



Department  
for Environment  
Food & Rural Affairs

T: 03459 335577  
helpline@defra.gov.uk  
[www.gov.uk/defra](http://www.gov.uk/defra)

[REDACTED]  
Valpak Limited

**Our ref: EV0491/31476**

**Date: 17 February 2021**

Dear [REDACTED]

**Award of Contract for the Supply of Review of the Packaging (Essential Requirements) Regulation 2015**

Following your tender for the Supply of Review of the Packaging (Essential Requirements) Regulation 2015 The Department for Environment, Food and Rural Affairs (Defra) we are pleased to award this contract to you. The Packaging (Essential Requirements) Regulations were introduced in 1998<sup>1</sup> and consolidated in 2015<sup>2</sup>. The aim of the Regulations is to reduce the impact that packaging has on the environment by minimising its weight and volume, requiring that it can be reused, recycled or recovered, and introducing tolerances on the amount of toxic heavy metals permitted and minimising noxious or hazardous substances released during waste management.

Organisations which are affected by the Packaging (Essential Requirements) Regulations 2015, include those that:

- pack or fill packaging and place packaged products onto the United Kingdom (UK) market
- import packaging filled and ready to be placed on the UK market
- design or manufacture packaging
- recondition packaging (i.e. for reuse)
- brand/trademark packaging

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/1998/1165/contents/made>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2015/1640/contents/made>

For the purposes of the Agreement, the Authority and the Supplier agree as follows:

- | Authority   | Supplier  |
|---|---|
| <p>Defra EU Exit Waste<br/>Waste &amp; Recycling Programme<br/>Environment Quality Directorate<br/>Environment &amp; Rural DG Group</p> <p>[Redacted]</p> <p><b>Attention:</b> [Redacted]</p> <p><b>Email:</b> [Redacted]</p> | <p>Valpak Limited</p> <p>[Redacted]</p> <p><b>Attention:</b> [Redacted]</p> <p><b>Email:</b> [Redacted]</p> <p><b>Cc:</b> [Redacted]</p> <p><b>Cc:</b> [Redacted]</p> |

6. The following persons are Key Personnel for the purposes of the Agreement:

Name	Title
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

7. For the purposes of the Agreement the **data security requirements** as indicated in the Terms and Conditions **No11: Confidentiality, Transparency and Publicity and the Environmental Policy** is also mentioned in the attached Terms and Conditions as stated in **No:12 Freedom of Information**

8. The Authority may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

## Payment

Our preference is for all invoices to be sent electronically, quoting a valid purchase order number (PO Number), to [REDACTED]

Please also copy to [REDACTED] Alternatively, you may post to [REDACTED] (the Authority’s preferred option); or [REDACTED]. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [REDACTED] (the Authority’s preferred option); or [REDACTED] between 09:00-17:00 Monday to Friday.

## Liaison

For general liaison your contact will continue to be [REDACTED] by email [REDACTED] or tel: [REDACTED] in their absence, [REDACTED] by email [REDACTED]

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. The [Authority] would be grateful if you could arrange the contract to be executed, by way of electronic signature, on behalf of Valpak Limited and within 7 days by **16 February 2021**.

**Execution of this award notification letter is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract will be formed on the date on which both Parties communicate acceptance of its terms on the Authority's eSourcing System.**

As of 23:00 of 31st December all future notices that are equal or above threshold relating to Defra group opportunities and awards will be advertised on the Finder a Tender Service (FTS), the replacement for the OJEU. The URL of the new UK e-notification service is [www.find-tender.service.gov.uk](http://www.find-tender.service.gov.uk). Access to this site will go live at 23:00 on 31st December 2020.



Department  
for Environment  
Food & Rural Affairs

# **Conditions of Contract Short Form – Services February 2021**

**EV0491- 31476**

**Annex 1**  
**Terms and Conditions of Contract for Service**

**Interpretation**

In these terms and conditions:

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Award Letter”	means the letter from the Customer to the Supplier printed above these terms and conditions;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-Ministerial Department; or</li><li>(d) Executive Agency;</li></ul>
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the person named as Customer in the Award Letter;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified

as such by the Customer to the Supplier in writing;

“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.1 In these terms and conditions, unless the context otherwise requires:

- 1.1.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.1.3 the headings to the clauses of these terms and conditions are for information only and

- do not affect the interpretation of the Agreement;
- 1.1.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.1.5 the word 'including' shall be understood as meaning 'including without limitation'.

## **2 Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within [7] days of the date of the Award Letter.

## **3 Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
- 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

## **4 Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

## **5 Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.



- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
  - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
  - 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6 Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely

responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **7 Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
  - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of

the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

- 8.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **9 Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Supplier hereby grants the Customer:
  - 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
  - 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
    - (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
    - (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## **10 Governance and Records**

- 10.1 The Supplier shall:
  - 10.1.1 attend progress meetings with the Customer at the frequency and times specified by

the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11 Confidentiality, Transparency and Publicity**

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in

accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12 Freedom of Information**

- 12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so

12.1.5

12.1.6 by the Customer.

- 12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13 Protection of Personal Data and Security of Data**

- 13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

- 13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:

13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection

Principle in Schedule 1 to the DPA;

13.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;

13.2.3 promptly notify the Customer of:

- (a) any breach of the security requirements of the Customer as referred to in clause 13.3; and
- (b) any request for personal data; and

13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.

13.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

## **14 Liability**

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## **15 Force Majeure**

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **16 Termination**

- 16.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
  - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
  - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
  - 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Supplier shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
  - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17 Compliance**

- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

17.2 The Supplier shall:

- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Supplier shall:

- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
- 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.

17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

- 17.5.1 the Official Secrets Acts 1911 to 1989; and
- 17.5.2 section 182 of the Finance Act 1989.

## 18 Prevention of Fraud and Corruption

18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:

- 18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## 19 Dispute Resolution

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.



- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20 General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22 Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## Annex 2 - Costs

The Customer, will pay to the Contractor no more than the fixed sum of **£22,825** (exclusive of VAT)

Year	Amount
2020/2021	£22,825
Total	<b>£22,825</b>

1. Subject to any variation of the Project, the amount in paragraph 1, above, shall remain firm throughout the duration of the Agreement.
2. In the event that the Agreement is varied, the amount in paragraph 3.3 shall be adjusted by such reasonable sum as may be agreed, in writing, between the Customer and the Contractor.
3. The Contractor will be paid by invoice following satisfactory completion of all the deliverables in the Deliverable Table below
4. Within 30 days of receiving an invoice satisfactory to the Customer, the Customer shall pay to the Contractor the amount of the Eligible Costs which the Customer reasonably consider to have been properly incurred by the Contractor in the carrying out of the Project during the relevant period.



**Table 1: Milestone**

Column1	Task	Target date (dd/mm/yyyy)	Description of milestone	Cost (£)
1	WP1 Regulations and Requirements	26/02/2021	To have completed the proposed aspects of WP1, subject to the condition	16400
2	WP2 Economic Assessment	31/03/2021	To have completed the proposed aspects of WP2, subject to the condition	5150
3	Project Management and Reporting	31/03/2021	To have completed the proposed aspects of the project including reporting	1275
			<b>Total</b>	<b>22825.00</b>

## **Annex 2/3 – Specification**

### **The Packaging (Essential Requirements) Regulations 2015**

#### **Aim**

To review the implementation and effectiveness of The Packaging (Essential Requirements) Regulations 2015<sup>3i</sup> and make recommendations to inform potential improvements to the Regulations and wider policy on producer responsibility for packaging. In addition, undertake an economic analysis of a limited number of recommendations as agreed with the Authority.

#### **Background**

The Packaging (Essential Requirements) Regulations were introduced in 1998<sup>4</sup> and consolidated in 2015<sup>5</sup>. The aim of the Regulations is to reduce the impact that packaging has on the environment by minimising its weight and volume, requiring that it can be reused, recycled or recovered, and introducing tolerances on the amount of toxic heavy metals permitted and minimising noxious or hazardous substances released during waste management.

Organisations which are affected by the Packaging (Essential Requirements) Regulations 2015, include those that:

- pack or fill packaging and place packaged products onto the United Kingdom (UK) market
- import packaging filled and ready to be placed on the UK market
- design or manufacture packaging
- recondition packaging (i.e. for reuse)
- brand/trademark packaging

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<sup>3</sup> <https://www.legislation.gov.uk/uksi/2015/1640/contents/made>

<sup>4</sup> <https://www.legislation.gov.uk/uksi/1998/1165/contents/made>

<sup>5</sup> <https://www.legislation.gov.uk/uksi/2015/1640/contents/made>

## **Packaging Requirements**

Packaging that does not meet the essential requirements as set out in Schedule 1 of the 2015 Regulations or exceeds the set heavy metal content limit (as specified in Part 3 (5) of the 2015 Regulations) cannot be placed onto the UK market<sup>6</sup>.

If a business is obligated under these Regulations, packaging must be designed and/ or used that conforms to the specific requirements in relation to weight and volume, recyclability and recoverability. In terms of packaging volume and weight, this means it must be the minimum amount to maintain the necessary levels of safety, hygiene and acceptance for the packed product and for the consumer. The business must also adhere to the limits on heavy metal substances<sup>7</sup> and the requirements for the minimisation of release of hazardous or noxious substances.

In addition, the business is required to retain evidence that any packaging used conforms with these Regulations. This evidence should be kept for four years, starting from the date that the packaging was first placed on the market and must be made available to an enforcement authority within 28 days of their request.

The enforcement authorities are the Local Authority Trading Standards Departments in Great Britain and the Department for the Economy in Northern Ireland.

Regulation 12 requires the Secretary of State to review the operation and effect of these Regulations and publish a Report within five years after they come into force and within every five years after that.

Following a review of Regulation 12, it will fall to the Secretary of State to consider whether the Regulations should remain as they are or be revoked or be amended. This research will help to inform this review as stated above. It will be for the Authority to prepare the Post Implementation Review report.

Specifically, Regulation 12 states:

**12.—(1)** The Secretary of State must from time to time—

- (a) carry out a review of the effect of these Regulations,
- (b) set out the conclusions of the review in a Report; and
- (c) publish the Report.

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<sup>6</sup> [https://www.legislation.gov.uk/uksi/2015/1640/pdfs/ukxi\\_20151640\\_en.pdf](https://www.legislation.gov.uk/uksi/2015/1640/pdfs/ukxi_20151640_en.pdf)

<sup>7</sup> The aggregate heavy metal limits apply to cadmium, mercury, lead and hexavalent chromium in packaging or packaging components and require that the total by weight of such metals should not exceed 100 ppm (subject to some exemptions).

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how articles 9 and 11 of the Directive (which is implemented by means of these Regulations) are implemented in other member States.

(3) The Report must in particular—

(a) set out the objectives to be achieved by the regulatory system established by these Regulations,

(b) assess the extent to which those objectives have been achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first Report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

## **Objectives**

### **Work Package 1 (WP1) - Regulations and Requirements**

- To review the current Regulations and requirements with a view to:
  - Identifying how effective the Regulations have been in meeting the objectives.
  - Identifying if the Regulations have led to greater circularity - for example, have they driven change by leading to more packaging being reusable or more packaging being recoverable through either recycling or composting?
  - Determining whether the Regulations have driven packaging producers to innovate, or have the requirements of the Regulations largely been ignored including due to an apparent lack of enforcement?
  - If the Regulations have not driven change, identifying the measures or factors that have been more influential in driving change
  - Determining whether packaging producers adhere to any standards or packaging design guidelines to help them assess whether their packaging conforms to the regulations including the standards produced by the British Standards Institute<sup>8</sup> and any other internationally recognised standards.
  - Assessing the current monitoring and enforcement regime including:
    - the effectiveness of the current arrangements for monitoring and enforcement
    - the main reasons behind the apparent lack of enforcement

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<sup>8</sup> <https://shop.bsigroup.com/en/Browse-by-Sector/Manufacturing/Packaging/Packaging/>



- the level of awareness of the Regulations and how effectively they have been communicated to obligated businesses
- the key requirements of a monitoring and enforcement regime and whether this is better delivered at a local level (as now) or by a national regulator
- Identifying ways in which the Regulations could be improved to drive more circularity in the design and use of packaging including re-usable / refillable primary packaging.
- Making recommendations on changes to the Regulations in respect of the above, for example giving Ministers the powers to issue statutory guidance that packaging producers must have regard to, plus some core components in the Regulations themselves for good packaging design
- Identifying any issues arising from this review of the essential requirements Regulations and their possible amendment and governments' proposals to introduce Extended Producer Responsibility (EPR) for packaging<sup>9</sup>. As EPR will include measures to incentivise the design of packaging a consideration on how the Essential Requirements fit with or align with the wider reforms of the packaging producer responsibility regime is required.

Identifying any specific implications of the UK having left the European Union (EU) including opportunities to amend the Regulations and implications of any such amendments for Northern Ireland

## **Work Package 2 (WP2) – Recommendations**

The outputs of Work Package 1 will include recommendations on changes to the Regulations to improve outcomes and address shortcomings in the current Regulations as identified by the research. The purpose of Work Package 2 is to undertake an economic assessment of a number of these recommendations as agreed with the Authority. This is likely to require an analysis of between 3 and 5 recommendations.

**There will be break in the Contract after satisfactory completion of the requirements in Work Package 1. The Authority will consider the outcomes and determine if there is a requirement to continue with WP 2. The break clause will allow the Authority to terminate on completion of WP 1. Note that the tender will be evaluated in relation to both WP 1 and WP 2.**

**Note there will be a break clause inserted into the contract so that the research can potentially terminate on completion of WP 1.**

## **Approach and Methodology**

### **Work Package 1**

It is expected that much of the research will be undertaken via literature and other evidence (such as that available from the enforcement bodies or unpublished data obtained from stakeholders)

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<sup>9</sup> <https://consult.defra.gov.uk/environmental-quality/consultation-on-reforming-the-uk-packaging-produce/>

reviews. This includes, government guidance <sup>10</sup>, relevant reports by the Waste & Resources Action Programme (WRAP)<sup>11</sup> and the recent review of the EU Essential Requirements for packaging and packaging<sup>12</sup>. With respect to the latter this should include which, if any of the recommendations made in the report, may be relevant to the UK.

Stakeholder engagement will form a key part of the research, preferably via interview and including companies that manufacture packaging and companies that use packaging. Researchers should take account of any relevant information, including international examples of effective regulations and the Commission's review of the Essential Requirements referred to above.

There will also need to be engagement, preferably remotely via interview, with enforcement bodies and the Devolved Administrations. The researchers should attempt to determine the number of enforcement actions and any other helpful data related to compliance monitoring and enforcement. For example, numbers of cases that were started, dropped, taken to court, and resulted in fines or other action.

The Contractor should set out details of intended stakeholder engagement.

## **Work Package 2**

For WP2, the economic assessment of possible policy changes identified through WP1 and any others agreed with the Authority, there will need to be clearly documented workings, including all assumptions, and demonstration of the level of sensitivity of output results and conclusions to the assumptions made. All data and analysis spreadsheets must be handed over to the Authority on completion of WP2 so that, if necessary, further work can be undertaken, either by the Authority or externally commissioned.

## **Project Milestones and Deliverables**

The Project will start week commencing 18 January 2021 with the final report due to be completed by close on 31 March 2021, or within 7 working days of receipt of the Authority's comments on the draft report, whichever is the later. Please note, the Authority would prefer this Project to finish by the 31 March 2021 but if required to allow for effective Research and Stakeholder Engagement, Tenders for delivery to a later date (but not later than **30 April 2021**) will still be considered. A commitment to deliver by the 31 March 2021 will be considered as part of the Evaluation process by the panel to arrive at an overall score for each Tender.

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<sup>10</sup> Packaging Essential Requirements – Government Guidance Notes - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/460891/BIS-15-460-packaging-essential-requirements-regulations-gov-guidance-notes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/460891/BIS-15-460-packaging-essential-requirements-regulations-gov-guidance-notes.pdf)

<sup>11</sup> For example, Packaging Optimisation for SME's <https://wrap.org.uk/food-drink/business-food-waste/guide/packaging-optimisation-smes-0>

The Project Deliverables and indicative Project Timeline are presented in the Table below.

The Final Deliverables will include a full Report, with Executive Summary in Word or PDF, plus a Power Point summary slide pack with key points.

Researchers would also be expected to undertake a 45 minutes presentation with 15 minutes for discussion (probably virtual) to key parties within Defra on completion, to ensure that the outcomes of this are understood across the Department.

Milestone Number	Milestone	Deliverable	Delivery Date
1.	Project Inception Meeting (assume by conference call /Zoom)	Note of meeting to be prepared by the contractor	w/c 8th February 2021
2	Progress updates	Fortnightly teleconference/phone call to update the Defra Project Officer on progress.	Fortnightly or as issues arise.
3.	Completion of Work Package 1 and submission of draft report	Draft report setting out review findings and recommendations. To be provided by e-mail to the Defra Project Officer	By 26 February 2021, unless agreed otherwise with Defra and no later than close 19 March 2021
4.	Project review meeting (assume by conference call /Zoom)	Presentation of WP1 findings and recommendations	By 26 February 2021 unless agreed otherwise with Defra and no later than close 19 March 2021

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<sup>12</sup> Effectiveness of the Essential Requirements for Packaging and Packaging Waste and Proposals for Reinforcement, Final Report produced by Eunomia Research and Consulting Ltd, published by EU Commission

5.	Defra confirmation to proceed to WP2  Defra confirmation of the policy options to be assessed	Defra to confirm by email	By close 1 March 2021  unless agreed otherwise with Defra and no later than close 22 March 2021
6.	Completion of WP2 and submission of draft final report	Draft final report (DFR) incorporating the findings from WP1 and the results of WP2. To be provided by e-mail to the Defra Project Officer	By 26 March 2021  unless agreed otherwise with Defra and no later than 23 April 2021
7.	Completion of Final report	Final report that addresses Defra's comments on the DFR.  To be provided by e-mail to the Defra Project Officer	By 31 March 2021 unless agreed otherwise with Defra and no later than 30 April 2021, or within 10 working days of receipt of Defra's comments, whichever is the later.

## Payment

Please provide costs separately for WP1 and WP2. All payment will be made to successful tenderer according to the agreed milestones. However, where there has been an overpayment made by the Authority to the Contractor, such monies shall be a sum recoverable.

There will be two payment stages. The first payment (50% of total cost) will be made on completion of work package 1. The second and final payment (50% of total cost) will be made on delivery of work package 2 and final report.

## **Vadpak Limited Tender Response**

### **E01 – Organisational Experience, Capability and Resources**

#### **Introduction**

#### **Valpak Consulting**

Valpak Consulting is pleased to offer this response to the ITT. The project is of considerable interest to us and Valpak Consulting is well-placed to carry out this work given its extensive track record in:

- compliance with the packaging waste regulations
- understanding of the packaging landscape and development, including ownership of a packaging dataset containing over 21,000,000 SKUs, covering:
  - Packaging weight
  - Material composition by component
  - Dimension
  - Contents
  - Recyclability
  - Case size
  - Pallet size
- support given to over 4,000 member companies who are or have been obligated under the packaging waste regulations in all aspects of the requirements placed on them, including but not limited to the proactive and reactive actions regarding the essential requirements
- the assistance and support that we give our members in meeting other mandatory and voluntary commitments, such as the various iterations of the Courtauld commitment and other requirements such as the plastics pact and data submissions to the annual Greenpeace plastics survey.

#### *Oakdene Hollins*

Oakdene Hollins is a technical, science-led, circular economy consultancy that delivers creative, strategic, practical solutions to support clients to be environmental and sustainability leaders in their field. Oakdene Hollins is known as a leading analyst and developer of innovative approaches in the circular economy. Particular areas of expertise include:

- Resource efficiency
- Value chain optimisation
- Market and impact analysis
- Policy and accreditation
- Remanufacturing

#### **Working relationship - principles**

Within the project delivery, Oakdene Hollins will provide project management and scrutiny by overseeing the project and independently managing the one to one stakeholder engagement, providing a level of objectivity that complements the contractual arrangement between Valpak and its members. This will add a demonstrable level of additional robustness to findings contained within the final report and mitigate risk around bias that may be attributable to the Valpak relationship with the business and vice versa.

Valpak Consulting will provide existing relationships and contacts, and use existing comprehensive datasets in order to produce evidence of:

- High level insight into member understanding of and attitudes toward the essential requirements
  - And any actions that the existence of the regulations may generate
- Evidence of any changes to packaging design or that align to the objectives of the essential requirements between 2015/2016 and 2019<sup>1</sup>
- Member queries relating to enforcement action

Valpak Consulting (and the wider Valpak business) will also support on one to one engagement with businesses within the packaging supply chain as required, for example where a Valpak Key Account has been identified as a survey subject, and Valpak enjoy a productive relationship with the client, it may be beneficial to the overall aims of the project for Valpak Consulting to engage under the scrutiny of Oakdene Hollins.

Oakdene Hollins will undertake independent desk research (to cover all of the packaging sector and enforcement agencies) and devise the structure for, and complete, the engagement with businesses within the packaging supply chain.

## **Delivery**

We have assembled a high calibre team with the knowledge, capability, experience and necessary skills to deliver this project to an excellent standard.

The project team is comprised of staff from Valpak Consulting and Oakdene Hollins. Valpak Consulting (established in 1997) is the UK's leading packaging compliance scheme and has extensive commercial knowledge, experience and contacts within obligated business. Oakdene Hollins has decades of research, years of practical experience, and active programmes in the areas of competitor benchmarking, tack back modelling, circularity, identifying and defining best practice, resource efficiency and recycling.

Together, this combined experience enables us to provide a full capability to establish, describe and quantify the impacts that the essential requirements have had on packaging design.

