

**Deed of Release and Indemnity  
Allocated Storage**

**Bullion Bourse Pty Ltd (ACN 140 221 067) (In Liquidation)**

and

**Neil Raymond Cribb in his capacity as liquidator of Bullion  
Bourse Pty Ltd (ACN 140 221 067) (In Liquidation)**

and

**The Customers listed in Schedule 1**

Ref GWS:NB:677136

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Level 11, Westralia Plaza, 167 St Georges Terrace, Perth WA 6000 Australia  
PO Box 7222, Cloisters Square WA 6850 Australia

Telephone +61 8 9420 1500  
Facsimile 1300 704 211 (Australia) +61 2 8507 6580 (International)  
hwlebsworth.com.au

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## Deed of Release and Indemnity

Date

2019

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Parties

**Bullion Bourse Pty Ltd (ACN 140 221 067) (In Liquidation)**

of c/- RSM Australia Partners, Level 32 Exchange Tower, 2 The Esplanade, Perth, Western Australia

**(Company)**

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**Neil Raymond Cribb in his capacity as liquidator of Bullion Bourse Pty Ltd (In liquidation) ACN 140 221 067**

of c/- RSM Australia Partners, Level 32 Exchange Tower, 2 The Esplanade, Perth, Western Australia

**(Liquidator)**

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**Each person listed in Schedule 1**

**(Customers)**

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Recitals

- A. The Liquidator was appointed as liquidator of the Company on the Appointment Date.
- B. Prior to the Appointment Date, the Customers entered into an agreement with the Company to store the Goods on the Premises.
- C. The Liquidator accepts that the Customers are the owners of the Goods and are entitled to retrieve the Goods.
- D. The Customers have requested that the Liquidator allow them access to the Premises for the purpose of retrieving the Goods.
- E. The Liquidator has agreed to provide the Customers with access to the Premises and to allow the Customers to retrieve the Goods on the terms and conditions outlined in this Deed.

This Deed witnesses that in consideration of, among other things, the mutual promises contained in this Deed the parties agree as follows:

## 1. Definitions and interpretation clauses

### 1.1 Definitions

In this Deed:

- Appointment** means the Liquidator's appointment as liquidator of the Company.
- Appointment Date** means 2 July 2019.
- Authorised Person** means the person whose details are set out at Schedule 2 of this Deed (if any).
- Business Day** means a day on which banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city.
- Claims** includes an allegation, claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or Liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Deed.
- Collecting Person** means:
- (a) if there is an Authorised Person, the Authorised Person; or
  - (b) otherwise:
    - (i) if there is one Customer and:
      - (A) the Customer is an individual, the Customer; or
      - (B) the Customer is a body corporate, a director of the Customer; or

- (ii) if there is more than one Customer and:
  - (A) the Customers are individuals, all of the Customers; or
  - (B) the Customers are body corporates, at least one director of each of the Customers.

<b>Company</b>	means Bullion Bourse Pty Ltd (In Liquidation) ACN 140 221 067.
<b>Cost Recovery Fee</b>	means the sum of \$350 per attendance at the Premises for the purposes of collecting the Goods.
<b>Customers</b>	means each and all of the persons specified as the primary, registered and nominated persons in any Storage Agreements or any other documents to the reasonable satisfaction of the Liquidator and as described in Schedule 1.
<b>Deed</b>	means this deed.
<b>Effective Time</b>	means the date on which the last Party to execute this Deed, executes this Deed.
<b>Goods</b>	means the goods described in Schedule 1 to this Deed.
<b>Government Agency</b>	means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity: it includes any self-regulatory organisation established under statute and any stock exchange.
<b>Liability</b>	means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred.
<b>Liquidator's Costs</b>	means the Liquidator's remuneration and fees in connection with the Appointment and all costs, expenses, taxes, actions, demands suits, proceedings, debts, Claims, Losses, damages or other Liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising

out of, during the course of, in connection with or incidental to the Appointment.

<b>Loss</b>	means all damage, loss, cost, Claim, Liability or expense (including legal costs and expenses of whatsoever nature or description).
<b>Missing Goods</b>	means any goods that the Customers allege were stored, or were provided to the Company to be stored, on the Premises but which are not Goods.
<b>Premises</b>	means 180 Wright Street, Cloverdale, Western Australia.
<b>Storage Agreements</b>	means any storage agreements between the Customers and the Company.
<b>Trust</b>	means any trust for which any Customer acts as trustee in relation to the Storage Agreements or the Goods.

## 1.2 Interpretation

In this Deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.1(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any clause, annexure, exhibit and schedule;

- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to an agreement other than this Deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (k) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (l) a provision of this Deed may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or the preparation or proposal of that provision;
- (m) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (o) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (p) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day, it is taken to have occurred or been done on the next day; and
- (q) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

## 2. Acknowledgements and warranties

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### 2.1 Warranties

Each of the Customers warrants in favour of the Company and the Liquidator that they beneficially own, or are entitled to exclusive possession of, the Goods.

### 2.2 Acknowledgements

Each of the Customers acknowledges and agrees that:

- (a) without limiting clause 6.1, they have no Claim against the Liquidator in relation to the Goods, any Missing Goods, the Storage Agreements or the Appointment;



- (b) the Customers bear the risk in the Goods and the Missing Goods;
- (c) the Liquidator has no Liability in respect of the Goods or their condition, any Missing Goods, the Storage Agreements or the Appointment; and
- (d) the Liquidator was only able to gain access and control to the Premises on 9 July 2019;
- (e) if there is more than one Customer and not all of the Customers will attend the Premises together to collect the Goods, the Customers must specify an Authorised Person (which may be one of the Customers);
- (f) no more than two Authorised Persons may be specified by the Customers; and
- (g) if anyone other than the Collecting Person(s) attend(s) the Premises, the Liquidator may refuse collection of the Goods.

### 3. Authority to collect

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- 3.1 This clause 3 applies only if an Authorised Person is specified in Schedule 2 to this Deed.
- 3.2 Provided that the Authorised Person is able to produce photographic identification, to the Liquidator's reasonable satisfaction, at collection, each of the Customers hereby absolutely and irrevocably:
  - (a) authorise the Authorised Person to collect the Goods on their behalf in accordance with this Deed; and
  - (b) authorise and direct the Liquidator to allow the Authorised Person to collect the Goods on their behalf in accordance with this Deed.

### 4. Access to the Premises and retrieval of the Goods

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- (a) On or before collection, the Customers must pay to the Liquidator (without set-off, counterclaim or deduction):
  - (i) all outstanding rent, storage fees and other amounts payable by the Customers to the Company in relation to the Storage Agreements or Goods; and
  - (ii) the Cost Recovery Fee.
- (b) Subject to:
  - (i) the Customers complying with their obligations pursuant to clause 4(a); and

- (ii) the Collecting Person complying with their obligations pursuant to clause 4(c),

the Liquidator must, allow the Collecting Person access to the Premises and permit the Collecting Person to take possession of the Goods, provided that the Collecting Person provides adequate photo identification at the time for the purpose of verifying his or her identity.

- (c) Immediately upon taking delivery of the Goods, the Collecting must provide the Liquidator with an acknowledgement in writing (in the terms set out in Schedule 3 of this Deed or terms otherwise acceptable to the Liquidator in his discretion) that he or she has taken delivery of the Goods.

## 5. No representations, warranties or undertaking

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Each of the Customers acknowledge and agree that, save as expressly set out in this Deed, they have not relied on any representation, warranty or undertaking of any kind made by or on behalf of the Company, the Liquidator or any of their respective employees (including former employees of the Company), advisers and agents.

## 6. Indemnity and release

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### 6.1 Release

Upon execution of this Deed by each Customer, each Customer absolutely and irrevocably releases, waives and forever discharges the Liquidator and any of his partners, employees, officers, advisers and agents and RSM Australia Pty Ltd from any and all Claims which the Customers have or, but for the execution of this Deed, may have against the Liquidator and any of his partners, employees, officers, advisers and agents and RSM Australia Pty Ltd arising from or otherwise relating to or connected in any way with any of the following, whether occurring before, on or after the Effective Time:

- (a) the Goods;
- (b) any Missing Goods;
- (c) the Storage Agreements;
- (d) if applicable, the collection of the Goods by the Authorised Person in accordance with this Deed;
- (e) this Deed; and
- (f) the Appointment.

## 6.2 Bar

The Liquidator and any of his partners, employees, officers, advisers and agents, RSM Australia Partners and RSM Australia Pty Ltd may plead this Deed as a bar to any Claims made or actual proceedings commenced by a Customer (or anybody claiming through them or any of them) against the Liquidator or any of his employees, officers, advisers and agents.

## 6.3 Indemnity

Each Customer each hereby agrees to indemnify and keep indemnified at all times the Liquidator against:

- (a) any and all Loss, Liability or Claim of or against the Liquidator to the extent that such Loss, Liability or Claim arises from, or is connected with any breach of any of the warranties made by any Customer (including, without limitation, those at clauses 2.1 or the breach of any other provision of this Deed);
- (b) any and all Loss, Liability or Claim of or against the Liquidator arising from, or connected with, any of the warranties in clause 2.1 not being true and correct; and
- (c) any and all Loss, Liability or Claim of or against the Liquidator arising from, or connected with, the collection of the Goods by the Collecting Person in accordance with this Deed.

## 6.4 Continuing obligation

The release and indemnities in clauses 6.1 and 6.3 respectively are continuing obligations, separate and independent from the other obligations set out in this Deed and survive termination of this Deed.

## 6.5 Indemnities survive retirement of Liquidator

The parties acknowledge and agree that the indemnities given by each Customer to the Liquidator in this Deed are continuing obligations and are not revoked, affected, compromised or prejudiced by the retirement of the Liquidator as liquidator of the Company or finalisation of the liquidation of the Company.

