



## GENERAL TERMS & CONDITIONS FOR THE REVOLVING CREDIT FACILITY

### I. THE AGREEMENT

This **REVOLVING CREDIT FACILITY AGREEMENT** ("**Agreement**") is dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Between:

- (1) **MOMENTUM CREDIT LIMITED**, a private limited liability company incorporated in Kenya with a Certificate of Incorporation Number CPR/2010/29811, whose principal place of business is at the 9th Floor of International House, Mama Ngina Street, Nairobi and of Post Office Box Number 29175 - 00100, Nairobi, Kenya (hereinafter referred to as the "**Momentum**") which expression shall, where the context so requires, include the Momentum's successors in title and assigns (whether immediate or derivative)) of the first part;

and

- (2) The person(s) whose names, description and present address as set out in Revolving Credit Facility Application Form (hereinafter referred to as the "**Customer**") which expression shall, where the context so admits include the Customer's personal representatives, successors heirs, and assigns whether immediate or derivative) on the second part.

Both hereafter collectively referred to as the "**Parties**" or separately as "**Party**".

### BACKGROUND:

- (A) The Customer (as hereinafter defined) and Momentum are the joint owners of the Vehicle specified in the clause I of this Agreement (hereafter called the "**Vehicle**") which expression shall where the context so requires include all or any one or more of them); and
- (B) The Customer has applied to Momentum for a facility and such financial accommodation, financing, credit and advances which borrowed amounts will be secured by the Vehicle and Momentum has subsequent to the application allowed the facility and such financial accommodation, financing, credit and advances granted to the Customer to become available to the Customer as a revolving fund for subsequent borrowing and repayment by the Customer on a revolving basis pursuant to the provisions of this Agreement, and includes all the benefits enjoyed by the Customer as a

result of being able to access the approved revolving funds as per this Agreement (the "**Revolving Credit Facility**").

- (C) The Parties have negotiated and agreed that it is mutually beneficial to enter into a Revolving Credit Facility Agreement subject to all covenants, terms, and conditions set out in this Agreement entered into by Momentum and the Customer.

### I. DEFINITION OF TERMS

In these Terms and Conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:

"**Account**" means a record or statement of financial expenditure or receipts relating to a particular period; "**Agreement**" means these Terms and Conditions herein and any amendments that will be made from time to time;

"**Charges**" means any costs incurred by Momentum or any amounts charged on Momentum by various parties including mobile payments providers on the account of the Customer in the process or/ as a result of provision of the Revolving Credit Facility to the Customer;

"**Credit Reference Bureau**" means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013, as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of customer credit information;

"**Customer**" means any the person whose names, description and present address are as set out in Revolving Credit Facility Application Form, who has applied to Momentum for access to the Revolving Credit Facility and has accepted this Agreement;

"**Device**" includes the Customer's mobile phone handset, M-PESA enabled SIM Card and/or other equipment which when used together enables the Customer to access the Revolving Credit Facility;

"**Event of Default**" refers to the circumstances set out in clause 14 of this Agreement;

"**Fees**" means the Fees applicable for the Service or Revolving Credit Facility;

"**Government**" means the national government, county government or any other Government statutory body lawfully established under the laws of Kenya;

"**IPRS**" means the Integrated Population Registration



System operated by the Ministry of Interior and Co-ordination of National Government of Kenya;

**“KYC”** also known as **“Know Your Client”** refers to the Customer due diligence obligations prescribed by relevant laws and as may be prescribed or recommended by the Government or Central Bank of Kenya (**“CBK”**) from time to time;

**“Logbook-Based Financing Facility”** also referred to as **“LBL Logbook Facility”** means the facility granted to the Customer by Momentum pursuant to the Logbook-Based Financing Agreement which facility is secured by the Vehicle and which shall upon application by the Customer to Momentum, be converted into a revolving fund by Momentum for subsequent borrowing and repayment by the Customer on a revolving basis pursuant to the provisions of this Agreement and the Logbook-Based Financing Agreement, and includes all the benefits enjoyed by the Customer as a result of being able to access the approved revolving funds as per this Agreement;

**“Minimum Payments”** means the minimum monthly payment of obligation to be met by the Customer in respect to the Revolving Credit Facility as per these Terms and Conditions;

**“Momentum”** means Momentum Credit Limited incorporated in Kenya as a limited liability company under the Companies Act, No. 17 of 2015, of the laws of Kenya and includes affiliates of Momentum;

**“Monthly Payments”** refers to the monthly payment obligations to be met by the Customer in regard to the Revolving Credit Facility as per the Facility’s Terms and Conditions;

**“M-PESA Account”** means the Customer’s M-PESA wallet registered in the Customer’s name;

**“M-PESA Subscriber”** means a person who has registered by Safaricom PLC to use M-PESA and accepted the M-PESA terms and conditions;

**“Mobile Money Services Provider”** means a Mobile Network Operator that has been duly authorized by the Central Bank of Kenya under applicable laws to offer Mobile Money Services in Kenya and includes Safaricom PLC;

**“Mobile Network Operator”** means a mobile Network operator in Kenya registered with the Communications Authority of Kenya and includes Safaricom PLC;

**“M-PESA”** means the mobile money transfer and payment service that is managed and operated exclusively by Safaricom PLC in Kenya and licensed by the Central Bank of Kenya;

**“Network”** means a mobile cellular network operated by a mobile network operator in Kenya registered with the Communications Authority of Kenya;

**“Opt-In Function”** refers to the options granted by Momentum USSD platform or Momentum mobile app or Momentum’s website to the Customer to accept or decline the terms and conditions of the Revolving Credit Facility when applying to be registered for the Revolving Credit Facility, if applying through his/her Device;

**“Outstanding Principal”** means the amount that the Customer has withdrawn from the Revolving Credit Facility Limit and is still outstanding;

**“Outstanding Amounts”** means any amounts including Fees, Outstanding Principal, interest and any costs that is due and payable by the Customer to Momentum in respect to the Revolving Credit Facility;

**“PIN”** means the Customer’s personal identification number being the secret code used to by the Customer access his Revolving Credit Facility Account using his Device and facilitated by the Customer’s M-PESA Account or Momentum USSD platform or Momentum’s mobile app including but not restricted to access and use the Revolving Credit Facility funds and make Requests;

**“PIN”** means the Customer’s personal identification number being the secret code used to access and operate the Customer’s Device on including the Customer’s M-PESA System PIN including but not restricted to access and use of the Revolving Credit Facility funds;

**“Product”** means the Revolving Credit Facility;

**“Recovery Expenses”** include any costs incurred by Momentum to recover Overdue Amounts;

**“Repayment Period(s)”** means the monthly or thirty (30) days intervals within which the Customer is expected to meet make the Customer’s Monthly Payments obligations;

**“Repayment”** means repayment of any amount due under the Revolving Credit Facility defined in these Terms and Conditions including but not restricted to repayment of the Revolving Credit Facility’s principal, interest and Fees;

**“Request”** means a request for access to the Revolving Credit Facility funds, received by Momentum from the Customer or purportedly from the Customer including but not limited from the Customer’s Device, or through the Customer’s Momentum Credit Card or through the USSD platform, or by way of a physical written application or through a point of sale or



automated teller machine (“**ATM**”) or through an online transaction or through the Customer’s MPESA Account, through upon which Momentum is authorized to act and includes any instruction from the Customer from the foregoing means;

“**Revolving Credit Facility Account**” means an Account maintained by Momentum in relation to Revolving Credit Facility transactions or any other transactions related to Momentum;

“**Revolving Credit Facility Application Form**” means a form filled and signed by the Customer to request for the Revolving Credit Facility;

“**Revolving Credit Facility Limit**” means the maximum amount availed by Momentum to the Customer on credit, in the Customer’s Revolving Credit Facility Account for his/her utilisation;

“**Service**” means the benefit(s) enjoyed by the Customer as a result of being able to access the approved funds under the Revolving Credit Facility as per this Agreement;

“**Safaricom PLC**” refers to a Mobile Money Services Provider and Mobile Network Operator in Kenya by that name, registered and licensed by the Central Bank of Kenya and the Communications Authority of Kenya to provide mobile money services and operate a mobile network, respectively;

“**SIM Card**” means the subscriber identity module which when used with the appropriate mobile phone handset enables the Customer to access the Network, and to access and use the Revolving Credit Facility Account;

“**SMS**” means a short message service consisting of a text message transmitted from one mobile Device to another;

“**Transaction Fees**” includes any fees and charges payable for the transfer of funds into and out of the Customer’s Revolving Credit Facility to Mobile Network Operators and banks which vary between different Mobile Network Operators and banks;

“**USSD Credit Card**” means a Revolving Credit Facility which is accessed by the Customer through Momentum’s USSD platform;

“**USSD Credit Card**” means a Revolving Credit Facility which is accessed by the Customer through Momentum’s USSD platform;

“**USSD**” means Unstructured Supplementary Service Data, a Global System for Mobile (“**GSM**”) communication technology used to send text between a mobile phone and an application program in the Network, and for the purposes of this Agreement refers to the code that the Customer enters on the Device to enable him/her Request and access Momentum’s products and services including but not

limited to the Revolving Credit Facility;

“**Vehicle**” means the motor vehicle, described in the Revolving Credit Facility Application Form (including any component parts of the motor vehicle from time to time held by the Customer (whether or not attached to the Vehicle)), together with all additions, alterations, substitutions, replacements, renewals or modifications of or to the Vehicle from time to time, and all accessories to the Vehicle from time to time (including maintenance and other records, manuals, handbooks, data, drawings and schematics relating to the Vehicle or documents relating to warranties and patent indemnities given by manufacturers or suppliers of the Vehicle and parts thereof). For avoidance of doubt a reference to the term “**Vehicle**” shall refer to one or more motor vehicles that the Customer has charged to Momentum as collateral for the Revolving Credit Facility or other facility(ies);

“**VAT**” means value added tax, as defined by the Value Added Tax Act, No. 35 of 2013 of the laws of Kenya; and

“**Virus**” any program which contains malicious code or infiltrates or damages a computer system without the owner’s informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user or is meant to take down the computer system or facilitate theft of data or money and has no legitimate purpose; and includes without limitation, any virus, worm, trojan, malware, spyware, adware, bots, rootkit, backdoors, ransomware boot kit, wipers, keyloggers, crimeware, browser hijacker and any code or software that is specifically designed to damage, disrupt, destroy, monitor and/or gather information including confidential information illegally, steal, or in general inflict some other “bad” or illegitimate action on data, hosts, or network.

### **3. RULES OF INTERPRETATION**

- 3.1 Words importing persons or Parties shall include firms and corporations and all references to persons shall include their permitted successors and assigns.
- 3.2 Words importing the singular only also include the plural and vice versa where the context requires.
- 3.3 Words importing the masculine shall include the feminine and neuter and vice versa.
- 3.4 The headings and marginal notes in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only.
- 3.5 A reference to writing or written does not include email (unless otherwise expressly provided in this Agreement).



- 3.6 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 3.7 Where the context permits, “other” and “otherwise” are illustrative and shall not limit the sense of the words preceding them.
- 3.8 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 3.9 The Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, articles, clauses, and Schedules, shall be construed as references to recitals of, articles of, clauses of and schedules to this Agreement, and references to paragraphs in a Clause or Schedule shall be construed as reference to paragraphs of that Clause or Schedule, unless indicated otherwise.
- 3.10 The Appendices herein form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Appendices.
- 3.11 References to clauses, and Appendices are to the clauses and Appendices of this Agreement and references to paragraphs are to paragraphs of the Appendices.

#### **4. TERMS AND CONDITIONS OF THE REVOLVING CREDIT FACILITY**

- 3.1 This Agreement sets out the complete terms and conditions (hereinafter called “these **Terms and Conditions**”) which shall be applicable to the Revolving Credit Facility requested by the Customer and granted by Momentum.
- 3.2 These Terms and Conditions and any amendments or variations thereto take effect on their date of publication.
- 3.3 The USSD Credit Card Terms and Conditions as set out in Appendix 2 of this Agreement are supplemental to these Terms and Conditions of the Revolving Credit Facility herein.
- 3.4 In the event of any inconsistency between the USSD Credit Card Terms and Conditions and these Terms and Conditions, these Terms and Conditions shall prevail.

#### **5. ACCEPTANCE OF THESE TERMS AND CONDITIONS**

- 5.1 Before opting-in or registering for the Service, the Customer should carefully read and understand these Terms and Conditions as they govern the access, use and operation of the Service and the Revolving Credit Facility.
- 5.2 These Terms and Conditions are available on <https://momentumcredit.co.ke/>. In the event the Customer is unable to read and understand these Terms and Conditions from an electronic device the Customer shall collect a printed version from the Momentum Branch nearest to the Customer.
- 5.3 If the Customer does not agree with these Terms and Conditions, he/she: (a) shall select “**Decline**” on the Opt-in Function if applying through the Customer’s Device; and (b) shall not append his/her signature if making a physical application.
- 5.4 The Customer will be deemed to have read, understood and accepted these Terms and Conditions upon selecting the “**Accept**” option on the Opt-in Function requesting the Customer to confirm that he/she has read, understood and agreed to abide by these Terms and Conditions; and/or by using or continuing to use and requesting for the Service if the application is via the Customer’s Device. If the application is through filling and signing a physical Revolving Credit Facility Application Form, the Customer will be deemed to have read and accepted these Terms and Conditions by appending a physical signature on the Revolving Credit Facility Application Form.
- 5.5 By registering for the Service, the Customer agree to comply with and be bound by these Terms and Conditions as amended and revised from time to time every time the Customer uses the Service and the Customer affirms that these Terms and Conditions are without prejudice to any other rights that Momentum may have in law or otherwise regarding the Customer’s registration, access and use of the Service.
- 5.6 The Customer will only be required to register to this Service once. All other subsequent access and usage of the Service shall be pegged to the initial registration of the Service.
- 5.7 Momentum may from time to time vary or amend these Terms and Conditions and the Customer’s continued access and use of the Service constitutes the Customer’s acceptance to be bound by the terms of any such amendment or variation.

#### **6. REQUESTING FOR THE REVOLVING CREDIT FACILITY**





- 5.1 The Customer may:
- 6.1.1 apply and register for the Service by way of an electronic application made by the Customer using the Customer's Device via Momentum's USSD platform, online portal, website, mobile application, email address or any other electronic means specified by Momentum from time to time; or
  - 6.1.2 request for the Revolving Credit Facility by filling-in and signing a physical Revolving Credit Facility Application Form or by any other means that Momentum may deem necessary from time to time at its sole discretion.
- 6.2 The Customer hereby agrees and authorizes Momentum to obtain and procure their personal information contained in the IPRS from the Government and the Customer further to the disclosure and provision of such personal information by the Government to Momentum.
- 6.3 The Customer hereby further acknowledges and authorizes Momentum to verify their personal information in Momentum's custody against the information received from the Government in the Customer's respect as contained in the IPRS.
- 6.4 Momentum reserves the right to request for further information from the Customer pertaining to his/her application to register for the Service at any time. Failure to provide such information within the time specified by Momentum may result in a decline of the Customer's application to register for the Service.
- 6.5 Momentum's acceptance or decline of the Customer's application to register for the Service shall be communicated through an SMS, email, phone call or any other mechanism that Momentum shall opt to use for such communication.
- 6.6 Momentum reserves: (a) the right to decline the Customer's application to register for the Service; (b) the right to decline any Request for the Revolving Credit facility; and (c) the right to revoke the Customer's registration on the Service at its sole discretion without giving any reasons to the Customer. Notwithstanding, Momentum shall endeavor to communicate such reasons to the Customer.

## **7. THE CUSTOMER'S REQUESTS**

- 7.1 The Customer hereby irrevocably authorizes Momentum to act on all Requests received by using the Customer's Device or through any other means the Customer may use to make such

Requests in regard to the Service. The Customer also authorizes Momentum and to hold him/her liable in respect thereof. Momentum may nevertheless refuse to carry out any requests beyond the scope of the Service as offered from time to time.

- 7.2 Momentum shall be deemed to have acted properly and to have fully performed all its obligations upon its compliance with the Request. Momentum may ask for further information or confirmation (whether written or otherwise) from the Customer before complying with a Request but shall not be obliged to comply with a Request in the absence of such further information or confirmation.

## **8. REVOLVING CREDIT FACILITY LIMIT**

- 8.1 The Customer's Request for access to the Revolving Credit Facility funds will be appraised according to Momentum's Revolving Credit Facility appraisal procedures. Momentum reserves the right at its sole discretion and, without assigning any reason, to approve or decline such Requests. Communication of Momentum's acceptance or decline of the Customer's Request will be via SMS, email or any other means that Momentum deem appropriate.
- 8.2 Momentum may from time to time prescribe the minimum and maximum Revolving Credit Facility Limit that the Customer may be able to Request on the Service. Such Revolving Credit Facility Limits will be communicated through SMS, email, Momentum's mobile application, website, phone call or may be obtained from any Momentum branch nearest to the Customer.
- 8.3 The Revolving Credit Facility Limit is subject to review from time to time and Momentum reserves the right to vary the Customer's Revolving Credit Facility Limit without giving any reasons. Momentum shall notify the Customer of any variation to the Customer's Revolving Credit Facility Limit and the Customer's continued use of the Service will constitute acceptance of the Customer's revised Revolving Credit Facility Limit.
- 8.4 The Revolving Credit Facility Limit will be continuously updated by Momentum's scoring engine or by Momentum's staff or by any other means that Momentum shall deem necessary at its sole discretion. This Revolving Credit Facility Limit shall be reviewed upwards or downwards (based on Momentum's sole discretion):
- 8.4.1 every six (6) months from LBL Logbook Facility loan initiation;



- 8.4.2 on expiry of the Revolving Credit Facility Limit, that is to say, after every twelve (12) months;
- 8.4.3 when a Customer makes settles in full the amount outstanding under the Revolving Credit Facility. The Revolving Credit shall be renewed/revolved with the new Revolving Credit Facility Limit; and
- 8.4.4 at any other time as deemed necessary by Momentum.

## **9. CONDITIONS PRECEDENT TO THE REVOLVING CREDIT FACILITY**

- 9.1 The Customer shall provide his/her Vehicle as the collateral to secure the LBL Logbook Facility and the Revolving Credit Facility and in the event of default, Momentum will exercise its right to realize the collateral and recover any unpaid portion for the Revolving Credit Facility plus all interest, expenses, costs including but not limited to loan charges, legal and any other costs.
- 9.2 The Customer, at his/her sole expense, shall deliver to Momentum, on or before the date of any Request, the following, in form and substance satisfactory to Momentum, in Momentum's sole opinion and judgment:
  - 9.2.1 this Agreement duly executed by the Customer;
  - 9.2.2 any pre-requisite documents required by Momentum;
  - 9.2.3 such signed resolutions, authorizations or certifications, as applicable, to borrow and/or related documents from the Customer;
  - 9.2.4 true and correct copies of the Customer's KYC documents including without limitation copies of the Customer's national identity card or passport, passport-sized photo, PIN certificate, among others; and
  - 9.2.5 such additional agreements, resolutions, certificates, reports, approvals, instruments, documents, consents, and opinions as Momentum may request in connection with the making of the Revolving Facility.
- 9.3 no suit, action, or other proceeding shall be pending or threatened which seeks to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain damages or other relief in connection therewith;
- 9.4 no breach of any warranty or representation by the Customer to Momentum shall have occurred;

- and
- 9.5 no event or circumstance shall have occurred and be continuing which constitutes, or would upon the giving of notice or passage of time, constitute an Event of Default or a failure of any condition of this Agreement.

## **10. CREDIT SCORING**

- 10.1 The Customer's Revolving Credit Facility Limit and Momentum's continued approval of the Customer's Requests for access to the Revolving Credit Facility funds will be determined by the Customer's credit score or by any other means as Momentum deems fit from time to time at its sole discretion.
- 10.2 The Customer's credit score will be assessed based on various metrics including the Customer's Mpesa Statement, the Customer's credit score and repayment history on the Customer's existing Revolving Credit Facility Limit and other facilities.

## **11. REPAYING THE REVOLVING CREDIT FACILITY**

- 11.1 The Revolving Credit Facility shall operate on a revolving credit principle and shall therefore run until an Event of Default occurs or the Customer requests for the termination of the Revolving Credit Facility, whichever occurs first.
- 11.2 Provided that no Event of Default (as outlined in these Terms and Conditions) has occurred, it is agreed that the Revolving Credit Facility shall be available, on a continuous basis, every thirty (30) days from the first date of availability of the Revolving Credit Facility, until it expires.

Momentum may allow the Customer to select the first repayment date for the Revolving Credit Facility, no later than thirty-seven (37) days from the date of avilment of the Revolving Credit Facility Limit. The subsequent repayment dates shall be bound to no more than every thirty (30) days after that.
- 11.3 The Customer's Vehicle will be revalued once every twelve (12) months whereby the Vehicle's tracking history and the Customer's repayment history shall be assessed, and subsequently, the Customer's Revolving Credit Facility Limit reviewed. This Revolving Credit Facility Limit may be reviewed upwards, downwards or may remain the same purely based on Momentum's sole discretion after the assessment.
- 11.4 Momentum reserves the right to review, to terminate and/or renew the Revolving Credit Facility at its sole discretion, at any time and without assigning reasons thereof.
- 11.5 Momentum reserves the right to terminate its



relationship with the Customer and/or suspend the Customer's access to the Service and the Revolving Credit Facility if the Customer fails to repay the Outstanding Amounts inclusive of the outstanding Fees within the repayment period(s) in accordance with these Terms and Conditions

- 11.6 Subject to Momentum's periodic review of the Customer's Revolving Credit Facility Limit, renewal, or termination of the Revolving Credit Facility will be under these Terms and Conditions and at Momentum's sole discretion.
- 11.7 The Customer will be notified of each instance of updating of the Revolving Credit Facility Limit and any suspension, declining or termination of the Revolving Credit Facility by Momentum.
- 11.8 The Customer irrevocably instructs Momentum to recover any Outstanding Amounts in full inclusive of the applicable Fees by repossessing and disposing off the Vehicle in the event the Customer defaults as well as to freeze any unutilized amount in the Revolving Credit Facility Account until the outstanding Monthly Repayments, Fees and costs are settled in full.
- 11.9 Any funds available in the Customer's Revolving Credit Facility Account shall be frozen on the third (3rd) day of arrears in case of default of any Monthly Repayment.
- 11.10 All Monthly Repayments made by the Customer in respect to the Revolving Credit Facility shall be applied in the following order of priority:
  - 11.10.1 the interest and costs payable under this Agreement; and
  - 11.10.2 the Outstanding Principal under this Agreement."costs" shall include any and all fees and costs incurred by Momentum in connection with the negotiation and preparation of the Revolving Credit Facility Documents, including legal fees, and closing of the Revolving Credit Facility as herein provided, and further including, without limitation, the Fees.

## **II. MINIMUM PAYMENT OPTIONS**

- 11.1 The Monthly Payment amount due by the Customer to Momentum shall be paid by the agreed payment due date as follows:
  - (a) by a part payment equal to or greater than eight per cent (8%) of the total monthly due amount which shall be inclusive of: the Outstanding Principal for the month, the interest charged or accrued for the month and monthly Vehicle tracking fees; and
  - (b) such other payment notified to the Customer

from time to time by Momentum.

- 11.2 All payments to Momentum shall be made via Mpesa pay bill, cash deposit or transfer to Momentum's bank account specified by Momentum as per the details set out in Appendix 2 hereunder. Payments may also be made through standing order deductions from the Customer's bank account or via any other means as specified by Momentum.
- 11.3 The Customer expressly accepts that if he/she fails to pay any Outstanding Amounts when due, or which may be declared due prior to, on or past the date when it would have become due, or commits any Event of Default, then, Momentum shall, at its sole discretion, without prejudice, exercise all or any of Momentum's rights and remedies available in these Terms and Conditions and applicable laws.
- 11.4 The Customer accepts that, Momentum or its appointed representatives and agents, may at any time follow up with the Customer for payment against amounts due on the Customer's account. The Customer also agrees to pay all costs (including legal costs) of collection of all outstanding Monthly Payments, all charges incurred by Momentum for related and incidental matters including, collection charges for amounts due, penalty fees for returned payments and similar expenses, and in the event of legal action initiated, any legal charges including, advocate costs incurred by Momentum in obtaining legal advice in connection with the Revolving Credit Facility and the Customer's dealings with Momentum or incurred by Momentum in any legal, arbitration or other proceedings arising out of any dealings in respect the Revolving Credit Facility and all other Fees, expenses and taxes, duties, impositions and expenses incurred in complying with the Customer's Requests.

## **12. INTEREST AND OTHER CHARGES**

- 12.1 The Customer is responsible for the payment of all applicable interest charges and Fees for the utilisation of the Revolving Credit Facility.
- 12.2 The Fees payable under this Service will be availed to the Customer upon request by Momentum's sales agents or relationship officers. Momentum's relationship officers shall assist the Customer with the statements of the Revolving Credit Facility and to clarify to the Customer about the applicable Fees, charges or costs.
- 12.3 The fees payable under this Service will be the fees stated expressly under Section 9 of this agreement and subject to sub-clause 12.5 of this agreement.
- 12.4 An existing Log Book Facility customer shall not incur tracking installation fees under this Service whereas a



pure Revolving Credit customer shall incur tracking installation fees as stipulated under Section 9 of this agreement.

- 12.5 Some of the Fees will be deducted at source while others will be spread throughout the Customer's repayment period.
- 12.6 All Fees and charges are subject to change at any time at Momentum's sole discretion.
- 12.7 The Fees charged shall be inclusive of any Transaction Fees payable in respect of third-party services including to Mobile Network Providers and Mobile Money Services Providers.
- 12.8 Except as may otherwise be notified, fees are inclusive of all applicable taxes including VAT at the prevailing rate. The Customer hereby irrevocably grants to Momentum permission to revise the Fees upon any changes to applicable taxes including VAT.
- 12.9 **Interest Charges:**
  - (a) Interest shall be charged on the Outstanding Principal balance on a daily basis until the balance is fully repaid.
  - (b) The total interest chargeable on the Revolving Credit Facility shall be calculated at a flat rate of five (5%) per month on the base of the principal loan amount plus capitalized fees (where applicable).

### **13 INTEREST ON OUTSTANDING DUES**

- 13.1 Interest on outstanding dues of 0.33% shall be charged on an Outstanding Amounts amount from the fourth (4th) day of lateness in payment of the due instalment, on a daily basis until full payment of the amount due.
- 13.2 Where a cheque provided by the Customer is dishonoured, the actual costs incurred by Momentum for each dishonoured cheque shall be recovered from the Customer.
- 13.3 Consequently, Momentum shall be entitled to repossess and dispose off the Vehicle in such manner as it may in its sole discretion determine to be in its best interest and the Customer is obligated to cooperate accordingly.
- 13.4 **Large Prepayments:**
  - (a) In an instance where the Customer makes monthly repayments and an excess amount is received by Momentum, which excess amount here means the amount over and above the actual minimum repayment amount, the excess amount shall be applied to reduce the Outstanding Principal, without any impact on the next due date.
  - (b) Upon full payment of the loan and related charges Momentum shall, at the Customer's request, return

the title document of the collateral provided by the Customer and exit the joint ownership of the same with the Customer.

### **14 EVENTS OF DEFAULT**

An Event of Default occurs:

- 14.1 when the Customer fails to remit one of any Monthly Payments or Minimum Payments on their due date;
- 14.2 where there is an outstanding balance after the Revolving Credit Facility expires, and Momentum decides to terminate (not to renew) access by the Customer's to the Revolving Credit Facility;
- 14.3 the Customer fails to insure the Vehicle as specified hereunder;
- 14.4 there is any misrepresentation of facts regarding the ownership of the Vehicle at the onset of the Revolving Credit Facility;
- 14.5 the Vehicle or accessory(ies) to the Vehicle are changed or modified or removed in a substantial way, which change or modification or removal is likely to prejudice Momentum's financial interest without Momentum being notified by the Customer and its prior consent obtained;
- 14.6 the identification and/or registration number, trademark or other identification mark upon the Vehicle is changed, modified or removed without Momentum being notified by the Customer and its prior consent obtained;
- 14.7 a third-party claims ownership of the Vehicle by virtue of a sale agreement, a logbook or trust arrangement and/or alleges fraud; Momentum receives a letter, a court order or any notification that is likely to prejudice Momentum's interest in the Vehicle from any Government agency.
- 14.8 when there is perennial inconsistency in meeting the Customer's obligations under these Terms and Conditions or in making the Monthly Payments;
- 14.9 if any representations, documents, statements or particulars made by the Customer are found to be fraudulent;
- 14.10 if the Customer commits any breach or fails to observe, keep or perform any of the terms, conditions covenants or provisions of any other agreement between Momentum and the Customer in respect of the Revolving Credit Facility;
- 14.11 if there is reasonable apprehension that the Customer is unable to pay his/her debts, or Momentum receives any notice that the Customer has admitted any inability to pay his/her debts as they become due (bankruptcy); or
- 14.12 if the Customer is convicted under any criminal law in force related to the Revolving Credit Facility or the use





of the Services or any other related services.

## 15 CONSEQUENCES OF DEFAULT

15.1 At any time in an Event of Default has occurred, Momentum may:

- (a) terminate the Revolving Credit Facility and the Services according to these Terms and Conditions, and at its sole discretion;
- (b) declare that the amounts outstanding under the Revolving Credit Facility (inclusive the Fees, all fees and charges) and all other amounts outstanding under these Terms and Conditions are immediately due and payable, whereupon the Customer shall be required to settle the Revolving Credit Facility with immediate effect;
- (c) freeze any of the funds that remain unutilized under the Customer's Revolving Credit Facility Account and deny the Customer access to the Revolving Credit Facility funds until such Outstanding Amounts are fully settled the Customer;
- (d) submit information concerning the Customer's default to Credit Reference Bureaus; and
- (e) take reasonable measures available under the law to Momentum including limitation engaging an independent debt collection agency, auctioneers and instructing Momentum's advocates to file a suit, to recover the amounts in default.

15.2 **Cross-Default:** If a Customer defaults on any of the facilities issued to him/her alongside the Revolving Credit Facility or a material event of default occurs under any such other facilities, which facilities may include, invoice factoring and/or insurance premium finance facility, Momentum is entitled to exercise the rights to offset and to consolidate the amounts outstanding in respect of all such facilities with the amount outstanding in respect of the Revolving Credit Facility, and repossess and dispose any collateral including the Vehicle, held by Momentum under such facilities during such default.

15.3 In a circumstance where the Customer has an existing insurance premium finance facility running concurrently with the Revolving Credit Facility and fails to remit any monthly instalments on their due date for the insurance premium finance facility, on the eighth (8th) day after the due date, a repayment shall be initiated by Momentum in the Insurance Premium Finance facility and the same amount added to the Revolving Credit Facility account

15.4 **Momentum's Power of Sale:** Where Momentum, at its own discretion, decides to terminate the

Customer's access to the Revolving Credit Facility as a result of any of the foregoing Events of Default and there is still an Outstanding Amounts to be cleared by the Customer:

- (a) the security constituted by this Agreement, that is, the Vehicle shall become immediately enforceable and Momentum in its absolute discretion or its agents may immediately thereupon or at any time thereafter without any previous or further notice or demand or concurrence on the part of the Customer and notwithstanding any subsequent acceptance of any payment of the principal money or interest due:
  - (i) enter (either personally or by its servants or agents) upon the land or premises whereof the Vehicle may for the time being be upon, without incurring any liability to the Customer for, or by any reason of, that entry and the Customer shall use its all endeavours to allow Momentum or its servants or agents access (including obtaining any necessary consents or permits of other persons);
  - (ii) take possession or collect and remove the Vehicle;
  - (iii) sell or dispose of the same by private sale or public auction or let or concur in the selling or letting of the Vehicle in such a manner and generally on such terms and conditions as it shall think fit and to carry out any such sale or letting into effect in the name of the Customer or otherwise; and
  - (iv) do all such other acts and things, and to exercise all its rights, powers and remedies, as may be incidental or conducive to any of the matters and powers aforesaid;
- (b) the power of Momentum to sell or dispose of the Vehicle by private sale or public auction shall be subject to such stipulations as Momentum may deem fit including without prejudice to the generality of the foregoing power to allow time for payment of any purchase money or to buy in the Vehicle at such auction and to rescind or vary the terms of any contract or sale and to resell without being answerable or liable for any loss or expenses occasioned thereby including the loss of any valuables and property of the Customer or any other person left or present in the Vehicle at the time of seizure and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and
- (c) the receipt of Momentum shall be a conclusive discharge to any purchaser at such sale for any of the purchase money and upon any sale purporting



to be made in exercise of the power herein expressed or implied and no purchaser shall be bound to inquire as to the propriety or regularity of any such sale or be effected by notice express or constructive that any such sale is improper or irregular. Any deficiency between the aforesaid purchase price and the sum due to Momentum, hereunder at the time of such sale together with all expenses pertaining to the same shall be made good by the Customer and be recoverable by Momentum as liquidated damages but any increase to the aforesaid shall belong to the Customer.

15.5 During the currency of this Agreement, Momentum shall be entitled to the exclusive possession of the invoices, deeds, documents of title and logbooks and other registration books relating to the Vehicle but nevertheless all the liabilities attending ownership of the Vehicle shall be borne by and be the responsibility of the Customer.

15.6 No relaxation, forbearance, delay or indulgence by Momentum in enforcing any of the terms and conditions of this Agreement nor the granting of time by Momentum to the Customer shall prejudice, affect or restrict the rights or the powers of Momentum hereunder nor shall any waiver of any breach thereof operate as a waiver of any subsequent breach thereof.

15.7 PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that the terms and conditions contained in this Agreement shall be in addition to and not in substitution for terms and conditions implied herein by virtue of Section 67 of the Movable Property Security Rights Act except so far as such implied terms and conditions are inconsistent with the terms and conditions hereof in which case the terms and conditions hereof shall prevail.

15.8 Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.

## **16 LIEN AND SECURITY RIGHTS**

16.1 The Customer acknowledge and accept that Momentum shall have a general lien over (right to retain) all the Customer's property in Momentum's possession. Such property and assets may include but are not restricted to: the Vehicle, cheques presented, bills and any other movable or immovable property charged to secure repayment of any money, whether or not that money has been repaid, and also over all property in respect of which, by the general law, Momentum has right of lien over. Property held under

lien in these Terms and Conditions shall be deemed to be held as security for the Revolving Credit Facility, up to an amount equivalent to the aggregate of the Outstanding Principal on the Customer's Revolving Credit Facility and the Recovery Expenses.

16.2 The Customer hereby also constitutes Momentum as the Customer's attorney for the purposes of completing and perfecting any transactions in relation to the Customer's Revolving Credit Facility Account or any other of the Customer's property held by Momentum in lien for purposes of discharging the Customer's Revolving Credit Facility, including the Recovery Expenses and unpaid Fees.

16.3 A written notice of seven (7) days running from the date of issuance of the notice to the Customer shall notify the Customer of Momentum's intention to realize sufficient amounts of the Customer's property held in possessory lien to settle any Outstanding Amounts. Any payments received after lapse of the notice will be accepted strictly on account and without prejudice to Momentum's rights.

## **17 STATEMENTS**

17.1 Upon receiving a request for full statement or mini-statement(s) from the Customer in respect of the Customer's Revolving Credit Facility Account, Momentum shall from time to time, provide the Customer with statement(s) or activity report(s) in respect of the Customer's Revolving Credit Facility Account's activity through Momentum's mobile application, or email, or a phone call or in person if the Customer visits one of Momentum's branches closest to the Customer.

17.2 A mini-statement issued by Momentum will provide details of the Customer's latest five (5) transactions on the Revolving Credit Facility Account or such other number of transactions as Momentum may determine, whereas the full statement will show all transactions carried out on the Customer's Revolving Credit Facility Account during the period requested and/or since the previous statement issued to the Customer.

17.3 The mini-statement will not be issued the Customer in a physical format but in electronic printable format via Momentum's mobile application, or by SMS to the mobile phone number associated with the Customer's account or such other electronic means as Momentum may determine.

17.4 The Customer may obtain his/her full statement in printed form from the Momentum's branch nearest to the Customer.

17.5 The Customer shall check the Customer's statement(s) carefully and inform Momentum as soon as possible, of any errors or anomalies or fraudulent transactions.



- 17.6 The Customer will be deemed to have accepted all entries in the Customer's mini-statement or full statement, as the case may be, if the Customer fails to raise any queries or objections on the entries therein within fifteen (15) calendar days from the statement date.
- 17.7 Momentum reserves the right to rectify discrepancies, add and or alter the entries in the Customer's full statements or mini-statement, without prior notice to the Customer. Momentum will however inform the Customer of any rectification, additions and/or alterations effected on the Customer's statements within seven (7) days after the changes are effected.

## **18 THE CUSTOMER'S DEVICE AND RESPONSIBILITIES**

- 18.1 The Customer shall at his own expense provide and maintain in safe and efficient operating order such Device necessary for the purpose of accessing the Services.
- 18.2 The Customer shall be responsible for ensuring the proper performance of his Device. Momentum shall neither be responsible for any errors or failures caused by any malfunction of the Customer's Device, and nor shall Momentum be responsible for any Virus or related problems that may be associated with the Customer's access and use of the Services and Device. The Customer shall be responsible for charges due to any service provider providing him with connection to the Network and Momentum shall not be responsible for any losses or delays caused by any such service provider.
- 18.3 The Customer shall follow all instructions, procedures and these Terms and Conditions and any other documents Momentum may provide the Customer concerning access to the Revolving Credit Facility and use of the Services and Device.
- 18.4 The Customer agrees and acknowledges that they shall be solely responsible for the safekeeping and proper use of his/her Device and for keeping his/her PINs related to the Customer's Device, Revolving Credit Facility Account, the Services or mobile application, secret and secure. The Customer shall ensure that the Customer's PIN does not become known or come into possession of any unauthorized person. Momentum shall not be liable for any disclosure of the Customer's PIN to any third party and the Customer hereby agree to indemnify and hold Momentum harmless from any loss and damage Momentum may incur as a result of the Customer's intentional, negligent or reckless disclosure of the PIN or account details.

## **19 THE CUSTOMER'S PERSONAL**

### **INFORMATION**

- 19.1 The Customer hereby expressly consents and authorizes Momentum to disclose, receive, record, storage, share or utilize the Customer's personal information, or information or data relating to the Customer's Revolving Credit Facility Account with respect to the funds granted under the Service and any details of the Customer's use of the Services:
- (a) to and from Momentum's service providers, dealers, agents or any other company that may be or become Momentum's affiliate or subsidiary or holding company for reasonable commercial purposes relating to the Services;
  - (b) to a Credit Reference Bureau and it is hereby understood and agreed that by signing this contract the Customer authorizes Momentum to access any information available to assess his/her application and also gives Momentum permission to register details of the conduct of the Customer's account with any Credit Rating Bureau, and the Customer waives any claim he or she may have against Momentum in respect of such disclosure.
  - (c) to independent debt-collection agencies;
  - (d) to Momentum's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
  - (e) for reasonable commercial purposes connected to the Customer's use of the Services, such as marketing and research related activities; and
  - (f) in business practices including but not limited to quality control, training and ensuring effective systems operation.
- 19.2 The Customer authorizes Momentum to disclose any information relating to the Customer's Revolving Credit Facility Account or any other related facility account to any local, foreign or international law enforcement or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as Momentum may deem necessary.
- 19.3 The Customer authorizes Momentum to disclose, respond, advise exchange and communicate the details or information pertaining to the Customer's Revolving Credit Facility Account to third parties involved in the administration of the Customer's Revolving Credit Facility Account, underwriting of insurance policies, updating of databases, or provision of user support.
- 19.4 The Customer shall notify Momentum of any changes to the Customer's personal information including but



not restricted to the Customer's name and address by:  
(a) updating the changes through the Device on Momentum's USSD app, mobile application, website;  
(b) by sending an email to [retailofficers@momentumcredit.co.ke](mailto:retailofficers@momentumcredit.co.ke); (c) or calling 0709434434; or (d) or any other means that Momentum may deem necessary. Until such notice is received, the Customer's personal information shall be deemed to be that which the Customer provided in the Customer's application to register for the Service.

## **20 INTELLECTUAL PROPERTY RIGHTS**

The Customer acknowledges that the intellectual property rights in the Revolving Credit Facility and the Service (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that Momentum provide to the Customer are vested either in us. The Customer shall not infringe any such intellectual property rights. The Customer shall not duplicate, reproduce, or in any way tamper with any documentation or functionality on the Device, USSD, website, mobile application or any other of Momentum's medium without Momentum's prior written consent.

## **21 INDEMNITY**

- 21.1 In consideration of Momentum complying with the Customer's instructions or Requests in relation the Revolving Credit Account, the Customer undertakes to indemnify Momentum and hold Momentum harmless against any loss, charge, damage, expense, fee or claim which the Momentum may suffer or incur or sustain thereby and the Customer absolve Momentum from all liability for loss or damage which the Customer may sustain from Momentum acting on the Customer's instructions or requests or in accordance with these Terms and Conditions.
- 21.2 The indemnity in clause 21.1 shall also cover all demands, claims, actions, losses and damages of whatever nature which may be brought against any of Momentum or which Momentum may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of Device, and any hardware, software, or equipment, Virus, fraud perpetuated by third parties relying on vulnerabilities of the Device or Virus introduced by the Customer on the Device, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Momentum's

control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by us.

- 21.3 The Indemnity in clause 21.1 shall also cover any loss or damage that may arise from the Customer's use, misuse, abuse or possession of any third-party software, including without limitation, any operating system, browser software or any other software packages or programs, any unauthorized access to the Customer's Revolving Credit Facility Account or any breach of security or any destruction or accessing of the Customer's data or any destruction or theft of or damage to any of the Customer's Device, any loss or damage occasioned by the failure by the Customer to adhere to these Terms and Conditions and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third-party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by Momentum as a consequence of any breach by these Terms and Conditions by the Customer.

## **22 VARIATION, SUSPENSION AND TERMINATION OF THE SERVICE AND THE REVOLVING CREDIT FACILITY**

- 22.1 Momentum may at any time, upon notice to the Customer, terminate or vary the business relationship with the Customer and suspend or discontinue his/her registration and/or access to the Service and the Revolving Credit Facility:
- (a) if it reasonably suspects or believes that the Customer is in breach of these Terms and Conditions (including non-payment of any amount due from the Customer where applicable);
  - (b) if the Customer uses the Service or Revolving Credit Facility for unauthorized purposes or where Momentum detects any abuse/misuse, breach of content, fraud or attempted fraud relating to the use of the Services;
  - (c) if Momentum required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority to that effect or necessitating it;
  - (d) where such a suspension or variation is necessary as a consequence of technical problems or for reasons of the Customer's safety or public access fees;
  - (e) to facilitate, update or upgrade the contents or





- functionality of the Services from time to time; or
- (f) if the Momentum decides to suspend or cease provision of the Services for commercial reasons or for any other reason as Momentum may determine.

22.2 In the event of the Customer failing to comply or failing to procure compliance with the terms of a notice consequently served on the Customer, Momentum may require immediate repayment in full of the Revolving Credit Facility amounts outstanding and/or forthwith terminate the contractual relationship with the Customer without any consequential liability to the Customer or any other person.

## **23 FACILITY CANCELLATION**

- 23.1 The Customer may request Momentum to cancel his/her application to the Service or his/her registration for the Service at any time through the Customer's Device or by contacting Momentum as stipulated in this clause 23 hereafter.
- 23.2 The Customer shall not cancel his/her registration for the Service or the Revolving Credit Facility if he/she has an outstanding and unpaid Monthly Payment, Overdue Amount or unpaid Fees.
- 23.3 Where the Facility is cancelled at any stage of processing before activation of the limit, the Customer shall be obligated to pay any loan origination costs incurred including but not limited to tracking device removal costs of Kenya Shillings Seven Thousand, seven hundred and twenty-five (Ksh. 7,925.00).
- 23.4 Cancellation of the Revolving Credit Facility before avilment of the Revolving Credit Facility Limit and access of the Revolving Credit Facility funds by the Customer shall be communicated in writing through the email to [cx@momentumcredit.co.ke](mailto:cx@momentumcredit.co.ke) or by an official letter to Momentum and shall not attract any charges or costs.
- 23.5 If the Revolving Credit Facility is cancelled by the Customer after access of the Revolving Credit Facility funds by the Customer, the Customer shall notify Momentum via the email given in clause 23.4 above and reimburse the loan origination costs in clause 23.3 within (forty-eight) 48 hours of such notification with the proof of refund, failing which clause 14 and clause 15 of these Terms and Conditions shall take effect.

## **24 DISPUTE RESOLUTION AND GOVERNING LAW**

- 24.1 The Customer may contact Momentum's customer care team using email, or a phone call or using the chat feature on Momentum's website or through

Momentum's social media accounts' direct message, or by written letter, to report any disputes, claims or discrepancies with the Customer's Revolving Credit Facility Account or the Services.

24.2 Unless this Agreement has already been repudiated or terminated, the parties shall, (notwithstanding that any dispute is subject to the dispute resolution procedure set out in this Agreement), continue to carry out their obligations in accordance with this Agreement.

24.3 This Agreement arising out of the Customer's acceptance of the Revolving Credit Facility on the Terms and Conditions set out herein shall be governed by and construed in all respects in accordance with laws of Kenya and more-so the Movable Property Security Rights Act (2017) of the laws of Kenya.

## **25 NOTICES**

- 25.1 All waivers, elections, options, notices, demands, and consents which either Party may be required or may desire to give under this Agreement ("**Notice**") shall be in writing and may be served personally or by registered post or recorded delivery or by facsimile transmission or electronic mail with confirmed delivery.
- 25.2 Each Party's address for the service of notice or communication shall be the one mentioned in the Revolving Credit Facility Application Form (for the Customer) and this in the Agreement (for Momentum), or such other address as one Party may specify by written notice to the other.
- 25.3 Notice shall be deemed to have been served:
- (a) if it was served in person at the time of service;
  - (b) if it was served by post, forty-eight (48) hours after it was posted; and
  - (c) if it was served by facsimile transmission or electronic mail, at the time of transmission provided an error transmission report is not received by the sender.

## **26 OFFER PERIOD**

The offer contained herein is available to the Customer for acceptance for a period of no less than one (1) month from the date of this Agreement after which date the Customer should have read understood the Terms and Conditions set out hereunder, the offer will lapse on expiry of this period unless extended in writing by The Customer is at liberty to consult independently on any term or condition in this Agreement.

## **27 REPRESENTATIONS & WARRANTIES**



Where a Vehicle has been provided as collateral, the Customer undertakes to:

- 27.1 guarantee that the Customer is the registered owner of the vehicle or has obtained the written consent from the owner of the Vehicle (which consent shall be issued to Momentum), to secure the Revolving Credit Facility and any other Momentum facility with the subject Vehicle;
- 27.2 cause the Vehicle to be and remain registered jointly with Momentum during the duration of the Revolving Credit Facility and to deposit the logbook relating to the Vehicle with Momentum;
- 27.3 keep and maintain the Vehicle in good order and condition (fair wear and tear only expected) and will be fully responsible for any loss thereof or damage thereto however occasioned;
- 27.4 not use the Vehicle nor permit it to be used for any purpose not permitted by the terms and conditions of the Vehicle's insurance policy nor permit to be done any act or thing by reason of which such insurance policy may be invalidated;
- 27.5 not take, or permit to be taken, the Vehicle out of the Republic of Kenya without the prior written consent of Momentum;
- 27.6 punctually pay all licenses, duties, fees and registration charges as and when they fall due;
- 27.7 ensure that he/she has taken due care to enable the tracking of the Vehicle, but not limited to the following obligations: permit Momentum's tracking services' service providers to access the Vehicle for checking the GPS tracking device, repair it or replace a faulty device with a functional device;
- 27.8 should a GPS tracking device develop a technical fault, Momentum and the tracking services' service provider will contact the Customer. It's the Customer's responsibility to cooperate with Momentum and the service provider to ensure that the vehicle is submitted to the service provider for resolution of the technical fault, and restoration of the device's to functional status. For avoidance of doubt, if the Customer fails to co-operate with Momentum and/or Momentum's tracking services' service providers, Momentum will institute repossession procedures of the affected Vehicle, twenty four (24) hours from the time of notification of the technical fault by Momentum to the Customer, and take the repossessed Vehicle for storage at one of the Momentum's storage yard, at the Customer's cost.

## **28 INSURANCE**

- 28.1 The Customer shall ensure that the Vehicle is insured comprehensively while this Agreement is still in force.

- 28.2 Where the Customer has taken up an insurance premium financing facility with Momentum, Momentum shall communicate to the Customer regarding the expiry of their existing insurance thirty (30) days and again fourteen (14) days to expiry. If the Customer opts to incur the cost of renewing their insurance cover upon expiry, Momentum shall allow the same. The Customer shall further provide to Momentum evidence of payment of the insurance within fourteen (14) days of that expiry month.
- 28.3 If the Customer fails or neglects to take up and maintain a comprehensive insurance cover for the Vehicle at least seven (7) days to expiry, Momentum shall take up such insurance cover and charge the insurance premium fee and associated costs on the Customer's Revolving Credit Facility Account, three (3) days to the expiry of the existing insurance cover and the insurance cover taken by Momentum shall be communicated to the Customer.
- 28.4 If the Customer expressly allows Momentum to charge the said insurance cover on the Customer's Revolving Credit Facility Account, there will be no refunds whatsoever made to the Customer.
- 28.5 Where the Customer notifies Momentum of his/her intention to cancel the insurance cover taken up by Momentum over the Vehicle and Momentum proceeds to cancel the insurance cover on the Customer's express instructions, there will be no refunds whatsoever made to the Customer.
- 28.6 The Customer undertakes to endorse Momentum as the principal beneficiary of any compensation and dues arising from an insurance claim relating to the Vehicle.
- 28.7 Momentum shall be entitled to the full benefit of the insurance policy thereof including claims that might at any time be outstanding. Any monies received by virtue of such insurance shall at the discretion of Momentum be applied in replacing or restoring any loss or damage in respect of which the same shall be received in or towards liquidation of the amount for the time being due by the Customer to Momentum under this Agreement.

## **29 DATA PROTECTION POLICY**

- 29.1 It is hereby understood and agreed that the data herein has been directly obtained from the Customer who has provided this data to Momentum to facilitate the processing of the Revolving Credit Facility sought by the Customer.
- 29.2 It is hereby understood and agreed that by signing this Agreement the Customer:
  - (a) shall provide personal data which is required for facilitating the processing of the Revolving Credit Facility, the establishing and maintenance of

business and for the fulfilment of Momentum's contractual and legal obligation;

- (b) consents to Momentum processing the data as per its internal company policy and the Data Protection Act, No. 24 of 2019 of the laws of Kenya ("**Data Protection Act**");
- (c) has given consent to Momentum to continue holding and processing the data provided even after all obligations under the Revolving Credit Facility has been settled for a variety of purposes including but not limited to cross selling, research, product development, analysis of market trends, operation of Momentum's regulations and procedures;
- (d) is at liberty to exercise its rights as a data subject and as is provided by the Data Protection Act;
- (e) consents to the use of their personal data from time to time by Momentum to market Momentum's products. The Customer may opt out of receiving marketing communication at any time within the duration of the Revolving Credit Facility by officially communicating to MCL through the prescribed channels of communication.

29.3 Momentum undertakes to ensure the personal data provided by the Customer is processed in accordance with the Data Protection Act.

29.4 For queries and more information on Momentum's data protection policy, the Customer may contact Momentum's data protection personnel at [cx@momentumcredit.co.ke](mailto:cx@momentumcredit.co.ke).

### 30 **FURTHER ASSURANCE**

When required by Momentum, the Customer will execute such further legal or other charges or assignments in favour of Momentum over the Vehicle including but not limited to all rights and remedies relating thereto both present and future to secure all moneys, obligations and liabilities hereby covenanted to be paid or otherwise hereby secured or to facilitate the realisation of Momentum's security or the exercise of the powers conferred on Momentum or a receiver appointed by it such further charges or assignments to be prepared by or on behalf of Momentum at the cost of the Customer in such form as Momentum requires.

### 31 **RESTRICTION ON DEALING**

The Customer covenants that he/she will not without notifying Momentum and obtaining the prior consent in writing of Momentum:

- 31.1 create or attempt to create or permit to subsist any mortgage, debenture, charge or pledge upon or permit any lien or other encumbrance to arise or affect the Vehicle;
- 31.2 assign, discount, factor, pledge, or charge the Vehicle; or
- 31.3 part with possession of, transfer, sell, lease or otherwise dispose the Vehicle or any part thereof or attempt or agree to do so.

### 32 **WITHDRAWAL FROM AGREEMENTS**

Momentum may, at any time withdraw from this Agreement and the Customer will have no claim against Momentum if Momentum does so.

### 33 **JOINT AND SEVERAL LIABILITY**

Should there be more than one (1) borrower, then:

- 33.1 each of them shall be jointly and severally liable with the other as co-principal debtor for every indebtedness and obligation of the Customer to Momentum; and
- 33.2 all references to "**the Customer**" shall be construed as reference to all the borrowers, jointly and severally, unless otherwise indicated.

### 34 **INDEPENDENT CONTRACTOR**

The relationship of Customer to Momentum is that of an independent contractor, and nothing in this Agreement shall be construed as creating any other relationship including without limitation, joint venture, agency, partnership or employer-employee relationship.

### 35 **COUNTERPARTS AND ELECTRONIC SIGNATURES**

- 35.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all ancillary documents may be executed by hand or electronic signature and delivered by facsimile, electronic mail or other means as may be mutually agreed by any of the parties to any other Party and the receiving Party may rely on the receipt of such document so executed and delivered as if the original



had been received.

- 35.2 The Parties agree that if this Agreement is executed and/or transmitted electronically neither Party shall contest the validity of this Agreement or any electronic signature or acknowledgement thereof, on the basis that this Agreement, or acknowledgement contains an electronic signature.

### **36 ENTIRE AGREEMENT**

This Agreement constitute the entire agreement between Parties, with respect to its subject matter and supersedes all prior oral and written agreements, understandings, negotiations, promises, representations of any kind and there are no conditions to this Agreement which are not expressed therein.

### **37 ASSIGNMENT**

- 37.1 The Customer shall not be entitled to assign all or any part of his/her rights, obligations or benefits hereunder without the prior written consent of Momentum.
- 37.2 The Customer hereby waives any notice of the transfer, factoring, delegation, ceding, novation or assignment of all or any part of Momentum's rights and/or obligations under this Agreement or other agreement to which the Customer and Momentum are parties, to any person, and agrees to remain bound by the terms of this Agreement, that other agreement subsequent to any such action by Momentum.

### **38 AMENDMENT, MODIFICATION AND WAIVER**

No amendment, modification or waiver of any provision of this Agreement or consent to departure therefrom shall be effective unless by written agreement signed by both Parties.

### **39 NO WAIVER**

No breach of any provision of this Agreement shall be deemed waived unless it is waived in writing by Momentum. No course of dealing and no delay on the part of Momentum in exercising any right will operate as a waiver thereof or otherwise prejudice Momentum's rights, powers, or remedies. No right, power, or remedy conferred by this Agreement upon Momentum will be exclusive of any other rights, power or remedy referred to this Agreement, or now or hereafter available at law, in equity, by statute, or otherwise.

### **40 SEVERABILITY**

If any provision of this Agreement, or the application of it to any Party or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision to other Parties or circumstances, shall not be affected thereby, the provisions of this Agreement being severable in any such instance.

### **41 VOLUNTARY SUBMISSION**

Both Parties acknowledge that they have entered into this Agreement voluntarily without duress or coercion.

### **42 JURISDICTION**

By executing this Agreement, both Parties consent to the exclusive jurisdiction of the courts of law of the Republic of Kenya to settle any issue, dispute, claim, controversy, difference, question or claims for compensation or otherwise, between them and waive any right to challenge jurisdiction or venue in such courts with regard to any suit, action, or proceeding under or in connection with this Agreement.