



**Standard agreement pursuant to the Decree of 28 December 2012 concerning the approval of standard agreements referred to in Article R.229-35 of the French Environmental Code regarding the national Administrator of the European greenhouse gas emission registry**

**AGREEMENT FOR THE OPENING AND ADMINISTRATION OF ACCOUNTS IN THE UNION  
REGISTRY AND IN THE KP REGISTRY**

**GENERAL TERMS AND CONDITIONS  
INSTALLATION OPERATOR AND AIRCRAFT OPERATOR ACCOUNT(S)**

Decree dated 28<sup>th</sup> December 2012 published in French Journal Officiel N° 0001 dated 1<sup>st</sup> January 2013

**PREAMBLE**

Pursuant to Decision No. 2002/358/CE of the European Parliament and of the Council of 25 April 2002, "*concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change*", the European Community and its Member States have undertaken to reduce their greenhouse gas emissions. To this end, the European Community and its Member States have notably put in place a scheme for greenhouse gas emission allowance trading within the Community.

Within this scope the following were, in particular, adopted:

- Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003, amended, establishing a scheme for greenhouse gas emission allowance trading (hereafter the "**Directive**");
- Decision No. 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol;
- Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No. 280/2004/EC of the European Parliament and of the Council;
- Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No. 280/2004/EC of the European Parliament and of the Council;
- Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to the above-mentioned Directive and Decision and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010.

France transposed the Directive by the amended Order No. 2004-330 of 15 April 2004, by establishing a national Registry the implementation and management of which has been entrusted to the Caisse des dépôts et consignations (hereafter "**CDC**"), which has, in particular, developed and secured information systems for the purposes of operating said Registry, with the aim of applying the greenhouse gas emission allowance trading scheme to aircraft operators.

Article 19 (1) of the Directive provides that allowances issued from 1 January 2012 onwards shall be held in the community Registry (hereafter the "**Union Registry**") for the execution of processes pertaining to the maintenance of the holding Accounts opened in the Member State.

In this context, CDC has once again been appointed, on behalf of the French State, to perform the role of national administrator of the Union Registry, which includes the Accounts of any entity likely to hold Allowances and Kyoto Units in the French section of the Union Registry. In this new context, the information system will henceforth be made available to the Holder by the European Commission in the place and instead of CDC's information system. Consequently, CDC shall not be involved in developing the information system or making it secure.

Pursuant to Article R. 229-34 of the French Environmental Code , CDC has also been appointed, on behalf of the French State, to act as national administrator of France's KP Registry under the Kyoto Protocol (hereafter the "**KP Registry**"), which includes the Accounts of any entities likely to hold Kyoto Units (hereafter the "**KP Account(s)**").

To enable the opening and administration of the various above-mentioned accounts within the Union Registry and the KP Registry (hereafter referred to as the "**Registries**"), CDC and the entity requesting to be an account holder (hereafter the "**Parties**") hereby enter into an agreement for the purposes of governing their relationships (hereafter the "**Agreement**").

## **HAVING REGARD TO THE AFORESAID, THE PARTIES AGREE AS FOLLOWS:**

### **ARTICLE 1 PURPOSE**

The purpose of the Agreement is to set out the terms and conditions for the opening and administration of each of the Accounts opened in the Registries, in the name of the Holder.

It shall comprise (i) these General Terms and Conditions and the Appendices hereto as well as (ii) the Specific Terms and Conditions.

### **ARTICLE 2 DEFINITIONS**

In addition to the terms set out in the recitals above, the following terms and expressions shall, when they start with a capital letter, have the meaning attributed thereto in this Article, it being specified that the above-mentioned terms and expressions, used in the plural in the Agreement, will have the same meaning (unless otherwise stipulated) as when they are used in the singular, and *vice-versa*:

**Central Administrator:** shall mean the entity appointed by the European Commission, pursuant to Article 20 of the Directive, to keep the Union Registry and the European Union transaction log.

**National Administrator:** shall mean CDC, the entity appointed by the French State to manage, on its behalf, the accounts of the French State and of other users subject to its jurisdiction with respect to the Registries in accordance with the Applicable Regulations.

**Aircraft:** shall mean any aircraft releasing greenhouse gas into the atmosphere and falling within the scope of the provisions of Articles L. 229-5 *et seq.* of the Code.

**Appendix:** shall mean an appendix to the General Terms and Conditions.

**Article:** shall mean an article in the General Terms and Conditions.

**Emissions Permit:** shall mean a greenhouse gas emissions permit issued, for a specific Installation, by the competent Authority pursuant to the provisions of Articles L. 229-6 and L. 512-1 of the Code.

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**Competent Authority:** shall mean the Authority appointed by the French State pursuant to Article 18 of the Directive, namely the Ministry of Civil Aviation as regards greenhouse gas emissions resulting from aviation activities and the Ministry of Environment and the Ministry of Economy as regards the Installations.

**UNFCCC:** shall mean the United Nations Framework Agreement on Climate Change adopted in New York on 9 May 1992.

**Code:** shall mean the French Environmental Code in force at any date in the territory of the French Republic.

**Account:** shall mean each holding Account opened in the name of the Holder in the Union Registry or the KP Registry, in which the Allowances or Kyoto Units issued, acquired or otherwise received are registered.

**KP Account:** shall mean each holding Account opened in the name of the Holder in the KP Registry, in which the Kyoto Units issued, acquired or otherwise received are registered.

**EU Account:** shall mean each holding Account opened in the name of the Holder in the Union Registry, in which the Allowances and/or Kyoto Units issued, acquired or otherwise delivered are registered.

**Installation Operator holding Account:** shall mean the Account opened in the name of an Installation Operator in the Union Registry.

**Aircraft Operator holding Account:** shall mean the Account opened in the name of an Aircraft Operator in the Union Registry.

**General Terms and Conditions:** shall mean these general terms and conditions for the opening and holding of Accounts.

**Specific Terms and Conditions:** shall mean all of the Forms (i) requesting the opening of an Account or Accounts – information regarding the Operator – and (ii) information regarding the account relating to an Operator or an aircraft, available on <http://www.seringas.caissedesdepots.fr/>, and filled out, dated and signed by the Holder.

**Compliance:** shall mean the situation of the Holder having surrendered an amount of Allowances at least equivalent to its verified allowances under the conditions provided for by the Applicable Regulations.

**Verified Emissions:** shall mean the greenhouse gas emissions declared by the Holder, on condition that this declaration has, in accordance with Article L. 229-14 III of the Code, been verified by a body registered with the administrative authority and accredited for such purpose.

**Operator:** shall mean any physical or legal entity operating an Installation or an Aircraft.

**Installation Operator:** shall mean any physical or legal entity operating an Installation within the meaning of Articles L. 229-5 *et seq.* of the Code.

**Aircraft Operator:** shall mean any person operating an Aircraft within the meaning of Articles L. 229-5 *et seq.* of the Code at the time it performs an aviation activity, or where such person is not known or not identified by the owner of the Aircraft, the owner of the Aircraft himself.

**Form:** shall mean each of the forms comprising the Specific Terms and Conditions.

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**Installation:** shall mean any classified installation operated by the Holder, falling within the scope of the provisions of Articles L. 229-5 *et seq.* of the Code. Each of the Installations referred to in this Agreement is mentioned in the corresponding Form.

**European Union Transaction Log or EUTL:** shall mean the standardised electronic database provided for by Article 20 of the Directive, maintained by the central Administrator, for the purposes of performing an automated check of each Transfer recorded, to ensure there are no irregularities in the issue, transfer and cancellation of Allowances and Kyoto Units; the EUTL also enables the recording of information concerning the ownership and transfer of Kyoto Units.

**Working day:** shall mean any day other than Saturday, Sunday and public holidays in France.

**Transfer Order:** shall mean any Transfer Order coming from an Authorized Person or an additional Authorized Person or from the Competent Authority, which includes *a minima* the information referred to in Appendix I.

**Commitment Period:** shall mean each of the periods referred to in Article L. 229-8-I of the Code.

**Authorized Persons:** shall mean the persons identified in the Specific Terms and Conditions, each of whom is authorized, in respect of one or more Accounts, to transmit the instructions and Transfer Orders provided for by the Agreement on behalf of the Holder in accordance with the Applicable Regulations.

**Additional Authorized Person:** shall mean the person appointed by the Account Holder, in addition to the Authorized Persons, whose duties and conditions of appointment are set out in the Applicable Regulations.

**Allocation plan:** shall mean the national plan drawn up by the French State and referred to in Article L. 229-8 of the Code, or national allocation plan table provided for by the Applicable Regulations specifying the total quantity of Allowances that it intends allocating for the Commitment Period under consideration and the manner in which it intends allocating them.

**Process:** shall mean an authorized technical means to carry out an action relating to an Account or unit in a Registry.

**Allowance:** shall mean the unit of Account referred to in Article L. 229-7 of the Code, representing the emission of one tonne of carbon dioxide equivalent.

**Union Registry:** shall mean the secure, centralised information system (standardised electronic database) maintained by the central Administrator enabling, in particular, the tracking of Allowances and Kyoto Units in accordance with the provisions of Article 19 of the Directive. Holders' Accounts under French jurisdiction as regards the Union Registry shall be managed by the national Administrator on behalf of the French State.

**KP Registry:** shall mean the secure, centralised information system (standardised electronic database) maintained by the central Administrator enabling the tracking of Kyoto Units in accordance with the provisions of Commission Regulation (EU) No. 920/2010 of 7 October 2010. Holders' Accounts under French jurisdiction as regards the Union Registry shall be managed by the national Administrator on behalf of the French State.

**Registries:** shall mean the Union Registry and the KP Registry.

**Applicable Regulations:** shall mean Directives transposed into national law, Community regulations, the Code, and any other current or future standard, whether of a legislative, regulatory or other nature (in particular including but not limited to any Community treaty, Directive, regulation, decision or guidelines and any law, order, decree or decision) relating to the Union Registry, Allowances or Kyoto Units.

**International Transaction Log or ITL:** shall mean the log of the United Nations Framework Convention on Climate Change to which the Registries are connected via a communication link enabling the transmission of transactions consisting in a transfer of Kyoto Units.

