

[*LBMA Member*] (1)

- and -

[*Consignee*] (2)

CONSIGNMENT AGREEMENT

THIS AGREEMENT is made on

BETWEEN:

- (1) [*name of LBMA member*] [a company incorporated in England and Wales with registered number [*registered company number*] whose registered office address is at [*address*]] OR [a company incorporated in [*foreign country*] acting through its United Kingdom branch office, Registered in England and Wales No. [*registration number of branch office*] with an office at [*address of branch office*] (“**the Consignor**”); and
- (2) [*insert name of Consignee*] [a company incorporated in [*country*] with registered number [*registered company number*]] [of or whose registered office address is at [*address*]] (“**the Consignee**”).

RECITAL

The Consignor is willing to consign Gold (as defined below) to the Consignee, and the Consignee is willing to receive Gold from the Consignor on a consignment basis, from time to time in accordance with the terms and conditions set out in this Agreement.

NOW IT IS AGREED as follows:

1 Definitions

- 1.1 In this Agreement, unless the context requires otherwise, the following terms shall have the following respective meanings:

Business Day means any day when banks are open to conduct Gold transactions in London, New York and the city in which the Consignee is located, as set out above;

Consignment means a consignment of Gold forming the subject matter of an individual request by the Consignee pursuant to Clause 2.1;

Consignment Gold means Gold consigned by the Consignor to the Consignee pursuant to this Agreement;

Gold means gold and/or gold bars;

Delivery Point means the place of delivery of the Consignment Gold by the Consignor to the Consignee and the point at which risk shall pass to the Consignee in accordance with Clause 3.2. [Unless expressly agreed otherwise in writing, the Delivery Point shall be [*state location*]];

Spot Market Price means, for any Business Day, the price per ounce of Gold quoted to the Consignee by the Consignor as determined by the Consignor in its sole discretion.

1.2 In this Agreement, any reference to a Clause shall be a reference to a clause of this Agreement.

1.3 Clause headings are for ease of reference only and shall not affect the construction of this Agreement.

2 Consignment

2.1 The Consignor shall, in its sole discretion, upon the request of the Consignee and subject to the terms and conditions set out in this Agreement, deliver and consign Gold to the Consignee. Nothing in this Agreement shall oblige the Consignor to accept any request by or on behalf of the Consignee to deliver and/or consign Gold to the Consignee.

2.2 The Consignor will only despatch a Consignment once all of the following terms have been agreed by the parties and have been confirmed in writing by such method as the Consignor may require in accordance with its standard procedures in place from time to time:

- (a) the quantity of Gold and, where appropriate, number of gold bars constituting the Consignment;
- (b) the proposed date of delivery of the Consignment;
- (c) the destination airport or other place of delivery;
- (d) the Delivery Point, i.e. the point at which risk in the Consignment will pass to the Consignee pursuant to Clause 3.2; and
- (e) the vaults in which the Consignment will be stored.

2.3 Once the Consignor has accepted a request for a Consignment, the Consignee can only cancel the request with the Consignor's prior agreement in writing, and on condition that the Consignee reimburses the Consignor any costs and expenses already incurred by the Consignor in preparing the Consignment.

2.4 Unless agreed otherwise in writing, the Consignment Gold shall be of at least the minimum fineness to comply with the London Bullion Market good delivery requirements.

2.5 All delivery costs will be for the account of the Consignor unless expressly agreed otherwise between the Consignor and the Consignee, except that any taxes, duties and other levies and/or charges imposed by governmental or other authority in connection with the importation of the Consignment Gold shall be borne and paid by the Consignee.

2.6 Upon the arrival of Consignment Gold at the Delivery Point, the Consignee shall immediately inspect the Consignment Gold, sign the delivery note accordingly, confirm to the Consignor in writing the safe arrival and receipt of the Consignment Gold and immediately transport the Consignment Gold to the vaults in which it will be stored.

