

## ***Electronic Silo Certificates (ESC)***

### **Participant Agreement**

**Issued: 16 May 2006 Version 1.0.5**

THIS AGREEMENT is entered into between Silo Certs (Pty) Ltd, a South African based corporation ("ESC"), and you the user of the web site accepting such terms ("you" or "the Participant"), for the purposes and on the terms and conditions hereinafter and referenced herein (collectively "the Agreement") and govern the use by the Participant of the information and services made available by ESC via the website. The Agreement constitutes the sole record of the agreement between the Participant and ESC in relation to the subject matter hereof. Silo Certs may modify the Agreement and such modification will supersede and replace any previous Agreement. The amended Agreement will be made available on the website. By registering to use the services, the Participant agrees to be bound by the Agreement and each time the Participant accesses the website and/or uses the services, the Participant agrees to be bound by the Agreement, as may be modified from time to time. Neither you nor ESC shall be bound by any express, tacit or implied representation, warranty, promise or the like not recorded herein.

#### **RECITALS**

1. A Silo Operator is the operator of a South African based grain silo ("the Silo Operator") storing maize, wheat, sunflower or soya ("the Products"), who is registered to use the computer systems maintained and operated by ESC ("System") to electronically issue electronic silo certificates as certificates of deposit in customary form and content (the "Electronic Silo Certificates").
2. A Participant is a person, other than the Silo Operator acting in the capacity as a Silo Operator, who wishes to use or have access to the services made available via the website ("Services").
3. This Agreement establishes the terms and procedures governing inter alia the use by the Participant of the website and the services.

NOW, THEREFORE, for and in consideration of the mutual agreements hereinafter set forth, ESC and the Participant agree as follows:

- 1 TERM / RENEWAL This Agreement shall become effective on the date on which ESC accepts the Participants registration to use the services as set out in 6 and unless terminated as provided herein, this Agreement shall continue indefinitely thereafter, terminable by either party on the giving of thirty days written notice of termination to the other.
- 2 ESC SERVICES. ESC will provide the following services:
  - 2.1 provide a data format for the Silo Operator to electronically create, modify, cancel and transfer Electronic Silo Certificates. Such format shall be supplied by ESC containing sufficient fields or processes to encompass all data required to be included in an Electronic Silo Certificate, including the terms of the Silo Operator relevant to the issued Electronic Silo Certificate. The Silo Operator will be solely responsible for making accurate entry of such data into the System in the format provided and will be subject to a further Silo Operator Agreement between ESC and each Silo Operator;

- 2.2 provide access via the Internet to the Participant, to be able to manage his or her Electronic Silo Certificates;
- 2.3 provide an electronic platform that allows a requested change of ownership of Electronic Silo Certificates to another system participant or encumbrance by a Participant to be recorded as such;
- 2.4 will ensure steps are taken to ensure the System and data remains confidential and secure.

3 CHARGES. ESC does not levy any costs. There are no system, user or registration costs, nor any transaction fees.

4 DATA / ISSUANCE AND TRANSFER OF ELECTRONIC SILO CERTIFICATES.

- 4.1 ESC will provide the Participant with an internet based system, and instructions and information regarding the manner by which Electronic Silo Certificates shall be managed by the Participant.
- 4.2 The Participant shall accurately provide all required data for input into the System in the prescribed formats. ESC shall not be responsible for the supply or correction of missing, incomplete or incorrect data. "Required Data" means that Information required by ESC in the prescribed formats for the System and Silo Operator to execute those instructions which the Participant intended to be executed by the System and Silo Operator for those actions selected by the Participant in using the System.
- 4.3 Silo Operators and their agents will have the sole authority to change the Electronic Silo Certificate data contained, or is required to be contained, in an Electronic Silo Certificate originating from the Silo Operator's system. ESC's responsibility will be limited to modification of such data based upon change information transmitted to ESC by the Silo Operator. The Participant agrees to be bound by the terms and conditions of the Silo Operator who issues such electronic silo certificate, and which terms will be placed on or attached to the electronic silo certificate in question.
- 4.4 ESC is authorised by the Participant to comply with requests or directions of any governmental entities.
- 4.5 The Participant shall monitor and verify its information in the system, and shall notify ESC immediately upon the discovery of any error or discrepancy. Upon request by ESC the Participant will verify the accuracy of the information in the system relevant to the Participant.
- 4.6 ESC reserves the right at any time to change or discontinue without notice, any aspect or feature of the website and any information, data, content and/or services on the website.
- 4.7 Any Participant which transfers an Electronic Silo Certificate warrants that it is the lawful owner thereof, or acting under express written authority of the lawful owner, and that it has authority to make such transfers and access the System. The Participant further agrees to at all times act in good faith and not attempt to compromise the System in any way to gain, or to allow any third party to gain, or attempt to gain unauthorised access to the system and/or information to which they are not entitled.

5 UNLAWFUL USE The Participant may not use the website and/or the services to interfere with the ability of others to access or use the website and/or the services or attempt to gain unauthorised access to accounts other than that the Participant owns or has legal authorised access to. The Participant shall further not use the website to send or post any message or material that is unlawful, harassing, defamatory, abusive, indecent, threatening, harmful, vulgar, obscene, sexually orientated, racially offensive, profane, pornographic or violates any applicable law and the Participant hereby indemnifies ESC against any loss, liability, damage or expense of whatever nature which the Participant or any third party may suffer which is caused by or attributable to, whether directly or indirectly, the Participant sending or posting any message or material as aforesaid to / on the website.

6 REGISTRATION In order to register to use the services, the Participant must complete the registration form provided. ESC reserves the right to refuse an application for registration for any reason whatever. Registration may be automated by being recognised as a bona fide client of the Silo Operator. Should the application be successful, the Participant will be issued with a designated user name and password ("password"). Furthermore a Personal Identification Number ("PIN") will be required to be used in conjunction with the password. Before submitting and/or updating any information and/or using the services, the Participant will be obliged to enter the PIN and password. The Participant undertakes to ensure that the PIN and password is not disclosed to any unauthorised third party and to immediately report any actual or potential unauthorised access to or use of the PIN and/or password to ESC. This shall apply to all users the Participant registers on the System with access to the Participant's account with their own passwords. These additional users will be the Participant's responsibility and this Agreement will apply to them mutatis mutandis. The Participant shall thereafter not make use of any of the services until such time as a new password and/or PIN number, as the case may be, has been authorised by ESC. ESC may from time to time require the Participant to change the Participant's password and/or PIN, as the case may be, and the Participant shall comply with such instruction immediately.

## 7 THE SERVICES

7.1 The website operates as an electronic silo certificate register and facilitates transactions between initial owners of the product ("Depositors") and other registered participants. ESC is not involved or a party to a transaction between Participants or between Participants and Silo Operators ("Transacting Parties"). Any correspondence and dealings between Transacting Parties are solely between them and exclude ESC. ESC is not responsible or liable for any loss or damage of whatever nature which may be suffered by you, the Participant or any third party as a result of such communications, dealings or agreements.

7.2 Once a Depositor has been issued with an Electronic Silo Certificate by the system of the Silo Operator, such electronic record will be posted on the system to result in an electronic silo certificate in respect of the product in question. The Participant will then, via the website, be able to transfer the Electronic Silo Certificate in question or encumber same. This will be done by the Participant "clicking" on the place provided therefore next to the Electronic Silo Certificate reference number to select such certificate/s for action. Transfer of the Electronic Silo Certificate will be deemed to have occurred when the relevant Electronic Silo Certificate is reflected against a Participant's name on the website in bona fides transactions. Participants agree to be bound by the Silo Operator terms and conditions attached to, and reflected against, each Electronic Silo Certificate. Transfer of ownership of the product in respect of which the Electronic Silo Certificate has been issued shall be governed by South African common law applicable to paper based silo certificates.

