

CUSTODY AGREEMENT

This Custody Agreement between:

- (1) the Contracting Member States (as defined hereafter) represented in the auctions by the auctioneers appointed pursuant to Article 22 (1) of the Auctioning Regulation (each a “*Member State*” and together referred to as the “*Member States*”), collectively represented under this Agreement by the European Commission (the “*Representative*”), and
- (2) European Commodity Clearing AG, established at Augustusplatz 9, 04109 Leipzig, Germany, (“*ECC*”),

each a “*Party*”, and together referred to as the “*Parties*”, shall be effective as of April 1st, 2017 (the “*Effective Date*”).

Each Member State shall continue to be a Party to this Agreement and this Agreement shall continue to be in full force in relation to each such Member State as from the Effective Date until return or delivery by ECC of all the Custodial Allowances (as defined hereafter) deposited by that Member State, it being understood that in such case this Agreement shall continue to be in full force in relation to the other Member States.

This Agreement is to be construed together with the clearing conditions of ECC, the contract for the appointment of the second common auction platform entered into between the European Commission, the signatory Member States (the “*Contracting Member States*”) and ECC on 13 July 2016 (the “*Service Contract*”) and the Escrow Agreement (as defined below). In case of any conflicts between this Custody Agreement and the clearing conditions of ECC, the provisions of this Custody Agreement shall prevail. Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the Escrow Agreement.

Whereas pursuant to Article 46 of the Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (the “*Auctioning Regulation*”), allowances auctioned by any auction platform shall be transferred by the Union registry prior to the opening of a bidding window, into a nominated holding account, to be held in escrow by the clearing system or settlement system acting as custodian, until delivery of the allowances to successful bidders or their successors in title, pursuant to the results of the auction, after payment of the auction proceeds has been effected.

Whereas pursuant to Article 47 (2) of the Auctioning Regulation, upon payment of the sum due, pursuant to Article 44 (1) of that Regulation, each successful bidder or its successors in title shall be delivered the allowances allocated to that bidder, as soon as practicable and in any event no later than the deadline for their delivery, by transferring the allowances notified to the bidder pursuant to Article 61 (3)(a) of the Auctioning Regulation from a nominated holding account held in escrow by the clearing system or settlement system acting as custodian, in whole or in part, into one or more nominated holding accounts held by the successful bidder or by its successors in title, or into a nominated holding account held in escrow by a clearing system or settlement system acting as custodian for the successful bidder or its successors in title.

Whereas ECC is the system operator of the clearing system that is connected to the second common auction platform and the Member States and ECC desire that ECC is also appointed as custodian as hereinafter provided.

Whereas, since an allowance is a “dematerialised” instrument that can be held through a custodian, allowances can be held in the Union registry either (i) on an individual account in the name of the ultimate investor who has the ownership interest over the allowances, or (ii) on an omnibus account in

the name of a custodian. In the latter case, the registration of the allowances in the name of the custodian is only a *prima facie* evidence of title, in the sense of Article 40 (2) of the Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EC) No 920/2010 and No 1193/2011 (the “**Registry Regulation**”), and ownership interests to the allowances belong to the ultimate investors (in the case at hand to the Member States). This interpretation is consistent with the concept of “custodian” as used in the Auctioning Regulation and with the existing holding structure of the Union registry and the holding system that is implemented by ECC for the primary market and secondary market of allowances, where interests in the dematerialized allowances of the Member States, of the bidders and of the trading participants for secondary market transactions, are held through omnibus accounts in the name of ECC at the Union registry (i.e. in “nominee name”), without the ultimate investor’s ownership interest being shown in the Union registry.

Whereas Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC was implemented in Germany by the German Allowances Trading Act (“*Treibhausgas-Emissionshandelsgesetz*” – “**TEHG**”). Section 7 (3) of the TEHG contains two conditions for a transfer of allowances to be effective: (1) the transfer of allowances shall be effected by agreement and (2) the transfer of allowances shall be effected by entry in the account of the purchaser in the emissions trading register. This means that under German law there is only a transfer of title to the extent that the entry into the Union registry is confirmed by an underlying agreement. The allowances auctioned by the auction platform belong to the Member States, and are transferred in the Union registry from the EU Auction Account or the EU Aviation Auction Account, in the sense of Article 41 (1) of the Registry Regulation, (respectively “**EU Auction Account**”, “**EU Aviation Auction Account**” or otherwise together referred to as “**EU (Aviation) Auction Account**”) to the Auction Delivery Account (as defined in Article 4.2 below). Since the Auction Delivery Account is opened in the name of ECC, the assumption based on the registration in the Union registry is that after the transfer to the Auction Delivery Account, the allowances belong to ECC. However, this assumption is rebutted by this Custody Agreement, which makes it clear that the registration is effected by ECC on behalf of and acting as custodian for the Member States, and that title to the allowances remains with the Member States.