**Site:** shall mean the Registries' website, accessible at "<https://ets-registry.webgate.ec.europa.eu/euregistry/FR/index.xhtml>", which notably enables the tracking of Transfers relating to the Allowances or the Kyoto Units.

**Holder:** shall mean the Operator in whose name one or more Accounts have been opened.

**Transaction:** shall mean a Registries Process including the transfer of an Allowance or a Kyoto Unit from one Account to another.

**Transfer:** shall mean any transfer from one Account to another within the Registries, whereby at least one of the accounts is managed by CDC.

**Kyoto Units:** shall mean the Units referred to in Book 2, Title 2, Chapter 9 of the Code regarding greenhouse gas, which are not Allowances.

### ARTICLE 3 TERMS AND CONDITIONS GOVERNING THE OPENING OF ACCOUNTS

For each of the Installations and each of the Aircraft Operators, CDC shall open an Installation Operator holding Account or an Aircraft Operator holding Account, in the name of the Holder, under the terms and conditions provided for by the Applicable Regulations and in accordance with the terms and conditions of this Agreement.

Following receipt of the Specific Terms and Conditions relating to said Account, duly completed and signed, and the supporting documents referred to in the Specific Terms and Conditions, CDC shall open the Account within a maximum of 20 working days for an Installation Operator holding Account and 40 working days for an Aircraft Operator holding Account, subject to the successful completion of any controls that may be carried out by CDC.

To open and operate the Account(s), the Holder must access the <http://www.seringas.caissedesdepots.fr> website and familiarise itself with these General Terms and Conditions and the Appendices hereto. It must then edit the Specific Terms and Conditions, fill out each of the Forms with the information requested, sign them and send them back to CDC along with the supporting documents by registered letter with return receipt requested. Each time a new Account is opened, the Holder must adapt and/or supplement the Specific Terms and Conditions accordingly, by filling out, dating and signing each of the Forms required in this context.

The Holder undertakes to notify CDC, within 10 working days, of any change regarding the information provided when the Account was opened and contained in the Specific Terms and Conditions. If necessary, CDC shall update the Registries with the information thus provided, within the deadline provided for by the Applicable Regulations, subject to the successful completion of any controls that may be carried out by CDC.

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## **ARTICLE 4 TERMS AND CONDITIONS GOVERNING THE OPERATION OF ACCOUNTS**

### **4.1 Deposit of Allowances and Kyoto Units**

Allowances allocated in accordance with the Applicable Regulations in respect of an Installation and one or more aircraft activities that emit greenhouse gases and the Kyoto Units shall be deposited in the Account opened in the name of the Holder, within the Union Registry, and within the Union Registry or the KP Registry respectively.

In accordance with the Applicable Regulations, the above-mentioned deposit includes a refutable presumption as to the Holder's ownership of the Allowances and the Kyoto Units deposited in the Account.

### **4.2 Transfer Orders and Transfers**

The Allowances and Kyoto Units shall be transmitted by means of a Transfer between Accounts pursuant to a Transfer Order by the Holder or, in the cases provided for by the Applicable Regulations, by the Competent Authority.

The Holder's Transfer Orders shall be transmitted exclusively by the Authorized Persons. They shall include the information set out in Appendix I. They shall be time-stamped, archived and recorded in the Registries as soon as the controls required by the Applicable Regulations have been carried out.

In accordance with the Applicable Regulations, the Kyoto Units may only be transferred either between Accounts opened within the KP Registry, or from an Account opened within the KP Registry to an Account opened within the Union Registry, or from an account opened within the Union Registry to an account opened within the KP Registry.

Allowances may only be transferred between Accounts opened within the Union Registry.

On an exceptional basis, and in accordance with the Applicable Regulations, when the Authorized Person(s) or the additional Authorized Person(s) do not have access to one and/or other of the Registries for technical or other reasons, the Transfer Orders may, at the request of the Holder, be transmitted to one or other of the Registries through CDC, acting in the name and on behalf of this or these Authorized Person(s), following approval of this request.

As CDC is not responsible for implementing the Transfer Orders in respect of the Accounts opened in the Registries, it may not be held liable in this regard. The terms and conditions for monitoring and implementing Transfer Orders from an Account opened in the Registries are set out in the Applicable Regulations.

### **4.3 Authorized Persons**

The person requesting the opening of an Account shall appoint, in the Specific Terms and Conditions, at least two persons that it wishes CDC to approve as Authorized Persons that may initiate, in its name and on its behalf, with CDC, all and any instructions provided for by the Agreement (in particular Transfer Orders) for each of its Accounts opened in the Registries.

The approval of these persons by CDC shall be a condition precedent to the opening of Accounts. CDC shall have 20 working days from receipt of the required information to consider the request for approval and approve the Authorized Persons or inform the person requesting the opening of the Account that approval has been refused. If more time is needed to consider the information regarding the appointed persons, CDC may extend the approval deadline by a maximum of 20 working days. The person requesting the opening of the Account shall be notified of this extension.

