

PLEDGE AND FACILITATION AGREEMENT

BETWEEN

NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED

AND

CENTRAL DEPOSITORY COMPANY OF PAKISTAN LIMITED

AND

[●]

[DATED]

PLEDGE AND FACILITATION AGREEMENT

THIS PLEDGE AND FACILITATION AGREEMENT (this “**Agreement**”) is made on this [●] Business Day of [●], 2020.

BETWEEN

[●], a company incorporated under the laws of the Islamic Republic of Pakistan holding Trading Right Entitlement Certificate issued by Pakistan Stock Exchange Limited and licensed as a Securities Broker by Securities & Exchange Commission of Pakistan and having its registered office at [●], Karachi, acting through its [●], (hereinafter referred to as the “**Securities Broker**”, which expression shall wheresoever the context so permits, includes its successors and permitted assigns) of the First Part;

AND

CENTRAL DEPOSITORY COMPANY OF PAKISTAN LIMITED, a company incorporated under the laws of Pakistan and licensed as Central Depository under the Securities Act, 2015 & Central Depositories (Licensing & Operations) Regulations, 2016, having its Registered Office at CDC House Main Shahra e Faisal, Karachi, through its authorized attorneys (hereinafter called as “**CDC**”, which expression shall mean and include, its successors-in-interest, legal representative, administrators, executors & assigns) of the Second Part;

AND

NATIONAL CLEARING COMPANY OF PAKISTAN LIMITED, a company incorporated under the laws of Pakistan and licensed as Clearing House under the Securities Act, 2015 & Clearing House (Licensing & Operations) Regulations, 2016, having its Registered Office at [8th Floor, Pakistan Stock Exchange Building, Stock Exchange Road, Karachi (hereinafter called as “**NCCPL**”, which expression shall mean and include, its successors-in-interest, legal representative, administrators, executors & assigns) of the Third Part.

(hereinafter collectively referred to as “**Parties**” and each individually as “**Party**”).

WHEREAS:

- (A) The CDC has established the CDS for custody of dematerialized Securities traded on the Pakistan Stock Exchange.
- (B) NCCPL is licensed as a clearing house by the Securities and Exchange Commission of Pakistan and presently provides clearing and settlement services for Securities traded on the Pakistan Stock Exchange;
- (C) The Securities Broker has been admitted by CDC as a Participant and an Account Holder to the CDS whereas in the capacity of a Clearing Member by the NCCPL;
- (D) As a Clearing Member, the Securities Broker is required to comply with Margin Requirements with respect to its proprietary trading as well trading on behalf of Investors, to mitigate default risk in settlement and clearing of Securities traded on the Pakistan Stock Exchange. Historically, the Margin Requirements could be met by the Securities Broker through cash deposit or pledging of

certain CDS Eligible Securities using the CDS in accordance with the CDC and NCCPL Regulations.

- (E) The CDC has recently been approved by the SBP for provision of Real Time Gross Settlement (RTGS) facility, which enables CDC to provide settlement and custodian services ('**CDC IPS Service**') of government issued securities, i.e. T-Bills, sukuks, PIBs and any other securities which may be issued by the government from time to time (collectively known as "**Government Securities**") for its clients. The CDC IPS Service is operated using an internal CDC IPS System rather than the CDS;
- (F) NCCPL has now expanded the pool of assets that the Securities Broker may use to meet the Margin Requirements to include certain Government Securities held by the Securities Broker and/or an Investor under the CDC IPS System. However, as the Government Securities are not CDS Eligible Securities, the Parties have now agreed to enter into this Agreement to provide for and agree on a contractual mechanism for Pledging certain Government Securities held by the Securities Broker and/or an Investor in favour of NCCPL to meet the Margin Requirements on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 In this Agreement, the following terms shall have the following meanings, unless the context requires otherwise:

"**Account Holders**" has the meaning ascribed to the term under Central Depositories Act, 1997;

"**Agreement**" means this Agreement together with its Annexures which are deemed to be an integral part of this Agreement.

"**Affected Party**" shall have the meaning assigned to it in Clause 7.

"**Applicable Laws**" means, with respect to any Party, all laws applicable to or binding on or to which such Party is subject including but not limited to the Securities Act, 2015, Central Depositories Companies Act, 1997, Clearing Houses (Licensing and Operations) Regulations, 2016, Securities Brokers (Licensing and Operations) Regulations, CDC Regulations and NCCPL Regulations;

"**Securities Broker**" is defined in the Recitals who is also Clearing Member of Clearing House;

“Securities Broker Account” means a proprietary IPS Account bearing No. [●] maintained by the Securities Broker with the CDC for the custody of the Government Securities being traded by the Securities Broker;

“Business Day” means a Business Day on which banks are open for business in Karachi and starting from 9 am through to 5:30 pm.

