

DISTRIBUTOR TAKE BACK SCHEME

AGREEMENT RELATING TO CA SITES

Introduction

- 1 This Agreement only applies to CA Sites. In this Agreement "**CA Site**" means a place provided by a local authority under relevant legislation at which persons resident in its area may deposit their own household waste free of charge (which are often referred to as household waste recycling centres) and CA Sites shall be construed accordingly.
- 2 Valpak Retail Services Limited ("**Valpak**") has been given approval in principle by the Secretary of State as the operator of the proposed WEEE distributor take back scheme under the WEEE Regulations. In this Agreement "**WEEE Regulations**" means the Waste Electrical and Electronic Equipment Regulations 2006 (as may be amended from time to time).
- 3 Under the WEEE Regulations the Secretary of State may approve any establishment or undertaking carrying out collection operations as a designated collection facility.
- 4 (Once the DTS has been formally approved by the Secretary of State under the WEEE Regulations (on terms acceptable to Valpak)) Valpak has agreed to assist the Secretary of State by compiling and submitting lists to the Secretary of State of those establishments or undertakings that wish to be considered for approval by the Secretary of State as a designated collection facility.
- 5 In this Agreement "**DTS**" means (as appropriate): (a) the proposed WEEE distributor take back scheme operated by Valpak that has been given approval in principle by the Secretary of State; and/or (b) the WEEE distributor take back scheme operated by Valpak that has been formally approved by the Secretary of State under the WEEE Regulations (on terms acceptable to Valpak).
- 6 The Authority would like Valpak to include on the lists to be submitted under clause 4 certain CA Site(s) operated by or on behalf of the Authority (each such CA Site being a "**Nominated CA Site**"). In this Agreement the "**Authority**" means the local authority as set out on the relevant application form submitted to Valpak.

Interpretation

- 7 In this Agreement words and expressions defined in the WEEE Regulations shall (where the context so permits) have the meanings set out in the WEEE Regulations unless differently defined in this Agreement and words and expressions defined in any clause shall (where the context so permits) have the meanings set out in such clause.
- 8 Any communication or notification in writing by Valpak to the Authority required for the purposes of this Agreement may be sent by Valpak by e-mail to the contact details provided by the Authority on the relevant application form.

Commencement and duration

070112 CA Sites (v4-0 0031270767)

- 9 This Agreement shall commence on the date Valpak notifies the Authority in writing that the Authority's application form has been received and accepted by Valpak ("**Commencement Date**") and shall (unless terminated earlier in accordance with the terms of this Agreement) continue in force until the end of the term of the appointment of the DTS or 31 December 2021 (whichever is the earlier).

Application for approval as a designated collection facility

- 10 The Authority shall set out on the relevant application form submitted to Valpak each Nominated CA Site together with such information in relation to each Nominated CA Site as Valpak may reasonably request.
- 11 The Authority shall ensure that each and every Nominated CA Site shall (on the date such Nominated CA Site is notified to Valpak under clause 10) be a CA Site and meet the criteria for approval as a designated collection facility as set out in Schedule 9 of the WEEE Regulations.
- 12 (Once the DTS has been formally approved by the Secretary of State under the WEEE Regulations (on terms acceptable to Valpak)) Valpak shall include all Nominated CA Sites on the lists referred to in clause 4 and Valpak shall submit such lists to the Secretary of State in accordance with the operational plan submitted by Valpak to the DTI as part of the process for approval of the DTS.
- 13 Valpak shall notify the Authority of any decision made by the Secretary of State under clause 3 in relation to the Nominated CA Sites where and to the extent that Valpak has received written notification from the Secretary of State of such decision.

Approval as a designated collection facility

- 14 Valpak shall (subject to clause 16) pay to the Authority the Fees for each Nominated CA Site that has been approved as a designated collection facility by the Secretary of State under the WEEE Regulations ("**DCF**") where: (a) the DTS has been formally approved by the Secretary of State under the WEEE Regulations (on terms acceptable to Valpak); and (b) Valpak has collected sufficient funding; and (c) such DCF is still a CA Site and meets the criteria for approval as a designated collection facility as set out in Schedule 9 of the WEEE Regulations.
- 15 In this Agreement the "**Fees**" mean: (a) £6,000 for each DCF; plus (b) up to an additional £3,000 for each DCF where and to the extent Valpak believes that such additional funding is appropriate (acting reasonably) in line with the operational plan submitted by Valpak to the DTI as part of the process for approval of the DTS.
- 16 No payments shall be made by Valpak under this Agreement in relation to any DCF where such DCF: (a) was not a CA Site prior to 1 July 2007; and/or (b) was notified by the Authority to Valpak under clause 10 after 30 June 2008.
- 17 The Fees shall be exclusive of VAT (where and to the extent that this is applicable) and in relation to each DCF shall (subject to clause 14) be paid within 30 days from the date that Valpak received written notification from the Secretary of State that such DCF had been

approved as a designated collection facility by the Secretary of State under the WEEE Regulations.

- 18 (Once the DTS has been formally approved by the Secretary of State under the WEEE Regulations (on terms acceptable to Valpak)) Valpak shall publish details of each Nominated CA Site that has been approved as a designated collection facility by the Secretary of State under the WEEE Regulations together with details of the associated Authority. This may be achieved through such means as Valpak may from time to time decide including but not limited to (where appropriate) on the recycle more website.

