

[ON STAMP PAPER OF APPROPRIATE VALUE]**REFINER AGREEMENT**

THIS AGREEMENT is entered into on _____, 2020. ("**Execution Date**")

BETWEEN

THE NATIONAL STOCK EXCHANGE OF INDIA LIMITED, a company incorporated in India and having its registered office at Exchange Plaza, Plot No. C – 1, Block G, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051(hereinafter referred to as the "**NSE**", which expression shall unless contrary to/or repugnant to the context thereof mean and include its successors and assigns) of the One Part; and

[•] a company incorporated under the provisions of the Companies Act, [•] and having its registered office at [•] (hereinafter referred to as "**Refiner**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) and having its refinery at [•] (hereinafter referred to as "**Refinery**") of the Second Part.

Recitals**WHEREAS:**

- (A) NSE is a recognised Stock Exchange under the Securities Contracts (Regulation) Act, 1956.
- (B) NSE has launched a Commodity Derivatives segment wherein it offers Commodity Derivative products which are based on gold and in this regard, NSE has introduced the NSE Refiner Standards (NRS) for Gold Bars conforming to BIS Standards.
- (C) NRS for Gold Bars conforming to BIS Standards prescribes detailed framework including the qualitative and quantitative criteria for empanelment of refiners for acceptance of the gold bars produced by them towards exchange settlement mechanism and also prescribes the operational procedures and empanelment requirements for refiners empaneled by NSE.
- (D) The Refiner shall submit an application and agrees to submit such additional information for empaneling its Refinery with NSE. NSE based on the representations and warranties made by the Refiner, shall empanel the Refiner and its Refinery on the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES AND IN CONSIDERATION OF THE PREMISES, MUTUAL PROMISES, COVENANTS, WARRANTIES SET FORTH HEREINAFTER, IT IS MUTUALLY AGREED AND DECLARED BY AND AMONG THE PARTIES AS UNDER:

1. DEFINITIONS

In this Agreement, except as otherwise provided, capitalized terms shall have the meaning assigned to them herein below:

"**Action**" means any claim, demand, dispute, litigation, petition, suit, investigation, inquiry,

opposition, proceeding, mediation, arbitration, conciliation, enforcement proceeding, hearing, complaint, assessment, fine, penalty, judgment, order, injunction, decree or award (administrative or judicial (criminal or otherwise)) by or before any Governmental Authority, and shall without limitation include any Insolvency Proceedings.

“Agreement” means this Agreement and shall include any schedules that may be annexed to this agreement, now or at a later date, and any amendments made to this agreement by the Parties in writing.

“Insolvency Proceedings” means one or more of the following:

- (a) initiation of any Action or a declaration of insolvency, liquidation or bankruptcy under the Insolvency and Bankruptcy Code, 2016, or any Applicable Law ;
- (b) the making of a general assignment for the benefit of, or entering into a re-organisation, arrangement, compromise or composition with its creditors;
- (c) the presentation or filing of a petition or application before any relevant authority for seeking winding up, re-organisation, administration, liquidation or dissolution of such Person; and
- (d) the appointment of a receiver, administrator, liquidator, trustee, provisional liquidator, compulsory manager, supervisor or analogous officer in its respect or any of its assets.

“Intellectual Property Rights” shall mean all intellectual property, including patents, inventions (whether or not patentable and whether or not reduced to practice), utility models, trade and service marks, trade names and the goodwill associated therewith, domain names, right in designs, copyrights, rights in databases, proprietary rights, technical, commercial or financial information of a proprietary or confidential nature (including without limitation manufacturing and production processes and techniques, improvements, customer proposals, customer and supplier information, technical and computer data and software), trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration or renewal of any of these, and all rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.

“NRS for Gold Bars conforming to BIS Standards” means the detailed framework including quantitative and qualitative criteria for empanelment of the refiners; the operational procedures for refiner empanelment and ongoing compliance requirements for the refiners issued by NSE from time to time and shall include all circulars, notifications, guidelines, directions issued by NSE from time to time.

“Party” means each of NSE and the Refiner and **“Parties”** shall collectively mean NSE and the Refiner.

2 INTERPRETATION

In this Agreement, unless the context otherwise requires, the rules of interpretation as provided in Clause 2.2 of the NRS for Gold Bars conforming to BIS Standards shall apply. The terms referred to in this Agreement, unless defined otherwise or unless inconsistent with

the context or meaning thereof, shall bear the same meaning as defined under the relevant statute/ legislation including the Companies Act, 2013, the LLP Act, the Securities Contract (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and/or as per the NRS for Gold Bars conforming to BIS Standards and/or as per customary trade usage.

