means the registration service as described more fully in the Services;

“Relevant Part of the Service” means as appropriate the Registration Service or Full Compliance Service;

“Secondary Contact” has the meaning designated by the Registry;

“Services” means the services as briefly described in the Schedule and in more detail at [www.valpak.co.uk](http://www.valpak.co.uk) that Valpak may provide, in whole or part, to the Client in accordance to this agreement;

“Submission” means the submission of disclosed information and/or for registration as a Participant under the CRC Order (as applicable);

“Third Party Data” means such data relating to the Client or the Client’s business supplied or obtained from third parties, including but not limited to, the Client’s relevant energy suppliers;

“Timescale” means the relevant timescale detailed in the CRC Order;

“Year” has the meaning detailed in the CRC Order.

## 2 ADMINISTRATION

It shall be noted that clause headings are for ease of reference only and shall not be taken into account in construing this agreement. References to any statute or statutory provision shall include: a) any subordinate legislation made under it; b) any provision which it has modified or re-enacted (whether with or without modification); and c) any provision which subsequently supersedes it or re-enacts it (whether with or without modification), whether made before or after the date of this agreement.

## 3 TERMS

This agreement set out the terms on which Valpak will provide the Services to the Client and the Client hereby agrees to be bound by this agreement.

## 4 SERVICES

- 4.1 In consideration of and subject to the Client complying with its obligations under this agreement, Valpak will provide the Services or the Relevant Part of the Services to the Client in accordance with this agreement.

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4.2 Valpak needs the Client's co-operation (as set out in this agreement) to ensure that the Services operate smoothly and Valpak depends on the Client providing or making available various information and data to Valpak as set out in this agreement.

4.3 Valpak will provide the Services with reasonable care and skill using appropriately qualified and experienced personnel selected by Valpak.

4.4 By signing this agreement the Client agrees and acknowledges that subject to the provisions of clause 4.5 it is requesting that Valpak provides the Registration and Full Compliance Services.

4.5 Valpak shall provide the Registration and Full Compliance Services unless:

- (a) Valpak notifies the Client that it does not need to register as a Participant in accordance with the CRC Order, in which case, Valpak shall provide only the Registration Services; or
- (b) where the Client must register as a Participant and Valpak has issued an invoice to the Client for provision of the Full Compliance Service, the Client gives Valpak written notice that it does not require Valpak to provide the Full Compliance Service within 14 days of the date of Valpak's relevant invoice. For the avoidance of doubt, the Client may give Valpak written notice in accordance with the terms of this clause 4.5 (b), each time Valpak issues an invoice for provision of the Full Compliance Service in the Relevant Year in accordance with clause 7.2.

## 5 CLIENT OBLIGATIONS

5.1 Subject to the provision of the Services by Valpak, the Client shall at all times whilst this agreement is in force, comply with all relevant obligations placed on it under the CRC Order.

5.2 Unless otherwise agreed with the Client in writing and if permitted by the Registry, the Client hereby authorises Valpak to:

- (a) as Registrant, carry out registration on behalf of and in the name of the Client and to be the Primary or Secondary Contact;
- (b) if not permitted under clause 5.2 (a), assume the role of the Client's Primary Contact or Secondary Contact and/or account representative, as appropriate, at the earliest point permitted by the Registry; and
- (c) complete on behalf of the Client any declarations required as part of the registration process (whether or not Valpak as at that stage a Primary or Secondary Contact);

5.3 The Client shall provide all relevant information and/or additional authorisations required by Valpak to complete the registration process detailed in clause 5.2 and shall also promptly provide on request any relevant authorisation to allow Valpak to obtain Third Party Data, which may include, but is not limited to, the provision of a signed authorisation letter in a form required by Valpak.

5.4 By the date required by Valpak, the Client shall provide to Valpak the Client Data to enable Valpak to provide the Services in line with any Timescale.

5.5 The Client shall also supply to Valpak any additional information Valpak reasonably requests and requires to enable Valpak to provide the Services.

