

Clearing Client Agreement

Clearing Agreement C

**N2EX Physical Market
Nord Pool AS**

[Insert name of Clearing Client]

THIS CLEARING CLIENT AGREEMENT dated _____ is made by and between:

[insert company name of Clearing Client], [insert registered address], with reg. no. [insert registration number] in the [insert home state] company register (the “**Clearing Client**” or “**Client**”);

and

Nord Pool AS, Vollsveien 17 B, 1366 Lysaker, Norway with reg.no 984 058 098 in the Norwegian company register,

each a “**Party**” and collectively referred to as the “**Parties**”.

1. General

- 1.1 Nord Pool offers Clearing services as set out in the Clearing Rules of Nord Pool relating to the N2EX Market as applicable at the time of the relevant Clearing Request or Clearing Transaction (the “Clearing Rules”).
- 1.2 The Clearing Client has regular business involving Transactions in Products available on the N2EX Market.
- 1.3 The Client Representative is a Clearing Member and has been approved by Nord Pool to act as a Client Representative. Upon entering into this agreement, the Clearing member agrees to act as the Client Representative in respect of the Clearing Client.
- 1.4 On entering into this agreement, the Clearing Client appoints the Client Representative as its Client Representative (as defined in the Clearing Rules) and obtains the right to have Transactions registered for Clearing through the Client Representative, in accordance with this agreement and as further regulated under the Clearing Rules.
- 1.5 The Clearing Client and the Client Representative hereby accept to be bound by the Clearing Rules, which are deemed to be incorporated by reference into this agreement.
- 1.6 In the event of conflict between the Clearing Rules and this agreement, the Clearing Rules shall prevail.
- 1.7 Terms defined in the Definitions (Trading/Clearing Appendix 1) shall have the same meaning in this Clearing Membership Agreement.

2. Access to Clearing

- 2.1 The Clearing Client may, pursuant to further conditions in the Clearing Rules, have Transactions registered for Clearing with Nord Pool through the Client Representative.
- 2.2 Nord Pool will establish the Clearing Accounts for the Clearing Client as specified in Annex 1 hereto.
- 2.3 Access to Clearing is contingent on the Client Representative paying to Nord Pool fees for Clearing as specified in the Fee List, and the posting of Collateral and fulfilment of other requirements for Clearing as set out in the Clearing Rules.

3. Market Conduct Rules

- 3.1 The Clearing Client acknowledges that it is under a duty to comply with the applicable Market Conduct Rules, which are deemed to be incorporated into this agreement by reference.
- 3.2 The Clearing Client further acknowledges that the Market Conduct Rules are under surveillance by and sanctioned by Nord Pool and that Nord Pool has the right to enforce the Market Conduct Rules against the Clearing Client as provided for in the Market Conduct Rules.
- 3.3 Nord Pool may, notwithstanding any duty of confidentiality owed to the Clearing Client but subject to the provisions in the Market Conduct Rules, make public the fact that an investigation of a particular Clearing Client(s) has been initiated in respect of a breach of the Market Conduct Rules. Nord Pool may also disclose the results of such investigations, including any sanctions.

4. Representations and warranties by the Clearing Client

- 4.1 By entering into this Clearing Client Agreement the Clearing Client is deemed to accept and undertake the Representations and warranties in the Clearing Rules.
- 4.2 In addition to the Representations under clause 4.1, the Clearing Client hereby represents and warrants that:
 - (a) it has all requisite power and authority and legal right to enter into this agreement under its articles of association, by law or any other document and to perform its obligations as a Clearing Client;
 - (b) it has taken all necessary actions to authorise the signing of this agreement; and
 - (c) the signing of this agreement and the compliance with the Clearing Rules does not violate any Applicable Law or agreement, document or instrument binding on or applicable to the Clearing Client; and
 - (d) it holds any Required Authorisations needed to conduct its affairs as a Clearing Client, and there are no further licences or filings with or other acts by or in respect of any Regulatory Body or any other governmental authority or court that are required to be obtained, made or done by the Clearing Client in connection with its role as a Clearing Client, nor is it necessary in order to ensure the validity or enforceability that the Clearing Rules or any agreement or Clearing Transaction are filed, registered or recorded in any public office by the Clearing Client.
- 4.3 The Clearing Client acknowledges that it is under a duty to notify Nord Pool immediately in case it becomes aware of any breach of a Representation or a warranty, as further provided for in the Clearing Rules.

5. Representations and warranties by the Client Representative

- 5.1 The Client Representative hereby represents and warrants that:
 - (a) it has all requisite power and authority and legal right to enter into this agreement under its articles of association, by law or any other document and to perform its obligations as a Client Representative;
 - (b) it has taken all necessary actions to authorise the signing of this agreement;

- (c) the signing of this agreement and the compliance with the Clearing Rules does not violate any Applicable Law or agreement, document or instrument binding on or applicable to the Client Representative; and
 - (d) it holds any Required Authorisations needed to conduct its affairs as a Client Representative, and there are no further licences or filings with or other acts by or in respect of any Regulatory Body or any other governmental authority or court that are required to be obtained, made or done by the Client Representative in connection with its role as a Client Representative, nor is it necessary in order to ensure the validity or enforceability that the Clearing Rules or any agreement or Clearing Transaction are filed, registered or recorded in any public office by the Client Representative.
- 5.2 The Client Representative acknowledges that it is under a duty to notify Nord Pool immediately in case it becomes aware of any breach of a Representation or a warranty, as provided for in the Clearing Rules.

