

## **TERMS & CONDITIONS FOR THE USSD TOPUP FACILITY**

### **1. THE AGREEMENT**

1.1. This agreement sets out the complete Terms and Conditions (hereinafter called "these terms and conditions") which shall be applicable to the USSD Topup (as hereinafter defined) requested by you, (as hereinafter defined) and granted by the Lender, (as Any reference to hereinafter defined.)

1.2. These Terms and conditions and any amendments or variations thereto take effect on their date of publication.

1.3. These Terms are supplemental to the LBL Finance Terms and Conditions. In the event of any inconsistency between the following Terms and conditions and the LBL finance Terms and Conditions or any other relevant Terms and Conditions, these Terms and Conditions shall prevail.

### **2. DEFINITION OF TERMS**

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

- **"Agreement"** means these terms and conditions and any amendments that will be made from time to time;
  - **"Applicant"** means any person who, applies for the USSD Topup facility;
  - **"Borrower"** means the Applicant who is successful and obtains the USSD Topup facility;
  - **"Charges"** means the fees applicable for the Facility and contained under Part A, Clause 3 below;
  - **"Collateral"** means the respective motor vehicle provided as security for the Facility;
  - **"Device"** includes your mobile phone handset, and/or other equipment which when used enables you to access the USSD Topup facility;
  - **"Facility"** means any funds advanced to your account pursuant to your application for either the USSD Topup facility or the LBL facility; **"LBL Facility"** means any Logbook loan advanced by the Lender to a successful applicant as per the Lender's Logbook loan terms and conditions;
  - **"Lender"** means Momentum Credit Limited incorporated in Kenya as a private limited liability company under the Companies Act, Laws of Kenya and includes subsidiaries of the Lender as may from time to time be specified by the Lender to you;
  - **"Repayment"** means repayment of any amount due under the facility defined in these Terms and Conditions including but not restricted to repayment of the facility and Fees;
  - **"USSD"** is simply a code that you enter on your device to enable you enjoy The Lender's Topup facility; services;
  - **"USSD Topup Facility"** means the Lender's product which entails an applicant with an existing LBL finance, applying for an additional loan amount using the USSD service.
7. The maximum amount that can be approved and disbursed under the USSD Topup facility is **Kes 2,000,000/-**. However, if the Applicant applies for more than the prescribed **Kes 2,000,000/-** he/she should contact the Lender's call centre or pay a visit to the Lender's offices countrywide for more advice.

- **"We," "our,"** and **"us,"** means The Lender and includes its successors and assigns;

- **"You"** or **"your"** means the Applicant and includes the Applicant's personal representatives and assigns;

- (a) a document includes any variation or replacement of it;
- (b) the singular includes the plural and vice versa;
- (b) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them); and
- (c) anything includes the whole and each part of it.

### **(A) USSD Topup Facility Terms & Conditions**

1. An existing pre-qualified LBL facility can be refinanced only thrice within one year before the Collateral is physically inspected and valued and the Facility is renewed. If a Borrower needs any refinancing, then the request should be channelled through the nearest LBL branch or call centre via telephone number 0709434434.
2. Only prequalified Applicants are eligible to apply for LBL refinancing via the USSD application.
  - 2.1 Approved USSD Topup facility will attract the following charges:
    - 2.2 Processing fee - 4% of the Topup amount
    - 2.3 Interest - 4% per month (flat rate which is equivalent to 6.458% per month on a reducing balance basis) on the base of the principal loan amount plus capitalized fees for the applied loan term.
    - 2.4 Tracking fees (monthly) - Kes 2,000
    - 2.5 Insurance quote (if extended)
    - 2.6 Credit Life Insurance— 0.3% of the Loan/applied amount
  3. The interest rate to be charged on any approved USSD Topup facility shall be similar to the interest rate applied on the original loan.
  4. After disbursement of the USSD Topup facility, the applicant must **within fourteen (14) days**, submit new cheques as per the new loan schedule. In the meanwhile, and until the new cheques are submitted, the Lender will continue banking the cheques in its custody.
  5. All USSD loan disbursements will be done via the Pesalink system or the RTGS system. All charges incurred on such disbursement shall be for the account of the Applicant.
  6. The terms and conditions under which the original loan was approved will apply to the new refinanced USSD Topup facility, in addition to the new terms which are specific to the USSD Topup.
  8. Each eligible Applicant will be provided with a specific maximum amount that they can apply for. This amount shall be determined during pre-qualification.
  9. The existing security and security agreement for the original loan shall be used as a continuing security for the new USSD Topup facility. However, the Applicant will be required to sign or agree to a Deed of

