

Food and Drink Federation Climate Change Agreement (FDF CCA)

Operator Participation Agreement

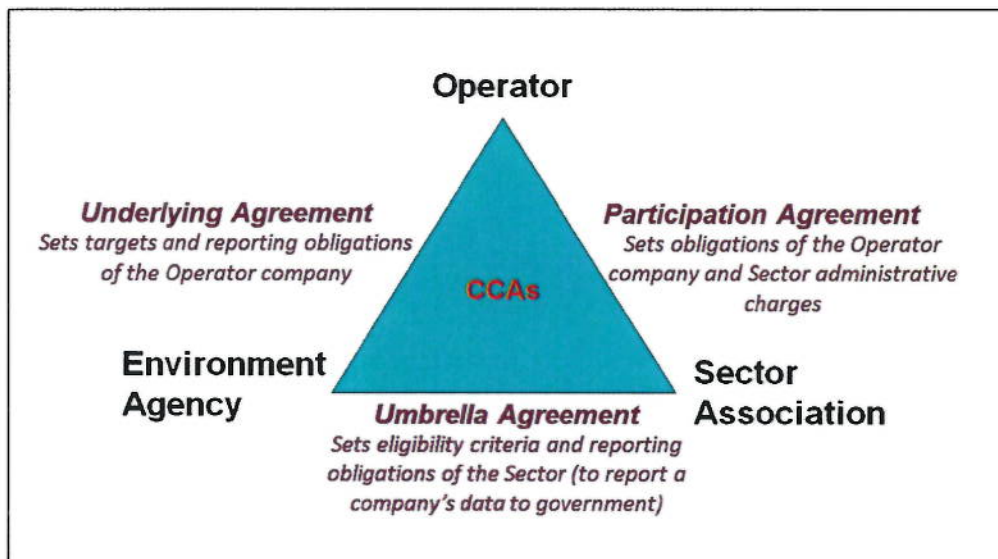
1. Introduction

1.1. The Finance Act 2000 (and as subsequently amended) makes provision for the Climate Change Levy (CCL) and for Climate Change Agreements (CCA). CCAs provide for installations in eligible energy-intensive industries to claim a discount on the CCL provided they meet targets for improving their energy efficiency or reducing their carbon emissions. CCAs have a 2-tier structure:

- Sector-level agreements between DECC and the Sector Association (known as umbrella agreements) - these set out sector targets, the sector and DECC’s obligations, and the procedures for administering the agreements.
- Individual agreements between DECC and the Operator of the facilities (known as underlying agreements) - these set out the targets the Operator needs to meet, the Operator and DECC’s obligations, the facilities covered by the agreement, and the procedures for administering the agreements.

1.2. This FDF CCA Participation Agreements sets out the relationship and obligations of the Sector and Operators under the two tier structure.

1.3. This agreement replaces the previous ‘FDF Administration Agreement’ which FDF CCA participants had previously agreed to and signed. It reflects the new relationships between the Sector Association, Operator companies and the Environment Agency, who act the scheme administrator on behalf of the Government. The following diagram illustrates the relationship between the CCA parties:



2. Interpretation

- 2.1. In this agreement the interpretation of terms is as stated in 'Section 1 Interpretation' in the 'Underlying Agreement for the Food and Drink Sector'.
- 2.2. The Sector Association is the Food and Drink Federation of 6 Catherine Street, London, WC2B 5JJ.
- 2.3. The Operator is **Britvic Soft Drinks Ltd of Swinnow Lane Industrial Estate Bramley Leeds LS13 4HT** whose target unit reference number is **FDF1/T00265**.

3. Duration of the Agreement

- 3.1. Subject to the below conditions for termination this agreement shall come into force from 1st January 2014 until 31st March 2023.
- 3.2. This agreement shall be automatically terminated before 31st March 2023 if:
 - The Underlying Agreement is terminated.
 - The Umbrella Agreement is terminated.
 - There are no facilities to which this agreement applies.
- 3.3. The Association may serve a termination notice on the Operator following an Event of Default by the Operator and such termination notice shall specify:
 - the nature of the relevant Event of Default;
 - where the relevant Event of Default is capable of remedy the steps required to remedy the Event of Default;
 - the date at which termination is to take effect which shall not be earlier than 30 days from the date of the termination notice unless the Event of Default is remedied; andProvided that the service of such termination notice shall not affect the parties continuing rights and obligations under this agreement up to the date of termination and in particular the Operator shall pay all charges and provide the information required by this agreement.
- 3.4. The Association shall withdraw the termination notice issued pursuant to sub-clause 3.3 upon being satisfied that the relevant Event of Default has been remedied.
- 3.5. The termination rights set out in this clause shall be the parties' only right to terminate this agreement whether pursuant to its terms at law or otherwise.

4. Obligations of the Sector Association

- 4.1. Comply with the obligation of the Sector Association in accordance with the requirements of the FDF 'Umbrella Climate Change Agreement for the Food and Drink Sector' and the 'Rules For The Operation of Climate Change Agreements' set out in Schedule 1 of that agreement.
- 4.2. Comply with additional requirements set out in the Environment Agency's 'Climate Change Agreement Operations Manual'.
- 4.3. Provide a help-desk, website and other appropriate mechanisms to support Operators with an 'Underlying Climate Change Agreement for the Food and Drink Sector' to meet their obligations under that, and this, Agreement.
- 4.4. Provide Operators with an annual report detailing their progress towards their targets and to allow them to confirm the accuracy of any data reported as part of the operation of the FDF CCA.
- 4.5. In accordance with the Scheme Rules ('Underlying Climate Change Agreement for the Food and Drink Sector' Schedule 1 Part 16) the Sector Association will collect charges due from the Operator to the Government appointed Administrator (Environment Agency) and remit said charges to the Administrators.
- 4.6. Nothing in this Agreement shall require the Sector Association, when fulfilling its obligations, to give preferential treatment to the Operator.