2.7 Signature of the delivery note shall be evidence of delivery of the agreed quantity and quality of Consignment Gold, and the Consignee shall have no claim against the Consignor in respect of delivery of the incorrect quality or quantity of Gold unless:

- (a) the Consignee gives written notice to the Consignor within 7 days of delivery specifying the error; and
 - (b) the Consignor is given a reasonable opportunity, after receiving such notice, of examining the Consignment Gold.
- 2.8 If, subject to Clause 2.7, the Consignment Gold is found by the Consignor to have been delivered in the incorrect quality or quantity, the Consignor shall rectify the error as soon as reasonably practicable and provided it does so the Consignor shall have no further liability arising out of such error.
- 2.9 If the Consignor in its sole discretion determines that maintaining Consignment Gold is economically not feasible (for example, but without limitation, if Consignment Gold remains in Consignment for one month without being purchased pursuant to Clause 4 or returned pursuant Clause 5), the Consignor and the Consignee shall discuss in good faith with a view to mutually agreeing for the Consignee to bear the gold financing cost, at an interest rate to be agreed, from an agreed date until the Consignment Gold is purchased or returned. This Clause is without prejudice to the Consignor's rights to terminate any consignment under Clause 5.1.

3 Title, Risk and Insurance

- 3.1 Full legal, beneficial and equitable title to the Consignment Gold shall remain vested in the Consignor unless and until the Consignee purchases all or any part of the Consignment Gold pursuant to Clause 4, in which event title in that part of the Consignment Gold purchased (but not in any other part of the Consignment Gold) shall pass to the Consignee upon receipt by the Consignor of payment in full in cleared funds for that part of the Consignment Gold.
- 3.2 Notwithstanding that title has not passed, upon delivery of the Consignment Gold to the agreed Delivery Point, risk shall pass to the Consignee and the Consignee shall bear the entire risk of loss, theft, damage and/or destruction of the Consignment Gold from any cause whatsoever until any redelivery to the Consignor pursuant to and in accordance with this Agreement
- 3.3 The Consignor shall insure each Consignment to the agreed Delivery Point in a value which includes the amount of any duty which the Consignee notifies to the Consignor.
- 3.4 From the agreed Delivery Point and so long as any Consignment Gold is at the risk of the Consignee:
- (a) the Consignee shall insure the Consignment Gold, at its own expense, with a financially sound and reputable insurance company or companies approved by the Consignor in writing, on terms and conditions acceptable to the Consignor, against loss, theft, damage and destruction and any other insurable risks which may from time to time be reasonably required by the Consignor, in such amounts as shall from time to time be reasonably required by the Consignor, with the Consignor as sole loss payee in respect of such Consignment Gold;
 - (b) the Consignee shall deliver to the Consignor, at the commencement of each year of the policy and from time to time on the Consignor's reasonable request, confirmation from the Consignee's insurers or brokers in a form satisfactory to the Consignor of the terms and validity of such insurance; and

- (c) if the Consignee shall fail to take out or maintain such insurance in accordance with this Clause 3.4, or to produce sufficient evidence (in the opinion of the Consignor) that the policy or policies are in full force and effect in accordance with this Clause 3.4, the Consignor shall be entitled at the Consignee's expense to take out and/or maintain such insurance and shall be reimbursed on demand by the Consignee all premiums and related costs incurred in exercising this right.
- 3.5 Unless and until full legal, beneficial and equitable title to and property in the Consignment Gold passes to the Consignee in accordance with Clause 4, or is redelivered to the Consignor in accordance with Clause 5, the Consignee shall:
- (a) hold the Consignment Gold on a fiduciary basis as the Consignor's bailee;
 - (b) store and safely keep the Consignment Gold for the Consignor in the vaults approved by the Consignor, with all reasonable care, in a manner satisfactory to the Consignor, and at its own cost and expense, and not remove the Consignment Gold from those vaults;
 - (c) keep the Consignment Gold segregated from other products and marked clearly by the Consignee as the Consignor's property;
 - (d) not convert, co-mingle or otherwise deal with the Consignment Gold;
 - (e) not create, incur, assume or suffer to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever over any of the Consignment Gold;
 - (f) at all times keep an accurate and up to date inventory of the Consignment Gold, including details of all purchases of Consignment Gold made pursuant to this Agreement and shall immediately upon request submit a copy of such inventory to the Consignor;
 - (g) permit the Consignor and its representatives to examine the Consignment Gold and the inventory kept pursuant to paragraph (f) above at any time on reasonable notice; and
 - (h) indemnify the Consignor and hold it harmless against any and all liabilities, damages, losses, costs, expenses, suits, claims, demands or judgments of any nature (including, without limitation, attorneys' fees and expenses) arising from or in connection with any loss, theft, destruction or damage to any Consignment Gold.
- 3.6 [The Consignee grants the Consignor, its agents and employees an irrevocable licence at any time to enter any premises where the Consignment Gold is or may be stored in order to inspect it, or, where the Consignee's right to possession has terminated pursuant to Clause 6.5, to recover it.]
- 3.7 Immediately upon title in any Consignment Gold passing to the Consignee pursuant to Clause 3.1, the Consignee shall withdraw and keep separate such Consignment Gold and shall (where applicable) notify the Consignor in writing of the identifying numbers of those gold bars which have been purchased.

4 Purchase of Consignment Gold

- 4.1 Subject to the terms of this Agreement, the Consignee may from time to time purchase all or any part of any Consignment Gold.
- 4.2 The prices and rates for the purchase of Consignment Gold by the Consignee may, by agreement between the Consignor and the Consignee, be based on market and premium, fixing and premium or any other pricing method expressly agreed between them, or if no such method is agreed, will be the Spot Market Price.
- 4.3 Unless agreed otherwise by the Consignee and the Consignor, the price of the Consignment Gold shall be in US Dollars and payment shall be made by the Consignee in US Dollars.
- 4.4 The purchase of Consignment Gold by the Consignee shall be subject to the Consignor's standard contract or terms and conditions (if any) for the sale and purchase of consigned Gold in force from time to time, and the Consignor shall only be obliged to complete the sale and purchase once it has agreed with the Consignee the quantity of Gold and, where appropriate, number of gold bars to be purchased and (where applicable) any delivery arrangements.
- 4.5 Unless agreed otherwise by the parties in writing, the Consignee shall pay the Consignor the purchase price of any Consignment Gold purchased pursuant to this Agreement, on [the second Business Day after the date with effect from which the purchase is agreed], into the bank account notified by the Consignor to the Consignee in writing.
- 4.6 All payments to be made by the Consignee for the purchase of Consignment Gold shall be made in full, in cleared funds, and without deduction or set-off provided that, should at any time the Consignee be compelled by applicable law to make any deduction or withholding from any such payment for or on account of any taxes -
- (a) the Consignee shall (if the Consignor disputes any such deduction or withholding) provide reasonable evidence to the Consignor supporting the application of the relevant tax;
 - (b) the Consignee shall pay the relevant tax when due;
 - (c) the Consignee shall, on the due date for payment of the relevant tax, pay to the Consignor such additional amounts as may be necessary to ensure that the Consignor receives an amount equal to the full amount which the Consignor would have received had such payment not been withheld for or on account of the relevant tax; and
 - (d) the Consignee shall furnish to the Consignor official certified copies of tax receipts evidencing the due payment of the relevant tax within 45 days of the due date for payment of such tax.
- 4.7 The Consignor reserves the right to charge interest on any amount remaining unpaid after the due date for payment, from the due date to the date of payment, at the rate of [[X]% over the 1 month LIBOR rate of the British Bankers' Association in force from time to time].
- 4.8 The Consignor may, at its discretion, agree to buy back from the Consignee any Gold which has been purchased by the Consignee pursuant to this Agreement. Any such

Gold shall only be purchased on terms agreed by the Consignor (which shall include a condition that the Consignee shall be responsible for ensuring that the Gold shall be of at least the minimum fineness to comply with the London Bullion Market good delivery requirements) and such Gold shall be deemed to be Consignment Gold.

