AGREEMENT ON AUCTIONING SERVICES

**The United Kingdom represented by The Department for Business, Energy and Industrial Strategy, on behalf of the Secretary of State for Business, Energy and Industrial Strategy**

**(“UK”)**

1 Victoria Street

London

SW1H 0ET

and

**European Energy Exchange AG ("EEX")**

Augustusplatz 9

DE-04109 Leipzig

Germany

and

the entity performing the function of the clearing system, including escrow and custody services referred to in Article 46 and 47(2) of Auctioning Regulation (hereafter: the "**clearing system**"):

**European Commodity Clearing AG ("ECC")**

Augustusplatz 9

DE-04109 Leipzig

Germany

(EEX and ECC hereafter: the "C**ontractor**" and the UK and the Contractor are hereafter the “**Parties**”)

WHEREAS

1. The UK has withdrawn from the European Union. However, as an integral part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the Withdrawal Agreement), the UK and the EU have agreed that, in accordance with Article 9 and Annex 4 to the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC applies to and in the UK in respect of Northern Ireland insofar as it applies to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.
2. In this Agreement, notwithstanding any other provision hereof:
   1. references to the UK will be references to the UK only insofar as certain provisions of Union law are made applicable, by the Protocol on Ireland and Northern Ireland to the Withdrawal Agreement, in respect of Northern Ireland;
   2. the services to be provided hereunder shall relate to the auctioning of allowances allocated to the UK acting in respect of Northern Ireland under the Prototcol on Ireland and Northern Ireland to the Withdrawal Agreement;
   3. references to allowances in this Agreement relate only to the allowances allocated to the UK in respect of Northern Ireland for auctioning as part of the European Union emissions trading scheme;
   4. the services (including any statement of exclusivity regarding the services) shall not include nor in any way relate to the operation (including any auctioning thereunder) as part of the UK emissions trading scheme; and
   5. nothing in this Agreement shall preclude, prohibit or restrict the development of the UK emissions trading scheme.
3. Pursuant to Art. 30 of Commission Regulation (EU) No 1031/2010[[1]](#footnote-2) (“**Auctioning Regulation**”) UK has decided not to participate (“**opt-out**”) in the joint action as provided in Art. 26 of the Auctioning Regulation and not to aggregate its volume of allowances for Northern Ireland with the volume of allowances of the member states participating in the joint action.
4. The European Union and the contracting member states, all represented by the European Commission, and EEX (representing ECC) have entered into a service contract (No 340201/2020/835568/SER/CLIMA.B1, “**CAP3 Service Contract**”) setting out the conditions for auctioning emission allowances by EEX in accordance with Art. 26(1) and Art. 27 Auctioning Regulation (“**CAP3**”) and for the performance of the service of a clearing system by ECC in accordance with Art. 46 and Art. 47(2) of the Auctioning Regulation.
5. Pursuant to Art. I.20 of the CAP3 Service Contract, EEX shall allow opt-out member states to use CAP3, “without becoming a party to the contract. The volumes of allowances to be auctioned for the opt-out States will not be aggregated with the volume of allowances auctioned under the contract.” EEX “shall offer the same terms and conditions” applicable under the CAP3 Service Contract to the opt-out member states “unless derogations are necessary for taking into account the specificities of the auctioning for those States”.
6. Hence pursuant to the third subparagraph of Article 30(7) of the Auctioning Regulation,, UK intends to contract EEX under the present Agreement (“**Agreement”**) as the auction platform in accordance with Art. 26(1) and Art. 27 of the Auctioning Regulation to auction UK's share of the volume of allowances covered by Chapter III of Directive 2003/87/EC allocated to Northern Ireland.
7. The Parties are aware, that this Agreement shall not conflict with the CAP3 Service Contract, nor undermine or otherwise negatively impact the proper performance of the CAP3 Service Contract. The Parties agree that in any event of such conflict, they shall use its best endeavors to remove the negative impediment inter alia by means of amending this Agreement.

HAVE AGREED

to the Agreement includingthe following annex:

**Annex I** European Commission, DG CLIMA, Sensitive Information Handling, CLIMA handling instructions

which form an integral part of this Agreement.

The Agreement sets out the obligations of the Parties during and after the execution of the Agreement.

1. Order of priority of provisions and applicable principles

In all circumstances, in the event of conflict between the provisions of the Agreement and any document issued by the Contractor, the Agreement takes precedence, regardless of any provision to the contrary in the Contractor's documents.

* 1. Definitions and short-hands
     1. All references to "day(s)" in the Agreement shall mean calendar day(s), unless otherwise specified.
     2. For the purposes of this Agreement, the following definitions shall apply in the Agreement:

1. ‘‘allowance’’: an allowance to emit one tonne of carbon dioxide equivalent during a specified period, in accordance with Directive 2003/87/EC
2. "CAP3 secondary market": secondary market operated by the Contractor as part of the same regulated market performing the function of the auction platform;
3. “CAP3 Service Contract”: contract stipulating the terms and conditions for the auctioning of the third common action platform referred to in Article 26(1) of the Auctioning Regulation; entered into between the Contractor and the European Union as well the contracting member states, both represented by the European Commission.
4. "conflict of interests": a situation where the impartial and objective performance of the Agreement by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other direct or indirect personal interest, or any other shared interest related to the subject matter of the Agreement;
5. "force majeure": any unforeseeable, exceptional situation or event beyond the control of the Parties that prevents them from fulfilling any of their obligations under the Agreement. The situation or event must not be attributable to error or negligence on the part of the Parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure;
6. "formal notification" (or "formally notify"): form of communication between the Parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;
7. "fraud": any act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union’s and/or UK’s financial interests and relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Unions and/or UK´s budget, (ii) the non-disclosure of information in violation of a specific obligation or to the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union´s or the UK´s interest;
8. "handling of information or documents": generating, processing, storing, transmitting or destroying of information or documents;
9. "information": all information relating to the performance of this Agreement whether or not covered by intellectual property rights, whether written or unwritten, whether in machine-readable or other form and whether stored electronically or otherwise, including any adaptations, improvements or modifications thereto;
10. "intellectual property rights": (i) copyrights, rights in software, patents, database rights, rights in industrial designs, and rights in trademarks, trade names, inventions, domain names and designs (in each case whether registered or unregistered); (ii) any other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world; and (iii) applications for registration, and the right to apply for registration for any of these rights;
11. "irregularity": any infringement of a provision of Union law or the applicable law of England and Wales or of the Agreement resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the auction revenue of UK;
12. "notification" (or "notify"): form of communication between the Parties made in writing including by electronic means;
13. "moral rights": any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country in the world, or under any treaty;
14. "performance of the Agreement": the execution of and delivery of the services by the Contractor to the UK;
15. "personnel": persons employed directly or indirectly or contracted by the Contractor to perform the Agreement;
16. "professional conflicting interest": a situation in which the Contractor’s previous or ongoing professional activities affect its capacity to perform the Agreement to an appropriate quality standard;
17. "related person": any natural or legal person who is a member of the administrative, management or supervisory body of the Contractor, or who has the powers of representation, decision or control with regard to the Contractor;
18. "regulated market": a multilateral system operated and/or managed by a market operator in accordance with Directive 2014/65/EU[[2]](#footnote-3) (MiFID II);
19. “Services” has the meaning as set out in Article I.1.3.
20. "third Party intellectual property rights": intellectual property rights of a third Party.
21. "Union”: the European Union.
22. “Withdrawal Agreement” means the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, including its Protocols.

