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**A G R E E M E N T**

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**IN RELATION TO MEMBERSHIP OF BIFFPACK**

**BETWEEN**

**BIFFA WASTE SERVICES LTD**

**AND**

Full Name: \_\_\_\_\_

Whose [registered office is situated at] address is: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The following are the rules and regulations to be observed by the members of the Scheme known as Biffpack operated by Biffa.

## **1. Definitions**

In these Conditions the following words and expressions unless the context otherwise dictates shall have the following meanings:

<b>“Adverse Market Conditions”</b>	conditions of the market for recovered or recycled materials or products in which on reasonable grounds the Operator of the Scheme considers it uneconomic or impractical to acquire such materials or products in connection with the performance of the Member's Recovery and Recycling Obligations as are not already within the ownership and control of the Operator of the Scheme
<b>“Agency”</b>	Environment Agency or Scottish Environmental Protection Agency or successor body from time to time.
<b>“Application”</b>	is the provision by the Member of a completed packaging flow data form, application form, signed Agreement and payment of the annual fee.
<b>“Biffa”</b>	Biffa Waste Services Limited whose registered office is at Coronation Road, High Wycombe, Buckinghamshire HP12 3TZ
<b>“Conditions”</b>	these rules and regulations
<b>“Fee”</b>	any fee or other charge or levy payable under the Conditions
<b>“Initial Period”</b>	In relation to a Three Year Member, the first period of three Scheme Years.
<b>“Member”</b>	Member of the Scheme
<b>“Operator of the Scheme”</b>	Biffa or its successors or assignees from time to time
<b>“PRNs”</b>	Packaging Waste Recovery Notes or Packaging Export Waste Recovery Notes provided by reprocessors in respect of packaging waste received for recovery or recycling
<b>“Preceding Year”</b>	the calendar year immediately preceding the Scheme Year
<b>“Producer Responsibility Obligations”</b>	the producer registration recovery and recycling obligations and certifying obligations specified in Regulation 3 of the Regulations
<b>“Recovery and Recycling Obligations”</b>	the recovery and recycling obligations included in the Producer Responsibility Obligations
<b>“Regulations”</b>	the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2008
<b>“Scheme”</b>	the Scheme under the name Biffpack registered with the Agency under the Regulations
<b>“Scheme Year”</b>	a calendar year beginning on 1 <sup>st</sup> January
<b>“Secretary of State”</b>	the Secretary of State for the Environment or the Secretary of State for Scotland or his successors from time to time
<b>“Successive Periods”</b>	In relation to a Three Year Member, each period of three Scheme Years following the Initial Period.
<b>“Three Year Member”</b>	a Member of the Scheme in accordance with condition 13 of these Conditions.

1.2 In these conditions the singular unless the context otherwise dictates includes the plural and vice versa and reference to any gender shall include any other gender.

1.3 Any reference to any statute, byelaw or regulation shall include any modification or re-enactment thereof.

## **2. Obligations of the Operator of the Scheme**

2.1 The Operator of the Scheme will use reasonable endeavours to perform:

2.1.1 the Recovery and Recycling Obligations of the Member whilst it is a Member during the period of registration of the Scheme;

2.1.2 any other operations of the Scheme as required by the Regulations.

in each case using such skill and expertise reasonably to be expected from an operator of a scheme registered under the Regulations.

- 2.2 The obligations contained in condition 2.1 shall be conditional upon the Member complying with the Conditions and there being no Adverse Market Conditions.
- 2.3 The obligations contained in condition 2.1 shall cease upon the cancellation of the Scheme under the Regulations.

### **3. Obligations of the Member**

- 3.1 The Member will observe and perform the obligations imposed upon the Member under these conditions.
- 3.2 The Member will not whilst a member of the Scheme:
- 3.2.1 be a member of any other scheme under the Regulations;
  - 3.2.2 register or continue registration as a producer under the Regulations with the Agency otherwise than through the Scheme;
  - 3.2.3 seek to comply with its Recovery and Recycling Obligations otherwise than through the Scheme;
  - 3.2.4 seek to comply with the other Producer Responsibility Obligations otherwise than through the Scheme.
- 3.3 The Member shall, by 1 September in any Scheme Year notify the Operator of the Scheme how many PRNs it will supply for the current Scheme Year and the Member shall be obliged to supply the number of PRNs so indicated by 1 December in the current Scheme Year and shall indemnify the Operator of the Scheme in respect of all costs incurred if it fails to supply the number of PRNs indicated.
- 3.4 The Member will forthwith upon receipt make available to the Scheme the benefit of any PRNs that the Member obtains and the Operator of the Scheme may (at its entire discretion) purchase the PRNs from the Member in accordance with condition 12 hereof.

### **4. Provision of Information**

- 4.1 The Member shall provide the Operator of the Scheme such information (including without limitation computer data on disk or other suitable media in such form as the Operator of the Scheme may reasonably require) and within such time limits in each case as may be reasonably required by the Operator of the Scheme for the purposes of the Scheme and in particular without limitation such information as shall be required to enable the Regulations to be observed and performed.
- 4.2 The Member shall promptly notify the Operator of the Scheme of any change in any information provided to the Operator of the Scheme under condition 4.1 or any previously notified change under this condition 4.2.
- 4.3 Without prejudice to the generality of the foregoing the Operator of the Scheme shall be entitled to require the Member to produce information in connection with any recovery recycling or reuse of waste materials currently undertaken by the Member otherwise than in the performance of the Producer Responsibility Obligations.
- 4.4 Any information provided by the Member (under this condition 4 or otherwise) shall be accurate and complete. The Member warrants that all information provided to the Operator of the Scheme under this Condition 4 or otherwise shall be accurate and complete.
- 4.5 The Operator of the Scheme shall be entitled to disclose information provided by Members to the Agency or any governmental public national international or European authority for the purposes of the operation of the Scheme.

- 4.6 The Member shall permit the Operator of the Scheme and the Agency to inspect any of the accounts and records as may be required in order to satisfy the requirements of the Regulations or the Conditions.

## **5. Group Membership**

- 5.1 In this condition the following expressions shall unless the context otherwise dictates have the following meanings:

<b>“Group”</b>	the Member the holding company of the Member and any subsidiary of the Member or its holding company as these expressions are defined in Section 736 of the Companies Act 1985.
<b>“Group Accounts”</b>	the approved audited consolidated profit and loss accounts and balance sheet of the Group for the latest accounting period available
<b>“Group Member”</b>	A Member referred to in condition 5.2
<b>“Group Turnover”</b>	the consolidated aggregate turnover of the Group as disclosed by the Group Accounts adjusted for any period if greater or lesser duration than 12 months

- 5.2 The condition has application to any Member who is a member of a Group.
- 5.3 The Member has with its application for membership of the Scheme disclosed full details of all other members of the Group to be covered by the Scheme and warrants to the Operator of the Scheme the accuracy of such details as at the date of the Application.
- 5.4 The Member shall promptly notify the Operator of the Scheme of any change in any details disclosed as referred to in condition 5.3 or any previously notified change under this condition 5.4.
- 5.5 The Member hereby warrants and represents to the Operator of the Scheme that the Member has the authority of each other Group Member as at the date hereof to apply for membership of the Scheme on behalf of itself and each other Group Member and the signature of the Member to the application shall bind each other Group Member jointly and severally to observe and perform the Conditions.
- 5.6 The Group Member on behalf of itself and each other Group Member shall pay a Fee in respect of each Scheme Year.
- 5.7 At or after the commencement of the Scheme Year the Member shall if required provide to the Operator of the Scheme a copy of the latest Group Accounts disclosing the Group Turnover.
- 5.8 If Group Accounts are for reasons outside the control of the Member not available the Operator of the Scheme shall be entitled to require the Member to supply such information as may be reasonably required to ascertain the amount of the consolidated aggregate turnover of the Group and the Member shall deliver such information to the Operator of the Scheme within such time limit as may be reasonably required by the Operator of the Scheme.
- 5.9 Any member of the Group other than the Member who ceases to be a member of the Group shall cease forthwith to be a member of the Scheme.
- 5.10 Where after the date of the application another company becomes a member of the Group the Member shall apply to the Operator of the Scheme to have such company admitted as a member of the Scheme subject to the approval of the Operator of the Scheme and admission of any such company shall be subject to payment of a fee.

## **6. Non Group Membership**

- 6.1 This condition has application to any Member who is not a Member of a Group as defined by condition 5.1.

- 6.2 In this condition the following expressions shall unless the context otherwise dictates have the following meanings:
- “**Accounts**” the approved audited profit and loss account and balance sheet of the Member for the latest accounting period available
- “**Turnover**” the aggregate turnover as disclosed by the Accounts adjusted for any period of greater or lesser duration than 12 months
- 6.3 The Member warrants that it is not a Member of a Group as defined in condition 5.1.
- 6.4 The Member shall pay a Fee in respect of each Scheme Year.
- 6.5 At or after the commencement of each Scheme Year the Member shall if required provide the Operator of the Scheme a copy of the latest Accounts disclosing the Turnover.

