UMBRELLA CLIMATE CHANGE AGREEMENT FOR THE AGRICULTURAL SECTOR
Agreement dated 6th March 2013

THIS AGREEMENT is made the 6th day of March 2013

BETWEEN:

(1) the Environment Agency ("the Administrator"); and

(2) the Sector Association set out in Schedule 2 ("the Sector Association").

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 Act.

(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 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 Sector Association is a representative as defined in paragraph 47(2) of Schedule 6 to the Act of each facility to which this agreement applies.

(F) The facility or facilities set out in Schedule 4 to this agreement are a facility or facilities to which an agreement applies.

AGREED TERMS

IT IS AGREED as follows:

UMBRELLA CLIMATE CHANGE AGREEMENT FOR THE AGRICULTURAL SECTOR
Agreement dated 6th March 2013

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, as the context requires, either:

a) this agreement; or

b) an umbrella agreement or an underlying agreement;

"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";

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

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

(a) 1st April 2013 to 30th June 2015;

(b) 1st July 2015 to 30th June 2017;

(c) 1st July 2017 to 30th June 2019;

(d) 1st July 2019 to 30th June 2021; or

(e) 1st July 2021 to 31st 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_2 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;[1]

[1] *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)

"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 4 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"

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

"operator" means a party to an underlying agreement other than the Administrator;

"personal information" means:

a) the address of the registered office of the sector association or operator;

b) the name, address and email address of:

   i) in the case of a sector association, a person who can be contacted in respect of the sector association;

   ii) in the case of an Operator, the responsible person; and

c) the name, address and email address of a person who can be contacted in respect of the facility or each facility covered by an agreement;

"the Register" means the electronic system established and operated by the Administrator for the administration of agreements;

"the Regulations" means the Climate Change Agreements (Administration) Regulations 2012 S.I. 2012/1976;

"Rule or Rules" means the Rules for the Operation of Climate Change Agreements or any of them set out in Schedule 1 to this Agreement as varied from time to time;

"Schedule 6" means Schedule 6 to the Finance Act 2000;

"sector" means the sector consisting of facilities which are covered by the same umbrella agreement;

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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).

"sector association" means the party to this agreement other than the Administrator;

"sector commitment" means the commitment set out in Schedule 5 of the umbrella agreement, as varied from time to time;

"surplus" means the amount by which the emissions have fallen below the target for any target period;

"target" means the percentage improvement in energy efficiency or carbon efficiency from the base year applicable to the target unit, set out in Schedule 6 to the underlying agreement, as varied from time to time;

"target period" means any of the following periods:

a) 1st January 2013 to 31st December 2014;

b) 1st January 2015 to 31st December 2016;

c) 1st January 2017 to 31st December 2018; or

d) 1st January 2019 to 31st December 2020;

"target unit" means a facility or group of facilities to which an underlying agreement applies;

"tCO_2 equivalent" means tonnes of carbon dioxide equivalent;

"technical annex" means the technical annex to this Agreement dated 6 March 2013 and published by the Administrator or the Secretary of State, available via the Administrator's website;

"throughput" means the measure of production, or factor related to production, used to determine the relationship between the amount of energy used by the target unit and the levels of activity of the target unit, as set out in Schedule 6 to an underlying agreement;

"the Tribunal" means the First-tier Tribunal established under the Tribunal Courts and Enforcement Act 2007[2];

"umbrella agreement" means, as the context requires, either:

a) this agreement; or

b) an agreement that is an umbrella agreement for the purposes of paragraph 48 of Schedule 6 to the Act;

[2] Appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655). The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) sets out procedural rules relating to such appeals.

"underlying agreement" means an agreement that is an underlying agreement for the purposes of paragraph 48 or Schedule 6 to the Act.

1.2 Other words and expressions used in this Agreement have the same meaning as they bear in Schedule 6 to the Finance Act 2000 or the Regulations.

