

**TEXAS BULLION DEPOSITORY  
BUSINESS DEPOSIT ACCOUNT AGREEMENT  
AND OTHER DISCLOSURES**

Effective February 1, 2020

## *Welcome*

Thank you for opening your account with the Texas Bullion Depository. Please keep this agreement for answers when you need them.

This document has two sections:

## *Deposit Account Agreement*

This section is your Deposit Account Agreement, or contract, with us. The Deposit Account Agreement incorporates the following documents that pertain to your account:

- Account Application
- Fee Schedule
- Important Disclosures, including Risk Disclosures
- Any additional disclosures, amendments, or agreements that we provide to you when you open your account or from time to time that are applicable to the specific type of account you open and that we provide to you.

This agreement is for use by customers who are businesses organizations.

Customers who open personal accounts will receive a different agreement and their accounts will be governed by that agreement, not this one.

## *Privacy Notice*

Our Privacy Notice explains how we keep information about you private and secure, and what choices you have about how we use your information.

This agreement is the contract that governs your account.

This agreement refers to and includes this document, your account application, and any other agreements, disclosures, or schedules that are applicable to the specific type of account you open that we may provide to you from time to time.

## *Definitions*

In this Agreement, the depositors may be referred to as “you”, “your”, or “Account Holder”.

The Texas Bullion Depository may also be referred to as “Depository”, “TXBD”, “we”, “our”, and “us.” References to the Texas Bullion Depository also includes the operator of the Depository and its agents.

Here are some other important terms that we use throughout this Agreement:

- “Account” means the deposit account covered by this Agreement.
- “Account Balance” means the value of the precious metals held in your Account.
- “Available Balance” means the balance in your Account after deducting (1) deposits that are not yet eligible for withdrawal under our funds availability rules, (2) transactions that we are legally obligated to pay or have already paid, (3) other pending transactions, and (4) any holds on your Account, such as holds to comply with court orders or other legal requirements.
- “Business Day” means a day other than Saturday, Sunday, or a banking holiday for a bank chartered under the laws of the State of Texas.
- “Declared Value” means the value assigned to a Product or Asset by you at or after the time of deposit, if higher than the metal content value.
- “Fee Schedule” means the fees and charges applicable to a deposit account as set forth below and as may be amended and published on the Depository website from time to time.
- “Official Exchange Rate” means the daily exchange rate for pricing precious metals transactions in terms of United States dollars as published on the Depository website.
- “Parties” refers collectively to both you, your agent(s) under any Power of Attorney, and the Depository.
- “Party” refers to either you, your agent(s) under any Power of Attorney, or the Depository, as the case may be.
- “Product” or “Asset” refers to the bullion and/or other precious metals held in your Account.

# *General Account Terms*

## **A. Accounts**

### 1. Deposit Account

Your Account with us is a custodial account. That means legal title to the precious metals that are held in your Account remains with you. Unless otherwise agreed, your deposits will be kept fully segregated and you will be responsible for account fees on that basis.

### 2. Account Changes

Each Account Holder or person authorized to sign on the Account is required to notify us in writing if any Account Holder or other person authorized to sign on the Account dies or is declared incompetent by a court. You must promptly notify us of any change in your address or name.

### 3. Account Closure/Termination

You agree that either of us may close your Account and terminate this agreement at any time, for any reason, with or without cause. If we close your Account, we may, but are not obligated to, provide advance written notice of our intention to do so. You may close any of your Accounts by notifying us in writing.

We may consider your Account closed if there are no Assets on deposit in your Account for a period of ninety (90) days. We may, but are not obligated to, contact you prior to closing your Account to verify whether you would like to keep the Account open. You may avoid involuntary closure of your Account by requesting us to suspend your Account for a period of up to 12 months. During the requested suspension period, we will not assess storage fees on your Account.

For security reasons, we may require you to close your Account and to open a new account.

The termination of this Agreement and closing of an Account will not release you from any fees or other obligations incurred prior to the date upon which this Agreement is terminated and the Account is closed or any fees assessed by us in the process of closing an Account. We will not be liable to you for any damages you suffer as a result of your Account being closed.

## **B. Fees and Charges**

### 1. Applicable Fees

You agree to pay us the fees and charges as provided by the Fee Schedule applicable to your Account and for other services we perform.

### 2. Fee Changes

We reserve the right to change the fees that are applicable to your Account and any services provided by us. Any such fee change will take effect no less than thirty (30) calendar days after we provide you with notice of a change in fees. We can provide such notice to you by mail, electronically by email, or via an account message on our website.

### 3. Payment Due Date

We will send you an invoice for storage fees on at least a quarterly basis. Your quarterly invoice will reflect the fees for services provided in the immediately preceding calendar quarter. Fees

and charges are due and payable within thirty (30) days of the date shown on the invoice. If you do not make a payment within that time, we may charge you a late fee.

You may make a payment by credit card or by automated clearinghouse (ACH) payment and you agree to comply with any legal requirements and our applicable payment requirements. If you choose to make a payment by credit card, you understand that we may charge you a convenience fee and you agree to that fee.

## **C. Deposit Rules**

### **1. Deposits**

Before you can make a deposit of precious metals into your Account, you must contact us prior to making the deposit by submitting a deposit request on our website. You may also contact us by telephone during normal business hours for assistance in completing a deposit request.

You are responsible for ensuring that your deposit request is accurately completed. Your deposit request should fully describe your deposit by specifying the metal type, quantity, form, weight in troy ounces pure, and/or any other characteristic to allow us to verify your deposit.

We may rely on the account number on any deposit request or similar record we receive, even if that account number is associated with a name that is different from the name you have provided. It is not our responsibility to detect any inconsistency between the account number you provide and the name on your Account.

If you make a deposit directly with us, we will provide you with an online notification that your deposit was received. You may also visit [texasbulliondepository.gov](http://texasbulliondepository.gov) to view your Account or call us to confirm that we have received your deposit.

