

TRIPARTITE AGREEMENT

for

CASH MANAGEMENT SYSTEM

TRIPARTITE AGREEMENT AMONG NCCPL, CLEARING MEMBER AND THE
SETTLING BANK dated is made on this ____day of _____, 2016 at Karachi

BETWEEN

NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED, a company incorporated under the Companies Ordinance, 1984 and having its registered office at 8th Floor, Pakistan Stock Exchange Building, Stock Exchange Road, Karachi (hereinafter referred to as the "Company" or "NCCPL", which expression shall, where the context so admits, include its successors and permitted assigns), of the One Part;

AND

[Name_of_the_Clearing_Member], having offices at «**Address**» (hereinafter referred to as the "Clearing Member" which expression shall, where the context so admits, include its successors and permitted assigns, and, where the Clearing Member is an individual, his heirs, executors, administrators and personal representatives), of the Other Part;

AND

_____ Bank Limited, a banking company duly licensed to carry on banking business in Pakistan, incorporated under the [Companies Act, 1913] [Companies Ordinance, 1984], having its Head Office at

_____ (hereinafter referred to as the “Settling Bank”, which expression shall, where the context so admits, include its successors and permitted assigns, and, where the context so admits, the Designated Branch (hereunder defined) and any successor branch of the Designated Branch), of the Third Part.

WHEREAS:

1. The Company has been formed under the authorization of the Securities and Exchange Commission of Pakistan and, in terms of such authorization, has established a National Clearing and Settlement System (hereinafter referred to as “NCSS”) for the settlement of contracts and transactions in respect of securities transaction;
2. The Company has provided a Cash Management System (“CMS”) for the recording and executing automated Deposit/Collect and Release/Pay of Cash Margins, Mark-to-Market (MtM) losses/profits and for the performance of its obligations and has also framed procedures governing the operations of the aforesaid system;
3. The Clearing Member has already been admitted as a “Clearing Member” by the Company under the National Clearing Company of Pakistan Limited Regulations (hereinafter referred to as the “NCCPL Regulations”, which term shall include all amendments, modifications and additions made therein from time to time and any new Regulations made in substitution therefore);
4. The Clearing Member is a TRE Certificate Holder of PSX who has been duly registered with the Commission under the Brokers and Agents Registration Rules, 2001 and provides brokerage services;
5. The Settling Bank satisfies the criteria of the Company for acting as a Settling Bank for the Clearing Member under the NCCPL Regulations and NCSS Procedures of the Company, which term shall include all amendments, modifications and additions made therein from time to time and any new procedures or regulations made in substitution therefore;
6. The Settling Bank has a branch (hereinafter referred to as the “Designated Branch”) at _____, called _____ Branch, and the Clearing Member is a customer of the Designated Branch; and
7. The Parties to the Agreement hereto are desirous of entering in to this Agreement for setting out the terms and conditions on which the Settling Bank will perform cash management services for the benefit of the Clearing Member and NCCPL.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties to the Agreement hereto agree and declare as follows:

1. As used in this Agreement (including recitals), the following words and expressions shall (unless the context otherwise requires) have the following meanings:

Authorized Person(s) means any natural person who is duly authorized by a Party to the Agreement to act on its behalf for the purposes specified in this Agreement;

Clearing Member's Account means the bank account(s) opened by the Clearing Member with a Designated Branch and identified in Clause 4 of the Schedule hereto.

