

To: All warehouse companies

CC: All members, London agents and other interested parties

Ref: 15/069 : W022

Date: 2 March 2015

Subject: **CHANGES TO THE WAREHOUSE AGREEMENT**

## Summary

- 1 This Notice confirms the amendments which the LME is making to the Warehouse Agreement, following the closing of the consultation with warehouse companies. It also provides further guidance to the market about certain provisions of the Warehouse Agreement.

## Background

- 2 Notice 14/319 : W149 sought the views of warehouse companies in relation to proposed amendments to the Warehouse Agreement. The proposed amendments followed a review of the Warehouse Agreement by external counsel.
- 3 The consultation closed on 9 February 2015. The LME received 17 written responses to the consultation (12 of which were warehouse companies), and also met with a number of respondents in person to discuss. The LME is grateful for all the responses to the consultation.
- 4 The LME has assiduously taken into account all the responses which it received. This notice sets out the LME's response to comments received from the warehouse companies, and confirms the changes which the LME is making to the Warehouse Agreement.
- 5 The LME is a "recognised investment exchange" ("RIE") recognised and supervised by the Financial Conduct Authority ("FCA") under the UK Financial Services and Markets Act 2000 as amended ("FSMA"). To remain recognised, an RIE must at all times ensure, and be able to demonstrate, that it continues to satisfy the requirements for RIEs under FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (the "Recognition Requirements"). Under the Recognition Requirements, the LME must, among other requirements, ensure that: (a) contracts admitted to trading on its markets are capable of being traded in a fair, orderly and efficient manner, (b) the arrangements for determining the settlement price of its contracts must be such that the contract price properly reflects the price of the underlying metal, (c) there are adequate settlement and delivery procedures for the metal traded on the exchange, (d) business conducted by means of its facilities affords proper protection to investors, and (e) appropriate measures are adopted to reduce the extent to which the LME's



facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence. The Warehouse Agreement plays an important role in the LME demonstrating and providing assurance to the FCA that the LME has arrangements in place to ensure that its warehousing arrangements operate in a way that enables the LME to continue to satisfy its regulatory obligations.

- 6 The LME is today by separate notice announcing (a) the results of a consultation on proposed changes to the policies and procedures governing the LME's physical delivery network, (b) a consultation on a proposed increase to the decay factor under the LME's Linked Load-In Load-Out Rule (LILLO), and (c) a discussion paper regarding possible future reforms to the LME's physical delivery network.

### **General Observations on Consultation Feedback**

- 7 Certain respondents noted that – coming in addition to the LME's introduction of LILLO and previous increases to the minimum load-out rates – this consultation (and the parallel consultation on the physical delivery network) represents too rapid an evolution of the LME's rule structures. Certain respondents argued that the LME should allow LILLO to take effect and monitor its impact before considering further changes. Certain respondents also suggested that the LME was over-extending its remit, questioned whether there was really a problem that needed to be addressed, and argued that the changes to the Warehouse Agreement were too one-sided. One respondent argued that the LME was catering too much for financial participants over physical participants. However, the LME cannot agree with these assertions. The persistence of queues at certain warehouses, and the issues for the market created by this, was considered and explained in detail in, amongst other things, the consultation undertaken in 2013 (the "2013 Consultation"). The intention to undertake a review of the Warehouse Agreement was a clear outcome (driven by market feedback) of the 2013 Consultation, as part of a 12-point plan of measures. The LME is under an obligation to consider the views of all market participants, and it frequently has to steer a path between multiple conflicting viewpoints. The changes proposed to the Warehouse Agreement have been carefully considered in conjunction with external counsel to ensure that they are necessary, reasonable and proportionate. Moreover, the changes to the Warehouse Agreement are essential in light of the LME's regulatory obligations, including to demonstrate and to provide assurance to the FCA that the LME has arrangements in place to ensure that its warehousing arrangements operate in a way that enables the LME to continue to satisfy its regulatory obligations.
- 8 Certain respondents to the consultation argued that, amongst other things, (a) the LME should review its load-out rates with a view to immediately increasing rates at warehouses with queues, (b) the queues should be reduced in no more than six months, (c) recipients of physical metal under LME contracts should have to wait no more than 20 days for delivery, (d) the LME should consider capping rents in queues, and (e) the LME should ensure that any proposed changes to its physical network do not result in increased rent and FOT rates charged by warehouses. The LME is pleased to note that these issues are considered in the discussion paper and



the consultation on the decay factor under LILLO, both of which are released to the market today.

## **Analysis of Detailed Comments from Respondents regarding Proposed Changes to the Warehouse Agreement**

- 9 Respondents' comments focussed on four key areas:
  - a. orderly functioning of the market & reporting of inducements (Clauses 9.3.1 and 9.3.2);
  - b. information about off-warrant stocks (Clause 7.3.3);
  - c. stock count (Clause 7.4); and
  - d. security measures (Clause 7.2.1).
- 10 The analysis below addresses each of these areas in turn. It also sets out the LME's response to comments made by respondents regarding other proposed changes to the Warehouse Agreement.

### *Proper functioning of the market & reporting of inducements*

- 11 A key area of focus for respondents was Clauses 9.3.1 and 9.3.2 of the Warehouse Agreement.
- 12 By way of background, the proposed amendments to Clause 9.3.1 clarified that warehouses must not prevent the orderly functioning of the LME market, including by doing anything which may directly or indirectly constrain the liquidity or elasticity of stocks of metal under warrant. This would include behaviour such as giving inducements, imposing unreasonable charges, or delaying the receipt or despatch of metal (save where unavoidable due to force majeure), where such behaviour may have a manipulative, distortive or disorderly effect on the market. The proposed amendments to Clause 9.3.2 introduced a new requirement to oblige warehouses to supply the LME periodically with information relating to inducements and charges.
- 13 The concern of warehouse companies centred on inducements (also referred to as incentives). A number of warehouse companies requested further guidance or clarity around the intention and purpose of Clause 9.3.1. A number of warehouse companies also expressed concern that, through a combination of Clauses 9.3.1 and 9.3.2, they could be prevented from paying incentives altogether. Two warehouse companies suggested that the proposed amendments could infringe European competition law and therefore be subject to challenge. One warehouse company doubted the effectiveness of the changes.

### *Clause 9.3.1*

- 14 Certain respondents argued that, amongst other things, the proposed amendments to Clause 9.3.1 (a) went further than is reasonable and proportionate, (b) granted the LME too broad powers, (c) gave too little guidance on what could constitute prohibited behaviour, (d) were likely to drive participants away from LME market, (e) were unenforceable and risked challenge in the courts, and (f) were unnecessary.



Certain respondents also queried how warehouse companies could know whether their behaviour could have a manipulative, distortive or disorderly effect on the market.

- 15 As a general point, the prevention of manipulative, distortive or disorderly behaviour is essential to the orderly operation of the LME's market and the fulfilment of the LME's regulatory obligations.
- 16 The LME has carefully considered the comments made by all respondents and, in the light of them, the LME proposes to amend the third sentence of Clause 9.3.1 as follows (new wording underlined), in order to give further clarity regarding prohibited behaviour:

*In consequence, Warehouses must not, without limitation, (i) give Inducements that in the ordinary course may reasonably be considered to be exceptional, (ii) impose charges for depositing or withdrawing metals that in the ordinary course may reasonably be considered to be unreasonable or (iii) delay unreasonably the receipt or despatch of metal, (save where unavoidable due to Force Majeure), where such behaviour may have, directly or indirectly, a manipulative, distortive or disorderly effect on the market.*

- 17 The LME agrees that some further guidance and clarity regarding incentives may be also be useful. To be absolutely clear, the LME is **not** attempting to prohibit the payment of incentives. The sole purpose of Clause 9.3.1 is to prevent the payment of *exceptional incentives which have a manipulative, distortive or disorderly effect on the market*. The purpose of Clause 9.3.2 is to enable the LME to monitor such incentives, so as to ensure that that the market operates in a smooth and orderly manner and the LME thereby also satisfies its regulatory obligations.
- 18 Anecdotally, the LME understands that for the purposes of this Notice incentives can be broadly divided into four separate categories:
- a. reasonable and proportionate incentives funded from anticipated rent & FOT rates in the ordinary course of business;
  - b. incentives which may create or prolong a queue;
  - c. incentives which are funded by a third party where the warehouse company is acting as a middleman or broker to arrange deals in metal related to an LME warrant; and
  - d. incentives whereby the warehouse company and a trading company agree to share any income or profits derived from dealing in LME contracts or the metal to which an LME contract relates.

- 19 The purpose of Clause 9.3.1 is not to prevent the payment of incentives of the type listed at paragraph 18(a) above. By way of example only, such incentive payments might include rebates or discounts relating to rent or FOT, freight discounts or rebates, or other payments or discounts, where such payments are reasonable, proportionate and justifiable in the ordinary course. The LME understands that such incentive payments are generally made and that they are a basis upon which warehouse companies compete. In general terms, only if such incentive payments



were significantly out of line with what would ordinarily be expected would the LME be concerned to establish whether such incentives were exceptional and could have a manipulative, distortive or disorderly effect on the LME's market. It would seem unlikely that incentive payments that were significantly out of line could be funded from anticipated rent and FOT rates in the ordinary course of business.

- 20 However, the LME would have serious concerns with incentives of the type in paragraph 18(b) above. Incentives which have the effect of creating or prolonging a queue can have a significant negative effect on the orderly operation of the market. They can also have a material negative effect on effective price convergence between the LME price and physical spot market price. Clause 9.3.5 of the revised Warehouse Agreement prevents such behaviour, and a similar provision is contained in the current version of the Warehouse Agreement as Clause 9.3.4.
- 21 In relation to incentive payments of the type in paragraph 18(c) and 18(d) above, the LME understands that many metal owners enter into financing arrangements with banks or trading houses, which may include participation by the metal owner in the price upside during the period over which the metal is financed. The LME also understands that a warehouse will sometimes effect an introduction between a metal owner and a finance provider. The LME also understands that on occasion a finance provider may control, or have a relationship with, a particular warehouse operator, and may make the use of storage provided by such warehouse operator a condition of the financing transaction.
- 22 For the avoidance of doubt, the LME thinks that, on their face, such arrangements are in the ordinary course of business dealings and ought not therefore to have a manipulative, distortive or disorderly effect on the market. However, the LME thinks it is inappropriate for a warehouse company to act as a conduit for the remittance of trading profits (in whatever form) by the trading house (regardless of whether or not it is in the same group as the warehouse operator) to a metal owner. The proper course would be for such payment to be structured directly between the trading house and the metal owner. In this regard, it should be noted that Clause 1.5.2 of the Warehouse Agreement prohibits a warehouse company from dealing directly or indirectly in LME contracts.
- 23 The LME notes the concern of one respondent that the LME ensure that there is parity of treatment between warehouse operators that do not belong to a group that comprises trading companies and those that do. The LME thinks that the rules as formulated do not discriminate: all warehouse operators (irrespective of whether or not they are in the same group as a trading company) are free to introduce metal owners to providers of finance or traders, should that be an element of their metal sourcing strategy. The LME notes that warehouse companies and trading companies which belong to the same group are obliged to have in place barriers to prevent the transmission of confidential information between the two entities; any breach of such information barriers will be strictly enforced.
- 24 One respondent argued that Clause 9.3.1 granted the LME inappropriate powers to intervene in the physical market, particularly in light of the fact that the LME is a private entity with conflicts of interest and a duty to shareholders. However, for the reasons set out above, the LME believes that Clause 9.3.1 is appropriate and



proportionate. The LME notes that it has strict procedures to manage conflicts of interest (and indeed, it is required to have such procedures in place pursuant to the Recognition Requirements).

- 25 The last sentence of Clause 9.3.1 states that “in the event that the Exchange considers that the conduct of a Warehouse indicates circumstances which may constitute Market Abuse, it is required to report this to the Financial Conduct Authority”. One respondent asked whether the LME would report all information to the FCA as a matter of course. One respondent suggested that the LME should be able to report incidents of market abuse to other regulators. In accordance with its regulatory obligations, the LME will continuously monitor for market abuse, and will report any suspected incidents to the FCA. As the LME’s primary regulator, the FCA is the appropriate body to whom to report suspicions of market abuse, but the LME notes that the FCA has arrangements in place for sharing suspected incidents of market abuse with overseas regulators as necessary.
- 26 The LME hopes that the proposed changes to Clause 9.3.1 and the above guidance are helpful in clarifying the intention and purpose of the Clause.

#### *Clause 9.3.2*

- 27 The periodic reporting of incentives to the LME pursuant to Clause 9.3.2 will assist the LME to monitor inducements and charges to ensure that they are not distortive and do not constrain the liquidity and elasticity of stocks under warrant in contravention of Clause 9.3.1. The LME believes that the periodic reporting of inducements is important in order to ensure the continued fulfilment of its regulatory obligations.
- 28 A number of warehouse companies expressed concern in relation to, (a) a lack of clarity about which types of inducements are prohibited and which are permitted, and (b) the confidentiality of data relating to warehouse companies’ clients. Certain warehouse companies also expressed concern that the consent of counterparties may be required in order to report inducements, and that it may prevent customers from using the market or drive metal off-warrant.
- 29 In relation to (a) above, it is hoped that the further guidance and explanation set out in relation to Clause 9.3.1 above will assuage warehouse companies’ concerns. In relation to (b), the LME believes that the reporting of inducements is required in order that the LME has access to information which will assist it in ensuring that inducements are not distorting the flow of metal and the orderly functioning of the market. Access to such information is therefore important to ensure the continued fulfilment of the LME’s regulatory obligations. The LME notes that, whilst a number of warehouses claimed that their customers would be opposed to the changes, the metal owners who responded to the consultation were generally supportive. Nevertheless, the LME has taken account of the concerns of warehouse companies, and proposes the following clarifications / amendments to the process set out in Notice 14/319:
- a. Warehouse companies will be required to report inducements to the LME on an anonymised basis. So, for example, the report will show that the warehouse company paid an inducement with a value of X on X date to client



A, and an inducement with a value of X on X date to client B etc. Only where specifically requested by the LME (such a request would come from the LME's Physical Operations, Legal or Compliance departments only) will the warehouse company be obliged to reveal to the LME the identity of the client. It is worth noting that all information supplied by warehouse companies pursuant to Clause 9.3.2 will remain confidential (subject to certain restrictions - see Clause 9.3.6);

- b. The reporting of inducements will begin on 1 January 2016. This will give sufficient time to agree the precise format with the Warehousing Committee, and allow warehouse companies to make appropriate preparations for reporting to commence, including obtaining the consent of counterparties where applicable; and
- c. From 1 January 2016, warehouse companies will be required to report all inducements, irrespective of whether such inducements were entered into before or after such date. From this date, failure to report inducements periodically as required would constitute a breach of the Warehouse Agreement, in respect of which the LME reserves the right to take disciplinary action under the Disciplinary Procedures (which form part of the Warehouse Agreement).

30 The above proposals will be specified on the LME's website following discussions with the Warehousing Committee, as set out in Clause 9.3.2 of the Warehouse Agreement. No amendments are necessary to the Warehouse Agreement in order to give effect to the above.

31 Warehouse companies are strongly encouraged to enter into dialogue with the LME regarding the process for reporting incentives, and also to seek clarification from the LME regarding any area of uncertainty (whether in relation to Clause 9.3.2 or indeed any other matter).

32 The LME firmly believes that the provisions of Clause 9.3.1 and 9.3.2 are reasonable, proportionate and necessary to ensure the continued orderly functioning of the market and the LME's compliance with its regulatory obligations. The LME also believes that they are fully compliant with all relevant legal requirements, including competition law. Further, the changes are necessary to demonstrate and to provide assurance to the FCA that LME has arrangements in place to ensure that its warehousing arrangements operate in a way that enables LME to continue to satisfy its regulatory obligations<sup>1</sup>.

#### Information about off-Warrant stocks

33 Clause 7.3.3 provided that the LME can require warehouses to provide it with information concerning metal held both on warrant and off-warrant. The LME viewed this as purely a clarificatory change, but a number of warehouse companies expressed concern in relation to it. Taking into account the concerns of warehouse companies, and in order to preserve the confidentiality of information relating to off-

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<sup>1</sup> Note – the FCA will have concurrent competition powers from 1 April 2015.



warrant stocks, the LME has clarified that it may only request information relating to off-warrant stocks in the context of an investigation pursuant to the Disciplinary Procedures. Such information may be required in relation to, for example, an investigation into alleged market manipulation or abuse. Clause 7.3.3 has been amended accordingly.

