

## LME Warehouse Agreement

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

#### 1 Conditions for and entitlements of listing

##### 1.1 Application

To become an LME listed warehouse company, a warehouse company shall:

- 1.1.1 execute the agreement of which these terms and conditions form a part (as contemplated by the definition of "**this Agreement**");
- 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 2.4 of the LMEsword Regulations.

##### 1.2 Financial status including capital

1.2.1 Without prejudice to Clause 7.3, the Warehouse must:

- (i) no later than 210 days after the end of each of its financial years, provide the Exchange with:
  - (a) its annual audited accounts; or
  - (b) the annual audited consolidated accounts of the Group, for that financial year;
- (ii) no earlier than 60 days, and no later than 30 days, prior to the start of each of its financial years, provide the Exchange with a cash flow forecast for that financial year,

and the Warehouse must exercise due skill, care and diligence in preparing such accounts and forecasts, and shall ensure that such accounts and forecasts are based on appropriate financial information and comply with the Accounting Principles (and for the avoidance of doubt (and without prejudice to (iv) below), the Warehouse shall not be in breach of (i) or (ii) above if any such account or forecast is not accurate at any point in time after its submission to the Exchange due to, and to the extent of, any change in the circumstances of the Warehouse or its Group during the period between submission and that point in time, that was not foreseeable or prudent to account-for having regard to the level of due skill, care and diligence required by this Clause 1.2.1);

- (iii) as soon as practicable (but in any event within seven days) upon request at any time, provide the Exchange with any information and documents (including management accounts) relating to the financial status (including capital and/or cash flow), insurance arrangements, status, assets, business and/or operations of the Warehouse, the Group or any member of the Group; and
- (iv) immediately notify the Exchange if at any time:
  - (a) it is or becomes Insolvent, or it is likely to become Insolvent; and/or

- (b) there has been a material adverse change in the assets, business or financial condition of the Warehouse, the Group or any member of the Group since the date of this Agreement.
- 1.2.2 The Exchange shall publish the standards by which it determines capital adequacy for LME listed warehouse companies, and may from time to time publish revisions of those standards. Without prejudice to Clause 1.2.4, the Warehouse shall ensure that it is adequately capitalised at all times in accordance with the most recent of such published standards.
- 1.2.3 The Exchange shall assess, against such published standards, whether the Warehouse's available capital is adequate by using such information as is available to the Exchange. In assessing whether the Warehouse's available capital is adequate, the Exchange may, at its discretion, disregard what are, in its view, immaterial or temporary failures to meet such published standards.
- 1.2.4 If at any time the Exchange is not satisfied with the Warehouse's capital, cash flow or other aspect of its financial status, the Exchange may increase the level of capitalisation to be maintained by the Warehouse (to a level in excess of that required pursuant to Clause 1.2.2) and the Warehouse shall as soon as practicable (but in any event within seven days) increase its capital accordingly and provide the Exchange with evidence of the increase.
- 1.2.5 Notwithstanding Clauses 1.2.1 to 1.2.4, and without prejudice to Clause 9.4.1 (including Clause 9.4.1(ii)), if at any time:
  - (i) the Exchange is not satisfied with:
    - (a) the capital, cash flow and/or any other aspect of the financial status of the Warehouse, the Group or any member of the Group;
    - (b) any aspect of the insurance arrangements of the Warehouse, the Group or any member of the Group; or
    - (c) any other aspect of the status, assets, business or operations of the Warehouse, the Group or any member of the Group; or
  - (ii) the Exchange determines that the Warehouse, the Group or any member of the Group is Insolvent, or is likely to become Insolvent,  
the Exchange may:
    - (A) require the Warehouse to provide the Exchange with credit protection in the form of a performance bond or cash cover, and the provisions of Clause 1.2.6 shall apply to such credit protection; and/or
    - (B) suspend the entitlement of the Warehouse to issue further Warrants or Immobilised Warrants, and upon receiving notice of such suspension the Warehouse shall immediately stop issuing further Warrants and Immobilised Warrants.
- 1.2.6 Terms relating to credit protection provided by Warehouses

- (i) The Exchange shall determine:
  - (a) whether the credit protection is in the form of a performance bond or cash cover (or a mix of both);
  - (b) the amount and currency(ies) of the credit protection;
  - (c) in the case of a performance bond:
    - (I) its expiry date;
    - (II) its terms; and
    - (III) the conditions applying to the bank or insurance company that issues it (including the location and credit rating of the issuer).
- (ii) “performance bond” refers to any on demand independent payment instrument issued by a bank or metalemetal company in favour of the Exchange, including performance bonds, standby letters of credit, bank guarantees and on-demand guarantees.
- (iii) “cash cover” refers to money paid to the Exchange and treated by the Exchange as its own funds, and constitutes a debt arrangement between the Exchange and the Warehouse (subject to the terms of this Agreement), and not a security arrangement (meaning neither the Warehouse nor any third party shall have any proprietary interest in such money or funds); cash cover shall not accrue interest.
- (iv) The Warehouse shall at its own cost provide the relevant credit protection as soon as practicable (but in any event within seven days) upon the Exchange requiring it in accordance with Clause 1.2.5.
- (v) The Warehouse shall at its own cost provide additional credit protection (and/or increase or extend any performance bond) as soon as practicable (but in any event within seven days) upon the Exchange requiring it at any time, including if the Exchange requires additional credit protection sufficient to cover the number of warrants issued or expected to be issued by the Warehouse.
- (vi) If the Exchange informs the Warehouse at any time that it is not satisfied with the identity or financial status of the bank or insurance company that issued a performance bond, the Warehouse shall at its own cost as soon as practicable (but in any event within seven days) upon the Exchange requiring it provide a replacement performance bond from a bank or insurance company with whom the Exchange is satisfied, and upon such replacement being issued, the Exchange shall release the replaced performance bond.
- (vii) The Exchange may at any time and from time to time make demands on any performance bond, and the proceeds received by the Exchange shall constitute cash cover. Without limiting the generality of the foregoing, the Exchange may call on a performance bond if at any time the Exchange

has concerns about the financial status of the issuer or if the expiry date of the performance bond is imminent.

- (viii) The Exchange may at any time use any cash cover:
  - (a) to settle any sum due by the Warehouse to the Exchange;
  - (b) to settle any sum which the Exchange believes is due by the Warehouse to any third party (including any landlord or warrant holder);
  - (c) in any way which the Exchange determines is necessary or desirable to achieve or facilitate the release to or retrieval by any warrant holder of any Underlying Metal held by the Warehouse;
  - (d) to meet the costs (including legal costs) incurred by any holder of a Metal Entitlement in respect of Underlying Metal held by the Warehouse in obtaining the release of, in retrieving and/or in moving that Underlying Metal to another location or warehouse; and/or
  - (e) to provide compensation to any warrant holder for the operational and other burdens suffered as a result of that warrant holder retrieving or trying to retrieve any Underlying Metal held by the Warehouse.
- (ix) If at any time the Exchange determines that none of the grounds set out in Clauses 1.2.5(i) and (ii) exists, the Exchange shall:
  - (a) release each performance bond and pay a sum to the Exchange equal to any cash cover after taking account of any amount used by the Exchange as contemplated by Clause 1.2.6(viii); and/or
  - (b) lift the suspension on the Warehouse issuing new Warrants.
- (x) The Warehouse shall promptly and at its own cost take any step and sign any document in relation to any credit protection or any other aspect of Clause 1.2.5 and this Clause 1.2.6 as the Exchange may at any time and from time to time require.
- (xi) The Exchange shall act reasonably and in good faith in relation to any credit protection or any other aspect of Clause 1.2.5 and this Clause 1.2.6.
- (xii) Notwithstanding any other provision of this Agreement (including Clause 1.2.6(xi) and Clause 1.2.6(xiii)), the Warehouse agrees that the Exchange shall not be liable to the Warehouse for any losses the Warehouse may suffer as a result of it providing any such credit protection or the Exchange calling on or using any such credit protection, provided that any such loss is not caused by the gross negligence or wilful default of the Exchange.
- (xiii) The Warehouse acknowledges that if the Exchange were to exercise any of its rights pursuant to the Rules and/or this Agreement to Delist or Suspend the Warehouse, or to call for additional capital or credit

protection in the form of cash cover or performance bonds, circumstances may at that time be such as to cause financial problems, or exacerbate existing financial problems, for the Warehouse, and may cause or quicken the Warehouse becoming Insolvent, and the Warehouse to the fullest extent permitted by applicable law waives any claims that it may have against the Exchange in relation thereto.

### **1.3 London Agent**

- 1.3.1 The 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 The 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 the 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 Depository**

The Depository is hereby appointed as agent of the Warehouse pursuant to the terms of the LMEsword Regulations:

- 1.4.1 to receive Instructions concerning the holding of the Underlying Metal;
- 1.4.2 for the purposes of making attornments for and on behalf of that Warehouse in accordance with the LMEsword Regulations; and
- 1.4.3 for the creation of Immobilised Warrants.

### **1.5 Exchange**

The Exchange is hereby appointed as agent of the Warehouse pursuant to the terms of the LMEsword Regulations for the creation of Warrants.

### **1.6 LMEsword**

The 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.

## **1.7 Restrictions**

- 1.7.1 An Authorised Warehouse may be used by only one LME authorised warehouse operator 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.
- 1.7.2 The 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 LME listed warehouse operators from Members and the maintenance of confidentiality in respect of price sensitive and customer confidential information.

## **1.8 Description of Warehouse and standard terms**

- 1.8.1 The Warehouse may, following its approval by the Exchange as a listed warehouse company, describe itself as an "LME listed warehouse company" and its Authorised Warehouses as "LME listed warehouses", for as long as it retains its listed status as provided for herein.
- 1.8.2 For so long as the Warehouse retains its listed status or holds itself out in accordance with Clause 1.8.1, it shall take reasonable steps (such as including a reasonably prominent statement on its website) to put on notice persons dealing with metals located within its Authorised Warehouses that such metals may be subject to the interests of Account Holders within LMEsword from time to time.

## **1.9 Availability of Rules**

The Warehouse may from at any time be sent a copy of the Rules and LMEsword Regulations and Operating Procedures as amended from time to time. The Warehouse shall ensure that its London Agent obtains and keeps up to date its 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.

## **1.10 Transitional Provisions**

- 1.10.1 This Clause 1.10 shall apply to Affected Warrants.
- 1.10.2 Unless and until the Exchange exercises the power provided for in Clause 1.10.4, Affected Warrants shall continue to constitute Warrants for the purposes of the Legacy Warehouse Agreement.
- 1.10.3 Following the Amendment Date, the Legacy Warehouse Agreement, as amended pursuant to this Clause 1.10, shall continue to apply in respect of all Affected Warrants, and to govern, in the context of Affected Warrants, the rights and obligations between the Warehouse and the Exchange, except that each reference in the Legacy Warehouse Agreement to:
  - (i) a "Warrant" shall instead be a reference to an Affected Warrant; and
  - (ii) the "Depository" shall be construed as a reference to the AW Depository.

- 1.10.4** At or following the Instruction Deadline, the Exchange may from time to time, by and upon giving notice to the Warehouse, provide that any Affected Warrant shall no longer constitute a Warrant for the purposes of the Rules and this Agreement (although they shall remain an Affected Warrant for the purposes of the Legacy LMEsword Regulations and Legacy Warehouse Agreement).
- 1.10.5** To the extent not otherwise the case, the London Agent is hereby appointed as agent of the Warehouse for the purposes of:
- (i) receiving from an Account Holder any Affected Warrant on behalf of the Warehouse, thereby rendering that Affected Warrant void and of no effect (other than as a chattel); and
  - (ii) the issuance (including any deemed issuance) of any Warrant Lodgement Instruction for the creation of a Warrant in substitution.
- 1.10.6** The Warehouse shall treat any Affected Warrant transferred to its London Agent as having been surrendered to the Warehouse, and any such Affected Warrant shall be void and of no effect.
- 1.10.7** To the extent applicable in accordance with, and as amended pursuant to, this Clause 1.10, the Legacy Warehouse Agreement shall form part of this Agreement.
- 1.10.8** In the event of any inconsistency between the terms of the Legacy Warehouse Agreement and the other terms of this Agreement, the latter shall prevail.

## **2 Issue of Warrants**

### **2.1 Metal delivery**

- 2.1.1** When receiving Underlying Metal for placing on Warrant, the Warehouse need not undertake an assay of the Underlying Metal itself but must carefully undertake a visual inspection of the Underlying Metal and all supporting documentation and, if the Underlying Metal or the supporting documentation is in any way patently sub-standard or anomalous the Warehouse must not issue a Warrant or Immobilised Warrant until any such shortcoming has been remedied. Without limitation to the foregoing, Underlying Metal will be deemed to be patently sub-standard if:
- (i) there is broken or visibly corroded strapping which could make the bundle of metal unsafe to handle;
  - (ii) there is visible contamination of metal;
  - (iii) 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); or
  - (iv) 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 Underlying 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.

## 2.2 Form of Warrant

- 2.2.1 From the date prescribed by the Exchange, all Warrants and Immobilised Warrants must be issued in accordance with the LMEsword Regulations.
- 2.2.2 No Warrant or Immobilised Warrant may be issued unless:
- (i) the form of each Warrant and Immobilised Warrant meets the requirements set out in the Special Contract Rules for Metals and this Clause 2.2 and Clause 2.3 are satisfied;
  - (ii) without prejudice to Clauses 2.1.1 and 2.1.2, the Underlying Metal or supporting documentation conforms to the relevant Special Contract Rules for Metals; and a Metal Report is produced;
  - (iii) the Underlying Metal in question is stored in an Authorised Warehouse of the Warehouse; and
  - (iv) it is issued through the LMEsword System and in accordance with the LMEsword Regulations.
- 2.2.3 Each Warrant and Immobilised Warrant must show the applicable rent rate and the date of commencement of the obligation to pay rent, as applicable.
- 2.2.4 Each Warrant and Immobilised Warrant shall be on terms to the effect that responsibility for insuring the Underlying Metal is that of the Account Holder to whose Account that Warrant is recorded from time to time within the LMEsword System.
- 2.2.5 Each Warrant and Immobilised Warrant should be numbered consecutively wherever practicable.
- 2.2.6 The Warehouse shall not cause to be created or amended any Warrant, Immobilised Warrant or Extracted Warrant other than in the format previously approved by the Exchange.
- 2.2.7 The issuance of each Warrant and Immobilised Warrant must be approved by an authorised signatory of the Warehouse or its London Agent.
- 2.2.8 Each Warehouse shall readily make available its standard terms of business in relation to each Warrant or Immobilised Warrant (as applicable), as prescribed from time to time in the Operating Procedures.

## 2.3 Legal status of Warrants

- 2.3.1 Each Warrant must be transferable electronically, and each Immobilised Warrant must be transferable by delivery or by delivery and endorsement by the transferor and without requiring registration, attornment or notice to the Warehouse.
- 2.3.2 A transferee of a Warrant shall be treated by the Warehouse as having the benefit of the contract of storage of the Underlying Metal 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.
- 2.3.3 Each Warrant must:
- (i) be transferable electronically;
  - (ii) be capable, upon transfer in accordance with the LMEsword Regulations, of transferring rights with respect to the Underlying Metal that may be transferred as if the Warrant were a document of title (and, where applicable, the equivalent concept under its governing law); and
  - (iii) be governed, and expressed on the face of the Warrant to be governed, by:
    - (a) subject to Clause 2.3.3(iii)(b), the law of the country in which the relevant Authorised Warehouse is situated, or in accordance with such other law recognised as applicable to the Warrant by such law; or
    - (b) where the Exchange so specifies by written notice, subject to, either:
      - (I) English law; or
      - (II) such other law as the Exchange may specify; and
  - (iv) by and upon being credited to an Account Holder's Account within the LMEsword System, and for so long as it is so recorded, give rise to the bailment relationships arising pursuant to and on the terms of the LMEsword Regulations, and governed by and construed in accordance with English law.
- 2.3.4 Each Immobilised Warrant must:
- (i) be in bearer form, and, subject to Clause 2.3.4(ii), be capable of legal transfer by delivery or delivery and endorsement;
  - (ii) be incapable or conferring upon any transferee any title or other interest in the Immobilised Warrant that is greater than the title or interest transferred to it by the Depository; and
  - (iii) be governed, and expressed on the face of the Immobilised Warrant to be governed, by:
    - (a) subject to Clause 2.3.3(iii)(b), the law of the country in which the relevant Authorised Warehouse is situated, or in accordance with

such other law recognised as applicable to the Immobilised Warrant by such law; or

(b) where the Exchange so specifies by written notice, subject to, either:

(I) English law; or

(II) such other law as the Exchange may specify; and

(iv) by and upon the crediting of the corresponding Warrant to an Account Holder's Account within the LMEsword System, and for so long as it is so recorded, give rise to the bailment relationships arising pursuant to and on the terms of the LMEsword Regulations, and be governed by and construed in accordance with English law.

**2.3.5** It must be a term of issue of:

(i) each Warrant and Immobilised Warrant, that the corresponding Underlying Metal shall only be delivered up to the holder by the Warehouse in accordance with the LMEsword Regulations on cancellation of the relevant Warrant and, if applicable, Immobilised Warrant; and

(ii) each Immobilised Warrant, that it shall not confer upon any transferee any title or other interest in the Immobilised Warrant that is greater than the title or interest transferred to it by the Depository.

**2.3.6** Each Warrant and Immobilised Warrant must be unlimited as to duration and remain valid until cancelled in accordance with this Agreement and the LMEsword Regulations.

**2.3.7** A Warehouse may have a right of retention in respect of Underlying Metal for unpaid rent in respect of the Underlying 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.

**2.3.8** Nothing in Clause 2.3.5 shall require the Warehouse to oppose any legally enforceable court order in respect of Underlying Metal which is binding on the Warehouse and which prevents it from delivering stored Underlying 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 Underlying Metal that:

**2.4.1** the Warehouse has complied with all Relevant Law and Regulation (including Clause 2.1 of this Agreement) in receiving that Underlying Metal and placing it on Warrant;

**2.4.2** the Warehouse will comply with the requirements of this Agreement concerning the storage of Underlying Metal; and

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

It is a requirement of this Agreement that the undertakings referred to in Clauses 2.4.1 to 2.4.3 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 or amendment**

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

A Warehouse shall, as applicable, issue a replacement Immobilised Warrant or amend the electronic details of a Warrant in accordance with this Agreement and the LMEsword Regulations and Operating Procedures in the following circumstances:

3.1.1 where an Immobilised Warrant has been lost, stolen, destroyed or damaged, on completion of its normal procedures and either:

- (i) upon presentation to the Warehouse of evidence satisfactory to the Warehouse that the person seeking such replacement is either the Account Holder to whose Account within the LMEsword System the corresponding Warrant is recorded, or the Depository on its behalf, provided in each case that the Warrant remains valid in accordance with its terms and has not been marked "out of depository", "cancelled", "not valid" or any other language indicating that it has or may have ceased to be valid; or
- (ii) 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; or

3.1.2 where any details on a Warrant or Immobilised Warrant which are capable of amendment in accordance with the LMEsword Regulations and Operating Procedures ("**Amendable Details**") require amendment, by way of amendment of the electronic details of the Warrant in LMEsword, or in the case of an Immobilised Warrant, against cancellation of the original Immobilised Warrant and reissue of an amended Immobilised Warrant.

#### **3.2 Entitlement to move Underlying Metal**

A Warehouse may move Underlying Metal 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) any Underlying Metal, or any Immobilised Warrant, may have been lost, stolen, destroyed or damaged; (b) the Amendable Details on a Warrant or an Immobilised Warrant may require amendment; (c) a Warrant or Immobilised Warrant may require cancellation in accordance with Clause 4.3; (d) any additional warehouse warrant, receipt, Metal Entitlement or other document representing or acknowledging receipt, has been issued or is in circulation in

respect of the same Underlying Metal as is subject to a Warrant or Immobilised Warrant; or (e) a transfer or purported transfer of any interest in any Warrant, Immobilised Warrant or Underlying Metal has taken or will take place, other than a transfer given effect to using the LMEsword System, it shall forthwith:

- (i) notify the Exchange by 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) any Underlying Metal or any Immobilised Warrant, has been lost, stolen, destroyed or damaged; (b) the Amendable Details on a Warrant or Immobilised Warrant require amendment; (c) a Warrant or Immobilised Warrant requires cancellation in accordance with Clause 4.3, (d) any additional warehouse warrant, warehouse receipt, Metal Entitlement or other document representing or acknowledging receipt, has been issued or is in circulation in respect of the same Underlying Metal as is subject to a Warrant or Immobilised Warrant, or (e) a transfer or purported transfer of any interest in any Warrant, Immobilised Warrant or Underlying Metal has taken or will take place, other than a transfer given effect to using the LMEsword System, it shall forthwith notify the Exchange by 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:

- (i) the date and details of loss or damage to or other matter affecting the Underlying Metal or Immobilised Warrant;
- (ii) the Warrant or Immobilised Warrant number(s);
- (iii) date of the Warrant or Immobilised Warrant;
- (iv) the brand and shape of Underlying Metal; and
- (v) the quantity of Underlying 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 Underlying Metal in question and assist with the orderly operation of the market.

