

**VALPAK LIMITED**  
**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](http://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) unless agreed otherwise in writing if there is any conflict between these Terms and any other terms of the Agreement the following order of precedence shall apply:
- the specific Application Form applicable to the Member's membership of such Scheme; then
  - the Specific Scheme Membership Terms applicable to the Member's membership of such Scheme; then
  - these Terms; then
  - 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:
- "Agency Fees"** means 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;
- "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;
- "Ancillary Fees"** means (in relation to each Scheme) any fees, costs, expenses or charges payable which may be incurred by Valpak in connection with the Member's membership of each Scheme and which are in addition to the Levy, the Membership Fee and the Agency Fees;
- "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;
- "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 performing its obligations under the Agreement.
- "Controller, Processor, Data Subject, Personal Data and Processing"** shall bear the respective meanings given to them in the Data Protection Law.
- "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](http://www.valpak.co.uk));
- "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.

**"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 Scheme 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 Data Protection Law;

**"Levy"** means (in relation to each Scheme) the material levy determined by Valpak in its sole discretion and as stated on the relevant invoice issued by Valpak to the Member;

**"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) but not including Controller Personal Data;

**"Membership Fee"** means (in relation to each Scheme) the annual membership fee payable by each Member in respect of each Obligation Year in which the Member is a Member of the Scheme, as the same is published by Valpak from time to time as is made available on request or at [www.valpak.co.uk](http://www.valpak.co.uk);

**"Membership Terms"** means (in relation to each Scheme) the Application Form applicable to such Scheme, the Specific Scheme Membership Terms applicable to such Scheme, these Terms and any other terms expressly agreed between the parties and forming part of the Agreement;

**"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;

**"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;

**"Scheme"** means (as appropriate):

- (in general) a producer responsibility compliance scheme approved and registered (where appropriate) under the relevant Regulations and operated by Valpak or any Valpak Affiliate;

- (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 or Valpak Affiliate) in which such Member has been registered in accordance with clause 3.1; and/or

- (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;

**"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](http://www.valpak.co.uk));

**"Subsidiary"** and **"Holding Company"** have the same meanings as in Section 1159 of the Companies Act 2006;

**"Valpak"** means Valpak Limited, registered in England with company number 07688691 and whose registered office is at Stratford Business Park, Banbury Road, Stratford-upon-Avon CV37 7GW;

**"Valpak Affiliate"** means any company which is a Holding Company or Subsidiary of Valpak from time to time, or which is a Subsidiary of any such Holding Company from time to time; 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, 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.

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.

- 3.3 The Member specifically acknowledges that:
- each Scheme is operated in the interest of the membership as a whole; and
  - it wishes to join a Scheme because it is subject to the relevant Regulations or is likely (based on Legislation immediately prior to the Member joining the Scheme) to be subject to the Regulations.

**4 VALPAK'S OBLIGATIONS**

- Valpak shall:
- (in relation to each Scheme) use its reasonable endeavours to carry out its operations diligently and in a reasonable, proper and cost-effective manner;
  - (in relation to each Scheme) exercise the skill and expertise reasonably to be expected of an organisation approved and registered (where

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appropriate) under the Regulations as a compliance scheme; and

(c) (in relation to each Scheme) provide advice (where reasonably required) which is consistent with the Regulations and current relevant guidance.

4.2 (Subject to clause 4.4) 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.

4.3 (Subject to clause 4.4) where the Member joins a Scheme part way through an Obligation Year, Valpak shall assume the Producer Responsibility Obligations relating to the Member applicable in relation to such Scheme for that Obligation Year.

4.4 (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 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 that Obligation Year;

(b) Valpak shall not be liable to repay any instalments or part of any Levy, Membership Fee or Agency Fee 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 these Terms and/or 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) the Member shall pay to Valpak any further sums directly incurred by Valpak and/or which are subsequently incurred by Valpak 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; and

(e) 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.

## 5 MEMBER OBLIGATIONS

5.1 The Member shall comply with the Regulations and all reasonable recommendations made by Valpak in relation to the Member's obligations under the Regulations.