Both Valpak Consulting and Oakdene Hollins have a well-established track record of successful delivery of projects and an excellent working relationship in partnership projects including in 2020:

- Review of the proposed Plastic Packaging Tax
- For WRAP Cost benefit analysis of restrictions on UK export of wastes and other measures
- for Material Focus (formally 'The WEEE Fund') on the impacts of COVID-19 and the subsequent lockdowns on EEE sales (in a WEEE context) and recycling.

Other examples of work completed by Oakdene Hollins includes:

- Glass container reuse study, FEVE (2020) – Our client and its members were concerned about the potential impacts the revision of the Essential Requirements would have if mandatory reuse targets for glass containers was included. We reviewed the revision of the Packaging Waste Directive essential requirements to understand the drivers behind and impacts of the revision and modelled the market landscape should the said reuse targets come into force. It was noted that this would have a major impact on the likes of the UK and France due to the very low market share of beverage packaging in refillable containers (unlike Germany, Croatia, Czech Republic, etc).

- Material flow analysis for an electronics product, Private Client (2019) – Supporting a client moving to increased product sustainability, a baseline of current material flows was conducted – using bill of materials data. All elements of the product and packaging were assessed including toxic/hazardous chemicals posing risk. Impact matrices were drawn up mapping the material risks alongside identifying opportunities for increased recyclability and recycled content within the specified products.
- Review and reduction of secondary and tertiary packaging for a global food and retail company, Private Client (2013) – Our client wished to reduce the secondary and tertiary packaging (i.e., packaging not part of the product sold to the consumer) used in the supply of their home and furniture products to distribution centres. Our work identified hotspot areas for significant financial and environmental savings, made recommendations for actions in order to achieve these savings and increase recyclability and drew out a major opportunity for plastics rationalisation.
- GlassRite - lightweighting, WRAP (2008). In addition to delivering glass savings of over 70,000 tonnes per year, the three GlassRite projects provided WRAP with a substantial base of information on overcoming the technical and consumer challenges to lightweighting, supported by numerous case studies of leading brands that had participated in the work.

## **Government Strategy**

Valpak Consulting have been involved in and contributed actively to policy development in waste management, recycling and producer responsibility for many years and has a strong track record of providing evidence-based and balanced input to Governments and other regulatory bodies. Valpak Consulting has undertaken numerous research projects and data analysis exercises to contribute to key policy areas including:

- Target setting to 2022 by assessing the impact of COVID-19 and lockdown on the packaging landscape by each of the packaging materials
- the potential for, and impact of, different deposit return systems
- new approaches to producer responsibility through our PackFlow 2025 project, and
- and produced a suite of detailed and authoritative packaging material flow projects and WEEE which have provided a sound basis for Government target setting and national performance reporting.

Valpak Consulting have recently completed our Packflow Covid-19 reports and analysis for packaging in the UK which establishes a comprehensive baseline dataset for packaging placed on the market, collections, UK domestic reprocessing and capacity, and exports. The analysis uses our packaging database (EPIC) to split packaging type (at individual SKU level) by material type and by sub material type. For example in plastics we are able to split out polymer type (PE, PET, PS, PVC etc), format (rigids, films), stream (Municipal & C&I), for glass by colour and for cardboard by cartonboard (and other packaging boards), corrugate, food carton and papers. We believe that the dataset on packaging is regarded by Government and industry as being the most up-to-date and robust available.

## **Summary**

In our team we have the necessary skills, experience data and resource to consider, quantify and document the impact of the essential requirements regulations. Valpak currently have direct access to c.2,000 obligated businesses and their subsidiaries, equating to over 28% of the total number of businesses obligated under the packaging waste regulations whom are responsible for 35% of the obligated packaging placed on the market. This is coupled with our unique and detailed insight into the UK's packaging profile through our Packaging database (known internally as EPIC – Environmental Product Information Centre), which currently contains comprehensive packaging information for over 21,000,000 products and has an archive stretching back to long before the 2015 review of the essential requirements. Furthermore, Valpak Consulting have a rich history in using our data and contacts to provide robust insight into the producer responsibility systems for packaging, WEEE and batteries for Government and other NGOs.

To complement this insight and experience, Oakdene Hollins bring a rounded environmental expertise, with deep insight into packaging, packing design and circularity. Their rigour and methodology will provide robust impartiality and additional third-party credence to any final report.

## **E02 – Proposed Project Team**

We have assembled a high calibre team with the knowledge, capability, experience and necessary skills to deliver this project to an excellent standard. The project team is comprised of staff from Valpak Consulting and Oakdene Hollins. Both parties have a well-established track record of successful delivery of projects and an excellent working relationship.

We believe the size and structure of the proposed project team will ensure that adequate resources have been allocated for all of the required roles and responsibilities to successfully deliver this project to the deadlines indicated in the ITT. In addition, we have arranged contingency support to draw on should project staff suffer illness or be otherwise unavailable during the project through unforeseen circumstances (drawdown of this contingency resource will not impact on project costs).

All project staff are on two months' notice as standard and those identified in key roles are on 3 months' notice. Through our annual resource plans key roles, single points of failure and flight risks are identified and plans are in place to cover these risks and maintain business continuity.

Details of the proposed project team and the team structure follow below with a brief summary of core areas of expertise and project examples relevant to this project.

## **E03 – Approach and Methodology (50%)**

This section of our response sets out our methodology and approach to the delivery of each of the work package objectives outlined in the ITT.