6. Changes to the agreement

- 6.1 Changes to this Clearing Client Agreement require the written agreement of all Parties. Notwithstanding the foregoing, the annexes to this Clearing Client Agreement may be changed as specified in each annex.
- 6.2 Notwithstanding clause 6.1, Nord Pool may amend the Clearing Rules in accordance with the provisions in the Clearing Rules. In case of such amendments, any references herein shall be deemed to have been substituted with references to the revised and/or substituted provisions of the Clearing Rules as applicable.

7. Confidentiality

- 7.1 Subject to the provisions in this clause 7, Nord Pool shall ensure that no other party gains access to or knowledge of any matters relating to the business or personal affairs of the Clearing Client which it becomes aware of through Clearing, and Nord Pool shall not make use of such information for any other purposes than those related to Clearing and related activities of Nord Pool.
- 7.2 Subject to the provisions in this clause 7, both the Clearing Client and the Client Representative undertake that it shall not at any time disclose to any person any confidential information concerning the business, business affairs, customers, clients or suppliers of Nord Pool without prior written consent.
- 7.3 Notwithstanding the other provisions of this clause 7:
- (a) Nord Pool may provide information to the Client Representative about the Clearing Accounts and Clearing Transactions of the Clearing Client, and the Clearing Client consents to such disclosure notwithstanding any obligations of Nord Pool under the Clearing Rules or Applicable Law;
 - (b) Nord Pool may provide information to Nord Pool in relation to their market surveillance, and to any other person or entity advising or assisting Nord Pool in its operations, provided these persons and entities are subject to a corresponding duty of confidentiality;
 - (c) the duty of confidentiality shall not extend to information which is or becomes public through no breach of a Party's confidentiality obligations hereunder;

- (d) either Party shall be allowed to disclose any information as may be required by Applicable Law; and
- (e) neither Party is required to keep confidential the fact that it has entered into this agreement or any suspension or termination of this agreement.

7.4 This clause 7.4 shall not limit either Party's confidentiality obligations under Applicable Law.

8. Termination

- 8.1 Nord Pool may terminate this agreement upon three (3) months written notice to the Clearing Client.
- 8.2 Nord Pool's right to suspend and/or terminate this agreement in the case of a Collateral Deficit or Default Event is set out in the General Terms of the Clearing Rules.
- 8.3 The Clearing Client may terminate this agreement upon three months' written notice to Nord Pool and the Clearing Representative. Subject to clause 8.4 of this agreement, the Clearing Client's Collateral shall be returned as soon as practicable after the date of termination, provided that in each case all amounts owing to Nord Pool by the Clearing Client have been fully, finally and unconditionally paid or discharged to Nord Pool and the Clearing Client has no Open Positions or Pending Settlements.
- 8.4 In the event that the Client Representative's Clearing Membership Agreement is to be terminated for any reason, the provisions of Section 14 of the General Terms to the Clearing Rules will apply and this agreement will terminate immediately on the Clearing Client entering into a Clearing Client Agreement with a new Client Representative (as defined in the Clearing Rules).
- 8.5 Termination of this agreement will not affect the Clearing Client's or the Client Representative's rights and obligations to Nord Pool, or the rights and obligations of Nord Pool, with respect to Transactions submitted to Nord Pool before the date of such termination. The Clearing Client may not enter into any Clearing Transactions on or after the date of termination of this agreement.

9. Entire Agreement

- 9.1 This agreement and the Clearing Rules contain the whole agreement between the Parties relating to the subject matter of this agreement and supersedes any previous arrangement, understanding or agreement between them relating to that subject matter.
- 9.2 The Parties each acknowledge that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this agreement and the Clearing Rules.
- 9.3 Nothing in this clause 9 shall limit or exclude any liability for fraud.

10. Choice of Law and Dispute Resolution

- 10.1 This agreement shall be governed by, construed and take effect in accordance with English law.
- 10.2 The English courts shall have exclusive jurisdiction to settle any claim, dispute or difference that may arise out of or in connection with this agreement, including any question as to its existence, validity or termination.

- 10.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in the English courts and any claim that any such proceedings have been brought in an inconvenient forum, and further irrevocably agrees that a judgement in any proceedings brought in the English courts shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction in accordance with the enforcement law of that jurisdiction.

11. Miscellaneous

- 11.1 **Counterparts.** This agreement may be executed in any number of counterparts, each of which when executed shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.
- 11.2 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy.
- 11.3 **Contracts (Rights of Third Parties) Act 1999.** Notwithstanding Section 18 of the General Terms of the Clearing Rules, Nord Pool and Nord Pool shall have the rights expressly granted to them under clause 3 of this agreement.

IN WITNESS OF THEIR AGREEMENT each Party has caused its authorised representative to execute this agreement effective as of the

date of signature by both Parties.

For and on behalf of [insert name of Clearing Client]

Signature

Name and title (printed letters)

Date:

For and on behalf of [insert name of Client Representative]

Signature

Name and title (printed letters)

Date:

For and on behalf of Nord Pool AS

Signature

Name and title (printed letters)

Date:

ANNEX 1

Accounts Overview

ANNEX 2

Contact Details and Authorisations