

Dated: 28 February 2013

(1) ETFS Hedged Metal Securities Limited

(2) ETFS Management Company (Jersey) Limited

Service Agreement

## CONTENTS

1.	Definitions and Interpretation.....	3
2.	Appointment and fees.....	8
3.	Standard of Care and compliance with laws .....	9
4.	Co-operation, Assistance and provision of Information.....	10
5.	Ongoing Review of the Services .....	10
6.	Disputes .....	11
7.	Regulatory provisions concerning the Services.....	11
8.	Warranties and Representations .....	12
9.	Data Protection .....	13
10.	Limited Recourse and Waiver .....	14
11.	Ownership of IPR .....	14
12.	Term and Termination .....	15
13.	Consequences of Termination .....	16
14.	Confidentiality .....	16
15.	Entire Agreement.....	17
16.	No Partnership .....	17
17.	Variations and Waivers .....	17
18.	Assignment and Sub-delegation .....	18
19.	Counterparts .....	18
20.	Notices.....	18
21.	Governing Law and Jurisdiction.....	19
	SCHEDULE 1 - SERVICES .....	20
	SCHEDULE 2 - Role of Compliance Officer.....	25
	SCHEDULE 3 - FEES .....	27
1.	Management Fee .....	27
2.	Processing Fee.....	28

THIS AGREEMENT is made on 28 February 2013

**BETWEEN:**

- (1) **ETFS HEDGED METAL SECURITIES LIMITED**, a company registered in Jersey with registered number 108311 and whose registered office is at PO Box 83, Ordnance House, 31 Pier Road, St Helier, JE4 8PW (the "**Issuer**"); and
- (2) **ETFS MANAGEMENT COMPANY (JERSEY) LIMITED**, a company registered in Jersey with registered number 106921 and whose registered office is at PO Box 83, Ordnance House, 31 Pier Road, St Helier, JE4 8PW (the "**Manager**").

**WHEREAS**

- (A) The Issuer is regulated as a collective investment fund for the purposes of, and has been granted a certificate under, the Collective Investment Funds (Jersey) Law 1988, as amended.
- (B) ManJer has agreed to provide or procure the provision of, at its own expense, services required by the Issuer in connection with its obligations under the Documents, upon the terms and conditions set out herein.

**IT IS AGREED:**

**1. Definitions and Interpretation**

- 1.1** In this Agreement, any words or phrases which are capitalised and are not specifically defined shall, unless the context otherwise requires, have the same meaning as such words and phrases have in the Trust Instrument (including the Conditions included therein) referred to below:

**Administrator** means R&H Fund Services (Jersey) Limited or any other administrator from time to time appointed by the Issuer.

**Applicable Rules** means:

- (a) the Funds Law;
- (b) the Companies Law;
- (c) the Financial Services (Jersey) Law, 1998;
- (d) the Codes of Practice for Certified Funds;
- (e) the Outsourcing Policy;
- (f) any law or legislation applicable to either party in connection with the provision of the Services or applicable to the activities of the Issuer;
- (g) any conditions or restrictions for the time being contained in any regulatory consent, licence or

- certificate issued to the Issuer; or
- (h) any policy statements issued by the Commission from time to time;
- (i) the Programme Documents;
- (j) the Prospectus; and
- (k) any Policies and Procedures.

**Business Day** means a day which is both a London Business Day and a New York Business Day.

**Codes of Practice for Certified Funds** means the Codes of Practice for Certified Funds as issued by the Commission from time to time.

**Commission** means the Jersey Financial Services Commission.

**Companies Law** means the Companies (Jersey) Law 1991.

**Confidential Information** means the contents of this Agreement and all information in whatever form received or obtained by a party (the “**Receiving Party**”) or any other member of its Group from, or on behalf of, another party (the “**Disclosing Party**”) or any other member of its Group as a result of, or in connection with, this Agreement (including any reports, summaries or analyses to the extent prepared from such information) (and including any information relating to clients of the Issuer) other than:

- (a) any information which was rightfully in the possession of the Receiving Party or any other member of its Group prior to the disclosure by the Disclosing Party or any other member of its Group and acquired on a non-confidential basis from sources other than the Disclosing Party or any other member of its Group; and
- (b) any information which is in the public domain otherwise than as a result of a breach of this Agreement by the Receiving Party.

**Data Protection Law** means the Data Protection (Jersey) Law 2005.

**Disclosing Party** has the meaning given to it in the definition of Confidential Information.

<b>Dispute</b>	means any dispute or claim arising out of, or in connection with, the Services or in respect of the legal relationships established by this Agreement in relation to the Services.
<b>ETFSL</b>	means ETF Securities Limited, a company incorporated and registered in Jersey with registered number 88370.
<b>ETP</b>	means exchange traded product.
<b>Funds Law</b>	means the Collective Investment Funds (Jersey) Law, 1988.
<b>Group</b>	means, in relation to ETFSL, includes ETFSL and any of its subsidiaries.
<b>IPR</b>	means rights in patents, designs, copyright, moral rights, database rights, trade marks, trade and business names, rights to sue for passing off, rights in the nature of unfair competition rights, trade secrets, confidentiality and other proprietary rights including rights to know-how and other technical information and any other intellectual property rights which subsist in computer software and computer programs (in each case whether registered or unregistered and including applications to register any of the foregoing) and all rights in the nature of any of the foregoing anywhere in the world.
<b>Issuer</b>	means ETFS Hedged Metal Securities Limited, a company incorporated and registered in Jersey with registration number 108331.
<b>London Bullion Market</b>	means the over-the counter market in gold and silver co-ordinated by the LMBA and the over-the counter market in platinum and palladium co-ordinated by the LPPM.
<b>London Business Day</b>	means a day (other than a Saturday or a Sunday) on which commercial banks generally and the London Bullion Market are open for the transaction of business in London.
<b>Loss</b>	means any damages, loss, costs (including any costs relating to settlement and legal costs and expenses),

claims, expenses, demands or liabilities of any kind whatsoever.

**New York Business Day**

means a day (other than a Saturday or a Sunday) on which commercial banks generally are open for the transaction of business in New York.

**Notice**

has the meaning given to it in clause 20.1.

**Outsourcing Policy**

means the policy and guidance notes on Outsourcing and Delegation by Jersey Certified Funds and Fund Services Businesses issued by the Commission from time to time.

**Personnel**

means all persons engaged from time to time by the Manager as the case may be in connection with the provision of the Services.

**Policies and Procedures**

means the policies and procedures adopted by the Issuer, including without limitation any policies and procedures developed for and/or on behalf of the Issuer as required under the Codes of Practice for Certified Funds.

**Products**

means such ETPs as are issued by the Issuer from time to time.

**Programme Documents**

means:

- (a) the Trust Instrument;
- (b) any security deeds entered into between, *inter alia*, the Issuer and the Trustee;
- (c) any Custodian Agreements;
- (d) any Metal Sale Counterparty Agreement;
- (e) the authorised participant agreements between the Issuer and such persons as are appointed as Authorised Participants from time to time in relation to the securities issued by the Issuer;
- (f) the Metal Adjustment Documentation; and
- (g) the registrar agreement dated on or about the

date of this Agreement between the Manager, the Issuer and the Trustee.

<b>Prospectus</b>	means any offering document, listing document or prospectus issued by the Issuer in respect of the offer or admission to trading of any ETPs, as the same or any part thereof may be amended, supplemented or re-issued from time to time.
<b>Receiving Party</b>	has the meaning given to it in the definition of Confidential Information.
<b>Relevant Authority</b>	means any judicial, quasi-judicial, statutory, governmental or quasi-governmental agency, body or authority with jurisdiction over the Issuer or the Manager including, without limitation, the Commission.
<b>Services</b>	means the services set out at Schedule 1 to this Agreement.
<b>subsidiaries</b>	has the same meaning given to that term under the Companies Law.
<b>Term</b>	means the period for which the Services will be provided, as set out in clause 12.
<b>Trust Instrument</b>	means the trust instrument dated on or about the date hereof (the “ <b>Trust Instrument</b> ”) between the Issuer and the Trustee constituting the securities issued by the Issuer.
<b>Trustee</b>	means The Law Debenture Trust Corporation p.l.c. or such other trustee as may replace or succeed The Law Debenture Trust Corporation p.l.c. as trustee under the Trust Instrument or such other security trustee as may be appointed as, or replace or succeed The Law Debenture Trust Corporation p.l.c. as, security trustee under any Security Deed.

**1.2** Unless the context otherwise requires, references in this Agreement (including the Schedules) to:

**1.2.1** any of the masculine, feminine and neuter genders shall include other genders;

- 1.2.2 the singular shall include the plural and vice versa;
  - 1.2.3 a “person” shall include a reference to any natural person, body corporate, unincorporated association, partnership and trust;
  - 1.2.4 a “company” shall include a reference to any body corporate;
  - 1.2.5 any statute or statutory provision shall be deemed to include any delegated legislation, instrument, order, regulation or direction made or issued under it and shall be construed so as to include a reference to the same as it may from time to time be amended, modified, consolidated or re-enacted;
  - 1.2.6 any agreement (including this Agreement), deed or other instrument or document (or to any provision of any of the same) are to be construed as references to it as it may have been or may from time to time be amended, varied, supplemented, restated or novated;
  - 1.2.7 any Jersey legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than that of Jersey, be deemed to include what most nearly approximates in that jurisdiction to the Jersey legal term; and
  - 1.2.8 a particular government or statutory authority shall include any entity which is a successor to that authority.
- 1.3 The headings in this Agreement are for convenience only and shall not affect its meaning.
- 1.4 References to a clause, Schedule or paragraph are (unless otherwise stated) to a clause of or Schedule to this Agreement or to a paragraph of the relevant Schedule. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement.
- 2. Appointment and fees**
- 2.1 The Issuer hereby appoints the Manager as manager of the Issuer to provide the Services for the period and on the terms set out herein. The Manager hereby accepts such appointment and agrees to render the Services and to assume the obligations set forth herein for the compensation herein provided.
- 2.2 In accepting the appointment and carrying out the Services the Manager agrees and acknowledges that it shall pay due regard to the instructions received from designated or authorised representatives of the Issuer and that it shall not carry out any of the Services in such a way that exceeds or is outside of the scope of such instructions.



2.3 In consideration of the provision of the Services by the Manager:

- (a) the Issuer shall pay to the Manager the fees set out in Schedule 3 in connection with providing the Services; and
- (b) the Manager shall pay all the management and administration costs of the Issuer (including without limitation all custody, legal, accounting, bookkeeping, auditing and other operating expenses of the Issuer).

**3. Standard of Care and compliance with laws**

3.1 The Manager shall use reasonable endeavours to ensure that the Services are provided reliably, effectively, with integrity, due skill, care and diligence, by Personnel with the appropriate level of educational background, professional credentials, training and/or industry expertise.

3.2 The Manager shall use reasonable endeavours to ensure that the Services are provided in accordance with Applicable Rules. In particular, the Manager shall:

- 3.2.1 comply with the terms of any Prospectus (together with any supplements or addenda) relating to an Issuer that may, from time to time be issued;
- 3.2.2 not act in such a manner that would cause any Issuer or the Issuer to breach the Applicable Rules, as the same may be amended, varied or replaced from time to time;
- 3.2.3 take all reasonable steps to ensure that any information provided to third parties is not misleading, false or deceptive;
- 3.2.4 comply with any requirement of any applicable law insofar as it applies to the marketing, distribution and sale of the Issuers' ETPs;
- 3.2.5 have due regard to the Applicable Rules;
- 3.2.6 maintain proper and accurate records of all acts done or performed by or on behalf of the Manager in relation to the provision of the Services for the time periods required by the Applicable Rules; and
- 3.2.7 where the Manager is required to transact business or to enter into any transaction for or on behalf of the Issuer, the Manager shall:
  - (a) transact that business in an expeditious manner;
  - (b) act in the best interests of the Issuer; and
  - (c) not effect such transactions with inappropriate frequency or in excessive size.

