

Clearing Agreement E3

# Bank Guarantee

English law version

[Insert name of Account Holder]

## NOTICE

The Clearinghouse provides a predefined set of agreement templates. The templates have been subject to consultation with members prior to release.

To speed up the processing of your application/request, the Clearinghouse encourages that the templates are used "as provided" and that change requests – if any – are kept to a minimum.

All changes to the templates (except for fill-in of data in brackets where so mandated by the template etc) require the consent of the Clearinghouse, and will normally not be approved. The Clearinghouse reserves the right to reject any changes proposed without further explanation. The Clearinghouse may furthermore impose special terms and conditions if the individual circumstances so require.

**[On headed paper of issuing bank]**

**ON-DEMAND BANK GUARANTEE**

Please ensure that this document when issued does not contain any square brackets, footnotes, explanatory notes etc. Kindly also remove this note.

**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]<sup>2</sup> or such other amount if varied pursuant to clause 2 below)

**Expiry Date** : [ ● ]<sup>3</sup> or such later date if this guarantee is extended pursuant to clause 2 below

**Applicant<sup>4</sup>** : [ ● insert full name]  
*address:* [ ● ]  
*attention:* [ ● ]

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

**Beneficiary** : NASDAQ OMX Stockholm AB (c/o Norwegian branch)  
*address:* Vollsveien 19, NO-1326 Lysaker, Norway  
*attention:* Market and Credit  
*telephone no:* +47 6752 8000  
*SWIFT no:* [ ● ]

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

<sup>2</sup> The same figure should be inserted in clause 1(a).

<sup>3</sup> The same date should be inserted in clause 1(b).

<sup>4</sup> Drafting note: This is the relevant Account Holder.

We, the undersigned,

**[insert name of bank guarantor],**

in consideration of NASDAQ OMX Stockholm AB of Tullvaktsvägen 15, S-105 78 Stockholm, Sweden (the "**Clearinghouse**") permitting

**[insert name and address of the Applicant]** (incorporated in [insert country] with registered number [insert org no])(the "**Account Holder**") to become or to continue as an Account Holder of the Clearinghouse System,

hereby provide the following guarantee (the "**Guarantee**") subject to the terms and conditions set out below:

1. We guarantee the due payment to the Clearinghouse of all money and liabilities for the time being due, owing or incurred by the Account Holder to the Clearinghouse 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 Account Holder is or becomes liable to the Clearinghouse (the "**Guaranteed Amounts**"), provided that:
  - (a) the total amount recoverable from us hereunder shall not exceed £ [insert figure] ([repeat figure in words]); 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. 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 Clearinghouse 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 Clearinghouse before the Specified Date. The Clearinghouse may, in its absolute discretion, accept or reject a Request. If the Clearinghouse has not notified its decision to us in writing before 6pm on the Specified Date, the Request shall lapse and the Clearinghouse shall be deemed to have rejected the Request. If the Clearinghouse 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 Clearinghouse to deliver a demand after 6pm on the Specified Date).
3. If any Guaranteed Amount is not paid in full by the Account Holder to the Clearinghouse 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 Clearinghouse pay the amount so demanded to the Clearinghouse 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 Clearinghouse (whose signature must be confirmed as authentic by the Clearinghouse'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 (through the Clearinghouse's bankers) to 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 Clearinghouse from making any further demands.

6. All payments by us to the Clearinghouse 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 Clearinghouse may notify to us in writing from time to time, provided that such notice shall not take effect until the fifth Business Day after (but not counting) the date on which such notice is given):

Bank: [ ● ]  
Branch: London  
SWIFT: [ ● ]  
Account name: [ ● ]  
Account number: [ ● ]  
Payment reference: [ ● insert name of Account Holder].

7. This Guarantee is irrevocable and unconditional and constitutes our direct primary obligation to make payment hereunder to the Clearinghouse without the necessity of any reference to or consent from the Account Holder and without examination of the Account Holder'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 Account Holder or we may have against the Clearinghouse or any rights of set-off that we may have against the Account Holder and whether or not the Account Holder disputes its liability to pay the amount demanded by the Clearinghouse.
8. We agree that the amount stated in any demand made by the Clearinghouse under this Guarantee as being payable by the Account Holder to the Clearinghouse shall, as between the Clearinghouse 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 Account Holder or the appointment of an administrator, receiver or similar office-holder of the Account Holder 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 Clearinghouse 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 Clearinghouse may at any time hold and may be enforced by the Clearinghouse without first having recourse to the same or taking any proceedings against the Account Holder.

11. No failure to exercise and no delay on the part of the Clearinghouse 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 Clearinghouse and ourselves.
13. Any notice, letter or other written communication between us and the Clearinghouse 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 Clearinghouse's bankers) at the address or SWIFT number of the recipient set out at the beginning of this Guarantee. We or the Clearinghouse 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 Clearinghouse 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 other Nasdaq Affiliate or (ii) any bank or financial institution which provides the Clearinghouse with any settlement services under the Clearinghouse 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 Clearinghouse 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) **"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;
  - (b) **"Clearinghouse"** includes any transferee or successor (whether immediate or derivative) of the Clearinghouse and any company with which it may amalgamate;
  - (c) **"Clearing Rules"** means the rules and procedures established by the Clearinghouse which are, from time to time, in force in relation to participants in the Clearinghouse System;
  - (d) **"Clearinghouse System"** means the clearing house operated by the Clearinghouse as a central counterparty for the clearing of financial electricity and other contracts and the services provided by it in connection with such arrangements;

- (e) **"Clearing Transaction"** means a Transaction that is registered for Clearing by the Clearinghouse as contemplated by the Clearing Rules;
  - (f) **"Nasdaq 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 NASDAQ OMX Group, Inc (or any successor);
  - (g) **"person"** shall have the same meaning given in the ISP98;
  - (h) 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 Clearinghouse 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.

**Issued** at [insert details of place] on [insert date]

**Signed** for and on behalf of  
**[insert full name of bank guarantor]**

.....

Authorised Signatory

.....

Authorised Signatory

**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

**Guarantee dated [ \*\*\* ] issued under reference number [\*\*\*] (the "Guarantee") by [*insert name of bank guarantor*] to NASDAQ OMX Stockholm AB in relation to [*insert the Account Holder's name*] (the "Account Holder")**

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 Account Holder and that the Account Holder 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

**NASDAQ OMX Stockholm AB**

.....

Authorised Officer

**SCHEDULE 2**

**Form of communication**

Date: [insert the date on which the letter is signed or delivered]

To: [NASDAQ OMX Stockholm AB] OR [ ● insert name of bank guarantor]

From: [ ● insert name of bank guarantor] OR [NASDAQ OMX Stockholm AB]

**Guarantee dated [ \*\*\* ] issued under reference number [\*\*\*] (the "Guarantee") by [insert name of bank guarantor] to NASDAQ OMX Stockholm AB in relation to [insert the Account Holder's name] (the "Account Holder")**

This notice is given in accordance with the Guarantee.

*[insert text here]*

For and on behalf of<sup>5</sup>

**[NASDAQ OMX Stockholm AB] OR [ ● insert name of issuing bank ]**

*(signed)* .....

Authorised signatory

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<sup>5</sup> This signature block is only required if the communication is to be delivered by hand or courier. No signature is required for a communication to be delivered by SWIFT.