Whereas the Parties want to ensure that ECC is appointed as custodian pursuant to Articles 46, 50 (1) and 50 (3) of the Auctioning Regulation, that have direct effect in Germany and in all other Member States, as construed in accordance with EU legislation, including the Registry Regulation, and that any definition of “custodian” or implementation of the relevant provisions under the laws of Germany and under any other national law of the Member States that contradicts or limits Articles 46, 50 (1) and 50 (3) of the Auctioning Regulation, as construed in accordance with EU legislation including the Registry Regulation or deviates from or prevents the practical effectiveness (“*effet utile*”) of Articles 46, 50 (1) and 50 (3) of the Auctioning Regulation, does not apply to this Custody Agreement nor to its implementation and enforcement.

Whereas the Member States and ECC want to ensure compliance with the Auctioning Regulation by entering into a trust by authorization (“*Ermächtigungstreuhand*”), based on an authorisation (“*Verfügungsbefugnis*”) in the sense of section 185 paragraph 1 of the German Civil Code (§ 185 Abs. 1 BGB) and that as a result:

- (i) in the event that ECC, as trustee, exceeds its authorization, as laid down in this Custody Agreement and in the Escrow Agreement (as defined hereafter), the disposal of the allowances is not valid, except in case of acquisition by a *bona fide* third party as provided in Article 40 (4) of the Registry Regulation; and
- (ii) in case of an Insolvency Event (as defined in Article 7.1. below) involving ECC, this Agreement, the Custody Accounts and the Custodial Allowances (as defined respectively in Articles 2 and 3 below) do not form part of the insolvency estate of ECC and are shielded and

exempt from such Insolvency Event. To this effect, Parties want to ensure at all times that the Custody Accounts and the Custodial Allowances are exclusively held in escrow by ECC as custodian for the sole benefit of the respective Member States, are kept separately from the own property and other assets of ECC and any other third parties, and are thus legally and economically the sole property of the respective Member States under this Agreement.

Whereas the Parties will also enter into an escrow agreement appointing ECC as escrow agent pursuant to Articles 46, 50(1) and (3) of the Auctioning Regulation (the “*Escrow Agreement*”).

In consideration of the foregoing, the Parties **have agreed as follows**:

Article 1. Appointment as custodian

The Member States hereby appoint ECC as custodian pursuant to Articles 46, 50 (1) and 50 (3) of the Auctioning Regulation to act in accordance with and subject to the terms of this Agreement and ECC hereby accepts such appointment and agrees to act in accordance with and subject to such terms.

Article 2. Safekeeping of Custodial Allowances

ECC hereby accepts to serve as custodian of the general allowances and aviation allowances of the Member States deposited with ECC and accepted by ECC (the “*Custodial Allowances*”), and to keep safely the Custodial Allowances on behalf of and for the sole benefit of the Member States, ensuring that the Custodial Allowances are subject to due skill care and protection and are not misappropriated by persons with access to the Custodial Allowances. In performing its obligations under this Agreement, ECC shall observe and comply with all laws and regulations applicable in Germany, including secondary legislation or regulations of any competent authority and any other applicable laws and regulations currently into force and to all Proper Instructions (as defined in Article 5 below). Without prejudice to the generality of the foregoing, ECC shall observe and comply with the authorisation (“*Verfügungsbefugnis*”) in the sense of section 185 paragraph 1 of the German Civil Code (§ 185 Abs. 1 BGB), provided by the Member States under Article 4 of this Agreement. The Member States however do not transfer any rights *in rem* over the allowances to ECC. When ECC, as trustee, exceeds its authorization when disposing of Custodial Allowances, and except in case of acquisition by a *bona fide* third party as provided in Article 40 (4) of the Registry Regulation, such disposal of the allowances is not valid and the Member States remain the legal owners with all of their powers.

Allowances are deemed to be deposited with and accepted by ECC in the sense of the first paragraph when the transfer of the allowances is effected from the EU (Aviation) Auction Account to the Auction Delivery Account, pursuant to Article 64 of the Registry Regulation.