10. Variation to authorise receipt of the loans capturing any change in the loan terms.
  11. The Lender reserves the right to amend the initial notice with the Registrar of Security rights to capture the refinanced amount.
  12. In case of default, the normal collections process as per the original terms and conditions of the LBL finance will apply.
  13. An Applicant shall read and familiarize themselves with the general terms and conditions of LBL finance which are listed in Part B hereinafter.
  14. The Lender is not liable for any acts of fraud committed by third parties using the Applicant's device or account details. The Applicant is advised to exercise due care to ensure that no unauthorized persons have access to their device or account details. The Applicant shall be held responsible for the usage of the Applicant's device or account details by any third parties.
  15. All loan facilities borrowed via mobile platforms will be linked to a pre-existing charged Collateral.
  16. The Applicant must have a loan period of **four (4) months** or more to qualify for a USSD Topup facility. Clients with a shorter loan period are encouraged to take the repeat loan facility.
  17. To qualify for the USSD Topup facility, the Applicant must have made regular payments for at least **three (3) months**.
  18. The Applicant authorizes The Lender to access any information available to it in order to assess his or her application, and also gives the Lender permission to register details of the conduct of the Applicant's account with any credit reference bureau, and the Applicant waives any claim he or she may have against the Lender in respect of such disclosure.
  19. The Lender reserves the right to charge insurance on the Applicant's loan **three (3) days** to the expiry of the existing insurance cover. However, the Lender shall communicate to the Applicant regarding the same, **thirty (30) days** and **fourteen (14) days** respectively prior to the expiry of the existing insurance period.
  20. The Lender shall allow the Applicant to incur the cost of renewing their insurance cover upon expiry. However, if the Applicant allows the Lender to charge the said insurance on his/her loan, there will be **no refunds whatsoever** made to the Applicant.
- The insurance to be charged shall be **solely** based on the most recent valuation report submitted to the Lender by the Lender's specified valuer.
21. The Lender shall **only recognize and act upon** valuations undertaken by The Lender's specified panel of valuers.
  22. As long as the Topup facility is running, the Collateral will be subject to a 1% depreciation factor every month. A new valuation of the secured Collateral will be done every **nine (9) months** following the initial valuation.
  23. The Lender shall **only recognize and act upon** tracking installations installed by the Lender's specified panel of tracking companies.
  24. To qualify for the USSD Topup facility, the Applicant must be pre-qualified. The Applicant will thereafter receive a pre-qualification SMS on his/her device. If the Applicant needs a top-up amount beyond the pre-qualified amount, he/she should contact the Lender for further advise through the Lender's call centre or by visiting any of the Lender's offices countrywide.
  25. The Applicant **can only apply** for the USSD Topup facility using the same device that he/she received the pre-qualification SMS from.
  26. Pre-qualification will be valid for **thirty (30) days** after which the Applicant needs to be pre-qualified again before accessing the facility in cases where the Applicant will not have taken the facility within **thirty (30) days** of the initial pre-qualification date.
  27. The Applicant shall receive an amount equivalent to the applied amount less any fees, accrued interest or any other charges as the Lender may deem necessary.
  28. The USSD Topup facility shall **only** be applicable for an Applicant whose collateral's manufacture date is within **fifteen (15) years** from the date of manufacture for ordinary cars and within **ten (10) years from the date** of manufacture unless otherwise specified by the Lender at its own discretion.
  29. The first repayment date of the USSD Topup facility will be thirty (30) days after the disbursement date of the Facility.
  30. Upon application for the USSD Topup, the Lender reserves the **exclusive right** of approving, revising or rejecting the initial pre-qualified amount as per **clause 24** above.

