

GENERAL TERMS & CONDITIONS FOR THE EZUA CHAPAA FACILITY

These Terms & Conditions dated
form the Contract 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 the Ezua Chapaa Facility Application Form, who has applied to Momentum for access to the Ezua Chapaa Facility and has accepted this Agreement (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 and Momentum are the joint owners of the Vehicle specified in the clause 1 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 "**Ezua Chapaa Facility**").
- (C) The Parties have negotiated and agreed that it is mutually beneficial to enter into a Ezua Chapaa facility Agreement subject to all covenants, terms, and conditions set out in this Agreement entered into by Momentum and the Customer.

1. 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;

"**Annual Assessment**" means a mandatory once-a-year valuation of the Customer's vehicle by Momentum as per this Agreement;

"**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 Ezua Chapaa 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;

"**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 Ezua Chapaa facility;

"**Event of Default**" refers to the circumstances set out in clause 13 of this Agreement;

"**Ezua Chapaa**" refers to the motor vehicle secured revolving line of credit accessible via a Mastercard card or USSD

;
"**Ezua Chapaa facility Account**" means an Account maintained by Momentum in relation to the Ezua Chapaa facility transactions or any other transactions related to Momentum;

"**Ezua Chapaa facility Application Form**" means a form filled and signed by the Customer to request for the Ezua Chapaa facility;"

"**Ezua Chapaa facility Limit**" means the maximum amount availed by Momentum to the Customer on credit, in the Customer's Ezua Chapaa facility Account for his/her utilisation;

"**Fees**" means the Fees applicable for the Service or Ezua Chapaa 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;

“**Limit Cancellation**” means the termination of the Customer’s Ezua Chapaa facility limit by Momentum due to an event of default as per this Agreement;

“**Limit Decrease**” means a downward adjustment of the Customer’s Ezua Chapaa facility limit by Momentum as per this Agreement;

“**Limit Freeze**” means a withdrawal and/or transaction restriction of the Customer’s Ezua Chapaa facility account by Momentum as per this Agreement;

“**Limit Increase**” means an upward adjustment of the Customer’s Ezua Chapaa facility limit by Momentum as per this Agreement;

“**Mastercard**” refers to a global payment technology solutions provider headquartered in the United States of America offering a range of financial services.

“**Minimum Payments**” means the minimum monthly payment of obligation to be met by the Customer in respect to the Ezua Chapaa 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 Ezua Chapaa 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 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;

“**Mobile Network Operator**” means a mobile Network

operator in Kenya registered with the Communications Authority of Kenya and includes Safaricom;

“**M-PESA**” means the mobile money transfer and payment service that is managed and operated exclusively by Safaricom 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 Ezua Chapaa facility when applying to be registered for the Ezua Chapaa facility, if applying through his/her Device;

“**Outstanding Principal**” means the amount that the Customer has withdrawn or utilized from the Ezua Chapaa 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 Ezua Chapaa facility;

“**Personal Data**” means any information relating to an identified or identifiable natural person, and shall be considered Confidential Information and afforded all of the protections set forth in these terms and conditions.

“**Physical Card**” means a Mastercard physical card that can be used by a Customer at any Mastercard enabled automatic teller machine (ATM) or at any Mastercard enabled point of sale as per this Agreement.

“**Paybill Number**” means Momentum’s Safaricom M-PESA Paybill Number 801480;

“**PIN**” means the Customer’s personal identification number being the secret code used by the Customer to access his Ezua Chapaa 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 of the Ezua Chapaa facility funds;

“**Product**” means the Ezua Chapaa 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 Ezua Chapaa facility defined in these Terms and Conditions including but not restricted to repayment of the Ezua Chapaa facility’s principal, interest and Fees;

“**Request**” means a request for access to the Ezua

Chapaa 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;

"Service" means the benefit(s) enjoyed by the Customer as a result of being able to access the approved funds under the Ezua Chapaa facility as per this Agreement;

"Safaricom" 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 Ezua Chapaa 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 Ezua Chapaa facility to Mobile Network Operators and banks which vary between different Mobile Network Operators and banks;

"USSD Ezua Chapaa" means the Ezua Chapaa 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 Ezua Chapaa Facility;

"Vehicle" means the motor vehicle, described in the Ezua Chapaa 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 Ezua Chapaa 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.