Article 3. Custody account opening

ECC shall open an internal inventory account in the clearing system of ECC as custody account for each Member State (a “*Custody Account*”).

All Custody Accounts shall be located and maintained for all purposes at the registered office of ECC in Germany and shall be governed solely by German law, notwithstanding any outsourcing or sub-custody arrangements made by ECC.

All Custody Accounts shall be opened in the name of the Member States.

ECC’s books and records (regardless of the media in or upon which they are maintained) shall constitute sufficient evidence of the Member State’s entitlements in relation to the Custodial Allowances, and all such books and records (including printed statements, e-mails and faxes received) irrespective of the form in which they are maintained, shall have the same value in evidence as a handwritten document.

Article 4. Powers and duties of ECC with respect to the Custodial Allowances

ECC shall have and perform the following powers and duties with respect to the Custodial Allowances:

Article 4.1. Crediting of the Custodial Allowances to the Custody Accounts

The Custodial Allowances shall be credited to the Custody Accounts of the relevant Member States in accordance with the applicable auction table referred to in Article 62 of the Registry Regulation. Title on the Custodial Allowances shall be established by booking the allowances on the Custody Accounts and acquisitions and dispositions of the Custodial Allowances shall be effected by book entry through crediting and debiting of the Custodial Allowances on the Custody Accounts of the Member States and no other steps or conditions shall be required to render an acquisition or disposition effective between the Member States and ECC and against third parties, except for the the confirmation of the transfer in the Union Registry as provided in Article 4.5.

Article 4.2. Holding the Custodial Allowances in the Union registry

ECC shall hold an auction delivery account in the Union registry, in accordance with Article 15 of the Registry Regulation, in which it shall hold the Custodial Allowances on behalf of the Member States (the “*Auction Delivery Account*”) deposited and accepted by ECC in accordance with Article 2. The appearance of ECC as holding the Custodial Allowances in the Union registry shall not mean, shall not be understood and shall not be construed as the basis for any title or rights of ECC in its own capacity in relation to the Custodial Allowances other than the limited rights set forth in this Agreement. Title and all rights relating to the Custodial Allowances shall exclusively belong to the Member States and the Custodial Allowances shall not form part of the property of ECC available for distribution among or realisation for the benefit of the creditors of ECC.

Article 4.3. Segregation of the Custodial Allowances in the Union registry

ECC shall ensure that the Custodial Allowances are segregated from any allowances that ECC holds in the Union registry in its own capacity and from the allowances that ECC holds in the Union registry for other account holders by holding all the Custodial Allowances on a segregated Auction Delivery Account in the Union registry and by ensuring that at all times all the Allowances held in such segregated Auction Delivery Account in the Union registry are Custodial Allowances held for the account of the Member States as set forth in Article 4.2. above.

Article 4.4. Matching book entry requirement

ECC shall ensure that the sum of the Custodial Allowances credited to the Custody Accounts is at all times, in number and Description (as defined in Article 4.6. below), equal to the Custodial Allowances that it holds for the account of the Member States in its Auction Delivery Account in the Union registry as set forth in Articles 4.2. and 4.3. above.

The Custodial Allowances that ECC holds for the account of the Member States in its Auction Delivery Account in the Union registry as set forth in Articles 4.2. and 4.3. above shall at all times be equal, in number and Description, to the Custodial Allowances deposited pursuant to Article 2 and not returned or delivered pursuant to Article 4.6.

In case the Custodial Allowances held in the Auction Delivery Account are less in number than the Custodial Allowances of the same Description credited on the Custody Accounts (“*Negative Holding*”), ECC shall immediately rectify the Negative Holding by either:

- (a) reversing erroneous credits or debits;
- (b) increasing the number of Custodial Allowances it holds as custodian in its Auction Delivery Account for the account of the Member States using the method described in Article 6.2. first paragraph, ensuring that this amount and Description is equal to the amount and Description of Custodial Allowances transferred in accordance with Article 64 of the Registry Regulation and/or, if this is not possible or sufficient, by reducing the number of Custodial Allowances credited on the Custody Accounts that it maintains for the Member States in proportion to their holding.

If the rectification of a Negative Holding results in or from a Loss of Custodial Allowances (as defined in Article 6.1. below), Article 6 applies.

