

SILO OPERATOR AGREEMENT

between

SILO CERTS (PROPRIETARY) LIMITED

and

THE PARTY WHOSE DETAILS ARE SET OUT IN ANNEXURE A HERETO

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SILO CERTS (PROPRIETARY) LIMITED

and

THE PARTY WHOSE DETAILS ARE SET OUT IN ANNEXURE A HERETO

1 **INTERPRETATION**

In this agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -

1.1 an expression which denotes -

1.1.1 any gender includes the other genders;

1.1.2 a natural person includes a juristic person and vice versa;

1.1.3 the singular includes the plural and vice versa;

1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1.2.1 "**agreement**" – this document together with all of its annexures, all as may be amended from time to time;

1.2.2 "**business day**" – any day other than a Saturday, Sunday or official public holiday in the RSA;

1.2.3 "**communication protocols**" – the set of rules that enables communication with and access and use of the system;

1.2.4 "**customer**" – the owner of the products deposited in the silo;

- 1.2.5 "**effective date**" – the date set out in annexure A hereto;
- 1.2.6 "**e electronic silo certificates**" – certificates generated by the silo operators' system and transmitted to the system from time to time;
- 1.2.7 "**information**" - all of the information in respect of, inter alia, the electronic silo certificates transmitted or made available by the silo operator to the system in the format set out in annexure D hereto;
- 1.2.8 "**prime rate**" - the prime bank overdraft rate as charged by the ABSA Bank Limited to its corporate customers in respect of overdraft facilities, calculated and compounded monthly in arrear, as certified by any manager of such bank whose appointment and authority it shall not be necessary to prove;
- 1.2.9 "**paper silo certificates**" – the paper certificates issued by the silo operator to the customer evidencing receipt of the products deposited in the silo, which certificate sets out, inter alia, the type, weight and quality of the products deposited;
- 1.2.10 "**participants**" – third parties who are authorised users of the system and who have concluded a participant agreement with Silo Certs;
- 1.2.11 "**participant agreement**" – the agreement to be concluded between Silo Certs and participants setting out, inter alia, the terms and conditions upon which participants may use the system, a pro forma copy of which is attached hereto as annexure F;
- 1.2.12 "**products**" – unprocessed wheat, maize, soya and sunflower;
- 1.2.13 "**RSA**" – the Republic of South Africa;

- 1.2.14 "SAFEX" – the South African Futures Exchange, a division of the JSE Securities Exchange of South Africa;
- 1.2.15 "**signature date**" – the date of signature of this agreement by the signatory which signs it last in time;
- 1.2.16 "**the silo(s)**" – the silo(s) operated by the silo operator as listed in annexure B hereto;
- 1.2.17 "**Silo Certs**" – Silo Certs (Proprietary) Limited (Registration Number 2003/024402/07), a private entity duly incorporated and registered in accordance with the laws and regulations of the RSA;
- 1.2.18 "**silo operator**" – the party whose details are more fully set out in annexure A hereto;
- 1.2.19 "**system**" – the system set up and managed by Silo Certs or its nominee, which system enables and facilitates transactions and which includes the communication protocols and user interface;
- 1.2.20 "**termination date**" – the date of termination of this agreement for any reason whatsoever;
- 1.2.21 "**transactions**" – the electronic creation, modification and cancellation of electronic silo certificates by the silo operator pursuant to a request therefore by a participant, the communication of same to the system and the transferring of electronic silo certificates between participants and the silo operators system by way of the system;
- 1.2.22 "**user interface**" - the user interface (front-end) component of the website accessed by the silo owner;

- 1.2.23 "VAT" – Value Added Tax levied in terms of the Value Added Tax Act, No. 89 of 1991 (as amended);
- 1.3 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the signature date, and as amended or substituted from time to time;
- 1.4 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this agreement;
- 1.5 where any term is defined within a particular clause other than this 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day;
- 1.7 any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.8 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this agreement may apply or to the laws of which a party may be or become subject;
- 1.9 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording

preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s;

- 1.10 the terms of this agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this agreement.

2 INTRODUCTION

- 2.1 The silo operator is the operator of the silo(s) and currently issues paper silo certificates to the customer, as evidence of receipt of products so deposited in the silos.

- 2.2 The silo operator wishes to be registered as a user of the system so that it can issue electronic silo certificates and use the functionality of the system.

- 2.3 The silo operator wishes to acquire the right to be a party to the system and Silo Certs has agreed to grant the silo operator such right, on the terms and conditions set out in this agreement.

3 REGISTRATION

With effect from the date on which Silo Certs notifies the silo operator in writing that the silo operator has completed the take-on process set out in annexure E hereto ("**registration date**"), the silo operator will become a registered user of the system.

4 LICENSE AND ACCESS TO THE SYSTEM

- 4.1 Silo Certs hereby grants the silo operator with effect from the registration date and for the duration of this agreement a non-exclusive and non-transferable right, subject to the terms and conditions set out in this agreement, to access and use the system solely to perform the transactions.

- 4.2 Silo Certs shall within fourteen days of the effective date, install the communication protocols at the silo operator, as may be necessary to enable the silo operator to access and use the system.
- 4.3 The silo operator shall not interfere with the operation of the user interface or the system, including by using any software, routine or device that will or may interfere with the user interface and/or system, such as viruses, Trojan horses, worms, time bombs or cancelbots.
- 4.4 The silo operator's license to use the user interface, communication protocols and the system will immediately terminate if the silo operator's registration or right to use the system is terminated for any reason, subject to clause 19.

5 LICENCE RESTRICTIONS

The silo operator shall not for the duration of this agreement and whether directly or indirectly -

- 5.1 access and/or use the system for any purpose other than to perform the transactions;
- 5.2 reverse engineer, disassemble or decompile the user interface, communication protocols, business logic and/or processes;
- 5.3 copy, reproduce, translate, adapt, vary, modify, sell, lease, licence, sub-licence, encumber or in any other way deal with the system and/or any component of the system (including but not limited to the user interface);
- 5.4 write and/or develop any derivative software or any other software programme based on the system or any component of the system that competes directly or indirectly with the system;
- 5.5 provide, disclose, divulge or make available to or permit use of the system by any unauthorised third party.

6 **DURATION**

6.1 The agreement shall commence on the effective date and shall, subject to 6.2 and 16 endure indefinitely thereafter, unless terminated by either party providing the other party with three months' prior written notice of termination.

6.2 It is recorded that should any rules, regulations and/or legislation be passed and/or should any rules, regulations and/or legislation existing as at the effective date be changed or terminated which would render any of the terms of this agreement unlawful or impossible to perform, then the parties shall negotiate in good faith and use their best endeavours to reach agreement on an amendment of the terms of this agreement so as to ensure that the provisions hereof remain lawful. Should the parties be unable to reach agreement as aforesaid, the provisions of clause 26 shall apply.

7 **FEES AND PAYMENT**

7.1 In consideration for the right granted by Silo Certs to the silo operator in terms of 4.1, the silo operator shall for the duration of this agreement pay Silo Certs the license fees and other charges set out in annexure C hereto.

7.2 In addition, the silo operator agrees to abide by Silo Certs' standard terms and conditions with regard to processing fees for the cancellation of paper and electronic certificates, which are set out in annexure C hereto.

7.3 All processing fees for cancelled certificates will be payable to Silo Certs as set out in annexure C. The silo operator will collect the processing fees and pay such fees directly to Silo Certs. The silo operator holds the products as security for the payment of such fees until such time as the fees are paid.

- 7.4 All amounts payable by the silo operator to Silo Certs in terms of this agreement are exclusive of VAT and shall be made in cash within fourteen days of receipt of the invoice from Silo Certs without deduction or set-off of any nature, free of exchange, bank charges or any other charges at Silo Certs' domicilium referred to in 23.1.1, or otherwise in accordance with Silo Certs' written directions from time to time.
- 7.5 The silo operator shall not unlawfully withhold payment of any amount due by it to Silo Certs under this agreement. In the event that the silo operator fails to make due and timeous payment of any amount owing to Silo Certs under this agreement, such amount shall bear interest at the prime rate plus 2% from the due date until payment thereof has been received by the Silo Certs in full.
- 7.6 Notwithstanding the provisions of 24, should any dispute arise out of the provisions of this clause 7 and failing agreement between the parties, a certificate under the hand of Silo Certs' auditors shall be final and binding on the parties. The silo operator shall not, pending finalisation of such dispute, be entitled to withhold payment to Silo Certs of any amount which is not in dispute.

8 **OBLIGATIONS OF SILO OWNER**

- 8.1 The silo operator undertakes for the duration of this agreement -
- 8.1.1 to ensure that its internal controls are sound, and that such internal controls are annually audited by the silo operator's auditors. These controls, both operational and financial, must, inter alia, include the valid, accurate, timely and complete criteria for -
- 8.1.1.1 raising new depositors in the system and maintaining the ongoing record of participants and depositors;
- 8.1.1.2 raising and maintaining electronic silo certificates;

- 8.1.1.3 managing master files of products, associated grades and silos;
- 8.1.1.4 the protection of all the physical products of which the electronic silo certificates represents;
- 8.1.1.5 staff access and use of the silo owners' own systems and the system;
- 8.1.1.6 ensuring information confidentiality and non -disclosure;
- 8.1.1.7 ensuring non -duplication of electronic silo certificates, both in terms of sequential numbering and across paper and electronic format; and
- 8.1.1.8 adherence to all SAFEX requirements for electronic silo certificates;
- 8.1.2 to have in place adequate systems and procedures to protect the information, data, records and documents relating to electronic silo certificates, customers and participants against any unauthorised access, alteration, destruction or dissemination;
- 8.1.3 within fifteen minutes of becoming aware of any problem with the system, including, inter alia, the system generating incorrect data and/or the system being unavailable, or being unable to communicate with the system, contact the Silo Cert helpdesk, whose contact details will be furnished on the effective date and a written record of all communications with the Silo Certs' helpdesk shall be maintained by the silo operator;
- 8.1.4 to use the system tools provided by Silo Certs to perform and communicate daily reconciliation's between the system and

the silo operator's system, and to clear any items of reconciliation within four working hours of the item appearing as a reconciliation item;

- 8.1.5 to not access or to attempt to gain access to information of other users of the system including but not limited to by way of using the Secure Socket Layer (SSL) communication layer;
- 8.1.6 that it will not publish or upload duplicate or incorrect information in respect of the electronic silo certificates on the system;
- 8.1.7 to timeously provide Silo Certs with all information reasonably requested by Silo Certs from time to time in respect of transactions including information in respect of the electronic silo certificates and customers;
- 8.1.8 to be registered with SAFEX as an issuer of paper silo certificates and approve SAFEX as an agent for, inter alia, splits (cancellations and re-issues) for SAFEX certificates on behalf of the silo operator;
- 8.1.9 to adhere to SAFEX and industry grading systems from time to time and where applicable, ensure their adherence to relevant legislation dealing with money laundering and associated financial surveillance requirements;
- 8.1.10 that if it ceases to be a provider of electronic silo certificates for any reason whatsoever, including as a result of the termination of this agreement, it will continue, in the ordinary course of business, to honour electronic silo certificates of customers reflected in the system at such time;
- 8.1.11 that it will not change the silo operator's procedures for the issuing of electronic silo certificates or the levying of electronic

silo certificate fees, without the prior written consent of Silo Certs;

- 8.1.12 to monitor information, APIs (Application Protocol Interface), communications and equipment for the purposes set out in 8.1.13;
- 8.1.13 within four business hours of receipt of same, to use the system generated messages to effect changes in the silo operator's system, in respect of API rejections, split requests and all other requests generated by the system;
- 8.1.14 not to use the information other than for the purpose of performing the transactions;
- 8.1.15 it shall, via the user interface, provide the electronic silo certificate, customer and other information required by Silo Certs, on the basis and in accordance with the requirements and formats set out in annexure D hereto;
- 8.1.16 to incorporate the terms set out herein into / attached to the electronic silo certificates created by it;
- 8.1.17 to take all precautions necessary to safeguard the confidentiality of the information, including but not limited to -
 - 8.1.17.1 those precautions taken by the silo operator to protect its own confidential information; and
 - 8.1.17.2 those which Silo Certs may request from time to time;
- 8.1.18 not intentionally do anything which is calculated to injure the reputation of or goodwill attaching to Silo Certs and/or participants;

8.1.19 abide by any reasonable criteria for use of the system as may be imposed by Silo Certs or any statutory authority.

8.2 The silo operator undertakes that -

8.2.1 any information written by the silo operator to the system in respect of a customer will be valid proof of such customer's ownership in the products or authority to deposit such products with the silo operator as the case may be, which the silo operator will honour as proof of the type, weight and quality of the product deposited in the silos. Such information will be subject to the silo owner's own terms and conditions attached to / incorporated into the electronic silo certificate and the silo operator indemnifies Silo Certs against any claim of whatsoever nature which arises or is caused by the information written to the system by the silo owner and/or the silo operator system and/or any personnel of the silo operator;

8.2.2 it will hold the products so deposited with it on behalf of the customer or participant, as the case may be and shall not have any claim against the customer or participant as the case may be, to any products so deposited, subject to the silo operator's terms attaching to the electronic silo certificate in question.

8.3 The silo operator acknowledges the provisions of the participant agreement and shall, where applicable, adhere to the provisions of the participant agreement and shall use its best endeavours to enable participants to comply with the participant agreement.

9 **SILO OWNER'S OBLIGATIONS TOWARDS TRANSFEREES**

The silo operator shall -

9.1 on electronic presentation by a transferee of an electronic silo certificate, honour the electronic silo certificate and allow the transferee to collect the product which forms the subject matter of the

electronic silo certificate in question, subject to the silo operator's terms attaching to the electronic silo certificate in question;

9.2 thereafter notify Silo Certs that the product has been claimed and electronically instruct Silo Certs using the system to cancel the electronic silo certificate, and pay Silo Certs all fees calculated in accordance with annexure C hereto, other than the issuing and cancellation fee which accrues to the silo operator;

9.3 not hold Silo Certs liable for any claim of whatever arising as a result of or which is caused by the silo operator failing to cancel an electronic silo certificate;

9.4 comply with the processes and time benchmarks for communication and events between the parties as apply to the silo operator as set out in the operations guide which will be made available by Silo Certs to the silo operator on the effective date;

9.5 not action or attempt to action any electronic silo certificate which is subject to a specific request of the participant who is the noted holder of the electronic silo certificate in any manner other than in accordance with a specific instruction or request in respect of such certificate.

10 **AUDITS AND RIGHTS OF INSPECTIONS**

10.1 Silo Certs and its duly authorised representatives shall be entitled, on reasonable prior written notice to the silo operator to such effect, to conduct an audit of all books, records, systems, data and information (whether of an accounting nature or otherwise) and other documents of the silo operator pertaining to the agreement in order to verify compliance by the silo operator with its obligations in terms of this agreement.

10.2 The silo operator shall co-operate and render all assistance reasonably requested by the Silo Certs and its representatives

relating to such audit. In addition, the silo operator shall provide Silo Certs and its representative's access any premises and personnel of the silo operator for the purposes of conducting such audit. Silo Certs and its representatives shall have the right to take copies of any records and information they reasonably require to assist in connection with any such audit.

10.3 The silo operator shall for the duration of this agreement and for a period of five years or such other period as may be prescribed by law after the termination date, maintain all data, records and documentation to enable Silo Certs to undertake the audit contemplated in this clause 10.

11 **WARRANTIES**

11.1 The silo operator warrants that -

11.1.1 it has obtained all necessary consents and authorizations to access and use the information to perform the transactions;

11.1.2 it has all necessary systems and internal controls in place to accurately and validly raise electronic silo certificates and perform its obligations under this agreement;

11.1.3 by no later than the effective date, it will have complied with and will thereafter continue to comply with all legislation and SAFEX requirements relevant to this agreement;

11.1.4 it has and shall continue to maintain a number of sufficiently skilled personnel to perform the obligations of the silo operator in accordance with this agreement.

11.2 No warranties or representations of whatever nature, whether express, implied in law or residual or made or given by Silo Certs, including that access to the system will be uninterrupted or error-free.

12 **LIMITATION OF LIABILITY**

12.1 Under no circumstances will Silo Certs be liable for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, and howsoever arising.

12.2 Without derogating from the generality of the provisions of 12.1, Silo Certs shall not be liable for any claim for any loss, liability, expense or damage of whatsoever nature and howsoever arising which may be attributable to or caused by, inter alia, -

12.2.1 the use by the silo operator or any other person of any of the information and/or the system;

12.2.2 any mistake, error or omission in any of the information and/or the system;

12.2.3 any abuse or unauthorised use of the system and/or the information;

12.2.4 the negligent acts or omissions of the silo operator, its employees, agents, representations, sub-contractors and/or service providers;

12.2.5 any failure to deliver or in any manner communicate the information to the system;

12.2.6 any telecommunication infrastructure and/or communication line faults;

12.2.7 the unavailability, for any reason whatsoever of the system or any component thereof,

unless such loss, liability, expense and/or damage is as a direct result of the gross negligence or wilful misconduct of Silo Certs and the silo

operator indemnifies Silo Certs against any claim arising which may be caused or attributable to the provisions of this 12.2 .

- 12.3 Notwithstanding any other provision of this 12, in no event will the total aggregate liability of Silo Certs for any claims, losses or damage howsoever arising, exceed the insurance cover in place by Silo Certs at such time.

13 INDEMNITY

Without prejudice to any of the rights of Silo Certs at law or in terms of any other provision of this agreement, the silo operator indemnifies Silo Certs against all actual and 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 whatever, which may arise as a result of or in connection with the silo operator cancelling or changing an electronic silo certificate other than pursuant to a valid instruction to cancel or change.

14 VIRUS PROTECTION

- 14.1 The silo operator shall take all steps necessary to prevent viruses from being introduced into the system and/or networks used to access and use the system ("**networks**") regardless of the source of such virus. In this regard, the silo operator shall, without limiting the generality of the foregoing install the most up to date anti-virus programs and ensure that same are in place for the duration of the agreement.

- 14.2 For the purposes of this clause 14, "**virus**" means anything that contains any "back door", "time bomb", "Trojan horse", "worm", "drop dead device", "virus" or other computer software routine or code which is intended to or does -

- 14.2.1 permit or enable access to or the use of the system, the network and/or any other systems of Silo Certs by the silo

operator or by a third person other than as authorised by Silo Certs, and/or

14.2.2 disables, damages, erases, disrupts or impairs the normal operation of the system and/or any other systems of Silo Certs.

15 **PASSWORDS**

15.1 Pursuant to registration in terms of clause 3, the silo operator will be issued with user name, a personal identity number ("**PIN**") and password ("**password**"). The silo operator shall ensure that the user name, 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 as the case may be to Silo Certs. The silo operator shall not use the system until such time as a new PIN and/or password as the case may be has been issued by Silo Certs.

15.2 The silo operator shall, at all times, be responsible for maintaining the security and confidentiality of the user name, PIN and password.

16 **BREACH**

Should either party breach any material provision of this agreement and fail to remedy such breach within seven days after receiving written notice requiring such remedy, then the other party shall be entitled, without prejudice to its other rights in law including any right to claim damages, to cancel this agreement or to claim immediate specific performance of all of the defaulting party's obligations whether or not otherwise then due for performance.

17 **SUMMARY TERMINATION**

17.1 Should the silo operator -

- 17.1.1 be wound-up, liquidated, deregistered or placed under judicial management, in any such event whether provisionally or finally and whether voluntarily or compulsorily, or pass a resolution providing for any such event; or
- 17.1.2 be deregistered, wound-up, liquidated or placed under judicial management, in any such event whether provisionally or finally; or
- 17.1.3 have any judgment or similar award ("**judgment**") awarded against it which impacts on its ability to carry out its obligations in terms of this agreement and fail to satisfy such judgment within thirty days after becoming aware thereof and -
- 17.1.3.1 if such judgment is appealable, fail to appeal against such judgment within the time limits prescribed by law or fail to diligently prosecute such appeal thereafter or ultimately fail in such appeal; or
- 17.1.3.2 if such judgment is a default judgment, fail to apply for the rescission thereof within the time limits prescribed by law or fail to diligently prosecute such application thereafter or ultimately fail in such application; or
- 17.1.3.3 if such judgment is reviewable, fail to initiate proceedings for the review thereof within the time limits prescribed by law or fail to diligently prosecute such proceedings thereafter or ultimately fail in such proceedings; or
- 17.1.4 be deemed to be unable to pay its debts in terms of the Companies Act No 61 of 1973; or
- 17.1.5 compromise or attempt to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally,

then Silo Certs shall be entitled, without prejudice to its other rights in law including the right to claim damages to cancel this agreement or to claim immediate specific performance of all of the silo operators obligations, whether or not otherwise then due for performance.

17.2 Should the agreement terminate on the basis set out in 17.1, subject to 19 the silo operator shall continue to honour all electronic silo certificates reflected in the system at such time in the ordinary course of business.

18 **FORCE MAJEURE**

18.1 Should a party ("**affected party**") be prevented from fulfilling any of its obligations in terms of this agreement as a result of an event of force majeure, then -

18.1.1 those obligations shall be deemed to have been suspended to the extent that and for so long as the affected party is so prevented from fulfilling them and the corresponding obligations of the other party ("**unaffected party**") shall be suspended to the corresponding extent;

18.1.2 the affected party shall promptly notify the unaffected party in writing of such event of force majeure and such notice shall include an estimation of the approximate period for which the suspension in terms of 18.1.1 will endure. Such estimate shall not be binding on the affected party; and

18.1.3 the duration of this agreement as well as each period within which and each date by which any obligation is required to be performed in terms of this agreement shall be extended or postponed, as the case may be, by the period of suspension in terms of 18.1.1.

- 18.2 Should the affected party partially or completely cease to be prevented from fulfilling its obligations by the event of force majeure, the affected party shall immediately give written notice to the unaffected party of such cessation and the affected party shall, as soon as possible, fulfil its obligations which were previously suspended; provided that in the event and to the extent that fulfilment is no longer possible or the other party has given written notice that it no longer requires such fulfilment, the affected party shall not be obliged to fulfil its suspended obligations and the unaffected party shall not be obliged to fulfil its corresponding obligations.
- 18.3 Should an event of force majeure continue for more than thirty days after the date of the notice referred to in 18.1.2 and notice of cessation in terms of 18.2 not have been given, then the unaffected party shall be entitled (but not obliged) to terminate this agreement by giving not less than seven days written notice to the affected party to that effect; provided that any such notice of termination shall be deemed not to have been given if a notice of cessation in terms of 18.2 is received by the unaffected party prior to the expiry of such thirty day period.
- 18.4 An "**event of force majeure**" shall mean any event or circumstance whatsoever which is not within the reasonable control of the affected party including vis major, casus fortuitus, any act of God, strike, theft, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, or the act of nationalisation of any government, international restrictions, any requirement of any international authority, any requirement of any government or other competent local authority, the downtime and/or unavailability of any telecommunications line and/or facility and/or infrastructure, any court order, export control and shortage of transport facilities.

19 RIGHTS ON TERMINATION

19.1 In the event of termination or suspension of this agreement for any reason whatsoever -

19.1.1 all rights granted to the silo operator in terms of this agreement shall cease with immediate effect and the silo operator shall immediately cease using the system save that the silo operator shall continue to honour the electronic silo certificates on the system at the time of termination in the ordinary course of business;

19.1.2 Silo Certs shall deactivate all user names and passwords and the user interface;

19.1.3 the silo operator shall immediately pay to Silo Certs all amounts due and owing to Silo Certs;

19.1.4 the silo operator shall within fourteen days of the termination date and at its own cost purge from its computer systems, storage media and other files and at Silo Certs' option, destroy or deliver to Silo Certs or its designee all information contained on its systems and all copies thereof and deliver to Silo Certs a written certificate that it has complied with its obligations in terms of this 19.1.4 .

19.2 The provisions contained in this clause 19 -

19.2.1 shall not apply until such time as all of the electronic silo certificates in the silo operator's system as at the termination date or date of suspension, as the case may be, have been cancelled by participants;

19.2.2 are severable from the rest of this agreement and shall remain in force, notwithstanding the termination or suspension of or invalidity for any reason of this agreement.

20 **RELATIONSHIP**

Save as specifically provided for in this agreement and the participant agreement, nothing in this agreement shall create any relationship of agency, partnership or joint venture between the silo operator and Silo Certs and the silo operator shall not hold itself out as the agent or partner of Silo Certs or as being in a joint venture with Silo Certs.

21 **INTELLECTUAL PROPERTY**

21.1 All right and title in and to the system and each component thereof, including without limitation any and all of the intellectual property rights used or embodied in or in connection with the system and each component shall be and remain the sole property of Silo Certs and no intellectual property rights therein are granted or assigned under this agreement. The silo operator shall not at any time in any way question or dispute the ownership of Silo Certs of any such item as aforesaid and undertakes not to infringe or prejudice any rights of Silo Certs in and to the system or any component thereof.

21.2 Neither party shall acquire any right, title or interest (without the prior written consent of the other) entitling it to use the name, service marks, trademarks or logos of the other. The parties undertake in favour of one another not to perform any act which would injure the reputation or goodwill attaching to their respective names and trademarks or which would prejudice their rights in and to such names and trademarks.

22 **CONFIDENTIALITY**

Notwithstanding the cancellation or termination of this agreement, neither party ("**receiving party**") shall, at any time after the conclusion of this agreement, disclose to any person or use in any manner whatever the other party's confidential information or the existence and contents of this agreement, provided that -

- 22.1 either party may disclose the existence and contents of this agreement to the extent required by any rules of any stock exchange by which that party is bound, provided further that no such disclosure shall be made unless the other party has first given its written approval for the form thereof, which approval may not be withheld unreasonably;
- 22.2 the receiving party may disclose the other party's confidential information and the existence and contents of this agreement -
- 22.2.1 to the extent required by law (other than in terms of a contractual obligation of the receiving party);
- 22.2.2 to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this 22 by the receiving party; and
- 22.3 the provisions of this 22 shall cease to apply to any confidential information of a party which -
- 22.3.1 is or becomes generally available to the public other than as a result of a breach by the receiving party of its obligations in terms of this 22;
- 22.3.2 is also received by the receiving party from a third party who did not acquire such confidential information subject to any duty of confidentiality in favour of the other party; or
- 22.3.3 was known to the receiving party prior to receiving it from the other party.

"**Confidential information**" of a party shall mean any information disclosed by that party to the receiving party prior to the conclusion of this agreement, in terms of this agreement or otherwise in connection with this agreement and includes, in the case of Silo Certs, the system.

23 **DOMICILIUM**

23.1 The parties choose domicilium citandi et executandi ("**domicilium**") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows -

23.1.1 Silo Certs physical - Suite 1, Cats Corner
Office Park
Kroton Street
Weltevreden Park
1715

facsimile - (011) 679 4965

23.1.2 the silo operator hereto - As cited in annexure A

23.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the RSA, and to vary its facsimile domicilium to any other facsimile number.

23.3 Any notice given or payment made by either party to the other ("**addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery.

23.4 Any notice given by either party to the other which is successfully transmitted by facsimile to the addressee's facsimile domicilium for the time being shall be deemed (unless the contrary is proved by the

addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

23.5 This 23 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this 23.

23.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

24 **ARBITRATION**

24.1 Any disputes arising from or in connection with this agreement shall if so required by either party by giving written notice to that effect to the other be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by an arbitrator or arbitrators appointed by AFSA. There shall be no right of appeal as provided for in article 22 of the aforesaid rules.

24.2 Each party to this agreement -

24.2.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

24.2.2 irrevocably authorises the other to apply, on behalf of all parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

24.3 This 24 -

24.3.1 constitutes an irrevocable consent by the parties to any proceedings in terms hereof; and

24.3.2 is severable from the other provisions of this agreement and shall remain in effect notwithstanding the termination or invalidity for any reason of this agreement.

24.4 The provisions of the clause 24 shall not preclude either party from approaching any Court of competent authority for an interdict or other injunctive relief of an urgent nature.

24.5 Without derogating from the foregoing, if within 21 (twenty one) days of written notice referred to in 24.1 by either party raising a dispute from or in connection with this agreement:

24.5.1 the arbitrator has not been agreed or appointed; or

24.5.2 the issues comprising the dispute in question have not been defined;
or

24.5.3 any other matter, or any nature whatsoever, relating to the dispute in question or the arbitration, shall not be finally agreed, thereby preventing proceedings in terms of the arbitration from being instituted,

the party raising the dispute in question shall be entitled to disregard the provisions of the clause 24 and instead institute proceedings out of the High Court of South Africa (Transvaal Provincial Division) to whose jurisdiction, the parties hereto submit.

25 **GOVERNING LAW**

This agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of the RSA.

26 **SEVERABILITY**

If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.

27 **SURVIVAL**

The provisions of clauses 10, 12, 13, 19, 21, 22, 24, 25, 27 and 28 shall survive any termination or cancellation of this agreement.

28 **GENERAL**

28.1 This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.

28.2 No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

28.3 No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

28.4 Without prejudice to any other provision of this agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by this agreement.

28.5 The signature by either party of a counterpart of this agreement shall be as effective as if that party had signed the same document as the other party.

29 **COSTS**

Each party shall bear and pay the costs incurred by it in respect of the negotiation, drafting, preparation and execution of this agreement.

Signed at on 2006
for Silo Certs (Proprietary) Limited

who warrants that he is duly
authorised hereto

Signed at on 2006
for

who warrants that he is duly
authorised hereto

SALIENT DETAILS

Name	_____
Registration Number / Identity Number	_____
Physical Address	_____

Postal Address	_____

Fax Number	_____
Telephone Number	_____
E-mail Address	_____
Key Contact Person	_____
Effective Date as cited in clause 1.2.5	_____

LIST OF SILOS

ANNEXURE C

FEES AND CHARGES

Silo Operator	License use of system fee	Nil*
Participant	License use of system fee	Nil
Transfer / encumbrance between parties		Nil
Book over by SAFEX		Nil
Return of encumbrance, or conversion of encumbrance to owner		Nil
For certificates issued from 01 May 2006 :		
<ul style="list-style-type: none"> (a) A cancellation processing fee for any <u>non-Safex</u> paper or electronic silo certificate of R180 per certificate will be paid to Silo Certs upon <u>cancellation</u> of such certificate by the Silo Operator. This fee will be waived where such non-Safex certificate is cancelled prior to 01 July 2006. (b) A cancellation processing fee for any <u>Safex</u> compliant paper or electronic certificate of R180 per certificate will be paid to Silo Certs upon issue of the certificate by the Silo Operator (c) Certificates split by Safex themselves at the exchange will not accrue any additional fee than that already collected on the original Safex certificate (d) If a client requests an existing paper certificate to be converted to an electronic certificate prior to 01 July 2006, then the processing fee above will not be levied 		

* Applies to software not to consulting requests

TERMS PERTAINING TO ELECTRONIC PRICING

Collection of fees on cancellation of electronic silo certificate by silo operator for payment to Silo Certs, in the manner provided for in the agreement.

REQUIRED FORMATS

TAKE-ON PROCESS

PRO FORMA PARTICIPANT AGREEMENT