

DATED 20....

.....
[NAME OF BANK]

AND

.....
[NAME OF CLIENT]

**UNALLOCATED PRECIOUS METALS ACCOUNTS
AGREEMENT**

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This Agreement is based upon the UNALLOCATED PRECIOUS METALS ACCOUNTS AGREEMENT as published by London Precious Metals Clearing Limited, with such modifications as are appropriate to the services to be provided.

THIS AGREEMENT is made on 20

BETWEEN

- (1) [NAME OF BANK] a company incorporated under the laws of [], whose [registered office][principal place of business] is at [] ("we" or "us"); and
- (2) [NAME OF CLIENT] a company incorporated under the laws of [], whose [registered office][principal place of business] is at [] ("you").

Each a "Party" and together the "Parties".

INTRODUCTION

We, as a member of London Precious Metal Clearing Limited ("**LPMCL**"), have agreed to open and maintain for you Unallocated Accounts (as defined below) and to provide other services to you in connection with such Unallocated Accounts. This Agreement sets out the terms under which we will provide those services to you and the arrangements which will apply in connection with those services.

IT IS AGREED AS FOLLOWS

1. **INTERPRETATION**

1.1 **Definitions:** In this Agreement:

"**Account Balance**" means, in relation to an Unallocated Account, a positive balance in the amount of Precious Metals owed to you by us, or a negative balance in the amount of Precious Metals owed by you to us, in each case as from time to time recorded on that Unallocated Account.

"**Allocated Account**" means, in relation to a Precious Metal, the account(s) maintained by us in your name, either pursuant to an agreement that we have entered into with you regulating the terms on which we hold allocated Precious Metals for your account (an "**Allocated Precious Metals Account Agreement**"), or on whatever other basis we have agreed with you for operating such account(s), in either case recording the amount of, and identifying, the Precious Metals received and held by us for you on an allocated basis.

"**AURUM**" means the electronic matching and settlement system operated by LPMCL.

"**Availability Date**" means the Business Day on which you wish to transfer or deliver Precious Metal to us for credit to an Unallocated Account.

"**Business Day**" means a day (excluding Saturdays, Sundays and public holidays) on which commercial banks generally are open for business in London and on which the London Precious Metals Markets relevant to the Precious Metals held pursuant to this Agreement are open for business.

“**Dispute**” means for the purpose of Clause 15 any disagreement between you and us which we have been unable to resolve amicably within a period of fourteen Business Days after we have received from you, or as the case may be you have received from us, written notification of the disagreement.

"**LBMA**" means The London Bullion Market Association or its successors.

"**London Precious Metals Markets**" means the London Bullion market, the LPPM, and such other markets for Precious Metals operating in London as may be agreed between us from time to time.

"**LPMCL**" means London Precious Metals Clearing Limited or its successors.

“**LPPM**” means the London Platinum and Palladium Market or its successors.

"**Precious Metal**" means any and all of gold, silver and any other metal(s) as may be agreed between us or otherwise specified in the Schedule.

"**Rules**" means the rules, regulations, practices and customs of the LBMA, LPMCL, LPPM, the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England and such other regulatory authority or other body, applicable to the Parties to this Agreement and/or to the activities contemplated by this Agreement.

"**Sanctioning Body**" means any of the following:

- (i) the United Nations Security Council;
- (ii) the European Union;
- (iii) Her Majesty’s Treasury and the Office of Financial Sanctions Implementation of the United Kingdom;
- (iv) The Office of Foreign Assets Control of the Department of Treasury of the United States of America; and
- (v) [Canada / China / Hong Kong / Switzerland / such other jurisdictional body]

"**Sanctions**" means economic or financial sanctions, boycotts, trade embargoes and restrictions relating to terrorism imposed, administered or enforced by a Sanctioning Body from time to time.

"**Sanctions List**" means any list of specifically designated nationals or blocked or sanctioned persons or entities (or similar) imposed, administered or enforced by a Sanctioning Body in connection with Sanctions from time to time.

"**Unallocated Account**" means, in relation to a Precious Metal, the account(s) maintained by us in your name recording the amount of that Precious Metal which we have a contractual obligation to transfer to you (or, in the case of a negative balance, if so permitted by us, which you have a contractual obligation to transfer to us).

"**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 (as amended or re-enacted from time to time) and legislation supplemental thereto and any

other tax (whether imposed in the United Kingdom in substitution thereof or in addition thereto or elsewhere) of a similar fiscal nature.

"**Withdrawal Date**" means the Business Day on which you wish to withdraw Precious Metal from an Unallocated Account.

1.2 **Headings:** The headings in this Agreement do not affect its interpretation.

1.3 **Singular and plural:** References to the singular include the plural and vice versa.

2. UNALLOCATED ACCOUNTS

2.1 **Opening Unallocated Accounts:** We shall open and maintain one or more Unallocated Accounts in respect of each Precious Metal which you ask us, and we agree, to hold for you on an unallocated basis on the terms of this Agreement.

