

Pledged Settlement Account Agreement

Germany

Nord Pool AS

**NORD
POOL**

This Pledged Settlement Account Agreement (the "Agreement") is made the day of _____20[]

BETWEEN:

[Insert Name of MEMBER], a company incorporated under the laws of *[insert state]*, having its registered office at *[insert registered address]*, registered in the *[insert name of register]* with the number *[insert registration number]*, (the "**Account Holder**");

[Insert Name of SETTLEMENT BANK], a company incorporated under the laws of *[insert state]*, having its registered office at *[insert registered address]*, registered in the *[insert name of register]* with the number *[insert registration number]* (the "**Settlement Bank**");

and

NORD POOL AS, a company incorporated under the laws of Norway having its registered office at Vollsveien 17B, Postboks 121, 1325 Lysaker, Norway and registered in the Register of Business Enterprises with the number 919 585 099 ("**Nord Pool**")

each a "**Party**" and together the "**Parties**".

1. INTRODUCTION

- 1.1 The Account Holder has set up a Pledged Settlement Account with the Settlement Bank with the account number **[insert account number/IBAN account number/SWIFT code]**, hereinafter referred to as the "**Pledged Settlement Account**". The Pledged Settlement Account corresponds with the settlement account that the Account Holder has opened with Nord Pool for registration of electricity Transactions, hereinafter referred to as the "**Settlement Account**".
- 1.2 The Pledged Settlement Account shall be used for Settlement Transactions registered in the Settlement Account, and for the part of the Collateral Call to be covered by cash deposits for registered and future Transactions.
- 1.3 The currency of this Pledged Settlement Account is **[insert currency NOK/DKK/SEK/EUR]**.
- 1.4 A copy of the Settlement Bank Agreement between the Settlement Bank and Nord Pool is enclosed as Appendix 1 to this Agreement, and constitutes a part of this Agreement.
- 1.5 This Agreement is further supplemented by the Rulebook issued by Nord Pool, except the rules regarding governing law and place of jurisdiction. Terms defined in the Rulebook shall have the same meaning in this Agreement. In case of any discrepancies this Agreement shall prevail.

2. PLEDGE IN FAVOUR OF NORD POOL

- 2.1 The Account Holder hereby irrevocably and unconditionally, on the terms and conditions set

out herein, grants a first priority security interest in and pledges to Nord Pool, all rights, title and interest in and to the Pledged Settlement Account (including both present and future credit balances, any interest accrued thereon and commission payable thereon).

- 2.2 The pledge shall serve as Collateral securing any claim Nord Pool has or may acquire against the Account Holder in connection with Transactions registered in the Settlement Account as well as any other claim Nord Pool has or may acquire against the Account Holder (the "**Secured Liabilities**").
- 2.3 The pledge is established pursuant to the law in the state where the Pledged Settlement Account is held. The Account Holder hereby notifies the Settlement Bank about the account pledge in the Pledged Settlement Account in accordance with § 1280 of the German Civil Code (*BGB*). The Settlement Bank hereby acknowledges such notification and the account pledge in the Pledged Settlement Account.
- 2.4 Nord Pool shall at all times (i) have the right to debit the balance in the Pledged Settlement Account to cover any due claims secured under Section 2.2, without any advance notice to the Account Holder and without any legal or other steps being necessary in order to verify or confirm its entitlements, and (ii) be entitled to exercise all rights in connection with the Pledged Settlement Account, and to instruct the Settlement Bank to make payments directly to Nord Pool; and (iii) do all other things in relation to the Pledged Settlement Account permitted by applicable law.
- 2.5 The security constituted by this Agreement shall be a continuing security and shall extend to the ultimate balance of the Secured Liabilities and shall continue to be in full force and effect notwithstanding any intermediate payment or discharge in whole or in part of the Secured Liabilities and shall be effective until Nord Pool has confirmed in writing that all Secured Liabilities have been settled in full.
- 2.6 Upon confirmation from Nord Pool that all Secured Liabilities have been settled in full, Nord Pool shall, at the request and cost of the Account Holder, release to the Account Holder all right, title and interest of Nord Pool in or to the Pledged Settlement Account, or any part thereof. Nord Pool shall also (at the request and cost of the Account Holder) notify the Settlement Bank that the pledge over the Pledged Settlement Account has been released and give such other instructions and directions as the Account Holder may require (acting reasonably) in order to perfect such release.

3. RIGHT OF DISPOSAL

- 3.1 The Account Holder hereby grants Nord Pool unconditional right of disposal over the balance in the Pledged Settlement Account, to be utilised in accordance with the Rulebook.
- 3.2 The Settlement Bank may not oppose such instruction or conduct any investigations regarding the validity of such instructions.
- 3.3 The right of disposal under Section 3.1 may not be revoked by the Account Holder as long as any Secured Liabilities are outstanding. In other cases, the Account Holder may, with 14 days' written notice to Nord Pool, request that the right of disposal be revoked. However, the right of disposal shall remain in effect until Nord Pool has confirmed in writing to the Settlement Bank that the right of disposal is revoked.
- 3.4 The Account Holder may dispose of any excess balance in the Pledged Settlement Account

only after meeting all Collateral Calls from Nord Pool and all Settlement amounts owed to Nord Pool from time to time. The Account Holder may grant a third party a similar right of disposal, and pledge the Pledged Settlement Account to third parties with priority after Nord Pool.

- 3.5 Nord Pool shall be notified by the Settlement Bank if a third party is granted rights as provided for in Section 3.4, and may suspend the right of disposal for the Account Holder or any third party.
- 3.6 The Settlement Bank and the Account Holder may agree upon further restrictions for the Account Holder's disposal of excess balance or granting of rights in the Pledged Settlement Account.
- 3.7 Subject to paragraph 3.1 to 3.6 above, the Account Holder shall be authorised to exercise all rights and powers in respect of the Pledged Accounts in its ordinary course of business (*gewöhnlicher Geschäftsbetrieb*) and with the due care of a prudent businessman (*Sorgfalt eines ordentlichen Kaufmanns*), subject at all times to the terms of this Agreement (the "**Authorisation**"). Nord Pool may revoke, restrict or impose conditions on the Authorisation by giving notice to the Account Holder (with a copy to the Settlement Bank), whenever at its sole discretion it seems advisable to protect the legitimate interests (*berechtigte Interessen*) of a Nord Pool, in particular upon the occurrence of an event of default.

4. INFORMATION DISCLOSURE

- 4.1 The Settlement Bank may inform Nord Pool of whether the balance in the Pledged Settlement Account is sufficient to cover Nord Pool's Collateral Calls and Settlement amounts, and may inform Nord Pool of the balance, in- and outgoing transactions whenever requested by Nord Pool, regardless of any duty of confidentiality.
- 4.2 Further exemptions from the Settlement Banks' duty of confidentiality may follow from the Settlement Bank Agreement.

5. INTEREST

- 5.1 Interest on the amounts standing to the credit of the Pledged Settlement Account shall accrue in accordance with a separate agreement between the Account Holder and the Settlement Bank.
- 5.2 Interest accrued is included in the pledge granted herein regardless of whether it has been credited to the Pledged Settlement Account.

6. ENFORCEMENT

Upon the occurrence of an event of default and after the requirements set forth in sections 1273 et seq., 1204 et seq. and 1228 subsection 2 of the German Commercial Code ("**BGB**") with regard to the enforcement of the pledges are met (*Pfandreife*) and the Secured Liabilities have become due and payable in whole or in part by operation of law in the event of the opening of insolvency proceedings of the Account Holder (an "**Enforcement Event**"), Nord Pool shall be entitled to realise (*verwerten*) the pledges (wholly or partly) and to avail itself of all other rights and remedies a pledgee is entitled to under the laws of Germany. Nord Pool shall be entitled

to exercise their rights without obtaining enforceable judgment or other instrument (*vollstreckbarer Titel*). The provisions of sections 1277 and 1282 para. 2 BGB shall not apply.

Nord Pool shall notify the Account Holder at least 5 (five) Business Days (which notification can be effected simultaneously with the notice of an event of default). No further notice or other requirements (including those set forth in section 1234 BGB) shall be necessary. Prior notice shall not be necessary if such notice would be inappropriate (*untunlich*), in particular if:

- the Account has generally ceased to effect payments (*Zahlungseinstellung*) or has otherwise become insolvent;
- a non-abusive (*nicht rechtsmißbräuchlich*) application for the opening of insolvency proceedings (*Insolvenzantrag*) (or any analogous proceeding in any jurisdiction) over the assets of the Account Holder has been made by the Account Holder or any of its creditors;
- insolvency proceedings have been opened (*Eröffnung eines Insolvenzverfahrens*) against the Account Holder;
- similar proceedings under applicable laws have been opened in relation to the Account Holder; or
- Nord Pool has reasonable grounds to believe that observance of the notice period would adversely affect the legitimate interests (*berechtigte Interessen*) of Nord Pool under or in connection with any of the Secured Liabilities.

7. CHOICE OF LAW AND LEGAL VENUE

7.1 Any disputes arising from this Agreement shall be decided under the laws of the State where the Pledged Settlement Account is held.

7.2 The courts of the of the State where the Pledge Cash Account is held 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.

7.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in the courts of the State where the Pledged Settlement Account is held and any claim that any such proceedings have been brought in an inconvenient forum, and further irrevocably agrees that a judgment in any proceedings brought before the courts in the State where the Pledged Settlement Account is held shall be conclusive and binding on such Party and may be enforced in the courts of any other jurisdiction in accordance with the enforcement rules of that jurisdiction.

8. CHANGES TO THE AGREEMENT

8.1 Amendments to this Agreement require the written agreement of all Parties.

8.2 Notwithstanding Section 8.1, Nord Pool may amend the Rulebook in accordance with the provisions in the Rulebook.

9. TERM OF AGREEMENT

9.1 This Agreement shall remain in effect until further notice, and may be terminated by a Party in

the event of a material breach of contract by any other Party or upon three months' written notice to the other Parties.

- 9.2 Regardless of what is stated in Section 9.1, termination of this Agreement shall only take effect if Nord Pool no longer has claims that are secured by the pledge on the Pledged Settlement Account. The pledge shall be discharged by a written release statement from Nord Pool to the Settlement Bank.

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 is executed in three (3) copies, one for each Party.

For and on behalf of the Account Holder

Signature

Name and title (printed letters)

Date:

For and on behalf of the Settlement Bank

Signature

Name and title (printed letters)

Date:

For and on behalf of Nord Pool AS

Signature

Name and title (printed letters)

Date:

Annex 1: Settlement Bank Agreement