5. Obligations of the Operator

- 5.1. Comply with the obligations of the Operator in accordance with the requirements of the 'Underlying Climate Change Agreement for the Food and Drink Sector' and the 'Rules For The Operation of Climate Change Agreements' set out in Schedule 1 of that agreement.
- 5.2. Comply with additional requirements set out in the Environment Agency's 'Climate Change Agreement Operations Manual'.
- 5.3. The Operator shall for each of the Facilities listed in their Underlying Agreement supply the Sector Association with the name of a person who is an employee of the Operator and who can be contacted in respect of each of the Facilities together with that person's postal address, telephone number, fax number and e-mail address and shall notify the Association of any changes within 20 working days.
- 5.4. The Operator shall report to the Sector Association on such information and data as reasonably requested in order to allow the Sector Association to meet its obligations under the FDF 'Umbrella Climate Change Agreement for the Food and Drink Sector' and in order to allow it to operate the FDF CCA in an efficient manner to the benefit of Operators. This will include annual reporting of energy use and throughput data.
- 5.5. The Operator shall pay the charges to the Sector Association in respect of the joining fee and the annual fee to allow it to fulfil its obligations under the Umbrella Agreement and its obligations under this agreement. These charges will be notified to Operators when they

join the scheme and thereafter made available on an updated annual basis. The Operator shall pay all charges within 30 days of receiving an invoice from the Sector Association. The Operator acknowledges the right of the Sector Association to vary the charges on an annual basis.

6. Liability of the Association

- 6.1. The Sector Association shall manage the FDF CCA for the benefit of the participating Operators in a professional manner with all due diligence.
- 6.2. The Operator by entering into this Agreement agrees with the Sector Association that it will make no claim and bring no proceedings for damages against the Sector Association arising from the management by the Sector Association of the FDF CCA or the participation by the Operator the FDF through this Agreement other than in the case of fraud or dishonesty on the part of the Sector Association.
- 6.3. The Sector Association shall arrange insurance cover as it deems fit to protect the Operator from any additional charge of the Climate Change Levy they may incur due to a failure to secure a reduced-rate supply at any of the facilities included within the FDF 'Umbrella Climate Change Agreement for the Food and Drink Sector' where such failure is directly the consequence of miss-management or negligence on the part of the Sector Association. The Operator accepts and acknowledges that it may make no claim against the Sector Association in excess of the insurance cover so arranged.

7. Confidentiality

- 7.1. Other than meetings its obligations under the FDF 'Umbrella Climate Change Agreement for the Food and Drink Sector' undertakes in relation to Confidential Information:
 - To use the Confidential Information solely for the purpose of meeting its obligations under the FDF 'Umbrella Climate Change Agreement for the Food and Drink Sector' and in order to allow it to operate the FDF CCA in an efficient manner to the benefit of Operators;
 - Not to disclose the same to any third party other than an independent contractor appointed by the Sector Association ;
 - To limit access to Confidential Information to those of its officers and employees who in each case necessarily require the same for the purpose of managing the FDF CCA.
- 7.2. Where an independent contractor undertakes any part of the management of the FDF CCA on behalf of the Sector Association it will obtain an undertaking from such contractor to keep Confidential Information confidential and not to disclose the same to any third party other than the Association and the Environment Agency as the CCA Scheme Administrator and not to use the Confidential Information other than in connection with the management of the FDF CCA on behalf of the Association.
- 7.3. The obligations contained in this clause do not relate to Confidential Information which is required to be disclosed by any applicable law or order of a court of competent jurisdiction or recognised stock exchange or government department or agency but the Sector

Association shall consult with the Operator prior to such disclosure regarding the nature and extent of the disclosure required.

7.4. For the purpose of this clause "Confidential Information" shall mean all information or data of a financial, technical, operational or commercial nature or regarding any aspect of the management of the Facilities disclosed or provided by the Operator to the Sector Association under the terms of this Agreement or otherwise pursuant to the management and operation of the FDF CCA by the Sector Association.

7.5. The restrictions contained in this clause shall not inhibit the Sector Association from making any representations it may wish to the Environment Agency in its role as the scheme administrator.

8. General



8.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing or by e-mail addressed to that other party at the address provided in the Underlying Agreement or Umbrella Agreement.

8.2. No waiver by the Sector Association of any breach of this Agreement by the Operator shall be considered as a waiver of any subsequent breach of the same or any other provision.

8.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

8.4. The Contract shall be governed by the laws of England and the English Courts shall have exclusive jurisdiction in the event of any dispute.

8.5. Any additional provisions to govern this Agreement shall be agreed by the parties in writing and signed on their behalf.

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| <p>Signed on behalf of the Sector Association by</p> <p>Name: Alison Butler</p> <p>Position: FDF CCA Administrator</p> <p>Signature: </p> <p>Date: 19.5.14</p> | <p>Signed on behalf of the Operator by</p> <p>Name: ANDREW GRANGE</p> <p>Position: COMPANY HSE MANAGER</p> <p>Signature: </p> <p>Date: 15/05/2014.</p> |
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