5.2 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.

5.3 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](http://www.valpak.co.uk)).

5.4 (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.

5.5 (In relation to each Scheme) (without prejudice to clause 5.4) 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.

5.6 (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.

5.7 (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.

5.8 The Member shall use its reasonable endeavours in relation to the operation of its own business, insofar as it is both reasonably practicable and economically appropriate to maintain good environmental practices.

## 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. Notwithstanding the foregoing, all information provided by the Member to Valpak must be complete, accurate and comply with all Legislation (including appropriate agency and/or governmental authority guidance).

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 6.9 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 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 6.5.

6.6 If Valpak makes a request under clause 6.5, the Member shall within 10 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.

6.7 The Member shall maintain and store in either electronic or written form within the United Kingdom all documents, data and/or appropriate records it holds, obtains or creates in respect of its membership of each Scheme and in respect of its obligations under these Terms for a minimum of 4 years from the date of such document, data and/or record and the Member shall make available such document, data and/or record to Valpak on demand.

6.8 Valpak may from time to time on reasonable notice in its absolute discretion alter the requirements for the format of period of storage set out in clause 6.7.

6.9 The Member shall provide Valpak with details (including telephone, fax number, email and address) 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.

6.10 The Member acknowledges and agrees that if the Member fails to provide any information or data to Valpak in accordance with clause 6.1 thereby preventing Valpak

from accurately calculating the Member's Producer Responsibility Obligations in respect of any Obligation Year then Valpak may (in its sole discretion) estimate the Member's Producer Responsibility Obligations in respect of an Obligation Year based, amongst other things, on historical data and / or information provided by the Member (the "Estimated Data"). The Member shall 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 Valpak using such Estimated Data to calculate the Member's Producer Responsibility Obligations (including but not limited to arising from Valpak purchasing evidence of compliance).

6.11 The provisions of this clause 6 shall continue in force notwithstanding the termination of the Agreement howsoever caused.

## 7 FEES AND LEVIES

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:

- the Levy;
- the Membership Fee;
- the Agency Fees; and
- the Ancillary Fees (if applicable).

## 8 PAYMENT

8.1 Unless otherwise agreed in writing:

- the Levy payable in relation to each Scheme for each Obligation Year shall be payable by the Member in advance in four instalments invoiced by Valpak and 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;
- (in relation to each Scheme) the Membership Fee shall be invoiced by Valpak and payable by the Member to Valpak in full and in advance;
- (in relation to each Scheme) the Agency Fees shall be invoiced by Valpak and payable by the Member to Valpak in full and in advance; and
- any Ancillary Fees shall be invoiced by Valpak and payable by the Member to Valpak in full and in advance.

8.2 Where a Member joins a Scheme part way through an Obligation Year then the Member shall be required to pay: (i) the Membership Fee and Agency Fees to Valpak in respect of the full Obligation Year; and (ii) the Levy in respect of that part of the Obligation Year that the Member is a Member of the relevant Scheme.

8.3 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.

8.4 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.

8.5 Valpak shall have the right to set off any sums owed to Valpak or any Valpak Affiliate by the Member which have fallen due and payable against any sums due to the Member from Valpak or any Valpak Affiliate (under any Scheme or any other agreement in place between the Member and Valpak or any Valpak Affiliate).

8.6 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.

