

# IKHOKHA PAYMENT ACCEPTANCE TERMS AND CONDITIONS

## 1 PARTIES

The parties to this agreement are:

1.1 Emerge Mobile (RF) Proprietary Limited;  
Reg. No. 2012/067507/07;  
Unit 4, 12 Frosterley Park, Frosterley Crescent, La Lucia Ridge, KwaZulu-Natal;  
Fax No. +27 31 566 1967  
(hereinafter referred to as "iKhokha")

and

1.2 Full Registered company name (or full name as appears on ID if Sole Proprietor): \_\_\_\_\_  
Company Registration No. (or ID No. if Sole Proprietor): \_\_\_\_\_

Physical Address:

Email address :

Merchant UID :

("You:")

## 2 PROCESS

2.1 Each application is subject to iKhokha's standard credit checks and regulatory procedures.

2.2 This agreement lets You accept pin driven cards as a form of payment for transactions using a smart phone or tablet and an Edge Card Reader.

2.3 This agreement only becomes a binding agreement between You and iKhokha once:

2.3.1 You have applied for and successfully been registered for the service;

2.3.2 You have taken delivery of an Edge Card Reader and it has been activated by iKhokha;

2.3.3 You meet iKhokha's standard credit checks and regulatory procedures (including, without limitation, FICA and KYC requirements).

2.4 You are obliged to provide iKhokha all compliance documents as iKhokha may request from You from time to time.

## 3 DEFINITIONS

In this agreement the following terms will have the meanings set out next to them unless clearly inconsistent with or otherwise indicated by the context:

3.1 "Card" means the card/s as listed in the Payment Acceptance: Merchant Application (which may be amended and/or replaced by iKhokha from time to time to allow for the addition or reduction of cards/services).

3.2 "Cardholder" means the person to whom a Card has been issued.

3.3 "Card Issuer" means the bank or any other entity that issues a Card.

3.4 "Chargeback" means a transaction that is reversed because the Cardholder has successfully disputed the transaction.

3.5 "Delayed Settlement" means the process during which the funds will be credited to You after all FICA/KYC compliance requirements have been met.

3.6 "Edge Card Reader" means iKhokha's Edge Card Reader for smartphones (including its associated clips and battery charger) and the associated iKhokha software.

3.7 "Electronic Authorisation Function" means a facility through which authorisation for a transaction may be obtained from a bank through the Edge Card Reader.

3.8 "Electronic Transaction" means a transaction done through the Edge Card Reader which leads to electronic transfer of funds.

3.9 "Floor Limit" means the total value which You may permit a Cardholder to spend on a Card at any one time without prior authorisation from a bank.

3.10 "Laundering" means the presentation of sales vouchers that did not result from an act between You and the Cardholder.

3.11 "Settlement" means the payment to You of the total nett value of all valid Electronic Transactions made by You in a business day less fees.

3.12 "Transaction Fee" means a portion of the total value of all card transactions made by You and payable to iKhokha.

3.13 "PCI DSS" means the Payment Card Industry Data Security Standards in effect from time to time or any successor standards to those standards.

3.14 "Procedural Manual" means iKhokha's directives to You from time to time, including, without limitation, as amended from time to time.

#### 4 HONOURING OF CARDS

4.1 You undertake to accept each valid Card that is presented to You by the rightful Cardholder in payment of goods and/or services.

4.2 You undertake to supply the goods and/or services at a price which is not more than Your normal cash price for the goods and/or services and not to discriminate against any Cardholder by adding any surcharge or by setting a minimum or maximum transaction amount as a condition of honouring any Card.

4.3 You may not accept Cards for the purchase of shares, bonds or stock.

4.4 iKhokha shall pay to You the value of all goods and/or services that You supply after an Electronic Transaction, on condition that delayed Settlement will apply when there are outstanding compliance documents. iKhokha shall be entitled to keep funds back in the case of excessive Chargebacks, bankruptcy, fraud or suspected fraud, Laundering or suspected Laundering.

4.5 iKhokha is irrevocably authorised to debit Your nominated bank account at whatever bank this is conducted with the following:

4.5.1 A minimum merchant Transaction Fee of \_\_\_\_\_ (excluding VAT) which will be deducted from the transactions' value prior to settling to Your account.

4.5.2 A daily Settlement fee of R2.50, which will be deducted from the total amount being settled daily into your account. You will be settled once a day for all transactions performed on that business day. Settlement will only take place when transactions have been performed and once the total amount to be settled exceeds R10.00

4.5.3 A Chargeback fee of R35.00 (excluding VAT) per Chargeback, if your client requests a chargeback from his/her bank with valid reason

4.5.4 A monthly data fee per iKhokha XL package purchased or rented at a minimum charge of R27 (including VAT) per month per device

#### 5 FLOOR LIMITS

5.1 The Floor Limit applicable to all transactions is zero. All transactions require prior authorisation from a bank by way of the Electronic Authorisation Function prior to You permitting the Cardholder to spend on a Card.

#### 6 PRESENTATION FOR PAYMENT

6.1 You shall not process a transaction that did not result from a transaction between You and the Cardholder and all such transactions shall take place only in the Republic of South Africa.

6.2 iKhokha will credit or debit Your nominated bank account with the total nett amount of valid Electronic Transactions presented for payment, on condition

that Delayed Settlement and/or no settlement (as determined by iKhokha) will apply when there are outstanding compliance documents.

6.3 Any crediting of Your nominated bank account does not waive or remove iKhokha's right to cancel payment of Electronic Transactions by debiting Your nominated bank account with the amount of the relevant invalid Electronic Transaction.

#### 7 WARRANTIES

7.1 By presenting an Electronic Transaction for payment to iKhokha, You warrant the following:

7.1.1 All statements of fact contained therein are true.

7.1.2 Goods and/or services were delivered or supplied at Your normal cash price and the price contains no extra charges or element of credit whatsoever.

7.1.3 The said Electronic Transaction between You and the Cardholder is legal.

7.1.4 There has been proper compliance by You with all the terms of this agreement and the Procedural Manual.

7.1.5 You indemnify iKhokha against any claim or liability that may arise from a dispute between You and the Cardholder about the supply and/or delivery of goods and/or services. You have and You shall provide evidence, that satisfies iKhokha, that the debiting of the Cardholder's account was authorised by the Cardholder.

7.1.6 You actually supplied the goods and/or services referred to in Electronic Transactions, to the Cardholder.

7.2 You will make sure that You and Your agents and sub-contractors (where applicable) comply with PCI DSS and all obligations relating to data security, data compromises and the steps necessary to demonstrate compliance with PCI DSS. You can access full details of the applicable obligations and processes at the PCI DSS website (<http://www.pcisecuritystandards.org>). You will make sure that You and Your agents and sub-contractors (where applicable) comply with the Procedural Manual.

#### 8 INVALID TRANSACTIONS

8.1 An Electronic Transaction will be invalid if:

8.1.1 the begin date on the Card has not yet been reached or the Card has expired;

8.1.2 the Electronic Transaction does not comply with any warranty contained in clause 7 above;

8.1.3 a mutilated, defaced, blank or illegible Card was accepted;

8.1.4 you do not present the Electronic Transaction within the agreed period;

8.1.5 at the time when the Electronic Transaction was done, any term of this agreement had been or was being violated;

8.1.6 the supplied goods and/or services paid for by the Cardholder were received broken, defective, incomplete or otherwise not suitable for the purpose for which they were sold, and the Cardholder returned the goods.

8.1.7 iKhokha may, in its sole discretion, choose to treat any of the abovementioned Electronic Transactions as valid but without prejudice to iKhokha's right in any following Electronic Transaction to treat any defect of a similar kind as invalid.

8.2 In the case of an invalid Electronic Transaction as set out above, iKhokha has the right to Chargeback the said Electronic Transaction as described in clause 11.1.1.