In addition, the following short-hands shall apply:

1. "application form": form for application for admission for direct access to the regulated market and to the clearing system or settlement system;
2. "auction fee": the fee for the services of the auctions charged directly or indirectly by the regulated market as defined in point i) of the third subparagraph of Article I.3.1 (b) ii)
3. "clearing and settlement fee": the fee for the clearing and settlement services charged by the clearing system as defined in point ii) of the third subparagraph of Article I.3.1 (b) ii)
4. "exchange rules": the rules of the regulated market established pursuant to Title III of MiFID II;
5. "fee for accessing the auctioning electronic interface": the fee for the use of the auctioning electronic interface via internet connection;
6. "fee for auction-only access": the fee charged for admission to the regulated market to bid in the auctions to persons that only seek to be admitted to bid in the auctions without already being, or simultaneously becoming, a member of or participant in the CAP3 secondary market;
7. "fee threshold": the fee threshold per lot won in the auctions as set out in Article I.3.2;
8. "lot": set of 500 emission allowances;
9. "rules of the system": the rules of the clearing system or the settlement system;
   * 1. **Subject matter**

The subject matter of the Agreement is the provision of the following services by the Contractor:

1. Services to be provided to UK that consist of the auctioning of allowances pursuant to Article 27 of the Auctioning Regulation via single or multiple emission allowances auctions.
2. The foregoing shall be applicable for the clearing system exclusively with respect to the performance of its functions.
3. EEX shall conduct the auctions in accordance with the provisions of the Auctioning Regulation and the principles of equality, non-discrimination, transparency, mutual recognition and proportionality as well as confidentiality and impartiality requirements, as long as these services do not conflict with the CAP3 Service Contract or undermine or otherwise negatively impact the proper performance of the above mentioned CAP3 Service Contract.
4. The Parties agree that they will refrain from any action that undermines or has negative impact on the proper performance of the services under the CAP3 Service Contract, including any action that could undermine the reputation of the auctioning conducted under the CAP3 Service Contract. EEX is entitled to consult the European Commission whenever there is a risk that such undermining or negative impact could arise and shall take the utmost account of any opinions provided by the European Commission in its capacity under the CAP3 Service Contract. The foregoing includes in particular the determination of the auction calendars for UK in respect of Northern Ireland.
5. The auctions shall be conducted in accordance with the rule and regulations of EEX and ECC as amended from time to time and in its respective valid version, available under [www.eex.com](http://www.eex.com/) and www.ecc.de. The conduct of the auctions shall be as much as possible harmonised with the conduct of the auctions under the CAP3 Service Contract.
6. The incident management protocol and the reserve price methodology under the CAP3 Service Contract shall apply to the Services in their entirety despite the fact that UK will not aggregate its share of emission allowances in respect of Northern Ireland with the pool of allowances auctioned under the CAP3 Service Contract.
7. For any complaints, problems or incidents related to the auctions conducted for UK, EEX will inform UK and the European Commission in the same manner as it informs the European Commission under the CAP3 Service Contract. Mitigating measures proposed by EEX and approved by the European Commission under the CAP3 Service Contract shall apply with respect to the auctions conducted for UK, and in any case shall ensure that the auctions conducted for UK do not conflict with the CAP3 Service Contract or undermine or otherwise negatively impact the proper performance of the CAP3 Service Contract.
   1. Entry into force, place of performance, duration and termination of the Agreement
      1. Entry into force

The Agreement enters into force on the date on which the last Party signs it.

The performance of the Agreement cannot start before its entry into force.

* + 1. Duration

The Agreement shall expire on: (i) the day that is 90 days following the day on which another auction platform is appointed by the UK as successor of the Contractor and commences to auction allowances or (ii) 9 December 2025. The date of appointment of the successor auction platform shall be the date of the entry into force of the listing of an opt-out auction platform to be appointed by UK as provided for in the first subparagraph of Article 30(6) of the Auctioning Regulation.

Notwithstanding the above, the Agreement shall terminate with immediate effect as soon as the CAP3 Service Contract is terminated or does expire. Without prejudice to the expiry date of the Agreement, the Contractor shall cease auctioning allowances under the Agreement before the day on which the succeeding common auction platform or the opt-out platform appointed by UK commences to auction allowances but not earlier than five working days before that date, as agreed with UK to ensure maximum continuity with the auctions to be conducted by the succeeding platform.

The foregoing provisions are without prejudice to the provisions on earlier termination stipulated in Article I. 2.3.

* + 1. Termination

1. Grounds for termination by UK

UK may terminate the Agreement in the following circumstances:

1. if the provision of the services under the Agreement has not actually started within 15 days of the scheduled date and UK considers that the new date proposed, if any, is unacceptable;
2. if the Contractor is unable, through its own fault, to obtain any of the permit or licence required for the performance of the Agreement;
3. if the Contractor does not perform the Agreement in accordance with or is in breach of a substantial contractual obligation;
4. if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in paragraphs (a) and (b) of Article 136(1) of the Financial Regulation[[3]](#footnote-4);
5. if the Contractor or any related person is subject to any of the situations provided for in paragraphs (c) to (h) of Article 136(1) or Article 136(2) of the Financial Regulation3;
6. if the procedure for awarding this Agreement, the CAP 3 Service Contract or the performance of the Agreement prove to have been subject to, irregularities, fraud or breach of other legally binding obligations;
7. if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
8. if the Contractor is in a situation that could constitute a conflict of interests or a professional conflicting interest;
9. if a change to the Contractor’s legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the Agreement or substantially modify the conditions under which the CAP 3 Service Contract or this Agreement was initially awarded;
10. in the event of force majeure, where resuming implementation is impossible or the necessary ensuing amendments to the Agreement would mean that the Agreement is no longer fulfilled or result in unequal treatment of tenderers or Contractors;
11. if the award of this Agreement is found to be a breach of the Public Contracts Regulation 2015 or the Concession Contracts Regulations 2016;
12. if the Contractor is in breach of data protection obligations;
13. if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;
14. for convenience in the event Auctions are no longer required, by providing written notice a minimum of 30 days in advance of the desired termination date.
15. Grounds for termination by the Contractor
16. The Contractor may terminate the Agreement if UK fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to perform the contract, including establishing the arrangements with the auctioneer pursuant to Article 22(3) of the Auctioning Regulation; or
17. if UK does unreasonably withhold or delay consent in relation to the first paragraph of Article I.6 of this Agreement.
18. Procedure for termination

