



VALPAK LTD

GENERAL MEMBERSHIP TERMS

1 APPLICATION

- 1.1 These General Membership Terms ("Terms") are applicable to all Members of all Schemes and are (in relation to each Scheme) subject to and shall be read in conjunction with and as part of the Membership Terms applicable to such Scheme (copies of which are available on request and/or at www.valpak.co.uk).
- 1.2 (Except as otherwise expressly provided) the Member acknowledges and agrees that it shall (in relation to each Scheme) (in addition to its obligations under these Terms) continue to comply with its obligations under all of the other Membership Terms applicable to the Member's membership of such Scheme.
- 1.3 (In relation to each Scheme) if there is any conflict between the these Terms and any other terms of the Agreement the following order of precedence shall apply:
- (a) the specific Application Form applicable to the Member's membership of such Scheme; then
 - (b) the Specific Scheme Membership Terms applicable to the Member's membership of such Scheme; then
 - (c) these Terms; then
 - (d) any other terms forming part of the Agreement that are not referred to above.
- 1.4 Where one term of the Agreement imposes on the Member a standard, duty and/or obligation which is more onerous than or additional to that imposed by another term of the Agreement this shall not be treated as a conflict for the purposes of the Agreement. Rather the relevant standard, duty and/or obligation shall so far as possible be treated as cumulative failing which the more onerous standard, duty and/or obligation shall take precedence.

2 DEFINITIONS AND INTERPRETATION

- 2.1 In these Terms words and expressions defined in any clause of these Terms shall (where the context so permits) have the meanings set out in such clause and the following words and expressions shall (where the context so permits) have the following meanings:
- "Agreement"** means (in relation to each Scheme in which the Member has become a Member in accordance with clause 3.1) the agreement between Valpak and the Member as set out in the Membership Terms applicable to such Scheme;

"Application Form" means (in relation to each Scheme) the application form (including all notes) completed and signed by the Member and countersigned by Valpak;

"Business Day" means a day (not being a Saturday) on which banks are open for normal banking business in the City of London;

"Common Holding Company" means (in relation to each Scheme) the Holding Company which signs the Application Form and which is the Holding Company common



to all the Group Companies that have Producer Responsibility Obligations and that are all Members of such Scheme as part of the same Group Membership;

"Data Form" means (in relation to each Scheme) the form for the submission of data on the Producer Responsibility Obligations of the Member provided by Valpak and completed by the Member in accordance with the Membership Terms applicable to such Scheme (a copy of which is available on request and/or at www.valpak.co.uk);

"Data Protection Act" means the Data Protection Act 1998;

"Directive" means (in relation to each Scheme) the directive as defined in the Specific Scheme Membership Terms applicable to such Scheme;

"Group Company" means a company which is part of a Group Membership; and **"Group Companies"** shall be construed accordingly;

"Group Membership" means (in relation to each Scheme)(except as otherwise expressly provided in the Specific Membership Terms applicable to such Scheme) membership by a Member both for itself and for and on behalf of: (i) all other Subsidiaries of the Common Holding Company to which that Member belongs whose names and registered numbers are set out on the Application Form (applicable to such Scheme) or are subsequently notified to and consented by Valpak pursuant to clause 9.6; and (ii) the Common Holding Company;

"Intellectual Property Rights" means all patents, design rights, trade marks, trading or business names, copyrights, database rights, whether registered or not and any applications to register or rights to apply for registration of these, rights in inventions, know-how, trade secrets and confidential information and all other intellectual property rights of a similar or corresponding character that subsist now or in the future in any part of the world.

"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, including, without limitation, the Directive, the Regulations and the Data Protection Act;

"Levy" means (in relation to each Scheme) the levy as defined in the Specific Scheme Membership Terms applicable to such Scheme;

"Member" means (except as expressly provided in the Specific Scheme Membership Terms) a Producer which has become a member of one or more Scheme(s) in accordance with clause 3.1; and **"Members"** shall be construed accordingly;

"Member's Data" means such data relating to the Member or the Member's business as is reasonably required by Valpak in relation to the Member's membership of Valpak and/or any Scheme (including but not limited to sales and purchase data, supplier details, product details and weights, product portfolio, details of supply chain and end users);

"Membership Terms" means (in relation to each Scheme) the Application Form applicable to such Scheme, the Specific Scheme Membership Terms applicable to such Scheme and these Terms;

"Obligation Year" means (in relation to each Scheme) the obligation year as defined in the Specific Scheme Membership Terms applicable to such Scheme;



"Producer" means (in relation to each Scheme) the producer as defined in the Specific Scheme Membership Terms applicable to such Scheme;

"Producer Responsibility Obligations" means (in relation to each Scheme) the producer responsibility obligations as defined in the Specific Scheme Membership Terms applicable to such Scheme;

