



## PACKAGING WASTE SCHEME

### MEMBERS COMPLIANCE EVIDENCE POLICY

#### 1 APPLICATION

- 1.1 This Packaging Waste Scheme Members compliance evidence policy ("**MCEP**") is applicable to all Members of the Packaging Waste Scheme and is subject to and shall be read in conjunction with and as part of the Membership Terms applicable to the Packaging Waste Scheme (including but not limited to the General Membership Terms and the Packaging Waste Scheme Membership Terms) copies of which are available on request and/or at [www.valpak.co.uk](http://www.valpak.co.uk).
- 1.2 (Except as otherwise expressly provided) the Member acknowledges and agrees that it shall (in addition to its obligations under this MCEP) continue to comply with its obligations under all of the other Membership Terms applicable to the Member's membership of the Packaging Waste Scheme (including but not limited to the General Membership Terms and the Packaging Waste Scheme Membership Terms (as appropriate)).

#### 2 DEFINITIONS AND INTERPRETATION

- 2.1 In this MCEP words and expressions defined in the General Membership Terms and/or the Packaging Waste Scheme Membership Terms shall (where the context so permits) have the meanings set out in the General Membership Terms and/or the Packaging Waste Scheme Membership Terms (as appropriate) unless differently defined below for the specific purposes of this MCEP.
- 2.2 In this MCEP words and expressions defined in any clause of this MCEP 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:

**"Criteria"** means the criteria, obligations and deadlines set out in Annex 1;

**"Maximum Tonnage"** means (subject to clause 12.1(b)) (in relation to each Member and each Obligation Year) the maximum number of PRNs which Valpak is permitted under the Regulations to offset against such Member's Producer Responsibility Obligations;

**"Pre-Qualifying PRN"** means (subject to clause 12.1(a)) any PRN obtained, generated or issued by a Member (whether itself, via a third party or otherwise) from the reprocessing or export (as appropriate) of that Member's own Packaging Waste arising in the course of that Member's normal business activities;

**"Pre-Qualifying Tonnage"** means (in relation to each Obligation Year) the total tonnage of Pre-Qualifying PRNs (broken down by Packaging Waste type) notified by the Member to Valpak in accordance with clause 3.3 or 3.4 (as appropriate)(as may be amended from time to time in accordance with this MCEP);

**"Qualifying PRN"** means (in relation to each Obligation Year) any Pre-Qualifying PRN that has been accepted by Valpak as offset in accordance with clause 4.5 (as may be amended from time to time in accordance with this MCEP);

**"Qualifying Tonnage"** means (in relation to each Obligation Year) the total tonnage of Qualifying PRNs (broken down by Packaging Waste type) accepted by Valpak as offset in accordance with clause 4.5 (as may be amended from time to time in accordance with this MCEP);

**"Quarterly Tonnage"** means (in relation to each Quarter) the quarterly tonnage notified by the Member to Valpak under clause 8.2;

**"Revised Statement"** means any revised Statement issued in accordance with clause 3.4; and

**"Statement"** means (subject to clause 12.1(c)) a statement of the Member's estimated tonnage of all of its Pre-Qualifying PRNs (broken down by Quarter and by Packaging Waste type) which that Member expects to obtain in the relevant Obligation Year (in such form as Valpak may from time to time reasonably specify (the current version of which is available on request and/or at [www.valpak.co.uk](http://www.valpak.co.uk))).

2.3 References in this MCEP to clauses are (unless otherwise expressly provided) references to clauses contained in this MCEP.

### **3 PRE-QUALIFYING PRNS**

3.1 (Subject to clause 4.7) this MCEP shall apply to all Pre-Qualifying PRNs (up to the Maximum Tonnage).

3.2 The Member shall use all reasonable endeavours (acting in good faith) to convert as much of its own Packaging Waste as possible into Pre-Qualifying PRNs.

3.3 The Member shall complete and return to Valpak a signed Statement (unless otherwise agreed in writing):

(a) (within 28 days of that Member becoming a Member of the Packaging Waste Scheme) setting out the Member's estimated tonnage of all of its Pre-Qualifying PRNs (up to the Maximum Tonnage) for the then current Obligation Year; and

(b) (on or before 31 October in each Obligation Year) setting out the Member's estimated tonnage of all of its Pre-Qualifying PRNs (up to the Maximum Tonnage) for the following Obligation Year.

3.4 (Without prejudice to clause 3.3) where and to the extent that the Member's estimated tonnage of all of its Pre-Qualifying PRNs (up to the Maximum Tonnage) for an Obligation Year has increased or decreased (for whatever reason)(during the relevant Obligation Year) the Member shall revise:

(a) the Statement issued in accordance with clause 3.3 (in relation to the relevant Obligation Year); and

(b) any revised Statement (if any) previously issued in accordance with this clause 3.4 (in relation to the relevant Obligation Year)

and shall immediately upon becoming aware of any such change return to Valpak such revised Statement setting out the Member's latest estimated tonnage of all of its Pre-Qualifying PRNs (up to the Maximum Tonnage) for the relevant Obligation Year.

- 3.5 The Member shall comply with the terms set out on the Statement and shall use all reasonable endeavours to ensure the accuracy of any Statement and Revised Statement (including but not limited to the estimated tonnage of Pre-Qualifying PRNs) issued by the Member to Valpak in accordance with clauses 3.3 and 3.4 (as appropriate).
- 3.6 The Member shall conform to all reasonable requirements of Valpak and provide Valpak with such information, assistance, co-operation and evidence as Valpak may reasonably request from time to time in relation to this MCEP including but not limited to:
- (a) information about the reprocessors and/or exporters (as appropriate) the Member intends to use in relation to each Pre-Qualifying PRN (and the Member shall notify Valpak as soon as possible and in any event within 28 days of any changes and/or anticipated changes to such reprocessors and/or exporters (as appropriate)); and/or
  - (b) in order to determine whether a PRN obtained, generated or issued by the Member is a Pre-Qualifying PRN.
- 3.7 Any dispute between the Member and Valpak as to whether a PRN is a Pre-Qualifying PRN shall be determined solely by Valpak acting reasonably.

#### **4 QUALIFYING PRNS**

- 4.1 Valpak shall have the right of first refusal in relation to all of the Member's Pre-Qualifying PRNs (up to the Maximum Tonnage) subject to and in accordance with the terms of this MCEP.
- 4.2 (Subject to and in accordance with clauses 4.3 and 4.4) Valpak shall (at Valpak's option) be entitled but not obliged (in whole or in part) to:
- (a) offset all or any Pre-Qualifying PRNs (up to the Maximum Tonnage) against the Member's Producer Responsibility Obligations under the Regulations; and/or
  - (b) offer to purchase all or any Pre-Qualifying PRNs (up to the Maximum Tonnage).
- 4.3 Within 30 days of receipt by Valpak of any Statement issued under clause 3.3 and any Revised Statement issued under clause 3.4 Valpak shall (in Valpak's absolute discretion) notify the Member where and to the extent that Valpak wishes to exercise its rights under clause 4.2.
- 4.4 Where any Revised Statement is issued in relation to any Obligation Year:
- (a) such Revised Statement shall replace and supersede all previous Statements and Revised Statements (as appropriate)(in relation to such Obligation Year);
  - (b) where Valpak makes any notification under clause 4.3 in relation to such Revised Statement such notification shall replace and supersede all previous notifications by Valpak under clause 4.3 (in relation to such Obligation Year); and
  - (c) where Valpak does not make any notification under clause 4.3 in relation to such Revised Statement the then most current notification made by Valpak under

clause 4.3 (if any) in relation to such replaced and superseded previous Statement and Revised Statements (as appropriate) shall continue to apply.