- 34 One respondent suggested that the use of the word “privileged” in Clause 7.3.3 should be defined. The LME considers that this word is well-understood and should be given its ordinary meaning. It is therefore unnecessary to define it.

### Stock Count

- 35 Proposed Clause 7.4 introduced a requirement for warehouses to, at least annually, appoint an independent third party auditor to carry out a 100% stock count of the metal which the warehouse holds on warrant.
- 36 A number of warehouse companies objected to this in responses to the consultation, primarily on the basis that (a) it would increase costs, (b) the LME carrying out the stock count would ensure more consistency and (c) the stock levy charged by the LME should cover the costs of a count operated by the LME.
- 37 The LME acknowledges that Clause 7.4 will introduce an additional obligation on warehouse companies which will have cost implications. However, the LME is of the view that warehouse companies may in many circumstances already be appointing third parties to carry out stock counts, and the potential costs are outweighed by the benefits to warehouse companies themselves and to the market by introducing an additional level of assurance that all warrants are backed by physical metal. Currently, the LME undertakes a 10% stock count as part of its own audit programme. This would not be necessary in the event of a third party auditor stock count, which would allow the LME to focus its resources on random checks of warrants. Requiring all warehouse companies to undertake a full stock count, rather than the 10% count undertaken by the LME, introduces an additional level of certainty.
- 38 The stock levy charged by the LME broadly covers the costs of administering the physical operations department within the LME, which manages the listing and delisting of delivery points and warehouses, undertakes warehouse audits etc. It is not intended specifically to cover the cost of a stock count. As set out above, the LME considers that it is appropriate that warehouse companies bear the cost of the stock count, and that it is likely that warehouse companies are already undertaking a stock count in a number of cases, so the incremental costs should not be significant.
- 39 One respondent argued that the Exchange should not be too prescriptive regarding the requirements of the stock count. Two respondents argued that the Exchange should provide more guidance regarding the approval of the independent auditor, or maintain a list of approved auditors. The LME does not consider that it is necessary to prescribe a list of approved auditors: it is preferable to maintain a degree of flexibility for warehouse companies. However, by way of guidance, the LME would expect, at a minimum, for the following criteria to be met when selecting an independent auditor:





- a. The auditor should be a reputable and established firm;
- b. The relative size of the auditor and the warehouse company will be important. In particular, the auditor should be of sufficient size and independence that the fees that will be earned from the audit work, and from any other work which the auditor performs for the warehouse company (including, if relevant, assurance pursuant to any information barrier requirements specified by the LME from time to time), will be immaterial to the auditor's overall business; and
- c. The auditor should have appropriate and relevant prior experience.

40 The LME does not propose any amendments to Clause 7.4. However, the LME hopes that the above guidance is helpful.

### Security Measures

- 41 Proposed Clause 7.2.1 introduced a provision allowing the LME to require enhancements to the security measures maintained by a warehouse. In certain circumstances it may be necessary for the LME to require a warehouse to put in place additional security measures on a case by case basis, where, for example but not limited to that example, the risk of theft is particularly high.
- 42 Certain warehouses objected to this, primarily on the basis that the LME should clarify in advance what measures it proposes, and that security measures should apply to all warehouse companies equally. One respondent suggested the implementation of a separate security standard, and argued that increased security measures could result in increases in rent and FOT rates.
- 43 However, the LME notes that it would only use the powers proposed under Clause 7.2.1 where strictly necessary. The use of such powers would be reasonable and proportionate, taking into account all relevant circumstances. However, the Clause is intended to allow the LME to respond to particular requirements in particular areas of the world. It is not possible therefore to specify the additional security measures required that would be equally applicable to all warehouses, or to implement a universal security standard. Given that the power to require additional security measures would be used proportionately and sparingly, the LME does not believe that the incremental costs would be material. In light of the above, the LME does not propose any amendments to Clause 7.2.1.

### *Other*

- 44 Clause 2.1.2 proposed that metal delivered for placing on warrant must conform to the relevant weights for those metals as outlined in the Special Contract Rules for Metals. One respondent argued that this change would be burdensome and result in rent & FOT rate increases. The LME does not agree with this assertion: the proposed amendment was clarificatory in nature, and the LME expects that warehouse companies are already checking that metal placed on warrant conformed to the relevant weights.



- 45 Clause 3.3.1 proposed that a warehouse or London Agent must notify the Exchange about lost, stolen, destroyed or damaged metal to which a warrant relates. One respondent suggested that the obligation to inform the LME should relate only to warrants issued by the warehouse company - i.e. the warehouse company's own warrants. However, the LME believes that it is reasonable to expect the warehouse or London Agent to notify the LME if it becomes aware of any warrant which has been lost, stolen etc. In reality, in relation to warehouses, such warrants are likely to be those in the custody or control of the warehouse. However, in relation to London Agents, the LME notes that many London Agents act for more than one warehouse company.
- 46 Clause 3.3.4 proposed that warehouse companies must keep the Exchange updated at all times and also take such steps as are necessary to protect the owner of the metal in question and assist with the orderly operation of the market. One respondent suggested removing the reference to the orderly operation of market. However, the LME believes the retention of the reference to the orderly operation of the market is important in light of the LME's regulatory obligations, and the fact that warehouse companies play an important role in ensuring the orderly operation of the market.
- 47 Three respondents commented that Clause 6.3.3 was too broad in scope and should be clarified so that the LME may publish information regarding stocks and queues relating to LME metal only. This change has been made.
- 48 Two respondents commented on Clause 9.3.5. One warehouse company objected to the removal of intent; the other asked for clearer guidance on the LME's powers in relation to Clause 9.3.5. The LME believes that it is appropriate and proportionate for it to have powers to impose additional load out obligations on a warehouse company where such company has created or caused a queue. By way of clarification, for the avoidance of any doubt, it should be noted that the right for the LME to impose additional load out obligations on a warehouse company is *in addition to* the powers the LME has under the disciplinary procedures. Any imposition of load out obligations on a warehouse company pursuant to Clause 9.3.5 would not be dependent on disciplinary proceedings against a warehouse company having been commenced or concluded: the two processes are entirely separate.
- 49 One respondent suggested that the definition "Relevant Law and Regulation" should be replaced by a definition "Applicable Law", and objected to the extension of FCA principles to warehouses. The LME's view is that the term "Relevant Law and Regulation" is appropriate and clearly defined. Although FCA principles are not directly applicable to warehouses, it is appropriate and proportionate, given the importance of warehouses to the orderly operation of the LME's market, that warehouses take account of FCA principles.
- 50 One respondent argued that the term "High Standards of Market Conduct" in Clause 11.3 is vague and should be clarified. The LME views this term as generally well-understood but also gives sufficient flexibility, and does not propose any changes or further clarification.



## **Final Version of the Warehouse Agreement**

51 The final version of the Warehouse Agreement is attached at Appendix A. A version showing the changes as against the version proposed in Notice 14/319 : W149 is attached as Appendix B.

52 The changes shall take effect on 1 June 2015.

**Tom Hine**  
**General Counsel & Head of Enforcement**

Cc: Board Directors  
Warehousing Committee  
Special Committee  
Physical Markets Committee  
User Committee  
All metals committees

## **List of Appendices**

APPENDIX A      Clean version of the Warehouse Agreement

APPENDIX B      Mark-up of the Warehouse Agreement showing changes as against  
version proposed in Notice 14/319 : W149

## **Terms and conditions applicable to all LME listed warehouse companies**

### **1 Conditions for and entitlements of listing**

#### **1.1 Application**

To become a Warehouse, a warehouse company shall:

- 1.1.1 execute the Agreement of which these terms and conditions form a part;
- 1.1.2 duly complete the forms prescribed by the Exchange attached as Schedule A and B hereto and pay any initial listing fees prescribed by the Exchange; and
- 1.1.3 comply with regulation 2.2 of the LMEsword Regulations.

#### **1.2 Capital**

- 1.2.1 Each Warehouse must be adequately capitalised at all times at levels determined from time to time by the Exchange and notified to all Warehouses by way of periodical circulars.
- 1.2.2 The Exchange shall assess whether a Warehouse's available capital is adequate by using the most recent audited accounts of the Warehouse and applying generally accepted accounting principles to determine the extent to which net assets exceed net liabilities. The Exchange shall, from time to time, publish the basis on which it determines capital adequacy for Warehouses. In assessing whether a Warehouse's available capital is adequate, the Exchange shall, at its discretion, disregard what are, in its view, immaterial or temporary failures to meet the capital adequacy requirements.
- 1.2.3 In the event that the Exchange is not satisfied with the financial status or the insurance arrangements of any Warehouse, it may require a performance bond issued by a bank or insurance company as it considers suitable for such sums and on such terms and conditions as it may determine. However, where the deficiencies in the financial status or the insurance arrangements of any Warehouse are, in the view of the Exchange, not likely materially to prejudice the Warehouse's ability to perform its obligations as an LME listed warehouse company and are capable of remedy, the Exchange may allow 7 Business Days for the Warehouse to rectify its financial status and/or insurance arrangements before requiring such a performance bond.

#### **1.3 London Agent**

- 1.3.1 Each Warehouse must appoint and maintain at all times an agent in or, in the opinion of the Exchange, sufficiently proximate to the City of London (a "London Agent") to act on its behalf, to carry out certain of its obligations under this Agreement and the LMEsword Regulations, and, if the Warehouse is not incorporated in England and Wales, also to act as its agent for service of process.
- 1.3.2 A London Agent may be a person independent from the Warehouse or be a branch or affiliated company of the Warehouse.
- 1.3.3 The Warehouse must obtain the prior approval of the Exchange to the appointment, or any change in the appointment, of its London Agent from time to time.

1.3.4 Each Warehouse shall be responsible for all of the acts and omissions of its London Agent undertaken in its capacity as such. The Exchange and other persons shall be entitled to assume a Warehouse's London Agent acts with the full authority of the Warehouse until such time as the Exchange has received written notice from the Warehouse that the London Agent has ceased to act as such. This term shall not affect the rights and obligations of the Warehouse and its London Agent inter se.

#### **1.4 LMEsword**

Each Warehouse must comply, and procure that its London Agent complies, with the LMEsword Regulations and Operating Procedures, which shall insofar as they relate to the Warehouse or its London Agent be deemed to be incorporated into this Agreement.

#### **1.5 Restrictions**

1.5.1 An Authorised Warehouse may be used by only one Warehouse and to the extent that it is used for the storage of any metals which are permitted to be the subject of a Contract, may not also be used to store such metals which are deliverable on any other exchanges.

1.5.2 A Warehouse may not deal directly or indirectly in Contracts, and shall observe such other requirements contained in Relevant Law and Regulation, and any Exchange notice relating to the separation of Warehouses from Members and the maintenance of confidentiality in respect of price sensitive and customer confidential information.

#### **1.6 Description of Warehouse**

Each Warehouse may, following its approval by the Exchange as a listed Warehouse, describe itself as an "LME listed warehouse company" and its Authorised Warehouse as "LME listed warehouses", for as long as it retains its listed status as provided for herein.

#### **1.7 Availability of Rules**

Warehouses shall be sent a copy of the Rules and LMEsword Regulations and Operating Procedures as amended from time to time. Warehouses shall ensure that their London Agent obtains and keeps up to date their own copies of such documents direct from the Exchange and is also provided with a copy of this Agreement. Where the Warehouse operates in more than one location it shall ensure that each location is kept up to date with changes to the Rules, the LMEsword Regulations and Operating Procedures and this Agreement.

## **2 Issue of Warrants**

### **2.1 Metal delivery**

2.1.1 When receiving metal for placing on Warrant, a Warehouse need not undertake an assay of the metal itself but must carefully undertake a visual inspection of the metal and all supporting documentation and, if the metal or the supporting documentation is in any way patently sub-standard or anomalous the Warehouse must not issue a Warrant until any such shortcoming has been remedied. Without limitation to the foregoing, metal will be deemed to be patently sub-standard if:

- 2.1.1.1 there is broken or visibly corroded strapping which could make the bundle of metal unsafe to handle;
- 2.1.1.2 there is visible contamination of metal;
- 2.1.1.3 there is inconsistent branding of metal (for instance, where all of the metal or some of the metal is patently not an LME brand or where different LME brands have been visibly mixed within a bundle); and
- 2.1.1.4 the supporting documentation and paperwork does not accord with the Rules.

For the avoidance of doubt, a Warehouse is not required to break bundles or inspect metal ingots hidden from view within bundles, unless there are visible signs indicating or suggesting a defect in quality within a bundle or the Warehouse is in any way aware that there is a defect within a bundle not apparent from a visual inspection.

- 2.1.2 All metal delivered for placing on Warrant must be weighed by Warehouse personnel on equipment which is regularly tested for accuracy in accordance with Clause 7.4.3, and must conform to the relevant weights for those metals as outlined in the Special Contract Rules for Metals.
- 2.1.3 Subject to Clauses 2.1.1 and 2.1.2, no Warrant may be issued if the metal or supporting documentation does not conform to the relevant Special Contract Rules for Metals.
- 2.1.4 A Warrant may only be issued by the Warehouse or its London Agent when the metal in question is stored in an Authorised Warehouse of the Warehouse.

## **2.2 Form of Warrant**

- 2.2.1 From the date prescribed by the Exchange, all Warrants must be issued in accordance with the LMEsword Regulations.
- 2.2.2 Each Warehouse shall ensure that the form of the Warrant is such that the requirements set out in the Special Contract Rules for Metals, this Clause 2.2 and Clause 2.3 are satisfied.
- 2.2.3 Each Warrant must have a clearly identifiable space for endorsements to allow for transfers of ownership to a named transferee and also have a clearly identifiable space for endorsement of rents paid to be marked on the Warrant.
- 2.2.4 Each Warrant must show the applicable rent rate and the date of commencement of the obligation to pay rent which must be the same as the date of issue of the Warrant.
- 2.2.5 Each Warrant must include a term stating that responsibility for insuring the metal subject to the Warrant is that of the holder of the Warrant.
- 2.2.6 Each Warrant should be numbered consecutively wherever practicable.
- 2.2.7 No Warrant may be issued by a Warehouse until the printed format which the Warehouse proposes to adopt has been delivered to and approved by the Exchange. Any proposed change to such format must similarly be approved by the Exchange prior to its use.

- 2.2.8 Each Warrant must be signed by an authorised signatory of the Warehouse or its London Agent.
- 2.2.9 Each Warrant shall state that the Warehouse's standard terms of business are available on request or are printed on the reverse side of the Warrant.

### **2.3 Legal status of Warrants**

- 2.3.1 Each Warrant must be transferable by delivery or by delivery and endorsement by the transferor and without requiring registration, attornment or notice to the Warehouse. A transferee of a Warrant shall be treated by the Warehouse as having the benefit of the contract of storage of the metal to which the Warrant relates and shall be bound by the Warehouse's standard terms of business insofar as they do not conflict with the Rules, the LMEsword Regulations or the Operating Procedures.
- 2.3.2 Each Warrant must be a document of title (or local equivalent concept) established in accordance with the law of the country in which the Warehouse is situated, or in accordance with such other law recognised as applicable to the Warrant by such law.
- 2.3.3 It must be a term of issue of each Warrant that the metal which it represents shall only be delivered up to the holder by the Warehouse on the Warrant being presented to the Warehouse or its London Agent or, in the event of a Warrant being lost, stolen, damaged or destroyed, against the provision of an indemnity substantially in the form prescribed by the Exchange from time to time and attached as the Appendix to Schedule A.
- 2.3.4 Subject only to Clause 2.3.5, a Warrant must be unlimited as to duration and remain valid until presented for cancellation to the Warehouse or its London Agent or otherwise cancelled in accordance with this Agreement and the LMEsword Regulations.
- 2.3.5 A Warehouse may have a right of retention in respect of metal under Warrant for unpaid rent in respect of the metal and other charges owed by the current holder of the Warrant but not otherwise and, in particular, without limitation, no person may have any right of retention in respect of charges owed by any other person.
- 2.3.6 Nothing in Clause 2.3.5 shall require the Warehouse to oppose any legally enforceable court order in respect of metal which is binding on the Warehouse and which prevents it from delivering stored metal to the Warrant holder, provided that the Warehouse immediately notifies the Exchange of the existence of such a court order as soon as it becomes aware of the same.

### **2.4 Warehouse's liability to Warrant holders**

The Warehouse is required to give undertakings to each Warrant holder from time to time in respect of the metal under relevant Warrant that:

- 2.4.1 the Warehouse has complied with all Relevant Law and Regulation (including, without limitation, Clause 2.1 of this Agreement) in receiving that metal and placing it on Warrant;

2.4.2 the Warehouse will comply with the requirements of this Agreement concerning the storage of metal; and

2.4.3 the Warehouse is not aware of any latent defects in the metal.