Article 4.5. Delays between the initiation and finalization of transfers in the Union registry

For the purpose of the segregation requirement of Article 4.3. and the matching book entry requirements of the first, second and third paragraph of Article 4.4., the transfers in the Union registry shall be taken into account as from the moment of their confirmation in accordance with Article 39 (1) and (2) of the Registry Regulation, except in case of cancellation in accordance with Article 39 (4) of the Registry Regulation.

In case the allowances are delivered to a third party beneficiary (typically the successful bidder, or to ECC in case of failure of cash collection by ECC from the successful bidders), ECC shall, immediately after crediting of the custody account of that beneficiary, start the execution of the necessary steps for the confirmation of the transfer of the relevant allowances from the Auction Delivery Account to the relevant account at the Union Registry, in the meaning of Article 39 (1) and (2) of the Registry Regulation, which shall be concluded without delay.

The delivery by crediting of the custody account of a third party beneficiary shall be conditional on the confirmation of the transfer of the relevant allowances from the Auction Delivery Account to the relevant account at the Union Registry, in the meaning of Article 39 (1) and (2) of the Registry Regulation. The delivery of the allowances credited on the custody account of the third party beneficiary shall only be final and irrevocable, and the relevant incoming credits of allowances on the custody account of such beneficiary shall only be available to such beneficiary upon the aforementioned confirmation in the Union Registry.

Notwithstanding the delays referred to in Article 39 of the Registry Regulation between the confirmation and the finalization of a transfer in the Union Registry, the delivery of Custodial Allowances shall be final and irrevocable immediately and automatically upon confirmation of such transfer in the Union Registry.

Article 4.6. Return or delivery of the Custodial Allowances

ECC has an absolute obligation of result to deliver or return the Custodial Allowances and shall only deliver or return the Custodial Allowances in the following circumstances:

- (i) Return of the allowances upon receipt of a Proper Instruction from the Representative as defined in Article 5 below. In such case, ECC shall comply with its obligation to return the Custodial Allowances by transferring the Custodial Allowances specified in the relevant Proper Instruction in the manner set forth in the Proper Instruction, unless otherwise agreed in the Escrow Agreement;
- (ii) Return of allowances in case of Loss of Custodial Allowances (as defined in Article 6.1. below). In case of Loss of Custodial Allowances, ECC shall immediately notify the Representative thereof and shall, unless requested otherwise by a Proper Instruction, upon such notification, return the Custodial Allowances remaining on the Custody Account after the Loss (“**Remaining Allowances**”) by transferring them to the relevant EU (Aviation) Auction Account, without any request of the Representative being required. ECC shall comply with its obligations under this paragraph before complying with its obligation under Article 6.2. to use its best endeavours to recover the Lost Allowances (as defined in Article 6.1. below) and/or substitute all Lost Allowances by Replacement Allowances (as defined in Article 6.2. below);
- (iii) Return of allowances in case of the occurrence of an Insolvency Event (as defined in Article 7.1.). In case of the occurrence of an Insolvency Event, ECC shall promptly return the Custodial Allowances available on the Custody Account at the Moment of the Insolvency Event (as defined in Article 7.1.) by transferring them to the relevant EU (Aviation) Auction Account, without any request of the Representative being required, unless requested otherwise by a Proper Instruction; and
- (iv) Delivery of allowances pursuant to the Escrow Agreement in the manner specified in the Escrow Agreement.

In case of return of Custodial Allowances in accordance with sub-paragraphs (i) to (iii) above, ECC shall immediately notify the European Energy Exchange AG, established at Augustusplatz 9, 04109

Leipzig (“**EEX**”), and request the cancellation of the auctions covered by the Custodial Allowances concerned without delay. ECC shall however only request EEX to cancel any auction in accordance with sections (ii) and (iii) of the previous paragraph to the extent that such cancellation does not result in the revocation of any transfer orders within the meaning of Article 2 (i) of Directive 98/26/EC on settlement finality in payment and securities settlement systems (the “**SFD**”) (“**Transfer Orders**”) after the moment that such Transfer Orders became irrevocable as defined in the clearing conditions of ECC. ECC shall also not return any allowances, available on the Custody Accounts of the Member States that are required for the settlement of such Transfer Orders. In case of the occurrence of an Insolvency Event, this paragraph only applies if and to the extent that under applicable law, such Transfer Orders are legally enforceable and binding on third parties notwithstanding the opening of the insolvency proceedings.

