

ELECTRONIC SERVICES AGREEMENT



Made and entered into by and between **Mercantile Bank Limited**, ("Mercantile") Reg.No.:1965/006706/06
of Mercantile Lisbon House , 142 West Street, SANDTON 2146

(Domicilium Citandi et Executandi)

and
I.D. Number
of

Registration Number

("the Customer")

(Domicilium Citandi et Executandi)

1. Terms and conditions of agreement

The terms and conditions set out herein, constitute the agreement between the parties hereto ("the Agreement") relating to Mercantile's electronic access facility ("BANK@bility") or telephone access facility ("TEL@bility")

2. Provision of [BANK@bility](#) and [TEL@bility](#)

- 2.1 Subject to the provisions of this Agreement, Mercantile shall make available to the Customer those of Mercantile's computer banking enquiry and transactional facilities and services ("the Services") as are from time to time available through [BANK@bility](#) and/or [TEL@bility](#) and are subscribed for by the Customer, provided such subscription has been accepted in writing by Mercantile.
- 2.2 The Customer acknowledges that the use of the Services shall, in addition to the terms and conditions of this Agreement, be subject to such further terms and conditions as may from time to time be imposed by Mercantile and notified to the Customer.
- 2.3 Mercantile shall be entitled at any time to modify, replace or withdraw the Services, or any of them.

3. Duration

- 3.1 This Agreement shall commence on and shall be of force with effect from the date of signature of same by Mercantile ("the Signature Date"), and shall continue until such time as it is terminated by either the Customer or Mercantile as follows:
 - 3.1.1 the Customer shall be entitled to terminate this Agreement at any time by giving Mercantile one calendar month's written notice of the Customer's intention to do so;
 - 3.1.2 Mercantile shall be entitled to terminate this Agreement at any time by written notice to the Customer, without being required to furnish any reason for such termination.
- 3.2 The termination of this Agreement shall not affect any liability of the Customer under this Agreement which arose prior to such termination.
- 3.3 On termination of this Agreement for whatever reason, the Customer shall immediately deliver to Mercantile all material and other matter mentioned in clause 11 including all copies thereof in the Customer's possession.

4. Presumption of authority

- 4.1 Mercantile shall not be obliged to enquire into, or to prove the authority of any person who has obtained access to, or who has initiated any transaction on any account of the Customer via [BANK@bility](#) and/or [TEL@bility](#).
- 4.2 The Customer warrants to Mercantile that any person who will obtain access to, or who will perform any function and/or initiate any transaction on any account of the Customer via [BANK@bility](#) and/or [TEL@bility](#), has the knowledge, ability and integrity to obtain such access, perform such function and/or initiate such transaction.
- 4.3 Any act performed, thing done, obligation undertaken or omission made by any person other than Mercantile, in connection with or arising from [BANK@bility](#) and/or [TEL@bility](#) shall be deemed to have been performed, done, undertaken or made by the Customer.

5. Software for [BANK@bility](#) only

- 5.1 Forthwith after the Signature Date, Mercantile shall furnish the Customer with such computer software ("the Software") as is required by the Customer (utilised in conjunction with ancillary hardware and software specified by Mercantile and supplied by the Customer at the Customer's cost ("the Additional Components")), in order to operate [BANK@bility](#).
- 5.2 Mercantile :
 - 5.2.1 shall not be responsible for installing the Software, nor for maintaining the Additional Components;
 - 5.2.2 does not warrant or represent
 - 5.2.2.1 the suitability or compatibility of the Additional Components to the Software;
 - 5.2.2.2 the adequacy or suitability of the security features which may form an element of [BANK@bility](#).

6. Other agreements

- 6.1 Nothing in this Agreement shall vary any aspect of the existing or any other banker/customer relationships, or agreements, or any other agreement or arrangement between Mercantile and the Customer.
- 6.2 Any transactions generated through [BANK@bility](#) and/or [TEL@bility](#) which constitute a departure from any agreement or arrangement between Mercantile and the Customer may be rectified by Mercantile, which shall be entitled, but not obliged, upon such notification to the Customer as Mercantile considers reasonable in the circumstances, to generate otherwise than through [BANK@bility](#) and/or [TEL@bility](#) such debit or credit entries as may be required to rectify or regularise any accounts thereby affected and to restore those accounts to comply with the limits applicable thereto or with any other terms of any such agreement or arrangement.
- 6.3 Without derogating from the generality of the provisions of clause 6.1, this Agreement shall not vary the provisions of any clearing or settlement mechanisms within the South African banking system and Mercantile's obligations within such system shall take precedence over, and override any obligations which Mercantile may owe to the Customer in terms of this Agreement.

7. Risk

It is essential that the customer take every possible precaution to ensure that the account numbers used are accurate. Valid account numbers may pass through the validation routines even though it is incorrect. There is no onus on the Bank to ensure that account numbers are, in fact, correct.

The Customer accepts all risk, loss or damage arising out of or connected with the accessing of and/or operation on its accounts via [BANK@bility](#) and/or [TEL@bility](#) and, in particular, but without limiting the generality of the foregoing, the Customer agrees that Mercantile shall not be liable for, or in respect of, direct or consequential loss or damage arising from any:

- 7.1 failure of [BANK@bility](#) and/or [TEL@bility](#), which shall include inter alia, any total or partial inaccuracy, breakdown or failure of the Services, the loss or destruction of any data, any loss occasioned by any system malfunction, the deterioration of storage media, the failure, interruption or distortion of communication links, any destruction of facilities caused by power failure or similar occurrences, any loss or damage caused by natural disaster, riot, acts of vandalism or terrorism and the like or because of the failure or unavailability of telephone links or otherwise, any inability of the Customer to gain access to or to use [BANK@bility](#) and/or [TEL@bility](#);
- 7.2 transaction being delayed for any reason (including any aforementioned failure of [BANK@bility](#) and/or [TEL@bility](#)) provided that Mercantile shall endeavour to adjust the transaction as if it had taken place on the proper day;
- 7.3 act or transaction carried out, generated or effected directly or indirectly through [BANK@bility](#) and/or [TEL@bility](#) by any person acting without the authority of the Customer;
- 7.4 non-adherence to procedures prescribed by Mercantile; or
- 7.5 destruction of data, any accessing of data by any unauthorised person, or any destruction or theft of, or damage to any hardware or software.
- 7.6 Straight Through Processing is a process through which Mercantile is able to transfer funds from computer to computer without any human intervention by way of automatic processing of a payment request by a customer via the inter bank clearing and settlement system. Mercantile is further able to transfer funds internally from one account held at Mercantile to another account held at Mercantile, on request of a customer.
- 7.7 Mercantile relies solely on the account number of the beneficiary supplied by the customer, if a funds transfer is effected by way of Straight Through Processing or otherwise as mentioned in 7.6 above;
- 7.8 in the absence of special arrangements relating to authentication and verification of details of both the account name and number Mercantile will not take steps to cross check and/or verify that the account number and account name relate to each other, but relies solely on the account number as provided by the customer;
- 7.9 in the event of the account number being incorrect, there is a risk that the transfer of funds may not be recoverable from the recipient;
- 7.10 in the event of the customer not being prepared to take the risk of relying only on an account number to effect the transfer of funds, the customer must make use of alternative means of transfer of funds/payment or make special arrangements in writing with Mercantile regarding validation of the beneficiary's particulars;
- 7.11 the customer have no right of recall of a payment instruction, once issued and Mercantile, or the bank of the beneficiary, may be unable, at any later stage to undo, recall, fix or demand repayment, on the customers request after acting on an instruction received;
- 7.12 the customer holds Mercantile harmless against all claims of whatsoever nature which Mercantile may incur and abandons any claim which the customer may have against Mercantile as a result of funds being transferred to an incorrect recipient due to the customer having provided the incorrect account number to Mercantile."
- 8. Indemnity**
The Customer hereby releases Mercantile from all liability and indemnifies Mercantile against all direct or consequential losses, liabilities, actions, suits, proceedings, costs, claims, demands, damages, charges and expenses (including all legal and professional fees and disbursements) directly or indirectly incurred in consequence of, or in any way related to any:
- 8.1 accessing of and operating upon the banking or other accounts of the Customer via [BANK@bility](#) and/or [TEL@bility](#);
- 8.2 failure, delay, unauthorised use, incorrect procedure, data destruction or other risk, loss or damage envisaged in clause 7;
- 8.3 incorrect information supplied by Mercantile through [BANK@bility](#) and/or [TEL@bility](#) to the Customer, howsoever caused; or
- 8.4 errors arising from the omission or incorrect input by the Customer, or reference details and/or other data fields.
- 9. Countermand of instructions**
The Customer will not be able to countermand via [BANK@bility](#) and/or [TEL@bility](#) an instruction previously made to Mercantile via [BANK@bility](#) and/or [TEL@bility](#).
- 10. Fees and other charges**
- 10.1 In consideration for access to the Services, the Customer shall effect payment to Mercantile of Mercantile's then prevailing fees, as notified by Mercantile to the Customer from time to time, and irrespective of whether the Services are utilised by the Customer, or not.
- 10.2 In addition to the fees referred to in clause 10.1 Mercantile shall be entitled to debit the Customer's accounts with its usual, customary or standard transaction fees prevailing from time to time in respect of any transaction generated by the use of [BANK@bility](#) and/or [TEL@bility](#) and additionally, with any other agreed rentals, fees or disbursements.
- 10.3 The Customer shall reimburse Mercantile with any amount paid by it in respect of any Government or Municipal duties, taxes or other charges levied on the Customer or Mercantile in connection with or arising out of this Agreement and for such purpose, Mercantile may debit the Customer's accounts with any amount so paid by Mercantile.
- 11. Copyright**
The parties record that Mercantile has been licensed to utilise all the Software, all data supplied in respect of [BANK@bility](#) and the manuals and all other written or printed matter, all micrographical or other reproduction of the written word, all depictions and pictorial material and all audio-visual, machine-readable or other information material supplied by Mercantile to the Customer in connection with [BANK@bility](#). The Customer shall not duplicate or reproduce any of the foregoing in whole or in part in any form without the prior written consent of Mercantile which may, in Mercantile's sole discretion, be withheld and nothing herein contained shall be interpreted or construed as vesting the Customer with any rights of whatsoever nature in and to the foregoing, other than rights of utilisation for the purposes contemplated in this Agreement. Notwithstanding the foregoing, if Mercantile, in its reasonable discretion, determines that :
- 11.1 its proprietary rights in and to the Software supplied by it to the Customer in terms of the provisions of clause 5.1 are being interfered or threatened in any manner whatsoever; or
- 11.2 unauthorised or illicit use of the [BANK@bility](#) and/or [TEL@bility](#) is being made by the Customer or any person in its employ, then Mercantile shall have the right to suspend the availability of the Services to the Customer until such time as such interference, threat or use has ceased and/or been safeguarded against to Mercantile's reasonable satisfaction
- 12. Confidentiality**
- 12.1 Without derogating from the provisions of clause 8.2, the Customer shall use its best endeavours to keep confidential and adequately ensure the confidentiality of all material and other matter referred to in clause 11, all telephone numbers used, all passwords, access codes, security cards and user identifications and generally all information relating to [BANK@bility](#) and/or [TEL@bility](#).
- 12.2 The Customer shall advise Mercantile forthwith the Customer becomes aware that any such information has come into, or is suspected of being in the unauthorised possession of any person whomsoever, and shall confirm such advice by prompt written notice.
- 12.3 The Customer shall not disclose to any person the provisions of this Agreement.

13. **General**

Notwithstanding anything to the contrary contained, or implied in this Agreement :

13.1 the provisions of this Agreement and the Services shall at all times be subject to Mercantile's standard credit criteria in force from time to time, which criteria shall at all times take precedence over such provisions;

13.2 all debit transactions generated via BANK@bilty and/or TEL@bilty will be "fated" against the available balance in the relative account(s) and will only be processed by Mercantile if the available balance(s) in the account(s) is(are) sufficient to accommodate the debit entry(ies) generated;

13.3 the Customer shall arrange for the termination of any agreements that may be in force with Mercantile to share facility limits amongst a group(s) of accounts belonging to the Customer and to conclude alternate arrangements with Mercantile for individual limits to be allocated to each of the accounts concerned.

14 **Notice and domicilium**

14.1 The Customer chooses *domicilium citandi et executandi* ("domicilium"), for the purposes of the giving of any notice, the serving of any process and for any purposes arising from this Agreement, at its address as set out on the face of this Agreement.

14.2 The Customer shall be entitled by written notice to Mercantile, to vary its domicilium to any other address within the Republic of South Africa, which is not a post office box or *poste restante*.

14.3 Any notice given by Mercantile to the Customer which :

14.3.1 is delivered by hand during normal business hours at the Customer's domicilium shall be rebuttably presumed to have been received by the Customer at the time of delivery;

14.3.2 is posted by prepaid registered post to the Customer's domicilium shall be rebuttably presumed to have been received by the Customer on the fourteenth day after date of posting;

14.3.3 is transmitted by telefacsimile to the telefacsimile number forming an element of the Customer's domicilium address, shall be rebuttably presumed to have been received by the Customer 48 (FORTY EIGHT) hours after the time of transmission;

14.3.4 is transmitted electronically utilising BANK@bilty shall be rebuttably presumed to have been received by the Customer 48 (FORTY EIGHT) hours after the time of transmission.

15. **Non-variation**

Subject to Mercantile's rights in terms of this Agreement, no alteration, consensual cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of both parties.

16. **Whole agreement**

This document contains the entire agreement between the parties regarding the matters contained herein and Mercantile shall not be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

17. **Severability**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be treated *pro non scripto* and severed from the balance of the Agreement without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

Thus done and signed at _____ on the _____ day of _____ year _____

Capacity _____ Signature _____

Capacity _____ Signature _____

Capacity _____ Signature _____

Capacity _____ Signature _____

Capacity _____ Signature _____

For and on behalf of* _____

* Delete if inapplicable

Thus done and signed at _____ on the _____ day of _____ year _____

Capacity _____ Signature _____

Capacity _____ Signature _____

For and on behalf of Mercantile Bank Limited