Business Day means Calendar Day on which NCCPL and Settling Bank are opened for their businesses;

CMS means Cash Management System using CMS software provided by NCCPL enabling NCCPL, Clearing Member and Settling Bank to manage automated collection, deposit, payment and releasing of cash;

Collect Report means the report generated through CMS reflecting funds to be collected from the Clearing Member's Account and to be paid to the NCCPL Account(s);

Collect Request means the request generated through CMS at the initiation of the NCCPL requesting funds to be collected from the Clearing Member's Account and to be paid to the NCCPL Account(s) for the purpose of Margin, MtM Losses and Clearing Payments;

Collect Screen means the details displayed on a Designated Branch's computer system connected to CMS enabling such Designated Branch to perform functions relating to collection of funds from the Clearing Member's Account and payment to NCCPL Account(s) in accordance with the Collect Report initiated by the NCCPL ;

Commission means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

Deposit Report means the request generated through CMS at the initiation of the Clearing Member requesting funds to be collected from the Clearing Member's Account and to be paid to the NCCPL Account(s) for the purpose of Margin, MtM Losses;

Deposit Request means the request generated through CMS at the initiation of the Clearing Member requesting funds to be collected from the Clearing Member's Account and to be

paid to the NCCPL Account(s) for the purpose of Cash Margin and Mark-to-Market (MtM) Losses;

Deposit Screen means the details displayed on a Designated Branch's computer system connected to CMS enabling such Designated Branch to perform functions relating to collection of funds from the Clearing Member's Account and payment to NCCPL Account(s) in accordance with the Deposit Requests initiated by the Clearing Member;

Designated Branch means the branch of the Settling Bank identified in Clause 3 of the Schedule hereto and any successor branch of such branch;

NCCPL Bank Account means the bank account opened by NCCPL with the Designated Branch and identified in Clause 5 of the Schedule hereto;

NCCPL Procedures means the procedure specified by NCCPL from time to time for the operations of the CMS software, as amended or substituted from time to time;

Party means one of NCCPL, Clearing Member or Settling Bank in its individual capacity where the context so requires;

Parties to the Agreement means any two or all of NCCPL, Clearing Member or Settling Bank, entering into this Agreement for electronically executing cash management transactions based on electronic instructions/reports on Cash Management System provided by NCCPL, where the context so requires;

Pay Report means the report generated through CMS reflecting funds to be paid to the Clearing Member's Account and to be collected from the NCCPL Account(s) in accordance with the Pay Requests initiated by the NCCPL;

Pay Request means the request generated through CMS at the initiation of the NCCPL requesting funds to be collected from the NCCPL Account(s) and to be paid to the Clearing Member's Account;

Pay Screen means the details displayed on a Designated Branch's computer system connected to CMS enabling such Designated Branch to perform functions relating to collection of funds from the NCCPL Account (s) and payment to Clearing Member Account in accordance with the Pay Report initiated by the NCCPL.

PSX means the Pakistan Stock Exchange Limited;

Release Report	means the report generated through CMS reflecting funds to be collected from the NCCPL Account(s) and to be paid to the Clearing Member's Account;
Release Request	means the request generated through CMS at the initiation of the Clearing Member requesting funds to be collected from the NCCPL Account(s) and to be paid to the Clearing Member's Account(s);
Release Screen	means the details displayed on a Designated Branch's computer system connected to CMS enabling such Designated Branch to perform functions relating to collection of funds from the NCCPL Account(s) and payment to the Clearing Member's Account in accordance with the Release Request;

2. In this Agreement, unless the context shall otherwise require:
 - 2.1. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation under, that legislative provision;
 - 2.2. the singular includes the plural and vice versa;
 - 2.3. a reference to a person includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
 - 2.4. a reference to any gender includes all genders;
 - 2.5. a reference to a recital, Clause, Schedule or Annex is to a recital, Clause, Schedule or Annex of or to this Agreement;
 - 2.6. a recital, Schedule or Annex forms part of this Agreement;
 - 2.7. a reference to any Agreement or document is to that Agreement or document (and, where applicable, any of its provisions) as they stand amended, novated, restated or replaced at the relevant time;
 - 2.8. a reference to any Party to this Agreement or any other document or arrangement includes that Party to the Agreement's executors, administrators, successors, permitted substitutes, permitted transferees and permitted assigns;
 - 2.9. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - 2.10. a reference to a matter being "to the knowledge" of a person means that the matter is to the best of the knowledge and belief of that person after making reasonable enquiries in the circumstances;
 - 2.11. any reference to a period of time in this Agreement shall be construed by reference to the Gregorian calendar;
 - 2.12. The Annexures and schedules attached herewith and shall be deemed to form an integral part of the Contract; and