2. RULES OF INTERPRETATION

- 2.1 Words importing persons or Parties shall include firms and corporations and all references to persons shall include their permitted successors and assigns.
- 2.2 Words importing the singular only also include the plural and vice versa where the context requires.
- 2.3 Words importing the masculine shall include the feminine and neuter and vice versa.
- 2.4 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.
- 2.5 A reference to writing or written does not include email (unless otherwise expressly provided in this Agreement).
- 2.6 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.
- 2.7 Where the context permits, "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.

- 2.8 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 2.9 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.
- 2.10 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.
- 2.11 References to clauses, and Appendices are to the clauses and Appendices of this Agreement and references to paragraphs are to paragraphs of the Appendices.

3. TERMS AND CONDITIONS OF THE EZUA CHAPAA FACILITY

- 3.1 This Agreement sets out the complete terms and conditions (hereinafter called "these **Terms and Conditions** ") which shall be applicable to the Ezua Chapaa facility requested by the Customer and granted by Momentum.
- 3.2 These Terms and Conditions take effect on the date they are signed and/or accepted by the Customer.
- 3.3 Momentum may amend these Terms and Conditions and any other part of the documentation either generally or in particular circumstances, from time to time.
- 3.4 Any such amendment shall apply with effect from such time as may be specified by Momentum.
- 3.5 Momentum will endeavour to give reasonable notice of any amendment, but reserves the right to introduce any amendment with immediate effect, if the Momentum deems it necessary to do so.

4. ACCEPTANCE OF THESE TERMS AND CONDITIONS

- 4.1 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 Ezua Chapaa facility.
- 4.2 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.
- 4.3 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.

- 4.4 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 Ezua Chapaa facility Application Form, the Customer will be deemed to have read and accepted these Terms and Conditions by appending a physical signature on the Ezua Chapaa facility Application Form.
- 4.5 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.
- 4.6 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. REQUESTING FOR THE EZUA CHAPAA FACILITY

- 5.1 The Customer may:
- i. 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
 - ii. request for the Ezua Chapaa facility by filling-in and signing a physical Ezua Chapaa facility Application Form or by any other means that Momentum may deem necessary from time to time at its sole discretion.
- 5.2 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 consents to the disclosure and provision of such personal information by the Government to Momentum.
- 5.3 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.

- 5.4 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.
- 5.5 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.
- 5.6 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 Ezua Chapaa 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 endeavour to communicate such reasons to the Customer.

6. THE CUSTOMER'S REQUESTS

- 6.1 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.
- 6.2 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.

7. EZUA CHAPAA FACILITY LIMIT

- 7.1 The Customer's Request for access to the Ezua Chapaa facility funds will be appraised according to Momentum's Ezua Chapaa 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, Momentum's mobile application, or

any other means that Momentum deem appropriate.

- 7.2 Momentum may from time to time prescribe the minimum and maximum Ezua Chapaa facility Limit that the Customer may be able to Request on the Service. Such Ezua Chapaa 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.
- 7.3 The Ezua Chapaa facility Limit is subject to review from time to time and Momentum reserves the right to vary the Customer's Ezua Chapaa facility Limit without giving any reasons. Momentum shall notify the Customer of any variation to the Customer's Ezua Chapaa facility Limit and the Customer's continued use of the Service will constitute acceptance of the Customer's revised Ezua Chapaa facility Limit.
- 7.4 The Ezua Chapaa 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 Ezua Chapaa facility Limit shall be reviewed upwards or downwards (based on Momentum's sole discretion):
 - i. every twelve (12) months from the vehicle's initial valuation;
 - ii. at any other time as deemed necessary by Momentum.
- 7.5 Subject to Momentum's periodic review of the Customer's Ezua Chapaa facility Limit, renewal, or termination of the Ezua Chapaa facility will be under these Terms and Conditions and at Momentum's sole discretion.

