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# WEBSITE TERMS AND CONDITIONS

IN TERMS OF SECTION 11 OF THE [ELECTRONIC COMMUNICATIONS AND TRANSACTIONS \(ECT\) ACT 25 OF 2002](#) AND THE COMMON LAW OF CONTRACT, THESE TERMS AND CONDITIONS ARE VALID, BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE KHARA HAIS WEBSITE, WEB PAGES OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS YOU MUST LEAVE THE KHARA HAIS WEBSITE WITHOUT DELAY, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

## DEFINITIONS AND INTERPRETATION

- a) “the Khara Hais website” means the website, owned and operated by Khara Hais and located at <http://www.kharahais.gov.za>, including any page, part or element thereof;
- b) “Khara Hais” means Khara Hais Municipality;
- c) “User” means any person who enters or uses the Khara Hais website, notwithstanding the fact that such a person only visits the home page of the Khara Hais website;
- d) References herein to the singular include the plural and vice versa; and
- e) Hyperlinks herein to legal documents should be deemed part of these terms and conditions in terms of section 11(3) of the [ECT Act](#). The fact that some or all of the hyperlinks may, from time to time, be non-operational, shall not affect the validity and interpretation of these terms and conditions.

## 1. GENERAL

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- 1.1 Khara Hais provides general and tourism information about Khara Hais.

## 2. ALLOWED USE AND LICENSE

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- 2.1 Khara Hais licenses the User to view, download and print the content of the Khara Hais website, provided that such content is used for private, personal, educational and/or non-commercial purposes only.
- 2.2 Content from the Khara Hais website may not be used or exploited by Users for



any commercial and non-private purposes without the prior written consent of Khara Hais.

2.3 Users may only access, browse and use the Khara Hais website for legitimate personal or commercial purposes and may not use the Khara Hais website or any Khara Hais services and/or products for:

2.3.1 Harmful purposes;

2.3.2 Illegal purposes;

2.3.3 Disclosing, sharing or publishing material that may be offensive, defamatory, regulated, prohibited, infringing or damaging to any person; and/or

2.3.4 The creation, storage and sending of unsolicited commercial communications.

2.4 The caching of the Khara Hais website shall only be allowed if:

2.4.1 The purpose of the caching is to make the onward transmission of the content from the Khara Hais website more efficient;

2.4.2 The cached content is not modified in any manner whatsoever;

2.4.3 The cached content is updated at least every 12 (twelve) hours; and

2.4.4 The cached content is removed or updated when so required by Khara Hais.

2.5 If any User uses content from the Khara Hais website in breach of the provisions detailed herein:

2.5.1 Khara Hais reserves the right to claim damages from the User;

2.5.2 Khara Hais reserves the right to institute criminal proceedings against the User; and

2.5.3 Khara Hais shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.

2.6 Hyperlinks to the Khara Hais website from any other source shall be directed at the home page of the Khara Hais website. Links beyond the Khara Hais home page may only be used with Khara Hais's prior written consent.

2.7 Khara Hais shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content, products or services available from the Khara Hais website, if such contents, products or services were accessed through a hyperlink not directed at the home page of the Khara Hais website. Persons that wish to link to pages beyond the home page of the Khara Hais



website without Khara Hais's prior written consent shall do so at their own risk and indemnify Khara Hais against any loss, liability or damage that may result from the use of such hyperlinks. Khara Hais's non-liability for deep linking is based on the fact that deep links bypass these terms and conditions.

- 2.8 Users may quote small and reasonable amounts of content available from the Khara Hais website and only if such a quote is placed in inverted commas and acknowledged.
- 2.9 No person may, without the prior written consent of Khara Hais, frame the Khara Hais website in any manner whatsoever.
- 2.10 Apart from bona-fide search engine operators and use of the search facility provided on the Khara Hais website by Users, no person may use or attempt to use any technology or applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Khara Hais website for any purpose whatsoever, without the prior written consent of Khara Hais.
- 2.11 E-mail addresses, names, telephone numbers and fax numbers published on the Khara Hais website may not be incorporated into any database used for electronic marketing or similar purposes. No permission is given or should be implied that information on the Khara Hais website may be used to communicate unsolicited communications to Khara Hais and all rights detailed in Section 45 of the [ECT Act](#) are reserved.
- 2.12 All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by Khara Hais at any time without prior notice or reasons.

### **3. INTELLECTUAL PROPERTY RIGHTS**

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- 3.1 All intellectual property on the Khara Hais website, including but not limited to content, trademarks (or any confusingly similar trademarks), logos, pictures, video, downloads, domain names, patents, design elements, software, source code, meta tags, databases, text, graphics, icons and hyperlinks are the property of or licensed to Khara Hais and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on the Khara Hais website are expressly reserved.
- 3.2 No person may use logos, icons or trade marks from the Khara Hais website as hyperlinks or other purposes without Khara Hais's prior written consent.

### **4. SOFTWARE AND EQUIPMENT**

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- 4.1 It is the responsibility of the User to acquire and maintain, at his/her own expense, the necessary computer hardware, software, communication lines and Internet access accounts required to access the Internet and the Khara Hais's website and/or download content from the Khara Hais website.



## 5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

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*These terms and conditions as well as product and / or service specific terms and conditions govern the sale of goods and / or the provision of services from or through the Khara Hais website.*

Access to the services, content, software and downloads available from the Khara Hais website may be classified as “electronic transactions” as defined in terms of the [ECT Act](#) and therefore Users have the rights detailed in Chapter 7 of the [ECT Act](#) and Khara Hais has, amongst others, the duty to disclose the following information:

- 5.1 **The full name and legal status of the website registrant:** Khara Hais Municipality;
- 5.2 **Directors:** Municipal Manager , Director Corporate Services, Director Social Services, Director Civil Engineering;
- 5.3 **Street address:** Civic Centre, Market Street, Upington, 8800;
- 5.4 **Postal address:** Private Bag X6003, Upington, 8800;
- 5.5 **Physical address for receipt of legal service:** Civic Centre, Market Street, Upington, 8800;
- 5.6 **Telephone number:** 054 332 5911;
- 5.7 **Fax number:** 054 332 1762;
- 5.8 **Main business:** The provision of municipal services to the inhabitants of Khara Hais;
- 5.9 **Code of Conduct:** [Municipal Systems Act 32 of 2000](#);
- 5.10 **The website address of the Khara Hais website is:** <http://www.kharahais.gov.za>;
- 5.11 **The official e-mail address of the Khara Hais website is:** [manager@kharahais.gov.za](mailto:manager@kharahais.gov.za);
- 5.12 **Alternative dispute resolution:** Subject to urgent and/or interim relief, all disputes regarding:
  - 5.12.1 access to the Khara Hais website;
  - 5.12.2 the inability to access the Khara Hais website;
  - 5.12.3 the services and content available from the Khara Hais website; or
  - 5.12.4 these terms and conditions,

shall be referred to arbitration in terms of the [expedited rules of the Arbitration Foundation of South Africa](#) and such arbitration proceedings shall be conducted in



Upington in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client. The expedited rules of the Arbitration Foundation of South Africa may be downloaded from the following website: <http://www.arbitration.co.za>;

- 5.13 **Cooling-off period:** In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off period provision of the ECT Act do not apply to this website and;
- 5.14 **Users may lodge complaints concerning the Khara Hais website with Khara Hais at:** [manager@kharahais.gov.za](mailto:manager@kharahais.gov.za)

## 6. CHANGES AND AMENDMENTS

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Khara Hais reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice or justification:

- 6.1 change these terms and conditions;
- 6.2 change the content and/or services available from the Khara Hais website;
- 6.3 discontinue any aspect of the Khara Hais website or service(s) available from the Khara Hais website; and/or
- 6.4 change the software and hardware required to access and use the Khara Hais website.

## 7. PRIVACY

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- 7.1 Khara Hais shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the [Promotion of Access to Information Act 2 of 2000](#) (PAIA).
- 7.2 Khara Hais may electronically collect, store and use the following personal information of Users:
- 7.2.1 name and surname;
- 7.2.2 area code;
- 7.2.3 street address;
- 7.2.4 postal address;
- 7.2.5 title;
- 7.2.6 contact numbers;
- 7.2.7 non-personal browsing habits and click patterns;



- 7.2.8 e-mail address; and / or
- 7.2.9 IP address.
- 7.3 Khara Hais collects, stores and uses the abovementioned information for the following purposes:
  - 7.3.1 Communicate requested information to the User;
  - 7.3.2 Provide services to the User as requested by the User;
  - 7.3.3 Authenticate the User;
  - 7.3.4 Provide the User with access to restricted pages on this website; and
  - 7.3.5 Compile non-personal statistical information about browsing habits, click-patterns and access to the Khara Hais website.
- 7.4 Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings.
- 7.5 Khara Hais may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:
  - 7.5.1 Khara Hais shall not disclose personal information from Users unless the User consents thereto;
  - 7.5.2 Khara Hais shall disclose personal information without the User's consent only through due legal process; and
  - 7.5.3 Khara Hais may compile, use and share any information that does not relate to any specific individual.
- 7.6 Khara Hais owns and retains all rights to non-personal statistical information collected and compiled by the Khara Hais.

## **8. HYPERLINKS TO THIRD PARTY SITES**

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- 8.1 Khara Hais may provide hyperlinks to websites not controlled by Khara Hais ("target sites") and such hyperlinks do not imply any endorsement, agreement on or support of the content, products and/or services of such target sites.
- 8.2 Khara Hais does not editorially control the content, products and/or services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, use, inability to use or content available on or through target sites.



## 9. SECURITY

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- 9.1 Khara Hais shall take all reasonable steps to secure the content of the Khara Hais website and the information provided by and collected from Users from unauthorised access and/or disclosure. However, Khara Hais does not make any warranties or representations that content shall be 100% safe or secure.
- 9.2 Subject to the provisions of sections 43(5) and 43(6) of the [ECT Act](#), if applicable, Khara Hais is under no legal duty to encrypt any content or communications from and to Users and is also under no legal duty to provide digital authentication of any pages on the Khara Hais website.
- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, robots or spy ware, to the Khara Hais website or the server and computer network that support the Khara Hais website.
- 9.4 Notwithstanding criminal prosecution, any person who delivers or attempts to deliver any damaging code to the Khara Hais website, whether on purpose or negligently, shall, without any limitation, indemnify and hold Khara Hais harmless against any and all liabilities, damages, risks and losses that Khara Hais and its partners / affiliates may suffer as a result of such delivery, attempt or damaging code.
- 9.5 Users may not develop, distribute or use any device or programme designed to breach or overcome the security measures of the restricted pages, products and services on the Khara Hais website and Khara Hais reserves the right to claim damages from any and all persons involved, directly and indirectly, in the development, use and distribution of such devices or programmes.
- 9.6 Users who commit any of the offences detailed in sections 85 to 88 of the [ECT Act](#) shall, notwithstanding criminal prosecution, be liable for all resulting liabilities, losses, destruction or damages suffered and/or incurred by Khara Hais and its partners / affiliates due to or related to these illegal actions.

## 10. DISCLAIMER AND LIMITATION OF LIABILITY

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- 10.1 Subject to the provisions of sections 43(5) and 43(6) of the [ECT Act](#), if applicable, and as far as allowed by law, Khara Hais (including its owners, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomsoever and resulting from:
- 10.1.1 access to the Khara Hais website;
- 10.1.2 access to websites linked to the Khara Hais website;
- 10.1.3 inability to access the Khara Hais website;
- 10.1.4 inability to access websites linked to the Khara Hais website;



- 10.1.5 content available on the Khara Hais website;
  - 10.1.6 services available from the Khara Hais website;
  - 10.1.7 products available from the Khara Hais website;
  - 10.1.8 downloads and use of content from the Khara Hais website; and/or
  - 10.1.9 any other reason not directly related to Khara Hais's gross negligence.
- 10.2 The Khara Hais website is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with the Khara Hais, that the content available from and through the Khara Hais website meets the User's individual requirements and is compatible with the User's computer hardware and/or software.
- 10.3 Information, ideas and opinions expressed on the Khara Hais website should not be regarded as professional advice or the official opinion of Khara Hais and Users are encouraged to obtain professional advice before taking any course of action related to the information, ideas or opinions expressed on the Khara Hais website.
- 10.4 Khara Hais does not make any warranties or representation that content and services available from the Khara Hais website shall in all cases be true, correct or free from any errors. Khara Hais shall take all reasonable steps to ensure the quality and accuracy of content available from the Khara Hais website.
- 10.5 Khara Hais does not make any warranties or representations that the Khara Hais website shall be available at all times. Users acknowledge that the Khara Hais website may be unavailable due to updates or other causes beyond the reasonable control of the Khara Hais, including, but not limited to virus infection, unauthorised access (hacking), power failure or other "acts of God".

## **11. COMMENTS**

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Khara Hais does not edit or scan comments posted by the User or e-mails from the User to Khara Hais or the Khara Hais website and shall not be liable for any defamatory, illegal, infringing, hateful, pornographic or harmful postings.

## **12. REMOVAL AND CORRECTION OF CONTENT**

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Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Khara Hais website to Khara Hais and Khara Hais undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.



### **13. INTERCEPTION OF COMMUNICATIONS**

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- 13.1 Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to Khara Hais's right to intercept, block, filter, read, delete, disclose and use all communications (including all "data messages" as defined in the [ECT Act](#)) sent or posted by the User to the Khara Hais website, its staff and employees. The RIC Act may be downloaded from: <http://www.info.gov.za/acts/2002/a70-02/>.
- 13.2 The User agrees and acknowledges that the consent provided by the User in clause 13.1 satisfies the "writing" requirement as detailed in the [ECT Act](#) and the RIC Act.

### **14. ENTIRE AGREEMENT AND SEVERABILITY**

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- 14.1 These terms and conditions constitute the entire agreement between Khara Hais and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Khara Hais from the User.
- 14.2 Any failure by Khara Hais to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision.
- 14.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

### **15. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT**

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The User and Khara Hais agree that:

- 15.1 the User shall be bound to these term and conditions and such agreement is concluded in Upington (South Africa) at the time the User enters the Khara Hais website for the first time;
- 15.2 data messages (as defined in the [ECT Act](#)) addressed by the User to Khara Hais shall only be deemed to have been received if and when responded to. An auto-reply shall not constitute such 'response' for the purposes of this clause;
- 15.3 data messages (as defined in the [ECT Act](#)) addressed to the User by Khara Hais shall be deemed to be received by the User as detailed in section 23(b) of the [ECT Act](#);
- 15.4 data messages (as defined in the [ECT Act](#)) addressed by the User to Khara Hais shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;



- 15.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and the Khara Hais; and
- 15.6 the User agrees and warrants that data messages that are sent to Khara Hais from a computer, IP address or mobile device normally used by or owned by the User, were sent and/or authorised by the User personally.

## **16. APPLICABLE AND GOVERNING LAW**

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The Khara Hais website is hosted, controlled and operated from the Republic of South Africa and therefore, subject to clause 5.11, the South African law enforced by the South African courts governs the use or inability to use the Khara Hais website, its content, services, products and these terms and conditions.

## **17. LEGAL COSTS**

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Khara Hais shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.

**VERSION: 20 MAY 2005**

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**END**