Authority's obligations

- 19 (Without prejudice to any other rights and remedies Valpak may have) where the Authority has received any payment from Valpak in accordance with this Agreement for any DCF and that DCF subsequently:
- (a) ceases to be a CA Site;
 - (b) ceases to be a designated collection facility under the WEEE Regulations; and/or
 - (c) does not meet the criteria for approval as a designated collection facility as set out in Schedule 9 of the WEEE Regulations

then the Authority shall promptly notify Valpak and shall on request refund to Valpak such proportion of the sums paid in accordance with this Agreement in relation to such DCF as Valpak may specify (acting reasonably).

- 20 (Where the Authority has requested and received more than £6000 in Fees in relation to any DCF) the Authority shall in relation to such DCF ensure that all Fees received by the Authority in relation to that DCF shall be spent in accordance with: (a) the relevant application form and associated information submitted by the Authority to Valpak in relation to that DCF; and (b) any requirements Valpak may reasonably specify.
- 21 The Authority shall provide such co-operation, assistance, information, records and reports as Valpak may reasonably require from time to time and the Authority shall comply with all reasonable instructions and requirements given and requests made by Valpak from time to time. The Authority shall promptly notify Valpak of any change in any of the information supplied by the Authority to Valpak in connection with this Agreement.
- 22 (Without prejudice to clause 21) the Authority 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 WEEE Regulations; (b) in relation to the WEEE Regulations; and (c) to enable Valpak to comply with any request by and/or requirement of any appropriate agency, governmental authority and/or any other regulatory and/or competition authority.
- 23 The Authority warrants to Valpak that: (a) it has authority to enter into this Agreement and that by entering into this Agreement it shall not be in breach of any other agreement; and (b)

the person responsible for completing the relevant application form and submitting this to Valpak has authority to enter into this Agreement for and on behalf of the Authority.

Intellectual property rights

- 24 The Authority acknowledges and agrees that Valpak is and shall remain the owner of any database created by or on behalf of Valpak in relation to this Agreement and any and all intellectual property rights arising from and/or created under or in relation to such database and/or this Agreement.

Limitation of liability

- 25 Nothing in the Agreement shall exclude or restrict either 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.
- 26 (Subject to clause 25) Valpak shall not be liable to the Authority (in contract, tort (including but not limited to negligence), misrepresentation or otherwise) for any loss or damage suffered or incurred by the Authority (or its employees, agents, sub-contractors or any third party) (even if the loss or damage is reasonably foreseeable or the possibility of such loss or damage occurring has been advised) arising from: (a) any circumstances outside Valpak's reasonable control; (b) the Authority's failure to comply with the Agreement; (c) loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings; and/or (d) consequential, special or indirect loss or damage.
- 27 (Subject to clauses 25 and 26) Valpak's entire liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise for all matters arising out of or in connection with this Agreement shall not exceed the total Fees paid by Valpak to the Authority under this Agreement.
- 28 The provisions of clauses 25 and 28 (inclusive) shall survive the expiry or the termination of this Agreement for whatever reason.

Variation

- 29 This Agreement may be varied by Valpak in whatever way reasonably required by Valpak to: (a) conform to the requirements of the WEEE Regulations and/or any appropriate non-statutory guidance; and/or (b) comply with any undertaking requested of Valpak by any appropriate agency, governmental authority and/or any other appropriate regulatory and/or competition authority.

Termination

- 30 Either party may terminate this Agreement with immediate effect by giving written notice to the other party in the following circumstances:

- (a) if the other party commits any material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the other party being notified of the breach;
 - (b) where Valpak does not (for whatever reason) submit any application for formal approval of the DTS under the WEEE Regulations by the relevant deadline for such application or where Valpak has not successfully appealed (for whatever reason) any decision of the Secretary of State to refuse to formally approve the DTS under the WEEE Regulations (on terms acceptable to Valpak); and/or
 - (c) (where the DTS has been formally approved by the Secretary of State under the WEEE Regulations (on terms acceptable to Valpak)) where the formal approval of the DTS is withdrawn for any reason under the WEEE Regulations and Valpak has not successfully appealed (for whatever reason) such decision to withdraw such approval under the WEEE Regulations.
- 31 Valpak may terminate this Agreement with immediate effect by giving written notice to the Authority where the DTS collects insufficient funding and/or attracts insufficient membership (for whatever reason).
- 32 Termination or expiry (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 or expiry as appropriate 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.

General

- 33 This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral agreements, understandings or arrangements between the parties relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement that is not expressly set out in this Agreement save for any representation made fraudulently.
- 34 (Subject to clause 29) no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties. A waiver of any term, provision or condition of this Agreement shall be effective only if given in writing and signed by the waiving party.
- 35 No failure or delay on the part of any party in exercising any right, power or privilege under this 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.
- 36 Each provision of this Agreement is severable and distinct from every other provision. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, this shall not affect the other provisions of this Agreement or the remainder of the affected provision, which shall remain in full force and effect.

- 37 Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute or be deemed to constitute a partnership, association, joint venture, agency or any other co-operative entity.
- 38 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 39 All rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and/or remedies, provided under this Agreement and/or by law.
- 40 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.