2. FACILITIES TO WHICH THIS AGREEMENT APPLIES

2.1 This Agreement applies to the facilities set out in Schedule 4.

2.2 A facility belongs to the sector if it is a facility which undertakes one or more of the activities set out in Schedule 3.

3. SECTOR COMMITMENT

3.1 The sector commitment for the sector to which this Agreement applies is set out in Schedule 5 to this Agreement, as varied from time to time.

3.2 The Secretary of State shall carry out a review of the sector commitment during 2016 for the target periods 1st January 2017 to 31st December 2018 and1st January 2019 to 31st December 2020. The sector commitment and associated targets may be varied following the review to take account of the review in accordance with the procedure set out in Rule 12.

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 Sector Association 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 by the Sector Association giving at least 10 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 3.2, 6.2 and 6.3, this Agreement may be varied at any time if agreed between the Administrator and the Sector Association.

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 at any time by the Administrator to take account of changes to the terms specified in the Regulations.

7. COLLECTION OF CHARGES

7.1 The parties agree that the Administrator shall not be liable to pay any expenses of the Sector Association in connection with or arising out of the collection of charges under Rule 16, nor to indemnify or remunerate the Sector Association in connection with the collection of charges.

Signed by authority of the Environment Agency	Signed on behalf of the Sector Association
Matthew Williamson CCA Manager	Jane Salter Head of Environment Policy

SCHEDULE 1

RULES FOR THE OPERATION OF CLIMATE CHANGE AGREEMENTS

1. OBLIGATIONS OF A SECTOR ASSOCIATION AND OF AN OPERATOR

1.1 An Operator and a Sector Association must:

1.1.1 supply such information to the Administrator as the Administrator may request in connection with an agreement, by the date specified in the request;

1.1.2 notify the Administrator of any changes to its personal information within 20 working days of the change;

1.1.3 co-operate with any person appointed by the Administrator to undertake an independent audit of information provided to the Administrator; and

1.1.4 comply with the provisions of the charging scheme. If a charge remains unpaid after the date on which it is due, it may be recovered by the Administrator as a civil debt.

2. OBLIGATIONS OF A SECTOR ASSOCIATION

2.1 Following the setting of the sector commitment by the Secretary of State, or following a variation of the sector commitment under Rule 12.1, a Sector Association must distribute the sector commitment between each target unit under the umbrella agreement.

3. OBLIGATIONS OF AN OPERATOR

3.1 An Operator must:

3.1.1 notify the Administrator and the Sector Association within 20 working days of the date when the Operator has reason to believe that a facility covered by an underlying agreement may not be eligible for inclusion in the underlying agreement;

3.1.2 notify the Administrator within 20 working days of becoming aware of any structural change or other change set out in the technical annex which may give rise to a variation to the target in accordance with Rule 11;

3.1.3 notify the Administrator within 20 working days of discovering any error in the data provided to the Administrator for the base year;

3.1.4 provide to the Administrator on or before 1st May following the end of a target period such information as has been requested by the Administrator in order to determine whether progress towards meeting the target is, or is likely to be, taken to be satisfactory;

3.1.5 provide any other information requested at any time by the Administrator by the date specified in the request to enable the Administrator to determine that:

(a) the target has been met; or

(b) the Operator is complying with the terms of the underlying agreement;

3.1.6 notify the Administrator within 5 working days of the Operator or a facility in a target unit becoming a firm in difficulty, within the meaning of the European Commission Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02);

3.1.7 provide the responsible person with full authority to carry out his or her functions, including authorisation to accept on behalf of the Operator the service of any notice; and

3.1.8 provide a current UK postal address and an operational email address of the responsible person for service of any notice.

3.2 If the Administrator enters into an underlying agreement before a target has been agreed, conditional upon the Operator providing sufficient information within a specified period in order to set the target for the target unit, the Operator must supply any data requested by the Administrator within the period specified by the Administrator on energy use and throughput of the target unit.

4. OPERATION OF THE REGISTER

4.1 Subject to Rules 4.2 and 4.3, to the extent possible, a Sector Association and an Operator must communicate with the Administrator using the Register.

4.2 Until a Sector Association and an Operator have been notified by the Administrator that the Operator is able to operate an account on its own behalf, an Operator must provide all information to the Sector Association to comply with the obligations of an Operator under an underlying agreement. The Sector Association must then operate the register on behalf of the Operator to provide the information to the Administrator.

4.3 After receiving notification from the Administrator that an Operator is able to operate an account on its own behalf, an Operator must notify the Administrator if it wishes to access its account directly to comply with its obligations under an underlying agreement. If an Operator makes such notification, the Operator

must then operate the Register on its own behalf in order to comply with its obligations under an underlying agreement. If an Operator does not make such notification, the Operator must continue to provide all information to the Sector Association to comply with the obligations of an Operator under an underlying agreement and 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:

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 31st 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.

6.4 If an Operator makes a notification under Rule 6.3, the Administrator may adjust the previous target in accordance with the principles, methodologies and calculations set out in the technical annex and must serve a notice on the Operator, setting out:

6.4.1 whether or not it had decided to vary the target; and

6.4.2 any revised target (as varied) for the target unit.

7. BUY-OUT MECHANISM

7.1 If the administrator finds that the target unit has failed to meet its targets:

7.1.1 at any time in the period beginning with 1st May in the year following the end of a target period and ending immediately before the first day of the next certification period; or

7.1.2 at any other time,

the obligation to make progress towards meeting targets may instead be satisfied by the payment to the administrator of a fee in accordance with Rule 7.2.

7.2 If Rule 7.1 applies, the administrator must serve a notice on the Operator containing the following information:

7.2.1 that the target unit has failed to meet its target;

7.2.2 the fee to be paid, calculated in accordance with Rule 7.3 or Rule 7.4;

7.2.3 the date by which the fee must be paid, determined in accordance with Rule 7.5 or Rule 7.6;

7.2.4 to whom the fee must be paid;

7.2.5 how the fee is to be paid; and

7.2.6 that failure to pay the fee in accordance with the notice will result in the issue of a variation certificate in accordance with paragraph 45 of Schedule 6.

7.3 If Rule 7.1.1 applies, the amount of the fee is:

$$£12 \times (W - S)$$

where W in units of tCO_2 equivalent represents the amount by which the emissions for the target period exceed the target and S in units of tCO_2 equivalent represents any surplus.

7.4 If Rule 7.1.2 applies, the amount of the fee is:

$$£12 \times W$$

where W in units of tCO_2 equivalent represents the amount by which the emissions for the target period exceed the target.

7.5 If Rule 7.1.1 applies, the fee must be paid on or before 1st July in the year in which the target unit is found to have failed to meet its targets.

7.6 If Rule 7.1.2 applies, the fee must be paid within 30 working days beginning with the date of the notice.

7.7 Payment of the fee is deemed to have been made when the person to whom the fee must be paid as specified in the notice receives full cleared funds.

7.8 For the purposes of calculating the buy-out fee under this Rule and for calculating the amount of any surplus, the Administrator must calculate the difference between the target for the target period and the actual performance achieved during the target period, where the target and the actual performance achieved are expressed in the same units, and convert any difference between the two into a quantity of carbon dioxide equivalent, expressed in units of tCO_2 equivalent, using the principles, methodologies and calculations set out in the technical annex.

8. SURPLUS

8.1 If a facility is excluded from a target unit, the Operator must determine how any surplus should be distributed between the facilities that have been excluded from the target unit and the facilities remaining in the target unit and must notify the Administrator of the redistribution within 20 working days of the facility being excluded from the target unit.

8.2 If an Operator fails to notify the Administrator of the redistribution in accordance with Rule 8.1 any surplus remains with the facilities remaining in the target unit.

8.3 If facilities join a target unit, any surplus attributable to those joining facilities may be used by the target unit as a whole.

9. VARIATION BY INCLUSION OF ADDITIONAL FACILITIES

9.1 A facility which is not already included in another umbrella agreement is eligible at any time to be considered for inclusion in an umbrella agreement where:

9.1.1 it is a facility within the meaning of paragraph 50 of Schedule 6; and

9.1.2 it is a facility undertaking the activities set out in Schedule 3 to an umbrella agreement.

9.2 A facility which is not already included in another underlying agreement is eligible at any time to be considered for inclusion in an underlying agreement where:

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:

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.

10.3 If the Administrator decides to vary or not to vary the target under Rule 10.2, it must serve a notice on the Operator, copied to the Sector Association, setting out whether or not it has decided to vary the target, and if so the revised target (as varied) for the target unit.

11. VARIATION OF TARGETS IN OTHER CIRCUMSTANCES

11.1 The Administrator may vary the target to take account of:

11.1.1 any structural changes or other changes to the target unit which the Operator must notify to the Administrator under Rule 3.1.2;

11.1.2 any errors in the data provided to the Administrator for the base year; or

11.1.3 in respect of a target unit which has a Novem ratio target, the removal of a product produced in the target period which was produced in the base year,

following the principles, methodologies and calculations set out in the technical annex.

11.2 The Administrator may request any information of a Sector Association or an Operator as it requires in order to determine the revised target under Rule 11.1.

11.3 If the Administrator decides to vary or not to vary a target under Rule 11.1, it must serve a notice on the Operator, copied to the Sector Association, setting out:

11.3.1 whether or not it has decided to vary the target; and

11.3.2 any revised target (as varied) for the target unit.

12. VARIATION OF SECTOR COMMITMENT FOLLOWING A REVIEW

12.1 The sector commitment may be reviewed by the Secretary of State during 2016 for the target periods from 1 January 2017 to 31 December 2018 and from 1 January 2019 to 31 December 2020.

12.2 If the Sector Association and the Secretary of State agree on a variation to the sector commitment following a review, the Secretary of State may issue a direction to the Administrator that the sector commitment must be varied and then the Administrator must serve a variation notice on the Sector Association.

12.3 The variation notice must state:

12.3.1 the agreed variation; and

12.3.2 the date from which the agreed variation will take effect.

12.4 The Sector Association must, within 20 working days of receipt of a variation notice, serve notice on the Administrator setting out the proposed distribution of the revised sector commitment between each target unit under the umbrella agreement.

12.5 The Administrator must:

12.5.1 agree to the proposed distribution and vary the targets of each target unit accordingly;

12.5.2 request further information in relation to the proposed distribution; or

12.5.3 refuse the proposed distribution and propose an alternative distribution, giving reasons for the decision.

12.6 If the Sector Association and the Secretary of State fail to agree on a variation of the sector commitment, either party may refer any dispute as to matters of fact to an adjudicator for adjudication, in accordance with the procedure set out in guidance published by the Secretary of State.

12.7 The adjudicator must, on the basis of representations provided to the adjudicator and any additional information considered necessary by the adjudicator, make a finding on the disputed questions of fact and notify the parties of that finding.

12.8 The adjudicator's finding on a disputed question of fact shall be binding on the parties but it shall be for the Secretary of State and the Sector Association to agree, in the light of that finding, what variations to the sector commitment are required.

12.9 If the Secretary of State and the Sector Association fail to agree on the variation to the sector commitment, the Administrator may terminate the agreement in accordance with Regulation 18.

13. RIGHT OF APPEAL

13.1 If the Administrator:

13.1.1 decides not to certify a facility or to vary a certificate which has been issued;

13.1.2 serves a notice imposing a buy-out fee under Rule 7 upon determining that a target unit has failed to meet its target; or

13.1.3 decides to vary or not to vary the target for a target unit,

the Operator may appeal to the Tribunal against the decision.

13.2 In respect of an Operator which enters into an agreement after 1 April 2013, the Operator may appeal to the Tribunal against the target that has been set for the target unit by the Administrator.

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.

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 of 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;

15.3.4 the Committee on Climate Change;

15.3.5 the Commissioners of Her Majesty's Revenue and Customs;

15.3.6 a person or body prescribed by or appointed under Part I of the Environmental Protection Act 1990 or regulations made under section 2 of the Pollution Prevention and Control Act 1999 or any corresponding legislation for Northern Ireland;

15.3.7 any regulator appointed under section 54 of the Competition Act 1998; or

15.3.8 any other public body, regulatory agency or government advisory body, where in the absolute discretion of the Administrator or the Secretary of State, as appropriate, the Administrator or Secretary of State considers that it would be obliged to disclose such information in response to a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, if such a request were made.

16. COLLECTION OF CHARGES

16.1 A Sector Association may request the consent of the Administrator to collect charges due from Operators to the Administrator in respect of facilities under the charging scheme.

16.2 If a Sector Association wishes to collect charges due from an Operator to the Administrator under the charging scheme, the Sector Association may serve a notice in writing on the Administrator by the last working day in February in the calendar year in which the charges fall due.

16.3 A notice served under Rule 16.2 must specify the facilities in respect of which the Sector Association intends to collect charges, being not fewer than 50% of the facilities covered by an umbrella agreement.

16.4 Following receipt of the notice, the Administrator must:

16.4.1 consent to the Sector Association collecting charges; or

16.4.2 refuse consent to the Sector Association collecting charges, giving reasons for the decision.

16.5 If the Administrator consents to the Sector Association collecting charges the Sector Association must:

16.5.1 itemise charges separately in any invoices that it issues in respect of charges;

16.5.2 collect and remit all charges collected to the Administrator without deduction or set off by the last working day in September in each year;

16.5.3 prepare an annual report to the Administrator by the last working day in October in the year in which it has collected charges setting out which Operators it has collected charges from and which Operators have failed to pay charges due to the Sector Association.

16.6 A Sector Association must not actively pursue any outstanding charges after the last working day in September in any year in which they fall due. If a Sector Association receives charges after this date the Sector Association must accept the payment and remit this to the Environment Agency along with information identifying the Operator making the payment.

16.7 If a Sector Association fails to comply with any of its obligations under this Rule the Administrator may serve a notice on the Sector Association that consent to the Sector Association continuing to collect charges is withdrawn at the expiry of 20 working days from the date of the notice.

17. SERVICE OF NOTICES

17.1 Any notice served under these Rules must be in writing and may be served by sending it by post or electronically.

17.2 The address for the service of all notices on the Administrator is:

Postal: Environment Agency
Richard Fairclough House
Knutsford Road, Latchford,
Warrington,
Cheshire, WA4 1HT

Electronic: CCA-operations@environment-agency.gov.uk

17.3 The address for the service of all notices on the Sector Association is the address of the person set out in Schedule 2 to the umbrella agreement.

17.4 The address for the service of all notices on the Operator is the address of the responsible person.

SCHEDULE 2
THE SECTOR ASSOCIATION

The Agricultural Industries Confederation
Which represents facilities that belong to the Agricultural Supply sector.

Whose address for service of all notices under this Agreement is
By post:
Confederation House, East of England Showground, Peterborough, PE2 6XE

Electronically:
jane.salter@agindustries.org.uk

SCHEDULE 3
THE SECTOR

A facility belongs to the sector if it is a facility in which the predominant activity is the manufacture of animal feeds for agricultural purposes.

SCHEDULE 4
LIST OF FACILITIES

SCHEDULE 5
THE SECTOR COMMITMENT

Sector Commitment:

Target Period	Sector Commitment (percentage reduction from base year)
1 January 2013 to 31 December 2014	3.750%
1 January 2015 to 31 December 2016	5.000%
1 January 2017 to 31 December 2018	6.250%
1 January 2019 to 31 December 2020	7.500%