

## **Draft Clearing Member – Trading Member Agreement**

This agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2001, between \_\_\_\_\_, a company/partnership firm/individual having its registered office/office/residence at \_\_\_\_\_ and having SEBI Registration No. \_\_\_\_\_ (hereinafter called the Clearing Member) which expression shall unless repugnant to the context or meaning thereof include its successors, legal representatives and permitted assigns) and \_\_\_\_\_, a company/partnership firm/individual having its registered office/office/residence at \_\_\_\_\_ and having SEBI Registration No. \_\_\_\_\_ (hereinafter called the Trading Member) which expression shall unless repugnant to the context or meaning thereof include its successors, legal representatives and permitted assigns).

### **Whereas**

1. \_\_\_\_\_ has been admitted as Trading Member of Futures & Options Segment of National Stock Exchange of India Limited [hereinafter referred to as “NSEIL”] and is required to clear and settle the deals executed by it /him, either by itself / himself, by becoming Clearing Member of the National Securities Clearing Corporation Limited [hereinafter referred as “NSCCL”] or have an arrangement with other Clearing Member through whom the deals could be cleared and settled, in accordance with the Rules, Bye Laws and Regulations of NSCCL (Futures & Options Segment).
2. \_\_\_\_\_ has been admitted as Clearing Member of the NSCCL and is authorised to carry on the activities of clearing and settlement of deals/trades (hereinafter referred to as deals) on behalf of Trading members of NSEIL who have executed deals/trades on the Futures & Options Segment of NSEIL.
3. The Trading Member desires to clear and settle the deals executed by it /him on the Trading System of NSEIL through the Clearing Member and accordingly approached the Clearing Member to undertake clearing & settlement of deals and to discharge its duties & obligations towards NSCCL on it / his behalf and the Clearing Member has also agreed to do the same on the terms and conditions contained herein.

**4. Now, therefore, this agreement witnesseth as follows:**

1. In consideration of Trading Member agreeing to pay certain fees and charges mentioned herein and abide by the terms and conditions contained in this agreement, Rules, Bye Laws and Regulations of NSCCL and NSEIL, the Clearing Member undertakes upon itself /himself, to the total exclusion of the Trading Member, the obligation of clearing and settlement of the deals of the Trading Member executed/done on the Futures & Options Segment of the NSEIL and to do all the acts, deeds and activities incidental to the clearing and settlement of the deals.

**2. Rights of the Clearing Member**

- (1) The Clearing Member shall be entitled to demand/receive from the Trading Member such deposits in such form as it/ he may specify from time to time.
- (2) Without prejudice to the generality of the above, the Trading Member shall place with the Clearing Member an amount of Rs.\_\_\_\_\_ as deposit which shall be maintained at any point of time. Subject to the provisions of Bye Laws, Rules and Regulations of NSCCL/NSEIL, in case of any shortfall in such deposit, the Clearing Member can initiate any action necessary to protect its /his interests in this regard against the Trading Member which may include restriction on further trading and close-out of open positions.
- (3) The Clearing Member shall be entitled to receive such fees, charges, brokerage or commission in respect of various services which it /he renders or agrees to render to the Trading Member from the Trading Member at such intervals as may be mutually agreed upon .
- (4) The Clearing Member shall specify, subject to the requirements prescribed by NSCCL from time to time, the exposure limits upto which open positions can be taken by the Trading Member. Such limits may be increased or reduced by the Clearing Member from time to time. The Clearing Member has the authority to initiate any action necessary to protect its /his interests in this regard which may, inter alia, include restriction on further trading and close-out of open positions of the Trading Member or withdrawal/disablement of trading facility of the Trading Member by making necessary requests to NSEIL/NSCCL for initiating such action.
- (5) Clearing Member shall be entitled to collect from Trading Member margin(s) of such amounts of such kinds, as he may deem necessary, which at any point of time shall not be less than the amount stipulated by NSCCL from time to time. The Clearing Member shall have authority to collect such additional margin(s) as the Clearing Member may deem necessary or as per the requirement of NSCCL.
- (6) The Clearing Member shall be entitled to receive from the Trading Member such amounts as may be required to be paid towards daily mark to market settlement, final settlement or such other settlement as per the requirement of NSCCL at such intervals as may be mutually agreed upon by them.

