



## Precious Metal One Credit, LLC

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### CUSTOMER LOAN, SECURITY & STORAGE AGREEMENT

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#### 1. Parties to the Agreement.

This Agreement is entered into between Precious Metal One Credit, LLC ("Credit") and the Customer(s) signing below (hereinafter "Customer" or "Borrower").

#### 2. Purpose of the Agreement.

This Agreement is intended to set forth the terms under which Credit will lend to Borrower, from time to time, physical commodities, sums of money to purchase physical commodities, including, but not limited to, delivery to a depository, costs, fees, storage, collateral, security interest, certain risks and costs associated with each loan transaction.

#### 3. Terms of Loans and Interest.

3.1 Borrower promises to pay to Credit at its office in White Plains, NY on demand, or if no demand, 4 (four) years from the date of the latest advancement, such sums as Credit may loan to, or for the benefit of, Borrower, together with interest and fees thereon from the dates of the respective advances at Credit's prevailing announced finance rates, as such rates may change from time to time.

3.2 Borrower also promises to return to Credit on demand, or if no demand, 4 (four) years from the date of the latest loan, such commodities as Credit may loan to, or for the benefit of, Borrower pursuant to this Agreement, and pay interest and fees thereon from the dates of the respective loans at Credit's prevailing announced rates, as such rates may change from time to time. Interest on commodities loaned to Borrower shall be based on the value of the commodities at the time they are borrowed as determined by Credit's then prevailing bid price.

3.3 Borrower's failure to make such payments, or return such commodities, as required, shall constitute a default by Borrower and Credit shall have the right to dispose of all collateral and security provided by Borrower or on Borrower's behalf, as provided in Section 13 hereof, and apply such proceeds against the obligations due it hereunder. Such right shall be without limitation to the value of the collateral and security or any other remedies granted to it by this Agreement or otherwise by law.

3.4 Interest on cash advances and commodity loans shall be based on the number of days the loan balance is outstanding divided by 360. On the last day of every month, any unpaid interest for that month is added to the unpaid balance in Borrower's account. Any principal or interest not paid when due shall bear interest from its due date at the current interest rate. Borrower may prepay any balance due without penalty. If any charges under this Agreement are held by a court of competent jurisdiction to exceed those allowable under applicable law, such charges shall be reduced to the legal maximum.

#### 4. Authorization of Loans.

4.1 Cash advances and loans of commodities may be made by Credit at the oral or written request of Borrower. Only Borrower is authorized to request advances and commodity loans and direct disposition thereof until written notice of the revocation of such authority is received by Credit. Any such advance or loan shall be conclusively presumed to have been made to, or for the benefit of, Borrower when made in accordance with such requested directions and when said advance is paid or loan is made on behalf of Borrower.

4.2 Such advances and loans will be made pursuant to New York State code to the extent that section is applicable. Borrower hereby waives diligence, presentment, protest, demand and notice of every kind and (to the full extent permitted by law) the rights to plead any statute of limitations as defense to any demand hereunder or in connection with any security heretofore.

#### 5. Collateral Requirements and Forced Liquidations.

Borrower agrees to keep his obligations at all times fully secured, to the satisfaction of Credit, and to make additional cash payments to his or her account or deposit additional property as security, should the value of the

security for such obligations at any time suffer a decline or for any reason be at any time insufficient to secure such obligations to the satisfaction of Credit. Commodity loans must be secured by cash or commodity deposits, the value of which at all times exceed the prevailing market value of the commodities loaned by Credit to Borrower. Commodities loaned by Credit to Borrower may be used for any investment or commercial purpose. Cash proceeds of any loan will be used for the purchase of commodities for investment or other commercial purposes and not for any personal, family or household purposes.

Borrower anticipates being called upon from time to time by Credit to reduce his or her outstanding loan balance and to deposit additional funds as security for commodity loans. In the case of a cash advance, if such a request is not responded to with the designated payment within the time specified (which may be as short as 24 hours), the property pledged as security may be sold by Credit and the proceeds applied to the repayment of amounts owed to it. Similarly, in the case of a commodity loan, if a request for an increase in Borrower's security deposit is not met within the time specified (which may be as short as 24 hours), Credit may purchase the commodities loaned to Borrower using the funds deposited with Credit to secure the loan to satisfy Borrower's obligations to Credit. Credit also has the right to affect such a sale or purchase without making, or before the deadline for response to, a request for the reduction of the outstanding balance due Credit or an increase in Borrower's security deposit with Credit if at any time Credit deems the collateral securing the obligations of Borrower to Credit to be inadequate. This will most frequently occur due to changes in the market value of the subject commodities.

**6. Form and Posting of Payments.**

6.1 Bank wires or bank checks are the preferred form of payment. Borrower payments that do not constitute immediate good funds (such as personal checks, bank checks greater than \$5,000.00 or money orders) will be deemed good funds upon bank clearance.

6.2 Funds received by Credit will be posted to the Borrower's account at 5:00 PM EST, on the day of receipt. Adverse market moves prior to posting such payment may result in forced liquidations.

**7. Commissions.**

Customer's independent dealer, provides certain services to and on behalf of Customer. As compensation, it will charge a commission to Customer on Customer transactions with Credit. Commissions will be charged on opening transactions only. There will be no commission charged on closing transactions. Customer hereby authorizes Credit to charge and pay such commissions from funds held in Customer's account at Credit.

**8. Responsibility for Control and Monitoring of Accounts.**

Customer's account is of a non-discretionary nature and Customer shall have full and complete control over such account at all times. Customer shall also have responsibility for monitoring all commodity positions established hereunder.

**9. Funds Held in Borrower's Account for a Pending Transaction.**

Borrower may, from time to time, deposit funds in his account at Credit to be used for a future transaction. Borrower understands and acknowledges that Credit will not discretionarily apply such funds to prevent equity calls or forced liquidations of existing positions.

**10. Borrower's Grant of Security Interest In Commodities:**

In consideration of any accommodation given to Borrower by Credit and as security for the satisfaction of all obligations now or hereafter existing, including any obligations assigned to Credit, of Borrower or any one or more obligations to Credit ("Indebtedness"), Borrower hereby grants to Credit a security interest in:

10.1 All commodities belonging to Borrower and held for Borrower by any bailee or bailees used by Credit (such bailees are hereinafter referred to individually and collectively as "Bank"), either directly or in other depositories.

10.2 All commodities or contractual rights in which Borrower has an interest which shall hereafter be delivered to or come into the possession, custody or control of Bank or Credit in any manner or for any purpose.

10.3 All cash deposited with Credit. Bank may hold all or part of such property (the "Collateral") in or transfer or deliver such property to any depository, account or vault owned by, or affiliated with, Bank or any depository, account, vault or facility rented or otherwise used by Bank.

**11. Delivery to a Depository; Confirmation Notices.**

11.1 In addition to Bank's own vaults, or vaults Bank is now using or may use, Bank may use any depository to store commodities on behalf of Borrower. A depository, for the purposes of this Agreement, is defined as

11.1.1 A financial institution, i.e. a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

11.1.2 A warehouse or other storage facility the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market (futures exchange) designated by the Commodity Futures Trading Commission.

11.1.3 A storage facility licensed or regulated by the United States or any agency thereof.

11.1.4 A warehouse or other storage facility approved by the London Metal Exchange to act as a custodian for metals traded on that exchange.

11.1.5 Such other savings institution, commercial bank, warehouse or storage facility with which Credit contracts to store warehouse receipts, warrants or other negotiable instruments evidencing the type, quantity and quality of the underlying commodity.

11.2 Commodities transferred to Bank for Borrower will be delivered as an undivided share of a fungible lot and held in safekeeping on a fungible basis with the commodities of other Bank customers. Upon delivery of commodities on behalf of Borrower to Bank, Borrower will receive a confirmation evidencing that such quantity of commodities has been delivered to the depository and is being and will continue to be held as an undivided share of the commodities so held by the depository, on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of Credit.

11.3 Borrower may take personal possession of commodities held as security upon full payment of the loan balance and any applicable storage and delivery charges.

**12. Risk of Decline in Value of Commodities.**

Borrower acknowledges that he/she bears the entire risk of decline in the value of his or her commodities held by Bank.

**13. Shipping and Handling Terms and Charges.**

13.1 Shipping and handling fees on commodities delivered to or received from Bank for the benefit of Borrower will be paid by Credit from the initial service fee charged on each transaction. Shipping and handling charges incurred as a result of personal delivery to Borrower shall be the obligation of Borrower. Shipping charges will vary depending on weight, value, destination, method of shipment and commodity. Borrower may pick-up his commodity at Bank. Requests for pick-up or delivery must be made through Customer Service Department at Credit. Specific charges will be quoted to Borrower at the time of such request. Borrower must satisfy all payments due Credit prior to pick-up or delivery.