## **7. Payment Provisions Generally**

- 7.1 All sums payable under the Conditions will be exclusive of Value Added Tax or any similar impost or levy.
- 7.2 All sums payable by any Member shall be free of any deduction set off or counterclaim.
- 7.3 Any Fee payable shall become due and payable in accordance with the provisions of condition 9. Time of payment shall be of the essence of this agreement.
- 7.4 Any sum due and payable by the Member which has not been paid by the date upon which the same shall be due and payable shall carry interest at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the date of payment until the date of actual payment.
- 7.5 If any Member shall during a Scheme Year become liable for a Fee calculated on a structure different from that obtaining at the commencement of the Scheme Year such adjustments to the Fee shall be made by the Operator of the Scheme as shall be appropriate and any additional Fee shall become due and payable within 30 days of demand therefore by the Operator of the Scheme.

## **8. Reporting to Members**

In relation to the Preceding Year if requested by the Member the Operator of the Scheme may supply to the Member such information as agreed by the Operator of the Scheme which is readily available without additional cost or burden to the Operator of the Scheme and which is relevant to the Member's membership of the Scheme as is reasonably requested by the Member PROVIDED THAT the Member shall not make a request under this condition 8 more than once in any Scheme Year.

## **9. Fees**

The Member shall be liable for a Fee in respect of each Scheme Year or part thereof which shall comprise:

- 9.1 an annual fee at the rate for the time being determined by the Operator of the Scheme which shall become due and payable upon Application and thereafter in relation to successive Scheme Years within 30 days of the date of the invoice.
- 9.2 a quarterly charge or levy which shall become due and payable within 30 days of the date of the invoice and shall be the aggregate of:
- 9.2.1 the Member's Recovery and Recycling Obligation in the relevant Scheme Year divided by four and
- 9.2.2 any costs (including but not limited to labour and administration costs) incurred by the Operator of the Scheme and arising from the purchase of PRNs in accordance with condition 2.1 and sub-condition 2.1.1 hereof.

9.3 Fees are paid as a deposit and are non-refundable.

## **10. Indemnity**

The Member hereby agrees to indemnify the Operator of the Scheme from and against all demands claims liabilities losses damages costs and expenses whatsoever (including all legal and other costs and expenses) and from and against all actions and proceedings which may be commenced taken or made against the Operator of the Scheme arising in relation to or in connection with:-

- 10.1 any material failure by the Member duly and punctually to provide any information which the Member is obliged to provide under the Conditions
- 10.2 any of the information provided by the Member under the Conditions being false inaccurate misleading or incomplete in any material respect

## **11. Term of Membership and Termination of Membership**

Membership shall continue unless terminated as follows:

- 11.1 by the Operator of the Scheme forthwith by notice in writing to the Member in the event that the Member
  - 11.1.1 for any reason fails to perform or suspends performance of all or any part of the obligations under conditions 4.1 and 4.4
  - 11.1.2 fails to pay any sum properly due in accordance with these Conditions
  - 11.1.3 is in breach of any of its obligations under the Conditions which if capable of remedy is not remedied within the time specified by, and to the satisfaction of, the Operator of the Scheme
  - 11.1.4 goes into liquidation whether compulsory or voluntary (except for the purpose of a bona fide reconstruction or amalgamation with the consent of the Operator of the Scheme)
  - 11.1.5 has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator
  - 11.1.6 convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up; or
- 11.2 by the Operator of the Scheme by not less than 30 days' notice in writing to the Member; or
- 11.3 by the Member by notice in writing to the Operator of the Scheme to take effect on 31 December during the current Scheme Year, PROVIDED THAT such notice is received by the Operator of the Scheme by 30 September in the current Scheme Year.
- 11.4 The Member shall notify the Operator of the Scheme if the Member shall after termination of Membership become a member of another Scheme registered under the Regulations during the remainder of the Scheme Year in which termination of Membership took effect.
- 11.5 The termination of Membership for whatever cause shall not affect any provision of the Conditions which is expressed to survive or operate in the event of such termination and shall not prejudice or affect the rights of either party against the other in respect of any breach of the Conditions or any monies payable by one party to the other in relation to any period prior to termination and in particular without limitation shall not affect the entitlement of the Scheme to any PRNs made available to it in accordance with the Conditions prior to termination.