- 2.13. a time of day is a reference to Pakistan Standard Time.
3. The Clearing Member hereby irrevocably and unconditionally authorizes the Settling Bank, on NCCPL's instructions issued through CMS to:
- 3.1. debit the Clearing Member's Account, in accordance with this Agreement, the NCCPL Regulations and NCCPL Procedures for making payments that are reflected in a Collect / Deposit Report or a Collect /Deposit Request;
 - 3.2. credit the Clearing Member's Account, in accordance with this Agreement, the NCCPL Regulations and NCCPL Procedures for making payments that are reflected in a Pay / Release Report or a Pay / Release Request;
 - 3.3. debit or credit the Clearing Member's Account in the event of any mistake, error or omission by the Settling Bank or NCCPL relating to any debit or credit entry.
 - 3.4. The Clearing Member hereby confirms that:
 - 3.4.1. it has opened with a Designated Branch the Clearing Member's Account being Bank Account No. _____ and shall maintain the same throughout the term of this Agreement;
 - 3.4.2. it shall not close the Clearing Member's Account without giving at least fifteen (15) days notice to NCCPL;
 - 3.4.3. it shall accept the debiting of the Clearing Member's Account by a Designated Branch in terms of the above authorization and not dispute or make any claims in respect of such action by such Designated Branch;
 - 3.4.4. the information supplied to NCCPL is true and correct and that the Clearing Member satisfies all the requirements of NCCPL Regulations and NCCPL Procedures and shall continue to satisfy such requirements;
 - 3.4.5. it shall maintain its interface with CMS in accordance with the NCCPL Regulations and NCCPL Procedures and shall ensure that no person other than an Authorized Person appointed by the Clearing Member has access to that interface with CMS;
 - 3.4.6. No lien, charge or other encumbrance exists on the CM Bank Account and that it shall not create nor allow to be created any lien, charge or other encumbrance on the CM Bank Account without the prior permission of the Company;
 - 3.4.7. it accepts and acknowledges that the Pay/Release Report and Collect/Deposit Report shall be in electronic form and shall not bear the signature of any authorized officer of NCCPL and agrees that the Settling Bank shall have the Clearing Member's authority to rely upon the Pay/Release Report and Collect/Deposit Report in such form and to act upon it in terms of this Agreement; and
 - 3.4.8. it will continue to abide by the NCCPL Regulations as amended from time to time and nothing contained in this Agreement shall relieve the Clearing Member from its obligations under such regulations.

3.5. The Clearing Member undertakes to NCCPL:

- 3.5.1. to always meet its all monetary obligations to NCCPL and to maintain and have available at all times sufficient resources for this purpose;
- 3.5.2. to forthwith inform NCCPL of any financial distress faced or likely to be faced by the Clearing Member in future;
- 3.5.3. to forthwith inform NCCPL of any order of restrictions or suspension, termination or censure by any court or by any regulatory authority or the PSX or Central Depository Company of Pakistan Limited or the State Bank of Pakistan;
- 3.5.4. to inform NCCPL forthwith if any claim is made or legal proceedings (including arbitration proceedings) are instituted which if upheld or decided against the Clearing Member will have a material adverse affect on the business of the Clearing Member; and
- 3.5.5. to enter into such supplemental(s) to this Agreement with NCCPL if so required by NCCPL under or in conformity with NCCPL Regulations or NCSS Procedures.

4. NCCPL hereby confirms that

- 4.1. it has opened NCCPL Bank Account(s) with the Designated Branch.
- 4.2. it shall make available to the Clearing Member an interface with CMS to enable the Clearing Member to generate Deposit Requests and Release Requests in accordance with the NCCPL Regulations and NCCPL Procedures.
- 4.3. it shall make available to the Settling Bank at the Designated Branch through its interface with CMS Collect / Deposit Reports and Pay / Release Reports. The Collect / Deposit Reports and Pay / Release Reports will include the following details (in addition to other particulars set out therein):
 - 4.3.1. name of the Clearing Member;
 - 4.3.2. particulars of the Clearing Member's Account;
 - 4.3.3. particular of the NCCPL Bank Account;
 - 4.3.4. amount to be debited or credited;

5. The Settling Bank hereby confirms that:

- 5.1. the Clearing Member's Account is being maintained by the Clearing Member with a Designated Branch and that as of the date hereof there are no restrictions whatsoever on payments into or withdrawals from the Clearing Member's Account;
- 5.2. it irrevocably waives and agrees not to exercise any bankers' lien, right of set off, right to combine accounts, or any other lien or right against funds held in the Clearing Member's Account in respect of any amounts owed by the Clearing Member to the Settling Bank; and

- 5.3. it shall not close the Clearing Member's Account without giving at least fifteen (15) days notice to NCCPL.
- 5.4. The Settling Bank hereby undertakes that:
 - 5.4.1. at all times the Designated Branch(es) shall have the capacity to communicate reliably with CMS in accordance with the NCCPL Regulations and NCCPL Procedures;
 - 5.4.2. it shall employ and retain such personnel as are familiar with this Agreement and NCCPL Regulations and NCCPL Procedures as are necessary to allow the Settling Bank and the Designated Branch(es) to carry out their obligations under this Agreement, to generate, receive and obtain reports, and to make reports, in accordance with the NCCPL Regulations and NCCPL Procedures, and to take such other actions as are required to be taken by the Settling Bank or the Designated Branch(es) or by their Authorized Persons under this Agreement; and
 - 5.4.3. it shall maintain its interface of the Designated Branch(es) with CMS established by NCCPL in accordance with NCCPL Regulations and NCCPL Procedures and shall ensure that no person other than an Authorized Person has access to that interface with CMS.
6. It is agreed between the Parties to the Agreement hereto that:
 - 6.1. the Settling Bank has been accepted by the Company to act as a Settling Bank and to perform "cash management and other services" stipulated under this contract for the benefit of the Clearing Member and the Company on the condition that the Settling Bank enters into this Agreement; and
 - 6.2. the NCCPL Regulations and the NCSS Procedures shall form a contract between the Parties hereto, to the extent applicable to the same, as if all the relevant terms of the NCSS Regulations and the NCSS Procedures are set forth herein.
7. The Settling Bank hereby unconditionally and irrevocably agrees and undertakes:
 - 7.1. to debit the Clearing Member's Account with the amount required to be debited from such account in terms of every Collect / Deposit Report and to credit such amount to the NCCPL Bank Account;
 - 7.2. to give priority to the debiting of the amount required to be debited from the Clearing Member's Account in terms of every Collect / Deposit Report over every other request for payment received (including any cheque or other instrument) by the Settling Bank (other than any payment due to National Clearing and Settlement System) simultaneously with or subsequent to the receipt of the Deposit/Collect Report by the Settling Bank; and
 - 7.3. if there are insufficient funds in the Clearing Member's Account, the Settling Bank shall make partial collection to extent of available funds and credit the same to NCCPL's Bank Account.
- 7.4. The Settling Bank:

- 7.4.1. Shall ensure that its Authorized Person shall post the received Collect Request / Deposit Request without changing the request amount on the CMS if the Clearing Member's Account is actually debited by the full/original amount and transferred to the NCCPL Bank Account and in case of partial deposit/ collection, its Authorized Person shall enter the actual amount to be debited to the Clearing Member's Account and transferred to the NCCPL Bank Account;
- 7.4.2. shall ensure that "Save" and "Post" functions on Collect / Deposit Screen and Pay/Release Screen are performed by two Authorized Persons separately using their passwords, provided, that the Bank may designate an Authorized Person as a super user to enable him to perform both functions singly;
- 7.4.3. Acknowledges that it shall indemnify NCCPL for any losses, costs, and expenses incurred by NCCPL if any wrong entry is made by the Settling Bank's in the relevant column of the Collect / Deposit Screen or Pay/Release Screen.
- 7.5. The Settling Bank undertakes to indemnify NCCPL from and against any losses, costs and expenses suffered and/or incurred by NCCPL as a consequence of any incorrect transaction processing or entry by the Settling Bank in the Collect / Deposit Screen or the Pay/Release Screen of the CMS.
8. It is hereby specifically agreed that the obligation of the Settling Bank to debit any account under this Agreement shall always be subject to sufficient funds being available in the relevant account with the Settling Bank and, in the event of the Settling Bank not being able to make the debit either on account of insufficient funds in the account to be debited or any prohibitory order from any court or other authority empowered under the law to issue such an order, the Settling Bank will incur no liability whatsoever on account of its inability to carry out such instructions.
9. NCCPL unconditionally and irrevocably authorizes the Settling Bank to debit the NCCPL Bank Account identified in the Pay/Release Report in accordance with this Agreement, the NCCPL Regulations and NCCPL Procedures with the amount shown to be credited to the Clearing Member's Account in every Pay/Release Report and to credit the Clearing Member's Account with the amount debited to such NCCPL Bank Account. This activity shall be undertaken by the Settling Bank immediately on receipt of relevant reports by the Settling Bank from NCCPL Clearing Member, through CMS interface, of specific instructions to make the said debit and credit entries.
10. The Settling Bank unconditionally and irrevocably undertakes:
- 10.1. to debit the NCCPL Bank Account in accordance with this Agreement, the NCCPL Regulations and NCCPL Procedures with the amount shown to be credited to the Clearing Member's Account in every Pay/Release Report of CMS and to transfer the resultant funds to and credit the same to the Clearing Member's Account upon receipt by the Settling Bank from NCCPL, as provided in clause 9 above, of specific instructions to make the said debit and credit entries.
- 10.2. shall ensure that a statement of debits and credits made to the Clearing Member's Account and NCCPL Bank Account on every Business Day is provided

to the Clearing Member and NCCPL not later than 9:30 a.m. on the next Business Day.

Any discrepancy in the report or the statement referred to in sub-clause 10.1 above of this clause must be pointed out by the Clearing Member or by NCCPL by notice to the other and to the Settling Bank by the next Business Day after the day on which the said report or the statement is submitted by the Settling Bank to NCCPL and the Clearing Member. If any such discrepancy is pointed out, NCCPL, the Clearing Member and the Settling Bank shall resolve and settle the discrepancy on the same day on which the discrepancy is pointed out by NCCPL or by the Clearing Member, as the case may be. In the event no discrepancy is pointed out within the specified time, said report or the statement, as the case may be, shall be deemed to have been admitted as correct.

11. In case of any failure or suspension of CMS, the Settling Bank shall perform its obligations in accordance with a manual pay and collect instructions issued by NCCPL in accordance with the NCCPL Regulations and NCCPL Procedures and all provisions of this Agreement shall apply mutatis mutandis.
12. This Agreement shall be binding on the Parties to the Agreement and their respective successors and permitted assigns, provided that none of the Parties to the Agreement shall be entitled to assign this Agreement or any of that Party to the Agreement's rights and obligations under this Agreement without the consent in writing of the others (which consent any Party to the Agreement may in its absolute discretion withhold).
13. No failure to exercise or delay in exercising any right, power or remedy vested in any Party to the Agreement under or pursuant to this Agreement shall constitute a waiver by that Party to the Agreement of that or any other right, power or remedy.
14. This Agreement, together with NCCPL Regulations and NCCPL Procedures constitutes the entire Agreement between the Parties to the Agreement in relation to its subject matter and supersedes all prior Agreements and understandings whether oral or written with respect to its subject matter and no variation of this Agreement shall be effective unless reduced to writing and signed by or on behalf of a duly authorized representative of each of the Parties to the Agreement, provided that NCCPL shall be free to amend, vary, modify or substitute any or all provisions of the NCCPL Regulations and NCCPL Procedures under intimation to other Parties to the Agreement. For avoidance of doubt, all obligations of the Clearing Member, NCCPL and Settling Bank as provided in NCCPL Regulations, the Agreement and earlier agreements will continue to remain in force and shall be binding on all Parties to the Agreement and in case of any conflict the provisions of such regulations shall prevail.
15. In the event that any term, condition or provision of this Agreement is held to be in violation of any applicable law, statute or regulation, the same shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such term, condition or provision had not originally been contained in this Agreement. Notwithstanding the foregoing, in the event of any such deletion, the Parties to the Agreement shall negotiate in good faith in order