## 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.

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- 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) 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:
- 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
  - 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
  - (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 INTELLECTUAL PROPERTY RIGHTS**
- 11.1 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.
- 11.2 (Subject to clause 11.1) 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.
- 11.3 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.
- 11.4 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).
- 11.5 The provisions of this clause 11 shall continue in force notwithstanding termination of the Agreement howsoever caused.
- 12 INDEMNITY**
- 12.1 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:
- 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;
  - 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);
  - any failure by the Member duly and punctually to pay instalments of the Membership Fees, the Agency Fees, the Levy and any Ancillary Fees when due in accordance with the terms of the Agreement; and / or
  - any purchase by Valpak of evidence of compliance based on information and / or data provided to Valpak by the Member (including, without limitation, in circumstances where the Member wishes to alter any information and / or data previously provided to Valpak).
- 12.2 The provisions of this clause 12 shall continue in force notwithstanding termination of the Agreement howsoever caused.
- 13 LIMITATION OF LIABILITY**
- 13.1 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.
- 13.2 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.
- 13.3 (Subject to clause 13.2) 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:
- any circumstances outside Valpak's reasonable control;
  - the Member's failure to comply with the Agreement;
  - loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings;
  - loss of data or use of data; and/or
  - consequential, special or indirect loss or damage.
  - (Subject to clauses 13.2 and 13.3) 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.
- 13.4 The provisions of this clause 13 shall continue in force notwithstanding termination of the Agreement howsoever caused.
- 14 TERMINATION**
- 14.1 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 immediately or at such time as may be specified in such notice on or after the occurrence of any of the following events:
- any failure by the Member to pay to Valpak any sum due to Valpak under any Agreement within 14 days of the due date for payment thereof; or
  - the Member (if an individual): has a bankruptcy petition presented against him (such petition not being dismissed within 14 days) presents his own bankruptcy petition, proposes a voluntary arrangement with his creditors or a deed of arrangement, suspends, or threatens to suspend, payment of his debts or is becomes unable to pay his debts as they fall due or admits an inability to pay his debts or is unable to pay his debts within the meaning of Section 268 of the Insolvency Act 1986, dies, becomes of unsound mind or a patient under any statute relating to mental health or becomes incapable through illness or injury of being able properly to perform his obligations under this Agreement; or
  - the Member (if a company): suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 propose or makes a composition or arrangement with its creditors, is subject to a presentation of a petition that the Member be put into liquidation or administration (such petition not being dismissed within 14 days), passes a resolution putting the Member into voluntary liquidation (other than for the purposes of amalgamation or reconstruction), has an administrator, provisional liquidator, receiver, manager or administrative receiver appointed on 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
  - the Member (if a partnership): suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or has any partner to whom any of the foregoing apply on 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
  - the Member suffers any equivalent or analogous events to those set out in clauses 14.1(b), (c), or (d) above; or
  - 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.
- 14.2 Valpak may (in its absolute discretion) terminate the Member's membership of a Scheme by notice in writing to take effect immediately or at such time as may be specified on 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;
  - (without prejudice to the generality of clause 14.2(a)) on or after the occurrence of any of the following events in relation to such Scheme:
    - 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);
    - if 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
    - if the Member does not in relation to such Scheme comply with the provisions of clauses 6.6 and/or 6.7;
  - (without prejudice to the generality of clause 14.2(a)) on or after the occurrence of any of the following events:
    - any enforcement notice and/or proceedings being issued and/or taken against the Member under the Regulations;
    - the Member being convicted of any offence under the Regulations;
    - the Member failing to comply with the Regulations;
    - the Member knowingly and/or recklessly supplying false information to Valpak in connection to the Member's membership of such Scheme; and/or
    - the Member acting 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;
  - pursuant to clause 9.5 (in relation to such Scheme);
  - 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; or