We are not responsible for any loss in transit of any deposit you send to us. You are encouraged to purchase insurance for any shipment of precious metals you send to us for deposit.

If you make a deposit with us through an authorized depository agent, you will be provided with a receipt, but the items on your deposit receipt are based entirely on the deposit request you complete. We may confirm that the items on your deposit request are as described before accepting the deposit.

### **2. Assets with Declared Value**

When making a deposit, you may declare an Asset as having a higher value than the base metal content value. If you declare a higher value for an Asset, we may rely on and use your Declared Value for calculating your storage fees. If you do not declare a higher value for any Asset deposited with us, we may assume that the value of the Asset is limited to its metal content value as determined by us and you will not be able to later claim a higher value in the event of loss or damage.

### **3. Limitations on Deposits**

The Depository reserves the right to restrict or limit the types, forms and sources of precious metals that may be deposited with the depository. Before submitting a deposit of precious metals, you are responsible for ensuring that the bullion or specie you are seeking to deposit with the depository is on our approved list of acceptable deposits. You may visit [texasbulliondepository.gov](http://texasbulliondepository.gov) to view the current list of metals and forms that the depository is accepting for deposit.

#### 4. Testing and Inspection

You authorize us to test and verify the precious metals you deposit with us at the time of deposit. We may, but are not obligated to, test the precious metals deposited with us. If we test a deposit, we may use one or more commercially reasonable methods to confirm that the weight, size, density, and/or metal composition are consistent with your deposit request. Acceptance of a deposit after testing does not constitute a guarantee by us that the precious metals are as described on your deposit request.

If we test a deposit, we will use commercially reasonable methods to the extent that we can do so without damaging the Product. However, we cannot guarantee that our testing services will not reduce the value of the Product and will not be liable to you for any damage or loss in value you incur as a result of testing.

If we test a Product and it does not conform to the weight, size, documentation, density, metal composition or other standards applicable to the Product being tested, our only obligation to you is to notify you of any discrepancies.

#### 5. Our Right to Refuse Deposits

We may refuse a deposit, or part of a deposit, at any time. We may also refuse a deposit after initially accepting it. We will not be liable to you for refusing a deposit and you will be responsible for the cost of returning the deposit to you.

#### 6. When You Can Withdraw Precious Metals You've Deposited

Generally, you may withdraw the precious metals you deposited the next Business Day after the day the depository receives and accepts your deposit. But, in some cases you may not. Please see *Asset Availability Policy*.

### **D. Withdrawal Rules**

#### 1. Withdrawals

You may request a withdrawal of precious metals from your Account by submitting a withdrawal request on our website. You may also contact us by telephone during normal business hours for assistance in completing a withdrawal request. If you contact us by phone for assistance, we will send you a completed form for signature.

We will only process withdrawal requests in a quantity of precious metals as are available in your Account. If a withdrawal request would result in your Account being overdrawn, if honored, we will be unable to process the request and you will nevertheless be obligated to pay us the withdrawal fee.

Upon receipt of any withdrawal request, we may contact you to confirm that you have authorized the withdrawal before processing the withdrawal request. If we are unable to confirm that you authorized the withdrawal, the request will not be processed. We also reserve the right to reject instructions that are inconsistent with the terms of this Agreement or applicable law.

You are responsible for ensuring that your withdrawal request is accurately completed. Your withdrawal request should fully describe the Assets for which you are requesting withdrawal by specifying the metal type, quantity, form, weight in troy ounces pure, and/or any other characteristic to allow us to identify the Assets.

Your withdrawal request must also specify the verified address to which the withdrawn Assets are to be delivered. You are responsible for paying the fees and costs associated with a withdrawal of precious metals from the Depository. The current fees and costs are set out in our Fee Schedule and are also posted on our website. We reserve the right to require payment of withdrawal costs prior to processing a withdrawal if, as a result of the withdrawal, your Account Balance drops below the amount of the associated withdrawal fees and costs.

We will use our best efforts to ship your withdrawal in accordance with your instructions within five (5) Business Days of your requested date of withdrawal.

If you wish to pick up the withdrawn Assets at our facility, you must contact us to arrange an appointment to do so and we may require additional documentation to verify your identity before we release the Assets to you. We reserve the right to designate an alternative pick-up location.

## 2. Withdrawal Discrepancies

You are responsible for notifying us of any discrepancies related to your withdrawal within ten (10) Business Days of the date you received the withdrawal. If you do not give us written notice of the discrepancy or error, we are not required to reimburse you for any claimed loss, and you cannot bring any legal claim against us in any way related to the discrepancy or errors.

If you properly provide notice of any discrepancy, the Parties shall endeavor to determine the cause of the discrepancy and resolve the dispute. You agree that for a period of ninety (90) days after providing us notice of a discrepancy you will not bring an action, suit, or other legal proceeding against us to allow us an opportunity to investigate the discrepancy and attempt to resolve the dispute with you. We will provide you with a written response within three (3) Business Days after completing our investigation.

## **E. Transfers of Depository Account Balances**

You may initiate a transfer of precious metals up to the Available Balance in your Account to another person by requesting a balance transfer on our website. You may also contact us by telephone during normal business hours for assistance in completing a balance transfer request. If you contact us by phone for assistance, the completed form will be sent to you for signature. If a balance transfer request would result in your Account being overdrawn, we will be unable to process the request and you will nevertheless be obligated to pay us the transfer fee. Upon receipt of a balance transfer request, we may contact you to confirm that you authorized the transfer before processing the request. If we are unable to confirm that you authorized the transfer, the request will not be processed.

If you request a balance transfer to a person who is not a depository account holder, we may refuse to honor the transfer request if doing so violates any applicable law or depository policy and we will not be responsible for any loss or damages whatsoever that you may incur as a result of our refusal.

You are responsible for ensuring that your balance transfer request is accurately completed. Your transfer request should fully describe the Assets for which you are requesting transfer by specifying the metal type, quantity, form, weight in troy ounces pure, and/or any other characteristic to allow us to identify the Assets you are requesting to be withdrawn.

Your request should also fully identify the person to whom you are transferring the precious metals, including to the extent known, the person's depository account number, address, and other identifying information to allow the depository to confirm the identity of the transferee. If we are unable to confirm the identity of a transferee, we may contact you for additional information or refuse to honor the transfer request. If we refuse to honor a transfer request for this reason, we will not be responsible for any loss or damages whatsoever that you may incur as a result of our refusal.

#### **F. Authorized Users**

Corporate and other business customers must designate one person as the administrator of your Account at the time the Account is opened, but additional Authorized Users may be designated using our online system. You must inform us if there is a change in the designated administrator for your account. You agree that you are responsible for managing their account permissions and, if a person is authorized to complete transactions for your account, you agree that you are solely responsible for any activity initiated by that person. You may change, limit, or revoke the permissions of an Authorized User at any time by logging onto your account and making the changes to your account. You agree that we may rely on the permissions set for your account with respect to any Authorized User, and that no change to those permissions will be effective unless you log in to your account and make a change.

#### **G. Power of Attorney**

You may designate a person as your agent or attorney-in-fact with power to act for you over your Account. We may accept any power of attorney form that is legally binding within the State of Texas, but to be effective, the power of attorney form must be notarized.

You agree that we may rely on your Power of Attorney and may act on the instructions we receive from your agent under such form. You agree to indemnify and reimburse us for all claims, costs, losses and damages that we incur in accepting and acting on any Power of Attorney form we believe you executed.

We reserve the right to refuse to honor any Power of Attorney you grant that is presented to us with or without cause and at no liability to us. We also reserve the right to require additional information, documentation, or actions from you that are sufficient, in our sole discretion, to satisfy any questions or concerns we may have regarding a Power of Attorney submitted to us.

We may also restrict the types or sizes of transactions we permit an agent to conduct. We may require a separate form for each agent and each Account for which you want to grant a Power of Attorney.

Unless otherwise agreed by us in writing, an agent cannot appoint another agent, including, but not limited to an Authorized User.

#### **H. Pledge of Account to Third Parties**

You may pledge your rights in and to your Account to a third party as collateral but to be effective any such pledge must be made using our Depository Account Pledge Form.

No pledge will be valid or binding on us, and we will not be considered to have knowledge of it, until we consent and acknowledge the pledge in writing. Any permitted pledge is subject to and



superseded by our setoff rights and remains subject to any other right we have under the Agreement and applicable state and federal law.

Unless we acknowledge the pledge in writing, we may treat you as the owner of the Account for all purposes.

If you pledge your Account as collateral to a third party you are still responsible for the fees associated with the Account.

### **I. Continuing Security Interest**

By law, we have a continuing lien and security interest in and to your Account to secure the payment of any of your obligations to us under this Agreement, including fees and other charges. If you default, we may, without notice to you, transfer or liquidate all or part of the balance of your Account as necessary to pay or satisfy your obligation to us. If we liquidate any portion of your Account to pay or satisfy your obligations to us, we will refund to you the proceeds of the sale, less any costs or expenses related to the sale and the amounts you owe us. We may also suspend withdrawal privileges on your Account until you pay or satisfy your obligation to us.

If we exercise our rights under this section, you may be liable to us for additional applicable fees.

### **J. Right of Setoff**

Subject to applicable law, we may exercise any right of setoff that we are entitled to exercise under common law, under this Agreement and under statute to recover amounts you owe us from any Accounts you maintain with us or with our affiliates before we pay any amount we may owe you. As permitted by applicable law, we may exercise our right of setoff for any liability or debt of any of you, whether the Account is owned jointly or individually; whether the liability or debt is direct or contingent and whether now or hereafter existing; and whether the liability or debt arises from overdrafts, endorsements, guarantees, attachments, garnishments, levies, attorneys' fees, or other obligations. If you are a sole proprietor, we may charge any of your personal or business Accounts. If you are a business partnership, we may also charge the personal Accounts of any general partner. If the Account is a joint or multiple-party Account, each joint or multiple-party Account Holder authorizes us to exercise our right of setoff against any and all Accounts of each Account Holder. We may use funds held in joint or multiple-party Accounts to repay the debts on which any one of you is liable, whether jointly with another or individually. We may charge any such debt against your Account at any time, without regard to the origin of deposits to the Account or beneficial ownership of the funds.

### **K. Asset Availability Policy**

Our policy is to make Assets deposited into your Account available to you on the first Business Day after we receive your deposit at our storage facility. However, longer delays may apply in certain circumstances or as required to comply with federal or state law. Upon request, we will provide you with an estimate of when the Assets will be made available to you.

If you receive a transfer of precious metals from another depository account holder, we will transfer the precious metals to your segregated storage account and adjust your Account

Balance accordingly. Precious metals transferred from another depository account holder are subject to a settlement period of up to ten (10) Business Days and may not be sold, withdrawn or otherwise transferred during the settlement period unless approved by us. If you need access to the transferred Assets right away, you should ask us when the Assets will be available.

#### **L. Account Statements/Error Resolution Procedures**

We will provide you with a monthly account statement that summarizes the Account activity as of the last day of the previous calendar month. You are responsible for promptly examining each account statement to ensure its accuracy and for reporting any discrepancies to us.

The Account Balance contained in your account statement reflects the number of ounces of each metal type multiplied by the applicable Official Exchange Rate plus an adjustment, if any, for items with a higher declared value. The Account Balance is not based upon our independent valuation and is not intended as a definitive statement or guarantee as to the value of the Assets contained in your Account. This balance is provided for convenience only and solely for the purpose of calculating applicable storage fees. In providing this balance, we are not exercising discretion in any capacity, nor acting as a fiduciary or giving advice with respect to the value of the Assets. Our role is limited to simply reporting the valuation of the assets as directed by you or your agent and is based on information supplied by independent public sources.