5 Return of Consignment Gold

- 5.1 The Consignor may, at any time, terminate any Consignment by giving [at least 2 Business Days'] notice to the Consignee. The Consignee may terminate any Consignment only with the written consent of the Consignor.
- 5.2 Upon the termination of any Consignment pursuant to Clause 5.1, all or any part of the Consignment Gold comprised in that Consignment (other than any Consignment Gold which has already been purchased pursuant to Clause 4) may be purchased by the Consignee pursuant to Clause 4. [The Consignor shall have discretion to require the Consignee, on the date of termination of the Consignment, to purchase all or any part of the Consignment Gold in accordance with Clause 4.]
- 5.3 Any part of the Consignment Gold which is not so purchased shall be physically returned to the Consignor at such address as shall be designated by the Consignor in writing. Prior to despatch, the Consignee shall agree with the Consignor in writing the date of the return of the Consignment Gold and the quantity to be returned.
- 5.4 All Consignment Gold returned to the Consignor shall be delivered, at the Consignee's sole risk and expense, to the Delivery Point agreed with the Consignor, in the same form as the Consignment Gold had been delivered to the Consignee pursuant to Clause 2 or in any other form expressly agreed by the Consignor in writing.
- 5.5 The Consignee shall indemnify the Consignor against any losses, including but not limited to market losses and loss of profit, incurred as a result of any return of Consignment Gold to the Consignor on a date other than the agreed date, such losses to be calculated by the Consignor in its reasonable discretion and such calculations to be made available to the Consignee for inspection upon request.

6 Termination

- 6.1 In the event that any one or more of the following events shall occur:
 - (a) the Consignee fails to pay to the Consignor when due any amounts payable under this Agreement, or fails to return to the Consignor when due any Consignment Gold, or fails to insure any Consignment Gold as required by this Agreement, or commits any continuing or material breach of any of the other terms of this Agreement;
 - (b) any statement, representation or warranty made by the Consignee is found to be incorrect or inaccurate in any material respect;
 - (c) the Consignor has reasonable grounds to believe that the Consignee has acted fraudulently;
 - (d) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Consignee;
 - (e) an order is made for the appointment of an administrator to manage the

affairs, business and property of the Consignee or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Consignee or notice of intention to appoint an administrator is given by the Consignee or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);

- (f) the Consignee makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- (g) the Consignee goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the Consignee under this Agreement);
- (h) the Consignee ceases, or threatens to cease, to carry on business;
- (i) anything similar to or having a similar effect to any of the events specified in paragraphs (d), (e), (f) or (g) above occurs to the Consignee under the laws of any applicable country;
- (j) the Consignee, in the Consignor's sole judgement, becomes unable to carry out any of its obligations under this Agreement or any individual agreement for the purchase of Consignment Gold pursuant to this Agreement or suffers any material change in its financial status; or
- (k) the Consignee purports to assign its rights or obligations under this Agreement other than in accordance with the terms of this Agreement,

then the Consignor may, by immediate notice in writing to the Consignee, terminate this Agreement in whole or in part, including any agreement to purchase Consignment Gold pursuant to Clause 4 for which payment has not been received (whether due or not).

- 6.2 Notwithstanding anything in this Agreement to the contrary, if it is or becomes unlawful for the Consignor to hold any Consignment Gold with the Consignee in accordance with the terms of this Agreement, the Consignor may by written notice to the Consignee terminate this Agreement immediately.
- 6.3 Each of the Consignee and the Consignor shall have the right to terminate this Agreement for any reason upon giving not less than [10][30] days' prior written notice to the other.
- 6.4 Upon termination of this Agreement pursuant to Clause 6.3, the Consignee may purchase all or any part of any Consignment Gold outstanding, and shall return any part of the Consignment Gold not so purchased, in accordance with the provisions of Clauses 5.3 to 5.5, and shall make immediate payment of any other obligations outstanding under this Agreement.
- 6.5 Upon termination of this Agreement pursuant to Clauses 6.1 or 6.2, the Consignee shall immediately deliver up to the Consignor, at its own expense, and in accordance with the Consignor's instructions, any Consignment Gold which has not already been purchased and paid for pursuant to this Agreement and shall make immediate payment of any other obligations outstanding under this Agreement.

6.6 This Clause 6 and any clauses which by their nature are intended to survive termination, including, without limitation, Clauses 3.4 to 3.6, 5.5, and 11 shall survive the termination of this Agreement.

6.7 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities of the parties accrued as at the date of termination.

7 Set off

7.1 The Consignor shall be entitled to set off any of its obligations to the Consignee (under this or any other agreement), whether matured, contingent or otherwise, against any sums due by the Consignee to the Consignor under this Agreement.

8 Definitive version of this Agreement

8.1 This Agreement may be translated into another language, but the definitive version of this Agreement shall be the English language version, and any dispute in respect of the meaning of this Agreement shall be resolved by reference to the English language version.