- to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.
16. This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute but one and the same Agreement.
 17. A notice, consent, approval or other communication (each a "Notice") under this Agreement shall be given in the manner set out in Regulation 2.6 of the NCCPL Regulations addressed to the person to whom it is to be given and to that person's address or (as the case may be) the facsimile number of that other Party to the Agreement set opposite its name in Clause 6 of the Schedule hereto or at such other address (or facsimile number) as the Party to the Agreement to be served may have notified (in accordance with the provisions of this clause) for the purposes of this Agreement.
 18. A Notice given to a person in accordance with this Clause is treated as having been given and received:
 - 18.1 if delivered, on the day of delivery if delivered before close of a Business Day but maximum to 5:00 p.m., otherwise on the next Business Day;
 - 18.2 if sent by mail on the 3rd day after the letter containing the Notice, duly stamped, is posted.
 - 18.3 if transmitted by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before close of a Business Day but maximum to 5:00 p.m., otherwise on the next Business Day.
 19. This Agreement shall remain in full force and effect for so long as it is not terminated in accordance with the provisions hereof.
 20. Any Party to the Agreement hereto may terminate this Agreement without cause by serving a thirty (30) days notice on the other Party to the Agreement. No liability whatsoever shall attach to any Party to the Agreement on account of termination of this Agreement under this Clause, provided that such termination shall be without prejudice to the rights and obligations of the Parties to the Agreement accrued up to the date of the expiry of the said thirty (30) days notice period.
 21. NCCPL may terminate this Agreement with immediate effect at any time by giving a notice in writing to the other Parties to the Agreement, upon occurrence of any of the following events:
 - 21.1. Clearing Member's Account is closed for any reason whatsoever or attached or seized under the law by any court or other competent authority;
 - 21.2. proceedings for winding-up or liquidation of any of the other Parties to the Agreement are initiated;
 - 21.3. any receiver, provisional manager or other similar officer is appointed in respect of any of the other Parties to the Agreement or any of their assets;

For: **«Name_of_the_Setling Bank»**

Mr. _____

Witnesses:

1. _____

NIC# _____

Name: _____

2. _____

NIC# _____

Name: _____

SCHEDULE

1. **Clearing Member:** _____ LIMITED

2. **Settling Bank:** _____ LIMITED

3. **Designated Branch:** _____

4. **Clearing Member's Account:**

i. **Account for Proprietary Deposits:**

a. Bank Account Title: _____

b. Bank Account No. _____

ii. **Account for Clients' Deposits:**

a. Bank Account Title: _____ - Client Account

b. Bank Account No. _____

5. **NCCPL Bank Account:**

i. Bank Account Title: National Clearing Company of Pakistan Limited

ii. Bank Account No. _____

6. **Addresses for Notices**

Address: National Clearing Company of Pakistan Limited, 8th Floor, Stock Exchange Building, I. I. Chundrigar Road, Karachi

Phone No. 021-32460811-19

Facsimile 021- 32460827

Attn: Company Secretary

(i) **Clearing Member**

Address: _____

Phone No. _____

Facsimile _____

Attn: 1. _____

2. _____

(ii) **Settling Bank**

Address: _____

Phone No. _____

Attn: _____