## 9 REFUNDS

9.1 If the purchase price of the goods is to be refunded to the Cardholder or if You allow an adjustment of the purchase price, You shall process the refund in the prescribed manner.

9.2 You cannot refund a transaction larger than R750.00, with your iKhokha Edge Card reader.

9.3 You may not make a cash refund to a Cardholder.

9.4 You must provide an SMS or e-mailed version of the credit voucher to the Cardholder.

9.5 You must present such credit voucher to iKhokha within 2 days.

9.6 You shall keep a copy of the credit voucher for a period of at least 180 days.

## 10 PROVISIONS RELATING TO ELECTRONIC TRANSACTIONS

10.1 You shall be responsible for the payment of any charges or extra charges by any cellular service provider or any other governmental or non-governmental body that has the authority to control the use of the Edge Card Reader and any connections required for the proper functioning of the Edge Card Reader.

10.2 iKhokha shall not be liable for any damage, network breakdown, system failure or equipment malfunction or damage to facilities caused by power failures or similar events or loss or damage caused by events beyond iKhokha's control and/or the fact that You or the Cardholder are not able to gain access to the mobile networks or to utilise it.

10.3 You shall ensure that all of Your employees who are duly authorised to do so, shall be properly trained to perform any Electronic Transaction by way of an Edge Card Reader.

10.4 Each Electronic Transaction performed shall be deemed to be valid and its validity may not be questioned by You.

10.5 You shall be responsible for any error occurring or fraud or Laundering committed through the use of the Edge Card Reader.

## 11 DEBITING OF YOUR ACCOUNT

11.1 iKhokha has the right to debit your bank account with:

11.1.1 the value of reversals of invalid electronic transactions and the value of Chargebacks;

11.1.2 the fees referred to in clause 4.5;

11.1.3 any refund due to a Cardholder and not processed or rectified by You;

11.1.4 any overpayments due to clerical or electronic errors by either party;

11.1.5 the value of transactions about which a disagreement exists as raised by a Cardholder. iKhokha shall have a right of full recourse to You should any disagreement arise between You and the

Cardholder;

11.1.6 interest at Absa Bank Limited's prime overdraft rate payable by You to iKhokha on any amount due.

11.1.7 any charges incurred as a result of your abuse, misuse or unauthorised use of the service and/or any damage incurred as a result of your failure to comply with any provision contained in the Agreement, as well as for any charges incurred as a result of the loss or theft of the SIM card in your iKhokha XL device where applicable

11.2 You also hereby authorise iKhokha to issue and deliver payment instructions to your banker for collection against your account at your bank as specified in your iKhokha Payment Acceptance Merchant Application on condition that the sum of such payment instructions will not differ from your obligations as agreed to in the iKhokha Payment Acceptance Terms and Conditions and the iKhokha Payment Acceptance Merchant Application (Merchant UID \_\_\_\_\_)

11.2.1 The individual payment instructions so authorised must be issued and delivered on the date when the obligation in terms of this Agreement is due and the amount of each individual payment instruction may not differ as agreed to in terms of the iKhokha Payment Acceptance Terms and Conditions and the iKhokha Payment Acceptance Merchant Application.

11.2.2 You agree that the first payment instruction will be issued and delivered on either the date that a transaction chargeback, refund or payment adjustment is actioned. Alternatively if applying for additional services from iKhokha the relevant payment instruction will be issued regularly on the 1st of each month.

11.2.3 If however, the date of the payment instruction falls on a non-processing day (weekend or public holiday) you agree that the payment instruction may be debited against your account on the following business day; or subsequent payment instructions will continue to be delivered in terms of this authority until the obligations in terms of the Agreement have been paid or until this authority is cancelled by you by giving you notice in writing of not less than the interval (as indicated in the previous clause) and sent by prepaid registered post or delivered to your address indicated above.

11.2.4 You acknowledge that all payment instructions issued by iKhokha shall be treated by your bank as specified in the iKhokha Payment Acceptance Application as if the instructions had been issued by you personally.

11.3 You will pay all debits upon presentation, and You will be responsible for the costs of any debits drawn by iKhokha.

11.4 You will pay an administration fee for each payment due by You to iKhokha, which is returned unpaid by a bank.

11.5 You will pay an administration fee for clerical errors that occur because Electronic Transactions were incorrectly processed, as may be stated from time to time on the merchant statement.

11.6 You hereby irrevocably authorise iKhokha to debit Your nominated bank account with any of the amounts stated in clauses 4.5, in clauses and sub clauses 11.1 to 11.5 and clause 12.3. You undertake to immediately inform iKhokha in writing of any changes in Your bank account details.

**12 FRAUDULENT TRANSACTIONS**

12.1 In this clause "Fraudulent Transaction" means any transaction which would be fraud or Laundering (regardless of whether an Electronic Authorisation Function code number has been issued by iKhokha to You) in terms of the common law or statute. This includes, without limitation, any purchase and/or transaction made by anyone who is not the authorised Cardholder, or someone authorised by the Cardholder or the use of a Card which has not been issued by a bona fide (good faith or authorised) Card Issuer.

12.2 You shall not process Electronic Transactions that You know or should have known are Fraudulent Transactions or unauthorised by the Cardholder. You agree that You shall be responsible for the actions of Your employees at all times.

12.3 iKhokha has the right to debit Your bank account at any time with the value of all Fraudulent Transactions electronically posted by You.

12.4 iKhokha shall be entitled to and hereby reserves the right to immediately end this agreement if fraud is committed by You or any Fraudulent Transaction is posted by You.

12.5 If your iKhokha merchant agreement is terminated due to confirmed suspicion of processing of fraudulent transactions with your card reader, you will be expected to return the card reader to iKhokha or allow iKhokha to collect the card reader in line with PCI policy and without any expectation or right to any form of compensation or refund.

**13 DISCLOSURE OF INFORMATION**

13.1 You must inform iKhokha in advance of any material change in the nature of Your business and/or ownership of Your business as indicated on the application form.

13.2 You must tell iKhokha about any previous merchant agreements you concluded or attempted to conclude with any financial institutions including, without limitation, any restrictive conditions applicable to and/or the reasons for cancellation of any of those merchant agreements. You hereby authorise iKhokha to investigate Your previous merchant agreements and merchant agreement applications.

13.3 You may not give Cardholder account information to third parties except as required by law. You shall keep all material on which account numbers and signatures of Cardholders appear, in a safe and secure area that only authorised personnel may access. All material that you wish to dispose of must first be destroyed in a way that makes it unreadable before you dispose of it.

13.4 iKhokha may give information about You to VISA International Service Association, MasterCard International Incorporated and other financial institutions. iKhokha may use this information in any fraud prevention schemes which may be set up. This includes the national merchant alert service, the merchant performance reporting service and the member alert to control high risk (merchant) system, to help iKhokha and the abovementioned institutions to identify merchants who are or may become involved in, amongst other things, fraud or suspected fraud, bankruptcy or any other similar proceedings, and any other such matter which would help iKhokha and these institutions in their effort to prevent fraud.

**14 INSPECTIONS**

14.1 iKhokha has the right to conduct physical inspections and investigations at Your premises or at any other place that iKhokha may consider relevant to the investigation while handling claims of Cardholders and when suspected fraud is investigated. If iKhokha suspects any irregularities during such investigations, iKhokha shall have the right to deactivate Your Edge Card Reader.

**15 ACCOUNTS**

15.1 You shall raise any query about the correctness or any other aspect of any entry on Your account within 30 days from the date on which such entry appeared on Your statement relating to Your current account.

**16 BREACH**

16.1 If a party commits a breach of any material provision of this agreement and does not remedy this breach within 14 days after receiving written notice from the other party asking it to do so, then the wronged party will have the right, without prejudice to its other rights in law, to cancel this agreement immediately or to claim specific performance of all the defaulting party's obligations whether or not these obligations have fallen due for performance, in either event without prejudice to the wronged party's right to claim damages.

**17 RESOLUTION OF DISPUTES**

17.1 If any dispute arises between the parties about the interpretation or application of the provisions of this agreement, this dispute will, unless the parties resolve it, be referred to and be settled by arbitration in terms of this clause.

17.2 Any party to this agreement may demand that a dispute be settled in terms of this clause by giving written notice to the other party.

17.3 This clause will not stop a party from obtaining urgent interim relief from a court of competent jurisdiction pending the decision of the arbitrator. The arbitration will be held:

17.3.1 in Pretoria;

17.3.2 with only the legal and other representatives of the parties to the dispute present;

17.3.3 according to the formalities and procedures decided on by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, as the intention is that the arbitration will be held and completed as soon as possible; and

17.3.4 on the basis that the arbitrator will have the right to settle the dispute according to what he considers to be just and equitable in the circumstances.

17.4 The following arbitrators will be acceptable to both parties. If the matter in dispute is principally:

17.4.1 a legal matter, a practising attorney or advocate of Pretoria of at least 15 years standing;

17.4.2 an accounting matter, a practising chartered accountant of Pretoria of at least 15 years standing;

17.4.3 any other matter, any independent and suitably qualified person.

17.5 If the parties to the dispute do not agree on whether the dispute is principally a legal, accounting or other matter within 7 days after the arbitration was demanded, the matter will be regarded as a legal matter.

17.6 If the parties cannot agree on an arbitrator within 14 days after notice is given in terms of clause 17.2, the arbitrator will be appointed at the request of any party to the dispute by the chairman for the time being of the Pretoria Bar Council according to the provisions of clauses 17.3 and 17.4.

17.7 The arbitrator's decision will be final and binding on the parties to the dispute. The arbitrator's decision may be made an order of any court under whose jurisdiction the parties fall, at the instance of any of the parties to the dispute.

17.8 The arbitrator will have a right to make such award including, without limitation, an award for specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion may see fit and fitting. He may deal as he sees fit with the question of costs, including if applicable, costs on the attorney and client scale, and his own fees.

17.9 The provisions of this clause:

17.9.1 are an irrevocable consent by the parties to any proceedings in terms of this clause and no party will have the right to withdraw from this or claim at any such proceedings that it is not bound by such provision;

17.9.2 are severable from the rest of this agreement and will remain valid even if this agreement is ended or invalid.

#### **18 DURATION**

18.1 This agreement shall be valid from the date on which it was signed by the last party signing. It will remain valid for an indefinite period until one of the parties ends it by giving to the other party 30 days' written notice, subject to the provisions of clause 12.4.

#### **19 GENERAL**

19.1 By signing this document, you are agreeing that you have reviewed the above consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents

19.2 Unless this agreement states differently, no alteration of this agreement shall be of any force or effect unless all parties have agreed on and signed same, and no waiver by any party shall be of any force or effect unless such party has given such waiver in writing.

19.3 Any relaxation or indulgence or extension of time granted by iKhokha to You will not constitute a novation or waiver of any of iKhokha's rights against You.

19.4 If You have already entered into a merchant agreement with iKhokha, such agreement shall take precedence and prevail over this agreement if there is any conflict between the two agreements.

19.5 You may not cede (transfer), delegate or assign any of your rights or obligations under this agreement.

#### **20 DOMICILIA AND NOTICE**

20.1 The parties choose as their respective domicilia citandi et executandi (each a "domicilium") for all purposes, their respective addresses set out in clauses 1.1 and 1.2.

20.2 Any party may change its domicilium to any other physical address within the Republic of South Africa by giving written notice to that effect to the other.

20.3 Any notice given by one party to the other ("addressee") which:

20.3.1 is delivered by hand during normal business hours at the addressee's domicilium will be presumed to have been received by the addressee at the time of delivery;

20.3.2 is posted by prepaid registered post to the addressee's domicilium, will be presumed to have been received by the addressee on the 7th day after date of posting;

20.3.3 is faxed to the addressee's fax number will be presumed to have been received by the addressee on the date of transmission thereof

## PAYMENT ACCEPTANCE: MERCHANT APPLICATION

### Application for Registration

(Private and Confidential)

- The Completion of the application does not imply acceptance by iKhokha. Please note that iKhokha will complete a full credit survey based on the information supplied in this application.
- These enquiries can take up to 2 (two) working days to complete.

#### Merchant Type

Phone Type	VAT Registration No.
Website	Cell No.
Contact Name	Merchant Category Code
Email Address for merchant statements	FICA Checked
	<input type="checkbox"/> YES <input type="checkbox"/> NO

Merchant No.

#### Group ID

#### Merchant Class

Retail, forecourt, restaurant, Sasol, workshop, inhouse workshop, inhouse forecourt, medical retail or other (if other, please specify)

#### The Applicant

No. of outlets requiring card facilities.  
if greater than 1, please complete "Additional outlets/Link to applications/Corporate application for each"

Trading Name of Applicant

Entity Type

Trading Address

Postcode

### Business Banking Details

Name of Applicant's Business Bank

Account No.

Branch Code

Name of Account

### Vetting

ITC

YES	NO
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Cheque Conduct

YES	NO
-----	----

Bank Report

YES	NO
-----	----

Experian

YES	NO
-----	----

Match

YES	NO
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### The following cards can be accepted via your iKhokha Card Reader:

	YES	NO	Transaction Fee that will apply for each %
MasterCard credit cards	YES	NO	2.75%
MasterCard debit cards	YES	NO	2.75%
MasterCard Maestro	YES	NO	2.75%
MasterCard pre-paid	YES	NO	2.75%
Visa credit cards	YES	NO	2.75%
Electron (Visa debit cards)	YES	NO	2.75%
American Express cards	YES	NO	N/A
Diners Club cards	YES	NO	N/A

### The following cards are not accepted via your iKhokha Card Reader:

	YES	NO	Transaction Fee that will apply for each %
Garage cards and Petro cards	YES	NO	N/A
Fleet	YES	NO	N/A
RCS	YES	NO	N/A

### The following cards are not accepted via your iKhokha Card Reader:

## PCI DSS - Compliance

1. Emerge Mobile operates the iKhokha mobile Point of Sale (mPOS) payment solution which requires compliance with Payments Council International (PCI) and PCI Data Security Standards (DSS) regulations. It is a requirement of these standards that Emerge Mobile manages the ownership and use of the Edge card readers supplied to provide mPOS facilities.

It is therefore a term of registering for this facility that you agree to the following:

- 1.1 That you will not copy or store any customer card data in any form whatsoever
- 1.2 That you will under no circumstances tamper with or attempt to open an Edge Card Reader
- 1.3 That you will inspect the Edge Card Reader(s) from time to time and that if you detect any evidence of tampering with the device, you will immediately inform the iKhokha support center and furthermore that you will not attempt to tamper with or open an Edge Card Reader yourself
- 1.4 That you will ensure that you know the whereabouts of the Edge Card Reader(s) supplied to you at all times and that in the event of one being lost, you will immediately inform the iKhokha support center
- 1.5 That you will return all Edge Card Reader(s) in your possession to iKhokha for the deActivating should you wish to deregister as an iKhokha mPOS operator. Refunds will only be provided if deregistration occurs within 5 business days of activation

## Personal Information Form - Business

### 2. ABOUT THIS FORM

2.1 This form is an addition to all other agreements between you and iKhokha. If there is a term in this form that is different from a term in another agreement that you have with iKhokha the terms of this form will apply.

2.2 If more than one person signs this form the word "I" will be read as "We".

2.3 The word "iKhokha" means Emerge Mobile (Pty) Ltd. Registration number 2012/067507/07 and includes all subsidiaries and associates of iKhokha.

