

**UNDERLYING CLIMATE CHANGE AGREEMENT FOR THE EGGS & POULTRY MEAT SECTOR**

Agreement Dated: 1st day of April 2013  
Agreement Identifier: NFU5/T00275 v1  
TU Identifier: NFU5/T00275

THIS AGREEMENT is made the 1st day of April 2013

BETWEEN:

- (1) the Environment Agency ("the Administrator"); and
- (2) the operator set out in Schedule 2 ("the Operator")

**RECITALS**

- (A) Section 30 of and Schedule 6 to the Finance Act 2000 ("the Act") make provision for a tax known as the climate change levy ("the Levy"). The Levy is charged on the supply of taxable commodities as defined in paragraph 3 of Schedule 6 to the Finance Act 2000.
- (B) Paragraphs 42(1)(ba) and 42(1)(c) of Schedule 6 to the Act provide that the amount payable by way of the Levy shall be discounted from the full rate where the supply is a reduced-rate supply. A reduced-rate supply is a taxable supply supplied to a facility specified in a certificate given by the Administrator to the Commissioners for Her Majesty's Revenue and Customs as a facility which is covered by a climate change agreement for a period specified in the certificate in accordance with paragraphs 42 to 52F of Schedule 6 to the Act.
- (C) A climate change agreement is defined in paragraph 46 of Schedule 6 to the Act. It may consist of a combination of agreements that falls within paragraph 48. A combination of agreements falls within paragraph 48 if a number of conditions are satisfied. The first condition is that the combination of agreements is a combination of an umbrella agreement and an agreement that, in relation to the umbrella agreement, is an underlying agreement.
- (D) This agreement is an underlying agreement in relation to an umbrella agreement, entered into for the purposes of the reduced rate of Levy. It is not intended to give rise to contractual obligations between the parties.
- (E) The facility or facilities set out in Schedule 4 to this agreement are a facility or facilities to which an agreement applies.
- (F) The Operator is a representative of each facility to which this agreement applies, as defined in paragraph 47(2) of Schedule 6.

**AGREED TERMS**

IT IS AGREED as follows:

**1. INTERPRETATION**

- 1.1 In this Agreement, unless the context otherwise requires:

"account" means the account in the Register of a sector association or an operator;

"agreement" means an umbrella agreement or an underlying agreement;

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"base year" in respect of a target unit which does not include a greenfield facility means a 12 month period agreed between an operator and the administrator, ending prior to the date of an underlying agreement, for which data is supplied by an operator to the administrator prior to the operator entering into the underlying agreement;

"base year" in respect of a target unit which does include a greenfield facility means the 12 month period starting on the date of an underlying agreement<sup>1</sup>;

"buy-out fee" means the fee calculated in accordance with Rule 7;

"certification period" means, any of the following periods:

- (a) 1<sup>st</sup> April 2013 to 30<sup>th</sup> June 2015;
- (b) 1<sup>st</sup> July 2015 to 30<sup>th</sup> June 2017;
- (c) 1<sup>st</sup> July 2017 to 30<sup>th</sup> June 2019;
- (d) 1<sup>st</sup> July 2019 to 30<sup>th</sup> June 2021; or
- (e) 1<sup>st</sup> July 2021 to 31<sup>st</sup> March 2023;

"charges" means charges due to the Administrator under the charging scheme;

"charging scheme" means the Climate Change Agreements Charges Scheme 2012 made by the Administrator or any replacement or revision of that charging scheme;

"emissions" means the total emissions in tCO<sub>2</sub> equivalent for a target period;

"EU ETS Directive" means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC, as amended from time to time;<sup>1</sup>

"facility" means a facility within the meaning of paragraph 50(2) to (6) of Schedule 6 to the Act;

"facility number" means the unique identification number of a facility set out in schedule 6 of this Agreement;

"greenfield facility" means a facility which started to carry out the process by virtue of which it is a facility within the meaning of paragraph 50 of Schedule 6 during the 12 month period ending on the date the operator applies for the facility to be covered by an agreement<sup>2</sup>

"Novem ratio target" has the meaning set out in the technical annex;

<sup>1</sup> "OJ No L 275, 25.10.03, p 32. The Directive was amended by European Parliament and Council Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109).

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### 3. TARGET

- 3.1 The target is set out in Schedule 6 to this Agreement, as varied from time to time.
- 3.2 Whether the target has been met must be determined in accordance with Rule 6.
- 3.3 The Secretary of State may carry out a review of the sector commitment during 2016 for the target periods 1<sup>st</sup> January 2017 to 31<sup>st</sup> December 2018 and 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2020. The target may be varied to take account of the review in accordance with the procedure set out in Rule 12.
- 3.4 The target may also be varied in accordance with Rules 6, 9, 10 and 11.

### 4. THE RULES

- 4.1 Schedule 1 to this Agreement which sets out the Rules for the operation of Climate Change Agreements has effect.
- 4.2 The Operator agrees to comply with the Rules.

### 5. DURATION AND TERMINATION OF THIS AGREEMENT

- 5.1 Subject to clause 5.2 below, this Agreement comes into force on 1 April 2013 or the date on which it is made, if later, and ends on 31 March 2023.
- 5.2 This Agreement may be terminated before 31 March 2023:
  - 5.2.1 at any time by a notice served by the Operator giving at least 20 working days notice served on the Administrator, or
  - 5.2.2 in accordance with the Regulations.

### 6. VARIATION OF AGREEMENT

- 6.1 Subject to clauses 6.2 and 6.3 below, this Agreement may be varied at any time if agreed between the Administrator and the Operator.
- 6.2 The facilities to which this Agreement applies may be varied in accordance with Rules 9 and 10.
- 6.3 This Agreement may be varied by the Administrator at any time to take account of changes to the terms specified in the Regulations.

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### 7. AUTHORITY

- 7.1 The Operator warrants that it has the power to enter into this Agreement and is authorised and has obtained all necessary approvals to enter into this Agreement on behalf of the included facilities and the responsible person warrants that he or she is authorised to sign this Agreement on behalf of the operator.

Signed on behalf of  
the Environment Agency

Signed by the responsible person on behalf  
of the Operator



CCA Manager

Ben Williams  
CCA Authorised Signatory  
bwilliams@keme.co.uk

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the Sector Association must continue to operate the register on behalf of the Operator to provide information to the Administrator.

## 5. CERTIFICATION OF A FACILITY

5.1 The Administrator must certify that a facility is covered by an agreement from the signing of an underlying agreement to the end of the certification period in which the underlying agreement is signed.

5.2 The Administrator must certify that a facility is covered by an agreement for any certification period other than the certification period in which the underlying agreement is signed, where it appears to the Administrator that progress made in the immediately preceding certification period, whether under the underlying agreement or under any previous underlying agreement, towards meeting targets set for the target unit is, or is likely to be, satisfactory.

5.3 For the purposes of this Rule, progress made in the immediately preceding certification period towards meeting targets set for the target unit is, or is likely to be satisfactory only where condition 1 and condition 2 are satisfied.

5.4 Condition 1 is that:

5.4.1 the target set for the target unit for the relevant target period is met, in accordance with Rule 6; or

5.4.2 if the target set for the target unit has not been met, the target unit has paid the buy-out fee in accordance with Rule 7.

5.5 Condition 2 is that obligations imposed under or by virtue of regulations made for the purpose of implementing the EU ETS Directive have been complied with in respect of each facility comprising the target unit.

5.6 If:

5.6.1 a target unit has failed to meet its target in accordance with Rule 6 and the Operator has failed to pay the buy-out fee in accordance with Rule 7;

5.6.2 obligations imposed under or by virtue of regulations made for the purpose of implementing the EU ETS Directive have not been complied with in respect of any facility in a target unit; or

5.6.3 the underlying agreement or umbrella agreement is terminated in accordance with Regulation 17(1)(2), or (3) or Regulation 18;

the Administrator must not certify that the facility or facilities comprising the target unit are covered by an agreement or, where a certificate has been issued, the Administrator must vary the certificate in accordance with paragraph 45 of Schedule 6.

5.7 If:

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5.7.1 a facility is not or ceases to be eligible for inclusion in an agreement; or

5.7.2 a facility is excluded from an underlying agreement under Rule 10;

the Administrator must not certify that the facility is covered by an agreement or, where a certificate has been issued, the Administrator must vary the certificate in accordance with paragraph 45 of Schedule 6.

5.8 If the information supplied to the Administrator is insufficient to determine whether:

5.8.1 the target for the target period has been met; or

5.8.2 obligations imposed under or by virtue of regulations made for the purpose of implementing the EU ETS Directive have been complied with in respect of each facility comprising the target unit;

the Administrator may refuse to certify that the facility or facilities are covered by an agreement or, where a certificate has been issued, the Administrator may vary that certificate in accordance with paragraph 45 of Schedule 6.

5.9 Subject to Rule 5.10, if the Administrator does not certify a facility or varies a certificate that has been issued, the Administrator must serve a decision notice on the Sector Association and the Operator of the facility setting out the reasons for the decision, unless a notice of termination has already been served.

5.10 The Administrator is not required to serve a decision notice where a facility has been certified under this Rule and it is subsequently discovered that the target unit for the relevant target period had not been met because of an error in the information originally supplied to the Administrator provided that:

5.10.1 the Sector Association and the Operator have satisfied the Administrator that the error was unintentional; and

5.10.2 the Operator has paid any buy-out fee in accordance with Rule 7.

## 6. MEETING THE TARGET

6.1 A target unit meets its target for the purpose of Rule 5 if it meets or exceeds the percentage improvement in energy efficiency or carbon efficiency from the base year set out in Schedule 6 to the underlying agreement.

6.2 The Administrator must determine whether the target has been met in accordance with the principles, methodologies and procedures set out in the technical annex.

6.3 An Operator must notify the Administrator on or before 31<sup>st</sup> January in the year following the end of a target period of any circumstances which may give rise to an adjustment to the target for the previous target period, as set out in the technical annex.

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- 9.2.1 it is a facility within the meaning of paragraph 50 of Schedule 6;
- 9.2.2 it is a facility undertaking the activities set out in Schedule 3 to an umbrella agreement; and
- 9.2.3 it has the same operator as the operator of the underlying agreement under which it will be included, as set out in the technical annex.
- 9.3 A facility which is already included in another underlying agreement is eligible to be considered for inclusion in a different underlying agreement on or before 30 September 2013 where:
- 9.3.1 it is a facility within the meaning of paragraph 50 of Schedule 6;
- 9.3.2 it is a facility undertaking the activities set out in Schedule 3 to an umbrella agreement; and
- 9.3.3 it has the same operator as the operator of the underlying agreement under which it will be included, as set out in the technical annex.
- 9.4 A facility which is already included in another underlying agreement is eligible to be considered for inclusion in a different underlying agreement on or after 1 October 2013 where:
- 9.4.1 it is a facility within the meaning of paragraph 50 of Schedule 6;
- 9.4.2 it is a facility undertaking the activities set out in Schedule 3 to an umbrella agreement;
- 9.4.3 it has the same operator as the operator of the underlying agreement under which it will be included, as set out in the technical annex; and
- 9.4.4 there has been a change of operator of the facility.
- 9.5 An additional facility cannot be added to an umbrella agreement or an underlying agreement:
- 9.5.1 during the final target period under the umbrella agreement or the underlying agreement; or
- 9.5.2 during the last two months of a target period.
- 9.6 The administrator may vary the target of a target unit to take account of the inclusion of additional facilities following the principles, methodologies and calculations set out in the technical annex.
- 9.7 If a Sector Association wishes to add an additional facility to an umbrella agreement or an Operator wishes to add an additional facility to an underlying agreement the Sector Association or the Operator must notify the Administrator not less than two months before the commencement of the next target period setting out:

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- 9.7.1 the name of the Operator of the facility;
- 9.7.2 the address of the facility;
- 9.7.3 a description of the facility;
- 9.7.4 such information as will enable the Administrator to reach a decision on establishing eligibility of the facility, as requested by the Administrator; and
- 9.7.5 such information as will enable the Administrator to determine the revised target for the target unit, as requested by the Administrator.
- 9.8 If the Administrator receives a notification under Rule 9.4, the Administrator must serve a notice on the Operator, copied to the Sector Association:
- 9.8.1 consenting to include the additional facility in an umbrella agreement or an underlying agreement and setting out whether or not it has decided to vary the target, and if so, the revised target (as varied) for the target unit;
- 9.8.2 refusing consent to include the facility in an umbrella agreement or an underlying agreement, giving reasons for the decision; or
- 9.8.3 requesting such further information as is required in order to establish eligibility of the facility or reach a decision on the target for the facility.

## 10. VARIATION BY EXCLUSION OF FACILITIES

- 10.1 If a Sector Association or an Operator wishes to exclude a facility, or part of it, from an umbrella agreement or an underlying agreement, it must notify the Administrator of the proposed exclusion, setting out:
- 10.1.1 the name of the Operator of the facility;
- 10.1.2 the facility number, or a description of the part that is to be excluded; and
- 10.1.3 the reason for the exclusion.
- 10.2 If:
- 10.2.1 a Sector Association or an Operator has notified the Administrator that it wishes to exclude a facility under Rule 10.1; or
- 10.2.2 the Administrator has terminated an agreement so far as it relates to an individual facility under Regulation 17(4),
- the Administrator may vary the target to take account of the exclusion or termination following the principles, methodologies and calculations set out in the technical annex, and may request such information from the Sector Association or the Operator as it requires in order to determine the revised target.

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13.3 For the purposes of Rule 13.2, the date on which notice of the decision is deemed to have been sent to the Operator is the later of the date the agreement is entered into or the date the Administrator sends notice to the Operator of the target for the target unit.

13.4 The grounds on which an Operator may appeal under Rule 13.1 and 13.2 are:

13.4.1 that the decision was based on an error of fact;

13.4.2 that the decision was wrong in law;

13.4.3 that the decision was unreasonable;

13.4.4 any other reason.

13.5 The bringing of an appeal suspends the effect of the decision pending final determination by the Tribunal of the appeal or its withdrawal.

13.6 On determining an appeal under these Rules the Tribunal must either:

13.6.1 affirm the decision;

13.6.2 quash the decision; or

13.6.3 vary the decision.

## 14. RECORDS AND INFORMATION

14.1 A Sector Association and an Operator must retain records of all information required to be supplied to the Administrator under these Rules.

14.2 In particular, an Operator must retain:

14.2.1 sufficient records to allow the Administrator to verify whether a target unit has met its target, including sufficient records to allow the accurate verification of throughput and annual consumption of energy of a target unit; and

14.2.2 records of energy saving actions and measures implemented during each target period.

14.3 A Sector Association and an Operator must make all records which it is required to retain under these Rules available for inspection by the Administrator or a person appointed by the Administrator and must provide copies of such records in response to a request by the date specified in the request.

14.4 All records required to be retained under these Rules must be retained throughout the duration of an agreement and for a period of four years following the termination of an agreement.

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## 15. PUBLICATION AND DISCLOSURE OF INFORMATION

15.1 The Administrator must publish such information as required under the Regulations.

15.2 In respect of the disclosure of information other than disclosure of information required to be published under the Regulations, information supplied by a Sector Association or an Operator to the Administrator or the Secretary of State, to any agent of the Administrator or the Secretary of State, or to any person appointed by the Administrator or Secretary of State to carry out an independent audit, may be disclosed without the consent of the Sector Association or Operator, where such disclosure is:

15.2.1 by the Administrator to the Secretary of State, for any purpose connected with the functions of the Secretary of State;

15.2.2 by the Secretary of State to the Administrator, for any purpose connected with the functions of the Administrator;

15.2.3 to a relevant authority, for any purpose connected with the functions of the relevant authority;

15.2.4 to any person appointed by the Administrator or the Secretary of State to carry out an independent audit;

15.2.5 to an adjudicator appointed under these Rules;

15.2.6 to any person appointed by the Administrator or the Secretary of State to act as agent, consultant, adviser or contractor to the Administrator or the Secretary of State, in connection with the functions of the Administrator or the Secretary of State;

15.2.7 necessary for the purpose of or in connection with any legal proceedings, including the obtaining of legal advice;

15.2.8 required to comply with any Act of Parliament or subordinate legislation made under an Act of Parliament, including requests made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004; or

15.2.9 required to meet any obligation to the European Union.

15.3 A relevant authority referred to in this Rule means:

15.3.1 either House of Parliament including any committee of either or both Houses;

15.3.2 any Government department;

15.3.3 the European Commission;

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**SCHEDULE 2**

**THE OPERATOR**

Greenway Poultry Ltd

Whose address for service of all notices under this Agreement is

By post:

The Highgrove

Llanhamlach

Brecon

Powys

LD3 7SU

Wales

Administrative contact

MR. Ben Williams

Electronically:

bwilliams@keme.co.uk

**SCHEDULE 3**

**THE SECTOR ASSOCIATION**

National Farmers Union

Whose address for service of all notices under this Agreement is

By post:

Agriculture House

Stoneleigh Park

Kenilworth

Warwickshire

CV8 2TZ

England

Sector Contact

DR. Jonathan Scurlock

Electronically:

jonathan.scurlock@nfu.org.uk

**THE UMBRELLA AGREEMENT**

The Agreement dated 01 Apr 2013 made between the Administrator and the Sector Association.

**SCHEDULE 4**

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**MEAT SECTOR**

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**ACTIVITIES UNDERTAKEN BY A FACILITY FALLING WITHIN THE SECTOR**

A facility belongs to the NFU poultry meat sector if it is a facility which is specifically used for rearing poultry for the production of meat. And/or A facility belongs to the egg production sector if it is a facility which is specifically used for rearing poultry for the production of eggs.

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SCHEDULE 7

VALUE OF FINANCIAL PENALTY

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See technical guidance.