

To: All members, warehouse companies, London agents and other interested parties

Ref: 16/320 : A314 : W098

Classification: Warehousing Consultation

Date: 28 September 2016

Subject: **DECISION NOTICE ON AMENDMENTS TO THE LME WAREHOUSE AGREEMENT IN RESPECT OF CHARGE-CAPPING**

## Summary

1. Following a market-wide consultation, the London Metal Exchange (“LME”) is today announcing that it intends to implement a policy of charge-capping (“CC”) on 28 December 2016 in respect of all headline rent and Free on Truck (“FOT”) charges (together, “Headline Warehousing Charges”) levied by LME-listed warehouse companies. This Notice considers the feedback received to Notice 16/252 : A246 : W085 (“Consultation on proposed amendments to the LME Warehouse Agreement in respect of charge-capping”, 14 July 2016, the “CC Consultation Notice”), outlines the LME’s response to this feedback, and details the timetable and next steps for implementation.

## Background

2. On 6 April 2016, the LME issued a Discussion Paper relating to possible reforms of its warehousing policy to deal with the issue of high Headline Warehousing Charges (Notice 16/136 : A132 : W045, “Discussion Paper relating to LME warehousing charges”, the “2016 Discussion Paper”). Specifically, the 2016 Discussion Paper outlined five warehouse reform proposals which could address the issue of perceived high levels of rent and FOT charged by LME-listed warehouse companies.
3. On 14 July 2016, the LME released Notice 16/251 : A245 : W084 (“Warehousing charges Discussion Paper – feedback and analysis”, the “2016 Discussion Paper Results Notice”) which announced the outcome of the 2016 Discussion Paper and outlined the LME’s rationale for further reform and its proposed route forward – namely, to consult on the implementation of CC.



4. The CC Consultation Notice initiated a five week consultation (the “CC Consultation”) with all members, warehouse companies, London agents and other interested parties regarding the LME’s proposal to introduce CC. The CC Consultation Notice explained the background to, and reasons for, the proposed reform (CC), the proposed rules for its operation and management and a proposed timetable for implementation.
5. Having reviewed and analysed the feedback received in respect of the CC Consultation Notice, the LME is today announcing that it will introduce CC, following the requisite 90 day notice period under the LME Warehouse Agreement.
6. This Notice should be read alongside the 2016 Discussion Paper, the 2016 Discussion Paper Results Notice and the CC Consultation Notice. Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in these Notices, the LME Warehouse Agreement (the “Warehouse Agreement”, being, for the avoidance of doubt, the new version attached to this Notice) and the Policy on Approval and Operation of Warehouses (the “Policy”) pursuant to Notice 15/372 : A359 : W121 (“Amendments to the Policy on Approval and Operation of Warehouses (implementation of LORI and QBRC) and clarification of certain points relating to the LME’s physical delivery network”, 25 November 2015).

#### **Consultation outcome**

7. As outlined above, following the CC Consultation, the LME is today announcing its intention to implement CC. Specifically, this reform measure is a straightforward approach to controlling warehousing charges, by capping charges at specified frozen rates for a five year period, after which such caps will be increased at the rate of CPI, with an appeals process serving to address any market concerns as to future caps being set at potentially inappropriate levels.
8. Attached to this Notice is the revised Warehouse Agreement that the LME will introduce, which contains amendments for the purposes of bringing CC into force. This version is unchanged from the proposed version attached to the CC Consultation Notice, save that the effective date of the Warehouse Agreement (28 December 2016) has been inserted at Clause 5.3.2. Per Clause 5.3.2, the 2017-18 Charge Caps will be formally published to the market on 28 December 2016 – however, these caps (derived formulaically per Clause 5.3.2) are also set out in Appendix D.
9. This version of the Warehouse Agreement will take effect on 28 December 2016, and the requirement of Clause 5.4.1 (by which warehouses must submit 2017-18



charges in accordance with the relevant Charge Caps) shall apply on 29 December 2016. The LME will then publish final 2017-18 warehouse charges on 30 December 2016. This implementation timetable also satisfies the 90 days' contractual notice period stipulated in the Warehouse Agreement.

### **Background to charge-capping**

10. A full background to the CC proposal, including the LME's assessment of the context of Headline Warehousing Charges, why the LME believed it was necessary to take action, a survey of possible approaches, and an analysis of the proportionality of such actions (including an assessment as to why the LME believes CC to be the most proportionate course of action), is contained in the 2016 Discussion Paper, the 2016 Discussion Paper Results Notice, and the CC Consultation Notice. Interested parties are referred to these Notices for further information.

### **The structure of this Notice**

11. The LME received twelve responses to the CC Consultation. Broadly, eight supported the implementation of CC, one dealt with technical questions relating to the proposal but did not express an opinion on the proposal itself, and three were opposed. Of the three responses opposed, the LME would note that one nonetheless adopted a positive attitude, and expressed a willingness to work with the LME, and all three provided answers to some or all of Consultation Questions 2-7 should CC be implemented.
12. The LME has read and considered all responses. The fact that any particular item raised in any particular response is not expressly included in this Notice does not indicate that the LME has not had regard to it.
13. The analysis of market feedback to the CC Consultation in this Notice mirrors the Consultation Questions as set out in the CC Consultation Notice, and the analytical framework as set out in the 2016 Discussion Paper Results Notice. As in those Notices, this structure is designed to facilitate the LME in acting proportionately and objectively. This Notice is therefore structured as follows:

**Section A** Consultation Question 1: Do you support the CC proposal?

**Section B** Consultation Questions 2-7 on the specific parameters of CC, namely:

Consultation Question 2: Do you agree that charge caps should be set at a per-country and per-metal level?



Consultation Question 3: Do you agree that the 2017-18 charge caps should be calculated as the arithmetic mean average of the highest 2015-16 and highest 2016-17 charges?

Consultation Question 4: Do you agree with the proposed 2017-18 charge caps set out in Appendix C?

Consultation Question 5: Do you agree with the 5 year charge freeze?

Consultation Question 6: Do you agree that, from the 2022-23 charge year onwards, each charge cap should be incremented by the applicable rate of CPI for the last measured 12-month period prior to publication of the relevant charge caps?

Consultation Question 7: Do you agree with the appeals process?

**Section C** Consultation Question 8: Are there any other matters you wish the LME to consider in the context of any aspect of the CC Consultation?

#### **Section D** LME analysis

**D.1** Does CC seek to achieve a regulatory, prudential or organisational objective?

**D.2** Is CC likely to have an effect on competition (noting that, even if it is likely to have an effect on competition, it may still be justifiable and proportionate)?

**D.3** Does CC comply with the principle of proportionality? In particular:

- (a) Is CC capable of meeting the relevant objectives?
- (b) What are the most pertinent arguments for CC?
- (c) What are the most pertinent arguments against CC?
- (d) Are there any other, less restrictive means of achieving the same objective(s)?
- (e) Would the negative effects of CC be too great to justify implementation?

14. A revised version of the Warehouse Agreement is contained in clean form at Appendix A, and in blackline form at Appendix B, blacklined to the version proposed in the CC Consultation Notice, and Appendix C, blacklined to the in-force version pursuant to Notice W050 ("Minor amendment to the Warehouse Agreement", 13 April 2016). Appendix D sets out the charge caps for the 2017-18 charge year.



## **The LME's financial interest**

15. As the market is aware, pursuant to the LME stock levy, the LME receives 1.1% of the rent charged by LME-licensed warehouses on LME-warranted metal (including metal waiting in queues, subject to the same terms as Queue-Based Rent Capping). This rate has not increased since 2002, and the LME's decision-making process, and its conduct of the CC Consultation, is in no way influenced by the existence of the stock levy. The LME's focus on ensuring that prices can be effectively discovered on the LME is essential in order for the LME to ensure that the market functions in an orderly manner in accordance with its regulatory obligations; this is also important to the LME's value as an ongoing business.

### **Section A Consultation Question 1: Do you support the CC proposal?**

16. Eight respondents were in favour of the proposal, commenting variously that it is good, provides clarity and is the most pragmatic of all the options available to the LME. It was also seen as likely to bring order to what was previously viewed as an undesirable situation by introducing a level playing field in respect of rates. Further, some respondents felt that it would enable the LME to retain its ability to act as a market of last resort and ensure the integrity and reliability of its price discovery arrangements, thus running an orderly market.
17. One respondent reiterated concerns about warehouse practices which they believed distorted the market – including the recent steep increases seen in warehouse charges – and was pleased that the LME has recognised that these charges are out-of-line with the cost of providing the underlying services.
18. One respondent was also pleased that the LME had chosen not to follow any of the more aggressive routes outlined in the 2016 Discussion Paper which, in the view of the respondent, could have led to legal action and / or an unworkable system which damaged the structure of the market.
19. Although some of the respondents in favour of CC did acknowledge that there are advantages and disadvantages, and several highlighted concerns which are outlined below in respect of the relevant specific parameters in respect of CC, only three respondents were against the introduction of the measure.
20. Of those who were against the CC proposal, one of these did not agree with CC on the basis that they believe in a free and competitive market. However, they added that, should the LME adopt a constructive approach, they would consider the proposal.



21. On a similar note, one respondent objected to CC as they felt that it represents a form of anti-competitive price fixing that could create an inefficient market which, they felt, would consequently be better served by less subjectively managed (in the view of that respondent) regulated exchanges. They stressed that they have raised these concerns before, had advised in favour of the simplification of warehousing rules, and felt disappointed, therefore, that the LME was choosing to continue with CC – especially while Queue-Based Rent Capping (“QBRC”) is still in force.
22. Further to this, one respondent commented that they preferred the Charge Threshold Guidance (“CTG”) reform proposal which was outlined in the 2016 Discussion Paper, as they believed that CC removes a significant element of commercial judgement and potential competitiveness from the warehousing sector, without preventing more powerful players from using their financial strength to dominate the market.
23. The LME does not believe that CC restricts competitiveness in its market – indeed, the 2016 Discussion Paper fully outlined the LME’s analysis of how competition between LME warehouses happens through bilateral negotiations between warehouses and metal owners bringing their metal into the warehouse, rather than through setting headline charges, and that this feature of the market contributes significantly to the steep increases in headline rates that the market has seen in recent times (see paragraph 31 of the 2016 Discussion Paper). Indeed, the LME believes that CC as proposed will prevent the steep increases in Headline Warehousing Charges seen in recent years, improving the efficiency of the year-end rate setting process and allowing all participants to compete on a level playing field. Concerns regarding the LME’s approach to reform are discussed below in paragraphs 26 and 96.
24. On this subject, another respondent commented that they felt that the only LME warehouse reform with any real merit was the Linked Load-In / Load-Out Rule, and that the disjointed and complicated nature of the other initiatives had made it impossible for warehouse companies to fully comply, resulting in overall user frustration with the system. As a result, they did not support the CC proposal and did not believe that it meets the relevant legal tests for ensuring a proper exercise of the LME’s regulatory power – specifically, while they agreed that ensuring an orderly market is a proper function of the LME, they did not believe that the CC proposal constitutes a necessary, appropriate or proportionate means of achieving this.
25. Further, this respondent felt that the LME has not fully acknowledged the influence of warehouse reforms and the consequent increased burden on warehouse companies on driving up costs. Similarly, they believed that the LME has not yet



had sufficient time to assess the true impact of existing reform and, as a result, did not think that this was an appropriate time to be progressing with CC.

26. The LME is aware of concerns in respect of its warehouse reform programme (also discussed below in paragraph 96); indeed, it has referenced such concerns in depth in earlier Notices – interested parties are referred to paragraphs 238-243 of the 2016 Discussion Paper Results Notice for the LME’s full analysis of these issues. However, the LME does not agree that CC would fail to meet any relevant legal tests for ensuring a proper exercise of its regulatory power. The LME considers that all the reforms undertaken constitute a proper exercise of its regulatory power. Far from being inconsistent with the proper exercise of its regulatory power, the LME considers that the implementation of CC at this juncture is an important part of the LME complying with its regulatory obligation to provide an orderly market.
27. The LME continues to be extremely grateful for the ongoing engagement and collaboration of its listed warehouse companies in the reform process. While fully cognisant of the cost and increased administrative burden placed on warehouse companies as a result of recent changes, the LME is pleased that so many of its warehousing stakeholders have been so supportive of its efforts to ensure that the physical network fulfils its function as a highly efficient market of last resort, operating effectively in support of the LME’s price discovery remit.
28. Furthermore, the LME is sympathetic to market concerns regarding the level of reform, and agrees that a period of stability would be beneficial to allow the market time to adjust and adapt. The LME initially proposed to adopt a “wait-and-see” approach in respect of CC (hence recognising the call for a pause in the reform agenda), and only consulted on taking substantive action in respect of CC as a result of the broad market concerns in respect of the 2016-17 rate-setting cycle. The LME notes the desire amongst certain parties for rule simplification. However, the LME also notes the view, expressed to the LME by certain stakeholders, that the simplest approach would be to leave the rules unchanged for a period of time – i.e. that the very process of attempted rule simplification would itself represent a further complication to the network.
29. One respondent felt that CC would be inappropriate given that the LME cannot accurately ascertain the true cost of providing warehouse services in a global market. They felt that such an assessment would be both subjective and location dependent with a number of variable costs involved. Additionally, the respondent noted that some warehouse operators are integrated into a wider entity, making it impossible to isolate and identify true costs for a specific operation.





30. The LME agrees that it would be very difficult, and would require significant data input from warehouse companies, to assess accurately the true cost of providing warehouses services. It is for this reason – in conjunction with the market feedback received in relation to the 2016 Discussion Paper – that the LME has not proposed to implement CC on the basis of such an assessment (as put forward in paragraph 84(b) of the 2016 Discussion Paper). However, as discussed below, it is possible to conclude with confidence that warehousing costs are below the headline rates that the LME is adopting in CC.

