ONLINE TERMS OF SERVICE AND CONDITIONS

Please read carefully these terms and conditions before registering online. Registering online indicates that you accept these terms and conditions. If you do not accept these terms and conditions, please do not register online or send your enquiry to info@ikas.co.za.

1. **Introduction**

1.1. This agreement is between you "Customer" and Ikhaya Automation Systems (Pty) Ltd "Service Provider" and consists of these Terms and Conditions set out below.

2. **Prevailing Terms and Conditions**

2.1. By completing the registration process online you acknowledge and accept the terms of service, conditions of use, limitations, disclaimers and indeed the entire content described in this document.

3. **Description of Service provided by Ikhaya Automation Systems and/or 3rd parties**

3.1. Through the installation of the Hardware and together with this website and its associated 3rd party products and services, Ikhaya Automation Systems provides you with various monitoring solutions "Services". The Service includes associated 3rd party products and services including, but not limited to, email messaging via the internet, Global System for Mobile Communication "GSM", short text-based messaging "SMS", various wireless data transmission methodologies such as General Packet Radio Services "GPRS" and software applications resident in hardware products separately supplied by Ikhaya Automation Systems. This Hardware and Services allow you to access temperature information, other process variables, digital I/O status, analog status, position and other relevant information, using the internet , GSM network or any other RF Network. In addition, the Service also allows the solution to purposely or autonomously initiate outward messages under certain conditions, some of which are configurable by you. "Event Notification".

4. **Commencement and Duration**

4.1. This agreement commences on the date of online registration or signing of the Contract "Activation Date" and shall continue until termination of this agreement in terms of clause 14 below.

5. **Your responsibilities**

5.1. You agree:

5.1.1. to notify Ikhaya Automation Systems as soon as possible should you find the Hardware or the Solution not working;

5.1.2. make sure you give Ikhaya Automation Systems at least 36 (thirty six) hours notice before a de-install or re-install of the Hardware;

5.1.3. to ensure the solution is working and you should check/test each installed solution at least once every seven days;

5.1.4. to ensure all information is correctly entered into the system ie mobile numbers, recipient email addresses, correct set points, naming of sensors, conditions for rules & etc.

5.1.5. to immediately notify Ikhaya Automation Systems of any changes in your business account details;

5.1.6. to pay Ikhaya Automation Systems all monies due. The subscription fees are due monthly in advance, on or before the first day of each month via debit order or electronic funds transfer and will be escalated annually by 8% or the Consumer Price Index (CPI) whichever is the greater;

5.1.7. not modify or tamper with the Hardware and only use the Service for its intended purpose;

5.1.8. to indemnify Ikhaya Automation Systems and its agents against any claim of whatever nature arising out of this agreement including claims made by your employees and/or sub-contractors;

5.1.9. that the cellular network "Network"is not a party to this agreement and as such the Network shall not be liable to you or your employees or sub-contractors for any injury, loss or damage of whatsoever nature;

5.1.10. that the Sim Card located in the Hardware is for the sole intended purpose as described in clause 6 below.

5.1.11. that Ikhaya Automation Systems may use any information communicated by the Hardware without restriction, provided that your confidentiality is maintained;

5.1.12. that the services offered by Ikhaya Automation Systems and its sub-contractors shall not be liable to you or your employees and sub-contractors for any injury, loss or damage of whatsoever nature;

5.1.13. to arrange for the replacement of batteries when required, which is typically every 12 months;

5.1.14. Ikhaya Automation Systems shall not supply any service or replace any Hardware, if you are in default of any of your obligations.

5.1.15. to provide a port in the equipment that any Ikhaya sensors or cabling needs to be installed into, and in the absence thereof allow Ikhaya to use initiative according to experience to install such sensor or cabling,

5.1.16. not hold Ikhaya responsible for damages to equipment or product should no port be provided as per 5.1.15.

5.1.17. give Ikhaya Automation permission to mount controller boxes using wall plugs to ensure a steadfast mounting

5.1.18. should permission not be granted per 5.5.17, and an alternative method of mounting be required, than any additional work regarding the mounting, such as remounting, may bear costs of travel and labour.

5.1.1.19. that the hosting company for website and servers "Backend" is not a party to this agreement and as such the hosting company shall not be liable to you or your employees or sub-contractors for any injury, loss or damage of whatsoever nature;

5.1.1.20. Users that are registered with Myfridgeonline must log in at least once a day and check that all sensors display appropriate data. User activity can be checked by Managers and Company owners under the menu item USERS/ENGAGEMENT

5.1.1.21. Daily or weekly reports must be perused for correct values and abnormalities in graphs or data fields must be addressed. The data under EXCEPTION and ALARM tabs must be perused, evaluated and addressed on a daily basis.

5.1.1.22. Where no reports are enabled, users must check daily sensor graphs online on a daily basis

5.1.1.23. The menu item ALERTS/ALERTS must be checked every morning, and alerts must be noted, investigated and cleared.

5.1.1.24. The failover from primary supply power to battery backup power must be tested weekly. This can be done by disabling the mains power supply feed for a minimum duration of ten minutes and checking that you receive an alert, the unit remains powered on and provides measurement data. After the mains power feed is restored, it must be checked that the unit returns to its normal operating condition.

5.1.1.25. The monitoring system is implemented as a precaution against stock spoilage or losses; thus provisions must be made for the above actions to be maintained on non-business days such as weekends and public holidays. During vacation or sick leave by assigned staff, alternate staff needs to be appointed and enabled to continue with these functions

5.1.1.26. Clients that have chosen the Short Message Service (SMS) notifications as part of the alerting protocol are informed that the standard subscription includes only a single bundle of SMS' per month and must monitor SMS utilisation through the "Myfridgeonline" portal. Ikhaya does not accept any liability for the non-delivery of SMS based alerts in the event that the monthly allocation of SMS' has been depleted. In the event of the SMS bundle being depleted before month-end, it is the clients responsibility to request additional bundles to be loaded on their monthly subscription account.

6.   SIM Card

6.1. The Sim card is used to provide connectivity services between the Hardware and the Backend.

6.2. Under no circumstances shall the Sim card be removed from the Unit.

6.3. All risk for loss, damage and **incurred cost** to Sim cards supplied by Ikhaya Automation Systems to the Customer will pass to the customer upon delivery of the Unit to the Customer or such person chosen by the Customer to accept delivery of the Unit.

6.4. The Customer is required to immediately notify Ikhaya Automation Systems in writing if a Sim card is lost, stolen, damaged or thinks that the Sim card is being used for purposes other than stipulated in clause 6.1. Until this notification is received and acknowledged by Ikhaya Automation Systems, the Customer remains liable for all costs and charges relating to the Sim card. Furthermore, the Customer remains liable for all costs associated to the Sim card for the duration of this Contract.

6.5. The Customer may apply to Ikhaya Automation Systems in writing for a replacement of a Sim card ("SIM swap"). Ikhaya Automation Systems will request the payment of R250 ex vat for the swap process and new card. Delivery and install costs are excluded from this amount.

6.6. In instance whereby a connection is disabled due to non-payment or any other reason a reconnection fee of R 250 ex vat will apply. Delivery and install costs are excluded from this amount.

6.7. The Customer hereby warrants that the Sim card will not be used for any improper, immoral or unlawful purpose, nor in any way that may cause injury or damage to persons or property or an impairment or interruption to the network services.

7. Warranty

7.1. The warranty will commence on the date of online registration or signing of the Contract ("Activation Date") or on the date of delivery of the Unit and shall remain in force for 12 (twelve) months.

7.2. The warranty is carry-in, which requires you to take the Unit to the nearest installer or Ikhaya Automation Systems office which warranty excludes any labour charges required to repair the Unit and excludes damage as a result of fluid damage, theft or attempted theft, tampering with the Unit or your negligence.

7.3. Should a technician of Ikhaya Automation Systems or its sub-contractors be requested at your authority to come out to site, callout fees including travel and labour will apply irrelevant of the warranty period.

7.4. The warranty remains in place only while your Account records are up to date.

7.5. All courier and postage cost will be borne by the Customer.

7.6. Product warranties remain valid provided the product was properly installed and used as detailed in the user and installer guides. .

7.7. This warranty is limited to the repair and/or replacement, at Ikhaya Automation Systems sole discretion of the defective product during its warranty period.

7.8. In the event that the product is removed & delivered to Ikhaya Automation Systems or an authorised Distributor, the customer accepts full responsibility for any loss or damage occurring during transit.

7.9. Customers may either seek assistance from the original dealer or from the closest Ikhaya Automation Systems Service Office. Repaired or replaced parts are warranted for ninety (90) days from the date of repair or replacement or for the remainder of the original product's warranty period whichever is longer.

7.10. Where the product is fitted to a vehicle and such vehicle requires a repair under warranty, such vehicle must be made available at an official distributor during working hours for repair. In all other cases, travel costs incurred will be charged at the current rate as determined by Ikhaya Automation Systems from time to time.

7.11. A product will not be warranted in the following conditions:

1. The product has been found to be defective after the warranty period has expired.
2. The product has been subjected to misuse, abuse, or unauthorized repair, whether by accident or other cause. Such conditions will be determined by Ikhaya Automation Systems at its sole and unfettered discretion.
3. The warranty of consumable and auxiliary products sold by Ikhaya Automation Systems will not be covered by the 12 month warranty, i.e. Temperature Probes, Humidity meters, Transducers etc.
4. Accessories not carrying the Ikhaya Automation Systems brand name! In this case, warranties are limited to the warranty provided by the original manufacturer of the accessory. Examples of such products and accessories are power adaptors, cables, sensors etc.
5. The product has been updated, reworked, or improperly installed by the customer, or by a third party at the request of the customer.
6. Defects, malfunctions, or failures of the warranted product caused by damage resulting from acts of God (such as floods, fire, etc.), environmental and atmospheric disturbances, other external forces such as power line disturbances, host computer malfunction, water damage, riots, removal of SIM Card whilst power is applied, use of incorrect power supply, use of incorrect cabling, damage caused by accidents, misuse, abuse and unauthorized alteration or repair
7. The product in question is an expendable item, such as a fuse, battery, etc.

8. Copyright & Intellectual Property Rights ("IPR")

8.1. All specifications, descriptive matter, electronic representations, downloaded files, software, drawings and other documents or media relating to the Services or Products, whether furnished by Ikhaya Automation Systems to you on this web site or other means, remains the property of Ikhaya Automation Systems and the intellectual property relating thereto remains vested in Ikhaya Automation Systems.

8.2. You shall not copy the whole or any part of software, the Unit and/or any Products, save as otherwise provided herein; reverse engineer, disassemble, translate, adapt, modify, alter or in any way decode the whole or any part of the software, Units and/or Products; convert the whole or any part of the software from object code to source code; merge or combine the whole or any part of the software with any other computer software or documentation; part with possession of, lend, assign, lease, sub-license, transfer or otherwise provide electronically any part of the software, Unit and/or products or any copy or part thereof to any other person; use any of the data or other confidential information of Ikhaya Automation Systems contained in or derived from the software, Unit and/or Products or to develop or market any software which is substantially similar in its function or expression to any part of the software; or use the software for the business needs of another person or entity.

8.3. You acknowledge that any and all of the intellectual property used or embodied in or in connection with the software, Unit and/or Products are and will remain the sole property of Ikhaya Automation Systems. You shall not question or dispute the ownership of such rights at any time.

8.4. You shall notify Ikhaya Automation Systems as soon as you become aware of:

8.4.1. any actual, threatened or suspected infringement of Ikhaya Automation Systems intellectual property;

8.4.2. Any claim brought against you alleging that its use of the software infringes the copyright or any other intellectual property belonging to or alleged to belong to the claimant.

8.5. If any such claim as mentioned above is brought against you, Ikhaya Automation Systems reserves the right to replace or change all or any part of the software, Unit and/or products in order to avoid infringement or alleged infringement of any third party's rights.

8.6. You acknowledge that the software and/or products contains confidential information or otherwise proprietary to Ikhaya Automation Systems and undertakes to hold in confidence such information and not divulge such information to any person.

9. Privacy

9.1. The Service was designed to use various passwords, usernames and access codes (collectively referred to as "Passwords" to protect your privacy. Ikhaya Automation Systems has taken reasonable precautions to ensure such Passwords are kept confidential on the system. In any secure environment, it is good practice to change passwords at regular intervals and you are advised to do the same on our system.

9.2. You remain entirely responsible to maintain the privacy of their Passwords from third parties. Failure to do so can result in such third parties gaining access to your confidential information such as the position of their vehicle and other process related information.

9.3. If you suspect any breach of security or unauthorized use of you account, you must immediately notify Ikhaya Automation Systems in writing.

10. System Limitations

10.1. Any or all of the following limitations may have an impact on the safe use of the Products and Services. These limitations must be carefully studied and fully understood by you and acceptance of these Terms and Conditions explicitly implies this to be the case. Ikhaya Automation Systems strongly advises against any critical use of their Services without the use of an appropriate and reliable backup service or procedures. Nor should the Services be used as the sole means of providing transactional information that may have a monetary or high priority risk on an individual or business.

10.2. Disruption of services. Ikhaya Automation Systems makes use of 3rd party infrastructure and services such as, inter alia, GSM, GPRS networks, electricity suppliers and internet service providers. The availability of services of any or all of these 3rd party infrastructure and service providers cannot be guaranteed. Nor can Ikhaya Automation Systems guarantee the availability and service levels of its own equipment, infrastructure or services.

10.3. Area coverage of the GPRS Controller currently makes use of the BICS network as its primary means of communication between the Unit, data base and the 3rd party services providers. As such, communication is limited to the GSM/GPRS coverage provided by BICS.

10.4. The Event Notifications offered by the Service will provide you with notifications of conditions such Door opening, temperature deviations form set point, fridge unit status and others. The reliability of delivery of such Event Notifications are mainly affected by the performance of the GSM network at any point in time. During busy or peak GSM traffic times, delivery Event Notifications may be significantly delayed or even discarded. Poor customer installations may also affect the ability of the Product to reliably sense any specific event.

10.6. If monthly subscription payments are not received on time, all services will be suspended, and services will only become available again once any arrear subscription payments are received and your account is re-instated.

10.7. The Hardware was designed to retain a certain amount of usage data in its memory. However, such usage data will not be kept indefinitely, nor can Ikhaya Automation Systems provide any warranties against its corruption within the Hardware. Once such usage data is uploaded to the Ikhaya Automation Systems servers as a trip report of similar service, the Ikhaya Automation Systems data base will attempt to store such data for a period of twelve months. Thereafter such data may be erased. Ikhaya Automation Systems also does not provide any warranties to the safekeeping of such data within the stated twelve month period.

10.8. General limitations - there are several other factors that may also adversely affect the availability and accuracy of the Services such as environmental conditions, battery condition , quality of the installation and the actual usage profile (such as inactive period between use) of the Product and Service.

11. Disclaimers

11.1. You agree that the use of the Service is entirely at your sole risk and is supplied on an "as is" and "as available" basis. Ikhaya Automation Systems expressly disclaims any warranties of any kind, whether expressed or implied, included but not limited to the fitness for any particular purpose.

11.2. Ikhaya Automation Systems provides no warranty that the Service will meet your requirements, or that the Service will be uninterrupted, timely, secure or error free. Nor does Ikhaya Automation Systems provide any warranty that results, data or information obtained from using the Service, are accurate.

11.3. You understand and agree that any information or material downloaded or otherwise received from Ikhaya Automation Systems servers is done at your sole discretion and risk and that any damage to your computer system or loss of data that results from downloading or receiving information or material from Ikhaya Automation Systems servers, will be your sole responsibility.

11.4. Ikhaya Automation Systems makes no claims, and provides no warranties, that any advice given or information provided to you relating to the Service, whether written, orally or by any means whatsoever, shall create any implied or expressed warranty not expressly made herein.

12. Third Party Content

12.1. Certain third party content is used or displayed by Ikhaya Automation Systems Service, including but not limited to text, software, music, sound, photographs, video, graphics and advertisements ("content"), is protected by copyright, trademarks, service marks, patents or other proprietary rights. You will not copy, distribute or create derivative works from the Content without written permission from Ikhaya Automation Systems or the owner of the Content. You also indemnify and holds Ikhaya Automation Systems harmless against such unauthorized use of the Content.

13. Damages and Losses

13.1. Notwithstanding anything else in these Terms and Conditions, Ikhaya Automation Systems shall not be liable to you by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of these Terms and Conditions, for any loss or damage (direct, indirect or consequential, for loss or profit or otherwise and whether occasioned by the negligence of Ikhaya Automation Systems or its employees or agents or otherwise) arising out of or in connection with any act or omission of the Ikhaya Automation Systems products and services relating to the supply of services and goods, or the use thereof in any manner whatsoever.

14. Termination of Service

14.1. This agreement shall continue for an indefinite period, unless terminated by either party giving the other at least 1 (one) months' written notice to that effect, provided however that you shall not be entitled to give such notice within 23 (twenty three) months from the Commencement Date.

14.2. To reinstate a terminated Service, you will be required to apply to the Ikhaya Automation Systems helpdesk at 0861 111 105 and will be required to provide written proof that all outstanding subscriptions have been paid.

14.3. Re-instatement after the Services has been suspended for more than six months may not be possible.

14.4. When a suspended service is resumed, the following conditions may apply:

14.4.1. A re-initialising fee amounting to R250 ex vat per device will be charged.

15. Transfer of Service

15.1. You may elect to transfer your Unit to a new vehicle. The new vehicle details are entered by you on the relevant page on this website. Any costs associated with de-installation and/or re-installation costs of the Unit will be for your account.

15.2. You may also elect to transfer your account to a new account holder, which transfer will only be accepted if the new account holder agrees to be bound by these Terms and Conditions and updates the account holder details on the appropriate web page.

17. Notices & Correspondence

17.1. Ikhaya Automation Systems provides a web-based service. Several means of communication with you are provided such as User Forums and Blogging Sites. All of these communication tools will be for the purposes of providing information only and any notices, claims made or descriptions of the Service provided on any of these media, will in no way be binding on Ikhaya Automation Systems, nor shall it alter or supersede these Terms and Conditions. The only exception to this will be notices posted on our Newsletter on the home page, alerting you to changes in these Terms and Conditions.

18. Domicilium and Notices

18.1. You choose as your domicilium citandi et executandi the address specified in the Account Holder form for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature.

19. General

19.1. The headings of the clauses herein are for the purpose of convenience and reference only and shall not be used in the interpretation, nor amplify the terms of these terms and conditions or any clause hereof. Unless contrary intention clearly appears, wording importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons include legal entities and vice versa.

19.2. These Terms and Conditions shall be governed by and construed in accordance with the laws of the Republic of South Africa.

19.3. Any cause or action arising out of the use of the Service or related thereto, must commence within one year after the cause of the action arose. Failure to do so will result in the cause of the action now longer considered valid and therefore disqualified from any further action by you.

19.4. Ikhaya Automation Systems shall, without notice to you, be entitled to sell, cede, pledge, assign and/or re-assign all or any of its rights and obligations under this Agreement to any third party, and if such sale, cession, pledge assignment and/or re-assign takes place, you shall: -

19.4.1. make all payments directly to such third party on the same terms as agreed to in this Agreement; and

19.4.2. accept any assignment and/or re-assign; and

19.4.3. accept any reference in this Agreement to Ikhaya Automation Systems (unless the context clearly indicates otherwise) as referring to such third party.

19.4.4. These Terms and Conditions without any notice may be updated from time to time.

20. Support Contact Details

20.1. More support contact details are available on the website but the following primary contacts are herewith provided: Telephonic Support: 0861 111 105 | Email Support: info@ikas.co.za

21. Protection of Information Act

In line with the provisions in the Protection of Information Act no. 4 of 2013, (POPIA), responsible parties are required to obtain consent from all data subjects when processing information or providing personal information of the data subject to third parties. Therefore, this addendum deals with terms relating to the processing of such information to ensure that Ikhaya and relevant parties comply with the legislative requirements and that all parties are aware of the protection afforded to their personal information.

22. Personal Information

22.1. Each party shall ensure that all the personal information they collect from the other party is obtained directly from the other party or an authorised representative, or in terms of Section 12 of POPIA.

22.2. Each party shall ensure at all times that the personal information provided to them by the other party is protected and retained with the utmost confidentiality.

22.3. Personal information collected from the parties shall only be used for the purpose it was originally obtained.

22.4. Where the information requires furthering process or utilizing for a different purpose from when originally obtained, such party shall request consent from the other party for further processing.

22.5. The supply of personal information is mandatory and provided by the parties voluntarily to give effect to the business relationship between the parties.

22.6. Each party shall ensure that the personal information obtained from the other party is kept for the minimum timeframe stipulated by applicable legislative requirements.

22.7. Each party may withdraw consent for or object to the processing of personal information, which will lead to the termination of the business relationship, and the personal information may be retained for a period to satisfy other legislative requirements which the parties are required to retain records for

Ikhaya will notify the customer immediately where there are reasonable grounds to believe that the Personal Information of a Data Subject has been accessed or acquired by any unauthorised person. The customer therefore gives consent and agrees to supply Ikhaya with it's personal information in order to continue the provision of services.