It is a requirement of this Agreement that the undertakings referred to in Clauses 2.4.1 to 2.4.3 above are incorporated without delay into the Warehouse's written contract of storage with each Warrant holder. Pending such incorporation, the relevant undertakings shall be deemed to be incorporated into each such contract of storage immediately upon such contract arising.

### **3 Replacement of Warrants**

#### **3.1 Entitlement to replace**

A Warehouse shall issue a replacement Warrant in accordance with this Agreement and the LMEsword Regulations and Operating Procedures in the following circumstances:

3.1.1 where a Warrant has been lost, stolen, destroyed, or damaged, on completion of its normal procedures and against delivery to it of an indemnity in the form prescribed by the Exchange from time to time and attached as the Appendix to Schedule A;

3.1.2 where any details on a Warrant which are capable of amendment in accordance with the LMEsword Regulations and Operating Procedures ("Amendable Details") require amendment, following the amendment of the electronic details of the Warrant in LMEsword in accordance with the LMEsword Regulations and against delivery to it of the original Warrant; and

3.1.3 where the space on a Warrant for endorsement of rent paid up and/or for transfers is full and against delivery to it of the original Warrant.

#### **3.2 Entitlement to move metal**

A Warehouse may move metal under Warrant between its own Authorised Warehouses within the same listed location at its own risk and expense subject to complying with Clause 3.3.

#### **3.3 Notification of the Exchange**

3.3.1 On the day that a Warehouse or its London Agent is notified or becomes aware of any circumstance which might reasonably cause suspicion that (a) a Warrant, or any underlying metal to which a Warrant relates, may have been lost, stolen, destroyed or damaged; or (b) the Amendable Details on a Warrant may require amendment; or (c) a Warrant may require cancellation in accordance with Clause 4.3, it shall forthwith:

(i) notify the Exchange by fax or email (or by such other means as the Exchange may prescribe from time to time) to the Exchange's Physical Operations Department; and

(ii) promptly investigate the circumstance.

3.3.2 The Warehouse will regularly update the Exchange on the investigation and report all findings to the Exchange.



- 3.3.3** On the day that a Warehouse or its London Agent is notified or becomes aware that (a) a Warrant, or any underlying metal to which a Warrant relates, has been lost, stolen, destroyed or damaged; or (b) the Amendable Details on a Warrant require amendment; or (c) a Warrant requires cancellation in accordance with Clause 4.3, it shall forthwith notify the Exchange by fax or email (or by such other means as the Exchange may prescribe from time to time) to the Exchange's Physical Operations Department containing full details thereof, including the following:
- 3.3.2.1** the date and details of loss or damage to or other matter affecting the metal or Warrant;
  - 3.3.2.2** the Warrant number(s);
  - 3.3.2.3** date of the Warrant;
  - 3.3.2.4** brand and shape of metal; and
  - 3.3.2.5** the quantity of metal (if any) missing, damaged, or otherwise affected.
- 3.3.4** The Warehouse shall keep the Exchange updated at all times and in addition take all such other steps, such as (without limitation) immediately notifying and cooperating with police authorities and insurers, as is necessary to protect the owner of the metal in question and assist with the orderly operation of the market.
- 3.3.5** Where a Warrant that requires replacement or cancellation is not lodged with the Depository, the Warehouse shall take all reasonable steps to identify the holder of the Warrant and notify it of the event and require that the Warrant be delivered up for replacement.

#### **3.4 Liability for replacement Warrants**

- 3.4.1** Where a Warrant is being replaced due to a change to its Amendable Details, the Warehouse shall indemnify the person surrendering the Warrant in respect of any reasonable loss or damage they may suffer as a result of the Warehouse not properly cancelling and retaining the original Warrant in accordance with this Agreement.
- 3.4.2** The Warehouse shall be responsible for the cost of replacing Warrants other than in the case of Warrants which have been lost, stolen, destroyed or damaged where such costs shall be the responsibility of the holder.
- 3.4.3** The Warehouse shall take all reasonable steps to ensure that no duplicate Warrants issued by it are in circulation and, in particular, shall make a notification to the Exchange pursuant to Clause 3.3.1 above.

### **4 Cancellation of Warrants**

#### **4.1 Process on replacement**

- 4.1.1** Where a Warrant is delivered to a Warehouse for replacement, the original Warrant must first be made properly null and void by being stamped "cancelled and replaced".

4.1.2 If the original of the Warrant has been lost, stolen or destroyed, a copy of the original must be duly marked and retained in lieu of the original.

#### **4.2 Process on cancellation and metal take-up**

Where a Warrant is delivered to a Warehouse for cancellation and metal take-up, the original must be made properly null and void by being stamped “cancelled”. The Warehouse is required to expedite load-out from warehouses at the minimum rates published from time to time by the Exchange in accordance with Clause 9.11.1. For the avoidance of doubt, any change to the minimum rates would constitute a material increase in the obligations of a Warehouse which would require consultation and notification in accordance with Clause 9.11.4. The Warehouse shall prioritise all requests for cancellation strictly in the order in which they are received unless the Warrant holders seeking cancellation agree otherwise. The Warehouse shall use all reasonable endeavours to allocate to each Warrant holder seeking cancellation the delivery time that he has requested, unless that requested delivery time has already been allocated to another Warrant holder, in which case the Warehouse shall offer one or more alternative delivery times as close to the time originally requested as possible and where reasonably possible shall allocate the delivery time which is acceptable to the Warrant holder. The Warehouse must prepare and maintain such documentation as is sufficient to evidence compliance with the aforesaid requirement (e.g. a schedule detailing (at least) the dates and times of receipt of cancellation requests and the allocated dates and times of delivery) and shall provide a copy of the same to the Exchange if so requested. The Warehouse will, at all times, be responsible for ensuring that deliveries of metal are effected in accordance with the above requirements except where the Warrant holder taking delivery of metal provides its own transport and fails, due to no fault of the Warehouse, to keep to the agreed delivery schedule, in which case the Warehouse and that Warrant holder shall agree between them an alternative time for delivery.

#### **4.3 Warrants requiring cancellation**

Where a Warehouse or its London Agent is notified or becomes aware that any details on a Warrant which are not Amendable Details are incorrect, it shall:

4.3.1 notify the Exchange thereof in accordance with Clause 3.3;

4.3.2 take all reasonable steps to identify the holder of the Warrant and notify it of the event and require the Warrant to be delivered up for cancellation; and

4.3.3 on its being delivered to the Warehouse or London Agent, cancel the Warrant in accordance with the LMEsword Regulations and Operating Procedures and issue a new Warrant in respect of the relevant metal.

#### **4.4 Storage**

All cancelled Warrants (and a copy of the original in the event that it has been lost, stolen or destroyed) must be securely retained and be made available for inspection by the Exchange for five years or (if later) until any replacement Warrant is surrendered for cancellation and metal take-up.

## **5 Rent and Free On Truck ("FOT") charges**

### **5.1 Calculation**

- 5.1.1 Calculations of rent due on Warrants must be on round tonnages and not actual weights.
- 5.1.2 Rent on metal under Warrant must accrue on a daily basis and rent accrued must be payable annually as at 31 March each year, or at such other times and for such other periods as the Exchange may prescribe, or upon cancellation of a Warrant whichever is the sooner.
- 5.1.3 Rent must be quoted in the Major Currency of the Contract to which the Warrant relates is traded.
- 5.1.4 Each Warehouse must fix its maximum rent rates and FOT charges annually in respect of each 12 month period commencing 1 April by notification to the Exchange not later than 1 December in the preceding year. At any time within 10 Business Days of receiving such notification, the Exchange may, at its discretion, require the Warehouse to provide within 10 Business Days, a comprehensive, written explanation of the economic circumstances which, in the view of the Warehouse, necessitate the change in its maximum rent rates and/or FOT charges. The Exchange shall publish the Warehouse's maximum rent rates and FOT charges by 31 December provided that no change in maximum rent rates or FOT charges shall become effective until the following 1 April.

### **5.2 Payment**

Rent must be paid for metal under Warrant in stock at 31 March (or such other dates as the Exchange may prescribe) in each year by direct settlement between holders of Warrants and Warehouses.

### **5.3 LMEsword**

Warehouses' other obligations in relation to rent shall be as set out in the LMEsword Regulations and the Operating Procedures.

## **6 Records**

### **6.1 Storage records for metal under Warrant**

- 6.1.1 Warehouses must have clearly organised systems for recording storage of metal under Warrant for use in their office and in each Authorised Warehouse.
- 6.1.2 Storage records must have a separate entry record for each lot and each such record must be numbered consecutively.
- 6.1.3 Storage records in respect of metal under Warrant must clearly identify the fact that the metal is under Warrant, include the Warrant number and note the Authorised Warehouse in which the metal is stored.
- 6.1.4 Metal under Warrant must be identifiable in an Authorised Warehouse by means of a label, or other marking method, as to lot or Warrant number.

## **6.2 Warrant records**

- 6.2.1** Each Warehouse must maintain a Warrant register which shows the dates of issue and cancellation of each Warrant, any corresponding lot numbers and the details of the metal as shown on the Warrant. Each entry on the Warrant register must be initialled by an authorised person or, in the case of a register maintained on a computer, have noted next to each entry the initials or other identity of an authorised person.
- 6.2.2** To the extent that any Warehouse has pre-printed warrants in blank, these must be kept secure. The Warehouse must ensure that it, or its London Agent, maintains a written record of the number of unused blank Warrants at any given time and will provide a copy of that record to the Exchange on request.
- 6.2.3** A copy of each Warrant issued by or for a Warehouse must be kept secure.

## **6.3 Stock records**

- 6.3.1** The stock of metal under Warrant of each Warehouse must be reported to the Exchange by the due completion of the form prescribed by the Exchange which must be faxed to the Exchange by 1200 hours London time each Business Day or delivered by such other means as the Exchange may prescribe and/or pursuant to LMEsword as the Exchange may from time to time prescribe in the LMEsword Regulations and Operating Procedures.
- 6.3.2** Until such time as stocks of metal are reported pursuant to LMEsword alone, metal taken off Warrant, but which is still on the Warehouse's premises, must be combined on the stock return with those stocks actually on Warrant rounded to the nearest complete Warrant lot and also separately identified on the return, or shown in such other manner as prescribed by the Exchange by notice. If no stocks are held, a nil return must be submitted on each Business Day.
- 6.3.3** Information concerning stocks and Queues at Warehouses shall be treated as confidential by the Exchange save that the Exchange may publish such information concerning LME stocks and Queues at Warehouses as it considers necessary, acting reasonably, for the purposes of market transparency. In addition the Exchange may publish such information for regulatory purposes and may make such disclosure as is required by Relevant Law and Regulation or that is requested by any regulatory authority or other person to whom the Exchange is required to disclose it by Relevant Law or Regulation. In addition, the Exchange may publish such information together with that of other Warehouses without identifying the Warehouse by name and also make reference to such information, identifying the Warehouse, in any notice of a decision given under the Disciplinary Procedures in the event of a breach of this Agreement. Warehouses are prohibited from revealing their stock of metal under Warrant to any person except that this prohibition shall not apply to:
  - 6.3.3.1** information supplied to a Warehouse's London Agent where the disclosure is reasonable and necessary to enable the recipient to perform the proper functions of his employment, profession or duties;
  - 6.3.3.2** information disclosed pursuant to any Relevant Law and Regulation;

- 6.3.3.3 information disclosed to a Warehouse's professional advisers and to its usual bankers where the disclosure is reasonable and necessary to enable the recipient to perform the proper functions of his employment, profession or duties;
- 6.3.3.4 historical information on aggregate stocks held by a Warehouse without differentiation between stocks held under Warrants and other stocks which is required to be disclosed to the shareholders of the Warehouse;
- 6.3.3.5 historical information on aggregate stocks held by a Warehouse without differentiation between stocks held under Warrants and other stocks which is required to be disclosed to a parent company of the Warehouse for the purpose of that parent company preparing its budgets and financial forecasts for the Group; or
- 6.3.3.6 information which has already been published by the LME pursuant to clause 6.3.3.

#### **6.4 Duty and Tax Records**

- 6.4.1 Each Warehouse must maintain records on the duty and tax status of each lot of metal.
- 6.4.2 The Warehouse shall make the records specified in Clause 6.4.1, or information derived from such records, available on request and at no cost to Warrant holders and the Exchange.

### **7 Continuing Obligations**

#### **7.1 Insurance**

- 7.1.1 Each Warehouse must maintain insurance in respect of all the types of risks marked with an asterisk in paragraph 9 of Schedule A at least at the levels from time to time prescribed by the Exchange. Such insurance must be maintained at all times until the Warehouse is no longer listed.
- 7.1.2 The Warehouse shall procure that the Exchange receives annually at renewal and/or at such other time as requested by the Exchange a certificate (or such other document as the Exchange may from time to time prescribe) evidencing that all the risks marked with an asterisk in paragraph 9 of Schedule A are protected and citing the maximum limit of cover per occurrence and the policy number. Any changes affecting the insurance cover are to be automatically notified to the Exchange by the insurance company. The Warehouse must ensure that its policy shows the Exchange as a notifiable party for amendments and renewal confirmations.

#### **7.2 Security**

- 7.2.1 The Warehouse must at least maintain the level of security measures referred to in its response(s) to Schedule B, Section (C) (as the same may be amended in writing between the Warehouse and the Exchange from time to time) at all its Authorised Warehouses and must keep them clean, dry (except outside storage areas as permitted by the LME), free from contaminants and in good repair. The Exchange may in its discretion reasonably require enhancements to the security measures maintained by a Warehouse as referred to in its

response(s) to Schedule B, Section (C). Without prejudice to the requirements of Clause 7.3, in the event of any material change in the details relating to its Authorised Warehouses as set out in its response(s) to Schedule B, Section (C), or in the event that the Warehouse otherwise fails to comply with this Clause 7.2.1, the Warehouse must notify the Exchange of such change or failure within 5 Business Days of becoming aware of the same. In the event of any material change in the details relating to the Warehouse's Authorised Warehouses which could in the Exchange's reasonable view result in a degradation in the level of security as set out in the Warehouse's response(s) to Schedule B, Section (C), or in the event that the Warehouse otherwise fails to comply with this Clause 7.2.1, the Exchange may, at its sole discretion, direct that any metal stored under Warrant in the Authorised Warehouse in question be relocated to another Authorised Warehouse, whether or not with the same Warehouse.

- 7.2.2 Any costs arising from such relocation, including, but not limited to, costs relating to re-inspection and re-approval, shall be met by the Warehouse.
- 7.2.3 The power of the Exchange under this Clause is without prejudice to its other powers under this Agreement, including the powers set out under the Disciplinary Procedures.

### **7.3 Monitoring and supply of information**

- 7.3.1 Each Warehouse must notify the Exchange of any facts, events or changes which are material to its listing as a Warehouse within 5 Business Days of becoming aware of the fact, event or change in question. This shall include, without limitation:
  - 7.3.1.1 any changes that materially affect the information given by the Warehouse in connection with its application for listing as a Warehouse, or such other material information as it may have given to the Exchange in writing from time to time;
  - 7.3.1.2 any changes affecting the Warehouse's ability to comply with its obligations hereunder or under the LMEsword Regulations.
- 7.3.2 A Warehouse shall not make any changes, or allow any changes which are within its power to prevent being made, to any of its Authorised Warehouses where such changes would involve a material change to any of the details provided in the answers given in Schedule B, without obtaining the Exchange's prior written approval in accordance with procedures published by the Exchange from time to time. In the event that the Warehouse becomes aware of such a change which is beyond its power to prevent, it must nonetheless notify the Exchange of such change immediately. The Exchange may, if it deems that the change materially affects the ability of the Authorised Warehouse(s) to operate, exercise its powers under this Agreement, including without limitation, those contained in Clause 9.2.
- 7.3.3 Each Warehouse shall provide to the Exchange on request such information from its storage records, Warrant records and/or stock records relating to the types of metals deliverable on the Exchange, as the Exchange may reasonably request from time to time in connection with any enquiries being made or to be

made by the Exchange in accordance with the Rules or this Agreement. All such information so supplied shall be treated as confidential by the Exchange and shall be restricted to those authorised staff and officers within the Exchange responsible for conducting such enquiries in accordance with the Rules, the Exchange's professional advisors, regulatory authorities and other persons to whom the Exchange is required to disclose it by Relevant Law and Regulation. The Exchange shall not be entitled to have access to legally privileged documents. A list of those persons within the Exchange who are authorised to obtain information from Warehouses in accordance with this Clause 7.3.3 will be circulated to all Warehouses and will be updated from time to time. The Exchange may request information about metal held off-Warrant at the Warehouse only in connection with an investigation pursuant to the Disciplinary Procedures.

