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| --- | --- | --- |
|  | Dated [⚫] |  |
| COMDAQ METALS LIMITED  and  [LICENSEE] | | |
| Platinum group metals reference price LICENCE AGREEMENT | | |

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This Agreement is made as of [date] by and between:

1. **COMDAQ METALS LIMITED**, having it's registered office at 88 Gracechurch Street, London, EC3V 0DN with company number 04145902 (**CML**); and
2. **[LICENSEE]**, having it's registered office at [⚫] with company number [⚫] (**Licensee**)

**INTRODUCTION**:

1. The Licensee has entered into a Membership Agreement or the Website Terms with CML.
2. The parties have agreed that the Licensee may issue Licensed Products on the terms of this Agreement.

**IT IS AGREED** as follows:

1. Definitions and interpretation

In this Agreement and the recitals, the following terms have the following meanings unless the context requires otherwise:

**Applicable Law** means any Law affecting the provision or receipt (as the case may be) of the Benchmark, (in the case of the Licensee) applicable to the Licensed Products or otherwise applicable to CML or the Licensee (as the case may be)

**Benchmark** means the following benchmarks administered by CML:

* + 1. Comdaq Metals Tradeable Rhodium Benchmark (CMRB)
    2. Comdaq Metals Tradeable Ruthenium Benchmark (CMRUB)
    3. Comdaq Metals Tradeable Iridium Benchmark (CMIRB)
    4. Comdaq Metals Tradeable Platinum Swap Benchmark (CMSB)
    5. Comdaq Metals Tradeable Palladium Swap Benchmark (CMSB)

**Charges** means the charges payable by the Licensee under this Agreement, as set out in Schedule 1

**CML Trade Marks** means the Comdaq Metals name and the name of each of the Benchmarks

**Commencement Date** means [⚫]

**Confidential Information** means all information (of whatever nature and however recorded or preserved) which:

* + 1. was disclosed or received before or after the date of this Agreement as a result of the discussions leading up to this Agreement, entering into this Agreement or the performance of this Agreement; and
    2. is designated as “confidential information” by the Disclosing Party at the time of disclosure; or
    3. would be regarded as being confidential by a reasonable business person; or
    4. is clearly confidential from its nature and/or the circumstances in which it was imparted

**Force Majeure Event** means:

* + 1. acts of God, flood, drought, earthquake or other natural disaster;
    2. epidemic or pandemic;
    3. terrorist attack, war or riots;
    4. nuclear, chemical or biological contamination; and
    5. collapse of buildings, fire, explosion or accident

**Initial Term** has the meaning given to such term in clause 8.1

**Insolvency Event** in relation to a party means:

* + 1. it suspends, or threatens to suspend, payment of its debts or becomes insolvent or unable to pay its debts;
    2. it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
    3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
    4. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the party;
    5. the holder of a qualifying floating charge over the assets of that party has become entitled to appoint or has appointed an administrative receiver;
    6. a person becomes entitled to appoint a receiver over the assets of the party or a receiver is appointed over the assets of the party;
    7. a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the party's assets and such attachment or process is not discharged within 14 (fourteen) days;
    8. it suffers or is subject to any equivalent event, circumstance or procedure to those set out above in clauses (a) to (g) in any other jurisdiction; or
    9. it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business

**Intellectual Property Rights** means rights in patents (including utility models), designs (whether or not capable of registration), copyright, moral rights, database rights, trademarks, service marks, trade and business names, rights to sue for passing off, rights in the nature of unfair competition rights, trade secret, confidentiality and other proprietary rights including rights to know-how and other technical information, applications to register any of the foregoing, rights to take action for past infringements in respect of any of the foregoing, and all rights in the nature of any of the foregoing anywhere in the world

**Law** means:

* + 1. statutes, statutory instruments, regulations, by-laws, rules, ordinances, guidance or subordinate legislation;
    2. the common law and the law of equity;
    3. a binding court order, judgment or decree;
    4. any industry code, guidance, policy or standard which, in each case, is enforceable by law or a regulator; and

any direction, policy, rule or order that is legally binding and that is made or given by a regulator

**Licensed Products means** any contract for: spot or prompt sale(s) or purchase(s), forward sales(s) or purchase(s), average price sales(s) or purchase(s), net purchase or sales to which the Licensee is a party, which references, is linked to, or the value or settlement of which is determined by, a Benchmark (in whole or in part) and which is not an option, option settlement, exchange traded fund, exchange traded note, exchange traded commodity, assets under management or accumulation programme, swap or swaption or any other form of derivative contract or product or instrument settled in cash or otherwise and whether listed or unlisted, all of which require a separate product licence

