

Clearing Agreement B

# Clearing Membership Agreement

N2EX Market

[insert name of Clearing Member]

## 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.

## CLEARING MEMBERSHIP AGREEMENT

entered into between

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

and

**NASDAQ OMX Stockholm AB**, Tullvaktsvägen 15, S-105 78 Stockholm, Sweden, with reg. no. 556383-9058 in the Swedish company register (the "**Clearinghouse**");

collectively referred to as the "**Parties**",

### 1. GENERAL

- 1.1 The Clearinghouse offers Clearing services as set out in the Clearing Rules of the Clearinghouse as applicable at the time of the relevant Clearing Request or Clearing Transaction (the "**Clearing Rules**").
- 1.2 The Clearing Member has regular business involving Transactions in Physical Products and/or Financial Products.
- 1.3 On entering into this agreement, the Clearing Member obtains the right to have Transactions subject to Clearing as a Clearing Member, in accordance with this agreement and the Clearing Rules.
- 1.4 The Clearing Member hereby accepts to be bound by the Clearing Rules, which are deemed to be incorporated by reference into this agreement.
- 1.5 In the event of conflict between the Clearing Rules and this agreement, the Clearing Rules shall prevail.
- 1.6 Terms defined in the Definitions (Clearing Appendix 1) shall have the same meaning in this Clearing Membership Agreement, unless otherwise defined herein.

### 2. ACCESS TO CLEARING

- 2.1 The Clearing Member may, pursuant to further conditions in the Clearing Rules, register its Principal Transactions for Clearing.
- 2.2 The Clearing Member may, if approved by the Clearinghouse as a Client Representative, also register Client Transactions for Clearing Clients for Clearing.
- 2.3 The Clearinghouse will establish the Clearing Accounts for the Clearing Member as specified in Annex 1 hereto.
- 2.4 Access to Clearing is contingent on the Clearing Member paying to the Clearinghouse 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 Member 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 Member further acknowledges that the Market Conduct Rules are under surveillance by and sanctioned by the relevant Market Operator(s) and that the Market Operator(s) has the right to enforce the Market Conduct Rules against the Clearing Member as provided for in the Market Conduct Rules.

3.3 The Market Operator(s) may, notwithstanding any duty of confidentiality owed to the Clearing Member but subject to the provisions in the Market Conduct Rules, make public the fact that an investigation of a particular Clearing Member has been initiated in respect of a breach of the Market Conduct Rules. The Market Operator(s) may also disclose the results of such investigations, including any sanctions.

#### **4. REPRESENTATIONS AND WARRANTIES BY THE CLEARING MEMBER**

4.1 By entering into this Clearing Membership Agreement the Clearing Member 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 Member 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 Member;
- 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 Clearing Member; and
- d. it holds any Required Authorisations needed to conduct its affairs as a Clearing Member, 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 Member in connection with its role as a Clearing Member, 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 Member.

4.3 The Clearing Member acknowledges that it is under a duty to notify the Clearinghouse immediately in case it becomes aware of any breach of a Representation or a warranty, as further provided for in the Clearing Rules.

#### **5. CHANGES TO THE AGREEMENT**

5.1 Changes to this Clearing Membership Agreement require the written agreement of both Parties. Notwithstanding the foregoing, the annexes to this Clearing Membership Agreement may be changed as specified in each annex.

5.2 Notwithstanding clause 5.1, the Clearinghouse may amend the Clearing Rules in accordance with the provisions in the Clearing Rules.

#### **6. CONFIDENTIALITY**

6.1 Subject to the provisions in this clause 6, the Clearinghouse shall ensure that no other party gains access to or knowledge of any matters relating to the business or personal affairs of the Clearing Member which it becomes aware of through Clearing, and the Clearinghouse shall not make use of such information for any other purposes than those related to Clearing and related activities of the Clearinghouse.

6.2 Subject to the provisions in this clause 6, the Clearing Member undertakes that it shall not at any time disclose to any person any confidential information concerning the business, business affairs, customers, clients or suppliers of the Clearinghouse without prior written consent.

6.3 Notwithstanding the other provisions of this clause 6:

- a. the Clearinghouse may provide information to the relevant Market Operator(s) in relation to their market surveillance, and to any other person or entity advising or assisting the Clearinghouse in its operations, provided these persons and entities are subject to a corresponding duty of confidentiality;

- b. the duty of confidentiality shall not extend to information which is or becomes public through no breach of a Party's confidentiality obligations hereunder;
- c. either Party shall be allowed to disclose any information as may be required by Applicable Law; and
- d. neither Party is required to keep confidential the fact that it has entered into this agreement or any suspension or termination of this agreement.

6.4 This clause 6 shall not limit either Party's confidentiality obligations under Applicable Law.

## **7. TERMINATION**

- 7.1 The Clearinghouse may terminate this agreement upon three (3) months written notice to the Clearing Member.
- 7.2 The Clearinghouse's right to suspend and/or terminate this agreement in the case of a Default Event is set out in the General Terms of the Clearing Rules.
- 7.3 The Clearing Member may terminate this agreement upon three months written notice to the Clearinghouse. Subject to clause 7.4 of this agreement, the Clearing Member's Collateral shall be returned as soon as practicable after the date of termination, provided that in each case all amounts owing to the Clearinghouse by the Clearing Member have been fully, finally and unconditionally paid or discharged to the Clearinghouse and the Clearing Member has no Open Positions or Pending Settlements.
- 7.4 In the event that the Clearing Member is approved as a Client Representative at the time of termination in accordance with clause 7.3 above and has entered into any Clearing Client Agreements with Clearing Clients, the provisions of Section 13.3.4 of the General Terms of the Clearing Rules will apply as if the Clearing Member's approval (acting as Client Representative) has been suspended or terminated. In addition to the provisions of clause 7.3 of this agreement, the Clearing Member's Collateral shall not be returned until all Clearing Clients for which it is approved have either entered into a Clearing Client Agreement with another Client Representative in accordance with Section 13.3.4 of the General Terms of the Clearing Rules or have ceased to be an Account Holder.
- 7.5 Termination of this agreement will not affect the Clearing Member's rights and obligations to the Clearinghouse, or the rights and obligations of the Clearinghouse, with respect to Transactions submitted to the Clearinghouse before the date of such termination. The Clearing Member may not enter into any Clearing Transactions on or after the date of termination of this agreement.

## **8. ENTIRE AGREEMENT**

- 8.1 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.
- 8.2 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.
- 8.3 Nothing in this clause 8 shall limit or exclude any liability for fraud.

## **9. CHOICE OF LAW AND DISPUTE RESOLUTION**

- 9.1 This agreement shall be governed by, construed and take effect in accordance with English law.
- 9.2 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.
- 9.3 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.

## 10. MISCELLANEOUS

- 10.1 **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.
- 10.2 **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.
- 10.3 **Contracts (Rights of Third Parties) Act 1999.** Notwithstanding Section 17.2 of the General Terms of the Clearing Rules, Nord Pool and NPS 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.

This agreement has been made in two (2) originals, and each Party keeps one (1).

**For and on behalf of [insert name of Clearing Member]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title (printed letters)

Date:

**For and on behalf of NASDAQ OMX Stockholm AB**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title (printed letters)

Date:

**Annex 1:** Clearing Accounts and ECV Notification Data

**Annex 2:** Contact Details and Authorisations

### SIGNATURES

Signatures must be evidenced by company certificate (not older than 1 (one) month from issue) or similar document authorising signature, and be accompanied by a certified copy of official ID (drivers license, passport or similar) containing signature sample of the signing person(s).

## ACCOUNT OVERVIEW

[insert name of Clearing Member]

### 1. STATUS

1.1 This Annex 1 forms an integral part of the Clearing Membership Agreement.

### 2. TRADING PORTFOLIOS

Note: Separate documentation must be filed with ELEXON for the appointment of the Clearinghouse or its nominee as ECV Notification Agent.

