

# COMDAQ METALS SWITZERLAND A.G.

## Comdaq Metals Tradable Rhodium Benchmark

### Membership Agreement

This agreement (the "**Membership Agreement**") made on \_\_\_\_\_ sets out the terms and conditions on which Comdaq Metals Switzerland A.G. ("**CMS**") of Dammstrasse 19, Zug, CH-6301, Switzerland will allow \_\_\_\_\_ of (the "**Participant**") to participate in a Comdaq Metals Tradable Rhodium Benchmark (a "**CMRB**") in respect of each Trade Date (as defined below).

Subject to the terms of this Membership Agreement, a CMRB will be formulated on every Trade Date and Participants that wish to buy rhodium on that Trade Date will be matched with Participants that wish to sell. By signing this Membership Agreement, the Participant is permitted to participate in any CMRB and agrees to be bound by any CMRB in which it participates on the terms set out in this Membership Agreement. A list of the Participants is available for inspection on CMS's website, the address for which is set out below.

Daily and historic CMRB prices will be published on the CMS and Comdaq Metals Ltd. (CML) websites. Participants only will also have access, via a secure, passworded log-in facility, to the daily and historic CMRB volumes. CMS reserves the right to charge for access to and use of any such privileged information.

Participants only will also have access, on CMS's and CML's websites, to a number of examples illustrating how the Membership Agreement operates. Such examples are intended for illustrative purposes only and are not part of this Membership Agreement nor binding on CMS.

#### 1 Definitions

1.1 In this Membership Agreement, the following terms shall have the following meanings:

"**Allocation**" means the volume of rhodium which a Buyer or Seller is matched with one or more Counterparties to buy or sell (as appropriate);

"**Benchmark Price**" means the price of rhodium determined under the CMRB on any particular Trade Date;

"**Buyer**" means a Participant which has declared an interest as a Buyer and specified a wish to buy a certain volume of rhodium at a particular Indicative Price;



“**Counterparty**” means any Seller with which a Buyer is matched and any Buyer with which a Seller is matched in accordance with clause 2.7;

“**Declaration Procedure**” means the procedure referred to in clause 2.2 below;

“**Indicative Price**” means each of the prices at which CMS performs the Declaration Procedure;

“**Location**” means any of Johnson Matthey Royston and Johnson Matthey U.S.A.;

“**Major Brand 999**” means rhodium as defined on the Website and which is generally traded on the over the counter physical rhodium market;

“**Pro-rata Procedure**” means the procedure referred to in clause 2.7 below;

“**Purchase Volume**” means the total volume of rhodium the Buyers wish to buy in aggregate at any Indicative Price;

“**Sale Volume**” means total volume of rhodium the Sellers wish to sell in aggregate at any Indicative Price;

“**Seller**” means a Participant which has declared an interest as a Seller and specified a wish to sell a certain volume of rhodium at a particular Indicative Price;

“**Trade Date**” means each day (other than a Saturday or Sunday) on which banks are ordinarily open for the transaction of normal business in London (a list of the Trade Dates for 2020 is available on the Website);

“**Trade Marks**” means the names “Comdaq”, “Comdaq Metals”, “Comdaq |Metals Switzerland A.G.”, “Comdaq Metals Limited”, “CMRB”, “Comdaq Metals Rhodium Benchmark” and any variant of such names and any related device or logo;

“**USD**” means the currency of the United States;

“**Value Date**” means T+2, in respect of each Trade Date, such date as shall be specified on the Website from time to time and the Value Date for each Trade Date will be specified by CML shortly before or at the time of the commencement of the CMRB and

“**Website**” means the website maintained by CMS and/or CML from time to time which is currently located at [www.comdaqmetals.net](http://www.comdaqmetals.net).

- 1.2 In this Membership Agreement, unless the context otherwise requires:
  - 1.2.1 words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include references to corporations, partnerships and other unincorporated associations or bodies of persons;
  - 1.2.2 headings are included for convenience only and should not be used for the purpose of interpretation; and

- 1.2.3 references to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has superseded or re-enacted (whether with or without modification), and (iii) any provision superseding it or re-enacting it (whether with or without modification).