- 7.3 ESC accepts no responsibility whatsoever for the accuracy of the information appearing on the website, the availability of the product mentioned, or for the risks or costs of any transaction that may or may not result from the information recorded on the website. The information is entered on the website by the Silo Operator. Subject to clause 12, ESC shall not be liable for any loss, liability, damage or expense suffered by Participants, Silo Operators or any other third party which is caused by or may be attributable to –
- 7.3.1 information on the website being incorrect, including as to participants or the content of any Electronic Silo Certificate;
- 7.3.2 disputes between parties as to ownership of the Product;
- 7.3.3 incorrect data being provided by Silo Operators or participants or data entered by participants as to, inter alia, nature of the Products and/or ownership of the Products.
- 7.4 In addition, ESC shall not be liable for any claim arising from a request for the cancellation or locking of an Electronic Silo Certificate or account, or the releasing of a transaction, and ESC facilitating compliance or non-compliance with such request. In the event of any rate changes including end-of-season storage rate changes, ESC shall assist Silo Operators to automatically update all Electronic Silo Certificates on the website in accordance with such rate changes.
- 7.5 ESC will comply with any bona fide instructions issued by the SAFEX division of the Johannesburg Stock Exchange in respect of issued SAFEX qualifying electronic certificates.
- 7.6 Insofar as there is an error in any of the Electronic Silo Certificates and ESC is instructed by either the Silo Operator or a Participant as the case may be, to rectify such error, ESC shall not be liable for any claim arising or which is caused by ESC acting in accordance with such instruction.
- 8 EQUIPMENT The Participant will at its cost provide its own computer facilities, long distance services, together with a modem and a telephone line for use of the electronic silo certificate data communication and storage system. The Participant shall ensure that such facilities are at all times compatible with the System and for use on the internet. The terms of this Agreement shall apply mutatis mutandis to transactions which may be affected through and the rendering of the services via any other medium, including telephone, telefax and/or e-mail.
- 9 HOURS OF ACCESS Subject to the provisions of this Agreement, ESC will use its reasonable endeavours to ensure that the system is operative and accessible to the Participant during working business days five (5) days a week, excluding public holidays during the hours of 7:00 A.M. to 7:00 P.M., South African time.
- 10 NOTICE Notices or communications otherwise specifically covered in this Agreement, shall be given in writing by facsimile or hand delivered, alternatively via email to the Participant's designated email address for such purpose as recorded on their registration form or client record of the Silo Operator in the case of automated registration. The designated Participant contact person shall be as reflected on the Application Form, or the contact person at a registered Silo Operator in the event of an automated registration. By written notice, , such contact persons may be changed. Unless otherwise notified, the Participant shall direct all such communications to ESC to the following:

ESC  
Contact: Head of Administration (ESC)  
(or such persons or contact details designated on the ESC website from time to time)  
Fax: (011) 202-9508 Tel: (011) 797-5591  
email: support@silocerts.co.za

- 11 BREACH Notwithstanding any other provision of this Agreement, should either party ("Defaulting Party") commit a breach of any provision of this agreement and fail to remedy such breach within fourteen days of receiving written notice from the other party ("Aggrieved Party") requiring it to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law, to terminate this Agreement or to claim immediate specific performance of all of the Defaulting Party's obligations whether or not due for performance, in either event without prejudice to the Aggrieved Party's right to claim damages.
- 12 SECURITY The Participant shall adhere to additional ESC security instructions from time to time.
- 13 VERIFICATION The Participant agrees that all information, instructions, consents and any other communications (collectively, "communications") which purport to originate from the Participant or a person who had authority to act on the Participant's behalf in respect of such communications or an information system programmed by or on the Participant's behalf to operate automatically (collectively "the Originator") and which are sent electronically and which may (as a result of interception, equipment malfunction, the distortion of communication links or any other reason whatsoever) be different from the communication actually sent or given, or may not have been given by the Participant at all, shall be deemed to have been given by the Originator in the form actually received and the Participant will be bound by such communication with no liability of whatever nature attaching to ESC or any other third party in regard thereto. The Participant waives any rights the Participant may have or obtain against ESC arising directly or indirectly from any loss or damage of whatsoever nature which is caused by or attributable to ESC or any other third party acting on the Participant's communications or a communication purported to emanate from the Participant. The Participant hereby indemnify ESC against all and any claims, liabilities, losses, costs, fines, damages and expenses incurred (whether directly or indirectly) caused by or attributable to the aforesaid.
- 14 DUTY OF CARE/LIMITATION OF LIABILITY.
  - 14.1 The Participant acknowledges that data processing entails the likelihood of some human and machine errors, omissions, delays, and losses, which may give rise to loss or damage. Accordingly, the Participant agrees that ESC shall not be liable for of any such errors, omissions, delays, and losses UNLESS CAUSED BY ESC'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. ESC shall not be liable for indirect, special or consequential damages, howsoever arising (including but not limited to loss of business, loss of data and/or loss of profits). In no event will the total aggregate liability of ESC for any claims, losses or damages arising under this Agreement and the services performed hereunder, exceed the insurance cover in place by ESC at the time.
  - 14.2 ESC shall have no obligation to maintain any data or other record, electronic or otherwise, for more than three (3) years from its entry into the system.

- 14.3 In case of any claim against ESC it shall be a condition precedent to such claim that written notice of such claim shall be made to ESC as soon as possible and in no event more than thirty (30) days after the claim arose, and a claim in respect thereof shall be brought within one (1) year after the claim arose.
- 14.4 The Participant shall adopt such measures as it deems appropriate to limit its exposure with respect to potential losses and damages arising by virtue of the use of and reliance on the services, including (without limitation) examination and confirmation of results prior to use thereof, provision for identification and correction of errors and omissions, preparation and storage of backup data, replacement of lost or mutilated documents, and reconstruction of data. The Participant shall maintain at all times alternative methods capable of replacing any lost data.
- 14.5 The Participant indemnifies and holds harmless ESC and its officers, employees and agents from all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which the Participant may suffer or incur as a result of or in connection with the negligent acts or omissions of the Participant.
- 14.6 Without limiting the generality of the foregoing, ESC does not give any guarantees and/or undertakings in respect of the website, the services, Electronic Silo Certificates, including as to the ownership, quality and quantity of the products to which the Electronic Silo Certificates relate. Without limiting the generality of the foregoing, neither ESC nor its directors shall be liable for any failure and/or unavailability of the website and/or the services for any reason whatsoever. The Participant further acknowledges and agrees that the Participant's access to and use of the website and the services will not be free of interruptions, errors, technical inaccuracies, problems or other limitations, and that the website and/or the services may be unavailable from time to time.
- 14.7 Notwithstanding any other provision of the Agreement, ESC shall not be liable for any loss, liability, damage (whether direct, indirect or consequential) or expense of whatever nature and howsoever arising same is which is caused by or attributable to the Participants failure to perform its obligations under this Agreement; circumstances that constitute a force majeure event under clause 17 of this Agreement, the unavailability of any telecommunication lines and/or infrastructure and/or the failure and/or unavailability for any reason whatsoever of any hardware, software programs, operating systems, applications, networks, telecommunication lines or any other computer system (or in any component thereof) and/or the non-availability for any reason whatsoever of any services and/or resources of any third party on whom ESC and/or the participant and/or the Silo Operator relies (whether directly or indirectly) to carry out any obligations in terms of the Agreement.
- 14.8 No opinions, information, data or content contained on the website shall be construed as advice and same are offered for information purposes only. No warranty or representation is given by ESC in relation to the accuracy, completeness or reliability of any such opinions, information, data or content.

- 15 EXTERNAL LINKS External links to other websites may be provided for the Participant's convenience, but they are beyond the control of ESC and no representation is made as to their content. No inference can be made or representation implied that ESC is connected with, operates or controls these linked web sites. Use or reliance on any external links provided is at the Participant's own risk. When visiting web sites via external links the Participant must refer to that external website terms and conditions of use. No hypertext links shall be created from any website controlled by the Participant or otherwise to this website without the express prior written permission of ESC. ESC makes no representations nor gives any guarantees or warranties, whether express, implied in law or residual, as to any information made available on or via the website from time to time, including as to the accuracy, completeness or reliability thereof and including but not limited to any information contained on or in any electronic silo certificate.
- 16 PARTICIPANT WARRANTY The Participant warrants the legality and correctness of any instruction the Participant gives to transfer an Electronic Silo Certificate. The Participant indemnifies ESC and the Silo Operator against all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which ESC and/or a Silo Operator may suffer or incur as a result of or in connection with the actions of the Participant. By accessing the website, the Participant warrants and represent to ESC that you are legally entitled and authorised to do so and to make use of information and the services made available on the website.
- 17 JURISDICTION AND CHOICE OF LAW These terms shall be governed by and construed in accordance with the laws of the Republic of South Africa without taking into account any principles of conflict of law. The Participant hereby consent to exclusive jurisdiction of the High Court of South Africa in respect of any disputes arising in connection with the Agreement or any matter related to or in connection therewith.
- 18 FORCE MAJEURE. Should ESC be prevented from fulfilling any of its obligations to the Participant as a result of any event of force majeure, then those obligations shall be deemed to have been suspended to the extent that and for as long as ESC is so prevented from fulfilling them and the Participant's corresponding obligations shall be suspended to the corresponding extent. In the event that an event of force majeure continues for more than fourteen days after it has first occurred, then ESC shall be entitled (but not obliged) to terminate all of its rights and obligations in terms of or arising out of this Agreement by giving notice to the Participant. All costs accrued under the Tariff to electronic silo certificates for activities prior to the date of the force majeure are due by the Participant to ESC. An "event of force majeure" shall mean any event or circumstance whatsoever which is not within the reasonable control of ESC including, without limitation, vis major, casus fortuitus, any act of God, strike, theft, riots, explosion, insurrection or other similar disorder, war (whether declared or not) or military operations, the downtime and/or unavailability of any external telecommunications line and/or telecommunications facilities or infrastructure, power failure, international restrictions, any requirement of any international authority, any requirement of any government or other competent local authority, any court order, export control or shortage of transport facilities and the acts or omissions of any third party service providers.

19 CONFIDENTIALITY & INTELLECTUAL PROPERTY

19.1 ESC shall keep confidential, and shall not disclose to any third party other than agents carrying out the duties of ESC all data and materials furnished by the Participant for processing hereunder, and ESC agrees that such information will not be used by ESC for any purposes other than the provision services pursuant to the Agreement; provided, however, that such confidentiality provisions shall not apply to data disclosed (a) with permission of the Participant, (b) to any governmental organisation, court or legitimate statutory audit, or (c) to the then current owner of the Electronic Silo Certificates or grain, or (d) as otherwise required by law.

19.2 Copyright and all intellectual property rights in all materials, texts, drawings and data made available on this website (collectively "the materials") are owned by ESC, alternatively, ESC is the lawful user thereof and are protected by both South African and international intellectual property laws. Accordingly, any unauthorised copying, reproduction, retransmission, distribution, attempted reverse engineering, dissemination, sale, publication, broadcast or other circulation or exploitation of such material, business concept or any component thereof will constitute an infringement of such copyright and other intellectual property rights; save that the Participant may use the materials or any component thereof for the Participant's own internal purposes and for the purpose of making use of the services offered by ESC. The trademarks, names, logos and service marks (collectively "trademarks") displayed on this website are registered and unregistered trademarks of ESC. Nothing contained on this website should be construed as granting any licence or right to use any trademark without the prior written permission of ESC.

20 ASSIGNMENT The Participant acknowledges that ESC may make use of third parties in execution of its obligations under this Agreement and ESC shall be entitled to cede, assign and delegate all or any of its rights and obligations under this Agreement to such third parties.

21 PRIVACY. All personal information obtained by ESC by virtue of the Participant's use of this website and the services is protected as set out in our privacy policy. ESC may assemble, review and use all the data collected by ESC by virtue of the Participant's use of the Services and/or the web site in a form that does not indicate the Participant's personally identifiable information.

-----oOo-----