

## SALE AND PURCHASE AGREEMENT

(IKHOKHA CARD MACHINE)

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: 3rd Floor Ridgeview Building, 1 Nokwe Avenue, Umhlanga Ridge 4319

Email Address: michelle@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

Business/Trading Name:

[merchant.registeredName]

Registration Number/Id Number:

[merchant.regNo]

Email Address:

[merchant.email]

Physical Address:

[merchant.address1]

[merchant.address2]

[merchant.city]

[merchant.province]

[merchant.postalCode]

(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

Cost Summary	
Total Repayable	[order.totalRepayable]
Total Weekly D/O	[order.totalDebitOrderAmt]
Debit Order Day	[order.debitOrderDay]

### 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: [merchant.accountHolder]

5.2 Bank Name: [merchant.bank]

5.3 Account No.: [merchant.bankAccountNo]

5.4 Branch Code: [merchant.branchCode]

### 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 Page, 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 iKhokha Card Machine, 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 "iKhokha Card Machine" 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 iKhokha Card Machine 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 iKhokha Card Machine 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 3rd Floor Ridgeview Building, 1 Nokwe Avenue, Umhlanga Ridge 4319;

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;

7.26 "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 iKhokha Card Machine;

## **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<sup>8</sup> 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 an iKhokha Card Machine 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 iKhokha Card Machine to the Merchant in terms of the agreement entered into between the Merchant and Emerge;

9.4 Ownership in the iKhokha Card Machine 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 installments 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 iKhokha Card Machine with due care and not tamper or do anything to the iKhokha Card Machine 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 iKhokha Card Machine;

13.1.2 it has the right to sell and supply the iKhokha Card Machine to the Merchant;

13.1.3 the iKhokha Card Machine 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 iKhokha Card Machine repaired during the warranty period should it require a repair that is covered by iKhokha Card Machine warranty;

13.2.2 while the iKhokha Card Machine is under repair, to supply the Merchant with a replacement iKhokha Card Machine, at Emerge's own cost and in terms of Emerge's warranty policy with the Merchant;

13.2.3 to supply the Merchant with a new iKhokha Card Machine 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 surety ship.

## **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, it's 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 defenses 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 cessionaries, perform all such obligations and make any payments direct to such cessionary or cessionaries.

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 [merchant.registeredName]

I/We hereby request, "instruct" and authorise you to draw against my/our account with the above mentioned bank (or any other bank or branch to which I/we may transfer my/our account) the sum of [order.totalDebitOrderAmt] 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 [order.debitOrderDay] 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 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: [user.firstName] [user.surname]

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Executive Directors: K.H Westvig (CEO), G.W Hosking

Non-executive Directors: G.W de Jager, L Norval, N.F.J Haasbroek