

[Approved format of Agreement to be signed and executed between Broker and Sub Broker]

AGREEMENT BETWEEN BROKER AND SUB BROKER

This agreement is entered in to and executed at Kathmandu, on (Date) of Calendar Bikram Sambath (official calendar of Govt. of Nepal.) corresponding to (Date) of Gregorian calendar,

BETWEEN

....., is a licensed Broker under the Clearing Membership of (“Clearing Member”) vide License No..... and having its registered office at hereinafter referred to as the “**Broker**” (which expression shall unless repugnant to the context or meaning thereof, be deemed to mean and include its successors, legal representatives and permitted assigns).

AND

Name :
Business/Registered office (if Institution) :
Sub Broker code :
Telephone/Fax :
Email :
Name of Authorised Signatory :

Hereinafter referred to as the “**Sub Broker**”, (which expression shall unless repugnant to the context or meaning thereof, shall be deemed to mean and include its successors, legal representatives, legal heirs and permitted assigns).

The “Broker” and “Sub Broker” are herein after individually referred to as a ‘Party’ and collectively as ‘Parties’.

Whereas the Broker is offering Sub Broker license to entities and persons, who fulfill the criteria prescribed by the Exchange including signing of this agreement. Every such Sub Broker shall be eligible to trade and introduce client and trade on behalf of such client in the Exchange in accordance with the Bye Laws and Rules of the Exchange.

Whereas the Sub Broker is desirous of obtaining Sub Broker license from the Broker and has completed the KYC and application requirements. Further the Sub Broker has agreed to abide by the Bye Laws and Rules of Exchange including the Rules of Trading, Clearing and Settlement.

Whereas Broker hereby grants license to the Sub Broker subject to the terms and conditions of the Agreement and based on the undertaking of the Sub Broker to abide by the Bye Laws and Rules of the Exchange.

NOW IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Grant of Sub Broker License:

- 1.1 Broker hereby grants a license to the Sub Broker for trading in the Exchange based on the application, KYC, financial details submitted by the Sub Broker and undertakings of the Sub Broker to abide by the Bye Laws and Rules of the Exchange. The license shall be effective from the date of this Agreement and continue unless terminated under the terms of this Agreement or by the Exchange in accordance with its Bye Laws and Rules.
- 1.2 Sub Broker shall be permitted to trade in the Exchange for itself and on behalf of its clients and clear such trade through the Clearing Member.
- 1.3 Sub Broker shall be permitted to solicit clients to participate trading in the Exchange. Sub Broker shall be responsible for opening and establishing trading account of such clients and completing the formalities for registration with Broker in such manner as prescribed by the Exchange.

2. Rights of the Exchange, Clearing Member and Broker

- 2.1 Exchange and Clearing Member have the right to inspect the office of the Sub

Broker and also have the right to inspect the books of accounts, records, documents and electronically stored data of the Customer without any prior notice.

- 2.2 Exchange, Clearing Member and Broker has the right to demand and Sub Broker shall pay such fees, charges, advances and deposits in respect of various services which it renders or agrees to render to the Sub Broker for the purpose of maintaining the license, trading, clearing and doing any transaction in the Exchange.
- 2.3 Exchange and Clearing Member shall specify the exposure limits up to which open position can be taken by the Sub Brokers. Such limits may be increased or reduced by the Exchange at any time in its discretion. The Exchange shall take measure to protect its interest in this regards which may, inter alia, include restriction on further trading, closing out open positions and withdrawing or disablement of the trading facility of the Sub Broker.
- 2.4 Clearing Member has the right to close out / liquidate the open position of the Sub Broker and/or its clients in accordance with the Rules of Exchange, in case of non Payment of dues by the Sub Broker and or its clients towards margins, daily mark to market settlement, final settlement or such other settlement, fees and charges. In such case, any loss cause to the Clearing Member or Exchange due to the closing out of open position will be recovered from the Sub Broker. However, the above shall not prejudice the right of the Sub Broker to recover the money from its clients, if the same was happened in view of the defaults of the clients.
- 2.5 Exchange and Clearing Member have the right to withdraw or disable the trading and clearing facility of the Sub Broker, without any notice, and also to take disciplinary proceedings, if the Sub Broker commits any defaults in payment of fee and deposits, commits any breach of the Bye Laws and Rules or acts against the interest of the Exchange.
- 2.6 Clearing member reserves the right to determine any procedure, take any action, pass any order or directions, impose any fee to protect the interest of the Exchange and by signing of this Agreement; Sub Broker undertakes to comply

with all such decision of the Exchange.