## **2 The CMRB**

The Participant acknowledges and agrees that each CMRB shall operate in the following way:

### **Starting price**

- 2.1 On each Trade Date at or shortly after 12:45 London time, CMS will set a starting price which will be used as the first Indicative Price. CMS has absolute discretion at what level to set such price but CMS will usually choose a price within the range of bids and offers for rhodium made worldwide and of which it is aware during the previous hour.

### **Declaration Procedure**

- 2.2 CMS will:
- 2.2.1 invite each Participant to declare solely to CMS whether it has an interest as a Seller at the Indicative Price;
- 2.2.2 then invite each Participant to declare solely to CMS whether it has an interest as a Buyer at the Indicative Price;
- 2.2.3 then invite each Seller to specify the volume of rhodium it wishes to sell solely to CMS at the Indicative Price; and
- 2.2.4 then invite each Buyer to specify the volume of rhodium it wishes to buy solely to CMS at the Indicative Price.
- 2.2.5 This process is referred to as the “**Declaration Procedure**”.

### **CMS’s discretion**

- 2.3 Once the Declaration Procedure has been carried out at the initial or any subsequent Indicative Price, CMS may:
- 2.3.1 if, at that Indicative Price, there are no declarations of interest to sell or no declarations of interest to buy or no declarations of interest to sell or to buy,
- (a) set the price for the CMRB at that Indicative Price, in which case that Indicative Price will be the Benchmark Price for that Trade Date; or
  - (b) adjust the Indicative Price to a new Indicative Price to be determined at CMS’s discretion and carry out the Declaration Procedure at the new Indicative Price;

- 2.3.2 if the difference between the Sale Volume and the Purchase Volume is 100 ounces or less:
- (a) perform the Assistance Procedure in accordance with clause 2.4 below; or
  - (b) perform the Pro-rata Procedure in accordance with clause 2.7 below; or
- 2.3.3 if the difference between the Sale Volume and the Purchase Volume is greater than 100 ounces:
- (a) adjust the Indicative Price by:
    - (i) if the Sale Volume is greater than the Purchase Volume, decreasing the Indicative Price; or
    - (ii) if the Purchase Volume is greater than the Sale Volume, increasing the Indicative Price,and carry out the Declaration Procedure at the new Indicative Price; or
  - (b) perform the Assistance Procedure in accordance with clause 2.4 below.
- 2.3.4 Where CMS sets the Benchmark Price at which there are no declarations of interest to sell or no declarations of interest to buy or no declarations of interest to sell or to buy in accordance with clause 2.3.1(a) above, the procedures set out in clauses 2.3.5 to 2.9 (inclusive) below will not be applicable.
- 2.3.5 On adjusting an Indicative Price in accordance with clause 2.3.3(a) above, all declarations of interest and specifications of volume specified at that previous Indicative Price will be deemed to have been revoked and CMS may adjust the Indicative Price to a price at which the Declaration Procedure has already been performed during the CMRB.

#### **Assistance Procedure**

- 2.4 CMS may ask one or more of the Sellers to assist in better matching the Sale Volume and the Purchase Volume at any Indicative Price. No Seller is obliged to assist CMS in this respect. CMS may ask one or more of the Buyers to assist in better matching the Sale Volume and the Purchase Volume at that Indicative Price. No Buyer is obliged to assist CMS in this respect. However, any Indicative Price at which (i) CMS makes this request and (ii) any of the Sellers or any of the Buyers assists CMS and (iii) as a result of such assistance being given, the difference between the Sale Volume and the Purchase Volume is 100 ounces or less, will be the Benchmark Price for the CMRB. The Participant agrees that it will be bound by any such Benchmark Price. This process is referred to as the “**Assistance Procedure**”.