8. CONDITIONS PRECEDENT TO THE EZUA CHAPAA FACILITY

- 8.1 The Customer shall provide his/her Vehicle as the collateral to secure the Ezua Chapaa facility and in the event of default, Momentum will exercise its right to realize the collateral and recover any unpaid portion for the Ezua Chapaa facility plus all interest, expenses, costs including but not limited to loan charges, legal and any other costs.
- 8.2 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:
 - i. this Agreement duly executed by the Customer;
 - ii. any pre-requisite documents required by Momentum;
 - iii. such signed resolutions, authorizations or

certifications, as applicable, to borrow and/or related documents from the Customer;

- iv. 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
 - v. such additional agreements, resolutions, certificates, reports, approvals, instruments, documents, consents, and opinions as Momentum may request in connection with the making of the Ezua Chapaa Facility.
- 8.3 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;
- 8.4 no breach of any warranty or representation by the Customer to Momentum shall have occurred; and
- 8.5 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.

9. CREDIT SCORING

- 9.1 The Customer's Ezua Chapaa facility Limit and Momentum's continued approval of the Customer's Requests for access to the Ezua Chapaa 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.
- 9.2 The Customer's credit score will be assessed based on various metrics including the Customer's Mpesa Statement, the Customer's repayment history on the Customer's existing Ezua Chapaa facility Limit and other facilities.

10. REPAYING THE EZUA CHAPAA FACILITY

- 10.1 The Ezua Chapaa facility shall operate on a revolving credit principal and shall therefore run until an Event of Default occurs or the Customer requests for the termination of the Ezua Chapaa facility, whichever occurs first.
- 10.2 Provided that no Event of Default (as outlined in these Terms and Conditions) has occurred, it is agreed that the Ezua Chapaa facility shall be available, on a continuous basis, every thirty (30) days from the first date of availability of the Ezua Chapaa facility, until it expires.
- 10.3 Momentum may allow the Customer to select the first repayment date for the Ezua Chapaa facility, no later than thirty-seven (35) days from the date of avilment of the Ezua Chapaa

facility Limit. The subsequent repayment dates shall be bound to no more than every thirty (30) days after that.

- 10.4 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 Ezua Chapaa facility Limit reviewed. This Ezua Chapaa facility Limit may be reviewed upwards, downwards or may remain the same based on Momentum's sole discretion after the assessment.
- 10.5 Momentum reserves the right to review, to terminate and/or renew the Ezua Chapaa facility at its sole discretion, at any time and without assigning reasons thereof.
- 10.6 Momentum reserves the right to terminate its relationship with the Customer and/or suspend the Customer's access to the Service and the Ezua Chapaa 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
- 10.7 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 Ezua Chapaa facility Account until the outstanding Monthly Repayments, Fees and costs are settled in full.
- 10.8 Any funds available in the Customer's Ezua Chapaa facility Account shall be frozen on the eighth (8th) day of arrears in case of default of any Monthly Repayment.
- 10.9 All Monthly Repayments made by the Customer in respect to the Ezua Chapaa facility shall be applied in the following order of priority:
- i. the interest and costs payable under this Agreement; and
 - ii. 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 Ezua Chapaa facility Documents, including legal fees, and closing of the Ezua Chapaa facility as herein provided, and further including, without limitation, the Fees.
- ## **11. PAYMENTS**
- 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 ten per cent (10%) 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 Momentum's Paybill Number or via any other means as specified by Momentum from time to time. .
- 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 Ezua Chapaa 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 Ezua Chapaa facility and all other Fees, expenses and taxes, duties, impositions and expenses incurred in complying with the Customer's Requests.
- 11.5 If any payment under this Agreement would otherwise be due to be made on a day which is not a Business Day, it shall be made on the next succeeding Business Day, unless such Business Day falls in the following calendar month, in which event it shall be made on the immediately preceding Business Day.
- 11.6 **Large Payments:**
 - 11.6.1 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.