3. Undertakings of the Sub Broker:

- 3.1 The Sub Broker understands the trading and the risks involved in trading in the Exchange and shall be fully responsible and assume any losses or liabilities that may arise in connection with the trading, clearing and settlement in the Exchange.
- 3.2 The Sub Broker shall comply with the Bye laws, Rules of the Exchange, Rules of Trading, Clearing and Settlement and any regulations, circulars or guidelines issued by the Exchange from time to time.
- 3.3 The Sub Broker shall deposit with the Broker/Clearing Member, as prescribed by the Exchange, securities and margins that may be required to open and/or maintain his/its position and clearing accounts with the Broker. Sub Broker shall also be responsible for maintaining the margins of its client. All such deposits and securities shall be subject to a general lien for the discharge of his/its obligations to the Broker/clearing member under this agreement.
- 3.4 Sub Broker shall pay without default the fee for maintaining its license and also the commission, services charges and other fee applicable for trading in the Exchange.
- 3.5 The Sub Broker hereby authorize the Broker and the Clearing Member, should deem it necessary for the protection of the Broker, to buy, sell or close out any part or all of the contracts held in his/its account or the accounts of its clients with the Broker. The Sub Broker will also reimburse any or all such incidental expense incurred by the Broker in this regard.
- 3.6 Sub Broker shall not use Exchange's name or issue, publish or distribute any advertisement, market letter, market research report or other sales literature utilizing or making reference to the name or facilities of the Exchange without Broker's prior written consent.
- 3.7 In the event that Sub Broker or any its client thereof shall become subject to

suspension or restriction by any regulatory body of the government, Sub Broker will notify the Exchange immediately thereof about such suspension or restriction and Exchange reserves the right to take all such steps against the Sub Broker or its clients as may be necessary for it to maintain compliance with the laws, rules and regulations of the Exchange without any notice to the Sub Broker.

- 3.8 Sub Broker shall be permitted to trade on behalf of its client, provided Sub Broker has obtained power of attorney or any authorization as prescribed by the Exchange from the client.
- 3.9 Prior to registration, Sub Broker shall educate the clients about the facilities and the high risk involved in online trading and the liabilities that may arise from such trading. Sub Broker should also ensure that the clients are well aware of using the Internet tools to carry on online trading.
- 3.10 Sub Broker shall not give any warranties, false representation or commitments to the clients for trading in the Exchange. Sub Broker shall be solely liable to the Broker and Exchange for any loss or liability that may arise on account of its clients.
- 3.11 Sub Broker shall provide the statement of its Bank Accounts as and when requested by the Broker, Clearing Member or Exchange.

4. Obligation Of The Broker

- 4.1 Broker shall facilitate the trading and clearing facility to the Sub Broker through the Clearing Member in accordance with the Bye laws, Rules of Trading, Clearing and Settlement and any regulations, circulars or guidelines issued by the Exchange from time to time.
- 4.2 Broker shall register the clients introduced by the Sub Broker and also provide trading and clearing facility to such clients, provided Broker is satisfied with the requirement for registration of such clients.
- 4.3 Broker shall maintain all details pertaining to the Sub Broker including

information related to the trade in the Exchange, in strict confidence and shall not disclose the same to any person/entity except as required by the Exchange or as required under the law; Provided, however, that the Broker shall be allowed to share the details of the Sub Broker with the parties/entities other than required under law or Exchange, with the express permission of the Sub Broker.