ECC shall comply with its obligation to return Custodial Allowances by delivering allowances of a type, issue, trading period, and term (“**Description**”) equal to the Description of the relevant Custodial Allowances. The allowances shall be returned *pro rata* in accordance with Article 6.3.

Article 4.7. Record keeping

ECC shall maintain proper and adequate records of the identity, status and ownership of the Custodial Allowances and shall keep the Member States fully informed of all actions taken by ECC in relation to the Custodial Allowances which could directly or indirectly affect the rights and obligations of the Member States represented by their auctioneers or ECC under this Agreement, the Escrow Agreement, the Clearing Conditions or the Service Contract.

ECC agrees that its independent accountant, the Representative under the Service Contract, including any entity designated by the Representative, or any representative of an appropriate regulatory body, shall be entitled to examine on ECC’s premises ECC’s records and tax receipts relating to the Custodial Allowances and to report findings to the Member States, upon receipt of a Proper Instruction from the Representative requesting such examination.

Article 5. Proper Instructions and notices

“**Proper Instructions**” under this Agreement shall mean a request, transmission, direction, instruction or certification initiated by one or more person or persons, as the Representative shall have from time to time authorized and which may relate to specific transactions or to types or classes of transactions, and may be in the form of standing instructions.

Proper Instructions and notices or other communication required or which may be given hereunder shall be given in accordance with Article I.10 of the Service Contract.

Article 6. Loss of Custodial Allowances

Article 6.1. Loss of Custodial Allowances

A Custodial Allowance of a particular Description shall be deemed lost (a “**Loss**”, and each a “**Lost Allowance**”) if:

- (i) A stated right of ownership of a Member State over a Custodial Allowance is demonstrated not to be valid because it either ceased to exist (e.g. it ceased to exist because it was stolen, destroyed or lost as a result of negligence, poor administration or inadequate record keeping) or never existed (e.g. because it was forged, fraudulent or in full or in part invalid, or because the Member States ownership was registered on the basis of falsified documents);
- (ii) A Member State has been definitively deprived of its right of ownership over the Custodial Allowance (e.g. because such Custodial Allowance is nationalised, expropriated, seized, or if as a result of an insolvency such Custodial allowance cannot be recovered);
- (iii) A Member State is definitively unable to directly or indirectly dispose of the Custodial Allowance (e.g. if for any reason such Custodial Allowance is not freely transferable or deliverable without encumbrance).

ECC shall immediately inform the Representative of any Negative Holding or of any other suspicion or indication of a potential Loss and of any steps taken to assess whether such Negative Holding, suspicion or indication results in a Loss of Custodial Allowances.

Article 6.2. Compensation by ECC

In case of a Loss of Custodial Allowances, ECC shall immediately use its best endeavors to recover the Lost Allowances and, if recovery is not possible, to replace the lost Custodial Allowances by allowances of the same amount and the same Description as the lost Custodial Allowances (“**Replacement Allowances**”). All Replacement Allowances will continue to be deemed deposited subject to the terms and conditions of this Custody Agreement, until they have been returned or delivered pursuant to Article 4.6.

Where the allowances cannot be replaced by Replacement Allowances, ECC shall compensate the Member States by promptly transferring the Corresponding Amount (as defined below) to the nominated bank account of the relevant Member State(s) referred to in Article 44 (1) of the Auctioning Regulation, or, when such payment is unsuccessful due to circumstances outside ECC’s control, to an alternative account if the relevant Member State has nominated such account, and where such alternative account is not provided or payment to that account is unsuccessful, to a notary trust account (“*Notar-Anderkonto*”) at the cost of ECC and for the benefit of the relevant Member State.

ECC shall however not be required to replace lost Custodial Allowances by Replacement Allowances or to compensate Member States by transferring the Corresponding Amount as provided in the previous paragraph, if and to the extent that ECC can prove that a Loss arose as a result of an external event beyond its control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary (“**Force Majeure Loss**”).

For the purpose of the previous paragraph, an event shall be deemed external when it is not resulting from an act or omission from ECC and/ or any other entity used for the performance of the service contract or this agreement, and an event shall be deemed beyond the control of ECC if there is nothing ECC or any other entity used for the performance of the service contract or this agreement, could have done to prevent it. External events beyond the control of ECC include but are not limited to government decisions, natural disaster and war.

