

ESCROW AGREEMENT

This Escrow 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 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 the termination of this Agreement pursuant to Article 12, or until the relevant Member State ceases to be a party to the Service Contract, 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 Commission, the signatory Member States (the "**Contracting Member States**") and ECC on 13 July 2016 (the "**Service Contract**") and the Custody Agreement (as defined below). In case of any conflicts between this Escrow Agreement and the clearing conditions of ECC, the provisions of this Escrow Agreement shall prevail. Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the Custody Agreement.

Whereas pursuant to Articles 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 ECC is the system operator of the clearing system that is connected to the second common auction platform and the Parties will also enter into a custody agreement appointing the ECC as custodian pursuant to Articles 46, 50 (1) and 50 (3) of the Auctioning Regulation (the "**Custody Agreement**").

Whereas under the Custody Agreement, Parties 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 the Custody Agreement and in this Agreement, 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. of the Custody Agreement) involving ECC, this Agreement, the Custody Agreement, the Custody Accounts and the Escrow Allowances (as defined in Article 2 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 allowances held in escrow and the relevant accounts are

exclusively held in escrow by ECC as custodian, 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 and the Custody Agreement.

Whereas the Custody Agreement authorizes ECC to manage or dispose of the allowances held in custody in a specific manner, including using these allowances as collateral to cover exposures of ECC as a result of ECC's obligation to deliver the allowances to the successful bidders pursuant to Article 46 of the Auctioning Regulation. The Parties therefore desire that ECC is also appointed as escrow agent pursuant to Article 46 of the Auctioning Regulation and accepts the Escrow Allowances (as defined in Article 2 below) in escrow, to be held and disbursed and delivered as hereinafter provided.

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

Article 1. Appointment of ECC as escrow agent

The Member States hereby appoint ECC as escrow agent pursuant to Articles 46, 50 (1) and (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. Deposit of Escrow Allowances

ECC shall open for each Member State an internal inventory account in the clearing system of ECC that is held under that Member State's name and that is governed by a separate custody agreement (the "**Custody Account**"). The auction platform operated by EEX shall submit the auction table to the Commission in accordance with Article 62 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**"). Pursuant to Article 64 (1) of the Registry Regulation, the central administrator of the Union registry will transfer the allowances to be auctioned and necessary for settlement (the "**Escrow Allowances**") to ECC's auction delivery account in the Union registry referred to in Article 15 of the Registry Regulation (the "**Auction Delivery Account**") in accordance with the auction tables. Upon transfer of the Escrow Allowances into the Auction Delivery Account, ECC will credit the Escrow Allowances to the Custody Accounts that it maintains for the Member States.

Article 3. Covered obligations

ECC shall hold the Escrow Allowances in escrow on the Custody Accounts in accordance with Article 50 of the Auctioning Regulation as collateral ("**Sicherheit**"). That collateral is provided by the relevant Member States to the benefit of ECC to cover the obligations of ECC to deliver the auctioned allowances after payment of the auction proceeds has been effected for the auctions concerned for which ECC is appointed as clearing system under the Services Contract (each a "**Covered Obligation**" and together the "**Covered Obligations**").

The Escrow Allowances shall constitute collateral security within the meaning of Article 2(m) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (the "**SFD**"), benefitting from the protection of Article 9 (1) of the SFD as transposed in German law by section 166 para. 3 subpara. 1 of the German Insolvency Code.

Article 4. Escrow Periods

ECC shall hold each of the Escrow Allowances in escrow until the termination of their respective Escrow Period (as defined below).

Each "**Escrow Period**" shall be the period beginning:

- (i) on the date the Escrow Allowances are deposited with ECC in accordance with Article 2; or

- (ii) in case of a Cancellation or Partial Cancellation (as defined in Article 5 below), on the date the Escrow Allowances that were released from escrow are reassigned as collateral to cover Covered Obligations of the next scheduled auctions pursuant to Article 5 (ii). Such date shall be the date of publication of the relevant adjustment of the auction calendar;

and ending on the date of release of the Escrow Allowances from escrow as set forth in Article 5.

Article 5. Release from escrow of the Escrow Allowances

The Escrow Allowances provided as collateral under this Agreement shall automatically be released from escrow when the Covered Obligations covered by such Escrow Allowances have been satisfied or have been cancelled in the following limited circumstances:

- (i) pursuant to Article 47(2) of the Auctioning Regulation, upon delivery of such Escrow Allowances by ECC to the successful bidders or their successors in title according to the results of the auction (a “*Delivery*”); or
- (ii) pursuant to Article 45(4)(a) of the Auctioning Regulation, upon delivery of such Escrow Allowances to ECC, in case of failure of cash collection by ECC from one or more Clearing Members;
- (iii) upon cancellation of an auction pursuant to Articles 7 (5), (6), or Article 9 of the Auctioning Regulation, pursuant to Article 4.6 first paragraph indent (i) to (iii) of the Custody Agreement (as a result of the return of the Escrow Allowances following a Proper Instruction, loss or insolvency), or upon failure of settlement pursuant to Article 45 (5) of the Auctioning Regulation (a “*Cancellation*”), or
- (iv) upon withholding of such Escrow Allowances from the auction pursuant to Article 22 (5) of the Auctioning Regulation (a “*Partial Cancellation*”).

