

TRIPARTITE AGREEMENT BETWEEN NCCPL, CLEARING MEMBER AND SETTLING BANK

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 First 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 Second 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;
- (2) The Clearing Member, being eligible, has been 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);

- (3) The Settling Bank satisfies the criteria of the Company for acting as a Settling Bank for the Clearing Member under the Procedures of the Company (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);
- (4) 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
- (5) The Company, the Clearing Member and the Settling Bank are desirous of entering in to this Agreement for setting out the terms and conditions on which the Settling Bank will perform money settlement services for the benefit of the Clearing Member and the Company.

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

1. The Clearing Member confirms that:
 - (a) It has opened with the Designated Branch a bank account, being Bank Account No. _____ (hereinafter referred to as the “CM Bank Account”);
 - (b) It shall not close the CM Bank Account without giving at least seven (7) days notice to the Company; and
 - (c) 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.
2. The Settling Bank hereby confirms on its part that:
 - (a) the CM Bank Account is being maintained by the Clearing Member with the Designated Branch and that as of the date hereof there are no restrictions whatsoever on payments into or withdrawals from the CM Bank Account;

- (b) it has no lien or charge on the CM Bank Account and that it shall not allow any lien to be created on the CM Bank Account in future; and
 - (c) It shall not close the CM Bank Account without giving at least seven (7) days notice to the Company.
3. The Company confirms that it has opened with the Designated Branch a bank account, being Bank Account No. _____ (hereinafter referred to as the “NCCPL Bank Account”).
4. It is agreed between the Parties hereto that:
- 4.1 the Settling Bank has been accepted by the Company to act as a Settling Bank and to perform “money settlement services” for the benefit of the Clearing Member and the Company on the condition that the Settling Bank enters into this Agreement; and
 - 4.2 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: the Settling Bank and the Clearing Member acknowledge 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. Any amendment in the NCSS Procedures which is relevant for or affects the rights or obligation of the Settling Bank under this Agreement shall be made after consultation with the Settling Bank and shall be communicated to the Settling Bank at least one week before the amendment becomes effective.
5. The Settling Bank undertakes that:
- (a) at all times the Designated Branch shall have the capacity to communicate reliably with NCSS in accordance with the NCSS Procedures; and
 - (b) it shall employ and retain such personnel as are familiar with the NCCPL Regulations, the NCSS Procedures and this Agreement as are necessary to allow the Settling Bank and the Designated Branch to carry out their obligations under this Agreement, to generate, receive and obtain reports, and to make reports, in accordance with the NCSS Procedures, and to take such other actions as are required to be taken by the Settling Bank or the Designated Branch or by their Authorised Persons under this Agreement.
- For the purpose of this Agreement, an “Authorised Person” shall be a person who has the actual authority of the Settling Bank and/or of the Designated Branch to communicate electronically or otherwise with NCSS, to access the “Pay and Collect Screen” on NCSS and to make entries therein, to act on behalf of the Settling Bank and the Designated Branch and to bind the Settling Bank and the Designated Branch for the purposes of this Agreement.
6. The Settling Bank shall maintain its interface of the Designated Branch with NCSS established by the Company in accordance with the NCSS Procedures and shall ensure that no person other than an Authorised Person has access to that interface with NCSS.
7. The Company shall on every settlement day, as per the clearing calendar of the Company, by the time specified for this purpose in the Designated Time Schedule (“DTS”) of the Company generate and make available to the Settling Bank at the Designated Branch through its interface with NCSS a “Pay and Collect Report”. This Report will include the following details (in addition to other particulars set out therein):
- 7.1 name of the Clearing Member;
 - 7.2 Clearing Member’s ID;
 - 7.3 particulars of the CM Bank Account;
 - 7.4 Amount to be debited to or credited to the CM Bank Account.
8. The Clearing Member hereby:
- (a) unconditionally and irrevocably authorizes and instructs the Settling Bank and the Designated Branch to debit the CM Bank Account with the amount shown in every “Pay and Collect Report” to be debited to such Account;
 - (b) agrees to accept the debiting of the CM Bank Account by the Designated Branch in terms of the above authorization and not to dispute or make any claims in respect of such action by the Designated Branch; and

- (c) accepts and acknowledges that the "Pay and Collect Report" shall be in electronic form and shall not bear the signature of any authorized officer of the Company and agrees that the Settling Bank shall have the Clearing Member's authority to rely upon the "Pay and Collect Report" in such form and to act upon it in terms of this Agreement.
9. The Settling Bank hereby unconditionally and irrevocably agrees and undertakes:
- (a) to debit, by the time specified for this purpose in DTS, the CM Bank Account with the amount required to be debited to such account in terms of every "Pay and Collect Report" provided by the Company through NCSS and to credit the NCCPL Bank Account with the amount debited to the CM Bank Account;
 - (b) to give priority to the debiting of the amount required to be debited to the CM Bank Account in terms of every "Pay and Collect Report" over every other request for payment received (including any cheque or other instrument) by the Settling Bank simultaneously with or subsequent to the receipt of the "Pay and Collect Report" by the Settling Bank; and
 - (c) if there are insufficient funds in the CM Bank Account, to debit the CM Bank Account to that extent and transfer such funds to the NCCPL Bank Account; and
 - (d) That the above activity shall be the first activity undertaken by the Settling Bank after a "Pay and Collect Report" is made available by the Company to the Settling Bank.
10. The Settling Bank:
- (a) shall procure that its Authorised Person shall tick against "Fully Paid Column" in the "Pay and Collect Screen" on the NCSS if the full amount to be debited to the CM Bank Account is actually debited and transferred to the NCCPL Bank Account;
 - (b) shall procure that its Authorised Person shall enter the actual or "zero" amount debited to the CM Bank Account in the "Partial Debit Payment Amount" column in the "Pay and Collect Screen" on the NCSS in case the full amount to be debited to the CM Bank Account is not debited and only the available amount in the CM Bank Account is debited and transferred to the NCCPL Bank Account or no amount is debited to the CM Bank Account; and
 - (c) acknowledges that the Company will:
 - (i) allow the release of "securities" to the Clearing Member on the basis of the entries made in the "Pay and Collect Screen" of the NCSS by the Authorised Person(s) of the Settling Bank; and
 - (ii) Suffer losses, costs, and expenses if any wrong entry is made by the Settling Bank's Authorised Person(s) in the relevant column of the "Pay and Collect Screen".
- The Settling Bank undertakes to indemnify the Company from and against any losses, costs and expenses suffered and/or incurred by the Company as a consequence of any incorrect entry made by the Authorised Person(s) of the Settling Bank in the "Pay and Collect Screen" of the NCSS.
11. The Company unconditionally and irrevocably authorizes the Settling Bank to debit the NCCPL Bank Account with the amount shown to be credited to the CM Bank Account in every "Pay and Collect Report" and to credit the CM Bank Account with the amount debited to NCCPL Bank Account. This activity shall be undertaken by the Settling Bank by the time specified for this purpose in DTS and upon receipt by the Settling Bank from the Company, through its interface with NCSS, of specific instructions to make the said debit and credit entries.
12. The Settling Bank unconditionally and irrevocably undertakes to debit the NCCPL Bank Account with the amount shown to be credited to the CM Bank Account in every "Pay and Collect Report" of NCSS and to transfer the resultant funds to and credit the same to the CM Bank Account upon receipt by the Settling Bank from the Company, as provided in Clause 11 above, of specific instructions to make the said debit and credit entries.
13. (a) The Settling Bank shall ensure that a report about debits and credits made on every settlement day, as per the clearing calendar of the Company, as above mentioned in this Agreement to the CM Bank Account and the NCCPL Bank Account is made available to the Company on the "Pay and Collect Screen" on the NCSS by the time specified for this purpose in DTS.

- (b) The Settling Bank shall ensure that a statement of debits and credits made to the CM Bank Account on every settlement day, as per the clearing calendar of the Company, is provided to the Clearing Member by 10 AM on the next settlement day, as per the clearing calendar of the Company.
 - (c) Any discrepancy in the report or the statement referred to in sub-clauses (a) and (b) above of this clause must be pointed out by the Clearing Member or by the Company by notice to the other and to the Settling Bank, by the time specified for this purpose in DTS by the next business day after the day on which the said report or the statement is submitted by the Settling Bank to the Company and the Clearing Member. If any such discrepancy is pointed out, the Company, 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 the Company or by the Clearing Member, as the case may be. In the event no discrepancy is pointed out within the specified time, the said report or the statement, as the case may be, shall be deemed to have been admitted as correct.
14. The Settling Bank hereby agrees that if any "Book-entry Securities" in any "Group Account" or "House Account" of the Clearing Member with Central Depository Company of Pakistan Limited (hereinafter referred to as "CDC") or in any Sub-Account with CDC controlled by the Clearing Member are in "Blocked Status" and a Pledge is created in favour of the Settling Bank by the Clearing Member on such Book-entry Securities in terms of Regulation 9.5.3 of the Central Depository Company of Pakistan Limited Regulations (hereinafter referred to as the "CDC Regulations") for the purpose of borrowing any amount from the Settling Bank, the Settling Bank shall pay such amount only into the CM Bank Account and simultaneously debit the CM Bank Account with the amount which is required to be debited to the CM Bank Account on the basis of that day's "Pay and Collect Report", or, if the available balance in the CM Account is not sufficient to allow full debiting of the amount to be debited to the CM Bank Account on the basis of "Pay and Collect Report", the Settling Bank shall debit the CM Bank Account to the extent of the available balance therein. The amount debited to the CM Bank Account shall be simultaneously credited to the NCCPL Bank Account.
15. (a) If the report submitted on any day by the Settling Bank to the Company under Clause 13(a) above shows that the amount to be debited to the CM Bank Account on the basis of that day's "Pay and Collect Report" of the Company was not fully debited to the CM Bank Account because of insufficiency of the required funds in CM Bank Account, the Settling Bank shall, at the request of the Company and against receipt from the Company of the amount which the Settling Bank had credited to the CM Bank Account under Clause 14 above, make a "Pledge Call" under Regulation 11.3A.1 of the CDC Regulations in respect of the Book-entry Securities pledged by the Clearing Member in favour of the Settling Bank under that Clause. Upon such "Pledge Call", the said Book-entry Securities shall be moved to the NCC-Pending Settlement Account of the Company with CDC pursuant to Regulation 11.3A.2 of CDC Regulations.
- (b) The Clearing Member hereby irrevocably authorizes and instructs the Settling Bank to make a Pledge Call in the above circumstances under Regulation 11.3A.1 of the CDC Regulations and irrevocably authorizes, instructs and empowers CDC to move the Book-entry Securities which are in Pledged Position in favour of the Settling Bank in any Holding of the Clearing Member to NCC-Pending Settlement Account of the Company with CDC whereupon such Book-entry Securities shall be at the absolute disposal of the Company.
 - (c) The Clearing Member accepts and acknowledges that the payment made by the Company to the Settling Bank of the amount credited by the Settling Bank in to the CM Bank Account shall be deemed to have been made on behalf of and under the authority of the Clearing Member and the Clearing Member shall have no claim or demand whatsoever against the Company or the Settling Bank in respect of such amount.
 - (d) The Clearing Member further accepts and acknowledges that the payment of the said amount by the Company to the Settling Bank and moving of any Book-entry Securities to NCC-Pending Settlement Account as above authorized shall not in any manner affect the rights of the Company to recover its losses, liabilities, costs and expenses from the Clearing Member in terms of the NCCPL Regulations.
 - (e) The Clearing Member and the Settling Bank agree to include provisions in their agreements between each other, including pledge agreements, reflecting the position set out in this Clause;
 - (f) The capitalized terms used in this Clause and not defined in this Agreement shall have the same meanings as set in the CDC Regulations.
16. This Agreement shall be binding on 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 others (which consent any Party may in its absolute discretion withhold).

17. No 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.
18. 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 NCSS Procedures, subject to the consent of SECP for amending, varying, modifying or substituting any or all provisions of NCCPL Regulations, to the extent such consent may be required.
19. 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.
20. 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.
21. 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 NCCPL 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) 3246-0827

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

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

To: _____ Bank Limited
Address:
Facsimile Number

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.

22. This Agreement shall remain in full force and effect for so long as the Clearing Member remains a Clearing Member of the Company, provided that the Company shall have the right to terminate this Agreement by notice to the other Parties in case the CM Bank Account or the NCCPL Bank Account is closed or allowed to be closed by the Settling Bank or by the Designated Branch or the Clearing Member, the Settling Bank or the Designated Branch is in breach of this Agreement.
23. Any Party hereto may terminate this Agreement without cause by serving a thirty (30) days notice on the other Party. No liability whatsoever shall attach to any Party 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 accrued up to the date of the expiry of the said thirty (30) days notice period.
24. This Agreement shall be governed by and be construed in all respects in accordance with Laws of Pakistan.

25. A. The Clearing Member represents and warrants to the other Parties 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 Settling Bank represents and warrants to the other Parties that (i) the Settling Bank 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 Settling Bank.
- C. The Company represents and warrants to the other Parties 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 hereto have executed this Agreement on the day and year above written.

_____ For: NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED	_____ For: <Name_of_the_CM>	_____ For: _____ BANK LIMITED
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Mr. _____	Mr. _____	Mr. _____
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Witnesses: 1. _____ NIC# _____ Name: _____ 2. _____ NIC# _____ Name: _____	Witnesses: 1. _____ NIC# _____ Name: _____ 2. _____ NIC# _____ Name: _____	Witnesses: 1. _____ NIC# _____ Name: _____ 2. _____ NIC# _____ Name: _____
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