#### **Where Assistance Procedure is not followed**

2.5 In any case in which the Assistance Procedure is not followed, the Benchmark Price for the CMRB will be the Indicative Price at which CMS decides not to adjust the price further provided that at such price the difference between the Sale Volume and the Purchase Volume is 100 ounces or less. The Participant agrees that it will be bound by any Indicative Price at which the difference between the Sale Volume and the Purchase Volume is 100 ounces or less and which becomes the Benchmark Price. For the avoidance of doubt, in any case where the Assistance Procedure is not used, CMS is not required to use any Indicative Price at which the difference between the Sale Volume and the Purchase Volume is 100 ounces or less as the Benchmark Price.

**Location**

2.6 The Benchmark Price having been determined, CMS will invite each of the Sellers to declare the Location or Locations of the rhodium it has specified its wish to sell at the Benchmark Price. For the avoidance of doubt, each Buyer accepts the Location or Locations at which it's Counterparty or Counterparties wishes or wish to sell rhodium.

**Pro-rata Procedure**

2.7 Subject to clauses 2.3 to 2.5 above (inclusive):

2.7.1 CMS will endeavour to set the Benchmark Price at the price where the Sale Volume is equal to the Purchase Volume and where CMS is able to do this, it will match Buyers and Sellers in such a way that each Buyer is matched with one or more Sellers which, in aggregate, specified a wish to sell the volume of rhodium the Buyer specified a wish to buy and each Seller is matched with one or more Buyers which, in aggregate, specified a wish to sell the volume of rhodium the Seller specified a wish to sell; and

2.7.2 where, at the Benchmark Price, the Purchase Volume remains greater than the Sale Volume by 100 ounces or less, CMS will match Buyers and Sellers in such a way that:

(a) the aggregate amount of rhodium in respect of which Buyers and Sellers will be matched will be the Sale Volume; and

(b) each Buyer will be matched with one or more Sellers so that (1) the volume of rhodium in respect of which that Buyer is matched bears the same proportion to the Sale Volume at the Benchmark Price as (2) the total volume of rhodium which that Buyer specified a wish to buy at the Benchmark Price bears to the Purchase Volume at the Benchmark Price; and

2.7.3 where, at the Benchmark Price, the Sale Volume is greater than the Purchase Volume by 100 ounces or less, CMS will match Buyers and Sellers in such a way that:

(a) the aggregate amount of rhodium in respect of which Buyers and Sellers will be matched will be the Purchase Volume; and

- (b) each Seller will be matched with one or more Buyers so that (1) the volume of rhodium in respect of which that Seller is matched bears the same proportion to the Purchase Volume at the Benchmark Price as (2) the total volume of rhodium which that Seller specified a wish to sell at the Benchmark Price bears to the Sale Volume at the Benchmark Price.

2.7.4 This process is referred to as the “**Pro-rata Procedure**”.

#### **Counterparty identification**

2.8 Once the Benchmark Price and each Participant’s Allocation has been determined and CMS has matched the Buyers and the Sellers in accordance with clause 2.7 above,

- (a) CMS will advise each Buyer of the identity of its Counterparty or Counterparties and the proportion of its Allocation which each of those Counterparties has agreed to sell to such Buyer; and
- (b) CMS will advise each Seller of the identity of its Counterparty or Counterparties and the proportion of its Allocation which each of those Buyers has agreed to buy from that Seller.
- (c) Both CMS and the Participant agree that they will use their best endeavours to ensure that, until this moment, all declarations of interest and specifications of volume will remain anonymous to all persons other than CMS.

#### **Agreement**

2.9 The Participant agrees that it will be bound by any CMRB in which it participates as a Buyer or as a Seller at the Indicative Price which becomes the Benchmark Price for that CMRB to:

- (a) if it participated as a Seller, sell its Allocation to its Counterparty or Counterparties in the proportions determined by clause 2.7 above and in relation to the Location or Locations from which it specified its wish to sell rhodium pursuant to clause 2.6 above; and
- (b) if it participated as a Buyer, buy its Allocation from its Counterparty or Counterparties in the proportions determined by clause 2.7 above from the Location or Locations specified by its Counterparty or Counterparties pursuant to clause 2.6 above,

on the terms of the Membership Agreement and at the Benchmark Price unless and to the extent it agrees otherwise with its Counterparty.