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Subject to the provisions of the Applicable Regulations, in particular those regarding the trusted Accounts list, the Account Holder or the person requesting the opening of an Account must also request the approval of at least one additional Authorized Person whose approval will be required, in addition to the approval of the Authorized Persons appointed pursuant to the first paragraph of this Article, to initiate, on behalf of the Holder, instructions relating to Transfers, surrenders and cancellations of Allowances. The request for approval of this additional Authorized Person must be made by sending a registered letter with return receipt requested to CDC. The approval of an additional Authorized Person other than the person appointed in the Specific Terms and Conditions when the Account is opened shall automatically amend the Specific Terms and Conditions.

When the Holder decides to revoke the powers granted to an Authorized Person or additional Authorized Person, it must notify CDC:

- by registered letter with return receipt requested; or
- by fax, suspending any movement on the Account(s), confirmed as soon as possible by registered letter with return receipt requested, resulting in a permanent revocation; or
- by personal service by a bailiff.

If the Holder were to revoke the powers granted to an Authorized Person or an additional Authorized Person directly on the Site, it must confirm such revocation to CDC in one of the above-mentioned ways.

The revocation shall only take effect for Transfers performed by this Authorized Person or additional Authorized Person in respect of the Accounts referred to in the notice of revocation, performed 24 working hours after the recording, by CDC, as the case may be, of the registered letter with return receipt requested, fax or personal service by a bailiff. The Holder agrees to keep the Authorized Person or the additional Authorized Person informed of the revocation of powers that have been granted to him.

Consequently, the Holder undertakes not to challenge any Transfer performed in accordance with the instructions of an Authorized Person or additional Authorized Person for as long CDC has not recorded a notice of revocation in respect thereof.

CDC shall not be held responsible inasmuch as the Transfer Order has been entered via the Site by an Authorized Person or additional Authorized Person who has not been revoked under the above-mentioned conditions, using the access ID and password given to him to log in. CDC shall not be held liable as regards the Transfer Order that it transmits on the Site under the conditions of Article 4.2 of the General Terms and Conditions, following the request of an Authorized Person or additional Authorized Person not revoked under the above-mentioned conditions. Any Transfer Order entered via the Site will be presumed to have been validly issued by the Authorized Person(s) and may be validly implemented on the basis of such Transfer Order.

#### **4.4 Restriction on the transfer of Allowances and Kyoto Units**

The Holder is hereby informed that in the cases provided for by the Applicable Regulations, CDC may suspend access by an Authorized Person or additional Authorized Person to any Account or to any Allowances and Kyoto Units in the French section of the Union Registry that it manages, as well as in the KP Registry, or to any Process to which this Authorized Person or additional Authorized Person may have access.

The Holder is also informed that in the event of failure to pay fees owed to CDC, following a formal request to pay that remains unsuccessful as referred to in Article 6, as well as in the event of failure to comply with or repeated breaches of the Applicable Regulations or the General Terms and Conditions and/or the Appendices thereof, CDC shall suspend access by all and any Authorized Persons and additional Authorized Persons connected to the Account, until such time as the Holder has paid the fees due or has addressed the shortcomings observed. This suspension of access shall not however prevent the performance of transactions that involve bringing the Holder into compliance.

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## **ARTICLE 5 INFORMATION OF AUTHORIZED PERSONS**

The Authorized Persons may consult the Account balance and the breakdown of transactions performed at any time by means of the online service referred to in Article 10.

## **ARTICLE 6 FEES**

CDC shall receive fees in respect of its role as national administrator of the Registries. The amount of and method for calculating such fees shall be decided by joint decision by the Minister of Economy and the Minister of Environment.

These fees shall be billed yearly, in a bill sent to the Holder setting out the total amount and any applicable taxes. The first bill sent by CDC to the Holder, as well as each bill drawn up following the opening of one or more new Accounts, will also include the charges for opening the Account(s) concerned.

Each bill shall be payable within 60 days of receipt thereof by the Holder, by cheque payable to CDC or by bank transfer, denominated in euro. In the event of an international transfer, bank fees must be charged in accordance with “share” (sharing of fees between the issuer and the beneficiary of the transfer), or “our” (all fees assumed by the issuer of the transfer) options. Failing this, CDC may charge the Holder 50% of the bank charges incurred as a result of failure to comply with the above-mentioned provisions.

In the event that the Holder does not pay a bill within the given deadline, CDC may, following a formal request to pay that remains unsuccessful after 30 days, apply the provisions provided for in Article 4.4.