3 EMPANELMENT OF REFINER

- 3.1 The Refiner shall submit an application for empaneling its Refinery with NSE. The Refiner has read and shall abide by the provisions under the NRS for Gold Bars conforming to BIS Standards.
- 3.2 Upon grant of letter of empanelment by NSE to the Refiner, the Refiner shall become an Approved Refiner and the Refinery for which such letter of empanelment has been granted shall become the Approved Refinery. All references to the Refiner and the Refinery in this Agreement shall be deemed to be the Approved Refiner and the Approved Refinery.

4 REPRESENTATIONS AND WARRANTIES

- 4.1 The Refiner provides to NSE the representations and warranties more particularly set out in Schedule 1 of this Agreement (“**R&W**”).
- 4.2 The Approved Refiner agrees and acknowledges that each of the R&W:
- 4.2.1 is true, accurate and not misleading on the Execution Date and during the term of this Agreement; and
- 4.2.2 is separate and independent and, except as expressly provided to the contrary to any other R&W or any other provision of this Agreement.

5 COVENANTS

- 5.1 Until the expiry of the Agreement, the Approved Refiner hereby agrees, acknowledges, undertakes and covenants that the Approved Refiner and/or the Approved Refinery shall comply with the NRS for Gold Bars conforming to BIS Standards; it being clarified that the provisions of the NRS for Gold Bars conforming to BIS Standards form an integral part of the Agreement.
- 5.2 The Approved Refiner shall defend and hold harmless NSE (and its directors and officers) from and against any Losses arising out of or resulting from:
- 5.2.1 any breach of any R&W and/or breach of any covenant, obligation or undertaking or provision of this Agreement and/or of the NRS for Gold Bars conforming to BIS Standards.
- 5.2.2 fraud, negligence or willful default by the Approved Refiner.
- 5.3 All payments made pursuant to Clause 5.2 shall be made free and clear of, and without withholding or deduction for any Tax unless required under Applicable Law, in which case the sum payable by the such Party shall be increased to the extent necessary to ensure that the other Party receives a sum net of any deduction or withholding equal to the sum which it

would have received had no such deduction or withholding been made or required to be made.

- 5.4 The rights of the Parties under this Clause 5 are independent of, and in addition to, such other rights and remedies as the Party suffering Loss may have under Applicable Law or in equity or otherwise, including the right to seek specific performance or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.
- 5.5 The Approved Refiner agrees that in the event of occurrence of any Losses or Claim to the NSE, NSE shall have right to adjust or set off with the Security Deposit without prejudice to any other rights available to it provided the Refiner fail act in accordance with Clause 5.2.
- 5.5A Notwithstanding any provision under this Agreement, under no circumstances NSE shall be liable or accountable for and no claim shall lie against NSE or any of its directors and officers except for claim, if any, arising on account of fraud, willful default and gross negligence on the part of NSE.
- 5.6 The Approved Refiner agrees to pay such fee as applicable to them and prescribed by NSE under the NRS for Gold Bars conforming to BIS Standards.

6 TERM AND TERMINATION

- 6.1 This Agreement shall be effective for a period of three (3) years from the Execution Date and at the end of such 3 year period shall be auto renewed for further periods of 3 years each, in accordance with Chapter 2 of the NRS for Gold Bars conforming to BIS Standards, unless terminated earlier as per Clause 6.3 below .
- 6.2 In the event of rejection or revocation of an application for letter of empanelment by NSE, the Refiner may submit a fresh application in accordance with the provisions of the NRS for Gold Bars conforming to BIS Standards after a period of not less than 1 year or such other period as may be specified by NSE from the date of such rejection or revocation of application.
- 6.3 This Agreement may be terminated at the option of NSE in the event of a breach of the NRS for Gold Bars conforming to BIS Standards and/or terms of this Agreement by the Refiner:
- 6.4 In addition to the rights of NSE under this Agreement and/or the NRS for Gold Bars conforming to BIS Standards and/or Applicable Law, NSE may further impose such additional non-compliance fee as per Clause 17 of the NRS for Gold Bars conforming to BIS Standards.
- 6.5 This Agreement shall cease from the date of termination of this Agreement, other than with respect to those Clauses which, by their nature, survive any termination of this Agreement including Clause 1 (Definitions), Clause 2 (Interpretation), Clause 5.2, Clause 6.4, Clause 6.5, Clause 7 (Confidentiality) and Clause 9 (Miscellaneous), without, prejudice to the accrued rights and obligations of the Parties at the date of such termination, including the rights of any Party in respect of a breach of this Agreement prior to such termination.