Trading Portfolio	Associated	Account number/key	Short code /ID
[Name]	(see below)	n/a	[text]
	Clearing Account	[number]	[text]
	Energy Account	[number]	[text]

### 3. CLEARING ACCOUNTS

Clearing Account	Associated	Account number	Short code	Bank	Sort Code	IBAN
[Name]	(see below)	[number]	[text]	n/a		
	Cash Settlement Account	[number]	[text]	[account bank]	[sort code]	[IBAN]
	Cash Collateral Account	[number]	[text]	[account bank]	[sort code]	[IBAN]

### 4. AMENDMENTS

Any amendments to this Annex 1 require the approval of the Clearinghouse, not to be unreasonably withheld. The Clearinghouse may require amendments to this Annex 1 if mandated by changes to the Clearing Rules. The Clearing Member grants to its Contact Person the non-exclusive right to negotiate, sign, execute and deliver any amendments to this Annex 1, and to delegate such power and authority to others at his/her discretion.

\* \* \*

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

For and on behalf of NASDAQ OMX Stockholm AB

\_\_\_\_\_  
Signature  
Date:

\_\_\_\_\_  
Name and title (printed letters)

\_\_\_\_\_  
Signature  
Date:

\_\_\_\_\_  
Name and title (printed letters)

#### SIGNATURES

Authorised signatures are required in order to effectuate this Annex 1 and any amendments. Authorised signatures are (i) signatures from person(s) authorised to sign on behalf of the member or (ii) the Contact Person (only in case of replacements/amendments). In case of signature by other persons than the Contact Person, please submit a copy of company certificate (not older than 1 (one) month from issue) or similar documentation authorising signature together with certified copy(ies) of official ID (drivers license, passport or similar) containing signature sample of signing person(s).

**CONTACT DETAILS AND AUTHORISATIONS**

<b>Member:</b>	[insert name of Clearing Member]		
<b>Category:</b>	Clearing Member		
<b>Document status:</b>	<input type="checkbox"/> <b>New</b> <small>(new members only)</small>	<input type="checkbox"/> <b>Replacement</b> <small>(replaces <u>all</u> previous forms)</small>	<input type="checkbox"/> <b>Amendment(s)</b> <small>(amends existing information)</small>

**1. STATUS**

1.1 This Annex 2 forms an integral part of the Clearing Membership Agreement.

**2. GENERAL CONTACT DETAILS**

<b>Postal address:</b>	[address] [postcode] [country]	<b>Visiting address:</b>	[address] [country] [country]
<b>Phone:</b>	[insert number int. format]	<b>Fax:</b>	[insert number int. format]
<b>General e-mail address:</b>	[e-mail address]		
<b>Invoice e-mail address:</b>	[e-mail address]		

**3. ORGANISATION**

The Clearing Member authorises any and all of the individuals below with respect to Trading and/or Clearing, as specified below.

**3.1 Contact Person**

<b>Status:</b>	<input type="checkbox"/> New	<input type="checkbox"/> Existing	
<b>Name:</b>	[insert name]	<b>Position:</b>	[insert position]
<b>Phone:</b>	[insert number int. format]	<b>Mobile:</b>	[insert number int. format]
<b>E-mail:</b>	[insert e-mail address]		
<b>Access rights:</b>	The Contact Person will by default have full access to all accounts and systems which the Clearing Member has access to.		
<b>Accounts:</b>			
<b>SecurID®:</b>	[insert number]	<small>(SecurID® to be filled in by the Clearinghouse for new Users)</small>	
<b>Comment:</b>	[none]		
<b>Signature sample:</b>	----- <small>(To be used in verification of amendment requests)</small>		

**3.2 Users (Traders and Authorised Employees)**

**3.2.1 User 1**

<b>Status:</b>	<input type="checkbox"/> New	<input type="checkbox"/> Existing	
<b>Name:</b>	[insert name]	<b>Position:</b>	[insert position]
<b>Phone:</b>	[insert number int. format]	<b>Mobile:</b>	[insert number int. format]
<b>E-mail:</b>	[insert e-mail address]		
<b>Trading access</b>	<input type="checkbox"/> Auction	<input type="checkbox"/> Spot	<input type="checkbox"/> Prompt
<b>Clearing access</b>	<input type="checkbox"/> OTC Clearing	<input type="checkbox"/> Back-office	
<b>Access type</b>	<input type="checkbox"/> Full access	<input type="checkbox"/> View Only	<input type="checkbox"/> Remove access
<b>Accounts:</b>	[specify account IDs if the User shall only be able to access certain accounts]		
<b>SecurID®:</b>	[insert number]	<small>(SecurID® to be filled in by the Clearinghouse for new Users.)</small>	
<b>Comment:</b>	[none]		

3.2.2 User 2

<b>Status:</b>	<input type="checkbox"/> New	<input type="checkbox"/> Existing	
<b>Name:</b>	[insert name]	<b>Position:</b>	[insert position]
<b>Phone:</b>	[insert number int. format]	<b>Mobile:</b>	[insert number int. format]
<b>E-mail:</b>	[insert e-mail address]		
<b>Trading access</b>	<input type="checkbox"/> Auction	<input type="checkbox"/> Spot	<input type="checkbox"/> Prompt
<b>Clearing access</b>	<input type="checkbox"/> OTC Clearing	<input type="checkbox"/> Back-office	
<b>Access type</b>	<input type="checkbox"/> Full access	<input type="checkbox"/> View Only	<input type="checkbox"/> Remove access
<b>Accounts:</b>	[specify account IDs if the User shall only be able to access certain accounts]		
<b>SecurID®:</b>	[insert number]	(SecurID® to be filled in by the Clearinghouse for new Users.)	
<b>Comment:</b>	[none]		

3.3 **Compliance contact**

<b>Status:</b>	<input type="checkbox"/> New	<input type="checkbox"/> Existing	
<b>Name:</b>	[insert name]	<b>Position:</b>	[insert position]
<b>Phone:</b>	[insert number int. format]	<b>Mobile:</b>	[insert number int. format]
<b>E-mail:</b>	[insert e-mail address]		
<b>Comment:</b>	[none]		

3.4 **Collateral and Settlement contact**

<b>Status:</b>	<input type="checkbox"/> New	<input type="checkbox"/> Existing	
<b>Name:</b>	[insert name]	<b>Position:</b>	[insert position]
<b>Phone:</b>	[insert number int. format]	<b>Mobile:</b>	[insert number int. format]
<b>E-mail:</b>	[insert e-mail address]		
<b>Comment:</b>	[none]		

3.5 **Other comments (to be specifically approved by the Clearinghouse)**

[none]

4. **AMENDMENTS**

Any amendments to this Annex 2 require the approval of the Clearinghouse, not to be unreasonably withheld. The Clearinghouse may require amendments to this Annex 2 if mandated by changes to the Clearing Rules. The Clearing Member grants to its Contact Person the non-exclusive right to negotiate, sign, execute and deliver any amendments to this Annex 2, and to delegate such power and authority to others at his/her discretion.

\* \* \*

**For and on behalf of [insert name of Clearing Member]**

\_\_\_\_\_  
Signature  
Date:

\_\_\_\_\_  
Name and title (printed letters)

INFORMATION	
<p><b>Return address</b> (for replacements or amendments only) Please sign and return by PDF copy to <a href="mailto:psychical.trading@n2ex.com">psychical.trading@n2ex.com</a></p> <p>Alternatively, return by fax to +47 67 52 81 46      Att: N2EX Physical Trading</p> <p><b>Signatures</b> Authorised signatures are required in order to effectuate this Annex 2 and any amendments. Authorised signatures are (i) by person(s) having general signing authority for the member or (ii) the Contact Person (only in case of replacements/amendments). In case of signature by other persons than the Contact Person (including first time signatures), please submit a copy of company certificate or similar document authorising signature together with certified copy(ies) of official ID (drivers license, passport or similar) containing signature specimens.</p>	<p><b>Inquiries</b> Inquiries regarding this Annex 2 can be directed at</p> <p>Phone: +47 67 52 81 20 E-mail: <a href="mailto:psychical.trading@n2ex.com">psychical.trading@n2ex.com</a></p>