## **ARTICLE 7 STATEMENTS**

The Holder states as follows, these statements being deemed to be reiterated at any time :

1. It is duly constituted in the case of a legal entity;
2. It has full powers to enter into the Agreement, sign any related document, and perform its obligations that may result therefrom (including as regards any Transfer);
3. All and any administrative and other authorisations that may be required for the signature and performance of the Agreement or the Transfer Orders have been obtained;
4. It has taken note of all of the Applicable Regulations and undertakes to take note of any changes thereto and to comply with them at all times;
5. It has taken note of all of the documents comprising the Agreement and is bound by the obligations;
6. Any Transfer Order or instruction shall be validly issued by the Authorized Person(s) and CDC may validly transmit a Transfer Order, where applicable and upon request, to the Union Registry, except in the event of the revocation of the Authorized Person(s) in accordance with the provisions of Article 4.3;
7. Subject to Article 3 (4), it shall immediately inform CDC in writing if one or more of the above-mentioned statements ceases to be accurate,

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## **ARTICLE 8 HOLDER'S OBLIGATIONS**

The Holder hereby undertakes to perform the following obligations *vis-à-vis* CDC:

1. Only perform on the Accounts, Transfers authorized by the Applicable Regulations, and in accordance with the terms and conditions set out by said Regulations;
2. Take all measures necessary to ensure that any personal information passed on to it by CDC or passed on to the Authorized Persons in relation to the Agreement, is kept strictly confidential;
3. Provide, at the request of CDC, the documents and supporting documents needed for the successful implementation of the Agreement or of any Transfer;
4. Ensure that all the information provided to CDC is complete, up-to-date, exact and true; in particular, it will inform CDC, within 10 days, of any change in the information provided when the Account was opened and referred to in the Specific Terms and Conditions, whether as regards statements made on forms, or supporting documents;
5. Inform CDC, at least once a year, that the information in CDC's possession regarding the Holder is complete, up-to-date, exact and true;
6. Provide CDC with all of the information and documents required for CDC to comply with its legal and regulatory obligations, in particular as regards the anti-money laundering and anti-terrorist financing requirements;
7. Familiarize itself with the Site and the operating conditions thereof as drawn up by the European Commission and its central Administrator, as set out in Appendix II;
8. Endow itself with the necessary technical resources, in particular anti-virus software, to secure its connections to the Site and the Transfer Orders that it performs;
9. Ensure that its login ID and password for accessing the Site are personal and confidential and are not disclosed to any third party. In no event shall CDC ask the Holder or one of the Authorized Persons or additional Authorized Persons for such ID and password.

The Holder shall ensure that these commitments are complied with by the Authorized Persons and additional Authorized Persons and shall act as guarantor in this respect as regards CDC.

## **ARTICLE 9 CDC'S OBLIGATIONS**

### **9.1 General**

CDC shall perform its obligations arising from the Applicable Regulations, in particular as regards opening Accounts, updating information required in respect of the Applicable Regulations, and suspending and closing Accounts. CDC will analyse and, if necessary, transmit to the European Commission's Help Desk, any reports by the Holder of anomalies and incidents, as well as any requests for changes to be made to the Site.

### **9.2 Information**

The Holder is hereby informed that, within the scope of the administration of the Accounts held in the Registries, CDC shall be subject to the obligations provided for by the Applicable Regulations, in particular in terms of the provision of information, which it expressly acknowledges. Thus, CDC is notably obliged to:

- 9.2.1** Make the information provided for by the Applicable Regulations available to the public;

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**9.2.2** Send the information provided for by Applicable Regulations, in particular as regards the functioning of the Union Registry, to the European Commission or the central Administrator that it has appointed;

**9.2.3** Draw up a report for the relevant administrative officer (Préfet) and the Competent Authority in the event that an Installation Operator does not surrender enough Allowances to cover its greenhouse gas emissions for the previous year;

**9.2.4** Transmit, to the Competent Authorities, any information that they may request in respect of national law or the Applicable Regulations. CDC records that it is notably bound, subject to criminal sanctions, by a duty to remain vigilant and to make any necessary declarations as regards the anti-money laundering and anti-terrorist financing requirements. The Holder acknowledges CDC's obligations and agrees to disclose any information and any document that may be requested by it.

### **9.3 Controls**

The Holder is also informed that CDC will carry out all of the checks provided for by the Applicable Regulations.

## **ARTICLE 10 ONLINE SERVICE**

The Authorized Persons shall perform transactions on the Accounts (Transfer Order), consult the balance and edit the account statements online.

Only the Holder's personal information, whose publication has been expressly provided for by the Applicable Regulations, will be published on the Site. However, the Holder may ask CDC, in writing, to publish other personal information regarding it, insofar as this is authorized by the Applicable Regulations. CDC hereby draws the Holder's attention to the risks involved in publishing personal information on the Site (phishing, etc.). CDC may not be held liable in the event of the use of the Holder's personal information published on the Site by a third party.

## **ARTICLE 11 CDC'S LIABILITY**

CDC shall be liable to the Holder for irregularities committed in the performance of its obligations under the Agreement, on condition that these irregularities cause direct harm to the Holder. Indirect harm such as risks to its image, knock-on harm, shortfall, loss of opportunity and any other harm not stemming directly from the irregularity committed by CDC shall therefore be excluded.

Damages paid to the Holder in compensation for such harm may not exceed five (5) times the amount of the annual fees paid by the Holder in respect of its Account, all damages combined.