Article 6. Holding, disbursement and delivery of the Escrow Allowances upon their release from escrow

Upon release of Escrow Allowances from escrow, ECC shall hold or disburse and deliver such Escrow Allowances as follows:

- (i) Delivery of Escrow Allowances as referred to in Article 5 (i) shall be effected in accordance with Article 4.1. of the Custody Agreement by book entry through the debiting of the Escrow Allowances from the Custody Accounts of the Member States and crediting them on the custody accounts of the successful bidders, as specified in Articles 4.1. and 4.5. of the Custody Agreement. The Escrow Allowances shall be allocated to the successful bidders or their successors in title in accordance with the auction results, pursuant to Article 47 of the Auctioning Regulation;
- (ii) Delivery of Escrow Allowances to ECC as referred to in Article 5 (ii) shall be effected in accordance with Article 4.1. of the Custody Agreement by book entry through the debiting of the Escrow Allowances from the Custody Accounts of the Member States and crediting them on the custody account of ECC;
- (iii) In case of a Cancellation or Partial Cancellation, ECC shall keep the Escrow Allowances that are released from escrow in custody on the Custody Accounts.

In case the allowances concerned by the Cancellation or Partial Cancellation are distributed over auctions scheduled on the same auction platform by the relevant adjustment of the auction calendar, the allowances that have been released from escrow are automatically reassigned as collateral (“*Sicherheit*”) to cover Covered Obligations of the next scheduled auction.

In case the Cancellation is resulting from the application of Article 4.6. first paragraph, indents (i) to (iii) of the Custody Agreement, ECC shall return the allowances that have been released from Escrow as set forth in that Article.

Article 7. Replacement Allowances and Corresponding Amounts

Any Replacement Allowances (as defined in Article 6.2. of the Custody Agreement) replacing Lost Allowances (as defined in Article 6.1. of the Custody Agreement) are subject to the terms and conditions of this Escrow Agreement in the same way and covering the same Covered Obligations as the lost Escrow Allowances that they are replacing, until they are released from escrow pursuant to Article 5.

Any Corresponding Amounts as defined in Article 6.2. of the Custody Agreement transferred to the Member States pursuant to Article 6.2. of the Custody Agreement as compensation for Lost Allowances, shall not be held in escrow under this Escrow Agreement and shall not be subject to the terms and conditions of this Escrow Agreement.

Article 8. Restrictions on transfers or other dispositions

During the Escrow Period, no sale, transfer or other disposition may be made of any or all of the Escrow Allowances except as provided in this Agreement. During the Escrow Period, the Member States shall not pledge or grant a security interest in the Escrow Allowances or grant a security interest in their rights under this Agreement.

Article 9. Custody Account waiver

ECC hereby waives any and all right, title, interest or claim of any kind (a “*Claim*”) in or to the Escrow Allowances held in escrow on the Custody Accounts and/or in or to any distribution of the Custody Accounts in which the Escrow Allowances will be deposited and held and hereby agrees not to seek recourse, reimbursement, payment or satisfaction for any Claim against the Escrow Allowances held in escrow on the Custody Accounts and/or in or to the Custody Accounts for any reason whatsoever, other than as a beneficiary under this Escrow Agreement.

Article 10. Right of separation in case of an Insolvency Event of ECC

It is the mutual understanding of the Parties to this Agreement that the Escrow Allowances, and in case of Loss, the Replacement Allowances, shall be treated as rights *in rem* which shall be treated as if they can be separated, especially within the meaning of section 47 of the German Insolvency Code. Furthermore all Escrow Allowances on the Custody Accounts are and remain legally and economically the exclusive and sole property of the relevant Member States. ECC shall ensure that the Escrow Allowances and any Replacement 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 Escrow Allowances and Replacement Allowances held in such segregated Custody Account are exclusively allowances held for the account of the relevant Member State as set forth in Article 4.2. of the Custody Agreement. ECC shall moreover segregate the Escrow Allowances and Replacement Allowances in the Union registry on an omnibus basis as set forth in Article 4.3. of the Custody Agreement. This shall mean that in case of an Insolvency Event of ECC, the Member States are entitled, based on this Agreement, to claim the separation (“*Aussonderung*”) of the Escrow Allowances and Replacement Allowances from the insolvency estate of ECC pursuant to section 47 of the German Insolvency Code, as owners with full legal rights (“*Vollrechtsinhaber*”).

Article 11. 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 Escrow Allowances held by it hereunder, ECC shall notify the Representative in writing. In the event of the receipt of such notice, ECC shall at the request of the Representative provide all reasonable assistance to determine ownership or disposition of the Escrow Allowances or deposit the Escrow Allowances with the clerk of any appropriate court or retain the Escrow 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 Escrow Allowances are to be disbursed and delivered. The provisions of this Article 11 shall survive in the event ECC resigns or is discharged pursuant to Article 12 below.

Article 12. Termination of this Agreement

Without prejudice to Article 11, this Escrow Agreement shall automatically terminate in case of termination of the Service Contract or in case of replacement of ECC following an amendment of the Service Contract, or in case of termination of the Custody Agreement, but only after completion of all Covered Obligations.

Upon such termination of the Agreement, any Escrow Allowances remaining on the Custody Accounts after completion of the Covered Obligations existing prior to the termination of the Agreement, shall automatically be released from escrow in accordance with Article 48 (7) of Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (*EMIR*) and shall remain on the Custody Account and continue to be held in custody subject to the terms and conditions of the Custody Agreement. Upon request of the Representative, ECC shall promptly transfer such remaining Escrow Allowances from the Custody Accounts to the EU (Aviation) Auction Accounts.

Article 13. 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:

- ECC's failure to comply with this Agreement;
- any other violation of the rights of the Member States or the Representative;
- ECC's failure to comply with applicable laws or regulations.

Article 14. Miscellaneous

Article 14.1. 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 personal 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 14.2. Entire Agreement

This Agreement, supplemented by the Custody 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 14.3. 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 14.4. Notices

Any notice or other communication required or which may be given hereunder shall take place in accordance with Article II.5 and section 5.9.2 of Annex II to the Service Contract.

Article 14.5. 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 Article stipulating the written form.

Article 14.6. 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 14.7. 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.