#### **Miscellaneous**

2.10 CMS has absolute discretion to:

- (a) decline to accept any declarations of interest to buy or sell rhodium and specifications of the volume wished to be bought and sold, and

(b) decline to accept any request to withdraw any declaration of interest to buy or sell rhodium or any specification of the volume wished to be bought and sold at any specific Indicative Price,

at any point during the CMRB in order to facilitate the determination of the Benchmark Price.

- 2.11 The Participant agrees that the terms on which the CMRB is formulated:
- 2.11.1 relate to physical rhodium of a minimum fineness of Major Brand 999 as stated on the Website;
  - 2.11.2 are for delivery on the Value Date to which the Trade Date on which the CMRB is entered into relates;
  - 2.11.3 relate to rhodium located at one or more of the Locations; and
  - 2.11.4 relate to prices expressed as a value of USD rounded upwards to no further than the second decimal place.
- 2.12 The Participant agrees that each expression of interest to buy and sell must be for a minimum of 100 ounces and be a multiple of 50 ounces.
- 2.13 The Participant agrees that, when performing the Pro-rata Procedure, CMS has discretion to round each Participant's Allocation up or down to the nearest whole ounce.
- 2.14 The Participant agrees that it shall communicate with CMS and follow the development of the CMRB by telephone, facsimile, Bloomberg dealing machine, email or CMS's website. No person who is not a Participant will be permitted to follow the CMRB. Participants should note that agreements pursuant to the CMRB cannot yet be entered into via the internet although CMS intends that this will be possible in the future via an auction site.
- 2.15 The Participant further agrees that no communications made to CMS (including, without limitation, declarations of interest as either a Seller or as a Buyer and specifications of the volume of rhodium a Seller or a Buyer wishes to sell or buy) will be deemed to have been made to CMS until CMS receives such communications in fact. CMS retains absolute discretion to determine whether a communication has in fact been received and takes no responsibility for communications that are not in fact received by CMS.

### **3 Important information about the CMRB**

- 3.1 The Participant acknowledges that the effect of clause 2.7 above is that it will:
- 3.1.1 as a Seller, be bound to sell the volume of rhodium it specified a wish to sell or a smaller volume to one or more Counterparties at the Benchmark Price; and
  - 3.1.2 as a Buyer, be bound to buy a volume of rhodium it specified a wish to buy or a smaller volume from one or more Counterparties at the Benchmark Price,

although the difference between the volume the Participant specifies a wish to buy or sell and the volume it is allocated to buy or sell will not be greater than 100 ounces. A Seller will not be required to sell, and a Buyer will not be required to buy, a greater volume of rhodium than it specified a wish to sell or buy (as appropriate) at the Benchmark Price.

- 3.2 The Participant acknowledges that the matching of Buyers and Sellers is at the absolute discretion of CMS and that it might be matched with more than one Counterparty for any CMRB.
- 3.2.1 The Participant acknowledges that it might not always be matched with the same Counterparty and that, on occasion, it might be matched with the same Counterparty.
- 3.2.2 A list of the Participants in the CMRB from time to time is located and maintained on CMS's website. Each Participant acknowledges that in order to facilitate the efficient operation of the CMRB, each Participant wishing to participate in the CMRB on any particular Trade Date should be prepared to trade with any other Participant. Notwithstanding the above, CMS and each Participant acknowledge that there may be circumstances in which a Participant may not wish to trade with another Participant for a legitimate commercial reason. Accordingly, a Participant may notify CMS if, on any particular Trade Date on which it wishes to participate in the CMRB, it would be unable to trade with any of the other Participants as Counterparty at least one hour in advance of 12.45 London time by telephone or Bloomberg dealing machine. In any circumstances in which the Participant notifies CMS in accordance with the above provisions, CMS will use its best endeavours to ensure that the Participant is not matched with the Participant in relation to which it has notified CMS. All Participants agree to assist, when necessary, to switch any Counterparty names for a commercial gain, this being a fee in U.S. Dollars per ounce paid by CMS, providing the Participant has an available credit facility and limit at that moment in time. The Participant agrees to maintain and update counterparty selection, metals and net daily delivery risk limits in United States dollars via the secure, passworded and login facility on CMS's website [www.comdaqmetals.net](http://www.comdaqmetals.net) to which it agrees to login regularly. The Participant agrees to take all reasonable steps to maintain its credit lines with other Participants.
- 3.3 The Participant acknowledges that, when participating in the CMRB as a Buyer, its Allocation might include rhodium that is located at more than one of the Locations and that the rhodium which it is allocated or any part of that rhodium might not be located at the Location or any of the Locations which the Participant might prefer. After the CMRB has been formulated, CMS will use its reasonable endeavours to assist the Participant to relocate rhodium by way of a location swap. However, CMS neither guarantees that it will be possible to make such arrangements on all occasions nor the terms on which those arrangements that are possible will be made.