The corresponding amount shall be the market value of the allowances of the same number and Description as the Lost Allowances calculated on the basis of the price of allowances in the secondary market that is the most liquid, at the opening of the business day on which the Loss of the Custodial Allowances occurred, or the last auction price, whichever is higher (“**Corresponding Amount**”). For the purpose of this Agreement, a business day refers to a TARGET2 business day.

Article 6.3. Force Majeure Loss of Custodial Allowances

In case of a Force Majeure Loss of Custodial Allowances, ECC shall use its best efforts to prevent further losses and to recover the Lost Allowances. If the Force Majeure Loss of Custodial Allowances was only partial and if the Lost Allowances could not be recovered, the remaining allowances of the same Description shall be allocated to the affected Member States on a *pro rata* basis as follows: the reduction in the amount of Custodial Allowances of a given Description on the Custody Accounts shall be shared by those Member States holding such Custodial Allowances in their Custody Accounts at the opening of the business day on which the Force Majeure Loss of Custodial Allowances occurred. The sharing shall be proportionate to the amount of Custodial Allowances of such Description held by the relevant Member States at the time of the loss and shall be done by way of debiting the relevant Custody Accounts.

Article 6.4. Recovered Custodial Allowances

Any Custodial Allowances recovered by ECC in respect of a Force Majeure Loss of Custodial Allowances shall be shared among the Member States proportionally to their share in the reduction applied pursuant to Article 6.3.

Article 7. Rights of the Member States in case of insolvency of ECC

Article 7.1. Insolvency Event

For the purpose of this Agreement, an Insolvency Event shall mean illiquidity (“*Zahlungsunfähigkeit*”) or over-indebtedness (“*Überschuldung*”) affecting ECC, each within the meaning of the German Insolvency Code as applied by German case law, or any other similar provision under any other insolvency law applicable to ECC. Furthermore, an insolvency proceeding shall be deemed to be opened against ECC if ECC is subject to any collective measure provided for in the law of Germany, or a third country, either to wind up ECC or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments (an “*Insolvency Event*”). The Moment of the Insolvency Event shall mean the day on which ECC was aware or should have been aware of the occurrence of the Insolvency Event.

Article 7.2. Effectiveness of acquisitions and dispositions

ECC shall promptly inform the Representative in case it cannot ensure that acquisitions and dispositions of Custodial Allowances that have become effective pursuant to Article 4.1. shall equally be effective against the insolvency administrator and the creditors of ECC in case of an Insolvency Event.

Article 7.3. Acquisition of rights in the Custodial Allowances

In case of an Insolvency Event, the Member States shall acquire full rights in their allowances as soon as the allowances are held in the Auction Delivery Account in accordance with Article 4.2. and before their crediting to their Custody Account.

Article 7.4. Right to separation

It is the mutual understanding of the Parties to this Agreement that the Custodial Allowances, or in case of a Loss of Custodial Allowances, the Replacement Allowances shall be treated as rights *in rem* which can be separated, especially within the meaning of section 47 of the German Insolvency Code. Furthermore, it is the exclusive purpose of the Custody Accounts to establish the Member States’ entitlements in relation to the Custodial Allowances, which remain, legally and economically the sole property of the relevant Member States. ECC shall ensure that the Custodial Allowances on each Custody Account are individually segregated at all times from any allowances that ECC holds in its own capacity and from the allowances that ECC holds for third parties and other Member States, by ensuring that at all times all the allowances held in such segregated Custody Account are exclusively Custodial Allowances held for the account of the relevant Member State as set forth in Article 4.2. Moreover ECC shall segregate the Custodial Allowances in the Union registry on an omnibus basis according to Article 4.3. This shall mean that in case of an Insolvency Event, the Member States are entitled, based on this Agreement, to claim the separation (“*Aussonderung*”) of the Custodial Allowances from the insolvency estate of ECC pursuant to section 47 of the German Insolvency Code, as owners with full legal rights (“*Vollrechtsinhaber*”).

Article 7.5. Restitution of the Custodial Allowances

Title and all rights relating to the Custodial Allowances shall exclusively belong to the Member States, and the Custodial Allowances shall be unavailable for distribution or realisation for the benefit of the creditors of ECC, even in case of an Insolvency Event. Pursuant to this Agreement and the right of separation pursuant to section 47 of the German Insolvency Code, entitlement to separation, surrender and delivery of the Custodial Allowances are governed by this Agreement and the applicable legal provisions applying outside of any insolvency proceedings, even in case ECC is subject to an Insolvency Event. The Custodial Allowances shall be returned immediately to the Member States in accordance with Article 4.6. on the day of the commencement of the Insolvency Event.