#### **4. Co-operation, Assistance and provision of Information**

**4.1** The Issuer shall at all times:

**4.1.1** respond promptly to any request for guidance or instruction which is reasonably required by the Manager to enable it to perform its obligations under this Agreement; and

**4.1.2** co-operate and liaise with the Manager as necessary with a view to the provision of the Services.

**4.2** The Issuer undertakes to supply the Manager with all the reasonable information and documentation necessary for the Manager to comply with its obligations under section 3.2, including without limitation, any constitutional documents, agreements, Policies and Procedures or Prospectus (together with any supplements or addenda) relating to an Issuer that may, from time to time be issued.

**4.3** The Manager undertakes to supply or procure the continued reasonable access by representatives of the Issuer of:

**4.3.1** information in respect of the Manager and the individuals of the Manager involved in the management or provision of the Services by the Manager; and

**4.3.2** all information and documentation, including without limitation, copies of all marketing material, commentary, media communications and other documentation provided to third parties in connection with the provision of the Services.

#### **5. Ongoing Review of the Services**

**5.1** The parties shall each make available an appropriate individual of appropriate seniority to oversee and manage the provision of the Services by the Manager and the instructions given by the Issuer. Such individuals shall meet at least once per calendar quarter at the Issuer's offices in Jersey to:

**5.1.1** discuss any issues arising in connection with the Services; and

**5.1.2** review and assess the quality of the provision of Services by the Manager and ongoing suitability of the Manager and its representatives to provide the Services under this Agreement and to discuss areas where the Services provided by the Manager are in need of improvement or refinement and, if required shall document a plan to implement the required changes or improvements setting out a timescale in which such changes or improvements are to be achieved.

## **6. Disputes**

- 6.1** Any Disputes shall be notified in writing to the other party (providing all relevant information) and shall be discussed between them at the next scheduled meeting. If a party deems a Dispute to be sufficiently serious, it may request an emergency meeting with the other party in advance of the quarterly meeting, which the other party shall use best endeavours to attend. The parties shall attempt in good faith to resolve the Dispute during the course of their meeting.
- 6.2** To the extent that any Dispute is not resolved during a meeting contemplated by clause 6.1, then it shall, within a further five Business Days, be referred to a meeting of the management committee of the Manager and the board of directors of the Issuer, together with all such information, data or submissions as may be necessary or may be requested by them. The management committee of the Manager and the board of directors of the Issuer shall use best endeavours to resolve the Dispute between them promptly.
- 6.3** Nothing in this clause 6 shall restrict the right which any party may have to seek injunctive relief in respect of a breach of this Agreement, in respect of which action for injunctive relief the parties submit to the exclusive jurisdiction of the Jersey courts.

## **7. Regulatory provisions concerning the Services**

- 7.1** The Manager is authorised and regulated by the Commission in connection with its business, and is therefore permitted to provide the Services to the extent that they constitute regulated activities.
- 7.2** The Manager is entitled to provide services similar to the Services to clients other than the Issuer. The Manager may have an interest, relationship or arrangement that is material in relation to an order or transaction arranged through the Services and which may conflict with duties owed to the Issuer. The Manager shall not be obliged to disclose any such conflict of interest on a case-by-case basis or to account to the Issuer for any profit the Manager may make as a result. The Manager maintains a Conflicts of Interest Policy which is designed to ensure fair treatment of the Manager's clients.
- 7.3** The Manager understands that the Issuer is obliged under the Codes of Practice for Certified Funds to address its conflicts of interest and shall disclose a copy of its current Conflicts of Interest Policy to the Issuer reasonably promptly after the date of this Agreement. The Manager undertakes to handle potential conflicts of interest in accordance with its Conflicts of Interest Policy.
- 7.4** The Manager acknowledges that the Issuer is subject to the Codes of Practice. The Manager undertakes to:
- 7.4.1** provide (and procure that any duly appointed agent or subcontractor of the

Manager provides) such reasonable information and reasonable assistance in connection with the services provided with respect to any inspection undertaken by the Commission in relation to the activities of the Issuer, the Manager (including any agent or delegate); and

7.4.2 to maintain, operate and act in accordance with (and to procure that any duly appointed agent and delegate maintains, operates and acts in accordance with) a written policy to manage any potential conflict of interest arising in connection with the provision of services to the Manager's customers (the “**Conflict of Interest Policy**”); and to disclose to the Issuer the Conflict of Interest Policy or any variation thereto as soon as practicable following such variation.

7.5 The Manager shall promptly notify the Issuer of:

7.5.1 any request for information, inspection or investigation commenced by the Commission or any other regulatory authority;

7.5.2 any matter which might reasonably be expected to be material to the interests of the Issuer, the Issuers or any Interested Parties in the Issuers to disclose; and

7.5.3 any complaints received from any third party in connection with the Services, the Issuer or the Products.

## 8. **Warranties and Representations**

8.1 Each party warrants and represents to the other that:

8.1.1 it has the ability, capacity and any authorisation (including all necessary licences or registrations) required by law to perform its obligations in accordance with this Agreement;

8.1.2 its is duly established and validly existing;

8.1.3 is has full power and authority to carry on its business and operations as they are now being conducted and to execute, deliver and perform its obligations under this Agreement;

8.1.4 neither the execution and delivery of this Agreement nor the performance of any of its obligations hereunder violates any applicable laws, statutes, rules, regulations, decree, regulatory licence, consent or permit applicable to it; and

8.1.5 it holds and undertakes that it will continue to hold all necessary licences, permissions, authorisations and consents as may be necessary under applicable law and all such licences, permissions, authorisations and consents are and will

remain in full force and effect.

8.2 The Manager warrants and represents to the Issuer that:

8.2.1 it is fit and proper and can fulfil the Services in a responsible, professional and suitable manner; and

8.2.2 any duly appointed agent or subcontractor appointed by the Manager pursuant to clause 18 shall be fit and proper and can provide the services in a responsible, professional and suitable manner.

## 9. Data Protection

9.1 Each Party undertakes to the other that it will comply, and will cause its employees, agents and sub-contractors to comply, with all applicable data protection laws in connection with the performance of its obligations under this Agreement.

9.2 For the purposes of this Agreement the Issuer acknowledges and agrees that the Administrator will act as data controller and processor in connection with any personal data received from individuals associated with the Issuer or any corporate parties connected to the Issuer or received by the Issuer in the course of its business which is relevant to the Services. The Manager will to the extent required and where it is subsequently acts as data controller, comply with the requirement of the Data Protection Law to take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to personal data. The Manager shall, to the extent required and where it subsequently acts as data controller, comply with the data protection principles set out in Schedule 1 of the Data Protection Law in connection with the processing of personal data in connection with the Issuer and such personal data will be held and processed by the Manager for the following purposes, working with ETFSL and/or the Administrator (where appropriate) in:

- (a) co-ordinating or preparing any regulatory filings for the purposes of complying with statutory and regulatory requirements in relation to anti-money laundering procedures;
- (b) contacting parties who are officers of or have business dealings with the Issuer;
- (c) discharging its functions under this Agreement;
- (d) meeting the legal, regulatory, reporting and/or financial obligations of the Issuer in Jersey or elsewhere; and
- (e) disclosing personal data to other functionaries of or advisers to the Issuer for the purposes of the operation of the same.

9.3 Where appropriate it may be necessary for the Manager (or its agents) to:

- (a) disclose personal data to a third party service provider appointed by the Issuer or the Manager to provide services to the same or a member of the group of companies of which the Manager is a part; and/or
- (b) transfer personal data outside of the European Economic Area to countries or territories which do not offer the same level of protection for the rights and freedoms of individuals as Jersey,

and if such disclosure or transfer should be made, the Manager (or its agents, as the case may be) shall use reasonable endeavours to ensure that any party to whom such personal data is disclosed or transferred is contractually bound to provide an adequate level of protection in respect of such personal data. The Issuer hereby consents to such processing for itself and on behalf of those individuals whose personal data has been provided to the Issuer and is processed by the Manager.

## 10. Limited Recourse and Waiver

10.1 The recourse of the Manager in respect of any claims (“**Claims**”) against the Issuer under or in connection with this Agreement shall be limited to the net proceeds of the realisation of the Secured Property (as defined for the purposes of each Security Deed) if any, remaining after the payment in full of the claims of any secured creditors of the Issuer (the “**Remaining Net Proceeds**”). If the Remaining Net Proceeds are insufficient to satisfy the Claims in full, any liability for any amount which remains unpaid shall be extinguished and the Manager shall have no further right in respect of any unpaid amount.

10.2 Neither the Manager nor any person acting on its behalf shall be entitled to take any other steps or proceedings against the Issuer to recover any sums payable under or in respect of this Agreement or interest thereon. In particular, the Manager shall not be entitled to institute, or join with any other person in bringing, instituting or joining, insolvency proceedings (whether court based or otherwise) in relation to the Issuer in respect of such sums or interest thereon.

10.3 The Manager waives any rights of indemnity, subrogation or other claims it may have against the Issuer as a result of the Manager performing its obligations under this Agreement, save for the liability of the Issuer to pay to the fees set out in Schedule 1 of this Agreement.

## 11. Ownership of IPR

11.1 Neither party shall receive any right, title or interest in respect of the IPR owned or controlled by the other party (including, without limitation, all IPR in the ETP's developed and established by ETFSL which shall remain vest in ETFSL at all times) other than as may be required by either party to enable the proper performance of its obligations under this

Agreement.

11.2 The parties agree to do all such things and execute all such documents to give effect to clauses 11.1 and 13.3.2.

## 12. Term and Termination

12.1 This Agreement shall continue in full force and effect until terminated pursuant to either clause 12.2 or 12.3.

12.2 Either party may terminate this Agreement at any time on not less than three months' Notice to the other.

12.3 Either party (the "**notifying party**") shall be entitled to terminate this Agreement with immediate effect by giving Notice to the other if any of the following occur:

12.3.1 the other party has committed a material breach of this Agreement (save for any breach caused by the notifying party's act or omission) and (where such breach is remediable) does not remedy such breach within twenty Business Days after receipt of a Notice from the notifying party specifying the breach and requiring it to be remedied;

12.3.2 a voluntary arrangement or a scheme of arrangement or composition with its creditors is entered into in relation to the other party, other than in consequence of a reconstruction or reorganisation;

12.3.3 a dissolution occurs, a winding up petition is presented, or a winding up resolution (other than a voluntary winding-up for reconstruction or reorganisation) is passed (whether by the directors or members) in relation to the other party;

12.3.4 a liquidator, receiver or administrator is appointed in respect of the other party or any of its assets, or notice to appoint an administrator is given by the other party, its directors;

12.3.5 any event occurs to the other party involving any form of insolvency proceeding or any event occurs similar or analogous to any of the events referred to in clauses 12.3.2, 12.3.3 and/or 12.3.4; or

12.3.6 the other party is affected by a Force Majeure Event which continues for a period of sixty Business Days and which prevents that other party from performing all, or a material part of, its obligations under this Agreement.

**13. Consequences of Termination**

**13.1** The termination of this Agreement (however caused) shall be without prejudice to:

**13.1.1** any accrued rights which either party may have under this Agreement;

**13.1.2** any liabilities accrued or obligations incurred prior to the date on which the termination takes effect; and

**13.1.3** any rights or obligations of a person which are expressly stated to survive, or by their nature survive, termination of this Agreement.

**13.2** Without limitation, the following provisions shall survive termination in accordance with clause 13.1.3: clauses 1, 10, 3, 5 and 1.

**13.3** Upon termination of this Agreement (howsoever caused) the Manager shall provide such assistance as the Issuer may reasonably require to effect a full and orderly transfer of responsibility for the Services to a third party manager of similar services nominated by the Issuer. The Manager shall furnish the Issuer with:

**13.3.1** any information or copies (at the cost of the Issuer) of documentation: (a) reasonably required to perform the Services; or (b) relating to the Issuer's business; and

**13.3.2** all IPR which has been created wholly in connection with the Services which is at the time of termination in the possession of the Manager.

**14. Confidentiality**

**14.1** Subject to clause 14.2, each Receiving Party shall protect and treat in confidence all Confidential Information and shall not:

**14.1.1** disclose in whole or in part Confidential Information to any person not a party to this Agreement; or

**14.1.2** use Confidential Information for a purpose other than for the exercise of its rights, or the performance of its obligations, under this Agreement.

**14.2** Notwithstanding the provisions of clause 14.1, a Receiving Party may disclose Confidential Information:

**14.2.1** to its Personnel to the extent required for the proper performance of this Agreement (conditional upon any such personnel being informed of the confidential nature of the Confidential Information and the Receiving Party procuring that such Personnel keeps such Confidential Information confidential in accordance with clause 14.1);



**14.2.2** to its clients, counterparties and others to the extent required for the proper performance and operation of the Services; and

**14.2.3** to the extent that such Confidential Information is required to be disclosed by law and/or by any Relevant Authority, provided that the other party is notified in advance (if it is lawful to do so) that such disclosure is to be made.

**14.3** If any Receiving Party becomes aware of any breach of the above obligations of confidentiality by any of its Personnel, it shall promptly notify the Disclosing Party.

**14.4** Each Receiving Party undertakes to apply to the Confidential Information at least the same security measures and degree of care as it applies to its own confidential information.

## **15. Entire Agreement**

**15.1** This Agreement (together with its Schedules and Appendices and any documents referred to herein or therein or required to be entered into pursuant to this Agreement) contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement and any such document.

**15.2** Each of the parties acknowledges and agrees that the express terms and conditions of this Agreement are in lieu of all representations, warranties, conditions, terms, undertakings and obligations implied by statute, common law or otherwise, all of which are hereby excluded to the fullest extent permitted by law, and each party acknowledges that the other party has not given, and shall have no liability for, any representation save to the extent that such representation was fraudulent or save to the extent otherwise expressly set out herein.

## **16. No Partnership**

The parties hereby acknowledge and agree that this Agreement shall not be construed as creating any partnership between the parties.

## **17. Variations and Waivers**

**17.1** No variation of this Agreement shall be effective unless made in writing, signed by or on behalf of each of the parties and expressed to be such a variation.

**17.2** No failure or delay by any party or time or indulgence given in exercising any remedy or right under or in relation to this Agreement shall operate as a waiver of the same, nor shall any single or partial exercise of any remedy or right preclude any further exercise of the same or the exercise of any other remedy or right.

**17.3** No waiver by any party of any requirement of this Agreement, or of any remedy or right under this Agreement, shall have effect unless given in writing and signed by such party.

No waiver of any particular breach of the provisions of this Agreement shall operate as a waiver of any repetition of such breach.

**18. Assignment and Sub-delegation**

**18.1** Neither party shall, without the prior consent of the other party, assign any of its rights under this Agreement.

**18.2** The Manager may only delegate, sub-contract or otherwise appoint any agent to perform the whole or any part of the Services where:

**18.2.1** the Manager has had due regard to the Applicable Rules; and

**18.2.2** the appointment of such delegate, sub-contractor or agent by the Manager is in accordance with the Applicable Rules.

**18.3** Without prejudice to clause 18.2, the parties acknowledge that the Manager may appoint another member of its Group (including without limitation, ETF Securities (UK) Limited) to assist the Manager with the provision and/or procurement of certain Services under this Agreement.

**18.4** The Manager shall continue to remain liable to the Issuer for any acts or omissions of any delegate, sub-contractor or agent appointed by the Manager pursuant to this clause 18.

**19. Counterparts**

This Agreement may be executed as two counterparts and execution by each party of any one of such counterparts shall constitute due execution of this Agreement.

**20. Notices**

**20.1** Any notice, consent, request, demand, approval or other communication to be given or made under or in connection with this Agreement (each a “**Notice**” for the purposes of this clause) shall be in English, in writing and signed by or on behalf of the person giving it.

**20.2** Service of a Notice must be effected by one of the following methods:

**20.2.1** by hand to the relevant address set out in clause 20.4 and shall be deemed served upon delivery if delivered during a Business Day, or at the start of the next Business Day if delivered at any other time; or

**20.2.2** by facsimile transmission to the relevant facsimile number set out in clause 20.4 and shall be deemed served on despatch, if despatched during a Business Day, or at the start of the next Business Day if despatched at any other time, provided that in each case a receipt indicating complete transmission of the Notice is obtained by

the sender and that a copy of the Notice is also despatched to the recipient using the method described in clause 20.2.1 no later than the end of the next Business Day.

**20.3** In clause 20.2, “during a Business Day” means any time between 9.30 a.m. and 5.30 p.m. on a Business Day based on the local time where the recipient of the Notice is located. References to “the start of a Business Day” and “the end of a Business Day” shall be construed accordingly.

**20.4** Notices shall be addressed as follows:

**20.4.1** If to the Issuer:

ETFs Hedged Metal Securities Limited  
PO Box 83  
Ordnance House  
31 Pier Road  
St Helier  
Jersey JE4 8PW

**20.4.2** If to the Manager:

ETFs Management Company (Jersey) Limited  
PO Box 83  
Ordnance House  
31 Pier Road  
St Helier  
Jersey JE4 8PW

**21. Supply of Goods and Services (Jersey) Law 2009**

The parties agree that no statutory terms (which shall include warranties, conditions or other contractual provisions) or rights, duties or liabilities imposed now or in the future by the Supply of Goods and Services (Jersey) Law 2009 shall apply to this Agreement or to the parties in relation to this Agreement.

**22. Governing Law and Jurisdiction**

This Agreement and the rights and obligations of the parties shall be governed by, and construed in accordance with, the laws of the Bailiwick of Jersey. The parties submit to the exclusive jurisdiction of the Jersey courts to settle any fact, matter or thing arising out of or in connection with it.

## SCHEDULE 1 - SERVICES

The Manager shall be responsible for providing or procuring the provision of the following services to the Issuer (the “**Services**”) in accordance with the terms of this Agreement:

### **(a) General Services**

During the continuance of this Agreement, the Manager shall:

- provide the Issuer's auditors with any or all information, explanations and assistance as they may reasonably require;
- provide such assistance to the Issuer as may be reasonably required in order for the Issuer to comply with and meet the standards set out in the Applicable Rules,
- provide an experienced and qualified (and, where relevant, independent) member of staff to fulfil the role of Compliance Officer for the Issuer to perform the role specified in Schedule 2 hereto;
- assist in connection with the drafting of hand books, operating memoranda and Policies and Procedures to record the terms on which the normal operating functions, internal systems and controls and corporate governance functions and activities of the Issuer will be conducted to a standard required for the Issuer to comply with the Applicable Rules including the Codes of Practice for Certified Funds;
- assist in connection with the preparation and periodic review, updating of a risk assessment document and development of an action plan to address management or reduction of risk issues in connection with the business of the Issuer; and
- provide access (on terms to be agreed between the parties) to disaster recovery resources and systems operated or available to the Manager to facilitate continuity of the Issuer's business in the event of severe disruption to normal services at the office premises of the Issuer affecting the business of the Issuer.

### **(b) Marketing Services**

#### *(i) Production of marketing materials*

As instructed by the Issuer, the Manager will produce marketing documentation required for the Products. Marketing documents are to be prepared in accordance with Issuer's and the Group's standard branding and according to pre-agreed templates. Such marketing documentation shall be for the use of the Issuer and the Group and shall include without limitation, details of the relevant Products, standard presentations, fact sheets, conference presentations, advertisements (both print and

online media) and Product prospectuses (for distribution by the Issuer):

(ii) *Day-to-day communication with Interested Parties*

As instructed by the Issuer, the Manager will be responsible for general communications with financial advisers, financial intermediaries, fund managers, distributors, marketers and other investment professionals (together, the “**Interested Parties**”) regarding the Products. Such communications may include:

- broadening the knowledge of the ETP industry and brand awareness of the Group;
- educating Interested Parties, either through one-to-one meetings, webinars or conference calls;
- responding with factual information to queries from Interested Parties as required;
- maintaining an appropriate database and record of communication with all Interested Parties; and
- sending such other communication on behalf of the Issuer, as the Issuer deems to be beneficial to the development of the Group brand or any Product.

For the avoidance of doubt, retail customers are not defined as Interested Parties.

(iii) *Market Commentary*

The Manager and its Personnel shall, as instructed by the Issuer:

- provide commentary (on a non-reliance basis) on investment sectors and themes linked to the Products in the form of published notes to be made available to Interested Parties on behalf of the Issuer;
- participate as required in marketing efforts on behalf of the Issuer for the purposes of discussing the ETP industry and market trends; and
- provide such additional market research services to the Issuer as the Issuer and / or the Manager deem to be beneficial.

(iv) *Conferences*

Where the Group and/or the Issuer are required to participate or sponsor conferences, the Manager shall, as instructed by the Issuer:

- exhibit and present at ETP market-focused conferences and the involvement and attendance of the Group shall be catered for as necessary (all conferences shall be agreed in advance with the Issuer);
- organise, set up and present Group branded educational seminars and it is expected that each seminar shall be attended by Interested Parties from different institutions;
- together with appropriate providers (e.g. Bloomberg), organise and present webinars and conference calls; and
- attend such other conferences as the Issuer deems to be beneficial to the development of the Group brand or any Product.

(v) *Public relations and advertising*

As instructed by the Issuer, the Manager will be responsible for all of the communication with the media in relation to the brand, research content and Products. Such communication includes:

- managing relationships with PR agencies on behalf of the Issuer;
- ensuring that external communications remain consistent within the Group.
- where required, liaising with newspapers and industry magazines (focussing on a professional and sophisticated client base) which may refer to the Products, including arranging market commentary and quotes from the Issuer and/or the Group where appropriate;
- arranging the press releases of the Issuer including performance reports for the Products;
- where required and/or requested, provide background information to the media in relation to the Issuer, the Products and the ETF Securities brand; and
- such other communication as the Issuer and/or the Manager deems to be beneficial to the development of the ETF Securities brand or any Product.

**(c) Product Services**

*(i) Assistance with legal and regulatory compliance*

From time to time, the Issuer may require assistance with respect to the legal and regulatory compliance of the Products. As instructed by the Issuer, the Manager will assist in certain maintenance tasks including:

- informing the Issuer and, as required, ETFSL of any material regulatory updates and/or changes that may impact the Issuer and Products;
- assisting the Issuer with the co-ordination and preparation of regulatory filings to Product offering documents as required by any Relevant Authority or such other regulatory regimes to which the Issuers and Products are subject and working with the Issuer's third party advisors;
- assisting the Issuer with the production of other regulatory filings or corporate governance materials in relation to the Issuers and Products, including annual and quarterly reports and providing tax information to investors; and
- assisting the Issuer with such other legal and regulatory compliance services as the Issuer and/or the Manager deem to be required for the maintenance of any Product.

*(ii) Assistance with Product operating services*

From time to time, the Issuer may require assistance with respect to certain operational matters of the Products. As instructed by the Issuer, the Manager will assist in certain tasks including:

- assisting the Issuer by providing their own report reconciling daily pricing calculations from counterparties with a direct relationship to the Products to ensure that the Products continue to operate within the restrictions of the offering documents;
- assisting the Issuer with providing information, as required to, amongst others, Authorised Participants (as defined in the relevant Product offering documents), market makers and other liquidity managers, to enable them to provide a more liquid market for the Products;
- assisting the Issuer with providing information to stock exchanges and regulators as may be required from time to time;

- assisting the Issuer with providing management information in relation to the performance of the Products, including daily AUM forecasts and performance for internal purposes, trading activities and run rate revenues; and
- such other product operating services as the Issuer and/or Manager deem to be required for the maintenance of any product.

**(d) Payment services**

The Manager shall (in respect of each FX Counterparty) on behalf of the Issuer convert Bullion representing the monthly Hedging Fee into US Dollars and pay the same to the FX Counterparty in accordance with clause 6.1 and clause 6.4 of the Metal Adjustment Agreement.

**For the avoidance of doubt, the Manager shall not provide any services to, or on behalf of the Issuer, which would constitute investment management services in relation to the Products.**



## SCHEDULE 2 - ROLE OF COMPLIANCE OFFICER

### *1. Appointment of a Compliance Officer*

#### *The Compliance Officers role is to:*

1. identify legal and regulatory requirements applicable to the Manager and to advise on these requirements;
2. provide support and guidance on applicable regulatory compliance issues;
3. provide assistance to the Directors in ensuring that the Manager takes appropriate and timely action to comply with relevant regulations and regulatory guidance; and
4. monitor the Manager to ensure that it meets all regulatory and legal requirements on an ongoing basis.

#### *To assist the Compliance Officer in achieving these objectives, the Compliance Officer:*

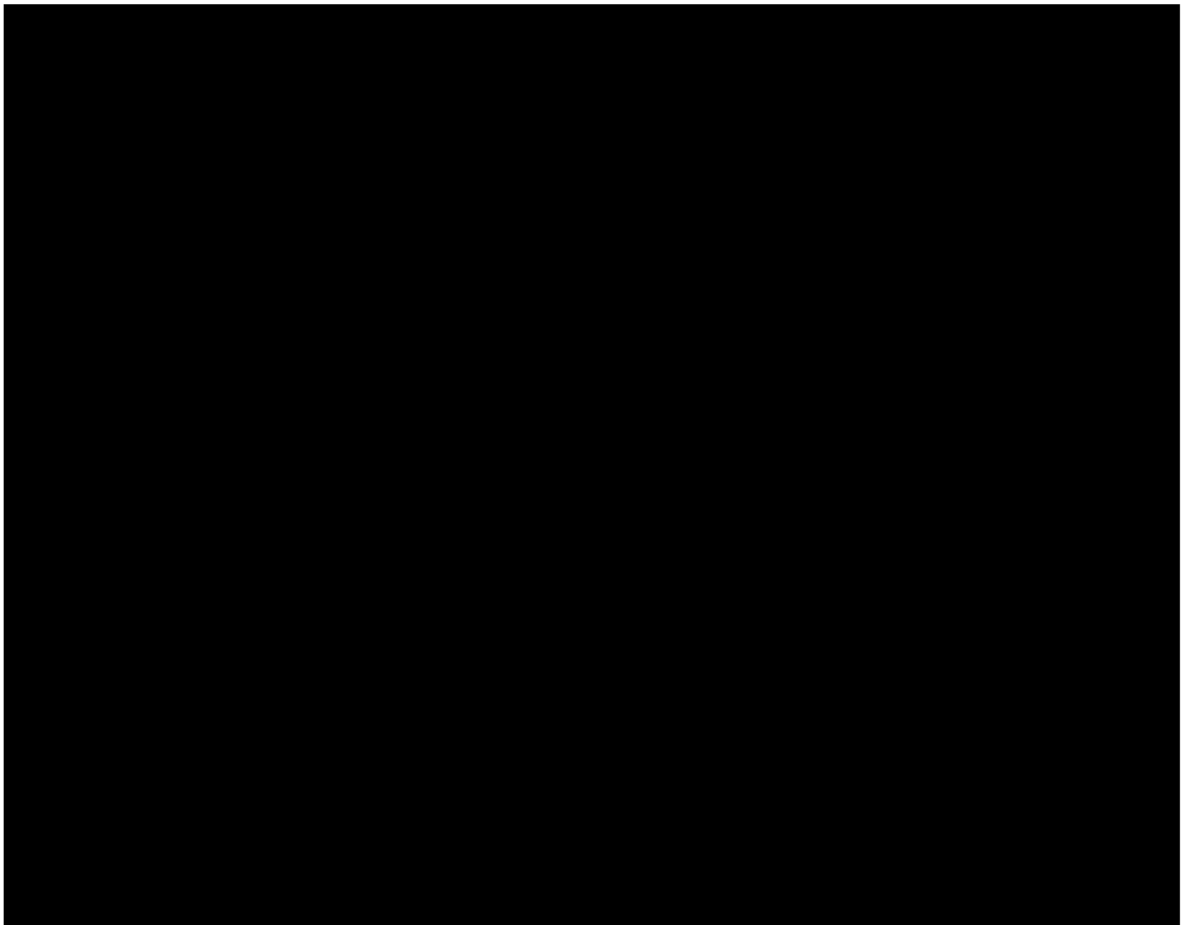
5. is independent from the operations business units in the Manager;
6. holds sufficient authority within the organisation to effectively carry out his/her responsibilities and reports directly to the Board of Directors, with the right to freely express and disclose his/her professional opinions and findings to the Board;
7. is allocated sufficient time and resources to properly discharge the responsibilities for the position; and
8. has the right to communicate with any staff member and has unfettered access to all records or files necessary to fulfil his/her function, including those maintained by the Manager.

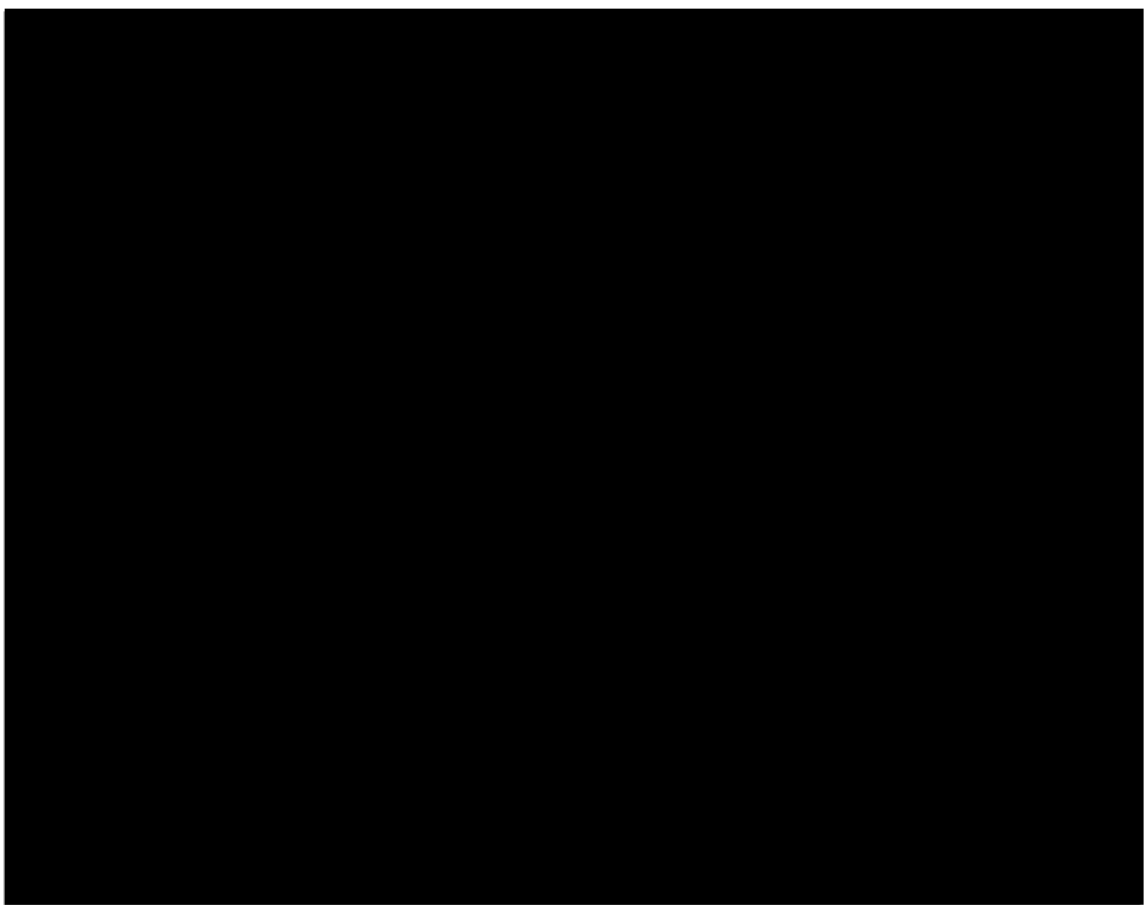
#### *The principal responsibilities of the Compliance Officer are:*

9. to act as the principal contact for the Commission and to ensure there is an open and constructive relationship. The Compliance Officer receives all regulatory related communications from the Commission and is responsible for ensuring that all such communications are reported to the Board. The Compliance Officer will also consult and advise the Board on any specific issues addressed in these communications and ensure that these matters are dealt with in an open, prompt and efficient manner;
10. to ensure that regulatory requests and other connected communications are handled in a prompt and efficient manner;
11. to maintain and update the relevant registers, including breaches and errors, complaints, gifts, conflicts of interest and staff dealing registers;

12. to monitor CPD registers;
13. to develop and implement an appropriate compliance monitoring programme, identifying and resolving problems, the results of which will form part of the regular compliance reports to the Board;
14. to produce regular compliance reports for the Board of Directors, which shall include any applicable regulatory updates and information on any breaches, errors complaints, certificate conditions and any other risk or regulatory matters that are deemed appropriate;
15. to attend Board meetings and advise on regulatory matters; if the Board requires clarification on any regulatory matter, the Compliance Officer will provide the necessary information;
16. to complete accurately all necessary statistical returns required by the Commission;
17. to ensure that all licence and certificate conditions for the Manager are monitored on an ongoing basis and any problems or issues identified are promptly dealt with;
18. to educate relevant individuals on compliance issues and act as a contact point within the organisation for compliance queries from staff members;
19. to assist the Board in ensuring the ongoing appropriateness of the Manager's risk and compliance policies and procedures by formulating and implementing new compliance policies and procedures in line with best practice and regulatory guidance;
20. to review procedures manuals on a regular basis to assess their appropriateness; implementing updates as required;
21. to assist the business units in identifying, documenting and assessing the risks associated with all business activities including the development of new products;
22. to assist in ensuring that all risks inherent in new relationships are considered and documented prior to on-boarding; and
23. to assist the business units in developing management reporting systems that provide the senior management team with appropriate, timely and accurate management information including key risk and performance indicators.

**SCHEDULE 3 - FEES**





**THIS AGREEMENT** has been duly executed on the date first stated above.

**EXECUTED by ETFS HEDGED** )

**METAL SECURITIES LIMITED** )

acting by: )

A solid black rectangular box redacting the signature of the director.

.....  
Director

**EXECUTED by ETFS** )

**MANAGEMENT COMPANY** )

**(JERSEY) LIMITED** )

acting by: )

.....  
Director

**THIS AGREEMENT** has been duly executed on the date first stated above.

**EXECUTED by ETFS HEDGED** )

**METAL SECURITIES LIMITED** )

acting by: )

.....

Director

**EXECUTED by ETFS** )

**MANAGEMENT COMPANY** )

**(JERSEY) LIMITED** )

acting by: )



Director

GRAHAM TUCKWELL