## **12. Purchase of PRNs From the Member**

- 12.1 If the Operator of the Scheme agrees to purchase PRNs from the Member then the Operator of the Scheme shall pay to the Member within 30 days of receipt of a valid invoice (such invoice not to be issued before Biffa has acknowledged receipt of the PRNs) an amount per PRN supplied which is equal to the average price paid by the Operator of the Scheme for a relevant PRN. The average price shall be calculated by dividing the total cost of the relevant PRNs secured by the Operator of the Scheme in the relevant quarter by the number of relevant PRNs secured by the Operator of the Scheme in the relevant quarter. In this Clause 12.1, "relevant PRNs" refers to PRNs of any type which may be used to meet either the recycling or recovery obligation.
- 12.2 A Member may, instead of supplying a PRN, supply other documentary information when using a non-accredited reprocessor ("Alternative Evidence") but acceptance of such Alternative Evidence by the Operator of the Scheme is subject to receipt of written approval from the Agency. For the avoidance of doubt, approved Alternative Evidence must be submitted on or before 1 September in any Scheme Year.

**13. Three Year Membership**

- 13.1 A Member shall be a Three Year Member if the parties have signed this Clause 13 and the provisions of this condition 13 shall apply and take precedence over any conflicting Conditions but, for the avoidance of doubt, the Conditions shall otherwise apply to a Three Year Member.
- 13.2 The annual fee referred to at condition 9.1 shall be fixed for the Initial Period and for each Successive Period and shall become payable on 1 January of each Scheme Year.
- 13.3 The right to terminate at condition 11.3 shall not apply during the Initial Period and during any Successive Periods.
- 13.4 On the expiry of the Initial Period membership shall continue for Successive Periods unless terminated as follows:
- 13.4.1 by the Operator of the Scheme in accordance with condition 11.1 (and sub-conditions 11.1.1 to 11.1.6) and condition 11.2;
- 13.4.2 by the Three Year Member forthwith by notice in writing to the Operator of the Scheme in the event of any material breach by the Operator of the Scheme of its obligations under the Conditions which if capable of remedy it shall not have remedied to the reasonable satisfaction of the Three Year Member; or
- 13.4.3 by the Three Year Member by not less than 92 days' notice in writing to the Operator of the Scheme PROVIDED THAT such notice is received by the Operator of the Scheme on or before 30 September in the third Scheme Year of the Initial Period or 30 September in the third Scheme Year of any Successive Periods.

**Signed by the authorised representative of the Member**

**Signed by the authorised representative of Biffa**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**14. General**

- 14.1 The provisions of the Conditions shall be binding on and enure to the benefit of the successors and personal representatives of each party hereto and the Member shall not be entitled to assign or transfer any of its rights or obligations under the Conditions.
- 14.2 Except as provided in this clause 14 these Conditions may not be altered modified or amended other than by the mutual written agreement of the Operator of the Scheme

and the Member.

- 14.3 The Operator of the Scheme may at any time amend modify or add to any provision of the Conditions if required by or as a consequence of any statute directive of the European Union byelaw regulation order or guidance from the Department of the Environment or its successor and any such amendment modification or addition shall become binding upon the Member and the Operator of the Scheme 30 days (or such lesser time as specified in the notice) after the Operator of the Scheme has published or otherwise notified the Member of such amendment modification or addition.
- 14.4 The Operator of the Scheme shall give at least 30 days notice to the Member of the Conditions which shall become binding upon the Member and the Operator of the Scheme from the commencement of the next Scheme Year unless Membership of the Scheme is terminated in accordance with condition 11.3.
- 14.5 For the avoidance of doubt any change in the quarterly charge or levy payable under condition 9.2 shall not be deemed to be an amendment modification or addition under this condition 14 and shall not require any notice to the Member.

**15. Notices**

- 15.1 Any notice given or made under the Conditions shall be in writing and may be delivered to the relevant party or sent by first class prepaid letter to the address of that party specified in the Conditions or such other address in the United Kingdom as may be notified under the Conditions by that party from time to time for the purpose shall be effectual notwithstanding any change of address not so notified. Any notice given or made under the Conditions to the Operator of the Scheme shall be addressed to the Company Secretary.
- 15.2 Each such notice or communication shall be deemed to have been given or made and delivered if by letter 48 hours after posting or if by delivery when left at the relevant address.

**16. Governing Law**

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

**Signed by the authorised representative  
of the Member**

**Signed by the authorised  
representative of Biffa**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Occupation

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Date