**3.3.5** Where an Immobilised Warrant that requires replacement or cancellation is temporarily not lodged with the Depository pursuant to the LMEsword Regulations, the Warehouse shall notify its holder of the event and require that the Immobilised Warrant be delivered up for replacement.

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

- 3.4.1 Where a Warrant or Immobilised Warrant is being replaced due to a change to its Amendable Details, the Warehouse shall indemnify the holder of the Warrant or Immobilised Warrant (as applicable) in respect of any reasonable loss or damage they may suffer as a result of the Warehouse not properly causing the cancelling and replacement of the Warrant or Immobilised Warrant in accordance with this Agreement.
- 3.4.2 The Warehouse shall be responsible for the cost of replacing Warrants or Immobilised Warrants, other than in the case of Immobilised 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 or Immobilised Warrants issued by it are in circulation and, in particular, shall make a notification to the Exchange pursuant to Clause 3.3.1, if applicable.

## **4 Cancellation of Warrants**

### **4.1 Process on replacement**

- 4.1.1 Where a Warrant or Immobilised Warrant is to be replaced, it must first be made properly null and void by being marked "cancelled and replaced".
- 4.1.2 If the original of an Immobilised 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 Underlying Metal take-up**

- 4.2.1 Where a Warrant or Immobilised Warrant is to be cancelled for Underlying Metal take-up, it must be made properly null and void by being marked "cancelled".
- 4.2.2 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.
- 4.2.3 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.
- 4.2.4 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.
- 4.2.5 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.

4.2.6 The Warehouse will, at all times, be responsible for ensuring that deliveries of Underlying Metal are effected in accordance with the above requirements except where the Warrant holder taking delivery of Underlying 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 or Immobilised 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
- 4.3.3 procure the cancellation of the Warrant or Immobilised Warrant (as applicable) in accordance with the LMEsword Regulations and Operating Procedures and the issuance of a new Warrant or Immobilised Warrant (as applicable) in respect of the relevant Underlying Metal.

#### 4.4 Storage

Evidence of the cancellation of all Warrants and Immobilised Warrants (and a copy of the original Immobilised Warrant 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 Underlying Metal take-up.

### 5 ~~Rent and~~ Free On Truck ("FOT") and re-warranting 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 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 The Warehouse shall be required to set maximum rent, FOT and ~~FOT~~re-warranting 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, except for re-warranting charges, 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). In respect of re-warranting Warehouse Maximum Charge Levels, a Warehouse must charge the same rate per metric tonne at each Delivery Point and in respect of each metal in relation to a Warrant which has been cancelled (but not yet loaded out from the Warehouse's LME-registered shed in the same Delivery Point) following which the metal owner requests the Warehouse to issue a new Warrant.

5.2.3 Rent, FOT and re-warranting charges 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.~~

5.2.4 FOT may be paid in any currency that the Warehouse and the Warrant holder agree, provided that:

- (i) both parties agree to both the currency of payment and the rate of conversion between the currency of the listed location ~~(or, in the case of aluminium premium Contracts, the Major Currency of the Contract)~~ and the currency of payment; and
- (ii) in the event that the parties cannot agree, ~~FOT shall be paid in the rate of conversion between~~ the currency of the listed location ~~(or, in the case of aluminium premium Contracts, and the currency of payment, FOT shall be paid in the~~ Major Currency of the Contract).

### 5.3 Publication of Charge Caps

5.3.1 With the exception of 2016 (which is covered by Clause 5.3.2), 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 the re-warranting Charge Cap it will apply to all Delivery Points and in relation to all metals which are the subject of a physically-settled Contract, and in respect of FOT and rent it will be a~~ combination of (i) each Delivery Point Country/Region, 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/Region. For the avoidance of doubt, the relevant Charge Cap shall apply to all Delivery Points in a Delivery Point Country/Region. Prior to [date of decision notice, if implemented] 2026, Charge Caps were only in respect of the maximum permissible Warehouse Maximum Charge Levels for rent and FOT, following [date of decision notice, if implemented] 2026, Charge Caps include the maximum permissible Warehouse Maximum Charge Levels for rent, FOT and re-warranting.

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/Region 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, (iv) 1 April 2021 to 31 March 2022, (v) 1 April 2022 to 31 March 2023, (vi) 1 April 2023 to 31 March 2024, (vii) 1 April 2024 to 31 March 2025, (viii) 1 April 2025 to 31 March 2026, ~~and~~ (ix) 1 April 2026 to 31 March 2027, (x) 1 April 2027 to 31 March 2028, (xi) 1 April 2028 to 31 March 2029, (xii) 1 April 2029 to 31 March 2030, (xiii) 1 April 2030 to 31 March 2031, and (xiv) 1 April 2031 to 31 March 2032 shall be the same as the Charge Caps for the period 1 April ~~2017~~2026 to 31 March ~~2018~~2027.
- 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-, apart from Charge Caps in respect of re-warranting which will be chargeable per metric tonne and a consistent rate across each Delivery Point Country/Region and each metal which is the subject of a physically-settled Contract pursuant to Clause 5.3.4. 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), which will be published by the LME each year in October, subject to the Warehouse's right of challenge as set out in Clause 5.3.6.
- 5.3.5** Where (i) the LME approves a new Delivery Point which is located in a new Delivery Point Country/Region, or (ii) a Warehouse becomes authorised to store in a Delivery Point Country/Region 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/Region in respect of the set of metals authorised for storage at one or more warehouses in that Delivery Point Country/Region 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 where appropriate, including the Charge Caps for geographically proximate countries, any factors relevant to the particular Delivery Point Country/Region, and its expert judgement.
- 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 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 Warehouse 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 Underlying Metal 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 Underlying Metal**

- 6.1.1** Warehouses must have clearly organised systems for recording storage of Underlying Metal 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 Underlying Metal must, if applicable, clearly identify the fact that the Underlying Metal is under Warrant, include the Warrant number and note the Authorised Warehouse in which the Underlying Metal is stored.
- 6.1.4** Underlying Metal 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** The 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 Underlying Metal under Warrant as shown on the relevant 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 Immobilised Warrant and Extracted Warrant issued by or for the Warehouse must be kept secure.

### 6.3 Stock records

#### 6.3.1 LME Eligible Stocks

For the purposes of this Agreement "**LME Eligible Stocks**" shall mean all metal within an LME-registered shed (which is not under Warrant and not Cancelled Tonnage) and is an LME brand.

#### 6.3.2 Reporting of Stock under Warrant

The stock of Underlying Metal under Warrant at the Warehouse, together with Cancelled Tonnage, must be reported to the Exchange, as prescribed in the LMEsword Regulations and Operating Procedures.

#### 6.3.3 Confidentiality of Stock and Queue information

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 and 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 (i) disclosing information concerning Queues at such Warehouses or (ii) revealing their stock of Underlying Metal under Warrant to any person, except that this prohibition shall not apply to:

- (i) information supplied to the 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;
- (ii) information disclosed pursuant to any Relevant Law and Regulation;
- (iii) information disclosed to the 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;
- (iv) historical information on aggregate stocks held by the Warehouse without differentiation between stocks held under Warrants and other stocks which is required to be disclosed to the shareholders of the Warehouse;
- (v) historical information on aggregate stocks held by the 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;

- (vi) information which has already been published by the LME pursuant to Clause 6.3.3; or
- (vii) information about the length of Queues where such information is provided to an owner of Underlying Metal that: (I) is contemplating or effecting the scheduling of load-out of Underlying Metal at the Warehouse; and (II) requires information regarding the waiting time for such scheduling, provided that the Warehouse: (A) may only disclose information pursuant to this Clause 6.3.3(vii) to the extent that such information relates to Queues arising from actual Cancelled Tonnage; and (B) shall not include in such disclosure the Warehouse's expectation regarding the cancellation or load-out request actions of any person other than the owner that requires such information in accordance with (I) and (II) above.

#### **Reporting of off-Warrant Stock**

**6.3.4** No later than the tenth calendar day of each calendar month, the Warehouse shall report to the Exchange the quantity of metal held by the Warehouse on the final day of the preceding calendar month that is not on Warrant (either live or cancelled) and which, at any point during that preceding month, was LME Eligible Stocks. The following provisions shall apply in respect of reporting LME Eligible Stocks.

- (i) The Warehouse shall submit a matrix report (using such template form as the LME may prescribe from time to time), showing quantity of metal (to the nearest metric tonne) which is LME Eligible Stock split by:
  - (a) any LME Good Delivery Location where the relevant off-warrant metal is currently located; and  
type of metal, divided by the Contract against which, if warranted, the metal would be deliverable.
- (ii) For the avoidance of doubt, there shall be no requirement for the Warehouse to provide details of metal owners, or of the economic terms on which metal is stored off-warrant.
- (iii) In respect of reporting under Clause 6.3.4:
  - (a) the Exchange shall treat the figures reported by Warehouses as confidential;
  - (b) notwithstanding (a) above:
    - (I) the Exchange may use the reported figures for reasonable internal purposes (including assessing market orderliness);
    - (II) the Exchange may publish (on a free or charged-for basis) summary statistics of off-warrant metal reported pursuant to Clause 6.3.4, in such format as the Exchange shall

notify to the market by written notice from time to time (subject that such statistics may not be disaggregated by Warehouse, but may be disaggregated by LME Good Delivery Location, metal type, or both);

- (III) provided that publication is consistent with (II) above, the Exchange shall not be prohibited from publishing disaggregated information which could be used to identify data specific to the Warehouse (such as, without limitation, where the Warehouse is the only operator in a given LME Good Delivery Location); and
- (c) notwithstanding (a) above, the Exchange may disclose the reported figures (or any information relating to such figures):
  - (I) where the Exchange is required to do so pursuant to any Relevant Law and Regulation;
  - (II) to the Exchange'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; or
  - (III) where such information is already in the public domain.

#### **6.3.5 Additional Daily Stock Reporting**

The Warehouse:

- (i) acknowledges that the Exchange may, following the date of this Agreement, by written notice specify changes to the classification of metals for the purpose of the daily reporting of stocks of metal in accordance with this Clause 6.3, in order that:
  - (a) the "cancelled" classification shall refer only to Underlying Metal that was cancelled but not scheduled for load-out;
  - (b) a new "scheduled" classification shall refer to Underlying Metal that has been cancelled and is scheduled (or in the process of being scheduled) for load-out; and
- (ii) agrees that it shall implement such operational requirements to effect such changes, and shall, on an on-going basis, apply such classification requirements for the purposes of reporting stock to the Exchange, in each case in the manner specified in such written notice, from the time specified in such written notice.

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

- 6.4.1** The Warehouse must maintain records on the duty and tax status of each lot of Underlying 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 The 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.
- 7.1.3 Each Warrant and Immobilised Warrant must include a term stating that responsibility for insuring the metal subject to the Warrant is that of the Account Holder to whose Account the Warrant is credited.

### **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 the 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 discretion, direct that any Underlying Metal stored 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 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 7.2 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** The 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:
- (i) 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;
  - (ii) any changes affecting the Warehouse's ability to comply with its obligations hereunder or under the LMEsword Regulations.
- 7.3.2** The 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 those contained in Clause 9.2.
- 7.3.3** The 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 Underlying 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 Underlying Metal held off-Warrant at the Warehouse only in connection with an investigation pursuant to the Disciplinary Procedures.
- 7.3.4** The Warehouse shall permit Exchange staff to conduct routine and other inspections of its premises used for the storage of Underlying 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. The 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 discretion for an immediate inspection to be undertaken by the Exchange or its appointed representatives.

**7.3.6** The 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, the Warehouse must:

- (i) carry out a visual inspection of all Underlying Metal in its Authorised Warehouses and of all supporting documentation;
- (ii) 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;
- (iii) 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(ii); and
- (iv) seek the approval of the Exchange in the selection of the independent third party auditor referred to in Clause 7.4.1(ii) 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:

- (i) the details of all issued Warrants and Immobilised Warrants at the time of the inspection;
- (ii) the date of the inspection; and
- (iii) 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 Underlying Metal 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 The Warehouse shall at all times comply with all applicable law, including Relevant Law and Regulation, sanctions, 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, the LMEsword Regulations or 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 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, 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 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.

## 7.7 eCOAs

### 7.7.1 For:

- (a) Designated Metal produced on or before 31 December 2023; or
- (b) Designated Metal where the Warehouse is unable to identify the production date; and
- (c) in both cases, where the underlying Designated Metal is not covered by an eCOA created in the eCOA System,

the Warehouse must create a Basic eCOA in accordance with Clause 7.7.32 as a prerequisite to:

- (d) the issuance of a Warrant or Immobilised Warrant;
- (e) the cancellation of a relevant Warrant or Immobilised Warrant;
- (f) the load-out or the scheduling of load-out of the relevant Designated Metal.

Warehouses must ensure that the creation of a Basic eCOA is completed in a timely manner and does not cause a delay to the cancellation of a relevant Warrant or Immobilised Warrant or the scheduling or load-out of the relevant metal. In such circumstances, Warehouses may charge the relevant metal owner up to an additional ten US dollars (US\$10) per Warrant or Immobilised Warrant (or such other amount as may be set out by way of notice from time to time) for creating the Basic eCOA in the eCOA System. Such additional charges shall be disregarded for the purposes of the provisions of this Agreement relating to Charge Caps.

