

INNERVATION PAN AFRICAN PAYMENTS AGREEMENT

(4 February 2020)

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 Innervation and the Providers 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, use the pdf viewer that is used to open this document. To print/save a copy of any other terms and conditions referred to in this Agreement, use the links as indicated, 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 (including their capitalised equivalents when used in clauses that contain capital letters) 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 **“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;
- 2.3 **“CPA”** means the Consumer Protection Act, 2008;
- 2.4 **“ECTA”** means the Electronic Communications and Transactions Act, 2002;
- 2.5 **“Force Majeure”** means, without limitation as to nature or kind, any one or more or any combination of the following –
 - 2.5.1 any power, force or agency which cannot be resisted or controlled by the ordinary person;
 - 2.5.2 any greater or superior or irresistible force;
 - 2.5.3 anything exceptional, extraordinary or unforeseen, which human foresight cannot be expected to anticipate;
 - 2.5.4 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;
 - 2.5.5 inability on the part of Innervation, as a result of anything of the nature contemplated in this clause 2.5, to obtain goods and/or services from its supplier or contemplated supplier (including any telecommunications supplier, bank or Provider);
- 2.6 **“Innervation”** means Innervation Pan African Payments Proprietary Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 2000/029811/07 and having its principal place of business at Block C & E, Wedgewood Office Park, 3 Muswell Road, Bryanston, Johannesburg, Gauteng, Republic of South Africa;
- 2.7 **“Innervation Transaction”** means a transaction processed on the MyKudos App being a: (i) debit/credit/pre-paid card payment, (ii) mobile wallet payment, (iii) redemption of an electronic coupon/voucher, (iv) balance enquiries, (v) administrative functions, (vi) store-location searches, (vii) promotion information, (viii) competition entries, (ix) electronic receipting, or (x) registration with Providers;
- 2.8 **“Licence”** means the grant of a licence giving You certain rights to use the MyKudos App (see, in particular, clauses 5.4 and 6 for the associated licence terms);
- 2.9 **“MyKudos App”** means the Innervation smartphone software application, which enables the processing of Innervation transactions; and any update, upgrade and new version which Innervation might make available to Innervation’s smartphone software application, from time to time;

- 2.10 **“Provider”** means each retailer, bank or utility provider linked to the MyKudos App by Innervation and with whom You will be able to perform Innervation Transactions through the MyKudos App;
- 2.11 **“Registered User”** means a person who has downloaded the MyKudos App and applied to become, and who has subsequently been accepted as, a registered user of the MyKudos App;
- 2.12 **“Website”** means the website at www.innervation.co.za, including all associated subdomains, which is owned and operated by Innervation;
- 2.13 **“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 INNERVATION FROM LIABILITY TO YOU FOR ANY LOSS DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO THE GROSS NEGLIGENCE OF INNERVATION, 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 INNERVATION 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 and applying to become a Registered User of the Website and/or the MyKudos App and acquiring a Licence 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 MyKudos App or by applying for a Licence, You are representing to Innervation 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 Innervation 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. Innervation 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 MyKudos App; and/or
- 4.6.3 decline to grant any Licence You wish to acquire; and/or
- 4.6.4 prevent You from performing any Innervation Transaction; 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, THE MYKUDOS APP, TO PERFORM INNERVATION TRANSACTIONS AND TO SEEK TECHNICAL SUPPORT FROM INNERVATION. THE COST OF THIS IS FOR YOUR ACCOUNT AND INNERVATION SHALL HAVE NO LIABILITY TO YOU FOR ANY SUCH COSTS. AS YOUR COMMUNICATIONS WITH THE WEBSITE, YOUR OPERATION OF THE MYKUDOS APP AND THE PERFORMANCE OF INNERVATION TRANSACTIONS ARE ACROSS THE INTERNET WHICH IS A GLOBAL PUBLIC NETWORK SYSTEM, INNERVATION STRONGLY RECOMMENDS THAT YOU TAKE SECURITY MEASURES AGAINST MALICIOUS COMPUTER SOFTWARE, CODE OR ROUTINES THAT CAN TARGET COMPUTER EQUIPMENT AND TELECOMMUNICATION CONNECTIVITY.

- 4.8 INNERVATION DOES NOT WARRANT THAT YOUR USE OF THE WEBSITE OR THE MYKUDOS APP OR YOUR PERFORMANCE OF INNERVATION TRANSACTIONS WILL BE UNINTERRUPTED, ERROR FREE OR THAT ANY INFORMATION (OR COMMUNICATIONS) TRANSMITTED VIA THE WEBSITE OR THE MYKUDOS APP OR WHEN PERFORMING INNERVATION TRANSACTIONS WILL BE TRANSMITTED ACCURATELY, RELIABLY, IN A TIMELY MANNER OR AT ALL. YOUR ACCESS TO THE WEBSITE, YOUR USE OF THE MYKUDOS APP AND YOUR PERFORMANCE OF INNERVATION TRANSACTIONS MAY BE RESTRICTED, FROM TIME TO TIME, TO ALLOW FOR UPDATES, REPAIRS AND MAINTENANCE TO THE WEBSITE AND TO INNERVATION'S SYSTEMS.
- 4.9 YOU WARRANT TO INNERVATION THAT ALL INFORMATION PROVIDED BY YOU TO INNERVATION WHETHER THROUGH THE WEBSITE, THE MYKUDOS APP OR WHEN PERFORMING INNERVATION TRANSACTIONS OR ANY OTHER FORM OF COMMUNICATION, IS BOTH TRUE AND CORRECT AND THAT INNERVATION MAY RELY AND ACT UPON THAT INFORMATION ACCORDINGLY.
- 4.10 YOU WARRANT TO INNERVATION THAT MATERIAL SENT, FORWARDED OR POSTED BY YOU TO INNERVATION, WHETHER THROUGH THE WEBSITE, THE MYKUDOS APP OR WHEN PERFORMING INNERVATION TRANSACTIONS OR ANY OTHER FORM OF COMMUNICATION, WILL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY.
- 4.11 YOU WARRANT TO INNERVATION THAT YOU WILL NOT OPERATE THE MYKUDOS APP OR PERFORM INNERVATION TRANSACTIONS FOR ILLEGAL PURPOSES. SHOULD WE HAVE REASONABLE GROUNDS TO SUSPECT THAT YOU ARE OPERATING THE MYKUDOS APP AND/OR PERFORMING INNERVATION TRANSACTIONS FOR ILLEGAL PURPOSES, WE RESERVE THE RIGHT TO IMMEDIATELY BLOCK YOUR MYKUDOS APP. 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 apply for a Licence, to use the MyKudos App and to perform Innervation Transactions, You must be a Registered User of the Website and the MyKudos App. This requires You to make an application to become a Registered User by registering on the Website and the MyKudos App. Innervation reserves the right to reject any Registered User application and Innervation's decision in this regard is final and will be binding on You. THE PERFORMANCE OF ALL INNERVATION TRANSACTIONS ARE 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. INNERVATION WILL HANDLE AND TREAT YOUR PERSONAL INFORMATION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE INNERVATION PRIVACY POLICY WHICH IS PART OF THIS AGREEMENT (read the Innervation Privacy Policy in clause 8). 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 Innervation, –
- 5.3.1 acting as a payments gateway and/or payment aggregator, facilitates the transfer to a bank of the debit/credit/pre-paid card payment component of Innervation Transactions to be processed. The bank, not Innervation, will process the debit/credit/pre-paid card payment component of Innervation Transactions (including rejecting, authorising, clearing and settling payments). YOU ACKNOWLEDGE THAT INNERVATION IS NOT CAPABLE OF REJECTING, AUTHORISING, CLEARING OR SETTLING ANY DEBIT/CREDIT/PRE-PAID CARD PAYMENT COMPONENT OF ANY INNERVATION TRANSACTION AS INNERVATION IS NOT A BANK;
- 5.3.2 acting as a gateway, facilitates the transfer to a Provider of that Provider's associated component of Innervation Transactions to be processed. The Provider, not Innervation, will process its associated component of Innervation Transactions (including rejecting or authorising same, and updating details and balances). YOU ACKNOWLEDGE THAT INNERVATION IS NOT CAPABLE OF PROCESSING ANY PROVIDER COMPONENT OF ANY INNERVATION TRANSACTION AS INNERVATION IS NOT THAT PROVIDER;
- 5.3.3 reserves the right to link Providers to the MyKudos App and to delink Providers from the MyKudos App at any time and from time to time, all as determined by Innervation in its sole and absolute discretion and without notice to You. YOU ACKNOWLEDGE THAT INNERVATION IS NOT OBLIGED TO LINK ANY PROVIDER TO THE MYKUDOS APP NOR TO RETAIN ANY SUCH LINK.
- 5.4 THE DOWNLOADING AND USE OF THE MYKUDOS APP THROUGH THE APP STORE IS ALSO SUBJECT TO THE APP STORE'S ASSOCIATED TERMS AND CONDITIONS. BEFORE DOWNLOADING AND USING THE MYKUDOS APP, YOU MUST READ AND UNDERSTAND AND AGREE TO THE APP STORE'S ASSOCIATED TERMS AND CONDITIONS WHICH ARE PART OF THIS AGREEMENT (these can be accessed via the links provided in the MyKudos App). SEE ALSO CLAUSE 6 FOR ADDITIONAL TERMS THAT GOVERN YOUR LICENCE TO USE THE MYKUDOS APP.
- 5.5 THE PROCESSING OF PROVIDER COMPONENTS OF INNERVATION TRANSACTIONS BY A PROVIDER, IS ALSO SUBJECT TO THAT PROVIDER'S ASSOCIATED TERMS AND CONDITIONS. BEFORE PERFORMING THE PROVIDER

COMPONENT OF ANY INNERVATION TRANSACTION, YOU MUST READ AND UNDERSTAND AND AGREE TO THE PROVIDER'S ASSOCIATED TERMS AND CONDITIONS WHICH ARE PART OF THIS AGREEMENT (these can be accessed via the links provided in the MyKudos App).

- 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 Provider's associated terms and conditions and the app 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 business that You do with Innervation and a Provider on or via the Website or the MyKudos App 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 granted a Licence or be able to do any business with Innervation or a Provider that is restricted to Registered Users (including performing any debit/credit/pre-paid card payment component of any Innervation Transactions).
- 5.7 Innervation reserves the right to amend the terms and conditions of this Agreement (including the Provider's associated terms and conditions and the app 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 Innervation (by delivery, post, fax or e-mail to the address in clause 14) that You do not wish to be bound by the amended Agreement. In that case, Your Registered User account will be terminated, Your Licence will be revoked and You will not be able to do any further business with Innervation or any Provider (using the Website or the MyKudos App) 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 business which You conducted with Innervation or a Provider prior to termination.
- 5.8 Innervation 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 Innervation at any time.
- 5.9 You must keep Your username and password to the Website and the MyKudos App as secret at all times and not disclose them to any third party. You must notify Innervation immediately (by delivery, post, fax or e-mail to the address in clause 14) 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 INNERVATION TRANSACTIONS) OF THAT THIRD PARTY.
- 5.10 Innervation 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 Innervation;
 - 5.10.2 close any Registered User account if Innervation forms the opinion that that it is a threat to the security or operation of the Website or other systems of Innervation or is disruptive to or causes harassment of any other Registered User.
- 5.11 As a Registered User, Innervation 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 Innervation and/or a Provider;
 - 5.11.2 marketing communications. You may, at any time, require Innervation 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 Innervation by delivery, post, fax or e-mail to the address in clause 14.
- 5.12 CLAUSES 5.1, 5.4, 5.4, 5.6, 5.7, 5.9 AND 5.10 ARE ALSO CONTRACTED BY INNERVATION AND AGREED TO BY YOU, FOR AND IN FAVOUR OF THE PROVIDERS AND IN THIS REGARD THESE CLAUSES CONSTITUTE A CONTRACT FOR THE BENEFIT OF A THIRD PARTY.

6 LICENCE

- 6.1 Your Licence grants You a personal, non-exclusive and non-transferable licence to use the MyKudos App for Your own private internal business data processing purposes, provided that You are and remain a Registered User. See also clause 5.4 for additional terms that govern Your licence to use the MyKudos App.
- 6.2 YOU ACKNOWLEDGE THAT YOUR LICENCE TO USE THE MYKUDOS APP WILL TERMINATE IN THE EVENT THAT YOU ARE NO LONGER A REGISTERED USER, FOR WHATEVER REASON.
- 6.3 You may not –
 - 6.3.1 reverse engineer, de-compile or disassemble the MyKudos App (in whole or part);
 - 6.3.2 translate, adapt, vary, modify or create any derivative work from the MyKudos App;
 - 6.3.3 have software developed for Yourself based on the MyKudos App;
 - 6.3.4 use the MyKudos App to perform Innervation Transactions for or on behalf of any third party unless that third party enters into a separate agreement with Innervation 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 MyKudos App within a reasonable period after Innervation notifies You of its availability (including by way of a pop-up message on the MyKudos App). YOU ACKNOWLEDGE THAT INNERVATION IS NOT OBLIGED TO, AND MIGHT NOT, MAKE AVAILABLE ANY UPDATES, UPGRADES OR NEW VERSIONS TO THE MYKUDOS APP.
- 6.5 YOU ACKNOWLEDGE THAT THE MYKUDOS APP IS NOT DESIGNED TO OPERATE ON ANY DEVICE OTHER THAN THE DEVICES STIPULATED BY INNERVATION FROM TIME TO TIME.

7 WARRANTIES

- 7.1 Innervation warrants that the MyKudos App –
 - 7.1.1 will be reasonably suitable for the purposes for which it is generally intended;
 - 7.1.2 will be of good quality, in good working order and free of any defects;
 - 7.1.3 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;
 - 7.1.4 will comply with any applicable standards set under the Standards Act, 1993, or any other public regulation, for a period of 6 months following download of the MyKudos App by You. Should a defect arise in the MyKudos App during this warranty period, You must promptly notify Innervation in writing (by delivery, post, fax or e-mail to the address in clause 14) describing the defect.
- 7.2 THE WARRANTY IN CLAUSE 7.1 SHALL NOT APPLY IN RESPECT OF DEFECTS OR FAULTS ARISING IN THE MYKUDOS APP DUE TO OR RESULTING FROM –
 - 7.2.1 YOU ALTERING, ADJUSTING, MODIFYING OR REPAIRING (OR ATTEMPTING TO DO SO) THE MYKUDOS APP WITHOUT INNERVATION'S PRIOR WRITTEN CONSENT;
 - 7.2.2 YOUR FAILURE TO INSTALL, OPERATE, USE OR STORE THE MYKUDOS APP IN ACCORDANCE WITH ITS OPERATING INSTRUCTIONS;
 - 7.2.3 YOUR FAILURE TO ACQUIRE AND INSTALL ANY UPDATE, UPGRADE OR NEW RELEASE OF THE MYKUDOS APP WITHIN A REASONABLE PERIOD AFTER INNERVATION NOTIFIES YOU OF ITS AVAILABILITY (INCLUDING BY WAY OF A POP-UP MESSAGE ON THE MYKUDOS APP) IF THE INSTALLATION OF THAT UPDATE, UPGRADE OR NEW RELEASE WOULD HAVE AVOIDED THE DEFECT OR FAULT;
 - 7.2.4 EXTERNAL FACTORS AFFECTING THE MYKUDOS APP, INCLUDING FORCE MAJEURE OR FAILURE OR FLUCTUATION OF ELECTRICAL POWER;
 - 7.2.5 NEGLIGENCE, THEFT, VANDALISM, ACCIDENTS OR ABNORMAL OPERATING CONDITIONS;
 - 7.2.6 FAIR WEAR AND TEAR, BUT SUBJECT TO CLAUSE 7.1.3.
- 7.3 Innervation warrants that –
 - 7.3.1 services will be performed and completed in a timely manner and Innervation shall give You timely notice of any unavoidable delay in the performance of the services;

- 7.3.2 services will be performed in a manner and quality that persons are generally entitled to expect, and should Innervation fail to meet these standards, You must promptly notify Innervation in writing (by delivery, post, fax or e-mail to the address in clause 14) describing the failure and Innervation 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.
- 7.4 Innervation 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 TECHNICAL SUPPORT

- 8.1 Following Your acquisition of a Licence, should You require technical support in respect of Your use of the MyKudos App, Innervation's technical support staff will be available between 8:30 AM to 5:00 PM during Business Days and will provide e-mail technical support to endeavour to assist You. For e-mail technical support, please e-mail your query to mykudos@innervation.co.za.
- 8.2 When requesting technical support, You agree to –
- 8.2.1 provide, where available, details of any problem being experienced and any error messages generated by the MyKudos App and the activities taking place on MyKudos App at the time the problem was experienced or when any error message was generated;
- 8.2.2 co-operate with Innervation'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.
- 8.3 YOU ACKNOWLEDGE THAT INNERVATION'S TECHNICAL SUPPORT STAFF DO NOT HAVE FACILITIES THAT PERMIT THEM TO MAKE OR RECEIVE TELEPHONE CALLS. YOU ALSO ACKNOWLEDGE THAT TECHNICAL SUPPORT DOES NOT INCLUDE INSTRUCTION ON THE USE OF THE MYKUDOS APP.

9 PRIVACY POLICY AND THIRD PARTY LINKS

- 9.1 Innervation 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 using the MyKudos App, when performing Innervation Transactions, when performing any other transaction with Innervation or when You communicate with Innervation. Non-identifiable information is gathered automatically when You visit or use the Website. Innervation may also combine the information we collect from You with information we obtain about You from our business associates and other third parties.
- 9.2 Mostly, Innervation collects Your information to ensure network integrity and to enable Innervation 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.
- 9.3 Innervation respects Your privacy. We will protect the confidentiality of Your personal information supplied in the course of contracting with Innervation. Innervation will not sell your personal information to third parties for commercial or marketing purposes.
- 9.4 Innervation 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.
- 9.5 Innervation 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.
- 9.6 Any information which Innervation 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.
- 9.7 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. Innervation cannot safeguard any information You disclose there.

9.8 The Website contains links to sites that belong to third parties unrelated to Innervation. These links are provided for convenience only and Innervation does not endorse these sites or the third parties. Innervation 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. Innervation cannot be held responsible for any use of Your personal information arising from You disclosing personal information on third party sites.

9.9 Innervation reserves the right to –

- 9.9.1 disclose information about You where required in good faith, to do so by law or to exercise Innervation's legal rights or defend Innervation against legal claims;
- 9.9.2 share Your information with law enforcement to investigate or prevent illegal activities being committed over Innervation's network;
- 9.9.3 disclose Your information where You have given us explicit consent to do so;
- 9.9.4 monitor user and network traffic for site security purposes and prevent any unauthorized attempts to tamper with the Website or to cause damage to Innervation's property.

10 PROHIBITED CONDUCT IN YOUR USE OF THE WEBSITE AND THE MYKUDOS APP

Innervation hereby reserves the right to edit or remove material which is sent, forwarded or posted by You and which Innervation determines is objectionable including that which Innervation 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 MyKudos App and in communicating with Innervation, You will not, directly or indirectly, –

- 10.1 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;
- 10.2 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;
- 10.3 pose as, or hold Yourself out to have, an identity which is not You;
- 10.4 interfere with the rights of others to use the Website or the MyKudos App;
- 10.5 circumvent or compromise (or attempt to circumvent or compromise) the security on the Website or the MyKudos App or Innervation's systems;
- 10.6 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;
- 10.7 advertise or promote Yourself or any third party or any products and/or services on the Website or the MyKudos App;
- 10.8 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;
- 10.9 introduce malicious computer software, code or routines which –
 - 10.9.1 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;
 - 10.9.2 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;
 - 10.9.3 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;
 - 10.9.4 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;
 - 10.9.5 might damage or corrupt data, storage media, software, firmware, hardware or communications or otherwise interfere with technology operations generally.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 All –

- 11.1.1 patents, copyright, trademarks, 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 Innervation's business (including the Website and the MyKudos App); and
- 11.1.2 ideas, designs, documents, diagrams, information, devices, technical data, scientific data, secret and other processes and methods used in connection with Innervation's business, and, all available information regarding marketing and promotion of Innervation'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 Innervation (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 Innervation's (or its licensors') Intellectual Property without the prior written consent of Innervation, which may withhold its consent in its sole and absolute discretion. All rights in and to Innervation's (or its licensors) Intellectual Property not expressly granted in this Agreement, are hereby reserved.
- 11.2 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 Innervation 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.
- 11.3 You hereby grant Innervation the perpetual, royalty-free, world-wide right to use and exploit to the extent that Innervation sees fit, all and any ideas, comments and information provided or communicated by You to Innervation (in whatever form they are provided or communicated). For clarity, You shall receive no compensation or reward in the event that Innervation uses and/or exploits any ideas, comments and information which You have provided or communicated to Innervation. IF YOU DO NOT WANT INNERVATION TO USE OR EXPLOIT ANY OF YOUR AFORESAID IDEAS, COMMENTS OR INFORMATION, THEN DO NOT DISCLOSE THEM TO INNERVATION.
- 11.4 Innervation may make reference to third party trade marks (or other intellectual property) on the Website and/or the MyKudos App. All third party trade marks (or other intellectual property) are the property of the respective owners thereof.

12 TERMINATION, BREACH AND DEFAULT

- 12.1 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.
- 12.2 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.
- 12.3 Should either party –
 - 12.3.1 commit 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);
 - 12.3.2 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.
- 12.4 Cancellation or termination of this Agreement shall not affect either party's accrued rights in terms hereof.

13 DISCLAIMERS AND LIMITATION OF LIABILITY

- 13.1 TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, INNERVATION 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 LICENCE, YOUR REGISTRATION OR YOUR USE OF THIS WEBSITE AND/OR YOUR USE OF THE MYKUDOS APP AND/OR THE PERFORMANCE OF INNERVATION

TRANSACTIONS, REGARDLESS OF HOW SUCH LOSSES OR DAMAGES ARE CAUSED (INCLUDING AS A RESULT OF NEGLIGENT ACTS OR OMISSIONS OF INNERVATION OR OF ANY PERSON FOR WHOM INNERVATION MAY BE LIABLE IN LAW), WHETHER THEY ARISE UNDER CONTRACT, DELICT OR OTHERWISE AND WHETHER THE LOSS WAS ACTUALLY FORESEEN OR REASONABLY FORESEEABLE.

- 13.2 TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, INNERVATION SHALL NOT BE LIABLE TO YOU FOR ANY LOSSES OR DAMAGES SUSTAINED BY YOU ARISING OUT OF OR IN CONNECTION WITH ANY LICENCE, YOUR REGISTRATION OR YOUR USE OF THIS WEBSITE AND/OR YOUR USE OF THE MYKUDOS APP AND/OR THE PERFORMANCE OF INNERVATION TRANSACTIONS, REGARDLESS OF HOW SUCH LOSSES OR DAMAGES ARE CAUSED (INCLUDING AS A RESULT OF NEGLIGENT ACTS OR OMISSIONS OF INNERVATION OR OF ANY PERSON FOR WHOM INNERVATION MAY BE LIABLE IN LAW), WHETHER THEY ARISE UNDER CONTRACT, DELICT OR OTHERWISE AND WHETHER THE LOSS WAS ACTUALLY FORESEEN OR REASONABLY FORESEEABLE, EXCEEDING, IN RELATION TO ANY CLAIM OR SERIES OF CLAIMS ARISING FROM THE SAME CAUSE OF ACTION, AN AMOUNT OF R250.00.
- 13.3 CLAUSES 13.1 AND 13.2 ARE ALSO CONTRACTED BY INNERVATION AND AGREED TO BY YOU, FOR AND IN FAVOUR OF ANY PERSON FOR WHOM INNERVATION MAY BE LIABLE IN LAW AND IN THIS REGARD THESE CLAUSES CONSTITUTE A CONTRACT FOR THE BENEFIT OF A THIRD PARTY.
- 13.4 SAVE AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE WEBSITE, THE MYKUDOS APP AND/OR THE PERFORMANCE OF INNERVATION TRANSACTIONS ARE PROVIDED ON AN AS-IS BASIS AND, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, INNERVATION EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, IN RESPECT OF THE WEBSITE, THE MYKUDOS APP AND/OR THE PERFORMANCE OF INNERVATION TRANSACTIONS.
- 13.5 Nothing in this clause 13 shall be interpreted or construed to exclude or limit Innervation'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 Innervation, save to the extent permitted by the CPA.

14 ADDRESSES FOR NOTICE AND SERVICE

- 14.1 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 –
- 14.1.1 Innervation:
- Physical: 1st Floor Cedar Square, Corner Cedar Road and Willow Avenue, Fourways, Johannesburg, Gauteng, Republic of South Africa
Postal: 1st Floor Cedar Square, Corner Cedar Road and Willow Avenue, Fourways, Johannesburg, Gauteng, Republic of South Africa
Fax: not applicable
e-Mail: cancellations@innervation.co.za
- 14.1.2 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.
- 14.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 14.3 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.
- 14.4 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).

- 14.5 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.
- 14.6 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).
- 14.7 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).
- 14.8 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.
- 14.9 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.

15 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.

16 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.

17 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.

18 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.

19 GOVERNING LAW

- 19.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 19.2 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.
- 19.3 The United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement and transactions implemented pursuant to it.

20 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.

21 WHOLE AGREEMENT, NO AMENDMENT

- 21.1 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.
- 21.2 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).
- 21.3 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.
- 21.4 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.

22 ECTA INFORMATION

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

- 22.1 Telephone number: 0861 111 665.
- 22.2 Membership of self-regulatory or accreditation bodies to which Innervation belongs/subscribes and their contact details: Payments Association of South Africa (Tel No: +27101407100/ E-mail: pasa@pasa.org.za).
- 22.3 Codes of conduct subscribed to by Innervation and how they can be accessed electronically: None.
- 22.4 Office bearers: Anton Gaylard, Vaughan Alexander, Mntungwa Morojele, Andiswa Mjuleka, Steve Mallaby Ian Steyn, Mark Schech.
- 22.5 Place of registration: The Republic of South Africa.
- 22.6 Description of the main characteristics of the goods/services offered by Innervation to enable a consumer to make an informed decision on the proposed electronic transaction: Innervation is a provider of payment services, customer engagement services, card and account management services and value added services to retail businesses.
- 22.7 Alternative dispute resolution codes subscribed to by Innervation and how they can be accessed electronically: None.

23 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 –

- 23.1 Public officers' contact details: Vaughan Alexander. Contact number: (office) 0861 111 665.
- 23.2 The exact service to be rendered by Innervation: A corporate website and a mobile app, the latter supporting payment and customer engagement on behalf of retailers, banks and utility providers who have contracted Innervation for that purpose.
- 23.3 Costs which Innervation is entitled to recover from You, and under what circumstances: None.

- 23.4 Innervation 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 Innervation, or whether to continue with an existing service.
- 23.5 The following commissions, consideration fees, charges or brokerages are payable to Innervation by the following persons: Innervation will receive fees from the Provider in return for the provision of payment services, customer engagement services, card and account management services and value added services.
- 23.6 Innervation has not been –
 - 23.6.1 found guilty of any offence involving dishonesty which was punishable by criminal imprisonment without the option of a fine;
 - 23.6.2 placed under sequestration, liquidation or business rescue proceedings.