“CDC” is defined in the Recitals;

“CDC IPS Service” is defined in Recital (E);

“CDC IPS System” means a system to record and maintain the custody of Government Securities

“CDC Regulations” means regulations issued by the CDC with the approval of the SECP notified on June 25, 1997, as amended from time to time;

“CDS” means Central Depository System established and maintained by the CDC to enable custody of CDS Eligible Securities traded on the Pakistan Stock Exchange;

“CDS Eligible Securities” has the meaning ascribed to the term under the CDC Regulations;

“Clearing Member” has the meaning ascribed to the term under the NCCPL Regulations;

“Damages” shall have the meaning assigned to in Clause 8.

“Disclosing Party” shall have the meaning assigned to it in Clause 10.

“Dispute” shall have the meaning assigned to it in Clause 11.

“Effective Date” means the date of this Agreement.

“Government Securities” is defined in Recital E;

“IPS Account” means [Investor Portfolio Securities Account maintained with CDC for custody and settlement of Government Securities traded in the secondary market];

“**Investor**” means any Account Holder in the CDS who also holds an Investor Account with the CDC for custody of Government Securities;

“**Investor Account**” means an IPS Account in the name of an Investor with the CDC for the custody of the Government Securities being traded by the Investor;

“**Default**” means default by the Securities Broker in meeting Margin Requirements and/or payment obligations owed to NCCPL;

“**Force Majeure Event**” means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 10 (Force Majeure). Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of this Agreement, which events were not pending on the date of this Agreement.

“**Instructions**” means instructions by the Broker to the CDC for Pledging Margin Securities issued in accordance with Clause 2;

“**Key Persons**” shall have the meaning assigned to it in Clause 11.2.

“**Margin Requirements**” means [initial and minimum margin requirements prescribed under NCCPL Regulations applicable for availing settlement and clearing services of NCCPL];

“**Margin Securities**” is defined in Clause 2.1;

“**Mature Margin Securities**” is defined in Clause 2;

“**NCCPL**” is defined in the Recitals;

“**NCCPL Account**” means IPS Account bearing No. 1073 maintained by NCCPL with the CDC for custody of the Government Securities that may be transferred to it from the Securities Broker Account and/or the Investor Account by operation of this Agreement;

“**NCCPL Regulations**” means regulations issued by NCCPL with the prior approval of the SECP and notified on September 1, 2015;

“**Notice**” shall have the meaning assigned to it in Clause 11.4.2.

“**Notify**” or “**Notifications**” means a written-notifications to Key Persons shared on the contact details shared in Clause 11.3, or, in case of notification by CDC, also includes notification using the CDS or any other electronic platform set up by CDC for that purpose;

“**Pakistan Stock Exchange**” means Pakistan Stock Exchange Limited, bearing Registration No: 0000262 and having its registered office at Stock Exchange Building Stock Exchange Road, Karachi - 74000

“**Participant**” bears the meaning ascribed to the term in the CDC Regulations;

“**Pledge**” means the movement of Government Securities to a Pledge Position in Investor Account

“**Pledged Account**” means the Securities Broker Account, in case of Securities Broker meeting Margin Requirement for proprietary trading, and Investor Account, where the Securities Broker creates a Pledge to meet Margin Requirements on behalf of an Investor;

“**Pledge Call**” means request issued by NCCPL to CDC for transfer of any or all of the Margin Securities from the Pledged Account to the NCCPL Account upon occurrence of Default;

“**Pledge Notice**” is defined in Clause 2.2;

“**Pledged Position**” means the position in a Pledged Account to which any number of Margin Securities are moved as a consequence of any Instruction transmitted to the CDC in compliance with the requirements of Clause 2;

“**Proprietary Information**” shall have the meaning assigned to it in Clause 10.

“**Receiving Party**” shall have the meaning assigned to it in Clause 10.1.