If the Custodial Allowances available on the day of the commencement of the Insolvency Event are not sufficient to ensure the full restitution of the allowances of the Member States, the available allowances shall be allocated between the Member States in proportion to their rights. In such case, if ECC holds in its own assets a number of allowances of the same Description, these allowances shall

be added to the aggregate amount of Custodial Allowances of the same Description to be allocated to the Member States and ECC shall keep only the number of allowances remaining after the total number of allowances of the same Description held by it for the Member States has been returned to the Member States.

Article 8. Bona fide acquisition

Pursuant to Article 40 (4) of the Registry Regulation, unless a Member State knew or should have known at the time of the crediting of Custodial Allowances to its Custody Account that that crediting should not have been made because that crediting violates the rights of another person that has an interest in the allowances or because the allowances were subject to an earlier defective entry (“*Bona Fide Acquirer*”), such Member State is protected against the reversal of that transaction and cannot be held liable for such transaction or defective entry.

Article 9. Indemnity

ECC shall at all times indemnify and keep indemnified and hold harmless the Member States against all losses, costs, claims, expenses, proceedings, damages, demands, actions, compensation, settlements, awards and liabilities of any nature arising from or relating to:

- (i) ECC’s failure to comply with this Agreement;
- (ii) any other violation of the rights of the Member States or the Representative;
- (iii) ECC’s failure to comply with applicable laws or regulations; or

Article 10. Action, suit or other proceeding

Promptly after the receipt by ECC of notice of any demand or claim or the commencement of any action, suit or proceeding, which in any way, directly or indirectly, arises out of or relates to this Agreement, the services of ECC hereunder, or the Custodial Allowances held by it hereunder, ECC shall notify the Representative in writing. Upon receipt of such notice, ECC shall at the request of the Representative provide all reasonable assistance to determine ownership or disposition of the Custodial Allowances or deposit the Custodial Allowances with the clerk of any appropriate court or retain the Custodial Allowances pending receipt of a final, non-appealable order of a court having jurisdiction over all of the parties hereto directing to whom and under what circumstances the Custodial Allowances are to be disbursed and delivered or returned. The provisions of this Article 10 shall survive in the event ECC resigns or is discharged pursuant to Article 11 below.

Article 11. Termination of this Agreement

Without prejudice to Article 10, this Custody Agreement shall automatically terminate:

- (i) in case of termination of the Service Contract, or
- (ii) in case of replacement of ECC following an amendment of the Service Contract,

and only after disbursement, delivery and /or return of all the Custodial Allowances deposited before the termination of the Service Contract.

Article 12. Miscellaneous

Article 12.1. Governing law

This Agreement shall for all purposes be deemed to be made under and shall be construed in accordance with the laws of Germany. Each of the Parties hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Agreement shall be brought and enforced in the courts of Germany, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive - provided the laws of Germany prescribe no other mandatory place of jurisdiction. Each of the Parties hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum.

Article 12.2. Entire Agreement

This Agreement, supplemented by the Escrow Agreement, the Services Contract and the clearing conditions of ECC, contains the entire agreement of the Parties hereto with respect to the subject matter hereof.

Article 12.3. Headings

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation thereof.

Article 12.4. Amendments, Written form

This Agreement may not be limited, amended or terminated or repealed, in whole or in part, except by an agreement in writing by the Parties. This shall also apply to changes to this clause stipulating the written form.

Article 12.5. Preamble, Recitals, Prior arrangements

The preamble and recitals to this Agreement form an integral part of this Agreement. This Agreement contains all agreements of the Parties relating to the transactions governed by this Agreement. No written or oral ancillary agreements exist. Any prior arrangements shall be replaced by this Agreement.

Article 12.6. Severability clause

If any of the provisions of this Agreement becomes or is held to be invalid, illegal or unenforceable, all other provisions of this Agreement remain in full force and effect. The invalid, illegal or unenforceable provision is deemed to be amended and replaced by a valid, legal or enforceable provision that legally and economically accomplishes as far as legally possible the economic purpose and the actual intent of the Parties concerning the invalid, illegal or unenforceable provision. The same applies should any omission or gaps in the Agreement become apparent or evident; such an omission or gap shall, without affecting or impairing the validity, legality and enforceability of the remaining provisions hereof, be deemed to be filled with such provision as comes as close as possible to the original intent of the Parties.