"Scheme" means (as appropriate):

- (a) (in general) a producer responsibility compliance scheme approved and registered (where appropriate) under the relevant Regulations and operated by Valpak;
- (b) (where the context requires) (in relation to a Member) the specific producer responsibility compliance scheme (approved and registered (where appropriate) under the relevant Regulations and operated by Valpak) in which such Member has been registered in accordance with clause 3.1; and/or
- (c) (where the context requires)(in relation to a scheme) the producer responsibility compliance scheme as defined in the Specific Scheme Membership Terms applicable to such scheme;

and **"Schemes"** shall be construed accordingly;

"Quarter" means (unless otherwise specified) each period of three months commencing on 1 January, 1 April, 1 July and 1 October;

"Regulations" means (in relation to each Scheme) the regulations as defined in the Specific Scheme Membership Terms applicable to such Scheme;

"Specific Scheme Membership Terms" means (in relation to each Scheme) the specific membership terms and conditions published by Valpak from time to time in relation to such Scheme (copies of which are available on request and/or at www.valpak.co.uk);

"Subsidiary" and **"Holding Company"** have the same meanings as in Section 736 of the Companies Act 1985;

"Valpak" means Valpak Limited, registered in England and whose registered office is at Stratford Business Park, Banbury Road, Stratford-upon-Avon CV37 7GW; and

"Year" means a calendar year.

- 2.2 Any reference in the Agreement to a law, directive, statute, bye-law, regulation, secondary, ancillary or delegated legislation or related non-legislative rules, guidance, arrangements or codes of practice shall include any law, directive, statute, bye-law, regulation, secondary, ancillary or delegated legislation or related non-legislative rules, guidance, arrangements or codes of practice in force from time to time modifying, re-enacting, extending or consolidating the same, or made pursuant to the same, or which is modified, re-enacted, replaced, extended or consolidated by the same or pursuant to which the same is made.
- 2.3 Clause headings in the Agreement are for ease of reference only and shall not be taken into account in construing the Agreement.

- 2.4 In the Agreement expressions denoting "**in writing**" or "**written**" shall, unless the contrary intention appears, be construed as including references to printing, electronic communication or lithography, photography and any other mode of reproducing words in visible form.
- 2.5 In the Agreement words importing the singular number only shall include the plural number and vice versa, words importing the masculine gender only shall include the feminine gender and words importing individuals shall include firms and corporations.
- 2.6 References in these Terms to clauses are (unless otherwise expressly provided) references to clauses contained in these Terms.

3 MEMBERSHIP OF A SCHEME

- 3.1 A Producer shall become a Member of a Scheme (and the Agreement shall commence) when Valpak countersigns the Application Form applicable to such Producer in relation to such Scheme and shall continue in force until and unless such membership is terminated in accordance with the Membership Terms applicable to such Scheme.
- 3.2 A Member may become a Member of one or more Schemes in accordance with clause 3.1.

4 VALPAK'S OBLIGATIONS

- 4.1 (Subject to clause 4.3) Valpak shall (subject to and in accordance with the terms of the Agreement) assume the Producer Responsibility Obligations relating to the Member (in relation to each Scheme in which such Member has become a Member in accordance with clause 3.1) in each Obligation Year throughout which the Member is a Member of such Scheme.
- 4.2 (Subject to clause 4.3) where the Member joins a Scheme part way through an Obligation Year, Valpak shall assume and the Member shall pay for the entire Producer Responsibility Obligations relating to the Member applicable in relation to such Scheme for that Obligation Year.
- 4.3 (In relation to each Scheme) where a Member's membership of that Scheme (either as a whole or (where such Scheme has separate categories of membership) in relation to any category of membership of such Scheme) terminates (for whatever reason) during an Obligation Year:
- (a) Valpak shall not assume any Producer Responsibility Obligations relating to the Member in relation to that Scheme (as a whole or that category of membership (as appropriate)) for that Obligation Year;
 - (b) Valpak shall not be liable to repay any instalments of any Levy in relation to that Scheme (as a whole or that category of membership (as appropriate)) for that Obligation Year already paid by the Member in accordance with the Membership Terms applicable to that Scheme;
 - (c) Valpak shall not be liable to repay any joining fee (if any) already paid by the Member in relation to the Member's membership of that Scheme (as a whole or that category of membership (as appropriate));

- (d) Valpak shall not be liable to repay any fees paid by Valpak in accordance with Legislation (including but not limited to any fees paid to any appropriate agency and/or governmental authority) in relation to the Scheme and/or the Member's membership of that Scheme (as a whole or that category of membership (as appropriate));
- (e) the Member shall pay to Valpak any further sums directly incurred and/or which are subsequently incurred and which relate to any quarterly instalment of the Levy in relation to that Scheme (as a whole or that category of membership (as appropriate)) up to and including the Quarter during which such termination takes effect;
- (f) the Member shall further be liable to pay to Valpak any further sums directly or indirectly incurred and which relate to the Member's membership of that Scheme (as a whole or that category of membership (as appropriate)) whether before or after the date on which such termination takes effect where and to the extent Valpak is unable (acting reasonably) to avoid such sums; and
- (g) (without prejudice to clause 4.3(f)) the Member shall further be liable to pay to Valpak on request the costs of any identifiable forward commitments which Valpak has made prior to such termination in respect of the Producer Responsibility Obligations relating to the Member in relation to that Scheme (as a whole or that category of membership (as appropriate)) for the remainder of the Obligation Year.

