

## **TERMS AND CONDITIONS FOR THE USE OF THE “MOMENTUM APPLICATION”**

### **WHEREAS**

The following Terms and Conditions apply to the use of the Momentum Mobile Application (hereinafter the “**Momentum App**”). These Terms and Conditions constitute a binding legal agreement between you and Momentum.

These Terms and Conditions are applicable in addition to all other Momentum Terms and Conditions for various products and services issued by Momentum as published on <https://momentumcredit.co.ke/terms-and-conditions/>.

These Terms and Conditions and any amendments or variations thereto take effect on their date of publication. You have the right to seek independent legal counsel to fully understand these Terms and Conditions before downloading the Momentum App and clicking the “Accept” option.

By downloading the Momentum App and clicking “Accept”, you indicate that you have read, understood, and agree to be bound by these Terms and Conditions as may be amended, supplemented, and varied from time to time.

If you do not agree with the Terms and Conditions, please click the “Decline” option. Please note that you will not be able to access the services offered by Momentum if you decline the Terms and Conditions.

### **IT IS AGREED AS FOLLOWS**

#### **I. DEFINITIONS AND INTERPRETATION**

For purposes of this Agreement, the following terms, whether used in the singular or plural, in upper or lower case, or in masculine or feminine and unless the context requires otherwise, shall have the following meanings:

“**Agreement**” means this Agreement;

“**Account**” means your account with Momentum;

“**Business Day**” means a day other than a Saturday, Sunday, or a public holiday in the Republic of Kenya;

“**Credentials**” means your personal credentials, including your Personal Identification Number used to access the Momentum App and operate your account;

“**Credit Reference Bureau**” means a credit reference bureau duly licensed under Banking Act pursuant to 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;

“**Data Processing Terms and Conditions**” means Momentum’s Data Processing Terms and Conditions that set out the basis on which any personal data we collect from you, or that you provide to us, will be processed by us and are published on <https://momentumcredit.co.ke/data-policy/>;

“**Equipment**” includes your mobile phone handset, SIM Card, and/or other equipment which when used together enables you to access the Network;



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

**“Mobile Network Operator”** means a mobile network operator in Kenya registered with the Communications Authority of Kenya;

**“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;

**“Network”** means a mobile cellular network operated by a Mobile Network Operator;

**“Request”** means a request or instruction received by Momentum from you or purportedly from you through the Network and upon which Momentum is authorized to act;

**“Personal Data”** means any information relating to an identified or identifiable natural person, and shall be considered Confidential Information and afforded all the protections outlined in these Terms and Conditions

**“Services”** shall include any form of financial services or products that Momentum may offer you pursuant to this Agreement and as you may from time to time subscribe to and “Service” shall be construed accordingly;

**“SIM Card”** means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the Network and to use the Momentum App;

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

## **2. GRANT AND SCOPE OF THE LICENSE**

2.1 In consideration of your agreeing to abide by these Terms and Conditions, Momentum grants you a non-transferable, non-exclusive license to use the Momentum App on your equipment, subject to these Terms and Conditions.

2.2 Momentum reserves all other rights. Except as expressly set out in this Agreement or as permitted by any local law, you agree:

2.2.1 not to rent, lease, sub-license, loan, translate, merge, adapt, vary, or modify the Momentum App;

2.2.2 not to make alterations to, or modifications of, the whole or any part of the Momentum App, or permit the Momentum App or any part of it to be combined with or become incorporated in any other programs.

## **3. LICENSE RESTRICTIONS**

3.1. You hereby agree:

3.1.1 Not to use the Momentum App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Momentum App.



#### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 You acknowledge that all intellectual property rights in the Momentum App belong to Momentum and its licensors and that rights in the Momentum App are licensed (not sold) to you, and that you have no rights in, or to, the Momentum App other than the right to use it in accordance with the terms of this Agreement.

#### **5. PERSONAL INFORMATION**

- 5.1 You hereby agree and authorize Momentum to verify information provided by you to Momentum against the information held by the Mobile Money Providers pursuant to the agreement between you and the relevant Mobile Money Provider for the provision of its products and services;
- 5.2 The information that Momentum may verify against the information held by the Mobile Money Providers includes (without limitation): your phone number, name, date of birth, gender, address, Identification Number ("ID") or Passport Number and such other information that will enable Momentum to identify you and comply with the regulatory "Know Your Customer" requirements (together the "Personal Data");
- 5.3 You hereby agree and authorize Momentum to obtain and procure your Personal Information from the Credit Reference Bureaus and you further agree and consent to the disclosure and provision of such Personal Information by the Credit Reference Bureaus and to the disclosure of your Personal Information to the Credit Reference Bureaus by Momentum;
- 5.4 Momentum reserves the right to request further information from you pertaining to your request at any time. Failure to provide such information within the time required by Momentum may result in Momentum declining to accept your request;

#### **6. YOUR REQUESTS**

- 6.1 You hereby irrevocably authorize Momentum to act on all requests received by Momentum from you (or purportedly from you) through the Momentum App and to hold you liable in respect thereof. Momentum may nevertheless refuse to carry out any requests in its sole and absolute discretion;
- 6.2 Subject to its discretion, Momentum reserves the right to reject any request about a loan application from you even if you have previously been issued a loan by Momentum;
- 6.3 Momentum shall be entitled to accept and to act upon any request, even if that request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, it believes that it can correct the incomplete or ambiguous information in the request without any reference to you being necessary;
- 6.4 Momentum shall be deemed to have acted properly and to have fully performed all the obligations owed to you notwithstanding that the request may have been initiated, sent, or otherwise communicated in error or fraudulently, and you shall be bound by any requests on which Momentum may act on if Momentum has in good faith acted in the belief that such requests have been sent by you.
- 6.5 Momentum may, in its absolute discretion, decline to act on or in accordance with the whole or any part of your request pending further inquiry or further confirmation (whether written or otherwise) from you.

- 6.6 You agree to and shall release from and indemnify Momentum against all claims, losses, damages, costs, and expenses howsoever arising in consequence of, or in any way related to Momentum having acted in accordance with the whole or any part of any of your requests (or failed to exercise) the discretion conferred upon it.
- 6.7 You acknowledge that to the full extent permitted by law, Momentum shall not be liable for any unauthorized drawing, transfer, remittance, disclosure, activity, or any incident on your Momentum App by the fact of the knowledge and/or use or manipulation of your Momentum App PIN, ID, or any means whether, or not, occasioned by your negligence.
- 6.8 Momentum is authorized to effect such orders in respect of your Momentum App as may be required by any court order or competent authority or agency under the applicable laws.
- 6.9 In the event of any conflict between any terms of any request received by Momentum from you and this Agreement, this Agreement shall prevail.

## **7. YOUR RESPONSIBILITIES**

- 7.1 You shall at your own expense provide and maintain in safe and efficient operating order your equipment necessary for accessing the Momentum App and Momentum's Services;
- 7.2 You shall be responsible for ensuring the proper performance of your equipment. Momentum shall neither be responsible for any errors or failures caused by any malfunction of your equipment nor shall Momentum be responsible for any computer virus or related problems associated with using the Momentum App and the equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and Momentum shall not be responsible for losses or delays caused by any such service provider;
- 7.3 You hereby agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your equipment and for keeping your credentials secret and secure. You shall ensure that your credentials do not become known or come into possession of any unauthorized person. Momentum shall not be liable for any disclosure of your credentials to any third party, and you hereby agree and indeed, indemnify and hold Momentum harmless from any losses resulting from any disclosure or use of your credentials;
- 7.4 **You hereby agree to update your credentials as and when requested by Momentum.**
- 7.5 You hereby agree to take all reasonable precautions to detect any unauthorized use of your equipment and you agree to, immediately, inform Momentum if:
  - 7.5.1 You have reason to believe that your credentials are or may be known to any person not authorized to know the same and/or if your credentials have been compromised; and
  - 7.5.2 You have reason to believe that the unauthorized use of your equipment has or may have occurred or could occur and a request may have been fraudulently made.

## **8. EXCLUSION OF LIABILITY**

- 8.1. Momentum shall not be responsible for any loss suffered by you should the Momentum App be interfered with or be unavailable because of the failure of any of your equipment, or any other circumstances whatsoever not within Momentum's control including, without limitation, Force Majeure or error, interruption, delay or non-availability of the Mobile Network Operator, terrorist or any enemy action on your equipment, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

## **9. INDEMNITY**

9.1. In consideration of Momentum complying with your requests about your use of the Momentum App, you undertake to indemnify Momentum and hold it harmless against any loss, charge, damage, expense, fee, or claim which Momentum suffers or incurs or sustains thereby and you absolve Momentum from all liability for loss or damage which you may sustain from Momentum acting on your requests or in accordance with these Terms and Conditions.

## **10. COMMUNICATION AND NOTICES**

10.1 If you wish to contact us in writing, or if any condition in these Terms and Conditions requires you to give us notice, you can send this to us by e-mail to [cx@momentumcredit.co.ke](mailto:cx@momentumcredit.co.ke) or to such e-mail address that may be communicated to you from time to time. We will confirm receipt of this by contacting you in writing by e-mail or through the Momentum App.

10.2 If we must contact you or give you notice in writing, we will do so by e-mail or by SMS to the mobile phone number or email address you provide to us in your request via the Momentum App.

## **11. ENTIRE AGREEMENT**

11.1 These Terms and Conditions, our Data Processing Terms and Conditions as well as such additional terms as may be made available to you on our Momentum App, constitute the entire agreement between you and us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations, and understandings between us, whether written or oral, relating to its subject matter;

11.2 You acknowledge that in entering into this Agreement you do not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions or our Data Processing Terms and Conditions.

## **12. GOVERNING LAW; DISPUTE RESOLUTION**

12.1 The Parties shall use their good faith efforts to resolve any dispute, controversy, or claim of any nature whatsoever arising out of or in relation to or in connection with this Agreement. To this end, the Parties in dispute shall each promptly appoint representatives of appropriate standing who shall meet and attempt to resolve any dispute between them. If an amicable settlement has not been reached within thirty (30) days of the parties' representatives meeting as aforesaid, the Parties agree to submit themselves to the exclusive jurisdiction of the courts of the Republic of Kenya;

12.2 These Terms and Conditions will be governed and construed in accordance with the laws of the Republic of Kenya without reference to any conflict of law provisions.