- 7.3.4 Each Warehouse shall permit Exchange staff to conduct routine and other inspections of its premises used for the storage of LME metal, including access to each relevant Authorised Warehouse and its offices supporting the operating of such warehouses. Warehouses shall use reasonable endeavours to procure similar access to the offices of their London Agents supporting those operations. Each Warehouse shall co-operate with the Exchange in the conduct of such inspections and give all reasonable assistance to the Exchange.
- 7.3.5 The Exchange shall give reasonable notice of its intention to make inspections, except that no such notice will be required to be given where the Exchange deems it necessary or desirable in its absolute discretion for an immediate inspection to be undertaken by the Exchange or its appointed representatives.
- 7.3.6 Each Warehouse shall provide the Exchange with details of its officers and employees authorised to act as its authorised signatories for the purposes of this Agreement and keep such details up to date at all times, notifying the LME of any changes thereto promptly.

#### **7.4 Periodical inspections**

- 7.4.1 From time to time, and at least every 12 months, each Warehouse must:
  - 7.4.1.1 carry out a visual inspection of all metal under Warrant in its Authorised Warehouses and of all supporting documentation;
  - 7.4.1.2 at its own cost, appoint an independent third party auditor to perform a count of all the stock which is under Warrant in its Authorised Warehouse(s) which shall include metal taken off Warrant, but which is still on the Warehouse's premises awaiting load-out;
  - 7.4.1.3 make a notification to the Exchange without delay following the end of each calendar year (and by not later than 1 March), such notification to contain a record of all such inspections which have been carried out throughout the previous year, and a copy of the report produced by the independent third party auditor pursuant to Clause 7.4.1.2; and
  - 7.4.1.4 seek the approval of the Exchange in the selection of the independent third party auditor referred to in Clause 7.4.1.2 and provide to the

Exchange such information concerning its preferred auditor as the Exchange may reasonably request.

- 7.4.2 Full records of such inspections must be kept, showing at least:
- 7.4.2.1 the details of all issued Warrants at the time of the inspection;
  - 7.4.2.2 the date of the inspection; and
  - 7.4.2.3 the name and job title of the person undertaking the inspection, who must also acknowledge that he has carried out the inspection and be of suitable seniority.

Without prejudice to the annual notification requirement in Clause 7.4.1, copies of such records will be made available to the Exchange at any time on request.

- 7.4.3 All weighing equipment used for weighing metal under Warrant must be checked for accuracy at least quarterly by an accredited and responsible institution which is not affiliated to the Warehouse and any material inaccuracies detected by such institution must be rectified by the Warehouse immediately. Written evidence of such inspections must be retained and made available to the Exchange on request.

## **7.5 Compliance with law and regulation**

- 7.5.1 Each Warehouse shall at all times comply with all applicable law, including (without limitation) Relevant Law and Regulation, local port conditions, local and national customs, local anti-corruption laws, prohibitions on Market Abuse, taxation law and other rules and regulations (where the aforesaid are not in conflict with the requirements of either this Agreement or of the LMEsword Regulations or of the Operating Procedures).
- 7.5.2 The Warehouse shall immediately notify the Exchange if it becomes aware that such law, customs or regulations conflict, or are likely to conflict, with the requirements of this Agreement, the LMEsword Regulations or the Operating Procedures. In the event of any such conflict, the Exchange shall, without prejudice to its rights under this Agreement, assess whether, in its reasonable opinion, such conflict in fact exists and, if so, whether it is reconcilable and shall determine in its absolute discretion what action (if any) to take. Where the Exchange is of the view that failure immediately to resolve the conflict will not materially prejudice the Warehouse's ability to comply with the requirements of this Agreement, the LMEsword Regulations or the Operating Procedures, it shall consult with the Warehouse as to the remedial action to be taken. In the event of a conflict between this Agreement and the LMEsword Regulations or Operating Procedures or any notice issued by the Exchange, the terms of this Agreement shall prevail.
- 7.5.3 The Warehouse will not, and nor will any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement which (i) would violate any anti-corruption laws or regulations applicable to the Warehouse, (ii) is intended to, or does, influence or reward a person and acting



in breach of an expectation of good faith, upholding or trust, or which it would otherwise be improper for the recipient to accept, or (iii) is made to a Public Official with the intention of influencing them and obtaining or retaining an exchange with conduct of terms ("**Corrupt Act**").

**7.5.4** The Warehouse represents and warrants that it has not, and so far as it is aware its directors and officers have not:

- (i) engaged in, admitted to, or been found by a court in any jurisdiction to have engaged in any Corrupt Act; or
- (ii) been investigated by a regulatory or law enforcement agency in any jurisdiction as a suspect in connection with an investigation into the commission of any Corrupt Act.

**7.5.5** The Warehouse further agrees and undertakes:

- (i) to properly and accurately record in its books and records all transactions which relate in any way to this Agreement; and
- (ii) to provide any such information as the Exchange may reasonably require by notice in writing in order to monitor the Warehouse's compliance with its obligations under Clauses 7.5.1 and 7.5.3 and 7.5.4; and
- (iii) to notify the Exchange immediately if, at any time, it becomes aware that any of the representations set out at under Clause 7.5.4 are no longer correct.

## **7.6 Principles of Conduct**

The Warehouse shall adhere to the Principles of Conduct set out at Clause 11.

## **8 Enforcement and Discipline**

The Exchange may investigate any breach of this Agreement and take disciplinary action. The terms of the LME's Enforcement and Disciplinary Procedures applicable to all LME Warehouses, as amended by the Exchange from time to time and issued to Warehouses (the "Disciplinary Procedures") shall be deemed to be incorporated into this Agreement as if set out in full herein.

## **9 General**

### **9.1 Fees**

**9.1.1** Each Warehouse shall pay the Exchange the fees and levies prescribed by the Exchange from time to time. The Exchange shall provide all Warehouses with reasonable notice of changes in its prescribed fees and levies.

**9.1.2** Each Warehouse shall be responsible for the cost of inspections undertaken by the Exchange in accordance with the terms of this Agreement except where the inspection is specific to a single Warehouse and is initiated by the Exchange in which case the Exchange shall be responsible for the cost thereof (but without prejudice to the power of the Exchange to recover any such costs from a Warehouse pursuant to a sanction imposed under the Disciplinary Procedures).

- 9.1.3** Each Warehouse shall pay the fees prescribed by the LMEsword Regulations and Operating Procedures.
- 9.1.4** The Exchange shall consult with Warehouses if any proposed changes in its prescribed fees and levies or in the fees prescribed by the LMEsword Regulations and Operating Procedures would result in a material increase in such fees and/or levies. For these purposes, a “material increase” shall be any increase in the previously prescribed fee or levy of more than the greater of (a) 10 per cent or (b) the percentage figure equal to the aggregate of (i) the percentage increase in the retail prices index (“RPI”) as published by the Office for National Statistics calculated by comparing the level of RPI (all items) for the month in which the previously prescribed fee or levy was fixed and comparing it to the level of RPI (all items) for the month in which the Exchange gives notice of its proposed increase and (ii) 5 per cent.

**9.2 Withdrawal of right to store particular metal**

Without prejudice to the other powers of the Exchange, the Directors may require a Warehouse to cease to store any one or more particular metals by giving the Warehouse 90 days’ prior notice, or such shorter period as the Directors may consider in their sole discretion justified in the circumstances.

**9.3 Proper functioning of the market**

- 9.3.1** Warehouses play an important role in the markets in which the Exchange operates by ensuring, amongst other things, that Contracts are sufficiently anchored to the price of the underlying metal and that settlements are orderly. Warehouses must not prevent the proper functioning of the market, including by doing anything which may directly or indirectly constrain the liquidity and elasticity of stocks of metal under Warrant. In consequence, Warehouses must not, without limitation, (i) give Inducements that in the ordinary course may reasonably be considered to be exceptional, (ii) impose charges for depositing or withdrawing metals that in the ordinary course may reasonably be considered to be unreasonable, or (iii) delay unreasonably the receipt or despatch of metal, (save where unavoidable due to Force Majeure), where such behaviour may have, directly or indirectly, a manipulative, distortive or disorderly effect on the market. In the event that the Exchange considers that the conduct of a Warehouse indicates circumstances which may constitute Market Abuse, it is required to report this to the Financial Conduct Authority.
- 9.3.2** All Warehouses must periodically supply to the Exchange information relating to all Inducements paid to, or received from, third parties, and charges levied, for example, those for loading and unloading metal for Warrant purposes; in the form, and at the times, specified by the Exchange and set out on the Exchange’s website from time to time. Further, a Warehouse must supply such information or clarifications on such information on request by the Exchange.
- 9.3.3** In addition to the information supplied pursuant to Clause 9.3.2, each Warehouse shall provide to the Exchange, on request, such information as the Exchange may reasonably request from time to time, including, without limitation, details of all Inducements, and details of the provenance of loaded-in metal, including information about metal which may have been held previously

in that Warehouse, or in another facility operated by the same Warehouse or member of the Warehouse's Group.

- 9.3.4** For the avoidance of doubt, the Exchange has a right to investigate Warehouses in connection with:
- (i) all Inducements and charges;
  - (ii) any behaviour it suspects may have, or has had, a manipulative, distortive, or disorderly effect on the market; and
  - (iii) a failure to meet any of the minimum loading-out standards and requirements from time to time laid down by the Exchange (save in an event of Force Majeure).

All investigations shall be conducted in accordance with Clause 8 above and the Disciplinary Procedures.

- 9.3.5** The Exchange may take disciplinary action and / or, in its discretion, impose additional load-out requirements on a Warehouse whose behaviour the Exchange considers may have, or has had, the effect of creating or maintaining a Queue and / or which has led to market manipulation or distortion; or otherwise created or maintained a disorderly market.

- 9.3.6** All information supplied pursuant to Clause 9.3 shall be treated as confidential by the Exchange and shall be restricted to those authorised staff and officers within the Exchange responsible for analysing such information and/or conducting investigations, the Exchange's professional advisors, regulatory authorities or other person to whom the Exchange is required to disclose it by Relevant Law and Regulation. The Exchange shall not be entitled to have access to legally privileged documents. A list of those persons within the Exchange who are authorised to obtain information from Warehouses in accordance with this Clause 9.3.6 will be circulated to all Warehouses and will be updated from time to time.

#### **9.4 Termination**

- 9.4.1** Without prejudice to the provisions of Clause 8, this Agreement may be terminated, and the Warehouse delisted on a permanent basis, with or without notice, if:
- 9.4.1.1** the Warehouse commits a serious breach of this Agreement, the LMEsword Regulations or the Operating Procedures;
  - 9.4.1.2** the Warehouse fails or ceases to satisfy the requirements of Clause 1.2 (capital) and/or becomes or is, in the opinion of the Exchange, likely to become insolvent;
  - 9.4.1.3** the Warehouse breaches Clause 7.5 (compliance with law and regulation);
  - 9.4.1.4** the Warehouse materially fails to meet any of its obligations to the holder for the time being of a Warrant and such obligations are not being disputed in good faith;

9.4.1.5 the Warehouse fails to pay a sum of £10,000 or more when it becomes due, or a lesser sum within 7 Business Days of it becoming due, to the Exchange under Clause 9.1 or in respect of a fine imposed on it under the Disciplinary Procedures; or

9.4.1.6 a Force Majeure occurs.

Any such termination and delisting will be effective upon by the Directors notifying the Warehouse accordingly. Without prejudice to Clause 9.4.1.5, and except in the case of a Force Majeure under Clause 9.4.1.6, the Exchange may at its discretion grant to the Warehouse 7 Business Days within which to remedy a default under this Clause 9.4.1.

9.4.2 The Exchange may by notice served on a Warehouse by no later than 1 October in any year delist the Warehouse with effect from the following 1 January where the Exchange reasonably believes that the Warehouse is no longer engaged in LME warehousing business.

9.4.3 Without prejudice to any other of the Exchange's powers, a Warehouse, or the Exchange, may terminate this Agreement and delist the Warehouse in question by the service of six months' prior notice (or such other period as they may agree or as provided under Clause 9.11) on the other. On the expiry of such notice, this Agreement shall be terminated and the Warehouse delisted. Subject thereto and the other powers of the Exchange hereunder, this Agreement shall be for an indefinite term.

9.4.4 On and following termination of this Agreement and the delisting of a Warehouse, the Warehouse shall not be entitled to any rebate of fees paid to the Exchange but shall remain liable for all pre-existing liabilities to the Exchange. In addition, the Warehouse shall remain subject to the obligations imposed by this Agreement as if it were a Warehouse until a period of five years after delisting has elapsed but shall not be entitled to any of the benefits conferred hereunder, including the right to describe itself as an LME listed warehouse company, and may not issue any further Warrants.

9.4.5 On delisting, a Warehouse must, at its own expense, relocate all metal under Warrant to another Warehouse's Authorised Warehouse(s) and arrange for the cancellation of all of its issued and current Warrants. The Exchange's prior approval must be obtained before any relocation arrangements are finalised and in giving such approval (which may not be unreasonably withheld or delayed) the Exchange shall have all due regard to the reasonable instructions of the holders of the Warrants in question, to the extent known to it.

## 9.5 Notices

9.5.1 All notices and other communications shall be in writing and in the English language.

9.5.2 Subject to Clause 9.5.5, all notices and other communications required to be served under this Agreement shall be served by fax or by electronic messaging (i.e. e-mail). Service will be deemed effective:

Fax: 02076800505

Email: LMElegal@lme.com

9.5.2.1 in the case of notices sent by fax, on the date and time that transmission is received by an employee of the recipient in legible form or, if that date is not a Business Day or, if the fax is sent after normal working hours, the next following Business Day the burden of proving receipt to be met by a transmission report generated by the sender's facsimile machine; and

9.5.2.2 in the case of notices sent by electronic messaging, on the date and at the time that the sender receives a valid "read receipt".

9.5.3 All notices and other communication required to be served on the Warehouse shall be deemed to be validly served thereon if served on the Warehouse's London Agent. A copy of each such notice and communication shall also be sent to the registered office of the Warehouse but failure to send such a copy shall not affect valid service if the notice or other communication has been served on the Warehouse's London Agent.

9.5.4 In the event of difficulty in using fax or electronic messaging to send notices under this Agreement, notices and other communications may be served in person or by courier, with such service deemed effective on the date of receipt, unless that date is not a Business Day in which case the notice shall be deemed given and effective on the first following day that is a Business Day.

9.5.5 Notices and other communications shall only be validly served by a Warehouse if they are signed by an authorised signatory notified to the Exchange in accordance with Clause 7.3.6. For the avoidance of doubt, the effect of this Clause 9.5.5 is that, unless the Exchange otherwise prescribes, notices and other communications to be served by a Warehouse may not be served by electronic messaging.

9.5.6 The Exchange shall not be liable for any actions taken or omitted to be taken in good faith on the basis of any notice or other communication however served which purports to have been given by or on behalf of a Warehouse. The Exchange shall not be under any duty to verify the genuineness of any signature nor the authority of the person which purports to sign a notice or other communication on behalf of a Warehouse.

9.5.7 Each party shall respond promptly to the communications of the other party, where such communications require a response.

## 9.6 Release

Any liability to the Exchange under this Agreement may in whole or in part be released, compounded or compromised or time or indulgence given by the Exchange in its absolute discretion as regards any Warehouse under such liability without in any way prejudicing or affecting its rights against any other or others of the Warehouses under the same or a like liability, whether joint and several or otherwise provided that a Warehouse's liability shall not be increased by such action, nor shall its right to claim compensation or contribution from any person be thereby reduced.

## **9.7 Waiver**

No failure of the Exchange to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement (each a "Right") will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. The Rights provided in this Agreement are cumulative and not exclusive of any other Rights (whether provided by law or otherwise). Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

## **9.8 Invalidity**

If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

## **9.9 Governing law and agreement to arbitrate**

**9.9.1** This Agreement shall be governed by and construed in accordance with English law.

**9.9.2** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which rules are deemed to be incorporated by reference into this Clause. The LCIA shall appoint a sole arbitrator. The place of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

**9.9.3** If the Warehouse is not incorporated in England and Wales, it hereby appoints its London Agent as its agent for service of process for the purposes of any proceedings commenced in the English Court seeking interim relief in support of an existing or prospective LCIA arbitration or enforcing any award granted by a tribunal in any such LCIA arbitration.

## **9.10 Exclusion of Liability**

Neither the LME, nor any member of the LME Group, nor any of their Directors nor other officers or members of its Warehousing Committee shall have any liability for any damage, loss, expense or liability of any nature which a Warehouse may suffer or incur in respect of any act or omissions in relation to the provision of warehouse services to Members or its activities or status as a listed Warehouse except to the extent of losses or expenses attributable to its fraud, negligence or wilful default. The terms of this Clause 9.10 shall take precedence over Regulation 11.8.1 of the LMEsword Regulations insofar as that Regulation relates to Warehouses and the Exchange.

## **9.11 Notices and Amendments**

**9.11.1** The Exchange may issue notices from time to time concerning any matter relevant to the performance by a Warehouse of its obligations under this Agreement.

**9.11.2** Each Warehouse shall comply with the terms of any such notice and such notices (including, without limitation, the Exchange's Policy on the Approval of Locations as Delivery Points and the Exchange's Policy on the Approval and

Operation of Warehouses) shall be deemed to be incorporated into this Agreement.

**9.11.3** The Exchange may amend this Agreement from time to time. Unless it is considered to be an emergency and essential for the proper operation of the market, any such change shall, subject to Clause 9.11.4 below, only take effect after each Warehouse has been given 30 days' prior written notice of any proposed change.

**9.11.4** In the event that any such proposed change, or any proposed change to the LMEsword Regulations or Operating Procedures, or any proposed notice under Clause 9.11.1, would have the effect of materially increasing the obligations of any Warehouse, it shall only take effect after the Warehouse has been given 90 days prior written notice thereof. The Exchange undertakes to consult with the affected Warehouses in relation to the proposed change, where practicable for a reasonable period and in reasonable time prior to the start of that 90 day period, and shall have reasonable regard to representations received. In the event that the Warehouse does not wish to be bound by any such proposed change which has the effect of materially increasing the obligations of the Warehouse, it may serve notice of termination of this Agreement at any time prior to the expiry of such notice period, in which event such change shall not at any time take effect with respect to the Warehouse in question and the Warehouse shall be delisted with effect from the date 90 days after the day the notice of termination is served.

**9.11.5** Clauses 9.11.3 and 9.11.4 shall not apply to the Disciplinary Procedures.

## **9.12 No Assignment**

A Warehouse may not assign the benefit of this Agreement to, or declare a trust over such benefit in favour of, any other person (or enter into any analogous arrangement in any jurisdiction) without the prior written consent of the Exchange.

## **9.13 Information Barriers**

Each Related Warehouse shall maintain effective information barriers between it and the relevant Trading Company as specified by the Exchange from time-to-time as set out in the Notice: Information barriers between Warehouse Companies and Trading Companies (Ref: 14/202: A195: W098), or any successor notice. The Related Warehouse shall engage a firm of professional accountants in public practice, the choice to be agreed with the Exchange, to assure that the information barriers it has in place meet the criteria specified by the Exchange, under such assurance standard(s) and in such manner as the Exchange may specify from time to time.

# **10 Interpretation**

## **10.1 Definitions**

In this Agreement, unless the context otherwise specifies, the words includes, including, for example and in particular shall be construed as being "without limitation". Further, the following words and expressions in this Agreement shall, unless the context otherwise requires, bear the following meanings:

"Amendable Details" has the meaning given in Clause 3.1.2;

“Authorised Warehouse” means a warehouse storage facility operated by a Warehouse in a particular Delivery Point, which has been approved by the Exchange for the purpose of this Agreement;

“Business Day” has the meaning given in the Rules;

“Contract” has the meaning given in the Rules;

"Corrupt Act" has the meaning given in Clause 7.5.3

"Delivery Point" shall mean a specific geographic area within which warehouses are listed and approved by the LME for the issue of Warrants;

“Depository” means the person appointed by the Exchange from time to time to act as such for the purposes of LMEsword;

“Directors” means the directors of the Exchange from time to time;

“Disciplinary Procedures” has the meaning given in Clause 8;

“the Exchange” means The London Metal Exchange;

"the Financial Conduct Authority" means the regulator (Company No. 01920623) currently based at 25 The North Colonnade, Canary Wharf, London E14 5HS, or any successor body;

“Force Majeure” means an event which is beyond the reasonable control of the Warehouse and which is, in the opinion of the Exchange, likely to render the Warehouse unable to perform its obligations under this Agreement either permanently or for more than 30 days or such other period of time that would, in the Exchange’s view, have such a serious effect on the Warehouse that in business terms it would be tantamount to a permanent cessation, including, without limitation, any act of war, terrorism, insurrection, revolution, act of God or the imposition of legal, regulatory or tax restrictions in any relevant location;

"FOT" means free on truck;

"Group" means, in relation to a company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. The terms "holding company" and "subsidiary" have the meanings given to them in section 1159 of the Companies Act 2006;

"Inducement" means, without limitation, any fee, commission, discount, rebate, provision of transport services, or any other monetary or non-monetary benefit given to attract the load-in of metal or deter the load-out of metal;

"LCIA" means the London Court of International Arbitration;

“LME” means The London Metal Exchange;

"LME Group" means, in relation to the LME, any subsidiary or any holding company from time to time of the LME, and any subsidiary from time to time of a holding company of the LME, including without limitation, the Hong Kong Exchanges and Clearing Limited (HKEx). The terms "holding company" and "subsidiary" shall have the meanings given to them in section 1159 of the Companies Act 2006.

"load-out" has the meaning given in the Exchange's Policy on the Approval and Operation of Warehouses, as revised from time to time;



“London Agent” has the meaning given in Clause 1.3.1;

“Major Currency” has the meaning given in the Rules;

"Market Abuse" means the types of behaviour proscribed by section 118 of the Financial Services and Markets Act 2000 or any successor law or regulation;

“Member” means a member of the Exchange;

“Operating Procedures” means the manual issued by the Exchange pursuant to the LMEsword Regulations setting out detailed procedures and information relating to the operation of LMEsword;

“person” includes an individual, partnership, unincorporated association and body corporate;

"Public Official" means an official, whether elected or appointed, who holds a legislative, administrative or judicial position of any kind of a country or territory inside or outside the UK;

"Queue" means circumstances where load-out requests cannot be serviced immediately by a Warehouse, measured by the number of calendar days a metal owner cancelling a Warrant today must wait for a scheduled delivery slot.

“Related Warehouse” means a Warehouse which is associated with a Trading Company. For the purpose of this definition, a Warehouse is associated with a Trading Company where the Warehouse is a subsidiary or holding company of a Trading Company, or a subsidiary or holding company of one of a Trading Company’s subsidiaries or holding companies or otherwise has a Close Connection with a Trading Company. The terms “holding company” and “subsidiary” have the meanings given to them in section 1159 of the Companies Act 2006. A Warehouse shall have a “Close Connection” with a Trading Company if any person or company either directly or indirectly holds or otherwise effectively controls 20% or more of the shares or voting rights in both the Warehouse and the Trading Company; or any Trading Company directly or indirectly holds or effectively controls 20% or more of the shares or voting rights of the relevant Warehouse (or vice versa);

"Relevant Law and Regulation" means the laws, rules and regulations of any statutory, governmental or regulatory authority in any country relevant to the operations of the Warehouse including without limitation the principles, rules and standards of the Financial Conduct Authority as in force from time to time;

“Rules” means the rules and regulations issued by the Exchange (and incorporating the LMEsword Regulations) governing the London Metal Exchange administered by the Exchange as the same may be amended in accordance with Article 71 of the Articles of Association of the Exchange and a reference to a Rule shall be construed accordingly;

“Secretary” means any person appointed to perform the duties of Secretary of the Exchange;

“Special Contract Rules for Metals” means Part 6 of the Rules as the same may be amended from time to time;

“LMEsword” means the system for, inter alia, the electronic transfer of title to Warrants governed and constituted by the LMEsword Regulations;

“LMEsword Regulations” means the regulations governing the operation of LMEsword issued by the Exchange as amended from time to time in accordance with the terms thereof;

“this Agreement” means the agreement between each Warehouse and the Exchange incorporating these terms and conditions as amended from time to time in accordance herewith and incorporating the Disciplinary Procedures in accordance with Clause 8 hereof;

“Trading Company” shall mean any Member or non-Member company that enters into Contracts or trades metal that is deliverable against a Contract;

“Warehouse” means a warehouse company which is party to this Agreement, accepted as such by the Exchange and listed in Appendix III of the Rules;

“Warehousing Committee” means the LME warehousing committee, details of which are set out on the LME website [www.lme.com](http://www.lme.com).

“Warrant” means a warehouse warrant for the storage of metal, issued by a Warehouse in accordance with this Agreement and in a form approved by the Exchange.

## **10.2 Interpretation**

**10.2.1** Where this Agreement refers to a document or thing being “prescribed”, that shall mean prescribed by the Exchange from time to time in a notice issued by it to Warehouses.

**10.2.2** Words importing the singular shall, where the context permits, include the plural and vice versa. Words importing gender shall include each gender.

**10.2.3** Where this Agreement refers to an act being undertaken by the Exchange, that act may be performed by the Exchange acting through the Directors of the Exchange or any duly authorised committee of the Directors of the Exchange or duly authorised individual.

## **11 Principles of conduct**

A Warehouse shall:

**11.1** Conduct its business with due skill, care and diligence, observing high standards of conduct and safety, complying with the warehouse agreement, the LMEsword regulations, these principles, the common standards of working practice for warehouse companies, other requirements for warehouse companies set by the Exchange, and Relevant Law and Regulation.

**11.2** Not engage in behaviour which would manipulate or distort the Exchange's markets, nor create or attempt to create a disorderly market, nor require or encourage or assist others to do so. In particular, without limitation, not engage in any behaviour which would be likely to manipulate or distort the market with the effect of creating or maintaining a Queue.

**11.3** At all times observe high standards of integrity and fair dealing, observe high standards of market conduct, and not enter into any arrangement or agreement that

prohibits the provision of any information that the LME requests in its role as a Recognised Investment Exchange.

- 11.4 Maintain financial resources at or above the minimum level set by the LME to ensure continuity in the provision of services for owners of metal on LME warrant, and shall have in place a performance bond (if required by the Exchange) in the manner and of the amount prescribed by the Exchange.
- 11.5 Manage conflicts of interest fairly, both between itself and holders of metal on LME warrant and between holders of metal on LME warrant, ensuring fair and equitable treatment to all holders of metal on LME warrant at all times.
- 11.6 Ensure that all metal held on LME warrants is stored continuously in good delivery condition and that it is identified and stored so as to facilitate easy access and delivery without undue delay.
- 11.7 Deal with those placing metal on LME warrant, those holding LME warrants and those taking metal off LME warrant on a fair and equitable basis.
- 11.8 Organise and control its affairs in a responsible manner, keep proper records, retain all relevant documentation, have well-defined procedures for handling metal stored on LME warrant and for delivering it out expeditiously, ensure that its employees or agents are suitable, adequately trained and properly supervised, and that it has well-defined procedures to ensure compliance with this Agreement, the LMEsword Regulations and the Operating Procedures and all other LME rules and requirements applicable to Warehouses.
- 11.9 Pay due regard to the information needs of LME warrant holders by having transparency of: normal hours of work, all delivery in and load-out charges, rent and rent payment dates, and total average daily load-out volume rates by metal and mode of transport.
- 11.10 Arrange adequate protection for metal held on LME warrant by insuring it against unexplained losses and losses caused by error, negligence, or fraudulent actions of its servants or agents or its personnel.
- 11.11 Deal with the LME in an open and co-operative manner, keeping it informed promptly of anything concerning the suitability of its warehouses or its continued suitability as a warehouse company, or about metal stored with it or that it knows will be placed on or taken off LME warrant, that the LME, as a Recognised Investment Exchange (as defined by the Financial Conduct Authority), which has responsibility for ensuring that its markets are proper and orderly and not subject to abuse, might reasonably expect to be disclosed to it.

## **Terms and conditions applicable to all LME listed warehouse companies**

### **1 Conditions for and entitlements of listing**

#### **1.1 Application**

To become a Warehouse, a warehouse company shall:

- 1.1.1 execute the Agreement of which these terms and conditions form a part;
- 1.1.2 duly complete the forms prescribed by the Exchange attached as Schedule A and B hereto and pay any initial listing fees prescribed by the Exchange; and
- 1.1.3 comply with regulation 2.2 of the LMEsword Regulations.

#### **1.2 Capital**

- 1.2.1 Each Warehouse must be adequately capitalised at all times at levels determined from time to time by the Exchange and notified to all Warehouses by way of periodical circulars.
- 1.2.2 The Exchange shall assess whether a Warehouse's available capital is adequate by using the most recent audited accounts of the Warehouse and applying generally accepted accounting principles to determine the extent to which net assets exceed net liabilities. The Exchange shall, from time to time, publish the basis on which it determines capital adequacy for Warehouses. In assessing whether a Warehouse's available capital is adequate, the Exchange shall, at its discretion, disregard what are, in its view, immaterial or temporary failures to meet the capital adequacy requirements.
- 1.2.3 In the event that the Exchange is not satisfied with the financial status or the insurance arrangements of any Warehouse, it may require a performance bond issued by a bank or insurance company as it considers suitable for such sums and on such terms and conditions as it may determine. However, where the deficiencies in the financial status or the insurance arrangements of any Warehouse are, in the view of the Exchange, not likely materially to prejudice the Warehouse's ability to perform its obligations as an LME listed warehouse company and are capable of remedy, the Exchange may allow 7 Business Days for the Warehouse to rectify its financial status and/or insurance arrangements before requiring such a performance bond.

#### **1.3 London Agent**

- 1.3.1 Each Warehouse must appoint and maintain at all times an agent in or, in the opinion of the Exchange, sufficiently proximate to the City of London (a "London Agent") to act on its behalf, to carry out certain of its obligations under this Agreement and the LMEsword Regulations, and, if the Warehouse is not incorporated in England and Wales, also to act as its agent for service of process.
- 1.3.2 A London Agent may be a person independent from the Warehouse or be a branch or affiliated company of the Warehouse.
- 1.3.3 The Warehouse must obtain the prior approval of the Exchange to the appointment, or any change in the appointment, of its London Agent from time to time.

1.3.4 Each Warehouse shall be responsible for all of the acts and omissions of its London Agent undertaken in its capacity as such. The Exchange and other persons shall be entitled to assume a Warehouse's London Agent acts with the full authority of the Warehouse until such time as the Exchange has received written notice from the Warehouse that the London Agent has ceased to act as such. This term shall not affect the rights and obligations of the Warehouse and its London Agent inter se.

#### **1.4 LMEsword**

Each Warehouse must comply, and procure that its London Agent complies, with the LMEsword Regulations and Operating Procedures, which shall insofar as they relate to the Warehouse or its London Agent be deemed to be incorporated into this Agreement.

#### **1.5 Restrictions**

1.5.1 An Authorised Warehouse may be used by only one Warehouse and to the extent that it is used for the storage of any metals which are permitted to be the subject of a Contract, may not also be used to store such metals which are deliverable on any other exchanges.

1.5.2 A Warehouse may not deal directly or indirectly in Contracts, and shall observe such other requirements contained in Relevant Law and Regulation, and any Exchange notice relating to the separation of Warehouses from Members and the maintenance of confidentiality in respect of price sensitive and customer confidential information.

#### **1.6 Description of Warehouse**

Each Warehouse may, following its approval by the Exchange as a listed Warehouse, describe itself as an "LME listed warehouse company" and its Authorised Warehouse as "LME listed warehouses", for as long as it retains its listed status as provided for herein.

#### **1.7 Availability of Rules**

Warehouses shall be sent a copy of the Rules and LMEsword Regulations and Operating Procedures as amended from time to time. Warehouses shall ensure that their London Agent obtains and keeps up to date their own copies of such documents direct from the Exchange and is also provided with a copy of this Agreement. Where the Warehouse operates in more than one location it shall ensure that each location is kept up to date with changes to the Rules, the LMEsword Regulations and Operating Procedures and this Agreement.

## **2 Issue of Warrants**

### **2.1 Metal delivery**

2.1.1 When receiving metal for placing on Warrant, a Warehouse need not undertake an assay of the metal itself but must carefully undertake a visual inspection of the metal and all supporting documentation and, if the metal or the supporting documentation is in any way patently sub-standard or anomalous the Warehouse must not issue a Warrant until any such shortcoming has been remedied. Without limitation to the foregoing, metal will be deemed to be patently sub-standard if:

- 2.1.1.1 there is broken or visibly corroded strapping which could make the bundle of metal unsafe to handle;
- 2.1.1.2 there is visible contamination of metal;
- 2.1.1.3 there is inconsistent branding of metal (for instance, where all of the metal or some of the metal is patently not an LME brand or where different LME brands have been visibly mixed within a bundle); and
- 2.1.1.4 the supporting documentation and paperwork does not accord with the Rules.

For the avoidance of doubt, a Warehouse is not required to break bundles or inspect metal ingots hidden from view within bundles, unless there are visible signs indicating or suggesting a defect in quality within a bundle or the Warehouse is in any way aware that there is a defect within a bundle not apparent from a visual inspection.

- 2.1.2 All metal delivered for placing on Warrant must be weighed by Warehouse personnel on equipment which is regularly tested for accuracy in accordance with Clause 7.4.3, and must conform to the relevant weights for those metals as outlined in the Special Contract Rules for Metals.
- 2.1.3 Subject to Clauses 2.1.1 and 2.1.2, no Warrant may be issued if the metal or supporting documentation does not conform to the relevant Special Contract Rules for Metals.
- 2.1.4 A Warrant may only be issued by the Warehouse or its London Agent when the metal in question is stored in an Authorised Warehouse of the Warehouse.

## **2.2 Form of Warrant**

- 2.2.1 From the date prescribed by the Exchange, all Warrants must be issued in accordance with the LMEsword Regulations.
- 2.2.2 Each Warehouse shall ensure that the form of the Warrant is such that the requirements set out in the Special Contract Rules for Metals, this Clause 2.2 and Clause 2.3 are satisfied.
- 2.2.3 Each Warrant must have a clearly identifiable space for endorsements to allow for transfers of ownership to a named transferee and also have a clearly identifiable space for endorsement of rents paid to be marked on the Warrant.
- 2.2.4 Each Warrant must show the applicable rent rate and the date of commencement of the obligation to pay rent which must be the same as the date of issue of the Warrant.
- 2.2.5 Each Warrant must include a term stating that responsibility for insuring the metal subject to the Warrant is that of the holder of the Warrant.
- 2.2.6 Each Warrant should be numbered consecutively wherever practicable.
- 2.2.7 No Warrant may be issued by a Warehouse until the printed format which the Warehouse proposes to adopt has been delivered to and approved by the Exchange. Any proposed change to such format must similarly be approved by the Exchange prior to its use.

- 2.2.8 Each Warrant must be signed by an authorised signatory of the Warehouse or its London Agent.
- 2.2.9 Each Warrant shall state that the Warehouse's standard terms of business are available on request or are printed on the reverse side of the Warrant.

### **2.3 Legal status of Warrants**

- 2.3.1 Each Warrant must be transferable by delivery or by delivery and endorsement by the transferor and without requiring registration, attornment or notice to the Warehouse. A transferee of a Warrant shall be treated by the Warehouse as having the benefit of the contract of storage of the metal to which the Warrant relates and shall be bound by the Warehouse's standard terms of business insofar as they do not conflict with the Rules, the LMEsword Regulations or the Operating Procedures.
- 2.3.2 Each Warrant must be a document of title (or local equivalent concept) established in accordance with the law of the country in which the Warehouse is situated, or in accordance with such other law recognised as applicable to the Warrant by such law.
- 2.3.3 It must be a term of issue of each Warrant that the metal which it represents shall only be delivered up to the holder by the Warehouse on the Warrant being presented to the Warehouse or its London Agent or, in the event of a Warrant being lost, stolen, damaged or destroyed, against the provision of an indemnity substantially in the form prescribed by the Exchange from time to time and attached as the Appendix to Schedule A.
- 2.3.4 Subject only to Clause 2.3.5, a Warrant must be unlimited as to duration and remain valid until presented for cancellation to the Warehouse or its London Agent or otherwise cancelled in accordance with this Agreement and the LMEsword Regulations.
- 2.3.5 A Warehouse may have a right of retention in respect of metal under Warrant for unpaid rent in respect of the metal and other charges owed by the current holder of the Warrant but not otherwise and, in particular, without limitation, no person may have any right of retention in respect of charges owed by any other person.
- 2.3.6 Nothing in Clause 2.3.5 shall require the Warehouse to oppose any legally enforceable court order in respect of metal which is binding on the Warehouse and which prevents it from delivering stored metal to the Warrant holder, provided that the Warehouse immediately notifies the Exchange of the existence of such a court order as soon as it becomes aware of the same.

### **2.4 Warehouse's liability to Warrant holders**

The Warehouse is required to give undertakings to each Warrant holder from time to time in respect of the metal under relevant Warrant that:

- 2.4.1 the Warehouse has complied with all Relevant Law and Regulation (including, without limitation, Clause 2.1 of this Agreement) in receiving that metal and placing it on Warrant;

- 2.4.2 the Warehouse will comply with the requirements of this Agreement concerning the storage of metal; and
- 2.4.3 the Warehouse is not aware of any latent defects in the metal.

It is a requirement of this Agreement that the undertakings referred to in Clauses 2.4.1 to 2.4.3 above are incorporated without delay into the Warehouse's written contract of storage with each Warrant holder. Pending such incorporation, the relevant undertakings shall be deemed to be incorporated into each such contract of storage immediately upon such contract arising.

### **3 Replacement of Warrants**

#### **3.1 Entitlement to replace**

A Warehouse shall issue a replacement Warrant in accordance with this Agreement and the LMEsword Regulations and Operating Procedures in the following circumstances:

- 3.1.1 where a Warrant has been lost, stolen, destroyed, or damaged, on completion of its normal procedures and against delivery to it of an indemnity in the form prescribed by the Exchange from time to time and attached as the Appendix to Schedule A;
- 3.1.2 where any details on a Warrant which are capable of amendment in accordance with the LMEsword Regulations and Operating Procedures ("Amendable Details") require amendment, following the amendment of the electronic details of the Warrant in LMEsword in accordance with the LMEsword Regulations and against delivery to it of the original Warrant; and
- 3.1.3 where the space on a Warrant for endorsement of rent paid up and/or for transfers is full and against delivery to it of the original Warrant.

#### **3.2 Entitlement to move metal**

A Warehouse may move metal under Warrant between its own Authorised Warehouses within the same listed location at its own risk and expense subject to complying with Clause 3.3.

#### **3.3 Notification of the Exchange**

- 3.3.1 On the day that a Warehouse or its London Agent is notified or becomes aware of any circumstance which might reasonably cause suspicion that (a) a Warrant, or any underlying metal to which a Warrant relates, may have been lost, stolen, destroyed or damaged; or (b) the Amendable Details on a Warrant may require amendment; or (c) a Warrant may require cancellation in accordance with Clause 4.3, it shall forthwith:
  - (i) notify the Exchange by fax or email (or by such other means as the Exchange may prescribe from time to time) to the Exchange's Physical Operations Department; and
  - (ii) promptly investigate the circumstance.
- 3.3.2 The Warehouse will regularly update the Exchange on the investigation and report all findings to the Exchange.



- 3.3.3** On the day that a Warehouse or its London Agent is notified or becomes aware that (a) a Warrant, or any underlying metal to which a Warrant relates, has been lost, stolen, destroyed or damaged; or (b) the Amendable Details on a Warrant require amendment; or (c) a Warrant requires cancellation in accordance with Clause 4.3, it shall forthwith notify the Exchange by fax or email (or by such other means as the Exchange may prescribe from time to time) to the Exchange's Physical Operations Department containing full details thereof, including the following:
- 3.3.2.1** the date and details of loss or damage to or other matter affecting the metal or Warrant;
  - 3.3.2.2** the Warrant number(s);
  - 3.3.2.3** date of the Warrant;
  - 3.3.2.4** brand and shape of metal; and
  - 3.3.2.5** the quantity of metal (if any) missing, damaged, or otherwise affected.
- 3.3.4** The Warehouse shall keep the Exchange updated at all times and in addition take all such other steps, such as (without limitation) immediately notifying and cooperating with police authorities and insurers, as is necessary to protect the owner of the metal in question and assist with the orderly operation of the market.
- 3.3.5** Where a Warrant that requires replacement or cancellation is not lodged with the Depository, the Warehouse shall take all reasonable steps to identify the holder of the Warrant and notify it of the event and require that the Warrant be delivered up for replacement.

#### **3.4 Liability for replacement Warrants**

- 3.4.1** Where a Warrant is being replaced due to a change to its Amendable Details, the Warehouse shall indemnify the person surrendering the Warrant in respect of any reasonable loss or damage they may suffer as a result of the Warehouse not properly cancelling and retaining the original Warrant in accordance with this Agreement.
- 3.4.2** The Warehouse shall be responsible for the cost of replacing Warrants other than in the case of Warrants which have been lost, stolen, destroyed or damaged where such costs shall be the responsibility of the holder.
- 3.4.3** The Warehouse shall take all reasonable steps to ensure that no duplicate Warrants issued by it are in circulation and, in particular, shall make a notification to the Exchange pursuant to Clause 3.3.1 above.

### **4 Cancellation of Warrants**

#### **4.1 Process on replacement**

- 4.1.1** Where a Warrant is delivered to a Warehouse for replacement, the original Warrant must first be made properly null and void by being stamped "cancelled and replaced".

4.1.2 If the original of the Warrant has been lost, stolen or destroyed, a copy of the original must be duly marked and retained in lieu of the original.

#### **4.2 Process on cancellation and metal take-up**

Where a Warrant is delivered to a Warehouse for cancellation and metal take-up, the original must be made properly null and void by being stamped "cancelled". The Warehouse is required to expedite load-out from warehouses at the minimum rates published from time to time by the Exchange in accordance with Clause 9.11.1. For the avoidance of doubt, any change to the minimum rates would constitute a material increase in the obligations of a Warehouse which would require consultation and notification in accordance with Clause 9.11.4. The Warehouse shall prioritise all requests for cancellation strictly in the order in which they are received unless the Warrant holders seeking cancellation agree otherwise. The Warehouse shall use all reasonable endeavours to allocate to each Warrant holder seeking cancellation the delivery time that he has requested, unless that requested delivery time has already been allocated to another Warrant holder, in which case the Warehouse shall offer one or more alternative delivery times as close to the time originally requested as possible and where reasonably possible shall allocate the delivery time which is acceptable to the Warrant holder. The Warehouse must prepare and maintain such documentation as is sufficient to evidence compliance with the aforesaid requirement (e.g. a schedule detailing (at least) the dates and times of receipt of cancellation requests and the allocated dates and times of delivery) and shall provide a copy of the same to the Exchange if so requested. The Warehouse will, at all times, be responsible for ensuring that deliveries of metal are effected in accordance with the above requirements except where the Warrant holder taking delivery of metal provides its own transport and fails, due to no fault of the Warehouse, to keep to the agreed delivery schedule, in which case the Warehouse and that Warrant holder shall agree between them an alternative time for delivery.

#### **4.3 Warrants requiring cancellation**

Where a Warehouse or its London Agent is notified or becomes aware that any details on a Warrant which are not Amendable Details are incorrect, it shall:

- 4.3.1 notify the Exchange thereof in accordance with Clause 3.3;
- 4.3.2 take all reasonable steps to identify the holder of the Warrant and notify it of the event and require the Warrant to be delivered up for cancellation; and
- 4.3.3 on its being delivered to the Warehouse or London Agent, cancel the Warrant in accordance with the LMEsword Regulations and Operating Procedures and issue a new Warrant in respect of the relevant metal.

#### **4.4 Storage**

All cancelled Warrants (and a copy of the original in the event that it has been lost, stolen or destroyed) must be securely retained and be made available for inspection by the Exchange for five years or (if later) until any replacement Warrant is surrendered for cancellation and metal take-up.

## **5 Rent and Free On Truck ("FOT") charges**

### **5.1 Calculation**

- 5.1.1 Calculations of rent due on Warrants must be on round tonnages and not actual weights.
- 5.1.2 Rent on metal under Warrant must accrue on a daily basis and rent accrued must be payable annually as at 31 March each year, or at such other times and for such other periods as the Exchange may prescribe, or upon cancellation of a Warrant whichever is the sooner.
- 5.1.3 Rent must be quoted in the Major Currency of the Contract to which the Warrant relates is traded.
- 5.1.4 Each Warehouse must fix its maximum rent rates and FOT charges annually in respect of each 12 month period commencing 1 April by notification to the Exchange not later than 1 December in the preceding year. At any time within 10 Business Days of receiving such notification, the Exchange may, at its discretion, require the Warehouse to provide within 10 Business Days, a comprehensive, written explanation of the economic circumstances which, in the view of the Warehouse, necessitate the change in its maximum rent rates and/or FOT charges. The Exchange shall publish the Warehouse's maximum rent rates and FOT charges by 31 December provided that no change in maximum rent rates or FOT charges shall become effective until the following 1 April.

### **5.2 Payment**

Rent must be paid for metal under Warrant in stock at 31 March (or such other dates as the Exchange may prescribe) in each year by direct settlement between holders of Warrants and Warehouses.

### **5.3 LMEsword**

Warehouses' other obligations in relation to rent shall be as set out in the LMEsword Regulations and the Operating Procedures.

## **6 Records**

### **6.1 Storage records for metal under Warrant**

- 6.1.1 Warehouses must have clearly organised systems for recording storage of metal under Warrant for use in their office and in each Authorised Warehouse.
- 6.1.2 Storage records must have a separate entry record for each lot and each such record must be numbered consecutively.
- 6.1.3 Storage records in respect of metal under Warrant must clearly identify the fact that the metal is under Warrant, include the Warrant number and note the Authorised Warehouse in which the metal is stored.
- 6.1.4 Metal under Warrant must be identifiable in an Authorised Warehouse by means of a label, or other marking method, as to lot or Warrant number.

## **6.2 Warrant records**

- 6.2.1** Each Warehouse must maintain a Warrant register which shows the dates of issue and cancellation of each Warrant, any corresponding lot numbers and the details of the metal as shown on the Warrant. Each entry on the Warrant register must be initialled by an authorised person or, in the case of a register maintained on a computer, have noted next to each entry the initials or other identity of an authorised person.
- 6.2.2** To the extent that any Warehouse has pre-printed warrants in blank, these must be kept secure. The Warehouse must ensure that it, or its London Agent, maintains a written record of the number of unused blank Warrants at any given time and will provide a copy of that record to the Exchange on request.
- 6.2.3** A copy of each Warrant issued by or for a Warehouse must be kept secure.

## **6.3 Stock records**

- 6.3.1** The stock of metal under Warrant of each Warehouse must be reported to the Exchange by the due completion of the form prescribed by the Exchange which must be faxed to the Exchange by 1200 hours London time each Business Day or delivered by such other means as the Exchange may prescribe and/or pursuant to LMEsword as the Exchange may from time to time prescribe in the LMEsword Regulations and Operating Procedures.
- 6.3.2** Until such time as stocks of metal are reported pursuant to LMEsword alone, metal taken off Warrant, but which is still on the Warehouse's premises, must be combined on the stock return with those stocks actually on Warrant rounded to the nearest complete Warrant lot and also separately identified on the return, or shown in such other manner as prescribed by the Exchange by notice. If no stocks are held, a nil return must be submitted on each Business Day.
- 6.3.3** Information concerning stocks and Queues at Warehouses shall be treated as confidential by the Exchange save that the Exchange may publish such information concerning [LME](#) stocks and Queues at Warehouses as it considers necessary, acting reasonably, for the purposes of market transparency. In addition the Exchange may publish such information for regulatory purposes and may make such disclosure as is required by Relevant Law and Regulation or that is requested by any regulatory authority or other person to whom the Exchange is required to disclose it by Relevant Law or Regulation. In addition, the Exchange may publish such information together with that of other Warehouses without identifying the Warehouse by name and also make reference to such information, identifying the Warehouse, in any notice of a decision given under the Disciplinary Procedures in the event of a breach of this Agreement. Warehouses are prohibited from revealing their stock of metal under Warrant to any person except that this prohibition shall not apply to:
  - 6.3.3.1** information supplied to a Warehouse's London Agent where the disclosure is reasonable and necessary to enable the recipient to perform the proper functions of his employment, profession or duties;
  - 6.3.3.2** information disclosed pursuant to any Relevant Law and Regulation;

- 6.3.3.3 information disclosed to a Warehouse's professional advisers and to its usual bankers where the disclosure is reasonable and necessary to enable the recipient to perform the proper functions of his employment, profession or duties;
- 6.3.3.4 historical information on aggregate stocks held by a Warehouse without differentiation between stocks held under Warrants and other stocks which is required to be disclosed to the shareholders of the Warehouse;
- 6.3.3.5 historical information on aggregate stocks held by a Warehouse without differentiation between stocks held under Warrants and other stocks which is required to be disclosed to a parent company of the Warehouse for the purpose of that parent company preparing its budgets and financial forecasts for the Group; or
- 6.3.3.6 information which has already been published by the LME pursuant to clause 6.3.3.

#### **6.4 Duty and Tax Records**

- 6.4.1 Each Warehouse must maintain records on the duty and tax status of each lot of metal.
- 6.4.2 The Warehouse shall make the records specified in Clause 6.4.1, or information derived from such records, available on request and at no cost to Warrant holders and the Exchange.

### **7 Continuing Obligations**

#### **7.1 Insurance**

- 7.1.1 Each Warehouse must maintain insurance in respect of all the types of risks marked with an asterisk in paragraph 9 of Schedule A at least at the levels from time to time prescribed by the Exchange. Such insurance must be maintained at all times until the Warehouse is no longer listed.
- 7.1.2 The Warehouse shall procure that the Exchange receives annually at renewal and/or at such other time as requested by the Exchange a certificate (or such other document as the Exchange may from time to time prescribe) evidencing that all the risks marked with an asterisk in paragraph 9 of Schedule A are protected and citing the maximum limit of cover per occurrence and the policy number. Any changes affecting the insurance cover are to be automatically notified to the Exchange by the insurance company. The Warehouse must ensure that its policy shows the Exchange as a notifiable party for amendments and renewal confirmations.

#### **7.2 Security**

- 7.2.1 The Warehouse must at least maintain the level of security measures referred to in its response(s) to Schedule B, Section (C) (as the same may be amended in writing between the Warehouse and the Exchange from time to time) at all its Authorised Warehouses and must keep them clean, dry (except outside storage areas as permitted by the LME), free from contaminants and in good repair. The Exchange may in its discretion reasonably require enhancements to the security measures maintained by a Warehouse as referred to in its

response(s) to Schedule B, Section (C). Without prejudice to the requirements of Clause 7.3, in the event of any material change in the details relating to its Authorised Warehouses as set out in its response(s) to Schedule B, Section (C), or in the event that the Warehouse otherwise fails to comply with this Clause 7.2.1, the Warehouse must notify the Exchange of such change or failure within 5 Business Days of becoming aware of the same. In the event of any material change in the details relating to the Warehouse's Authorised Warehouses which could in the Exchange's reasonable view result in a degradation in the level of security as set out in the Warehouse's response(s) to Schedule B, Section (C), or in the event that the Warehouse otherwise fails to comply with this Clause 7.2.1, the Exchange may, at its sole discretion, direct that any metal stored under Warrant in the Authorised Warehouse in question be relocated to another Authorised Warehouse, whether or not with the same Warehouse.

- 7.2.2 Any costs arising from such relocation, including, but not limited to, costs relating to re-inspection and re-approval, shall be met by the Warehouse.
- 7.2.3 The power of the Exchange under this Clause is without prejudice to its other powers under this Agreement, including the powers set out under the Disciplinary Procedures.

### **7.3 Monitoring and supply of information**

- 7.3.1 Each Warehouse must notify the Exchange of any facts, events or changes which are material to its listing as a Warehouse within 5 Business Days of becoming aware of the fact, event or change in question. This shall include, without limitation:
  - 7.3.1.1 any changes that materially affect the information given by the Warehouse in connection with its application for listing as a Warehouse, or such other material information as it may have given to the Exchange in writing from time to time;
  - 7.3.1.2 any changes affecting the Warehouse's ability to comply with its obligations hereunder or under the LMEsword Regulations.
- 7.3.2 A Warehouse shall not make any changes, or allow any changes which are within its power to prevent being made, to any of its Authorised Warehouses where such changes would involve a material change to any of the details provided in the answers given in Schedule B, without obtaining the Exchange's prior written approval in accordance with procedures published by the Exchange from time to time. In the event that the Warehouse becomes aware of such a change which is beyond its power to prevent, it must nonetheless notify the Exchange of such change immediately. The Exchange may, if it deems that the change materially affects the ability of the Authorised Warehouse(s) to operate, exercise its powers under this Agreement, including without limitation, those contained in Clause 9.2.
- 7.3.3 Each Warehouse shall provide to the Exchange on request such information from its storage records, Warrant records and/or stock records relating to the types of metals deliverable on the Exchange ~~(including information about metal held on Warrant and off Warrant at the Warehouse)~~, as the Exchange may

reasonably request from time to time in connection with any enquiries being made or to be made by the Exchange in accordance with the Rules or this Agreement. All such information so supplied shall be treated as confidential by the Exchange and shall be restricted to those authorised staff and officers within the Exchange responsible for conducting such enquiries in accordance with the Rules, the Exchange's professional advisors, regulatory authorities and other persons to whom the Exchange is required to disclose it by Relevant Law and Regulation. The Exchange shall not be entitled to have access to legally privileged documents. A list of those persons within the Exchange who are authorised to obtain information from Warehouses in accordance with this Clause 7.3.3 will be circulated to all Warehouses and will be updated from time to time. [The Exchange may request information about metal held off-Warrant at the Warehouse only in connection with an investigation pursuant to the Disciplinary Procedures.](#)

- 7.3.4 Each Warehouse shall permit Exchange staff to conduct routine and other inspections of its premises used for the storage of LME metal, including access to each relevant Authorised Warehouse and its offices supporting the operating of such warehouses. Warehouses shall use reasonable endeavours to procure similar access to the offices of their London Agents supporting those operations. Each Warehouse shall co-operate with the Exchange in the conduct of such inspections and give all reasonable assistance to the Exchange.
- 7.3.5 The Exchange shall give reasonable notice of its intention to make inspections, except that no such notice will be required to be given where the Exchange deems it necessary or desirable in its absolute discretion for an immediate inspection to be undertaken by the Exchange or its appointed representatives.
- 7.3.6 Each Warehouse shall provide the Exchange with details of its officers and employees authorised to act as its authorised signatories for the purposes of this Agreement and keep such details up to date at all times, notifying the LME of any changes thereto promptly.

#### **7.4 Periodical inspections**

- 7.4.1 From time to time, and at least every 12 months, each Warehouse must:
- 7.4.1.1 carry out a visual inspection of all metal under Warrant in its Authorised Warehouses and of all supporting documentation;
- 7.4.1.2 at its own cost, appoint an independent third party auditor to perform a count of all the stock which is under Warrant in its Authorised Warehouse(s) which shall include metal taken off Warrant, but which is still on the Warehouse's premises awaiting load-out;
- 7.4.1.3 make a notification to the Exchange without delay following the end of each calendar year (and by not later than 1 March), such notification to contain a record of all such inspections which have been carried out throughout the previous year, and a copy of the report produced by the independent third party auditor pursuant to Clause 7.4.1.2; and

7.4.1.4 seek the approval of the Exchange in the selection of the independent third party auditor referred to in Clause 7.4.1.2 and provide to the Exchange such information concerning its preferred auditor as the Exchange may reasonably request.

7.4.2 Full records of such inspections must be kept, showing at least:

7.4.2.1 the details of all issued Warrants at the time of the inspection;

7.4.2.2 the date of the inspection; and

7.4.2.3 the name and job title of the person undertaking the inspection, who must also acknowledge that he has carried out the inspection and be of suitable seniority.

Without prejudice to the annual notification requirement in Clause 7.4.1, copies of such records will be made available to the Exchange at any time on request.

7.4.3 All weighing equipment used for weighing metal under Warrant must be checked for accuracy at least quarterly by an accredited and responsible institution which is not affiliated to the Warehouse and any material inaccuracies detected by such institution must be rectified by the Warehouse immediately. Written evidence of such inspections must be retained and made available to the Exchange on request.

## **7.5 Compliance with law and regulation**

7.5.1 Each Warehouse shall at all times comply with all applicable law, including (without limitation) Relevant Law and Regulation, local port conditions, local and national customs, local anti-corruption laws, prohibitions on Market Abuse, taxation law and other rules and regulations (where the aforesaid are not in conflict with the requirements of either this Agreement or of the LMEsword Regulations or of the Operating Procedures).

7.5.2 The Warehouse shall immediately notify the Exchange if it becomes aware that such law, customs or regulations conflict, or are likely to conflict, with the requirements of this Agreement, the LMEsword Regulations or the Operating Procedures. In the event of any such conflict, the Exchange shall, without prejudice to its rights under this Agreement, assess whether, in its reasonable opinion, such conflict in fact exists and, if so, whether it is reconcilable and shall determine in its absolute discretion what action (if any) to take. Where the Exchange is of the view that failure immediately to resolve the conflict will not materially prejudice the Warehouse's ability to comply with the requirements of this Agreement, the LMEsword Regulations or the Operating Procedures, it shall consult with the Warehouse as to the remedial action to be taken. In the event of a conflict between this Agreement and the LMEsword Regulations or Operating Procedures or any notice issued by the Exchange, the terms of this Agreement shall prevail.

7.5.3 The Warehouse will not, and nor will any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement



which (i) would violate any anti-corruption laws or regulations applicable to the Warehouse, (ii) is intended to, or does, influence or reward a person and acting in breach of an expectation of good faith, upholding or trust, or which it would otherwise be improper for the recipient to accept, or (iii) is made to a Public Official with the intention of influencing them and obtaining or retaining an exchange with conduct of terms ("**Corrupt Act**").

**7.5.4** The Warehouse represents and warrants that it has not, and so far as it is aware its directors and officers have not:

- (i) engaged in, admitted to, or been found by a court in any jurisdiction to have engaged in any Corrupt Act; or
- (ii) been investigated by a regulatory or law enforcement agency in any jurisdiction as a suspect in connection with an investigation into the commission of any Corrupt Act.

**7.5.5** The Warehouse further agrees and undertakes:

- (i) to properly and accurately record in its books and records all transactions which relate in any way to this Agreement; and
- (ii) to provide any such information as the Exchange may reasonably require by notice in writing in order to monitor the Warehouse's compliance with its obligations under Clauses 7.5.1 and 7.5.3 and 7.5.4; and
- (iii) to notify the Exchange immediately if, at any time, it becomes aware that any of the representations set out at under Clause 7.5.4 are no longer correct.

## **7.6 Principles of Conduct**

The Warehouse shall adhere to the Principles of Conduct set out at Clause 11.

## **8 Enforcement and Discipline**

The Exchange may investigate any breach of this Agreement and take disciplinary action. The terms of the LME's Enforcement and Disciplinary Procedures applicable to all LME Warehouses, as amended by the Exchange from time to time and issued to Warehouses (the "Disciplinary Procedures") shall be deemed to be incorporated into this Agreement as if set out in full herein.

## **9 General**

### **9.1 Fees**

**9.1.1** Each Warehouse shall pay the Exchange the fees and levies prescribed by the Exchange from time to time. The Exchange shall provide all Warehouses with reasonable notice of changes in its prescribed fees and levies.

**9.1.2** Each Warehouse shall be responsible for the cost of inspections undertaken by the Exchange in accordance with the terms of this Agreement except where the inspection is specific to a single Warehouse and is initiated by the Exchange in which case the Exchange shall be responsible for the cost thereof (but without

prejudice to the power of the Exchange to recover any such costs from a Warehouse pursuant to a sanction imposed under the Disciplinary Procedures).

9.1.3 Each Warehouse shall pay the fees prescribed by the LMEsword Regulations and Operating Procedures.

9.1.4 The Exchange shall consult with Warehouses if any proposed changes in its prescribed fees and levies or in the fees prescribed by the LMEsword Regulations and Operating Procedures would result in a material increase in such fees and/or levies. For these purposes, a “material increase” shall be any increase in the previously prescribed fee or levy of more than the greater of (a) 10 per cent or (b) the percentage figure equal to the aggregate of (i) the percentage increase in the retail prices index (“RPI”) as published by the Office for National Statistics calculated by comparing the level of RPI (all items) for the month in which the previously prescribed fee or levy was fixed and comparing it to the level of RPI (all items) for the month in which the Exchange gives notice of its proposed increase and (ii) 5 per cent.

## 9.2 **Withdrawal of right to store particular metal**

Without prejudice to the other powers of the Exchange, the Directors may require a Warehouse to cease to store any one or more particular metals by giving the Warehouse 90 days’ prior notice, or such shorter period as the Directors may consider in their sole discretion justified in the circumstances.

## 9.3 **Proper functioning of the market**

9.3.1 Warehouses play an important role in the markets in which the Exchange operates by ensuring, amongst other things, that Contracts are sufficiently anchored to the price of the underlying metal and that settlements are orderly. Warehouses must not prevent the proper functioning of the market, including by doing anything which may directly or indirectly constrain the liquidity and elasticity of stocks of metal under Warrant. In consequence, Warehouses must not, without limitation, (i) give Inducements that in the ordinary course may reasonably be considered to be exceptional, (ii) impose charges for depositing or withdrawing metals that in the ordinary course may reasonably be considered to be unreasonable~~for depositing or withdrawing metals~~, or (iii) delay unreasonably the receipt or despatch of metal, (save where unavoidable due to Force Majeure), where such behaviour may have, directly or indirectly, a manipulative, distortive or disorderly effect on the market. In the event that the Exchange considers that the conduct of a Warehouse indicates circumstances which may constitute Market Abuse, it is required to report this to the Financial Conduct Authority.

9.3.2 All Warehouses must periodically supply to the Exchange information relating to all Inducements paid to, or received from, third parties, and charges levied, for example, those for loading and unloading metal for Warrant purposes; in the form, and at the times, specified by the Exchange and set out on the Exchange’s website from time to time. Further, a Warehouse must supply such information or clarifications on such information on request by the Exchange.

9.3.3 In addition to the information supplied pursuant to Clause 9.3.2, each Warehouse shall provide to the Exchange, on request, such information as the

Exchange may reasonably request from time to time, including, without limitation, details of all Inducements, and details of the provenance of loaded-in metal, including information about metal which may have been held previously in that Warehouse, or in another facility operated by the same Warehouse or member of the Warehouse's Group.

**9.3.4** For the avoidance of doubt, the Exchange has a right to investigate Warehouses in connection with:

- (i) all Inducements and charges;
- (ii) any behaviour it suspects may have, or has had, a manipulative, distortive, or disorderly effect on the market; and
- (iii) a failure to meet any of the minimum loading-out standards and requirements from time to time laid down by the Exchange (save in an event of Force Majeure).

All investigations shall be conducted in accordance with Clause 8 above and the Disciplinary Procedures.

**9.3.5** The Exchange may take disciplinary action and / or, in its discretion, impose additional load-out requirements on a Warehouse whose behaviour the Exchange considers may have, or has had, the effect of creating or maintaining a Queue and / or which has led to market manipulation or distortion; or otherwise created or maintained a disorderly market.

**9.3.6** All information supplied pursuant to Clause 9.3 shall be treated as confidential by the Exchange and shall be restricted to those authorised staff and officers within the Exchange responsible for analysing such information and/or conducting investigations, the Exchange's professional advisors, regulatory authorities or other person to whom the Exchange is required to disclose it by Relevant Law and Regulation. The Exchange shall not be entitled to have access to legally privileged documents. A list of those persons within the Exchange who are authorised to obtain information from Warehouses in accordance with this Clause 9.3.6 will be circulated to all Warehouses and will be updated from time to time.

## **9.4 Termination**

**9.4.1** Without prejudice to the provisions of Clause 8, this Agreement may be terminated, and the Warehouse delisted on a permanent basis, with or without notice, if:

- 9.4.1.1** the Warehouse commits a serious breach of this Agreement, the LMEsword Regulations or the Operating Procedures;
- 9.4.1.2** the Warehouse fails or ceases to satisfy the requirements of Clause 1.2 (capital) and/or becomes or is, in the opinion of the Exchange, likely to become insolvent;
- 9.4.1.3** the Warehouse breaches Clause 7.5 (compliance with law and regulation);

- 9.4.1.4 the Warehouse materially fails to meet any of its obligations to the holder for the time being of a Warrant and such obligations are not being disputed in good faith;
- 9.4.1.5 the Warehouse fails to pay a sum of £10,000 or more when it becomes due, or a lesser sum within 7 Business Days of it becoming due, to the Exchange under Clause 9.1 or in respect of a fine imposed on it under the Disciplinary Procedures; or
- 9.4.1.6 a Force Majeure occurs.

Any such termination and delisting will be effective upon by the Directors notifying the Warehouse accordingly. Without prejudice to Clause 9.4.1.5, and except in the case of a Force Majeure under Clause 9.4.1.6, the Exchange may at its discretion grant to the Warehouse 7 Business Days within which to remedy a default under this Clause 9.4.1.