4.4 Valpak shall:

- (a) (in relation to each Scheme) act in the best interests of the Members of such Scheme as a whole;
- (b) (in relation to each Scheme) use its reasonable endeavours to carry out its operations diligently and in a reasonable, proper and cost effective manner having regard to the interests of Members of that Scheme in securing compliance with the Regulations in future as well as in the current Obligation Year and the cost of that compliance in the current Obligation Year and future Obligation Years; and
- (c) (in relation to each Scheme) exercise the skill and expertise reasonably to be expected of an organisation approved and registered (where appropriate) under the Regulations as a compliance scheme.

5 MEMBER OBLIGATIONS

- 5.1 The Member shall (in relation to each Scheme in which such Member has become a Member in accordance with clause 3.1) comply with all Membership Terms applicable to the Member's membership of such Scheme.
- 5.2 The Member shall comply with the requirements of Valpak's website terms and conditions and Internet privacy policy (copies of which are available on request and/or at www.valpak.co.uk).
- 5.3 (In relation to each Scheme) the Member shall provide such co-operation, assistance, information, records and/or reports as Valpak may reasonably request and the Member shall comply with all reasonable instructions given and requests made by Valpak.

- 5.4 (In relation to each Scheme)(without prejudice to clause 5.3) the Member shall provide to Valpak such co-operation, assistance, information, records and/or reports as may be required:
- (a) to enable Valpak to comply with Valpak's obligations under the Regulations;
 - (b) in relation to the Regulations; and/or
 - (c) to enable Valpak to comply with any request by and/or requirement of any appropriate agency, governmental authority and/or any other regulatory body.
- 5.5 (In relation to each Scheme) the Member shall promptly notify Valpak of any and all enforcement notices and/or proceedings (including but not limited to entry and inspection proceedings) (and all associated information) issued or taken against the Member under the Regulations and any conviction of the Member for any offence under the Regulations.
- 5.6 (Without prejudice and in addition to any other terms of the Agreement) the Member shall comply with all of its obligations under the Agreement in an appropriate and timely manner.

6 PROVISION OF INFORMATION

- 6.1 (In relation to each Scheme) the Member shall provide Valpak, within the time limits specified by Valpak, such information in such form and to such standard of accuracy as may be requested from time to time by Valpak in connection with the Member's membership of such Scheme including, but without limitation information required to be provided by Valpak directly or indirectly in respect of the Member to any person (including, without limitation, to any appropriate agency and/or governmental authority) by Legislation and/or information required to be provided by the Member to Valpak by Legislation.
- 6.2 The Member shall inform Valpak immediately upon becoming aware that any information provided to Valpak does not satisfy the standard of accuracy required (by either Valpak pursuant to clause 6.1 or any appropriate agency and/or governmental authority) in respect of such information and shall as soon as possible thereafter supply to Valpak:
- (a) a statement in writing explaining in which respect the information originally supplied did not satisfy such standard of accuracy; and
 - (b) (to the extent to which it is still relevant) the information originally requested to the required standard of accuracy.
- 6.3 The Member agrees that Valpak shall be entitled to provide copies and/or details of information provided to Valpak by the Member to any person (including but not limited to any appropriate agency and/or any governmental authority) to which Valpak is obligated pursuant to Legislation, and/or as Valpak deems necessary in the interests of Valpak, the relevant Scheme and/or Valpak's Members as a whole.
- 6.4 (Without prejudice to any other terms of the Agreement) the Member shall (in relation to each Scheme) inform Valpak in writing as soon as practicable and in any event within 15 days of the happening of any of the following events:
- (a) a Group Company ceasing to be a Subsidiary of its Common Holding Company;

- (b) a change in the registered office address or in the details provided to Valpak pursuant to clause 6.8 or other telephone/facsimile, email address and/or address provided for the purpose of its membership of any Scheme;
 - (c) any material change in any of the information, data, records and/or reports previously provided by the Member to Valpak in accordance with the Agreement (and the Member shall as soon as possible thereafter supply to Valpak such information, data, records and/or reports updated to take into account such change); and/or
 - (d) any appropriate agency and/or governmental authority has requested and/or carried out any audit of the Member.
- 6.5 (In relation to each Scheme) the Member shall instruct its auditors to carry out a review each Obligation Year of the Member's systems and procedures which enable the Member to comply with its obligations to Valpak under the Agreement (including, without limitation, the obligations in relation to the provision of information set out in the Membership Terms applicable to each Scheme) and the Member shall procure that its auditors shall, if requested by Valpak, provide written confirmation to Valpak that such systems and procedures are satisfactory.
- 6.6 Valpak may by notice in writing to the Member request that Valpak (or its authorised agents) shall have access to the premises and to relevant books, records, data and/or information of the Member either in order to verify the completeness or accuracy of any information provided by the Member to Valpak under the Agreement or in order to obtain such information if the Member shall fail to provide any information to Valpak within such time limit as is specified by Valpak. Valpak shall specify in its notice the matters in relation to which Valpak wishes to exercise its rights under this clause 6.6.
- 6.7 If Valpak makes a request under clause 6.6, the Member shall within not less than ten Business Days of such notice during normal business hours, subject to any restriction imposed by statute or regulation and to any relevant health and safety regulations, afford to Valpak (or its authorised agents) access to the premises of the Member and to all documents, data, records and computer hardware and software of the Member wheresoever and howsoever maintained and stored and whether or not under the provision or control of a third party unless the Member is prohibited from disclosing the same (and shall permit Valpak (or its authorised agents) to make and take copies of such documents, data and records) so as to enable Valpak to exercise its rights as so specified.
- 6.8 The Member shall provide Valpak with details (including telephone, fax number and email) of a nominated individual for the service of notices and other communications, under and in connection with each Scheme in which the Member has become a Member in accordance with clause 3.1.
- 6.9 The provisions of this clause 6 shall continue in force notwithstanding the termination of the Agreement howsoever caused.

7 FEES AND PAYMENTS

- 7.1 Each Member shall (in relation to each Scheme in which the Member has become a Member in accordance with clause 3.1) pay to Valpak:

- (a) the Levy in accordance with the Membership Terms applicable to such Scheme:
and
 - (b) any other fees, costs, expenses or charges payable in accordance with any Legislation by Valpak in relation to the Member and/or on the Member's behalf in relation to the Member's membership of such Scheme.
- 7.2 Each Member shall, on joining a Scheme or on re-joining a Scheme, pay a joining fee of such an amount (if any) as determined in accordance with Valpak's joining fees then published at www.valpak.co.uk.
- 7.3 For the avoidance of doubt where an additional Group Company becomes part of a Group Membership, there shall (unless otherwise expressly provided) be no additional joining fee payable.
- 7.4 All sums payable under the 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 All sums payable by the Member to Valpak shall be paid in full without any deduction, withholding, counterclaim or set off within 30 days of the date of the invoice.
- 7.6 Valpak shall have the right to set off against and deduct from any sums due to the Member from Valpak (in relation to any Scheme or otherwise) any sums due to Valpak from the Member (in relation any Scheme or any other agreement between Valpak (or any Valpak group company) and the Member or otherwise).
- 7.7 If any sum payable by the Member to Valpak under this Agreement remains unpaid for more than 30 days from the date of the invoice, Valpak may charge the Member interest on such sum (after as well as before judgment) at the rate of 4 per cent per annum (or such other percentage rate as Valpak shall from time to time decide and notify to Members such revised rate to come into effect 10 Business Days after the date of the notice) above Barclays Bank Plc's base rate from time to time, such interest to be calculated on a daily basis from the date upon which such sum became due to be compounded with quarterly rests and to be payable on demand.

8 LEVIES

- 8.1 Prior to the commencement of each Obligation Year or, if the Member joined a Scheme part way through an Obligation Year, as soon as reasonably practicable after the date upon which the Member joined such Scheme, Valpak shall make a non-binding estimate of the total Levy payable by the Member in respect of that Obligation Year in relation to each Scheme in which the Member has become a Member in accordance with clause 3.1.
- 8.2 (In relation to each Scheme) from time to time during the Obligation Year, Valpak may inform the Member of any material adverse change in its estimate of the Levy.
- 8.3 Unless otherwise agreed in writing:
- (a) the Levy payable in relation to each Scheme for each Obligation Year shall be payable by the Member in advance in four instalments in January, April, July and October in that Obligation Year. Each instalment shall be as to one-quarter of the

then estimated Levy plus or minus any shortfall or surplus (as appropriate) in the total payments made during the previous Quarter(s) in the light of the then estimated Levy;

- (b) (in relation to each Scheme and in relation to any fees, costs, expenses or charges payable in accordance with any Legislation by Valpak in relation to the Member and/or on the Member's behalf in relation to the Member's membership of such Scheme) such sums shall be payable by the Member to Valpak and shall be paid by the Member in full and in advance within the time limits specified by Valpak (acting reasonably); and
- (c) all other sums payable by the Member (in relation to each Scheme) to Valpak under the Agreement shall be paid by the Member:
 - (i) in full and in advance in the first Quarter (where the Member is registered as a Member of such Scheme at the beginning of the relevant Obligation Year); or
 - (ii) in full at the same time as it is due to pay its first invoice in accordance with clause 8.3(a) (where the Member is not registered as a Member of such Scheme at the beginning of the relevant Obligation Year).

8.4 (In relation to each Scheme) following the end of each Obligation Year, Valpak shall recalculate the Levy (in relation to such Scheme) and shall serve notice on the Member of the amount as so recalculated and:

- (a) to the extent to which the total payments of the Levy for that Obligation Year already made by the Member pursuant to the Membership Terms applicable to such Scheme are less than the Levy as recalculated, the Member shall pay the deficit to Valpak at the same time as the next payment to be made by the Member pursuant to the Membership Terms applicable to such Scheme or, if the Member has subsequently ceased to be a Member of the relevant Scheme, on demand by Valpak; and
- (b) to the extent to which the total payments of the Levy for that Obligation Year already made by the Member pursuant to the Membership Terms applicable to such Scheme are more than the Levy as recalculated, Valpak shall (subject to clause 8.6) deduct the excess from the next payment to be made from the Member pursuant to the Membership Terms applicable to such Scheme but, if the Member has subsequently ceased to be a Member of such Scheme, Valpak shall not be obliged to pay the excess to such Member.

8.5 (In relation to each Scheme) notwithstanding clause 8.4, until the expiry of the next following Obligation Year Valpak may from time to time further recalculate the Levy on the basis set out in the Membership Terms applicable to such Scheme and may adjust (either upwards or downwards) the amount of it and the provisions of clause 8.4 shall apply to such recalculated Levy.

8.6 (In relation to each Scheme) at Valpak's absolute discretion, any surplus payments to be returned to a Member pursuant to clauses 8.4 and 8.5 shall be reduced by up to 100 per cent to the extent that, in Valpak's opinion, the Member has not complied with the Membership Terms applicable to such Scheme.

9 GROUP MEMBERSHIP

- 9.1 (In relation to each Scheme) the Common Holding Company warrants the accuracy of the details of each other Group Company set out on the Application Form or which are subsequently notified to Valpak pursuant to clause 9.6, and therefore to be included in the Group Membership and warrants that each other Group Company is a Subsidiary of the Common Holding Company.
- 9.2 (In relation to each Scheme) the Common Holding Company warrants that it has the authority to enter into the Agreement (except as otherwise expressly provided in the Specific Membership Terms applicable to such Scheme) both on its own behalf and for and on behalf of each other Subsidiary that is to become a Member.
- 9.3 (In relation to each Scheme) the Member shall be jointly and severally liable hereunder with each other Group Company that is part of the same Group Membership each of whom shall be severally liable hereunder.
- 9.4 (In relation to each Scheme) any Group Company that ceases at any time to be a Subsidiary of the Common Holding Company shall cease to be a Member of such Scheme as part of that Group Membership and that company shall automatically become a Member of such Scheme in its own right, and be subject to the Membership Terms applicable to such Scheme.
- 9.5 Notwithstanding clause 9.4 the relevant departing Group Company in clause 9.4 and/or Valpak may give notice to the other that clause 9.4 shall not apply and that the company shall cease to be a Member of such Scheme.
- 9.6 (In relation to each Scheme) (subject to clause 7.3) the Common Holding Company may from time to time during an Obligation Year, but only with the prior consent in writing of Valpak, add additional Subsidiaries to the Group Membership of such Scheme by serving a notice in writing on Valpak stating the name and registered number of each additional company and giving a non-binding estimate of the quantity of relevant material it handles under the Regulations and each such Subsidiary shall (subject to the prior consent of Valpak referred to above) become a Member of the relevant Scheme as part of the Group Membership on service of such notice.
- 9.7 (In relation to each Scheme) the Common Holding Company shall sign and complete the Application Form.
- 9.8 From time to time, Valpak may in relation to a Scheme in its absolute discretion designate, solely for internal purposes, that a Member which acts as a buyer and representative for a group of companies trading under a single trading name (a "**Group Trading Company**"), be deemed to be acting in the capacity of a Common Holding Company, and the members of that group of companies be deemed to constitute Subsidiaries of that Member ("**Group Trading Members**"). Where Valpak makes such designation, it may choose that references to a Common Holding Company in these Terms be deemed to be a reference to the Group Trading Company, acting as such, and references to Subsidiaries may be deemed to be references to the Group Trading Members, acting as such. Valpak reserves the right to withdraw any such designation at any time, in whole or in part, which withdrawal may be retrospectively applied. Any designation shall not affect the Member's obligations under relevant Legislation, to which the group company provisions may not apply.

10 CONFIDENTIALITY

- 10.1 Each party hereby undertakes to the other that it shall not (and shall procure so far as it is able that each of its directors, officers and employees and group companies shall not) at any time (whether before or after the termination for whatever reason of the Agreement) (save with the prior consent in writing of the other) divulge or communicate to any person other than as is reasonably necessary for the purpose of conducting its business any secret or confidential information concerning the business, financial or contractual arrangements or other dealings or affairs of the other party or of any customers or clients thereof save to the extent to which:
- (a) such information shall (other than through any unauthorised disclosure by it or any of its directors, officers or employees) come within the public domain on a non-confidential basis; or
 - (b) it is required by law or by any court or tribunal of competent jurisdiction or other applicable regulatory body to divulge or communicate such information; or
 - (c) (in the case of Valpak only) Valpak is required to divulge or communicate such information in the circumstances referred to in clause 6.3.
- 10.2 The provisions of this clause 10 shall continue in force notwithstanding termination of the Agreement howsoever caused.

11 DATA PROTECTION

- 11.1 The Member consents to Valpak holding and/or processing its personal data, and providing such personal data directly or indirectly to any appropriate agency and/or governmental authority, by electronic means or otherwise.

12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Member is and shall remain the owner of all Intellectual Property Rights in the Member's Data. The Member grants Valpak such rights in Member's Data as are set out in the Agreement and/or as may be agreed in writing from time to time.
- 12.2 (Subject to clause 12.1) the Member acknowledges and agrees that Valpak is and shall remain the owner of all Intellectual Property Rights in, arising from or created under, or as a result of the Agreement and that nothing in the Agreement shall confer on the Member any ownership or other rights in these or any other Intellectual Property Rights except such rights as are expressly set out in the Agreement or are agreed in writing by Valpak from time to time.
- 12.3 The Member hereby grants to Valpak a non-exclusive, royalty free licence to use the Member's Data and any Intellectual Property Rights owned or used by the Member that are necessary for the purposes of the Member's membership of Valpak and/or any Scheme.
- 12.4 The Member hereby grants to Valpak a non-exclusive, perpetual, irrevocable, royalty free licence (with the right to grant sub-licences) during the term and after the expiry or termination of the Agreement (for whatever reason) to retain and use the Member's Data as required by Legislation and/or for such other purposes as Valpak may consider appropriate (acting reasonably).

12.5 The provisions of this clause 12 shall continue in force notwithstanding termination of the Agreement howsoever caused.

13 INDEMNITY

13.1 The Member hereby irrevocably and unconditionally agrees to indemnify and keep indemnified Valpak from and against all demands, claims, liabilities, losses, damages, costs and expenses whatsoever (including all reasonable legal and other costs and expenses, together with value added and similar taxes thereon (if applicable) incurred by Valpak in enforcing Valpak's rights under this indemnity) and from and against all actions, suits and proceedings which may be commenced, taken or made against Valpak arising in relation to or in connection with:

- (a) any material failure by the Member duly and punctually to provide any information which the Member is obliged to provide to Valpak in accordance with the terms of the Agreement;
- (b) any of the information provided by the Member pursuant to the Agreement failing to satisfy the standard of accuracy required in respect of such information (for the avoidance of doubt including but not limited to arising from Valpak purchasing additional evidence of compliance as a result of the Member understating its Producer Responsibility Obligations and from Valpak selling surplus evidence of compliance as a result of the Member overstating its Producer Responsibility Obligations);
- (c) any failure by the Member duly and punctually to pay instalments of the Levy when due in accordance with the terms of the Agreement; and/or
- (d) any failure by the Member to keep its user name and/or password for the valpak.co.uk website and/or any Scheme specific user name and/or password confidential.

13.2 The provisions of this clause 13 shall continue in force notwithstanding termination of the Agreement howsoever caused.

14 LIMITATION OF LIABILITY

14.1 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Agreement.

14.2 Nothing in the Agreement shall exclude or restrict either of parties liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation, or for breach of the terms (if any) implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

14.3 (Subject to clause 14.2) Valpak shall not be liable to the Member (in contract, tort (including but not limited to negligence), misrepresentation or otherwise) for any loss or damage suffered or incurred by the Member (or its employees, agents, sub-contractors 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) any circumstances outside Valpak's reasonable control;

- (b) the Member's failure to comply with the Agreement;
 - (c) loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings;
 - (d) loss of data or use of data; and/or
 - (e) consequential, special or indirect loss or damage.
- 14.4 (Subject to clauses 14.2 and 14.3) 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 each Scheme in each Obligation Year shall not exceed the total amount of the Levy paid by the Member to Valpak in relation to such Scheme in such Obligation Year.
- 14.5 The provisions of this clause 14 shall continue in force notwithstanding termination of the Agreement howsoever caused.

15 TERMINATION

- 15.1 Valpak shall be entitled to terminate the Member's membership of each and every Scheme by notice in writing to the Member to take effect either forthwith or at such time as may be specified in such notice on or after the occurrence of any of the following events:
- (a) any failure by the Member to pay to Valpak any sum due to Valpak under any Agreement within 30 days of the due date for payment thereof; or
 - (b) the Member (if an individual) having a bankruptcy petition presented against him (such petition not being dismissed within 14 days), presenting his own bankruptcy petition, proposing a voluntary arrangement with his creditors or a deed of arrangement, being unable to pay his debts within the meaning of Section 268 of the Insolvency Act 1986, dying, becoming of unsound mind or a patient under any statute relating to mental health or becoming incapable through illness or injury of being able properly to perform his obligations hereunder; or
 - (c) the Member (if a company) becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, proposing or making a composition or arrangement with its creditors, the presentation of a petition that the Member be put into liquidation or administration (such petition not being dismissed within 14 days), the passing of a resolution putting the Member into voluntary liquidation (other than for the purposes of amalgamation or reconstruction), the appointment of an administrator, provisional liquidator, receiver, manager or administrative receiver, the crystallisation of a floating charge over the business undertaking or assets or any part thereof of the Member or the dissolution of the Member; or
 - (d) the Member (if a partnership) becoming unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986, the presentation of a petition that the Member be wound up or dissolved (such petition not being dismissed within 14 days) or the dissolution of the Member; or
 - (e) the Member suffers any equivalent or analogous events to those set out in clauses 15.1(b), (c), or (d) above; or

- (f) where Valpak (acting reasonably) believes that it is in the best interests of the Members as a whole to terminate such Member's membership of each and every Scheme.

15.2 (In relation to each Scheme) the Member's membership of such Scheme may be terminated in the following circumstances:

- (a) by Valpak (in its absolute discretion) by notice in writing to the Member to take effect forthwith or at such time as may be specified in such notice on or after the occurrence of any material breach by the Member of the Membership Terms applicable to such Scheme which, if capable of remedy, shall not have been remedied to the reasonable satisfaction of Valpak within 30 days of receipt by the Member of a written request from Valpak for such breach to be remedied;
- (b) (without prejudice to the generality of clause 15.2(a)) by Valpak (in its absolute discretion) by notice in writing to the Member with immediate effect on or after the occurrence of any of the following events in relation to such Scheme:
 - (i) information is not provided by the Member to Valpak in accordance with the Membership Terms applicable to such Scheme (including but not limited to where the information is not provided by the Member to Valpak to the requested standard of accuracy);
 - (ii) the Member seeks to change any information and/or supply any new information in accordance with clause 6.2 in relation to such Scheme; and/or
 - (iii) the Member does not in relation to such Scheme comply with the provisions of clauses 6.6 and/or 6.7,

and Valpak (acting reasonably) believes that such event adversely affects or is likely to adversely affect the interests of the Members of such Scheme as a whole; or

- (c) (without prejudice to the generality of clause 15.2(a)) by Valpak (in its absolute discretion) by notice in writing to the Member with immediate effect on or after the occurrence of any of the following events in relation to such Scheme:
 - (i) any enforcement notice and/or proceedings are issued and/or taken against the Member under the Regulations;
 - (ii) any conviction of the Member for any offence under the Regulations;
 - (iii) the Member has failed to comply with the Regulations;
 - (iv) the Member knowingly and/or recklessly supplies false information to Valpak in connection to the Member's membership of such Scheme; and/or
 - (v) the Member acts in such a way that may reasonably be expected to result in the withdrawal of approval and/or registration (where appropriate) of such Scheme under the Regulations;
- (d) by the Member by notice in writing to Valpak to take effect either forthwith or at such time as may be specified in such notice following any material breach by



Valpak of the Membership Terms applicable to such Scheme which, if capable of remedy, shall not have been remedied to the reasonable satisfaction of the Member within 30 days of receipt by Valpak of a written request from the Member for such breach to be remedied; or

- (e) by Valpak in accordance with clause 9.5 (in relation to such Scheme); or
- (f) where Valpak (acting reasonably) believes that it is in the best interests of all the Members of that Scheme to terminate such Member's membership of such Scheme.

15.3 Termination (for whatever reason) shall not: (a) affect any provision of the Agreement which is expressed to survive or operate (or which by implication survives or operates) in the event of such termination which shall remain in full force and effect; and (b) shall not prejudice or affect the accrued rights and/or liabilities of either party including but not limited to the rights of either party against the other in respect of any breach of the Agreement or any monies payable by one party to the other in relation to any period prior to termination.