- 4.4 Broker shall maintain the records of transaction of Sub Broker and its clients and shall provide a statement thereof to the Sub Broker on periodical basis or as and when requested by Sub Broker. Broker shall also disburse the Commission entitled to the Sub Broker without any delay and default.

5. Trade Obligations:

- 5.1 The Sub Broker shall accept and be responsible for all trades executed by the Sub Broker and its clients irrespective of whether the order is executed partially or in full in the Exchange.
- 5.2 In the event of Non-confirmation of trades by Sub Broker or its clients for any reason whatsoever, all exchange-levied margins, MTM losses (on open position), will be borne by the Sub Broker for the unconfirmed trades. In such case, the Sub Broker shall pay to the Broker, margins levied by the Exchange on the unconfirmed trades. In addition to the above, the Broker shall have an option to call for collateral from the Sub Broker, to meet the subsequent daily margin obligation/MTM losses on the unconfirmed trades, the Sub Broker shall be obliged to pay the daily margin, MTM on the immediate succeeding business day when the Broker raises such margin requirement.
- 5.3 The Broker shall not permit the Sub Broker to create any new positions, until receipt of such additional margin requirement. If the Sub Broker or its clients defaults in paying the daily margin, MTM, if any, the Broker shall be entitled to liquidate or close out all or any of the Sub Broker's positions. Any and all losses and financial charges on account of such liquidation or closing out shall be borne by the Sub Broker.

6. Payment of Commissions and Service Charges

- 6.1 The Sub Broker shall pay the Commission and services Charges to the Broker, Clearing Member and Exchange for every trade executed by the Sub Broker and its customer. In order to centralize and efficient functioning of the commission or service charge distribution system, the Sub Broker hereby grants the absolute authority to the Clearing Member to maintain and operate the Commission/Service Charge account of the Sub Broker, if any.
- 6.2 Clearing Members shall have the exclusive right to manage and distribute the commission/service charges pertaining to the Sub Broker.
- 6.3 The Clearing member shall after the distribution of the Commission/Service Charges provide a statement of Commission to the Sub Broker.
- 6.4 The rate of commission payable by Sub Broker to the Broker shall be mutually agreed and Broker reserves the right to make amendments or revision to the same with the approval of the Clearing Member.
- 6.5 If the Exchange or Clearing Member increases the Commission or Service Charges, the Broker shall also entitled to revise proportionately its commission and service charges payable by the Sub Broker and the Sub Broker shall adhere to the same.
- 6.6 If the Sub Broker gives any discounts in commission and services charges to its Clearing Member, which shall not at no point of time exceed the limit prescribed by the Clearing Member and Exchange.

7. Liability of payment of Taxes:

- 7.1 Sub Broker undertakes, agrees and accepts the responsibility and liability of remitting tax of all forms, VAT, Sales Tax, Levies, License Fees which fall due from their respective business operations to the Government of Nepal or any other local body, even if such tax is imposed by such Government or Local

body with immediate or retrospective effect and hereby absolves the Broker, Clearing member and Exchange from any such liability and responsibilities.

- 7.2 If any deduction to be made from the amount payable to the Sub Broker under the laws of Nepal, then Clearing Member and Broker shall make such deduction and a statement thereof shall be given to the Sub Broker.

8. Risk Acknowledgment by Sub Broker:

Sub Broker understands and acknowledges the following known risks and other risks associated with trading in the Exchange. This risk stated below does not disclose all of the risks and other significant aspects of trading in the Exchange. The Sub Broker shall take its own endeavor to understand and assess the risk before trading in the Exchange:

- 8.1 A Sub Broker shall participate in trading and also permit its Customer for trading only if it clearly understands the nature of the contracts, contract specification, price, margin and the extent of exposure to risk. Risk of loss in trading can be substantial and a Sub Broker should carefully consider whether trading is appropriate in light of its experience, objectives, financial resources and other relevant circumstances. Thus, trading requires not only the necessary knowledge and financial resources but also the financial and emotional temperament.
- 8.2 Sub Broker shall be solely responsible for loss arising out of trading in the Exchange on its account and also its Customers Account, and the Exchange and Brokers shall not be responsible for the same and it will not be open for the Sub Broker to take the plea that neither adequate disclosure was made nor explained the full risk involved in trading. The Sub Broker will be solely responsible for the consequences for each and every trade executed by the Sub Broker.
- 8.3 Effect of "Leverage" the amount of margin is small considering the value of the commodity contract so the transactions are 'leveraged' or 'geared'. Trading, which is conducted with a relatively small amount of margin, provides the possibility of great profit or loss in comparison with the principal investment

amount. Transactions in trading also carry a high degree of risk; therefore, Sub Broker and its Customer should trade with caution by taking into account its financial resources. If the prices move, a trader may lose a part of or whole margin or equivalent to the principal investment amount in a relatively short period of time. Moreover, the loss may exceed the original margin amount.

- 8.4 Trading involves daily settlement of all positions. Every day the open positions are mark to market based on the closing level of the index. If the index has moves against the trader, the trader would require depositing the amount of loss (notional) resulting from such movement. This margin will have to be paid within a stipulated time frame, generally before commencement of next day's trading. If a Sub Broker fails to deposit the additional margin by the deadline or if an outstanding debt occurs in the trader's account, the Exchange may liquidate a part of or the whole position or substitute commodities. In this case, the Sub Broker will be liable for any losses incurred due to such Close Outs.
- 8.5 Under certain market conditions, a Sub Broker may find it difficult or impossible to execute transactions. For example, this situation can occur due to factors such as illiquidity i.e. when there are insufficient bids or offers or suspension of trading due to price limit or circuit breakers etc.
- 8.6 In order to maintain market stability, the Exchange may change the margin, contract specification and other parameters of trading. These measures may be applied to the existing open positions. In such conditions, a Sub Broker will be required to put up additional margins or reduce its positions.
- 8.7 A Sub Broker must itself gather information from the Exchange and Broker relating to the details of the contracts it plan to trade i.e. the contract specifications and the associated obligations.
- 8.8 The placing of certain orders (e.g., "stop-loss" orders, or "limit" orders), which are intended to limit losses to certain amounts, may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions may be as risky as taking simple "long" or "short" positions.
- 8.9 Market conditions (e.g., illiquidity) and/or the operation of the rules of certain

markets (e.g., the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss due to inability to liquidate/offset positions.

8.10 Sub Broker should familiarize with the protections accorded to the money or other property deposited with the Broker. A Sub Broker will not be able to recover the money, which is lost in the trading. In case of any dispute arising out of the trading shall be subject to Arbitration Rules of the Exchange.

8.11 Sub Broker should obtain clear information of all commission, fees and other charges with respect to conducting trading in the Exchange. These charges will affect the net profit (if any) in the trade or will increase your loss.

8.12 The Exchange offers only electronic trading facilities (online trading facilities), which are computer-based systems for order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. In such circumstances, the Sub Broker may suffer losses which cannot be ascertained and recoverable.

9. Indemnity

The Sub Broker shall indemnify and keep indemnified the Broker and the Exchange from and against all harm, loss, damages, injury, penalty, that may be suffered or incurred by the Broker and the Exchange during the course of trading, clearing and settlement and all costs, charges and expenses incurred in instituting and/or carrying on and/or defending any legal proceedings by the Broker or the Exchange as result of or on account of any act of commission or omission or default of the Sub Broker in complying with this agreement, any of the provisions of the Bye-Laws, Rules of the Exchange or the Laws of the Nepal

10. Force majeure:

The Broker shall not be liable to the Sub Broker or its clients or to any third party for any failure to perform its functions, defaults, laches, or delays happened to the

clearing functions of the Clearing Member or to the Automatic Trading System of the Exchange as a result of circumstances beyond the control of the Clearing Member, Exchange or any act of God. In the event that the functions of the Broker, Clearing Member and the Exchange is prevented or hindered in consequence of any act of God or circumstances beyond the control of the Broker, the functions of the Broker shall be suspended during the period of continuance of any such event. These acts may amongst other things include electrical, communication, computer system failure beyond the reasonable control of the Broker, war, invasion, riot, strike, rebellion, revolution, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, embargo and natural calamities.