The following procedure shall apply:

1. a Party must formally notify the other Party of its intention to terminate the Agreement and the grounds for termination;
2. the other Party has 30 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed;
3. if the other Party submits observations, the Party intending to terminate shall formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate;
4. unless a timeframe is referenced in the subparagraphs of paragraph (a), termination takes effect on the day following the date of formal notification of termination as evidenced by the post mark or acknowledgement of receipt;
5. in addition, at the request of UK and regardless of the grounds for termination, the Contractor shall provide all necessary assistance, including information, documents and files, to allow UK to complete, continue or transfer the services to a new Contractor or internally, without interruption or adverse effect on the quality or continuity of the services.

The Parties may agree to draw up a transition plan detailing the Contractor’s assistance unless such plan is already detailed in other contractual documents.

The Contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the Parties will negotiate an arrangement in good faith; and

1. in case the Contractor terminates the Agreement, the date when the termination takes effect shall be specified in the formal notification but cannot be any sooner than 12 months from the date of the formal notification of termination as evidenced by the post mark or acknowledgement of receipt, unless otherwise notified by UK.
2. Effects of termination

The Contractor is liable for damage incurred by UK as a result of the termination of the Agreement including the cost of appointing another Contractor to provide or complete the services.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Agreement, including loss of anticipated profits, unless the loss was caused by the situations specified in paragraph (b).

The Contractor shall take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

* 1. Price FOR THE SERVICES

In accordance with Article 52(1) of the Auctioning Regulation (hereafter in this clause the “Article”), the cost of the Services shall be paid by bidders through fees. The Contractor shall:

1. not be entitled to any monetary compensation from UK or the auctioneer for the performance of the Services, unless specified below under I.3.1 (d);
2. be entitled to require directly or indirectly the payment of fees by persons admitted to bid and bidders in accordance with this Article.

Differentiation of fees to be paid by persons admitted to bid or differentiation of fees to be paid by successful bidders is not allowed, except where expressly provided for in this Article.

The Contractor shall be entitled to require the payment of fees for accessing the auctions and fees per lot won in the auctions, as specified below.

* + 1. Type of fees

The Contractor shall be entitled to require the payment of fees for accessing the auctions and fees per lot won in the auctions, as specified below. The fees as contained in the respective valid version of the price list of EEX and ECC, available under [www.eex.com](http://www.eex.com/) and [www.ecc.de](http://www.ecc.de/) shall apply.

1. Fees for accessing the auctions

Fees for accessing the auctions are charged to persons admitted to bid in the auctions. These fees do not vary depending on the number of allowances actually won in the auctions.

The Contractor shall not be allowed to charge any fee to persons prior to the approval of their application for admission to bid, including when their application is rejected.

Fees for accessing the auctions, if any, shall give access to auctions of general allowances; no separate fees for accessing the auctions shall be charged.

The Contractor shall be entitled to require the payment of the following one-off fees and periodic fees for accessing the auctions by persons admitted to bid in the auctions:

1. one-off fees are charged only once, irrespective of the amount of allowances awarded to that person in an auction and irrespective of the period for which the person intends to remain or remains admitted to bid;
2. periodic fees are fees payable for a given period as a condition for being admitted to bid on the CAP3 secondary market, e.g. membership fee; those shall not depend on the volume of allowances awarded in the auctions, nor on the frequency of participation of the bidder in the auctions.

The Contractor shall be entitled to differentiate the one-off fees and the periodic fees, as follows:

1. fee charged for admission to the regulated market to bid in the auctions to persons that are members of or participants in the CAP3 secondary market, in addition to any fees provided for accessing the CAP3 secondary market;
2. fee charged for admission to the regulated market to bid in the auctions to persons that only seek to be admitted to bid in the auctions without already being, or simultaneously becoming, a member of or participant in the CAP3 secondary market (hereafter: "fees for auction-only access");
3. fee for the use of the auctioning electronic interface via internet connection (hereafter: "fees for accessing the auctioning electronic interface"). This fee shall include fees charged for any mandatory training or examination for participating in the auctions via the auctioning electronic interface (e.g. trader examination).
4. Fees per lot won in the auctions

Fees per lot won in the auctions is charged to successful bidders per lot won.

The Contractor shall not charge any fees per lot won in the auctions to unsuccessful bidders.

The level of the fee per lot won in the auctions:

1. shall not vary according to the actual volume of allowances an individual bidder bids for;
2. shall be the same for each lot auctioned in a single auction and shall equal the corresponding fee applicable under the CAP3 Service Contract.

The Contractor shall be entitled to require the payment of the fee per lot won in the auctions as per the price list of EEX[[4]](#footnote-5) and ECC[[5]](#footnote-6) as follows:

1. fee for the services of the auction platform charged directly or indirectly by the regulated market (hereafter: the "auction fee"); and
2. fee for the clearing and settlement services charged by the clearing system (hereafter: the "clearing and settlement fee").

The clearing and settlement services covered by this fee shall include the delivery of allowances to the designated account in the Union Registry of the successful bidder or its successor in title. This shall not preclude the Contractor from further differentiating within the clearing and settlement fee a separate fee per lot won for the transfer of allowances to the designated account in the Union Registry.

The sum of the auction fee and the clearing and settlement fee is referred to as "fee per lot won in the auctions".