5.6 The Client acknowledges and agrees that it has responsibility for ensuring that all Client Data and other data it provides to Valpak under this agreement is:

- (a) accurate and shall check, confirm and comply with any data sign off procedure Valpak implements from time to time; and

- (b) provided and signed off (where appropriate) in line with any dates required by Valpak to ensure that it provides the Services in line with any relevant Timescales.

The Client also acknowledges and agrees that Valpak has no liability to the Client in respect of any inaccurate data that is provided to the Administrator.

5.7 The Client agrees to take such steps as are reasonably required to correct any inconsistencies or inaccuracies that Valpak discovers in the Client Data and to provide corrections to the Client Data to Valpak by the date required by Valpak from time to time.

5.8 The Client acknowledges and agrees that if the Client Data is not provided to Valpak in accordance with this clause 5, this may result in the Client not being able to comply with some or all of the Client's obligations under the CRC Order. The Client further agrees and acknowledges that in accordance with guidance notes issued by the Agency that the Client cannot delegate responsibility for complying with the requirements of the CRC Order to an agent or other third party and the Client remains responsible for compliance and will be liable for any penalties if the agent or other third party does not comply.

5.9 Unless the Client notifies Valpak in writing to the contrary, the Client agrees that Valpak may use the Client's information to send the Client marketing information about other Valpak products and services that Valpak believes may be of interest to the Client.

## 6 THIRD PARTY DATA

If Valpak uses Third Party Data in the provision of the Services, then Valpak agrees to use reasonable endeavours to ensure such data is accurate, complete and up to date and to take reasonable steps to obtain further data to remedy any inaccuracies or inconsistencies that Valpak discovers in such Third Party Data, although the Client acknowledges and agrees that Valpak cannot be responsible for inaccurate Third Party Data. The Client agrees to co-operate and provide reasonable assistance to Valpak in obtaining Third Party Data.

## 7 FEES AND CHARGES

7.1 On or before the date of signature of this agreement by the Client, the Client shall pay the then current Fee for the Registration Services.

7.2 If, in providing the Registration Services, Valpak ascertains that the Client must register as a Participant, Valpak shall issue an invoice for the provision of the Full Compliance Service during the Baseline Year. Thereafter, Valpak shall issue an annual invoice for the provision of the Full Compliance Service for each subsequent Year (after the Baseline Year) that it provides the Full Compliance Service. Such invoice shall be issued in the April of the relevant Year.

7.3 Subject to the provision of clause 4.5 (b) the Client shall pay for the provision of the Full Compliance Service on receipt of Valpak's relevant invoice(s) issued from time to time in accordance with this agreement.

7.4 All sums payable by the Client to Valpak shall be paid in full without any deduction, withholding, counterclaim or set off within 30 days of the date of Valpak's invoice. All sums payable under this agreement are exclusive of any Value Added Tax and any other sales or similar taxes, which shall be added to such sum to the extent applicable from time to time.

7.5 If any sum payable by the Client to Valpak under this agreement remains unpaid for more than 30 days from the date of the invoice, Valpak may charge the Client interest on such sum (after as well as before judgment) at the rate of 4 per cent per annum above Barclays Bank Plc's base rate from time to time, such interest to be calculated on a daily basis from the date on which such sum became due to be compounded with quarterly rests and to be payable on demand.

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- 7.6 The Fees are based on the assumption that Valpak will be able to obtain a reasonable amount of information Valpak requires directly from the Client to complete the Relevant Part or Parts of the Service that the Client requests in accordance with this agreement.
- 7.7 The Client shall, where it must register as a Participant, be responsible for paying or arranging for payment of the Registration Fee.
- 7.8 Except as provided in clause 7.7 and where the Client has nominated Valpak's address as the invoice address on the Registry, the Client shall provide to Valpak by the date required by Valpak any relevant Charge necessary to enable Valpak to pay any relevant Charges to the Administrator in line with any relevant Timescale.
- 7.9 The Client shall immediately on request from Valpak reimburse all other amounts that Valpak may pay to the Administrator on behalf of the Client in accordance with the CRC Order which the Client has not already paid to the Administrator directly or to Valpak under clauses 7.8 or 7.8 above.

## 8 COMMENCEMENT DATE AND DURATION

- 8.1 This agreement will commence when Valpak accepts the Client's application requesting the Services by signing the Client's signed counterpart of this agreement and will remain in force until either party terminates this agreement in accordance with this clause 8 or the expiry of Phase One (the "Term").
- 8.2 Either party may give written notice to the other terminating this agreement with immediate effect in the following circumstances:
- the other party is in material and/or persistent breach of the agreement (where the breach is not remediable);
  - the other party is in material and/or persistent breach of this agreement and (where the breach is remediable) fails to remedy such breach (to the reasonable satisfaction of the party giving such notice) within 30 days of being notified of and required to remedy such breach; and/or
  - (c) the other party is wound up or becomes insolvent or has a receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator or any equivalent or analogous event occurs.
- 8.3 Termination or expiry of this agreement (for whatever reason) shall not affect either the accrued rights and/or liabilities of either party arising in any way out of this agreement as at the date of termination or expiry and all provisions expressed to survive this agreement (or which by implication survive this agreement) shall remain in full force and effect. For the avoidance of doubt the provisions of clauses 9 and 10 shall survive termination or expiry of this agreement.
- 8.4 On termination of this agreement for any reason the Client shall pay:
- for Services provided and work done by Valpak in relation to providing the Service immediately prior to such termination, which shall become immediately due and payable by the Client notwithstanding any other provision of this agreement; and
  - all outstanding unpaid invoices, which shall become immediately due and payable by the Client notwithstanding any other provision of this agreement.

The Client agrees that no sums paid by the Client to Valpak prior to termination shall be refunded.

## 9 CONFIDENTIALITY OBLIGATIONS

- 9.1 Subject to clauses 9.2 and 9.3, Valpak and the Client undertake not to use the other's Confidential Information for any purpose other than the performance of its obligations under this agreement and undertakes not to disclose the other's Confidential Information to any person except

with the prior written consent of the other and to make every reasonable effort to prevent the use or disclosure of such Confidential Information.

- 9.2 The obligations of confidence in this clause 9 shall not apply to any Confidential Information that can be shown by whoever receives Confidential Information ("Receiving Party") to be in the possession of the Receiving Party or otherwise in the public domain prior to the receipt by the Receiving Party or that becomes publicly available on a non-confidential basis through no fault of the Receiving Party.

- 9.3 Valpak and the Client may disclose Confidential Information relating to the other to the extent that such disclosure is required by any applicable law or regulation and/or by any appropriate agency and/or governmental body but only to this extent and for the avoidance of doubt such information shall otherwise remain confidential.

## 10 LIMITATION OF LIABILITY

- 10.1 Nothing in this agreement shall exclude or restrict either party's liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation.

- 10.2 Subject to clause 10.1 the Client acknowledges and agrees that Valpak is not responsible for the Client Data, that there are certain limitations on the Services (as set out in this agreement) and that Valpak relies on the Client complying with the Client's obligations under this agreement to enable Valpak to provide the Services. Whilst Valpak agrees to use reasonable care and skill in providing the Services, the Client acknowledges and agrees that Client Data and Third Party Data is not within Valpak's control and may be inaccurate or incomplete which may affect the accuracy of the Client's Submission and that Valpak makes no representations, warranties express or implied, as to the accuracy, reliability, completeness, validity or fitness for the purpose of the Submission and shall not be liable for any omission, error or inaccuracy in relation to the Submission unless Valpak should reasonably have been alerted by any omission, error or inaccuracy in the Client Data or Third Party Data. Accordingly, subject to clause 10.1, the Client acknowledges and agrees that Valpak shall not be liable to the Client in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any loss or damage suffered or incurred by the Client resulting from:

- the Client's failure to comply with this agreement or the Client's acts or omissions;
- limitations on the Services (as set out in this agreement or as notified by Valpak to the Client from time to time);
- any other circumstances outside Valpak's reasonable control (including but not limited to inaccuracies, errors or omissions in Client Data, Third Party Data and any resultant inaccuracy in the Client's Submission or any delay, non-performance or mis-performance or the consequences of such delay, non-performance or mis-performance (except to the extent this results from Valpak failing to take reasonable steps to verify the accuracy of such data); and/or
- any use by the Client of any Materials and/or Services where Valpak has not been made aware of and has not agreed to such proposed use.

- 10.3 Subject to clause 10.1, Valpak shall not be liable to the Client (in contract, tort (including but not limited to negligence), misrepresentation or otherwise) for any loss or damage suffered or incurred by the Client (or the Client's employees, agents, subcontractors or any third party) (even if the loss or damage is reasonably foreseeable or the possibility of such loss or damage occurring has been advised) arising from: (a) loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings; (b) loss of data or use of data; and/or (c) consequential, special or indirect loss or damage, including but not limited to, any penalties imposed on the Client under the CRC Order.

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10.4 Subject to clause 10.1 and 10.2 Valpak's entire liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise for all matters arising out of or in connection with this agreement or its subject matter shall not exceed an amount that is three times the total Fees paid by the Client in the twelve months immediately prior to the matter arising.

10.5 The Fees are based strictly on the understanding of acceptance by the Client of the provisions in this agreement limiting Valpak's liability.

## 11 GENERAL

11.1 This agreement constitutes the entire agreement between Valpak and the Client relating to the Services and supersedes all prior written or oral agreements. No variation to this agreement will be valid unless agreed in writing by both parties.

11.2 Nothing in this agreement will constitute Valpak and the Client as being partners, joint venturers, co-owners or agents of the other or empower

either party to act for, bind or otherwise assume any obligation on behalf of the other and neither Valpak nor the Partner will hold itself out as having authority to do so.

11.3 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract.

11.4 Neither of the parties will be in breach of this agreement or otherwise liable to the other for any delay or non-performance of any of the obligations in this agreement where this is due to any cause beyond the reasonable control of the party concerned.

11.5 This agreement will be governed by and construed in accordance with the laws of England and both the Client and Valpak submit to the exclusive jurisdiction of the English Courts.

IN WITNESS of which the parties have signed this agreement on the date set out above.

SIGNED by [SIGNATORY] for and on behalf of VALPAK LIMITED

SIGNED by [SIGNATORY] for and on

behalf of VALPAK LIMITED

behalf of [THE CLIENT]

## SCHEDULE Service Overview & Fee Structure

Part of Service	Brief Description	Fee
Part 1	Ascertain level of participation and register	£295 (for 1 or 2 sites) plus an additional £150 per additional site
Part 2	<p>(Applicable to full Participants only)</p> <p>In the Baseline Year:</p> <ul style="list-style-type: none"> <li>Identify relevant fuel sources</li> <li>Quantify fuel usage</li> <li>Prepare structure for evidence pack</li> <li>Convert baseline fuel usage to CO<sub>2</sub>e</li> <li>Prepare Footprint Report</li> <li>Complete online submission (subject to Client sign off)</li> </ul> <p>In all Years after the Baseline Year:</p> <ul style="list-style-type: none"> <li>Review energy use</li> <li>Maintain evidence pack by collecting half yearly data</li> <li>Convert annual data to CO<sub>2</sub>e</li> <li>Complete online submission (subject to Client sign off)</li> </ul>	£495 (for 1 or 2 sites) plus an additional £150 per additional site

Full details of the Registration and Full Compliance Services that will be provided by Valpak can be found at [www.valpak.co.uk](http://www.valpak.co.uk).