What is more, CDC may not be held liable in the following cases:

- for the consequences of failing to perform its obligations in respect of the Agreement due to IT system failures outside of its control, an interruption, malfunctioning or error in a communication system outside its control, or any event constituting a *force majeure* event as defined by French case law;
- for any harm caused by the merits or appropriateness of a Transfer Order or a Transfer, that fall within the exclusive remit and competence of the Holder;
- for harm resulting from incorrect information provided by the central Administrator, the European Commission, the Competent Authority or any third party;

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- for any harm resulting from improper or unauthorized use of the Site by the Holder or the Authorized Persons;
- for any harm resulting from a malfunction of the Holder or from failure to comply with the Agreement or the Applicable Regulations, or improper or unauthorized use of the Registries;
- for any harm resulting from a malfunction on behalf of the European Commission or the central Administrator responsible for ensuring the correct functioning of the Union Registry in order to comply with their obligations pursuant to the Applicable Regulations (in particular hosting the Site, maintenance, update and management, security, confidentiality of information, etc.).

## **ARTICLE 12 HOLDER'S LIABILITY**

The Holder hereby undertakes to assume full liability and to compensate CDC for any direct harm caused by it, resulting in particular from:

1. any inaccuracy in any of the statements appearing in Article 7 or from failure to comply with the obligations stipulated in Article 8;
2. any incorrect or fraudulent use of the Registries;
3. the provision of incorrect information or data to CDC;
4. failure to comply with its obligations in respect of the Applicable Regulations and the Agreement.

In this context, the Holder will be liable for any harm caused by it or by any Authorized Persons appointed by it.

## **ARTICLE 13 TERM OF THE AGREEMENT - TERMINATION**

### **13.1 Term of the Agreement**

The Agreement shall enter into effect as of the date of signature thereof. It shall be entered into for an indefinite term.

### **13.2 Termination of the Agreement**

It is hereby specified that the Agreement will remain in force for as long as the Holder retains its capacity as Operator and, in this respect, holds Allowances or Kyoto Units.

Consequently, unless the Holder loses its capacity as Operator and no longer holds Allowances or Kyoto Units, the Agreement may only be terminated by one or other of the Parties in the cases provided for by the Applicable Regulations. Such termination may thus only take place under the terms and conditions laid down for this purpose by the Applicable Regulations.

In the event that the Holder loses its capacity as Operator and no longer holds Allowances and Kyoto Units, the Agreement will be automatically terminated 30 days after the occurrence of such an event.

In the event of termination of the Agreement, access to the Site by all of the Authorized Persons and the Holder, where applicable, will be immediately suspended.

## **ARTICLE 14 ACCOUNT CLOSURE**

CDC may close any Operator's Account under the conditions provided for in the Applicable Regulations. This closure shall lead to the termination of the Agreement.

In particular, in the event of a suspension, cancellation or withdrawal of a greenhouse gas emission permit in relation to an Installation, CDC shall, after receipt of notification from the Competent Authority, close the Account relating to said Installation in accordance with the account closure mechanism provided for in the Applicable Regulations.

CDC will also close the Aircraft Operator's Account if instructed to do so by the Competent Authority.

The closure of an Account held by an Installation whose greenhouse gas emission permit has been suspended, cancelled or withdrawn will take place at the latest by 30 June of the year following the year in which said emission permit ended if the relevant installation has surrendered an amount of Allowances equal to or greater than its verified emissions. If the amount of Allowances surrendered is less than the verified emissions, the Account will be closed the day after the day on which the number of Allowances surrendered becomes equal to or greater than the Emissions verified or the day after the date on which the Competent Authority has ordered CDC to close the Account.

If there is a positive balance of allowances or Kyoto units in a Holder's Account, CDC shall, prior to closing the Account, notify the Holder, by registered letter with return receipt requested, and request it to specify another Account to which the Allowances or Kyoto Units will be transferred. CDC must then transfer the balance in accordance with the Holder's instructions. If the Holder has not responded to the request within 40 days, CDC shall transfer the allowances and Kyoto units to a national holding account.

CDC shall notify the Holder immediately of the closure of any Account. Any amounts outstanding in respect of the Account concerned shall be payable immediately.

It is however specified, for the purposes of this Article, that if an Installation were to close and its production activities transferred during a Commitment Period, the corresponding Account would then be closed at the end of said Commitment Period.

## **ARTICLE 15 PERSONAL DATA**

In accordance with Article 32 of Law no. 78-17 of 6 January 1978, the Holder is hereby informed that CDC shall, as stipulated by the Agreement, implement a system for processing personal data, the purpose of which is the opening and management of the Holder's Accounts.

The Holder shall have the right to access, correct and dispute information pertaining to it in accordance with the above-mentioned legal provisions, by writing to the address referred to in Article 18 of the Agreement.

Personal data gathered and processed by CDC by means of forms may not be transferred or leased, free of charge or in return for payment, to any third parties with the exception of persons and establishments designated by the legislation in force.

Personal data gathered by CDC by means of forms may be published in full or in part on the Site, under the conditions provided for by the Applicable Regulations and the legislation in force.

It is hereby specified that personal data gathered and processed by CDC within the scope of the performance of the Agreement shall be kept by CDC for archiving purposes and, possibly, for statistical purposes, in compliance with the Applicable Regulations.

*Translation for information purposes only of the standard agreement pursuant to the Decree dated 28<sup>th</sup> December 2012 published in French Journal Officiel N° 0001 dated 1<sup>st</sup> January 2013 and concerning the approval of standard agreements referred to in Article R.229-35 of the French Environmental Code.*

## **ARTICLE 16 CONFIDENTIALITY**

Subject to the provisions of Article 9, and without prejudice to the provisions of Article 11, information gathered by CDC within the scope and for the requirements of entering into and performing the Agreement shall be considered as confidential, including, in particular, information regarding the administration of the Accounts and the Transfers.

CDC hereby undertakes to implement procedures to prevent any use, within CDC, of the confidential information for business that is not in any way connected with the administration of the Accounts in the Registries.

Information that has been (i) released in the public domain prior to or subsequent to its disclosure, without the breach of any obligation under the Agreement; (ii) lawfully received from a third party without any restriction and in the absence of any breach of the Agreement, (iii) published, without breach of the Agreement or (iv) disclosed, pursuant to a provision of the law or regulations, by any competent court or government authority, shall not be considered as confidential information as regards the Agreement.

CDC may be released from its confidentiality undertaking by the Holder and in all cases provided for by the regulations in force. In particular, the Holder shall authorise CDC, from here on forwards, to provide all or some of the above-mentioned information to:

- (i) any Authorized Person or additional Authorized Person; and
- (ii) any other person (a) in the event that the provision of this information is necessary for the performance, by CDC, of its obligations in respect of the Agreement or the Applicable Regulations or (b) at the Holder's request, to enable it to perform an agreement to which it is a party, as well as (c) in cases where CDC is bound to pass on all or part of this information pursuant to the provisions of the law or regulations or any court or administrative decision.

The confidentiality obligation referred to in this Article shall cease five years after the Agreement expires.

## **ARTICLE 17 MISCELLANEOUS PROVISIONS**

### **17.1 Transfer to a third party**

CDC's rights and obligations in respect of the Agreement may be transferred under the conditions provided for by the Applicable Regulations and without prior written agreement from the other Party.

### **17.2 Contractual documentation**

The preamble, Appendices and Specific Terms and Conditions are an integral part of this Agreement.

### **17.3 Non-waiver**

The non-performance by one of the Parties of a right provided for by the Agreement shall not constitute a waiver of such right on its behalf.

## **ARTICLE 18 CORRESPONDANCE – NOTIFICATIONS**

Unless another arrangement has been specifically provided for, all and any correspondence or notification regarding the Agreement, in writing or by e-mail, shall be sent to the following addresses:

- For CDC: Caisse des dépôts et consignations  
Registre National / DSBF5  
15, quai Anatole France  
75356 Paris 07 SP  
+ 33 (0)1 58 50 01 87 (fax)  
[RegistreFrancais-GES@caissedesdepots.fr](mailto:RegistreFrancais-GES@caissedesdepots.fr)
- For the Holder: as set out in the Specific Terms and Conditions
- For the Authorized Persons: as set out in the Specific Terms and Conditions

CDC recommends using secure solutions for the electronic exchange of information with it, such as encryption, electronic signature, etc., in particular when such exchanges contain sensitive data.

## **ARTICLE 19 APPLICABLE LAW – COMPETENT COURTS**

The validity, interpretation and performance of this Agreement shall be governed by French law. Any dispute, in particular regarding the validity, interpretation or performance of the Agreement shall be subject to the competence of the administrative courts.

## **ARTICLE 20 TRANSLATION**

The Agreement shall be drawn up in French, and include (i) the Specific Terms and Conditions filled out, dated and signed by the Holder, and (ii) the General Terms and Conditions and the Appendices thereof. An English translation of the General Terms and Conditions is also available, for information purposes only, at <http://www.seringas.caissedesdepots.fr/>, it being hereby specified that in the event of contradiction only the Agreement drawn up in French shall be deemed valid.

**Appendix I**

**Compulsory information on the Transfer Orders**

- Account Holder name,
- Denomination of the principal account,
- Principal account number,
- Type of Allowances or Kyoto Units transferred,
- Amount of Allowances or Kyoto Units transferred,
- Transferee name,
- Denomination of the transferee account,
- Transferee account number,
- Denomination of the recipient Registry, and of the national administrator of the transferee account,
- Signature of the Authorized Person(s).

## **Appendix II**

### **Site and operating conditions drawn up by the European Commission and its central Administrator**

In accordance with the recommendations of the European Commission, it is incumbent on you to observe the following:

#### **Minimum security requirements to be fulfilled:**

##### **1. Security patches**

- The Operating System ("OS") and any other software installed on the computers used by you to access the Registry must be regularly updated with the latest versions of the relevant security patches.

##### **2. Restriction of privileges to information system (IS) administrators**

- The information system's administrator accounts must be used by trusted individuals and only to install trusted and authorised programmes (see point 6 below). In overall terms, computers must be adequately protected.
- To connect to the Union Registry and the Internet, users must use a computer from which they connect by means of a "user" profile. Never access the Registry if you have connected to your computer by means of a "system administrator" account.

##### **3. Anti-malware / antivirus policy**

- It is your responsibility and duty to use up-to-date antivirus and firewall software. Software must be updated and upgraded at least once a week.
- You must carry out a full and comprehensive analysis of antivirus and spyware software at least every two weeks using up-to-date antivirus and anti-malware software.
- Ideally, two antivirus software packages, from two different providers, should be installed on each computer and run in parallel.

##### **4. Locking system**

- Computers must have a screen saver that automatically logs the user out after three minutes of inactivity.

##### **5. External devices**

- Users may not connect a USB device that has not been previously secured and safeguarded in respect of their computer.
- Computers must be configured in such a way as to avoid the connection of USB devices, and at the very least to avoid the computer recording the USB connection.



## 6. List of authorised software

- A comprehensive list of software authorised on the user's computer must be drawn up.
- System administrators must ensure that no other software is installed on the user's computer by scanning the workstation by means of checks and controls.
- Any unauthorized software must be removed.

## 7. Auditing and recording connections

- Remote access events must be recorded and analysed frequently by the administrators. Any anomaly, no matter how slight, must be investigated.

## 8. Secure Internet connection

- The Registry must be accessed by means of a secure Internet connection.
- The secure connection must include a firewall between the internal network to which the user's computer is connected and the Internet, including a host-based intrusion detection system (HIDS) and antivirus features.
- The secure Internet connection must restrict Internet access by prohibiting access to non-listed sites or forbidden functionalities.

## 9. User training

- Users of the Union Registry must have been trained on and be aware of information security issues.
- Users must avoid sharing the computer used to connect to the Union Registry with other persons.
- Never open links in emails. Neither the Commission, the central Administrator nor the national Administrator will ever send you emails containing links and/or attachments. We will never ask you for your password, or to install any software whatsoever.
- Never open an attachment to an email sent from an entity other than the Union Registry unless you have checked that its source and content are reliable. In particular, never open an executable attachment, i.e., notably files with the extensions .com, .bat, .vbs, .wsh or .exe.
- Contact your national Administrator's Help Desk in the event of doubt regarding an email.
- Users will always be informed of any important issues by email or by means of a message appearing directly on the Union Registry website: [www.seringas.caissedesdepots.fr](http://www.seringas.caissedesdepots.fr).
- The Registry's Help Desk will send all emails from the following address: [registrefrancais-ges@caissedesdepots.fr](mailto:registrefrancais-ges@caissedesdepots.fr).
- The National Registry's Help Desk **will never request the passwords of users of** the Union Registry.
- In the event of doubt, contact your Registry administrator immediately at:  
[registrefrancais-ges@caissedesdepots.fr](mailto:registrefrancais-ges@caissedesdepots.fr)  
Tel: +33 (0)1 58 50 87 00 from 10:00 to 17:30 (GMT+1)  
Fax: +33 (0)1 58 50 01 87  
CAISSE DES DEPOTS ET CONSIGNATIONS - REGISTRE GES DSBF5  
15 Quai A. France – 75007 PARIS

## 10. Configuration of user's computer

- The user's computer must be configured in such a way that the automatic identification function may not be used. After start-up of the operating system or programme, users shall be required to expressly log in using at least one login ID and one password.
- The Internet browser must be configured in such a way that the login ID and password may not be stored in the browser.
- Do not start the computer used to access the Registry from a peripheral device (CD, DVD, USB stick, etc.) and protect all access to "BIOS" by means of a particularly complex password that is different from the login password.
- The computer must be configured in such a way that it is impossible to share resources (files, printers, etc.) used by the computer accessing the Registry. Do not install servers (e.g., http(s), ftp, etc., servers.), file sharing tools or shared files (e.g., BitTorrent) on the computer used to connect to the Union Registry.
- The computer must be configured in such a way that a user cannot connect to the Internet with its system administrator rights, but only with restricted rights. Users must not be allowed to install a programme using the account with which they connect to the Internet and the Union Registry.

## 11. Use of the Union Registry

- The password used to connect to the Union Registry is strictly confidential. Any action carried out in the Union Registry with a login ID and password is considered to be the responsibility of the user of such ID and password.
- Any authorised user of the Union Registry must ensure that his or her login ID, password and one-off connection code (sent by SMS) do not become known to other persons, including other Union Registry Account Holders. The national Administrator or the Help Desk may ask users for their login ID by phone, but neither the Commission nor the national Administrators will ever ask end users to provide their login ID and password by email.
- Login IDs and passwords that have not been used for more than six months shall be deactivated.
- To access the Union Registry website, it is recommended to always type the site's address directly into the browser's URL bar. The address of the Union Registry is:  
<https://ets-registry.webgate.ec.europa.eu/euregistry/FR/index.xhtml>  
If users do not enter this address each time they connect, they must check that the SSL connection is configured ("https" and not "http" must appear in the browser's URL bar) and that the SSL certificate that appears when you click on the browser's lock icon is issued by "Global Sign Organization Validation CA-G2" for "ets-registry.webgate.ec.europa.eu" and is valid until 30 November 2013.
- When users leave their workstation they must log off from the Union Registry so that no unauthorized persons may access their account from the Registry.
- Users must take all reasonable precautions to prevent the unauthorized use of mobile phones used to receive the SMS codes required to use the Registry.
- Such mobile phones must not also be used at the same time to make Internet purchases.