4.5 (Subject to clause 4.4) where and to the extent that Valpak chooses in accordance with clause 4.3 to offset under clause 4.2(a) such Pre-Qualifying PRNs shall become Qualifying PRNs and the Member shall deliver (free of charge to Valpak) and Valpak shall offset such Qualifying PRNs subject to and in accordance with the terms of this MCEP.

4.6 (Subject to clause 4.4) where and to the extent that Valpak chooses in accordance with clause 4.3 to offer to purchase under clause 4.2(b) and the Member chooses to accept such offer to purchase the Member shall sell and Valpak shall purchase such Pre-Qualifying PRNs on such terms as may be agreed between the Member and Valpak from time to time.

4.7 In relation to any Pre-Qualifying PRNs where and to the extent that:

(a) (subject to clause 4.4(c)) Valpak does not notify the Member in accordance with clause 4.3; and/or

(b) agreement can not be reached to purchase under clause 4.6 within a reasonable time

the Member shall be entitled to deal with such Pre-Qualifying PRNs in any way it chooses and this MCEP shall no longer apply to such Pre-Qualifying PRNs.

4.8 For the avoidance of doubt no provision of this MCEP shall apply where and to the extent that this would retrospectively adversely affect any previous dealings by the Member with Pre-Qualifying PRNs in accordance with clause 4.7.

4.9 The Member acknowledges and agrees that all PRNs supplied by the Member to Valpak under this MCEP (whether by means of offset and/or purchase) shall:

(a) be properly and correctly completed in a form acceptable as evidence of compliance to the appropriate Agency (as defined in the Regulations) and to the reasonable satisfaction of Valpak;

(b) be issued by an accredited reprocessor and/or an accredited exporter (as appropriate) in a form required under the Regulations and any statutory guidance issued from time to time pursuant to section 94(4) of the Environmental Act 1995 or any other regulations and/or guidance issued under such Act;

(c) be issued in good faith and represent Packaging Waste that has been recovered and/or recycled in compliance with the requirements of the Regulations and all relevant legislative requirements and guidance (whether statutory or otherwise) that may be applicable;

(d) be valid for the relevant Obligation Year in accordance with the Regulations; and

(e) be subject to and in accordance with the terms set out in this MCEP.

## **5 OFFSET**

5.1 The Member acknowledges and agrees that Valpak is only entitled to offset Qualifying PRNs where and to the extent such is permitted under the Regulations and that where

(for whatever reason) Valpak is not entitled to offset under the Regulations Valpak shall no longer be obliged to offset under clause 4.5.

- 5.2 In relation to each Member the Qualifying PRNs applicable to such Member shall be offset by Valpak against that Member's Producer Responsibility Obligations (subject to clause 12.4(b)) in each Obligation Year and in such order of priority as Valpak may from time to time (acting reasonably) decide.

## **6 PURCHASE**

- 6.1 For the avoidance of doubt nothing in this MCEP shall prevent the Member and Valpak from agreeing to sell and purchase Pre-Qualifying PRNs (over and above the Maximum Tonnage) on such terms as may be agreed between the Member and Valpak from time to time and the terms of this MCEP shall not apply.

## **7 MAXIMUM TONNAGE**

- 7.1 Where the Maximum Tonnage for any Obligation Year has increased or decreased (for whatever reason) Valpak shall be entitled (but not obliged) (in its discretion) by written notice to the Member to increase or decrease the Qualifying Tonnage (acting reasonably).

## **8 DELIVERY OF QUALIFYING PRNS**

- 8.1 The Member shall comply with the Criteria.
- 8.2 (Subject to and in accordance with clause 8.3) the Member shall confirm to Valpak by notice in writing the Quarterly Tonnage that the Member shall deliver to Valpak in each Quarter in accordance with the confirmation deadlines set out in column 5 of the Criteria.
- 8.3 The Quarterly Tonnage notified by the Member under clause 8.2 shall (in relation to each Quarter) be calculated by reference to the proportion of the Qualifying Tonnage which then applies for that Quarter in accordance with the maximum and minimum percentages of the total Qualifying Tonnage set out in column 4 of the Criteria provided always that the Member shall ensure that in calculating such Qualifying Tonnage it shall deliver to Valpak in each Obligation Year not more than and not less than 100% of the total Qualifying Tonnage for such Obligation Year.
- 8.4 The Member shall deliver in each Quarter the Quarterly Tonnage notified to Valpak by the Member under clause 8.2 in accordance with the delivery deadlines set out in column 6 of the Criteria.
- 8.5 The Member shall deliver to Valpak all Qualifying PRNs with an appropriate covering sheet (a copy of which is available on request and/or at [www.valpak.co.uk](http://www.valpak.co.uk)) by special delivery to Valpak's registered office (or such other address as Valpak may from time to time notify to the Member in writing) during Valpak's normal business hours.
- 8.6 (Without prejudice to any other rights or remedies Valpak may have) Valpak shall be entitled to close off each Quarter on a Quarter by Quarter basis in accordance with clause 8.7 or 9.3 (as appropriate) and Valpak shall accordingly be entitled to adjust (in its discretion)(acting reasonably) any Quarterly Tonnage, associated Qualifying PRNs and/or the total Qualifying Tonnage (in relation to the Obligation Year as a whole).
- 8.7 Where the Member has in relation to any Quarter delivered Qualifying PRNs over and above the relevant Quarterly Tonnage Valpak may (in its absolute discretion) accept

such Qualifying PRNs and offset them against the Quarterly Tonnage for the following Quarter(s) (as appropriate).

8.8 Time shall be of the essence for all deliveries by the Member under this MCEP.

## **9 FAILURE TO DELIVER QUARTERLY TONNAGE**

9.1 For the avoidance of doubt Valpak shall be entitled but not obliged (in its absolute discretion) (without prejudice to any other rights or remedies Valpak may have) to reject any and/or all PRNs not delivered in accordance with and/or which do not conform with the terms of this MCEP.

9.2 The Member shall at all times keep Valpak fully informed as to any possible failure, delay or default on the part of the Member including but not limited to notifying Valpak in writing immediately the Member becomes aware (and (in any event) no later than 15 days prior to the relevant delivery deadline) where and to the extent that the Member either shall or may be unable to deliver the Quarterly Tonnage in accordance with clause 8.4.

9.3 (Without prejudice to any other rights or remedies Valpak may have) where the Member has in relation to any Quarter failed (in whole or in part) to deliver the relevant Quarterly Tonnage to Valpak in accordance with this MCEP Valpak may (in its absolute discretion):

- (a) invoice the Member for PRNs representing such shortfall on an indemnity basis being such a sum as is equal to the additional costs, charges and expenses incurred by Valpak in securing additional PRNs to fulfil such shortfall (for the avoidance of doubt nothing in the Agreement shall however oblige Valpak to purchase any PRNs to fulfil such shortfall);
- (b) adjust the relevant Quarterly Tonnage, associated Qualifying PRNs and/or total Qualifying Tonnage (in relation to the Obligation Year as a whole and/or to which such Quarter relates) to take account of such shortfall; and/or
- (c) terminate this MCEP and/or the Member's membership of the Packaging Waste Scheme by notice in writing to the Member with immediate effect.

## **10 EFFECT ON LEVY**

10.1 The calculation of the estimated Variable Levy payable by the Member and revisions of the estimated Variable Levy made pursuant to the Membership Terms applicable to the Packaging Waste Scheme and the recalculation of the Variable Levy following the end of each Obligation Year pursuant to the Membership Terms applicable to the Packaging Waste Scheme shall take into account the total tonnage of Qualifying PRNs which Valpak has accepted as offset and which the Member has delivered to Valpak subject to and in accordance with this MCEP.

## **11 INDEMNITY**

11.1 The Member shall fully indemnify and keep fully indemnified Valpak against any and all actions, costs, claims, demands, damages, expenses (including legal fees), liabilities, losses and proceedings suffered or incurred by Valpak arising from a breach by the Member of this MCEP.

11.2 The provisions of this clause 11 shall continue in force notwithstanding the termination of this MCEP howsoever caused.

## **12 GROUP MEMBERSHIP**

- 12.1 In relation to a Member who is the Common Holding Company of a Group Membership of the Packaging Waste Scheme the provisions of this clause 12 shall apply (notwithstanding any other provision of this MCEP) and in relation to such Member;
- (a) a Pre-Qualifying PRN shall be deemed to also include any PRN obtained, generated or issued by each and every Group Company (which is part of such Group Membership)(whether itself, via a third party or otherwise) from the reprocessing or export (as appropriate) of that Group Company's own Packaging Waste arising in the course of that Group Company's normal business activities;
  - (b) the Maximum Tonnage shall be deemed to be (in each Obligation Year) the maximum number of PRNs which Valpak is permitted under the Regulations to offset against the Producer Responsibility Obligations of all Group Companies which are part of the Group Membership as a whole; and
  - (c) the Statement shall include a statement of the estimated tonnage of all Pre-Qualifying PRNs (broken down by Quarter and by Packaging Waste type) which that Member expects all Group Companies which are part of the Group Membership to obtain in the relevant Obligation Year.
- 12.2 The Member who is the Common Holding Company of the relevant Group Membership shall:
- (a) be responsible for complying with this MCEP on its own behalf and for and on behalf of each and every Group Company (which is part of such Group Membership); and
  - (b) serve on and report to Valpak all documents and other information to be served on and to be reported to Valpak pursuant to this MCEP on its own behalf and for and on behalf of each and every Group Company (which is part of such Group Membership).
- 12.3 Valpak shall have the right of first refusal in relation to all of the Pre-Qualifying PRNs from each and every Group Company (which is part of the relevant Group Membership)(up to the Maximum Tonnage) subject to and in accordance with the terms of this MCEP.
- 12.4 For the avoidance of doubt Valpak shall:
- (a) be entitled to offset any Pre-Qualifying PRN from any Group Company (which is part of the relevant Group Membership) against the Producer Responsibility Obligations of any and all Group Companies (which are part of the relevant Group Membership) as a whole; and
  - (b) not be obliged to offset the specific Pre-Qualifying PRNs from any Group Company against that individual Group Company's Producer Responsibility Obligations.

## **13 TERMINATION**

- 13.1 (Without prejudice to any other rights or remedies Valpak may have) Valpak may terminate this MCEP by notice in writing to the Member with immediate effect where the

Member's membership of the Packaging Waste Scheme terminates or expires (for whatever reason).

- 13.2 Where this MCEP terminates (for whatever reason) during any Obligation Year Valpak shall not be liable to return any PRN delivered to Valpak by the Member in accordance with this MCEP.

**ANNEX 1**

<b>(1) Quarter</b>	<b>(2) Quarter commencing</b>	<b>(3) Quarter ending</b>	<b>(4) Minimum/Maximum Percentage of the total Qualifying Tonnage to be delivered in each Quarter</b>	<b>(5) Deadline by which Member must confirm to Valpak Quarterly Tonnage to be delivered in relation to each Quarter</b>	<b>(6) Deadline for delivering Quarterly Tonnage to Valpak in relation to each Quarter</b>
Q1	1 January	31 March	Not less than 15%  Not more than 30%	28 January	10 April
Q2	1 April	30 June	Not less than 15%  Not more than 30%	28 April	10 July
Q3	1 July	30 September	Not less than 15%  Not more than 30%	28 July	10 Oct
Q4	1 October	31 December	Not less than 15%  Not more than 30%	28 September	10 December (for Qualifying PRNs for October and November and 10 January (for Qualifying PRNs for December