# 7. No waiver

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## 7.1 No waiver

The failure of a party at any time to require performance of any obligation under this Deed is not a waiver of that Party's right:

- (a) to claim damages for breach of that obligation;

- (b) to enforce any indemnity that they take the benefit of under this Deed; and
- (c) at any other time to require performance of that or any other obligation under this Deed,

unless written notice to that effect is given in accordance with this Deed.

## 7.2 Waiver

Waiver of any provision of or right under this Deed:

- (a) save for in relation to clause 4(a), must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

## 8. Joint and several obligations

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### 8.1 Parties jointly and severally bound

Any provision in this Deed which binds more than one party binds all of those parties jointly and each of them individually.

### 8.2 Separate obligations

Each obligation imposed on a party by this Deed in favour of another is a separate obligation.

## 9. Costs

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Each party to this Deed must bear and pay its own legal costs and expenses in relation to the negotiation, preparation and execution of, and the satisfaction of the conditions precedent under, this Deed.

## 10. Counterparts

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### 10.1 Parts

This Deed may be executed in counterparts by the respective parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same deed. This Deed shall take effect immediately upon it having been executed (whether together or by execution of different counterparts) by all of the parties.

## 10.2 Facsimile and PDF copies

An executed facsimile or PDF copy of this Deed is acceptable as an original.

## 11. Confidentiality

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The parties undertake that they will not disclose the contents of this Deed or any information relating to it to any third party, unless the disclosure is:

- (a) for the purposes of enforcing this Deed;
- (b) with the written consent of the other parties;
- (c) to the Party's professional advisers; or
- (d) required by law.

## 12. Severability

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Part or all of any provision of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining provisions of this Deed will continue in force.

## 13. Entire agreement

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This Deed constitutes the entire agreement between the parties with respect to the subject matter of this Deed and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Deed.

## 14. Time of the essence

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Time is of the essence in this Deed in relation to any obligation to pay money or in relation to any obligation to satisfy conditions precedent.

## 15. Variation

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A variation of any term of this Deed will be of no force or effect unless it is in writing and signed by each of the parties.

## 16. Jurisdiction

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This Deed shall be governed by and construed in accordance with the laws of Western Australia and the parties submit themselves to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

## 17. Trustees

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Each of the Customers enter into this Deed in their own capacity and as trustee of the relevant Trust (if applicable).

## 18. Further assurances

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Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Deed.

## Schedule 1 Customer(s) and Goods details

### Customer(s)

	Customer Name	Addresses
1.		
2.		
3.		
4.		

### Description of Goods





Schedule 2      Authorised Person(s)

	Name	Addresses
1.		
2.		

### Schedule 3 Form of acknowledgement of collection

<b>Customer(s):</b>	DO NOT COMPLETE - SAMPLE ONLY
<b>Customer(s) Address:</b>	DO NOT COMPLETE - SAMPLE ONLY
<b>Collecting Person(s):</b>	DO NOT COMPLETE - SAMPLE ONLY
<b>Collecting Person(s) Address:</b>	DO NOT COMPLETE - SAMPLE ONLY
<b>Date:</b>	DO NOT COMPLETE - SAMPLE ONLY

I/we, the Collecting Person(s), hereby acknowledge that:

1. I am / we are the Collecting Person(s), as that term is defined in the Deed of Release and Indemnity signed by the Customer (**Deed**); and
2. I / we jointly hereby take possession and control of the Goods (as that term is defined in the Deed).

**This letter is executed as a deed poll**

**Signed, sealed and delivered by**  
\_\_\_\_\_ in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

**Signed, sealed and delivered by**  
\_\_\_\_\_ in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

**Executed** as a deed.

**Executed by Bullion Bourse Pty Ltd  
(ACN 140 221 067) (In Liquidation)** by its  
liquidator:

**DO NOT SIGN - SAMPLE ONLY**

\_\_\_\_\_  
Signature of Collecting Person

**DO NOT SIGN - SAMPLE ONLY**

\_\_\_\_\_  
Signature of Collecting Person

\_\_\_\_\_  
Signature of Neil Raymond Cribb, liquidator  
of Bullion Bourse Pty Ltd (ACN 140 221  
067) (In Liquidation)

**Signed, sealed and delivered by Neil  
Raymond Cribb** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Neil Raymond Cribb

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

**Sign here if Customer(s) is an / are individual(s):**

**Signed, sealed and delivered** by  
\_\_\_\_\_ [name] in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of \_\_\_\_\_ [name]

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

**Signed, sealed and delivered** by  
\_\_\_\_\_ [name] in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of \_\_\_\_\_ [name]

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

**Signed, sealed and delivered** by  
\_\_\_\_\_ [name] in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of \_\_\_\_\_ [name]

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

**Signed, sealed and delivered** by  
\_\_\_\_\_ **[name]** in the presence  
of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of \_\_\_\_\_ **[name]**

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

**Sign here if Customer is a company:**

**Executed by**

\_\_\_\_\_ [company name]

ACN: \_\_\_\_\_ in accordance with  
section 127 of the *Corporations Act 2001* (Cth)

by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