- (7) The Clearing Member shall be entitled to receive from the Trading Member a statement containing (i) the details in respect of margin amount, due and paid by the Trading Member to the Clearing Member on his own account, which the Clearing Member had paid to the Clearing Corporation for the purpose of meeting margin requirements and (ii) a list of client codes, names of the clients, client-wise margin amount, collected by the Trading Member from his clients and paid to the Clearing Member, which the Clearing Member had paid to the Clearing Corporation for the purpose of meeting margin requirements. Such statements to be furnished by the Trading Member to the Clearing Member periodically as may be specified by the Clearing Corporation providing the amounts paid by the Trading Member on it /his own account and on behalf of it / his clients shall be conclusive and binding on itself / himself, his Clearing Member and all his clients unless the contrary is proved to the satisfaction of the Clearing Corporation.
- (8) The Clearing Member shall have authority to close out/liquidate the open positions of the Trading Member in accordance with the NSCCL Regulations, in the case of non-payment of dues by the Trading Member towards margins, daily mark to market settlement, final settlement or such other settlement, fees, brokerage, commission and/or charges, by making necessary requests to NSEIL/NSCCL for initiating such action. In such case, any loss arising due to the closing out of open positions will be recovered from the Trading Member.
- (9) Without prejudice to clause 8 above, in the event of non-payment of dues by the Trading Member towards margins, daily mark to market settlement, final settlement or such other settlement, fees, charges, brokerage and/or commission, the Clearing Member will have the authority to withdraw or disable the trading facility of the Trading Member by intimation to the NSCCL/NSEIL.
- (10) The Clearing Member shall have the right to require the Trading Member to undertake registration of all his constituents and to comply with the requirements of 'Constituent Registration Form' and 'Risk Disclosure Document'. For this purpose, the Clearing Member shall be entitled to collect such information from the Trading Member about the Trading Member constituents as the Clearing Member may require including the information pertaining to constituents' positions.
- (11) The Clearing Member shall have the right to require the Trading Member to allot each constituent a distinct constituent code.
- (12) The Clearing Member shall have the right to inspect the books of accounts, records, documents and computerised data of the Trading Member for which Clearing Member shall have free access to the premises occupied by Trading Member or by any other person on his behalf.

### **3. Obligations of the Clearing Member**

- (1) The Clearing Member shall ensure that the Trading Member collects the margins from it / his constituents on such basis as may be prescribed by NSCCL from to time.

- (2) The money deposited by each Trading Member shall be kept in a separate account by the Clearing Member, distinct from his own account and shall provide the details to NSCCL.
- (3) The Clearing Member shall inform the Trading Member about the exposure limits (including any increase or reduction in such limits) upto which open positions can be taken by the Trading Member.
- (4) The Clearing Member shall be liable to pay to the Trading Member such amounts towards daily mark to market settlement, final settlement and such other settlement as per the requirements of NSCCL.
- (5) The Clearing Member shall be required to refund any excess margin money to the Trading Member as per mutual agreement.
- (6) The Clearing Member shall settle the accounts on a periodical basis as may be mutually agreed between the Clearing Member and the Trading Member which should be in accordance with the Byelaws, Rules & Regulations of NSCCL.
- (7) In the event of default by Clearing Member being declared a defaulter by NSCCL, the money of the clearing member's constituents, trading members own account and trading members' constituents shall remain safe and shall not be utilised to meet the Clearing Members liabilities. In such cases, the positions of the constituents and the trading members except the Trading Member because of whom the Clearing Member has defaulted shall be transferable to some other Clearing Member.
- (8) In the event of failure by the Clearing Member in the payment of any dues to the Clearing Corporation as well as Trading Member, the Trading Member shall, with the prior approval of the Clearing Corporation, have the right to transfer his own open positions as well as the open positions of his constituents immediately to another Clearing Member. The Clearing Member shall be obliged to pay to the Trading Member for any costs incurred for transfer of the open positions.
- (9) The Clearing Member shall inform NSCCL/NSEIL in case the Trading Member has defaulted in his payments.
- (10) In case the Clearing Member is declared a defaulter by NSCCL and the Trading Member transfers his open positions to some other Clearing Member, the Clearing Member shall be obliged to pay for any costs incurred for transfer of the open positions.
- (11) If due to the default of the Clearing Member, the open position of the Trading Member is closed-out and any loss is incurred due to such close-out, the Clearing Member shall reimburse such loss to the Trading Member except to the Trading Member because of whom the Clearing Member has defaulted.
- (12) The Clearing Member shall treat the information pertaining to the Trading Member and of the constituents of such Trading Member as confidential. The Clearing Member shall not disclose the same to other Trading Members or any

other person except to the governmental, statutory, regulatory or legal authorities on a request made by these authorities in writing.

- (13) The Clearing Member shall give a reasonable notice to the Trading Member before undertaking any inspection of books of accounts, records, documents of the Trading Member.
- (14) The Clearing Member shall be required to provide reports/statements of mark to market settlement, final settlement or such other settlement, margin amounts and open positions to the Trading Member.