11.6.2 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.

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 Ezua Chapaa 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 Ezua Chapaa 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 provided under Section 6 of the Ezua Chapaa facility Application Form and subject to sub-clause 12.4 hereunder.
- 12.4 No fees will be deducted at source. All initial fees under Section 6 of the Ezua Chapaa facility Application Form will be capitalized.
- 12.5 All Fees and charges are subject to change at any time at Momentum's sole discretion.
- 12.6 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.
- 12.7 Except as may otherwise be notified, fees are inclusive of all applicable taxes at the prevailing rate. The Customer hereby irrevocably grants to Momentum permission to revise the Fees accordingly upon any changes to the applicable taxes.
- 12.8 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 Ezua Chapaa 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 EVENTS OF DEFAULT

An Event of Default occurs:

- 13.1 when the Customer fails to remit one of any Monthly Payments or Minimum Payments on their due date;
- 13.2 where there is an outstanding balance after the Ezua Chapaa facility expires, and Momentum decides to terminate (not to renew) access by the Customer's to the Ezua Chapaa facility;

- 13.3 when the Customer fails to insure the Vehicle or cause the Vehicle to be insured during the course of the Ezua Chapaa facility;;
- 13.4 there is any misrepresentation of facts regarding the ownership of the Vehicle at the onset of the Ezua Chapaa facility;
- 13.5 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;
- 13.6 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;
- 13.7 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.
- 13.8 when there is perennial inconsistency in meeting the Customer's obligations under these Terms and Conditions or in making the Monthly Payments;
- 13.9 if any representations, documents, statements or particulars made by the Customer are found to be fraudulent;
- 13.10 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 Ezua Chapaa facility;
- 13.11 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);
- 13.12 if it becomes unlawful for the Customer to perform all or any of its obligations under these terms and conditions; or
- 13.13 if the Customer is convicted under any criminal law in force related to the Ezua Chapaa facility or the use of the Services or any other related services.

14 CONSEQUENCES OF DEFAULT

- 14.1 At any time in an Event of Default has occurred, Momentum may:
- (a) terminate the Ezua Chapaa facility and the Services according to these Terms and Conditions, and at its sole discretion;
 - (b) declare that the amounts outstanding under the Ezua Chapaa 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 Ezua Chapaa facility with immediate effect;

- (c) freeze any of the funds that remain unutilized under the Customer's Ezua Chapaa facility Account and deny the Customer access to the Ezua Chapaa 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.

14.2 **Cross-Default:** If a Customer defaults on any other facility(ies) issued to him/her by Momentum or a material event of default occurs under any such other facility(ies) , which facility(ies) may include, among others, 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 facility(ies) with the amount outstanding in respect of the Ezua Chapaa facility, and repossess and dispose any collateral including the Vehicle, held by Momentum under such facility(ies) during such default.

14.3 In a circumstance where the Customer has an existing insurance premium finance facility running concurrently with the Ezua Chapaa 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 Ezua Chapaa facility account.

14.4 **Momentum's Power of Sale:** Where Momentum, at its own discretion, decides to terminate the Customer's access to the Ezua Chapaa facility as a result of any of the 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 Vehicle 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) a payment receipt from Momentum with respect to the Vehicle 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.

- 14.5 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.
- 14.6 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.

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.

- 14.7 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.

15 FACILITY CANCELLATION

- 15.1 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 16.
- 15.2 The Customer shall not cancel his/her registration for the Service or the Ezua Chapaa facility when he/she has an outstanding and unpaid Monthly Payment, Overdue Amount or unpaid Fees.
- 15.3 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 by Momentum

including but not limited to tracking device removal costs of Kenya Shillings Two Thousand, five hundred (Ksh. 2,500.00).

- 15.4 Cancellation of the Ezua Chapaa facility before confirmation of the Ezua Chapaa facility Limit and access to the Ezua Chapaa facility funds by the Customer shall be communicated in writing via email to **cx@momentumcredit.co.ke** or through an official letter to Momentum.
- 15.5 Where the Customer wishes to cancel the Ezua Chapaa facility after access to the Ezua Chapaa facility funds, the Customer shall notify Momentum via the email to **cx@momentumcredit.co.ke** and reimburse the loan origination costs referred to in clause 16.3 within (forty-eight) 48 hours of such notification and thereafter provide proof of refund, failing which Clause 14 and Clause 15 of these Terms and Conditions shall take effect.

16 VARIATION, SUSPENSION AND TERMINATION OF THE SERVICE AND THE EZUA CHAPAA FACILITY

- 16.1 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 Ezua Chapaa 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 Ezua Chapaa 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 is required to comply with an order, instruction of or a recommendation from the government, any regulator it is subject to or any other competent authority to that effect;
 - (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;
 - (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;
 - (g) where subject to clause 10.4, the Vehicle has not been submitted by the Customer to Momentum for revaluation; or
 - (h) when the Mastercard issued by Momentum to

the Customer expires.

- 16.2 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 Ezua Chapaa facility amounts outstanding and/or forthwith terminate the contractual relationship with the Customer without any consequential liability to the Customer or any other person.

17 LIEN AND SECURITY RIGHTS

- 17.1 The Customer acknowledges and accepts that Momentum shall have a general lien over (right to retain) all the Customer's property in Momentum's possession under or in connection with these Terms and Conditions or any other facility. 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 Ezua Chapaa facility, up to an amount equivalent to the aggregate of the Outstanding Principal on the Customer's Ezua Chapaa facility and the Recovery Expenses.

- 17.2 The Customer confirms that at the time of sale or transfer of any property in Momentum's possession, Momentum will have the full and unqualified right to make such sale, payment or transfer in relation to the Customer's Ezua Chapaa facility Account or any other of the Customer's property held by Momentum in lien for purposes of discharging the Customer's Ezua Chapaa facility, including the Recovery Expenses and unpaid Fees, and that at the time of any transfer to any purchaser such purchaser will have the full and unqualified right to make such purchase, acquire or receive such property.

- 17.3 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.

18 STATEMENTS

- 18.1 Upon receiving a request for full statement or mini-statement(s) from the Customer in

respect of the Customer's Ezua Chapaa facility Account, Momentum shall from time to time, provide the Customer with statement(s) or activity report(s) in respect of the Customer's Ezua Chapaa 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.

- 18.2 A mini-statement issued by Momentum will provide details of the Customer's latest five (5) transactions on the Ezua Chapaa 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 Ezua Chapaa facility Account during the period requested and/or since the previous statement issued to the Customer.
- 18.3 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.
- 18.4 The Customer may obtain his/her full statement in printed form from the Momentum's branch nearest to the Customer.
- 18.5 The Customer shall check his/her statement(s) carefully and inform Momentum as soon as possible, of any errors or anomalies or fraudulent transactions.
- 18.6 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.
- 18.7 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.

19 CUSTOMER'S DEVICE AND RESPONSIBILITIES

- 19.1 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.
- 19.2 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.

- 19.3 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 Ezua Chapaa facility and use of the Services and Device.
- 19.4 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, Ezua Chapaa 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 agrees 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.

20 INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges that the intellectual property rights in the Ezua Chapaa 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 Momentum. 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 absolves 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 22.1 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 22.1 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 Ezua Chapaa 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 DISPUTE RESOLUTION AND GOVERNING LAW

- 22.1 The Customer may contact Momentum's customer care team via 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 Ezua Chapaa facility Account or the Services.
- 22.2 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.