#### **4 CMS's role:**

- 4.1 The Participant agrees that CMS's role is to:
  - 4.1.1 set the initial Indicative Price;
  - 4.1.2 facilitate the determination of the Benchmark Price; and
  - 4.1.3 match each Buyer and each Seller in accordance with the terms of the CMRB.
- 4.2 The Participant acknowledges and agrees that CMS does not:
  - 4.2.1 enter into agreements with Participants for the sale or purchase of rhodium either as principal or as agent;
  - 4.2.2 advise Participants on any aspects of the agreements they enter into;
  - 4.2.3 negotiate the terms of the agreements entered into between Participants or assist Participants to enter into such agreements;
  - 4.2.4 provide clearing or settlement services in relation to the agreements entered into between Participants; or
  - 4.2.5 provide storage, valuation or delivery services.

#### **5 Fees**

- 5.1 In consideration for CMS's services, the Participant agrees to pay to CMS a fee of USD per ounce of rhodium, as specified on its website, in each of its Allocations plus Value Added Tax (if applicable). For the avoidance of doubt, the Participant incurs fees in relation to each CMRB in which it participates as either Seller or as Buyer.
- 5.2 CMS will invoice the Participant at the end of each calendar month in arrears and the Participant will pay CMS's fees within 14 days of receiving such invoices by transferring funds in USD to CMS's bank account.
- 5.3 CMS reserves the right to charge the Participant interest on any amount which is not paid to CMS when it is due, calculated at LIBOR plus 2 per cent. Interest will accrue on a daily basis and be due and payable by the Participant as a separate debt.

#### **6 Participants**

- 6.1 Any person who wishes to be a Participant must be accepted as a Participant under terms substantially similar to this Membership Agreement by CMS. CMS has absolute discretion whether or not to accept any person as a Participant without giving a reason for such a decision.
- 6.2 CMS reserves the right to terminate any person's status as a Participant at any time with immediate effect and without giving a reason for such a decision. Without prejudice to the above, CMS may

terminate any person's status as a Participant with immediate effect in the case of any breach of the representation and warranties under clause 7.

- 6.3 A Participant may cease to be a Participant and thereby cease to be subject to the terms of this Membership Agreement (other than clauses 5, 8 and 9) with immediate effect by giving CMS written notice of its intention to cease to be a Participant.
- 6.4 Each Participant must notify CMS of the persons who are, from time to time, authorised to act on its behalf in respect of the CMRB (its "**Representatives**"). Only Representatives may participate on the Participant's behalf in the CMRB. CMS is not required to accept declarations of interest to buy or sell rhodium from any other person purporting to act for the Participant and CMS shall be entitled to assume that declarations of interest purporting to be made by a Representative have been made by a Representative without further enquiry. By notifying CMS of the names of its Representatives, the Participant represents that agreements (including the Membership Agreement and the agreements entered into as a result of the CMRB) entered into by such persons on behalf of the Participant are legally binding on the Participant.

