

**GENERAL TERMS AND CONDITIONS FOR:  
DATA AND CONSULTING SERVICES**

**1 DEFINITIONS AND INTERPRETATION**

1.1 In these general terms and conditions ("**General Terms**") words and expressions shall have the following meanings:

"**Agreement**" means the Proposal and these General Terms and the Special Terms (as applicable).

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

"**Controller Personal Data**" means all Personal Data which is owned, controlled or processed by Controller and which is provided by or on behalf of Controller to the Processor or which comes into the possession of the Processor as a result of or in connection with the supply of the Services.

"**Controller, Processor, Data Subject, Personal Data and Processing**" shall bear the respective meanings given to them in the Data Protection Law (and **Process and Processes** shall be construed accordingly).

"**Client**" means the client as stated in the Proposal to whom Valpak shall provide the Services in accordance with the Agreement.

"**Client Data**" means such data relating to Client or Client's business as is reasonably required by Valpak to provide the Services and is supplied by Client as set out in the Proposal (including any Sales Data supplied by Client).

"**Client IP**" means Client Data and all Intellectual Property Rights in any designs, product specifications, documentation, plans, materials, test results, ideas, concepts, inventions, designs, and branding supplied by Client to Valpak in connection with the Agreement (but excluding any Third Party Data).

"**Commencement Date**" means the date set out in the Proposal.

"**Contract Term**" means the period set out in the Proposal.

"**Confidential Information**" means any and all information relating to the Services, the Agreement or business, technical, sales, product, financial or other information relating to Valpak or Client or arising out of or in connection with the Agreement.

"**Insights Platform**" means the date visualisation tool developed, owned and utilised by Valpak that may be used for the provision of the Services.

"**Data Protection Law**" means the General Data Protection Regulation 2016 (Regulation (EU) 2016/679) ("GDPR"), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), together with the equivalent legislation of any other applicable jurisdiction and all other applicable law, regulations, guidance and codes of conduct or practice in any relevant jurisdiction relating to the processing of personal data, cyber security and/or privacy including the guidance and codes of practice issued by the UK Information Commissioner's Office ("ICO"), the Article 29 Working Party, the European Data Protection Board or any relevant supervisory authority from time to time.

"**Deliverables**" means any data, documents, products and materials which are developed by Valpak or its agents, contractors and employees exclusively for Client as part of or in relation to the Services (but excluding any Third Party Data).

"**Fees**" means the fees for the Services detailed in the Proposal or as otherwise agreed in writing between the parties.

"**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.

"**Jurisdiction**" means the territory identified in the Proposal.

"**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 in the relevant Jurisdiction.

"**Materials**" means the works, reports, products and materials developed or prepared by or on behalf of Valpak in relation to the Services (in whatever medium) but excluding the Deliverables.

"**Proposal**" means each proposal document agreed between Valpak and Client which sets out, amongst other things, the Services to be provided by Valpak to Client.

"**Regulations**" means the relevant regulations in the Jurisdiction as expressly identified in the Proposal.

"**Sales Data**" means the number of units of each product (by reference to SKU) sold by Client.

"**Services**" means the environmental and/or ethical consulting services supplied by Valpak to Client as set out in the Proposal.

"**Special Terms**" means any special terms and conditions attached to these General Terms which may be applicable to the Services.

"**Timeline**" means the timeline as set out in the Proposal.

"**Third Party Data**" means such data relating to Client or Client's business supplied to Valpak from third parties or obtained by Valpak from third parties, including but not limited to product or packaging information supplied by Client's suppliers.

"**Valpak**" means Valpak Limited (company number 07688691) whose registered office is at Stratford Business Park, Banbury Road, Stratford-upon-Avon 7GW.

1.2 Any reference in these General Terms and/or the Special Terms to any statute or statutory provision or subordinate legislation will (unless the context otherwise requires) be construed as a reference to that statute, statutory provision or subordinate legislation as amended, consolidated, modified, extended, re-enacted or replaced from time to time in the specified Jurisdiction including as a result of the United Kingdom's withdrawal from the European Union by virtue of Article 50 of the Treaty of the European Union.

1.3 Clause headings are for ease of reference only and shall not be taken into account in construing these General Terms and/or any Special Terms.

1.4 Any phrase in these General Terms and/or Special Terms introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.5 A reference to **writing** or **written** includes faxes and e-mails.

