

# **Bank Guarantee**

**England & Wales Collateral Agreement 2**

***[Insert name of Clearing Member]***

**Nord Pool AS**

## ON-DEMAND BANK GUARANTEE

**Date of Issuance** : [ ● ]

**Reference Number<sup>1</sup>** : [ ● ]

**Currency** : [ ● insert currency symbol] ([ ● insert currency in words])

**Maximum Amount Recoverable** : [ ● insert number] ([ ● insert amount in words] or such other amount if varied pursuant to clause 2 below)

**Expiry Date** : [ ● ] or such later date if this deed of guarantee is extended pursuant to clause 2 below

**Applicant<sup>2</sup>** : [ ● insert full name]  
*address:*  
*attention:* The Beneficiary may from time to time assign any or all or its rights (including any proceeds of the Beneficiary's drawing) under this letter of credit and/or transfer all of this letter of credit to (i) any Affiliate or (ii) any bank or financial institution which provides the Beneficiary with any services under or in connection with the CCP Service and/or any credit, liquidity or other banking facilities, in each case without the necessity of the Issuer's consent.

**Bank Guarantor** : [ ● insert name of issuing bank]  
*address:* [ ● ]  
*attention:* [ ● ]  
*telephone no:* [ ● ]  
*SWIFT no:* [ ● ]

**Beneficiary** : Nord Pool AS (company number 984 058 098 in the Norwegian Register of Business Enterprises)  
*visiting address:* Vollsveien 17 B, 1366 Lysaker, Norway  
*mail address:* PO BOX 121, 1325 Lysaker, Norway  
*attention:* Agreements  
*telephone no:* +47 67 10 91 00/+47 67 10 91 63  
*SWIFT no:* NDEAGB2LXXX

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<sup>1</sup> Drafting note: This is the unique reference number which the issuing bank may assign to this bank deed of guarantee. Please delete if the issuer does not use reference numbers.

<sup>2</sup> Drafting note: This is the relevant Applicant/Clearing Member.

We, the undersigned,

[*insert name of bank guarantor*], a company incorporated in [*insert country*] (registered number [•]), with its registered office at [*insert address*] (hereinafter “we”, “us”, “our”) hereby provide the Beneficiary with this deed of guarantee (the “**Guarantee**”), subject to the terms and conditions set out below, in connection with the application of [*insert name of Applicant*], a company incorporated in [*insert country*] (registered number [registered number [•]]), with its registered office at [*insert address*] (the “**Clearing Member**”) to become and remain an Clearing Member in the Settlement System:

1. We guarantee the due payment to the Beneficiary of all money and liabilities for the time being due, owing or incurred by the Clearing Member to the Beneficiary under or in connection with Clearing Transactions (as defined below) together with all interest, commission, fees and all other charges and expenses for which the Clearing Member is or becomes liable to the Beneficiary (the “**Guaranteed Amounts**”), provided that:
  - (a) the total amount recoverable from us hereunder shall not exceed the Maximum Amount Recoverable set out at the beginning of this Guarantee; and
  - (b) no demand under this Guarantee shall be valid and result in any liability on our part unless it is made on us before 6pm on the Expiry Date set out at the beginning of this Guarantee. After such time we shall have no further liability under this Guarantee save to the extent of any demand(s) validly made prior to such time.
2. We may from time to time deliver a written notice (in materially the same form as set out in Schedule 2 of this Guarantee) to the Beneficiary requesting (i) a change in the limit specified in clause 1(a) above, and/or (ii) an extension of the Expiry Date, or (iii) the revocation of this Guarantee (a “**Request**”) to take effect on a Business Day clearly specified in that Request (the “**Specified Date**”). A Request will not be valid and will have no effect unless it is received by the Beneficiary before the Specified Date. The Beneficiary may, in its absolute discretion, accept or reject a Request. If the Beneficiary has not notified its decision to us in writing before 6pm on the Specified Date, the Request shall lapse and the Beneficiary shall be deemed to have rejected the Request. If the Beneficiary accepts the Request in writing, the relevant change, extension or revocation (as the case may be) shall take effect automatically at 6pm on the Specified Date and (in the case of a change or extension) this Guarantee shall continue in effect subject to that change or extension. In the case of revocation, this Guarantee shall terminate at 6pm on the Specified Date provided that such termination shall not affect any rights or obligations which may have accrued on or prior to such time (save that nothing in this clause 2 shall permit the Beneficiary to deliver a demand after 6pm on the Specified Date).
3. If any Guaranteed Amount is not paid in full by the Clearing Member to the Beneficiary by the specified deadline on the due date for payment in accordance with the Clearing Rules (as defined below), we shall on first written demand from the Beneficiary pay the amount so demanded to the Beneficiary as soon as operationally possible and in any event within three (3) Business Days after (but not counting) the day of demand.
4. Every demand for payment under this Guarantee should be made to us materially in the same form as set out in Schedule 1 to this Guarantee and, if delivered by hand or courier (but not if

delivered by SWIFT), signed by at least one authorised signatory of the Beneficiary (whose signature must be confirmed as authentic by the Beneficiary's bankers).

5. A demand may be delivered in one or more of the following ways:
- (a) by hand or courier to our address set out at the beginning of this Guarantee; and/or
  - (b) by authenticated SWIFT from the Beneficiary 's bankers to us at our SWIFT number set out at the beginning of this Guarantee.

A demand does not need to be accompanied by a copy or the original of this Guarantee. The making of one demand shall not preclude the Beneficiary from making any further demands.

6. All payments by us to the Beneficiary under this Guarantee shall be made (by electronic transfer for same day value in cleared funds) to the bank account set out below (or such other bank account in London as the Beneficiary may notify to us in writing from time to time, provided that such notice shall not take effect until the fifth (5<sup>th</sup>) Business Day after (but not counting) the date on which such notice is given):

Bank: Nordea Bank AB (publ)  
Branch: London Branch  
SWIFT: NDEAGB2LXXX  
Account name: Nord Pool AS  
Account number: 46905511 (IBAN Number GB47NDEA40487846905511)  
Payment reference: [ ● insert name of Clearing Member].

7. This Guarantee is irrevocable and unconditional and constitutes our direct primary obligation to make payment hereunder to the Beneficiary without the necessity of any reference to or consent from the Clearing Member and without examination of the Clearing Member's liability under the Clearing Rules. Any amount due hereunder will be paid without reference to any rights of set-off or counterclaim that the Clearing Member or we may have against the Beneficiary or any rights of set-off that we may have against the Clearing Member and whether or not the Clearing Member disputes its liability to pay the amount demanded by the Beneficiary.
8. We agree that the amount stated in any demand made by the Beneficiary under this Guarantee as being payable by the Clearing Member to the Beneficiary shall, as between the Beneficiary and ourselves, be conclusive evidence that our liability hereunder has accrued in respect of the amount demanded.

9. This Guarantee is a continuing guarantee and shall remain in force notwithstanding the liquidation or dissolution of the Clearing Member or the appointment of an administrator, receiver or similar office-holder of the Clearing Member or in relation to all or any part of its assets. Our liability hereunder shall not be discharged or impaired by reason of any change (substantive or otherwise) made now or in the future by the Beneficiary to the Clearing Rules or any act or matter whatsoever which (but for this provision) might have discharged or impaired our liability.
10. This Guarantee is in addition to and not in substitution for any guarantee, indemnity or security which the Beneficiary may at any time hold and may be enforced by the Beneficiary without first having recourse to the same or taking any proceedings against the Clearing Member.
11. No failure to exercise and no delay on the part of the Beneficiary in exercising any right under this Guarantee and no course of dealing between the parties shall be construed or operate as a waiver of that right, nor shall any single or partial exercise of any right preclude any other or further exercise of it or the exercise of any other right.
12. No variation, supplement, deletion or replacement of or from this Guarantee or any of its terms shall be effective unless made in writing and signed by or on behalf of the Beneficiary and ourselves.
13. Any notice, letter or other written communication between us and the Beneficiary must be in materially the same form as set out in Schedule 2 of this Guarantee and may be delivered to the recipient by hand or courier or by authenticated SWIFT (through the Beneficiary 's bankers) at the address or SWIFT number of the recipient set out at the beginning of this Guarantee. We or the Beneficiary may at any time notify the other in writing (in materially the same form as set out in Schedule 2 of this Guarantee) of any change to its address and/or SWIFT number, provided that such change shall not take effect until the fifth (5th) Business Day after (but not counting) the date on which such notice is given, provided that our address must be located in England or Scotland. We shall ensure that it is able at all times to receive communications by authenticated SWIFT message.
14. The Beneficiary may assign any or all of its rights (including its right to receive any amounts becoming payable by us) under this Guarantee to (i) any Affiliate or (ii) any bank or financial institution which provides the Beneficiary with any settlement services under Settlement System and/or any credit, liquidity or other banking facilities, in each case without the necessity of our consent. If we receive written notice of assignment, we shall within five Business Days after (but not counting) the date of delivery acknowledge receipt of the notice of assignment and confirm to the assignee the balance then capable of being demanded under this Guarantee (after deduction of any demand(s) previously received and paid by us under this Guarantee). We will promptly take any steps reasonably requested by the Beneficiary to effect any assignment permitted by this clause 14.
15. Unless the context otherwise requires or unless re-defined herein, words and phrases and principles of interpretation provided for in Appendix 1 of the Clearing Rules (as defined below) have the same meanings in this Guarantee and, in addition, the following expressions shall have the following meanings:

- (a) "**Affiliate**" means any legal entity which is directly or indirectly controlled (whether through any shareholding or voting rights, rights provided for in any document or otherwise) by the Beneficiary (or any successor);
  - (b) "**Business Day**" means any day (other than a Saturday or Sunday) on which banks are generally open in London for business of the kind contemplated in this Guarantee;
  - (c) "**Clearing Rules**" means the rules and procedures established by the Beneficiary which are, from time to time, in force in relation to Clearing Members with respect to Clearing;
  - (d) "**Clearing Transaction**" means a Transaction that is registered for Clearing by the Beneficiary as contemplated by the Clearing Rules;
  - (e) "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality), or two or more of the foregoing;
  - (f) "**Settlement System**" means the system operated by the Beneficiary as a central counterparty for the clearing of electricity contracts in the Beneficiary's GB markets, and the services provided by it in connection with such arrangements;
  - (g) "**SWIFT**" means the Society for Worldwide Interbank Financial Telecommunication (or any successor provider of such telecommunication services). References to any type of message transmitted through SWIFT shall include such type of message as modified, replaced and/or renumbered by SWIFT from time to time; and
  - (i) references to **time** shall be references to London time.
16. This Guarantee and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law. Subject to clause 17, the English courts shall have exclusive jurisdiction to settle any claim, dispute or difference which may arise out of or in connection with this Guarantee.
17. Nothing in clause 16 shall limit the right of the Beneficiary to take proceedings against us in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law). We irrevocably waive any objections on the ground of venue or inconvenient forum or any similar grounds and irrevocably agree that any judgment in any proceedings brought in any court referred to in this clause shall be conclusive and binding and may be enforced in any other jurisdiction.
18. As soon as our liability under this Guarantee has ceased or been fully satisfied, please return this document to us for cancellation.

**THIS GUARANTEE** has been executed as a deed and shall take effect on the date stated in the beginning of this Guarantee<sup>34</sup>.

**[Option 1 – Execution by one director in the presence of a witness]**

Executed as a deed by **[insert full name of bank guarantor]** acting by **[insert name of director]** in the presence of **[insert name of witness]**

.....  
Director

.....  
Director/Secretary

**[Option 2 – Execution by two authorised signatories]**

Executed as a deed by **[insert full name of bank guarantor]** acting by **[insert name of director]** and **[insert name of director / secretary]**

.....  
Director

.....  
Director/Secretary

**[Option 3 – Affixing common seal]**

Executed as a deed by the affixing of the common seal of **[insert full name of bank guarantor]** in the presence of **[insert name of director]** and **[insert name of director / secretary]**

.....  
Director

.....  
Director/Secretary

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<sup>3</sup> In relation to an English Company entering into this deed, one of the three execution blocks should be used and the method of execution used should be in accordance with that English Company's articles.

<sup>4</sup> In relation to a non-English company entering into this deed, the method of execution should be in the manner permitted by the laws of the territory in which the non-English company is incorporated for the execution of deeds by such a company. If there is no specified manner under the laws of the territory in which the non-English company is incorporated, then Option 2 should be used, i.e. execution by two authorised signatories.

**SCHEDULE 1**  
**Form of Demand**

To: *[Insert name and address of bank guarantor]*

For the attention of *[insert details]*

Dated [ ]

[By courier/registered post]

Dear Sirs

**Deed of guarantee dated [ \*\* ] issued under reference number [ \*\* ] (the "Guarantee") by *[insert name of bank guarantor]* to Nord Pool AS in relation to *[insert the Clearing Member's name]* (the "Clearing Member")**

1. We hereby demand the immediate payment to us of *[insert words]* pounds sterling (£ *[insert figures]*) under the Guarantee.
2. We confirm that the sum demanded is due and payable by the Clearing Member and that the Clearing Member has failed to pay the sum demanded to us.
3. Payment under this demand should be made by you to our bank account specified in clause 6 of the Guarantee.

Signed for and on behalf of  
**Nord Pool AS**

.....  
Authorised Officer



**SCHEDULE 2**  
**Form of communication**

Date: [insert the date on which the letter is signed or delivered]  
To: [Nord Pool AS] OR [ ● insert name of bank guarantor]  
From: [ ● insert name of bank guarantor] OR [Nord Pool AS]

**Deed of guarantee dated [\*\*\*] issued under reference number [\*\*\*] (the "Guarantee") by [insert name of bank guarantor] to Nord Pool AS in relation to [insert the Clearing Member's name] (the "Clearing Member")**

This notice is given in accordance with the Guarantee.

*[insert text here]*

For and on behalf of

**[Nord Pool AS] OR [ ● insert name of issuing bank]**

(signed) .....<sup>5</sup>  
Authorised signatory

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<sup>5</sup> No signature is required for a communication delivered by SWIFT.