## **7 The Participant's representations and warranties**

- 7.1 The Participant represents and warrants to CMS at the time of signing this Membership Agreement and on each Trade Date on which it participates in the CMRB that:
  - 7.1.1 it acts as principal and not as agent on behalf of others in entering into this Membership Agreement and each of the agreements entered into as a result of the CMRB;
  - 7.1.2 it participates in this Membership Agreement and each agreement entered into as a result of the CMRB with the intention, when it is a Buyer to take delivery of, and when it is a Seller to deliver, the rhodium within 2 business days of the Trade Date on which the CMRB is formulated;
  - 7.1.3 where it acts as Seller, rhodium is available for, and where it acts as Buyer, arrangements are in place to take delivery of, the rhodium within 2 business days of the Trade Date;
  - 7.1.4 it has a continuing interest in either the production or consumption of rhodium or the hedging of wholesale rhodium industry requirements;
  - 7.1.5 it has all necessary authority, powers, consents, licences and authorisations and has taken all necessary action to enable it lawfully to enter into this Membership Agreement and each agreement it enters into as a result of the CMRB;
  - 7.1.6 this Membership Agreement and each of the agreements entered into as a result of the CMRB are binding on and enforceable against the Participant in accordance with its terms and do not and will not violate against the terms of any regulations, order, charge or agreement by which the Participant is bound; and

- 7.1.7 any information which it has provided to CMS in relation to this Membership Agreement is accurate and not misleading in any material respect.
- 7.2 The Participant agrees that it will provide any such information as may reasonably be required by CMS to evidence the matters referred to in clause 7.1.
- 7.3 The Participant agrees that it will respect the anonymity of this Membership Agreement and any agreement it enters into as a result of the CMRB. In particular, the Participant agrees:
- (a) that it will not communicate any declaration of interest or specification of volume which it makes under any CMRB to any person both prior and during the Agreement (whether or not such person has executed a Membership Agreement) other than CMS or the non-participating chairman under any CMRB ; or
  - (b) otherwise reveal or discuss its intentions, identity or interest in relation to the CMRB on any particular Trade Date or in connection with this Membership Agreement generally to any person (whether or not such person has executed a Membership Agreement), except to its Counterparty or Counterparties in accordance with clauses 2.8 and 2.9 or as is otherwise expressly permitted by the terms of this Membership Agreement.
- 7.4 The Participant acknowledges that its participation in this Membership Agreement and in any CMRB in accordance with this Membership Agreement is voluntary and does not limit, and is not intended to limit, the freedom of the Participant to trade in rhodium other than in accordance with the terms of this Membership Agreement, or the terms on which the Participant may undertake such trading.
- 7.5 All data and information that the Participant is provided access to by CMS, including but not limited to via the Website, and including but not limited to the Benchmark Price (together "**Data**"), and all intellectual property rights in the Data, shall remain owned by CMS or its licensors. Subject to the remainder of this clause 7.5, CMS grants to the Participant a royalty-free, non-exclusive, non-transferable personal licence to use the Data for its internal business purposes only. The Participant (and/or its employees, directors, agents or subcontractors) shall not, without an additional express licence from CMS:
- 7.5.1 copy, repackage, further transmit, transfer, license, modify, adapt or store or otherwise exploit, in whole or in part, in any form or manner the Data or any part of it;
  - 7.5.2 use the Data or any part of it for the purpose of or in connection with:
    - (a) creating, issuing and/or operating any contract or financial product (including any spot or prompt sale(s) or purchase(s), forward sales(s) or purchase(s), average price sales(s) or purchase(s), net purchase or sales contracts, option, option settlement, exchange traded fund, exchange traded note, exchange traded commodity, assets under management or

accumulation programme, swap or swaption or any other form of derivative contract or product or instrument settled in cash or otherwise and whether listed or unlisted) which references, is linked to, or the value or settlement of which is determined by, the Data or any part of it;

(b) creating, issuing and/or operating any contract, financial product, index, or service which seeks to match or track the performance of, or whose capital and/or income value is related to, the Data or any part of it; or

(c) creating, issuing and/or operating any contract, financial product, index or service the performance of which is linked to the performance of a third party's product, index or service prohibited under (a) or (b) above; or

7.5.3 use the Data in any other way not expressly permitted by this Agreement.

The Participant warrants that at all times it shall only use such data in accordance with all applicable laws.

7.6 The Participant shall not use the Trade Marks in any form, except to the extent required by law and/or to the extent and in the manner consented to by CMS in advance in writing (and only upon payment of any fee required by CMS). In addition and without limiting the preceding sentence, the Participant shall not do, or fail to do, anything which may prejudice or impair CMS's rights in the Trade Marks or which brings CMS and/or the Trade Marks into disrepute anywhere in the world and the Participant will not use the Trade Marks in conjunction with Participant's or any third party's marks resulting in a composite mark in any territory except to the extent expressly agreed with CMS in writing in advance.

## **8 Liability and indemnity**

8.1 Neither CMS nor any of CMS's directors, officers, employees or agents shall be liable for any direct or indirect losses, damages, costs or expenses incurred or suffered by the Participant under this Membership Agreement or under any agreements entered into as a result of the CMRB unless arising directly from CMS's gross negligence, wilful default or fraud, in which case such losses, damages, costs or expenses will be limited to the total amount of fees which the Participant paid to CMS in respect of the CMRB in relation to which the Participant suffered loss.

8.2 The Participant shall pay to CMS on a full indemnity basis any losses, liabilities, costs or expenses (including legal fees) taxes, imposts and levies which CMS may incur as a result of any violation by the Participant of any of its obligations under this Membership Agreement or any agreement entered into as a result of the CMRB or by the enforcement of CMS's rights.

## **9 Miscellaneous**

- 9.1 CMS may amend any term of this Membership Agreement (other than clause 5.1) by giving written notice setting out the amended terms of the Agreement to the Participant and stating the date on which such amended terms will take effect (which date shall be at least one calendar month from the date of such notice except where a shorter period is, in the reasonable opinion of CMS, appropriate in order to reflect changes in applicable law). CMS may not amend clause 5.1 of this Membership Agreement until July 2020 and may do so at any time thereafter provided that at least six calendar months have passed since the previous amendment to clause 5.1 became effective by giving written notice to the Participant setting out the amended clause 5.1 and stating the date on which such amended clause 5.1 will take effect (which date shall be at least one calendar month from the date of such notice).
- 9.2 If and to the extent that either party to this Membership Agreement is hindered or prevented by circumstances not reasonably foreseeable and not within its reasonable ability to control from performing any of its obligations under this Membership Agreement (or, in the case of the Participant, any of the agreements entered into as a result of the CMRB) and promptly so notifies the other party, giving full particulars of the circumstances in question, then CMS or the Participant, as appropriate, shall be relieved of liability to the other for failure to perform such obligations, but shall nevertheless use its best endeavours to resume full performance thereof without avoidable delay, and pending such resumption shall permit and shall use its best endeavours to facilitate any efforts that the other party may make to procure alternative supplies or services.
- 9.3 This Membership Agreement is binding on the Participant and its successors and assigns. The Participant may not assign, charge or otherwise transfer its rights or obligations under this Membership Agreement or any of the agreements made as a result of the CMRB without CMS's prior written consent. Any purported assignment, charge or transfer in violation of this clause 9.3 will be void. CMS may freely assign the benefit of this Membership Agreement.
- 9.4 If, at any time, any provision of this Membership Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Membership Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired. CMS reserves the right to assign this membership agreement after 30 days' notice to the Participant.
- 9.5 No person other than CMS or the Participant has a right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of this Membership Agreement.
- 9.6 This Membership Agreement shall be governed by and construed in accordance with English law.

9.7 The Participant agrees that the courts of England shall have jurisdiction to determine any suit, action or other proceedings arising out of this Membership Agreement and irrevocably submits to the non-exclusive jurisdiction of such courts.

**IN WITNESS** whereof this Agreement has been entered into the day and year first above written.

**SIGNED** by Neil Grover (duly authorised)  
for and on behalf of Comdaq Metals Switzerland A.G.

Date:

**SIGNED** by (duly authorised)  
for and on behalf of  
Date: