

# TERMS & CONDITIONS

## 1 IMPORTANT – READ THIS CAREFULLY

1.1 You must please read this agreement. The terms and conditions of this agreement are important and are the basis upon which You and iKhokha and the bank will do business with each other.

1.2 While reading the agreement, You will see that certain selected terms and conditions are in capital letters. These are important but please remember that all the other terms and conditions are also important and must be read as well.

1.3 To print/save a copy of this agreement click here: **Print/Save Agreement**. To print/save a copy of any other terms and conditions referred to in this Agreement, click through to the associated link where You will be given an opportunity to print/save them.

## 2 DEFINITIONS

In this agreement, unless a contrary intention clearly appears, the following terms shall bear the meanings assigned to them and similar expressions shall have corresponding meanings –

2.1 “**Agreement**” means this agreement with its terms and conditions together with any other terms and conditions referenced by this agreement, including as any of them might be amended from time to time;

2.2 “**Bank**” means a bank, registered as such in terms of the Banks Act, 1990, which acts as the acquiring bank to process the debit/credit/pre-paid card payment component of iKhokha transactions, and which has appointed iKhokha as a payments gateway and/or payment aggregator to facilitate the transfer of the debit/credit/pre-paid card payment component of iKhokha Transactions to the acquiring bank to be processed;

2.3 “**Business Day**” means any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

2.4 “**CPA**” means the Consumer Protection Act, 2008;

2.5 “**ECTA**” means the Electronic Communications and Transactions Act, 2002;

2.6 “**FICA**” means the Financial Intelligence Centre Act, 2001;

2.7 “**Force Majeure**” means, without limitation as to nature or kind, any one or more or any combination of the following –

2.7.1 any power, force or agency which cannot be resisted or controlled by the ordinary person;

2.7.2 any greater or superior or irresistible force;

2.7.3 anything exceptional, extraordinary or unforeseen, which human foresight cannot be expected to anticipate;

2.7.4 acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, interruption of essential services from public utilities (including electricity, water and sewerage), combination of workmen, prohibition of exports, rationing of supplies, flood, storm, fire or any other circumstances beyond the reasonable control of a party;

2.7.5 inability on the part of iKhokha, as a result of anything of the nature contemplated in this clause 2.6, to obtain goods and/or services from its supplier or contemplated supplier (including any telecommunications supplier or Bank);

2.8 “**iKhokha**” means Emerge Mobile (RF) Proprietary Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 2012/067507/07 and having its principal place of business at Unit 4, 12 Frosterley Park, Frosterley Crescent, La Lucia Ridge, Kwa-Zulu Natal, 4051, Republic of South Africa;

2.9 “**iKhokha Software**” means –

2.9.1 the firmware (a type of software) associated with the iKhokha ‘Edge’ smartphone adapter;

2.9.2 the iKhokha smartphone software application which enables the processing of iKhokha transactions via the Website;

2.9.3 any update, upgrade and new version which iKhokha might make available to any of them, from time to time;

2.10 “**iKhokhaSystem**” means –

2.10.1 iKhokha’s ‘Edge’ smartphone adapter (including its associated clips and battery charger);

2.10.2 the iKhokha software;

2.11 “**iKhokhaTransaction**” means a transaction processed on the iKhokha system via the website, being either a –

2.11.1 debit/credit/pre-paid card payment; or

2.11.2 mobile wallet payment; or

2.11.3 acceptance of an electronic coupon; or

2.11.4 merchant reporting and analytics transaction;

2.12 “**Purchase**” means the purchase of an iKhokha system, which includes the grant of a licence giving You certain rights to use the iKhokha Software

(see, in particular, clauses 5.5 and 6 for the associated licence terms);

2.13 **"RegisteredUser"** means a person who has registered on –

2.13.1 the website to apply to become, and who has subsequently been accepted as, a registered user of the website; and/or

2.13.2 the iKhokha system (following a purchase) to apply to become, and who has subsequently been accepted as, a registered user of the iKhokha System in order to process iKhokha transactions;

2.14 **"Website"** means the website at [www.ikhokha.com](http://www.ikhokha.com), including all associated subdomains, which is owned and operated by iKhokha;

2.15 **"You"** means any person who browses the website and also means any registered User.

### 3 INTERPRETATION

3.1 NO PROVISION IN THIS AGREEMENT SHALL BE INTERPRETED OR CONSTRUED TO –

3.1.1 LIMIT OR EXEMPT IKHOKHA FROM LIABILITY TO YOU FOR ANY LOSS DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO THE GROSS NEGLIGENCE OF IKHOKHA, OR, TO CONSTITUTE AN ASSUMPTION BY YOU OF ANY SUCH RISK OR LOSS;

3.1.2 EXCLUDE, WAIVE OR DEPRIVE YOU OF ANY OF THOSE OF YOUR RIGHTS IN TERMS OF THE CPA OR ECTA OTHER THAN AS PERMITTED IN TERMS OF THOSE ACTS;

3.1.3 AVOID ANY COMPULSORY OBLIGATION OR DUTY IMPOSED BY THE CPA OR ECTA UPON IKHOKHA AS A SUPPLIER.

3.2 Clause headings in this agreement are for the purpose of convenience and reference only and capitalisation of terms and conditions in this agreement are for the purpose of drawing attention to them only, and neither of these shall be used in the interpretation of nor modify nor amplify its terms nor any of its clauses.

3.3 In this agreement unless a contrary intention clearly appears, words importing: any one gender include the other two; the singular include the plural (and the converse shall apply); natural persons include legal entities (corporate or unincorporate) and the state (and the converse shall apply).

3.4 Any reference to an enactment in this Agreement is to that enactment as at the Signature Date and as amended or re-enacted from time to time.

3.5 Any substantive provision in any definition in this agreement which confers rights or imposes obligations on a Party shall, notwithstanding that it is only in a definition, be given effect to as if it were a substantive provision in the body of this Agreement.

3.6 When a number of days is prescribed in this agreement, they shall be counted exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding Business Day.

3.7 Defined expressions in this agreement shall bear the same meanings in schedules to this Agreement which do not themselves contain their own definitions.

3.8 Reference to days, months or years in this Agreement shall be construed as Gregorian calendar (the internationally accepted civil calendar) days, months or years.

3.9 The use in this Agreement of any expression covering a process available under South African law such as a winding-up (without limitation as to the nature or kind of process) shall, if any Party to this agreement is subject to the law of another jurisdiction, be construed as including equivalent or similar proceedings under that law.

3.10 Any term defined within the context of any particular clause in this Agreement shall, unless otherwise determined by the context, bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that such term is not defined in the definition clause.

3.11 Expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they shall continue to operate thereafter or which of necessity must continue to have effect thereafter notwithstanding that the clauses themselves do not expressly provide for this.

3.12 In this agreement the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

3.13 Any reference in this agreement to a party shall, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be.

3.14 In this Agreement the words **"include"**, **"including"** and **"in particular"** shall be construed as being by way of example or emphasis only and shall not be construed nor shall they take effect as limiting the generality of any preceding words.

3.15 In this agreement the words **"other"** and **"otherwise"** shall not be construed as being limited to the nature or kind of any prior words where a wider construction is possible.

### 4 LEGAL CAPACITY, THIS WEBSITE AND THIS AGREEMENT

4.1 Browsing this website, applying to become a registered User of the website and/or the iKhokha System and making a purchase are each subject to the terms and conditions of this agreement.

4.2 By browsing the website, by applying to become a registered user of the website and/or the iKhokha System or by making a purchase, You are representing to iKhokha that –

4.2.1 YOU ARE 18 YEARS OF AGE OR OLDER AND YOU HAVE FULL LEGAL CAPACITY TO ENTER INTO THIS AGREEMENT WITHOUT THE ASSISTANCE OF A GUARDIAN, CURATOR OR TRUSTEE (OR SIMILAR SUCH APPOINTEE); ALTERNATIVELY

4.2.2 YOU ARE 18 YEARS OF AGE OR OLDER AND YOU HAVE FULL LEGAL CAPACITY TO ENTER INTO THIS AGREEMENT BECAUSE YOU ARE BEING ASSISTED TO ENTER INTO THIS AGREEMENT BY YOUR GUARDIAN, CURATOR OR TRUSTEE (OR SIMILAR SUCH APPOINTEE); ALTERNATIVELY

4.2.3 YOU ARE YOUNGER THAN 18 YEARS OF AGE AND YOU HAVE FULL LEGAL CAPACITY TO ENTER INTO THIS AGREEMENT BECAUSE YOU ARE BEING ASSISTED TO ENTER INTO THIS AGREEMENT BY YOUR GUARDIAN, CURATOR OR TRUSTEE (OR SIMILAR SUCH APPOINTEE).

4.3 If You –

4.3.1 are younger than 18 years of age and are not being assisted to enter into this agreement by Your guardian, curator or trustee (or similar such appointee); or

4.3.2 are 18 years of age or older but do not have full legal capacity to enter into this agreement without the assistance of a guardian, curator or trustee (or similar such appointee),

then stop using the website and seek the advice and assistance of your guardian, curator or trustee (or similar appointee) in this regard.

4.4 IF YOU BROWSE THE WEBSITE THEN BY DOING SO YOU ARE AGREEING TO THE TERMS AND CONDITIONS OF THIS AGREEMENT IN RELATION TO YOUR BROWSING. IF YOU DO NOT WANT TO AGREE TO THEM, THEN STOP USING THE WEBSITE. PLEASE REMEMBER THAT IT IS YOUR RIGHT TO CHOOSE NOT TO BE BOUND BY THESE TERMS AND CONDITIONS. IF YOU CONTINUE TO BROWSE THE WEBSITE THEN YOU WILL BE DEEMED TO HAVE AGREED TO THE TERMS AND CONDITIONS OF THIS AGREEMENT IN RELATION TO YOUR BROWSING.

4.5 iKhokha reserves the right to amend the terms and conditions of this Agreement at any time by publishing an updated Agreement on-line on the Website. You must check regularly for any new amendments. If You browse the Website but do not want to be bound by any amended Agreement, then stop using the Website. If You continue to browse the Website then You will be deemed to have agreed to the amended terms and conditions of the Agreement in relation to Your browsing.

4.6 The right of admission to the Website and the right of continuation as a Registered User is reserved. iKhokha reserves the right, at any time and from time to time, without prior notice to –

4.6.1 prevent You from browsing the Website; and/or

4.6.2 reject Your application to become a Registered User of the Website and/or the iKhokha System; and/or

4.6.3 decline to accept any Purchase You wish to make; and/or

4.6.4 prevent You from making any Purchase; and/or

4.6.5 revoke Your Registered User account.

4.7 YOU WILL REQUIRE COMPUTER EQUIPMENT AND TELECOMMUNICATION CONNECTIVITY IN ORDER TO USE THE WEBSITE, TO CONDUCT PURCHASES THAT YOU MAKE, TO OPERATE THE IKHOKHA SYSTEM, TO PERFORM IKHOKHA TRANSACTIONS AND TO SEEK TECHNICAL SUPPORT FROM IKHOKHA. THE COST OF THIS IS FOR YOUR ACCOUNT AND IKHOKHA SHALL HAVE NO LIABILITY TO YOU FOR ANY SUCH COSTS. AS YOUR COMMUNICATIONS WITH THE WEBSITE AND WHEN OPERATING THE IKHOKHA SYSTEM AND PERFORMING IKHOKHA TRANSACTIONS ARE ACROSS THE INTERNET WHICH IS A GLOBAL PUBLIC NETWORK SYSTEM, IKHOKHA STRONGLY RECOMMENDS THAT YOU TAKE SECURITY MEASURES AGAINST MALICIOUS COMPUTER SOFTWARE, CODE OR ROUTINES THAT CAN TARGET COMPUTER EQUIPMENT AND TELECOMMUNICATION CONNECTIVITY.

4.8 IKHOKHA DOES NOT WARRANT THAT YOUR USE OF THE WEBSITE (INCLUDING WHEN OPERATING THE IKHOKHA SYSTEM AND/OR PERFORMING IKHOKHA TRANSACTIONS) WILL BE UNINTERRUPTED, ERROR FREE OR THAT ANY INFORMATION (OR COMMUNICATIONS) TRANSMITTED VIA THE WEBSITE (INCLUDING WHEN OPERATING THE IKHOKHA SYSTEM AND/OR PERFORMING IKHOKHA TRANSACTIONS) WILL BE TRANSMITTED ACCURATELY, RELIABLY, IN A TIMELY MANNER OR AT ALL. YOUR ACCESS TO THE WEBSITE (INCLUDING WHEN OPERATING THE IKHOKHA SYSTEM AND/OR PERFORMING IKHOKHA TRANSACTIONS) MAY BE RESTRICTED, FROM TIME TO TIME, TO ALLOW FOR UPDATES, REPAIRS AND MAINTENANCE TO THE WEBSITE AND TO IKHOKHA'S SYSTEMS.

4.9 YOU WARRANT TO IKHOKHA THAT ALL INFORMATION PROVIDED BY YOU TO IKHOKHA WHETHER THROUGH THE WEBSITE (INCLUDING WHEN OPERATING THE IKHOKHA SYSTEM AND/OR PERFORMING IKHOKHA TRANSACTIONS) OR ANY OTHER FORM OF COMMUNICATION, IS BOTH TRUE AND CORRECT AND THAT IKHOKHA MAY RELY AND ACT UPON THAT INFORMATION ACCORDINGLY.

4.10 YOU WARRANT TO IKHOKHA THAT MATERIAL SENT, FORWARDED OR POSTED BY YOU TO IKHOKHA, WHETHER THROUGH THE WEBSITE (INCLUDING WHEN OPERATING THE IKHOKHA SYSTEM AND/OR PERFORMING IKHOKHA TRANSACTIONS) OR ANY OTHER FORM OF COMMUNICATION, WILL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY.

4.11 YOU WARRANT TO IKHOKHA THAT YOU WILL NOT OPERATE THE IKHOKHA SYSTEM AND/OR PERFORM IKHOKHA TRANSACTIONS FOR ILLEGAL PURPOSES. SHOULD WE HAVE REASONABLE GROUNDS TO SUSPECT THAT YOU ARE OPERATING THE IKHOKHA SYSTEM AND/OR PERFORMING IKHOKHA TRANSACTIONS FOR ILLEGAL PURPOSES OR SHOULD WE HAVE REASONABLE GROUNDS TO SUSPECT THAT YOUR IKHOKHA SYSTEM IS BEING USED FOR ILLEGAL PURPOSES, WE RESERVE THE RIGHT TO IMMEDIATELY BLOCK YOUR IKHOKHA SYSTEM. WE SHALL THEN NOTIFY YOU OF OUR ACTION AND ADVISE THE PROCEDURE YOU NEED TO FOLLOW FOR INVESTIGATION OF THE MATTER.

## 5 REGISTRATION

5.1 In order to Purchase an iKhokha System, to operate the iKhokha System and to perform iKhokha Transactions, You must be a Registered User of the Website and the iKhokha System. This requires You to make an application to become a Registered User by registering on the Website and the iKhokha System. iKhokha reserves the right to reject any Registered User application and iKhokha's decision in this regard is final and will be binding on You. ALL PURCHASES AND The performance of all iKhokha Transactions is subject to this Agreement.

5.2 As part of Your application to register as a Registered User You will be asked to provide certain personal information. iKhokha WILL HANDLE AND TREAT YOUR PERSONAL INFORMATION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE iKhokha PRIVACY POLICY WHICH IS PART OF THIS AGREEMENT (read the iKhokha Privacy Policy in clause 11). You must keep Your personal information in Your Registered User account up to date and promptly update Your Registered User account with any changes.

5.3 iKhokha, acting as a payments gateway and/or payment aggregator, facilitates the transfer to the Bank of the debit/credit/pre-paid card payment component of iKhokha Transactions to be processed. The Bank, not iKhokha, will process the debit/credit/pre-paid card payment component of iKhokha Transactions (including rejecting, authorising, clearing and settling payments). YOU ACKNOWLEDGE THAT IKHOKHA IS NOT CAPABLE OF REJECTING, AUTHORISING, CLEARING OR SETTLING ANY DEBIT/CREDIT/PRE-PAID CARD PAYMENT COMPONENT OF ANY IKHOKHA TRANSACTION AS IKHOKHA IS NOT A BANK.

5.4 THE PROCESSING OF the debit/credit/pre-paid card payment component of iKhokha Transactions BY A BANK, IS ALSO SUBJECT TO the BANK'S ASSOCIATED terms and conditions. Before PERFORMING THE debit/credit/pre-paid card payment component of ANY iKhokha Transaction, You must read and understand and agree to the BANK'S ASSOCIATED terms and conditions which ARE PART OF THIS AGREEMENT. You will also need to provide documentary proof of who You are as required in terms of FICA (click here to see the documents required by FICA).

5.5 THE DOWNLOADING AND USE OF the iKhokha SOFTWARE THROUGH THE ONLINE STORE IS ALSO SUBJECT TO the ONLINE STORE'S ASSOCIATED terms and conditions. Before DOWNLOADING AND USING the iKhokha SOFTWARE, You must read and understand and agree to the ONLINE STORE'S ASSOCIATED terms and conditions which ARE PART OF THIS AGREEMENT (click here to read the online store's associated terms and conditions). See also clause 6 for additional terms that govern Your licence to use the iKhokha Software.

5.6 As part of Your application to register as a Registered User You will be asked to read and to agree to the terms and conditions of this Agreement (including the Bank's associated terms and conditions and the online store's associated terms and conditions) as part of the registration process. If –

5.6.1 You are prepared to agree to them, then press the 'Accept' button. By pressing the 'Accept' button You agree to the terms and conditions in this

Agreement and to be bound by them. All Purchases and all business that You do with iKhokha and a Bank on or via the Website or using the iKhokha System, will be subject to this Agreement;

5.6.2 You do not want to agree to them, then press the 'Do Not Agree' button. By pressing the 'Do Not Agree' button the registration process will be terminated and You will not be registered as a Registered User and will not be able to make any Purchases or do any business with iKhokha or a Bank that is restricted to Registered Users (including performing any debit/credit/pre-paid card payment component of any iKhokha Transactions).

5.7 iKhokha reserves the right to amend the terms and conditions of this Agreement (including the Bank's associated terms and conditions and the online store's associated terms and conditions) at any time by publishing an updated Agreement on-line on the Website. YOU MUST CHECK REGULARLY FOR ANY NEW AMENDMENTS. If You are a Registered User but do not want to be bound by any amended Agreement, You must notify iKhokha (by delivery, post, fax or e-mail to the address in clause 16) that You do not wish to be bound by the amended Agreement. In that case, Your Registered User account will be terminated and You will not be able to make any further Purchases or do any further business with iKhokha or any Bank after termination. Whichever version of the Agreement that You agreed to up until the point of termination will remain binding on You and will continue to apply in respect of all Purchases and all business which You conducted with iKhokha or a Bank prior to termination.

5.8 iKhokha will retain a copy of the version of the Agreement by which You are bound from time to time. You may request a copy of this from iKhokha at any time.

5.9 You must keep Your username and password to the Website and the iKhokha System as secret at all times and not disclose them to any third party. You must notify iKhokha immediately (by delivery, post, fax or e-mail to the address in clause 16) should You identify any unauthorised use of, or any breach of security in relation to, Your Registered User account (including Your username or password). IF YOU DISCLOSE YOUR USERNAME OR PASSWORD OR OTHER REGISTERED USER ACCOUNT DETAILS TO ANY THIRD PARTY, YOU AGREE THAT SUCH THIRD PARTY IS APPOINTED AS YOUR AGENT TO ACT ON YOUR BEHALF USING YOUR REGISTERED USER ACCOUNT AND YOU AGREE TO BE BOUND BY AND LIABLE FOR ALL ACTIONS (INCLUDING PURCHASES AND IKHOKHA TRANSACTIONS) OF THAT THIRD PARTY.

5.10 iKhokha reserves the right, at any time and from time to time, without prior notice to –

5.10.1 validate any Registered User's account details including requiring the Registered User to revalidate their Registered User account with iKhokha;

5.10.2 close any Registered User account if iKhokha forms the opinion that that it is a threat to the security or operation of the Website or the iKhokha System or other systems of iKhokha or is disruptive to or causes harassment of any other Registered User.

5.11 As a Registered User, iKhokha may send You communications which will, generally, fall into two categories –

5.11.1 business communications relating to Your Registered User account and the conduct of Your business with iKhokha and/or the Bank;

5.11.2 marketing communications. You may, at any time, require iKhokha to stop sending You marketing communications by using any unsubscribe link that may appear in those marketing communications, alternatively, you can also achieve this by sending your request to iKhokha by delivery, post, fax or e-mail to the address in clause 16.

5.12 clauses 5.1, 5.4, 5.5, 5.7, 5.9 AND 5.10 are also contracted by iKhokha and agreed to by you, for and in favour of THE BANK and in this regard these clauses constitute a contract for the benefit of a third party.

## 6 LICENCE

6.1 Your Purchase of an iKhokha System includes the grant to You of a personal, non-exclusive and non-transferable licence to use the iKhokha Software for Your own private internal business data processing purposes, on and in relation to the iKhokha 'Edge' smartphone adapter Purchased by You, for the lifetime of that iKhokha 'Edge' smartphone adapter, provided that You are and remain a Registered User. See also clause 5.5 for additional terms that govern Your licence to use the iKhokha Software.

6.2 YOU ACKNOWLEDGE THAT YOUR LICENCE TO USE THE IKHOKHA SOFTWARE WILL TERMINATE IN THE EVENT THAT: (i) YOU ARE NO LONGER A REGISTERED USER, FOR WHATEVER REASON; OR (ii) YOUR ASSOCIATED iKhokha 'Edge' smartphone adapter REACHES THE END OF ITS LIFE, FOR WHATEVER REASON.

6.3 You may not –

6.3.1 reverse engineer, de-compile or disassemble any iKhokha Software (in whole or part);

6.3.2 translate, adapt, vary, modify or create any derivative work from any iKhokha Software;

6.3.3 have software developed for Yourself based on any iKhokha Software;

6.3.4 use any iKhokha Software to perform iKhokha Transactions for or on behalf of any third party unless that third party enters into a separate agreement with iKhokha and pays the associated licence and transaction fees to authorise such use.

6.4 You agree to acquire and install any update, upgrade or new release of the iKhokha Software within a reasonable period after iKhokha notifies You of its availability (including by way of a pop-up message on the iKhokha System). YOU ACKNOWLEDGE THAT IKHOKHA IS NOT OBLIGED TO, AND MIGHT NOT, MAKE AVAILABLE any updates, upgrades OR new versions to the IKHOKHA SOFTWARE.

6.5 YOU ACKNOWLEDGE THAT the IKHOKHA SOFTWARE IS NOT DESIGNED TO OPERATE ON ANY SYSTEM OTHER THAN THE IKHOKHA SYSTEM.

## 7 PURCHASES, PRICES, PAYMENT AND RETURNS

7.1 The full price of the goods or services offered by iKhokha in respect of any Purchase You are considering making, including taxes and any other fees or costs, will be presented to You during the Purchase process prior to checkout of your Purchase. You will be given the opportunity to 'Go Back' at each stage of the Purchase process and to correct/change Your Purchase up until the point that You 'Confirm and Pay' for Your Purchase.

7.2 Payment is made by credit or cheque card and You will need a valid unexpired 'Visa' or 'MasterCard' credit card with sufficient funds available in order to make Your Purchase. Should the payment process –

7.2.1 be approved, this is acceptance of Your Purchase by iKhokha;

7.2.2 fail or be declined, for whatever reason, iKhokha will not accept Your Purchase and Your Purchase will fail.

7.3 You are entitled to cancel Your Purchase, without penalty, within 7 days from the date that You receive Your Purchase from iKhokha, by returning the iKhokha System to iKhokha within 10 Business Days from the date of delivery of Your Purchase to You. Where iKhokha has received payment from You for the said Purchase, iKhokha will refund that payment received, within 30 days of the date on which You cancel the Purchase thereof and return the iKhokha

System to iKhokha. In this regard, receipt of payment by iKhokha means when the funds have been cleared to iKhokha by its bankers following any holding period which may have been placed on those funds. If –

7.3.1 there is any direct cost to iKhokha of taking return of the iKhokha System, then iKhokha shall levy that charge onto You and You will be liable for payment thereof; and

7.3.2 the iKhokha System is returned to iKhokha in its original condition and repackaged in its original packaging, iKhokha will charge You a reasonable amount for –

7.3.2.1 use of the iKhokha System while it was in Your possession, if any; and

7.3.2.2 necessary restoration costs to render the iKhokha System fit for re-stocking. No restoration costs will be charged to You if the iKhokha System is returned in its original condition and in its original unopened packaging.

7.4 If your application is declined, iKhokha will refund you for the value of the Edge Card Reader, excluding shipment and activation fees.

7.5 The iKhokha System You Purchase will be delivered to You within 30 days after the date of successful payment and acceptance by iKhokha of Your Purchase, on condition that you have provided all the required FICA documentation. If iKhokha is unable to execute Your Purchase within 30 days after the date of successful payment and acceptance by iKhokha of Your Purchase, you may then cancel Your Purchase on 7 days written notice to iKhokha (by delivery, post, fax or e-mail to the address in clause 16). The risk of loss or damage to the iKhokha System will pass to You on delivery.

7.6 Prior to being able to take physical delivery of Your Purchase You will need to hand over to the courier documentary proof of who You are as required in terms of FICA (You will already have submitted copies of these documents in digital format through the Website in order to make Your Purchase on the Website) (click here to see the documents required by FICA). You will not be able to take physical delivery of Your Purchase if You fail to provide these documents to the courier, and, if You fail to provide these documents to the courier the costs of any additional delivery will be for Your account and will need to be paid to the courier at the time of that delivery.

7.7 Whilst your Registered User account remains valid, a complete record of all transactions performed by You during the previous 5 years will be available in Your Registered User account. Should Your Registered User account be terminated for whatever reason, You may request a copy of the complete record of the transaction performed by You during the previous 5 years, from iKhokha (by delivery, post, fax or e-mail to the address in clause 16) for 18 months after termination.

7.8 Refunds will also be made in the circumstances described in clauses 8.2 and 15.2.

7.9 PayU Payment Solutions Proprietary Limited (“PP”) is a provider of secure online services. iKhokha uses PP to process all credit card transactions. iKhokha will not have access to Your card details. PP complies with PCI Data Security Standards which sets out the industry standards for maintaining a secure environment. PP stores and processes Your information on computers located in the Republic of South Africa that are protected by physical and technological security devices. All card details are secured by secure socket layer (SSL) encryption and reinforced through various encryption processes in order to provide protection for all sensitive payment information. PP does not store or access any unencrypted card details. Card details entered by You are SSL encrypted and stored in PP’s secure PCI environment. PP’s company registration documents and site registered domain name are checked and verified by Verisign. PP takes all reasonable steps to ensure the integrity and security of its website and back-office applications.

## 8 WARRANTIES

8.1 iKhokha warrants that the iKhokha System –

8.1.1 will be reasonably suitable for the purposes for which it is generally intended;

8.1.2 will be of good quality, in good working order and free of any defects;

8.1.3 will be useable and durable, having regard to the use to which it would normally be put and to all the surrounding circumstances of its supply;

8.1.4 will comply with any applicable standards set under the Standards Act, 1993, or any other public regulation,

for a period of 6 months following delivery of the iKhokha System to You. Should a defect arise in the iKhokha System during this warranty period, You must promptly return the iKhokha System to iKhokha (by delivery or registered post to the address in clause 16, the reasonable costs of which shall be reimbursed to You by iKhokha) enclosing a written notification describing the defect and advising if You want: (a) the iKhokha System to be replaced or (b) to be refunded for Your Purchase.

8.2 THE WARRANTY IN CLAUSE 8.1 SHALL NOT APPLY IN RESPECT OF DEFECTS OR FAULTS ARISING IN THE IKHOKHA SYSTEM DUE TO OR RESULTING FROM –

8.2.1 YOU ALTERING, ADJUSTING, MODIFYING OR REPAIRING (OR ATTEMPTING TO DO SO) THE IKHOKHA SYSTEM WITHOUT IKHOKHA’S PRIOR WRITTEN CONSENT;

8.2.2 YOUR FAILURE TO INSTALL, OPERATE, USE OR STORE THE IKHOKHA SYSTEM IN ACCORDANCE WITH ITS OPERATING INSTRUCTIONS;

8.2.3 YOUR FAILURE TO ACQUIRE AND INSTALL ANY UPDATE, UPGRADE OR NEW RELEASE OF THE IKHOKHA SOFTWARE WITHIN A REASONABLE PERIOD AFTER IKHOKHA NOTIFIES YOU OF ITS AVAILABILITY (INCLUDING BY WAY OF A POP-UP MESSAGE ON THE IKHOKHA SYSTEM) IF THE INSTALLATION OF THAT UPDATE, UPGRADE OR NEW RELEASE WOULD HAVE AVOIDED THE DEFECT OR FAULT;

8.2.4 EXTERNAL FACTORS AFFECTING THE IKHOKHA SYSTEM, INCLUDING FORCE MAJEURE OR FAILURE OR FLUCTUATION OF ELECTRICAL POWER;

8.2.5 NEGLIGENCE, THEFT, VANDALISM, ACCIDENTS OR ABNORMAL OPERATING CONDITIONS;

8.2.6 FAIR WEAR AND TEAR, BUT SUBJECT TO CLAUSE 8.1.3.

8.3 iKhokha warrants that –

8.3.1 services will be performed and completed in a timely manner and iKhokha shall give You timely notice of any unavoidable delay in the performance of the services;

8.3.2 services will be performed in a manner and quality that persons are generally entitled to expect,

and should iKhokha fail to meet these standards, You must promptly notify iKhokha in writing (by delivery, post, fax or e-mail to the address in clause 16) describing the failure and iKhokha will, at its option (exercised reasonably), remedy any failure in the quality of the services performed or refund You a reasonable portion of the price You paid for those services, having regard to the extent of the failure.

8.4 iKhokha warrants that it has the authority to enter into this Agreement and to grant the rights set out herein, to You, upon the terms of this Agreement.

8.5 YOU ACKNOWLEDGE THAT THE merchant reporting and analytics COMPONENT OF THE IKHOKHA TRANSACTIONS PERFORMED BY THE IKHOKHA SYSTEM ARE NOT DESIGNED TO BE THE SOLE RECORD OF THE INFORMATION IN THESE TRANSACTIONS NOR TO COMPRISE ACCOUNTING RECORDS, NOR IS THE IKHOKHA SYSTEM AN ACCOUNTING SYSTEM. ACCORDINGLY, YOU ACKNOWLEDGE THAT YOU

SHOULD MAINTAIN A SEPARATE INDEPENDENT RECORD OF ALL INFORMATION ON THE IKHOKHA SYSTEM AND THAT YOU SHOULD SEEK PROFESSIONAL ACCOUNTING ADVICE REGARDING ACCOUNTING RECORDS REQUIRED TO BE MAINTAINED BY YOU.

## 9 IKHOKHA SYSTEM ACTIVATION, DEACTIVATION AND LINKED BANK ACCOUNT

9.1 Following Your Purchase of an iKhokha System, You will need to activate Your iKhokha System. Before You can activate Your iKhokha System You will need: (a) Your unique 10-digit activation code individual merchant number which will be issued to You via email; (b) the iKhokha smartphone software application downloaded onto Your smartphone from the online store; and (c) Internet connectivity to connect to the Website. Your iKhokha System will have been cryptographically linked to Your unique 10-digit activation code Your merchant number prior to leaving iKhokha's distribution centre. Once You have your unique 10-digit activation code You have Your merchant number and have downloaded the iKhokha smartphone software application, You will need to connect the iKhokha 'Edge' smartphone adapter to Your smartphone and enter unique 10-digit activation code Your merchant number on the keypad of the iKhokha 'Edge' smartphone adapter. Your iKhokha System will run a security check to verify Your individual merchant number unique 10-digit activation code with Your iKhokha System.

9.2 DUE TO THE NATURE OF THE IKHOKHA SYSTEM AND ITS BUILT-IN SECURITY FEATURES, YOUR IKHOKHA SYSTEM IS cryptographically LINKED TO YOUR INDIVIDUAL MERCHANT NUMBER IN THE MANUFACTURING AND DISTRIBUTION PROCESS AND THIS CAN NEVER BE CHANGED TO LINK TO ANY OTHER PERSON'S MERCHANT NUMBER. YOU ACKNOWLEDGE THAT THIS MEANS THAT YOUR IKHOKHA SYSTEM CANNOT BE RESOLD OR TRANSFERRED TO ANY OTHER PERSON, AND ACCORDINGLY, YOU AGREE NEVER TO RESELL OR TRANSFER YOUR IKHOKHA SYSTEM TO ANY OTHER PERSON.

9.3 SHOULD YOUR IKHOKHA 'EDGE' SMARTPHONE ADAPTER EVER BE LOST, STOLEN, DESTROYED OR IRREPARABLY CEASE TO WORK, YOU MUST IMMEDIATELY REPORT THIS TO IKHOKHA AT THE CONTACT DETAILS CONTAINED IN CLAUSE 10.1 AND WHEN MAKING THE REPORT YOU MUST INCLUDE YOUR INDIVIDUAL MERCHANT NUMBER, YOUR FULL NAME AND YOUR IDENTITY NUMBER. THIS IS AN EXTREMELY IMPORTANT SECURITY REQUIREMENT. IF YOU FAIL TO MAKE A FULL REPORT (PROPERLY OR AT ALL) YOU WILL BE BOUND BY AND LIABLE FOR ALL ACTIONS (INCLUDING PURCHASES AND IKHOKHA TRANSACTIONS) OF ANY THIRD PARTY USING YOUR IKHOKHA 'EDGE' SMARTPHONE ADAPTER. ONCE IKHOKHA ACKNOWLEDGES THAT IT HAS RECEIVED A FULL REPORT FROM YOU, YOUR IKHOKHA 'EDGE' SMARTPHONE ADAPTER WILL BE REMOTELY DEACTIVATED. ONCE YOUR IKHOKHA 'EDGE' SMARTPHONE ADAPTER HAS BEEN DEACTIVATED, THAT IKHOKHA SYSTEM CAN NO LONGER BE USED AND YOU WILL NEED TO PURCHASE ANOTHER IKHOKHA SYSTEM TO PERFORM ANY FURTHER IKHOKHA TRANSACTIONS.

9.4 YOU ACKNOWLEDGE THAT FOR SECURITY REASONS YOU CANNOT YOURSELF CHANGE YOUR BANK ACCOUNT DETAILS THAT ARE LINKED TO YOUR IKHOKHA SYSTEM. SHOULD YOU WISH TO CHANGE YOUR BANK ACCOUNT DETAILS YOU MUST IMMEDIATELY REPORT THIS TO IKHOKHA AT THE CONTACT DETAILS CONTAINED IN CLAUSE 10.1 AND WHEN MAKING THE REPORT YOU MUST INCLUDE YOUR INDIVIDUAL MERCHANT NUMBER, YOUR FULL NAME AND YOUR IDENTITY NUMBER. YOU AGREE THAT FROM THE TIME IKHOKHA ACKNOWLEDGES THAT IT HAS RECEIVED A REPORT OF A CHANGE IN BANKING DETAILS FROM YOU, IT WILL TAKE APPROXIMATELY 3 BUSINESS DAYS FOR THAT CHANGE TO BECOME EFFECTIVE.

## 10 TECHNICAL SUPPORT

10.1 Following Your Purchase of an iKhokha System, should You require technical support in respect of Your use of Your iKhokha System, iKhokha's technical support staff will be available between 8:30 AM to 5:00 PM during Business Days and will provide telephonic and e-mail technical support to endeavour to assist You. For telephonic technical support, please call

0860 546 542. For e-mail technical support, please e-mail Your query to [hello@ikhokha.com](mailto:hello@ikhokha.com)

10.2 When requesting technical support, You agree to –

10.2.1 provide, where available, details of any problem being experienced and any error messages generated by the iKhokha System and the activities taking place on the iKhokha System at the time the problem was experienced or when any error message was generated;

10.2.2 co-operate with iKhokha's technical support staff and provide information reasonably requested and follow instructions reasonably given, including those given to try resolve and/or reproduce the problem.

10.3 YOU ACKNOWLEDGE THAT IKHOKHA'S TECHNICAL SUPPORT STAFF DO NOT HAVE FACILITIES THAT PERMIT THEM TO MAKE TELEPHONE CALLS. YOU ALSO ACKNOWLEDGE THAT TECHNICAL SUPPORT DOES NOT INCLUDE INSTRUCTION ON THE USE OF THE IKHOKHA SYSTEM. For instructions on the use of the iKhokha System please refer to the user documentation (click here to access the user documentation).

## 11 PRIVACY POLICY AND THIRD PARTY LINKS

11.1 iKhokha will collect certain personal information about You, including both identifiable and non-identifiable personal data. Identifiable personal data is collected when You register as a Registered User, while You are a Registered User, when making a Purchase, when performing any transaction on the iKhokha System, when performing any other transaction with iKhokha or when You communicate with iKhokha. Non-identifiable information is gathered automatically when You visit or use the Website. iKhokha may also combine the information we collect from You with information we obtain about You from our business associates and other third parties.

11.2 Mostly, iKhokha collects Your information to ensure network integrity and to enable iKhokha to provide You with relevant content and a service that suits Your needs. In some cases, we are required by law to collect personal information about customers. Except where the law requires otherwise, we will protect the confidentiality of such data.

11.3 iKhokha respects Your privacy. We will protect the confidentiality of Your personal information supplied in the course of contracting with iKhokha. iKhokha will not sell your personal information to third parties for commercial or marketing purposes.

11.4 iKhokha collects and shares aggregated user data with business associates and other third parties for the purposes of developing content and

ensuring relevant advertising and content. This user data will not be used to identify individual users.

11.5 iKhokha may log Your visits to and use of the Website and collect IP addresses and information about your operating system and the type of browser you use for the purposes of network/system administration, to report aggregate information to our advertisers and to audit the use of the Website. This data will not be used to identify individual users.

11.6 Any information which iKhokha collects from You through our communications will be used to address the matters referred to in those communications. If this requires referring such communications to a third party to ensure customer service, Your personal information will only be disclosed to the point necessary to address your query or concerns, and will otherwise be kept confidential.

11.7 Any information that You disclose in a public space on the Website (including on a bulletin board or chat room) is available to anyone else who visits that space. iKhokha cannot safeguard any information You disclose there.

11.8 The Website contains links to sites that belong to third parties unrelated to iKhokha. These links are provided for convenience only and iKhokha does not endorse these sites or the third parties. iKhokha has no control over and takes no responsibility for Your use of or for any information You submit to or over these third party sites. You access and use third party sites at Your own risk. iKhokha cannot be held responsible for any use of Your personal information arising from You disclosing personal information on third party sites.

11.9 iKhokha reserves the right to –

11.9.1 disclose information about You where required in good faith, to do so by law or to exercise iKhokha's legal rights or defend iKhokha against legal claims;

11.9.2 share Your information with law enforcement to investigate or prevent illegal activities being committed over iKhokha's network;

11.9.3 disclose Your information where You have given us explicit consent to do so;

11.9.4 monitor user and network traffic for site security purposes and prevent any unauthorized attempts to tamper with the Website or to cause damage to iKhokha's property.

## 12 PROHIBITED CONDUCT IN YOUR USE OF THE WEBSITE AND THE IKHOKHA SYSTEM

iKhokha hereby reserves the right to edit or remove material which is sent, forwarded or posted by You and which iKhokha determines is objectionable including that which iKhokha determines is offensive, indecent, obscene, abusive threatening, menacing, incites violence, incites hatred, breaches any obligation of confidentiality or infringes the rights of any third party. In Your use of the Website and the iKhokha System and in communicating with iKhokha, You will not, directly or indirectly, –

12.1 conduct Yourself or incite others to conduct themselves in a manner contrary to any law or which would amount to a criminal offence or which would give rise to civil liability;

12.2 conduct Yourself in a manner which is offensive, indecent, obscene, threatening, menacing, incites violence, incites hatred, breaches any obligation of confidentiality or infringes the rights of any third party;

12.3 pose as, or hold Yourself out to have, an identity which is not You;

12.4 interfere with the rights of others to use the Website or the iKhokha System;

12.5 circumvent or compromise (or attempt to circumvent or compromise) the security on the Website or the iKhokha System or iKhokha's systems;

12.6 send, forward or post material which is offensive, indecent, obscene, abusive threatening, menacing, incites violence, incites hatred, breaches any obligation of confidentiality or infringes the rights of any third party;

12.7 advertise or promote Yourself or any third party or any products and/or services on the Website or the iKhokha System;

12.8 create or send 'chain letters' being communications which are sent, or which encourage any person to send, them (or copies or variations of them) to multiple parties either in a single or over multiple posting sessions;

12.9 introduce malicious computer software, code or routines which –

12.9.1 might disrupt, distort, disable, harm or otherwise impede the operation of any software, firmware, hardware, local area network, wide area network, virtual private network or any of their peripherals;

12.9.2 might disable or impair in any way the operation of any software, firmware, hardware, local area network, wide area network, virtual private network or any of their peripherals based on an elapsed period of time or advancement to a particular date or other numeral;

12.9.3 might permit any person to access (remotely or otherwise) and disable or impair any software, firmware, hardware, local area network, wide area network, virtual private network or any of their peripherals;

12.9.4 comprise harmful or hidden procedures, routines or mechanisms which might cause any software, firmware, hardware, local area network, wide area network, virtual private network or any of their peripherals to cease functioning;

12.9.5 might damage or corrupt data, storage media, software, firmware, hardware or communications or otherwise interfere with technology operations generally.

## 13 INTELLECTUAL PROPERTY RIGHTS

13.1 All –

13.1.1 patents, copyright, trade marks, logos, style names, slogans, designs, models, inventions, trade and business secrets and any other type of intellectual property (whether registered or unregistered including applications for and rights to obtain, use or for their protection) which are used or held, whether or not currently, in connection with iKhokha's business (including the Website and the iKhokha System); and

13.1.2 ideas, designs, documents, diagrams, information, devices, technical data, scientific data, secret and other processes and methods used in connection with iKhokha's business, and, all available information regarding marketing and promotion of iKhokha's products and services, and, all and any modifications or improvements to any of the foregoing,

(collectively, "Intellectual Property") are and will at all times be and remain the property of iKhokha (or its licensors) and You shall not acquire any rights, title or interest of any kind in or to any or all of such Intellectual Property. Except as expressly permitted in this Agreement, You shall not make use of iKhokha's (or its licensors') Intellectual Property without the prior written consent of iKhokha, which may withhold its consent in its sole and absolute discretion. All rights in and to iKhokha's (or its licensors) Intellectual Property not expressly granted in this Agreement, are hereby reserved.

13.2 Provided that You have agreed to the Terms and Conditions of this Website, You may view and interact with the Website in its original display format

(as intended by iKhokha for access by the public) for your own personal and non-commercial use. You may not display the whole or any part of this Website, on or in any other website or in any form of communication to any other person.

13.3 YOU HEREBY GRANT IKHOKHA THE PERPETUAL, ROYALTY-FREE, WORLD-WIDE RIGHT TO USE AND EXPLOIT TO THE EXTENT THAT IKHOKHA SEES FIT, ALL AND ANY IDEAS, COMMENTS AND INFORMATION PROVIDED OR COMMUNICATED BY YOU TO IKHOKHA (IN WHATEVER FORM THEY ARE PROVIDED OR COMMUNICATED). FOR CLARITY, YOU SHALL RECEIVE NO COMPENSATION OR REWARD IN THE EVENT THAT IKHOKHA USES AND/OR EXPLOITS ANY IDEAS, COMMENTS AND INFORMATION WHICH YOU HAVE PROVIDED OR COMMUNICATED TO IKHOKHA. IF YOU DO NOT WANT IKHOKHA TO USE OR EXPLOIT ANY OF YOUR AFORESAID IDEAS, COMMENTS OR INFORMATION, THEN DO NOT DISCLOSE THEM TO IKHOKHA.

13.4 iKhokha may make reference to third party trade marks (or other intellectual property) on the Website and/or the iKhokha System. All third party trade marks (or other intellectual property) are the property of the respective owners thereof.

## 14 TERMINATION, BREACH AND DEFAULT

14.1 Either party will be entitled to cancel this Agreement at any time by giving the other party 20 Business Days' prior written notice to this effect.

14.2 Should either party breach any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fail to remedy such breach within 20 Business Days of receipt of notice requiring it to do so and warning that if the breach is not so remedied, the aggrieved party may exercise its rights in terms of this clause, then the aggrieved party will be entitled without notice, in addition to any other remedy available to it at law or in terms of this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.

14.3 Should either party –

14.3.1 commits an act which is or would be an act of insolvency in terms of section 8 of the Insolvency Act, 1936 (if committed by a natural person);

14.3.2 commence business rescue proceedings, be provisionally or finally liquidated, be removed from the company register, take steps for its voluntary winding up, or, be placed in any similar or replacement regime covered by South African insolvency law, then, the other party shall thereafter be entitled to terminate this Agreement on written notice to that effect.

14.4 Cancellation or termination of this Agreement shall not affect either party's accrued rights in terms hereof.

## 15 DISCLAIMERS AND LIMITATION OF LIABILITY

15.1 To the maximum extent permissible by law, iKhokha shall NOT be liable to You for any indirect, extrinsic, special, penal, punitive, exemplary or consequential losses or damages sustained by You arising out of or in connection with any PURCHASE, Your REGISTRATION or Your use of this Website AND/OR YOUR USE OF THE IKHOKHA SYSTEM, regardless of how such losses or damages are caused (including as a result of negligent acts or omissions of iKhokha or of any person for whom iKhokha may be liable in law), whether they arise under contract, delict or otherwise and whether the loss was actually foreseen or reasonably foreseeable.

15.2 To the maximum extent permissible by law, iKhokha shall NOT be liable to You for any losses or damages sustained by You arising out of or in connection with any PURCHASE, Your REGISTRATION or Your use of this Website AND/OR YOUR USE OF THE IKHOKHA SYSTEM, regardless of how such losses or damages are caused (including as a result of negligent acts or omissions of iKhokha or of any person for whom iKhokha may be liable in law), whether they arise under contract, delict or otherwise and whether the loss was actually foreseen or reasonably foreseeable, EXCEEDING –

15.2.1 in relation to any claim or series of claims arising from any PURCHASE, AN AMOUNT EQUIVALENT TO 150% of the amount paid by You for that PURCHASE; or

15.2.2 in relation to any other claim or series of claims arising from the same cause of action, an amount of R1000

15.3 CLAUSES 15.1 AND 15.2 ARE ALSO CONTRACTED BY IKHOKHA AND AGREED TO BY YOU, FOR AND IN FAVOUR OF ANY PERSON FOR WHOM IKHOKHA MAY BE LIABLE IN LAW AND IN THIS REGARD THESE CLAUSES CONSTITUTE A CONTRACT FOR THE BENEFIT OF A THIRD PARTY.

15.4 SAVE AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE IKHOKHA SYSTEM AND/OR THE ASSOCIATED SERVICES ARE PROVIDED ON AN AS-IS BASIS AND, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, IKHOKHA EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, IN RESPECT OF THE WEBSITE, THE IKHOKHA SYSTEM AND/OR THE ASSOCIATED SERVICES.

15.5 Nothing in this clause 15 shall be interpreted or construed to exclude or limit iKhokha's liability for death, illness or personal injury or any loss of or physical damage to property, caused to You by any act or omission of iKhokha, save to the extent permitted by the CPA.

## 16 ADDRESSES FOR NOTICE AND SERVICE

16.1 The parties choose as their addresses at which legal notices may be served and legal process may be executed, for all purposes in terms of this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following –

16.1.1 iKhokha:

Physical: 4th Floor, Terraces Building, Black River Park South, 2 Fir Street, Observatory, 7925, Cape Town

Postal: 4th Floor, Terraces Building, Black River Park South, 2 Fir Street, Observatory, 7925, Cape Town

Fax: not applicable

e-Mail: hello@ikhokha.com

16.1.2 You, if You are a Registered User:

the addresses selected by You for this purpose during the process of applying to become a Registered User, as amended by You in accordance with this Agreement.

16.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

16.3 Either party may by notice to the other party change the physical address chosen as its address at which legal notices may be served and legal process may be executed, to another physical address where postal delivery occurs in the Republic of South Africa, or its postal address or its fax number or its e-mail address, provided that the change shall become effective on the 5th Business Day from the deemed receipt of the notice by the other party. UNTIL THE CHANGE BECOMES EFFECTIVE ALL COURT PROCESS, NOTICES AND OTHER DOCUMENTS AND COMMUNICATIONS OF WHATSOEVER NATURE THAT HAVE BEEN SERVED AND EXECUTED AT THE THEN CURRENT ADDRESS SHALL BE VALID AND EFFECTIVE AGAINST THAT PARTY EVEN IF THEY DO NOT COME TO THE ATTENTION OR KNOWLEDGE OF THAT PARTY.

16.4 A notice to a party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its address at which legal notices may be served and legal process may be executed, to which post is delivered, shall be deemed to have been received on the 5th Business Day after posting (unless the contrary is proved).

16.5 A notice to a party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its address at which legal notices may be served and legal process may be executed, shall be deemed to have been received on the day of delivery.

16.6 A notice to a party sent by fax to its chosen fax number, shall be deemed to have been received on the first Business Day following the date of dispatch (unless the contrary is proved).

16.7 A notice to a party sent by e-mail to its chosen e-mail address, shall be deemed to have been received on the first Business Day following the date of dispatch (unless the contrary is proved).

16.8 Notwithstanding the foregoing, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address at which legal notices may be served and legal process may be executed.

16.9 Each party appoints any responsible person at its chosen address at which legal notices may be served and legal process may be executed, to receive for and on its behalf, service of process in such jurisdiction in any legal action or proceedings regarding this Agreement. Nothing herein shall affect the right to serve process in any other manner permitted by law.

## 17 FORCE MAJEURE

If Force Majeure causes delays in or failure or partial failure of performance by a party of all or any of its obligations, this Agreement, or as the case may be the affected portion thereof, shall be suspended for the period during which the Force Majeure prevails, but if they affect any material part of the Agreement it shall be suspended only for a maximum period of 21 days after which any affected party shall be entitled on 3 days' written notice to cancel this Agreement. Written notice of a Force Majeure event specifying its nature and commencement date shall be dispatched by the party seeking to rely on it (on whom the onus shall rest) as soon as reasonably possible after its commencement. Written notice of the cessation of the Force Majeure event shall be given by the party who relied on it, within 3 days after such cessation.

## 18 CESSION AND ASSIGNMENT

Neither party shall be entitled to cede, delegate, assign or in any other manner dispose of any of its rights or obligations arising out of this Agreement without the prior written approval of the other party which may withhold its approval in its sole and absolute discretion, provided that to the extent that any such cession, delegation, assignment or disposal relates to an amalgamation or genuine restructuring of the first-mentioned party or any group of companies of which it is part, then the other party's approval shall not be unreasonably withheld. This clause shall be binding on the liquidator, business rescue practitioner or trustee (whether provisional or final) of each party.

## 19 RELATIONSHIP OF PARTIES

Nothing in this Agreement shall be deemed to constitute either party the partner or agent or legal representative of the other. It is not the parties' intention to create nor shall this Agreement be construed to create any commercial or other partnership. Neither party shall have any authority to act for or assume any obligation or responsibility on behalf of the other party nor hold itself out as partner or agent of the other party.

## 20 LANGUAGE

This Agreement has been concluded in the English language. In the case of any conflict between the English version of this Agreement and any translation version, the English version shall prevail. Notices required in terms of this Agreement shall be given in the English language.

## 21 GOVERNING LAW

21.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

21.2 If this Agreement is concluded outside of the Republic of South Africa, or, where a party is domiciled in another country, the parties agree that this Agreement shall be governed by the substantive laws of the Republic of South Africa (if its prescription laws are not considered to be substantive laws, by the prescription laws as well but excluding its conflict of law principles), provided that if the major part of the Agreement is to be performed outside the Republic of South Africa, none of its laws which promote competition in the Republic of South Africa shall govern. All disputes, actions and other matters relating to this Agreement shall be determined in accordance with such law.

21.3 The United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement and transactions implemented pursuant to it.

## 22 SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it were not written herein, and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.

## 23 WHOLE AGREEMENT, NO AMENDMENT

23.1 THIS AGREEMENT CONSTITUTES THE WHOLE AGREEMENT BETWEEN THE PARTIES RELATING TO ITS SUBJECT MATTER AND REPLACES, SUPERSEDES AND CANCELS IN ITS ENTIRETY, ANY PRIOR AGREEMENTS WHATSOEVER (WHETHER WRITTEN OR ORAL) IN FORCE BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

23.2 No amendment or consensual cancellation of this Agreement or any of its provisions or terms or of any agreement or other document or instrument issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising out of this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement or other document or instrument issued pursuant to or in terms of this Agreement shall be binding unless performed in accordance with the terms of this Agreement or otherwise recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation).

23.3 Any extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement or other document or instrument issued or executed pursuant to or in terms hereof, shall be strictly construed as relating strictly to the matter in respect whereof it was made or given, shall not operate as an estoppel (*to preclude/prevent a person from asserting/denying a fact or a right*) against any party in respect of its rights in terms of this Agreement, and, shall not operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.

23.4 No failure or delay on the part of either party in exercising any right, power or privilege in terms of this Agreement shall operate as a waiver thereof, nor shall 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.

## 24 ECTA INFORMATION

In addition to that already contained in this Agreement or on the Website, the following information is provided in terms of ECTA –

24.1 Telephone number: 0860 546 542

24.2 Membership of self-regulatory or accreditation bodies to which iKhokha belongs/subscribes and their contact details:

24.2.1 EMV, who develop specifications for secure payment transactions and whose details can be found at [www.emvco.com](http://www.emvco.com) and who can be contacted at [http://www.emvco.com/contact\\_us.aspx](http://www.emvco.com/contact_us.aspx);

24.2.2 PCI, who develop, maintain and manage PCI security standards and whose details can be found at <https://www.pcisecuritystandards.org> and who can be contacted at <https://www.pcisecuritystandards.org>.

24.3 Codes of conduct subscribed to by iKhokha and how they can be accessed electronically: Not applicable.

24.4 Office bearers: Clive Andrew Putman, Ramsay L'amy Daly, Matthew Wade Putman, Bevan John Ducasse, Anton Ross Gaylard.

24.5 Place of registration: The Republic of South Africa.

24.6 Description of the main characteristics of the goods/services offered by iKhokha to enable a consumer to make an informed decision on the proposed electronic transaction: iKhokha is a mobile point of sale solution that allows registered merchants to process debit and credit card payments through a downloaded application on their smartphone using the 'Edge' – an EMV L1 and L2 and PCI compliant credit and debit card reader. Merchants can purchase the 'Edge' from [www.iKhokha.com](http://www.iKhokha.com). iKhokha's service includes merchant profile management, transactional analytics, facilitation of secure payments through the 'Edge' and 1st level, 5 channel support via in-application FAQ's, e-mail, telephone, Facebook and Twitter. Further to this, iKhokha sells, via its website, "*peripheral service items*" such as but not limited to, rechargeable battery packs, car chargers, 'Edge' protective casings, 'Edge' functional spares such as handset clips and additional USB charge cables.

24.7 Alternative dispute resolution codes subscribed to by iKhokha and how they can be accessed electronically: Not applicable.

## 25 CPA INFORMATION

In addition to that already contained in this Agreement or on the Website, the following information is provided in terms of the CPA –

25.1 Public officers' contact details: Clive Andrew Putman. Contact number: 031 566 1998.

25.2 The exact service to be rendered by iKhokha: iKhokha provides technology that enables businesses and individuals (sole proprietors), to accept debit and credit cards through their smartphone by purchasing the iKhokha Edge and downloading the iKhokha application through relevant handset operating system application stores. iKhokha also provides, merchant profile management, 1st level, 5 channel support via in-application FAQ's, e-mail, telephone, Facebook and Twitter and transactional analytics.

25.3 Costs which iKhokha is entitled to recover from You, and under what circumstances: iKhokha will be entitled to recover a fee per transaction from You amounting to 2.75% of the value of the transaction on every transaction that is processed using the iKhokha system. This amount will be deducted from the total transactional amount and the remainder of the transactional amount will be deposited in your registered bank account as per the website registration form.

25.4 iKhokha will disclose any information, at any relevant time, which may be relevant to You when You are deciding whether to acquire the service offered by iKhokha, or whether to continue with an existing service.

25.5 The following commissions, consideration fees, charges or brokerages are payable to iKhokha by the following persons: You will be liable to pay a fee per transaction amounting to 2.75% of the value of the transaction on every transaction that is processed using the iKhokha system. iKhokha will receive a percentage of the transaction fee charged by the Bank and is a commission agreed with the Bank and is in line with the Bank's current practices.

25.6 iKhokha has not been –

25.6.1 found guilty of any offence involving dishonesty which was punishable by criminal imprisonment without the option of a fine;

25.6.2 placed under sequestration, liquidation or business rescue proceedings.

## 26 THIRD PARTY REFERRALS

26.1 The referrer will be credited with R100 for each redemption of their unique referral code when the referred participant is successfully approved as an iKhokha merchant. The referred participant will also be given a R100 discount on the total purchase value

26.2 An iKhokha merchant is defined as someone that has successfully applied for and purchased an iKhokha card reader

26.3 Only iKhokha merchants will be settled for successful referrals

26.4 Anyone that has signed up for iKhokha but has not successfully completed the full application process will be able to refer other interested parties but will only be settled with the R100 referral credit on successful application and purchase of an iKhokha card reader.

26.5 All merchants are approved at the discretion of iKhokha. Approval is based on a successful credit check and submission of correct FICA documentation.

26.6 The referral discount generated by use of a referrer's unique code will only apply to online signups

26.7 Should a referee request the assistance of a physical sales agent in order to complete the iKhokha merchant application process he/she will not be eligible for the referral discount of R100.

26.8 Should an iKhokha merchant refer a person that then requests the assistance of a physical sales agent in order to complete the iKhokha merchant application process he/she will not be eligible for the referral credit of R100.