7.7.2 In order to Warrant copper on or after [date to be determined via notice], if the copper does not have an Enhanced eCOA then the Warehouse must create a Basic eCOA. For the avoidance of doubt, copper cannot be warranted on or after [date to be determined via notice] if the metal is not accompanied by an Enhanced eCOA or a Basic eCOA.

7.7.27.7.3 Where a Warehouse elects, or is required, to produce a Basic eCOA, it shall:

- (a) upload the complete and correct Paper COA relating to the metal;
- (b) enter the correct information into the eCOA System as requested by the eCOA System for the purposes of creating the Basic eCOA and as may be further specified by the Exchange from time to time; and
- (c) use all reasonable skill, care and attention when using the eCOA System.

~~7.7.37.7.4~~ Where a Member notifies the Warehouse that it is electing to produce a Basic eCOA for metal stored at the Warehouse and requests information, or confirmation of information, relating to that ~~underlying metal~~ Underlying Metal, the Warehouse shall use all reasonable endeavours to respond to any such request in a timely and accurate manner.

## **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 ~~or Group~~, 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** The 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** The 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 the Warehouse pursuant to a sanction imposed under the Disciplinary Procedures).

**9.1.3** The 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 the 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 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 relevant 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 Underlying Metal. 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 the 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 Underlying 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, the 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, the Warehouse shall provide to the Exchange, on request, such information as the Exchange may reasonably request from time to time, including details of all Inducements, and details of the provenance of loaded-in Underlying Metal, including information about Underlying Metal which may have been held previously in that Warehouse, or in another facility operated by the same Warehouse or member of the 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).
- 9.3.5** All investigations shall be conducted in accordance with Clause 8 above and the Disciplinary Procedures.
- 9.3.6** The Exchange may take disciplinary action and / or, in its discretion, impose additional load-out requirements on the 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.

- 9.3.7** 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 9.3.7 will be circulated to all Warehouses and will be updated from time to time.
- 9.3.8** The following provisions apply in respect of Post-Sale Economic Incentive Arrangements.
- (i) In respect of any Underlying Metal placed on Warrant on, or after, 1 February 2020:
    - (a) the Warehouse may only enter into a Post-Sale Economic Incentive Arrangement with the Original Metal Owner; and
    - (b) any Post-Sale Economic Incentive Arrangement must be agreed so as to come into effect from the time that the Underlying Metal is placed on Warrant, and such agreement must be recorded in legally binding written terms agreed between the Warehouse and the Original Metal Owner on or prior to such date.
  - (ii) Clause 9.3.8(i) shall not affect the validity of any Post-Sale Economic Incentive Arrangement entered into in respect of any warranted Underlying Metal prior to 1 February 2020.
  - (iii) A Post-Sale Economic Incentive Arrangement in respect of any Warrant may last until the earlier of:
    - (a) the Underlying Metal is loaded-out of the Warehouse;
    - (b) such earlier time or event agreed between the Warehouse and the Original Metal Owner; or
    - (c) (where applicable, subject to the application of Clause 9.3.8(iv)) an Automatic PSEIA Termination.
  - (iv) The Exchange may specify by written notice that some or all Post-Sale Economic Incentive Arrangements shall be subject to automatic termination in specific circumstances (an "**Automatic PSEIA Termination**"). The circumstances shall be specified by the notice, but shall be one or both of the following:
    - (a) the cancellation of the Warrant by a Later Metal Owner; or
    - (b) the receipt by the Warehouse of a written request from a Later Metal Owner that the Post-Sale Economic Incentive Arrangement shall be terminated,

provided that such Automatic PSEIA Termination shall only apply in respect of any Post-Sale Economic Incentive Arrangements that relate to

any Underlying Metal that is placed on Warrant on or following the thirtieth (30<sup>th</sup>) calendar day following the issue by the Exchange of such notice.

- (v) The Warehouse acknowledges and agrees that:
  - (a) in addition to any duties of confidentiality that it may have in respect of information regarding Warrant holders of Warrants that are subject to a Post-Sale Economic Incentive Arrangement (whether such duties arise pursuant to contract or Relevant Law and Regulation), the Warehouse agrees with the Exchange to treat such information as confidential and shall not disclose such information except where permitted under the terms of this Agreement or in circumstances agreed with any person to whom such information relates;
  - (b) such Warehouse shall not disclose to any person, including any Original Metal Owner, information regarding a Later Metal Owner and/or the Warrants held by such Later Metal Owner in breach of this Agreement or of any obligations of confidentiality owed by the Warehouse to such Later Metal Owner, notwithstanding that a Warrant held by such Later Metal Owner may be subject to a Post-Sale Economic Incentive Arrangement between the Warehouse and the Original Metal Owner.
- (vi) Nothing in this Clause 9.3.8 shall prevent a Later Metal Owner and the Warehouse from negotiating and/or agreeing a level of rent and/or FOT below the Warehouse's published rent rates in respect of any Warrants (that is, "**discounted charges**"), provided that such discounted charges shall apply only during the period that such Warrants continue to be held and the related Underlying Metal owned by that Later Metal Owner. In the event that the Underlying Metal in respect of such Warrants is also subject to a Post-Sale Economic Incentive Arrangement with an Original Metal Owner, then subject to Clause 9.3.8(v) above, the Warehouse may liaise with such Original Metal Owner to determine whether, and to what extent, the Original Metal Owner will agree to modify the terms of the Post-Sale Economic Incentive Arrangement, in order to facilitate the Later Metal Owner's request for discounted charges.
- (vii) Without limitation to the obligations of Warehouses, and the rights of the Exchange, under Clauses 9.3.1 to 9.3.8, no Warehouse shall agree any Post-Sale Economic Incentive Arrangement in respect of any Warrants and/or Underlying Metal:
  - (a) the terms or effect of which is to prevent a Later Metal Owner from withdrawing from the Warehouse the Underlying Metal and/or making alternative arrangements for the storage of such Underlying Metal; or
  - (b) that has a distortive, manipulative or disorderly effect on the market,

and in the event that the Exchange notifies the Warehouse that it considers that a Post-Sale Economic Incentive Arrangement has any of the effects described above, the Warehouse shall comply with any direction of the Exchange to terminate any such arrangement.

#### **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:

- (i) the Warehouse commits a serious breach of this Agreement, the LMEsword Regulations or the Operating Procedures;
- (ii) the Warehouse is in breach of any aspect of Clause 1.2 and/or in the opinion of the Exchange, is Insolvent and/or is likely to become Insolvent;
- (iii) the Warehouse breaches Clause 7.5 (compliance with law and regulation);
- (iv) 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;
- (v) 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
- (vi) 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(v), and except in the case of a Force Majeure under Clause 9.4.1(vi), 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 the 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, the 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 the 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, the Warehouse must, at its own expense, relocate all Underlying Metal under Warrant to another LME authorised warehouse company's Authorised Warehouse(s) and arrange for the cancellation of all of its issued and current Warrants and Immobilised 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.
- 9.4.6** The Warehouse shall notify each of its customers (whether or not they are or might become holders of Warrants) that the Warehouse may in certain circumstances be Delisted or Suspended (and the Warehouse shall promptly upon request at any time provide the Exchange with evidence of such notification).

## **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 electronic messaging (i.e. e-mail). Service of notices by electronic messaging will be deemed effective on the date and time that the sender receives a valid "read receipt". Notices by electronic messaging shall be sent by email to:
- Email: LMELegal@lme.com
- 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 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 the 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 the 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 the 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 the 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 the 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 and any non-contractual obligations arising out of or in connection with it 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 9.9. 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 the 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 12.8.1 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 the Warehouse of its obligations under this Agreement.

9.11.2 The Warehouse shall comply with the terms of any such notice and such notices (including 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, only take effect after the 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**

The 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, Non-Related Warehouses shall also maintain effective information barriers between~~ as specified by the Exchange from time to time. Each Related Warehouse ~~Companies and Trading Companies (Ref: 14/202: A195: W098), or any successor notice. The Non-Related Warehouse shall~~ **should** 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~~ **that they have** 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.

### 9.14 Disclosure

Without implying any duty of confidentiality or other information restrictions on the Exchange, the Warehouse agrees that the Exchange may at any time, if it deems necessary or desirable, disclose to any person or generally publish the following information:

9.14.1 any Delisting or Suspension of the Warehouse; and/or

9.14.2 any exercise by the Exchange of any right under Clause 1.2, including any requirement for additional capital or for the provision of credit protection in the form of cash cover or performance bonds.

## 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:

"**Account**" means an account of an Account Holder with the Depository, recorded by the LMEsword System and established in accordance with the LMEsword Regulations and Operating Procedures, to which Warrants may be credited and debited;

"**Account Holder**" means the Clearing House and any person admitted as an Account Holder by the Exchange, and which has not withdrawn or ceased to be an Account Holder, in accordance with the LMEsword Regulations;

"**Accounting Principles**" means IFRS or, if the Exchange agrees, the generally agreed accounting principles of the jurisdiction of incorporation of the Warehouse;

"**Affected Warrant**" has the meaning given in the Rules;

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

"**Amendment Date**" means the date on which this Agreement took effect in its current form;

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

**“Automatic PSEIA Termination”** has the meaning given in Clause 9.3.8(iv);

**“AW Depository”** means the person appointed as Depository in respect of Affected Warrants;

**“Basic eCOA”** has the meaning given in the Rules;

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

**“Cancelled Tonnage”** means Underlying Metal that has been taken off Warrant, but which (at the relevant time) remains on the Warehouse's premises;

**“Charge Cap Information”** has the meaning given in Clause 5.3.7;

**“Charge Caps”** has the meaning given in Clause 5.3.1;

**“Clearing House”** means the clearing house designated by the Exchange from time to time;

**“Contract”** has the meaning given in the Rules;

**“Corrupt Act”** has the meaning given in Clause 7.5.3;

**“Customer”** means a person with whom an Account Holder has entered into a written agreement under which the Account Holder has authority to act for the Customer as bailee of Underlying Metal and, if applicable, Immobilised Warrants where the related Warrants or the Immobilised Warrants are held by the Account Holder within the LMEsword System, subject to the terms of the LMEsword Regulations and with authority to effect transfers of such Warrants for and on behalf of the Customer;

**“Delist”** means the Warehouse being delisted or otherwise ceasing to be an LME listed warehouse company in accordance with the Rules or this Agreement (including pursuant to Clause 9.4), and **“Delisted”** and **“Delisting”** shall have the corresponding meaning.

**“Delivery Point”** means a specific geographic area within which warehouses are listed and approved by the LME for the issue of Warrants;

**“Delivery Point Country/Region”** means a country/region 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;

**“Designated Metal”** means metal of a type determined by the Exchange as being subject to the requirements of Clause 7.7 of this Agreement and as notified to the market from time to time by way of notice;

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

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

**“discounted charges”** has the meaning given in Clause 9.3.8(vi);

**“eCOA”** has the meaning given in the Rules;

**“eCOA System”** has the meaning given in the Rules;

**“Enhanced eCOA” has the meaning given in the Rules;**

**“the Exchange”** means The London Metal Exchange;

**“Extracted Warrant”** has the meaning given in the LMEsword Regulations;

**“the Financial Conduct Authority”** means the regulator (Company No. 01920623) currently based at 12 Endeavour Square, London E20 1JN, 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 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 the Warehouse, any subsidiary or any holding company from time to time of the Warehouse, and any subsidiary from time to time of a holding company of the Warehouse. The terms “holding company” and “subsidiary” have the meanings given to them in section 1159 of the Companies Act 2006;

**“IFRS”** means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;

**“Immobilisation Jurisdiction”** means each jurisdiction specified as such from time to time by written notice;

**“Immobilised Warrant”** means a physical warehouse warrant issued in accordance with the LMEsword Regulations and in a form prescribed by the Operating Procedures and this Agreement from time to time;

**“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 (and shall include, without limitation, any Post-Sale Economic Incentive Arrangement);

**“Insolvent”** means, in relation to a person:

- (i) that person:
  - (a) is unable or admits inability to pay its debts as they fall due;
  - (b) suspends making payments on any of its debts; or
  - (c) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Exchange) with a view to rescheduling any of its indebtedness;
- (ii) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities).
- (iii) a moratorium is declared in respect of any of its indebtedness;
- (iv) any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise)

of that person other than a solvent liquidation or reorganisation of that person;

- (b) a composition, compromise, assignment or arrangement with any creditor of that person;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of the person), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that person or any of its assets; or
- (d) enforcement of any security over any assets of that person,

or any analogous procedure or step is taken in any jurisdiction (save that this paragraph (iv) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement;

**"Instruction"** has the meaning given in the LMEsword Regulations;

**"Instruction Deadline"** has the meaning given in the LMEsword Regulations;

**"Later Metal Owner"** means any person who purchases Underlying Metal relating to a Warrant from an Original Metal Owner, and any other person who subsequently becomes a Warrant holder in respect of such Warrant (including by receiving the Warrant in settlement of a Contract), during such time as the Underlying Metal underlying such Warrant remains in the Warehouse;

**"LCIA"** means the London Court of International Arbitration;

**"Legacy LMEsword Regulations"** has the meaning given in the LMEsword Regulations;

**"Legacy Warehouse Agreement"** means this Agreement as in force immediately prior to the Amendment Date;

**"LME"** means The London Metal Exchange;

**"LME Eligible Stocks"** has the meaning given in Clause 6.3.1;

**"LME Good Delivery Location"** means a location approved as a Delivery Point, pursuant to the LME Policy on the Approval of Locations as Delivery Points;

**"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 the Hong Kong Exchanges and Clearing Limited (~~HKEX~~HKEX). The terms "holding company" and "subsidiary" shall have the meanings given to them in section 1159 of the Companies Act 2006.

**"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;

**"LMEsword System"** means the system for, inter alia, the electronic transfer of Warrants, governed and constituted by the LMEsword Regulations;

"**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;

"**Metal Entitlement**" means evidence of an entitlement to Underlying Metal (including a warehouse warrant, warehouse receipt or other document representing or acknowledging receipt of Underlying Metal) issued by or on behalf of a Warehouse and which meets the requirements of Regulation 3.2.4 of the LMEsword Regulations;

"**Metal Report**" means a report generated by a Warehouse and uploaded to the eCOA System relating to the Certificate of Analysis for the Underlying Metal, and which links such information to the corresponding Warrant or Immobilised Warrant held or previously held in respect of that metal;

"**Non-Related Warehouse**" means a Warehouse that does not have a close connection with a Trading Company. 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);

"**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;

"**Original Metal Owner**" means, in respect of any Warrant, the Warrant holder that first placed the Underlying Metal on Warrant;

"**Paper COA**" has the meaning given in the Rules;

"**person**" includes an individual, partnership, unincorporated association and body corporate;

"**Post-Sale Economic Incentive Arrangement**" means any agreement between a Warehouse and an Original Metal Owner, under which the Original Metal Owner has a right to benefit from any income or other benefits received by the Warehouse in respect of Underlying Metal, for some or all of the period between (i) the sale of the Warrant by the Original Metal Owner to any Later Metal Owner(s) and (ii) the load-out of the Underlying Metal from the Warehouse (but shall not include the payment by the Warehouse of a fixed payment to an Original Metal Owner, including where the Warehouse intends to recoup such fixed payment from revenues received following the sale of the Underlying Metal by the Original Metal Owner);

"**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 the Warehouse, measured by the number of calendar days a Underlying 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 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;

**"Suspend"** means the suspension of the ability of the Warehouse to issue Warrants pursuant to the Rules or this Agreement (including pursuant to Clause 1.2.5(B)), and **"Suspended"** and **"Suspension"** shall have the corresponding meaning.

**"this Agreement"** means the agreement between the 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"** means any Member or non-Member company that enters into Contracts or trades metal that is deliverable against a Contract;

**"Underlying Metal"** means, in relation to a Warrant, Immobilised Warrant, Metal Entitlement or an Extracted Warrant, the Underlying Metal described therein as (i) relating to that Warrant, Immobilised Warrant, Metal Entitlement or Extracted Warrant (as applicable) and (ii) in the case of a Warrant or Immobilised Warrant only, held by the related Warehouse under the LMEsword Regulations;

**“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;

**“Warehouse Maximum Charge Levels”** has the meaning given in Clause 5.2.1;

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

**“Warrant”** means, as the case may be:

- (i) if that Warrant relates to metal located in an Immobilisation Jurisdiction, an electronic record within LMEsword of an Immobilised Warrant; or
- (ii) otherwise, an electronic warehouse warrant issued by a Warehouse in accordance with this Agreement and the LMEsword Regulations; and

**“Warrant Lodgement Instruction”** has the meaning given in the Operating Procedures.

## 10.2 Interpretation

**10.2.1** Where this Agreement refers to:

- (i) 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;
- (ii) 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;
- (iii) references to the Exchange or the Depository exercising a discretion or making a determination are to the exercise of that discretion or the making of a determination in the sole and absolute discretion of the Exchange or Depository (as applicable);
- (iv) a “warrant”, that shall include a reference to a Warrant and an Immobilised Warrant;
- (v) the “issuance” of a warrant, that shall include a reference to causing a Warrant or Immobilised Warrant (as the case may be) to be created;
- (vi) the “holder” of a warrant, or warrant holder, that shall include in the case of a Warrant or Immobilised Warrant a reference to the Account Holder within LMEsword to whose Account a Warrant is recorded from time to time; or
- (vii) a Warrant or Immobilised Warrant being ‘marked’ shall include any writing, typing, printing or other mode of representing or reproducing words in a visible form, including electronically.

**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.

## 11 Principles of Conduct

The Warehouse shall:

- 11.1 Conduct its business with due skill, care and diligence, observing high standards of conduct and safety, complying with the warehouse agreement, the LMEsword Regulations, these principles, the common standards of working practice for warehouse companies, other requirements for warehouse companies set by the Exchange, and Relevant Law and Regulation.
- 11.2 Not engage in behaviour which would manipulate or distort the Exchange's markets, nor create or attempt to create a disorderly market, nor require or encourage or assist others to do so. In particular, without limitation, not engage in any behaviour which would be likely to manipulate or distort the market with the effect of creating or maintaining a Queue.
- 11.3 At all times observe high standards of integrity and fair dealing, observe high standards of market conduct, and not enter into any arrangement or agreement that prohibits the provision of any information that the LME requests in its role as a Recognised Investment Exchange.
- 11.4 Maintain financial resources at or above the minimum level set by the LME to ensure continuity in the provision of services for owners of Underlying Metal.
- 11.5 Manage conflicts of interest fairly, both between itself and holders of Underlying Metal and between holders of Underlying Metal, ensuring fair and equitable treatment to all holders of Underlying Metal at all times.
- 11.6 Ensure that all Underlying Metal 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 Underlying Metal on LME warrant, those holding Warrants and those taking Underlying Metal off 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 Underlying Metal 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 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 Underlying Metal 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 Underlying Metal stored with it or that it knows will be placed on or taken off 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 this 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/Region, 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 2026-31 March 2027, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{avg\ 2015 - 17, local\ currency} \times ACPI_{august\ t-1} / ACPI_{august\ 2025}$$

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 this 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/Region, 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:

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

Where

$FX\$_{avg\ 2015 - 17}$  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 2026 – 31 March 2027, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{avg\ 2015 - 17, local\ currency} \times ACPI_{august\ t-1} / ACPI_{august\ 2025}$$

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

$ACPI_{august\ 2025}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2025.

(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  $P_{t-1,\$}$ .

### ADDITIONAL FORMULAE

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

### FOT

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

$P_{sp\ cmte, local}$  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 2026 – 31 March 2027, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, local} = P_{sp\ cmte, local} \times ACPI_{august\ t-1} / ACPI_{august\ 2025}$$

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

$ACPI_{august\ 2025}$  is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2025.

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

### 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 for rent 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 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 2026 – 31 March 2027, for each charge year t, set the Charge Cap ( $P_t$ ) as follows:

$$P_{t, \text{local}} = P_{\text{sp cmte, local currency}} \times \text{ACPI}_{\text{august } t-1} / \text{ACPI}_{\text{august } 2025}$$

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 2025</sub> is the arithmetic average of the local monthly CPI index published in the 12 months up to and including August in the year 2025.*

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

*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 sp cmte -2</sub> 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 2030, the relevant CPI in this case is the 12 months up to and including August 2028.*

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 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 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:

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

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 sp cmte -2</sub> 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 2030, the relevant CPI in this case is the 12 months up to and including August 2028.*

*(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  $P_{t-1, \$}$ .

## 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/region

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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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, International Financial Statistics
Germany	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Italy	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Japan	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Korea	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Netherlands	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Spain	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Sweden	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
United Kingdom	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
United States	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Malaysia	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Singapore	Daily, monthly, annual	International Monetary Fund, International Financial Statistics
Taiwan	Daily, monthly, annual	Federal Reserve
UAE	Daily, monthly, annual	International Monetary Fund, 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.**

