

Direct Clearing Client Agreement C

Direct Clearing Client Agreement

Direct Clearing Client: [insert name of Direct Clearing Client]

TEMPLATE

DIRECT CLEARING CLIENT 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.

This agreement is made on the date stated on the last page of this document between

[insert company name of Direct Clearing Client], with reg. no. [insert registration number] in the [insert jurisdiction and name of company register] (the "**Direct Clearing Client**");

[insert company name of Direct Clearing Agent], with reg. no: [insert registration number] in the [insert jurisdiction and name of company register] (the "**Direct Clearing Agent**")

and

Nasdaq Clearing AB, with reg. no 556383-9058 in the Swedish company register (the "**Clearinghouse**");

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

1 GENERAL

- 1.1 The Clearinghouse offers clearing services as set out in the clearing rules issued by the Clearinghouse in respect of derivatives and certain other products and instruments (the "**Clearing Rules**").
- 1.2 The Direct Clearing Client has regular business involving trading in Exchange Listed Instruments and Clearing Listed Instruments.
- 1.3 The Direct Clearing Agent is a General Clearing Member or a Clearing Member approved by the Clearinghouse to act as a Direct Clearing Agent. The Direct Clearing Client hereby nominates the Direct Clearing Agent as its Direct Clearing Agent and the Direct Clearing Agent hereby accepts the Direct Clearing Client as its Direct Clearing Client.
- 1.4 Upon entering into this agreement, the Direct Clearing Client obtains the right to submit Transactions in Exchange Listed Instruments and Clearing Listed Instruments for clearing as a Direct Clearing Client through the Direct Clearing Agent in accordance with this agreement and the Clearing Rules (as applicable at the time of each relevant Transaction).
- 1.5 The Clearinghouse will establish Direct Clearing Accounts for the Direct Clearing Client as further specified by the Direct Clearing Client, subject to and in accordance with the Clearing Rules. The Direct Clearing Accounts are accounts on which contracts are Recorded.
- 1.6 The Direct Clearing Client agrees to be bound by and obligated towards both the Clearinghouse and the Direct Clearing Agent by the Clearing Rules in the form in effect from time to time as well as the terms and conditions of this Direct Clearing Client Agreement.
- 1.7 Capitalised terms shall have the meaning ascribed to them in the Clearing Rules. In the event of conflict between the Clearing Rules and this agreement, the Clearing Rules shall prevail.

2 REPRESENTATIONS AND WARRANTIES

- 2.1 The Direct 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 Direct Clearing Client;
- 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 Direct Clearing Client; and
- d. it holds any Required Authorisations needed to conduct its affairs as a Direct 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 Direct Clearing Client in connection with its role as a Direct Clearing Client, nor is it necessary in order to ensure the validity or enforceability that the Clearing Rules or any agreement or Transaction are filed, registered or recorded in any public office by the Direct Clearing Client.

2.2 The Direct Clearing Agent 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 Direct Clearing Agent;
- 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 Direct Clearing Agent; and
- d. it holds any Required Authorisations needed to conduct its affairs as a Direct Clearing Agent, 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 Direct Clearing Agent in connection with its role as a Direct Clearing Agent, nor is it necessary in order to ensure the validity or enforceability that the Clearing Rules or any agreement or Transaction are filed, registered or recorded in any public office by the Direct Clearing Agent.

2.3 In addition to clauses 2.1 and 2.2, both the Direct Clearing Client and the Direct Clearing Agent is deemed to accept and repeat any representations and warranties in the Clearing Rules. The Direct Clearing Client and the Direct Clearing Agent acknowledges that they are under a duty to notify the Clearinghouse immediately in case either of them becomes aware of any breach of a representation or warranty.

3 CONFIDENTIALITY

3.1 The Clearinghouse shall ensure that no unauthorised party gains access to or knowledge of any matters relating to the business of the Direct Clearing Client 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.

3.2 The Direct Clearing Client undertakes to not disclose to any person any confidential information concerning the business, customers, clients or suppliers of the Clearinghouse which it becomes aware of through its membership without prior written consent of the Clearinghouse.

3.3 Notwithstanding the other provisions of this clause 3 or the Clearing Rules:

- a. the Clearinghouse may provide information related to the Direct Clearing Accounts and Transactions of the Direct Clearing Client to the Direct Clearing Agent;
- b. the Clearinghouse may provide information to any regulated market in relation to market surveillance of the applicable Transactions or as otherwise allowed or mandated under applicable law;
- c. the Clearinghouse may provide information 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 and shall only use the information for such purposes;

- d. the duty of confidentiality shall not extend to information which is or becomes public through no breach of a Party's confidentiality obligations hereunder;
 - e. either Party shall be allowed to disclose any information as may be required by applicable law; and
 - f. neither Party is required to keep confidential the fact that it has entered into this agreement or any suspension or termination of this agreement.
- 3.4 This clause 3 shall not limit either Party's confidentiality or disclosure obligations as established by applicable law. Unless otherwise agreed this clause 3 shall survive the termination of this agreement by ten (10) years.

4 INFORMATION

- 4.1 The Direct Clearing Agent shall act as an intermediary between the Clearinghouse and the Direct Clearing Client. Any communication with respect to the obligations under the Clearing Rules and other applicable market information shall be provided by the Clearinghouse to the Direct Clearing Agent in accordance with the Clearing Rules and this Agreement, unless the Clearinghouse chooses to involve the Direct Clearing Client directly. The Direct Clearing Agent shall in a secure manner forward all relevant information to the Direct Clearing Client.
- 4.2 The Direct Clearing Agent shall have the right to provide the Direct Clearing Client access to the Clearing System. Such arrangement shall be documented in a separate agreement between the Direct Clearing Client and the Direct Clearing Agent. Notwithstanding this, the operational responsibility remains with the Direct Clearing Agent at all times.
- 4.3 The Direct Clearing Agent shall inform the Clearinghouse about the names and contact details of the relevant contact persons at the Direct Clearing Client. Even though the communication in most cases will go through the Direct Clearing Agent, the Clearinghouse retains the right to contact such persons directly.

5 SETTLEMENT AND FEES

- 5.1 The Direct Clearing Agent is hereby irrevocably authorised to debit or credit the transaction account on the relevant Settlement Day as a result of Contracts Recorded on such account.
- 5.2 The Direct Clearing Client shall ensure that sufficient funds and Instruments (where relevant) are available in the transaction account on Settlement Day.
- 5.3 Fees shall be payable for Transactions in Instruments provided by the Clearinghouse and for the Direct Clearing Agent's services in relation to such Transactions in accordance with those principles which the Clearinghouse or the Direct Clearing Agent may apply from time to time.

6 COLLATERAL

- 6.1 The Clearinghouse is, in its capacity as a clearing organisation, obligated by law to assure that collateral is provided to secure the obligations of Direct Clearing Clients towards the Clearinghouse and that such collateral is maintained as long as the obligations remain.
- 6.2 The Clearinghouse shall notify the Direct Clearing Agent of applicable Margin Requirements in accordance with the Clearing Rules. The Direct Clearing Agent shall in a secure manner forward all relevant information to the Direct Clearing Client.
- 6.3 The Direct Clearing Client shall provide Collateral to the Clearinghouse for the obligations of the Direct Clearing Client under the Clearing Rules and the Contracts recorded on the above stated Direct Clearing Account.

7 GENERAL PLEDGE

- 7.1 Any and all of the Direct Clearing Client's claims against the Clearinghouse as a result of Contracts which are recorded or which may be recorded, on the Direct Clearing Client's Direct Clearing Account(s) with the Clearinghouse are hereby pledged to the Clearinghouse in accordance with the terms and conditions set forth in this agreement and under the Clearing Rules.

- 7.2 The general pledge under this Direct Clearing Client Agreement shall apply firstly to any and all obligations of the Direct Clearing Client towards the Clearinghouse under Contracts Recorded on the Direct Clearing Client's Direct Clearing Account with the Clearinghouse and thereafter to obligations under Contracts which are Recorded on the Direct Clearing Client's other Direct Clearing Accounts with the Clearinghouse. The general pledge shall not be utilised in such a manner so as to override the requirements of Article 39 of EMIR.
- 7.3 The Clearinghouse shall, to the extent possible, make use of collateral under the general pledge to the Clearinghouse before realising upon other collateral or prior to invoking any payment obligations of the Agent.

8 TERMINATION

- 8.1 Each Party may terminate this agreement with one (1) month's written notice to the other Parties.
- 8.2 The Clearinghouse's right to suspend and/or terminate this agreement in the case the Direct Clearing Client would enter into a default, and the effects of any termination of this agreement, is set out under the Clearing Rules.
- 8.3 In the event that the Direct Clearing Agent's rights as a General Clearing Member or a Clearing Member is terminated or suspended for any reason, or the Direct Clearing Agent is no longer eligible or accepted as a Direct Clearing Agent, the provisions of section 8.4.3 of the Clearing Rules will apply.

9 LIABILITY

- 9.1 The Direct Clearing Agent shall not be liable for the obligation of the Clearinghouse towards the Direct Clearing Client as a result of Contracts Recorded on the Direct Clearing Client's Direct Clearing Account with the Clearinghouse.
- 9.2 Where the Direct Clearing Agent and the Direct Clearing Client enter into an agreement regarding supplementary provisions to this Direct Clearing Client Agreement, such provisions may not limit the obligations of the Direct Clearing Client towards the Clearinghouse under this Direct Clearing Client Agreement or the Clearing Rules in the form in effect from time to time.
- 9.3 The Direct Clearing Agent shall not be liable towards the Direct Clearing Client for damage which results from Norwegian or foreign legislation, the decisions of Norwegian or foreign government agencies, acts of war, electric power disruptions, telecommunications disruptions, fire, water damage, strikes, blockades, boycotts, lockouts or other similar circumstances. The reservation regarding strikes, blockades, boycotts and lockouts shall apply even where the Direct Clearing Agent itself is the object of such action or causes such action to be taken.
- 9.4 The Direct Clearing Agent shall not be liable towards the Direct Clearing Client for damage which arises as a result of other causes where the Direct Clearing Agent has acted with normal care. The Direct Clearing Agent shall not be liable for consequential damages.
- 9.5 The Direct Clearing Agent shall not be liable towards the Direct Clearing Client for damage caused by parties contracted by the Direct Clearing Agent to perform services where the Direct Clearing Agent has exercised due care in the retaining of such parties or where the party was referred to the Direct Clearing Agent by the Direct Clearing Client. The Direct Clearing Agent shall not be liable for damage incurred by the Direct Clearing Client or third party as a result of limitations on the right of disposal which may be applied against the Direct Clearing Agent regarding financial instruments.
- 9.6 Where the Direct Clearing Agent is hindered entirely or in part from executing purchase or sale requests regarding financial instruments as a result of circumstances set forth in the first paragraph, the performance shall be postponed until the cause for delay is removed. Where the Direct Clearing Agent as a result of such a circumstance is prevented from making or receiving payment, neither the Direct Clearing Agent nor the Direct Clearing Client shall be liable for penalty interest.

10 THE CLEARINGHOUSE'S LIABILITY, ETC.

- 10.1 The Direct Clearing Client is hereby notified of the fact that the Clearing Rules contain provisions which limit the Clearinghouse's liability, grant the Clearinghouse the right to take extraordinary measures in certain situations in order to maintain properly functioning clearing activities and which grant the Clearinghouse the right to make modifications and amendments to the Clearing Rules which may apply to Contracts already entered into. The Clearing Rules also contain provisions regarding fees and compensation in the event of late Settlement and delivery as well as the right for the Clearinghouse, in certain cases, to receive information from the Direct Clearing Agent as to its opinion of the Direct Clearing Client's financial position. In addition, the Direct Clearing Client shall note that the Clearinghouse, according to the Clearing Rules, shall not be liable for direct or indirect damages related to the use of market information from the Clearinghouse.
- 10.2 The Direct Clearing Client is aware of the fact that certain Instruments possess special qualities and that trading in such Instruments may involve special risks.

11 INDEMNITY

- 11.1 The Direct Clearing Client shall indemnify the Direct Clearing Agent for any obligation, claim, expense or cost which the Direct Clearing Agent may incur either as a result of, or in connection with, this Direct Clearing Client Agreement or other measure taken by the Direct Clearing Agent under this agreement, or as a result of the Direct Clearing Client's breach of the provisions contained in the Clearing Rules or of the terms and conditions contained in this Direct Clearing Client Agreement.

12 CHOICE OF LAW AND DISPUTE RESOLUTION

- 12.1 This agreement shall be governed by, construed and take effect in accordance with Norwegian law.
- 12.2 Any dispute between the Parties concerning the understanding of this agreement or the Clearing Rules or any dispute arising from any acts or omissions governed by them shall be resolved in accordance with section 18 of the Clearing Rules.
- 12.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in accordance with clause 12.2 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 accordance with clause 12.2 shall be conclusive and binding upon such Party and may be enforced in any jurisdiction in accordance with the enforcement law of the applicable jurisdiction.

13 AMENDMENTS

- 13.1 Changes to this agreement require the written consent of all Parties.
- 13.2 Notwithstanding clause 13.1, any annexes or additional arrangements to this agreement, including the Clearing Rules, may be changed to the extent allowed by each such document, and the Clearinghouse may make additions and/or amendments to the Clearing Rules with 14 days written or electronic notice to the Direct Clearing Client. Changes may be implemented with shorter notice if required by law or by Regulatory Bodies.
- 13.3 Changes and/or amendments which affect economic rights in Open Positions vested before the change require the consent of all Account Holders with such Open Positions, unless the changes or amendments are required by law, regulations, Regulatory Bodies or a court of law or (in the view of the Clearinghouse) are strictly necessary for the continued Clearing operations.

14 MISCELLANEOUS

- 14.1 **Entire Agreement.** This agreement supersedes any previous arrangement, understanding or agreement between the Parties related hereto. The Parties each acknowledge that, on

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 or other written arrangements in force between the Parties (including the Clearing Rules). Nothing in this clause shall limit or exclude any liability for fraud.

14.2 **Rights of Third Parties.** No person or entity who is not a Party to this agreement shall confer any benefit on, or give any right to enforce any provisions of the agreement or the Clearing Rules, except as otherwise expressly provided.

14.3 **No Waiver.** No failure or delay by a Party to exercise any right or remedy provided under this agreement, the Clearing Rules or applicable law shall constitute a waiver of that or any other right or remedy.

14.4 **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.

* * *

IN WITNESS OF THEIR AGREEMENT each Party has caused its authorised representative to execute this agreement effective as of the date of signature by all Parties.

This agreement has been made in three (3) originals, and each Party keeps one (1).

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

Signature

Name and title (printed letters)

Date:

For and on behalf of [insert name of Direct Clearing Agent]

Signature

Name and title (printed letters)

Date:

For and on behalf of Nasdaq Clearing AB

Signature

Name and title (printed letters)

Date:

Please attach when returning to the Clearinghouse (check off):

- Documentation evidencing the due authorisation of the signing person(s).
- Certified copy of list of signatories (with signature samples) and/or official ID of signing person(s) (passport, national ID etc.).

TEMPLATE