## **B. GENERAL TERMS & CONDITIONS FOR THE LBL FACILITY:**

### **TERMS AND CONDITIONS THAT SHALL APPLY TO THE FACILITY (IF APPROVED)**

#### **GRANT OF CREDIT FACILITIES:**

Should your loan application be approved, alongside this Offer?

MCL shall further send you, the applicant, a letter (“**the Confirmation Letter**”) confirming the amount of the loan approved as well as the special terms and conditions (if any) that shall apply to the facility;

The following additional terms and conditions shall also apply to your facility:

1. The borrower has provided the collateral described above specifically to secure the loan and in the event of default, the Lender will exercise its right to realize the collateral and recover any unpaid portion for the loan plus all costs including but not limited to loan charges, legal and any other costs.
2. The Borrower shall provide the Lender with post-dated cheques equivalent in number with the number of loan instalments and authorizes the Lender to bank the cheques on the instalment due date. In the event that the Borrower expressly requests the Lender not to bank the said cheques, the Borrower shall make payments using alternative means as provided by the Lender. On final settlement of the loan, the Lender shall return to the Borrower any issued but unbanked cheques.
3. The Lender reserves the right to call up the loan upon which the whole of the monies remaining payable hereunder shall immediately become payable by the Borrower without demand if any event of default as highlighted in Clause 4 occurs.
4. **Events of Default-** Default will be deemed to have occurred if:
  - 5.2. Facility and fails to remit one of any monthly instalments on their due date for the Insurance Premium Finance facility, the following condition shall apply: On the eighth (8th) day after the due date, a repayment shall be initiated by the Lender in the Insurance Premium Finance facility and the same amount added to the Logbook Loan facility account
6. **Representations and Warranties-**Where a motor vehicle has been provided as collateral, the borrower undertakes to:
  - 6.1. Guarantee that the Borrower is the owner of the vehicle or has obtained the consent from the owner of the motor vehicle (which consent shall be issued to the Lender), to secure the loan facility with the subject motor vehicle;
    - 4.1 the borrower fails to remit one of any monthly instalments on their due date;
    - 4.2 there is any tampering or interference with the installed tracker.
    - 4.3 the Borrower fails to insure the collateral for the entire loan period as specified in Clause 7.
    - 4.4 there is any misrepresentation of facts regarding the ownership of the collateral at the onset of the loan
    - 4.5 the motor vehicle or accessory(ies) to the motor vehicle is changed or modified or removed which change or modification or removal is likely to prejudice the Lender's financial interest;
    - 4.6 the identification and/or registration number, trademark or other identification mark upon the motor vehicle is changed, modified or removed;
    - 4.7 a third-party claims ownership of the motor vehicle either by a sale agreement or a logbook and/or alleges fraud; the Lender receives a letter, a court order or any notification that is likely to prejudice our interest in the motor vehicle from any Government Agency.
  5. If an applicant defaults on any of the facilities issued to them alongside the Logbook Loan, which facilities may include a Logbook Loan separate from the one detailed under Section 7 and Section 8 of this loan application form, Invoice Factoring and/or an Insurance Premium Finance facility, the lender is entitled to exercise the rights to offset and withhold any collateral held by the company during such default.
    - 5.1. In a circumstance where the borrower has an existing Insurance Premium Finance facility running concurrently with the Logbook loan
    - 6.2. Cause the motor vehicle to be and remain registered jointly with the Lender during the duration of the loan and to deposit the Logbook relating to the motor vehicle.
    - 6.3. Keep and maintain the vehicle in good order and condition (fair wear and tear only expected) and will be fully responsible for any loss thereof or damage thereto however occasioned.
    - 6.4. Not use the motor vehicle nor permit it to be used for any purpose not permitted by the terms and conditions of the Insurance Policy nor permit to be done any act or thing by reason of which such Insurance Policy may be invalidated.
    - 6.5. Not take, or permit to be taken, the motor vehicle out of the Republic of Kenya.
    - 6.6. Punctually pay all licenses, duties, fees and registration charges as and when they fall due.

6.7. Ensure that he/she has taken due care to enable the tracking of the motor vehicle used as security through, but not limited to the following obligations:

6.7.1. In the event that the vehicle will not be in use for any period of the loan, notify the Lender of the specific dates, and arrange to have the said Motor Vehicle to be held at an approved yard.

6.7.2. Should a tracking device develop a technical fault within the course of this loan agreement, the Lender and the tracking service provider will contact the borrower. It's the borrower's responsibility to cooperate with the Lender and the service provider to ensure that the vehicle is submitted to the service provider for issue resolution, and restoration of the transmission signal to normal status. In the event that a borrower fails to cooperate, the Lender will institute repossession procedures of the affected motor vehicle, 24 hours from notification, for storage at a designated yard, at the customer's cost.

## 7. Insurance:

7.1. The Borrower undertakes to insure the collateral for the entire loan period.

7.2. The Lender shall communicate to the Borrower regarding the expiry of their existing insurance 30 days and 14 days to expiry. If the Borrower opts to incur the cost of renewing their insurance cover upon expiry, the Lender shall allow the same. The Borrower shall further provide to the Lender evidence of payment of the insurance within 14 days of that expiry month.

7.3. Failure to comply with Clause 5.2, the Company reserves the exclusive right to charge the insurance premium fee on the loan facility, 3 days to the expiry of the existing insurance cover and the Insurance taken by the Lender shall be communicated to the Borrower.

7.4. If the Borrower expressly allows the Lender to charge the said insurance on their loan, there will be **no refunds whatsoever** made to the Borrower.

7.6 The Borrower undertakes to endorse Momentum Credit Limited as the principal beneficiary of any dues arising from an insurance claim relating to the motor vehicle used as a security. In the instance where the Borrower intends to cancel and cancels the insurance taken by the Lender on their express instructions, there will be no refunds whatsoever made to the Borrower.

7.7 The Lender shall be entitled to the full benefit of the Insurance Policy thereof including claims that might at any time be outstanding. Any monies received by virtue of such insurance shall at the discretion of the Lender be applied in replacing or restoring any loss or damage in respect of which the same shall be received in or towards liquidation of the amount for the time being due by the borrower to the Lender under this agreement.

**8. Interest Rate and Interest Calculation** -The total interest chargeable on the facility is calculated at a flat rate of 4% per month on the base of the principal loan amount plus capitalized fees (where applicable) subject to the applied loan term. In accordance with globally accepted International Financial Reporting Standards (IFRS), principal and interest repayments on the loan amortization schedule shall be calculated on the basis of an equivalent reducing balance interest rate of up to a Maximum of 6.458% subject to the loan term, which shall form the basis of calculating the outstanding amount due in the event of a prepayment.

## 9. Applicable interest on outstanding dues and bank charges accrued

9.1 interest on outstanding dues of 0.36% shall be charged on an unpaid instalment amount from the fourth day of lateness in payment of the due instalment, on a daily basis until full payment of the amount due.

9.2 For past term accounts, interest on outstanding dues of 0.36% shall be charged on the outstanding instalment amount on a daily basis up to a maximum of a quarter of the original loan term.

9.3 Where a cheque/instrument provided by the Borrower is dishonoured, the actual costs incurred by the Lender for each dishonoured cheque/instrument shall be recovered from the Borrower.

9.3.1 Consequently, the lender shall be entitled to repossess and dispose off the motor vehicle/ collateral in such manner as it may in its sole discretion determine to be in its best interest and the Borrower is obligated to cooperate accordingly.

9.3.2 Upon repossession of the motor vehicle, the Lender shall temporarily halt banking of the subsequent cheques/instruments in its custody until the loan account is regularized or fully settled.

10. Upon full payment of the loan and related charges the Lender shall, at the Borrower's request, return the title document of the collateral provided by the Borrower and exit the joint ownership of the same with the Borrower.

## 11. Data Protection Policy

11.1. It is hereby understood and agreed that the data herein has been directly obtained from the Borrower who has provided this data to the Lender to facilitate the processing of the loan facility sought by the Borrower.

11.2. It is hereby understood and agreed that by signing this contract the Borrower:

- 11.2.1. must provide personal data which is required for facilitating the processing of the loan facility, the establishing and maintenance of business and for the fulfilment of the Lender's contractual and legal obligation;
  - 11.2.2. consents to the Lender processing the data as per its internal company policy;
  - 11.2.3. has given consent to the Lender to continue holding and processing the data provided even after all obligations under the loan 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 the Lender's regulations and procedures;
  - 11.2.4. is at liberty to exercise its rights as a data subject and as is provided by the Data Protection Act of 2019, Laws of Kenya;
  - 11.2.5. consents to the use of their personal data from time to time by the Lender to market the company's products. The Borrower may opt out of receiving marketing communication at any time within the duration of their loan by officially communicating to MCL through the prescribed channel of communication.
- 11.3 the Lender undertakes to ensure the personal data provided by the Borrower is processed in accordance with the Data Protection Act, Laws of Kenya.
- 11.4 For queries and more information on our Data Protection Policy, the Borrower may contact our Data Protection personnel at

- 12. Credit Reference Bureau-** It is hereby understood and agreed that by signing this contract the borrower authorizes the Lender to access any information available to assess his/ her application and also gives the Lender permission to register details of the conduct of the Borrower's account with any Credit Rating Bureau, and the Borrower waives any claim he or she may have against the Lender in respect of such disclosure.
- 13.** The lender is also at liberty to discount on or trade in the debt arising from his loan without making any further reference to the borrower.
- 14.** The Borrower is allowed to select the first repayment date, no later than thirty seven (37) days from the date of disbursement. The subsequent repayment dates

**15.** will then be bound to no more than thirty (30) days from this date.

**16.** The Lender will collect full interest accrued on any account settled after the final payment due dates as per original contract

**17.** In the event of default on the final instalment, the Lender shall collect full interest accrued, alongside any fees and/or charges arising therefrom.

## 18. Loan Cancellation:

17.1. Where the loan is cancelled at any stage of processing before disbursement of the funds, the Borrower shall be obligated to pay any loan origination costs incurred including but not limited to tracking device removal costs of Kenya Shillings Seven Thousand, seven hundred and twenty five (Ksh. 7,925).

17.2. Cancellation of the loan before disbursement of the funds should be communicated in writing through the email to [cx@momentumcredit.co.ke](mailto:cx@momentumcredit.co.ke) or by an official letter.

17.3. If the loan is cancelled after receipt of the funds, the Borrower shall reimburse the disbursed amount plus the loan origination costs within 48 hours of receipt of the said funds be communicated in writing through the cancellation email or an official letter accompanied with the proof of refund. Failure to which Clause 8 of the Terms and Conditions shall take effect.

## 18. Dispute resolution

18.1. In case a dispute regarding the loan contract herein or any transactions thereof, the borrower can seek resolution from the borrower in writing via email

18.2. All claims and disputes whatsoever arising under this agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act by a single arbitrator to be appointed by agreement between the parties or, failing agreement within 14 days of the notification by either party to the other of the existence of a dispute or claim, to be appointed by the Chairman for the time being of Institute of Arbitrators, Kenya on the application of either party.

18.2 The award of the arbitrator shall, to the extent permitted by law, be final and binding.

18.3 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.

19. This contract arising out of the Borrower's acceptance of the 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 terms and conditions set out in the **Movable Property Security Rights Act (2017)** Laws of Kenya and to the exclusive jurisdiction of the Kenyan Courts.

20. Offer Period- The offer contained in this Letter is available to the Borrower for acceptance for a period of no less than one month from the date of this Letter after which date the customer should have read understood the terms and conditions mentioned above, the offer will lapse on expiry of this period unless extended in writing by the Lender. The borrower is at liberty to consult independently on any term or condition in this agreement.

### **3. ACCEPTANCE OF THE TERMS AND CONDITIONS**

- 3.1 Before opting-in or registering for the Service, you **should carefully read and understand these terms and conditions** as they govern the access, use and operation of the Service. These Terms and Conditions are available on <https://momentumcredit.co.ke/>. Where you are unable to read and understand these terms and conditions from an electronic device you are requested to collect a printed version from your nearest Momentum Credit Limited Branch.
- 3.2 If you do not agree with these terms and conditions, please click “Cancel” in the Welcome screen
- 3.3 You will be deemed to have read, understood and accepted these terms and conditions;
- 3.3.1 Upon selecting the “Register” option on the welcome screen requesting you to confirm that you have read, understood and agreed to abide by these terms and conditions; and/or
- 3.3.2 by using or continuing to use and requesting for the Service.
- 3.4 By registering for the Service, you agree to comply with and agree to be bound by these terms and conditions as amended and revised from time to time every time you use the service and you affirm that these terms and conditions are without prejudice to any other rights that we may have in law or otherwise regarding your registration, access and use of the Service.
- 3.5 You 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.
- 3.6 We may from time to time vary or amend these terms and conditions and your continued access and use of the Service constitutes your acceptance to be bound by the terms of any such amendment or variation.

### **4. EXCLUSION OF LIABILITY**

- 4.1 The Lender shall not be responsible for any loss suffered by you should the facility be interfered with or be unavailable by reason of;
- (a) the failure of any of your Equipment or;
- (b) any other circumstances whatsoever not within the Lender’s control including, without limitation, force majeure or error, interruption, delay or non- availability of the 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.
- 4.2 The Lender will not be liable for any losses or damage suffered by you as a result of or in connection with: failure, malfunction, interruption or unavailability of the System, your Equipment, the Network, the money in your bank account being subject to legal process or other encumbrance restricting payments or transfers thereof; your failure to give proper or complete instructions for payments or transfers relating to your bank Account; any fraudulent or illegal use of the Services, the System and/or your Equipment; or Your failure to comply with these Terms and Conditions and any document or information provided by the Lender concerning the use of the facility.
- 4.3 The Lender shall not be responsible for any loss, damage or inconvenience caused or occasioned by the bouncing of a Pesalink or RTGS transaction during disbursement of the USSD Topup facility.

### **5. DISCLOSURE OF INFORMATION**

- 5.1 You hereby expressly consent and authorize the Lender to disclose, receive, record or utilize your personal information or data relating to your Topup facility and any details of your use of the facility:
- 5.2 To and from any local or international law enforcement or competent regulatory or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud;
- 5.3 To and from the Lender’s service providers, dealers, agents or any other company that may be or become the Lender’s subsidiary or holding company for reasonable commercial purposes relating to the Services;
- 5.4 To a Credit Reference Bureau;
- 5.5 To the Lender’s lawyers, auctioneers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;

5.6 In business practices including but not limited to quality control, training and ensuring effective systems operation.

## **6. NOTICES**

6.1 The Lender will send information to the Applicant concerning the USSD Topup facility via SMS, phone call, email or any other communication mode as the Lender deems fit.

6.2 Any notices by the Applicant to the Lender in connection with this Agreement must be in writing.

## **7. DISPUTE RESOLUTION AND JURISDICTION**

7.1 You may contact the Lender's Customer Care Center to report any disputes, claims or discrepancies.

7.2 This Agreement shall be governed by and construed in accordance with the Laws of the Republic of Kenya.

## **8. FEEDBACK AND COMPLAINTS**

We are committed to improving the service we offer our customers, however we acknowledge that sometimes we

get it wrong, and when this happens we'd like the opportunity to put things right. When you make a complaint to us we're committed to:

- Doing our best to understand your concerns
- Recording your complaint
- Providing you with a response
- Providing you with our contact details so that you know who is dealing with your complaint
- Keeping you updated of our progress; and
- Doing what we can to solve the problem

### **How to make a complaint**

Step 1: Talk to us. Please contact us through this email: [cx@momentumcredit.co.ke](mailto:cx@momentumcredit.co.ke) as soon as you have identified a problem. We'll aim to resolve your complaint on your first call. To help us solve your complaint quickly, please have the following handy:

- any relevant documents or supporting information in relation to your complaint
- records of times, dates, letters or names relating to your complaint; and
- how you would like your complaint resolved.