**2 BASIS OF AGREEMENT**

2.1 In case of a conflict between any documents or provisions contained in the Agreement, it shall be resolved by applying those documents or provisions in the following order of precedence (prevailing document first):

- 2.1.1 the Proposal;
- 2.1.2 the Special Terms (if any); and
- 2.1.3 these General Terms.

**3 PROVISION OF THE SERVICES**

3.1 Valpak agrees to provide the Services using all reasonable skill and care and in accordance with the Proposal, the Special Terms (if any) and these General Terms in all material respects.

3.2 Valpak shall use its reasonable endeavours to provide Client with advice on compliance with the Regulations in the relevant Jurisdiction as agreed in the Proposal.

3.3 Valpak shall use all reasonable endeavours to meet any performance dates specified in the Proposal.

3.4 Valpak shall be entitled (in its sole discretion) to alter or vary the Services (or part of the Services) as a result of:

- 3.4.1 any material alteration in Client's business of which Valpak had not been notified before the date of this Agreement;
- 3.4.2 any change in Client's corporate structure of which Valpak had not been notified before the date of this Agreement; and/or
- 3.4.3 any changes in Legislation.

3.5 If any revision to the Services is required in accordance with clause 3.4 then Valpak shall notify Client in writing of such amendments to the Services.

**4 CLIENT'S OBLIGATIONS**

4.1 Client acknowledges and agrees that Valpak is not responsible for the accuracy of any Client Data.

4.2 Notwithstanding the Services provided by Valpak pursuant to this Agreement, Client will remain fully responsible for all its responsibilities under the Regulations in any Jurisdiction, under any applicable Legislation or otherwise.

4.3 Client agrees to cooperate with Valpak in the performance of the Services and to give Valpak such assistance as Valpak may reasonably require in relation to the Agreement to facilitate Valpak in providing the Services. Such assistance shall include, but not be limited to:

- 4.3.1 allowing Valpak such access to Client's premises and personnel as Valpak may reasonably require;
- 4.3.2 promptly supplying Valpak (in such format and by such means as specified by Valpak from time to time) with complete, comprehensive and accurate Client Data and such other information or documents as Valpak may reasonably request (including any such information or documents set out in the Proposal) in relation to the Services; and
- 4.3.3 complying with all reasonable instructions and

requests by Valpak in relation to the Services and promptly raising and discussing any issues in relation to the Services.

4.4 Client acknowledges and agrees that provision of the Services are contingent on and subject to Client complying with the obligations set out in clause 4.3 and that Valpak shall (subject to clause 9.1) have no liability to Client in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any failure to provide any part or parts of the Services that arises as a result of failure by Client to comply with such obligations.

4.5 Client 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](http://www.valpak.co.uk)).

**5 CLIENT DATA AND THIRD PARTY DATA**

5.1 On and from the Commencement Date, for each year of the Agreement, Client will provide Client Data in the format set out in the Proposal (or as otherwise agreed between the parties acting reasonably) and by the date set out in the Timeline (or as otherwise agreed between Client and Valpak in writing from time to time).

5.2 Without prejudice to Valpak's rights and remedies, Client agrees to take such steps as are reasonably required to correct any inconsistencies or inaccuracies that Valpak discovers in Client Data and to provide corrections to Client Data to Valpak by the date set out in the Timeline (or as otherwise specified by Valpak from time to time).

5.3 Client acknowledges and agrees that, notwithstanding clause 5.2, it has responsibility for ensuring that all Client Data and other data provided to Valpak under the Agreement is:

- 5.3.1 accurate and shall check, confirm and comply with any reasonable data sign off procedure Valpak implements from time to time; and
- 5.3.2 provided and signed off (where appropriate) in line with any timeframes specified by Valpak in the Proposal; and
- 5.3.3 the sole responsibility of Client and that Valpak has no liability to Client in respect of any inaccurate Client Data or other data supplied by Client.

5.4 Client acknowledges and agrees that should Client fail to comply with the requirements as set out at clause 5.3 then Valpak may be unable to provide the Services which may result in Client being unable to comply with some or all of Client's obligations under the Regulations.

5.5 Client shall provide Valpak with all reasonable assistance (as notified to Client in writing) necessary to obtain any Third Party Data.