16 WHOLE AGREEMENT

16.1 In entering into the Agreement the Member does not rely on any agreement, understanding, arrangement, representation, warranty, collateral contract or other assurance, made by or on behalf of Valpak (in particular, but not limited to, the interpretation of the Regulations) that is not expressly set out in the Agreement and the Member waives all rights and remedies which, but for this clause 16.1, might otherwise be available to it in respect of any such agreement, understanding, arrangement, representation, warranty, collateral contract or other assurance provided that nothing in the Agreement shall limit or exclude any liability for fraud.

16.2 (In relation to each Scheme) the Agreement and any other document specified as constituting part of the Agreement sets out the entire understanding and agreement between Valpak and the Member relating to such Scheme and supersedes all prior written or oral agreements, understandings and/or arrangements made between Valpak and the Member relating to the subject matter of the Agreement. Notwithstanding the foregoing, Valpak may, from time to time in its sole discretion, enter into agreement(s) with Members for services and products outside the scope of the Agreement. Valpak may include on invoices issued under the Agreement charges owed by a Member under such separate agreements, but the services and/or products to which such charges relate shall not (except as otherwise expressly provided) be governed by the terms and conditions of the Agreement.

17 GENERAL

17.1 The provisions of the Agreement shall be binding on and inure to the benefit of the successors and personal representatives of each party hereto and neither party may assign or transfer or may agree to assign or transfer any of its rights or obligations under the Agreement.

17.2 Valpak may at any time and from time to time amend, modify or add to any provision of the Agreement on giving to the Member not less than 60 days notice in writing of such amendment, modification or addition, unless such amendment, modification or addition is made by reason of any requirement of or any amendment to or pursuant to Legislation or

the requirement of any relevant appropriate agency, governmental authority and/or other regulatory body in which event such amendment, modification or addition shall have effect from the date specified in the notice.

- 17.3 Each party irrevocably and unconditionally waives any right which it may have to claim damages and/or to rescind the Agreement for any misrepresentation whether or not contained in the Agreement or for any breach of any warranty not contained in the Agreement unless such misrepresentation or warranty was made fraudulently.
- 17.4 No failure or delay by either party in exercising any right, power or privilege under the Agreement shall operate as a waiver of such right, power or privilege nor shall any single or partial exercise by either party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 17.5 Except as otherwise expressly provided the rights and remedies provided in the Agreement are cumulative and not exclusive of any other rights and remedies provided by law.
- 17.6 No variation of the Agreement shall be valid unless it is in writing and validly signed by or on behalf of both Valpak and the Member.
- 17.7 Each provision of the Agreement is severable and distinct from every other provision. If any provision of the Agreement is found by any competent court or administrative body to be illegal, invalid or unenforceable, this shall not affect the other provisions of the Agreement or remainder of the affected provision, which shall remain in full force and effect.
- 17.8 A waiver of any term, provision or condition of the Agreement shall be effective only if given in writing and validly signed by the waiving party.
- 17.9 Nothing in the Agreement and no action taken by either party pursuant to the Agreement shall constitute, or be deemed to constitute, a partnership, association, joint venture, agency or any other co-operative entity.
- 17.10 No term of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Agreement.
- 17.11 Time shall be of the essence for compliance by the Member of its obligations under this Agreement.
- 17.12 Valpak shall not be in breach of the Agreement or otherwise liable to the Member by reason of any delay in performance, non-performance and/or mis-performance of Valpak's obligations under the Agreement or the consequences of any such delay in performance, non-performance and/or mis-performance due to any circumstances outside Valpak's reasonable control.

18 NOTICES AND COMMUNICATIONS

- 18.1 Any notice to be given to or by any person under the Agreement must be in writing. Any notice or document may be served by Valpak on any Member either personally or by leaving it and/or by sending it through the post in a prepaid letter addressed to him at his registered address. Valpak may also send a notice or document by electronic communication to an address notified to Valpak by the Member.

18.2 Any notice or other document, if served by post or by electronic communication shall be deemed to have been served at the expiration of 48 hours after the envelope containing it was posted and in the case of a notice contained in an electronic communication at the expiration of 48 hours after the time it is sent. In proving postal service it shall be sufficient to prove that the letter containing the notice or document was properly addressed, stamped and posted, and in the case of proving electronic communication it shall be sufficient to show that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.

18.3 For the purpose of clause 18.1 Valpak's address, fax, email and website address are:

(a) Stratford Business Park, Banbury Road, Stratford-upon-Avon CV37 7GW

(b) Fax Valpak on 08450 682 532

(c) Website address www.valpak.co.uk or email address info@valpak.co.uk

19 GOVERNING LAW

19.1 The Agreement shall be governed by and construed in all respects in accordance with English law. The parties agree to submit to the non-exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Agreement.