7 CONFIDENTIALITY

- 7.1 The Approved Refiner undertakes to keep all information received by it under the terms of this Agreement as confidential and shall not disclose the same to any third party without prior consent of NSE. The term “**Confidential Information**”, as used in this Agreement, means: (a) any information concerning this Agreement and any information that may be disclosed by any other party to other party in written or oral, or (b) any information or materials prepared by or for a Party or any of its Representatives that contain or otherwise reflect, or are generated from, Confidential Information; or (c) each other’s businesses, assets or affairs.
- 7.2 The provisions of Clause 7.1 above shall not apply to:
- 7.2.1 disclosure of Confidential Information that is or comes into public domain other than through the act or omission of, of the Approved Refiner or any of its representatives in breach of this Agreement;
 - 7.2.2 disclosure, required to be made under Applicable Law or as part of judicial process;
 - 7.2.3 Confidential Information acquired independently by the Approved Refiner or its representatives from a third Person source not known to such party or representative to be obligated to the Party disclosing Confidential Information to keep such information confidential;
 - 7.2.4 Confidential Information already known or already in the lawful possession of the Approved Refiner or its representatives receiving Confidential Information, as of the date of its disclosure by the Person disclosing such Confidential Information;
 - 7.2.5 information independently developed by or on behalf of the Party receiving Confidential Information without reference to Confidential Information;

8 INTELLECTUAL PROPERTY RIGHTS

Respective Parties recognize that each Party has Intellectual Property Rights which may be shared in implementing this Agreement, and nothing in this Agreement shall confer any right or title in the intellectual property of the other Party except for the right to use intellectual property authorized by Party in written or by entering into an agreement.

9 MISCELLANEOUS

- 9.1 Successors and Assigns: The rights and obligations of the Parties under this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties. The Approved Refiner shall be prohibited from assigning or subcontracting this Agreement or any part thereof without the prior written Consent of NSE (which Consent shall be at the sole discretion of NSE and/or subject to such conditions as may be deemed fit by NSE.).
- 9.2 Further Assurances: The Parties shall from time to time and at their own cost do, execute and deliver or procure to be done, executed and delivered all such further acts, documents and things required by, and in a form satisfactory to the other Party, in order to give full effect to this Agreement and its rights, powers and remedies under this Agreement.

- 9.3 Entire Agreement: This Agreement, together with any other documents referred to in this Agreement, constitutes the entire agreement and supersedes any previous agreements between the Parties relating to the subject matter of this Agreement. This Agreement supersedes any contrary arrangement or understanding amongst the Parties.
- 9.4 Severance and Validity: If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under Applicable Law, it shall be deemed to be severed from this Agreement and the Parties shall use all reasonable efforts to replace such provision with one having an effect as close as possible to the deficient provision. The remaining provisions will remain in full force in that jurisdiction and all provisions will continue in full force in any other jurisdiction.
- 9.5 No Variation: No variation or amendment of any provision of this Agreement shall be effective unless such variation or amendment is executed in writing and signed by or on behalf of all the Parties.
- 9.6 Remedies: Each of the rights of the Parties hereto under this Agreement are independent, cumulative and without prejudice to all other rights, powers, privileges or remedies available to them under this Agreement, under law or in equity.
- 9.7 No Partnership or Agency: The relationship between the Parties shall be on a principal to principal basis and nothing in this Agreement shall, or shall be deemed to, constitute a partnership between the Parties nor constitute any Party as an agent of any other Parties for any purpose.
- 9.8 Stamp Duty and Cost and Expenses: Each Party shall pay its own costs and expenses in connection with the negotiation, preparation and performance of the Agreement and any other document executed in connection with this Agreement. Any stamp, registration fees and other cost and expenses payable in India on this Agreement shall be borne by the Refiner.
- 9.9 Notices: Any notice or other communication to be given under or in connection with this Agreement ("**Notice**") shall be in the English language in writing and signed by or on behalf of the Party giving it. A Notice may be delivered personally, by facsimile transmission, by e-mail or sent by pre-paid recorded delivery or international courier to the address provided in the Preamble of this Agreement. A Notice shall be deemed to have been received:
- 9.9.1 at the time of delivery, if delivered personally;
- 9.9.2 at the time of transmission if sent by facsimile or by electronic mail (excluding any answer or confirmation automatically generated by electronic means, such as out-of-office replies); or
- 9.9.3 at the time of delivery if sent by pre-paid recorded delivery or international courier, provided that if receipt of any Notice occurs after 6.00 p.m. or is not on a Business Day, deemed receipt of the Notice shall be 9.00 a.m. on the next Business Day. References to time in this Clause 9.9 are to local time in the country of the addressee.