1. Any other fees

The Contractor shall not charge directly or indirectly to persons admitted to bid or bidders any other fees than the fees for accessing the auctions and the fees per lot won in the auctions provided in paragraphs (a) and (b) above. The foregoing shall not preclude:

1. the Contractor or any other relevant providers from requiring the payment of fees for the access to the auctioning electronic interface via dedicated connections;
2. the clearing system designated under the 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 (hereafter: "SFD")[[6]](#footnote-7) from requiring the payment of fees by participants in the system for their admission and general participation in the system (CCP) and the submission of the applicable margins, collaterals and contribution in accordance with the applicable legislation. No separate fees shall be charged to participants in the system for participation into the system for the clearing and settlement of allowances;
3. the clearing members from requiring fees to the persons admitted to bid in the auctions that are not participants in the system;
4. fees charged for any non-mandatory training or examination;
5. fees charged by the Contractor for services other than those under the contract to persons admitted to bid or to bidders and charging corresponding fees, provided that such additional services are optional and do not negatively affect the services performed under this Agreement.

(d) One-off payment

The Contractor is required to undertake preparatory works necessary for establishing the Services. This includes:

• making necessary adjustments to the reporting structure, website, trading and clearing functionalities and rulebooks of the Contractor and its clearing house European Commodity Clearing AG;

• Admitting of the any additional auction participants

• setting up the TARGET2 connection with the auctioneer; and

• Coordination with the European Commission.

Following agreement between the Parties that the Contractor has completed the preparatory works above or following the first auction executed under this Agreement, whichever is the earliest, the Contractor shall be entitled to send an invoice the UK requesting a one-off payment for the sum EUR 38,000, plus applicable VAT (if any).

* + 1. Transparency of fees

The levels of any fees charged by the Contractor shall be publicly disclosed in a visible and user-friendly manner on the dedicated auctioning website.

UK may require the Contractor to publish the benchmark fees (including their level), the fee threshold per lot won in the auctions or the principles of the methodology for calculating such fee thresholds for ensuring the adequate transparency of possible adjustments of the levels of the fees during the performance of this Agreement.

* 1. Payment arrangements

1. One-off and periodic fees for accessing the auctions payable by persons admitted to bid in the auctions shall be due as follows:

Table 1 – Payment of fees for accessing the auctions

|  |  |  |
| --- | --- | --- |
| **Type of fees for accessing the auctions** | **Time when the fee is charged** | **Payment term for persons admitted to bid** |
| **ONE-OFF FEES FOR ACCESSING THE AUCTIONS** | | |
| Total additional auction one-off fee for access of members or participants in CAP3 secondary market (excluding fees for accessing the auctioning electronic interface) | n/a | n/a |
| Total one-off fee for auction-only access (excluding fees for accessing the auctioning electronic interface) | n/a | n/a |
| Total auction one-off fee for accessing the auctioning electronic interface | n/a | n/a |
| **PERIODIC FEES FOR ACCESSING THE AUCTIONS** | | |
| Total additional auction periodic fee for access by members or participants in CAP3 secondary market (excluding fees accessing the auctioning electronic interface) | n/a | n/a |
| Total periodic fee for auction-only access (excluding fees for accessing the auctioning electronic interface) | n/a | n/a |
| Total auction periodic fee for accessing the auctioning electronic interface | n/a | n/a |

1. Fees per lot won in the auctions shall be due as follows:

Table 2: Payment of fees per lot won in the auctions

|  |  |
| --- | --- |
|  | Payment term for successful bidders or their successful in title |
| Auction fee | Due date of payments  The auction fee and the clearing and settlement fee fall due on the day of delivery on which the transaction is based. Transaction fees are payable upon receipt of the invoice.  Debit  Any auction fee and clearing and settlement fee which fall due will be debited by debit order using the debit advice procedure.  Value-Added Tax (VAT)  Fees are exclusive of VAT or other taxes. The VAT stated in the invoices is set in accordance with the respectively valid tax regulations. |
| Clearing and settlement fee |

* 1. Communication details
     1. For the purpose of this Agreement, any communication relating to the Agreement or to its implementation may be made in writing either on paper or in electronic form.
     2. Paper communication shall be sent by registered mail or by courier, with acknowledgement of receipt where so required under the Agreement, on the Contractor's own initiative or at UK´s request.
     3. Electronic communication shall be confirmed by paper communication when so requested by UK or the Contractor.
     4. Any communication is deemed to have been made when the receiving Party receives it, unless this Agreement refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving Party on the day of dispatch of that e-mail provided that it is sent to the email address indicated in the arrangements. The sending Party must be able to prove the date of dispatch. In the event that the sending Party receives a non-delivery report, it must make every effort to ensure that the other Party actually receives the communication by email or mail. In such a case, the sending Party is not held in breach of its obligation to send such communication within a specified deadline.

Formal notifications are considered to have been received by the receiving Party on the date of receipt indicated in the proof received by the sending Party that the message was delivered to the specified recipient.

* + 1. Paper communications shall be submitted to the following addresses:

1. UK:

[REDACTED]

the Department for Business, Energy and Industrial Strategy

1 Victoria Street

London

SW1H 0ET

[REDACTED]

1. Contractor:

European Energy Exchange AG

[REDACTED]

Group Strategy

DE-04109 Leipzig, Germany

* 1. Governance of the Agreement
     1. The Parties are aware that the governance of the Agreement is related to the governance of the CAP3 Service Contract, as the Contractor shall offer the same terms and conditions applicable under the CAP3 Service Contract to UK. However, nothing in this Agreement shall enable the Contractor to implement any amendments or changes to auction rules under this Agreement without the consent of the UK, such consent not to be unreasonably withheld or delayed.
     2. Hence the Parties agree, that acts to be adopted by the Contractor might result from any modification of the CAP3 Service Contract or from the performance of the CAP3 Service Contract, provided that such acts are consistent with para 1.6.1 above.
     3. In addition, the Parties may agree on other documents describing actions to be taken by the Contractor for the performance of the contract or aspects of the auction processes which are not regulated under the Agreement. Upon request of UK, or on its own initiative, the Contractor may submit a Contractor proposal. Upon approval by UK, such proposal shall become an act adopted by the Contractor.
  2. Performance of the Agreement
     1. The Contractor shall provide services of high quality standards, in accordance with the Agreement and any acts adopted thereunder.
     2. The Contractor shall hold and maintain any permit or licence required in the State where the services are provided.
     3. The Contractor shall be able to start conducting the auctions on CAP3 at the latest 60 days after the entry into force of the Agreement.

In case of conflict between the exchange rules or the rules of the system and the Agreement, including any act adopted under the Agreement, the Agreement or any such act, in its only authentic version which shall be English, shall prevail and the Contractor shall be held liable under the Agreement for any damage arising from such conflict.