11. Notices

All notices and any communication required to be given pursuant to this Agreement shall be in writing and shall be delivered personally, or by facsimile or registered mail to the other party as follows:

1. To the Broker

Name:

Address:

E-mail id:

2. To the Sub Broker

Name:

Address:.....

E-mail id:

Any notice required to be sent under this Agreement shall be deemed as served/ delivered within three day from the date of its posting or sending.

12. Termination:

- 12.1 Either party may by giving 30 days (Thirty) written notice to the other party terminates this agreement.
- 12.2 Broker may terminate this agreement forthwith, with the prior permission of Clearing Member, if Sub Broker commits any default or provided any false information for obtaining the license or acted against the anti money laundering laws of Nepal.
- 12.3 Notice of such termination shall be submitted by the terminating party separately in writing to the Clearing Member and acknowledgement thereof shall be obtained. The terminating party shall also send a resolution approving the termination to the Clearing member along with the notice.
- 12.4 The termination shall not have any effect on the transactions executed before the date of termination by the parties and the rights and obligations of the parties in respect of such transactions continue to subsist till the settlement of accounts in terms of this agreement and/or the terms and conditions as may be prescribed by the Exchange on receipt of notice of termination.
- 12.5 In the event of the death or insolvency of the Sub Broker or the Sub Broker is otherwise becoming incapable of receiving and paying for or delivering or transferring instruments which the Sub Broker has ordered to be bought or sold, the Broker may request the clearing member after the approval of the Exchange, to close out the transaction of the Sub Broker and the Sub Broker or his legal heirs or representatives shall be liable for any losses, costs, damages including statutory/regulatory charges, if any and be entitled to any surplus which may result there from.
- 12.6 In the event of cancellation of membership of the Broker, the Sub Broker shall be entitled to transfer its account to another Broker after settlement of its account with the Broker.
- 12.7 Notwithstanding the above, Exchange and Clearing Member reserves, the right to terminate this agreement without assigning reason, if it found that the Sub Broker committed any default or acted against the interest of the Exchange or is

in violation of the Bye Laws and Rules of the Exchange.

13. Applicable Law and Jurisdiction:

13.1 This agreement and all the trades, transactions and contracts executed under this Agreement are subject to the Rules and Bye Laws of the Exchange and the parties agree that the Courts in Kathmandu shall have the exclusive jurisdiction irrespective of the location of the parties.

13.2 For the purpose of jurisdiction, all the transactions entered or executed through the online trading system of the Exchange shall also be deemed to have been taken place at the city of Kathmandu and the place of contracting shall be at Kathmandu irrespective of the location at which the transaction is entered or executed.

14. Settlement of Disputes:

14.1 **Amicable Settlement:** The Broker and Sub Broker shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the Agreement or the breach, termination or invalidity thereof.

14.2 **Arbitration:** Any dispute, controversy or claim between the parties arising out of the Agreement, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with Arbitration Rules of the Mercantile Exchange Nepal Limited for the time being in force, which rules are deemed to be incorporated by reference to this clause.

The language of the Arbitration shall be in English and both the parties agree that arbitration shall be held at the premises of the Exchange or any other place prescribed by the Exchange at Kathmandu.

15. Language:

The parties may for their own purpose, translate this agreement in to any other language for the purpose of explanation of contents of various clauses and definitions of this agreement and where-in this agreement is used for resolving any disputes, it is mutually agreed by the parties that the English version of this agreement shall always prevail.

16. Amendments:

Any Amendments to the terms and conditions of this agreement require written approval from both parties and also the approval of the Exchange.

In WITNESS THEREOF, the parties hereto have executed this agreement on the date first above written.

FOR THE BROKER:

Signature: **(Stamp)**

Name:

For THE SUB BROKER:

Signature:..... **(Stamp)**

Name:.....

Witnesses:

- 1.
- 2.