- 9.4.2 The Exchange may by notice served on a Warehouse by no later than 1 October in any year delist the Warehouse with effect from the following 1 January where the Exchange reasonably believes that the Warehouse is no longer engaged in LME warehousing business.
- 9.4.3 Without prejudice to any other of the Exchange's powers, a Warehouse, or the Exchange, may terminate this Agreement and delist the Warehouse in question by the service of six months' prior notice (or such other period as they may agree or as provided under Clause 9.11) on the other. On the expiry of such notice, this Agreement shall be terminated and the Warehouse delisted. Subject thereto and the other powers of the Exchange hereunder, this Agreement shall be for an indefinite term.
- 9.4.4 On and following termination of this Agreement and the delisting of a Warehouse, the Warehouse shall not be entitled to any rebate of fees paid to the Exchange but shall remain liable for all pre-existing liabilities to the Exchange. In addition, the Warehouse shall remain subject to the obligations imposed by this Agreement as if it were a Warehouse until a period of five years after delisting has elapsed but shall not be entitled to any of the benefits conferred hereunder, including the right to describe itself as an LME listed warehouse company, and may not issue any further Warrants.
- 9.4.5 On delisting, a Warehouse must, at its own expense, relocate all metal under Warrant to another Warehouse's Authorised Warehouse(s) and arrange for the cancellation of all of its issued and current Warrants. The Exchange's prior approval must be obtained before any relocation arrangements are finalised and in giving such approval (which may not be unreasonably withheld or delayed) the Exchange shall have all due regard to the reasonable instructions of the holders of the Warrants in question, to the extent known to it.

## **9.5 Notices**

- 9.5.1 All notices and other communications shall be in writing and in the English language.

**9.5.2** Subject to Clause 9.5.5, all notices and other communications required to be served under this Agreement shall be served by fax or by electronic messaging (i.e. e-mail). Service will be deemed effective:

Fax: 02076800505

Email: LMELegal@lme.com

**9.5.2.1** in the case of notices sent by fax, on the date and time that transmission is received by an employee of the recipient in legible form or, if that date is not a Business Day or, if the fax is sent after normal working hours, the next following Business Day the burden of proving receipt to be met by a transmission report generated by the sender's facsimile machine; and

**9.5.2.2** in the case of notices sent by electronic messaging, on the date and at the time that the sender receives a valid "read receipt".

**9.5.3** All notices and other communication required to be served on the Warehouse shall be deemed to be validly served thereon if served on the Warehouse's London Agent. A copy of each such notice and communication shall also be sent to the registered office of the Warehouse but failure to send such a copy shall not affect valid service if the notice or other communication has been served on the Warehouse's London Agent.

**9.5.4** In the event of difficulty in using fax or electronic messaging to send notices under this Agreement, notices and other communications may be served in person or by courier, with such service deemed effective on the date of receipt, unless that date is not a Business Day in which case the notice shall be deemed given and effective on the first following day that is a Business Day.

**9.5.5** Notices and other communications shall only be validly served by a Warehouse if they are signed by an authorised signatory notified to the Exchange in accordance with Clause 7.3.6. For the avoidance of doubt, the effect of this Clause 9.5.5 is that, unless the Exchange otherwise prescribes, notices and other communications to be served by a Warehouse may not be served by electronic messaging.

**9.5.6** The Exchange shall not be liable for any actions taken or omitted to be taken in good faith on the basis of any notice or other communication however served which purports to have been given by or on behalf of a Warehouse. The Exchange shall not be under any duty to verify the genuineness of any signature nor the authority of the person which purports to sign a notice or other communication on behalf of a Warehouse.

**9.5.7** Each party shall respond promptly to the communications of the other party, where such communications require a response.

## **9.6 Release**

Any liability to the Exchange under this Agreement may in whole or in part be released, compounded or compromised or time or indulgence given by the Exchange in its absolute discretion as regards any Warehouse under such liability without in any way prejudicing or affecting its rights against any other or others of the Warehouses under

the same or a like liability, whether joint and several or otherwise provided that a Warehouse's liability shall not be increased by such action, nor shall its right to claim compensation or contribution from any person be thereby reduced.

**9.7 Waiver**

No failure of the Exchange to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement (each a "Right") will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. The Rights provided in this Agreement are cumulative and not exclusive of any other Rights (whether provided by law or otherwise). Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

**9.8 Invalidity**

If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

**9.9 Governing law and agreement to arbitrate**

**9.9.1** This Agreement shall be governed by and construed in accordance with English law.

**9.9.2** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which rules are deemed to be incorporated by reference into this Clause. The LCIA shall appoint a sole arbitrator. The place of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

**9.9.3** If the Warehouse is not incorporated in England and Wales, it hereby appoints its London Agent as its agent for service of process for the purposes of any proceedings commenced in the English Court seeking interim relief in support of an existing or prospective LCIA arbitration or enforcing any award granted by a tribunal in any such LCIA arbitration.

**9.10 Exclusion of Liability**

Neither the LME, nor any member of the LME Group, nor any of their Directors nor other officers or members of its Warehousing Committee shall have any liability for any damage, loss, expense or liability of any nature which a Warehouse may suffer or incur in respect of any act or omissions in relation to the provision of warehouse services to Members or its activities or status as a listed Warehouse except to the extent of losses or expenses attributable to its fraud, negligence or wilful default. The terms of this Clause 9.10 shall take precedence over Regulation 11.8.1 of the LMEsword Regulations insofar as that Regulation relates to Warehouses and the Exchange.

## **9.11 Notices and Amendments**

- 9.11.1 The Exchange may issue notices from time to time concerning any matter relevant to the performance by a Warehouse of its obligations under this Agreement.
- 9.11.2 Each Warehouse shall comply with the terms of any such notice and such notices (including, without limitation, the Exchange's Policy on the Approval of Locations as Delivery Points and the Exchange's Policy on the Approval and Operation of Warehouses) shall be deemed to be incorporated into this Agreement.
- 9.11.3 The Exchange may amend this Agreement from time to time. Unless it is considered to be an emergency and essential for the proper operation of the market, any such change shall, subject to Clause 9.11.4 below, only take effect after each Warehouse has been given 30 days' prior written notice of any proposed change.
- 9.11.4 In the event that any such proposed change, or any proposed change to the LMEsword Regulations or Operating Procedures, or any proposed notice under Clause 9.11.1, would have the effect of materially increasing the obligations of any Warehouse, it shall only take effect after the Warehouse has been given 90 days prior written notice thereof. The Exchange undertakes to consult with the affected Warehouses in relation to the proposed change, where practicable for a reasonable period and in reasonable time prior to the start of that 90 day period, and shall have reasonable regard to representations received. In the event that the Warehouse does not wish to be bound by any such proposed change which has the effect of materially increasing the obligations of the Warehouse, it may serve notice of termination of this Agreement at any time prior to the expiry of such notice period, in which event such change shall not at any time take effect with respect to the Warehouse in question and the Warehouse shall be delisted with effect from the date 90 days after the day the notice of termination is served.
- 9.11.5 Clauses 9.11.3 and 9.11.4 shall not apply to the Disciplinary Procedures.

## **9.12 No Assignment**

A Warehouse may not assign the benefit of this Agreement to, or declare a trust over such benefit in favour of, any other person (or enter into any analogous arrangement in any jurisdiction) without the prior written consent of the Exchange.

## **9.13 Information Barriers**

Each Related Warehouse shall maintain effective information barriers between it and the relevant Trading Company as specified by the Exchange from time-to-time as set out in the Notice: Information barriers between Warehouse Companies and Trading Companies (Ref: 14/202: A195: W098), or any successor notice. The Related Warehouse shall engage a firm of professional accountants in public practice, the choice to be agreed with the Exchange, to assure that the information barriers it has in place meet the criteria specified by the Exchange, under such assurance standard(s) and in such manner as the Exchange may specify from time to time.

## 10 Interpretation

### 10.1 Definitions

In this Agreement, unless the context otherwise specifies, the words includes, including, for example and in particular shall be construed as being "without limitation". Further, the following words and expressions in this Agreement shall, unless the context otherwise requires, bear the following meanings:

"Amendable Details" has the meaning given in Clause 3.1.2;

"Authorised Warehouse" means a warehouse storage facility operated by a Warehouse in a particular Delivery Point, which has been approved by the Exchange for the purpose of this Agreement;

"Business Day" has the meaning given in the Rules;

"Contract" has the meaning given in the Rules;

"Corrupt Act" has the meaning given in Clause 7.5.3

"Delivery Point" shall mean a specific geographic area within which warehouses are listed and approved by the LME for the issue of Warrants;

"Depository" means the person appointed by the Exchange from time to time to act as such for the purposes of LMEsword;

"Directors" means the directors of the Exchange from time to time;

"Disciplinary Procedures" has the meaning given in Clause 8;

"the Exchange" means The London Metal Exchange;

"the Financial Conduct Authority" means the regulator (Company No. 01920623) currently based at 25 The North Colonnade, Canary Wharf, London E14 5HS, or any successor body;

"Force Majeure" means an event which is beyond the reasonable control of the Warehouse and which is, in the opinion of the Exchange, likely to render the Warehouse unable to perform its obligations under this Agreement either permanently or for more than 30 days or such other period of time that would, in the Exchange's view, have such a serious effect on the Warehouse that in business terms it would be tantamount to a permanent cessation, including, without limitation, any act of war, terrorism, insurrection, revolution, act of God or the imposition of legal, regulatory or tax restrictions in any relevant location;

"FOT" means free on truck;

"Group" means, in relation to a company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. The terms "holding company" and "subsidiary" have the meanings given to them in section 1159 of the Companies Act 2006;

"Inducement" means, without limitation, any fee, commission, discount, rebate, provision of transport services, or any other monetary or non-monetary benefit given to attract the load-in of metal or deter the load-out of metal;

"LCIA" means the London Court of International Arbitration;



“LME” means The London Metal Exchange;

"LME Group" means, in relation to the LME, any subsidiary or any holding company from time to time of the LME, and any subsidiary from time to time of a holding company of the LME, including without limitation, the Hong Kong Exchanges and Clearing Limited (HKEx). The terms "holding company" and "subsidiary" shall have the meanings given to them in section 1159 of the Companies Act 2006.

"load-out" has the meaning given in the Exchange's Policy on the Approval and Operation of Warehouses, as revised from time to time;

“London Agent” has the meaning given in Clause 1.3.1;

“Major Currency” has the meaning given in the Rules;

"Market Abuse" means the types of behaviour proscribed by section 118 of the Financial Services and Markets Act 2000 or any successor law or regulation;

“Member” means a member of the Exchange;

“Operating Procedures” means the manual issued by the Exchange pursuant to the LMEsword Regulations setting out detailed procedures and information relating to the operation of LMEsword;

“person” includes an individual, partnership, unincorporated association and body corporate;

"Public Official" means an official, whether elected or appointed, who holds a legislative, administrative or judicial position of any kind of a country or territory inside or outside the UK;

"Queue" means circumstances where load-out requests cannot be serviced immediately by a Warehouse, measured by the number of calendar days a metal owner cancelling a Warrant today must wait for a scheduled delivery slot.

“Related Warehouse” means a Warehouse which is associated with a Trading Company. For the purpose of this definition, a Warehouse is associated with a Trading Company where the Warehouse is a subsidiary or holding company of a Trading Company, or a subsidiary or holding company of one of a Trading Company’s subsidiaries or holding companies or otherwise has a Close Connection with a Trading Company. The terms “holding company” and “subsidiary” have the meanings given to them in section 1159 of the Companies Act 2006. A Warehouse shall have a “Close Connection” with a Trading Company if any person or company either directly or indirectly holds or otherwise effectively controls 20% or more of the shares or voting rights in both the Warehouse and the Trading Company; or any Trading Company directly or indirectly holds or effectively controls 20% or more of the shares or voting rights of the relevant Warehouse (or vice versa);

"Relevant Law and Regulation" means the laws, rules and regulations of any statutory, governmental or regulatory authority in any country relevant to the operations of the Warehouse including without limitation the principles, rules and standards of the Financial Conduct Authority as in force from time to time;

“Rules” means the rules and regulations issued by the Exchange (and incorporating the LMEsword Regulations) governing the London Metal Exchange administered by the

Exchange as the same may be amended in accordance with Article 71 of the Articles of Association of the Exchange and a reference to a Rule shall be construed accordingly;

“Secretary” means any person appointed to perform the duties of Secretary of the Exchange;

“Special Contract Rules for Metals” means Part 6 of the Rules as the same may be amended from time to time;

“LMEsword” means the system for, inter alia, the electronic transfer of title to Warrants governed and constituted by the LMEsword Regulations;

“LMEsword Regulations” means the regulations governing the operation of LMEsword issued by the Exchange as amended from time to time in accordance with the terms thereof;

“this Agreement” means the agreement between each Warehouse and the Exchange incorporating these terms and conditions as amended from time to time in accordance herewith and incorporating the Disciplinary Procedures in accordance with Clause 8 hereof;

“Trading Company” shall mean any Member or non-Member company that enters into Contracts or trades metal that is deliverable against a Contract;

“Warehouse” means a warehouse company which is party to this Agreement, accepted as such by the Exchange and listed in Appendix III of the Rules;

“Warehousing Committee” means the LME warehousing committee, details of which are set out on the LME website [www.lme.com](http://www.lme.com).

“Warrant” means a warehouse warrant for the storage of metal, issued by a Warehouse in accordance with this Agreement and in a form approved by the Exchange.

## **10.2 Interpretation**

**10.2.1** Where this Agreement refers to a document or thing being “prescribed”, that shall mean prescribed by the Exchange from time to time in a notice issued by it to Warehouses.

**10.2.2** Words importing the singular shall, where the context permits, include the plural and vice versa. Words importing gender shall include each gender.

**10.2.3** Where this Agreement refers to an act being undertaken by the Exchange, that act may be performed by the Exchange acting through the Directors of the Exchange or any duly authorised committee of the Directors of the Exchange or duly authorised individual.

## 11 Principles of conduct

A Warehouse shall:

- 11.1 Conduct its business with due skill, care and diligence, observing high standards of conduct and safety, complying with the warehouse agreement, the LMEsword regulations, these principles, the common standards of working practice for warehouse companies, other requirements for warehouse companies set by the Exchange, and Relevant Law and Regulation.
- 11.2 Not engage in behaviour which would manipulate or distort the Exchange's markets, nor create or attempt to create a disorderly market, nor require or encourage or assist others to do so. In particular, without limitation, not engage in any behaviour which would be likely to manipulate or distort the market with the effect of creating or maintaining a Queue.
- 11.3 At all times observe high standards of integrity and fair dealing, observe high standards of market conduct, and not enter into any arrangement or agreement that prohibits the provision of any information that the LME requests in its role as a Recognised Investment Exchange.
- 11.4 Maintain financial resources at or above the minimum level set by the LME to ensure continuity in the provision of services for owners of metal on LME warrant, and shall have in place a performance bond (if required by the Exchange) in the manner and of the amount prescribed by the Exchange.
- 11.5 Manage conflicts of interest fairly, both between itself and holders of metal on LME warrant and between holders of metal on LME warrant, ensuring fair and equitable treatment to all holders of metal on LME warrant at all times.
- 11.6 Ensure that all metal held on LME warrants is stored continuously in good delivery condition and that it is identified and stored so as to facilitate easy access and delivery without undue delay.
- 11.7 Deal with those placing metal on LME warrant, those holding LME warrants and those taking metal off LME warrant on a fair and equitable basis.
- 11.8 Organise and control its affairs in a responsible manner, keep proper records, retain all relevant documentation, have well-defined procedures for handling metal stored on LME warrant and for delivering it out expeditiously, ensure that its employees or agents are suitable, adequately trained and properly supervised, and that it has well-defined procedures to ensure compliance with this Agreement, the LMEsword Regulations and the Operating Procedures and all other LME rules and requirements applicable to Warehouses.
- 11.9 Pay due regard to the information needs of LME warrant holders by having transparency of: normal hours of work, all delivery in and load-out charges, rent and rent payment dates, and total average daily load-out volume rates by metal and mode of transport.
- 11.10 Arrange adequate protection for metal held on LME warrant by insuring it against unexplained losses and losses caused by error, negligence, or fraudulent actions of its servants or agents or its personnel.

- 11.11 Deal with the LME in an open and co-operative manner, keeping it informed promptly of anything concerning the suitability of its warehouses or its continued suitability as a warehouse company, or about metal stored with it or that it knows will be placed on or taken off LME warrant, that the LME, as a Recognised Investment Exchange (as defined by the Financial Conduct Authority), which has responsibility for ensuring that its markets are proper and orderly and not subject to abuse, might reasonably expect to be disclosed to it.