9 Force Majeure

9.1 The Consignor reserves the right to defer the date of delivery or to cancel any Consignment or reduce the quantity of Gold in any Consignment (without liability to the Consignee), by giving notice in writing to the Consignee, if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Consignor including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

9.2 If the Consignor is unable to deliver the Consignment within a reasonable period after giving notice under Clause 9.1, the Consignee shall be entitled to give notice in writing to the Consignor to cancel the affected Consignment, without liability to the Consignor.

10 General

10.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.

10.2 The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

10.3 No variation of this Agreement or of any contract made pursuant to it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

- 10.4 The Consignor shall be entitled to assign its rights under this Agreement to any person. The Consignee may not assign or transfer the whole or any part of this Agreement to any person without having obtained the prior written consent of the Consignor.
- 10.5 If any part of this Agreement becomes invalid, illegal or unenforceable, the other provisions of this Agreement and the remainder of the affected provision shall continue to be valid and the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement.
- 10.6 This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.
- 10.7 This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it. Nothing in this Agreement shall exclude or limit either party's liability for fraudulent misrepresentation.
- 10.8 No third party shall have any right to enforce any term of this Agreement, except that any permitted assignee of the parties shall, after the assignment, in its own right be able to enforce any term of this Agreement in accordance with the terms of this Agreement as if it were a party.

11 Notices

- 11.1 Any notice or other communication given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid airmail or fax to the address and for the attention of the relevant party set out below (or as otherwise notified by that party under this Clause). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of registered airmail, five days from the date of posting; and
- (c) in the case of fax, at the time of transmission

provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

- 11.2 The addresses and fax numbers of the parties for the purposes of this Clause are:

[The Consignor]

Address:

For the attention of:

Fax number:

[The Consignee]

Address:

For the attention of:

Fax number:

- 11.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out above (or as otherwise notified by that party under this Clause) and delivered either to that address or into the custody of the postal authorities as a pre-paid airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out above (or as otherwise notified by that party under this Clause).
- 11.4 Notice given under this Agreement shall not be validly served if sent by e-mail.

12 Enforceability

- 12.1 The Consignee hereby represents and warrants to the Consignor as of the date of this Agreement and as of the date of any Consignment, or purchase by the Consignee of Consignment Gold pursuant to this Agreement that:
- (a) the Consignee has all requisite power and authority to enter into and perform the terms and provisions of this Agreement, and that such performance shall not be in conflict with, result in a breach of, or constitute a default under any agreement or other instrument to which the Consignee is a party or by which it is bound, and shall not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Consignee;
 - (b) its obligations under this Agreement and in respect of each Consignment and purchase of Consignment Gold are legal, valid and binding obligations, enforceable against it in accordance with their terms and performance by the Consignee of such obligations will not violate any provision of law, any order of any court or of any other agency of government; and
 - (c) all applicable legal and/or regulatory registrations, approvals and other requirements of the jurisdiction in which the Consignee is operating in respect of this Agreement have been obtained and remain in full force and effect.

13 Law and Jurisdiction

- 13.1 This Agreement shall be governed by and construed and performed in accordance with English law.
- 13.2 Any suit or action of the Consignee to enforce or compel the performance of any provision of this Agreement, or to obtain a remedy for any breach of this Agreement, shall be brought solely in the competent courts of England. Any suit or action of the Consignor to enforce or compel the performance of any provision of this Agreement, or to obtain a remedy for any breach of this Agreement, shall be brought, in the Consignor's discretion, in the competent courts of England or before the courts or any competent authority of any country.

- 13.3 The Consignee irrevocably waives any objection which it may at any time have to the laying of the venue of any proceedings in any of the above courts of competent jurisdiction and any claim that any such proceedings have been brought in an inconvenient forum, and the parties further irrevocably agree that a judgment in any proceedings brought in any such court shall be conclusive and binding upon the parties and may be enforced in the courts of any other jurisdiction.
- 13.4 The taking of proceedings by the Consignor in one of the above jurisdictions shall not preclude the taking of proceedings in any other of the above jurisdictions, whether concurrently or not.

Signed for and on behalf of [*insert the name of the Consignor*] by

Name:

Title:

Signed for and on behalf of [*insert the name of the Consignee*] by

Name:

Title: