

## INSURANCE PREMIUM FINANCE AGREEMENT

### **IMPORTANT: THE BORROWER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 11, 12 AND 13 OF THIS INSURANCE PREMIUM FINANCE AGREEMENT.**

#### **THIS INSURANCE PREMIUM FINANCE AGREEMENT witnesseth as follows:**

In consideration of Momentum Credit Limited (hereafter referred to as "MCL") paying the premium amount to the Insurer (as defined in the schedule hereto) on behalf of the Borrower being the amount payable by the Borrower to the Insurer under the policy (as defined in the schedule hereto in respect of the powered two-wheeled or three-wheeled motor vehicle (hereafter referred to as "vehicle")):

#### **I. The Borrower Hereby Covenants and Agrees:**

- a) To pay to MCL, punctually the monthly instalments specified in the schedule contained in the confirmation letter and in the manner specified. The first instalment shall be paid as the deposit on the signing of this Agreement. Subsequent instalments shall be payable monthly in advance.
  - b) To pay to MCL **Kenya Shillings One Thousand and Twenty (KShs.1,020.00)** for any dishonored cheque in addition to the any other applicable costs that MCL may incur thereon;
  - c) To pay to MCL a rollover interest fees of 0.1% per day on the outstanding instalment.
  - d) To pay to MCL in addition to the applicable instalment in clause 1(c) above interest on any instalment(s) which remains un-paid after becoming due at the rate of 4.146% (reducing balance) (flat rate) per month.
  - e) The total interest chargeable on the Facility is 2.5% per month on the principal loan amount plus capitalized fees for the applied loan term. The principal and interest repayments on the loan shall be calculated on the basis of a reducing balance interest rate of 4.146%, which shall form the basis of calculating the outstanding amount due in the event of early loan settlement.
  - f) Warrants that the policy is valid and shall remain valid throughout the course of the Borrower's indebtedness with MCL. The Borrower shall not to cancel the policy without MCL's consent or do any act or commit any default thereby. The provisions of this sub-clause shall be without prejudice to MCL's rights set out hereunder.
  - g) To procure a valuation within fourteen (14) days of receiving a valuation request note from MCL, failure to which MCL shall downgrade the particular policy or cancel it absolutely.
  - h) Where the actual value of the vehicle is found to be lower than that previously issued by the Insurer, then the difference realized will be appropriated by MCL to offset the loan amount payable.
  - i) Where the quote previously issued by the insurer is found to be lower than the actual value of the vehicle, the difference shall be payable together with the succeeding monthly installments and the borrower shall also be expected to make a non-refundable 20% deposit payment on the excess amount.
- j) It shall be the sole responsibility of the Borrower to ensure that the valuation of the vehicle is done timeously and that MCL shall bear no liability on any eventuality resulting from the Borrower's failure to fulfil this obligation.
  - k) In the event that an accident occurs, no repairs shall begin, and the vehicle shall not be released by MCL if the account is in arrears.
  - l) In the event of any default under clause 11, MCL may cancel the policy, and terminate this Agreement and the insurance policy within fourteen (14) calendar days after issuance of notice to cancel the policy and terminate.
  - m) To service the loan and settle it fully.
  - n) Where a claim arises, before the Borrower has fully serviced the loan, the Borrower undertakes to service the loan and settle it fully.
  - o) The termination of this Agreement shall not absolve the Borrower from liability to the MCL for any outstanding amounts due on the account.
  - p) That the outstanding balance on the account shall be payable on demand by Borrower, with interest of 4.146% accruing from the date of demand if the Borrower makes default. on any of the Borrower's obligations hereunder or under the policy and that MCL shall be at liberty, upon making the formal demand to terminate the policy and to receive refundable premium (if any) from the Insurer. MCL shall also be entitled to recover the outstanding balance (if any) in the account, interest and charges from the Borrower by summary procedure as a liquidated debt. A certificate of MCL as to the amount outstanding shall be binding and conclusive as against the Borrower.
  - q) Authorizes the insurer hereby to register MCL's right to terminate the policy as financier as well as MCL's right to terminate the policy and receive the refund on the premium amount. The Borrower shall ensure that the insurer complies with the aforesaid authorization confirms that he shall upon payment by the insurer immediately upon receipt surrender such monies to MCL to be credited to the Account. This obligation shall subsist until MCL confirms in writing that the account has been redeemed in full.
  - r) Appoints MCL to be his attorney and in his name and on his behalf to execute and do any assurances, acts and things which the Borrower ought to execute and do under the policy including without limitation the power to terminate the policy.
  - s) Authorizes MCL to execute, conduct any assurances, terminate the policy, to give receipt and discharge amount or any part received by the Borrower upon termination or settlement paid under the policy on his behalf. The Borrower further agrees that any premium or part of premium refunded or any settlement paid to MCL will first be applied towards redeeming the Account and the balance [if any) thereafter released to the Borrower.

- t) To execute in favour of MCL a legal assignment or mortgage or cede the policy upon request by MCL at the Borrower's cost
  - u) Confirms that no failure or delay by MCL in exercising any right power or privilege under this Agreement shall operate as a waiver for the same nor shall any single or partial exercise of any right preclude any further exercise of the same or of any other right power or privilege.
  - v) That the Borrower has the power to enter into this Agreement and that neither the execution nor performance of the Borrower's obligations hereunder will result in any breach of any law.
  - w) Commits to provide information that MCL will find necessary for the purposes of this Agreement.
  - x) Agrees that it shall be the sole responsibility of the Borrower to undertake a logbook transfer to himself/herself if need be and that MCL shall bear no liability on any eventuality resulting from the Borrower's failure to fulfil this obligation.
  - y) At his/her own expense provide and maintain in safe and efficient operating order his/her mobile phone handset, computer, SIM Card and/or other equipment ("**Equipment**") which when used together enables him/her to apply for the insurance premium finance facility ("**Facility**") from MCL and pay the specified monthly instalments.
  - z) Shall be responsible for ensuring the proper performance of the Equipment. MCL shall neither be responsible for any errors or failures caused by any malfunction of the Equipment, and nor shall MCL be responsible for any computer virus, malicious code, program or related problems that may be associated with the use of the Equipment. Any charges due to any mobile money services provider, providing money transfer services for payment of the monthly installments shall be on his/her account.
  - aa) Agrees that he/she shall be solely responsible for the safekeeping and proper use of the Equipment and for keeping his/her login credentials including PINs and passwords ("**Credentials**") secret and secure. MCL shall not be liable for any disclosure of the Credentials to any third party and the Borrower hereby agrees to indemnify and hold MCL harmless from any losses resulting from any such disclosure.
  - bb) Shall take all reasonable precautions to detect any unauthorized use of the Equipment and immediately inform MCL in the event that:
    - i) he/she has reason to believe that the Credentials have been compromised; and/or
    - ii) he/she has reason to believe that unauthorized or fraudulent use of the Equipment or the Facility account has or may have occurred or could occur; and
    - iii) he/she has reason to believe that fraud has or may have occurred or could occur.
  - cc) The Borrower shall not at any time operate or use the Facility in any manner that may be prejudicial to MCL.
- 2. Refund of Premiums and Claims:**
- a) In the event of a claim, the Borrower shall continue servicing the loan until the claim is fully settled. MCL may cancel the insurance cover and demand for a refund from the Insurer if the claim investigations or settlement goes beyond thirty (30) days or is declined.
  - b) If the insurance cover is terminated, either by MCL or the Borrower, MCL will take possession of any refund of premiums either from the Insurer or the insurance broker ("**Broker**") and apply such refund in the first instance in paying the balance of the loan then account for the surplus (if any) to the Borrower.
  - c) MCL shall refund the Borrower any excess amount paid towards the loan repayment within seven (7) days of the full settlement of the loan account,
  - d) If the Borrower or the Broker acting on its behalf makes a claim in respect of the policy(ies) herein, then MCL shall at any time before the loan has been repaid in full to MCL, to take possession from the Insurer or the Broker of the proceeds for payment of the balance of the loan to MCL together with any interest due and costs incurred and thereafter account to the Borrower in respect of any available surplus.
  - e) In the event of a total loss of the asset insured, the Borrower shall receive the final settlement (discharge amount) after the Insurer has deducted any amounts due to MCL including the full credit charge and/or late payment charges.
  - f) The Borrower hereby authorizes the Broker to:
    - i) forward to MCL the original policy(ies) herein held by it;
    - ii) instruct the Insurer referred herein to cancel the said policy(ies) and to remit to MCL any part of the premium(s) payable thereunder refunded by the Insurer.
    - iii) inform MCL of any claims pending under the said policy(ies), the progress and outcome of such claims and remit to it such portion of these claims as MCL may require; and
    - iv) inform MCL of the intention to cancel or avoid the said policy(ies) and to remit to MCL any part of the premium(s) payable by the Insurer.
- The authorization to the Broker in terms of this clause is irrevocable and shall to apply until the Broker receives a notification from MCL that all sums due to it in respect of the policy have been paid in full.

**3. Disclosure:**

- The Borrower agrees and consents that MCL may:
- a) disclose information in its possession relating to this Agreement to its authorized agents for purposes of managing the Borrower's account;
  - b) disclose any information in its possession of MCL relating to this Agreement and the Borrower's account to authorized third parties including but not limited to credit reference agencies pursuant to the laws of Kenya;
  - c) disclose any information relating to this Agreement including details of the Borrower to authorized third

- d) parties for the purpose of evaluating the applicant(s)' creditworthiness or for any other lawful purpose;
- e) obtain any information relating to the Borrower from any third party including licensed credit reference agencies for purposes of evaluating the Borrower's application;
- f) disclose any information in its possession relating to this application including account details of the Borrower to authorized parties or institutions under the laws of Kenya in compliance with its obligations; and
- g) use the Borrower's personal data to market the MCL's products.

**4. Communication:**

- a) Any notice from the MCL shall be sent to the last postal or email address provided by the Borrower. Any written communication from MCL to the Borrower shall be deemed to have been received if delivered personally to the Borrower or sent by post to the address provided by the Borrower and be deemed to have been received if it was properly stamped and addressed.
- b) MCL shall not be liable for:
  - i) damage resulting from losses, delays, or any other irregularities due to transmission of any communication whether to or from the Borrower, MCL or any third party; and
  - ii) the failure receipt of communication by the Borrower or unauthorized exposure of such communication to third parties where the Borrower fails to provide accurate details of their email and or postal address.

**6. Joint and Several Liability:**

Where there is more than one Borrower, they shall be jointly and severally liable for the payment of all dues payable under this Agreement.

**7. Validity of Documents:**

The Borrower shall ensure that all documents submitted to MCL are authentic and valid.

**8. No Waiver:**

No relaxations, delays or indulgence on the part of MCL in exercise of any of its rights under this Agreement shall operate as a waiver of such rights.

**9. Governing Law and Jurisdiction**

This Agreement shall be governed and construed in accordance with the laws of Kenya. Both Parties consent to the exclusive jurisdiction of the courts 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.

**10. Variation, Renewal and Termination of Relationship:**

- a) MCL may upon notice to the Borrower and Insurer, terminate or vary its relationship with the Borrower and

Insurer. MCL may cancel advances which it has granted and require the repayment of outstanding debts resulting therefrom, upon issuance of a fourteen (14) days' notice.

- b) Upon the expiry of any insurance cover, the Borrower shall within seven (7) days of such expiry deliver to MCL the relevant renewal advise failure to which MCL shall renew such insurance through its insurance brokers at the Borrower's cost and further credit the Borrower's account with the amount paid by MCL.

**11. Specific events of Default**

- a) Default will occur if:
  - i) the Borrower fails to remit one of any monthly installments on the due date;
  - ii) the Borrower has an existing Logbook loan (LBL) facility running simultaneously with the IPF Facility and fails to remit one of any monthly installments on their due date for the IPF Facility. In the following circumstance, on the fifteenth (15th) day after the due date, a repayment shall be initiated by MCL in the IPF Facility and the same amount added as fees to the LBL facility account; or
  - iii) the Borrower uses the Facility for unauthorized or unlawful purposes or where we detect any abuse/misuse, breach, fraud or attempted fraud relating to the Facility.
- b) In addition to the other grounds of termination provided in this Agreement, MCL may terminate this Agreement if:
  - i) MCL is required to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority; or
  - ii) MCL reasonably suspects or believe that the Borrower is in breach of the terms of this Agreement (including non-payment of any loan amount due from the Borrower where applicable) which he/she fail to remedy (if remediable) within seven (7) days after the service of notice by email, SMS or other electronic means requiring him/her to do so.

**12. Exclusion of Liability**

- a) MCL shall not be responsible for any loss suffered by the Borrower should the Facility be unavailable or be delayed by reason of the failure of any of the Borrower's Equipment, or any other circumstances whatsoever not within MCL's control including, without limitation, Force Majeure or error, interruption, system downtime, delay or non-availability of the MCL's system, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.
- b) MCL will not be liable for any losses or damages suffered by the Borrower:
  - i) as a result of or in connection with:
    - a. the Borrower's failure to give proper or complete instructions or information relating to the Facility;

- b. any negligent act, fraud, recklessness, carelessness, default, misconduct or breach of the law or breach of the terms of this Agreement by the Borrower;
  - c. any fraudulent or illegal use of his/her Equipment; or
  - d. the Borrower's failure to comply with the terms of this Agreement and information provided by us concerning the Facility,
- ii) during the upgrade or downgrade of the insurance cover financed;
  - iii) as a result of a change of usage or policy of the motor vehicle by the Borrower without prior written consent of MCL;
  - iv) as a result of the Borrower rescinding instructions that have already been transmitted to the Insurer by MCL;
  - v) as a result of suspension of the policy by MCL and/or Insurer where the Borrower requests MCL and/or the Insurer to suspend the policy, including any claim that arises immediately following the receipt of the request to suspend by MCL and/or the Insurer;
  - vi) as a consequence of prolonged investigations into the authenticity and validity of a claim or prolonged processing of a claim by the Insurer or the denial of a claim by the Insurer for whatever reason; and
  - vii) as a result of the termination of the insurance policy either by the Insurer for whatever reason, the regulator or an order of the court.
- c) MCL shall endeavor to process claims within thirty (30) days pursuant to clause 2(a), however, it shall not be liable for any losses or damages suffered by the Borrower as a result of the extension of this period of time due to factors beyond MCL's control.
  - d) Under no circumstances shall MCL be liable to the Borrower for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Facility even where the possibility of such loss or damage is notified to MCL.
  - e) All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

### **13. Indemnity**

- a) In consideration of MCL complying with the Borrower's instructions or requests or offers in relation the Facility, the Borrower undertakes to indemnify MCL and hold it harmless against any loss, charge, damage, expense, fee or claim which MCL suffers or incurs or sustains thereby and the Borrower absolves MCL from all liability for loss or damage which he/she may sustain from MCL acting on the Borrower's instructions or requests or offers or information provided by him/her or in accordance with the terms of this Agreement.
- b) The indemnity in clause 13(a) shall also cover the following:
  - i) all demands, claims, actions, losses and damages of whatever nature which may be brought against MCL

- or which it may suffer or incur arising from its acting or not acting on the information provided by the Borrower or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, 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 MCL'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 the application received by MCL;
- ii) any loss or damage that may arise from the Borrower'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;
- iii) any unauthorized access to the Borrower's Equipment or any breach of security or any destruction or accessing of his/her data or any destruction or theft of or damage to any of the Equipment;
- iv) any loss or damage occasioned by the failure by the Borrower to adhere to the terms of this Agreement 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 MCL as a consequence of any breach by the terms of this Agreement; and
- v) any damages and costs payable by MCL in respect of any claims against MCL for recompense for loss where the particular circumstance is within the Borrower's control.

### **14. Binding and Dispute Resolution**

This Agreement shall be binding upon execution by all the parties herein.

#### **Acceptance:**

I/we have read and understood the terms of the Agreement governing the Insurance Premium Financing Facility offered by MCL. I/we agree that the Facility shall be granted solely at the discretion of MCL and shall indemnify MCL at my/our cost against any loss or claim arising in relation to this Facility. I/we confirm that the above information is correct and true. I/we hereby accept them and will abide by them. I/we further confirm that I/we have received all the information pertaining to the Facility. I/we have independently verified the terms of the Agreement noted above and where necessary I/we have consulted other persons independent from MCL's officials. I/we understand that MCL reserves the right to decline this application without giving reasons.

**Signed for and on behalf of Momentum Credit Limited**

Names: \_\_\_\_\_

Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Borrower (please sign here):**

Surname: \_\_\_\_\_

Other Names: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_