5.6 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, although Client acknowledges and agrees that Valpak cannot be responsible for inaccurate Third Party Data.

**6 FEES**

6.1 Client agrees to pay the Fees and any other reasonable, expenses agreed between the parties in advance that are payable in accordance with the provisions of the Proposal and these General Terms.

6.2 Unless stated otherwise in the Proposal, all sums payable by one party to the other shall be paid within 30 days of the receipt of the relevant invoice.

6.3 If any sum payable by Client to Valpak under the Agreement remains unpaid for more than 30 days from the due date for payment, then Valpak may (at its sole discretion) charge Client interest on such invoice at the rate of 2% (two per cent) per annum above Bank of England's base rate from time to time. Such interest to be calculated on a daily basis from the date upon which the invoice became due until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

6.4 Valpak may suspend its provision of the Services during any period in which any undisputed payments from Client are overdue.

6.5 Subject to Client's approval (such approval not to be unreasonably withheld or delayed and in any case to be provided within thirty (30) days of Valpak's written notice) Valpak may (acting reasonably) increase the Fees provided that such Fees cannot be increased or varied unless such increase or variation is the result of alterations to the Services arising as a result of:

- 6.5.1 a change in Legislation affecting the Services;
- 6.5.2 a change in the Services to be provided by Valpak due to a variation of the Agreement pursuant to clause 17.4 of these General Terms; or
- 6.5.3 a change to the timelines or timeframes in which Valpak are to provide the Services where such change is due to unanticipated problems beyond Valpak's control.

