

**AGREEMENT**

**ENTERED INTO BY**

**THE SOUTH AFRICAN RESERVE BANK**

**(the “Bank”)**

**AND**

.....

**(the “Participant”)**

**on**

**THE CONDITIONS OF USE OF THE SOUTH AFRICAN RESERVE BANK’S  
MONEY MARKET INTERNET SYSTEM (the “MMIS”) FOR THE REPORTING OF  
DEALS IN AND THE SUBMITTING OF BIDS FOR IMMOBILISED TREASURY  
BILLS AND DEMATERIALIZED SOUTH AFRICAN RESERVE BANK  
DEBENTURES AND THE REPORTING OF REPURCHASE AGREEMENTS AND  
REVERSE REPURCHASE AGREEMENTS ENTERED INTO WITH THE BANK**

The following conditions shall apply to a Participant utilising the Bank's money market Internet system for the reporting of deals in and the submitting of bids for immobilised treasury bills and dematerialised South African Reserve Bank debentures and the reporting of repurchase agreements and reverse repurchase agreements entered into with the Bank:

**1. Confidentiality**

- 1.1 A Participant shall not disclose or permit any disclosure of any information, however acquired, or information furnished to a Participant by the Bank, to any third party where such information has been identified by the Bank as being confidential.
- 1.2 Any information pertaining to transactions, data, operational procedures or functions obtained through the use of the MMIS shall be confidential.
- 1.3 These conditions will not apply where a disclosure made by a Participant is -
  - 1.3.1 made under compulsion of law;
  - 1.3.2 in compliance with a duty to the public to disclose;
  - 1.3.3 necessary to further the legitimate interests of the Participant, provided that such disclosure is made under written advice to the Bank; or
  - 1.3.4 made with the written consent of the Bank.
- 1.4A Participant's obligations in specific respect to this confidentiality clause shall continue indefinitely irrespective of the termination of these conditions of

use.

## 2. **Copyright**

- 2.1 All the intellectual property rights, including trade marks, copyrights and other rights, used or combined in any document, publication, research project or computer software program pertaining to the MMIS and which originates from or has been designed, programmed, manufactured or produced by, for or on behalf of the Bank will remain the exclusive property of the Bank or the property of any third party acknowledged by the Bank to be the holder of such rights notwithstanding the termination of these conditions of use.
- 2.2 Save with the prior written consent of the Bank, no Participant shall copy, duplicate or reproduce, in any way or by any means whatsoever, or shall cause or permit such copying, duplication or reproduction, or shall publish or distribute, or cause or permit such publication or distribution of any document, publication, research project or computer software program pertaining to the MMIS and which is the exclusive property of the Bank or any third party acknowledged by the Bank.
- 2.3 A Participant may, however, make a copy or a back-up of any document, publication, research project or computer software program pertaining to the MMIS for internal use only: Provided such copies or back-ups are permissible in terms of this agreement or any applicable law.
- 2.4 In the event of the termination of these conditions of use, a Participant shall be obliged to return to the Bank all the material provided or supplied to it by the Bank, as well as any back-up or copy referred to above.

### 3. **Loss or damage**

- 3.1 The Bank shall, in the provision and the operation of the MMIS, exercise reasonable care and take reasonable precautions in order to ensure the effective and proper functioning and operation of the MMIS in such manner as to ensure that a Participant shall not suffer loss or damage pursuant to the Participant's utilisation of the MMIS.
- 3.2 Notwithstanding the foregoing, the Bank shall not be liable to a Participant or its employees, agents, contractors, clients or any other person to whom the Participant owes a duty of care, for loss or damage arising from or occasioned by any occurrence or event which is not within the reasonable control of the Bank, its officers, employees, agents and/or contractors, including loss or damage resulting from any act of God or *force majeure*, save and except if such loss or damage arises from or is occasioned, directly or indirectly, by any negligence proven, wilful or fraudulent act, omission or conduct on the part of the Bank, its employees, agents and/or contractors.
- 3.3 Any claim for loss or damage instituted against the Bank by a Participant as contemplated in clause 3.2 above, shall be limited to direct compensatory loss or damages and shall exclude consequential loss or indirect and/or special damages, howsoever caused.

### 4. **Dispute resolution**

- 4.1 Any dispute between a Participant and the Bank that arises with regard to the availability, functioning and/or operation of the MMIS and which cannot be resolved by *bona fide* negotiations between the parties at the level of general management within 7 (seven) calendar days of such dispute arising, shall be referred by either party to an arbitrator, agreed to

by both parties within 7 (seven) days of the aforementioned date, for resolution. Failing agreement on the arbitrator to be appointed, an arbitrator shall be appointed at the request of either the Participant or the Bank by the Arbitration Foundation of Southern Africa ("AFSA") or its successor, which arbitrator shall, as far as possible, be a person appointed on account of his/her knowledge of both the law and the financial markets. Such appointment shall be made within 7 (seven) days of the request for such appointment. Nothing contained herein shall preclude either the Participant or the Bank from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

- 4.2 The arbitration referred to above shall be held as a matter of urgency, at a time and place decided on by the duly appointed arbitrator, in the English language and with a view to it being completed within 14 (fourteen) days after the appointment of the arbitrator. The arbitration shall be held in accordance with the AFSA rules and procedures.
- 4.3 The Bank and the Participant agree that the decision in the arbitration proceedings shall be final and binding upon them, shall be carried into effect and may be made an order of court of competent jurisdiction at the discretion and sole volition of either party, subject to the right of appeal in accordance with the AFSA rules and procedures.

## 5. **Effective date**

These conditions of use shall commence and take effect on from the date of signature of the party signing last and shall continue in force and effect until terminated by agreement between the parties.

## 6. General

6.1 This agreement constitutes the entire agreement (and supersedes any previous written or oral agreement) between the parties relating to the subject matter of this agreement.

6.2 The headings in this agreement will not affect the interpretation of this agreement.

6.3 Any notice or other communication given under this agreement must be in writing, in English and served on a party at its address or fax number as specified below (or any other address it has notified to the other party in accordance with this clause) by hand, by registered post or by fax. Notices may not be sent by email.

**The Bank:** *[Please insert]*

**The Participant:** 3 Exchange Square, 87 Maude Street, Sandton, 2196

6.4 No variation of this agreement will be valid unless it is in writing and signed by or on behalf of each party.

6.5 If any provision of this agreement is held illegal, invalid or unenforceable such illegality, invalidity or unenforceability will not affect the other provisions of this agreement which shall remain in full force and effect.

6.6 A failure to exercise or delay in exercising a right or remedy provided by this agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this agreement or by law prevents further exercise of the right or remedy or the exercise of

another right or remedy.

**7. Execution**

Thus done and signed at .....on this ..... day of .....

.....  
**(The Bank)**  
duly authorised hereto

.....  
.....  
**As Witnesses**

.....  
**(The Bank)**  
duly authorised hereto

.....  
.....  
**As Witnesses**

Thus done and signed at ..... on this ..... day of .....

.....  
**(The Participant)**  
duly authorised hereto

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**As Witnesses**

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**(The Participant)**  
duly authorised hereto

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.....  
**As Witnesses**