### **Work Package 1 - Regulations and Requirements**

To deliver this work package we will identify and review existing data sources, perform a literature review and engage in surveys of businesses obligated under the packaging waste regulations in order to collate relevant data on micro and macro packaging trends, packaging development drivers, enforcement action and knowledge of the regulations.



Oakdene Hollins (OH) shall manage and oversee the project, and Oakdene Hollins and Valpak shall complete 11 distinct components to meet the requirements of WP1. These are detailed below, with the lead organisation on each of the relevant parts referenced for completeness.

## **Literature Review**

### **Component 1: OH - Review Essential requirements – literature review (2 days)**

Oakdene Hollins shall complete an overview of published or reported impacts following the 2015 review of the regulations. This review will include but if not limited to:

- Reference to Essential requirements in national, trade and sector press. Example areas of focus include:
  - How companies meet the ‘minimal’ requirements, e.g. how many companies use the BSI standards or other forms of guidance from WRAP, INCPEN, etc?
  - How companies meet the ‘reuse and recoverability’ requirements due to incineration with energy recovery. WRAP recommends that this should not be considered a recovery route and that the focus should be on reuse and recyclability (including compostability)<sup>1</sup>
  - Are the noxious, hazardous substances, heavy metals targets based on legacy ingredients such as lead solder for sealing cans or cadmium as a stabiliser in PVC packaging and hence are they still relevant?
- Press coverage of enforcement actions
- Summary of published reports since 2015
  - Including *EU Report - effectiveness of essential requirements (2020) and Awareness and Exchange of Best Practices on the Implementation and Enforcement of the Essential Requirements for Packaging and Packaging Waste 2011*
- WRAP Guidelines

Oakdene Hollins shall also complete interviews with stakeholders including WRAP, WRAP Cymru and Zero Waste Scotland to quantify time and resource dedicated to essential requirements and level of engagement with businesses. Environment Agencies in the devolved administrations may also be contacted if required.

## **Data Analysis and Research**

### **Component 2: Valpak – Micro view based on specific examples (2 days)**

**Valpak** shall use its existing packaging database (EPIC) in order to quantify the changes to packaging identified on the *Illustrative Examples of Packaging* detailed in Schedule 5 of the regulation 3(2)<sup>1</sup>. Comparison shall be made between these product types in 2015 and 2019.

The packaging considered within this phase of the analysis would align to at least 10 of the illustrative examples as follows:

- Sweet boxes
- Film overwrap around a CD case
- Mailing pouches for catalogues and magazines (with a magazine inside)
- Cake doilies sold with a cake
- Rolls, tubes and cylinders around which flexible material (e.g. plastic film, aluminium, paper) is wound, except rolls, tubes and cylinders intended as parts of production machinery and not used to present a product as a sales unit
- Flower pots intended to be used only for the selling and transporting of plants and not intended to stay with the plant throughout its lifetime

- Glass bottles for injection solutions
- CD spindles (sold with CDs, not intended to be used as storage)
- Clothes hangers (sold with a clothing item)
- Matchboxes
- Sterile barrier systems (pouches, trays and materials necessary to preserve the sterility of the product)
- Beverage system capsules (e.g. coffee, cacao, milk) which are left empty after use
- Refillable steel cylinders used for various kinds of gas, excluding fire extinguishers

These items would be assessed against the 6 basic principles of packaging optimisation as defined by WRAP:

- By Minimisation measured in weight
- By Preparing for re-use by secondary research and examples
- By Recyclability by OPRL guidelines
- By Transport Efficiency by case size and pallet size
- For Biodegradability/ compostability by secondary research
- By Material or energy recovery by calorific value

### **Component 3: Valpak Macro View - sector and category comparison (minimisation, recyclability and transport efficiency) (3.5 days)**

Valpak would use comparative data from its EPIC database and historical PackFlow reports and Eurostat where appropriate to establish packaging changes between two date points (proposed to be 2015 and 2019) to understand the difference in relation to:

- average weight of packaging
  - to quantify the change in performance in relation to primary, secondary and tertiary minimisation
- Proportion of products that would be considered 'widely recycled'
  - By the OPRL definition
- The number and weight of items contained within a case or pallet of products
- The change in overall packaging waste generation by packaging material

This analysis would be completed as follows:

- By up to three sectors as agreed with the Authority – proposed sectors include
  - Grocery packaging as a % of turnover
  - Other consumer packaging as a % of turnover – suggested sector being DIY
  - Other industry sectors as a % of market value calculated using Valpak's Packflow reports
- By up to 10 sub-categories as agreed with the Authority from the grocery and consumer goods sectors, to be agreed with Defra prior to commencement - for example:
  - Best in class packaging for MFP (e.g. per 100g of product) against industry average.
  - Power tools packaging per item
  - Small household appliances per weight of product

Valpak will also complete a further analysis of packaging data returns (aggregated) from up to 4 sectors split by SIC Code. This dataset will be derived from either the total Valpak data and/or from the UK dataset obtained under FOI, normalised by turnover to give a balancing figure of packaging per £ of turnover. For example, one such analysis could be made by interrogating the 'selling' line of grocery retailers, or the 'pack/fill' line of a certain sector of manufacturing. This output will show the change to the amount of packaging used between target year (2015) and most recent year (2019).

#### **Component 4: Valpak - Knowledge, impact and assessment (0.5 days)**

Valpak will ask all packaging members (1,935 businesses plus their subsidiaries making up 28% of obligated businesses and c.35% of the total packaging obligation by weight) through the 2021 data submission process two questions:

- Question 1: Are you aware of The Packaging (Essential Requirements) Regulations 2015? [yes/no]
- Question 2: Have you considered The Packaging (Essential Requirements) Regulations 2015 in your decision-making process on packaging? [yes/no]

#### **Component 5: Valpak – Review of trading standards actions – Valpak members (1 day)**

Valpak shall produce a summary report of incoming Valpak member queries (anonymised) relating to enforcement action and regulator queries since 1998, including details on the source of the query (for example where applicable which trading standards / Local Authority was involved).

#### **Component 6: Valpak – Review of other drivers – specifically import / export (0.5 days)**

Valpak shall produce a summary report of incoming Valpak member queries (anonymised) relating to other essential requirement queries since 1998, for example relating to overseas customs engagement.

#### **Component 7: Valpak – Member training programme – from the Valpak ‘EPR ready’ programme (0 days)**

Valpak shall also share a simple training slide deck that is used to explain the essential requirements and the actions required to its obligated members. Valpak shall modify and provide this collateral at our own cost as the outcome from this project may in turn feed into our member offer.

#### **Component 8: Oakdene Hollins (supported by Valpak) - Business engagement regarding packaging design (8 days)**

In order to ensure impartiality, this section will be designed and managed by Oakdene Hollins, although questionnaires / interviews will be distributed or completed by both Oakdene Hollins and Valpak where appropriate, for example where the obligated business is identified as a cooperative account with a close working relationship with the Valpak account manager.

A simple Questionnaire to capture attitudes toward packaging development in the context of the essential requirements, focussing the 6 basic principles of packaging optimisation, will be developed by Oakdene Hollins. The framework for this is as follows:

- Objectives
  - Understand awareness of the essential requirements
  - Understand the relative importance of the essential requirements in the decision-making process around packaging design
  - Detail adherence to other standards such as those published by the BSI
  - Understand the ‘other’ key drivers in the decision-making process around packaging design
  - Capture any enforcement activity that the member has been subject to
- Target
  - <10 mins to complete
  - 80 obligated businesses (no more than 35 from packaging manufacturer, packer filler or retailer)

Businesses will be selected from the Valpak membership base by Oakdene Hollins. The exact criteria for selecting participants shall be agreed with DEFRA in advance of selection, however it is proposed skew candidate selection toward those businesses with a larger obligation and ensuring a

spread by role in the supply chain. This achieves a high market share (without simply choosing the largest Valpak members by obligation) and ensures that an even spread of converter, packer/filler, retailer businesses are included.

This survey will also exclude businesses already approached by Valpak on behalf of WRAP/Defra on other projects within the last 6 months (specifically the cups and fibre composite packaging project). Questionnaires will also only be completed outside of the critical packaging data submission period so as not to cause delay to this important process.

*Please note that contacting relevant staff from obligated businesses during the packaging data submission process (data round) is not advised as it is unlikely to generate a thorough response and may damage the relationship between Valpak and our client. It is therefore envisaged that this contact takes place as quickly as possible following the award of the contract prior to the peak activity of the data round – however we should also be mindful that generating responses during the earlier stages of lockdown and furlough may also prove challenging. It is therefore suggested that the contingency time afforded in the ITT is ringfenced to complete this activity after businesses have completed their packaging returns, should that be required.*

#### **Component 9: Oakdene Hollins (supported by Valpak) – Targeted engagement regulated metals (2 days)**

Separately, Oakdene Hollins (for impartiality) shall develop a simple questionnaire to be delivered to businesses involved in the manufacture and fill of packaging that may (historically) have use the regulated metals in their manufacture. This questionnaire should take no more than 5 minutes to complete and it is suggested that 10 obligated businesses are approached, including no more than 8 from packaging manufacturer or packer filler.

Additionally, the packaging trade associations (including but not limited to British Glass and the British Plastics Federation) will also be approached. In the case of British Glass, they were central to the decision to exclude glass from this requirement on the basis that glass is inert and the high levels of heavy metal is due to the use of recycled glass containing heavy metals.

#### **Component 10: Oakdene Hollins - Enforcement activity (2 days)**

Based on those trading standard / local authorities for which Valpak are aware that some level of enforcement activity has taken place (likely to be those identified in component 5), Oakdene Hollins shall strive to undertake some sample Interviews with up to 5 trading standards / district councils to establish the motivations and blockers to effective enforcement. Separately, Oakdene Hollins shall also investigate the possibility of securing data pertaining to the number of enforcement actions undertaken either in entirety or by a sample of trading standards / local authorities or by a Freedom of Information request.

#### **Component 11: OH (supported by Valpak) – Recommendations (2 days)**

Oakdene Hollins, supported by Valpak, shall produce a simple report and PowerPoint slide deck detailing the findings recommendations from the project. These findings and suggestions shall be categorised by alignment to EPR reform, refining regulations, awareness and enforcement.

### **Work Package 2**

#### **Valpak – Economic Assessment (5 days)**

Valpak will propose to ring fence 5 days effort to quantify the potential impact of 3-5 recommendations from the report, as agreed with Defra prior to commencement. Assessment and reporting shall be undertaken in terms of:

1. Cost / benefit of action (obligated business)

- a. Using 'best in class' data established from *Macro View - sector and category comparison* in work packaging 1.
2. Required level of awareness
3. Cost of enforcement
4. Qualitative assessment of unintended consequences.

Further criteria may also be added prior to commencement. Further resource may also be added as required.

## Key Project Deliverables

The key project deliverables are:

- A draft report and a final report with executive summary, plus a summary slide deck with key points (2 additional days)
- Interview questions and responses where interviewees agree to share (anonymous or otherwise)
- All assumptions plus Excel data spreadsheets so that, if necessary, further scenarios can be analysed and sensitivity analysis can be undertaken either by Defra or others externally.

