

Clearing Agreement F

ECV Transferee Agreement

N2EX Market

[insert name of ECV Transferee]

ECV TRANSFEREE AGREEMENT

Notice

Please ensure that this document when executed does not contain any square brackets, footnotes, explanatory notes etc except those which are intended to remain in the document (if any). Please initial each page in the bottom right hand corner, and ensure that signatures are by duly authorised persons, accompanied by evidence of authorisation and personal identification etc as further instructed by the Clearinghouse.

entered into between

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

and

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

individually referred to as a "**Party**" and collectively as the "**Parties**",

1. BACKGROUND

- 1.1 The Clearinghouse offers its Account Holders clearing services as set out in the Clearing Rules of the Clearinghouse relating to the N2EX Market as applicable at the time of the relevant Clearing Request or Clearing Transaction (the "**Clearing Rules**").
- 1.2 The ECV Transferee is a party to the BSC and has or will establish arrangements with one or more Account Holders to be party to ECV Transfers.
- 1.3 By entering into this agreement (the "**Agreement**"), the ECV Transferee obtains the right to have Account Holders appoint it as their ECV Transferee, in accordance with this Agreement and the Clearing Rules.
- 1.4 Terms defined in the Definitions of the Clearing Rules (Clearing Appendix 1) shall have the same meaning in this Agreement, unless otherwise defined herein.

2. APPOINTMENT AS ECV TRANSFEREE

- 2.1 Account Holders may appoint the ECV Transferee as their ECV Transferee (as defined in the Clearing Rules) and the ECV Transferee shall acknowledge such appointment through joint written notification from the Account Holder and the ECV Transferee to the Clearinghouse, in such format and incorporating such information as the Clearinghouse prescribes from time to time.
- 2.2 The appointment as ECV Transferee (as defined in the Clearing Rules) in relation to each Account Holder becomes effective, in relation to each Account Holder, when the Clearinghouse has received and accepted an appointment in accordance with clause 2.1 (acceptance being effected through written notice to the ECV Transferee and the Account Holder), and the Clearinghouse has been appointed ECV Notification Agent for the relevant Energy Accounts in accordance with clause 3.3.

3. ECV NOTIFICATIONS, DELIVERY AND ACCEPTANCE

- 3.1 The Clearinghouse will make ECV Notifications in relation to any ECV Transfers to the Energy Account(s) of the ECV Transferee in accordance with the applicable provisions of this Agreement and the Clearing Rules.
- 3.2 Electricity Contract Volumes that are deliverable under an ECV Transfer shall be delivered in accordance with the terms of the BSC, the terms of each ECV Transfer, this Agreement and the Clearing Rules.

- 3.3 The ECV Transferee shall ensure that the Clearinghouse (or its nominee) is appointed as ECV Notification Agent for the Energy Account relevant to any ECV Transfer to which it is a party in accordance with the applicable requirements of the BSC and the procedures of the Clearinghouse from time to time, and that the Clearinghouse's (or its nominee's) status as ECV Notification Agent for such Energy Account is maintained at all times, so as to enable the Clearinghouse to make ECV Notifications in respect of ECV Transfers to such Energy Account. The ECV Transferee shall furthermore ensure that all such actions are taken by it as may be required pursuant to the BSC or otherwise as reasonably requested by the Clearinghouse in order for the Clearinghouse (or its nominee) to act as ECV Notification Agent under the BSC pursuant to the Clearing Rules at all times.