13.2 Borrowers shipping commodities to Credit bear all risks of loss or non-delivery until the commodity is received and accepted by Credit. A Borrower wishing to make delivery to Credit, except by demand, must give at least 2 days advance notice and make delivery to a designated facility. Commodities must be in a form acceptable to Credit. Credit may require inspection and assay at the expense of Borrower to determine acceptability of commodity. Credit may at any time change its shipping and handling fees.

**14. Authorization of Action by Credit to Protect Security Interest in Collateral.**

Borrower authorizes Credit to take any actions it believes necessary to protect or preserve its security interest in the Collateral. Credit may file this Agreement and such other documents as Credit may request (which Borrower agrees to provide upon such request) with the appropriate authorities in order to perfect Credit's security interest under this Agreement. Until the Indebtedness is repaid in full, Borrower shall not sell, encumber or otherwise transfer any interest in the Collateral or permit to be any encumbrance of any kind on the Collateral other than the security interest of Credit under this Agreement.

**15. Advances and Expenses Incurred by Credit to Exercise Rights, Powers or Remedies.**

All advances and expenses, including reasonable attorney's fees, incurred or paid by Credit in exercising any right, power or remedy conferred by this Agreement or its enforcement shall become a part of the Indebtedness and shall be paid to Credit by Borrower immediately and upon demand, with interest thereon at Credit's prevailing finance rate.

**16. Default; Changes in Collateral Requirements.**

16.1 At the option of Credit, and without necessity of demand or notice, all or any part of the Indebtedness (including any loan of commodities to Borrower) shall immediately become due and payable upon the happening of either of the following events (Events of Default):

16.1.1 Failure to meet or perform any of the terms or provisions of this Agreement.

16.1.2 Default in the payment of principal or interest of any Indebtedness of Borrower when due.

16.2 In the event that Borrower's equity in the Collateral or security deposit for commodity loans falls below 10% of Credit's minimum permissible level at any time, Credit shall have the right, but not the obligation, to foreclose upon all or any part of such Collateral at its sole discretion. Foreclosure may be affected without prior notice, even though:

16.2.1 A demand for additional security or repayment has not been made.

16.2.2 Such a demand is outstanding which has not yet been met.

16.2.3 The Borrower's equity in the Collateral has subsequently risen above Credit's minimum permissible level due to an increase in the market value of the Collateral.

16.3 Borrower agrees to closely monitor the equity in the Collateral to reduce the likelihood of foreclosure and acknowledges the increased risk of foreclosure if Borrower fails to do so.

16.4 Borrower agrees that funds sent to Credit will be credited to his account at 5:00PM EST of the day of receipt. Credit reserves the right to change its minimum permissible collateral level at its sole discretion at any time.

**17. Foreclosure.**

17.1 In the event of Borrower's failure to satisfy any Indebtedness when due, or upon the happening of any Event of Default as previously specified, or upon demand by Bank, Credit may, at any time, at its election, apply, set off, collect or sell in one or more sales, with or without any previous demands, notice or advertisement, the whole or any part of the Collateral, in such order as Credit may elect, and purchase any commodities loaned to Borrower with the funds deposited to secure the loan.

17.2 Any such sale or purchase may be made either at public or private sale as Credit may deem fair, and Credit may be a bidder on or the purchaser of any or all Collateral so sold, whether at public or private sale, and hold the same thereafter in its own right, free of any claim from Borrower or right of redemption. In such circumstances, Credit is also entitled to take possession and control of any proceeds resulting from the sale or other disposition of any of the Collateral. Borrower hereby appoints Credit as his Attorney-in-Fact to make any transfer of the Collateral permitted by this Agreement and to deliver all instruments to accomplish such transfer. Bank may act upon instructions from Credit concerning the sale or other disposition of the Collateral. Borrower agrees to indemnify Bank from any liability to Borrower for actions taken by Bank in conformity with such instructions.

17.3 Borrower agrees that the commodities comprising the Collateral or loaned to Borrower may decline or increase speedily in value and are of the type customarily sold on a recognized market and that Credit may treat and deal with such commodities in any fashion it deems appropriate, in its absolute discretion, to preserve such commodities or their value.

**18. Waiver.**

18.1 Borrower waives any right to require Credit to:

Proceed against any particular person.

Proceed against or exhaust any part of the Collateral.

Pursue any other remedy in Credit's power prior to or as a condition of proceeding against Borrower or any part of the Collateral.

18.2 Borrower further waives any defense arising by reason of any disability or other defense of Borrower or any other person. Until all Indebtedness shall have been paid or otherwise satisfied in full, Borrower shall have no right of subrogation and waives any benefit and/or any right to participate in any Collateral or security whatsoever now or hereafter held by Credit.

18.3 Borrower authorizes Credit without notice or demand and without affecting Borrower's liability hereunder or on the Indebtedness to:

18.3.1 Change the time for payment or otherwise change the terms of the Indebtedness, or any part thereof, including the rates of interest thereon.

18.3.2 Take and hold security, other than the Collateral, for the payment of the Indebtedness or any part thereof, and exchange, enforce, waive and release the Collateral, or any part thereof, or any such security.

18.3.3 Release or substitute Borrower, or any endorser or guarantor of the Indebtedness, or any part thereof.

**19. Delivery of Collateral to Borrower.**

Credit may, at any time release all or part of the Collateral to Borrower. Credit shall be discharged from any liability for the Collateral so delivered.

**20. Loans To Borrower Are Non-Recourse.**

The responsibility to liquidate low equity accounts belongs to Credit. Should Credit fail to act in timely manner to prevent a deficiency in the borrowers account, borrower shall not be liable for any deficiency remaining after collateral has been exhausted as the result of forced liquidation by Credit.

**21. Lending of collateral.**

Borrower authorizes Credit to lend the collateral underlying his loan with Credit, for a fee to be determined by Credit, at such times as market conditions may warrant.

**22. Borrower Acknowledges The Following:**

22.1 Borrower has read and understands this Agreement and is aware of the nature and extent of his rights and the risks involved under this Agreement. Transactions subject to this Agreement are financing transactions with

Credit and are not subject to regulation by the Commodity Futures Trading Commission or the National Futures Association.

- 22.2 Transactions will be posted to Borrower's account as soon as possible, after the payment by the Borrower of the initial equity requirement for the specific transaction. For the purpose of interest calculations and monitoring of equity calls and forced liquidation levels the transaction will be considered completed at the time of posting. In some instances, this may occur prior to an advance of funds by Credit or receipt of the Collateral by Bank.
- 22.3 Borrower shall have no claim against Credit with respect to Borrower's purchases of commodities from, or sales of commodities to, any other person or firm not a party to this Agreement.
- 22.4 Credit's financing sources are confidential. As with any credit lending institution, Credit may obtain financing, or by utilizing one or more financial institutions, to provide Borrower with the funds requested to initiate physical commodity transactions with Precious Metal One, LLC ("Trading"); moreover, Credit may, at times, provide financing to Borrower entirely from its own capital or in conjunction with any other financing source. In connection with the loans to be obtained by Borrower hereunder, there is no privity of contract with any lender, other than Credit, and Credit shall not be under any obligation to disclose its financing sources to Borrower or anyone acting pursuant to Borrower's direction or authority.
- 22.5 Credit shall be entitled to rely upon all orders and directions given to it by Borrower, and Credit shall have no liability to Borrower and Borrower shall hold Credit harmless for following the orders or directions of Borrower.
- 22.6 In times of highly volatile markets, Credit phone lines may be busy due to the volume of calls. Because of this, Borrower is advised and will be responsible to have alternative methods to communicate with Credit (e.g., telegraph, facsimile, courier, messenger services, etc.) should it become necessary to do so. If you have any questions or need any information concerning your loan account with Credit, please call Credit immediately.
- 22.7 Representations that Borrower will be notified or that his collateral will be liquidated, or that commodity will be bought to satisfy his commodity loan obligations, at particular price levels, are not authorized by Credit and may not be relied upon.
- 22.8 **BORROWER'S ACCOUNT WITH CREDIT IS SELF-DIRECTED. THIS MEANS BORROWER MAKES AND IS RESPONSIBLE FOR ALL TRANSACTIONS FOR HIS ACCOUNT. IF BORROWER EVER BELIEVES THAT A LOAN TRANSACTION HAS BEEN ENTERED FOR HIS ACCOUNT WITH CREDIT THAT HAS NOT BEEN AUTHORIZED BY BORROWER, OR THAT A LOAN TRANSACTION HAS BEEN ACCEPTED BY CREDIT FOR BORROWER'S ACCOUNT AND HAS NOT BEEN EXECUTED BY CREDIT, BORROWER WILL IMMEDIATELY NOTIFY Precious Metal One, LLC COMPLIANCE DEPARTMENT BY PHONE AT 914-462-3850 AND IMMEDIATELY CONFIRM SUCH NOTIFICATION IN WRITING TO Precious Metal One, LLC AT 75 South Broadway, 4<sup>th</sup> floor, White Plains, NY 10601**
- 22.9 If Borrower fails to make such notification by the **fifth** business day after Credit has e-mailed to the Borrower a confirmation of the transaction, Borrower waives all right to contest such loan or omission and Borrower's account will stand, as is, as of the end of such business day.
- 22.10 Any interest earned on funds deposited with Credit to secure commodity loans by Borrower, or free credit balances held in Borrower's account for pending transactions, shall inure to the benefit of Credit. While Credit may, at its sole discretion, pass through a portion of such interest to Borrower, Borrower acknowledges that Credit has no obligation to do so. Any interest that may be earned from foreign currency deposits, which are held by Bank for the benefit of Borrower, shall inure to the benefit of Credit. While Credit may, at its sole discretion, reduce or offset a portion of Borrower's interest charges as a result of any interest it may earn from such deposits, Borrower acknowledges that Credit has no obligation to do so.
- 22.11 If, at any time, Borrower finances the purchase of commodities through Credit and Borrower concurrently borrows commodities from Credit, any funds or commodities received by Credit as payment or security in his Credit account shall first be applied as security for the commodities borrowed, up to the value of such commodities at the time they were borrowed, and then to any outstanding balance for the commodities financed.
- 22.12 Transactions in commodities involve bid/ask spreads charged by Trading, sales commissions and finance and service charges charged by Credit. Shipping charges and sales or use tax may also be payable. These charges can result in a loss despite favorable price movement.
- 23. Assignment.**
- 23.1 Upon transfer of all or any part of the Indebtedness to Bank, Credit may transfer its security interest in all or any part of the Collateral and shall be fully discharged from all liability with respect to the Collateral so transferred, and Bank shall be vested with all the rights and powers of Credit with respect to such Collateral. Borrower may not assert against Bank any claim or defense Borrower has against Credit.
- 23.2 Credit may, at any time, without notice to Borrower, assign all or any part of its rights and privileges under this Agreement to Bank in order to provide financing to Borrower. Borrower agrees that Credit may utilize any commercially reasonable basis by which it, in its sole discretion, may provide financing to Borrower including, but not limited to, acquiring the Collateral on margin of up to one hundred percent of the Collateral's value, or hypothecating all or any part of the Collateral in exchange for financing, from Bank. In the event Credit assigns its security interest under this Agreement in the Collateral to Bank, Borrower agrees that Bank may, at any time,

at its election and sole discretion, without notice or demand to Borrower, sell, apply, set off, liquidate, or further hypothecate up to one hundred percent of the Collateral's value.

23.3 Borrower further agrees to hold Bank, or other third party with whom Credit may enter into any transaction in order to provide financing to Borrower, harmless from any claims asserted by Borrower arising out of any such sale, liquidation, set off or further hypothecation of the Collateral by said Bank or other third party.

23.4 Borrower may not delegate or assign any obligations or rights hereunder without the prior written consent of a duly authorized officer of Credit. Any attempt at such delegation or assignment without such consent shall be void.

**24. Continuation of Agreement and Revocation.**

This is a continuing agreement and all the rights, powers and remedies hereunder shall apply to all past, present and future Indebtedness of Borrower to Credit. This Agreement may be revoked only upon written notice to Credit given by any Borrower signing this Agreement and then only if at that time there is no Indebtedness outstanding.

**25. Credit's Rights, Powers and Remedies.**

The rights, powers and remedies given to Credit by this Agreement are cumulative and not exclusive of any other rights, powers and remedies Credit may otherwise have. All rights, powers and remedies given to Credit by virtue of the New York Commercial Code or any other law shall also be available to Credit. No forbearance, failure or delay by Credit in exercising any right, power or remedy under this Agreement shall be deemed to be a waiver thereof, or of any other right, power or remedy hereunder; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof or of any other right, power or remedy hereunder. Each right, power and remedy of Credit hereunder shall continue in full force and effect until specifically waived in writing by Credit.

**26. Borrower's Obligations Are Joint and Several.**

All words used herein in the singular shall be deemed to have been used in the plural, and vice versa, as appropriate, and the obligations and undertakings of Borrower(s) hereunder shall be joint and several. Neither the discharge of any Borrower for any reason other than payment or other satisfaction in full of all Indebtedness, nor any extensions, forbearance, change in interest rate, or acceptance, release or substitution of Collateral or any impairment of Credit's rights, powers or remedies against one Borrower shall affect the liability or obligations of any other Borrower hereunder. Each Borrower waives any right to require Credit to proceed against one Borrower before any other.

**27. Communications.**

All communications required or permitted hereunder shall be sent to Credit at Precious Metal One Credit, LLC, 75 South Broadway, 4<sup>th</sup> floor, White Plains, NY 10601 and to Customer at the electronic mail address set forth in the online account application or such other electronic mail address subsequently provided to Trading by Customer. **The customer at all times shall be responsible for notifying Trading of any change in their electronic mail address.** All communications from Credit to Borrower by mail or courier service shall be effective upon receipt if hand delivered, when delivered to Borrower's address; if telegraphic, when deposited with a public telegraph company for transmittal, charges prepaid.

**28. Force Majeure.**

In the event of adverse conditions in the marketplace or other factors beyond the control of Credit, including, but not limited to, acts of God, national and/or international emergencies, adverse governmental actions, suspension of trading by commodity exchanges, or the failure or delay of suppliers, the maximum time for delivery of commodities or payment by Credit may, except if prohibited by any applicable law, be extended indefinitely during the period of such adverse circumstances. Credit will not be responsible for delays or failure in the transmission, receipt or execution of orders, payments, deliveries or information due to the incapacity or failure of computer, transmission or communication facilities that are beyond the control of Credit.

**29. Entire Agreement.**

This Agreement constitutes the entire and whole agreement among its parties and is intended as a complete and exclusive statement of the terms of their Agreement. This Agreement may be amended only upon execution of a subsequent written Agreement or upon Borrower's failure to object, within 10 days, to modifications contained in written material sent to Borrower by Credit. This Agreement shall supersede any oral representations between the parties.

**30. Individual Authority of Borrower.**

Any party signing this Agreement as Borrower is authorized to deal fully with the account opened hereunder. Any action taken by any such party shall be binding on all parties with an interest in that account. Each such party shall hold Credit harmless for relying thereon.

**31. Recording of Conversations.**

Credit may electronically record any conversation between Credit, its employees or agents and Borrower.

**32. Bank Indemnification.**

Borrower agrees that Bank may act upon any instructions from Credit concerning delivery, transfer, sale or disposition of commodities held by Bank on Borrower's behalf. Borrower further agrees to indemnify Bank from any liability to Borrower for actions taken by Bank in conformity with such instructions.

**33. Governing Law.**

This Agreement is entered into in accordance with, and shall be governed by, the laws of the New York; provided that, if any New York law shall dictate that the laws of another jurisdiction be applied in any proceeding, such New York law shall be superseded by this paragraph and the remaining New York laws shall nonetheless be applied in such proceeding.

**34. New York Contract.**

The formation of this Agreement constitutes the making of a contract in Westchester County, NY; and the making of this contract will cause the following events, among others, to occur in Westchester County, NY: The contract will be accepted and executed in Westchester County, NY; Credit is located in Westchester County, NY; all deposits and payments made by Borrower will be delivered to and paid in Westchester County, NY ; all loans and advances by Credit will be made from and paid in Westchester County, NY ; and statements of Borrower's account will be generated in and transmitted from Westchester County, NY. Borrower and Credit agree that Westchester County, NY is a mutually and reasonably convenient place for any hearing concerning disputes relating to this Agreement.

**35. Location of Legal Proceedings.**

Any arbitration or other legal proceedings arising out of or relating to this Agreement or any dealings between Credit and Borrower, whether brought before or after any termination of this Agreement, shall be brought and heard only in Orange County, California, and Customer expressly waives any rights under any law or rule to cause any such proceedings to be brought or heard in any other location.

**36. Severability.**

In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable in any jurisdiction, such provision shall be unenforceable in that jurisdiction and the remainder of this Agreement shall remain binding upon the parties as if such provision were not contained therein. The enforceability of such provision shall otherwise be unaffected and remain enforceable in all other jurisdictions.

**37. Borrower's Taxpayer Identification Number.**

Borrower certifies, under penalty of perjury, that the Taxpayer Identification number (Social Security Number or Employer Identification Number) provided above is correct and that the Internal Revenue Service has not notified Borrower that he or she is a "Payee under-reporter" under section 3406(a)(1)(c) of the Internal Revenue Code.

**38. Collateral Calls and Forced Liquidation.**

The following information and example demonstrate how Credit computes equity and the market price at which a collateral call or forced liquidation may be triggered.

**Purchase Example**

The market bid value when loan is initiated	\$4,900
Customer's Loan Balance	\$3,750
Adding interest and service fees for 3 months	\$160
Market bid value triggering collateral call	\$4,645
Percent decline in market value	5.21%
Market bid value triggering forced liquidation	\$4,253
Percent in decline in market value	13.21%

38.1 The example is based on a collateral call level of 12%, a forced liquidation level of 7.2%, an annual interest rate of 9.5% and monthly service fee of .45%.

38.2 In the example, it is assumed that the amount of the loan, finance and service charges has increased during the first 3 months to \$3,910 as a result of accrued (unpaid) charges of \$160. The difference between the increased loan balance (\$3,910) and the trigger collateral call bid market value (\$4,645) is \$735 or 15% of the collateral call bid market value. (A shortcut calculation to determine the collateral call bid market value can be accomplished by simply dividing the loan balance [increased by the accrued charges for any period you desire] by 85%.) Information and an example for a commodity loan transaction are available upon request.

38.3 Equity, for Credit's computation purposes, is equal to the amount by which the **BID** market value of your Collateral exceeds your prevailing loan balance or, in the case of a commodity loan, the amount by which your deposit exceeds the **ASK** market value of the commodity you borrowed. For example, if the bid market value of your Collateral is \$4,900 and your loan is \$4,000, Credit computes your equity to be \$900 or 18.4% ( $\$900/\$4,900$ ). You are required to maintain the percentage equity specified by Credit. The **BID** and **ASK** market values used by Credit to compute the equity in your account are those quoted by Trading unless you are otherwise informed.

**39. Additional Borrower Acknowledgments.**

As Borrower, I reaffirm my acknowledgment and understanding of the following:

- 39.1 Purchasing physical commodities on credit and the borrowing of commodities involves a high degree of risk.
- 39.2 I understand that I must maintain equity in my loan account at or above the allowable minimum. I anticipate being called upon by Credit to restore equity in my account. I further understand that if I do not meet an equity call within the time required, Credit may foreclose upon the Collateral that I have pledged as security.
- 39.3 All risks of decline in the value of my commodities held by the Bank are mine and not those of Bank or Credit.
- 39.4 If at any time the equity in my account falls below Credit's minimum required level, Credit has the right, but not the obligation, to foreclose upon my Collateral without prior notice even if an equity call is in effect.
- 39.5 I will lose money by purchasing physical commodities unless the value of the commodity moves favorably enough to compensate for various costs, including:
  - 39.5.1 Sales commission charges charged by Precious Metal One, LLC.
  - 39.5.2 The spread between the bid and ask prices of the commodity, quoted by Trading.
  - 39.5.3 Service fees and interest charged by Credit.
- 39.6 I will immediately notify Credit's Compliance Department if any statement made to me by any employee of Credit or Precious metal One, LLC is inconsistent with the risks and terms set forth in this Agreement or which I consider to be offensive or unprofessional in nature.
- 39.7 All controversies, causes of action, and equitable claims arising out of or relating to this agreement, or the business dealings between the parties, shall be resolved in binding arbitration in Westchester County, NY. Judgment upon any award by the arbitrator(s) may be entered in any court having jurisdiction over the parties. The prevailing party determined by the arbitrator(s), shall be entitled to recover from the other party all costs and expenses (including reasonable attorney's fees) incurred in connection with the arbitration. All awards rendered in the arbitration shall be final and non-appealable.