#### **Section B Consultation Questions 2-7 on the specific parameters of CC**

##### **Consultation Question 2: Do you agree that charge caps should be set at a per-country and per-metal level?**

31. In respect of a per-metal basis, four respondents agreed and eight did not comment. On the subject of per-country caps, two respondents agreed, two had suggested refinements, one was against, one was unclear and six did not comment. Of the respondents who addressed this question, one noted that, while not in agreement with CC as a reform measure, were it to proceed they would have no objection to such a methodology.
32. One respondent pointed out that this would likely lead to charges at lower cost locations rising to the prevailing rate of the country.
33. The LME has consistently acknowledged the risk that the implementation of a charge cap would lead to all charges “floating up” to the cap. However, as previously discussed, the LME does not view competition in this market as occurring at the level of Headline Warehousing Charges – and, as such, would not view this as an anti-competitive outcome. Furthermore, in this context, it is worth considering the “counterfactual” scenario, i.e. what would happen in the event that the LME implemented no solution, or an alternative option such as those considered in the Discussion Paper. The starting point for a counterfactual consideration must be what would happen in the event that no measure was put in place. This was considered in the Discussion Paper Results Notice (see in particular paragraph 123). The LME’s view is that the counterfactual would be likely to involve headline charges spiralling ever upwards above the maximum level. Therefore even if the cap were to operate as a focal point, this should be considered to be more competitive than the counterfactual. If one then considers the counterfactual as an alternative to CC, then clearly one needs to consider whether CC would be less restrictive of competition than any of the alternatives. As explained in this Notice, the LME considers the charge capping measure it proposes to be both the least restrictive of





competition and the most effective in addressing the issue of high charges. This issue is also considered further in Section D below.

34. One respondent agreed with a per-metal basis, and also agreed that a per-country cap would work. However, they also suggested looking at a per-port cap, lest the most expensive port retain a competitive advantage under a per-country cap, or, that regional economics would advantage one port over another within the same country (e.g. cheaper lease rates in, for example, Detroit compared to other US locations).
35. The LME accepts that differences will always exist between storage facilities, and any level of charge caps less granular than a per-shed analysis could be argued to fail to represent differences in logistical cost structures. However, the view of the LME remains that a per-country assessment represents the optimal balance in this regard, and that cost structures within a given country will not vary to a sufficient degree such that the principle of an equitably-applied charge cap would be invalidated.
36. One respondent expressed concerns as to the differential levels of caps in particular countries and, as one of a broader universe of solutions, proposed a regional approach. This respondent's feedback is more fully considered in paragraphs 43-50 below.

**Consultation Question 3: Do you agree that the 2017-18 charge caps should be calculated as the arithmetic mean average of the highest 2015-16 and highest 2016-17 charges?**

37. Four respondents agreed with this, with one commenting that they understood the rationale behind the methodology. One respondent, while reiterating that they were not in favour of CC as a whole, said that they would not object to such methodology were CC to be implemented. One respondent had suggested amendments, two disagreed and five did not comment on this question.
38. One respondent felt that the simplicity of this proposal would be welcomed by those warehouses which would be able to increase prices as a result.
39. One respondent was not against the principle, but expressed concern that there would be an unacceptably high number of appeals due to the fact that the rents are expressed in US currency, but warehouses incur costs in their local currency meaning that substantial movements in local currencies would not be reflected. This respondent felt that, while this would be acceptable when local currencies devalue against the dollar, this was unlikely to work when they increase in value – an



outcome which was perceived to be quite likely in some locations over the next five years. The respondent also suggested that the outcome of the November 2016 US elections might provoke a sharp shift in the value of the US dollar, irrespective of local country economics. The respondent accepted that this is a difficult problem to resolve, although they proposed a number of ideas including expressing rent caps in local currencies (while accepting that this might be difficult in a global market where the US dollar is the contractual currency) or building in an automatic adjustment of the cap for individual countries whose currencies appreciate over a certain amount (e.g. 10%) from the base period.

40. The LME, however, believes that its methodology for the application of the CPI inflator to the US dollar-denominated rents addresses this issue, as it also incorporates an FX adjustment to reflect the fact that the warehouse's cost-base will be in local currency. This has represented a key area of the work of the LME's economic expert. The LME accepts that such CPI inflation will not be applied during the five year charge freeze window – however, a key rationale for the appeals process is to provide an avenue for changes to be made within the freeze window due to, inter alia, significant currency fluctuations of this nature. The LME further accepts that significant FX movements between local currency and the US dollar intra-year may cause temporary difficulties until such changes can be reflected in the next year's published Headline Warehousing Charges – but this issue exists equally under the current rules.
41. Two respondents, while not taking issue with the proposed methodology, did feel that certain of the outcomes were undesirable. While this could be viewed as a comment on the methodology, the LME believes it is best addressed under Consultation Question 4.

**Consultation Question 4: Do you agree with the proposed 2017-18 charge caps set out in Appendix C?**

42. Four respondents agreed with this – with two noting that if a party agreed with Consultation Question 3 then, by definition, that party should also agree with Consultation Question 4. Two respondents disagreed with the proposed caps (although one agreed in principle but was concerned about the potential number of appeals, as outlined above in paragraph 39), one suggested amendments and five did not comment.
43. One respondent stated that their priority is to see stability in the market, and that they therefore supported the levels of caps on the basis that they remove a potentially contentious issue from undermining confidence in the market.



44. One respondent felt that the proposed per-country caps could lead to potentially serious distortions. This respondent's view was grounded in the fact that, in previous rate submission cycles, some operators had shown restraint, and others had not. Furthermore, some countries were served only by operators which had, in the view of the view of the respondent, demonstrated restraint – with the effect that maximum 2015-16 and 2016-17 Headline Warehousing Charges in those countries were lower, and the application of the LME's proposed methodology for the calculation of charge caps would result in those countries being subjected to lower charge caps. The respondent added that this factor would only be exacerbated as increases based on CPI-based indicators would widen the absolute differences between the maximum rates of different countries.
45. In discussions with the LME, this respondent further noted that, in its view, certain countries operate as part of a competitive region, whereby metal owners will solicit "bids" for the payment of incentives from warehouses in several countries across the region. The respondent hence believes that, within a region, warehouses operating in countries with lower charge caps would be at a competitive disadvantage compared to warehouses operating in countries with higher charge caps, as warehouses operating in countries with higher charge caps could fund the payment of greater incentives (assuming a broadly comparable cost structure across the region).
46. By way of example, this respondent highlighted the fact that rates in Germany, Sweden and Spain would be lower than those in the Netherlands, despite a comparable cost structure and the existence of a broader "northern European region" for metal flows, making it more difficult for operators in those countries to compete for metal. This was perceived as being likely to lead to a decrease in LME-related activities and, potentially, the end of LME warehousing in those countries. Although the respondent stated that they usually base cost structure on a per-country basis, they argued that, within one region, these cost structures are often very comparable and that, as a result, they could not accept some countries being placed at a perverse and permanent competitive disadvantage.
47. The respondent stressed the importance of this issue, stating that allowing or encouraging regional price differences would mean that the LME implicitly makes a strategic decision on geographical diversity. In contrast, should the LME amend the levels of the caps to restore regional stability, this would allow the market to continue to decide where the demand for storage lies. They felt that leaving the situation uncorrected could lead to legal challenge from disadvantaged warehouse operators.



48. As further examples, they suggested that rent and FOT were too low in Taiwan, UAE and the UK, whilst rent was too high in Malaysia, and in Singapore, FOT was too high and rent too low.
49. To ameliorate this situation, the respondent proposed a number of solutions which they believe would help establish a level playing field including:
  - (a) Percentage increases for countries with excessively high 2016-17 rates to be calculated on 2015-16 rates to avoid unjustified inequality of rates being cemented on an ongoing basis. They point out that this suggestion is premised on the LME standing by its earlier statements that some rate increases in 2016-17 were excessive – even after the rate submission window was reopened.
  - (b) The LME taking a regional approach to rate-setting, giving all countries in Europe the same caps, which would cancel out any regional differences. Given the risk of potential resistance and the preference to avoid delays, they suggested applying the highest rate per continent for all countries therein.
  - (c) Calculate the average percentage increases using 2015-16 rates as the basis.
50. The respondent recognised that all of these proposed approaches carry attendant advantages, disadvantages and risks. As such, they also proposed a fourth solution by which all the proposed caps would be analysed to identify the outliers for each region. They believed that this would lead to the following conclusions:
  - (a) Rent and FOT rates for Germany, Sweden, Spain (and potentially, the UK) would be increased to the same level as Belgium and the Netherlands.
  - (b) Rent rates in Malaysia would be decreased to the same as those proposed for Singapore, while Singapore's FOT would be decreased to be more in line with other countries in the region. Alternatively, Singaporean rents could be increased to match those of Malaysia, and Singaporean FOT could be decreased more modestly.
51. A further respondent, while not providing the same level of methodological detail, noted a similar point in respect of the resulting levels of proposed charge cap – namely that, when the proposed per-country FOT rates are converted into US dollars, this highlights the wide variance between the highest FOT (compared to the lowest). This respondent pointed out that this factor – combined with the five year rate freeze – puts the low FOT countries at a competitive disadvantage when bidding for metal globally, an outcome which they fear will lead to these countries becoming dormant for LME storage. This respondent requested that the LME comment on such a variance and outline its proposal for ensuring that all countries remain competitive.



52. The LME acknowledges that there exist a significant number of ways in which caps can be calculated. The LME has worked hard, therefore, to put forward a methodology which, in the view of the LME, accounts for all the above mentioned variations without significantly economically disadvantaging LME-listed operators.
53. The LME does not consider that the resultant proposed 2017-18 charge caps discriminate against any particular country. Indeed, the LME notes that such concerns were expressed only by two respondents, both of which were global warehousing operators. Crucially, smaller warehouse operators whose businesses were biased very significantly towards the allegedly disadvantaged countries (such as Germany, Spain and the UK) did not raise such concerns in the CC Consultation.
54. Furthermore, the analysis of FOT comparability on the basis of rates converted into US dollars naturally reflects the differing cost structures of the underlying countries – although the LME accepts that, even adjusting for such variations, the proposed per-country FOT charge caps would still exhibit a degree of variance within regions. However, the LME would again note that, were such differences likely to disadvantage given countries, then warehouse operators with significant exposure to such countries would be more likely to have raised concerns.
55. Furthermore, the methodology applied by the LME to calculate charge caps is deliberately based on observed 2015-16 and 2016-17 Headline Warehousing Charges. To the extent that differences exist between per-country charge caps, this is because such differences existed between historical rates, and there is (in the view of the LME) no evidence that any countries will “fall out” of the LME warehousing network as a result of current charges.
56. Accordingly, the LME does not believe there is a sufficient weight of evidence to militate for changes to the proposed 2017-18 charge caps. To the extent that disparities were to emerge and be observed by the market, the LME believes these could be effectively addressed by means of changes to the 2018-19 charge caps via the appeals process.
57. In this regard, the LME would note its commitment to a full market review during the course of 2017 (as further set out in paragraph 79 below), which will help to identify any such concerns, including whether any countries are at risk of becoming dormant due to the level of caps.



### **Consultation Question 5: Do you agree with the 5 year charge freeze?**

58. Only six respondents commented on the charge freeze, with three moderately in favour – agreeing with the idea of a freeze in principle but highlighting some reservations as outlined below – and three against. As fully explored below in paragraph 65, there was no consensus amongst respondents as to the appropriate length of charge freeze.
59. Three respondents were against the five year freeze, with one arguing that the rates should be adjusted at a fair rate of cost increase. However, they agreed to comply should the LME adopt a fair approach which takes into account CPI increases and exchange rate adjustments in countries not using the US dollar.
60. A second respondent felt that five years would be too long and proposed a three year freeze as an alternative.
61. A third respondent was against the five year freeze, arguing that five years is an extraordinarily long time during which many macro factors (including, for example, inflation, taxation and geopolitical issues) can all impact the cost of operating an LME warehouse company. Instead, they proposed a two year freeze and a defined review process in each of the subsequent three years to make adjustments on a case by case – and per-location – basis. They felt that the LME's economic analysis took a flawed and simplistic approach which ignored the material and negative financial impact of LME reform on warehousing businesses.
62. Of those moderately in favour, one respondent proposed regular reviews of the effectiveness of the freeze with findings communicated to the market.
63. The second referred back to their concerns with freezing FOTs at the proposed levels. These concerns are fully outlined above at paragraph 51.
64. The third respondent was in favour of the freeze, feeling that it balances the needs of both sides of the market as well as those of the warehouse operators. However, they also highlighted the large delta between LME headline rates and bilaterally negotiated rates as the core of the problem, as they believed it causes the LME to become a market of first resort, where warehouses compete with consumers for metal, artificially increasing premiums and promoting the practice of long-term financing deals, which limits the number of free-floating warrants and creates artificial backwardations. This respondent felt that this results in the LME contract becoming increasingly detached from the physical market, that the LME's aim



should be to reduce this delta, and that five years would not be sufficient to make a meaningful difference.

65. This diversity of views – with some stakeholders preferring a shorter freeze period and another advocating for an extension – demonstrates a fundamental tension in the market and the LME has been highly cognisant of the need to capture and adequately account for competing viewpoints. It was for this reason that the LME requested its independent economic expert to identify a suitable length of time during which Headline Warehousing Charges could be frozen, without meaningful risk of inflation causing the “real-world” warehousing charges to converge with the frozen Headline Warehousing Charges. This analysis resulted in the five year proposal, and the LME does not believe that any respondent has provided an argument (for either a longer or shorter freeze period) which invalidates such analysis. Furthermore, the appeals process would act as a safeguard, even if the five year period proved to be too long.
66. While the LME notes the desire on the part of the final respondent to reduce the delta between Headline Warehousing Charges and those negotiated bilaterally, and agrees that this could have positive implications for the market, the LME did put forward this proposal in the 2016 Discussion Paper (see paragraphs 68 (c) and (d) for full details) but it received minimal support in response (see the 2016 Discussion Paper Results Notice, paragraphs 78-80), with respondents feeling that this would be too aggressive.
67. The final respondent flagged a further concern – namely that the delta would be unaffected should the CPI remain flat or reduce over the course of those five years, or would get worse in a negative inflation scenario. While they did not believe that an immediate drop in Headline Warehousing Charges would be feasible, they felt that – if the LME wanted to restore normal market practice and bring LME storage costs in line with bilaterally negotiated rates – then the freeze would either need to be longer (with the suggestion that even 10-15 years would not be enough), be extended in a flat or deflationary scenario, or contain a carve-out for a deflationary period. They suggested that a final alternative solution would be to reduce all rates by 10%, which they did not believe would cause problems or affect the functionality of the network.
68. The LME agrees that in the circumstances described by the respondent, the five year freeze would not reduce the delta (although it notes that only in a negative inflation scenario would the delta get worse). The LME considers that such a scenario is unlikely. In any event, the LME will continue to monitor the economic environment and it has the power to take action in the future should it become





necessary. To this end, and as discussed at paragraph 79 below, the LME hereby commits to conducting substantive market engagement, achieved via the Warehousing Committee and the Physical Market Committee, working with stakeholders to understand any potential market concerns as to the level of charge caps during summer 2017 (prior to the 2018-19 rent year).

**Consultation Question 6: Do you agree that, from the 2022-23 charge year onwards, each charge cap should be incremented by the applicable rate of CPI for the last measured 12-month period prior to publication of the relevant charge caps?**

69. Six respondents agreed, commenting that it appears to be the most straightforward and appropriate means of incrementing the caps, with one commenting that a CPI-based increase was as good as any other method. One respondent reiterated that they did not believe that a five year freeze was sufficiently long (as outlined in response to Consultation Question 5). One respondent was against this measure and five did not address the question.
70. One respondent proposed that the FX rate on the FOT is included on top of the CPI. They proposed that the FOT in non-USD countries is adjusted automatically should there be substantial FX variations; for example, above 10% on a yearly basis.
71. The LME accepts that the FOT, denominated in local currencies, is subject to FX variations – however, the LME takes the view that applying a local-market CPI inflator which would incorporate the impact of any FX rate differences.
72. One respondent, while not in favour of CC, said they had no objection to the CPI approach in principle.

**Consultation Question 7: Do you agree with the appeals process?**

73. Four respondents agreed, although one commented that they would like to see information on the basis by which appeals would be decided, and new caps introduced. The LME notes this request, but feels that it would be unhelpful to provide such guidance given that all such appeals will be considered on a case-by-case basis, and will be entirely dependent on the unique circumstances of that appeal.
74. One respondent was against the appeals process, one suggested refinements, and six respondents did not comment.



75. One respondent added that they believe that other market players should have a chance to appeal, thus giving all participants a chance to comment on rates – especially if there should be perceived problems with the rates. They were also concerned that the appeals process should not be limited to one opportunity a year.
76. The LME continues to believe that warehouses represent the correct appellants within the appeals process, because the most likely scenario is that a warehouse's costs will increase and as a result they will seek to appeal the charge cap before setting their headline rates. However, as set out below in paragraph 79, the LME will be mindful of the views of a broad set of market participants when carrying out market engagement as to the appropriateness of the levels of charge caps. The LME believes that an annual appeals process is appropriate; given that the charge-setting cycle (even under the current rules) is also annual.
77. One respondent did not agree with the appeals process, believing that – once published – it would be difficult for the LME to revise the rates. The respondent found this especially concerning given their belief that the LME is not inclined – or able – to amend proposed reforms in favour of warehouses, something which they view as partly responsible for (in the view of the respondent) ill-thought through reforms which have been implemented to date. This respondent's preference would be for the LME to allow a window during which any warehouse can talk to the LME about specific views or relevant factors for consideration on a confidential basis prior to publication. This would allow the LME to assess these factors before rate publication – and if a warehouse company were still dissatisfied, it would be able to appeal via the route outlined in the CC Consultation Notice.
78. The LME recognises that warehouse operators may wish to discuss concerns as to the level of charge caps informally with the LME, prior to their decision as to the possible submission of an official appeal. The LME expects such desire to be particularly strong prior to the 2018-19 rent year submission (which will represent the first rent year for which the appeals process will operate), and additionally following any significant changes to LME warehousing rules or procedures (which could potentially impact economics for warehouse operators, and hence give rise to calls for changes to the levels of charge caps).
79. The LME recognises this desire, and would emphasise that it is always available for discussions of this nature with any warehouse operator (and indeed, any market participant). However, recognising that the potential need for such discussions will be particularly acute in summer 2017 (prior to the 2018-19 rent year), and immediately following any substantial warehouse reform (assessed as being substantial in the sole discretion of the LME), the LME will commit to meaningful



market engagement, achieved via the Warehousing Committee and the Physical Market Committee, working with stakeholders to understand any potential market concerns as to the level of charge caps. As part of this process, the LME Executive will form and communicate a preliminary view as to whether any market concerns, in its opinion, appear to carry merit. The view of the LME Executive will be communicated to the LME Special Committee

80. For the avoidance of doubt, (i) any changes to charge caps will continue to require an appeal to be made to the Special Committee, (ii) such appeals may be made even if the LME Executive has not carried out a market engagement in the circumstances set out above, and (iii) the Special Committee will not be bound by the recommendation, or absence of recommendation, of the LME Executive.

**Section C** Consultation Question 8: Are there any other matters you wish the LME to consider in the context of any aspect of the CC Consultation?

81. Respondents raised a number of other points relating to the CC Consultation.
82. One requested a contractual commitment from the LME (written into the LME Warehouse Agreement) that the stock levy and warehouse listing fees would also be frozen for five years.
83. As set out in paragraph 15, the LME conducts its consultation activities entirely separately to its assessment of fees and other economics, and hence does not believe it would be appropriate to draw a linkage of this nature.
84. There was also a concern from one respondent about the potential legal risk if all warehouse companies were to set their rent and FOTs at the cap level, and that this action is later misconstrued as anti-competitive practice. They argue that this risk is especially pertinent for those warehouse companies still defending legal action in the USA which relates to allegations in respect of anti-competitive practices. This respondent requested information from LME as to the legal risk mitigants the Exchange would propose for warehouse companies; for example, publication of the LME's legal advice on competition law, as well as, if in existence, the written opinion or guidance of any regulatory authority on this topic.
85. The LME, while understanding the rationale behind this request, does not propose to disclose privileged legal advice. However, the LME is confident that the structure and content of CC is fair, proportionate and compliant with all relevant requirements. Further, the LME notes that, as per existing practice, all warehouse companies are expected to assess their costs and submit rates on this basis, provided they do not



exceed the stated caps. Thus, warehouses remain free to set their rates below the caps provided by the LME, should they have concerns of this nature.

86. One respondent requested further transparency to pricing through the publication of monthly data from each LME-listed warehouse company of their average warehousing charges after incentives and discounts.
87. The LME notes this request, but would emphasise that incentive data reported to the LME is provided on a strictly confidential basis, that the circulation of such data is limited even within the LME, and that it would be a breach of the Warehouse Agreement to publish such data, even at the aggregate level. Individual warehouse companies are, of course, free to publish data relating to their own costs and charges as they see fit.
88. One respondent requested that the LME published illustrative example of variables, calculations and associated rates to further clarify the detailed formulae included in the CC Consultation Notice.
89. The LME notes that it has done so in the CC Consultation Notice itself, and considers that this gives sufficient clarity.
90. One respondent requested that the LME undertake an aggressive campaign to recruit more LME-listed warehouses.
91. The LME is always happy to accept further warehouse companies to its network, although it notes that any new warehouse application will need to meet the criteria laid out in the agreements and policies which govern the LME warehouse network. The LME is pleased to report that, since the start of the warehouse reform process in July 2013, nine new warehouse operators have listed as LME warehouses, and only two have delisted.
92. One respondent queried why the CC Consultation Notice said nothing about the Information Barrier point which was raised in the 2016 Discussion Paper, and restated their support for an extension of Information Barriers to all LME-listed warehouse companies.
93. There is no mention of the Information Barrier point in the CC Consultation Notice as this was not included as part of the CC Consultation. The LME believes that this point was dealt with in full in the 2016 Discussion Paper Results Notice. As stated therein, the LME, while recognising the validity of the query raised, continues to believe that the existing clause in the Warehouse Agreement (which is legally



binding upon all LME-listed warehouse companies) provides appropriate protection against the dissemination of confidential or market sensitive information by warehouse companies. For the LME's full response to this point, interested parties are referred to the 2016 Discussion Paper Notice, paragraphs 217-225.

94. Finally, one respondent reiterated its previously-stated concerns that warehouse reform in general, and QBRC in particular, have made the market less transparent, reduced the flow of metal available to settle positions, and have in turn increased the risk of market abuse by dominant position holders with consequent disruption to the forward curve. They argue that this is especially true of QBRC, which they perceive as reducing warehouses' willingness to load in metal, creating a higher chance of shortages and squeezes, and thus reducing the attractiveness of the use of LME warehousing. This respondent suggested that the LME conduct a separate consultation as to whether LME supervision and tools to manage dominant positions remain fit for purpose, and further to outline its strategic plans to increase liquidity of metal on LME warrant.
95. This is mirrored by another concern of the respondent relating to QBRC, namely that its structure incentivises ongoing cancellation of metal by financially-motivated market participants at the expense of warehouse companies. The respondent outlined their concern that investment decisions had been made on the basis of LME regulations at that point in time and, as a result of the changing rules, they face long term losses and associated consequences including lowered staff morale and loss of business. They asked that the LME reconsider and address the flaw (in the view of that respondent) of QBRC to incorporate a more appropriate structure of reduced rates (but above zero in order to better balance competing factors) rates. They further argued that the LME should not view its previous reform as fixed and immutable, but rather should reassess and redefine its approach to promote simplification which would ultimately serve the interests of the LME and the market. They believed that an ongoing lack of coordination would hamper reform success and lead to market disillusionment across the LME's business activities.
96. The LME has consistently acknowledged the validity of concerns such as those outlined above – as recently explored in the 2016 Discussion Paper Results Notice (see paragraphs 129 and 242, for example) and is highly aware of the potential for unintended consequences. However, it does not believe that this should prevent the LME from progressing with necessary reform, provided such reform is conducted in conjunction with a thorough risk assessment and decisions are made within this context. The LME does agree with the principle of simplicity, as further discussed in paragraph 28. The LME also notes the concerns regarding dominant positions – although this is outside the scope of this Consultation, the LME would highlight its



ongoing commitment to its Lending Rules, and its recent announcements in respect of accountability levels.

## **Section D** LME Analysis (updated where necessary or appropriate)

### **D.1** Does CC seek to achieve a regulatory, prudential or organisational objective?

97. The LME believes that CC will reduce the incidence of high levels of Headline Warehousing Charges, hence reversing the negative market effects set out in the 2016 Discussion Paper Results Notice, which in the view of the LME represents a key regulatory deliverable in the context of the LME market.

### **D.2** Is CC likely to have an effect on competition (noting that, even if it is likely to have an effect on competition, it may still be justifiable and proportionate)?

98. The LME observes that maximum pricing rules are not typically restrictive of competition because their direct effect is only to put a cap, and not a floor, on prices. The LME is aware, however, that one consequence of CC may be that Headline Warehousing Charges will broadly “float up” to or near to the maximum rates, and that the maximum Headline Warehousing Charges could act as a “signalling mechanism” by which warehouses simply set their Headline Warehousing Charges at, or near, the maximum levels. In other contexts, effects of that kind could be characterised as restrictive of competition.
99. As set out in paragraph 123 of the 2016 Discussion Paper Results Notice, however, the LME’s view is that, in the specific context of Headline Warehousing Charges, such an effect would not be a restriction of competition. As explained in the 2016 Discussion Paper, the LME’s analysis is that warehouses do not currently compete to set low Headline Warehousing Charges to attract business. Rather, competition takes place at a different level of the economic system – on the basis of discounted rates. Furthermore, as also explained above, the position with a charge cap in place is in principle less restrictive of competition than the position of ever-increasing headline charges in the absence of CC. Accordingly, the LME’s view is that CC would not restrict competition and this is echoed by many of the respondents to the 2016 Discussion Paper.

### **D.3** Does CC comply with the principle of proportionality? In particular:

#### *(a) Is CC capable of meeting the relevant objectives?*

100. On its face, CC achieves the relevant objectives by embedding them in an LME rule which would be binding on warehouse operators. This view is also supported by



many of the respondents to both the 2016 Discussion Paper and the CC Consultation. However, as further set out below, if CC were to be challenged (even if unsuccessfully), that may impact its short-term ability to achieve its objectives.

*(b) What are the most pertinent arguments for CC?*

101. CC is expected to achieve the LME's stated aim of addressing high Headline Warehousing Charges, hence reversing the negative market effects set out in the 2016 Discussion Paper and the 2016 Discussion Paper Result Notice. The LME believes that CC represents the most direct and straightforward means of achieving this aim.

*(c) What are the most pertinent arguments against CC?*

102. The most pertinent arguments against CC are:
- (i) Warehouse operators or other market participants may take the view that the maximum Headline Warehousing Charges reallocate economics too severely from warehouses to metal owners, particularly if incentives have historically been paid in respect of the underlying metal. Accordingly, warehouse operators may challenge the CC rule itself, which could exert a disruptive impact on the LME market. The extent to which this is likely to happen is viewed as dependent on the severity of the changes to Headline Warehousing Charges, which is why the LME has taken significant time to discuss and consult with the market, in order to propose a form of CC which balances the needs of all of its stakeholders. While the LME believes that it would win any challenge to CC, the disruptive interim effects may be deemed sufficiently undesirable that it would be viewed as preferable not to proceed with implementation.
  - (ii) Given that warehouses will be required to adhere to the maximum Headline Warehousing Charges, there is a possibility of all operators converging on the maximum Headline Warehousing Charges, with an apparent reduction in the level of competition in the marketplace. As set out above, the LME does not believe this would represent a valid interpretation of the fact-pattern – however, there would still exist a risk that others would take a different view, and any competition law or regulatory action could itself exert a disruptive impact on the LME market.
  - (iii) CC could render the business of LME warehousing less attractive than at present for any warehouse operator currently levying charges above the CC thresholds. Although the LME does not agree with this assessment (since, in the view of the LME, much of the high Headline Warehousing





Charges generally are paid out as incentives), on this hypothesis warehouse operators may exit the market, hence reducing the provision of LME-listed warehousing services, and making it more difficult for metal owners to place their metal on LME warrant. This could cause problems for short position holders on the LME, who may not be able to deliver in metal and hence create an artificial backwardation. However, the LME believes this is unlikely given the given that the caps as set out do not materially impact the economics of any market participant.