* + 1. The Contractor shall invite by letter the auctioneer to submit the application for admission as auctioneer to the regulated market and the clearing system.

The auctioneer and UK shall be notified in writing of the entry into application of the terms and conditions for auctioning in the exchange rules and rules of the system. In the event of any modification to the applicable legislation, the Contractor shall submit to UK a report identifying the impact of the modification to the applicable legislation on the auction process as well as the proposal for the corresponding modifications of this Agreement.

* + 1. The Contractor must not present itself as a representative of UK and must inform third parties that it is not part of the European public service.
  1. Arrangements with the auctioneer
     1. In accordance with Article 22(2) of the Auctioning Regulation, the Contractor shall conclude the necessary arrangements with the auctioneer appointed by UK allowing them to auction allowances (hereafter: "arrangements"), upon mutually agreed terms and conditions for the auctioning.

The Contractor shall use its reasonable endeavours for ensuring that the arrangement with the auctioneer are concluded in due time for the start of the auctions.

The arrangement shall consist in direct access admission to the regulated market and to the clearing system or settlement system, including any specific necessary technical or legal arrangements such as the technical connection for the payment of the auction proceeds into the nominated bank account of the auctioneer.

The arrangements and the related conditions for admission shall be defined in the exchange rules and the rules of the system and, to the extent necessary, reproduced or referenced to in the application form used for admission to direct access to the regulated market and the clearing system (hereafter "application form").

The terms and conditions for the auctioning shall consist in the terms and conditions in the Agreement and in the acts to be adopted under the Agreement and which are reflected to the extent necessary in the exchange rules and the rules of the system.

* + 1. Any breach by the Contractor or the subcontractors of the contractual relationship entered into with the auctioneer upon admission and which concerns terms and conditions for auctioning shall constitute a breach of this Agreement.
  1. Subcontracting
     1. The Contractor must not subcontract and have the contract performed by third parties without UK's prior written authorisation.
     2. Even if UK authorises subcontracting, the Contractor remains bound by its contractual obligations and is solely responsible for the performance of this contract.
     3. The Contractor must ensure that the subcontract does not affect the rights of the contracting authority under this Agreement.
  2. Agreement management
     1. The auction platform is hereby appointed as a contact point for the entities signing the Agreement. UK will deal with the auction platform in relation to all contractual matters, without prejudice to the right of UK to contact members of the other entities performing the Agreement, including subcontractors, for the day-to-day management and monitoring of the performance of the Agreement.
     2. The monitoring of the performance of this Agreement is without prejudice to monitor the Contractor's compliance with the Agreement and the supervision performed by the relevant competent authorities at EU or national level.

UK shall be entitled to perform checks and audits on the performance of the Agreement.

* + 1. The Contractor is required to cooperate with UK at all times in a constructive manner and to comply diligently with all its reporting and notification obligations relating to the monitoring of the Contractor's performance.
    2. The Contractor shall establish one core team for the management of this Agreement for the day-to-day management of the Contractor's performance of the Agreement.

The Contractor shall duly justify any change to the core team, and shall substitute an expert no longer listed in the core team with an expert of at least the same technical capability.

UK shall be entitled to contact the relevant member of the Contractor's core team, regardless of whether that person is employed, among others, by the Contractor, an entity within the Contractor's group, or by a subcontractor, whilst keeping the Contractor informed about such contact at all times, if necessary.

The core team shall at all times include at least one expert and a back-up for each of the following areas:

1. management-level experience in operating a regulated market;
2. management-level experience in operating a clearing system;
3. management-level experience in surveying auctioning or trading on a regulated market;
4. management-level experience in organising the external communications of a regulated market; and
5. management-level experience with responsibility for the information technology infrastructure and the security of data at a regulated market.

One person from the core team may be expert in more than one of the aforementioned fields, except where independence from one another is necessary for ensuring that there is no conflict of interests between two or more functions (e.g. regulatory compliance).

The aforementioned experts shall be natural persons and will hereafter be referred to as "members of the core team". Each member of the core team shall be entrusted with the appropriate managerial responsibility for the effective management of the performance of the Agreement falling within its area of expertise.

UK may require, where necessary for the proper performance of the Agreement the replacement of any member of the core team upon evidence or legitimate suspicion of conflict of interests, negligence or failure to perform his functions.

* + 1. The Contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by UK. The Contractor must inform its personnel that UK has no authority over the personnel and that their participation in providing the services does not result in any employment or contractual relationship with UK.
  1. Ownership of information and use of resulting information
     1. Definition of resulting information

All information that arises either directly or indirectly from the performance of this Agreement and the CAP 3 Service Contract, whether in whole or in part, shall be part of the resulting information.

Non-resulting information shall be excluded from the scope of the resulting information. Such non-resulting information may, for instance, relate to information obtained by the Contractor prior to the award of this Agreement and the CAP 3 Service Contract or information that has arisen and has been used exclusively through the operation of another auction platform or of CAP3 secondary market.

The Contractor shall draw up and submit for UK's approval a list of resulting information and non-resulting information that is necessary for understanding, accessing or using the resulting information. UK is entitled to organise on-site visits in order to further elaborate this list of resulting information and non-resulting information.

The Contractor shall maintain the list of resulting information and non-resulting information up to date.

The list shall identify any business secrets or other confidential information and their sensitivity level as referred to in the provisions of this Agreement that refer to confidentiality, as well as any intellectual property rights and third Party intellectual property rights contained in the resulting information or non-resulting information as referred to in these provisions.

The following are non-exhaustive examples of the types of resulting information:

1. any procedure, methodology or algorithm generated for the conduct of the auctions, including clearing and settlement, such as the determination of the auction clearing price, the resolution of tied bids and the determination of the reserve price methodology pursuant to Article 7(7) of the Auctioning Regulation;
2. any information generated from the implementation of the procedures, methodologies and algorithms referred to in paragraph (a), which may include anonymised information used for the determination of the auction clearing price, including but not limited to bids submitted, bids withdrawn and successful bids as well as resolved tied bids and the underlying data for the application of reserve price methodology;
3. any information used in, generated by or describing any process of the auctions, including the determination of the clearing price and of bids as mentioned in paragraph (a), and of the account keeping and transaction logs for payment of the auction proceeds and delivery of the allowances pursuant to Article 44 of the Auctioning Regulation;
4. the necessary arrangements for recording, updating and making available the information held on a bidder pursuant to Article 19 of the Auctioning Regulation that any entity(ies) participating in whole or in part in the process for admission to the auctions, including clearing and settlement, have in place;
5. any information pertaining to the decisions to admit applicants for admission to bid as referred to in Article 20(10) of the Auctioning Regulation and information pertaining to refusals, revocations or suspensions of admission referred to in Article 21 of the Auctioning Regulation;
6. information pertaining to the establishment and management of the auction calendar;
7. information regarding bidders' bidding behaviour on the CAP3, including all the bids submitted or withdrawn;
8. information on the frequency and nature of any complaints received relating to the operation of the CAP3, including the clearing system connected to it;
9. information on suspicions of money laundering, terrorist financing, fraud, corruption, or any other illegal activity or irregularity in relation to the operation of the CAP3, as well as the actions undertaken in the light of such suspicions and any contacts undertaken with the relevant competent authorities at national and EU level;
10. information on problems or issues regarding the arrangements entered into with the auctioneers and the solutions thereto;
11. information on any default of payment by bidders, any failure of delivery of allowances or on any problems or issues relating to clearing or settlement;
12. information on any problems or issues relating to the auction process and the solutions thereto.
    * 1. Property of all tangible and intangible assets available to the Contractor

The Parties are aware that the ownership and use of resulting information are governed by the CAP3 Service Contract. However, the Contractor shall ensure that UK has access to all resulting and non-resulting information necessary for the proper performance of this Agreement including, if necessary, subject to the permission of the European Commission, granting the UK a royalty-free, non-exclusive and non-transferable, in perpetuity licence to use such resulting and non-resulting information.

* + 1. The Contractor's obligations

The Contractor shall have the following obligations:

1. to keep resulting information safely and intact at all times. The Contractor shall hold resulting information separately from non-resulting information, unless otherwise agreed by UK;
2. to ensure the confidentiality, integrity and reliability of the resulting information at all times and comply with the obligations on confidentiality stipulated in this Agreement including, but not limited to, the requirements on the handling of information and documents described in Annex I;
3. to establish and maintain the necessary infrastructures, measures and procedures to ensure the confidentiality, integrity and reliability of resulting information;
4. to ensure that the information provided by the Contractor is reasonably sufficient to enable UK, the Contractor´s successor or any third Party designated by UK to make full and proper use thereof;
5. to provide the technical assistance necessary for enabling the access to or use of the resulting information or of any non-resulting information that is necessary to understand, access or use the resulting information;

Resulting information shall be disclosed or made available at any time that the UK reasonably requests – it shall also be similarly made available to the Contractor's successor or to any third Party designated by UK in an orderly manner and in a usable form to the extent required by the UK. The form in which or the support on which resulting information is disclosed or made available shall be readily accessible and user friendly.

The Contractor's obligations under this Article shall also apply to non-resulting information that is necessary for understanding, accessing or using the resulting information.

1. The Contractor shall continue to be bound by the obligations in this Article even after the expiry or termination of the Agreement for no less than five years or longer if provided for by the applicable law.
   * 1. UK´s rights

Notwithstanding Articles I.1.3(d) and I.11.2., UK shall have the following rights:

1. to use and allow the Contractor´s successor or any third Party designated by UK to use all resulting information in any way it deems fit;
2. to use and allow the Contractor´s successor or any third Party designated by UK to use non-resulting information that is necessary to understand, access or use resulting information in any way it may deem fit, including its storage, reproduction, modification, exploitation, granting access, adaptation, translation, disclosure, distribution, enhancement, maintenance, transmission or use in any other manner, subject to:
3. an undertaking of the Contractor's successor or any third Party designated by UK to use the non-resulting information solely for the purpose agreed to with such designated Party;
4. when the resulting information or non-resulting information that is necessary to understand, access or use the resulting information contain business secrets or other confidential information, a non-disclosure agreement with any third Party designated by UK to use such business secrets or confidential information for the purposes of applying the exit strategy and /or handover, unless the entity concerned has the right to receive the resulting information or non-resulting information concerned under the applicable legislation. The foregoing shall not limit UK's ability to disclose and use business secrets or other confidential information contained in the resulting information or non-resulting information for the fight against any type of fraud.

The Contractor hereby consents to the disclosure and use of any business secrets or other confidential information contained in the resulting information or the non-resulting information that is necessary to understand, access or use the resulting information under this Article. To this effect, the Contractor shall also obtain within the limits of the applicable legal framework any requisite consent from any sub-Contractor or other affected third Party, such as persons admitted to bid in the auctions or bidders in the auctions.

* + 1. Information of the European Commission and the Member States

The Contractor may transfer to the European Commission any information on the auctions for UK. EEX will include in its reporting to the Commission on individual auctions and in the monthly reports drafted pursuant to the CAP3 Service Contract the corresponding information on the auctions for UK. Any information resulting from the Agreement transferred to the European Commission pursuant to this Article, shall be made available and transferred to UK at the same time.

EEX will not require UK and the Commission to make any payment for providing information pursuant to this Article.

* 1. Exit strategy and handover
     1. After the adoption of the list of resulting information, the Contractor shall submit a draft exit strategy for UK's approval in accordance with Article 27(3) of the Auctioning Regulation.
     2. The exit strategy shall in particular:

1. list the resulting information and non-resulting information necessary for understanding the resulting information, which have to be made available to candidates and tenderers in the procurement procedures for the appointment of the Contractor's successor, identifying any business secrets or confidential information;
2. describe the way in which the resulting information and the non-resulting information referred to in paragraph (a) will be handled so as to ensure that is accessible in an orderly manner and in a usable form, and available at any time in a form or on a support that is readily accessible and user friendly;
3. describe the way in which the Contractor will provide any resulting information and non-resulting information referred to in paragraph (a) to UK or any third Party designated by UK in an user-friendly and orderly manner;
4. describe the way in which the Contractor will provide the technical assistance to the entities referred to in paragraph (c) which is needed to understand, access, copy or use the resulting information or any non-resulting information referred to in paragraph (a). Such technical assistance shall comprise:
5. organisation of trainings for the entities referred to in paragraph (c) which would enable those entities to understand, access or use the resulting information or any non-resulting information referred to in paragraph (a);
6. preparation for and attendance to meetings on the implementation of the exit strategy with the entities referred to in paragraph (c);
7. provision of any written or oral explanations or clarifications on any aspect relating to the resulting information or any non-resulting information referred to in point (a), in response to questions from the entities referred to in paragraph (c);
8. Provision, to the entities referred to in paragraph (c), of any material or information necessary to understand, access, copy, and/or use the resulting information or any non-resulting information referred to in paragraph (a);
9. describe any specific adaptations to the measures referred to in paragraphs (b) to (d) necessary in case of termination.
   * 1. The Contractor shall co-operate fully with UK, the Contractor's successor or any other third Party designated by UK in drawing up and implementing the exit strategy, in accordance with the Contractor's obligations and UK's rights under this Article.
     2. The Contractor's obligations under the exit strategy and this Article shall apply equally to any resulting information or non-resulting information that is in the possession or under the control of its subcontractor(s).
     3. These obligations shall continue to subsist after the expiry or termination of this Agreement, unless otherwise agreed by UK.
   1. Conflict of interests
      1. The Contractor must take all the necessary measures to prevent any situation of conflict of interest or professional conflicting interest.
      2. The Contractor must notify UK in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the performance of the contract. The Contractor must immediately take action to rectify the situation.