**Losses** mean all losses (including any direct or indirect/consequential losses), liabilities, damages, costs, charges, and expenses (including management time, reasonable legal fees on a solicitor and own client basis, other professional advisers’ fees, and costs and disbursements of investigation, litigation, settlement, judgment, interest, fines, penalties and remedial actions)

**Renewal Term** has the meaning given in clause 8.1

**Term** means the Initial Term and any Renewal Term(s)

1. Structure of this Agreement
   1. This Agreement is supplemental to the Tradable Rhodium Benchmark Membership Agreement (the **Membership Agreement**) or Terms and Conditions for trading, Mark2Market and all Data Usage (the **Website Terms**) already in place between the parties, which shall continue in full force and effect.
   2. This Agreement constitutes the Licensee’s express licence under clause 7.5 of the Membership Agreement or clause 13 b) of the Website Terms (as applicable) in respect of the Licensed Products.
2. Grant of Licence
   1. Subject to clause 3.3, CML grants the Licensee a non-transferable, non-exclusive, personal licence to use the CML Trade Marks, the Benchmark, the name of the Benchmark, values of the Benchmark during the Term in connection with the:
      1. issue;
      2. operation; and
      3. settlement,

of the Licensed Products.

* 1. The Licensee may distribute the value of the Benchmark to counterparties of the Licensed Products solely for the purposes of settlement of the relevant Licensed Product.
  2. Unless otherwise provided in this Agreement, the Licensee shall not:
     1. use the Benchmarks or CML Trade Marks:
        1. in connection with anything other than the Licensed Products;
        2. in a way that might cause confusion as to the person responsible for preparing or disseminating the Benchmark;
        3. in a way that suggests (expressly or otherwise) that CML:
           1. has given any approval, endorsement or consent to the issue of or the investment in the Licensed Products or is otherwise connected to them in a way which may put CML in breach of Applicable Law; or
           2. have made any judgement about, or has expressed any opinion on, the Licensee or the Licensed Products;
           3. have given any investment advice in relation to the Benchmark, the Licensed Products or made any claim as to the suitability of the Benchmark for its use in connection with any Licensed Product.
        4. as part of, or otherwise in relation to, any informational, advertising or promotional material which breaches Applicable Law;
        5. in any other way not expressly permitted by this Agreement; or
     2. allow access to, publish or distribute the Benchmark, its value or any related data in any way other than as permitted by clause 3.2.

1. Intellectual Property Rights
   1. CML or its licensors shall own all Intellectual Property Rights subsisting in or arising in connection with the Benchmark and the CML Trade Marks and, except as licensed under this Agreement, the Licensee shall not acquire any Intellectual Property Rights in those items, and clause 4.2 shall apply if or to the extent that they might otherwise do so.
   2. If at any time the Licensee, by operation of Law, comes to own Intellectual Property Rights other than in accordance with the allocation contemplated by clause 4.1, it shall, on request from CML, at its own expense:
      1. assign such Intellectual Property Rights to CML or its nominee; and
      2. to the extent permitted by Law, waive all moral rights (and analogous rights) worldwide in connection with such Intellectual Property Rights.
   3. At CML’s request, and at the Licensee’s expense, the Licensee shall promptly execute deeds and other documents (including registration documents), and do such other things, as are necessary to confirm the ownership of Intellectual Property Rights assigned pursuant to this clause 4.
2. Charges, reporting and audit
   1. The Licensee shall pay the Charges.
   2. Within 14 days of the end of each calendar quarter or, if requested by CML, calendar month, the Licensee shall provide CML with written notice of:
      1. the number of Licensed Products issued by it or to which it was a party during that quarter or month (as applicable);
      2. the weight of metal of each such Licensed Product;
      3. the maturity of each such Licensed Product.

The Licensee shall not be required to issue a nil return to CML in the event that the Licensee does not issue or is not a party to any Licensed Products in a month.

* 1. CML shall invoice the Licensee for the Charges monthly in arrears. The Licensee shall pay each invoice within 30 (thirty) days of its date.
  2. CML may, by giving not less than 4 (four) months’ notice to the Licensee, increase the Charges, such increase to take effect on the next anniversary of the Commencement Date. CML may charge the Licensee interest at a per annum rate equal to 2% (two per cent) above the then current base rate of Barclays Bank at the date the invoice was issued on any validly issued invoices paid late.
  3. CML may vary the Charges at any time provided it gives the Licensee not less than 3 (three) months' notice of its intention to do so. The new Charges will take effect from the end of the period of notice, subject to the Licensee's right of termination under clause 9.
  4. The Charges are exclusive of VAT. Where any supply for VAT purposes is made under or in connection with this Agreement by CML, CML shall provide the Licensee with a valid VAT invoice in respect of any such supply. The Licensee shall, in addition to any payment made for that supply, pay to CML such VAT as is validly chargeable in respect of the supply at the same time as payment is due or, if received later, as soon as reasonably practicable after receipt of the VAT invoice.
  5. Licensee shall respond promptly to any reasonable request from CML for information necessary to confirm Licensee's compliance with this Agreement, including details of the number of Licensed Products issued by Licensee or to which it was a party.
  6. CML or its third party auditors may, upon giving Licensee not less than 14 (fourteen) days' notice (or such other shorter period of notice where CML reasonably suspects Licensee to be in breach of this Agreement) audit Licensee's accounts, records and other relevant documents and/or take or demand copies or extracts thereof solely to verify that Licensee is in compliance with the terms of this Agreement. CML or its third party auditors may continue to exercise the powers set out in this clause 5.7 for a period of 12 (twelve) months following the termination or expiry of this Agreement.
  7. In the event that the audit referred to in clause 5.7 shows there has been an underpayment of more than 10% of the Charges due for the period covered by such audit, or a breach of the Agreement, Licensee shall pay to CML within 15 (fifteen) days of CML's request:
     1. any costs and expenses incurred by CML on a full indemnity basis carrying out the audit pursuant to clause 5.7; and
     2. the underpayment and any interest thereon from the date it was first incurred until the date it is paid, calculated in accordance with clause 5.4.

1. Warranties, representations and undertakings
   1. Each party warrants, represents and undertakes to the other party that it has full capacity and authority to enter into and to perform its obligations under and in accordance with this Agreement.
   2. CML warrants that it has the right to grant to the Licensee the rights granted by this Agreement.
   3. CML will not be liable for breach of any of the warranties or other term of this Agreement to the extent that the breach arises from use of the Benchmark or CML Trade Marks in breach of this Agreement or as otherwise notified to the Licensee by CML or any alterations to the Benchmark or CML Trade Marks made by anyone other than CML or someone authorised by CML.
   4. The Licensee undertakes that it will comply with all Applicable Law relevant to the Licensed Products.
   5. Unless the Agreement expressly provides otherwise and to the extent permitted by Law, CML gives no:
      1. warranties representations, undertakings or other terms as to the Benchmark, the CML Trade Marks or their use by the Licensee;
      2. warranties representations, undertakings or other terms that the Benchmark or CML Trade Marks:
         1. are of any particular quality (satisfactory or otherwise);
         2. are fit for any particular purpose or use (whether or not this use has been made known to CML), including for use in connection with the Licensed Products; or
         3. are accurate or complete.
   6. The Licensee acknowledges that (i) CML has not given any investment advice or made any claim as to the suitability of the Benchmark for its use in connection with any Licensed Product; and (ii) Licensee has made its own assessment as to the suitability of the Benchmark for such use (and the Licensee is qualified to make such assessment or has received suitable independent advice).
2. Liability and indemnity
   1. Nothing in this Agreement limits or excludes:
      1. a party's liability:
         1. to the extent that it cannot be legally limited or excluded by Law;
         2. for death or personal injury arising out of its negligence or that of its personnel; and
         3. for Losses suffered by the other arty arising out of the first party's (or its Personnel’s) fraud or fraudulent statement;
      2. Licensee’s liability to pay the Charges or under the indemnity in clause 7.4.
   2. Neither shall have any liability to the other party, whether in contract (including under any indemnity or warranty), in tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
      1. loss of revenue;
      2. loss of anticipated savings;
      3. loss, destruction or corruption of data;
      4. loss of contract, business or opportunity;
      5. loss of goodwill; or
      6. indirect or consequential Losses of any kind whatsoever and however caused, whether or not reasonably foreseeable, reasonably contemplatable, or actually foreseen or actually contemplated, by that party at the time of entering into this Agreement.
   3. Subject to clause 7.1 CML’s total liability to the Licensee, whether in contract (including under any indemnity or warranty), in tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for Losses incurred or suffered by the Licensee shall be limited for all claims in aggregate in any consecutive twelve month period, to all sums paid or payable by the Licensee under this Agreement in that twelve month period, or $7,000 (seven thousand US Dollars), whichever is greater.
   4. The Licensee will Indemnify CML against any Losses incurred by as a result of or in relation to any claim by a third party arising from or in relation to the Licensed Products or any trading in, or other dealing in relation to, the Licensed Products.
3. Term and termination
   1. This Agreement will commence on the Commencement Date and shall continue for an initial term of 1 (one) year (**Initial Term**), after which it shall automatically renew for successive periods of 1 (one) year (each a **Renewal Term**) until terminated by either party in accordance with this clause 8.
   2. Either party may terminate this Agreement by giving not less than 3 (three) months written notice of termination to the other party, such notice to take effect at the end of the Initial Term or any Renewal Term.
   3. CML may terminate this Agreement if:
      1. the Licensee breaches any undertaking in clause 6.4;
      2. the Licensee is found to be in material breach of any Applicable Law;
      3. there is a change of control impacting on or in relation to the Licensee (as defined in section 574 of the Capital Allowances Act 2001).
   4. Either party may terminate this Agreement if:
      1. the other party is subject to an Insolvency Event;
      2. the other party commits a material breach of this Agreement which is not capable of remedy or, if capable of remedy, is not remedied within 30 (thirty) days after having been given notice requiring such breach to be remedied; or
      3. the other party commits persistent breaches of this agreement which together amount to a material breach of this Agreement
   5. If the Licensee breaches this Agreement CML may suspend performance of any of its obligations and/or exercise of any of the Licensee's rights under this Agreement until the Licensee remedies the breach to the reasonable satisfaction of CML.
4. Consequences of termination
   1. Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.
   2. Upon termination of this Agreement:
      1. the Licensee shall cease to issue or enter into Licensed Products; and
      2. provided that:
         1. the Agreement has not been terminated due to wilful default of the Licensee;
         2. the Licensee has paid all applicable Charges; and
         3. the Licensee continues to observe the terms of this Agreement,

the licences set out in clauses 3.1 and 3.2 shall continue until expiry of all Licensed Products in issue as at the date of termination.

* 1. Without prejudice to clause 9.2, the rights and obligations under provisions of this Agreement which expressly or by their nature survive termination shall remain in full force and effect, including the following provisions: clause 1 (*Definitions and interpretation)*; clause 2 (*Structure of this Agreement*); clause 6 (*Warranties, representations and undertakings*); clause 7 (*Liability and indemnity*); clause 8 (*Term and termination*); clause 9 (*Consequences of termination*); clause 10 (*Confidentiality*); clause 11 (*Assignment and subcontracting*); clause 12 (*Force Majeure*); clause 13 (*Variation*); clause 14 (*Counterparts*); clause 15 (*Entire Agreement*); clause 16 (*Further Assurances*); clause 17 (*Rights of Third Parties*); clause 18 (*No Partnership or agency*); clause 19 (*Notices*); clause 20 (*Waiver*); clause 21 (*Severance*); Clause 22 (*Governing Law and Jurisdiction*).

1. Confidentiality
   1. Subject to clause 10.2 and 10.3:
      1. each party (the **Recipient**) shall keep confidential the other party’s (the **Disclosing Party**) Confidential Information disclosed to it by or on behalf of the Disclosing Party or otherwise obtained, developed or created by the Recipient; and
      2. the Recipient shall:
         1. use the Confidential Information solely in connection with the performance of its obligations or exercise of its rights under this Agreement; and
         2. take all action reasonably necessary to secure the Disclosing Party’s Confidential Information against theft, loss or unauthorised disclosure.
   2. The restrictions on use or disclosure of information in clause 10.1 do not apply to information which is:
      1. generally available in the public domain, other than as a result of a breach of an obligation under this clause 10; or
      2. lawfully acquired from a third party who owes no obligation of confidence in respect of the information; or
      3. independently developed by the Recipient, or was in the Recipient’s lawful possession prior to receipt from the Disclosing Party.
   3. The Recipient may disclose the Confidential Information:
      1. subject to clause 10.4, to its group undertakings (as such term is defined in Section 1161 of the Companies Act 2006), representatives and subcontractors, to whom disclosure is required for the performance of the Recipient's obligations or the exercise of its rights under this Agreement, but only to the extent necessary to perform such obligations or exercise such rights (together the **Permitted Disclosees**); or
      2. if, and to the extent that, such information is required to be disclosed (including by way of an Announcement) by the rules of any stock exchange or by any regulator (including, without limitation, any tax authority) or court of competent jurisdiction (**Relevant Authority**) to which the Recipient is subject, provided that the Recipient shall, if it is not so prohibited by Law, provide the Disclosing Party with prompt notice of any such requirement or request.
   4. The Recipient shall:
      1. before disclosing Confidential Information to a Permitted Disclosee:
         1. notify the Disclosing Party of the intended disclosure and the identity of the intended Permitted Disclosee;
         2. at the request of the Disclosing Party, procure that such Permitted Disclosee has entered into confidentiality undertakings on terms no less onerous than those contained in this clause 10;
      2. otherwise ensure that such Permitted Disclosee is aware of and complies with the Recipient’s obligations under this clause 10 as if it were the Recipient; and
      3. be responsible for the acts, omissions or defaults of any Permitted Disclosee in relation to Confidential Information of the Recipient as if they were its own acts or omissions.
   5. The Parties agree that damages may not be an adequate remedy for breach of this clause 10 and (to the extent permitted by the court) that the party not in breach shall be entitled to seek an injunction or specific performance in respect of such breach.
2. Assignment and subcontracting
   1. The Licensee may not transfer, assign or sub-license this Agreement or any of its rights or obligations under it.
   2. CML may sub-contract the performance of any of CML's obligations under this Agreement. CML may assign this Agreement or any of CML's rights or obligations under it to someone else, provided CML informs the Licensee if it does so.
3. Force Majeure
   1. Save in relation to the restrictions set out in clause 3.3, if a party is prevented from, hindered or delayed in performing any of its obligations under this Agreement by a Force Majeure Event, it shall not be in breach of this Agreement or otherwise liable to the other party for any such failure or delay in performing such obligations.
   2. In the event of either party being hindered, delayed or prevented from performing its obligations by a Force Majeure Event, such party shall:
      1. promptly notify the other party of the occurrence of a Force Majeure Event affecting it in connection with this Agreement;
      2. take all reasonable steps to mitigate the effect of the Force Majeure Event; and
      3. continue to perform its obligations under this Agreement to the extent possible during the period of the Force Majeure Event.
4. Variation
   1. No variation to this Agreement shall be effective unless in writing and signed by both parties.
5. Counterparts
   1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
6. Entire Agreement
   1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   2. Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any statement, promises, assurances, warranties, representations or understandings (whether oral or written, and whether made innocently or negligently) made by or on behalf of the other party (or any of its representatives) that are not set out in this Agreement.
   3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
   4. Nothing in this clause 16 shall limit or exclude any liability for fraud.
7. Further Assurances
   1. At its own expense (unless otherwise specified in this Agreement), each party shall, at the request of the other party, do all acts and execute all documents which may be necessary to give full effect to this Agreement.
8. Rights of Third Parties
   1. No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not named as of the date of signature as a party to this Agreement.
9. No Partnership or agency
   1. Nothing in this Agreement shall be construed as constituting a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, a party the agent of the other party for any purpose or authorise a party to enter into any commitments for or on behalf of the other party.
10. Notices
    1. Any notice or other document to be given under this Agreement shall be in writing and shall be served by sending the same by recorded delivery or reputable courier to the appropriate address specified on the front sheet of this Agreement. Where a notice is delivered by recorded delivery, such notice shall be deemed to be effective 5 (five) days after sending and any receipt issued by the postal authorities or courier shall be conclusive proof of the fact and date of sending of any such notice.
11. Waiver
    1. Any waiver or relaxation whether partly or wholly of any of the terms or conditions of the contract shall be valid only if in writing and signed by a representative of each party and shall apply only to a particular occasion and shall not be continuing and further shall not constitute a waiver or relaxation of any other terms or conditions.
12. Severance

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated.

1. Relief
   1. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights and remedies provided by law. Each party acknowledges that remedies at law may be inadequate to protect the other party against any breach by them or by their recipients of this Agreement. Without prejudice to any other rights and remedies otherwise available, each party agrees not to oppose the granting of injunctive relief in favour of the other party on the grounds of failure to prove actual damage.
2. Governing Law and Jurisdiction
   1. The parties agree that this Agreement (including any non-contractual obligations arising under or in connection with this Agreement) shall be governed by English law. The parties submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute concerning this Agreement.
3. Charges

The Charges shall calculated by reference to the actual weight of metal to which each Licensed Product relates in accordance with the following table:

|  |  |  |
| --- | --- | --- |
| **Benchmark** | **Metal** | **Price per oz.** |
| CMRB | Rhodium | $0.50 |
|  | Ruthenium | $0.50 |
|  | Iridium | $1.00 |
| CMSG | Platinum | $0.10 |
|  | Palladium | $0.10 |

SIGNED for and on behalf of:  
**COMDAQ METALS LIMITED**

.....................................................................  
Signature

.....................................................................  
Print name

.....................................................................  
Print title

.....................................................................  
Date

SIGNED for and on behalf of:  
**[LICENSEE]**

.....................................................................  
Signature

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Print name

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Print title

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Date