2.2 **Denomination of Unallocated Accounts:** The Precious Metals recorded in Unallocated Accounts shall be denominated: in the case of gold, in fine troy ounces of gold (to three decimal places); in the case of silver, in troy ounces of silver (to at least one decimal place); and, in the case of any other metal, in such denomination as is provided for in the Rules or if there is no such provision, such denomination as may be agreed between us.

2.3 **Reports:** We will provide reports to you relating to deposits into and withdrawals from the Unallocated Accounts and the Account Balance on each Unallocated Account in such form and with such frequency as required (but not less than annually) as may be agreed between us, or as otherwise specified in the Schedule.

2.4 **Discrepancies:** If a material error or discrepancy is noted by you on any report provided pursuant to Clause 2.3 above in relation to any activity or balances, you will notify us in writing as soon as possible (and in any event no later than 5 Business Days from the date of your receipt of the relevant report) so that we may investigate and resolve any such material error or discrepancy as soon as practicable. We shall not be liable for any interest or default interest if notification is received from you later than 5 Business Days from the date of your receipt of the relevant report. For the purposes of this Clause 2.4 only, in the absence of evidence to the contrary, a report shall be deemed received by you on the day which is [2] Business Days after the date on which such report was sent by us to you.

2.5 **Reversal of entries:** We at all times reserve the right, without prior notice to you, to reverse any provisional or erroneous entries to an Unallocated Account with effect back-valued to the date upon which the final or correct entry (or no entry) should have been made (including, without limitation, where we have credited a deposit made pursuant to Clause 3.1(b) and on receipt by us of the Precious Metal we determine that it does not comply with the Rules or that it is not the weight required by the Rules for the amount of the relevant Precious Metal which you notified to us for deposit), but shall notify you in writing as soon as reasonably practicable of any such reversals.

3. DEPOSITS

3.1 **Procedure:** You may at any time notify us of your intention to deposit Precious Metal in an Unallocated Account. A deposit may be made (in the manner and accompanied by such documentation as we may require) by:

- (a) procuring a book-entry transfer: (i) to us by arranging that our account with a third party (as notified by us to you) in which we hold Precious Metal of the type which we have agreed to hold for you (and which has the same denomination as the Precious Metal to which your Unallocated Account relates) is credited with an amount of Precious Metal equal to the amount of Precious Metal to be recorded in your Unallocated Account; or (ii) to your Unallocated Account by you arranging that a third party for whom we maintain an account holding Precious Metal of the type which we have agreed to hold for you (and which has the same denomination as the Precious Metal to which your Unallocated Account relates) instructs us to debit from its account with us an amount of Precious Metal and to credit such amount to your Unallocated Account; or
- (b) the delivery of Precious Metal to us at our nominated London vault premises detailed in the Schedule attached hereto, at your expense and risk. Any Precious Metal delivered to us (or to a third party holding to our order) must be in the form of bars which comply with the Rules (including the Rules relating to good delivery and fineness) or in such other form as may be agreed between us.

3.2 **Notice requirements:** Any notice relating to a deposit of Precious Metal must:

- (a) be in writing and be received by us no later than [2pm] (London time) on a Business Day (and if not received on a Business Day or received later will be deemed to be received on the next Business Day);
- (b) in the case of a deposit pursuant to Clause 3.1(a), specify the details of the account from which the Precious Metal will be transferred;
- (c) in the case of a deposit pursuant to Clause 3.1(b), specify the name of the person or carrier that will deliver the Precious Metal to us at the vault premises specified in the Schedule attached hereto and the manner in which the Precious Metal will be packed; and
- (d) in any case specify the amount (in the appropriate denomination) of the Precious Metal to be credited to the Unallocated Account, the Availability Date and any other information which we may from time to time require.

3.3 **Timing:** A deposit of Precious Metal will not be credited to an Unallocated Account until:

- (a) in the case of a deposit pursuant to Clause 3.1(a), an account of ours with any bank, broker or other firm has been credited with an amount equal to the amount of such deposit; and
- (b) in the case of a deposit pursuant to Clause 3.1(b), we have received the Precious Metal in accordance with Clauses 3.1 and 3.2, verified its compliance with the Rules and weighed it in accordance with LBMA practice to confirm that it is the weight required by the Rules for the amount of the relevant Precious Metal which you notified to us for deposit.

3.4 **Right to refuse Precious Metal or amend procedure:** We may refuse to accept Precious Metal, and amend the procedure in relation to the deposit of Precious Metal or impose such additional procedures in relation to the deposit of Precious Metal as we may

from time to time consider appropriate. Any such refusal, amendment or additional procedures will be promptly notified to you in accordance with Clause 13 of this Agreement, and will (unless otherwise specified) take effect immediately upon your receipt of notification.

