

AGREEMENT BETWEEN NCCPL AND CLEARING MEMBER

THIS AGREEMENT is made on this ____ day of _____, 2016.

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”, which expression shall, where the context so admits, include its successors and permitted assigns), of the One Part;

AND

«Name_of_the_CM», 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;

WHEREAS:

- (1) The Company has been formed under the authorization of the Securities and Exchange Commission of Pakistan (hereinafter referred to as “SECP”) 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;
- (2) The Clearing Member is eligible to be admitted as a “Clearing Member” by the Company under the National Clearing Company of Pakistan Limited (NCCPL) Regulations of the Company (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), and the Company has agreed to admit the Clearing Member as a Clearing Member on the condition that the Clearing Member enters into this Agreement pursuant to Regulation 5.7 of the NCCPL Regulations.

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

1. Subject to the terms and conditions of this Agreement and of NCCPL Regulations and the Procedures made thereunder (hereinafter referred to as the “NCSS Procedures”, which term shall include all amendments, modifications and additions made therein from time to time and any new procedures made in substitution therefore), the Company:
 - (a) hereby admits the Clearing Member to the Company in the capacity of a Clearing Member; and

- (b) agrees to make available to the Clearing Member, and the Clearing Member agrees to the establishment by the Company with NCSS in the name of the Clearing Member:
 - (i) a “Clearing Account” under the NCCPL Regulations, bearing such number as shall be assigned thereto by the Company; and
 - (ii) a “Money Account” under the NCCPL Regulations, bearing such number, if any, as shall be assigned thereto by the Company; and
 - (iii) such other or additional accounts, of such nature and bearing such numbers, if any, as shall be assigned to such accounts by the Company, as the Clearing Member may desire to establish in accordance with the NCCPL Regulations.

2. It is agreed between the Parties hereto that:

- (a) the Clearing Account, the Money Account, and the other accounts as are referred to in clause 1(b)(i)(ii)(iii) above, shall be made available and established in accordance with the NCCPL Regulations and the NCSS Procedures;
- (b) the admission of the Clearing Member to NCSS in the capacity of a Clearing Member shall be governed by and be subject to this Agreement and the NCCPL Regulations and the NCSS Procedures;
- (c) the Clearing Member shall, during the tenure of this Agreement, abide by and comply with the requirements of the NCCPL Regulations and the NCSS Procedures and shall be bound by all of the provisions and any amendments thereof; provided that if the Clearing Member shall cease to be admitted to NCSS in the capacity of a Clearing Member, the Clearing Member shall nonetheless continue to be bound by the NCCPL Regulations and the NCSS Procedures as to all matters and transactions occurring while the Clearing Member was admitted to the NCSS in the capacity of a Clearing Member and for so long as his liabilities to the Company are not fully discharged;
- (d) the NCCPL Regulations and the NCSS Procedures shall form a contract between the Clearing Member and the Company as if all of the terms of the NCCPL Regulations and the NCSS Procedures were set forth in full herein;
- (e) the Company shall have all the rights and remedies contemplated by the NCCPL Regulations and NCSS Procedures;
- (f) subject to the proviso to clause 2(c) above, this Agreement shall terminate forthwith upon the termination, in accordance with the NCCPL Regulations, of the admission of the Clearing Member to the NCSS in the capacity of a Clearing Member, provided that such termination shall be without prejudice to the rights accrued to the Company up to the date of termination of this Agreement or arising from or as a consequence of such termination; and

- (g) any contravention by the Clearing Member of its obligations under this Agreement shall be deemed to be a contravention of the NCCPL Regulations and of the NCSS Procedures.

3. The Clearing Member:

- (a) hereby agrees to open, within seven (7) days after the date of this Agreement (or within such longer period as may be allowed by the Company in writing at the request of the Clearing Member), a bank account with the _____ Branch (hereinafter referred to as the “Designated Branch”) of _____ (hereinafter referred to as the “Settling Bank”), unless the Clearing Member already has a bank account with the Designated Branch, to facilitate money settlement services to be provided by the Settling Bank for the Clearing Member in terms of the NCCPL Regulations and the NCSS Procedures;
- (b) hereby agrees to enter into a Tripartite Agreement between the Company, the Clearing Member and the Settling Bank (hereinafter referred to as the “Tripartite Agreement”) within seven (7) days after the date of this Agreement (or within such longer period as may be allowed by the Company in writing at the request of the Clearing Member), in the form, or mutatis mutandis in the form, attached to this Agreement as Exhibits I;
- (c) represents and warrants to the Company that the information supplied in its application for admission as a Clearing Member to the Company is true and correct and that the Clearing Member satisfies the Technical and Performance Requirements, the Business Integrity Requirements, the Capacity Requirements and the Financial Requirements of the NCCPL Regulations to be satisfied by each Clearing Member in terms of the NCCPL Regulations and shall continue to satisfy the said requirements for so long as the Clearing Member remains a Clearing Member under the NCCPL Regulations;
- (d) hereby authorizes the Company to obtain from Central Depository Company of Pakistan Limited (hereinafter referred to as “CDC”) all such information as relate to the Registration Details and other information set out in the Admission Form submitted by the Clearing Member to CDC, including any update of such information submitted by the Clearing Member to CDC: this authorization to the Company will also be an authorization and instructions from the Clearing Member to CDC to supply the said information to the Company at its request;
- (e) agrees to indemnify the Company if any losses, damages, costs or expenses are suffered or incurred as a result of any inaccuracy contained in the information supplied in the Admission Form referred to in paragraph (c) above and the information obtained by the Company from CDC under paragraph (d) above;
- (f) shall regularly and timely pay to the Company the fee and charges prescribed in the “Fee and Charges Schedule” of the Company for the time being in force and shall pay to the Company such fines as may be imposed by the Company on the Clearing Member;
- (g) shall make, continue to make and maintain the Clearing Member’s Clearing Fund Contribution in accordance with the NCCPL Regulations;
- (h) agrees that the determination of the Company of all questions affecting the fee and charges payable or the Clearing Fund Contribution of the Clearing Member shall be final and conclusive;
- (i) shall procure that the NCCPL Regulations shall be a part of every contract or transaction, which is to be cleared and settled through NCSS;
- (j) shall maintain its interface with NCSS established by the Company in accordance with the NCSS Procedures and shall ensure that no person other than an Authorised Person appointed by the Clearing Member under the NCCPL Regulations has access to that interface with NCSS; and
- (k) agrees that its books and records shall at all times be open for inspection by the duly authorized representatives of the Company and that the Company shall be furnished with all such information in respect of its business and transactions as the Company may require, provided that if it ceases to be a Clearing Member the Company shall have no right to inspect its books and records or require information relating to transactions subsequent to the time when it ceased to be a Clearing Member, except and to the extent provided in the NCCPL Regulations and the NCSS Procedures.

4. The Clearing Member undertakes to the Company that the Clearing Member shall, at the Clearing Member’s own expense, undergo testing as and when desired by the Company to determine if the Clearing Member meets the admission requirements of the NCCPL Regulations. The failure of the Clearing Member to meet with the said admission requirements as determined during such testing shall empower the Company to proceed in accordance with Regulation 5.8 of the NCCPL Regulations.

5.
 - (a) The Clearing Member shall cause to be maintained, during the tenure of this Agreement, with CDC under the Central Depository Company of Pakistan Limited Regulations (hereinafter referred to as the "CDC Regulations") one or more "Clearing Accounts" in the name of the Clearing Member and, if required, one or more "Lending Accounts" in compliance with all applicable laws and rules and the requirements of the CDC Regulations, as the same may be in force from time to time, and of the procedures made there under.
 - (b) The Clearing Member hereby irrevocably and unconditional authorizes and empowers the Company to move any Book-entry Securities from any Clearing Account and/or the Lending Account of the Clearing Member with CDC to the NCC-CNS Account of the Company with CDC;
 - (c) The terms "Book-entry Securities", "Clearing Accounts", "Lending Accounts" and "NCC-CNS Account" as used in this Clause shall have the same meanings as set out in the CDC Regulations.

6. The Clearing Member undertakes to comply with all the requirements of the NCSS Procedures to the extent applicable to the Clearing Member including, without limitation, regarding:
 - (a) the manner of obtaining access to NCSS;
 - (b) the allocation and use of and maintenance of confidentiality in respect of passwords for obtaining access to NCSS;
 - (c) the authorization by the Company of the workstation(s) of the Clearing Member for obtaining access to NCSS; and
 - (d) the protection and proper use of "user ids" by each Authorised Person appointed by the Clearing Member. For the purpose of this Agreement, an "Authorised Person" shall be a person who has the actual authority of the Clearing Member to communicate electronically or otherwise with NCSS, to act on behalf of the Clearing Member and to bind the Clearing Member for the purpose of this Agreement.

7. The Clearing Member hereby undertakes:
 - (a) to always meet its monetary obligations to the Company under the NCCPL Regulations and the NCSS Procedures and to maintain and have available at all times sufficient resources for this purpose;
 - (b) to forthwith inform the Company of any financial distress faced or likely to be faced by the Clearing Member in future, or if it or any company, firm or other business with which it may be associated as a director, partner or otherwise is placed or is likely to be placed on defaulters list by the State Bank or any other bank;
 - (c) to forthwith inform the Company of any order of restrictions or suspension, termination or censure by stock exchange or by SECP or CDC;
 - (d) to inform the Company 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
 - (e) to enter into such supplemental or supplementals to this Agreement with the Company if so required by the Company under or in conformity with NCCPL Regulations or NCSS Procedures.

8. The Company may suspend, add to or modify NCSS from time to time by notice to the Clearing Member. While advance notice of maintenance work likely to affect the availability of NCSS shall be given by the Company to the Clearing Member where possible, the Company reserves the right to suspend, without notice, access to NCSS or the provision of all or any of the facilities of NCSS at any time if the Company deems it necessary to do so for reasons of security or maintenance work. The Clearing Member acknowledges that the computer system comprised in NCSS is of an advanced, complex and sensitive nature and minor failure of the computer system, beyond the reasonable control of the Company, may result in temporary suspension of NCSS. In such eventuality, the Company's responsibility shall be limited to making best efforts for the early resumption of NCSS. The Clearing Member, on its part, undertakes to notify the Company immediately of any failure, delay or defect relating to NCSS.

9. The Company shall not be liable to the Clearing Member for any delay or non-performance of the Company or of NCSS arising from the occurrence of any event of Force Majeure, as defined in the NCCPL Regulations, or due to the occurrence of any other event beyond the control of the Company which delays or prevents the operations of the Company or of NCSS.

10. The Company shall be entitled to accept (without investigating or verifying the authenticity thereof) any notice received from or on behalf of the Clearing Member given pursuant to the NCCPL Regulations or the NCSS Procedures or any agreement between the Clearing Member and the Company as a notice which has been duly authorized by the Clearing Member; provided that the Company may reject any such notice if it is of the opinion that such notice has not been duly authorized by the Clearing Member; provided further that if any notice is capable of being acted upon by the Company in more ways than one, the Company may act upon such notice in any of the said ways at its sole discretion.
11. The Clearing Member acknowledges receipt from the Company of a copy of the NCCPL Regulations and the NCSS Procedures as in effect at the time of the execution of this Agreement.
12. This Agreement shall be binding on, and shall inure to the benefit of, the Parties to it and their respective successors and permitted assigns, provided that none of the Parties shall be entitled to assign this Agreement or any of that Party's rights and obligations under this Agreement without the consent in writing of the other (which consent such other Party may in its absolute discretion withhold).
13. No exercise or failure to exercise or delay in exercising any right, power or remedy vested in any Party under or pursuant to this Agreement shall constitute a waiver by that Party of that or any other right, power or remedy.
14. This Agreement, together with NCCPL Regulations and NCSS Procedures, constitute the entire agreement between the Parties in relation to its subject matter and supersedes all prior agreements and understandings whether oral or written with respect to that 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, provided that the Company shall be free to amend, vary, modify or substitute any or all provisions of the NCCPL Regulations and the NCSS Procedures.
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 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. If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of such provision under the law of any other jurisdictions shall in any way be affected or impaired thereby; provided, however, that where the provisions of any applicable law which renders any provisions hereof illegal, invalid or unenforceable may be waived, they are hereby waived by the Parties hereto to the fullest extent permitted by such law such that this Agreement shall be a valid and binding agreement enforceable in accordance with its terms.
17. 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.
18. Any notice to be given by any Party to the other shall be given in the manner set out in Regulation 2.6 of the NCSS Regulations at the address or (as the case may be) the facsimile number of that other Party set opposite its name below:

To: CHIEF EXECUTIVE OFFICER
NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED
Address: 8TH FLOOR, PAKISTAN STOCK EXCHANGE BUILDING, STOCK EXCHANGE
ROAD, KARACHI-74000, PAKISTAN
Facsimile Number: (92-21) 32460827

To: «Name_of_the_CM»
Address: «Address»
Facsimile Number: (92-«CC») Nil

Mr. _____
[Marked for the attention of (name)]

or at such other address (or facsimile number) as the Party to be served may have notified (in accordance with the provisions of this clause) for the purposes of this Agreement.

19. This Agreement shall remain in full force and effect for so long as the Clearing Member remains a Clearing Member of the Company in terms of the NCCPL Regulations, provided that the Company shall have the right to terminate this Agreement by notice to the Clearing Member in case the Clearing Member is in breach of this Agreement, provided that the termination of this Agreement, whether as a result of the Clearing Member ceasing to be a Clearing Member or as a result of termination by the Company, shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination or arising from or as a consequence of

such termination. The Company shall have no obligation whatsoever to the Clearing Member for the termination of this Agreement or for termination by the Company of the Clearing Member admission to NCSS, and especially for any indirect loss or damages or loss of profit or business alleged by the Clearing Member.

- 20. This Agreement shall be governed by and construed in all respects in accordance with Laws of Pakistan.
- 21. A. The Clearing Member represents and warrants to the Company that (i) the Clearing Member has full power, authority and legal right to incur the obligations, to execute and deliver and to perform and observe the terms and provisions of this Agreement, (ii) this Agreement has been duly authorized, executed and delivered by it, and (iii) this Agreement constitutes the legal, valid and binding obligations of the Clearing Member.
- B. The Company represents and warrants to the Clearing Member that (i) the Company has full power, authority and legal right to incur the obligations, to execute and deliver and to perform and observe the terms and provisions of this Agreement, (ii) this Agreement has been duly authorized, executed and delivered by it, and (iii) this Agreement constitutes the legal, valid and binding obligations of the Company.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year above written.

For: NATIONAL CLEARING
COMPANY OF PAKISTAN LIMITED

For: «Name_of_the_CM»

Mr. _____

Mr. _____

Witnesses:

Witnesses:

1. _____
NIC# _____
Name: _____

1. _____
NIC# _____
Name: _____

2. _____
NIC# _____
Name: _____

2. _____
NIC# _____
Name: _____