

**THE 1994 INTERNATIONAL
BULLION MASTER AGREEMENT (IBMA)**

The Guide

The IBMA Terms (English law version)

The IBMA (New York law version)

June 1994

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THE 1994 INTERNATIONAL BULLION MASTER AGREEMENT

CONTENTS

GUIDE TO THE IBMA		Page
I.	INTRODUCTION	1
II.	IBMA PROVISIONS	3
A.	Definitions	3
B.	Scope of the IBMA; Single Agreement	8
C.	Confirmations	9
D.	Settlement and Netting	10
E.	Representations, Warranties and Covenants	13
F.	Close-Out and Liquidation	14
G.	Illegality, Impossibility and Force Majeure	16
H.	Parties to Rely on Their Own Expertise	16
I.	Miscellaneous	16
J.	Law and Jurisdiction	19
K.	Schedule	19
III.	BULLION OPTIONS - RELEVANT PROVISIONS AND MARKET PRACTICE	21
A.	Premiums	21
B.	Exercise and Settlement	22
IV.	PRINCIPAL DIFFERENCES BETWEEN THE ENGLISH LAW AND NEW YORK LAW VERSIONS OF THE IBMA	25

THE IBMA TERMS (ENGLISH LAW VERSION)

Heading Sheet (Optional)

1.	Definitions	1
2.	Bullion Transactions	11
3.	Bullion Options - Premiums	11
4.	Bullion Options - Discharge and Termination	12
5.	Bullion Options - Exercise and Settlement	13
6.	Bullion Transactions - Settlement and Netting	14
7.	Representations, Warranties and Covenants	16
8.	Close-Out and Liquidation	17
9.	Illegality, Impossibility and Force Majeure	21
10.	Parties to Rely on Their Own Expertise	22
11.	Miscellaneous	22
12.	Law and Jurisdiction	25

Signing Sheet (Optional)

THE IBMA (NEW YORK LAW VERSION)

1.	Definitions	1
2.	Bullion Transactions	11
3.	Bullion Options - Premiums	11
4.	Bullion Options - Discharge and Termination	12
5.	Bullion Options - Exercise and Settlement	13
6.	Bullion Transactions - Settlement and Netting	14
7.	Representations, Warranties and Covenants	16
8.	Close-Out and Liquidation	17
9.	Illegality, Impossibility and Force Majeure	21
10.	Parties to Rely on Their Own Expertise	22
11.	Miscellaneous	22
12.	Law and Jurisdiction	25
	Schedule - Parts I - XVII	27

Guide

**GUIDE TO
THE 1994 INTERNATIONAL BULLION MASTER AGREEMENT ("IBMA")**

I. INTRODUCTION

In March 1990, the London Bullion Market Association ("LBMA") introduced a document entitled "Bullion Options Guidelines" which details standard terms and conditions for bullion options. This document was intended to provide guidance and clarification for the trading community, to reflect and encourage good market practice and was considered by market participants to be helpful. These guidelines were, however, never intended to be a specific legal document and indeed, in its introduction, mention was made that "bilateral clauses referring to non-performance and margining of option positions must be the responsibility of individual parties as they are beyond the scope of this paper".

Subsequently, as the market has evolved and expanded, there has been increased pressure from market participants to correctly identify, quantify and, where possible, contain risks relating not only to bullion options, but also to spot and forward bullion trades in the bullion market. In the light of these developments, the Management Committee of the LBMA decided in 1993 to establish a working party to prepare a document which could be used by the international market for spot and forward bullion trades and bullion options. At the same time, the Financial Markets Lawyers Group, a group of lawyers representing US financial institutions, formed a working party to work on such a document. The Bank of England and the Federal Reserve Bank of New York were represented as observers on the working parties and the resulting document was reviewed by Clifford Chance and representatives of the Financial Markets Lawyers Group, both having been closely involved in drafting the International Currency Options Market Master Agreement ("ICOM") and the International Foreign Exchange Master Agreement Terms ("IFEMA"). The ICOM was published in 1992 and the IFEMA in 1993 in the UK by the British Bankers' Association ("BBA") and in the US by the Foreign Exchange Committee ("FXC") (an advisory committee which is independent of, but sponsored by, the Federal Reserve Bank of New York and whose members are participants in the inter-dealer foreign exchange market). The IBMA is being published as a result of these efforts.

The aim of the IBMA is to provide a common set of terms for spot and forward bullion trades and bullion options in the international bullion market. The IBMA contains provisions which reflect best market practices, which set out procedures that, in the event of a default by one Party, will govern the method by which the Non-Defaulting Party may close out and liquidate its trading positions and which sets out similar procedures for closing out and liquidating affected bullion transactions in the event that illegality, force majeure, or act of State occurs. Each Party will then be in a better position to take measures to quantify and control the risks that it faces.

The IBMA builds on the experience of the BBA and the FXC in drafting earlier foreign exchange agreements such as ICOM and IFEMA. The IBMA represents a continuing effort to reduce the risks of market trading and the costs to participants of negotiating bilateral agreements.

In interpreting the IBMA, practitioners may wish to consult this Guide. The Guide does not constitute part of, and should not be interpreted as modifying any contractual term contained in the IBMA.

The IBMA is published in two versions: one version is governed by English law and the other by New York law (see IV of this Guide for an overview of the principal differences between the two versions). It is expected that market participants in the New York market will execute the New York law version in the form of a Master Agreement.

In the London market, the English law version may be executed in the form of a Master Agreement, and it is also in a form allowing it to be used without this being required. Market participants should agree with their counterparties the terms which will apply before dealing commences. In the event that they do not, the IBMA Terms will be presumed to apply if one of the Parties is acting through an office in the UK (unless there is an agreement with broadly similar netting provisions between the contracting offices of the Parties applicable to spot and forward bullion trades **and** bullion options between the Parties). Unless the Parties otherwise agree, where the Parties already have in place a netting agreement between their respective contracting offices which apply only to spot and forward bullion trades (but not to bullion options) or vice versa, the IBMA Terms will nonetheless be presumed to apply (in place of such netting agreement) to all such spot and forward bullion trades **and** bullion options entered or to be entered into by the Parties between these respective contracting offices on or after the Effective Date. Where no Master Agreement is being executed, market participants should take steps to agree the matters referred to in the form of the Schedule enclosed with the Terms. In the absence of such agreement, the Terms provide a number of fall-back provisions of which users should take note.

The following sections of this Guide are intended (i) to explain various provisions of the IBMA and the significance of their inclusion in the IBMA and (ii) to provide further clarification of normal market practice. This Guide should therefore be read carefully. Although the IBMA does, and is intended to, stand on its own as a legal agreement, the Guide provides important commentary on current market practices and certain provisions contained in the IBMA. The Guide uses terms which are defined in the IBMA.

II. IBMA PROVISIONS

A. Definitions

Every effort has been made to ensure that the definitions used in the IBMA are in close accord with the common understanding and usage of the Bullion market. However, in some cases no such understanding exists and the IBMA has, in consequence, provided such a definition. Practitioners should ensure that they are sufficiently familiar with the definitions used in the IBMA to avoid any confusion or misunderstanding. The following guidance may be useful in explaining various provisions of the IBMA and in deciding what action to take in relation to certain definitions used in it.

1. Bullion

Bullion is defined in the IBMA to mean gold or silver in the form of bars or unallocated gold or silver complying with the rules of the LBMA relating to good delivery and fineness from time to time in force and does not extend to metals other than gold or silver.

Parties may, if they wish, use the IBMA as a framework for covering other metals provided that appropriate modifications and supplemental terms are adopted. Users of the IBMA that trade other metals who wish to cover such metals under the same master agreement as Bullion should discuss with their counsel the modifications and supplemental provisions necessary to do so.

2. Bullion Option, Bullion Trade, Bullion Obligation and Bullion Transaction

As mentioned earlier, the IBMA covers not only bullion options, but also spot and forward bullion trades. Different terminology is required to distinguish between bullion options on the one hand and spot and forward bullion trades on the other because some provisions in the IBMA are only relevant to bullion options (for example, provisions concerning the payment of Premium and the mechanisms for the exercise of bullion options), and not to spot and forward bullion trades (see III of this Guide for an overview of these provisions which are particularly relevant to bullion options).

In order to understand how the provisions contained in the IBMA work, it is important to appreciate at the outset the difference in the meaning of the following terms:

(i) Bullion Option

Bullion Option is defined as a transaction between the Parties under which the Seller agrees with the Buyer that the Buyer shall be entitled

(but not obliged, except upon exercise) to purchase from or, as the case may be, sell to the Seller a specified number of Ounces of Bullion at the Strike Price, and in respect of which transaction the Parties have agreed (whether orally, electronically or in writing):

- (a) the quantity (in Ounces) and type of Bullion to be purchased and sold upon exercise of such Bullion Option;
- (b) which Party is the Seller and which is the Buyer;
- (c) the Premium;
- (d) the Strike Price;
- (e) the Expiration Date;
- (f) the Expiration Time (but where the Parties do not expressly agree upon the Expiration Time, it shall be deemed to be 9.30 a.m. New York time on the Expiration Date);
- (g) whether the Bullion Option is a Call Option or a Put Option;
- (h) whether it is an American Style Option or a European Style Option (but where the Parties do not expressly agree upon the style of Bullion Option, it shall be deemed a European Style Option); and
- (i) the delivery location and form of delivery (but where the Parties do not expressly agree upon the delivery location and the form of delivery, the Bullion to be delivered shall be delivered loco London by being credited to an unallocated account of a member of the LBMA agreed by both Parties (or, failing agreement, nominated by the delivering Party)).

(ii) Bullion Trade

Bullion Trade is a term used to mean a spot or forward bullion trade. It is defined in the IBMA as any transaction (other than a Bullion Option, whether or not exercised) between the Parties for the purchase by one Party of an agreed quantity of Bullion against the payment by such Party to the other Party of an agreed amount of Currency, both such amounts being deliverable on the same Value Date, and in respect of which transaction the Parties have agreed (whether orally, electronically or in writing):

- (a) the quantity (in Ounces) and type of Bullion to be purchased;
- (b) which Party will purchase the Bullion;
- (c) the Contract Price;
- (d) the Value Date; and
- (e) the delivery location and form of delivery (but where the Parties do not expressly agree upon the delivery location and the form of delivery, the Bullion to be delivered shall be delivered loco London by being credited to an unallocated account of a member of the LBMA agreed by both Parties (or, failing agreement, nominated by the delivering Party)).

(iii) Bullion Obligation

Bullion Obligation is a term used to refer specifically to a Party's obligation to deliver Bullion or Currency under a Bullion Trade or a Bullion Option which has been exercised or deemed exercised. In the case of an obligation to deliver Currency, the amount of Currency to be delivered is (subject to Section 6 of the IBMA) the product of the Contract Price (in the case of a Bullion Trade) or the Strike Price (in the case of a Bullion Option) and the number of Ounces which are the subject of such Bullion Trade or Bullion Option, as the case may be.

(iv) Bullion Transaction

Bullion Transaction is a term used to mean any Bullion Option or Bullion Trade.

3. Base Currency

Where the IBMA is to be executed in the form of a Master Agreement, Base Currency is specified by each Party in accordance with Part I of the Schedule. If the Parties are dealing on the basis of the IBMA in the form of Terms, Pounds Sterling will be presumed to apply unless Parties agree otherwise. Upon the occurrence of an Event of Default, or some other event, resulting in the close-out and liquidation under the IBMA of outstanding Bullion Obligations and Bullion Options, the Base Currency of the Non-Defaulting Party is the Currency in which the final close-out amount will be calculated.

Where this Base Currency is different from the Currency of the country in which the winding up of the Defaulting Party will take place, consideration should be

given to whether local insolvency law will permit payments in other Currencies to creditors.

The Base Currency Rate plus one percent per annum will be the interest rate used for the purposes of determining the late payment rate applied to the final close-out amount.

4. Business Day

It is important to note that Business Day has alternative definitions depending on the context in which it is used.

5. Designated Office(s), Settlement Netting Office(s), Novation Netting Office(s), Matched Pair Novation Netting Office(s)

The IBMA contemplates that the Parties will enter into Bullion Transactions between pairs of offices (Designated Offices). Obligations to deliver a particular type of Bullion or Currency on the same Value Date between these Designated Offices may be settled by payment or settlement netting, in which case the Parties should agree which Designated Offices are Settlement Netting Offices. The Parties may also agree to net and novate Bullion Obligations, either in respect of transactions involving at least one common type of Bullion or Currency (in which case the relevant Designated Offices should be designated as Novation Netting Offices) or in respect of transactions involving the same type of Bullion **and** Currency (in which case the relevant Designated Offices should be designated as Matched Pair Novation Netting Offices). A general overview of the various provisions in the IBMA on settlement netting and novation netting is set out in II D of this Guide.

If the Parties are trading on the basis of the IBMA executed in the form of a Master Agreement, it is important that the Designated Offices which will enter into Bullion Transactions to be covered by the IBMA are agreed between the Parties before trading takes place and specified in accordance with Part II of the Schedule. Parties should also agree which pairs of Designated Offices will trade as Settlement Netting Offices (Part V of the Schedule), Novation Netting Offices (Part IV of the Schedule) and Matched Pair Novation Netting Offices (Part III of the Schedule). Any changes relating to any of these offices should also be agreed between the Parties.

If the Parties are dealing under the IBMA in the form of Terms, the Parties should specify in writing which offices are to be their Designated Offices, failing which the definition of "Designated Office" provides that those offices which enter into Bullion Transactions will be deemed to be the Designated Offices, so long as at least one is in the UK and there is no existing comparable netting

agreement applicable to Bullion Transactions between them (see also I, page 2 of this Guide).

Careful consideration should be given to the effect of local insolvency law and other relevant law (such as exchange control regulations) on the Designated Offices covered by the IBMA. For example, certain jurisdictions might not accept the netting of amounts due under Section 8.

6. Effective Date

The Effective Date where the IBMA has been executed in the form of a Master Agreement is the date of that Master Agreement. In the case where the IBMA is being utilised in the form of Terms, the Effective Date is the date agreed in writing by the Parties, failing which the Effective Date is the date designated as such by the LBMA in a notice to its members.

7. Events of Default

The Events of Default are generally credit-related events, which include non-payment, insolvency, cross-defaults affecting Credit Support Providers (such as guarantors) and cross-defaults under Specified Indebtedness and Specified Transactions. The Events of Default do not include events over which the Parties do not have control: illegality, impossibility, force majeure or act of State, which are described in and covered by Section 9 of the IBMA.

The Parties may elect in Part XV of the Schedule to include a provision whereby a Party may request adequate assurances from its counterparty as to that counterparty's ability to perform its obligations under the IBMA. If no such assurances are forthcoming, or the relevant assurances are not, in the good faith opinion of the Party requesting the assurances, adequate, then two Business Days after the request for adequate assurance has been given the first Party may close-out and liquidate all outstanding Bullion Obligations and Bullion Options. Such a provision might allow a Party grounds to protect itself against uncertainties which do not, by themselves, otherwise constitute an Event of Default. During the pendency of the request for adequate assurances, the Party requesting adequate assurances may suspend its obligations under the IBMA. Such a provision is sometimes seen in agreements subject to US law, but it is not considered good market practice in the London market.

Where such a provision has been included, senior management are encouraged to review the desirability of making such a request and suspending payments, particularly where unsubstantiated rumour might be involved, and will wish to place particular weight on the potential effect on the counterparty of such a request. The request for adequate assurances must be reasonable given all the facts and circumstances. In all cases, the determination of both the

reasonableness of the request and the adequacy of the assurances should depend on the facts of the situation.

8. Threshold Amount

Clause (h) (in the English law version) or Clause (i) (in the New York law version) of the definition of Event of Default provides that an Event of Default will occur if, by virtue of a default, event of default or other like event, Specified Indebtedness equal to, or in excess of, the Threshold Amount becomes, or becomes capable of being declared, due and payable before the Specified Indebtedness would otherwise have been due and payable. The Threshold Amount for each Party where the IBMA has been executed in the form of a Master Agreement should be specified in accordance with Part VI of the Schedule. Where the Parties are dealing on the basis of the IBMA in the form of Terms (and unless otherwise agreed in writing) the Threshold Amount will be assumed to be 3 percent of a Party's net worth (gross assets less gross liabilities), or if such amount cannot be determined by reference to published audited financial statements of that Party, 100,000 Pounds Sterling or Currency equivalent.

9. Value Date

Value Date is defined in the IBMA to mean:

- (i) in the case of a Bullion Trade, the Business Day agreed by the Parties for delivery of, and payment for, the Bullion to be purchased and sold;
- (ii) in the case of a Bullion Obligation, the Business Day upon which the obligation to deliver Bullion or Currency is to be performed;
- (iii) in the case of a Bullion Option which is an American Style Option, the second Business Day after the Exercise Date of such Bullion Option; and
- (iv) in the case of a Bullion Option which is a European Style Option, the second Business Day after the Expiration Date of such Bullion Option.

Note that Business Day means, in this context, a Local Banking Day for the applicable Designated Office of both Parties and a trading day in the relevant Bullion market if settlement of the relevant Bullion Transaction involves the delivery of Bullion (the relevant Bullion market being the London Bullion market where delivery is loco London). In the case of a Bullion Option to be settled at the In-the-Money Amount, Business Day simply means a Local Banking Day for the applicable Designated Office of both Parties and does not also have to be a trading day in the London Bullion market.

B. Scope of the IBMA; Single Agreement

The IBMA generally governs all Bullion Transactions (ie. Bullion Trades and Bullion Options) between two Designated Offices of the Parties entered into on or after the Effective Date. The Parties may, however, agree in accordance with Section 2.1 that specified Bullion Transactions then outstanding between any two Designated Offices of the Parties are to be subject to the provisions of the IBMA. Where the IBMA has been executed in the form of a Master Agreement, the Parties will do this by completing Part VII of the form of Schedule enclosed with the IBMA, in the case of the IBMA utilised in the form of Terms, the Parties should agree separately in writing. In both cases, upon such an agreement, all outstanding Bullion Transactions so specified shall be governed by the IBMA and the netting provisions of Sections 4, 6 and 8 of the IBMA will then apply to such transactions.

Section 2.2 provides that the IBMA, the Schedule (if any), the details relating to each Bullion Transaction governed by the IBMA, each Confirmation (insofar as the terms of such Bullion Transactions are recorded therein), and all amendments to such items together form the agreement between the Parties (the "Agreement"). Together these items constitute a single agreement between the Parties. The IBMA further states that the Parties enter into Bullion Transactions under the Agreement in reliance upon these facts. The intent of these provisions is to provide a legal basis for the close-out, liquidation and netting of all Bullion Transactions (as provided by Section 8) upon the occurrence of an Event of Default with respect to one of the Parties. These provisions are considered important as part of the provisions intended to avoid the possibility that a trustee, receiver or conservator of a Defaulting Party would be upheld by a court in affirming and enforcing some Bullion Transactions (eg. those as to which it is in-the-money) and rejecting and repudiating others (eg. those as to which it is out-of-the-money), the practice commonly known as "cherry-picking".

C. Confirmations

Confirmations are an important defence against error and fraud. Section 2.3 provides that Confirmations of a Bullion Transaction should be exchanged promptly, although failure to do so will not negate the obligations arising from a Bullion Transaction. Any use of telephone confirmations on the trade date should be followed on the same day by written Confirmations, exchanged through a means of immediate communication such a telex, SWIFT, or fax transmissions, or by various automated dealing and confirmation systems.

If there has been a misunderstanding between the Parties as to the terms of a Bullion Transaction this will usually be discovered upon the review of the Confirmations. The non-receipt of expected Confirmations should be questioned or objected to within the time period recognised by local market practice.