2.4 The word "use" means any uses of or activities relating to personal information, including the collection, recording or its sharing within other entities within iKhokha

### 3. HOW IKHOKHA WILL USE YOUR PERSONAL INFORMATION

3.1 Any of iKhokha's operators or agents (including those who are based outside of South Africa) may use your personal information. This includes iKhokha's sub-contractors and their agents, professional advisers and any other similar third parties. These third parties will be bound to confidentiality agreements.

3.2 iKhokha may use and keep your information as long as necessary or allowed for any of the following purposes:

- 3.2.1 Legal and regulatory
  - 3.2.2 Crime prevention
  - 3.2.3 Credit risk management services
  - 3.2.4 Marketing (with your consent)
  - 3.2.5 Research (with your consent)
  - 3.2.6 Internal reporting and approval processes and policy requirements
- This includes when you are no longer a client of iKhokha.

3.3 For iKhokha to manage its risks, you accept that iKhokha may receive and provide your personal information, including information about how you conduct your accounts, to:

- 3.3.1 Credit risk management services (including credit bureau); and
- 3.3.2 Crime prevention agencies

### 4. IKHOKHA MUST CHECK YOUR INFORMATION

4.1 iKhokha must comply with national and international laws, regulations, policies, rules and requirements to prevent criminal activities, money laundering and terrorist financing, sanctions and prohibited business activity laws and rules and violations. iKhokha must therefore check all information from and about you and monitor and screen your information, instructions and transactions on an ongoing basis. This may cause some delays in transactions that you make or accounts you apply for. We may also have to end our relationship with you without warning.

**4.2 iKhokha is not responsible for any losses or damages that you suffer because of these checks or by iKhokha ending the relationship. This includes any loss of profits or savings that you otherwise expected to make.**

### 5. CONSENT TO THE USE OF YOUR PERSONAL INFORMATION

#### 5.1 Marketing Consent

At times, iKhokha will want to tell you about products, services, special offers, and research that iKhokha believes may interest you. If you do not want us to contact you with this type of information, you must tell us by unsubscribing from the iKhokha e-mails:

- 5.1.1 This choice will replace any choices you have made before this date.
- 5.1.2 This choice does not limit iKhokha's right to contact you.
- 5.1.3 About the administration of any goods and services that we provide; or
- 5.1.4 In our dealings with you; or
- 5.1.5 In terms of our duties under any laws

#### 5.2 Changing your marketing consent:

If, in future you do not want iKhokha to market directly to you, you can stop this by:

- 5.2.1 Contracting iKhokha's call centre.
- 5.2.2 Registering a block on any register which iKhokha legally must recognise.

#### 5.3 iKhokha will not charge you a fee for a change in consent.

5.4 If you change your marketing choice, iKhokha will make these changes as soon as possible.

5.5 Upon receipt of your notification, it may take up to 30 (thirty) days for us to remove your information from iKhokha's marketing channels.

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## SALE AND PURCHASE AGREEMENT (IKHOKHA CARD READER DEVICE)

The entering into of this Agreement by the Parties is facilitated by:

Emerge Mobile (RF) (Pty) Ltd ("Emerge")

Registration number: 2012/067507/07

Physical Address: Unit 4, 12 Frosterley Park, Frosterley Crescent, La Lucia Ridge, Durban, 4051

Email Address: matt@emergemobile.co.za

(hereinafter referred to as "the Facilitator");

### 1. PARTIES

The Parties to this Agreement are:

1.1. Retail Capital (Pty) Ltd

Registration Number: 2010/019149/07

Physical Address: 155 Campground Road, Newlands, Cape Town, 7700

(hereinafter referred to as "Retail Capital"); and

1.2 Business/Trading Name:

Registration Number/Id Number:

Physical Address: Email Address:

(hereinafter referred to as the "**Merchant**")

### 2. SUMMARY OF AGREEMENT & COMMENCEMENT

2.1. The Facilitator introduced the Product to the Merchant and assisted the Merchant in completing and submitting this Agreement to Retail Capital as set out more fully below.

2.2. By signing this Agreement, Retail Capital offers to purchase from the Merchant, against payment of the Purchase Price, its full right, title and interest in and to the Purchased Amount of the Merchant's Future Receivables arising from Payments by the Merchant's customers to the Merchant, on the Standard Terms and Conditions which are attached hereto.

2.3. The Merchant's business address is the address reflected on its online profile with the Facilitator and makes use of the bank account specified in clause 5 below.

2.4. The Merchant will as agent for and on behalf of Retail Capital:

2.4.1. remit the Purchased Amount of Future Receivables to Retail Capital by receiving of this amount for and on behalf of Retail Capital in the Nominated Bank Account, and then paying to Retail Capital as principal, through the Debit Order process, an amount equal to the Debit Order Amount;

2.4.2. pay the Debit Order Amount from Future Receivables to Retail Capital as principal until the Merchant has paid Retail Capital the full Purchased Amount plus the Processing Fee.

2.5. The Agreement will commence once the Merchant has clicked on the acceptance of the cash advance offer tab on the Offer Page or made any other indication (electronic or otherwise) to be bound to the Agreement.

### 3. KEY TERMS

3.1 Purchase Price:	R XXX.XX
3.2. Purchased Amount	R XXX.XX
3.3. Processing Fee:	R XXX.XX
3.4. Total Repayable:	R XXX.XX
3.5. Debit Order Amount:	R XXX.XX
3.6. Debit Order Day:	R XXX.XX
3.7. Repayment Period	R XXX.XX

### 4. PROCESSING FEE

The processing fee (incl. of Vat) is the cost of the processing, preparation and completion of documents, setting up of the Debit Order and the liaison and interaction with third parties.

### 5. NOMINATED BANK ACCOUNT

The Merchant's Nominated Bank Account details are:

- 5.1 Account Name:
- 5.2 Bank Name:
- 5.3 Account No.:
- 5.4 Branch Code:

### 6. EXECUTION & SIGNATURE

- 6.1. The parties agree that this Agreement (as defined in the standard terms and conditions) can be signed electronically;
- 6.2. The Agreement will be deemed to be signed electronically by both parties once the Merchant has clicked on the acceptance of the cash advance offer tab on the Offer Page and/or any other method of acceptance that is displayed and/or required on the Offer Page.
- 6.3 This agreement has been signed electronically as per paragraph 6.2 on (insert date)

## STANDARD TERMS AND CONDITIONS

### 7. DEFINITIONS

In this Agreement, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

- 7.1 "Acceptance Date"** means the date upon which the Merchant has clicked on the acceptance of the cash advance offer tab on the Offer Page or any other method of acceptance that is displayed on the Offer Page;
- 7.2 "Agreement"** means the Sale and Purchase Agreement (including these terms and conditions) read together with the Application Page, Offer Page, Debit Order Form and the Merchants' Profile and includes any annexures, addenda, appendices and schedules referred to in any of the documents or applications referred to in this agreement;
- 7.3 "App"** means a separate application on the Emerge App whereby the Merchant through the Merchant's Profile (on the Emerge App) completes an Application form on the programme, and based on the financial and other information provided by the Merchant, Retail Capital offers to purchase the Merchant's Future Receivables at a certain amount subject to the terms and conditions contained herein;
- 7.4 "Application Page"** means the page/s on the App where the Merchant makes application to Retail Capital for the sale of the Merchant's Future Receivables, which will include, but not limited to, the financial information of the Merchant;
- 7.5 "Acquirers"** means the banks and/or independent service operators, including but not limited to the Facilitator, which own the electronic processing equipment provided to the Merchant or sell such equipment to the Merchant, including but not limited to the Card Reader device, and which facilitate Payments to the Nominated Bank Account;
- 7.6 "Business Day"** means any day that the Merchant trades and receives Payments by its customers;
- 7.7 "Card Reader device"** means the device supplied by Emerge to the Merchant that reads the debit or credit card of the customer and allows a transaction to occur between the Merchant and the customer, used in conjunction with the Emerge App;
- 7.8 "Debit Order"** means the process whereby the Merchant, in terms of the Debit Order Form, instructs and authorises its Nominated Bank to deduct a fixed or varied amount due by the Merchant from the Merchant's Nominated Bank Account on a weekly basis;
- 7.9 "Debit Order Amount"** means the weekly amount due by the Merchant as agent for and on behalf of Retail Capital, to Retail Capital in respect of the Purchased Amount to be payable by Debit Order every month. The amount has been calculated by Retail Capital to recover the Purchased Amount and Processing Fee over the Repayment Period. The Debit Order Amount is the amount reflected in clause 3 of the Sale and Purchase Agreement;
- 7.10 "Debit Order Form"** means the electronic form completed by the Merchant on the App whereby the Merchant instructs and authorises the Nominated Bank to deduct the Debit Order Amount from the Merchant's Nominated Bank Account on a weekly basis and to pay the Debit Order Amount to the Retail Capital's nominated bank account. The Merchant agrees to the Debit Order Amount being deducted from its Nominated Bank Account once the Debit Order Form on the App is submitted by the Merchant or the Merchant applies an electronic signature on the Debit Order Form or the Merchant indicates in some other way that the Debit Order has been authorised;
- 7.11 "Electronic Payment Mechanisms"** means all mechanisms available to the Merchant's customers to pay the Merchant for goods and/or services, which includes but is not limited to the Card Reader device used in conjunction with the App, and includes payment by way of credit and debit cards, mobile payments and any other form of payment allowed by the electronic processing equipment, which includes the Card Reader device and the Emerge App;
- 7.12 "Emerge"** means Emerge Mobile (RF) (Pty) Ltd, Registration No 2012/067507/07, a company registered under the laws of South Africa with its registered address being Unit 4, 12 Frosterley Park, Frosterley Crescent, La Lucia Ridge, Durban, 4051;
- 7.13 "Facilitator"** means Emerge, who has facilitated the successful conclusion of this Agreement between the Merchant and Retail Capital, on the terms set out in this Agreement, whose particulars are reflected on the face of the "Sale and Purchase Agreement" and to which these Standard Terms and Conditions are attached;
- 7.14 "Future Receivables"** means the proceeds of sales by the Merchant to its customers after the Acceptance Date, arising from Payments by the Merchant's customers, less any fees, charges or deductions made by any of the Acquirers and paid to the Nominated Bank Account by any of the Acquirers;
- 7.15 "Merchant"** means the Party who contracts with Retail Capital on the terms set out in this Agreement, whose particulars are reflected on the Merchants Profile. The Merchant hereby consents to Retail Capital having access to its profile on the App in order to obtain the necessary information of the Merchant. Furthermore, the Facilitator shall grant Retail Capital access to the profile of the Merchant on the Emerge App;
- 7.16 "Merchant's Profile"** means the profile of the Merchant on the Emerge App which records at least the following details of the Merchant:
- 7.16.1 Full names;
  - 7.16.2 Identity number or registration number;
  - 7.16.3 Physical, business or registered address;
  - 7.16.4 Nominated Bank Account details
- 7.17 "Nominated Bank"** means the bank(s) at which the Nominated Bank Account is held;
- 7.18 "Nominated Bank Account"** means the bank account nominated in clause 5 of the "Sale and Purchase Agreement", which shall take receipt of all the Future Receivables arising from Payments by customers to the Merchant;

**7.19 "Offer Page"** means the page on the App where Retail Capital offers to purchase the Merchant's Future Receivables in return for payment of the Debit Order Amount;

**7.20 "Parties"** means the Merchant and Retail Capital and **"Party"** means either one of them;

**7.21 "Payments"** means payments made by the Merchant's customers to the Merchant by Electronic Payment Mechanisms;

**7.22 "Processing Fee"** means the fee charged by Retail Capital for the processing, preparation and completion of documents, the and the liaison and interaction with third parties;

**7.23 "Product"** means the sale by the Merchant to Retail Capital, against payment of the Purchase Price, of its full right, title and interest in and to the Purchased Amount of the Merchant's Future Receivables arising from Payments by the Merchant's customers to the Merchant;

**7.24 "Purchase Price"** means the amount designated as such in clause 7 of the "Sale and Purchase Agreement", which is the amount that Retail Capital will pay the Merchant in exchange for the Purchased Amount, subject to clause 7.7 below;

**7.25 "Purchase Price Payment Date"** means the date upon which Retail Capital pays the Purchase Price to the Merchant;

**9.26 "Purchased Amount"** means the amount designated as such in clause 7 of the "Sale and Purchase Agreement", which is the amount of the Merchant's Future Receivables, which it has sold to Retail Capital.

**7.27 "Repayment Period"** means the fixed period of time over which the Purchased Amount will be paid by the Merchant to Retail Capital by Debit Order as reflected on the Offer Page;

**7.28 "Retail Capital"** means Retail Capital (Pty) Ltd, a private company with Registration Number 2010/019149/07, with its principal place of business situated at 155 Campground Road, Newlands, Cape Town, 7700;

**7.29 "South Africa"** means the Republic of South Africa;

**7.30 "Termination Event"** means any one or more of the events or circumstances described as a termination event as set out in clause 8.1.

**7.31 "Emerge App"** means means the self-contained program and/or piece of software and/or application designed and developed by Emerge (of which the App forms a part) for a user to download to their mobile device and/or computer to facilitate and process a transaction with their customer in conjunction with the Card Reader device;

## 8. SALE AND PURCHASE

8.1 Upon the Merchant accepting Retail Capital's offer to purchase the Merchants Future Receivables on the App, by clicking on the "acceptance of offer" tab on the App or any other method of acceptance displayed or required on the Offer Page, a binding agreement between the parties has come into existence, subject to the terms and conditions contained herein.

8.2 The Merchant sells, and Retail Capital purchases, the Purchased Amount.

8.3 Upon payment of the Purchase Price to the Merchant, Retail Capital will own the right, title and interest in and to the Purchased Amount, without the need for any other act of transfer.

8.4 The Purchase Price paid by Retail Capital is for the purchase of the Purchased Amount and is not a loan from Retail Capital to the Merchant.

8.5 The Merchant acknowledges that the full right, title and interest to the Purchased Amount is being ceded by the Merchant to Retail Capital.

8.6 The Merchant will take receipt of the full amount of the Future Receivables into the Nominated Bank Account, and will then as agent for and on behalf of Retail Capital pay the Debit Order Amount on the chosen debit order day per the Debit Order Form, utilising the debit order process.

8.7 The Merchant as agent for and on behalf of Retail Capital will continue to pay the Debit Order Amount to Retail Capital until such time as the entire Purchased Amount plus the Processing Fee has been paid to Retail Capital.

8.8 In the event that any of the Future Receivables are for any reason reversed, Retail Capital shall not repay the Merchant the amount so reversed (or any portion thereof) but shall rather take the reversal into account when evaluating any adjustment of the Debit Order Amount.

## 9 APPLICATION OF THE PURCHASE PRICE

9.1 It is agreed that the Purchase Price may only be utilised by the Merchant to purchase a Card Reader device from the Facilitator;

9.2 The Merchant accordingly and hereby expressly authorises and instructs Retail Capital to pay the Purchase Price to the Facilitator;

9.3 Once the Facilitator has received the Purchase Price on behalf of the Merchant, the Facilitator shall release the Card Reader device to the Merchant in terms of the agreement entered into between the Merchant and Emerge;

9.4 Ownership in the Card Reader device shall transfer to the Merchant on delivery thereof by the Facilitator to the address stipulated on the Merchant's Profile.

## 10 PAYMENT OF THE PURCHASED AMOUNT

10.1 The Merchant will as agent for and on behalf of Retail Capital pay the full Purchased Amount to Retail Capital in weekly instalments over the Repayment Period;

10.2 The instalments ("the Debit Order Amount") shall be secured by the Merchant authorising a Debit Order on his Nominated Bank Account, by completing the Debit Order Form on the App;

10.3 The Debit Order Amount has been calculated by Retail Capital to recover the Purchased Amount and Processing Fee over the Repayment Period.

## 11 REPRESENTATIONS

11.1 The Merchant makes the following representations and warranties to Retail Capital on the Acceptance Date, the Purchase Price Payment Date and on each day during the period of this Agreement:

11.1.1 the Merchant has not entered into any Invoice Financing Agreement in terms of which it has sold, factored or discounted its existing or future invoices.

11.1.2 in respect of each of the Merchant's Payments:

11.1.2.1 each Payment is free from all encumbrances and the Purchased Amount is sold by the Merchant to Retail Capital with full title guarantee, and no other person has any right or interest in or to it; and

11.1.2.2 the Merchant has no obligations to the Facilitator other than under the Merchant's agreement with the Facilitator.

11.1.3 in the event of the Merchant being a juristic entity, then the signatory to this Agreement has the legal capacity and has taken all necessary steps and corporate action required to empower and authorise the Merchant to enter into and implement this Agreement on the terms and conditions set out herein.

11.1.4 this Agreement constitutes an agreement valid and binding on the Merchant and is enforceable against the Merchant in accordance with its terms.

11.2 The Merchant acknowledges that the provisions of clauses 11.1.1 and 11.1.2 are of fundamental importance to Retail Capital and go to the root of this Agreement.

## 12 WARRANTIES AND UNDERTAKINGS BY THE MERCHANT

12.1 The Merchant undertakes that during the currency of this Agreement, it will at all times:

12.1.1 conduct its business in a manner consistent with its past business practices, and not voluntarily cease operation of its business;

12.1.2 exclusively use the Nominated Bank Account for the processing and settling of all of Payments;

12.1.3 not take any action whatsoever to discourage the use of Electronic Payment Mechanisms to pay for goods and/or services by persons purchasing goods and/or services from the Merchant;

12.1.4 not permit any event to occur which could have an adverse effect on the use, acceptance or authorisation of Electronic Payment Mechanisms for the purchase of its goods and/or services;

12.1.5 not amend or terminate the Acquiring Contracts with the Facilitator, nor take any action which could give the Acquirers any right to terminate the Acquiring Contracts;

12.1.6 not take any action that may cause the current Acquirer contract with the Facilitator to be changed to any other acquirer/s, or that may add additional acquirers;

12.1.7 not conduct its business under any name other than the Business/Trading Name stated on the face of this Agreement;

12.1.8 not sell, factor or discount any of its Payments, except to Retail Capital;

12.1.9 not enter into any Invoice Financing Agreement;

12.1.10 not alienate or encumber any of its Payments;

12.1.11 not sell, dispose, convey or transfer its business or assets to any person, unless that person first agrees in writing to assume all of the Merchant's obligations under this Agreement, and Retail Capital agrees to such person assuming the Merchant's obligations;

12.1.12 ensure that it has given the Facilitator the necessary consent for Retail Capital to access the statements of the Acquirers which indicate the transactions on the Nominated Bank Account. The Merchant and/or Facilitator gives its consent for Retail Capital to engage directly with the Acquirers to obtain information as required from time to time;

12.1.13 not change its place/s of business from the Business Address stated on the face of this Agreement;

12.1.14 not make any representation or statement in the Agreement or in any other document provided by the Merchant in connection with this Agreement which is incorrect or misleading in any material respect when made;

12.1.15 not alter or terminate the Debit Order instruction to the bank without Retail Capital's prior written consent;

12.1.16 not do (or fail to do, as the case may be) anything to avoid complying with any of its obligations contained in this Agreement;

12.1.17 maintain insurance in such amounts and against such risks as are consistent with its past business practice and provide proof of such insurance to Retail Capital on request;

12.1.18 Either personally or through the Merchants employees, treat the Card Reader device with due care and not tamper or do anything to the Card Reader device whether intentionally or recklessly, that would affect the warranty that is in place in respect of the device;

12.1.19 provide Retail Capital with such further information regarding the Merchant's financial condition and business operations which is required to maintain the accuracy of the information held by Retail Capital, or as Retail Capital may reasonably request from time to time; and

12.1.20 promptly notify Retail Capital of the happening of any Termination Event.

12.2 The warranties specified in clauses 11.1.1, 11.1.2, 12.1.2, 12.1.5, 12.1.6,

12.1.7, 12.1.13 may only be amended if the Merchant first obtains the written consent of Retail Capital to such amendment/s, which consent shall be at the sole and unfettered discretion of Retail Capital.

12.3 Each of the warranties given by the Merchant in clauses 11.1.1, 11.1.2 and 12.1 is:

12.3.1 a separate warranty and is in no way limited or restricted by inference from the terms of any other warranty; and

12.3.2 is deemed to be a material representation inducing Retail Capital to enter into this Agreement.

## 13 WARRANTIES BY FACILITATOR

13.1 The Facilitator warrants that:

13.1.1 it has a valid and binding supply agreement with the Supplier in respect of the manufacturing and supply of the Card Reader device;  
 13.1.2 it has the right to sell and supply the Card Reader device to the Merchant;  
 13.1.3 the Card Reader device to be supplied to the Merchant has not been and shall not be pledged to a third party as security, is and shall not be encumbered in any other form and no third party has or will have a claim thereto;  
 13.1.4 all the necessary details required to identify the Merchant, including but not limited to the name, physical and email address of the Merchant, is and will on date of Acceptance be reflected on the Merchants profile on the App developed by the Facilitator.

13.2 The Facilitator undertakes:

13.2.1 to have the Card Reader device repaired during the warranty period should it require a repair that is covered by Card Reader device warranty;  
 13.2.2 while the Card Reader device is under repair, to supply the Merchant with a replacement Card Reader device, at Emerge's own cost and it terms of Emerge's warranty policy with the Merchant;  
 13.2.3 to supply the Merchant with a new Card Reader device should the Supplier confirm that there is no reasonable prospect that the device can be repaired.

## 14 DEFAULT AND TERMINATION

14.1 A Termination Event shall occur if:

14.1.1 the Merchant breaches any term of this Agreement, including but not limited to, the breach of any of the warranties listed in clauses 7.1.1, 7.1.2 and 8.1, and fails to rectify such breach within 5 (five) days of receipt of written notice from Retail Capital requiring it to do so;  
 14.1.2 Retail Capital does not receive payment of a Debit Order Amount or an instruction is given by the Merchant to the Nominated Bank to cancel the Debit Order on the Nominated Bank Account  
 14.1.3 there is a material change in the ownership or control of the Merchant, or in the Merchant's shareholders (if the Merchant is a company), the Merchant's members (if the Merchant is a close corporation), the Merchant's partners (if the Merchant is a partnership) or the Merchant's trustees (if the Merchant is a trust);  
 14.1.4 the Merchant commits an act of insolvency as contemplated by the Insolvency Act, No. 24 of 1936;  
 14.1.5 an order is made by any court of competent jurisdiction, whether provisional or final, for the Merchant's winding up or sequestration (as the case may be);

14.1.6 the Merchant passes a resolution for its voluntary winding up;  
 14.1.7 the Merchant ceases to carry on business, disposes of its business, changes the fundamental nature of its business or disposes of the major portion of its assets other than for value;  
 14.1.8 the Merchant assigns its rights under this Agreement to any third party without Retail Capital's prior written consent;  
 14.1.9 the Merchant compromises generally with its creditors or merges with a third party;  
 14.1.10 the Merchant applies for, or enters into the process of business rescue as contemplated in the Companies Act, No. 71 of 2008;  
 14.1.11 the Merchant conducts and operates its business in a manner which Retail Capital, in its sole and absolute discretion, considers to be imprudent and/or irresponsible; 14.1.12 the Merchant is a natural person and;

14.1.12.1 becomes the subject of debt review proceedings;  
 14.1.12.2 dies;  
 14.1.12.3 becomes mentally incapacitated; or  
 14.1.12.4 is convicted of an offence.

14.2 Upon the occurrence of a Termination Event or at any time thereafter whilst the Termination Event is continuing, Retail Capital shall be entitled but not obliged, without prejudice to any other rights it may have in terms of this Agreement or at law, by written notice to the Merchant, to cancel this Agreement and claim from the Merchant, as liquidated damages, the full amount which Retail Capital would have received (being the Purchased Amount less any payments made by the Merchant) had the Termination Event not occurred;

14.3 Notwithstanding the cancellation, Retail Capital shall be entitled to continue submitting debit orders to the Nominated Bank Account in terms of the Debit Order process;

14.4 Notwithstanding any termination by Retail Capital of this Agreement, the Merchant shall indemnify and hold Retail Capital harmless from and against all liabilities, losses, costs or expenses, including but not limited to legal costs (calculated at the same rate as contemplated by clause 17.1.1), that Retail Capital may suffer, incur or sustain arising out of:

14.4.1 the happening of any Termination Event;  
 14.4.2 any cancellation of this Agreement;  
 14.4.3 a breach by the Merchant of its representations, or any of the terms of this Agreement and/or;  
 14.4.4 the protection and enforcement by Retail Capital of its rights and remedies under, and in respect of, this Agreement and any suretyship.

## 15 CERTIFICATE OF INDEBTEDNESS

15.1 A certificate issued under the signature of Retail Capital (or its duly authorised agent) that serves to certify the balance of the Purchased Amount still to be paid to Retail Capital including any Further Purchased Amount(s) by the Merchant as agent, that such amount is due to be paid and as to any other fact, matter or thing related to the purchase of the Merchant's Future Receivables by Retail Capital in terms of this Agreement, will be accepted as prima facie (that is, face value) proof of the contents and correctness thereof. Furthermore:

- 15.1.1 it will not be necessary to prove the appointment or signature of the person signing any such certificate;
- 15.1.2 the certificate will be sufficient for Retail Capital for the purposes of summary judgment, default judgment, provisional sentence, or any other proceedings, shall be valid as a liquid document for such purposes and shall, in addition, be prima facie proof for purposes of pleading or trial in any proceedings instituted by Retail Capital arising herefrom; and
- 15.1.3 the Merchant accepts that, in order to defend any such proceedings by Retail Capital, it will be necessary for the Merchant to prove that the amount on the certificate is not the amount that is owed by the Merchant.

## 16 DEED OF SURETYSHIP AND/OR GUARANTEE

16.1 In the event that Retail Capital requires that a party/parties stand as sureties, co-principal debtors and/or guarantors for the obligations of the Merchant to Retail Capital, such party/parties will execute a Deed of Suretyship and/or Guarantee in favour of Retail Capital.

16.2 It is expressly recorded that Retail Capital shall not be entitled to call on the Deed of Suretyship & Guarantee or exercise its rights against the party/parties who have bound themselves as sureties, co-principal debtors and/or guarantors for the obligations of the Merchant, unless a Termination Event has occurred.

## 17 COSTS

17.1 In the event of a Termination Event and Retail Capital exercising any of its rights against the Merchant in terms of clause 8.2, then:

- 17.1.1 the Merchant shall be liable to Retail Capital for the payment of all legal costs calculated on the scale as between attorney-and-own client, charged at a rate equivalent to twice the prevailing High Court tariff; and
- 17.1.2 the legal costs incurred by Retail Capital shall, in the event of Retail Capital exercising its rights in terms of clause 8.2, be added to the Purchased Amount, and Retail Capital shall be entitled but not obliged, to recover such legal costs through the Debit Order.

## 18 KYC - KNOW YOUR CUSTOMER

18.1 If any law requires Retail Capital to comply with "Know Your Customer" or similar identification procedures, the Facilitator will promptly and on written request, supply Retail Capital with such information or documentation as requested to carry out and satisfy such "Know Your Customer" or similar identification procedures.

## 19 DATA PERMISSIONS AND CONSENTS

19.1 By entering into this Agreement, the Merchant confirms, acknowledges and agrees that Retail Capital may use the particulars of the Merchant as contained in this Agreement or any transaction concluded under it, or any entry, account or other information held by Retail Capital (which may include personal information about the Merchant's directors, officers, shareholders, members or other individuals) for the purposes of:

- 19.1.1 considering the Merchant's application as encapsulated in this Agreement;
- 19.1.2 monitoring the operation of and performance of obligations in terms of this Agreement;
- 19.1.3 enquiring with (or where appropriate, searching at) vendors, suppliers, landlords/mortgagors, credit reference agencies, card and electronic payment transaction processors, banks and creditors about the Merchant, its directors, officers, shareholders, members, sureties or other related individuals;
- 19.1.4 credit decisions and assessing financial risks;
- 19.1.5 fraud prevention and preventing and detecting crime (including money laundering);
- 19.1.6 tracing and tracking purposes;
- 19.1.7 insurance purposes;
- 19.1.8 training purposes.

19.2 The Merchant furthermore agrees that Retail Capital may disclose any details of the Merchant's application in respect of this Agreement to:

- 19.2.1 any credit reference agency or credit bureau (who may make records of searches and enquiries which may be used by others for lending, credit or purchasing decisions concerning the Merchant or any related parties);
- 19.2.2 any trade register;
- 19.2.3 any party which is engaged in Retail Capital's business or who is acting on Retail Capital's behalf; or
- 19.2.4 any other party where Retail Capital is required or permitted to do so by law.

19.3 Retail Capital shall furthermore be entitled to:

- 19.3.1 transmit the details set out in this application (or any other information relating to the Merchant that is held by Retail Capital) to jurisdictions other than South Africa, which jurisdictions may not have data protection laws equivalent to those in South Africa;
- 19.3.2 monitor and/or record telephone calls made by the Merchant to Retail Capital, or by Retail Capital to the Merchant.

## 20 ADDRESSES FOR NOTICES AND LEGAL PROCESS

20.1 Each Party choose as its address for all purposes under this Agreement ("Chosen Address"), whether in respect of serving any court process or other documents, giving any notice or making any other communications of whatsoever nature ("Notice"), the following addresses:

- 20.1.1 The Merchant: the physical and email address recorded on the Merchants Profile on the App;
- 20.1.2 Retail Capital: the physical address referred to in clause 7.1 of the Sale and Purchase Agreement;
- 20.1.3 The Facilitator: its physical address referred to on page 1 of the "Sale and Purchase Agreement";

20.2 Any Notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent for Retail Capital to give notice to the Merchant by email.

20.3 Any Party may by Notice to the other Party, change its Chosen Address to another physical address or email address, provided that the change shall only become effective on the 7th (seventh) day of receipt (or deemed receipt) of the Notice by the other Party.

20.4 Any Notice:

- 20.4.1 delivered by hand to a responsible person during ordinary business hours at his Chosen Address, shall be deemed to have been received on the day of delivery;
- 20.4.2 if sent by prepaid registered post from within South Africa, be deemed to have been received within 5 (five) days of posting, unless the contrary can be proven;
- 20.4.3 sent by email to his Chosen Address, shall be deemed to have been received on the date of dispatch and at the time recorded by the computer/device used by the sender of the email (unless the contrary is proven).

20.5 Notwithstanding anything to the contrary herein contained, a Notice actually received by a Party shall be an adequate written notice or communication to him notwithstanding that it was not sent to or delivered at his Chosen Address.

## 21 RELIANCE ON TERMS

21.1 The provisions of this Agreement are agreed to for the benefit of the Merchant, the Facilitator, Retail Capital and the Acquirers and, notwithstanding the fact that the Acquirers and Facilitator are not party to this Agreement, it may rely upon the terms of this Agreement and raise them as defences in any action or application.

## 22 GOVERNING LAW

22.1 This Agreement will in all respects be governed by and construed in accordance with the laws of South Africa.

## 23 JURISDICTION

23.1 In terms of section 45 of the Magistrates Court Act, No. 32 of 1944, the Parties hereby consent to the jurisdiction of the Magistrates Court having jurisdiction under section 28 of the said Act in regard to all matters arising from this Agreement. It shall nevertheless be entirely within the discretion of Retail Capital as to whether to proceed against the Merchant in a Magistrates' Court or to do so in any other court having jurisdiction.

## 24 UNDERTAKINGS

24.1 By signature of this Agreement, the Merchant:

24.2 accepts and agrees to be bound by all the terms and conditions of this Agreement;

24.3 declare that all of the information that has been provided by it is true and correct in all respects, and is not misleading or deceptive in any way; and

24.4 acknowledge that it has received, read and carefully considered the terms of this Agreement.

## 25 ELECTRONIC SIGNATURE

25.1 The parties agree that this agreement may be signed electronically in terms of section 11 of the Electronic Communications and Transactions Act 25 of 2002. The Agreement will be deemed to be signed electronically by both parties once the Merchant has accepted Retail Capital's offer on the Offer Page, by clicking on the acceptance tab on the said Offer Page and/or any other method of acceptance that is displayed and or required on the Offer Page.

25.2 The Merchant furthermore agrees that all of its actions logged in the audit trail of the App serves and is sufficient to fulfil the requirements of "writing" as stipulated in section 12 of the Electronic Communications and Transactions Act 25 of 2002 and constitutes a legal and binding data message as per the definition in the said Act:

25.3 The Merchant hereby agrees to the use of electronic communications in order to enter into contracts, share data and other records and to the electronic delivery of notices, policies and records of transactions, electronic tax invoices for the purpose of claiming input tax, and data sharing initiated or completed through the App, if applicable or relevant to this transaction;

## 26 MERCHANTS PRIVACY

26.1 It is Retail Capital's policy to respect the privacy of the Merchant. Retail Capital will not monitor, edit, or disclose any personal information about the Merchant as contained in the App, including its contents, without the Merchants prior permission unless Retail Capital has a good faith belief that such action is necessary to:

- 26.1.1 Conform to legal requirements or comply with legal process;
- 26.1.2 Protect and defend the rights or property of Retail Capital;
- 26.1.3 Enforce this Agreement or protect Retail Capitals business or reputation, including without limitation upon termination, cancellation or suspension of this Agreement by Retail Capital;
- 26.1.4 Respond to request for identification in connection with claim of copyright or trademark infringement by the Merchant, or a claim by a third party that the User is using the Service in connection with an infringing, illegal or improper activity; or
- 26.1.5 Act to protect the interests of the Merchant or others.

26.2 The Merchant agrees that Retail Capital may access its account, including its contents, as stated above or to respond to service or technical issues. The Merchant hereby grants Retail Capital the right to send the Merchant communication via e-mail of any updates, upgrades, notices, or other information that Retail Capital deems important for the Merchant to know, relating to the service.

## 27 RELATIONSHIP BETWEEN THE FACILITATOR AND RETAIL CAPITAL

27.1 The Facilitator introduced the Product to the Merchant and assisted the Merchant in completing and submitting the Agreement to Retail Capital.

27.2 For the avoidance of doubt it is recorded that Retail Capital performs all administrative functions relating to this Agreement.

## 28 GENERAL

28.1 Whole Agreement. This Agreement (together with the "Sale and Purchase Agreement", any information on the App or profile of the Merchant on the App relating to the Merchant, and any annexures, addenda, schedules and appendices referred to herein) constitutes the whole agreement between the Parties relating to the matters dealt with in this Agreement and save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.

28.2 Non Variation. No variation, addition, deletion, or agreed cancellation of this Agreement will be of any force or effect unless in writing and signed by or on behalf of the Parties hereto.

28.3 No Waiver. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by or on behalf of the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

28.4 Severability. Each provision of this Agreement is severable from the other provisions. Should any provision be found by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the Parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of this Agreement. The remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.

28.5 No Cession or Assignment. Save as otherwise herein provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred by the Merchant without Retail Capital's prior written consent. The Merchant further hereby irrevocably and unconditionally consents to the cession, delegation, assignment or other transferral by Retail Capital (or any person to whom its rights and/or obligations are ceded, delegated or assigned in terms of this clause 28.5) of all or any of its rights or obligations in terms of this Agreement, notwithstanding that such cession or assignment, if made to more than one person and/or of any but not all of Retail Capital's rights, may result in a splitting of claims. The Merchant shall, if so required by any cessionary or assignees, perform all such obligations and make any payments direct to such cessionary or assignees.

28.6 Signature on Counterparts. This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## ELECTRONIC DEBIT ORDER AUTHORITY

BUSINESS NAME: As per paragraph 1.2  
 PHYSICAL ADDRESS: As per paragraph 1.2  
 DATE: As per paragraph 6.3  
 The details of my/our bank account are as follows:  
 BANK: As per paragraph 5  
 BRANCH No: As per paragraph 5  
 ACCOUNT NAME: As per paragraph 5  
 ACCOUNT No: As per paragraph 5

BENEFICIARY: Abbreviated Name as Registered with the Bank - RETAIL CAP

Sale and Purchase Agreement ("Agreement") between Retail Capital (Pty) Ltd and (insert)

I/We hereby request, "instruct" and authorise you to draw against my/our account with the abovementioned bank (or any other bank or branch to which I/we may transfer my/our account) the sum of XXX.00 (XXX Rand) or any variable amount pertaining to this Agreement. The debit order is to commence on the Commencement Date and is to run on a weekly basis and shall continue until termination of the Agreement.

The weekly debit order shall be actioned on every XXX (Can only select Tuesday, Wednesday or Thursday) of each week.

In the event that the payment day falls on a recognized South African public holiday, the payment day will automatically be the very next ordinary business day. All such withdrawals from my/our bank account by you shall be treated as though they had been signed by me/us personally.

I/We understand that the withdrawals hereby authorise will be processed through a system provided by the South African Banks, and I also understand that details of each withdrawal will be printed on my bank statement or on an accompanying voucher.

I/We agree to pay any bank charges relating to this debit order instruction. I/We agree that should the debit order be returned due to insufficient funds or another reason caused on my/our part, I/we will have to pay the outstanding amount along with the additional bank charges.

This authority may be cancelled by me/us by giving you 30 (thirty) days' notice in writing only when the Agreement conditions have been completed, this must be sent by prepaid registered post. I/we understand that I/we shall not be entitled to any refund of amounts which you have withdrawn while this authority was in force if such amounts were legally owing to you.

Receipt of this instruction by you shall be regarded as receipt thereof by my/our bank (whichever it is or will be).

### CANCELLATION:

I/We agree that although this Authority and Mandate may be cancelled by me/us, such cancellation will not cancel the Agreement. I/We shall not be entitled to any refund of amounts which you have withdrawn while this Authority was in force, if such amounts were legally owing to you.

### ASSIGNMENT:

I/We acknowledge that this Authority may be ceded or assigned to a third party if the Agreement is also ceded or assigned to that third party, but in the absence of such assignment of the Agreement this Authority and Mandate cannot be assigned to any third party.

Authority Given by {{ merchant.user.first\_name }} {{ merchant.user.last\_name }}  
 Signed Electronically

Retail Capital (Pty) Limited, Reg no: (2010/019149/07)  
 Executive Directors: K.H Westvig (CEO), G.W Hosking  
 Non-executive Directors: G.W de Jager, L Norval, N.F.J Haasbroek