The monthly account statement will be considered correct for all purposes, and we will not be liable for any discrepancy, unless you notify us in writing of the discrepancy or error within thirty (30) days of the date we sent you the first account statement on which the problem or error appeared. If you do not give us written notice of the discrepancy or error within this time period, we are not required to reimburse you for any claimed loss, and you waive your right to and cannot bring any legal claim against us in any way related to the discrepancy or errors.

If you properly provide notice of any discrepancy, the Parties shall endeavor to determine the cause of the discrepancy and resolve the dispute. You agree that for a period of ninety (90) days after providing us written notice of a discrepancy you will not bring an action, suit, or other legal proceeding against us to allow us an opportunity to investigate the discrepancy and attempt to resolve the dispute with you. We will tell you the results within three (3) Business Days after completing our investigation. If we decide there was no error, we will send you a written explanation.

Please note that Texas law provides that any action, suit, or legal proceeding arising from a denial of deposit liability must be brought within one year of the date we gave notice to you of the denial of liability. Provision of a periodic account statement constitutes notice of denial of liability for any transaction that is not reflected on the account statement.

#### **M. Loss or Damage**

Except as otherwise provided in this Agreement, in the event of loss or damage to your Assets, we may, at our sole option, replace your precious metals with precious metals in the same or similar form or may reimburse you for the value of the precious metals at the time of loss or damage occurred. In any event, our liability to you for loss or damage to your Assets is limited to the metal content value unless you declared a higher value for the lost or damaged items at the time of deposit. If you declared a higher value at or after the time of deposit, our liability to you is limited to the lower of actual value or your declared value.

Our liability for loss or damage does not include normal wear and tear from handling or storing your Assets, including, but not limited to any tarnishing or other chemical reactions that may occur as a result of storing your Assets.

## **N. Notices**

Except as otherwise provided in this Agreement, all notices required under this agreement shall be in writing. If you have provided us with an email address, you agree that we may provide any required notice to you electronically by email to that address. We may also provide you notice by other electronic means including via an online account notification on the Depository website. Only one notice will be given in the case of joint account owners and notice to any Account Holder is deemed notice to all Account Holders.

All notices from us will be effective when we have mailed them to the current address (whether physical address or email address) we have for you in our records. You may update your contact information on our website, but any notice sent to you within fifteen (15) Business Days of any such change shall be effective even if we sent the notice to your previous address.

All notices to us will be effective when actually received. You may contact us or provide any required written notice to us at the following address:

Texas Bullion Depository  
c/o Texas Depository Services, LLC  
203 Heritage Grove Rd  
Leander, Texas 78641  
Telephone: +1.844.416.4653  
Facsimile: +1.800.735.6051  
Email: [clientservices@texasbulliondepository.gov](mailto:clientservices@texasbulliondepository.gov)

## **O. Changes to Agreement**

We may change the terms of this agreement or your Account, including without limitation all rates, fees, and charges, to the extent permitted by law. For changes related to the Fee Schedule, please refer to the Fee Schedule section of this Agreement. For all other changes, we will endeavor to provide you reasonable notice in writing or by any other method permitted by law, including notice of our effective date. By maintaining your Account after the effective date of any change for which we have provided you notice, you agree to the change.

You agree that we may also change or terminate this agreement without notice to comply with any appropriate federal or state law or regulation.

## **P. Confidentiality**

You authorize us to disclose information to third parties, our affiliates and agents, or other authorized persons about you and your Account(s):

- When it is necessary to complete a transaction requested by you;
- If you give us written permission;
- In order to comply with government agency or court orders, or other applicable law; and
- In accordance with our Privacy Policy.

## **Q. Miscellaneous Provisions**

### **1. Security and Passwords**

As part of our services, we employ various authentication technologies. In addition to unique User IDs and a personal password (“Password”), you may be required to provide additional information we may require from time-to-time in conjunction with any additional authentication procedures we may employ (“Additional Authentication Information” or “AAI”). Such AAI shall be used in conjunction with various authentication procedures that the Depository may employ, including but not limited to, security questions and responses and/or other hardware and software-based security and authentication programs and procedures. Upon selection, the User ID, Password and AAI become the method for authenticating transactions. You understand you are solely responsible for safeguarding your User ID, Password and AAI.

You understand that we will rely on access via use of your User ID, Password and AAI as confirmation that you have authorized all activity conducted following such authenticated access. If you authorize or permit another person to use your Account, either by granting permissions as an Authorized User or by giving them your User ID, Password or AAI, you are responsible for all activity the person initiates via our online system.

You understand and agree to notify us immediately if your or an Authorized User’s User ID, Password or AAI have been lost, stolen or compromised.

### **2. Electronic Platforms**

You acknowledge that we do not guarantee the continued availability of our electronic platforms, including without limitation our website. The result of a system failure may be that your order is not executed, or your order may not be executed in accordance with your instructions. Further, to the extent you make any transaction request using our electronic platforms, we reserve the right to ask you to verify any such transaction requests and you agree that we shall have no liability for any delays caused by such verification. Your use of our electronic platforms constitutes your agreement to be bound by our Website User Agreement and Privacy Policy, which are available on our website.

We shall not be responsible to you for any loss or damages suffered by you as a result of the failure of systems hardware and software used by you to interface with our electronic platform to initiate or process Account transactions. This limitation applies whether such transactions are initiated or processed directly with our systems or through a third-party service provider.

### **3. Telephone and Electronic Communication**

We may record and/or monitor any of our telephone conversations with you. If we do record, we do not have to keep the recordings unless the law says we must.

When you give us your mobile number, we have permission to contact you at that number about your Account. Your consent allows us to use text messaging, artificial or prerecorded voice messages and automatic dialing technology for informational and account service calls. Message and data rates apply. You may contact us at any time to change these preferences.

If you give us your email address, you consent to receiving communications electronically, including notices regarding your Account, rather than through U.S. Mail or other means, unless the law says otherwise.

#### 4. Inactive and Unclaimed Accounts

Each state has laws that govern when accounts are considered inactive or abandoned, and when we are required to report and send a customer's unclaimed property to the state. If we send your unclaimed property to a state, you will have to contact that state to claim your property. To avoid having us report your property as unclaimed or abandoned, please keep your Account active by signing into your Account online, making transactions or otherwise keeping in contact with us. We will mail you a letter to the address we have on file for you to notify you before we report your property to the state as abandoned property.

#### 5. Illegal Activity

We reserve the right to inquire about any deposits, withdrawals or other account activity. You agree not to use your Account for any illegal activity.

### **R. Other legal terms**

#### 1. Choice of Law

This agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its choice of laws principles.

#### 2. Location of Legal Proceedings

For any lawsuit or legal proceeding arising out of or in any manner connected with your Account or this agreement, the Parties agree that venue shall be proper in, and submit themselves to the jurisdiction of, the state district courts located in Travis County, Texas.

#### 3. Force Majeure

We shall not be liable for any loss, damage, liability or expense, including loss of or damage to Product, resulting from non-performance, delays of service, or physical damage, destruction, or loss that is directly or indirectly caused by, contributed to, or arising from acts of war (whether an actual declaration thereof is made or not), terrorism, sabotage, insurrection, riot, acts of civil disobedience, acts of public enemy, acts of any government or any agency or subdivision thereof, judicial action, labor dispute, explosion, storm, technical failure, utility or systems failure, fire or flood, acts of God, or other cause beyond our reasonable control.

#### 4. Assignment

You may not assign or transfer your rights or obligations under this Agreement without our prior written consent. No assignment or transfer will be valid or binding on us, and we will not be presumed to have knowledge of it, unless and until we consent to and acknowledge the assignment in writing. Any permitted assignment is subject to and superseded by our setoff rights and remains subject to any other rights we have under this Agreement and applicable state and federal law. If you want to assign ownership of your Account, we may require that you close the Account and open a new account in the name of the transferee or assignee.

We may assign all of our rights and obligations under this agreement at any time without your consent and without prior notice to you.

#### 5. No Waiver

Nothing in this Agreement shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Texas Bullion Depository as an agency of the State of Texas or otherwise available to us. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to the

Depository under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. We do not waive any privileges, rights, defenses, remedies, or immunities available to the Texas Bullion Depository as an agency of the State of Texas, or otherwise available to us, by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to the Texas Bullion Depository must be in writing, must reference this Section, and must be signed by us to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to the Texas Bullion Depository shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

#### 6. Third-party Beneficiaries

Nothing in this agreement confers any rights or remedies to any person or entity other than the Parties.

#### 7. Severability

The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement.

#### 8. Headings; No Presumption

The headings used in this agreement are for convenience only and do not affect the meaning of any provisions of this agreement. No presumption in favor of or against any Party in the construction or interpretation of this agreement, or any provision hereof, shall be made based upon which Party drafted this agreement or the provision.

#### 9. Entire Agreement

This agreement, together with any additional disclosures we may provide to you, is our entire agreement and it supersedes all prior communications between you and us as it relates to your Account. Any representation, warranty, either express or implied, or agreement that is not included in this agreement has no force and effect.

#### 10. Binding Agreement

This agreement is binding on the Parties and their respective heirs, successors, executors, administrators, representatives and assigns. By signing a signature card or submitting an account application, or by using any of our deposit account services, you and anyone else identified as an owner of the Account agree to the terms of this agreement. We may ask you to sign this agreement either in original or by digital signature, but this agreement will nevertheless be binding on you irrespective of whether you have signed the agreement.

#### 11. Indemnification and Release

**Account Holder shall defend, indemnify and hold harmless the State of Texas, the Comptroller of Public Accounts, and the Texas Bullion Depository, their respective officers, employees, agents, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from:**

- (i) **The acts or omissions of Account Holder, the breach by Account Holder of any of its covenants contained in this Agreement, or the inaccuracy of any representation or warranty of the Account Holder contained in this Agreement or the account application.**

- (ii) **Any claims, disputes, suits, proceedings at law or in equity, loss, liabilities, costs, payments, injury, damage and expenses of any nature (including attorneys' fees and court costs) brought by or on behalf of any third parties with respect to the Account or any Product deposited therein from time to time under this Agreement including, without limitation, from third parties claiming or asserting (a) any ownership interest in any Product stored at any facility of the Depository, (b) any lien or other encumbrance of any kind whatsoever on the Account or any Product, or (c) any taxes arising out of or relating to the Account relationship,**
- (iii) **The failure by Account Holder to provide a notice of discrepancy within the time periods specified in this Agreement,**
- (iv) **Actions taken by TXBD, or any third party at TXBD's request, upon the written direction or request of the Account Holder.**

**If the State of Texas or any of its agencies are named as defendants in any lawsuit, Account Holder shall coordinate the defense of the case with the Office of the Attorney General. Account Holder may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Parties agree to provide timely written notice to each other of any such claim.**

***This section is not intended to and shall not be construed to require Account Holder to indemnify or hold harmless the State or the Depository for any claims or liabilities resulting from the negligent acts or omissions of the Depository, its employees or agents.***

## **S. Account Holder Representations**

Account Holder hereby represents, warrants, and covenants to TXBD as follows:

- i. Account Holder is establishing a commercial account with TXBD. Account Holder represents that in opening the account it has properly characterized whether the precious metals deposited in the Account are intended to be used for the production of income. Account Holder agrees that in the event they engage in any activity that would make the account subject, in whole or in part, to property tax, Account Holder shall inform TXBD of the change in account status. This provision notwithstanding, Account Holder warrants that Account Holder shall be solely responsible for complying with state and federal tax laws that may be applicable, including rendition.
- ii. If Account Holder is not a natural person, Account Holder is an entity duly formed, validly existing, and in good standing under the laws of its state of formation. Account Holder has all requisite power and authority to own and operate its properties and to carry on its business as presently conducted.
- iii. Account Holder and, where applicable, the representative of Account Holder executing this Agreement on behalf of Account Holder have full legal and corporate/company (if applicable) rights, powers, and authority to enter into and execute and deliver this Agreement, and to carry out the transactions contemplated hereby. The execution and delivery by Account Holder of this Agreement, and the completion of all transactions, have been duly authorized by all requisite action on the part of Account Holder. This Agreement and each of the other documents and instruments delivered by Account Holder constitute the legal, valid, and binding obligation of the Account Holder, enforceable against the Account Holder in accordance with their respective terms.

- iv. The execution, delivery, compliance with and performance by the Account Holder of this Agreement and each of the other documents and instruments delivered do not and will not (A) violate or contravene the organizational certificates, documents, and agreements, as amended to date, of the Account Holder, if applicable; (B) violate or contravene any law, statute, rule, regulation, order, judgment, or decree to which the Account Holder is subject, or; (C) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument, or other document to which the Account Holder is a party or by which the Account Holder or any of the Account Holder's assets or properties are bound.
- v. The Account Holder understands and agrees to comply with applicable rules and regulations promulgated by the Commodity Trading Futures Commission ("CFTC") from time to time pursuant to the Commodity Exchange Act of 1936 ("CEA"), as amended. TXBD, CPA and TDS neither undertake nor facilitate any transaction(s) for, or on behalf of, the Account Holder and the Account Holder shall have no recourse against TXBD, CPA or TDS with respect to the same. The Account Holder shall consult with its own legal advisers concerning regulatory compliance with the CEA and CFTC rules concerning any investment or transaction(s) in the Product(s).
- vi. The Account Holder has executed the account application as a condition to TXBD establishing the Account, which contains information relied upon by TXBD to establish the Account and maintain the Account during the term of this Agreement. The information provided by the Account Holder to TXBD at any time, including information in the Account Application, is complete, accurate, and true in all respects.

#### **T. Sovereign Immunity and Limitation of Damages**

**NOTHING IN THIS AGREEMENT SHALL CONSTITUTE A WAIVER OF THE STATE'S SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY EXCEPT AS OTHERWISE PROVIDED BY LAW. IN NO EVENT SHALL THE DEPOSITORY, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, OR CONTRACTORS BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF THE DEPOSITORY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, THE DEPOSITORY IS NOT LIABLE FOR PRE- OR POST-JUDGMENT INTEREST, COSTS, OR ATTORNEY'S FEES. OUR LIABILITY, IF ANY, WILL BE LIMITED TO THE METAL CONTENT VALUE OF THE ASSETS ON DEPOSIT OR, IN OUR SOLE DISCRETION, REPLACEMENT OF THE ASSETS WITH THE SAME OR SIMILAR ASSET OF EQUAL WEIGHT.**



## Fee Schedule

The following fees are applicable to your Account. We reserve the right to amend these fees without prior notice and without your consent, provided, that we shall notify you in writing of any change in fees, which shall take effect thirty (30) days following notice to you. Unless you notify us that you wish to terminate the Agreement, your continued use of services shall constitute your consent to the modified fees. Our current fees can be found on our website:

[www.texasbulliondepository.gov](http://www.texasbulliondepository.gov). In the event of a discrepancy between the fees contained in this schedule and the fees posted on our website, the fees posted on our website will control.

Storage fees are calculated daily and billed quarterly. The quarterly storage bill is the sum of the daily charges or \$25.00, whichever is greater.

The daily charge equals the daily rate multiplied by the Account Balance. The daily rate is the annual rate divided by 365 days.

The Account Balance equals the number of ounces of each metal type in your Account multiplied by the applicable Official Exchange Rate plus an adjustment, if any, for Assets with a Declared Value that is higher than the base metal content value.

Segregated Storage Fees:			
Account Balance			
From	To	Annual Rate	
\$0.01	\$2,499,999.99	0.50%	
\$2,500,000.00	\$4,999,999.99	0.45%	
\$5,000,000.00	\$7,499,999.99	0.40%	
\$7,500,000.00	\$9,999,999.99	0.35%	
\$10,000,000.00	\$24,999,999.99	0.30%	
\$25,000,000.00	\$49,999,999.99	0.25%	
\$50,000,000.00	\$99,999,999.99	Negotiable	
\$100,000,000.00		Negotiable	

Non-Storage Fees:		
Fee Type	Fee Amount	Details
Account Setup Fee	\$50.00	per account
Withdrawal/Balance Transfer Fee	\$25.00	per transaction
Customer Room Usage Fee	\$50.00	per hour
Online, Real-Time Viewing Fee	\$50.00	per 1/2 hour
Postage / Transportation Fee (Domestic)	<i>Gold , Platinum, Palladium, Rhodium \$25.00 up to 100oz Plus, 15 cents (.15) per oz. over 100 oz.</i>	per transaction
Postage / Transportation Fee (Domestic)	<i>Silver \$25.00 up to 500oz Plus, 10 cents (.10) per oz. over 500 oz.</i>	per transaction
Personal Pick-Up Fee	\$25.00	per transaction
Replacement Pallet Packaging Fee	\$50.00	per pallet
Stop Payment Fee	\$30.00	per transaction
Late Payment Fee	\$30.00	per transaction
Insufficient Funds/Overdraft Fee	\$30.00	per transaction
Refused Deposit Fee	\$25.00 <i>Plus applicable postage</i>	per transaction
Account Pledge Fee	\$50.00	per transaction
90% and 40% Silver Coin Bag Counting Fee	\$25.00	per bag
Credit Card Convenience Fee	3%	per payment

## *Important Disclosures*

**You acknowledge that you have read, understand and agree with the following important disclosures.**

**The following summary does not disclose all of the risks of investing, buying and selling bullion or precious metals Products. Given the risks, you should undertake such transactions only if you are familiar with and understand the nature of investing in the Products and understand the extent of your exposure to risk. Investing, buying, selling or trading in the Products is not suitable for many members the public, and therefore you are instructed to carefully consider whether investing, buying, selling or transacting in the Products is appropriate for you in light of your financial resources, experience, objectives and other circumstances relevant to you.**

### **A. Status as a State Agency**

The Texas Bullion Depository is an agency of the State of Texas and is administered as a division within the office of the Comptroller of Public Accounts. As a state agency, we are subject to rules and regulations that may not be applicable to private entities.

Our status as a state agency means that you may have a limited right to sue us. If you have a conflict with us, you should consult with an attorney to discuss your rights to sue us under this Agreement or otherwise.

You understand and agree to release, indemnify, defend and hold harmless the Comptroller of Public Accounts and the Texas Bullion Depository for any loss or claims arising from any actual or perceived conflicts of interest that may arise as a consequence of our role and responsibilities as a state-owned entity and our compliance with state and federal laws applicable to us as a state agency.

### **B. Texas Bullion Depository Operated by a Private Company**

The Texas Bullion Depository is operated by Texas Depository Services, LLC (“TDS”), an affiliate of Lonestar Tangible Assets, LLC, the private company selected by the Comptroller to operate the Depository.

The Administrator of the Texas Bullion Depository supervises the operations of TDS. If you have a conflict with TDS, we request that you contact the Administrator for the Texas Bullion Depository at the following address:

Texas Bullion Depository  
Attn: Administrator  
111 E. 17<sup>th</sup> Street  
Austin, Texas 78711

Email: [depositoryadministrator@cpa.texas.gov](mailto:depositoryadministrator@cpa.texas.gov)

### **C. No Investment Advice**

The Comptroller of Public Accounts (CPA), TXBD and TDS, respectively, operate different aspects of depository services, and do not engage in discretionary buying, selling or otherwise

transacting in the Products. The CPA, TXBD and TDS do not provide tax, accounting or legal advice or any advice regarding the suitability of investing in any Product.

The Account Holder has undertaken its own investigation with regard to whether it is appropriate to invest or purchase, buy, sell, hold or otherwise own the Product(s) deposited or to be deposited, and Account Holder is independently capable of evaluating the risks and the merits of purchasing, buying, selling, holding or otherwise owning the Product(s) without investment or other advice from TXBD, CPA and TDS. TXBD, CPA and TDS has not and will not provide any advice to Account Holder with respect to the Product(s) being held or to be held for deposit, and Account Holder agrees never to seek any such advice from TXBD, CPA and TDS. Account Holder acknowledges his/her/their independent understanding that owning the Product(s) can involve a high degree of risk and that market value for the Product(s) are affected by factors such as political events, general economic events, the value of the U.S. Dollar, central bank sales, regulatory initiatives, supply and demand, derivative transactions and speculation. Account Holder acknowledges and agrees that, as part of the establishment of the Account, TXBD CPA and TDS have not undertaken a duty to supervise Account Holder's investment in the Product(s) in any way, or to make any recommendation to the Account Holder with respect to, the purchase, sale, holding, or other disposition of any Product(s), or the balances maintained in the Account. TXBD does not guarantee the investment of Account Holder. Furthermore, the TXBD, CPA and TDS are not acting as agent, fiduciary or financial adviser or commodity trading adviser or investment adviser or broker or dealer, and is not acting in any similar capacity on behalf of Account Holder, and as such, TXBD CPA and TDS do not undertake any of the duties that an entity or person acting in those capacities ordinarily would perform. Neither TXBD, CPA, or TDS nor their agents who engage in transacting in the Products serve as brokers, dealers or agents to an Account Holder and accordingly any statements made by or communicated through them shall not be construed as recommendations or advice. An Account Holder is expected to evaluate the appropriateness of any transaction or holding based on the Account Holder's own independent facts and circumstances and their own assessment of the transaction's or holding's merits. TXBD, CPA, and TDS are not engaged in the buying or selling of the Products.

TXBD, CPA and TDS are not licensed as an investment company or as a commodity trading adviser or investment adviser or broker or dealer and as such, are not authorized to recommend any investment in, or purchase or sale of the Product(s). Account Holders should only transact with licensed precious metals dealers. Consult with a licensed professional with expertise in the particular Product(s) before making a decision to buy or sell any Product(s). If Account Holder has designated a commodity trading adviser or investment adviser or broker in the Account Application that accompanies this Agreement as authorized to act on the Account Holder's behalf ("Account Holder Agent"), then Account Holder shall immediately update the Account Application in the event that such account Holder agent is terminated or replaced by another person designated to act on the Account Holder' behalf. Account Holder acknowledges that TXBD CPA and TDS do not recommend any particular commodity trading adviser or investment adviser or broker.

## **D. Risk Disclosures**

Non-Reliance: Nothing herein constitutes a solicitation or recommendation to transact in derivatives. No representation herein shall be construed as an offer to sell or the solicitation of an offer to buy any commodity, derivative or security in any jurisdiction. Nothing in this Deposit Account Agreement and Account Application constitutes a recommendation or takes into account the particular investment objectives, financial conditions, or needs of the individual account holder. Before investing in the Product(s), you should consider whether it is suitable for your particular circumstances and, if necessary, seek professional advice. The price and value of the investments and Products that are the subject of this Deposit Account Agreement and the income from them may go down as well as up, and investors may realize losses on any investments. Past performance is not a guide to future performance. Future returns are not guaranteed, and a loss of original capital may occur. We do not provide tax, accounting, or legal advice to account holders and all account holders are advised to consult with their tax, accounting, or legal advisers regarding any potential investment or transaction in the Product(s).

Information we may provide you from time to time is based on information that we consider reliable, but we do not represent that it is accurate, complete or up to date, and it should not be relied on as such. Any information that may contain an opinion are current opinions as of the date appearing on the material only, and only represent the views of the author and not those of the CPA, TXBD or TDS or LoneStar.

Risk Disclosure regarding Bullion and Precious Metals. Before entering into any transactions, you should understand the transactions, the Products and the risks. Bullion and Precious metals transactions give rise to substantial risk and are not suitable for all investors. If you have any questions about whether you are eligible to enter into these transactions, please contact your tax, accounting, investment or legal advisers.

Order Handling Practices. While we are holding your Products, we or our other account holders may engage in trading activity in the same or related products. While such trading activity is unrelated to your orders, it may coincidentally impact the price of the Products that you are buying or selling.

Not a Fiduciary: To the extent any material is provided to an individual in connection with employee benefits subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code") (each, a "Benefit Plan Investor"), by executing this Agreement, such Benefit Plan Investor is deemed to represent, warrant and acknowledge that the Benefit Plan Investor is represented by a fiduciary that is independent of the Texas Bullion Depository, the Comptroller of Public Accounts, the State of Texas and LoneStar and its affiliates (the "Independent Fiduciary"). The Independent Fiduciary is a fiduciary under ERISA and/or the Code with respect to, and is responsible for exercising independent judgment in evaluating the investment and Products on behalf of the account holder. Neither the Texas Bullion Depository, the Comptroller of Public Accounts, the State of Texas and LoneStar and its affiliates are undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity with respect to any Benefit Plan Investor's subsequent investment decisions. For any other account holders, their investment in the Products and the execution of this Agreement is undertaken solely on the basis that the account holder is capable of independently evaluating investment risk and is exercising independent judgment in evaluating investment decisions. Its investment decisions will be based on its own independent assessment of the opportunities and risks

presented by the Products, a potential investment, market factors and other investment considerations.

## *Privacy Notice*

The Texas Bullion Depository is committed to safeguarding your personal information. As an Account Holder, you are entitled to know how our agents, our affiliates, and we handle and protect information we collect about you and how we limit its disclosure.

### Why and How We Collect Information

When you apply for or maintain an account with us, we collect information for business purposes, such as evaluating your needs, processing your requests and transactions, informing you about services that may be of interest to you, and providing customer service. The information we collect about you includes:

- Information you provide to us on applications and other forms;
- Information about your transactions with us and with our affiliates;
- Information we receive from other entities not affiliated with the Texas Bullion Depository; and
- Information you provide to us to verify your identity.

### How We Protect Information

We limit access to your information to those employees who need to know in order to conduct our business, service your account, and help you accomplish your objectives. Our employees are required to maintain and protect the confidentiality of your information and must follow established procedures to do so. We maintain physical, electronic and procedural safeguards to protect your information.

### Sharing Information with Our Affiliates

We may share information described above with our affiliates for limited business purposes, such as to perform services for us or on our behalf, provide data processing, and as permitted by applicable law.

### Disclosure to Non-Affiliated Third Parties

In order to support the services we provide you, we may share the information described above with third-party service providers not affiliated with us, such as companies under contract to perform services for us or on our behalf, vendors that prepare and mail statements and transaction confirmations, and vendors that provide data processing, computer software maintenance and development.

These companies acting on our behalf are required to keep your information confidential.

In addition, we may disclose information with non-affiliated companies and regulatory authorities as permitted or required by applicable law. For example, we may disclose information to cooperate with regulatory authorities and law enforcement agencies to comply with subpoenas or other official requests, and as necessary to protect our rights or property. We may also

disclose information as may be required under applicable law, such as pursuant to the requirements of the Texas Public Information Act.

### Accessing and Revisiting Your Information

We endeavor to keep our customer files complete and accurate. In accordance with Texas state law, you are entitled to review, request, and correct information we have on file about you. Most of this information is contained in account statements that you receive from us and applications that you submit to obtain our services. We encourage you to review this information and notify us if you believe any information should be corrected or updated. If you have a question or concern about your information or this privacy notice, please contact us.

### Request for Your Information

With few exceptions, you have the right to request, receive, and review your information with us. You are also entitled to have us correct any information about you in our possession that may be incorrect.

To request information from us, please submit your request via one of the methods listed below and ensure your request includes enough description and detail so we may accurately identify and locate your information.

By mail:

Open Records Section  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, TX 78711-3528

By fax: 512-475-1610

In person:

Open Records Section  
Comptroller of Public Accounts  
111 E. 17th St.  
LBJ State Office Bldg., Ste. 210  
Austin, TX 78701

You may also email us at [open.records@cpa.texas.gov](mailto:open.records@cpa.texas.gov).

### Retention of Information

Information collected by or provided to the Texas Bullion Depository will be retained and maintained as required by law or regulation. Different types of information are required to be kept for different periods.

We will store or use sensitive and confidential information submitted by you only for the time necessary. Confidential information is destroyed via purging, magnetic degaussing/erasing,



shredding, and/or other means of authorized confidential destruction when no longer required and to prevent unauthorized access or use of the data. Regularly scheduled archiving, purging, and proper disposal of records and information is a standard practice throughout CPA.

## **STATE OF TEXAS PRIVACY NOTICES**

**FEDERAL PRIVACY ACT NOTICE-** Disclosure of your social security number on the Application is required and authorized under law, for the purpose of tax administration and identification of any individual affected by applicable law, 42 U.S.C. §405(c)(2)(C)(i); Tex. Govt. Code §§403.011 and 403.078. Release of information on this form in response to a public information request will be governed by the Public Information Act, Chapter 552, Government Code, and applicable federal law.

**TEXAS PRIVACY NOTICE -** Under Ch. 559, Government Code, you are entitled to review, request, and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at Texas Bullion Depository, Attention: Open records Section, P.O. Box 13528, Austin, TX 78711-3528 or (512) 475-1610.

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