Confirmations should identify, in the case of any Bullion Transaction: (i) the Parties to it and their Designated Offices through which they are respectively acting, (ii) the quantity (in Ounces) and type of Bullion which is the subject of the relevant Bullion Transaction and which Party is or would be the purchaser thereof, (iii) the Contract Price (in the case of Bullion Trade) or the Strike Price (in the case of a Bullion Option), (iv) the Value Date, (v) the delivery location and form of delivery (but where the Parties do not expressly agree upon the delivery location and the form of delivery, the Bullion to be delivered shall be delivered loco London by being credited to an unallocated account of a member of the LBMA agreed by both Parties (or, failing agreement, nominated by the delivering Party) and (vi) any other term generally included in such a writing in accordance with the practice of the London Bullion market.

In the case of any Bullion Option, in addition to the above specified information, the Confirmation should also identify (i) which Party is the Seller and which is the Buyer, (ii) the Premium and the Premium Payment Date, (iii) the Expiration Date, (iv) the Expiration Time (but where the Parties do not expressly agree upon the Expiration Time, it shall be deemed to be 9.30 a.m. New York time on the Expiration Date), (v) whether the Bullion Option is a Call Option or a Put Option and (vi) whether the Bullion Option is an American Style Option or a European Style Option (but where the Parties do not expressly agree upon the style of Bullion Option, it shall be deemed a European Style Option).

The IBMA does not require Parties to send Confirmations for Bullion Transactions resulting from novation netting under Sections 4, 6.3(a) or 6.3(b) (see II D of this Guide).

Market participants are discouraged from including other terms and conditions in the Confirmation which would have the effect of amending the Agreement. You may wish to note, in connection with this, that Section 2.2 states that in the event of a conflict between a Confirmation and the other provisions of the Agreement, the Confirmation will govern with respect to that transaction. This gives the Parties the flexibility to agree to non-standard provisions for specific transactions (such as in the case of Asian style or exotic options) and still have the transactions governed by the more general provisions of the Agreement such as those relating to close-out. Note that this provision of Section 2.2 concerning conflicts between the Confirmation and the other provisions of the Agreement is intended primarily to apply to the economic terms of a transaction and not, in the absence of clear specific agreement between the Parties, to other provisions of the Agreement such as Events of Default or close-out.

Furthermore, brokers should be mindful of, and adhere to, market practice in dealings with counterparties (including the prompt issuance of Confirmations). In the New York market, the Parties to the Bullion Transaction should exchange Confirmations (including for spot Bullion Trades), notwithstanding the fact that the Parties have received Confirmations from a broker. Parties dealing in the London market, whether directly or through brokers, should note the requirements of the London Code of Conduct regarding confirmations.

No form of Confirmation for either Bullion Trades or Bullion Options has been suggested because market participants use a variety of forms of acceptable Confirmations.

D. Settlement and Netting

1. Settlement - Section 6.1

Section 6.1 of the IBMA anticipates that each Party will deliver to the other Party the amount of the Bullion or Currency to be delivered by it under each Bullion Transaction on the Value Date relating to it and that any amount of such Bullion will be delivered loco London by being credited to an unallocated account at a member of the LBMA agreed by both Parties (or, failing agreement, nominated by the delivering Party), unless the Parties agree to deliver at another location and/or in other form.

2. Net Settlement/Payment Netting - Section 6.2

Parties may provide for net settlement in accordance with the provisions of Section 6.2 if each Party has agreed Settlement Netting Offices in accordance with Part V of the Schedule. Under the concept of settlement netting, on each Value Date each Party will aggregate the amounts of a type of Bullion or Currency (ie. Gold with Gold, Silver with Silver and payments in one Currency with other payments in the same Currency) to be delivered by it on that date, and only the difference between these aggregate amounts will be delivered by the Party with the larger aggregate amount.

The amounts of Bullion or Currency deliverable on settlement following settlement netting will not differ from those that would be deliverable following novation netting where that applies (see II D 3 of this Guide). Novation netting, however, involves the legal netting and replacement of individual delivery obligations on the trade date (as distinct from the Value Date in the case of a settlement netting).

3. Novation Netting - Sections 4, 6.3(a) and 6.3(b)

The IBMA provides for a two-part regime for effecting novation netting:

(i) Unexercised Bullion Options - Section 4

Section 4 provides for the automatic discharge and termination of Call Options written by both Parties and Put Options written by both Parties provided that:

- (a) the Parties agree in writing that Section 4 shall apply (by so specifying in accordance with Part IX of the Schedule if the

Parties trade on the basis of IBMA executed in the form of a Master Agreement or by so specifying in any other form of writing if the Parties deal under the IBMA in the form of Terms);

- (b) the material terms (as set out in Section 4 in greater detail) of the relevant Bullion Options are the same;
- (c) Premiums with respect to such Bullion Options have been paid;
- (d) each such Bullion Option is being transacted through the same Designated Offices of both Buyer and Seller respectively; and
- (e) such Bullion Options have not been exercised.

The sole remaining rights and obligations of the Parties, with respect to Bullion Options discharged and netted under Section 4, are to exercise that portion, if any, of one of the Bullion Options that is not discharged and terminated and to settle such portion upon the exercise thereof. Section 4 effectively allows counterparties to close out existing Bullion Options or to reduce their exposure to each other by entering into offsetting Bullion Options.

(ii) Bullion Trades and Exercised Bullion Options - Sections 6.3(a) and 6.3(b)

Existing Bullion Obligations (ie. obligations of a Party to deliver Bullion or Currency pursuant to a Bullion Trade or a Bullion Option which has been exercised or deemed exercised pursuant to Section 5.3 (Automatic Exercise)) will be automatically cancelled and replaced in accordance with Section 6.3(a) by a new Bullion Obligation which is the portion of such existing Bullion Obligations that is not cancelled or replaced **provided that:**

- (a) the Parties agree in writing that Section 6.3(a) shall apply (by specifying Novation Netting Offices in accordance with Part IV of the Schedule if the Parties trade on the basis of the IBMA executed in the form of a Master Agreement or by so specifying in any other form of writing if the Parties deal under the IBMA in the form of Terms);
- (b) the relevant Bullion Obligations are entered into by the Parties through the same pair of Novation Netting Offices; and

- (c) the relevant Bullion Obligations have the same Value Date and are in the same type of Bullion or Currency.

The provisions of Section 6.3(b) are broadly similar except that novation netting by matched pair involves the same type of Bullion and Currency. Parties are also required to designate Matched Pair Novation Netting Offices (instead of Novation Netting Offices) in accordance with Part III of the Schedule or in any other form of writing, as appropriate.

Whether the Parties enter into the IBMA in the form of a Master Agreement or deal on the basis of the IBMA in the form of Terms, the Parties must, if they wish to apply the novation netting provisions of Sections 6.3(a) and/or 6.3(b), elect whether the provisions of Sections 6.3(a) and/or 6.3(b) will apply to all Bullion Obligations or only to Bullion Obligations with a Value Date more than two Business Days after the day on which the Parties enter into such Bullion Obligation. This provision reflects the practice in the Bullion market that, although spot and forward Bullion Trades and exercised Bullion Options are similar agreements which create obligations to exchange Bullion or Currency on a Value Date, market participants classify these transactions according to their maturities. A spot Bullion Trade is generally one whose Value Date is two Business Days after the trade date of the Bullion Trade. Similarly, an exercised Bullion Option is generally settled two Business Days after the Exercise Date (in the case of an American Style Option) or the Expiration Date (in the case of a European Style Option). For operational or other reasons, market participants may not wish such transactions to be subject to novation netting. For all other purposes of the IBMA, including the close-out provisions, spot Bullion Trades will be dealt with on the same terms as forward Bullion Trades.

As noted under the discussion of Confirmations (II C of this Guide), where Bullion Obligations arise pursuant to the novation netting provisions contained in the IBMA, no exchange of netting Confirmations is required.

Net Settlement/payment netting and/or novation netting will be suspended upon the occurrence of a Close-Out Date or if any involuntary case or other proceeding described in clause (c) of the definition of Event of Default has occurred without being dismissed (within 5 days) in relation to either Party.

E. Representations, Warranties and Covenants

The representations and warranties contained in Section 7 are made by each Party on each occasion on which the Parties enter into a Bullion Transaction.

Under Section 7.1(c), each Party represents, amongst other things, that the Agreement and each Bullion Transaction governed by the Agreement do not violate any laws to which the Party is subject. Such representation would include, for example, a representation that the Agreement and the Bullion Transactions are permissible for the Party under any applicable commodities law, such as the U.S. Commodity Exchange Act.

An important representation is made pursuant to Section 7.1(e), where each Party warrants to the other that it acts only as principal in entering into each Bullion Transaction. This representation could not be made by a fund manager or other person acting as an agent for a principal.

Where a representation or warranty is shown to have been materially false or misleading then, after the applicable grace period has elapsed, the other Party may, by notice, designate an Event of Default pursuant to clause (f)(i) of the definition of Event of Default, close-out and liquidate all outstanding Currency Obligations.

Under Section 7.2, each Party covenants to the other that it will do all that is necessary to ensure that it has the relevant authority to be able to perform its obligations under the Agreement and that it will notify the other Party of the occurrence of an Event of Default in respect of itself or any Credit Support Provider or any event which with the giving of notice or the passage of time or both would constitute an Event of Default with respect to itself or its Credit Support Provider.

F. Close-Out and Liquidation

The provisions of Section 8 should be read carefully and understood as they set forth the rights and obligations of the Parties upon the occurrence of an Event of Default with respect to either of them. (In addition, the close-out and liquidation procedures set forth in Sections 8.1, 8.2 and 8.4 will also be followed in relation to the affected transaction in the event that it becomes illegal or impossible for a Party to perform its obligations under a Bullion Transaction (see Section 9 of the IBMA).)

Section 8.1 sets out the steps which a Non-Defaulting Party must take in closing out and liquidating Bullion Obligations (including Bullion Obligations arising from the exercise or deemed exercise of Bullion Options) on the one hand (under paragraph (a)) and Bullion Options which have neither been exercised nor deemed exercised on the other (under paragraph (b)). In each case, the Non-Defaulting Party is required to close-out and liquidate all outstanding Bullion Obligations or all unexercised Bullion Options, as the case may be.

Under the IBMA Terms, in the case of certain specified Events of Default relating to the insolvency of the Defaulting Party, the close-out and liquidation will be automatic with respect to all outstanding Bullion Obligations and Bullion Options.

Section 8.1 provides for the calculation and aggregation of market damages for each Party for each Bullion Obligation or Bullion Option closed-out and liquidated. The Non-Defaulting Party should endeavour to close-out and liquidate all outstanding Bullion Obligations and all Bullion Options on a single day. However, if this is impracticable, the close-out and liquidation should be completed as soon as possible. The determination of market damages for each Party in each instance must be made in good faith, including the use of market rates.

In the case of Bullion Obligations (including Bullion Obligations arising from the exercise or deemed exercise of Bullion Options), close-out and liquidation is to be effected by calculating the Closing Gain and Closing Loss on each transaction and converting the resulting amounts to the Non-Defaulting Party's Base Currency (where different). Thereafter, all Closing Gains and Closing Losses payable to the Defaulting Party and vice versa are summed by Value Date and adjusted to present value by discounting, or, in the case of overdue obligations, adding interest. All the Value Date amounts (with interest or discount as applicable) are then aggregated to produce a single figure. The net figure becomes the amount (in respect of Bullion Obligations) to be paid (if negative) by the Non-Defaulting Party to the Defaulting Party or to be paid (if positive) by the Defaulting Party to the Non-Defaulting Party.

In the case of Bullion Options which have not been exercised or deemed exercised, close-out and liquidation is to be effected (broadly) by:

- (i) calculating for each Party the sum of current market premiums (in respect of Bullion Options purchased), unpaid premiums together with any interest thereon (in respect of Bullion Options sold), and (if such Party is the Non-Defaulting Party) any costs or expenses incurred by it in covering its obligations (including a delta hedge) with respect to such liquidated Bullion Options;
- (ii) converting the sum arrived at in (i) above into the Non-Defaulting Party's Base Currency (where different); and
- (iii) netting the sums calculated in respect of each Party to arrive at a single liquidated amount.

Under Section 8.3, the Non-Defaulting Party may close-out and liquidate in accordance with the provisions of Section 8.1 any other Bullion Transactions not governed by the IBMA then outstanding between the Parties (for example, Bullion Transactions booked at offices that are not Designated Offices or certain exotic or Asian style options which are not otherwise covered by the IBMA).

Section 8.4 provides that the net amount of market damages payable pursuant to Sections 8.1 and 8.3 shall be paid by one Party to the other by the close of business on the Business Day following the close-out and liquidation of the Bullion Obligations and Bullion Options. In some countries, a judgment can be rendered only in the Currency

of that country. Therefore, Section 8.4 provides that, if required by applicable law, the net amount payable by one Party to the other will be converted into a Currency other than the Non-Defaulting Party's Base Currency. Any costs of such conversion will be borne by the Defaulting Party. If this amount is not paid when due, Section 8.4 provides for the payment of interest at the applicable interbank rate plus 1% per annum for each day for which the amount remains unpaid or at such other rate as may be prescribed by applicable law.

Section 8.5 establishes the right of one Party to suspend performance of its obligations under the IBMA if the counterparty is currently in default in the payment or performance of any of its obligations under the IBMA and the Non-Defaulting Party has not exercised its rights under Section 8.1. The provision does not provide for the payment of interest for the period during which performance of obligations is suspended by the Non-Defaulting Party.

Section 8.8 provides that the rights of the Non-Defaulting Party under Section 8 of the IBMA are in addition to any other rights which the Non-Defaulting Party may have by way of agreement, operation of law or otherwise, including, but not limited to, a general right of set-off. Parties may wish to apply their rights of set off under this Section 8.8, for example, to obligations in respect of Bullion loans, leases or consignments.

G. Illegality, Impossibility and Force Majeure

Section 9 provides that, if either Party is unable to perform, or is hindered or delayed in performing, its obligations in respect of any Bullion Obligation or Bullion Option due to force majeure or act of State, or if it otherwise becomes illegal or impossible for either Party to make or receive any payment in respect of a Bullion Obligation or Bullion Option, then either Party may, after notice of the occurrence of such event, close-out and liquidate affected Bullion Obligations or Bullion Options. It is worth noting that this Section is intended to apply where a Party is prevented from performing because, for example, sanctions have been imposed by one country on another or a state of war has been declared.

Although such events do not constitute Events of Default, the close-out and liquidation procedures to be followed are those provided for in Section 8. Either of the Parties may initiate such action upon notice to the other, although (to emphasise the point) only in relation to the affected Bullion Obligations or Bullion Options. It is important that the Parties have the ability to liquidate positions promptly in order to limit their exposure to Bullion Obligations or Bullion Options which one of the Parties may be unable to perform. If Section 9 is applicable to the obligations of both Parties, the Parties should mutually agree upon the close-out and liquidation of the affected Bullion Obligations and Bullion Options.

H. Parties to Rely on Their Own Expertise

Section 10 establishes that each of the Parties has relied on its own expertise and judgement in entering into each Bullion Transaction and as to all other subsequent actions or matters related thereto. The intent of this provision is to protect each of the Parties from a claim or action by the other Party where it is alleged that the first Party exercised such influence or control that it should be liable for losses incurred or that the first Party sold the other an unsuitable product.

I. Miscellaneous

1. Currency Indemnity

In part, the intent of Section 11.1 is to ensure that any payment resulting from close-out and liquidation of Bullion Obligations and Bullion Options arising either as a result of an Event of Default, or illegality, act of State, impossibility or force majeure, and pursuant to the operation of Sections 8 or 9, is made in the receiving Party's Base Currency (ie. the Non-Defaulting Party's Base Currency) and is paid in the full amount in such Base Currency. If payment is made in some other Currency, such payment is deemed to discharge the obligation of the payer only to the extent that the payee could purchase the full amount of the Base Currency (or the Non-Defaulting Party's Base Currency) with the amount of the Currency received on the Business Day following the date of receipt. If the amount of the Currency received is insufficient to purchase the full amount of the Base Currency, the payer indemnifies the payee against any loss and, in any event, the payer indemnifies the payee against any costs incurred in purchasing the Base Currency. Parties should, in appropriate cases, check with local counsel the enforceability of such a provision under local law.

2. Telephonic Recording

Pursuant to Section 11.3, the Parties agree to the tape recording of any telephone conversations between them and agree that such tape recordings can be submitted in evidence in any proceeding relating to the IBMA. It is standard market practice that the conversations between traders and between traders and brokers are recorded. This practice is encouraged, as such recordings can substantially reduce the number of disputes that arise between market participants and the time which it takes to resolve such disputes.

3. Notices

Section 11.5 provides that a Party executing the IBMA in the form of a Master Agreement should specify in accordance with Part VII of the Schedule (and a Party dealing under the IBMA in the form of Terms should notify in writing) its address, telex number, facsimile or telephone number and the appropriate individual or department for the giving of notices under the IBMA. Changes to

such information should be given by notices made pursuant to the provisions of Section 11.5.

4. FDICIA Representations

The Parties may agree to include a representation (set out in Part XVI of the Schedule to the New York law version of the IBMA) that they are financial institutions and express their agreement that the IBMA constitutes a netting contract subject to the provisions of the netting provisions of Title IV of the United States Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), which gives increased certainty as to the enforceability of netting contracts between financial institutions. In order to benefit from the provisions of FDICIA, a netting contract, such as the IBMA, must be governed by the law of a United States jurisdiction and the agreement must accordingly be executed in the form of a Master Agreement. Under FDICIA, the term "financial institution" includes depository institutions (insured banks, thrifts and credit unions; US branches and agencies of non-US banking institutions; and Edge Act and agreement corporations), brokers or dealers in securities licensed as such under US federal or state law, futures commission merchants licensed under US federal law to engage in the business of selling futures and options in commodities, and other entities specified as financial institutions by the Federal Reserve. The Federal Reserve has issued Regulation EE, which includes certain other institutions, including institutions organised under non-US law, under the definition of "financial institution" for the purposes of the FDICIA netting provisions, provided that certain qualitative and quantitative tests are met. Part XVI of the Schedule to the New York law version of the IBMA gives Parties the option of making representations that such tests are satisfied if such is the case.

5. Value Added Tax ("VAT")

VAT is (broadly) a European turnover tax chargeable in respect of supplies of goods and services. The person making a VATable supply is usually the person responsible for charging the VAT and accounting to the relevant fiscal authority for the VAT chargeable, and the person receiving such a VATable supply may (depending, generally, on the nature of his business) be able to recover the whole or part of such VAT.

UK VAT is chargeable in respect of dealings in Bullion at either the standard rate (of 17.5%) or the zero rate. Dealings on the London Bullion market are in the main zero-rated. Nevertheless, provisions have been incorporated in the IBMA (see Section 11.12) to cover those circumstances where VAT is chargeable at the standard rate. Such provisions place the burden of the tax on the recipient of the relevant supply (which is usual, given that such a person may be able to recover the whole or part of any VAT paid).

Briefly, the provisions deal with the following main situations:

- (i) where VAT is chargeable and accountable by the party which is, for example, selling Bullion pursuant to the IBMA;
- (ii) where VAT is chargeable and accountable by an LBMA member (for example, where Bullion belonging to one party, not being an LBMA member, leaves the effective physical control of an LBMA member for delivery in the UK to the other party, also a non-LBMA member); and
- (iii) where VAT is accountable by the party which is, for example, purchasing and taking delivery of gold in the UK pursuant to the IBMA (there is a special regime in the UK relating to supplies of gold which in certain circumstances places the responsibility for accounting to Customs & Excise for the VAT chargeable on the recipient of the supply, as opposed to the supplier, which is more usually the person who is liable to account of the tax).

6. Withholding Tax

The Parties may elect in Part XIV of the Schedule to include provisions to cover any withholding tax which may be chargeable in respect of payments made under the IBMA. From the UK perspective under present law, such provisions will only really be relevant in the case of payments of interest (such as default interest) under the IBMA.

Briefly, such provisions provide for:

- (i) the party which is required to withhold tax to gross up the payment concerned;
- (ii) the party receiving a payment on which withholding tax is chargeable to use reasonable endeavours to apply for double tax treaty relief (where available); and
- (iii) the party receiving a grossed-up payment to pass back to the party which grossed up any tax credit, etc which the former obtains as a consequence of the withholding.

J. Law and Jurisdiction

It is expected that counterparties, and especially those physically located in either the UK or the US, will choose either English law or New York law to govern the IBMA. It is also expected that Parties will submit to the jurisdiction of either the courts in England or in the State of New York, consistent with their choice of governing law. However,

as such submission to jurisdiction is expressed to be non-exclusive, Parties are intended to be free to bring actions, suits or proceedings in other jurisdictions, subject to applicable procedural requirements of the relevant jurisdiction. Where Parties deal on the basis of the IBMA in the form of Terms, English law will be assumed to be the governing law, unless otherwise agreed.

In the New York market, in the case of any dispute relating to Bullion Transactions governed by the IBMA, the Parties are encouraged to mitigate their respective losses and to act in good faith promptly to identify and resolve the dispute. It is customary in the New York market for disputes to be resolved by allocating between the Parties any losses arising out of such disputes by assessment of the relative fault of each Party in contributing to such losses. Examples of situations where a Party contributed to the loss might include a failure of a Party to verify the terms of the Confirmation or the failure of a Party in a Confirmation to state the correct terms of the Bullion Transaction, which failure might be compounded by the failure of the other Party to recognise the mistake of the first Party.

Pursuant to Section 12.3, each Party explicitly waives any sovereign immunity it may be entitled to assert in any legal proceeding arising out of the IBMA.

K. Schedule

Where the IBMA is executed in the form of a Master Agreement, the Parties should complete a Schedule in the form included with the IBMA. The Schedule contains, amongst other things, particulars concerning each Party, such as the address, telephone, telex and facsimile number, and contact person for notices and other communications, and each Party's Base Currency. In Parts II-V of the Schedule, the Parties must designate their branches or offices whose transactions and dealings are intended to be covered by the IBMA as Designated Offices, Settlement Netting Offices, Novation Netting Offices and Matched Pair Novation Netting Offices, respectively.

Part XIII of the Schedule gives a Party the option of appointing an agent for service of process. Any Party relying on such an appointment by the other Party should verify to its satisfaction that the appointment has been accepted by the agent so designated.

III. BULLION OPTIONS - RELEVANT PROVISIONS AND MARKET PRACTICE

The IBMA contains provisions which are particularly relevant to Bullion Options. These are outlined as follows:

Section 3	Premiums
Section 4	Discharge and Termination
Section 5	Exercise and Settlement
Section 6.3	Novation Netting
Section 6.4(d)	Netting of Premiums
Section 8.1(b)	Close-Out

Section 4 (Discharge and Termination), Section 6.3 (Novation Netting) and Section 8.1(b) (Close-Out) have already been dealt with in this Guide (see II D and II F respectively).

A. Premiums - Sections 3 and 6.4(d)

Section 3.1 provides that, unless the Parties otherwise agree, the Premium shall be paid in the Option Currency (ie. the Currency in which the Premium and the Strike Price are expressed) no later than the second Business Day after the day on which the relevant Bullion Option is granted. (Note that, in this context, Business Day means a day which is a Local Banking Day for the applicable Designated Offices of both Parties).

Market practice is that Bullion Options are quoted in terms of specific monetary amounts of Premium (for example, US dollars and cents per Ounce). The foreign exchange market norm of quoting on a volatility basis is not general practice.

Section 3.2 provides for alternative courses of action in the event that a Premium is not received on the Premium Payment Date. As Premiums are sometimes paid late (due primarily to operational problems or mistakes), under appropriate circumstances, a Seller should generally be willing to accept a late payment, and it is common practice in the market for a Seller to do so. However, where the failure to pay the Premium has not been remedied after a short period of time or is credit-related, the Seller may choose either to void the Bullion Option or to take the more drastic step of declaring an Event of Default. In the case of either a late payment or the decision to treat the relevant Bullion Option as void, the Seller is entitled to recover its out-of-pocket costs and actual damages incurred, specifically including interest on the amount of any Premium (which would be calculated in the same manner as any other late payment in the inter dealer Bullion market) and any costs or expenses in covering its obligations (including, without limitation, a delta hedge). Where the Seller chooses to declare an Event of Default, such amounts are recoverable under the provisions of Section 8.

Section 6.4(d) provides for the netting of Premiums if (a) the Parties so agree in writing (by specifying in Part X of the Schedule if the IBMA is executed by the Parties in the form of a Master Agreement or by specifying in any other form of writing if the Parties

are dealing on the basis of IBMA in the form of Terms); (b) the Premiums are payable on the same Premium Payment Date, in the same Currency and between the same Designated Offices of the Parties.

B. Exercise and Settlement - Section 5

1. Notice of Exercise

A Bullion Option may be exercised by delivery of a Notice of Exercise in accordance with Section 5.1.

In the case of an American Style Option, if a Notice of Exercise is delivered on any Business Day prior to the Expiration Date, the cut-off time is 2.00 p.m. (Seller's local time) on such Business Day. Any Notice of Exercise received after the cut-off time will be effective only as of the opening of business of the Seller on the first Business Day subsequent to its receipt. (Subject to III B 2(ii) of this Guide, Business Day means, in this context, a day which is a Local Banking Day for the applicable Designated Office of the Seller). If, on the other hand, a Notice of Exercise is delivered on the Expiration Date, the cut-off time is the Expiration Time (i.e. 9.30 a.m. (New York time) on the Expiration Date, which is the market practice, unless the Parties otherwise agree).

In the case of a European Style Option, the cut-off time is also 9.30 a.m. (New York time) on the Expiration Date, unless the Parties otherwise agree.

2. Quotation of Expiration Date - Market Practice

Generally there are two methods for quotation of Expiration Dates - quotation of Expiration Dates by calendar month and quotation of specific dates. (Note that, as in the context of delivery of a Notice of Exercise, subject to III B 2(ii) of this Guide, Business Day is defined, for the purpose of the definition of Expiration Date, as a Local Banking Day for the applicable Designated Office of the Seller.)

(i) Expiration Dates by Calendar Month

Currently, it is market practice to quote for expiration in a particular month without reference to the actual date. This convention gives rise to Standard Dates which are two Business Days before the last Business Day of the month.

(ii) Expiration Dates for Specific Dates

For Expiration Dates other than Standard Dates, Parties must take special care to agree upon a date which is a Business Day. Although the IBMA does not provide that the Expiration Date must be a Business Day, this

will customarily be the case. However, some dealers occasionally sell Bullion Options with Expiration Dates that are not Business Days. Similarly, some dealers will accept Notice of Exercise on a day which is not a Business Day. If the Expiration Date is not a Business Day or if the Seller is not willing to accept Notice of Exercise at its Designated Office on a day which is not a Business Day, it is incumbent upon the Seller to make other arrangements (such as designating a different office or an agent for receipt) to enable the Buyer to exercise the Bullion Option. In these circumstances, the Seller should notify the Buyer of such arrangements as soon as possible and reconfirm them to the Buyer prior to the Expiration Date.

3. No Partial Exercise

Section 5.2 provides that, unless otherwise agreed by the Parties, a Bullion Option may be exercised only in whole and not in part.

4. Automatic Exercise

Section 5.3 provides for automatic exercise of Bullion Options which are at least 1% in-the-money at the Expiration Time and which have not been exercised by delivery of a Notice of Exercise. The provision is **not** meant to be a substitute for the delivery of a Notice of Exercise by the Buyer, which is good market practice and is encouraged. For this reason, (a) a Bullion Option will only be deemed exercised under Section 5.3 if at the Expiration Time, it has an In-the-Money Amount that equals or exceeds the product of 101% (or such other percentage as may have been agreed by the Parties) of the Strike Price and the number of Ounces of Bullion which are the subject of such Bullion Option and (b) the Seller determines the Spot Price that is used to calculate the In-the-Money Amount.

5. In-the-Money Amount Settlement

Section 5.5 provides that if the Buyer so elects in its Notice of Exercise, a Bullion Option shall not be settled by way of physical delivery of the Bullion but will instead be net cash settled by a payment to the Buyer of the Bullion Option's In-the-Money Amount (or intrinsic value). The intrinsic value of a Bullion Option will be equal to the difference between the Spot Price and the Strike Price multiplied by the number of Ounces of the Bullion to be delivered upon exercise of the Bullion Option. An example of the calculation of the intrinsic value of a US Dollar Gold Call is as follows:

US Dollar Gold Call : Spot Price (\$395.00) - Strike Price (\$370.00)

Amount traded : 25,000 Ounces

In-the-Money Amount : $\$25 \times 25,000 = \$625,000$

The level of the Spot Price at the time of exercise is, therefore, crucial to the ultimate value of the net cash settlement. Unless the Buyer specifies otherwise (which it is entitled to do (see Section 5.5)), the Spot Price that is used for such purposes is generally determined in good faith by the Seller. The Buyer should, therefore, ascertain **at the outset** how the Seller will determine the Spot Price.

IV. PRINCIPAL DIFFERENCES BETWEEN THE ENGLISH LAW AND NEW YORK LAW VERSIONS OF THE IBMA

1. The English law version adopts a Terms approach whereas the New York law version requires market participants to execute the IBMA in the form of a Master Agreement (see I of this Guide).
2. Where the English law version is being used in the form of Terms, Pounds Sterling is presumed to be the Base Currency unless Parties agree otherwise; where the New York law version is being used, the Base Currency is the Currency specified by each Party as such in accordance with Part I of the Schedule (see II A 3 of this Guide).
3. The New York law version includes an additional Event of Default (Clause (e) in the definition of Event of Default) where one Party becomes unable to pay its debts as they fall due. This has not been included in the English law version as this was felt to be sufficiently covered by other Events of Default.
4. The English law version provides that unless the Parties otherwise agree in writing, in the case of an Event of Default specified in Clause (b) or (c) of the definition of Event of Default (events relating to the insolvency of the Defaulting Party), the close-out and liquidation will be automatic with respect to all outstanding Bullion Transactions; under the New York law version, however, such automatic close-out and liquidation will only apply if the Parties so specify in the Schedule.
5. The New York law version includes additional provisions providing, for example, where one of the Parties to the IBMA is domiciled in the US, the Parties intend that the IBMA shall be a Master Agreement as defined in 11 U.S.C. Section 101(55)(C) and 12 U.S.C. Section 1821(e)(8)(D)(vii), that the terms of IBMA can only be amended, varied or waived by an instrument in writing and waiver of jury trial in any Proceedings.
6. The New York law version also provides that Parties may include in their Master Agreement FDICIA representations by so specifying in the Schedule (see II I 4 of this Guide).
7. The New York law version further makes provisions to enable Parties to extend the scope of the IBMA to include metals other than gold or silver if they so wish (see II A 1 of this Guide).

JMSS0354.18

**The 1994 International Bullion
Master Agreement Terms
(English Law Version)**

HEADING SHEET

Parties wishing to record their entry into a Master Agreement on these Master Agreement Terms in hard copy may utilise this heading sheet to create their Master Agreement.

If this heading sheet is utilised, the signing sheet, to be found at the end of the Master Agreement Terms on page 26, should also be completed.

INTERNATIONAL BULLION MASTER AGREEMENT
for Spot and Forward Bullion Trades and Bullion Options

MASTER AGREEMENT dated as of ^a 19 by and between

^b, ^{a^c}

of ^d ("Party A")

and ^c, ^{a^c}

of ^d ("Party B")

^a *insert date of month and year*

^b *insert name of party*

^c *insert type of body (e.g. company)*

^d *insert place of establishment*

^e *insert name of counterparty*

INTERNATIONAL BULLION MASTER AGREEMENT TERMS
for Spot and Forward Bullion Trades and Bullion Options

CONTENTS

SECTION	PAGE
1. DEFINITIONS	1
2. BULLION TRANSACTIONS	11
3. BULLION OPTIONS - PREMIUMS	11
4. BULLION OPTIONS - DISCHARGE AND TERMINATION	12
5. BULLION OPTIONS - EXERCISE AND SETTLEMENT	13
6. BULLION TRANSACTIONS - SETTLEMENT AND NETTING	14
7. REPRESENTATIONS, WARRANTIES AND COVENANTS	16
8. CLOSE-OUT AND LIQUIDATION	17
9. ILLEGALITY, IMPOSSIBILITY AND FORCE MAJEURE	21
10. PARTIES TO RELY ON THEIR OWN EXPERTISE	22
11. MISCELLANEOUS	22
12. LAW AND JURISDICTION	25
SCHEDULE - Parts I - XV	27

INTERNATIONAL BULLION MASTER AGREEMENT TERMS
for Spot and Forward Bullion Trades and Bullion Options

SECTION 1. **DEFINITIONS**

Unless otherwise required by the context, the following terms shall have the following meanings:

- "Agreement"** has the meaning given to it in Section 2.2 and, unless otherwise agreed in writing by the Parties, the Agreement shall arise between the Parties where, and as soon as, these Terms are applied to a Bullion Transaction by virtue of Section 2.1;
- "American Style Option"** means a Bullion Option which may be exercised on any Business Day up to and including the Expiration Time;
- "Base Currency"** means, as to a Party, the Currency agreed as such in relation to it by agreement in writing between the Parties or, failing any such agreement in writing, Pounds Sterling;
- "Base Currency Rate"** means, as to a Party and any amount, the cost (expressed as a percentage rate per annum) at which that Party would be able to fund that amount from such sources and for such periods as it may in its reasonable discretion from time to time decide, as determined in good faith by it;
- "Bullion"** means Gold or Silver, as the case may be;
- "Bullion Obligation"** means any obligation of a Party to deliver Bullion or Currency pursuant to a Bullion Trade governed by the Agreement (in the case of Currency being the Contract Price multiplied by the number of Ounces which are the subject of such Bullion Trade) or a Bullion Option governed by the Agreement which has been exercised or deemed exercised (in the case of Currency being the Strike Price multiplied by the number of Ounces which are the subject of such Bullion Option) or pursuant to the application of Sections 6.3(a) or 6.3(b);
- "Bullion Option"** means a transaction between the Parties under which the Seller agrees with the Buyer that the Buyer shall be entitled (but not obliged, except upon exercise) to purchase from or, as the case may be, sell to the Seller a specified number of Ounces of Bullion at the Strike Price, and in respect of which transaction the Parties have agreed (whether orally, electronically or in writing): (a) the quantity (in Ounces) and type of Bullion to be purchased and sold upon exercise of such Bullion Option, (b) which Party is the Seller and which is the Buyer, (c) the Premium, (d) the Strike Price, (e) the Expiration Date,

(f) the Expiration Time (provided that where the Parties do not expressly agree upon the Expiration Time, it shall be deemed to be 9.30 a.m. New York time on the Expiration Date), (g) whether the Bullion Option is a Call Option or a Put Option, (h) whether it is an American Style Option or a European Style Option (provided that where the Parties do not expressly agree upon the style of Bullion Option, it shall be deemed a European Style Option) and (i) the delivery location and form of delivery (provided that where the Parties do not expressly agree upon the delivery location and the form of delivery, the Bullion to be delivered shall be delivered in accordance with Section 6.1);

"Bullion Trade"

means any transaction (other than a Bullion Option, whether or not exercised) between the Parties for the purchase by one Party of an agreed quantity of Bullion against the payment by such Party to the other Party of an agreed amount of Currency, both such amounts being deliverable on the same Value Date, and in respect of which transaction the Parties have agreed (whether orally, electronically or in writing): (a) the quantity (in Ounces) and type of Bullion to be purchased, (b) which Party will purchase the Bullion, (c) the Contract Price, (d) the Value Date and (e) the delivery location and form of delivery (provided that where the Parties do not expressly agree upon the delivery location and the form of delivery, the Bullion to be delivered shall be delivered in accordance with Section 6.1);

"Bullion Transaction" means any Bullion Trade or Bullion Option;

"Business Day"

means, for the purposes of:

- (a) Section 3.2, a day which is a Local Banking Day for the applicable Designated Office of the Buyer;
- (b) Section 5.1 and the definition of American Style Option, Exercise Date and Expiration Date, a day which is a Local Banking Day for the applicable Designated Office of the Seller;
- (c) in respect of (i) the definition of Settlement Date when used in respect of settlement of any Bullion Option by delivery of Bullion in accordance with Section 5.4, or (ii) in respect of settlement of any Bullion Obligation by delivery of Bullion, a day which is a Local Banking Day for the applicable Designated Office of both Parties and a trading day in the Bullion market in the delivery location; and
- (d) any other provision of the Agreement, a day which is a Local Banking Day for the applicable Designated Office of both Parties

Provided, however, that neither Saturday nor Sunday shall be considered a Business Day hereunder for any purpose;

- "Buyer"** means the owner of a Bullion Option;
- "Call Option"** means a Bullion Option entitling, but not obliging (except upon exercise), the Buyer to purchase from the Seller at the Strike Price a specified number of Ounces of Bullion;
- "Close-Out Amount"** has the meaning given to it in Section 8.1(a)(ii);
- "Close-Out Date"** means a day on which, pursuant to the provisions of Section 8.1, the Non-Defaulting Party closes out and liquidates Bullion Obligations and Bullion Options governed by the Agreement or such a close-out and liquidation occurs automatically;
- "Closing Gain"** means, as to the Non-Defaulting Party, the difference described as such in relation to a particular Value Date under the provisions of Section 8.1(a);
- "Closing Loss"** means, as to the Non-Defaulting Party, the difference described as such in relation to a particular Value Date under the provisions of Section 8.1(a);
- "Confirmation"** means a writing (including telex, facsimile or other electronic means from which it is possible to produce a hard copy) which shall specify:
- (a) in the case of any Bullion Transaction, (i) the Parties to it and the Designated Offices through which they are respectively acting, (ii) the quantity (in Ounces) and type of Bullion the subject of the relevant Bullion Transaction and which Party is or would be the purchaser thereof, (iii) the Contract Price (in the case of a Bullion Trade) or the Strike Price (in the case of a Bullion Option), (iv) the Value Date, (v) the delivery location and form of delivery (provided that where the Parties do not expressly agree upon the delivery location and the form of delivery, the Bullion to be delivered shall be delivered in accordance with Section 6.1);
 - (b) in the case of any Bullion Option, in addition to the matters specified in (a) above, (i) which Party is the Seller and which is the Buyer, (ii) the Premium and the Premium Payment Date, (iii) the Expiration Date, (iv) the Expiration Time (provided that where the Parties do not expressly agree upon the Expiration Time, it shall be deemed to be 9.30 a.m. New York time on the

Expiration Date), (v) whether the Bullion Option is a Call Option or a Put Option and (vi) whether the Bullion Option is an American Style Option or a European Style Option (provided that where the Parties do not expressly agree upon the style of Bullion Option, it shall be deemed a European Style Option);

- "Contract Price"* means, in respect of a Bullion Trade, the price per Ounce, expressed in a Currency, agreed as such by the Parties, being the price at which the purchaser under that Bullion Trade shall purchase and the seller under that Bullion Trade shall sell the Bullion which is the subject of such Bullion Trade;
- "Credit Support Document"* means, as to a Party (the "first Party"), a guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party ("*Credit Support Provider*"), or of the first Party, in favour of the other Party supporting any obligations of the first Party under the Agreement;
- "Credit Support Provider"* has the meaning given to it in the definition of Credit Support Document;
- "Currency"* means money denominated in the lawful currency of any country or the Ecu;
- "Custodian"* has the meaning given to it in the definition of Event of Default;
- "Defaulting Party"* has the meaning given to it in the definition of Event of Default;
- "Designated Office(s)"* means, as to a Party, the office(s) agreed between the Parties to be its Designated Office(s) for the purposes of the Agreement, but in the absence of any such agreement, whenever on or after the Effective Date the Parties enter into a Bullion Transaction in which at least one of them is acting through an office in the United Kingdom, then (unless at the time there subsists a netting agreement between the two offices through which the Parties are respectively acting) each of the offices through which the Parties are respectively acting in relation to that Bullion Transaction shall thereby become a Designated Office for the purposes of these Terms (and for these purposes, a "netting agreement" means an agreement applicable to Bullion Transactions containing provisions having a broadly similar effect to the effect of Sections 4 and 6, and/or 8.1 of these Terms);
- "Effective Date"* means the date agreed in writing between the Parties to be the Effective Date for the purposes of the Agreement or, in the absence of any such written agreement, the date designated as such for the purposes of these Terms by The London Bullion Market Association;

"European Style Option"

means a Bullion Option which may only be exercised on the Expiration Date up to and including the Expiration Time, unless otherwise agreed;

"Event of Default"

means the occurrence of any of the following with respect to a Party (the *"Defaulting Party"*, the other Party being the *"Non-Defaulting Party"*):

- (a) the Defaulting Party shall default in any payment or delivery under the Agreement to the Non-Defaulting Party with respect to any sum or Bullion when due under any Bullion Obligation, any Bullion Option (including, but not limited to, any Premium payment) or pursuant to the Agreement and such failure shall continue for two (2) Business Days after written notice of non-payment or non-delivery has been given by the Non-Defaulting Party to the Defaulting Party;
- (b) the Defaulting Party shall commence a voluntary case or other proceeding seeking liquidation, reorganisation or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency or similar law, or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each, a *"Custodian"*) of it or any substantial part of its assets; or shall take any corporate action to authorise any of the foregoing;
- (c) an involuntary case or other proceeding shall be commenced against the Defaulting Party seeking liquidation, reorganisation or other similar relief with respect to it or its debts under any bankruptcy, insolvency or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets, and such involuntary case or other proceeding shall not have been dismissed within five (5) days of its institution or presentation;
- (d) the Defaulting Party is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to such Party;
- (e) the Defaulting Party or any Custodian acting on behalf of the Defaulting Party shall disaffirm, disclaim or repudiate any Bullion Obligation or Bullion Option;
- (f) (i) any representation or warranty made or deemed made by the Defaulting Party pursuant to the Agreement or pursuant to any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1)

Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof; or

- (ii) the Defaulting Party fails to perform or comply with any obligation assumed by it under the Agreement (other than an obligation to make payment or delivery of the kind referred to in clause (a) of this definition of Event of Default) and such failure is continuing thirty (30) days after the Non-Defaulting Party has given the Defaulting Party written notice thereof;
- (g) the Defaulting Party consolidates or amalgamates with or merges into or transfers all or substantially all its assets to another entity and (i) the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of the Defaulting Party prior to such action or (ii) at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Defaulting Party under the Agreement by operation of law or pursuant to an agreement satisfactory to the Non-Defaulting Party;
- (h) by reason of any default, or event of default or other similar condition or event, any Specified Indebtedness (being Specified Indebtedness of an amount which, when expressed in the Currency of the Threshold Amount, is in aggregate equal to or in excess of the Threshold Amount) of the Defaulting Party or any Credit Support Provider in relation to it: (i) is not paid on the due date therefor and remains unpaid after any applicable grace period has elapsed, or (ii) becomes, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such Specified Indebtedness before it would otherwise have been due and payable;
- (i) the Defaulting Party is in breach of or in default under any Specified Transaction and any applicable grace period has elapsed, and there occurs any liquidation or early termination of, or acceleration of obligations under that Specified Transaction or the Defaulting Party (or any Custodian on its behalf) disaffirms, disclaims or repudiates the whole or any part of a Specified Transaction; or
- (j) (i) any Credit Support Provider relating to the Defaulting Party or the Defaulting Party itself fails to comply with or perform any agreement or obligation to be complied with or

performed by it in accordance with the applicable Credit Support Document and such failure is continuing after any applicable grace period has elapsed;

- (ii) any Credit Support Document relating to the Defaulting Party expires or ceases to be in full force and effect prior to the satisfaction of all obligations of the Defaulting Party under the Agreement, unless otherwise agreed in writing by the Non-Defaulting Party;
- (iii) the Defaulting Party or any Credit Support Provider in relation to it (or, in either case, any Custodian acting on its behalf) disaffirms, disclaims or repudiates, in whole or in part, or challenges the validity of, any Credit Support Document;
- (iv) any representation or warranty made or deemed made by any Credit Support Provider in relation to the Defaulting Party pursuant to any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1) Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof; or
- (v) any event set out in (b) to (e) or (g) to (i) above occurs in respect of any Credit Support Provider in relation to the Defaulting Party;

"Exercise Date"

means, in relation to any Bullion Option, the Business Day on which a Notice of Exercise received by the applicable Designated Office of the Seller becomes effective pursuant to Section 5.1;

"Expiration Date"

means, in relation to any Bullion Option, the date agreed as such and as evidenced by a Confirmation therefor (which date shall be a Business Day) in relation to that Bullion Option **provided that** in the case of any Bullion Option quoted for a specific month in relation to which no Expiration Date is specifically agreed, the Expiration Date shall be the Standard Date in relation to that month;

"Expiration Time"

means 9.30 a.m. New York time on the Expiration Date, unless the Parties otherwise agree;

- "Gold"** means gold bars or unallocated gold complying with the rules of The London Bullion Market Association relating to good delivery and fineness from time to time in effect;
- "In-the-Money Amount"** means:
- (a) in the case of a Call Option, the excess of the Spot Price over the Strike Price, multiplied by the aggregate number of Ounces of Bullion to be purchased under that Call Option; and
 - (b) in the case of a Put Option, the excess of the Strike Price over the Spot Price, multiplied by the aggregate number of Ounces of Bullion to be sold under that Put Option;
- "Local Banking Day"** means
- (a) for any Currency, a day on which commercial banks generally effect deliveries of that Currency in accordance with the market practice of the relevant foreign exchange market; and
 - (b) for any Party, a day in the location of the applicable Designated Office of such Party on which commercial banks in that location are not authorised or required by law to close;
- "Matched Pair
Novation Netting
Offices"** means, in respect of a Party, its Designated Office(s) (if any) identified as such by agreement in writing between the Parties;
- "Non-Defaulting Party"** has the meaning given to it in the definition of Event of Default;
- "Notice of Exercise"** means telex, telephonic or other electronic notification providing assurance of receipt (excluding facsimile transmission), given by the Buyer prior to or at the Expiration Time of the exercise of a Bullion Option, which notification shall be irrevocable;
- "Novation Netting Office(s)"** means, in respect of a Party, its Designated Office(s) (if any) identified as such by agreement in writing between the Parties;
- "Option Currency"** means, in relation to a Bullion Option, unless otherwise agreed by the Parties, the Currency in which the Premium and the Strike Price are expressed;
- "Ounce"** means a fine troy ounce, in the case of Gold, or a troy ounce, in the case of Silver;

"Parties" means the parties to the Agreement and shall include their successors and permitted assigns (but without prejudice to the application of clause (g) of the definition of Event of Default); and the term "**Party**" shall mean whichever of the Parties is appropriate in the context in which such expression may be used;

"Premium" means, in respect of a Bullion Option, the purchase price of the Bullion Option as agreed upon by the Parties, and payable by the Buyer to the Seller thereof;

"Premium Payment Date" means, in respect of a Bullion Option, the date on which the Premium is due and payable, being the second Business Day after the day on which the Bullion Option is granted, unless otherwise agreed by the Parties;

"Proceedings" means any suit, action or other proceedings relating to the Agreement;

"Put Option" means a Bullion Option entitling, but not obliging (except upon exercise), the Buyer to sell to the Seller at the Strike Price a specified number of Ounces of Bullion;

"Seller" means the Party granting a Bullion Option;

"Settlement Date" means in respect of the exercise of a Bullion Option which is: (a) an American Style Option, the second Business Day after the Exercise Date of such Bullion Option; or (b) a European Style Option, the second Business Day after the Expiration Date of such Bullion Option;

"Settlement Netting Office(s)" means, in respect of a Party, its Designated Office(s) (if any) identified as such by agreement in writing between the Parties;

"Silver" means silver bars or unallocated silver complying with the rules of The London Bullion Market Association relating to good delivery and fineness from time to time in effect;

"Specified Indebtedness" means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money, other than in respect of any money deposits or Bullion deposits received;

"Specified Transaction" means any transaction (including an agreement with respect thereto) between one Party to the Agreement (or any Credit Support Provider of such Party) and the other Party to the Agreement (or any Credit Support Provider of such Party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity linked swap, equity or equity index option, bond option, interest

rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot or spot deferred bullion transaction, forward bullion transaction, bullion option, bullion lease, loan or consignment, EFP (exchange for physical), bullion swap, bullion forward rate transaction or any other similar transaction (including any option with respect to any of these transactions) or any combination of any of the foregoing transactions;

"Spot Price"

means, at any time, the bid price per Ounce (in the case of a Call Option) or offer price per Ounce (in the case of a Put Option) at such time for the relevant type of Bullion against U.S. dollars for delivery and payment two (2) Business Days later, converted, if necessary, into the Option Currency at the price at which, at such time, the Seller could enter into a contract in the foreign exchange market to buy the Option Currency in exchange for U.S. dollars for delivery and payment on such day which is two (2) Business Days later;

"Standard Date"

means, with respect to any month, two (2) Business Days before the last Business Day of the month;

"Strike Price"

means, in relation to a Bullion Option, the price per Ounce, expressed in the Option Currency, agreed as such by the Parties, being the price at which under that Bullion Option the Buyer shall be entitled to purchase (in the case of a Call Option) or sell (in the case of a Put Option) the Bullion which is the subject of such Bullion Option;

"Terms"

means these International Bullion Master Agreement Terms;

"Threshold Amount"

means in relation to a Party, the amount specified as such by agreement in writing between the Parties or, in the absence of such an agreement, either three percent (3%) of that Party's net worth (being its gross assets less its gross liabilities) as determined by reference to that Party's most recent published audited financial statements or, in the event that there are no, or such amount cannot be determined by reference to, published audited financial statements of the relevant Party, £100,000 (one hundred thousand Pounds Sterling) or Currency equivalent;

"Value Added Tax"

means value added tax as provided for in the Value Added Tax Act 1983 (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; and

"Value Date"

means (a) in the case of a Bullion Trade, the Business Day agreed by the Parties for delivery of the Bullion to be purchased and sold against payment therefor on such Business Day pursuant to such Bullion Trade and, in the case of a Bullion Obligation, the Business Day upon which the obligation to deliver Bullion or Currency pursuant to such Bullion Obligation is to be performed; and (b) in the case of a Bullion Option, the Settlement Date therefor.

SECTION 2. BULLION TRANSACTIONS

2.1 Scope of the Agreement

Unless otherwise agreed in writing by the Parties, each Bullion Transaction entered into between two Designated Offices of the Parties on or after the Effective Date shall be governed by these Terms and the particular terms agreed between the Parties relating to such Bullion Transaction. All Bullion Transactions between any two Designated Offices of the Parties outstanding on the Effective Date which are identified by agreement in writing between the Parties for the purposes of this Section 2.1 shall be Bullion Transactions governed by these Terms and every obligation of the Parties to deliver Bullion or Currency under any such Bullion Transaction that is a Bullion Trade shall be a Bullion Obligation under the Agreement.

2.2 Single Agreement

These Terms, the particular terms agreed between the Parties in relation to each and every Bullion Transaction governed by these Terms (and, insofar as such terms are recorded in a Confirmation, each such Confirmation), the Schedule (if any) to these Terms and all amendments to any of such items shall together form the agreement between the Parties (the "*Agreement*") and shall together constitute a single agreement between the Parties. The Parties acknowledge that all Bullion Transactions governed by the Agreement are entered into in reliance upon the fact that all such items constitute a single agreement between the Parties. In the event of any inconsistency between the provisions of the Schedule and the other provisions of the Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and the Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Bullion Transaction.

2.3 Confirmations

Bullion Transactions governed by the Agreement shall be promptly confirmed by the Parties by Confirmations exchanged by mail, telex, facsimile or other electronic means. The failure by a Party to issue a Confirmation shall not prejudice or invalidate the terms of any Bullion Transaction governed by the Agreement.

SECTION 3. BULLION OPTIONS - PREMIUMS

3.1 Payment of Premium

Unless otherwise agreed in writing by the Parties, the Premium related to a Bullion Option governed by the Agreement shall be paid no later than the Premium Payment Date in relation to such Bullion Option, in the Option Currency.

3.2 Late Payment or Non-Payment of Premium

If any Premium is not received on the Premium Payment Date, the Seller may elect either: (a) to accept a late payment of such Premium; (b) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat the related Bullion Option as void; or (c) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat such non-payment as an Event of Default under clause (a) of the definition of Event of Default. If the Seller elects to act under either clause (a) or (b) of the preceding sentence, the Buyer shall pay all out-of-pocket costs and actual damages incurred in connection with such unpaid or late Premium or void Bullion Option, including, without limitation, interest on such Premium in the same Currency as such Premium at the then prevailing market rate and any other costs or expenses incurred by the Seller in covering its obligations (including, without limitation, a delta hedge) with respect to such Bullion Option.

SECTION 4. BULLION OPTIONS - DISCHARGE AND TERMINATION

If the Parties agree in writing that this Section 4 shall apply to the Agreement, then any Call Option written by a Party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call Option written by the other Party and any Put Option written by a Party will automatically be terminated and discharged, in whole or in part, as applicable, against a Put Option written by the other Party, such termination and discharge to occur automatically upon the payment in full of the last Premium payable in respect of such Bullion Options **provided that** such termination and discharge may only occur in respect of Bullion Options:

- (a) each being with respect to the same type of Bullion and having the same Option Currency;
- (b) each having the same Expiration Date and Expiration Time;
- (c) each being of the same style, i.e. either both being American Style Options or both being European Style Options;
- (d) each having the same Strike Price;
- (e) each to be settled in the same location;
- (f) each being transacted through the same Designated Offices of both Buyer and Seller respectively; and
- (g) neither of which shall have been exercised by delivery of a Notice of Exercise;

and, upon the occurrence of such termination and discharge, neither Party shall have any further obligation to the other Party in respect of the relevant Bullion Options or, as the case may be, parts thereof so terminated and discharged. In the case of a partial termination and discharge (i.e., where the

relevant Bullion Options are for different numbers of Ounces of Bullion), the remaining portion of the Bullion Option which is partially discharged and terminated shall continue to be a Bullion Option for all purposes of the Agreement, including this Section 4.

SECTION 5. BULLION OPTIONS - EXERCISE AND SETTLEMENT

5.1 Notice of Exercise

The Buyer may exercise a Bullion Option governed by the Agreement by delivery to the Seller of a Notice of Exercise. Subject to Section 5.3, if a Bullion Option governed by the Agreement has not been exercised prior to or at the Expiration Time, it shall expire and become void and of no effect. Any Notice of Exercise shall (unless otherwise agreed):

- (a) in respect of an American Style Option, if received prior to or at 2.00 p.m. (Seller's local time) on any Business Day prior to the Expiration Date or prior to or at the Expiration Time on the Expiration Date, be effective upon receipt thereof by the Seller and, for the avoidance of doubt, any Notice of Exercise received after 2.00 p.m. (Seller's local time) on any Business Day prior to the Expiration Date shall be effective only as of the opening of business of the Seller on the first Business Day (if any, being a Business Day prior to the Expiration Date) subsequent to its receipt; and
- (b) in respect of a European Style Option, if received on the Expiration Date prior to or at the Expiration Time, be effective upon receipt thereof by the Seller.

5.2 No Partial Exercise

Unless otherwise agreed by the Parties, a Bullion Option governed by the Agreement may be exercised only in whole.

5.3 Automatic Exercise

Unless the Seller is otherwise instructed by the Buyer, if a Bullion Option has an In-the-Money Amount at its Expiration Time that equals or exceeds the product of (a) 1% (or such other percentage as may have been agreed by the Parties) of the Strike Price and (b) the number of Ounces of Bullion which are the subject of such Bullion Option, then the Bullion Option shall be deemed automatically exercised. In such case, unless otherwise agreed by the Parties, such Bullion Option shall be settled in accordance with Section 5.4 of the Agreement. For the purpose of determining whether or not any Bullion Option shall be deemed automatically exercised pursuant to this Section 5.3, the Buyer shall, unless otherwise agreed by the Parties, accept the Seller's calculation of the In-the-Money Amount.

5.4 Settlement of Exercised Bullion Options

Subject to Sections 5.2, 5.3 and 5.5, an exercised Bullion Option shall be settled on its Settlement Date as follows:

- (a) in the case of a Call Option, the Seller shall deliver in accordance with Section 6.1 to the Buyer the number of Ounces of Bullion in respect of which the Bullion Option is exercised and the Buyer shall pay to the Seller the product of such quantity and the Strike Price; and
- (b) in the case of a Put Option, the Buyer shall deliver in accordance with Section 6.1 to the Seller the number of Ounces of Bullion in respect of which the Bullion Option is exercised and the Seller shall pay to the Buyer the product of such quantity and the Strike Price.

5.5 In-the-Money Amount Settlement

A Bullion Option shall be settled at its In-the-Money Amount if the Buyer so elects in its Notice of Exercise. In such case, the In-the-Money Amount shall be determined based upon the Spot Price at the time of exercise or as soon thereafter as possible. The sole obligations of the Parties with respect to settlement of such Bullion Option shall be to deliver or receive the In-the-Money Amount of such Bullion Option on the Settlement Date. Notwithstanding the definition of Spot Price in Section 1, if the Buyer elects to settle a Bullion Option at its In-the-Money Amount, the Buyer shall be entitled when giving the Notice of Exercise to require that the In-the-Money Amount of the Bullion Option be ascertained with reference to the U.S. dollar bid or offer price, as appropriate, per Ounce quoted by the Seller to the Buyer at 9.30 a.m. New York time on the Exercise Date (in the case of an American Style Option) or the Expiration Date (in the case of a European Style Option) converted, if necessary, into the Option Currency at the price at which, at such time, the Seller could enter into a contract in the foreign exchange market to buy the Option Currency in exchange for U.S. dollars.

SECTION 6. BULLION TRANSACTIONS - SETTLEMENT AND NETTING

6.1 Settlement

Subject to Sections 4, 6.2 and 6.3, each Party shall deliver to the other Party the amount of the Bullion or Currency to be delivered by it under each Bullion Transaction on the Value Date for such Bullion Transaction. All Bullion to be delivered under any Bullion Transaction shall be delivered loco London by being credited to an unallocated account at a member of The London Bullion Market Association agreed by both Parties (or, failing agreement, nominated by the delivering Party) or by delivery at such other location and/or in such other form as may be agreed.

6.2 Net Settlement/Payment Netting

If on any Value Date more than one delivery of a particular type of Bullion or Currency is to be made between a pair of Settlement Netting Offices, then, on such date, each Party shall aggregate the amounts of such type of Bullion or Currency (i.e., Gold with Gold, Silver with Silver, etc. and each Currency with other Currency of the same type) deliverable by it and only the difference between these aggregate amounts shall be delivered by the Party obliged to deliver the larger aggregate amount to the other Party and, if the aggregate amounts are equal, no delivery of the relevant type of Bullion or Currency, as the case may be, shall be made.

6.3 Novation Netting

(a) By Type of Obligation

If the Parties enter into a Bullion Trade governed by the Agreement through a pair of Novation Netting Offices or, if a Bullion Option governed by the Agreement and entered into by the Parties through a pair of Novation Netting Offices is exercised or deemed exercised, in each case, giving rise to a Bullion Obligation for the same Value Date and in the same type of Bullion or Currency as a then existing Bullion Obligation between the same pair of Novation Netting Offices, then immediately upon entering into such Bullion Trade or exercise or deemed exercise of such Bullion Option, each such Bullion Obligation shall automatically and without further action be individually cancelled and simultaneously replaced by a new Bullion Obligation for such Value Date determined as follows: the amounts of such type of Bullion or Currency that would otherwise have been deliverable by each Party on such Value Date shall be aggregated (i.e., Gold with Gold, Silver with Silver, etc. and each Currency with other Currency of the same type) and the Party with the larger aggregate amount shall have a new Bullion Obligation to deliver to the other Party the amount of such type of Bullion or Currency by which its aggregate amount exceeds the other Party's aggregate amount, provided that if the aggregate amounts are equal, no new Bullion Obligation shall arise. This clause (a) shall not affect any other Bullion Obligation of a Party to deliver any different Bullion or Currency on the same Value Date.

(b) By Matched Pair

If the Parties enter into a Bullion Trade governed by the Agreement between a pair of Matched Pair Novation Netting Offices or, if a Bullion Option governed by the Agreement and entered into through a pair of Matched Pair Novation Netting Offices is exercised or deemed exercised, then the provisions of Section 6.3(a) shall apply only in respect of Bullion Obligations arising by virtue of Bullion Trades or exercised Bullion Options governed by the Agreement entered into between such pair of Matched Pair Novation Netting Offices and involving the same type of Bullion and Currency and the same Value Date.

6.4 General

(a) Inapplicability of Sections 6.2 and 6.3

The provisions of Sections 6.2 and 6.3 shall not apply if a Close-Out Date has occurred or an involuntary case or other proceeding of the kind described in clause (c) of the definition of Event of Default has occurred without being dismissed in relation to either Party.

(b) Failure to Record

The provisions of Section 6.3 shall apply notwithstanding that either Party may fail to record the new Bullion Obligations in its books.

(c) Cut-Off Date and Time

The provisions of Section 6.3 are subject to any cut-off date and cut-off time agreed between the applicable Novation Netting Offices and Matched Pair Novation Netting Offices of the Parties.

(d) Netting of Premiums

If the Parties so agree in writing, then, unless otherwise agreed, if, on any date Premiums would otherwise be payable under the Agreement in the same Currency between the same Designated Offices of the Parties, then, on such date, each Party's obligation to make payment of any such Premium will be automatically satisfied and discharged and, each Party shall aggregate the Premium(s) that would otherwise have been payable by it and only the difference between the aggregate Premium(s) shall be payable by the Party owing the larger aggregate Premium(s) to the other Party and, if the aggregate Premium(s) are equal, no payment shall be made.

SECTION 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Representations and Warranties

Each Party represents and warrants to the other Party as of the date of the Agreement and as of the date of each Bullion Transaction governed by the Agreement that:

- (a) it has authority to enter into the Agreement and such Bullion Transaction;
- (b) the persons entering into such Bullion Transaction and the Agreement on its behalf have been duly authorised to do so;

- (c) the Agreement and the Bullion Obligations and Bullion Options created under the Agreement are binding upon it and enforceable against it in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and applicable principles of equity) and do not and will not violate the terms of any agreements or laws to which such Party is subject;
- (d) no Event of Default or any event which with the giving of notice or the passage of time or both would constitute an Event of Default has occurred and is continuing with respect to it; and
- (e) it acts as principal in entering into, and (with respect to Bullion Options) exercising, each and every Bullion Transaction governed by the Agreement.

7.2 Covenants

Each Party covenants to the other Party that:

- (a) it will at all times obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required to enable it lawfully to perform its obligations under the Agreement; and
- (b) it will promptly notify the other Party of the occurrence of any Event of Default with respect to itself or any Credit Support Provider in relation to it or any event which, with the giving of notice or the passage of time or both, would constitute an Event of Default with respect to itself or any Credit Support Provider in relation to it.

SECTION 8. CLOSE-OUT AND LIQUIDATION

8.1 Circumstances of Close-Out and Liquidation

If an Event of Default has occurred and is continuing, then the Non-Defaulting Party shall have the right to close out and liquidate in the manner described below all, but not less than all, outstanding Bullion Obligations and Bullion Options governed by the Agreement (except to the extent that in the good faith opinion of the Non-Defaulting Party certain of such Bullion Obligations and Bullion Options may not be terminated under applicable law) by notice to the Defaulting Party. Notwithstanding the previous sentence, unless otherwise agreed in writing by the Parties, in the case of an Event of Default specified in clauses (b) or (c) of the definition of Event of Default, such close-out and liquidation shall be automatic as to all such outstanding Bullion Obligations and Bullion Options. Where such close-out and liquidation is to be effected, it shall be effected by:

- (B) the sum of all Close-Out Amounts relating to Bullion Obligations under which, and of all Bullion Obligations in the Non-Defaulting Party's Base Currency under which, the Non-Defaulting Party would otherwise have been obliged to pay the relevant amount to the Defaulting Party on that Value Date, adding (to the extent permitted by applicable law), in the case of a Bullion Obligation in the Non-Defaulting Party's Base Currency whose Value Date precedes the Close-Out Date, interest for the period from the Value Date to the Close-Out Date at the Non-Defaulting Party's Base Currency Rate as at such Value Date for such period;
 - (iv) if the sum determined under clause (iii)(A) above is greater than the sum determined under clause (iii)(B) above, the difference shall be the Closing Gain for such Value Date; if the sum determined under clause (iii)(A) is less than the sum determined under clause (iii)(B) above, the difference shall be the Closing Loss for such Value Date;
 - (v) to the extent permitted by applicable law, adjusting the Closing Gain or Closing Loss for each Value Date falling after the Close-Out Date to present value by discounting the Closing Gain or Closing Loss from the Value Date to the Close-Out Date, at the Non-Defaulting Party's Base Currency Rate, or at such other rate as may be prescribed by applicable law;
 - (vi) aggregating the following amounts so that all such amounts are netted into a single liquidated amount payable by or to the Non-Defaulting Party in respect of Bullion Obligations: (A) the sum of the Closing Gains for all Value Dates (discounted to present value, where appropriate, in accordance with the provisions of clause (a)(v) of this Section 8.1) (which for the purposes of this aggregation shall be a positive figure) and (B) the sum of the Closing Losses for all Value Dates (discounted to present value, where appropriate, in accordance with the provisions of clause (a)(v) of this Section 8.1) (which for the purposes of the aggregation shall be a negative figure); and
 - (vii) if the resulting net amount is positive, it shall be owing by the Defaulting Party to the Non-Defaulting Party in respect of Bullion Obligations, and if it is negative, then the absolute value of such amount shall be payable by the Non-Defaulting Party to the Defaulting Party in respect of Bullion Obligations.
- (b) **In the case of Bullion Options:**
- (i) closing out each Bullion Option governed by the Agreement which has not been exercised or deemed exercised on or prior to the Close-Out Date so that each such Bullion Option is cancelled and market damages for each Party are calculated by determining the aggregate of:

- (A) with respect to each Bullion Option purchased by such Party, the current market premium for such Bullion Option,
 - (B) with respect to each Bullion Option sold by such Party, any unpaid Premium and, to the extent permitted by applicable law, interest on any unpaid Premium in the relevant Option Currency as such Premium at the then prevailing market rate, and
 - (C) any costs or expenses incurred by the Non-Defaulting Party in covering its obligations (including a delta hedge) with respect to such Bullion Option, all as determined in good faith by the Non-Defaulting Party;
- (ii) converting any damages calculated in accordance with clause (b)(i) above in a Currency other than the Non-Defaulting Party's Base Currency into such Base Currency at the spot price at which, at the time of close-out, the Non-Defaulting Party could enter into a contract in the foreign exchange market to buy the Base Currency in exchange for such Currency; and
 - (iii) netting such damage payments with respect to each Party so that all such amounts are netted to a single liquidated amount payable by one Party to the other Party as a settlement payment in respect of Bullion Options governed by the Agreement which have not been exercised or deemed exercised on or prior to the Close-Out Date.
- (c) **Final Netting**

The net amounts payable by each Party under clauses (a) and (b) of this Section 8.1 shall be aggregated and netted so that a single net amount in respect of Bullion Transactions governed by the Agreement is payable by one Party to the other Party.

8.2 Calculation of Interest

Any addition of interest or discounting required under Section 8.1 shall be calculated on the basis of the actual number of days elapsed and of a year of such number of days as is customary for transactions involving the relevant Currency in the relevant foreign exchange market.

8.3 Other Bullion Transactions

Where close-out and liquidation occurs in accordance with Section 8.1, the Non-Defaulting Party shall also be entitled to close out and liquidate, to the extent permitted by applicable law, any other Bullion Transactions entered into between the Parties which are then outstanding in accordance with the provisions of Section 8.1, as if each such transaction were governed by the Agreement.

8.4 Payment and Late Interest

The amount payable by one Party to the other Party pursuant to the provisions of Sections 8.1 and 8.3 above shall be paid by the close of business on the Business Day following such close-out and liquidation (converted as required by applicable law into any other Currency, any costs of such conversion to be borne by, and deducted from any payment to, the Defaulting Party). To the extent permitted by applicable law, any amounts required to be paid under Section 8.1 or 8.3 and not paid on the due date therefor shall bear interest at the Non-Defaulting Party's Base Currency Rate plus 1% per annum (or, if conversion is required by applicable law into some other Currency, either (a) the average rate at which overnight deposits in such other Currency are offered by major banks in the London interbank market as of 11.00 a.m. (London time) plus 1% per annum or (b) such other rate as may be prescribed by such applicable law) for each day for which such amount remains unpaid.

8.5 Suspension of Obligations

Without prejudice to the foregoing, so long as a Party shall be in default in payment or performance to the Non-Defaulting Party under the Agreement and so long as the Non-Defaulting Party has not exercised its rights under Section 8.1, the Non-Defaulting Party may, at its election and without penalty, suspend its obligation to perform under the Agreement.

8.6 Expenses

The Defaulting Party shall reimburse the Non-Defaulting Party in respect of all out-of-pocket expenses incurred by the Non-Defaulting Party (including fees and disbursements of counsel and including attorneys who may be employees of the Non-Defaulting Party) in connection with any reasonable collection, preservation of rights or other enforcement proceedings related to the payments required under this Section 8.

8.7 Reasonable Pre-Estimate

The Parties agree that the amounts recoverable under this Section 8 are a reasonable pre-estimate of loss and not a penalty. Such amounts are payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in the Agreement, neither Party will be entitled to recover any additional damages as a consequence of such losses.

8.8 No Limitation of Other Rights: Set-Off

The Non-Defaulting Party's rights under this Section 8 shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise). To the extent not prohibited by applicable law, the Non-Defaulting Party shall have a general right of set-off with respect to all amounts owed by each Party to the other Party, whether or not due and payable (provided that any amount not due and payable at the time of such set-off shall, if appropriate, be discounted to present value

in a commercially reasonable manner by the Non-Defaulting Party). The Non-Defaulting Party's rights under this Section 8.8 are subject to Section 8.7.

SECTION 9. ILLEGALITY, IMPOSSIBILITY AND FORCE MAJEURE

If either Party is prevented from or hindered or delayed by reason of force majeure or act of State in the delivery or receipt of any Bullion or Currency in respect of a Bullion Obligation or Bullion Option or if it becomes or, in the good faith judgment of one of the Parties, may become unlawful or impossible for either Party to deliver or receive any Bullion or Currency which is the subject of a Bullion Obligation or Bullion Option, then either Party may, by notice to the other Party, require the close-out and liquidation of each affected Bullion Obligation and Bullion Option in accordance with the provisions of Sections 8.1, 8.2 and 8.4 and, for the purposes of enabling the calculations prescribed by Sections 8.1, 8.2 and 8.4 to be effected, the Party unaffected by such force majeure, act of State, illegality or impossibility (or if both Parties are so affected, whichever Party gave the relevant notice) shall effect the relevant calculations as if it were the Non-Defaulting Party. Nothing in this Section 9 shall be taken as indicating that the Party treated as the Defaulting Party for the purposes of calculations required hereby has committed any breach or default.

SECTION 10. PARTIES TO RELY ON THEIR OWN EXPERTISE

Each Party shall enter into each Bullion Transaction governed by the Agreement in reliance only upon its own judgment. Neither Party holds itself out as advising, or any of its employees or agents as having the authority to advise, the other Party as to whether or not it should enter into any such Bullion Transaction or as to any subsequent actions relating thereto or on any other commercial matters concerned with any Bullion Transaction governed by the Agreement, and neither Party shall have any responsibility or liability whatsoever in respect of any advice of this nature given, or views expressed, by it or any of such persons to the other Party, whether or not such advice is given or such views are expressed at the request of the other Party.

SECTION 11. MISCELLANEOUS

11.1 Currency Indemnity

The receipt or recovery by either Party (the "first Party") of any amount in respect of an obligation of the other Party (the "second Party") in a Currency other than that in which such amount was due, whether pursuant to a judgment of any court or pursuant to Section 8 or 9, shall discharge such obligation only to the extent that, on the first day on which the first Party is open for business immediately following such receipt, the first Party shall be able, in accordance with normal banking practice, to purchase the Currency in which such amount was due with the Currency received. If the amount so purchasable shall be less than the original amount of the Currency in which such amount was due, the second Party shall, as a separate obligation and notwithstanding any judgment of any court, indemnify the first Party against any loss sustained

by it. The second Party shall in any event indemnify the first Party against any costs incurred by it in making any such purchase of Currency.

11.2 Assignments

Neither Party may assign, transfer or charge, or purport to assign, transfer or charge, its rights or its obligations under the Agreement or any interest therein without the prior written consent of the other Party, and any purported assignment, transfer or charge in violation of this Section 11.2 shall be void.

11.3 Telephonic Recording

The Parties agree that each may electronically record all telephonic conversations between them and that any such tape recordings may be submitted in evidence in any Proceedings. In the event of any dispute between the Parties as to the terms of a Bullion Transaction governed by the Agreement or any Bullion Obligations thereby created, the Parties may use electronic recordings between the persons who entered into such Bullion Transaction as the preferred evidence of the terms of such Bullion Transaction, notwithstanding the existence of any writing to the contrary.

11.4 No Obligation

Neither Party to the Agreement shall be required to enter into any Bullion Transaction with the other.

11.5 Notices

Unless otherwise agreed, all notices, instructions and other communications to be given to a Party under the Agreement shall be given to the address, telex (if confirmed by the appropriate answerback), facsimile (confirmed if requested) or telephone number and to the individual or department specified by notice in writing by such Party. Unless otherwise specified, any notice, instruction or other communication given in accordance with this Section 11.5 shall be effective upon receipt.

11.6 Termination

Each of the Parties hereto may terminate the Agreement at any time by seven (7) days' prior written notice to the other Party delivered as prescribed above, and termination shall be effective at the end of such seventh day **provided**, however, that any such termination shall not affect any outstanding Bullion Transactions, and the provisions of the Agreement shall continue to apply until all the obligations of each Party to the other under the Agreement have been fully performed.

11.7 Severability

In the event any one or more of the provisions contained in the Agreement should be held invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions under the law of such jurisdiction, and the validity, legality and enforceability of such and any other provisions under the law of any other jurisdiction, shall not in any way be affected or impaired thereby.

11.8 Waiver

No indulgence or concession granted by a Party, and no omission or delay on the part of a Party in exercising any right, power or privilege under the Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11.9 Time of Essence

Time shall be of the essence in the Agreement.

11.10 Headings

Headings in the Agreement are for ease of reference only.

11.11 Payments Generally

Every payment or delivery of Currency to be made by a Party under the Agreement shall be made in same day (or immediately available) and freely transferable funds to the bank account designated by the other Party for such purpose.

11.12 Taxes

Where, pursuant to or in connection with any Bullion Transaction or the Agreement:

- (a) one Party (the "**Supplier**") makes a supply to the other Party (the "**Recipient**"), and (i) Value Added Tax is chargeable in respect of such supply and (ii) the Supplier is required to account to the relevant fiscal authority for such Value Added Tax, the Recipient shall on demand pay to the Supplier (in addition to the relevant consideration for such supply) an amount equal to such Value Added Tax, and the Supplier shall on receipt of such payment provide the Recipient with an invoice or receipt in such form as may be prescribed by applicable law; and
- (b) a person other than the Supplier and the Recipient is deemed or treated by applicable law or the practice from time to time of the relevant fiscal authority to make a supply to the Recipient for Value Added Tax purposes, and (i) Value Added Tax is chargeable in respect of such supply and (ii) such person is required to account to the relevant fiscal

authority for such Value Added Tax, the Recipient shall on demand by the Supplier pay to such person an amount equal to such Value Added Tax, and the Supplier shall use its reasonable endeavours to procure that such person will on receipt of such payment provide the Recipient with an invoice or receipt in such form as may be prescribed by applicable law

Provided that the Recipient shall not be liable to make any payment to any person as aforesaid where it itself is (or is deemed or treated by applicable law or the practice from time to time of the relevant fiscal authority to be) the person which makes the relevant supply for Value Added Tax purposes and which is required to account to the relevant fiscal authority for the Value Added Tax chargeable in respect of such supply, and the Recipient shall in such a case provide the Supplier with such relevant information as the Supplier shall reasonably require to show that the Recipient is (or is deemed or treated by applicable law or the practice from time to time of the relevant fiscal authority to be) the person making the relevant supply for Value Added Tax purposes as aforesaid.

SECTION 12. LAW AND JURISDICTION

12.1 Governing Law

The Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

12.2 Consent to Jurisdiction

With respect to any Proceedings, each Party irrevocably (a) agrees for the benefit of the other Party that the courts of England shall have jurisdiction to determine any Proceedings and irrevocably submits to the jurisdiction of the English courts and (b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such Party. Nothing in the Agreement precludes either Party from bringing Proceedings in any other jurisdiction nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

12.3 Waiver of Immunities

Each Party irrevocably waives to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees to the extent permitted by applicable law

that it will not claim any such immunity in any Proceedings. Each Party consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever of any order or judgment which may be made or given in such Proceedings.

SIGNING SHEET

Parties wishing to record their entry into a Master Agreement on these Master Agreement Terms in hard copy form may use the signing section to create their Master Agreement.

If this signing section is utilised the heading sheet, to be found at the beginning of this Master Agreement, should also be completed.

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed by their respective authorised officers as of the date first written above.

By:

Name:

Title:

By:

Name:

Title:

SCHEDULE

PART I Base Currency

Party A:

Party B:

PART II Designated Offices

Each of the following shall be a Designated Office:

Party A:

Party B:

PART III Matched Pair Novation Netting Offices

Matched pair netting by novation provisions of Section 6.3(b) shall apply to the following Matched Pair Novation Netting Offices and shall apply to [all Bullion Obligations] [Bullion Obligations with a Value Date more than two (2) Business Days after the day on which the Parties enter into such Bullion Obligations].

Party A:

Party B:

PART IV Novation Netting Offices

Netting by novation provisions of Section 6.3(a) shall apply to the following Novation Netting Offices and shall apply to [all Bullion Obligations] [Bullion Obligations with a Value Date more than two (2) Business Days after the day on which the Parties enter into such Bullion Obligations].

Party A:

Party B:

PART V Settlement Netting Offices

Net settlement provisions of Section 6.2 shall apply to the following Settlement Netting Offices:

Party A:

Party B:

PART VI Threshold Amount

The Threshold Amount applicable to Party A shall be:

The Threshold Amount applicable to Party B shall be:

PART VII Scope of Agreement

The Agreement shall apply to [all] [the following] Bullion Transactions outstanding between any two (2) Designated Offices of the Parties on the Effective Date.

PART VIII Confirmation Procedures

The following provision [shall][shall not] apply to the Agreement:

In relation to Confirmations, unless either Party objects to the terms contained in any Confirmation within three (3) Business Days of receipt thereof, or such shorter time as may be appropriate given the Value Date of the Bullion Transaction, the terms of such Confirmation shall be deemed correct and accepted absent manifest error, unless a corrected Confirmation is sent by a Party within such three Business Days, or shorter period, as appropriate, in which case the Party receiving such corrected Confirmation shall have three (3) Business Days, or shorter period, as appropriate, after receipt thereof to object to the terms contained in such corrected Confirmation.

PART IX Discharge and Termination of Bullion Options

The provisions of section 4 [shall] [shall not] apply.

PART X Netting of Premiums

The provisions of section 6.4(d) [shall] [shall not] apply.

PART XI Notices

Party A:

Address:

Telephone Number:

Telex Number:

Facsimile Number:
Name of Individual or Department to whom Notices are to be sent:

Party B:

Address:
Telephone Number:
Telex Number:
Facsimile Number:
Name of Individual or Department to whom Notices are to be sent:

PART XII Payment and Settlement Instructions

Name of Bank and Office, Account Number and Reference with respect to relevant Currencies and/or Bullion.

PART XIII Process Agent

[Not applicable]

[Party A appoints the following as its agent for service of process in any Proceeding in England:]

[Party B appoints the following as its agent for service of process in any Proceeding in England:]

PART XIV Withholding Tax

[Each of the] [The] following provision[s] [shall] [shall not] apply to the Agreement:

All payments to be made by either Party pursuant to or in connection with any Bullion Transaction or the Agreement shall be made free and clear of, and without deduction or withholding for or on account of, tax unless a Party (the "**Payer**") is required by applicable law to make a payment (the "**Relevant Payment**") subject to the deduction or withholding of tax, in which case the sum of the Relevant Payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Party receiving the Relevant Payment (the "**Payee**") receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and retained had no such deduction or withholding been made or required to be made.

[If and to the extent that the Payer's obligation to pay an increased sum as aforesaid can be mitigated by virtue of the provisions of any applicable double tax convention, the Payee shall use its reasonable endeavours (including, without limitation, the submission to the relevant fiscal authorities of all requisite forms and information) to ensure the application of such double tax convention.]

[In the event that an increased payment is made by the Payer as aforesaid, and the Payee (acting in good faith) determines in its sole opinion that it has received or been granted (and has derived full use and benefit from) any credit against tax, or repayment of tax, paid or payable by it in respect of, or calculated with reference to, the deduction or withholding giving rise to such increased payment, the Payee shall, to the extent that it can do so without prejudice to the retention of the amount of such credit or repayment, pay to the Payer such amount as the Payee (acting in good faith) shall have concluded in its sole opinion to be attributable to such deduction or withholding **Provided that** nothing in this paragraph shall interfere with the right of the Payee to arrange its tax affairs in whatever manner it thinks fit nor oblige the Payee to disclose any information relating to its tax affairs (or any computation made in respect thereof), and (in particular) the Payee shall not be under any obligation to claim credit or repayment from or against its corporate profit or similar tax liability in respect of the amount of such deduction or withholding as aforesaid in priority to any other claims, reliefs, credits or deductions available to it.]

PART XV **Adequate Assurances**

The following provision [shall][shall not] apply to the Agreement:

The failure by a Party ("**first Party**") to give adequate assurances of its ability to perform any of its obligations under the Agreement within two (2) Business Days of a written request to do so when the other Party ("**second Party**") has reasonable grounds for insecurity shall be an Event of Default under the Agreement, in which case during the pendency of a reasonable request by the second Party to the first Party for adequate assurances of the first Party's ability to perform its obligations under the Agreement, the second Party may, at its election and without penalty, suspend its obligations under the Agreement.

**The 1994 International Bullion
Master Agreement
(New York Law Version)**

INTERNATIONAL BULLION MASTER AGREEMENT
for Spot and Forward Bullion Trades and Bullion Options

CONTENTS

SECTION	PAGE
1. DEFINITIONS	1
2. BULLION TRANSACTIONS	11
3. BULLION OPTIONS - PREMIUMS	11
4. BULLION OPTIONS - DISCHARGE AND TERMINATION	12
5. BULLION OPTIONS - EXERCISE AND SETTLEMENT	13
6. BULLION TRANSACTIONS - SETTLEMENT AND NETTING	14
7. REPRESENTATIONS, WARRANTIES AND COVENANTS	16
8. CLOSE-OUT AND LIQUIDATION	17
9. ILLEGALITY, IMPOSSIBILITY AND FORCE MAJEURE	21
10. PARTIES TO RELY ON THEIR OWN EXPERTISE	22
11. MISCELLANEOUS	22
12. LAW AND JURISDICTION	25
SCHEDULE - Parts I-XVII	27

INTERNATIONAL BULLION MASTER AGREEMENT
for Spot and Forward Bullion Trades and Bullion Options

MASTER AGREEMENT dated as of _____, 199__ by and between

_____, a _____ and

a _____.

SECTION 1. DEFINITIONS

Unless otherwise required by the context, the following terms shall have the following meanings:

- "Agreement"** has the meaning given to it in Section 2.2.
- "American Style Option"** means a Bullion Option which may be exercised on any Business Day up to and including the Expiration Time.
- "Base Currency"** means, as to a Party, the Currency agreed as such in relation to it in Part I of the Schedule hereto.
- "Base Currency Rate"** means, as to a Party and any amount, the cost (expressed as a percentage rate per annum) at which that Party would be able to fund that amount from such sources and for such periods as it may in its reasonable discretion from time to time decide, as determined in good faith by it.
- "Bullion"** means Gold or Silver, as the case may be.
- "Bullion Obligation"** means any obligation of a Party to deliver Bullion or Currency pursuant to a Bullion Trade governed by the Agreement (in the case of Currency being the Contract Price multiplied by the number of Ounces which are the subject of such Bullion Trade) or a Bullion Option governed by the Agreement which has been exercised or deemed exercised (in the case of Currency being the Strike Price multiplied by the number of Ounces which are the subject of such Bullion Option) or pursuant to the application of Sections 6.3(a) or 6.3(b).
- "Bullion Option"** means a transaction between the Parties under which the Seller agrees with the Buyer that the Buyer shall be entitled (but not obligated, except upon exercise) to purchase from or, as the case may be, sell to the Seller a specified number of Ounces of Bullion at the Strike Price, and in respect of which transaction the Parties have agreed (whether orally,

electronically or in writing): (a) the quantity (in Ounces) and type of Bullion to be purchased and sold upon exercise of such Bullion Option, (b) which Party is the Seller and which is the Buyer, (c) the Premium, (d) the Strike Price, (e) the Expiration Date, (f) the Expiration Time (provided that where the Parties do not expressly agree upon the Expiration Time, it shall be deemed to be 9:30 a.m. New York time on the Expiration Date), (g) whether the Bullion Option is a Call Option or a Put Option, (h) whether it is an American Style Option or a European Style Option (provided that where the Parties do not expressly agree upon the style of Bullion Option, it shall be deemed a European Style Option) and (i) the delivery location and form of delivery (provided that where the Parties do not expressly agree upon the delivery location and form of delivery, the Bullion to be delivered shall be delivered in accordance with Section 6.1).

"Bullion Trade"

means any transaction (other than a Bullion Option, whether or not exercised) between the Parties for the purchase by one Party of an agreed quantity of Bullion against the payment by such Party to the other Party of an agreed amount of Currency, both such amounts being deliverable on the same Value Date, and in respect of which transaction the Parties have agreed (whether orally, electronically or in writing): (a) the quantity (in Ounces) and type of Bullion to be purchased, (b) which Party will purchase the Bullion, (c) the Contract Price, (d) the Value Date and (e) the delivery location and form of delivery (provided that where the Parties do not expressly agree upon the delivery location and the form of delivery, the Bullion to be delivered shall be delivered in accordance with Section 6.1).

"Bullion Transaction"

means any Bullion Trade or Bullion Option.

"Business Day"

means, for the purposes of:

- (a) Section 3.2, a day which is a Local Banking Day for the applicable Designated Office of the Buyer;
- (b) Section 5.1 and the definition of American Style Option, Exercise Date and Expiration Date, a day which is a Local Banking Day for the applicable Designated Office of the Seller;
- (c) in respect of (i) the definition of Settlement Date when used in respect of settlement of any Bullion Option by delivery of Bullion in accordance with Section 5.4, or (ii) in respect of settlement of any Bullion Obligation by delivery of Bullion, a

day which is a Local Banking Day for the applicable Designated Office of both Parties and a trading day in the Bullion market in the delivery location; and

- (d) any other provision of the Agreement, a day which is a Local Banking Day for the applicable Designated Office of both Parties;

Provided, however, that neither Saturday nor Sunday shall be considered a Business Day hereunder for any purpose.

- "Buyer"** means the owner of a Bullion Option.
- "Call Option"** means a Bullion Option entitling, but not obligating (except upon exercise), the Buyer to purchase from the Seller at the Strike Price a specified number of Ounces of Bullion.
- "Close-Out Amount"** has the meaning given to it in Section 8.1(a)(ii).
- "Close-Out Date"** means a day on which, pursuant to the provisions of Section 8.1, the Non-Defaulting Party closes out and liquidates Bullion Obligations and Bullion Options governed by the Agreement or such a close-out and liquidation occurs automatically.
- "Closing Gain"** means, as to the Non-Defaulting Party, the difference described as such in relation to a particular Value Date under the provisions of Section 8.1(a).
- "Closing Loss"** means, as to the Non-Defaulting Party, the difference described as such in relation to a particular Value Date under the provisions of Section 8.1(a).
- "Confirmation"** means a writing (including telex, facsimile or other electronic means from which it is possible to produce a hard copy) which shall specify:
- (a) in the case of any Bullion Transaction, (i) the Parties to it and the Designated Offices through which they are respectively acting, (ii) the quantity (in Ounces) and type of Bullion the subject of the relevant Bullion Transaction and which Party is or would be the purchaser thereof, (iii) the Contract Price (in the case of a Bullion Trade) or the Strike Price (in the case of a Bullion Option), (iv) the Value Date, (v) the delivery location and form of delivery (provided that where the Parties do not expressly agree upon the delivery location and the form of

delivery, the Bullion to be delivered shall be delivered in accordance with Section 6.1);

- (b) in the case of any Bullion Option, in addition to the matters specified in (a) above, (i) which Party is the Seller and which is the Buyer, (ii) the Premium and the Premium Payment Date, (iii) the Expiration Date, (iv) the Expiration Time (provided that where the Parties do not expressly agree upon the Expiration Time, it shall be deemed to be 9:30 a.m. New York time on the Expiration Date), (v) whether the Bullion Option is a Call Option or Put Option and (vi) whether the Bullion Option is an American Style Option or a European Style Option (provided that where the Parties do not expressly agree upon the style of Bullion Option, it shall be deemed a European Style Option).

"Contract Price" means, in respect of a Bullion Trade, the price per Ounce, expressed in a Currency, agreed as such by the Parties, being the price at which the purchaser under that Bullion Trade shall purchase and the seller under that Bullion Trade shall sell the Bullion which is the subject of such Bullion Trade.

"Credit Support Document" means, as to a Party (the "first Party"), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party ("**Credit Support Provider**"), or of the first Party in favor of the other Party supporting any obligations of the first Party under the Agreement.

"Credit Support Provider" has the meaning given to it in the definition of Credit Support Document.

"Currency" means money denominated in the lawful currency of any country or the Ecu.

"Custodian" has the meaning given to it in the definition of Event of Default.

"Defaulting Party" has the meaning given to it in the definition of Event of Default.

"Designated Office(s)" means, as to a Party, the office(s), specified in Part II of the Schedule hereto, as such Schedule may be modified from time to time by agreement of the Parties.

"Effective Date" means the date of this Master Agreement.

"European Style Option" means a Bullion Option which may only be exercised on the Expiration Date up to and including the Expiration Time, unless otherwise agreed.

"Event of Default"

means the occurrence of any of the following with respect to a Party (the "Defaulting Party", the other Party being the "Non-Defaulting Party"):

- (a) the Defaulting Party shall default in any payment or delivery under the Agreement to the Non-Defaulting Party with respect to any sum or Bullion when due under any Bullion Obligation, any Bullion Option (including, but not limited to, any Premium payment) or pursuant to the Agreement and such failure shall continue for two (2) Business Days after written notice of non-payment or non-delivery given by the Non-Defaulting Party to the Defaulting Party;
- (b) the Defaulting Party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency or similar law, or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each, a "Custodian") of it or any substantial part of its assets; or shall take any corporate action to authorize any of the foregoing;
- (c) an involuntary case or other proceeding shall be commenced against the Defaulting Party seeking liquidation, reorganization or other similar relief with respect to it or its debts under any bankruptcy, insolvency or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets, and such involuntary case or other proceeding is not dismissed within five (5) days of its institution or presentation;
- (d) the Defaulting Party is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to such Party;
- (e) the Defaulting Party shall otherwise be unable to pay its debts as they become due;
- (f) the Defaulting Party or any Custodian acting on behalf of the Defaulting Party shall disaffirm, disclaim or repudiate any Bullion Obligation or Bullion Option;
- (g) (i) any representation or warranty made or deemed made by the Defaulting Party pursuant to the Agreement or pursuant to any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1) Business Day has elapsed after the Non-

Defaulting Party has given the Defaulting Party written notice thereof; or

- (ii) the Defaulting Party fails to perform or comply with any obligation assumed by it under the Agreement (other than an obligation to make payment or delivery of the kind referred to in clause (a) of this definition of Event of Default) and such failure is continuing thirty (30) days after the Non-Defaulting Party has given the Defaulting Party written notice thereof;
- (h) the Defaulting Party consolidates or amalgamates with or merges into or transfers all or substantially all its assets to another entity and (i) the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of the Defaulting Party prior to such action or (ii) at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Defaulting Party under the Agreement by operation of law or pursuant to an agreement satisfactory to the Non-Defaulting Party;
- (i) by reason of any default, or event of default or other similar condition or event, any Specified Indebtedness (being Specified Indebtedness of an amount which, when expressed in the Currency of the Threshold Amount, is in aggregate equal to or in excess of the Threshold Amount) of the Defaulting Party or any Credit Support Provider in relation to it: (i) is not paid on the due date therefor and remains unpaid after any applicable grace period has elapsed, or (ii) becomes, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such Specified Indebtedness before it would otherwise have been due and payable;
- (j) the Defaulting Party is in breach of or in default under any Specified Transaction and any applicable grace period has elapsed, and there occurs any liquidation or early termination of, or acceleration of obligations under that Specified Transaction or the Defaulting Party (or any Custodian on its behalf) disaffirms, disclaims or repudiates the whole or any part of a Specified Transaction; or
- (k) (i) any Credit Support Provider relating to the Defaulting Party or the Defaulting Party itself fails to comply with or perform any agreement or obligation to be complied with

or performed by it in accordance with the applicable Credit Support Document and such failure is continuing after any applicable grace period has elapsed;

- (ii) any Credit Support Document relating to the Defaulting Party expires or ceases to be in full force and effect prior to the satisfaction of all obligations of the Defaulting Party under the Agreement, unless otherwise agreed in writing by the Non-Defaulting Party;
- (iii) the Defaulting Party or any Credit Support Provider in relation to it (or, in either case, any Custodian acting on its behalf) disaffirms, disclaims or repudiates, in whole or in part, or challenges the validity of, any Credit Support Document;
- (iv) any representation or warranty made or deemed made by any Credit Support Provider in relation to the Defaulting Party pursuant to any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1) Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof; or
- (v) any event set out in (b) to (f) or (h) to (j) above occurs in respect of any Credit Support Provider in relation to the Defaulting Party.

"Exercise Date"

means, in relation to any Bullion Option, the Business Day on which a Notice of Exercise received by the applicable Designated Office of the Seiler becomes effective pursuant to Section 5.1.

"Expiration Date"

means, in relation to any Bullion Option, the date agreed as such and as evidenced by a Confirmation therefor (which date shall be a Business Day) in relation to that Bullion Option; **provided that** in the case of any Bullion Option quoted for a specific month in relation to which no Expiration Date is specifically agreed, the Expiration Date shall be the Standard Date in relation to that month.

"Expiration Time"

means 9:30 a.m. New York time on the Expiration Date, unless the Parties otherwise agree.

"Gold" means gold bars or unallocated gold complying with the rules of The London Bullion Market Association relating to good delivery and fineness from time to time in effect.

"In-the-Money Amount" means:

- (a) in the case of a Call Option, the excess of the Spot Price over the Strike Price, multiplied by the aggregate number of Ounces of Bullion to be purchased under that Call Option; and
- (b) in the case of a Put Option, the excess of the Strike Price over the Spot Price, multiplied by the aggregate number of Ounces of Bullion to be sold under that Put Option.

"Local Banking Day" means:

- (a) for any Currency, a day on which commercial banks generally effect deliveries of that Currency in accordance with the market practice of the relevant foreign exchange market; and
- (b) for any Party, a day in the location of the applicable Designated Office of such Party on which commercial banks in that location are not authorized or required by law to close.

"Master Agreement" means the terms and conditions set forth in this master agreement.

**"Matched Pair
Novation Netting
Office(s)"** means, in respect of a Party, its Designated Office(s) specified in Part III of the Schedule hereto, as such Schedule may be modified from time to time by agreement of the Parties.

"Non-Defaulting Party" has the meaning given to it in the definition of Event of Default.

"Notice of Exercise" means telex, telephonic or other electronic notification providing assurance of receipt (excluding facsimile transmission), given by the Buyer prior to or at the Expiration Time of the exercise of a Bullion Option, which notification shall be irrevocable.

**"Novation Netting
Office(s)"** means, in respect of a Party, its Designated Office(s) specified in Part IV of the Schedule hereto, as such Schedule may be modified from time to time by agreement of the Parties.

"Option Currency" means, in relation to a Bullion Option, unless otherwise agreed by the Parties, the Currency in which the Premium and the Strike Price are expressed.

"Ounce" means a fine troy ounce, in the case of Gold, or a troy ounce, in the case of Silver.

"Parties" means the parties to the Agreement and shall include their successors and permitted assigns (but without prejudice to the application of clause (h) of the definition of Event of Default); and the term "Party" shall mean whichever of the Parties is appropriate in the context in which such expression may be used.

"Premium" means, in respect of a Bullion Option, the purchase price of the Bullion Option as agreed upon by the Parties, and payable by the Buyer to the Seller thereof.

"Premium Payment Date" means, in respect of a Bullion Option, the date on which the Premium is due and payable, being the second Business Day after the day on which the Bullion Option is granted, unless otherwise agreed by the Parties.

"Proceedings" means any suit, action or other proceedings relating to the Agreement.

"Put Option" means a Bullion Option entitling, but not obligating (except upon exercise), the Buyer to sell to the Seller at the Strike Price a specified number of Ounces of Bullion.

"Seller" means the Party granting a Bullion Option.

"Settlement Date" means in respect of the exercise of a Bullion Option which is: (a) an American Style Option, the second Business Day after the Exercise Date of such Bullion Option; or (b) a European Style Option, the second Business Day after the Expiration Date of such Bullion Option.

"Settlement Netting Office(s)" means, in respect of a Party, its Designated Office(s) specified in Part V of the Schedule hereto, as such Schedule may be modified from time to time by agreement of the Parties.

"Silver" means silver bars or unallocated silver complying with the rules of The London Bullion Market Association relating to good delivery and fineness from time to time in effect.