#### **4. Rights of the Trading Member**

- (1) The Trading Member shall be entitled to have all the deals, entered into by him on the Futures & Options Segment of NSEIL, cleared and settled through the Clearing Member.
- (2) The Trading Member shall be entitled to receive intimation from the Clearing Member about the exposure limits (including any increase or reduction in such limits) upto which open positions can be taken by the Trading Member.
- (3) The Trading Member shall be entitled to receive reports/statements of mark to market settlement, final settlement or such other settlement, margin amounts and open positions from the Clearing Member.
- (4) The Trading Member shall be entitled to receive from the Clearing Member such amounts towards daily mark to market settlement, final settlement and such other settlement as may required to be paid by the Clearing Member as per the requirement of NSCCL.
- (5) In the event of the Clearing Member being declared a defaulter by NSCCL, the Trading Member, except the Trading Member because of whom the Clearing Member has defaulted, shall be entitled to transfer its / his open positions to some other Clearing Member and recover any costs incurred for such transfers from the Clearing Member.
- (6) In the event of failure by the Clearing Member in the payment of any dues to the Clearing Corporation as well as Trading Member, the Trading Member shall, with the prior approval of the Clearing Corporation, have the right to transfer his own open positions as well as the open positions of his constituents immediately to another Clearing Member. The Trading Member shall also have the right to recover from Clearing Member any costs incurred for transfer of the open positions.
- (7) In case the open position of the Trading Member is closed-out due to the default of the Clearing Member, the Trading Member, except the Trading Member because of whom the Clearing Member has defaulted, shall be entitled to recover such loss from the Clearing Member.

- (8) The Trading Member shall be entitled to receive intimation from the Clearing Member before the Clearing Member undertakes inspecting books of accounts, records, documents of the Trading Member.

#### **5. Obligations of the Trading Member**

- (1) The Trading Member shall pay to the Clearing Member such deposits in such form as the Clearing Member may specify from time to time.
- (2) Without prejudice to the generality of the above, the Trading Member shall place with the Clearing Member an amount of Rs.\_\_\_\_\_ as deposit which shall be maintained at any point of time. Subject to the provisions of Bye Laws, Rules and Regulations of the NSCCL/NSEIL, the Clearing Member can initiate any action necessary to protect it / his interest in this regard against the Trading Member which may include restriction on further trading and close-out of open positions.
- (3) The Trading Member shall pay to the Clearing Member such fees, charges, brokerage or commission in respect of various services which he renders or agrees to render to the trading member at such intervals as may be mutually agreed upon by them.
- (4) The Trading Member shall pay to the Clearing Member margins of such amounts as may be prescribed by NSCCL from time to time including additional margins, if any, or such higher amount of margins as may be mutually agreed with the Clearing Member. The margins shall be deposited by the Trading Member within such time and in such form as may be specified by the Clearing Member.
- (5) The Trading Member shall collect the margins from his constituents on a gross basis.
- (6) The Trading Member shall be liable to pay to the Clearing Member such amounts towards daily mark to market settlement, final settlement and such other settlement as per the requirement of NSCCL at such intervals as may be mutually agreed upon by them.
- (7) The Trading Member shall submit to the Clearing Member a statement containing (i) the details in respect of margin amount, due and paid by the Trading Member to the Clearing Member on his own account, which the Clearing Member had paid to the Clearing Corporation for the purpose of meeting margin requirements and (ii) a list of client codes, names of the clients, client-wise margin amount, collected by the Trading Member from his clients and paid to the Clearing Member, which the Clearing Member had paid to the Clearing Corporation for the purpose of meeting margin requirements. Such statements to be furnished by the Trading Member to the Clearing Member periodically as may be specified by the Clearing Corporation providing the amounts paid by the trading member on his own account and on behalf of his clients shall be conclusive and binding on himself, his Clearing Member and all his clients unless the contrary is proved to the satisfaction of the Clearing Corporation.

- (8) The accounts shall be settled on a periodical basis as may be mutually agreed between the Clearing Member and the Trading Member which should be in accordance with the Byelaws, Rules & Regulations of NSCCL.
- (9) The Trading Member shall be obliged to reimburse any loss caused due to the closing out / liquidation of his open positions by the Clearing Member, in the case of non-payment of dues by the Trading Member towards margins, daily mark to market settlement, final settlement or such other settlement, fees, charges, brokerage, commission, penalties and expenses.
- (10) The Trading Member shall do all such acts, deeds and activities which are necessary for the purpose of complying with the Rules, Bye Laws & Regulations of NSCCL by the Clearing Member.
- (11) The Trading Member shall issue a Constituent Registration Form and a Risk Disclosure Document before accepting or placing orders on behalf of the Constituents and provide such details to the Clearing Member.
- (12) The Trading Member shall allot each constituent a distinct constituent code.
- (13) The Trading Member shall provide such information about his constituents as the Clearing Member may require including the information pertaining to constituents' positions.
- (14) The Trading Member shall maintain separate bank accounts to distinguish the (i) moneys received from or on account of and moneys paid to or on account of each of his constituents; and (ii) the moneys received and paid on member's own account and provide such details to the Clearing Member. The moneys belonging to one constituent shall not be utilised for meeting the obligations of the Trading Member or some other constituent.
- (15) The Trading Member shall keep such books of accounts as will be necessary to distinguish the (i) moneys received from or on account of and moneys paid to or on account of each of his constituents; and (ii) the moneys received and paid on member's own account and provide such details to the Clearing Member.
- (16) The Trading Member hereby agrees and undertakes to do all things, which may be necessary in order to transfer his constituents positions to the clearing member or another Trading Member in the event of his default. The Trading Member shall be obliged to pay for any costs incurred for transfer of open positions. In such case, the constituent money shall remain safe and shall not be utilized to meet the Trading Member's liabilities. In the event of default due to failure of a specific constituent to fulfill his obligation, the money of other constituents shall remain safe and can not be utilized to meet the obligation of the defaulting constituent.
- (17) If due to the default of the Trading Member, the open position of the Trading Member is closed-out and any loss is incurred due to such close-out, the Trading Member shall reimburse such loss to the Clearing Member.

- (18) The Trading Member shall allow the Clearing Member to have free access to the premises occupied by him or by any other person on his behalf and also extend reasonable facilities for examining any books, records, documents and computerised data in his possession.

#### **6. Termination of the Agreement**

The agreement entered into between the Clearing Member and the Constituent shall stand terminated by mutual consent of the parties by giving at least one month written notice. Such cancellation or termination shall not have any effect on transaction executed before the date of termination and the parties shall enjoy the same rights and shall have same obligations in respect of such transactions.

#### **7. Notice**

Any communication between the Clearing Member and Trading Member shall be made in any one or more of the following ways:

- (a) delivering it by post
- (b) sending it by registered post
- (c) sending it under certificate of posting
- (d) sending it by express delivery post / courier services.
- (e) sending it by telegram
- (f) affixing it on the door at the last known business or residential address
- (g) advertising it at least once in any prominent daily newspaper
- (h) sending a message through the Trading System
- (i) an electronic mail or fax

#### **8. Force Majeure**

No liability shall result to either party for delay in performance or non-performance of the obligations under the agreement caused or contributed to by any event of force majeure. For purposes of this Clause, "Force Majeure" means and includes wars, insurrections, revolution, fires, floods, epidemic, quarantine restrictions, declared general strikes in relevant industries, act of God, act of governmental, statutory, regulatory or legal authority and such other acts or events beyond the control of the non-performing party.

#### **9. No assignment**

Neither party shall be entitled to assign or otherwise transfer this agreement or any benefits, rights, obligations or interests herein whether in whole or in part to any other agency without the prior written consent of the other.

#### **10. Supersession**

This agreement shall supersede all previous communications between the Clearing Member and Trading Member with respect to clearing and settlement of deals, both oral or written, and the provisions herein contained shall not be omitted, added to, modified or amended in any manner except in writing and signed by both the parties hereof.

#### **11. Non-waiver**

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent



breach and no rights, powers, remedies herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each right, power or remedy shall be cumulative.

**12. Arbitration**

- (1) All disputes, differences or questions arising out of or in relation to the agreement including the interpretation of the terms contained herein or in the Rules, Bye Laws and Regulations of NSCCL/NSEIL or in regard to the obligations, failure or breach thereof by any of the parties and/or of any matter whatsoever arising out of the Agreement, shall in the first instance be resolved mutually by the parties.
- (2) If the parties fail to resolve the same mutually, then the same shall be referred to the arbitration in accordance with the Rules, Bye Laws and Regulations of NSCCL.

**13. Jurisdiction**

This agreement shall be subject to the exclusive jurisdiction of the courts in Mumbai.

IN WITNESS THEREOF, the parties to agreement have caused these presents to be executed as of the day and year first above written.

Signed for and on behalf of

**CLEARING MEMBER** :  
By :  
Signature :  
Title :  
Witness :

Signed for an on behalf of

**TRADING MEMBER** :  
By :  
Signature :  
Title :  
Witness :