- 3.5 **Allocation:** We may, if applicable, at our option convert your entitlement in respect of an Unallocated Account into rights in respect of Precious Metals in an Allocated Account, and vice-versa.¹ Where Precious Metal is deposited to the credit of your Unallocated Account, we may from time to time convert some or all of that deposit into allocated Precious Metal by designating the relevant number of bars of the relevant Precious Metal as allocated to your account, with the intention that you will acquire ownership of the specific bars so designated. Any bar so allocated shall comply with the Rules (including those relating to good delivery and fineness) or shall be in such other form as may be agreed between us.² Where we so allocate, your Account Balance shall be reduced to reflect this reduction in unallocated Precious Metal held for you. Subject as provided below, if at any time we so allocate any Precious Metals (the “**Converted Precious Metals**”) and you have entered into an Allocated Precious Metals Account Agreement with us relating to Precious Metals of the relevant kind, then the Converted Precious Metals shall be held by us upon the terms of that agreement. If you have not entered into such an agreement with us, we shall hold the Converted Precious Metals for your account in accordance with our customary terms at that time for the holding of allocated Precious Metals of the relevant kind.

Where we hold for you any Converted Precious Metal, we may also at any time subsequently de-allocate it and return it to your Account Balance. For this purpose, you authorise us as your agent from time to time at our option to transfer to us all your right and title to some or all of the Converted Precious Metals in exchange for the creation of a contractual obligation owed by us to you, as recorded in your Unallocated Account, to transfer to you Precious Metals of the same amount as such Converted Precious Metals. Where Converted Precious Metals are replaced by a contractual obligation pursuant to this provision, the Account Balance on your Unallocated Account shall be increased to reflect this increase in unallocated Precious Metals held for you, and the balance on your Allocated Account shall be reduced accordingly.

Physical Delivery Following Allocation:

- (a) Following an allocation of Precious Metals pursuant to this sub-clause, if you wish to withdraw the Converted Precious Metals then the procedures and provisions of the agreement pursuant to which we hold for you allocated Precious Metals, if any, or our customary terms, relating to withdrawals shall apply to such withdrawal, provided that notwithstanding the provisions thereof we shall have the right to

¹ Where this wording applies, fee/expense provisions will need to clarify who bears the costs of transfer, delivery, insurance, etc.

² Technically, both allocation and de-allocation involve a transfer of ownership. Parties will therefore need to consider any relevant changes to accounting treatment (conversion from contractual claim to ownership and vice-versa), and the risk of a transfer being reversed if subject to insolvency claw back

select which bars are made available to you (although such bars will be of the same kind and have the same denomination as the Converted Precious Metals); and

- (b) if any such selection by us of bars pursuant to sub-clause (a) above results in a shortfall in the total amount of Precious Metal which you have notified to us you wish to withdraw (the difference between such total amount and the amount resulting from our selection being the “**Shortfall**”) we shall promptly credit an amount equal to the Shortfall to your Unallocated Account.

All expenses in relation to delivery, including insurance, of Converted Precious Metals shall be for your account.

4. **WITHDRAWALS**

4.1 **Procedure:** You may at any time notify us in writing of your intention to withdraw Precious Metal standing to the credit of an Unallocated Account. A withdrawal may be made (in the manner and accompanied by such documentation as we may require) by:

- (a) book-entry transfer by a debit by us of an amount of Precious Metals from your Unallocated Account and credit of such amount to an account maintained by us for another client, or instructing credit of such amount to the account specified by you and maintained by a third party; or
- (b) the collection of Precious Metal from the vaults specified in the Schedule attached hereto at your expense and risk. Any Precious Metal made available to you will be in the form of bars which comply with the Rules (including the Rules relating to good delivery and fineness) or in such other form as may be agreed between us. We are entitled to select which bars are to be made available to you.

4.2 **Notice requirements:** Any notice relating to a withdrawal of Precious Metal must:

- (a) if it relates to a withdrawal pursuant to Clause 4.1(a), be received by us no later than [2pm] (London time) on a Business Day (and if not received on a Business Day or received later will be deemed to be received on the next Business Day) and specify the details of the account to which the Precious Metal is to be transferred;
- (b) if it relates to a withdrawal pursuant to Clause 4.1(b), be received by us no later than [2pm] (London time) on a Business Day (and if not received on a Business Day or received later will be deemed to be received on the next Business Day) and specify the name of the person or carrier that will collect the Precious Metal from us; and
- (c) in any case be in writing and specify the amount (in the appropriate denomination) of the Precious Metal to be debited from the Unallocated Account, the Withdrawal Date and any other information which we may from time to time require.

4.3 **Right to amend procedure:** We may amend the procedure for the withdrawal of Precious Metal from an Unallocated Account or impose such additional procedures as we may from time to time consider appropriate. Any such amendments or additional procedures will be promptly notified to you in accordance with Clause 13 of this Agreement, and will (unless otherwise specified) take effect immediately upon your receipt of notification.

4.4 **Collection or Delivery of Precious Metals:** You accept liability for all costs of transportation and insurance (if any) in relation to the delivery of Precious Metal upon withdrawal once your designated carrier has taken physical delivery of the relevant Precious Metal.

(a) Unless specifically agreed that sub-clause (b) below applies to a withdrawal, you must collect, or arrange for the collection of, Precious Metals being withdrawn from us at your expense and risk. We will advise you of the location from which the Precious Metals may be collected no later than [] Business Days prior to the Withdrawal Date.

(b) Where we have agreed with you that this sub-clause (b) applies, we shall arrange delivery of the Precious Metal to you, and shall arrange such delivery, including transportation, in accordance with our usual practices. Where specific requests are made by you regarding the method of delivery, we may (but shall have no obligation to) make reasonable efforts to comply with such requests. We shall in no circumstances have any obligation to effect any requested delivery, if in our reasonable opinion (i) such delivery would cause us or any of our agents to be in breach of the Rules or any applicable law, court order or regulation, or (ii) the costs incurred by us or our agents in making such delivery would be excessive, and we have not had satisfactory confirmation that you will reimburse us for such costs, or (iii) delivery is not reasonably practicable for any reason.

5. INSTRUCTIONS

5.1 **Your representatives:** We may assume that instructions have been properly authorised by you if they are given or purport to be given by a person who is, or purports to be, and is reasonably believed by us to be, a director, employee or other authorised person acting for you.

5.2 **Instructions:** All transfers into and out of the Unallocated Account(s) shall be made upon receipt of, and in accordance with, instructions given (or appearing to be given) by you to us. Such instructions may be given by SWIFT transmission or by such other means (if any) as are specified in the Schedule or, if for any reason SWIFT or the means specified in the Schedule are not operational, such other means as we may agree from time to time. Unless otherwise agreed, any such instruction or communication shall be effective if given by written means. We may assume that any electronic instructions have been validly given on your behalf. We reserve the right to obtain further validation of any instructions.

5.3 **AURUM:** You acknowledge that instructions relating to a counterparty for whom we do not already provide settlement services will be forwarded by us to AURUM on your behalf. You acknowledge that AURUM is operated by a third party and that we cannot be responsible for any errors, omissions or malfunctions in the systems operated by AURUM. To the extent that AURUM is not available or suffering a malfunction, you agree that our obligations under this Agreement shall be postponed during such unavailability or such malfunction and until a reasonable period thereafter.

5.4 **Amendments:** Once given, instructions continue in full force and effect until they are cancelled or amended. Any such instructions shall be valid and binding only after actual receipt by us in accordance with Clause 13 of this Agreement.

5.5 **Unclear or ambiguous instructions:** If, in our opinion, any instructions are unclear or ambiguous, we will use reasonable endeavours (taking into account any relevant time constraints) to obtain clarification of those instructions from you but, failing that, we may in our absolute discretion and without any liability on our part, act upon what we believe in good faith such instructions to be or refuse to take any action or execute such instructions until any ambiguity or conflict has been resolved to our satisfaction.

5.6 **Refusal to execute:** We reserve the right to refuse to execute instructions if in our opinion they are or may be, or require action which is or may be, contrary to the Rules or any applicable law.

6. **CONFIDENTIALITY**

6.1 **Disclosure to others:** Subject to Clauses 6.2 and 6.3, each Party shall respect the confidentiality of information acquired under this Agreement and neither will, without the consent of the other, disclose to any other person any information acquired under this Agreement.

6.2 **Permitted disclosures:** Each Party accepts that from time to time the other Party may be required by law, or a court order or similar process, or requested by a government department or agency, fiscal body or regulatory authority, to disclose information acquired under this Agreement. In addition, the disclosure of such information may be required by a Party's auditors, by its legal or other advisors or by a company which is in the same group of companies as a Party (e.g. a subsidiary, or holding company of a Party). Each Party irrevocably authorises the other to make such disclosures without further reference to such Party.

6.3 You acknowledge that, as a member of the London Precious Metal Clearing Limited, and that from time to time in carrying out our duties and obligations under this Agreement, it may be necessary for us to disclose to LPMCL and/or other clearing members, your account details and certain other information in order to act in accordance with your notices hereunder for the purposes of facilitating settlement. You acknowledge and accept that such disclosures may be made by us for the purposes set out in this Clause 6.3.

7. **REPRESENTATIONS**

7.1 Each Party represents and warrants to the other, on a continuing basis that:

- (a) it is duly constituted and validly existing under the laws of its jurisdiction of constitution;
- (b) it has all necessary authority, powers, consents, licences and authorisations and has taken all necessary action to enable it lawfully to enter into and perform its duties and obligations under this Agreement;
- (c) the persons entering into this Agreement on its behalf have been duly authorised to do so; and
- (d) this Agreement and the obligations created under it constitute its legal and valid obligations which are binding upon it and enforceable against it in accordance with the terms of this Agreement (subject to applicable principles of equity) and do not

and will not violate the terms of the Rules, any applicable laws, or any order, charge or agreement by which it is bound.

7.2 In addition to (and without limitation of) the representations and warranties given by you in Clause 7.1, you represent and warrant to us, on a continuing basis, that any deposit of Precious Metal with us is made: (i) in accordance with the Rules, (ii) with full legal and beneficial title, and (iii) free and clear from any and all contingent or existing charges, pledges, mortgages, securities, encumbrances, liens or other third party right or claim whatsoever permitted or created by you or, to the best of your knowledge and belief permitted or created by any third party.

8. **SANCTIONS**

8.1 In addition to (and without limitation of) the representations and warranties given by you in Clause 7.1 and Clause 7.2 above, you represent, warrant and undertake, on a continuing basis, that:

- (a) you are not a person or entity that is named on any Sanctions List or directly or indirectly targeted under any Sanctions;
- (b) you are not acting in violation of any applicable Sanctions;
- (c) you shall comply with all applicable laws, regulations, codes and sanctions relating to your operations, wherever conducted, and in particular relating to human rights, bribery, corruption, money-laundering, accounting and financial controls and anti-terrorism, including but not limited to the UK Bribery Act 2010;
- (d) you have adequate risk management and compliance procedures in place and have taken necessary measures (including screening clients for sanctions, money laundering and anti-bribery and corruption) to ensure continued compliance with the Rules and with the ongoing requirements of any Sanctioning Body;
- (e) you have conducted adequate due diligence on any person that you direct we transfer Precious Metals to or from under the terms of this Agreement; and
- (f) you will not cause us to hold any Precious Metals that originate from financial crime or are being or have been used to facilitate the violation of any Sanctions.

8.2 You agree that neither any Precious Metals nor the proceeds of any Precious Metals will be used by you in any way to fund the activities or business of any person or entity in any country or territory subject to Sanctions or included in any Sanctions List. You further agree that we shall be under no obligation to comply with a notice of withdrawal delivered pursuant to Clause 4.1 where we have reasonable grounds to suspect that any such withdrawal may in any way be used to fund the activities or business of any person or entity in any country or territory subject to Sanctions or included in any Sanctions List.

8.3 If at any time you become aware of any breach by you of Clauses 8.1 or 8.2 above after the date of this Agreement and before the later of (i) termination of this Agreement and (ii) the date that all obligations under this Agreement are fully and finally discharged, you shall promptly notify us in writing with full details of such breach together with, promptly

following any request from us to do so, any other information we may reasonably request in connection with such breach.

8.4 In the event that you breach any of Clauses 8.1 to 8.3 above, or if we have reasonable grounds to believe that you have breached any of Clauses 8.1 to 8.3 above, we shall have the right to terminate this Agreement forthwith upon written notice. In the event of termination of this Agreement pursuant to this Clause 8.4, you agree to indemnify us and hold us harmless against any and all losses, costs and liabilities incurred as a direct consequence of such termination.

8.5 Nothing in this Agreement shall require a Party to take any action or to refrain from taking any action which may cause that Party any liability to or imposed by a Sanctioning Body.

9. FEES AND EXPENSES

9.1 **Fees:** You will pay us such fees as we from time to time agree with you as set out in the Schedule attached hereto. We reserve the right to amend the fee structure from time to time. Details of changes to the charges (including transfer, clearing and storage charges) will be advised to you by us in writing no less than 30 days before becoming effective.

9.2 **Expenses:** You must pay us on demand all costs, charges and expenses (including any relevant taxes, duties and legal fees) incurred by us in connection with the performance of our duties and obligations under this Agreement or otherwise in connection with any Unallocated Account (including without limitation any delivery, collection or storage costs). You shall be liable for all taxes, assessments, duties and other governmental charges, including any interest or penalty with respect thereto ("**Taxes**"), with respect to any Unallocated Account maintained by us pursuant to this Agreement or any deposits or withdrawals related thereto. You shall indemnify us for the amount of any Tax that we are required under applicable laws (whether by assessment or otherwise) to pay in respect of each Unallocated Account or any deposits or withdrawals related thereto (including any payment of Tax required by reason of an earlier failure to withhold). In the event that we are required under applicable law to pay any Tax on your behalf, we are hereby authorised, without prior notice to you, to debit from the credit balance of any or all of the Unallocated Accounts an amount equal to the quotient of (x) the principal amount of the relevant Tax payable by us, divided by (y) the Spot Rate. If the aggregate credit balance of the Unallocated Accounts is not sufficient to pay such Tax, we will notify you of an additional amount of cash required and you shall directly deposit such additional amount of cash (in the appropriate currency) to an account specified by us on or before the first Business Day following the date on which our notice to you that such amount is required becomes effective in accordance with this Agreement. For the purposes hereof, "**Spot Rate**" in respect of a Precious Metal and the particular currency in which the relevant Tax is denominated has the meaning set out in the Schedule.

9.3 **Credit balances:** No interest or other amount will be paid by us on any credit balance on an Unallocated Account unless otherwise agreed between us.

9.4 **Debit balances:** You are not entitled to overdraw an Unallocated Account except to the extent that we otherwise agree in writing. In the absence of our written agreement to an overdraft, we shall not be obliged to carry out any instruction from you where to do so would in our opinion cause any Unallocated Account to have a negative balance. If for any

reason an Unallocated Account is overdrawn, you will be required to pay us interest on the debit balance at the rate agreed between us or, if no such agreement exists, at such rate as we determine to be appropriate. The amount of the overdraft and any accrued interest will be repayable by you on our demand. Your obligation to pay interest to us will continue until the overdraft is repaid by you in full.

9.5 **Default interest:** If you fail to pay us any amount when it is due, we reserve the right to charge you interest (both before and after any judgement) on any such unpaid amount calculated at a rate set out in the Schedule attached hereto. Interest will accrue on a daily basis, on a compound basis with monthly resets, and will be due and payable by you as a separate debt.

10. SCOPE OF RESPONSIBILITY

10.1 **Exclusion of liability:** We will use reasonable care in the performance of our duties under this Agreement and will only be responsible for any loss or damage suffered by you as a direct result of any negligence, fraud or wilful default on our part in the performance of our duties, and in which case our liability will not exceed the aggregate market value of the Account Balances at the time of such negligence, fraud or wilful default (calculating the value using the next available prices for Precious Metals of the same type and amount on the relevant London Precious Metals Markets following the occurrence of such negligence, fraud or wilful default). We shall not in any event be liable for any consequential loss, or loss of profit or goodwill, whether or not resulting from any negligence, fraud or wilful default on our part.

10.2 **No duty or obligation:** We are under no duty or obligation to make or take any special arrangements or precautions beyond those required by the Rules.

10.3 **Force majeure:** We shall not be liable to you for any delay in performance, or for the non-performance of, any of our obligations under this Agreement by reason of any cause beyond our reasonable control. This includes any breakdown, malfunction or failure of, or in connection with, any communication, computer, transmission, clearing or settlement facilities, industrial action, acts and regulations of any governmental or supra national bodies or authorities, or the rules of any relevant regulatory or self-regulatory organisation.

10.4 **Indemnity:** You shall indemnify and keep us indemnified (on an after tax basis) on demand against all costs and expenses, damages, liabilities and losses which we may suffer or incur, directly or indirectly in connection with this Agreement except to the extent that such sums are due directly to our negligence, wilful default or fraud.

10.5 **Set-off:** We shall exercise such set-off rights against amounts owed to you by us under this Agreement. Without prejudice to any other rights of set-off which we may have by implication of law or otherwise, we may, without notice to you, at any time combine, consolidate or merge all or any of your Unallocated Accounts in relation to the same Precious Metals, and may value the amount of Precious Metals recorded in your Unallocated Accounts (calculating the value using the next available prices for Precious Metals of the same type and amount on the relevant London Precious Metals Markets following such decision to consolidate or set off), set off against that value the value of any liability owed by you to us under this Agreement or otherwise, and reduce the Account Balance for your Unallocated Accounts accordingly. We may exercise our powers under this Clause 10.5

notwithstanding that the balances on such Unallocated Accounts and your liabilities to us may not relate to the same branches, and may not be expressed in the same currency. You authorise us to effect any currency conversions required by this Clause 10.5 at such rate of exchange as we may in good faith consider appropriate at the time the relevant conversion is made.

11. **TERMINATION**

11.1 **Method:** Either Party may terminate this Agreement (a) by giving not less than 10 Business Days written notice to the other Party, or (b) immediately by written notice in the event of the presentation of a winding up order, bankruptcy or analogous event in relation to the other Party.

11.2 Any notice given by you under Clause 11.1 must specify:

- (a) the date on which the termination will take effect (the "**Termination Date**");
- (b) the person to whom each Account Balance which is a credit balance is to be transferred;
- (c) whether the Precious Metal standing to the credit of each Unallocated Account is to be withdrawn pursuant to Clause 4.1(a) or Clause 4.1(b); and
- (d) all other necessary arrangements for the transfer or repayment, or as the case may be, of each Account Balance.

11.3 **Redelivery arrangements:** If you do not make arrangements acceptable to us for the transfer or repayment, as the case may be, of an amount of Precious Metal equal to the Account Balance, we may continue to maintain that Unallocated Account, in which case we will continue to charge the fees and expenses payable under Clause 8. If you have not made arrangements acceptable to us for the transfer or repayment of Precious Metal equal to each Account Balance within 6 months of the Termination Date, we will be entitled to close each Unallocated Account and in place of delivery of Precious Metals, account to you for the value of the Account Balance on each such Unallocated Account (as at the date which is 6 months after the Termination Date, calculating the value using the next available prices for that date for Precious Metals of the same type and amount on the relevant London Precious Metals Markets), after deducting any amounts due to us under this Agreement.

11.4 **Existing rights:** Termination shall not affect rights and obligations then outstanding under this Agreement which shall continue to be governed by this Agreement until all obligations have been fully performed. The provisions of Clauses 6 and 15 shall survive the termination of this Agreement.

12. **VALUE ADDED TAX**

12.1 **VAT exclusive:** All sums payable under this Agreement by you to us shall be deemed to be exclusive of VAT.

12.2 **Supplies:** Where pursuant to or in connection with this Agreement, we make a supply to you for VAT purposes and VAT is or becomes chargeable on such supply, you shall on demand pay to us (in addition to any other consideration for such supply) a sum equal to the

amount of such VAT and we shall on receipt of such payment provide you with an invoice or receipt in such form and within such period as may be prescribed by applicable law.

12.3 **Deemed supplies:** Where, pursuant to or in connection with this Agreement, we are deemed or treated by applicable law or the practice from time to time of the relevant fiscal authority to make a supply for VAT purposes to any person by virtue of our or any custodian for us relinquishing physical control of any Precious Metal, and VAT is or becomes chargeable on such supply, you shall on demand pay to us a sum equal to the amount of such VAT and we shall on receipt of such payment provide an invoice or receipt in such form and within such period as may be prescribed by applicable law to the person to which we are deemed or treated to make such supply.

12.4 **Reimbursement:** References to any fee, cost, expense, charge or other liability incurred by us and in respect of which we are to be reimbursed or indemnified by you under the terms of this Agreement shall include such part of such fee, cost, expense, charge or other liability as represents any VAT.

13. NOTICES

13.1 **Form:** Any notice or other communication under or in connection with this Agreement may be given in writing or as otherwise specified in the Schedule. References to writing includes an electronic transmission in a form permitted by Clause 13.2.

13.2 **Method of transmission:** Any notice or other communication shall be delivered personally or sent by first class post, pre-paid recorded delivery (or air mail if overseas), authenticated electronic transmission (including fax, email and SWIFT) or such other electronic transmission as the Parties may from time to time agree, to the Party due to receive the notice or communication, at its address, number or destination set out in this Agreement or another address, number or destination specified by that Party by written notice to the other.

13.3 **Deemed receipt of notice:** A notice or other communication under or in connection with this Agreement will be deemed received only if actually received or delivered.

13.4 **Recording of calls:** We may record telephone conversations without use of a warning tone. Such recordings will be our sole property and accepted by you as evidence of the orders or instructions given. In the event of inconsistency between the written notice and oral orders or instructions, the terms of the written notice shall prevail.

14. GENERAL

14.1 **No advice:** Our duties and obligations under this Agreement do not include providing you with investment advice. In asking us to open and maintain the Unallocated Accounts, you do so in reliance upon your own judgement and we shall not owe to you any duty to exercise any judgement on your behalf as to the merits or suitability of any deposits into, or withdrawals from, an Unallocated Account.

14.2 **Rights and remedies:** Our rights under this Agreement are in addition to, and independent of, any other rights which we may have at any time in relation to the Unallocated Accounts and any lien or other rights we may have to set-off, combine or consolidate any of your accounts.

- 14.3 **Business Day:** If an obligation of a Party would otherwise be due to be performed on a day which is not a Business Day in respect of the relevant Unallocated Account, such obligation shall be due to be performed on the next succeeding Business Day in respect of that Unallocated Account.
- 14.4 **Assignment:** This Agreement is for the benefit of and binding upon us both and our respective successors and assigns. You may not assign, transfer or encumber, or purport to assign, transfer or encumber, your right, title or interest in relation to any Unallocated Account or any right or obligation under this Agreement without our prior agreement in writing.
- 14.5 **Amendments:** Unless otherwise specified in this Agreement, any amendment to this Agreement must be agreed in writing and be signed by us both. Unless otherwise agreed, an amendment will not affect any legal rights or obligations which may already have arisen.
- 14.6 **Partial invalidity:** If any of the clauses (or part of a clause) of this Agreement becomes invalid or unenforceable in any way under the Rules or any law, the validity of the remaining clauses (or part of a clause) will not in any way be affected or impaired.
- 14.7 **Liability:** Nothing in this Agreement shall exclude or limit any liability which cannot lawfully be excluded or limited (e.g. liability for personal injury or death caused by negligence).
- 14.8 **Entire Agreement:** This document represents the entire agreement, and supersedes any previous agreements between us relating to the subject matter of this Agreement.
- 14.9 **Joint and several liability:** If there is more than one of you, your responsibilities under this Agreement apply to each of you individually as well as jointly.
- 14.10 **Counterparts:** This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together constitute the same agreement.
15. **GOVERNING LAW AND JURISDICTION**
- 15.1 **Governing law:** 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.
- 15.2 **Jurisdiction:** The English courts are to have non-exclusive jurisdiction to settle any disputes or claims (each a "**Dispute**") which may arise out of or in connection with this Agreement, including any question regarding its existence, validity or termination, and accordingly any legal action or proceedings arising out of or in connection with this Agreement ("**Proceedings**") may be brought in such courts. Each of the Parties hereto irrevocably submits to the non-exclusive jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.
- 15.3 **Arbitration:** Unless otherwise specified in the Schedule, Disputes may be referred to arbitration in accordance with the terms set out in the Schedule attached hereto.

15.4 **Waiver of immunity:** To the extent that you may in any jurisdiction claim for yourself or your assets any immunity from suit, judgement, enforcement or otherwise howsoever, you agree not to claim and irrevocably waive any such immunity to which you would otherwise be entitled (whether on grounds of sovereignty or otherwise) to the full extent permitted by the laws of such jurisdiction.

15.5 **Third Party Rights:** A person who is not a party to this Agreement has no right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

15.6 **[Service of process:** If you are situated outside England and Wales, process by which any proceedings in England are begun may be served on you by being delivered to the address specified below. This does not affect our right to serve process in another manner permitted by law.

Address for service of process:

.....
.....
.....]

EXECUTED by the Parties

Signed on behalf of
[NAME OF BANK]

by:

Signature
Name
Title

Signed on behalf of
[NAME OF CLIENT]

by:

Signature
Name
Title

SCHEDULE

To Unallocated Precious Metals Accounts Agreement dated

This Schedule forms an integral part of the Agreement to which it is attached and expressions contained herein shall, where applicable, have the same meaning as defined in the Agreement.

For the purposes of the Agreement, “**Precious Metal**” shall mean [Gold, Silver, Platinum, Palladium].

Clause 2.3: Reports

Reports will be provided [daily / weekly / monthly / quarterly / six monthly / annually].

Clauses 3.1(b), 3.2(c) and 4.1(b): Vault premises

The vault premises into which we shall require delivery, or out of which we shall effect delivery, in accordance with the above clauses are:

[To be specified]

Clause 5.2: Instructions

Agreed methods of giving instructions include the following:

[insert]

Clause 9.1: Fees

You will pay us the following fees:

[insert]

Clause 9.2: Expenses

The spot rate is [].

Clause 9.5: Default interest

The rate of interest applicable under this clause will be []%.

Clause 13.1: Notices

Agreed methods of giving a notice or other communication under or in connection with this Agreement include the following:

[insert]

Clause 15.3: Arbitration

[No Dispute may be referred to arbitration.]

[OR]

[Notwithstanding any other provision of the Agreement, the Parties agree that one Party ("**Party A**") may elect that the Dispute be resolved by arbitration and not litigation by notice in writing to the other Party ("**Party B**") sent at least [14] days in advance of the proposed date for appointment of arbitrators. If Party A receives written objection to referral of the Dispute to arbitration from Party B within [14] days of the date of Party A's notice, the Dispute shall be referred to the courts of England pursuant to Clause 15.2, but otherwise the dispute shall be referred to arbitration under the Rules of the London Court of International Arbitration (the "**Arbitration Rules**") and finally resolved by arbitration under the Arbitration Rules which are deemed to be incorporated by reference into this clause. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Where a Dispute is referred to arbitration pursuant to this clause:

- (a) the Parties exclude the jurisdiction of the courts under Sections 45 and 69 of the Arbitration Act 1996;
- (b) the Parties agree that:
 - (i) the number of arbitrators shall be three, consisting of one arbitrator appointed by each of the Parties and one arbitrator, who shall act as chairman, appointed by the London Court of International Arbitration in accordance with the Arbitration Rules;
 - (ii) the place of the arbitration shall be London;
 - (iii) the language to be used in the arbitration proceedings shall be English; and
 - (iv) the decision and award of the arbitration shall be final;
- (c) if any Dispute raises issues which are substantially the same as or connected with issues raised in a Dispute which has already been referred to arbitration (an "**Existing Dispute**"), or arises out of substantially the same facts as are the subject of an Existing Dispute (in either case a "**Related Dispute**"), the arbitrators appointed or to be appointed in respect of any such Existing Dispute shall also be appointed as the arbitrators in respect of any Related Dispute;
- (d) the arbitrators may upon the request of: (i) any party to a Dispute; or (ii) any one of the Parties, join any party to any reference to arbitration proceedings in relation to that Dispute and may make a single, final award determining all Disputes between the parties to such Dispute and any party so joined. Each of the Parties hereby consents to be joined to any reference to arbitration proceedings in relation to any Dispute; and
- (e) where the same arbitrators have been appointed in relation to two or more Disputes, the arbitrators may, with the agreement of all the parties concerned, or upon the application of one of the parties (such party being a party to two or more of the Disputes), order that the whole or part of the matters at issue shall be heard together

upon such terms or conditions as the arbitrators think fit. The arbitrators shall have power to make such directions and any provisional, interim or partial awards as they consider just and desirable.]