- "Specified Indebtedness"** means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money, other than in respect of money deposits or Bullion deposits received.
- "Specified Transaction"** means any transaction (including an agreement with respect thereto) between one Party to the Agreement (or any Credit Support Provider of such Party) and the other Party to the Agreement (or any Credit Support Provider of such Party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity linked swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot or spot deferred bullion transaction, forward bullion transaction, bullion option, bullion lease, loan or consignment, EFP (exchange for physical), bullion swap, bullion forward rate transaction or any other similar transaction (including any option with respect to any of these transactions) or any combination of any of the foregoing transactions.
- "Spot Price"** means, at any time, the bid price per Ounce (in the case of a Call Option) or offer price per Ounce (in the case of a Put Option) at such time for the relevant type of Bullion against U.S. dollars for delivery and payment two (2) Business Days later, converted, if necessary, into the Option Currency at the price at which, at such time, the Seller could enter into a contract in the foreign exchange market to buy the Option Currency in exchange for U.S. dollars for delivery and payment on such day which is two (2) Business Days later.
- "Standard Date"** means, with respect to any month, two (2) Business Days before the last Business Day of the month.
- "Strike Price"** means, in relation to a Bullion Option, the price per Ounce, expressed in the Option Currency, agreed as such by the Parties, being the price at which under that Bullion Option the Buyer shall be entitled to purchase (in the case of a Call Option) or sell (in the case of a Put Option) the Bullion which is the subject of such Bullion Option.
- "Threshold Amount"** means the amount specified as such for each Party in Part VI of the Schedule.
- "Value Added Tax"** means value added tax as provided for in the Value Added Tax Act 1983 (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.

"Value Date"

means (a) in the case of a Bullion Trade, the Business Day agreed by the Parties for delivery of the Bullion to be purchased and sold against payment therefor on such Business Day pursuant to such Bullion Trade and, in the case of a Bullion Obligation, the Business Day upon which the obligation to deliver Bullion or Currency pursuant to such Bullion Obligation is to be performed; and (b) in the case of a Bullion Option, the Settlement Date therefor.

SECTION 2. BULLION TRANSACTIONS

2.1 Scope of the Agreement

Unless otherwise agreed in writing by the Parties, each Bullion Transaction entered into between two (2) Designated Offices of the Parties on or after the Effective Date shall be governed by the Agreement. All Bullion Transactions between any two (2) Designated Offices of the Parties outstanding on the Effective Date which are identified in Part VII of the Schedule shall also be Bullion Transactions governed by the Agreement and every obligation of the Parties to deliver Bullion or Currency under any such Bullion Transaction that is a Bullion Trade shall be a Bullion Obligation under the Agreement.

2.2 Single Agreement

This Master Agreement, the particular terms agreed between the Parties in relation to each and every Bullion Transaction governed by this Master Agreement (and, insofar as such terms are recorded in a Confirmation, each such Confirmation), the Schedule to this Master Agreement and all amendments to any of such items shall together form the agreement between the Parties (the "Agreement") and shall together constitute a single agreement between the Parties. The Parties acknowledge that all Bullion Transactions governed by the Agreement are entered into in reliance upon the fact that all such items constitute a single agreement between the Parties. In the event of any inconsistency between the provisions of the Schedule and the other provisions of the Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and the Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Bullion Transaction.

2.3 Confirmations

Bullion Transactions governed by the Agreement shall be promptly confirmed by the Parties by Confirmations exchanged by mail, telex, facsimile or other electronic means. The failure by a Party to issue a Confirmation shall not prejudice or invalidate the terms of any Bullion Transaction governed by the Agreement. If the Parties so agree in Part VIII of the Schedule or otherwise in writing, the provisions in such Part VIII shall be applicable to Confirmations.

SECTION 3. BULLION OPTIONS - PREMIUMS

3.1 Payment of Premium

Unless otherwise agreed in writing by the Parties, the Premium related to a Bullion Option governed by the Agreement shall be paid no later than the Premium Payment Date in relation to such Bullion Option, in the Option Currency.

3.2 Late Payment or Non-Payment of Premium

If any Premium is not received on the Premium Payment Date, the Seller may elect either: (a) to accept a late payment of such Premium; (b) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat the related Bullion Option as void; or (c) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat such non-payment as an Event of Default under clause (a) of the definition of Event of Default. If the Seller elects to act under either clause (a) or (b) of the preceding sentence, the Buyer shall pay all out-of-pocket costs and actual damages incurred in connection with such unpaid or late Premium or void Bullion Option, including, without limitation, interest on such Premium in the same Currency as such Premium at the then prevailing market rate and any other costs or expenses incurred by the Seller in covering its obligations (including, without limitation, a delta hedge) with respect to such Bullion Option.

SECTION 4. BULLION OPTIONS - DISCHARGE AND TERMINATION

If the Parties agree in Part IX of the Schedule or otherwise in writing that this Section 4 shall apply to the Agreement, then any Call Option written by a Party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call Option written by the other Party, and any Put Option written by a Party will automatically be terminated and discharged, in whole or in part, as applicable, against a Put Option written by the other Party, such termination and discharge to occur automatically upon the payment in full of the last Premium payable in respect of such Bullion Options; provided that such termination and discharge may only occur in respect of Bullion Options:

- (a) each being with respect to the same type of Bullion and having the same Option Currency;
- (b) each having the same Expiration Date and Expiration Time;
- (c) each being of the same style, i.e. either both being American Style Options or both being European Style Options;
- (d) each having the same Strike Price;
- (e) each to be settled in the same location;
- (f) each being transacted through the same Designated Offices of both Buyer and Seller respectively; and
- (g) neither of which shall have been exercised by delivery of a Notice of Exercise;

and, upon the occurrence of such termination and discharge, neither Party shall have any further obligation to the other Party in respect of the relevant Bullion Options or, as the case may be, parts thereof so terminated and discharged. In the case of a partial termination and discharge (i.e., where the

relevant Bullion Options are for different numbers of Ounces of Bullion), the remaining portion of the Bullion Option which is partially discharged and terminated shall continue to be a Bullion Option for all purposes of the Agreement, including this Section 4.

SECTION 5. BULLION OPTIONS - EXERCISE AND SETTLEMENT

5.1 Notice of Exercise

The Buyer may exercise a Bullion Option governed by the Agreement by delivery to the Seller of a Notice of Exercise. Subject to Section 5.3, if a Bullion Option governed by the Agreement has not been exercised prior to or at the Expiration Time, it shall expire and become void and of no effect. Any Notice of Exercise shall (unless otherwise agreed):

- (a) in respect of an American Style Option, if received prior to or at 2:00 p.m. (Seller's local time) on any Business Day prior to the Expiration Date or prior to or at the Expiration Time on the Expiration Date, be effective upon receipt thereof by the Seller and, for the avoidance of doubt, any Notice of Exercise received after 2:00 p.m. (Seller's local time) on any Business Day prior to the Expiration Date shall be effective only as of the opening of business of the Seller on the first Business Day (if any, being a Business Day prior to the Expiration Date) subsequent to its receipt; and
- (b) in respect of a European Style Option, if received on the Expiration Date prior to or at the Expiration Time, be effective upon receipt thereof by the Seller.

5.2 No Partial Exercise

Unless otherwise agreed by the Parties, a Bullion Option governed by the Agreement may be exercised only in whole.

5.3 Automatic Exercise

Unless the Seller is otherwise instructed by the Buyer, if a Bullion Option has an In-the-Money Amount at its Expiration Time that equals or exceeds the product of (a) 1% (or such other percentage as may have been agreed by the Parties) of the Strike Price and (b) the number of Ounces of Bullion which are the subject of such Bullion Option, then the Bullion Option shall be deemed automatically exercised. In such case, unless otherwise agreed by the Parties, such Bullion Option shall be settled in accordance with Section 5.4 of the Agreement. For the purpose of determining whether or not any Bullion Option shall be deemed automatically exercised pursuant to this Section 5.3, the Buyer shall, unless otherwise agreed by the Parties, accept the Seller's calculation of the In-the-Money Amount.

5.4 Settlement of Exercised Bullion Options

Subject to Sections 5.2, 5.3 and 5.5, an exercised Bullion Option shall be settled on its Settlement Date as follows:

- (a) in the case of a Call Option, the Seller shall deliver in accordance with Section 6.1 to the Buyer the number of Ounces of Bullion in respect of which the Bullion Option is exercised and the Buyer shall pay to the Seller the product of such quantity and the Strike Price; and
- (b) in the case of a Put Option, the Buyer shall deliver in accordance with Section 6.1 to the Seller the number of Ounces of Bullion in respect of which the Bullion Option is exercised and the Seller shall pay to the Buyer the product of such quantity and the Strike Price.

5.5 In-the-Money Amount Settlement

A Bullion Option shall be settled at its In-the-Money Amount if the Buyer so elects in its Notice of Exercise. In such case, the In-the-Money Amount shall be determined based upon the Spot Price at the time of exercise or as soon thereafter as possible. The sole obligations of the Parties with respect to settlement of such Bullion Option shall be to deliver or receive the In-the-Money Amount of such Bullion Option on the Settlement Date. Notwithstanding the definition of Spot Price in Section 1, if the Buyer elects to settle a Bullion Option at its In-the-Money Amount, the Buyer shall be entitled when giving the Notice of Exercise to require that the In-the-Money Amount of the Bullion Option be ascertained with reference to the U.S. dollar bid or offer price, as appropriate, per Ounce quoted by the Seller to the Buyer at 9:30 a.m. New York time on the Exercise Date (in the case of an American Style Option) or the Expiration Date (in the case of a European Style Option) converted, if necessary, into the Option Currency at the price at which, at such time, the Seller could enter into a contract in the foreign exchange market to buy the Option Currency in exchange for U.S. dollars.

SECTION 6. BULLION TRANSACTIONS - SETTLEMENT AND NETTING

6.1 Settlement

Subject to Sections 4, 6.2 and 6.3, each Party shall deliver to the other Party the amount of the Bullion or Currency to be delivered by it under each Bullion Transaction on the Value Date for such Bullion Transaction. All Bullion to be delivered under any Bullion Transaction shall be delivered loco London by being credited to an unallocated account at a member of The London Bullion Market Association agreed by both Parties (or, failing agreement, nominated by the delivering Party) or by delivery at such other location and/or in such other form as may be agreed.

6.2 Net Settlement/Payment Netting

If on any Value Date more than one delivery of a particular type of Bullion or Currency is to be made between a pair of Settlement Netting Offices, then, on such date, each Party shall aggregate the amounts of such type of Bullion or Currency (i.e., Gold with Gold, Silver with Silver, and each Currency with other Currency of the same type) deliverable by it and only the difference

between these aggregate amounts shall be delivered by the Party obligated to deliver the larger aggregate amount to the other Party and, if the aggregate amounts are equal, no delivery of the relevant type of Bullion or Currency, as the case may be, shall be made.

6.3 Novation Netting

(2) By Type of Obligation

If the Parties enter into a Bullion Trade governed by the Agreement through a pair of Novation Netting Offices or, if a Bullion Option governed by the Agreement and entered into by the Parties through a pair of Novation Netting Offices is exercised or deemed exercised, in each case giving rise to a Bullion Obligation for the same Value Date and in the same type of Bullion or Currency as a then existing Bullion Obligation between the same pair of Novation Netting Offices, then immediately upon entering into such Bullion Trade or exercise or deemed exercise of such Bullion Option, each such Bullion Obligation shall automatically and without further action be individually cancelled and simultaneously replaced by a new Bullion Obligation for such Value Date determined as follows: the amounts of such type of Bullion or Currency that would otherwise have been deliverable by each Party on such Value Date shall be aggregated (i.e., Gold with Gold, Silver with Silver, and each Currency with other Currency of the same type) and the Party with the larger aggregate amount shall have a new Bullion Obligation to deliver to the other Party the amount of such type of Bullion or Currency by which its aggregate amount exceeds the other Party's aggregate amount, provided that if the aggregate amounts are equal, no new Bullion Obligation shall arise. This clause (a) shall not affect any other Bullion Obligation of a Party to deliver any different Bullion or Currency on the same Value Date.

(b) By Matched Pair

If the Parties enter into a Bullion Trade governed by the Agreement between a pair of Matched Pair Novation Netting Offices or, if a Bullion Option governed by the Agreement and entered into through a pair of Matched Pair Novation Netting Offices is exercised or deemed exercised, then the provisions of Section 6.3(a) shall apply only in respect of Bullion Obligations arising by virtue of Bullion Trades or exercised Bullion Options governed by the Agreement entered into between such pair of Matched Pair Novation Netting Offices and involving the same type of Bullion and Currency and the same Value Date.

6.4 General

(a) Inapplicability of Sections 6.2 and 6.3

The provisions of Sections 6.2 and 6.3 shall not apply if a Close-Out Date has occurred or a voluntary or involuntary case or other proceeding of the kind described in clauses

(b) or (c) of the definition of Event of Default has occurred without being dismissed in relation to either Party.

(b) **Failure to Record**

The provisions of Section 6.3 shall apply notwithstanding that either Party may fail to record the new Bullion Obligations in its books.

(c) **Cut-off Date and Time**

The provisions of Section 6.3 are subject to any cut-off date and cut-off time agreed between the applicable Novation Netting Offices and Matched Pair Novation Netting Offices of the Parties.

(d) **Netting of Premiums**

If the Parties so agree in Part X of the Schedule or otherwise in writing, then, unless otherwise agreed, if, on any date Premiums would otherwise be payable under the Agreement in the same Currency between the same Designated Offices of the Parties, then, on such date, each Party's obligation to make payment of any such Premium will be automatically satisfied and discharged and, each Party shall aggregate the Premium(s) that would otherwise have been payable by it and only the difference between the aggregate Premium(s) shall be payable by the Party owing the larger aggregate Premium(s) to the other Party and, if the aggregate Premium(s) are equal, no payment shall be made.

SECTION 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Representations and Warranties

Each Party represents and warrants to the other Party as of the date of the Agreement and as of the date of each Bullion Transaction governed by the Agreement that:

- (a) it has authority to enter into the Agreement and such Bullion Transaction;
- (b) the persons executing the Agreement and entering into such Bullion Transaction on its behalf have been duly authorized to do so;
- (c) the Agreement and the Bullion Obligations and Bullion Options created under the Agreement are binding upon it and enforceable against it in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and applicable principles of equity) and do not and will not violate the terms of any agreements or laws to which such Party is subject;

- (d) no Event of Default or any event which with the giving of notice or the passage of time or both would constitute an Event of Default has occurred and is continuing with respect to it; and
- (e) it acts as principal in entering into, and (with respect to Bullion Options) exercising, each and every Bullion Transaction governed by the Agreement.

7.2 Covenants

Each Party covenants to the other Party that:

- (a) it will at all times obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authorizations, approvals, licenses and consents required to enable it lawfully to perform its obligations under the Agreement; and
- (b) it will promptly notify the other Party of the occurrence of any Event of Default with respect to itself or any Credit Support Provider in relation to it or any event which, with the giving of notice or the passage of time or both, would constitute an Event of Default with respect to itself or any Credit Support Provider in relation to it.

SECTION 8. CLOSE-OUT AND LIQUIDATION

8.1 Circumstances of Close-Out and Liquidation

If an Event of Default has occurred and is continuing, then the Non-Defaulting Party shall have the right to close out and liquidate in the manner described below all, but not less than all, outstanding Bullion Obligations and Bullion Options governed by the Agreement (except to the extent that in the good faith opinion of the Non-Defaulting Party certain of such Bullion Obligations and Bullion Options may not be terminated under applicable law) by notice to the Defaulting Party. If "Automatic Termination" is specified as applying to a Party in Part XI of the Schedule hereto, then in the case of an Event of Default specified in clauses (b) or (c) of the definition thereof with respect to such Party, such close-out and liquidation shall be automatic as to all such outstanding Bullion Obligations and Bullion Options. Where such close-out and liquidation is to be effected, it shall be effected by:

- (a) **In the case of Bullion Obligations:**
 - (i) closing out each outstanding Bullion Obligation (including any Bullion Obligation which has not been performed and in respect of which the Value Date is on or precedes the Close-Out Date) so that each such Bullion Obligation is cancelled and the Non-Defaulting Party shall calculate in good faith with respect to each such cancelled Bullion Obligation, the Closing Gain or, as appropriate, the Closing Loss, as follows:

(ii) for each Bullion Obligation in Bullion or in a Currency other than the Non-Defaulting Party's Base Currency, calculate a "Close-Out Amount" by converting:

(A) in the case of a Bullion Obligation whose Value Date is the same or is later than the Close-Out Date, the amount of such Bullion Obligation (expressed in aggregate number of Ounces of the relevant Bullion or amount of the relevant Currency); or

(B) in the case of a Bullion Obligation whose Value Date precedes the Close-Out Date, the amount of such Bullion Obligation increased, to the extent permitted by applicable law, by adding interest thereto from the Value Date to the Close-Out Date at the rate representing the cost (expressed as a percentage rate per annum) at which the Non-Defaulting Party would have been able, on such Value Date, to fund the amount of such Bullion Obligation for the period from the Value Date to the Close-Out Date (such cost, in the case of Bullion Obligations denominated in Bullion, taking into account the rates for bullion deposits);

into such Base Currency at the rate of exchange at which the Non-Defaulting Party can buy or sell, as appropriate, such Base Currency with or against the Bullion or Currency of such Bullion Obligation for delivery on the Value Date of that Bullion Obligation, or if such Value Date precedes the Close-Out Date, for delivery on the Close-Out Date;

(iii) determine in relation to each Value Date:

(A) the sum of all Close-Out Amounts relating to Bullion Obligations under which, and of all Bullion Obligations in the Non-Defaulting Party's Base Currency under which, the Non-Defaulting Party would otherwise have been entitled to receive the relevant amount from the Defaulting Party on that Value Date, adding (to the extent permitted by applicable law), in the case of a Bullion Obligation in the Non-Defaulting Party's Base Currency whose Value Date precedes the Close-Out Date, interest for the period from the Value Date to the Close-Out Date at the Non-Defaulting Party's Base Currency Rate as at such Value Date for such period, and

(B) the sum of all Close-Out Amounts relating to Bullion Obligations under which, and of all Bullion Obligations in the Non-Defaulting Party's Base Currency under which, the Non-Defaulting Party would otherwise have been obligated to pay the relevant amount to the Defaulting Party on that Value Date, adding (to the extent permitted by applicable law), in the case of a Bullion Obligation in the Non-Defaulting Party's Base Currency whose Value Date precedes the Close-Out Date, interest for the period

from the Value Date to the Close-Out Date at the Non-Defaulting Party's Base Currency Rate as at such Value Date for such period;

- (iv) if the sum determined under clause (iii)(A) above is greater than the sum determined under clause (iii)(B) above, the difference shall be the Closing Gain for such Value Date; if the sum determined under clause (iii)(A) is less than the sum determined under clause (iii)(B) above, the difference shall be the Closing Loss for such Value Date;
 - (v) to the extent permitted by applicable law, adjusting the Closing Gain or Closing Loss for each Value Date falling after the Close-Out Date to present value by discounting the Closing Gain or Closing Loss from the Value Date to the Close-Out Date, at the Non-Defaulting Party's Base Currency Rate, or at such other rate as may be prescribed by applicable law;
 - (vi) aggregating the following amounts so that all such amounts are netted into a single liquidated amount payable by or to the Non-Defaulting Party in respect of Bullion Obligations: (A) the sum of the Closing Gains for all Value Dates (discounted to present value, where appropriate, in accordance with the provisions of clause (a)(v) of this Section 8.1) (which for the purposes of this aggregation shall be a positive figure) and (B) the sum of the Closing Losses for all Value Dates (discounted to present value, where appropriate, in accordance with the provisions of clause (a)(v) of this Section 8.1) (which for the purposes of the aggregation shall be a negative figure); and
 - (vii) if the resulting net amount is positive, it shall be owing by the Defaulting Party to the Non-Defaulting Party in respect of Bullion Obligations, and if it is negative, then the absolute value of such amount shall be payable by the Non-Defaulting Party to the Defaulting Party in respect of Bullion Obligations.
- (b) **In the case of Bullion Options:**
- (i) closing out each Bullion Option governed by the Agreement which has not been exercised or deemed exercised on or prior to the Close-Out Date so that each such Bullion Option is cancelled and market damages for each Party are calculated by determining the aggregate of:
 - (A) with respect to each Bullion Option purchased by such Party, the current market premium for such Bullion Option,
 - (B) with respect to each Bullion Option sold by such Party, any unpaid Premium and, to the extent permitted by applicable law, interest on any unpaid Premium in the relevant Option Currency as such Premium at the then prevailing market rate, and

(C) any costs or expenses incurred by the Non-Defaulting Party in covering its obligations (including a delta hedge) with respect to such Bullion Option, all as determined in good faith by the Non-Defaulting Party;

(ii) converting any damages calculated in accordance with clause (b)(i) above in a Currency other than the Non-Defaulting Party's Base Currency into such Base Currency at the spot price at which, at the time of close-out, the Non-Defaulting Party could enter into a contract in the foreign exchange market to buy the Base Currency in exchange for such Currency; and

(iii) netting such damage payments with respect to each Party so that all such amounts are netted to a single liquidated amount payable by one Party to the other Party as a settlement payment in respect of Bullion Options governed by the Agreement which have not been exercised or deemed exercised on or prior to the Close-Out Date.

(c) **Final Netting**

The net amounts payable by each Party under clauses (a) and (b) of this Section 8.1 shall be aggregated and netted so that a single net amount in respect of Bullion Transactions governed by the Agreement is payable by one Party to the other Party.

8.2 Calculation of Interest

Any addition of interest or discounting required under Section 8.1 shall be calculated on the basis of the actual number of days elapsed and of a year of such number of days as is customary for transactions involving the relevant Currency in the relevant foreign exchange market.

8.3 Other Bullion Transactions

Where close-out and liquidation occurs in accordance with Section 8.1, the Non-Defaulting Party shall also be entitled to close out and liquidate, to the extent permitted by applicable law, any other Bullion Transactions entered into between the Parties which are then outstanding in accordance with the provisions of Section 8.1, as if each such transaction were governed by the Agreement.

8.4 Payment and Late Interest

The amount payable by one Party to the other Party pursuant to the provisions of Sections 8.1 and 8.3 above shall be paid by the close of business on the Business Day following such close-out and liquidation (converted as required by applicable law into any other Currency, any costs of such conversion to be borne by, and deducted from any payment to, the Defaulting Party). To the extent permitted by applicable law, any amounts required to be paid under Section 8.1 or 8.3 and not paid on the due date therefor shall bear interest at the Non-Defaulting Party's Base Currency Rate plus 1% per annum (or, if conversion is required by applicable law into some

other Currency, either (a) the average rate at which overnight deposits in such other Currency are offered by major banks in the London interbank market as of 11:00 a.m. (London time) plus 1% per annum or (b) such other rate as may be prescribed by such applicable law) for each day for which such amount remains unpaid.

8.5 Suspension of Obligations

Without prejudice to the foregoing, so long as a Party shall be in default in payment or performance to the Non-Defaulting Party under the Agreement and so long as the Non-Defaulting Party has not exercised its rights under Section 8.1, the Non-Defaulting Party may, at its election and without penalty, suspend its obligation to perform under the Agreement.

8.6 Expenses

The Defaulting Party shall reimburse the Non-Defaulting Party in respect of all out-of-pocket expenses incurred by the Non-Defaulting Party (including fees and disbursements of counsel and including attorneys who may be employees of the Non-Defaulting Party) in connection with any reasonable collection, preservation of rights or other enforcement proceedings related to the payments required under this Section 8.

8.7 Reasonable Pre-Estimate

The Parties agree that the amounts recoverable under this Section 8 are a reasonable pre-estimate of loss and not a penalty. Such amounts are payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in the Agreement, neither Party will be entitled to recover any additional damages as a consequence of such losses.

8.8 No Limitation of Other Rights: Set-Off

The Non-Defaulting Party's rights under this Section 8 shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise). To the extent not prohibited by applicable law, the Non-Defaulting Party shall have a general right of set-off with respect to all amounts owed by each Party to the other Party, whether or not due and payable (provided that any amount not due and payable at the time of such set-off shall, if appropriate, be discounted to present value in a commercially reasonable manner by the Non-Defaulting Party). The Non-Defaulting Party's rights under this Section 8.8 are subject to Section 8.7.

SECTION 9. ILLEGALITY, IMPOSSIBILITY AND FORCE MAJEURE

If either Party is prevented from or hindered or delayed by reason of force majeure or act of State in the delivery or receipt of any Bullion or Currency in respect of a Bullion Obligation or Bullion Option or if it becomes or, in the good faith judgment of one of the Parties, may become unlawful or impossible for either Party to deliver or receive any Bullion or Currency which is the subject of a Bullion Obligation

or Bullion Option, then either Party may, by notice to the other Party, require the close-out and liquidation of each affected Bullion Obligation and Bullion Option in accordance with the provisions of Sections 8.1, 8.2 and 8.4 and, for the purposes of enabling the calculations prescribed by Sections 8.1, 8.2 and 8.4 to be effected, the Party unaffected by such force majeure, act of State, illegality or impossibility (or if both Parties are so affected, whichever Party gave the relevant notice) shall effect the relevant calculations as if it were the Non-Defaulting Party. Nothing in this Section 9 shall be taken as indicating that the Party treated as the Defaulting Party for the purposes of calculations required hereby has committed any breach or default.

SECTION 10. PARTIES TO RELY ON THEIR OWN EXPERTISE

Each Party shall enter into each Bullion Transaction governed by the Agreement in reliance only upon its own judgment. Neither Party holds itself out as advising, or any of its employees or agents as having the authority to advise, the other Party as to whether or not it should enter into any such Bullion Transaction or as to any subsequent actions relating thereto or on any other commercial matters concerned with any Bullion Transaction governed by the Agreement, and neither Party shall have any responsibility or liability whatsoever in respect of any advice of this nature given, or views expressed, by it or any of such persons to the other Party, whether or not such advice is given or such views are expressed at the request of the other Party.

SECTION 11. MISCELLANEOUS

11.1 Currency Indemnity

The receipt or recovery by either Party (the "first Party") of any amount in respect of an obligation of the other Party (the "second Party") in a Currency other than that in which such amount was due, whether pursuant to a judgment of any court or pursuant to Section 8 or 9, shall discharge such obligation only to the extent that, on the first day on which the first Party is open for business immediately following such receipt, the first Party shall be able, in accordance with normal banking practice, to purchase the Currency in which such amount was due with the Currency received. If the amount so purchasable shall be less than the original amount of the Currency in which such amount was due, the second Party shall, as a separate obligation and notwithstanding any judgment of any court, indemnify the first Party against any loss sustained by it. The second Party shall in any event indemnify the first Party against any costs incurred by it in making any such purchase of Currency.

11.2 Assignments

Neither Party may assign, transfer or charge, or purport to assign, transfer or charge, its rights or its obligations under the Agreement or any interest therein without the prior written consent of the other Party, and any purported assignment, transfer or charge in violation of this Section 11.2 shall be void.

11.3 **Telephonic Recording**

The Parties agree that each may electronically record all telephonic conversations between them and that any such tape recordings may be submitted in evidence in any Proceedings. In the event of any dispute between the Parties as to the terms of a Bullion Transaction governed by the Agreement or any Bullion Obligations thereby created, the Parties may use electronic recordings between the persons who entered into such Bullion Transaction as the preferred evidence of the terms of such Bullion Transaction, notwithstanding the existence of any writing to the contrary.

11.4 **No Obligation**

Neither Party to the Agreement shall be required to enter into any Bullion Transaction with the other.

11.5 **Notices**

Unless otherwise agreed, all notices, instructions and other communications to be given to a Party under the Agreement shall be given to the address, telex (if confirmed by the appropriate answerback), facsimile (confirmed if requested) or telephone number and to the individual or department specified by such Party in Part XII of the Schedule attached hereto. Unless otherwise specified, any notice, instruction or other communication given in accordance with this Section 11.5 shall be effective upon receipt.

11.6 **Termination**

Each of the Parties hereto may terminate the Agreement at any time by seven (7) days' prior written notice to the other Party delivered as prescribed above, and termination shall be effective at the end of such seventh day; provided, however, that any such termination shall not affect any outstanding Bullion Transactions, and the provisions of the Agreement shall continue to apply until all the obligations of each Party to the other under the Agreement have been fully performed.

11.7 **Severability**

In the event any one or more of the provisions contained in the Agreement should be held invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions under the law of such jurisdiction, and the validity, legality and enforceability of such and any other provisions under the law of any other jurisdiction, shall not in any way be affected or impaired thereby.

11.8 **Waiver**

No indulgence or concession granted by a Party, and no omission or delay on the part of a Party in exercising any right, power or privilege under the Agreement, shall operate as a waiver

thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11.9 Master Agreement

Where one of the Parties to the Agreement is domiciled in the United States, the Parties intend that the Agreement shall be a master agreement, as defined in 11 U.S.C. Section 101(55)(C) and 12 U.S.C. Section 1821(e)(8)(D)(vii).

11.10 Time of Essence

Time shall be of the essence in the Agreement.

11.11 Headings

Headings in the Agreement are for ease of reference only.

11.12 Payments Generally

Every payment or delivery of Currency to be made by a Party under the Agreement shall be made in same day (or immediately available) and freely transferable funds to the bank account designated by the other Party for such purpose.

11.13 Taxes

Where, pursuant to or in connection with any Bullion Transaction or the Agreement:

- (a) one Party (the "Supplier") makes a supply to the other Party (the "Recipient"), and (i) Value Added Tax is chargeable in respect of such supply and (ii) the Supplier is required to account to the relevant fiscal authority for such Value Added Tax, the Recipient shall on demand pay to the Supplier (in addition to the relevant consideration for such supply) an amount equal to such Value Added Tax, and the Supplier shall on receipt of such payment provide the Recipient with an invoice or receipt in such form as may be prescribed by applicable law; and
- (b) a person other than the Supplier and the Recipient is deemed or treated by applicable law or the practice from time to time of the relevant fiscal authority to make a supply to the Recipient for Value Added Tax purposes, and (i) Value Added Tax is chargeable in respect of such supply and (ii) such person is required to account to the relevant fiscal authority for such Value Added Tax, the Recipient shall on demand by the Supplier pay to such person an amount equal to such Value Added Tax, and the Supplier shall use its reasonable endeavors to procure that such person will on receipt of such payment provide the Recipient with an invoice or receipt in such form as may be prescribed by applicable law

Provided that the Recipient shall not be liable to make any payment to any person as aforesaid where it itself is (or is deemed or treated by applicable law or the practice from time to time of the relevant fiscal authority to be) the person which makes the relevant supply for Value Added Tax purposes and which is required to account to the relevant fiscal authority for the Value Added Tax chargeable in respect of such supply, and the Recipient shall in such a case provide the Supplier with such relevant information as the Supplier shall reasonably require to show that the Recipient is (or is deemed or treated by applicable law or the practice from time to time of the relevant fiscal authority to be) the person making the relevant supply for Value Added Tax purposes as aforesaid.

11.14 Amendments

No amendment, modification or waiver of the Agreement will be effective unless in writing executed by each of the Parties.

SECTION 12. LAW AND JURISDICTION

12.1 Governing Law

The Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to conflict of laws provisions.

12.2 Consent to Jurisdiction

With respect to any Proceedings, each Party irrevocably (a) submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, and (b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such Party. Nothing in the Agreement precludes either Party from bringing Proceedings in any other jurisdiction nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

12.3 Waiver of Immunities

Each Party irrevocably waives to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees to the extent permitted by applicable law that it will not claim any such immunity in any Proceedings. Each Party consents generally in

respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever of any order or judgment which may be made or given in such Proceedings.

12.4 **Waiver of Jury Trial**

Each Party hereby irrevocably waives any and all right to trial by jury in any Proceedings.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first written above.

By _____

Name:

Title:

By _____

Name:

Title:

SCHEDULE

International Bullion Master Agreement

between _____ ("Party A") and
_____ ("Party B").

PART I Base Currency

Party A:
Party B:

PART II Designated Offices

Each of the following shall be a Designated Office:

Party A:
Party B:

PART III Matched Pair Novation Netting Offices

Matched pair netting by novation provisions of Section 6.3(b) shall apply to the following Matched Pair Novation Netting Offices and shall apply to [all Bullion Obligations] [Bullion Obligations with a Value Date more than two (2) Business Days after the day on which the Parties enter into such Bullion Obligations].

Party A:
Party B:

PART IV Novation Netting Offices

Netting by novation provisions of Section 6.3(a) shall apply to the following Novation Netting Offices and shall apply to [all Bullion Obligations] [Bullion Obligations with a Value Date more than two (2) Business Days after the day on which the Parties enter into such Bullion Obligations].

Party A:
Party B:

PART V

Settlement Netting Offices

Net settlement provisions of Section 6.2 shall apply to the following Settlement Netting Offices:

Party A:

Party B:

PART VI

Threshold Amount

The Threshold Amount applicable to Party A shall be:

The Threshold Amount applicable to Party B shall be:

PART VII

Scope of Agreement

The Agreement shall apply to [all] [the following] Bullion Transactions outstanding between any two (2) Designated Offices of the Parties on the Effective Date.

PART VIII

Confirmation Procedures

The following provision [shall][shall not] apply to the Agreement:

In relation to Confirmations, unless either Party objects to the terms contained in any Confirmation within three (3) Business Days of receipt thereof, or such shorter time as may be appropriate given the Value Date of the Bullion Transaction, the terms of such Confirmation shall be deemed correct and accepted absent manifest error, unless a corrected Confirmation is sent by a Party within such three Business Days, or shorter period, as appropriate, in which case the Party receiving such corrected Confirmation shall have three (3) Business Days, or shorter period, as appropriate, after receipt thereof to object to the terms contained in such corrected Confirmation.

PART IX

Discharge and Termination of Bullion Options

The provisions of Section 4 [shall] [shall not] apply.

PART X

Netting of Premiums

The provisions of Section 6.4(d) [shall] [shall not] apply.

PART XI

Automatic Termination

The "Automatic Termination" provision in Section 8.1 [shall] [shall not] apply to Party A and [shall] [shall not] apply to Party B.

PART XII

Notices and Settlement Instructions

Party A:

Address:

Telephone Number:

Telex Number:

Facsimile Number:

Name of Individual or Department to whom Notices are to be sent:

Name of Bank and Office, Account Number and Reference with respect to relevant Currencies and/or Bullion:

Party B:

Address:

Telephone Number:

Telex Number:

Facsimile Number:

Name of Individual or Department to whom Notices are to be sent:

Name of Bank and Office, Account Number and Reference with respect to relevant Currencies and/or Bullion:

PART XIII

Process Agent

[Not applicable.]

[Party A appoints the following as its agent for service of process in any Proceedings in New York: _____.]

[Party B appoints the following as its agent for service of process in any Proceedings in New York: _____.]

PART XIV

Withholding Tax

[Each of the] [The] following provision[s] [shall] [shall not] apply to the Agreement:

All payments to be made by either Party pursuant to or in connection with any Bullion Transaction or the Agreement shall be made free and clear of, and without deduction or withholding for or on account of, tax unless a Party (the "Payer") is required by applicable law to make a payment (the "Relevant Payment") subject to the deduction or withholding of tax, in which case the sum of the Relevant Payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Party receiving the Relevant Payment (the "Payee") receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and retained had no such deduction or withholding been made or required to be made.

[If and to the extent that the Payer's obligation to pay an increased sum as aforesaid can be mitigated by virtue of the provisions of any applicable double tax convention, the Payee shall use its reasonable endeavors (including, without limitation, the submission to the relevant fiscal authorities of all requisite forms and information) to ensure the application of such double tax convention.]

[In the event that an increased payment is made by the Payer as aforesaid, and the Payee (acting in good faith) determines in its sole opinion that it has received or been granted (and has derived full use and benefit from) any credit against tax, or repayment of tax, paid or payable by it in respect of, or calculated with reference to, the deduction or withholding giving rise to such increased payment, the Payee shall, to the extent that it can do so without prejudice to the retention of the amount of such credit or repayment, pay to the Payer such amount as the Payee (acting in good faith) shall have concluded in its sole opinion to be attributable to such deduction or withholding; **Provided** that nothing in this paragraph shall interfere with the right of the Payee to arrange its tax affairs in whatever manner it thinks fit nor oblige the Payee to disclose any information relating to its tax affairs (or any computation made in respect thereof), and (in particular) the Payee shall not be under any obligation to claim credit or repayment from or against its corporate profit or similar tax liability in respect of the amount of such deduction or withholding as aforesaid in priority to any other claims, reliefs, credits or deductions available to it.]

PART XV

Adequate Assurances

The following provision [shall][shall not] apply to the Agreement:

The failure by a Party ("**first Party**") to give adequate assurances of its ability to perform any of its obligations under the Agreement within two (2) Business Days of a written request to do so when the other Party ("**second Party**") has reasonable grounds for insecurity shall be an Event of Default under the Agreement, in which case during the pendency of a reasonable request by the second Party to the first Party for adequate assurances of the first Party's ability to perform its obligations under the Agreement, the second Party may, at its election and without penalty, suspend its obligations under the Agreement.

PART XVI

FDICIA Representations

The following provisions [shall][shall not] apply to the Agreement:

For the purposes of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. §4401 ("FDICIA"):

[Delete provisions that are not applicable.]

(a) Party A represents and warrants to Party B as of the date of the Agreement and as of the date of each Bullion Transaction governed by the Agreement that

[it qualifies as a "financial institution" by virtue of being a [broker or dealer] [depository institution] [futures commission merchant] within the meaning of FDICIA.]

[it qualifies as a "financial institution" as that term is defined in 12 C.F.R. §231.3 of Regulation EE issued by the Board of Governors of the Federal Reserve System ("Regulation EE") by virtue of the fact that it is willing to enter into "financial contracts" as a counterparty "on both sides of one or more financial markets" as those terms are used in Section 231.3 of Regulation EE and, during the 15-month period immediately preceding the date it makes or is deemed to make this representation, it has had on at least one day during such period, with counterparties that are not its affiliates (as defined in Section 231.3(b) of Regulation EE) either: (i) one or more financial contracts of a total gross notional principal amount of \$1 billion outstanding; or (ii) total gross market-to-market positions (aggregated across counterparties) of \$100 million; and it will notify Party B if it no longer meets the requirements for status as a financial institution under Regulation EE.]

(b) Party B represents and warrants to Party A as of the date of the Agreement and as of the date of each Bullion Transaction governed by the Agreement that

[it qualifies as a "financial institution" by virtue of being a [broker or dealer] [depository institution] [futures commission merchant] within the meaning of FDICIA.]

[it qualifies as a "financial institution" as that term is defined in 12 C.F.R. §231.3 of Regulation EE issued by the Board of Governors of the Federal Reserve System ("Regulation EE") by virtue of the fact that it is willing to enter into "financial contracts" as a counterparty "on both sides of one or more financial markets" as those terms are used in Section 231.3 of Regulation EE and, during the 15-month period immediately preceding the date it makes or is deemed to make this representation, it has had on at least one day during such period, with counterparties that are not its affiliates (as defined in Section 231.3(b) of Regulation EE) either: (i) one or more financial contracts of a total gross notional principal amount of \$1 billion outstanding; or (ii) total gross market-to-market positions (aggregated across counterparties) of \$100 million; and it will notify Party A if it no longer meets the requirements for status as a financial institution under Regulation EE.]

(c) If paragraphs (a) and (b) apply, the Parties agree that the Agreement shall be a netting contract, as defined in FDICIA, and each receipt or payment or delivery obligation under the Agreement shall be a covered contractual payment entitlement or covered contractual payment obligation, respectively, as defined in and subject to FDICIA.

PART XVII

Other Metals

The Parties agree that the term "Bullion" in Section 1 is modified to include [platinum or] any [other] precious or base metal agreed by the Parties, which metal or metals shall be subject to such terms supplemental to the Agreement as agreed in writing.