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- 6.6 Client shall immediately (on written request from Valpak) reimburse Valpak for all amounts agreed between Valpak and the Client to be paid by Valpak on behalf of Client to any regulatory body or authority.
- 6.7 All sums payable in accordance with the Agreement are exclusive of 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 CONFIDENTIALITY**
- 7.1 Each party shall not without the other party's prior written consent (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) divulge or communicate to any person other than as is reasonably necessary for the purpose of conducting its business, any Confidential Information except to the extent to which:
- 7.1.1 such information can be shown to be (other than through any unauthorised disclosure by it or any of its directors, officers or employees) within the public domain on a non-confidential basis; or
- 7.1.2 it is required by Legislation or by any court or by any appropriate agency or any governmental body but only to this extent and for the avoidance of doubt such information shall otherwise remain confidential; or
- 7.1.3 Valpak is required to disclose Confidential Information of Client to third parties (including any appropriate agency, governmental authority or service provider) in order for Valpak to provide the Services.
- 7.2 For the avoidance of doubt, all information contained within the Deliverables produced by Valpak under the terms of this Agreement shall be deemed to be confidential and shall be treated by the parties in accordance with clause 7.1. In addition, Client shall not supply or otherwise provide any of the Deliverables (or any part thereof) to any third party without the prior written consent of Valpak.
- 7.3 The provisions of this clause 7 shall continue in force notwithstanding termination of the Agreement howsoever caused.
- 8 INTELLECTUAL PROPERTY**
- 8.1 Client Data/IP**
- 8.1.1 Valpak acknowledges and agrees that Client may, during the term of the Agreement, disclose Client IP to Valpak. Valpak acknowledges and agrees that Client is and shall remain the sole owner of Client IP and nothing in the Agreement shall confer on Valpak any ownership or other rights in these or any other of Client's Intellectual Property Rights except such rights as are expressly set out in the Agreement or are agreed in writing with Client from time to time.
- 8.1.2 Subject to clauses 8.1.3 and 8.4, Client hereby grants to Valpak (and any third parties including any appropriate agency, government authority or service provider) a non-exclusive, royalty free licence to use any Client IP during the term of the Agreement for the purposes of providing the Services and complying with Valpak's obligations under the Agreement.
- 8.1.3 Where as part of the Services Valpak is given access to or generates product or packaging information and/or Sales Data, then Client hereby grants to Valpak a non-exclusive, perpetual, irrevocable, royalty free licence to use such information and/or Sales Data in an anonymised and aggregated form or format for such purposes as Valpak may, in its absolute discretion, determine.
- 8.2 Deliverables**
- 8.2.1 Valpak assigns to Client, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables.
- 8.3 Materials**
- 8.3.1 Client acknowledges and agrees that Valpak (or its licensors) is and will remain the owner of all Intellectual Property Rights in the Materials and Third Party Data. Nothing in the Agreement shall confer on Client any ownership or other rights in these or any other of Valpak's Intellectual Property Rights except such rights as are expressly set out in the Agreement or are agreed in writing with Valpak from time to time.
- 8.3.2 (Subject to receipt by Valpak (in cash or cleared funds) of all sums due from Client to Valpak under the Agreement) Valpak hereby grants Client a non-exclusive, royalty free, non-transferable licence (with no right to grant sub-licences) to use the Materials and Third Party Data solely for Client's own internal business purposes in accordance with the terms of the Agreement. For the avoidance of doubt, Client shall not disclose the Materials or Third Party Data to any third party without the prior written consent of Valpak.
- 8.3.3 Each party warrants to the other that the use by each party of any Intellectual Property Rights licensed by one party to the other does not and will not infringe the Intellectual Property Rights of any third party.
- 8.4 Licence of Insights Platform**
- 8.4.1 Where Valpak makes available the Insights Platform to Client then the terms of this clause 8.4 shall apply.
- 8.4.2 Subject to the following provisions of this clause 8.4, Valpak grants to Client a non-exclusive licence during the Contract Term to use the Insights Platform.
- ("Scope of Use").
- 8.4.3 In relation to the Scope of Use:
- a) (for the purposes of clause 8.4.2) use of the Insights Platform shall be restricted to use by Client and employees of Client of the Insights Platform for the Client's normal internal business purposes only;
- b) for the purposes of clause 8.4.2, "use of the Insights Platform" means accessing and viewing product and packaging information and other information on the Insights Platform;
- c) Client shall not, at any time, permit the use of or access to the Insights Platform by, or for the benefit of, any employee other than in accordance with clause 8.4.2 above and where such use or access is granted to an employee of Client, Client shall procure such employee's compliance with the terms of this clause 8.4 as if the employee was a party to it; and
- d) Client may not use the Insights Platform other than as specified in clause 8.4.2 and clause 8.4.3(a) without the prior written consent of Valpak, and Client acknowledges that additional fees may be payable on any change of use approved by Valpak.
- 8.4.4 Except as expressly stated in this clause 8.4, Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify or adapt the Insights Platform in whole or in part.
- 8.4.5 Client shall not (nor shall it permit any third party to):
- a) use any information provided by Valpak or obtained by Client during any such use of the Insights Platform as permitted under clause 8.4.2 to create any packaging waste database or any other database whose content and/or purpose is substantially similar to that of the Insights Platform nor use such information in any manner which would be restricted by any Intellectual Property Rights subsisting in it;
- b) sub-license, assign or novate the benefit or burden of the licence in this clause 8.4 in whole or in part; and/or
- c) allow the Insights Platform to become the subject of any charge, lien or encumbrance.
- 8.4.6 Client shall:
- a) keep a complete and accurate record of Client's copying and disclosure of the Insights Platform and its users, and produce such record to Valpak on request from time to time;
- b) notify Valpak as soon as it becomes aware of any unauthorised use of the Insights Platform by any person; and
- c) permit Valpak to inspect and have access to any premises (at or on which the Insights Platform is being kept or used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring that Client is complying with the terms of this Agreement, provided that Valpak provides reasonable advance notice to Client of such inspections, which shall take place at reasonable times.
- 9 LIABILITY**
- 9.1 Nothing in the Agreement shall exclude or limit either party's liability for:
- 9.1.1 death or personal injury resulting from its own negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 for breach of the terms (if any) implied by section 2 of the Supply of Goods and Services Act 1982.
- 9.2 Subject to clause 9.1, neither party shall under any circumstances whatsoever be liable to the other party whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss or damage suffered or incurred by the other party (or the other party's 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) 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 (collectively meaning those losses recoverable under the second limb of the rule in *Hadley v Baxendale (1854) 9Ex341*).
- 9.3 Subject to clauses 9.1, 9.2 and 9.4, each party's entire aggregate liability to the other in respect of all other losses arising out of or in connection with the Agreement or its subject matter shall not exceed an amount that is three times the total Fees paid by Client in the twelve months immediately prior to the matter arising. For the avoidance of doubt no sums paid by either party to the other under this clause 9.3 shall count towards the cap on liability set out at clause 9.4.
- 9.4 Subject to clauses 9.1, 9.2 and 9.3, each party's entire liability to the other in respect of any losses arising out of or in connection with any breaches of clauses 7.1, 8.3.3 or 16 shall not exceed one hundred thousand pounds (£100,000). For the avoidance of doubt no sums paid by either party to the other under this clause 9.4 shall count towards the cap on liability set out at clause 9.3.
- 9.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 9.6 The provisions of this clause 9 shall survive the expiry or the termination of the Agreement for whatever reason.
- 10 TERM AND TERMINATION**
- 10.1 The Agreement shall commence on the Commencement Date and shall, subject to the terms of the Agreement, continue for an initial period of 12 months ("**Initial Period**") and thereafter for further periods of 12 months (each such further 12 month period being a "**Successive Period**"), unless and until terminated by either party giving the other not less than 90 days' written notice such notice to expire at the end of the Initial Period or at the end of any Successive Period (as the case may be).
- 10.2 Valpak may terminate the Agreement at any time on giving 90 days' prior written notice to Client.
- 10.3 Without limiting its other rights or remedies, each party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 10.3.1 the other party is in material and/or persistent breach of the 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 in writing of the breach;
- 10.3.2 an encumbrancer takes possession or a receiver or an administrative receiver is appointed over any of the property or assets of that other party;
- 10.3.3 the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- 10.3.4 the other party has a petition presented to any Court for its winding-up (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under the Agreement);
- 10.3.5 any distress execution sequestration or other process being levied or enforced on the property of that other party which it does not discharge within seven (7) days;
- 10.3.6 the other party ceases, or threatens to cease, to carry on business;
- 10.3.7 the other party acts in a manner which in the opinion of the other could bring or tend to bring the good name of the other into disrepute;
- 10.3.8 anything analogous to any of the foregoing clauses 10.3.2 to 10.3.7 (inclusive) occurs in relation to the other party under the law of any foreign jurisdiction occurs in relation to the other party.
- 10.4 Without limiting its other rights or remedies, Valpak may terminate the Agreement with immediate effect by giving written notice to Client if:
- 10.4.1 Client fails to pay any amount due under the Agreement within thirty (30) days of the due date for payment;
- 10.4.2 Valpak is unable to obtain sufficiently accurate Client Data and/or other necessary information due to a lack of assistance from Client or Client's suppliers (as appropriate);
- 10.4.3 Valpak is unable to provide the Services due to a change in Legislation; or
- 10.4.4 Client fails to provide its approval within 30 days of Valpak's reasonable request in accordance with clause 6.5.
- 11 CONSEQUENCES OF TERMINATION**

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- 11.1 On termination of the Agreement for any reason:
- 11.1.1 Client shall immediately pay to Valpak:
- a) all of Valpak's outstanding unpaid and undisputed invoices and interest, subject to the deduction of any refund payable pursuant to clause 11.1.2; and
- b) in respect of Services supplied but for which no invoice has been submitted, Valpak shall submit an invoice, which shall be payable by Client immediately on receipt. For the avoidance of doubt, Client shall not be entitled to a refund of any sums paid by Client to Valpak prior to termination if the Agreement;
- 11.1.2 Valpak shall, if it has terminated the Agreement pursuant to clauses 10.2, 10.4.3 or 10.4.4, refund to the Client any Fees paid in advance which relate to the period after termination;
- 11.1.3 Valpak shall, if requested by Client, return to Client any Client Data and Deliverables in Valpak's possession or control; and
- 11.1.4 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 11.2 The provisions of clauses 6, 7, 8, 9, 11, 13, 16 and 17, and any other clauses that expressly or by implication have effect following termination or expiry of the Agreement, shall survive termination or expiry of the Agreement.
- 12 PUBLICITY**
- Neither party shall make or release any statements or announcements regarding the terms of, the conclusion of, or termination of the Agreement, unless such statements or announcements have been approved by the other party in writing.
- 13 NON-SOLICITATION**
- 13.1 Each party (including that party's subsidiaries or associated companies, or any person connected to that party) undertakes that it will not directly or indirectly recruit as an employee or engage as an independent contractor any person employed or so engaged by the other party in connection with the Services for a period of twelve (12) months following the expiry or termination of the Agreement.
- 14 BRIBERY AND MODERN SLAVERY**
- 14.1 Each party shall, and that it shall procure that persons associated with it ("Associated Persons") shall:
- 14.1.1 comply with all applicable laws, statutes, regulations and codes relating to bribery and other corruption, slavery and human trafficking, including the Bribery Act 2010 and the Modern Slavery Act 2015 ("Compliance Requirements");
- 14.1.2 not take or knowingly permit any action to be taken that would or might cause or lead the other party to be in violation of the Compliance Requirements including under section 7 of the Bribery Act 2010; and
- 14.1.3 not bribe or attempt to bribe (which shall include any offer or form of payment, gift or other inducement, reward or advantage (whether of money or anything of value)) the other party or any of the other party's employees, officers, agents, representatives, affiliates or persons acting on the other party's behalf.
- 14.2 The parties agree to establish and at all times during the term of this Agreement maintain and implement adequate policies and procedures to prevent any breach of clause 14.1.
- 14.3 Each party represents and warrants to the other that:
- 14.3.1 neither it nor any Associated Person has bribed or attempted to bribe:
- a) any person in order to obtain and/or retain any business, or advantage in the conduct of business, for the other party whether in connection with this Agreement or otherwise; or
- b) any person described in clause 14.1.3 for any purpose whatsoever;
- 14.3.2 neither it nor any Associated Person:
- a) has been convicted of any offence involving bribery or corruption; or
- b) has been or is the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence under the Compliance Requirements;
- and such party undertakes to notify the other party immediately if any of the representations and warranties in this clause 14.3 would not be true and accurate if repeated at any time during the term of this Agreement.
- 15 FORCE MAJEURE**
- 15.1 A party, provided that it has complied with the provisions of clause 15.3, shall not be in breach of the Agreement, nor liable for any failure or delay in performance of any obligations under the Agreement (and, subject to clause 15.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to any natural disaster (including fire, flood, earthquake, windstorm or adverse weather conditions); war, terrorist attack, cyber attack or similar actions; compliance with any law, any labour dispute, including but not limited to strikes, industrial action or lockouts; non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and interruption or failure of utility service.
- 15.2 The corresponding obligations of the other party will be suspended to the same extent.
- 15.3 Any party that is subject to a Force Majeure Event shall not be in breach of the Agreement provided that:
- 15.3.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- 15.3.2 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 15.4 If the Force Majeure Event prevails for a continuous period of more than six (6) weeks (or such other period as detailed in the Proposal), either party may terminate the Agreement by giving fourteen (14) days' written notice to all the other party. On the expiry of this notice period, the Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Agreement occurring prior to such termination.
- 16 DATA PROTECTION**
- 16.1 The parties agree that the Client is a Controller and that Valpak is a Processor. The Processor warrants that it has complied and shall continue to comply with Data Protection Law.
- 16.2 To the extent that the Controller collects and passes Personal Data to the Processor, it represents, warrants and undertakes that:
- 16.2.1 it has obtained appropriate authority from all Data Subjects to whom it relates, or has provided them with the requisite information required under the Data Protection Law, to pass their Personal Data to the Processor for the purposes for which the Controller intends to use it and/or as specified by the Controller in writing; and
- 16.2.2 it is accurate and up to date.
- 16.3 To the extent that the Processor or any Processor employees, staff and contractors Processes any Controller Personal Data it shall:
- 16.3.1 process it only in accordance with the Controller's documented instructions from time to time;
- 16.3.2 not transfer, or otherwise directly or indirectly disclose, any Controller Personal Data to a third party or to a country or territory outside the European Economic Area without the prior written consent of the Controller;
- 16.3.3 taking into account the nature of the Processing, assist the Controller (by appropriate technical and organisational measures), insofar as this is possible, in relation to any request from any Data Subject for access, rectification or erasure of the Controller Personal Data, or any objection to Processing; and