“**Release Instructions**” means instruction issued by NCCPL to CDC requesting release of any or all Margin Securities in accordance with Clause 5;

“**Release Notice**” is defined in Clause 5;

“**Replacement Instruction**” means instructions issued by the Securities Broker to CDC and NCCPL requesting replacement of Mature Margin Securities with Replacement Margin Securities in accordance with Clause 3;

“**Replacement Notice**” is defined in Clause 3;

“Replacement Margin Securities” is defined in Clause 3;

“**SBP**” means the State Bank of Pakistan;

“**SECP**” means the Securities and Exchange Commission of Pakistan

“**Securities**” bears the meaning ascribed to the term under the Securities Act, 2015;

“**Term**” shall have the meaning assigned to it in Clause 7.

“**Terminating Party**” shall have the meaning assigned to it in Clause 7;

“**Transmit**” or any variation thereof means to cause a message or other information to be sent through a medium approved and Notified by the CDC, including delivery through physical or electronic means; and

“**Working Hours**” means working hours of CDC notified by CDC for this purpose from time to time.

1.2 Interpretation

1.2.1 In this Agreement, unless the context shall otherwise require;

- (a) the headings are for convenience only and shall not be considered in construing or interpreting this Agreement;
- (b) 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;

- (c) the singular includes the plural and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a Recital, Clause, Schedule or Annexure is to a Recital, Clause, Schedule or Annexure of or to this Agreement;
- (f) a Recital, an Annexure and / or Schedule forms an integral part of this Agreement. In the event of inconsistency between the main body of this Agreement and the Schedules, the Schedules shall prevail;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
- (h) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, successors, permitted substitutes, permitted transferees and permitted assigns;
- (i) where an expression is defined, another grammatical form or variation of that expression has a corresponding meaning;
- (j) "include", "includes" and "including" shall be respectively construed as "include without limitation", "includes without limitation" and "including without limitation", and all derivative terms shall be construed accordingly;
- (k) "Law" or "law" shall be construed as meaning any law (including statutory and common law), statute, constitution, decree, judgment, treaty, regulation, rule, by-law, order, other legislative measure, directive, requirement, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, local government, court or, statutory, regulatory or self-regulatory (or similar) body or authority;
- (l) a reference to the date of this Agreement shall mean the date first above written;
- (m) if the Business Day on which any act, matter or thing to be done under or pursuant to this Agreement is not a Business Day, that act, matter or thing:
- (n) if it involves a payment other than a payment which is due on demand, shall be done on the immediate succeeding Business Day; and
- (o) in all other cases, shall be done no later than the immediate succeeding Business Day.

2 PLEDGING OF GOVERNMENT SECURITIES

- 2.1 The Securities Broker may, from time to time, Transmit Instructions to CDC to pledge in favor of NCCPL any or all of the Government Securities in the Securities Broker Account and/or Investor Account, as the case may be, for the purposes of satisfying the Margin Requirements (“**Margin Securities**”). Such an Instruction shall be:
- (a) Transmitted, during Working Hours on a Business Day, to the CDC;
 - (b) include the Pledged Account information;
 - (c) specify NCCPL as the entity in whose favor the Margin Securities are instructed to be Pledged along with NCCPL Account information; and
 - (d) specify the number and details of Margin Securities to be Pledged in favour of NCCPL.
- 2.2 If, in CDC’s sole discretion, the Instruction has been Transmitted to the CDC in accordance with Clause 2.1 above and there are sufficient Government Securities available in the Pledged Account, the CDC shall, Pledge the Margin Securities in favor of NCCPL and shall Notify the Securities Broker and NCCPL (“**Pledge Notice**”) to that effect. It is hereby agreed that the Pledge shall take effect upon issuance of the Pledge Notice.
- 2.3 If the Instructions are not Transmitted to the CDC in accordance with Clause 2.1 above and/or insufficiency of Government Securities in the Pledged Account, the CDC will reject the Instruction and Notify the other Parties upon receipt of Instruction.
- 2.4 The Securities Broker hereby confirms having agreed that once the Pledged Notice is issued by the CDC, the Margin Securities will be pledged in favor of NCCPL as security for the due payment of the obligations of the Securities Broker and/or Investor to NCCPL in terms of the Applicable Laws. It is clarified that the term “**Pledge**” shall mean the movement of Margin Securities to a Pledge Position in accordance with this Clause 2.
- 2.5 The Securities Broker hereby acknowledges that it shall have no authority or capability to, or to request CDC to, hold over, sell, transfer, encash, surrender, appropriate and otherwise dispose of and deal with the entire or any part of the Margin Securities unless the Pledge is vacated on such Margin Securities in terms of Clause 4 below. Provided that the Pledge shall not preclude or restrict the receipt of any coupon payments by the Securities Broker with respect to any or all of the Margin Securities.
- 2.6 The Securities Broker hereby agrees to indemnify the NCCPL and CDC against any claims made by any person or against any losses or damages incurred on the ground that Pledging of the Margin Securities belonging to such person was not authorized by such person on any other ground whatsoever.

3 REPLACEMENT INSTRUCTION

- 3.1 At least seven [7] Business Days prior to maturity of any of the Margin Securities, the Securities Broker shall prepare and Transmit a Replacement Instruction to the CDC and NCCPL. The Replacement Instruction shall:
- (a) be Transmitted, during Working Hours on a Business Day, to the CDC and NCCPL;
 - (b) include Pledged Account information;
 - (c) include a statement that any or all of the Margin Securities are reaching date of maturity;
 - (d) specify the Notification by virtue of which the Margin Securities were Pledged in favor of NCCPL in terms of Clause 2.2 above;
 - (e) specify the number and details of Margin Securities reaching date of maturity (“**Mature Margin Securities**”) and identify the shortfall in compliance with Margin Requirements resulting therefrom;
 - (f) detail its proposal for meeting the shortfall; and
 - (g) specify the number and details of additional Margin Securities to be Pledged in favour of NCCPL to meet the shortfall (“**Replacement Margin Securities**”).
- 3.2 Upon receipt of the Replacement Instruction, the NCCPL shall either confirm its acceptance or rejection of the proposed replacement to the CDC.
- 3.3 If, in CDC’s sole discretion, the Replacement Instruction has been Transmitted to the CDC in accordance with Clause 3.1 above, and there are sufficient Government Securities available in the Securities Broker Account, subject to NCCPL’s concurrence under Clause 3.2 above, the CDC shall, vacate the Mature Margin Securities and Pledge the Replacement Margin Securities in favor of NCCPL and Notify the Securities Broker and NCCPL (“**Replacement Notice**”) to that effect. It is hereby agreed that the Pledge on Mature Margin Securities shall stand vacated and the Pledge on Replacement Margin Securities shall take effect simultaneously upon issuance of the Replacement Notice.
- 3.4 If the Replacement Instructions are not transmitted to the CDC in accordance with Clause 3.1 above and/or insufficiency of Government Securities in the Pledged Account and/or rejection of NCCPL, the CDC will reject the Replacement Instruction and Notify the other Parties upon receipt of the Replacement Instruction.
- 3.5 The Securities Broker hereby agree to indemnify NCCPL and the CDC against any claims made by any person or against any losses or damages incurred on the ground that Pledging of the Margin Securities belonging to such person was not authorized by such person on any other ground whatsoever

4 PLEDGE CALL

- 4.1 In the event of Default, the NCCPL may Transmit a Pledge Call to CDC. The Pledge Call shall:

- (a) be Transmitted, during Working Hours on a Business Day, to the CDC;
- (b) include the Pledged Account information;
- (c) include a statement that there has been a Default;
- (d) specify the Notification by virtue of which the Margin Securities were Pledged in favor of NCCPL in terms of Clause 2.2 above;
- (e) specify the number and details of Margin Securities Pledged in favour of NCCPL and the number and details of Margin Securities in respect of which Pledge Call is being made.

4.2 If in CDC's sole discretion, the Pledge Call is Transmitted to CDC in accordance with Clause 4.1 and there are sufficient Margin Securities to meet the Pledge Call, the CDC shall deduct the Margin Securities from the Pledged Account and enter the same to the NCCPL Account. If the Pledge Call is not Transmitted to the CDC in accordance with Clause 4.1 above and/or insufficiency of Margin Securities, the CDC will reject the Pledge Call and Notify the other Parties.

4.3 The Securities Broker hereby issues to CDC standing instructions on its behalf and on behalf of the Investors, to, from time to time, deduct the Margin Securities from the Pledged Account and enter the same into NCCPL Account in accordance with the terms of this Agreement ("**Standing Instruction**"). The Standing Instruction is irrevocable and will remain unchanged unless Notified to CDC by the Securities Broker with the consent of NCCPL.

4.4 The Securities Broker hereby agrees to indemnify and hold harmless the CDC against any claims made by any person on the ground that the Margin Securities which are the subject of the Pledge Call should not have been transferred to NCCPL Account for any reason whatsoever.

5 RELEASE

5.1 The NCCPL may, at its sole discretion, Transmit a Release Instruction to CDC. The Release Instruction shall:

- (a) be Transmitted, during Working Hours on a Business Day, to the CDC;
- (b) include Securities Broker Account /Investor Account information;
- (c) include a statement that NCCPL wishes to release all or any of the Margin Securities;
- (d) specify the Notification by virtue of which the Margin Securities were Pledged in favor of NCCPL in terms of Clause 2.2 above;
- (e) specify the number and details of Margin Securities Pledged in favour of NCCPL and the number and details of Margin Securities in respect of which Release Instruction is being made.

5.2 If, in CDC's sole discretion, the Release Instruction is Transmitted to CDC in accordance with Clause 5.1 and there are sufficient Margin Securities to meet the Release Instruction, the CDC shall Transmit a notice to the other Parties after execution of Release Instruction ("**Release Notice**"). It is hereby agreed that the Pledge shall be released, only up to the extent requested as per the Release Instruction, upon issuance of the Release Notice by the CDC. CDC shall be unconditionally and irrevocably liable for any loss, penalty, cost or charges suffered by NCCPL in case CDC releases more than the number of Margin Securities requested in accordance with Clause 5.1 above, due to any error, whether intentional or not.

5.3 If the Release Instruction is not Transmitted to the CDC in accordance with Clause 5.1 above and/or insufficiency of Margin Securities, the CDC will reject the Release Instruction and Notify the other Parties.

5.4 CDC hereby agrees to indemnify and hold harmless NCCPL against any claims made by any person on the ground that the Margin Securities which are the subject of the Release Notice have not been duly released by CDC in accordance with this Clause 5. NCCPL hereby agrees to indemnify and hold harmless CDC against any claims made by any person on the ground that the Margin Securities were not released by CDC where the delay or failure to release was caused on account of any act or omission of NCCPL or NCCPL's failure to Transmit the Release Instruction in accordance with Clause 5.1 above.

6 REPRESENTATIONS AND WARRANTIES

6.1 Each Party hereby represents, warrants and covenants to the other Party as of the Effective Date and throughout the Term of this Agreement as follows:

- (a) It is duly organized, validly existing and in good standing under the laws of Pakistan, and has full power and authority to conduct its business;
- (b) It has all necessary authority and has taken all necessary action to enter into this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder. This Agreement has been duly executed and delivered by each Party and is a legal, valid and binding obligation of each Party, enforceable against it in accordance with its terms;
- (c) Neither the execution and delivery of this Agreement by any Party nor any performance by any Party of its obligations hereunder will result in (i) a violation of the Memorandum of Association or Articles of Association of such Party; (ii) a breach of, or a default under any contract, agreement, instrument, license, permit or authorization to which such Party is a party or by which it or its assets are bound; or (iii) a violation by such Party of Applicable Laws; and
- (d) Each Party has obtained, and will maintain at all times, any and all consents, approvals or authorizations of, and made any and all declarations, filings or registrations with, any Governmental Authority, or any other Person, required to be obtained or made by such Party in order to execute, deliver and perform its obligations under this Agreement or consummate the transactions contemplated hereby.

6.2 With respect to this Agreement, the Securities Broker hereby further represents, warrants and covenants to the other Parties as of the Effective Date and throughout the Term of this Agreement that:

- (a) all actions undertaken by the Securities Broker on behalf of the Investors by virtue of this Agreement are so undertaken with the proper authority and prior concurrence of the Investors;
- (b) It is and will act in compliance with all Applicable Laws, in particular the Securities Act, 2015, CDC and NCCPL Regulations, Securities (Leveraged Markets and Pledging) Rules, 2011 as well as all contractual terms and conditions of admission into Pakistan Stock Exchange, NCCPL as well CDC IPS System;
- (c) Any change in its rights and entitlements to the Margin Securities or any change likely to have an effect on such rights and entitlements;
- (d) all information furnished by it is or shall be accurate and that it has not omitted or concealed and shall not omit or conceal any material facts which would render such information incorrect, misleading or inaccurate; and
- (e) no extraordinary circumstances and no change of law has occurred which would make it impossible for it to carry on its business or fulfill its obligations under this Agreement.

7 TERM AND TERMINATION

7.1 This Agreement shall become effective from the Effective Date and shall continue in full force and effect for a period unless terminated earlier in accordance with Clause 7.2 (“**Term**”). Upon expiry, the Term may be renewed with the mutual consent of the Parties

7.2 At any time from and after the Effective Date, any Party (“**Terminating Party**”) may, subject to Clause 7.3, terminate this Agreement with immediate effect (and after compliance with cure periods set forth below) by delivery of a written notice of termination to the other Party (“**Affected Party**”), if:

- (a) the Affected Party is insolvent, or admits in writing its inability to pay debts as they become due, or otherwise makes an assignment for the benefit of its creditors or voluntarily suspends payment of its obligations;
- (b) the Affected Party is in breach of any material obligations under this Agreement and, if the breach is capable of remedy, the Affected Party has failed to remedy such breach within fifteen (15) Business Days of receipt of notice of such breach by the Terminating Party;
- (c) the Affected Party is in material breach of any Applicable Laws and/or ceases to be a licensed entity for the purposes contemplated under this Agreement or in the case of the Securities Broker, the Securities Broker ceases to be a Participant/Account Holder/IPS Account holder/Clearing Member;
- (d) the Affected Party ceases the business operations enabling performance of all or any part of this Agreement; and/or
- (e) the Affected Party breaches any of its representations, warranties or covenants in this Agreement and, if the breach is capable of remedy, the Affected Party has failed to remedy such breach within fifteen (15) Business Days of receipt of notice of such breach by the Terminating Party;

7.3 In addition to and without prejudice to Clause 7.2, any Party may terminate this Agreement with immediate effect by delivery of a written notice of termination to the other Parties at any time and without any reason.

7.4 Seven (7) days prior to the effective date of termination, the Securities Broker shall ensure that it has deposited with NCCPL sufficient margin as required under Applicable Laws to ensure that the requisite margin continues to be available with NCCPL at all times. Failure of the Securities Broker to do the needful shall result in an event of default on the part of the Securities Broker, entitling NCCPL to call the Pledge and recover the Margin Securities from the Pledged Account.

7.5 Post the effective date of termination, the CDC shall;

8 CEASE TO ACCEPT ANY INSTRUCTIONS OR REQUESTS UNDER CLAUSE 2 THROUGH 5; LIABILITY AND INDEMNIFICATION

8.1 From the Effective Date, CDC liability in relation to all risks, liabilities and/or losses associated with or arising out of this Agreement shall be limited to actual and direct loss incurred due to material default by CDC of the terms of this Agreement. CDC shall not be liable for any indirect, consequential or remote losses.

8.2 Without prejudice to Clauses 3, 4 and 5 above, the Securities Broker will indemnify, defend, and hold the CDC and NCCPL harmless from and against any and all damages (including any and all third party claims against the NCCPL and CDC), judgments, liabilities, fines, penalties, losses, claims, actions, demands, costs and expenses (including reasonable attorneys' fees (collectively "**Damages**") incurred by CDC and/or NCCPL that arise out of relate to any:

- (a) breach by the Securities Broker of the representations or warranties or covenants under this Agreement;
- (b) breach by the Securities Broker of any provisions of this Agreement;
- (c) non-compliance by the Securities Broker of Applicable Laws or any contractual obligations it has with any third parties or NCCPL [(including any dealing with the Margin Securities without the proper and prior concurrence of its customers/beneficial owners of such Margin Securities)];
- (d) negligence, willful misconduct or fraud by the Securities Broker.

8.3 The Securities Broker shall:

- (a) Promptly after receipt of any written claim, notice of any action giving rise to a claim for indemnification or the discovery by Securities Broker of any Damages that may give rise to a claim for indemnification, provide notice to CDC/NCCPL of such claim, action or Damages, provided that failure to so notify the CDC/NCCPL will not relieve Securities Broker of its indemnification obligations hereunder;
- (b) provide reasonable cooperation and assistance in the defense or settlement of any claim; and
- (c) grant the CDC/NCCPL control over the defense and settlement of the same, provided that the Securities Broker shall be entitled to participate in the defense and settlement of the claim and to employ counsel at its own expense to assist in the handling of the claim.

8.4 All amounts payable by the Securities Broker pursuant to this Clause 8.2 shall be paid within ten (10) Business Days of receiving a demand in writing from CDC and/or NCCPL.

8.5 The Securities Broker and NCCPL hereby further agree to hold CDC harmless from and agree to resolve amongst themselves (without any reference or resort to CDC) any and all disputes which may have arisen between them unless such a dispute is due to any default by CDC of its obligations under Clause 5.2 and/or Clause 5.4, in which case CDC shall be unconditionally and irrevocably liable to NCCPL for any direct and actual losses, costs, expenses or penalties which are suffered by NCCPL.

9 FORCE MAJEURE

If either Party is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform.. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either Party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

10 CONFIDENTIALITY OF PROPRIETARY INFORMATION

10.1 Definition

10.1.1 For the purposes of this Clause, the following terms will have the definitions set forth below:

- (a) **“Proprietary Information”** means any valuable, secret business information that is designated or identified as confidential at the time of the disclosure or is by its nature clearly recognizable as confidential information to a reasonably prudent person with knowledge of the Disclosing Party’s business and industry;
- (b) **“Disclosing Party”** means the Party disclosing any Proprietary Information hereunder, which such disclosure is directly from or through the Disclosing Party’s personnel;
- (c) **“Receiving Party”** means the Party receiving any Proprietary Information hereunder, whether such disclosure is received directly from or through the Receiving Party’s personnel.

10.1.2 Notwithstanding the definition of Proprietary Information in Clause 10.1.1, Proprietary Information does not include any information that:

- (a) was in the Receiving Party’s possession before disclosed to it by the Disclosing Party without a duty of confidentiality on the Receiving Party;
- (b) is or becomes a matter of public knowledge through no fault of the Receiving Party;
- (c) is rightfully received by the Receiving Party from a third party without a duty of confidentiality;
- (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Proprietary Information; or
- (e) is disclosed by the Receiving Party with the Disclosing Party’s prior written approval;

10.2 Proprietary Information

10.2.1 In the performance of this Agreement, each Party may disclose to the other Party certain Proprietary Information.

10.3 Ownership and Restrictions on Use

10.3.1 The Receiving Party acknowledges and agrees that except to the extent otherwise expressly provided herein, the Proprietary Information of the Disclosing Party will remain the sole and exclusive property of the Disclosing Party or a third party providing such information to the Disclosing Party, and the disclosure of such information to the Receiving Party does not confer upon it any license, interest, or right of any kind in or to the Proprietary Information, except as provided under this Agreement.

10.3.2 At all times and notwithstanding any termination of this Agreement, the Receiving Party agrees that it will:

- (a) hold in strict confidence and not disclose to any third party the Proprietary Information of the Disclosing Party, except as approved in writing by the Disclosing Party;
- (b) only permit access to the Proprietary Information of the Disclosing Party to those of its personnel who have a need to know and have signed confidentiality agreements or are otherwise bound by confidentiality obligations substantially similar to those contained in this Agreement;
- (c) be responsible to the Disclosing Party for any third party's use and disclosure of the Proprietary Information provided to such third party by the Receiving Party
- (d) only use the Proprietary Information that is receives to carry out the purposes of this Agreement and for no other purpose whatsoever; and
- (e) use at least the same degree of care it would use to protect its own Proprietary Information of like importance, but in no event less than a reasonable degree of care, including maintaining information security standards for such Proprietary Information as are commercially reasonable and customary for the type of information.

10.4 Permitted Disclosure

10.4.1 Notwithstanding Clause 10.3, a Party may disclose the Proprietary Information in the following events:

- (a) if required by Applicable Laws;
- (b) if required by an order of a Government or regulatory/supervisory authority;
- (c) if required by an order of a Court; or
- (d) if required to its professional advisors (including attorneys, lawyers, and accountants) and/or consultants and/or agents, subject to appropriate confidentiality obligations.

10.4.2 If the Receiving Party is required to disclose Proprietary Information pursuant to Clauses 10.4.1(a), (b) or (c), it shall, to the extent legally permissible, provide written notice of such required disclosure to the Disclosing Party prior to making such disclosure.

10.5 Notice Of Unauthorized Disclosure

10.5.1 Each Party to this Agreement will immediately notify the other Parties in writing about discovery of any loss or unauthorized disclosure of the Proprietary Information of the other Parties.

10.6 Equitable Relief

10.6.1 If any Party should breach or threaten to breach any provision of this Clause 9 of the Agreement, the non-breaching Party, in addition to any other remedy it may have at law or in equity, will be entitled to seek a restraining order, injunction or similar remedy in order to specifically enforce the provisions of this Agreement. Each Party specifically acknowledges that money damages alone would not be an adequate remedy for the injuries and damages that would be suffered and incurred by the non-breaching Party as a result of a breach of any provision of this Agreement.

11 MISCELLANEOUS

11.1 Key Persons

11.1.1 Each Party shall, from time to time, appoint, authorize and designate at least two (2) officers as contact persons (“**Key Persons**”) to liaise with the other Party on any matter arising out of or pursuant to this Agreement.

11.1.2 The initial Key Persons shall be:

Securities Broker

[insert names and designation]

CDC

[insert names and designation]

NCCPL

[insert names and designation]

11.1.3 Any change in the Key Person shall be communicated in writing by the Parties at least five (5) Business Days in advance of the proposed change.

11.2 Notices

11.2.1 [Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or courier at its registered office;
- (b) sent by fax to its main fax number; or
- (c) sent by email to its email address.

11.2.2 The addresses to which notices and communications shall be sent are as follows:

Securities Broker

[insert details]

CDC

[CDC House 99 – B, Block B, S.M.C.H.S Main Shara-e-Faial, Karachi]

NCCPL

[insert details]

11.2.3 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by courier, at 9:30 am on the second Business Day after posting or at the time recorded by the courier services; and
- (c) if sent by fax or email, at 9:30 am; on the next Business Day after transmission.

11.3 Relationship of the Parties

11.3.1 Nothing in this Agreement is intended to create, nor does it create and shall not be construed to create, a relationship of partners or joint ventures, fiduciaries or any association for profit between the Parties.

11.4 Expenses

11.4.1 Except as is otherwise expressly provided in this Agreement, each Party shall bear its own costs and expenses in connection with this Agreement and the transactions contemplated hereby, including all lawyers' fees, accounting fees, regulatory fees and other expenses.

11.5 Successors and Assigns

11.5.1 All terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, and each of their respective permitted transferees, successors and permitted assigns.

11.6 Anti- Assignment

11.6.1 Neither Party may assign or transfer any right under this Agreement without the prior written consent of the other Party.

11.7 Counterparts

11.7.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed, collectively, one agreement.

11.8 Entire Agreement

11.8.1 The making, execution and delivery of this Agreement by the Parties have been induced by no representations, warranties, statements or agreements other than those herein expressed. This Agreement, including the Annexures and Schedules attached hereto, embodies the entire understanding of the Parties, and there are not further or other agreements or understandings, written or oral, in effect among the Parties relating to the subject matter hereof.

11.9 Amendment

11.9.1 This Agreement may be amended or modified only by a written instrument signed by each of the Parties.

11.10 Waiver

11.10.1 None of the Parties shall be deemed to have waived any of its rights, powers or remedies under this Agreement unless such waiver is approved in writing by an authorized representative of the waiving Party. No delay or failure by any Party to exercise any right, power or remedy hereunder shall constitute a waiver thereof by such Party, and no single or partial exercise by any Party of any right, power or remedy shall preclude other or further exercise thereof or any exercise of any other rights, powers or remedies.

11.11 Severability

11.11.1 Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under Applicable Laws, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Laws, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11.12 Governing Law

11.12.1 This Agreement shall be governed by, and construed in accordance with, the laws of the Islamic Republic of Pakistan,

11.13 Dispute Resolution

11.13.1 Except as otherwise expressly provided in this Agreement, the Parties agree that any dispute arising in connection with the interpretation of this Agreement or the performance of either Party under this Agreement or otherwise relating to this Agreement (“**Dispute**”) will be treated in accordance with the procedures set forth in this Clause 11.14, prior to the resort by either Party to arbitration in connection with such Dispute.

11.13.2 In the event of a Dispute, the same shall be referred for resolution to the respective Chief Executive Officer or any other authorized representative of each Party. Such procedure will be invoked by either Party presenting to the other Party a notice of request for resolution of dispute (“**Notice**”) identifying the issues in Dispute sought to be addressed hereunder. A meeting of the

respective Chief Executive Officer/authorized representative of the Parties will be held within ten (10) Business Days after the delivery of the Notice. In the event, that the Parties are unable to resolve the Dispute within twenty (20) Business Days from the date of the meeting of the [-- Chief Executive Officer/authorized representative-], any Party may refer the Dispute to binding arbitration pursuant to Clause 11.14.3 below.

11.13.3 Any Dispute that remains unresolved after the mediation procedure in Clause 11.14.2 above, shall be referred to arbitration under the Arbitration Act, 1940, by one arbitrator to be appointed by each Party. In the event of lack of consensus between the two (2) arbitrators, the matter shall be referred to an umpire, to be selected by the two (2) arbitrators before the commencement of the reference. The unanimous decision of both the arbitrators, or in case of lack of consensus between the two (2) arbitrators, the decision of the umpire, as the case may be shall be final and binding upon both the Parties.

11.14 Survival

11.14.1 Any and all provisions, promises, and warranties contained herein, which by their nature or effect are required or intended to be observed, kept or performed after expiration or termination of this Agreement (including Clauses 1, , 8,10, 11.2, 11.3, 11.12, 11.13 and 11.14), will survive the expiration or termination of this Agreement and remain binding upon and for the benefit of the Parties hereto.