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- (f) where the Member is no longer eligible for membership of such Scheme or no longer required to be a member of such Scheme in each case due to a change in Legislation (including the Regulations).
- 14.3 The Member may terminate its membership of a Scheme with immediate effect 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.
- 14.4 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.
- 14.5 For the avoidance of doubt, nothing in this 14 shall in any way limit or be intended to conflict with any express termination rights provided within any applicable Specific Scheme Membership Terms (or any other document)
- 14.6 If the Member resigns from a Scheme by terminating its membership of a Scheme pursuant to the termination for convenience right found under the relevant Specific Scheme Membership Terms, and then subsequently revokes its resignation, such revocation shall not be automatic, and will not be effective unless and until approved in writing by Valpak (at its absolute discretion), and the Member shall not be readmitted to the Scheme until such approval has been given.
- 15 ANTI-BRIBERY AND MODERN SLAVERY**
- 15.1 The Member shall, and that it shall procure that persons associated with it ("Associated Persons") shall:
- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption, slavery and human trafficking, including but not limited to the Bribery Act and/or the Modern Slavery Act 2015 as applicable ("Compliance Requirements");
- (b) not take or knowingly permit any action to be taken that would or might cause or lead Valpak to be in violation of any Anti-Corruption Requirements including under section 7 of the Bribery Act 2010; and
- (c) 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)) Valpak or any of Valpak's employees, officers, agents, representatives, affiliates or persons acting on Valpak's behalf.
- 15.2 The Member agrees with Valpak that it shall establish and at all times during the term of the Agreement maintain and implement adequate policies and procedures to prevent any breach of clause 15.
- Member represents and warrants to Valpak that:
- (a) neither it nor any Associated Person has bribed or attempted to bribe:
- (i) any person in order to obtain and/or retain any business, or advantage in the conduct of business, for Valpak whether in connection with the Agreement or otherwise; or
- (ii) any person described in clause 15.1(c) for any purpose whatsoever;
- (b) neither the Member nor any Associated Person:
- (i) has been convicted of any offence involving bribery or corruption; or
- (ii) has been or is the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence under the Compliance Requirements;
- and the Member undertakes to notify Valpak immediately if any of the representations and warranties in this clause 15.3 would not be true and accurate if repeated at any time during the term of the Agreement.
- 15.4 The Member shall indemnify and keep indemnified Valpak in full and hold it harmless on demand from and against any and all losses suffered or incurred by Valpak or for which the Member may become liable arising out of or in connection with any breach of this clause 15, whether or not the Agreement has expired or been terminated.
- 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 DATA PROTECTION**
- 17.1 The parties agree that the Member 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.
- 17.2 To the extent that the Controller collects and passes Personal Data to the Processor, it represents, warrants and undertakes that:
- (a) 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
- (b) it is accurate and up to date.
- 17.3 To the extent that the Processor or any Processor employees, staff and contractors Processes any Controller Personal Data it shall:
- (a) process it only in accordance with the Controller's documented instructions from time to time;
- (b) 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;
- (c) 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
- (d) 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 17.
- 17.4 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 17 and the expressions "controller" and "processor" used in those provisions and incorporated in this Agreement pursuant to this clause 17 shall be deemed references to the Controller and the Processor respectively.
- 17.5 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 name, email address, address, telephone number, job title, opinions, correspondence and online identifiers of customers, suppliers and end users 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.
- 17.6 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 Controller's instructions under the Agreement. All such processing shall be carried out only to the extent and duration necessary for those purposes.
- 17.7 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.
- 17.8 The Member acknowledges that Valpak may receive and Process Personal Data of the Member's employees, staff and/or contractors in connection with the Member's performance or either Party's obligations under the Agreement. The Member 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.
- 18 GENERAL**
- 18.1 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, subject to clause 18.2, neither party may assign or transfer or may agree to assign or transfer any of its rights or obligations under the Agreement.
- 18.2 Valpak may, without the prior written consent of the Member, assign, transfer or sub-contract the Agreement (or any part of it) to any other Valpak Group Company.
- 18.3 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.
- 18.4 Subject to clause 18.3, 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.
- 18.5 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.
- 18.6 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.
- 18.7 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.
- 18.8 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.
- 18.9 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.
- 18.10 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.
- 18.11 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.
- 18.12 Time shall be of the essence for compliance by the Member of its obligations under this Agreement.
- 18.13 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.
- 19 NOTICES AND COMMUNICATIONS**
- 19.1 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.
- 19.2 Any notice or other document, if served by post 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 24 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.
- 19.3 For the purpose of clause 19.1 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](http://www.valpak.co.uk) or email address [info@valpak.co.uk](mailto:info@valpak.co.uk)
- 20 GOVERNING LAW**
- 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

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English courts as regards any claim or matter arising in relation to the Agreement.

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