- 16.3.4 allow for an audit (no more than once per annum) by the Controller and any auditors appointed by it, upon reasonable notice and within business hours and provided that these auditors are not competitors of the Processor in order for the Processor to demonstrate its compliance with this clause 16.
- 16.4 The Processor shall comply with the provisions set out in Article 28 of the GDPR (together with any provisions referenced therein) which shall have effect as obligations on the Processor as if set out in full in this clause 16 and the expressions "controller" and "processor" used in those provisions and incorporated in this Agreement pursuant to this clause 16 shall be deemed references to the Controller and the Processor respectively.
- 16.5 The Parties acknowledge and agree that the types of Personal Data that shall be processed by the Processor in connection with this Agreement are the email, telephone or postal addresses for the Client's employees, staff and contractors ("Staff") for the purpose of administering and complying with these Terms and any scheme terms or regulatory requirements. All such processing shall be carried out only to the extent and duration necessary for those purposes.
- 16.6 The Parties acknowledge and agree that Valpak may share Controller Personal Data with third parties (including any appropriate agency, government authority or service provider that Valpak engages to provide services to Valpak) in order to fulfil its obligations to comply with the Client's instructions under the Agreement. All such processing shall be carried out only to the extent and duration necessary for those purposes.
- 16.7 The obligations and rights of the Controller as the applicable Data Controller of the Controller Personal Data Processed in connection with this Agreement are set out in this Agreement and in Data Protection Law.
- 16.8 The Client acknowledges that Valpak may receive and Process Personal Data of the Client's employees, staff and/or contractors in connection with the Client's performance or either Party's obligations under the Agreement. The Client acknowledges that Valpak shall Process such Personal Data in connection with its business activities acting as an independent Controller determining the legal basis and conditions for which it Processes it as described in Valpak's privacy policy or other notice required under Data Protection Law as amended from time to time.
- 17 GENERAL**
- 17.1 Whole Agreement:**
- 17.1.1 These General Terms, the Proposal and any Special Terms (as applicable) constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of the Agreement.
- 17.1.2 Each party acknowledges that, in entering into the Agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in the Agreement (whether made innocently or negligently) shall be for breach of contract.
- 17.1.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 17.2 Assignment and sub-contracting:**
- 17.2.1 Client shall not at any time (without Valpak's prior written consent, such consent not to be unreasonably withheld or delayed) assign, transfer, hold on trust or sub-contract any of Client's rights or obligations under the Agreement or appoint any third party agent to perform such obligations.
- 17.2.2 Valpak shall not be entitled to, without Client's prior written consent (such consent not to be unreasonably withheld or delayed), assign, transfer, hold on trust or sub-contract any of its rights or obligations under the Agreement to any third party or appoint any third party agent to perform such obligations. For the avoidance of doubt, Valpak shall be entitled to transfer the Agreement or any of its rights or obligations under it to any subsidiary or holding company of Valpak (from time to time) in its absolute discretion and Client shall do all such further acts, deeds and things necessary to effect such a transfer (including but not limited to executing such novation agreement as Valpak, acting reasonably, may provide to Client).
- 17.3 Notices:**
- 17.3.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office, or sent by fax to the other party's main fax number or sent by email to the other party's email address as notified in writing from time to time.
- 17.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to in clause 17.3.1 or, if sent by pre-paid first-class post or recorded delivery, on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next business day after transmission, or if by email, it shall be sufficient to show that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.
- 17.4 **Variation:** Valpak may (acting reasonably) at any time and from time to time amend, modify or add to any provision of the Agreement on giving to the Client 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

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body in which event such amendment, modification or addition shall have effect from the date specified in the notice.

- 17.5 **Severance:** 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.
- 17.6 **Waiver:** 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. No failure or delay on the part of either party in exercising any right, power or privilege under the Agreement shall operate as a waiver of it, nor shall any single or partial exercise of any such right power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.
- 17.7 **No partnership:** 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.
- 17.8 **No right of set off:** All sums due from one party to the other in accordance with the Agreement will be paid in accordance with the payment provisions of the Proposal and the General Terms (in cash or cleared funds) in full without any deduction, withholding, counterclaim or set off. All sums payable under the Agreement are exclusive of any value added tax and any other sales or similar taxes, which will be added to such sum to the extent applicable from time to time.
- 17.9 **Third party rights:** 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.
- 17.10 **Counterparts:** This Agreement may be executed in counterparts or duplicates, each of which, when executed, shall constitute an original of this Agreement and such counterparts or duplicates together shall constitute one and the same instrument. No counterpart or duplicate shall be effective until each party has executed at least one counterpart or duplicate.
- 17.11 **Governing law and Jurisdiction:** The Agreement shall be governed by and construed in accordance with the law of England. Each party agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Agreement.

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