UK may do any of the following:

1. verify that the Contractor’s action is appropriate;
2. require the Contractor to take further action within a specified deadline;
   * 1. The Contractor must pass on all the relevant obligations in writing to:

(a) its personnel;

(b) any natural person with the power to represent it or take decisions on its behalf;

(c) third parties involved in the performance of the contract, including subcontractors.

The Contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

* 1. Confidentiality and security measures
     1. UK and the Contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the performance of the Agreement and identified in writing as confidential. This Article shall be without prejudice to the rights of the UK under Article I.11.
     2. Each Party must:

(a) not use confidential information or documents for any purpose other than to perform its obligations under the contract without the prior written agreement of the other Party;

(b) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information and in any case with due diligence;

(c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other Party.

* + 1. The confidentiality obligations set out in this Article I.14 are binding on UK and the Contractor during the performance of the Agreement and for as long as the information or documents remain confidential unless:

(a) the disclosing Party agrees to release the receiving Party from the confidentiality obligation earlier;

(b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;

(c) the applicable law (or a relevant regulatory body) requires the disclosure of the confidential information or documents.

* + 1. The Contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Agreement, a commitment that they will comply with this Article. At the request of UK, the Contractor must provide a document providing evidence of this commitment.
    2. The Contractor shall handle the information under this contract in accordance with the Generic Handling Instructions for Sensitive Information Handling. UK may amend on its own initiative or upon a proposal by the Contractor the handling instructions to take into account the experience gained in the implementation thereof and changes in the threats, vulnerabilities and technology. The aforementioned amendments shall enter into force upon UK's written notification to the Contractor.
    3. The Contractor shall establish and maintain a list of persons working in connection with the contract identifying which persons are authorised to handle information or documents marked in accordance with the Generic Handling Instructions for Sensitive Information Handling and the sensitivity information list. The Contractor shall submit to UK for information the aforementioned lists, including any amendments thereto. UK may require that the persons authorised to handle marked information or documents fill in and sign a specific declaration on confidentiality and lack of conflicts of interests. Where such a declaration is requested, the authorisation to handle the respective information shall be subject to the submission to UK of the duly completed, dated and signed declaration for the person concerned.
    4. The Contractor shall determine, establish and maintain the measures and procedures necessary to ensure that persons working for the Contractor who are not working in connection with the contract and who receive marked documents shall not read any such document or any information contained therein. The Contractor shall further determine, establish and maintain measures and procedures ensuring that, if such persons should nevertheless receive such information or documents by error, they shall inform the sender immediately and securely return the document unread, or immediately delete the electronic file concerned.

The Contractor shall determine, establish and maintain the measures and procedures necessary for ensuring the compliance with the marking and handling instructions notified by UK, corresponding to the maximum sensitivity level under the contract in accordance with the sensitivity information list, including any subsequent amendment, by means of a risk assessment based on the specific administrative and working environment.

These measures and procedures shall encompass, amongst others, physical security, IT security, document management and personnel security.

For any elements of information handling not specifically addressed by the handling instructions, the Contractor shall follow the principles and guidance set out in the Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission, and determine the appropriate security measures and procedures.

* + 1. The Contractor shall immediately notify the UK of any breach of its confidentiality obligations under the contract and any breach of the markings and of the related Generic Handling Instructions for Sensitive Information Handling.

The Contractor shall immediately notify the UK and promptly investigate any mishandling of marked documents or information contained therein, resulting in the loss or inappropriate handling of such information or documents, where it is known or where there are reasonable grounds for suspecting that such marked information or documents have been handled without due compliance with the relevant handling instructions.

The Contractor shall cooperate with UK for any investigation into a potential breach, loss or inappropriate handling of information or documents.

* 1. Competition

Cross-subsidies from activities performed under the Agreement to any other businesses are prohibited. The Contractor shall hold separate accounts for its activities on the performance of the Agreement and its other activities.

* 1. Legal structure and liability
     1. The auction platform is the European Energy Exchange, the Member State where the regulated market is authorised is Germany and the public law governing the trading conducted under the system of the regulated market in accordance with Article 44(4) of MiFID II is the law of Germany.

The clearing system is the European Commodity Clearing AG, the Member State where it is authorised as CCP is Germany, the law of the system referred to in Article 2(a) of SFD is the law of Germany, and the law applicable to the allowances held in custody and escrow by the clearing system is the law of Germany.

* + 1. Any change of entity, location and applicable law listed in I.16.1 and of sub subcontractor(s) shall be subject to the prior approval by UK and shall result in a corresponding amendment to the Agreement.
    2. The auction platform shall be liable for any loss or damage caused towards UK during or as a consequence of performance of the Agreement, including in the event of subcontracting.

For the avoidance of doubt ECC shall be jointly and severally liable together with EEX for any loss or damage caused towards UK but only where this loss or damage is caused by the performance of any services directly or indirectly related to the clearing and settlement and to the custody and escrow of the allowances.

* + 1. If a third Party brings any action against the UK in connection with the performance of the Agreement, including any action for alleged breach of intellectual property rights, the Contractor shall assist UK in the legal proceedings, including by intervening in support of UK upon request.
    2. UK is not liable for any loss or damage caused to the Contractor during or as a consequence of performance of the Agreement, unless the loss or damage was caused by wilful misconduct or gross negligence of UK
    3. The Parties are aware that any act by the European Commission relating to the CAP3 Service Contract management or the performance of the auctions under the CAP3 Service Contract that have been approved by the Joint Procurement Steering Committee (Hereafter: the "JPSC") for the Common Auction Platform (hereafter: "CAP") or on which the JPSC-CAP gave a positive opinion, or which have been adopted by the Commission following a decision from the JPSC-CAP pursuant to Article 13(4) of the JPA-CAP dispensing the Commission from seeking the JPSC's approval or opinion for that matter might have an impact on the Agreement. If required, the Parties will negotiate in good faith on a potential adjustment of the Agreement but no amendment or modification to this agreement or the performance of the Agreement will take place without the UK’s express written consent.
  1. Indemnity and insurance
     1. The Contractor shall hold harmless and indemnify UK on demand from and against all actions, claims and proceedings, including legal costs and incidental expenses, whether arising from actions, claims and proceedings, brought by third parties which are caused in whole or in part by the Contractor's breach of its obligations (including, for the avoidance of doubt, any breach by its subcontractors) under the Agreement or under the Contractor's non-contractual liability.
     2. The Contractor shall indemnify and hold harmless UK, both during and after the termination or expiry of this Agreement, against any and all actions, claims or proceedings based upon a violation of third party intellectual property rights or other rights because of the use of any rights granted to UK under this Agreement. In case of such an alleged action, claim or proceeding the Contractor may, at its own expenses:

1. obtain the right for UK to continue using such rights; or
2. replace or modify such rights so as to avoid violation, subject to the agreement of UK to the replacement or modification.

In case of such an alleged action, claim or proceeding UK may choose to terminate the Agreement.

* + 1. The Contractor shall effect and maintain for the duration of the Agreement one or more professional liability insurance policies at a level it reasonably considers sufficient against all the risks and damage or loss relating to the performance of the Agreement, with one or more reputable insurance companies.

The Contractor shall provide a proof of the relevant policy(ies) and that the policy(ies) cover all its possible liabilities under the Agreement upon request by UK, together with a receipt or other evidence of payment of the latest premium due thereunder.

* 1. Representation and warranties

The Contractor represents and warrants to UK that:

1. it has full capacity and authority to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
2. it is the exclusive owner of, or alternatively that it has the necessary authorisations with respect to any intellectual property rights in any resulting information and non-resulting information and that it has all the necessary rights and consents to comply with its obligations under the Agreement ;
3. it shall comply with all applicable laws, rules and regulations throughout the duration of the Agreement;
4. it does not carry out other business activities on its own account or on behalf of any States or third parties which prevent it from entering into or conflict with the Agreement or may undermine or otherwise negatively impact the performance of the Agreement. The Contractor shall not enter into any such activities following the entry into force of the Agreement;
5. neither itself, nor any nominated subcontractor, nor any member of its core team, nor any member of its team or the team of the nominated subcontractor(s) that is directly involved with the execution of the auction processes, has been at the time of the entry into force of the Agreement in one of the situations referred to in the paragraphs (a) to (h) of Article 136(1) or Article 136(2) of the Financial Regulation.
6. neither itself, nor any nominated subcontractor, nor any member of the core team, nor any member of its team or the team of the nominated subcontractor that is directly involved with the execution of the auction processes, is subject at the time of the entry into force of the Agreement to a conflict of interests as described in contractual provisions dealing with the conflict of interest
7. it acknowledged that the tasks and services under this Agreement shall be performed and provided by suitable, appropriately qualified, experienced and competent personnel, exercising due care and diligence throughout in the performance of the Agreement;
8. it has and shall at all times maintain in force and comply with all permits, authorisations and consents necessary to perform the tasks and provide the services under the Agreement so as to ensure that those are adequately supervised, including with regard to the financial requirements; and
9. all hardware and software used by the Contractor in the performance of the Agreement shall be legitimately used and fit for the purpose for which they are used, free from any legal defects and defects in material and workmanship and shall conform to the applicable product specifications under normal use.

The Contractor provides the above representations and warranties as by way of an independent guarantee pursuant to Section 311 para. 1 German Civil Code (BGB).

* 1. Checks and audits
     1. UK may check or require an audit on the performance of the Agreement. This may be carried out either by UK or anybody authorised to do so by it.

Such checks and audits may be initiated at any moment during the performance of the Agreement and during five years from the expiry or termination of the Agreement or longer if provided for by the applicable law.

The audit procedure is initiated on the date of receipt of the relevant letter sent by UK. Audits are carried out on a confidential basis.

* + 1. The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, during the performance of the Agreement and, during five years from the expiry or termination of the Agreement or longer if provided for by the applicable law. In case where the original copies are handed over to UK the Contractor is obliged to keep the copies.
    2. The Contractor shall grant UK’s staff and outside personnel authorised by UK the appropriate right of access to sites and premises where the Agreement is performed and to all the information and results, including information and results in electronic format, needed to conduct such checks and audits. Unless the information or results have already been handed over to UK previously, the Agreement shall ensure that the information or results are readily available at the moment of the check or audit and, if so requested, that information and the results are handed over in an appropriate form.
    3. On the basis of the findings made during the audit, a provisional report is drawn up. UK or its authorised representative shall send it to the Contractor, who has 30 days following the date of receipt to submit observations. The Contractor shall receive the final report within 60 days following the expiry of that deadline to submit observations.
  1. Applicable law and Settlement of disputes
     1. The Agreement is governed exclusively by the law of Germany.
     2. In the event that any dispute arising out of or in connection with the Agreement, UK and the Contractor shall use their best endeavours to address the situation as soon as possible in order to settle the matter amicably without undue delay.
     3. Any dispute arising out of or in connection with the Agreement that cannot be settled amicably shall be brought before the courts of Germany.

**SIGNATURES**

|  |  |
| --- | --- |
| **For the Contractor,**  **European Energy Exchange AG**  [REDACTED]  and  [REDACTED] | **For the United Kingdom**  [REDACTED] |
| **European Commodity Clearing AG**  [REDACTED]  and  [REDACTED] |  |

**ANNEX I**

European Commission

DG CLIMA

Sensitive Information Handling

CLIMA handlings instructions

1. 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 of the Council establishing a system for greenhouse gas emission allowances trading within the Union, OJ L 302 18.11.2010, p. 1. [↑](#footnote-ref-2)
2. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (*OJ L 173, 12.6.2014, p. 349)* [↑](#footnote-ref-3)
3. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 [↑](#footnote-ref-4)
4. available under https://www.eex.com/en/markets/trading-ressources/price-list [↑](#footnote-ref-5)
5. available under https://www.ecc.de/en/about-ecc/rules/price-list [↑](#footnote-ref-6)
6. [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 (OJ L 166, 11.6.1998, p. 45).](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01998L0026-20140917&qid=1466086521695&from=EN) [↑](#footnote-ref-7)