- 9.9.4 A Party shall notify the other Parties of any change to its details of its address in the Preamble in accordance with the provisions of this Clause 9.9, provided that such notification shall only be effective on the later of the date specified in the notification and 5 (five) Business Days after deemed receipt.
- 9.9.5 In the event that a Party refuses delivery or acceptance of a Notice, request or other communication, under this Agreement, it shall be deemed that the Notice was given upon proof of the refused delivery, provided such Notice was sent in the manner specified in this Agreement.
- 9.10 Force Majeure: No Party shall be liable to the other if, and to the extent, that the performance or delay in performance of any of its obligations under this Agreement is prevented, restricted, delayed or interfered with specifically due to Government legislations, fires, floods, explosions, epidemics, accidents, acts of God, wars, riots, strikes, lockouts, or other concerted acts of workmen ("**Force Majeure Event**"). The Party claiming a Force Majeure Event shall promptly notify the other Parties in writing and provide full particulars of the cause or event and the date of first occurrence thereof, as soon as possible after the event and also keep the other Parties informed of any further developments. The Party so affected shall use its best efforts to remove the cause of non-performance, and the Parties shall resume performance hereunder with the utmost dispatch when such cause is removed.
- 9.11 Counterparts: This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts. Facsimile transmission or electronic mail in portable format (".pdf") of an executed signature page of this Agreement by a Party shall constitute, and be sufficient evidence of, due execution of this Agreement by such Party.
- 9.12 Governing Law and Jurisdiction: This Agreement shall be governed by Indian laws. Subject to Clause 9.14, Courts in Mumbai shall have exclusive jurisdiction.
- 9.13 Public Announcement: The Refiner shall not make any public announcement without the prior written consent of NSE.
- 9.14 Dispute Resolution:
- 9.14.1 All disputes or difference arising out of or in connection with any of the matters set out in this Agreement, if not resolved by amicable settlement within 30 (thirty) days, shall be referred to a committee of the NSE as may be directed by NSE from time to time. The Refiner shall have the right to represent itself at meetings of such committee. If the dispute is still not resolved within the aforesaid 30 days, it shall finally and conclusively be determined by arbitration by a sole arbitrator appointed by the Parties to the dispute, in accordance with the Arbitration and Conciliation Act, 1996 of India, as amended from time to time. The seat of the arbitration shall be in Mumbai, India and the arbitration shall be conducted in the English language. Any document not in English submitted by any Party shall be accompanied by an English translation.

- 9.14.2 A written transcript of the proceedings shall be made and furnished to the Parties. Notwithstanding anything to the contrary contained herein, in the event various Disputes arise in relation to the same or substantially similar set of facts, cause of action or claim, the Parties undertake that all such Disputes shall be dealt with under the same arbitral proceeding and separate arbitral proceedings shall not be initiated with respect to each such Dispute.
- 9.14.3 The arbitrator shall have the power to grant any legal or equitable remedy or relief available under law, including injunctive relief (whether interim and/or final) and specific performance and any measures ordered by the arbitrator may be specifically enforced by any court of competent jurisdiction.
- 9.14.4 During the course of any arbitration under this Clause 9.14 except for the matters under dispute, the Parties shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Agreement to the extent applicable. Each Party shall participate in good faith to reasonably expedite (to the extent practicable) the conduct of any arbitral proceedings commenced under this Agreement. The arbitration shall be kept confidential and the existence of the proceeding and any element of it shall not be disclosed beyond the arbitrator, the Parties, their counsel and any Person necessary to the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.
- 9.14.5 The arbitrator shall decide on and apportion the costs and reasonable expenses (including reasonable fees of counsel retained by the Parties) incurred in the arbitration.
- 9.14.6 The Parties agree that the arbitration award shall be final and binding on each the Parties that were parties to the dispute. Judgment upon the arbitration award may be rendered in any court of competent jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The Parties would be entitled to seek interim relief from the courts of Mumbai.
- 9.15 The courts in Mumbai, India shall have sole and exclusive jurisdiction with respect to this Agreement.
- 9.16 Power to levy additional noncompliance fee

In the event of breach of the terms of this Agreement and/or the NRS for Gold Bars conforming to BIS Standards, NSE shall have the power to levy such additional non-compliance fee and/or take any other action as it may deem fit.

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IN WITNESS WHEREOF, this Agreement has been signed by both Parties through their authorized representatives here below.

NATIONAL STOCK EXCHANGE OF INDIA LIMITED NAME: MR. RAVI VARANASI DESIGNATION: CHIEF BUSINESS DEVELOPMENT OFFICER	[●] NAME: DESIGNATION:
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SCHEDULE 1 – R&W

The Refiner hereby represents and warrants the following:

1. The Refiner is duly incorporated and organized and existing under the laws of India and is validly existing under Applicable Law.
2. The Refiner is not in receivership or liquidation and has/have taken no steps to enter into liquidation and it has not received any notice presenting a petition for winding-up or dissolution. There are no grounds on which a petition or application could be based for the winding-up or appointment of a receiver for the Refiner.
3. The Refiner has full power and authority to enter into and comply with its obligations under this Agreement and has obtained, in writing, all Consents to enter into and comply with its obligations under this Agreement. The execution and delivery by the Refiner of this Agreement and the performance by the Refiner of the transactions contemplated herein and therein have been duly authorised by all necessary corporate or other action of the Refiner.
4. This Agreement constitutes valid and legally binding obligations of the Refiner enforceable in accordance with its terms and this Agreement will constitute valid and legally binding obligations of the Refiner, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
5. The execution, delivery and performance of this Agreement by the Refiner shall not:
 - (a) conflict with or result in any material breach or violation of any of the terms and conditions of, or constitute (or with notice or lapse of time or both constitute) a default under, any agreement to which the Refiner is a party or by which the Refiner is bound;
 - (b) violate any court order, judgment, injunction, award, decree or writ against, or binding upon, the Refiner or upon its assets; or
 - (c) violate any Applicable Law;
6. Neither the Refiner, or where applicable, their respective employees, officers or directors, any agent or other third party representative acting on behalf of any of the Promoters, is currently, or has prior to the Execution Date, offered, promised, provided, or authorized the provision of any money, property, contribution, gift, entertainment or other thing of value, directly or indirectly, to any Governmental Authority, or any other Person acting in an official capacity, to influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of his/her employer, or otherwise engaged in any conduct that would be in violation of any applicable Anti-Corruption Laws.
7. Neither the Refiner nor its employees, officers, directors, employees, agents, or representatives acting on behalf of any of the Refiner in relation to their business: (i) is

identified on any Sanctions List; (ii) is a Sanctioned Person; or (iii) has transacted business with a Sanctioned Person or in violation of Sanctions.

8. The Refiner has not violated and is not in violation of any Anti-Money Laundering Laws.
9. No funds, proceeds, or assets contributed, sold, or otherwise made available to or for the benefit of the Refiner, or invested by the Refiner were obtained or derived from any unlawful or criminal activity (including without limitation activity in violation of Anti-Corruption Laws, Sanctions, or Anti-Money Laundering Laws).
10. The information provided to NSE by the Refiner is true and complete.
11. Neither the Refiner nor any of their respective assets or properties are involved in, or subject to, any Insolvency Proceedings. There are no circumstances which require or would enable any Insolvency Proceedings to be commenced or initiated against them or any of their assets or properties.
12. The Refiner and/or its Promoters/ partners are not engaged (whether as claimant, defendant, plaintiff or otherwise) in any Action and there is no Action passed, in progress, pending, outstanding or to the best knowledge of the Refiner threatened.
13. The Refiner is not convicted of any economic offence, offence involving securities laws or fraud of any nature.
14. The accounts submitted by the Refiner to NSE has been duly prepared, and filed in accordance with the Companies Act, 2013 and correctly states the Assets and liabilities (including off balance sheet liabilities) of the Refinery, are otherwise accurate and complete, and gives a true, fair and complete view of the financial condition of the Refiner as at the last day of the Financial Year to which they relate.