*(d) Are there any other, less restrictive means of achieving the same objective(s)?*

103. Market feedback on the relative restrictiveness of CC suggests that the LME's position on the appropriate maximum levels of Headline Warehousing Charges has received broad support, representing a fair and proportionate rate, without materially impacting the economics of any market participant. Thus the LME understands that the view of the market would be that CC would be less restrictive than other reform methods.
104. Specifically, the LME's view is that none of the other options considered in the 2016 Discussion Paper constitute a less restrictive alternative to CC. FTA and CBIG would have the same effect on competition (prices floating up to the cap) if they were effective in capping prices at all. So they are either no less restrictive, or less effective. Similarly, the FOTC option would not directly address rents, and so would not be as effective. Moreover, FOTC involves serious practical difficulties of implementation, as discussed in the 2016 Discussion Paper.

*(e) Would the negative effects of CC be too great to justify implementation?*

105. Following the CC Consultation and the LME's own analysis, the LME does not believe that the negative effects of CC would outweigh the benefits of addressing high Headline Warehousing Charges.

## **Conclusion**

106. LME intends to implement CC on 28 December 2016.
107. Full information on all aspects of the LME's warehouse reform programme, including the CC Consultation, can be found on the LME website at <http://www.lme.com/trading/warehousing-and-brands/warehousing/lme-warehouse-reform/>



108. The LME would like to thank all market participants who have responded to the CC Consultation, many of whom have been engaged in the reform process since 2013 and of whose continued collaboration the LME remains highly appreciative.

**Matthew Chamberlain**  
**Head of Business Development**

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

#### **List of Appendices**

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| APPENDIX A. | Revised Warehouse Agreement effective 28 December 2016 – clean   |
| APPENDIX B. | Revised Warehouse Agreement effective 28 December 2016 – blackline to version proposed in CC Consultation Notice |
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| APPENDIX D. | 2017-18 charge caps  |

**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:
- 3.3.3.1** the date and details of loss or damage to or other matter affecting the metal or Warrant;
  - 3.3.3.2** the Warrant number(s);
  - 3.3.3.3** date of the Warrant;
  - 3.3.3.4** brand and shape of metal; and
  - 3.3.3.5** 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.

### **5.2 Warehouse Maximum Charge Levels**

- 5.2.1 Each Warehouse shall be required to set maximum rent and FOT charges (the "Warehouse Maximum Charge Levels"), specifying the highest rates which may be levied, in accordance with the requirements of this Clause 5.
- 5.2.2 Warehouses may set separate Warehouse Maximum Charge Levels in respect of each Delivery Point in which the Warehouse operates licensed facilities, and in each such Delivery Point, (i) in respect of rent, a rate for each metal which the Warehouse is licensed to store in that Delivery Point, and (ii) in respect of FOT, (a) a rate for cobalt (if the Warehouse is licensed to store cobalt in that Delivery Point), (b) a rate for roasted molybdenum concentrate (if the Warehouse is licensed to store roasted molybdenum concentrate in that Delivery Point), (c) a rate for premium primary aluminium (if the Warehouse is licensed to store premium primary aluminium in that Delivery Point), and (d) a single rate for all other metals (if the Warehouse is licensed to store metals other than cobalt, roasted molybdenum concentrate and premium primary aluminium in that Delivery Point).
- 5.2.3 Rent must be quoted in the Major Currency of the Contract to which the Warrant relates is traded. FOT must be quoted in the currency of the listed location, except for FOTs in respect of aluminium premium Contracts, which must be quoted in the Major Currency of the relevant Contract.

### **5.3 Publication of Charge Caps**

- 5.3.1 With the exception of 2016 (which is covered by Clause 5.3.2 below), the LME shall, by 31 October each year, in respect of the period from 1 April of the following year to 31 March of the next following year, publish a list of maximum permissible Warehouse Maximum Charge Levels ("Charge Caps"), in respect of each combination of (i) each Delivery Point Country, and (ii) each metal which is the subject of a physically-settled Contract (with the exception of aluminium premium Contracts) and licensed for storage by at least one Warehouse in that Delivery Point Country. For the avoidance of doubt, the relevant Charge Cap shall apply to all Delivery Points in a Delivery Point Country.
- 5.3.2 In respect of 2016, the LME shall publish the Charge Caps on 28 December 2016. The Charge Caps for the period 1 April 2017 to 31 March 2018 shall be calculated as the arithmetic mean average of (i) the highest Warehouse Maximum Charge Levels published by the LME in December 2014 for the period 1 April 2015 to 31 March 2016 and (ii) the highest Warehouse Maximum

Charge Levels published by the LME in February 2016 for the period 1 April 2016 to 31 March 2017, in each case in respect of that Delivery Point Country and that metal (and rounded up to the nearest smallest unit of the local currency, in the case of FOT, or the nearest US cent, in the case of rent).

- 5.3.3** Subject to Clause 5.3.6, the Charge Caps for the periods (i) 1 April 2018 to 31 March 2019, (ii) 1 April 2019 to 31 March 2020, (iii) 1 April 2020 to 31 March 2021, and (iv) 1 April 2021 to 31 March 2022 shall be the same as the Charge Caps for the period 1 April 2017 to 31 March 2018.
- 5.3.4** In respect of each subsequent period 1 April to 31 March, the Charge Caps shall either be kept the same, or increase, in accordance with the formula set out in Appendix A. In the event that the relevant index (or certain data points within the index) as specified in Appendix A is unavailable, the LME shall determine an appropriate comparable index (or data points), subject to the Warehouse's right of challenge as set out in Clause 5.3.6 below.
- 5.3.5** Where (i) the LME approves a new Delivery Point which is located in a new Delivery Point Country, or (ii) a Warehouse becomes authorised to store in a Delivery Point Country a metal for which Charge Caps have not previously been calculated, the LME shall, prior to or at the same time as admission of the new Delivery Point or storage authorisation of the Warehouse, publish Charge Caps for such Delivery Point Country in respect of the set of metals authorised for storage at one or more warehouses in that Delivery Point Country and in respect of which Charge Caps have not previously been published. In determining the relevant Charge Caps, the LME shall take into account all relevant factors, including, without limitation, the Charge Caps for geographically proximate countries, any factors relevant to the particular Delivery Point Country, and its expert judgment.
- 5.3.6** In respect of Charge Caps published from 2017 onwards, a Warehouse may challenge any Charge Cap on the basis that it does not adequately take into consideration any relevant increase in the Warehouse's costs, or on the basis of any other reason. Any Warehouse wishing to challenge any Charge Cap may submit such a challenge in writing to the LME, including full reasons for such challenge together with any relevant supporting documentation, within fourteen calendar days of the publication of the relevant Charge Cap. The challenge will be considered by the Special Committee of the LME. The LME shall have the opportunity to make written representations or provide supporting evidence to the Special Committee where the LME considers it appropriate to do so. The Special Committee may request such additional documentation or explanation from the Warehouse, or any other Warehouse, or the LME, as it considers appropriate, in considering the challenge. Having considered the challenge, the Special Committee may either (i) reject the challenge, or (ii) accept the challenge and require the LME to increase the relevant Charge Cap by such amount as it considers appropriate. Where the Special Committee accepts the challenge, it shall publish a notice to the market explaining the nature of the challenge and the reasons for accepting it. The amended Charge Cap(s) shall take effect on the following 1 April and shall be taken into account when calculating any increases to Charge Caps in future years in accordance with Clause 5.3.4 and Appendix A. Where the Special Committee rejects the

challenge, it may, where it considers it appropriate, publish a notice to the market explaining the nature of the challenge and the reasons for rejecting it (and, in the event that it does not publish such a notice, it shall still provide the Warehouse which brought the challenge with the reasons for rejecting it). The Special Committee shall endeavour to publish any notice to the market within fourteen calendar days of the challenge being brought, or such other date as it shall in its sole discretion consider appropriate.

- 5.3.7** While the LME endeavours to ensure the accuracy, reliability and completeness of the Charge Caps and any information (including third party information) with reference to which the Charge Caps are compiled (the “Charge Cap Information”), neither the LME nor any of its affiliates makes any warranty or representation, express or implied, or accepts any responsibility or liability for, the accuracy, completeness or reliability of the Charge Cap Information. The LME accepts no liability whatsoever to any Warehouse or other person for any loss or damage arising from any inaccuracy or omission in the Charge Cap Information.

#### **5.4 Process for advising Warehouse Maximum Charge Levels**

- 5.4.1** On 29 December 2016, each Warehouse must set its Warehouse Maximum Charge Levels in respect of the 12 month period commencing 1 April 2017. For the avoidance of doubt, if a Warehouse has already submitted Warehouse Maximum Charge Levels in respect of the 12 month period commencing 1 April 2017 pursuant to any requirement in a previous version of this Agreement, such charges must be resubmitted if they do not comply with clause 5.4.3.
- 5.4.2** From 15 December 2017, each Warehouse must set its Warehouse Maximum Charge Levels annually in respect of each 12 month period commencing 1 April of the following year by notification to the Exchange not later than 15 December in the preceding year.
- 5.4.3** No Warehouse Maximum Charge Level submitted pursuant to clause 5.4.1 or 5.4.2 may be higher than the corresponding Charge Cap. In the event that a Warehouse submits a Warehouse Maximum Charge Level in excess of the corresponding Charge Cap, the LME may revise the Warehouse Maximum Charge Level down to the corresponding Charge Cap (for the avoidance of doubt, such submission may also constitute a breach of this Agreement which may be subject to disciplinary action pursuant to the Disciplinary Procedures). For Warehouse Maximum Charge Levels not subject to a Charge Cap, levels may be set in the discretion of the Warehouse.
- 5.4.4** The Exchange shall publish each Warehouse’s Warehouse Maximum Charge Levels by 31 December. For the avoidance of doubt, no change in Maximum Charge Levels shall become effective until the following 1 April.

#### **5.5 Dates**

The Exchange may, by giving notice in writing to each Warehouse, amend any of the dates set out in clauses 5.3.1, 5.3.2 or 5.4 for any given relevant year in the event of a challenge to the Charge Caps pursuant to clause 5.3.6 or for any other reason.

## **5.6 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.

## **5.7 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: 02072568864

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;

"Charge Cap Information" has the meaning given in Clause 5.3.7;

"Charge Caps" has the meaning given in Clause 5.3.1;

"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;

"Delivery Point Country" shall mean a country in which one or more Delivery Points is located;

"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 Committee" means the Special Committee of the LME, as maintained by the LME from time-to-time, details of which are published on the LME's website;

"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);

"Warehouse Maximum Charge Levels" has the meaning given in Clause 5.2.1;

"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**

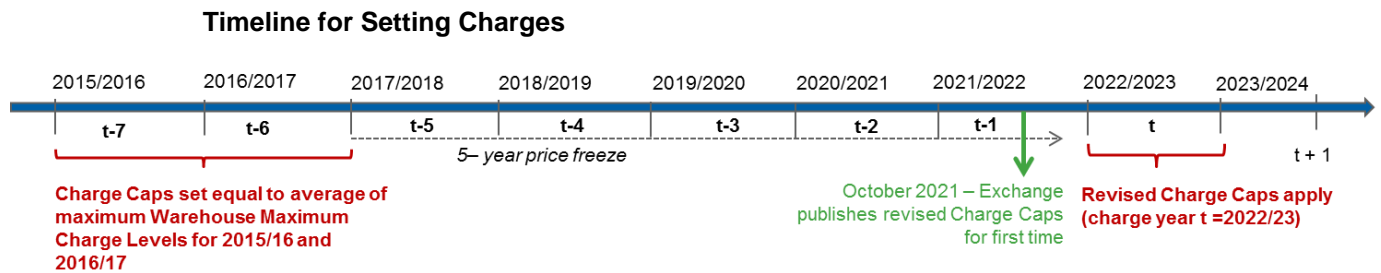
A Warehouse shall:

- 11.1** Conduct its business with due skill, care and diligence, observing high standards of conduct and safety, complying with the warehouse agreement, the LME's rules and 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.

## Appendix A

### Charge Cap Increase Mechanism



#### Formula for FOT

The Exchange shall apply the following formula for increasing the Charge Cap for FOT in accordance with Clause 5.3.4 of the Agreement:

(1) Define the Charge Cap applied in 2017/18 as follows:

$P_{avg, 2015-17, local\ currency}$  is the arithmetic average of the highest Warehouse Maximum Charge Level levied by any Warehouse within the Delivery Point Country, as published by the Exchange in (i) December 2014, for the period 1 April 2015 to 31 March 2016, and (ii) February 2016, for the period 1 April 2016 to 31 March 2017.

(2) Apply historical change in CPI to the price in local currency

For all charging years following 1 April 2021-31 March 2022, for each charge year  $t$ , set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{avg, 2015-17, local\ currency} \times ACPI_{august\ t-1} / ACPI_{august\ 2020}$$

Where

$ACPI_{august\ t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year  $t-1$ ; and

$ACPI_{august\ 2020}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

However, if  $P_{t, local}$  would be lower than  $P_{t-1, local}$ , then  $P_{t, local}$  will instead be set to  $P_{t-1, local}$ .

The above formula assumes that the CPI index value shall be measured relative to August, on the basis that the Exchange publishes the Charge Cap in October (CPI monthly data is published with a one month lag). If the Exchange publishes the Charge Cap in a different month, the formula shall be adjusted accordingly. This shall be the case for all formula in this Appendix A.

#### Formula for rental charges

The Exchange shall apply the following formula for increasing the Charge Cap for rent in accordance with Clause 5.3.4 of the Agreement:

(1) Define the Charge Cap applied in 2017-2018 as follows:

$P_{avg, 2015-17, \$}$  is the arithmetic average of the highest Warehouse Maximum Charge Level levied by any Warehouse within the Delivery Point Country, as published by the Exchange in (i) December 2014, for the period 1 April 2015 – 31 March 2016, and (ii) February 2016, for the period 1 April 2016 – 31 March 2017.

Define the Charge Cap for rent in the local currency as follows:



$$P_{\text{avg 2015 - 17, local currency}} = P_{\text{avg 2015 - 17, US\$}} \times \text{FX\$}_{\text{avg 2015 - 17}}$$

Where

$\text{FX\$}_{\text{avg 2015 - 17}}$  corresponds to the average daily local currency/US\$ exchange rate for the two charge years, running over the period 1 April 2015 – 31 March 2017 and 1 April 2016 – 31 March 2017.

*(2) Apply historical change in CPI (12M average) to the price in local currency*

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{avg 2015 - 17, local currency}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august 2020}}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august 2020}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

*(3) Convert back to US\$*

$$P_{t, \$} = P_{t, \text{local}} / \text{FX\$}_{\text{august } t-1}$$

where  $\text{FX\$}_{\text{august } t-1}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year t.

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

## ADDITIONAL FORMULAE

- (1) Where the Exchange determines a new Charge Cap in accordance with Clause 5.3.5 of the Agreement, or the Special Committee determines a Charge Cap in accordance with Clause 5.3.6 of the Agreement, in either case during the five year price freeze period contemplated by Clauses 5.3.2 and 5.3.3 of the Agreement, the following formulae shall apply when increasing the Charge Cap in accordance with Clause 5.3.4 of the Agreement:

## FOT

*(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:*

$P_{\text{sp cmte, local}}$  is the Charge Cap for FOT determined by the Exchange / Special Committee in the local currency.

*(2) Apply historical change in CPI to the price in local currency*

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august 2020}}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august 2020}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

However, if  $P_{t, \text{local}}$  would be lower than  $P_{t-1, \text{local}}$ , then  $P_{t, \text{local}}$  will instead be set to  $P_{t-1, \text{local}}$ .

## Rental Charges

*(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:*

$P_{\text{sp cmte, US\$}}$  is the Charge Cap for rent determined by the Exchange / Special Committee in US\$.

Define the Charge Cap for rent in the local currency as follows:

$$P_{\text{sp cmte, local currency}} = P_{\text{sp cmte, US\$}} \times \text{FX\$}_{\text{sp cmte}}$$

Where

$\text{FX\$}_{\text{sp cmte}}$  is the average daily local currency/US\$ for the annual period measured up to and including 31 August in the year prior to the year for which the Exchange / Special Committee determines a Charge Cap.

(2) Apply historical change in CPI (12M average) to the price in local currency

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local currency}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august } 2020}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august } 2020}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

(3) Convert back to US\$

$$P_{t, \$} = P_{t, \text{local}} / \text{FX\$}_{\text{august } t-1}$$

where  $\text{FX\$}_{\text{august } t-1}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year t.

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

- (2) Where the Exchange determines a new Charge Cap in accordance with Clause 5.3.5 of the Agreement, or the Special Committee determines a Charge Cap in accordance with Clause 5.3.6 of the Agreement, in either case after the five year price freeze period contemplated by Clauses 5.3.2 and 5.3.3 of the Agreement, the following formulae shall apply when increasing the Charge Cap in accordance with Clause 5.3.4 of the Agreement:

## FOT

(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:

$P_{\text{sp cmte, local}}$  is the Charge Cap for FOT determined by the Exchange / Special Committee in the local currency.

(2) Apply historical change in CPI to the price in local currency

For charge years t following the charge year for which the Exchange / Special Committee made a determination, set Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local currency}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august sp cmte } -2}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august sp cmte } -2}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year two years prior to the determination of the Charge Cap by the Exchange / Special Committee. For example, if the Exchange / Special Committee makes a determination for the charge year beginning 1 April 2025, the relevant CPI in this case is the 12 months up to and including August 2023.

However, if  $P_{t, \text{local}}$  would be lower than  $P_{t-1, \text{local}}$ , then  $P_{t, \text{local}}$  will instead be set to  $P_{t-1, \text{local}}$ .

## Rental Charges

(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:

$P_{sp\ cmte, US\$}$  is the Charge Cap for rent determined by the Exchange / Special Committee in US\$.

Define the Charge Cap in the local currency as follows:

$$P_{sp\ cmte, local\ currency} = P_{sp\ cmte, US\$} \times FX\$_{sp\ cmte}$$

Where

$FX\$_{sp\ cmte}$  is the average daily local currency/US\$ for the annual period measured up to and including 31 August for the year prior to the year for which the Exchange / Special Committee determines a Charge Cap.

(2) Apply historical change in CPI (12M average) to the price in local currency

For each charging year  $t$  following a determination by the Exchange / Special Committee, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{sp\ cmte, local\ currency} \times ACPI_{august\ t-1} / ACPI_{august\ sp\ cmte -2}$$

Where

$ACPI_{august\ t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year  $t-1$ ; and

$ACPI_{august\ sp\ cmte -2}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year two years prior to the determination of the Charge Cap by the Exchange / Special Committee. For example, if the Exchange / Special Committee makes a determination for the charge year beginning 1 April 2025, the relevant CPI in this case is the 12 months up to and including August 2023.

(3) Convert back to US\$

$$P_{t, \$} = P_{t, local} / FX\$_{august\ t-1}$$

where  $FX\$_{august\ t-1}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year  $t$ .

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

## DEFINITIONS AND AVAILABILITY OF CPI

The following table sets out the official index name and source for the CPI indexation of Charge Caps.

### CPI measures by country

| Country        | Official index name                                       | Definition   | Original source                                  | Data available monthly |
|----------------|---|--|--|------------------------|
| Belgium        | Consumer Price Index - General index                      | The Belgium IPC measures the changes in the retail prices, inclusive of VAT, of a fixed set of goods and services used by households.  | Statistics Belgium                               | ✓                      |
| Germany        | Consumer Price Index - Overall index                      | The index tracks the change in the prices of a basket of goods and services bought by the reference population for the purposes of consumption.<br>Types of prices: Prices measured are actual prices to the consumer and include turnover taxes and VAT, taking into account rebates.   | Statistisches Bundesamt Deutschland              | ✓                      |
| Italy          | Consumer Price Index - All items                          | The index provides a measure of temporal change in the prices of a basket of goods and services destined to final private consumption.<br>Types of prices: the total prices of products, whether fully or partially paid by consumers.   | ISTAT  | ✓                      |
| Japan          | Consumer Price Index - All items                          | The index measures monthly changes in the general level of prices of goods and services that households acquire for consumption.<br>Type of prices: Prices are transaction prices, excluding temporary reductions, special sales, etc.   | Statistics Bureau of Japan                       | ✓                      |
| Korea          | Consumer Price Survey (Index) - Total                     | The Consumer price index is produced by collecting the prices of goods and services purchased for consumption purposes.<br>Type of prices: Actual transaction prices inclusive of sales taxes.   | KOSTAT   | ✓                      |
| Netherlands    | Consumer Price Index - All Categories                     | The index measures monthly changes in the general level of prices of goods and services bought for consumption.<br>Types of prices: Consumption expenditure is valued at purchasers' prices.   | CBS  | ✓                      |
| Spain          | Consumer Price Index - Overall index                      | The Consumer Price Index (CPI) measures monthly changes in the general level of prices of goods and services bought by private households for consumption purposes.<br>Types of prices: Retail prices, including sales taxes and other taxes, and price reductions (since January 2002) but excludes special offers and deferred payments. | INE  | ✓                      |
| Sweden         | Consumer Price Index - Total                              | The CPI shows the average change in prices of a fixed basket of goods and services available for private consumption.<br>Types of prices: Prices actually paid by consumers including taxes and without any addition of subsidies.   | SCB  | ✓                      |
| United Kingdom | CPI All Items Index                                       | The index provide an average measure of change in prices of goods and services bought for the purpose of consumption.<br>Type of prices: Cash prices, inclusive of taxes such as VAT. Rebates are considered on a case by case basis.  | ONS  | ✓                      |
| United States  | Consumer Price Index-All Urban Consumers - U.S. All items | The CPI measures pure price change in a market basket of goods and services of constant quality purchased for everyday living by all residents in urban areas.<br>Tax/rebates: The prices include any applicable taxes, discounts and rebates.   | US Bureau of Labour Statistics                   | ✓                      |
| Malaysia       | Total Consumer Price Index                                | The Consumer Price Index (CPI) measures the percentage change through time in the cost of purchasing a constant "basket" of goods and services representing the average pattern of purchases made by a particular population group in a specified time period.   | Department of Statistics, Malaysia               | ✓                      |
| Singapore      | Consumer Price Index - All items                          | The CPI is designed to measure the average price changes of a fixed basket of goods and services commonly purchased by the households over time.<br>Types of prices: Transaction prices (including taxes) actually paid.   | Department of Statistics, Singapore              | ✓                      |
| Taiwan         | Consumer Price Index                                      | The consumer price index (CPI) is a weighted average price which measures the changes in the price level of consumer goods and services generally purchased by households for consumption purposes.  | National Statistics, Republic of China (Taiwan)  | ✓                      |
| UAE            | Consumer Price Index - All items                          | The Consumer Price Index (CPI) measures the average price changes in a fixed basket of consumption goods and services.   | Federal Competitiveness and Statistics Authority | ✓                      |

## FX data sources

| Country        | Data periodicity       | Original source  |
|----------------|------------------------|--|
| Belgium        | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Germany        | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Italy          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Japan          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Korea          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Netherlands    | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Spain          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Sweden         | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| United Kingdom | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| United States  | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Malaysia       | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Singapore      | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Taiwan         | Daily, monthly, annual | Federal Reserve  |
| UAE            | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |

**Note: Data available from the IMF, defined as: Official exchange rate (LCU per US\$, period average): this rate refers to the exchange rate determined by national authorities or to the rate determined in the legally sanctioned exchange market.**

**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:
- 3.3.3.1** the date and details of loss or damage to or other matter affecting the metal or Warrant;
  - 3.3.3.2** the Warrant number(s);
  - 3.3.3.3** date of the Warrant;
  - 3.3.3.4** brand and shape of metal; and
  - 3.3.3.5** 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.

### **5.2 Warehouse Maximum Charge Levels**

- 5.2.1 Each Warehouse shall be required to set maximum rent and FOT charges (the "Warehouse Maximum Charge Levels"), specifying the highest rates which may be levied, in accordance with the requirements of this Clause 5.
- 5.2.2 Warehouses may set separate Warehouse Maximum Charge Levels in respect of each Delivery Point in which the Warehouse operates licensed facilities, and in each such Delivery Point, (i) in respect of rent, a rate for each metal which the Warehouse is licensed to store in that Delivery Point, and (ii) in respect of FOT, (a) a rate for cobalt (if the Warehouse is licensed to store cobalt in that Delivery Point), (b) a rate for roasted molybdenum concentrate (if the Warehouse is licensed to store roasted molybdenum concentrate in that Delivery Point), (c) a rate for premium primary aluminium (if the Warehouse is licensed to store premium primary aluminium in that Delivery Point), and (d) a single rate for all other metals (if the Warehouse is licensed to store metals other than cobalt, roasted molybdenum concentrate and premium primary aluminium in that Delivery Point).
- 5.2.3 Rent must be quoted in the Major Currency of the Contract to which the Warrant relates is traded. FOT must be quoted in the currency of the listed location, except for FOTs in respect of aluminium premium Contracts, which must be quoted in the Major Currency of the relevant Contract.

### **5.3 Publication of Charge Caps**

- 5.3.1 With the exception of 2016 (which is covered by Clause 5.3.2 below), the LME shall, by 31 October each year, in respect of the period from 1 April of the following year to 31 March of the next following year, publish a list of maximum permissible Warehouse Maximum Charge Levels ("Charge Caps"), in respect of each combination of (i) each Delivery Point Country, and (ii) each metal which is the subject of a physically-settled Contract (with the exception of aluminium premium Contracts) and licensed for storage by at least one Warehouse in that Delivery Point Country. For the avoidance of doubt, the relevant Charge Cap shall apply to all Delivery Points in a Delivery Point Country.
- 5.3.2 In respect of 2016, the LME shall publish the Charge Caps on ~~[date on which the revised version of this Agreement shall take effect]~~ **28 December 2016**. The Charge Caps for the period 1 April 2017 to 31 March 2018 shall be calculated as the arithmetic mean average of (i) the highest Warehouse Maximum Charge Levels published by the LME in December 2014 for the period 1 April 2015 to

31 March 2016 and (ii) the highest Warehouse Maximum Charge Levels published by the LME in February 2016 for the period 1 April 2016 to 31 March 2017, in each case in respect of that Delivery Point Country and that metal (and rounded up to the nearest smallest unit of the local currency, in the case of FOT, or the nearest US cent, in the case of rent).

- 5.3.3** Subject to Clause 5.3.6, the Charge Caps for the periods (i) 1 April 2018 to 31 March 2019, (ii) 1 April 2019 to 31 March 2020, (iii) 1 April 2020 to 31 March 2021, and (iv) 1 April 2021 to 31 March 2022 shall be the same as the Charge Caps for the period 1 April 2017 to 31 March 2018.
- 5.3.4** In respect of each subsequent period 1 April to 31 March, the Charge Caps shall either be kept the same, or increase, in accordance with the formula set out in Appendix A. In the event that the relevant index (or certain data points within the index) as specified in Appendix A is unavailable, the LME shall determine an appropriate comparable index (or data points), subject to the Warehouse's right of challenge as set out in Clause 5.3.6 below.
- 5.3.5** Where (i) the LME approves a new Delivery Point which is located in a new Delivery Point Country, or (ii) a Warehouse becomes authorised to store in a Delivery Point Country a metal for which Charge Caps have not previously been calculated, the LME shall, prior to or at the same time as admission of the new Delivery Point or storage authorisation of the Warehouse, publish Charge Caps for such Delivery Point Country in respect of the set of metals authorised for storage at one or more warehouses in that Delivery Point Country and in respect of which Charge Caps have not previously been published. In determining the relevant Charge Caps, the LME shall take into account all relevant factors, including, without limitation, the Charge Caps for geographically proximate countries, any factors relevant to the particular Delivery Point Country, and its expert judgment.
- 5.3.6** In respect of Charge Caps published from 2017 onwards, a Warehouse may challenge any Charge Cap on the basis that it does not adequately take into consideration any relevant increase in the Warehouse's costs, or on the basis of any other reason. Any Warehouse wishing to challenge any Charge Cap may submit such a challenge in writing to the LME, including full reasons for such challenge together with any relevant supporting documentation, within fourteen calendar days of the publication of the relevant Charge Cap. The challenge will be considered by the Special Committee of the LME. The LME shall have the opportunity to make written representations or provide supporting evidence to the Special Committee where the LME considers it appropriate to do so. The Special Committee may request such additional documentation or explanation from the Warehouse, or any other Warehouse, or the LME, as it considers appropriate, in considering the challenge. Having considered the challenge, the Special Committee may either (i) reject the challenge, or (ii) accept the challenge and require the LME to increase the relevant Charge Cap by such amount as it considers appropriate. Where the Special Committee accepts the challenge, it shall publish a notice to the market explaining the nature of the challenge and the reasons for accepting it. The amended Charge Cap(s) shall take effect on the following 1 April and shall be taken into account when calculating any increases to Charge Caps in future years in accordance with

Clause 5.3.4 and Appendix A. Where the Special Committee rejects the challenge, it may, where it considers it appropriate, publish a notice to the market explaining the nature of the challenge and the reasons for rejecting it (and, in the event that it does not publish such a notice, it shall still provide the Warehouse which brought the challenge with the reasons for rejecting it). The Special Committee shall endeavour to publish any notice to the market within fourteen calendar days of the challenge being brought, or such other date as it shall in its sole discretion consider appropriate.

- 5.3.7** While the LME endeavours to ensure the accuracy, reliability and completeness of the Charge Caps and any information (including third party information) with reference to which the Charge Caps are compiled (the “Charge Cap Information”), neither the LME nor any of its affiliates makes any warranty or representation, express or implied, or accepts any responsibility or liability for, the accuracy, completeness or reliability of the Charge Cap Information. The LME accepts no liability whatsoever to any Warehouse or other person for any loss or damage arising from any inaccuracy or omission in the Charge Cap Information.

#### **5.4 Process for advising Warehouse Maximum Charge Levels**

- 5.4.1** On 29 December 2016, each Warehouse must set its Warehouse Maximum Charge Levels in respect of the 12 month period commencing 1 April 2017. For the avoidance of doubt, if a Warehouse has already submitted Warehouse Maximum Charge Levels in respect of the 12 month period commencing 1 April 2017 pursuant to any requirement in a previous version of this Agreement, such charges must be resubmitted if they do not comply with clause 5.4.3.
- 5.4.2** From 15 December 2017, each Warehouse must set its Warehouse Maximum Charge Levels annually in respect of each 12 month period commencing 1 April of the following year by notification to the Exchange not later than 15 December in the preceding year.
- 5.4.3** No Warehouse Maximum Charge Level submitted pursuant to clause 5.4.1 or 5.4.2 may be higher than the corresponding Charge Cap. In the event that a Warehouse submits a Warehouse Maximum Charge Level in excess of the corresponding Charge Cap, the LME may revise the Warehouse Maximum Charge Level down to the corresponding Charge Cap (for the avoidance of doubt, such submission may also constitute a breach of this Agreement which may be subject to disciplinary action pursuant to the Disciplinary Procedures). For Warehouse Maximum Charge Levels not subject to a Charge Cap, levels may be set in the discretion of the Warehouse.
- 5.4.4** The Exchange shall publish each Warehouse’s Warehouse Maximum Charge Levels by 31 December. For the avoidance of doubt, no change in Maximum Charge Levels shall become effective until the following 1 April.

#### **5.5 Dates**

The Exchange may, by giving notice in writing to each Warehouse, amend any of the dates set out in clauses 5.3.1, 5.3.2 or 5.4 for any given relevant year in the event of a challenge to the Charge Caps pursuant to clause 5.3.6 or for any other reason.

## **5.6 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.

## **5.7 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: 02072568864

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;

"Charge Cap Information" has the meaning given in Clause 5.3.7;

"Charge Caps" has the meaning given in Clause 5.3.1;

"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;

"Delivery Point Country" shall mean a country in which one or more Delivery Points is located;

"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 Committee" means the Special Committee of the LME, as maintained by the LME from time-to-time, details of which are published on the LME's website;

"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);

"Warehouse Maximum Charge Levels" has the meaning given in Clause 5.2.1;

"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 LME's rules and 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.

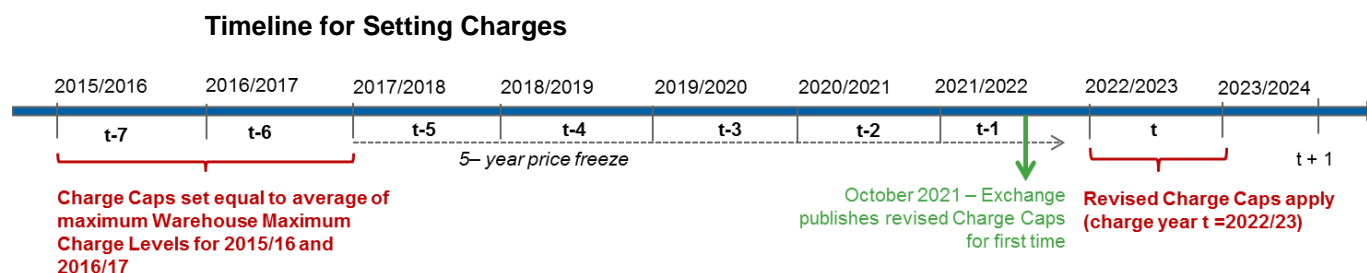
**11.5** Manage conflicts of interest fairly, both between itself and holders of metal on LME warrant and between holders of metal on LME warrant, ensuring fair and equitable treatment to all holders of metal on LME warrant at all times.

- 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.



## Appendix A

### Charge Cap Increase Mechanism



#### Formula for FOT

The Exchange shall apply the following formula for increasing the Charge Cap for FOT in accordance with Clause 5.3.4 of the Agreement:

(1) *Define the Charge Cap applied in 2017/18 as follows:*

$P_{avg \ 2015-17, \text{ local currency}}$  is the arithmetic average of the highest Warehouse Maximum Charge Level levied by any Warehouse within the Delivery Point Country, as published by the Exchange in (i) December 2014, for the period 1 April 2015 to 31 March 2016, and (ii) February 2016, for the period 1 April 2016 to 31 March 2017.

(2) *Apply historical change in CPI to the price in local currency*

For all charging years following 1 April 2021-31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{ local}} = P_{avg \ 2015 - 17, \text{ local currency}} \times ACPI_{august \ t-1} / ACPI_{august \ 2020}$$

Where

$ACPI_{august \ t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$ACPI_{august \ 2020}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

However, if  $P_{t, \text{ local}}$  would be lower than  $P_{t-1, \text{ local}}$ , then  $P_{t, \text{ local}}$  will instead be set to  $P_{t-1, \text{ local}}$ .

The above formula assumes that the CPI index value shall be measured relative to August, on the basis that the Exchange publishes the Charge Cap in October (CPI monthly data is published with a one month lag). If the Exchange publishes the Charge Cap in a different month, the formula shall be adjusted accordingly. This shall be the case for all formula in this Appendix A.

#### Formula for rental charges

The Exchange shall apply the following formula for increasing the Charge Cap for rent in accordance with Clause 5.3.4 of the Agreement:

(1) *Define the Charge Cap applied in 2017-2018 as follows:*

$P_{avg \ 2015-17, \$}$  is the arithmetic average of the highest Warehouse Maximum Charge Level levied by any Warehouse within the Delivery Point Country, as published by the Exchange in (i) December 2014, for the period 1 April 2015 – 31 March 2016, and (ii) February 2016, for the period 1 April 2016 – 31 March 2017.

Define the Charge Cap for rent in the local currency as follows:

$$P_{\text{avg 2015 - 17, local currency}} = P_{\text{avg 2015 - 17, US\$}} \times \text{FX\$}_{\text{avg 2015 - 17}}$$

Where

$\text{FX\$}_{\text{avg 2015 - 17}}$  corresponds to the average daily local currency/US\$ exchange rate for the two charge years, running over the period 1 April 2015 – 31 March 2017 and 1 April 2016 – 31 March 2017.

*(2) Apply historical change in CPI (12M average) to the price in local currency*

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{avg 2015 - 17, local currency}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august 2020}}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august 2020}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

*(3) Convert back to US\$*

$$P_{t, \$} = P_{t, \text{local}} / \text{FX\$}_{\text{august } t-1}$$

where  $\text{FX\$}_{\text{august } t-1}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year t.

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

## ADDITIONAL FORMULAE

- (1) Where the Exchange determines a new Charge Cap in accordance with Clause 5.3.5 of the Agreement, or the Special Committee determines a Charge Cap in accordance with Clause 5.3.6 of the Agreement, in either case during the five year price freeze period contemplated by Clauses 5.3.2 and 5.3.3 of the Agreement, the following formulae shall apply when increasing the Charge Cap in accordance with Clause 5.3.4 of the Agreement:

## FOT

*(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:*

$P_{\text{sp cmte, local}}$  is the Charge Cap for FOT determined by the Exchange / Special Committee in the local currency.

*(2) Apply historical change in CPI to the price in local currency*

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august 2020}}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august 2020}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

However, if  $P_{t, \text{local}}$  would be lower than  $P_{t-1, \text{local}}$ , then  $P_{t, \text{local}}$  will instead be set to  $P_{t-1, \text{local}}$ .

## Rental Charges

*(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:*

$P_{\text{sp cmte, US\$}}$  is the Charge Cap for rent determined by the Exchange / Special Committee in US\$.

Define the Charge Cap for rent in the local currency as follows:

$$P_{\text{sp cmte, local currency}} = P_{\text{sp cmte, US\$}} \times \text{FX\$}_{\text{sp cmte}}$$

Where

$\text{FX\$}_{\text{sp cmte}}$  is the average daily local currency/US\$ for the annual period measured up to and including 31 August in the year prior to the year for which the Exchange / Special Committee determines a Charge Cap.

(2) Apply historical change in CPI (12M average) to the price in local currency

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local currency}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august } 2020}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august } 2020}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

(3) Convert back to US\$

$$P_{t, \$} = P_{t, \text{local}} / \text{FX\$}_{\text{august } t-1}$$

where  $\text{FX\$}_{\text{august } t-1}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year t.

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

- (2) Where the Exchange determines a new Charge Cap in accordance with Clause 5.3.5 of the Agreement, or the Special Committee determines a Charge Cap in accordance with Clause 5.3.6 of the Agreement, in either case after the five year price freeze period contemplated by Clauses 5.3.2 and 5.3.3 of the Agreement, the following formulae shall apply when increasing the Charge Cap in accordance with Clause 5.3.4 of the Agreement:

## FOT

(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:

$P_{\text{sp cmte, local}}$  is the Charge Cap for FOT determined by the Exchange / Special Committee in the local currency.

(2) Apply historical change in CPI to the price in local currency

For charge years t following the charge year for which the Exchange / Special Committee made a determination, set Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local currency}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august sp cmte } -2}$$

Where

$\text{ACPI}_{\text{august } t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august sp cmte } -2}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year two years prior to the determination of the Charge Cap by the Exchange / Special Committee. For example, if the Exchange / Special Committee makes a determination for the charge year beginning 1 April 2025, the relevant CPI in this case is the 12 months up to and including August 2023.

However, if  $P_{t, \text{local}}$  would be lower than  $P_{t-1, \text{local}}$ , then  $P_{t, \text{local}}$  will instead be set to  $P_{t-1, \text{local}}$ .

## Rental Charges

(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:

$P_{sp\ cmte, US\$}$  is the Charge Cap for rent determined by the Exchange / Special Committee in US\$.

Define the Charge Cap in the local currency as follows:

$$P_{sp\ cmte, local\ currency} = P_{sp\ cmte, US\$} \times FX\$_{sp\ cmte}$$

Where

$FX\$_{sp\ cmte}$  is the average daily local currency/US\$ for the annual period measured up to and including 31 August for the year prior to the year for which the Exchange / Special Committee determines a Charge Cap.

(2) Apply historical change in CPI (12M average) to the price in local currency

For each charging year  $t$  following a determination by the Exchange / Special Committee, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{sp\ cmte, local\ currency} \times ACPI_{august\ t-1} / ACPI_{august\ sp\ cmte -2}$$

Where

$ACPI_{august\ t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year  $t-1$ ; and

$ACPI_{august\ sp\ cmte -2}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year two years prior to the determination of the Charge Cap by the Exchange / Special Committee. For example, if the Exchange / Special Committee makes a determination for the charge year beginning 1 April 2025, the relevant CPI in this case is the 12 months up to and including August 2023.

(3) Convert back to US\$

$$P_{t, \$} = P_{t, local} / FX\$_{august\ t-1}$$

where  $FX\$_{august\ t-1}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year  $t$ .

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

## DEFINITIONS AND AVAILABILITY OF CPI

The following table sets out the official index name and source for the CPI indexation of Charge Caps.

### CPI measures by country

| Country        | Official index name                                       | Definition   | Original source                                  | Data available monthly |
|----------------|---|--|--|------------------------|
| Belgium        | Consumer Price Index - General index                      | The Belgium IPC measures the changes in the retail prices, inclusive of VAT, of a fixed set of goods and services used by households.  | Statistics Belgium                               | ✓                      |
| Germany        | Consumer Price Index - Overall index                      | The index tracks the change in the prices of a basket of goods and services bought by the reference population for the purposes of consumption.<br>Types of prices: Prices measured are actual prices to the consumer and include turnover taxes and VAT, taking into account rebates.   | Statistisches Bundesamt Deutschland              | ✓                      |
| Italy          | Consumer Price Index - All items                          | The index provides a measure of temporal change in the prices of a basket of goods and services destined to final private consumption.<br>Types of prices: the total prices of products, whether fully or partially paid by consumers.   | ISTAT  | ✓                      |
| Japan          | Consumer Price Index - All items                          | The index measures monthly changes in the general level of prices of goods and services that households acquire for consumption.<br>Type of prices: Prices are transaction prices, excluding temporary reductions, special sales, etc.   | Statistics Bureau of Japan                       | ✓                      |
| Korea          | Consumer Price Survey (Index) - Total                     | The Consumer price index is produced by collecting the prices of goods and services purchased for consumption purposes.<br>Type of prices: Actual transaction prices inclusive of sales taxes.   | KOSTAT   | ✓                      |
| Netherlands    | Consumer Price Index - All Categories                     | The index measures monthly changes in the general level of prices of goods and services bought for consumption.<br>Types of prices: Consumption expenditure is valued at purchasers' prices.   | CBS  | ✓                      |
| Spain          | Consumer Price Index - Overall index                      | The Consumer Price Index (CPI) measures monthly changes in the general level of prices of goods and services bought by private households for consumption purposes.<br>Types of prices: Retail prices, including sales taxes and other taxes, and price reductions (since January 2002) but excludes special offers and deferred payments. | INE  | ✓                      |
| Sweden         | Consumer Price Index - Total                              | The CPI shows the average change in prices of a fixed basket of goods and services available for private consumption.<br>Types of prices: Prices actually paid by consumers including taxes and without any addition of subsidies.   | SCB  | ✓                      |
| United Kingdom | CPI All Items Index                                       | The index provide an average measure of change in prices of goods and services bought for the purpose of consumption.<br>Type of prices: Cash prices, inclusive of taxes such as VAT. Rebates are considered on a case by case basis.  | ONS  | ✓                      |
| United States  | Consumer Price Index-All Urban Consumers - U.S. All items | The CPI measures pure price change in a market basket of goods and services of constant quality purchased for everyday living by all residents in urban areas.<br>Tax/rebates: The prices include any applicable taxes, discounts and rebates.   | US Bureau of Labour Statistics                   | ✓                      |
| Malaysia       | Total Consumer Price Index                                | The Consumer Price Index (CPI) measures the percentage change through time in the cost of purchasing a constant "basket" of goods and services representing the average pattern of purchases made by a particular population group in a specified time period.   | Department of Statistics, Malaysia               | ✓                      |
| Singapore      | Consumer Price Index - All items                          | The CPI is designed to measure the average price changes of a fixed basket of goods and services commonly purchased by the households over time.<br>Types of prices: Transaction prices (including taxes) actually paid.   | Department of Statistics, Singapore              | ✓                      |
| Taiwan         | Consumer Price Index                                      | The consumer price index (CPI) is a weighted average price which measures the changes in the price level of consumer goods and services generally purchased by households for consumption purposes.  | National Statistics, Republic of China (Taiwan)  | ✓                      |
| UAE            | Consumer Price Index - All items                          | The Consumer Price Index (CPI) measures the average price changes in a fixed basket of consumption goods and services.   | Federal Competitiveness and Statistics Authority | ✓                      |

## FX data sources

| Country        | Data periodicity       | Original source  |
|----------------|------------------------|--|
| Belgium        | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Germany        | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Italy          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Japan          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Korea          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Netherlands    | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Spain          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Sweden         | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| United Kingdom | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| United States  | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Malaysia       | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Singapore      | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Taiwan         | Daily, monthly, annual | Federal Reserve  |
| UAE            | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |

**Note: Data available from the IMF, defined as: Official exchange rate (LCU per US\$, period average): this rate refers to the exchange rate determined by national authorities or to the rate determined in the legally sanctioned exchange market.**

**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:

3.3.23.1 the date and details of loss or damage to or other matter affecting the metal or Warrant;

3.3.23.2 the Warrant number(s);

3.3.23.3 date of the Warrant;

3.3.23.4 brand and shape of metal; and

3.3.23.5 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.

### 5.2 Warehouse Maximum Charge Levels

- 5.2.1 Each Warehouse shall be required to set maximum rent and FOT charges (the "Warehouse Maximum Charge Levels"), specifying the highest rates which may be levied, in accordance with the requirements of this Clause 5.
- 5.2.2 Warehouses may set separate Warehouse Maximum Charge Levels in respect of each Delivery Point in which the Warehouse operates licensed facilities, and in each such Delivery Point, (i) in respect of rent, a rate for each metal which the Warehouse is licensed to store in that Delivery Point, and (ii) in respect of FOT, (a) a rate for cobalt (if the Warehouse is licensed to store cobalt in that Delivery Point), (b) a rate for roasted molybdenum concentrate (if the Warehouse is licensed to store roasted molybdenum concentrate in that Delivery Point), (c) a rate for premium primary aluminium (if the Warehouse is licensed to store premium primary aluminium in that Delivery Point), and (d) a single rate for all other metals (if the Warehouse is licensed to store metals other than cobalt, roasted molybdenum concentrate and premium primary aluminium in that Delivery Point).
- ~~5.1.3~~ Rent must be quoted in the Major Currency of the Contract to which the Warrant relates is traded.
- 5.2.3 Each Warehouse- FOT must fixbe quoted in the currency of the listed location, except for FOTs in respect of aluminium premium Contracts, which must be quoted in the Major Currency of the relevant Contract.

### 5.3 Publication of Charge Caps

- 5.3.1 With the exception of 2016 (which is covered by Clause 5.3.2 below), the LME shall, by 31 October each year, in respect of the period from 1 April of the following year to 31 March of the next following year, publish a list of maximum permissible Warehouse Maximum Charge Levels ("Charge Caps"), in respect of each combination of (i) each Delivery Point Country, and (ii) each metal which is the subject of a physically-settled Contract (with the exception of aluminium premium Contracts) and licensed for storage by at least one Warehouse in that Delivery Point Country. For the avoidance of doubt, the relevant Charge Cap shall apply to all Delivery Points in a Delivery Point Country.
- 5.3.2 In respect of 2016, the LME shall publish the Charge Caps on 28 December 2016. The Charge Caps for the period 1 April 2017 to 31 March 2018 shall be calculated as the arithmetic mean average of (i) the highest Warehouse Maximum Charge Levels published by the LME in December 2014 for the

period 1 April 2015 to 31 March 2016 and (ii) the highest Warehouse Maximum Charge Levels published by the LME in February 2016 for the period 1 April 2016 to 31 March 2017, in each case in respect of that Delivery Point Country and that metal (and rounded up to the nearest smallest unit of the local currency, in the case of FOT, or the nearest US cent, in the case of rent).

5.3.3 Subject to Clause 5.3.6, the Charge Caps for the periods (i) 1 April 2018 to 31 March 2019, (ii) 1 April 2019 to 31 March 2020, (iii) 1 April 2020 to 31 March 2021, and (iv) 1 April 2021 to 31 March 2022 shall be the same as the Charge Caps for the period 1 April 2017 to 31 March 2018.

5.3.4 In respect of each subsequent period 1 April to 31 March, the Charge Caps shall either be kept the same, or increase, in accordance with the formula set out in Appendix A. In the event that the relevant index (or certain data points within the index) as specified in Appendix A is unavailable, the LME shall determine an appropriate comparable index (or data points), subject to the Warehouse's right of challenge as set out in Clause 5.3.6 below.

5.3.5 Where (i) the LME approves a new Delivery Point which is located in a new Delivery Point Country, or (ii) a Warehouse becomes authorised to store in a Delivery Point Country a metal for which Charge Caps have not previously been calculated, the LME shall, prior to or at the same time as admission of the new Delivery Point or storage authorisation of the Warehouse, publish Charge Caps for such Delivery Point Country in respect of the set of metals authorised for storage at one or more warehouses in that Delivery Point Country and in respect of which Charge Caps have not previously been published. In determining the relevant Charge Caps, the LME shall take into account all relevant factors, including, without limitation, the Charge Caps for geographically proximate countries, any factors relevant to the particular Delivery Point Country, and ~~its maximum rent rates and FOT charges expert~~ judgment.

5.3.6 In respect of Charge Caps published from 2017 onwards, a Warehouse may challenge any Charge Cap on the basis that it does not adequately take into consideration any relevant increase in the Warehouse's costs, or on the basis of any other reason. Any Warehouse wishing to challenge any Charge Cap may submit such a challenge in writing to the LME, including full reasons for such challenge together with any relevant supporting documentation, within fourteen calendar days of the publication of the relevant Charge Cap. The challenge will be considered by the Special Committee of the LME. The LME shall have the opportunity to make written representations or provide supporting evidence to the Special Committee where the LME considers it appropriate to do so. The Special Committee may request such additional documentation or explanation from the Warehouse, or any other Warehouse, or the LME, as it considers appropriate, in considering the challenge. Having considered the challenge, the Special Committee may either (i) reject the challenge, or (ii) accept the challenge and require the LME to increase the relevant Charge Cap by such amount as it considers appropriate. Where the Special Committee accepts the challenge, it shall publish a notice to the market explaining the nature of the challenge and the reasons for accepting it. The amended Charge Cap(s) shall take effect on the following 1 April and shall be taken into account when

calculating any increases to Charge Caps in future years in accordance with Clause 5.3.4 and Appendix A. Where the Special Committee rejects the challenge, it may, where it considers it appropriate, publish a notice to the market explaining the nature of the challenge and the reasons for rejecting it (and, in the event that it does not publish such a notice, it shall still provide the Warehouse which brought the challenge with the reasons for rejecting it). The Special Committee shall endeavour to publish any notice to the market within fourteen calendar days of the challenge being brought, or such other date as it shall in its sole discretion consider appropriate.

5.3.7 While the LME endeavours to ensure the accuracy, reliability and completeness of the Charge Caps and any information (including third party information) with reference to which the Charge Caps are compiled (the "Charge Cap Information"), neither the LME nor any of its affiliates makes any warranty or representation, express or implied, or accepts any responsibility or liability for, the accuracy, completeness or reliability of the Charge Cap Information. The LME accepts no liability whatsoever to any Warehouse or other person for any loss or damage arising from any inaccuracy or omission in the Charge Cap Information.

#### **5.4 Process for advising Warehouse Maximum Charge Levels**

5.4.1 On 29 December 2016, each Warehouse must set its Warehouse Maximum Charge Levels in respect of the 12 month period commencing 1 April 2017. For the avoidance of doubt, if a Warehouse has already submitted Warehouse Maximum Charge Levels in respect of the 12 month period commencing 1 April 2017 pursuant to any requirement in a previous version of this Agreement, such charges must be resubmitted if they do not comply with clause 5.4.3.

5.4.2 From 15 December 2017, each Warehouse must set its Warehouse Maximum Charge Levels annually in respect of each 12 month period commencing 1 April of the following year by notification to the Exchange not later than 415 December in the preceding year. ~~At any time within 10 Business Days of receiving such notification, the~~

5.4.3 No Warehouse Maximum Charge Level submitted pursuant to clause 5.4.1 or 5.4.2 may be higher than the corresponding Charge Cap. In the event that a Warehouse submits a Warehouse Maximum Charge Level in excess of the corresponding Charge Cap, the LME may revise the Warehouse Maximum Charge Level down to the corresponding Charge Cap (for the avoidance of doubt, such submission may also constitute a breach of this Agreement which may be subject to disciplinary action pursuant to the Disciplinary Procedures). For Warehouse Maximum Charge Levels not subject to a Charge Cap, levels may be set in the discretion of the Warehouse.

~~5.4.45.4.4 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~~shall publish each Warehouse's Warehouse Maximum Charge Levels by 31 December. For the avoidance of doubt, no 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~~Maximum Charge Levels shall become effective until the following 1 April.

## **5.5 Dates**

The Exchange may, by giving notice in writing to each Warehouse, amend any of the dates set out in clauses 5.3.1, 5.3.2 or 5.4 for any given relevant year in the event of a challenge to the Charge Caps pursuant to clause 5.3.6 or for any other reason.

## **5.25.6 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.

## **5.35.7 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: 02072568864  
  
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;

"Charge Cap Information" has the meaning given in Clause 5.3.7;

"Charge Caps" has the meaning given in Clause 5.3.1;

"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;

"Delivery Point Country" shall mean a country in which one or more Delivery Points is located;

"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 Committee" means the Special Committee of the LME, as maintained by the LME from time-to-time, details of which are published on the LME's website;

"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~~ [www.lme.com](http://www.lme.com);

"Warehouse Maximum Charge Levels" has the meaning given in Clause 5.2.1:

"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 LME's rules and 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.

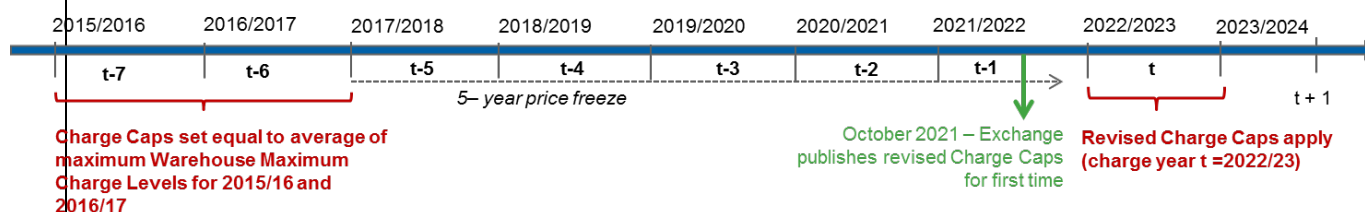


- 11.5 Manage conflicts of interest fairly, both between itself and holders of metal on LME warrant and between holders of metal on LME warrant, ensuring fair and equitable treatment to all holders of metal on LME warrant at all times.
- 11.6 Ensure that all metal held on LME warrants is stored continuously 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.

## Appendix A

### Charge Cap Increase Mechanism

#### Timeline for Setting Charges



#### Formula for FOT

The Exchange shall apply the following formula for increasing the Charge Cap for FOT in accordance with Clause 5.3.4 of the Agreement:

*(1) Define the Charge Cap applied in 2017/18 as follows:*

$P_{avg, 2015-17, local\ currency}$  is the arithmetic average of the highest Warehouse Maximum Charge Level levied by any Warehouse within the Delivery Point Country, as published by the Exchange in (i) December 2014, for the period 1 April 2015 to 31 March 2016, and (ii) February 2016, for the period 1 April 2016 to 31 March 2017.

*(2) Apply historical change in CPI to the price in local currency*

For all charging years following 1 April 2021-31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{avg, 2015 - 17, local\ currency} \times ACPI_{august\ t-1} / ACPI_{august\ 2020}$$

*Where*

$ACPI_{august\ t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$ACPI_{august\ 2020}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

However, if  $P_{t, local}$  would be lower than  $P_{t-1, local}$ , then  $P_{t, local}$  will instead be set to  $P_{t-1, local}$ .

The above formula assumes that the CPI index value shall be measured relative to August, on the basis that the Exchange publishes the Charge Cap in October (CPI monthly data is published with a one month lag). If the Exchange publishes the Charge Cap in a different month, the formula shall be adjusted accordingly. This shall be the case for all formula in this Appendix A.

#### Formula for rental charges

The Exchange shall apply the following formula for increasing the Charge Cap for rent in accordance with Clause 5.3.4 of the Agreement:

*(1) Define the Charge Cap applied in 2017-2018 as follows:*

$P_{avg, 2015-17, \$}$  is the arithmetic average of the highest Warehouse Maximum Charge Level levied by any Warehouse within the Delivery Point Country, as published by the Exchange in (i) December 2014, for the period 1 April 2015 – 31 March 2016, and (ii) February 2016, for the period 1 April 2016 – 31 March 2017.

Define the Charge Cap for rent in the local currency as follows:

$$P_{\text{avg 2015 - 17, local currency}} = P_{\text{avg 2015 - 17, US\$}} \times \text{FX\$}_{\text{avg 2015 - 17}}$$

Where

FX\$<sub>avg 2015 - 17</sub> corresponds to the average daily local currency/US\$ exchange rate for the two charge years, running over the period 1 April 2015 – 31 March 2017 and 1 April 2016 – 31 March 2017.

(2) Apply historical change in CPI (12M average) to the price in local currency

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap (P<sub>t</sub>) as follows:

$$P_{t, \text{local}} = P_{\text{avg 2015 - 17, local currency}} \times \text{ACPI}_{\text{august t-1}} / \text{ACPI}_{\text{august 2020}}$$

Where

ACPI<sub>august t-1</sub> is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

ACPI<sub>august 2020</sub> is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

(3) Convert back to US\$

$$P_{t, \$} = P_{t, \text{local}} / \text{FX\$}_{\text{august t-1}}$$

where FX\$<sub>august t-1</sub> is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year t.

However, if P<sub>t, \$</sub> would be lower than P<sub>t-1, \$</sub>, then P<sub>t, \$</sub> will instead be set to P<sub>t-1, \$</sub>.

### **ADDITIONAL FORMULAE**

- (1) Where the Exchange determines a new Charge Cap in accordance with Clause 5.3.5 of the Agreement, or the Special Committee determines a Charge Cap in accordance with Clause 5.3.6 of the Agreement, in either case during the five year price freeze period contemplated by Clauses 5.3.2 and 5.3.3 of the Agreement, the following formulae shall apply when increasing the Charge Cap in accordance with Clause 5.3.4 of the Agreement:

### **FOT**

(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:

P<sub>sp cmte, local</sub> is the Charge Cap for FOT determined by the Exchange / Special Committee in the local currency.

(2) Apply historical change in CPI to the price in local currency

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap (P<sub>t</sub>) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local}} \times \text{ACPI}_{\text{august t-1}} / \text{ACPI}_{\text{august 2020}}$$

Where

ACPI<sub>august t-1</sub> is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

ACPI<sub>august 2020</sub> is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

However, if P<sub>t, local</sub> would be lower than P<sub>t-1, local</sub>, then P<sub>t, local</sub> will instead be set to P<sub>t-1, local</sub>.

### **Rental Charges**

(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:

P<sub>sp cmte, US\$</sub> is the Charge Cap for rent determined by the Exchange / Special Committee in US\$.

Define the Charge Cap for rent in the local currency as follows:

$$P_{\text{sp cmte, local currency}} = P_{\text{sp cmte, US\$}} \times \text{FX\$}_{\text{sp cmte}}$$

Where

$\text{FX\$}_{\text{sp cmte}}$  is the average daily local currency/US\$ for the annual period measured up to and including 31 August in the year prior to the year for which the Exchange / Special Committee determines a Charge Cap.

*(2) Apply historical change in CPI (12M average) to the price in local currency*

For all charging years following 1 April 2021 – 31 March 2022, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local currency}} \times \text{ACPI}_{\text{august t-1}} / \text{ACPI}_{\text{august 2020}}$$

Where

$\text{ACPI}_{\text{august t-1}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august 2020}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2020.

*(3) Convert back to US\$*

$$P_{t, \$} = P_{t, \text{local}} / \text{FX\$}_{\text{august t-1}}$$

where  $\text{FX\$}_{\text{august t-1}}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year t.

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

(2) Where the Exchange determines a new Charge Cap in accordance with Clause 5.3.5 of the Agreement, or the Special Committee determines a Charge Cap in accordance with Clause 5.3.6 of the Agreement, in either case after the five year price freeze period contemplated by Clauses 5.3.2 and 5.3.3 of the Agreement, the following formulae shall apply when increasing the Charge Cap in accordance with Clause 5.3.4 of the Agreement:

## **FOT**

*(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:*

$P_{\text{sp cmte, local}}$  is the Charge Cap for FOT determined by the Exchange / Special Committee in the local currency.

*(2) Apply historical change in CPI to the price in local currency*

For charge years t following the charge year for which the Exchange / Special Committee made a determination, set Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local currency}} \times \text{ACPI}_{\text{august t-1}} / \text{ACPI}_{\text{august sp cmte -2}}$$

Where

$\text{ACPI}_{\text{august t-1}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year t-1; and

$\text{ACPI}_{\text{august sp cmte -2}}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year two years prior to the determination of the Charge Cap by the Exchange / Special Committee. For example, if the Exchange / Special Committee makes a determination for the charge year beginning 1 April 2025, the relevant CPI in this case is the 12 months up to and including August 2023.

However, if  $P_{t, \text{local}}$  would be lower than  $P_{t-1, \text{local}}$ , then  $P_{t, \text{local}}$  will instead be set to  $P_{t-1, \text{local}}$ .

## Rental Charges

(1) Define the Charge Cap determined by the Exchange / Special Committee as follows:

$P_{sp\ cmtc, US\$}$  is the Charge Cap for rent determined by the Exchange / Special Committee in US\$.

Define the Charge Cap in the local currency as follows:

$$P_{sp\ cmtc, local\ currency} = P_{sp\ cmtc, US\$} \times FX\$_{sp\ cmtc}$$

Where

$FX\$_{sp\ cmtc}$  is the average daily local currency/US\$ for the annual period measured up to and including 31 August for the year prior to the year for which the Exchange / Special Committee determines a Charge Cap.

(2) Apply historical change in CPI (12M average) to the price in local currency

For each charging year  $t$  following a determination by the Exchange / Special Committee, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{sp\ cmtc, local\ currency} \times ACPI_{august\ t-1} / ACPI_{august\ sp\ cmtc -2}$$

Where

$ACPI_{august\ t-1}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August of year  $t-1$ ; and

$ACPI_{august\ sp\ cmtc -2}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year two years prior to the determination of the Charge Cap by the Exchange / Special Committee. For example, if the Exchange / Special Committee makes a determination for the charge year beginning 1 April 2025, the relevant CPI in this case is the 12 months up to and including August 2023.

(3) Convert back to US\$

$$P_{t, \$} = P_{t, local} / FX\$_{august\ t-1}$$

where  $FX\$_{august\ t-1}$  is the average daily local currency/US\$ exchange rate, measured over an annual period up to and including 31 August in the year prior to the charge year  $t$ .

However, if  $P_{t, \$}$  would be lower than  $P_{t-1, \$}$ , then  $P_{t, \$}$  will instead be set to  $P_{t-1, \$}$ .

## DEFINITIONS AND AVAILABILITY OF CPI

The following table sets out the official index name and source for the CPI indexation of Charge Caps.

### CPI measures by country

| Country        | Official index name                                       | Definition   | Original source                                  | Data available monthly |
|----------------|---|--|--|------------------------|
| Belgium        | Consumer Price Index - General index                      | The Belgium IPC measures the changes in the retail prices, inclusive of VAT, of a fixed set of goods and services used by households.  | Statistics Belgium                               | ✓                      |
| Germany        | Consumer Price Index - Overall index                      | The index tracks the change in the prices of a basket of goods and services bought by the reference population for the purposes of consumption.<br>Types of prices: Prices measured are actual prices to the consumer and include turnover taxes and VAT, taking into account rebates.   | Statistisches Bundesamt Deutschland              | ✓                      |
| Italy          | Consumer Price Index - All items                          | The index provides a measure of temporal change in the prices of a basket of goods and services destined to final private consumption.<br>Types of prices: the total prices of products, whether fully or partially paid by consumers.   | ISTAT  | ✓                      |
| Japan          | Consumer Price Index - All items                          | The index measures monthly changes in the general level of prices of goods and services that households acquire for consumption.<br>Type of prices: Prices are transaction prices, excluding temporary reductions, special sales, etc.   | Statistics Bureau of Japan                       | ✓                      |
| Korea          | Consumer Price Survey (Index) - Total                     | The Consumer price index is produced by collecting the prices of goods and services purchased for consumption purposes.<br>Type of prices: Actual transaction prices inclusive of sales taxes.   | KOSTAT   | ✓                      |
| Netherlands    | Consumer Price Index - All Categories                     | The index measures monthly changes in the general level of prices of goods and services bought for consumption.<br>Types of prices: Consumption expenditure is valued at purchasers' prices.   | CBS  | ✓                      |
| Spain          | Consumer Price Index - Overall index                      | The Consumer Price Index (CPI) measures monthly changes in the general level of prices of goods and services bought by private households for consumption purposes.<br>Types of prices: Retail prices, including sales taxes and other taxes, and price reductions (since January 2002) but excludes special offers and deferred payments. | INE  | ✓                      |
| Sweden         | Consumer Price Index - Total                              | The CPI shows the average change in prices of a fixed basket of goods and services available for private consumption.<br>Types of prices: Prices actually paid by consumers including taxes and without any addition of subsidies.   | SCB  | ✓                      |
| United Kingdom | CPI All Items Index                                       | The index provide an average measure of change in prices of goods and services bought for the purpose of consumption.<br>Type of prices: Cash prices, inclusive of taxes such as VAT. Rebates are considered on a case by case basis.  | ONS  | ✓                      |
| United States  | Consumer Price Index-All Urban Consumers - U.S. All items | The CPI measures pure price change in a market basket of goods and services of constant quality purchased for everyday living by all residents in urban areas.<br>Tax/rebates: The prices include any applicable taxes, discounts and rebates.   | US Bureau of Labour Statistics                   | ✓                      |
| Malaysia       | Total Consumer Price Index                                | The Consumer Price Index (CPI) measures the percentage change through time in the cost of purchasing a constant "basket" of goods and services representing the average pattern of purchases made by a particular population group in a specified time period.   | Department of Statistics, Malaysia               | ✓                      |
| Singapore      | Consumer Price Index - All items                          | The CPI is designed to measure the average price changes of a fixed basket of goods and services commonly purchased by the households over time.<br>Types of prices: Transaction prices (including taxes) actually paid.   | Department of Statistics, Singapore              | ✓                      |
| Taiwan         | Consumer Price Index                                      | The consumer price index (CPI) is a weighted average price which measures the changes in the price level of consumer goods and services generally purchased by households for consumption purposes.  | National Statistics, Republic of China (Taiwan)  | ✓                      |
| UAE            | Consumer Price Index - All items                          | The Consumer Price Index (CPI) measures the average price changes in a fixed basket of consumption goods and services.   | Federal Competitiveness and Statistics Authority | ✓                      |

### **FX data sources**

| Country        | Data periodicity       | Original source  |
|----------------|------------------------|--|
| Belgium        | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Germany        | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Italy          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Japan          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Korea          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Netherlands    | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Spain          | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Sweden         | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| United Kingdom | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| United States  | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Malaysia       | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Singapore      | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |
| Taiwan         | Daily, monthly, annual | Federal Reserve  |
| UAE            | Daily, monthly, annual | International Monetary Fund,<br>International Financial Statistics |

**Note: Data available from the IMF, defined as: Official exchange rate (LCU per US\$, period average): this rate refers to the exchange rate determined by national authorities or to the rate determined in the legally sanctioned exchange market.**

# 2017-18 charge caps

## Appendix D

| Rents per tonne per day in US cents |                 |        |      |        |        |                   |     |      |        |     |       |
|-------------------------------------|-----------------|--------|------|--------|--------|-------------------|-----|------|--------|-----|-------|
| Country                             | Aluminium Alloy | Copper | Lead | NASAAC | Nickel | Primary Aluminium | Tin | Zinc | Cobalt | RMC | Steel |
| Belgium                             | 54              | 51     | 51   | -      | 58     | 55                | 55  | 53   | 59     | -   | 44    |
| Germany                             | 52              | 47     | 47   | -      | 56     | 52                | 53  | 48   | -      | -   | -     |
| Italy                               | 56              | 53     | 53   | -      | 59     | 56                | 56  | 54   | -      | -   | 49    |
| Japan                               | -               | -      | -    | -      | -      | 45                | -   | -    | -      | -   | -     |
| Korea (South)                       | 56              | 51     | 51   | -      | 59     | 55                | 56  | -    | -      | -   | -     |
| Malaysia                            | 56              | 53     | 53   | -      | 59     | 56                | 55  | 54   | -      | -   | -     |
| Netherlands                         | 54              | 51     | 51   | -      | 58     | 55                | 55  | 53   | 60     | 56  | 46    |
| Singapore                           | 54              | 51     | 51   | -      | 58     | 55                | 55  | 53   | 59     | 55  | -     |
| Spain                               | 53              | 47     | 47   | -      | 56     | 52                | 53  | 48   | -      | -   | 25    |
| Sweden                              | -               | 47     | 47   | -      | 56     | 52                | -   | 48   | -      | -   | -     |
| Taiwan                              | 53              | 47     | 47   | -      | 56     | 53                | 54  | 49   | -      | -   | -     |
| U.A.E                               | -               | 47     | 47   | -      | 56     | -                 | -   | 49   | -      | -   | -     |
| U.K.                                | 51              | 47     | 47   | -      | 55     | 52                | 52  | 48   | -      | -   | -     |
| USA                                 | -               | 54     | 53   | 57     | 59     | 57                | 56  | 55   | 60     | 55  | -     |

| FOT rates per tonne in local currency |          |                      |        |       |
|---------------------------------------|----------|----------------------|--------|-------|
| Country                               | Currency | FOT rate incl. steel | Cobalt | RMC   |
| Belgium                               | €        | 33.00                | 39.80  | -     |
| Germany                               | €        | 30.50                | -      | -     |
| Italy                                 | €        | 34.25                | -      | -     |
| Japan                                 | ¥        | 3,380.00             | -      | -     |
| Korea (South)                         | KW       | 49,600.00            | -      | -     |
| Malaysia                              | MR       | 162.50               | -      | -     |
| Netherlands                           | €        | 33.00                | 39.80  | 33.25 |
| Singapore                             | S\$      | 68.50                | 73.70  | 64.30 |
| Spain                                 | €        | 31.00                | -      | -     |
| Sweden                                | SKr      | 304.00               | -      | -     |
| Taiwan                                | T\$      | 1,455.00             | -      | -     |
| U.A.E                                 | Dir      | 136.00               | -      | -     |
| U.K.                                  | £        | 22.00                | -      | -     |
| USA                                   | \$       | 45.00                | 48.37  | 45.57 |