The Gantt chart below shows activities and workflow to deliver each work package. Detailed allocation of staff time to activities shown in relevant section of the response.

[illegible]

## E04 – Risk Management and Mitigation

Our assessment of the project risk profiles for delivering this project are summarised in Table 1 which includes a description of the key risks perceived, the effect of the risk on delivery and quality, the impact, likelihood and visibility of the risks to the project, an overall risk score, and a list of mitigating actions that we will take as necessary to ensure the risk does not impact on our ability to deliver the required outputs to the delivery schedule outlined in the ITT and our quality high quality standards.

An indicative assessment of the level of risk (high, medium or low) is made in line with the following criteria:

Impact	How seriously would the project delivery/quality be affected?	1 = Low, 5 = High
Likelihood	The probability of the risk occurring.	1 = Low, 5 = High
Visibility	The extent to which there is advance warning that there is likely to be a requirement to take mitigating action	1 = High, 5 = Low

An overall risk score then summarises the total allocated project risk – the higher the risk score the greater the urgency to take mitigating action. We have allocated a RAG rating to the potential range of risk scores as follows:

Alert Level	Risk Category	Risk Score Range
Green	Low risk	< 33%
Amber	Medium risk	34% to 68%
Red	High risk	> 68%

**Table 1: Project Risk Register – Preliminary**

Item	Description of Risk	Description of Effect	Impact	Likelihood	Visibility	Risk Score	Mitigating Action
1	Loss of project staff due to illness or other unforeseen circumstances	Key skills and capability not available to the project team	1	1	1	20%	Notice periods for key staff are adequate. Allocate support/cover to key roles and execute pre-planned strategy to draw on resource contingency if necessary
2	Lack of satisfactory response from industry engagement due to disruption from Covid-19 lockdown (inc Furlough) and the packaging dataround	Undermines the robustness of the analysis and results	2	3	2	51%	Valpak have a very good relationship with its members with regularly contact. Start engagement as quickly as possible following award and if necessary allocate contingency time from the available extension to complete the task.
3	Available data is partial, of poor quality and/or is not up to date.	Undermines the robustness of the analysis and results	3	2	3	49%	Much of the core data to be used for this study will be from Valpak's own data bank which reduces the risk of availability. These data banks are regularly reviewed for the quality of the data and to ensure it is up to date. Sensitivity analysis to demonstrate impact on results.
4	Scope change in project	Delay in delivery of the project	2	1	1	22%	Project team will anticipate areas where change is likely and seek to ensure scope is agreed at project inception meeting. The short term nature of the project reduces the potential for scope change.
5	Strong lack of consensus results in weak scenario's for WP2	Develop scenario's based on Defra direction and provide models for future analysis.	1	1	2	27%	Identify crux of disagreement and resolve defined and documented assumptions



## **E05. Working Arrangements with the Authority**

This section of our response to the ITT sets out clear communication routes we will use and a proposed approach to working with Defra officials on this project. It includes possible options for dissemination of the findings.

### **Inception Meeting**

We will schedule a projection inception meeting in the week commencing 18 January 2021. We will provide the secretariat for this meeting and produce detailed minutes of the meeting, noting key decisions and actions arising. The minutes will be circulated and agreed by the group.

### **Fortnightly Progress Meetings**

We will schedule regular progress updates as fortnightly teleconference/phone calls to update the Authority's Project Officer and Defra officials on progress. Members of the stakeholder groups will join these calls if required to input on technical and/or other matters arising during the project.

We will regularly review/update and discuss the project's risk register at these progress meetings, assess risks and take decisions (agreed with the group) on mitigating actions.

We will provide the secretariat for these meetings and produce detailed minutes noting key decisions and actions arising. The minutes will be circulated and agreed by meeting attendees.

### **Day to day contact**

At a working level the project team will be available to communicate and discuss continuously issues as they may arise on data collection, analysis, modelling assumptions, scope of scenarios, and key outputs with Defra officials.

Peter Lee (Oakdene Hollins) will act as project co-ordinator and be the first point of contact on communications with Defra staff in this project.

### **Draft report**

We will prepare a draft final report and a slide deck including all outputs and analysis relating to the project. This will be circulated for comments by e-mail to Defra's Project Officer, other Defra officials as required, and any stakeholder group involved by 26 February 2021.

We will schedule a teleconference/phone to discuss the key findings of the draft report.

### **Final report**

We will prepare a draft final report (incorporating comments on the WP1 report and the findings from WP2) and an accompanying overview slide deck including all outputs and analysis relating to the project. This will be circulated by e-mail to Defra's Project Officer and officials by close of play 26<sup>th</sup> March 2021 (with a final version being published by 31<sup>st</sup> March or within 10 days of Defra's comments) unless agreed otherwise with Defra subject to the timeline risks highlighted elsewhere in this submission.

We will schedule a teleconference/phone meeting to discuss the key findings of the final report.

## **Dissemination of findings**

While the ITT doesn't mention whether or not the final report will be published, our assumption is that it will be. Therefore, we will prepare the report to be of a standard and quality that is publication ready (with easily accessible on-line media versions as required).

Valpak has an excellent Marketing team who can assist with the design and development of all media assets and communications materials (copy for press releases, Q&A etc) to promote the report across our networks, these of course will be agreed in advance with Defra officials.

Oakdene Hollins will also promote the report across its networks.

Valpak can host the report on our website if required, and if desired we will host a webinar to publicise the work and its key findings.

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