- 22.3 This Agreement arising out of the Customer's acceptance of the Ezua Chapaa 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.

23 NOTICES

- 23.1 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.
- 23.2 Any notice to the Borrower shall be addressed to last known address provided by the Customer to Momentum. Notices to Momentum shall be addressed to the branch where the application was made or the registered office of the Bank as provided in these terms and conditions., or such other address as one Party may specify by written notice to the other.
- 23.3 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.

24 OFFER PERIOD

The offer contained herein is available to the Customer for acceptance for a period of fourteen (14) days from the date of this Agreement after which date the offer will lapse unless extended in writing by Momentum. The Customer is at liberty to consult independently on any term or condition in this Agreement.

25 REPRESENTATIONS & WARRANTIES

Where a Vehicle has been provided as collateral, the Customer represents and warrants to Momentum that:

- 25.1 the Customer is the registered owner of the vehicle and/or has obtained the written consent from the owner of the Vehicle (which consent shall be issued to Momentum), to secure the Ezua Chapaa facility and any other Momentum facility with the Vehicle;
- 25.2 the Customer will cause the Vehicle to be and remain registered jointly with Momentum during the duration of the Ezua Chapaa facility and to

- deposit the Vehicle's logbook with Momentum;
- 25.3 the Customer will 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;
- 25.4 the Customer will ensure that the Vehicle has a Comprehensive insurance cover or any other insurance cover as Momentum would advise from time to time upon a limit increase;
- 25.5 the Customer will not use the Vehicle nor permit it to be used for any purpose other than that 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;
- 25.6 the Customer will not take, or permit to be taken, the Vehicle out of the Republic of Kenya without the prior written consent of Momentum;
- 25.7 the Customer will pay all licenses, duties, fees and registration charges as and when they fall due;
- 25.8 the Customer will ensure that he/she has taken due care to enable the tracking of the Vehicle, but not limited to the following: 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;
- 25.9 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 devices 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 yards, at the Customer's cost.

26 DATA PROTECTION

- 26.1 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 Ezua Chapaa facility sought by the Customer.
- 26.2 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 Ezua Chapaa 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 Ezua Chapaa 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 Ezua Chapaa facility by officially communicating to MCL through the prescribed channels of communication.

26.3 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.

27 CONFIDENTIAL INFORMATION AND CREDIT CHECKS

- 27.1 The Customer hereby expressly consents and authorizes Momentum to disclose, receive, record, store, share or utilize the Customer's personal data, or information or data relating to the Customer's Ezua Chapaa facility Account with respect to the funds granted under the Service and any details of the Customer's use of the Product:
- (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 Product;
- (b) to licensed credit reference agencies or any other creditor if the Customer is in breach of its obligations to Momentum and the Customer agrees that such information may be used by other institutions in assessing credit applications and for debt tracing .

- (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) to any regulatory, fiscal or supervisory authority;
- (f) if Momentum has a right or duty to disclose or is permitted or compelled to do so by law. .

28 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.

29 RESTRICTION ON DEALING

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

- 29.1 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;
- 29.2 assign, discount, factor, pledge, or charge the Vehicle; or
- 29.3 part with possession of, transfer, sell, lease or otherwise dispose the Vehicle or any part thereof or attempt or agree to do so.

30 JOINT AND SEVERAL LIABILITY

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

- 30.1 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
- 30.2 all references to "the Customer" shall be construed as reference to all the borrowers, jointly and severally, unless otherwise indicated.

31 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.

32 COUNTER PARTS AND ELECTRONIC SIGNATURES

- 32.1 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.
- 32.2 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.

33 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.

34 ASSIGNMENT

- 34.1 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.
- 34.2 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.

35 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.

36 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.

37 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.

38 VOLUNTARY SUBMISSION

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

39 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.