4. NATURE OF OBLIGATIONS

- 4.1 The Clearinghouse's (including any nominee's) sole obligation towards the ECV Transferee is to act as ECV Notification Agent in relation to ECV Transfers to which the ECV Transferee is a party, subject to the provisions of the Clearing Rules and this Agreement.
- 4.2 The ECV Transferee acknowledges and agrees that:
- a. ECV Transfers are not Clearing Transactions, and the ECV Transferee shall have no rights in relation to any Clearing Transactions towards the Clearinghouse. This Agreement does not give the ECV Transferee status as Account Holder under the Clearing Rules.
 - b. This Agreement shall not give the ECV Transferee the right to register any Clearing Transactions, nor shall the ECV Transferee have the right to instruct the Clearinghouse in relation to any Clearing Transaction or ECV Transfer in its capacity as ECV Transferee (as defined in the Clearing Rules).
 - c. The ECV Transferee is not authorised to represent any Account Holders in its capacity as their ECV Transferee (as defined in the Clearing Rules), except as may follow explicitly from the Clearing Rules or from written appointment by the relevant Account Holder that has also been approved by the Clearinghouse.
 - d. The Clearinghouse (or its nominee) shall not become a party to any ECV Transfers and shall not, except for making the ECV Notifications to be made by it in accordance with the Clearing Rules in relation to ECV Transfers, have any obligations towards the ECV Transferee in respect of any ECV Transfers.
 - e. Any bilateral arrangements between Account Holders and the ECV Transferee in relation to ECV Transfers shall be exclusively between the applicable Account Holder(s) and the ECV Transferee, and all settlements relating to any ECV Transfer shall be exclusively between the ECV Transferee and the applicable Account Holder. The ECV Transferee shall ensure that any arrangements between it and its relevant Account Holders do not conflict with this Agreement or the Clearing Rules.
 - f. This Agreement does not create a fiduciary relationship between the ECV Transferee and the Clearinghouse and the ECV Transferee agrees not to assert any claim against the Clearinghouse based on an assertion that the Clearinghouse serves in a fiduciary capacity.

5. INFORMATION DUTIES

- 5.1 The ECV Transferee confirms that it has acquainted itself with all relevant parts of the Clearing Rules, and undertakes that it shall keep itself informed about and comply with all changes to the Clearing Rules to the extent relevant to its obligations under this Agreement. The Clearinghouse shall have no obligation to inform the ECV Transferee of any changes to the Clearing Rules except through publication of such changes on the Clearinghouse's website.
- 5.2 The ECV Transferee shall upon request deliver such information as the Clearinghouse may require in relation to the ECV Transferee and its status as ECV Transferee, or as is otherwise required under the Clearing Rules to be disclosed by an Account Holder in relation to ECV

Transfers to which the ECV Transferee is party, and shall notify the Clearinghouse in case of any events which would reasonably be expected to be of interest to the Clearinghouse in relation such matters.

- 5.3 The ECV Transferee shall notify the Clearinghouse immediately it becomes aware of any breach of a representation or a warranty under clause 6.

6. REPRESENTATIONS AND WARRANTIES BY THE ECV TRANSFEREE

6.1 The ECV Transferee hereby represents and warrants that:

- a. **Power.** It has the power to perform its obligations under this Agreement and each ECV Transfer;
- b. **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, is of good standing);
- c. **Organisation.** It is properly staffed and organised to enable it to carry out this Agreement and each ECV Transfer;
- d. **Risk Assumption.** It is aware of and understands the characteristics of the ECV Transfers and the risks related thereto, and it has entered into this Agreement and any arrangements with Account Holders in respect of ECV Transfers after a full opportunity to review their terms and conditions, and has a sufficient understanding of those terms and conditions and of their risks, and is capable of assuming those risks;
- e. **No Violation or Conflict.** The execution, delivery and performance of this Agreement and the ECV Transfers do not violate or conflict with any Applicable Law or any provision of its constitutional documents applicable to the ECV Transferee or any of its assets, or any contractual restriction binding on or affecting it or any of its assets;
- f. **Required Authorisations.** All Required Authorisations under Applicable Law have been obtained and are in full force and effect, and all conditions of any Required Authorisations have been complied with, and there are no further licences or filings with or other acts by or in respect of any Regulatory Body or competent court that are required to be obtained, made or done by the ECV Transferee in connection with any ECV Transfers, nor is it necessary in order to ensure the validity or enforceability of any ECV Transfer that this Agreement or any ECV Transfer is filed, registered or recorded in any public office;
- g. **Obligations Binding.** Its obligations under this Agreement and each ECV Transfer constitute legal, valid and binding obligations of the ECV Transferee, enforceable in accordance with their respective terms subject to Applicable Law affecting creditors' rights generally and to equitable principles of general application;
- h. **BSC Compliance.** The ECV Transferee is in compliance with all applicable requirements under the BSC. No Credit Default (as defined under the BSC) or other default under the BSC, or event that with notice or lapse of time or both would constitute a Credit Default or other default under the BSC has occurred in relation to the ECV Transferee and no such event would occur as a result of the ECV Transferee entering into or performing its obligations under this Agreement or any ECV Transfer;
- i. **No Litigation.** No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it that would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under it;
- j. **Principal.** It will enter into and execute each ECV Transfer as principal (and not as agent or in any other capacity, fiduciary or otherwise); and

- k. **Accurate Information.** All applicable information that is furnished in writing by or on behalf of the ECV Transferee which is identified as being subject to or connected to the this Agreement is or will be, as of the date it is furnished to the Clearinghouse, true, accurate and complete in every material respect.

6.2 The ECV Transferee is deemed to repeat the representations and warranties specified above when entering into each ECV Transfer.

7. CHANGES TO THE AGREEMENT

7.1 Changes to this ECV Transferee Agreement require the written agreement of both Parties.

7.2 Notwithstanding clause 7.1:

- a. the Clearinghouse may issue such additional rules and regulations in relation to ECV Transferees generally as the Clearinghouse deems appropriate, subject to one (1) month's prior written notice to the ECV Transferee, in which case such rules and regulations shall be deemed an integral part of this Agreement and prevail in case of conflict; and
- b. the Clearinghouse shall have a right to amend the Clearing Rules in accordance with the provisions of the Clearing Rules .

8. TERMINATION

8.1 Each Party may terminate this agreement upon three (3) months written notice to the other Party, and with immediate effect in case of any material breach by the other Party of this Agreement. Termination of this Agreement will not affect the rights and obligations of the Parties with respect to ECV Transfers entered into before the date of such termination. The ECV Transferee may not enter into any ECV Transfers which are deliverable (in whole or part) on or after the date of termination of this Agreement.

8.2 The ECV Transferee may terminate its appointment as ECV Transferee for one or more Account Holders by no less than twenty one (21) calendar days written notice to the Clearinghouse (and with copy to the affected Account Holder). Such termination shall not affect the rights or obligations of the Parties with respect to ECV Transfers registered into in relation to such Account Holder(s) before the effective date of such termination. The ECV Transferee may not enter into any ECV Transfers with an Account Holder which are deliverable (in whole or part) on or after the date of termination of in accordance with this clause 8.2.

9. ENTIRE AGREEMENT

9.1 This Agreement contains 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.

9.3 Nothing in this clause 9 shall limit or exclude any liability for fraud.

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.** Any rights of third parties to enforce any provision of this Agreement pursuant to the Contracts (Rights or Third Parties) Act 1999, are

expressly excluded.

- 10.4 **Assignment.** Neither party may assign or transfer this agreement and/or any rights and/or any obligations hereunder to any other person, firm or enterprise, without the prior written consent of the other Party.
- 10.5 **Notices.** Unless otherwise specified all notices provided hereunder shall be in writing and delivered personally, posted by first class prepaid postage, or delivered by confirmed electronic or digital means to the addresses set forth at the beginning of this agreement, or as may be updated from time to time by the relevant party.

11. CHOICE OF LAW AND DISPUTE RESOLUTION

- 11.1 This Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by, construed and take effect in accordance with English law.
- 11.2 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.
- 11.3 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.

* * *

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 ECV Transferee]

Signature

Name and title (printed letters)

Date:

For and on behalf of NASDAQ OMX Stockholm AB

Signature

Name and title (printed letters)

Date: