INVOICE FACTORING STANDARD TERMS

1. APPLICATION

These Standard Terms (these **Standard Terms**) shall apply to the Services to be provided by Momentum to the Customer from time to time.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement the following words and phrases shall have the following meanings:

2.1.1 **Administration Services** means services provided by Momentum in relation to accounts prescribed under Paragraph 6 (*Administration Services*).

2.1.2 **Affiliate** means, with respect to each Party, any person or entity directly or indirectly through one or more intermediary Controlling, Controlled by, or under direct or indirect common Control with a party and **Control**, **Controlled** or **Controlling** means, with respect to any person or entity, any circumstance in which such person or entity is controlled by another person or entity by virtue of the latter person or entity controlling the composition of the board of directors or managers or owning the largest or controlling percentage of the voting securities of such person or entity or otherwise controlling the other.

2.1.3 **Approved Receivable** means a Receivable which, if purchased by Momentum from the Customer, would not cause either applicable the Overall Limit or Customer Limit to be exceeded.

2.1.4 **Assignment** means the assignment of Receivables by the Customer to Momentum created pursuant to Clause **Error! Reference source not found.** (*Legal Assignment)* of the Agreement or otherwise in connection this Agreement.

2.1.5 **Business Day** means a day other than a Saturday, Sunday or public holiday in Kenya when banks in Kenya are open for business.

2.1.6 **Collection Account** means the account indicated in the Commercial Terms, into which all outstanding payments from Debtors in respect of the Purchased Receivables shall be paid.

2.1.7 **Collection Services** means the measures initiated by Momentum under Paragraph 5 (*Collection Services*) with respect to the collection of the Receivables (including Purchased Receivables).

2.1.8 **Commercial Terms** means the supplemental terms set out in Schedule 3 (*Commercial Terms*) setting out the commercial terms applicable to the Services.

2.1.9 **Customer Limit** means the amount shown as such against the name of a Debtor in the Commercial Terms or other letter or document exchanged between Momentum and the Customer.

2.1.10 **Data Processing Policy** means Momentum's Data Processing Policy and Notice (accessible on Momentum's website) and as amended from time to time.

2.1.11 **Data Protection Legislation** means the Kenya Data Protection Act, No. 24 of 2019, and any regulations issued under it, and any all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority to a Party.

2.1.12 **Debtor** means a person to whom the Customer supplies goods or provides services from time to time, who has previously been accepted by the Momentum in accordance with Paragraph 3 (*Acceptance of Debtors and Limits*).

2.1.13 **Effective Date** means the date specified as such in the Commercial Terms.

2.1.14 **Encumbrance** includes any mortgage or charge (whether legal or equitable), lien, option, security interest, restrictive covenant, pledge, assignment, title retention, trust arrangement or other restriction of any kind or other encumbrance securing or any right conferring a priority of payment in respect of any obligation of any person.

2.1.15 **Estimated Maturity Date** means the date specified as such in the Commercial Terms.

2.1.16 **Event of Default** means any event or circumstances listed in Paragraph 13 (*Events of Default*).

2.1.17 **Factoring Services** means the service based on which Momentum purchases Receivables from the Customer pursuant to, *inter alia*, Clause **Error! Reference source not found.** (*Services*) of the Agreement and Paragraph 4 (*Factoring Services*).

2.1.18 **Initial Instalment Limits** means the percentage specified as such under the Commercial Terms.

2.1.19 **Insolvency Event** means any of the following events related to a legal entity:

2.1.19.1 the entity is dissolved (other than as result of a solvent merger); or

2.1.19.2 the entity becomes insolvent, or it is unable to pay its debts, or it does not pay or admits in writing its inability to pay its due debts; or

2.1.19.3 a procedure aiming to obtain the insolvency, judicial reorganization or dissolution and/or liquidation has been initiated against the entity; or

2.1.19.4 the entity has a resolution passed for its dissolution, judicial reorganization, official management, winding-up or liquidation (other than as result of a solvent merger); or

2.1.19.5 the value of the entity's assets is lower than the value of its liabilities (taking into account its contingent and prospective liabilities).

2.1.20 **Interest Rate** means the interest rate stipulated in the Commercial Terms.

2.1.21 **Invoice** means an invoice or other fiscal document covering a payment request for products or services provided by the Customer to a Debtor.

2.1.22 **IPRS** means the Integrated Population Registration System set up and maintained by the Government of the Republic of Kenya under the Ministry in charge of the Immigration and Registration of Persons.

2.1.23 **Litigation** means any judicial action, challenge, objection, claim, including a refusal to pay among others, made by the Debtor or by the Customer or by any third party, affecting a Purchased Receivable, irrespective of whether or not a procedure is initiated in front of the judicial or arbitral courts, or in front of any authority having jurisdictional attributions.

2.1.24 "Loan" means financing created for each invoice presented for factoring or collection of invoices presented as a statement where the invoice statement has been presented to buyer for payment.

2.1.25 **Material Adverse Effect** means, in the reasonable opinion of Momentum, a material adverse effect on:

2.1.25.1 the business, operations, property, condition (financial or otherwise) or prospects of the Customer;

2.1.25.2 the ability of the Customer to perform or comply with any of its obligations under this Agreement and/or other security or transaction documents relating thereto; or

2.1.25.3 the validity or enforceability of, or the effectiveness of the Assignment or rights of remedies of Momentum under this Agreement and/or other security or transaction documents relating thereto.

2.1.26 **Maturity Date** means in relation to a Purchased Receivable:

2.1.26.1 the day on which Momentum shall have received payment in full of the outstanding balance of that Purchased Receivable; or

2.1.26.2 the date of the insolvency of the Debtor in respect of that Purchased Receivable; or

2.1.26.3 the date of expiry of the period of twelve (12) months from the purchase of the Receivables by Momentum, whichever first occurs.

2.1.27 **MPSR Act** means the Movable Property Security Rights Act, No. 13 of 2017.

2.1.28 **Offer** means an offer made by the Customer to Momentum pursuant to Paragraph 4.1 (*Offers*).

2.1.29 **Outstanding Amounts of the Purchased Receivables** means the total amount of Purchased Receivables remaining outstanding in respect of which the relative Maturity Dates have not yet occurred.

2.1.30 **Overall Limit** means the amount specified as such under the Commercial Terms, being the maximum amount of Receivables that the Customer is eligible to offer to sell to Momentum from time to time, it being acknowledged that the limit has a revolving nature, being considered replenished as the

Purchased Receivables are collected; and that the Overall Limit shall be used and replenished based on the nominal value of the Invoices.

2.1.31 **Parties** means Momentum and the Customer and, where the context requires, includes their respective successors in title, personal representatives and permitted assigns (as applicable).

2.1.32 **Purchased Receivable** means a Receivable purchased by Momentum from the Customer under the terms of this Agreement.

2.1.33 **Receivables** means any book and other debts and monetary claims from time to time owing or payable to the Customer from a Debtor under a Supply Contract and all other rights to receive money, and any proceeds thereof which is evidenced through an unpaid Invoice.

2.1.34 **Related Rights** means, in relation to any asset:

2.1.34.1 the proceeds of sale of any part of that asset or other proceeds of any part of that asset;

2.1.34.2 all rights under any licence, agreement for sale or agreement for lease in respect of that asset;

2.1.34.3 all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that asset; and

2.1.34.4 any monies and proceeds paid or payable in respect of that asset.

2.1.35 **Services** means the Factoring Services, Administration Services and Collection Services.

2.1.36 **Supply Contract** means:

2.1.36.1 an agreement between the Customer and a Debtor; and/or

2.1.36.2 a firm order by a Debtor and accepted by the Customer, based on which the Customer has provided goods or services and the Debtor shall pay the price agreed within that agreement or order.

2.2 Interpretation

2.2.1 In addition to the definitions in Paragraph 2.1 (*Definitions*), in this Agreement:

2.2.1.1 unless the context requires otherwise, words in the singular shall include the plural and *vice versa*;

2.2.1.2 unless the context requires otherwise, a reference to any one gender, whether masculine, feminine or neuter, includes the other two;

2.2.1.3 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

2.2.1.4 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

2.2.1.5 an obligation on a Party not to do something includes an obligation not to allow that thing to be done;

2.2.1.6 a reference to this Agreement (or any provision thereof) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Agreement) from time to time;

2.2.1.7 reference to a Paragraph in these Standard Terms is a reference to a Paragraph these Standard Terms;

2.2.1.8 reference to an **amendment** or similar terms includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);

2.2.1.9 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;

2.2.1.10 a reference to **determine** or **determined** means, unless the contrary is indicated, a determination made at the sole discretion of the person making it;

2.2.1.11 a reference to **eligible** in relation to a Receivable means that such Receivable that complies with criterial set out in Paragraph 4.1.3.

2.2.1.12 the words **hereof**, **herein** and **hereunder** and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement;

2.2.1.13 any words following the terms **including**, **include**, **in particular**, **such as**, **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;

2.2.1.14 reference to **indemnifying** any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss incurred by that person as a consequence of or which would not have arisen but for that circumstance;

2.2.1.15 **losses** include losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities;

2.2.1.16 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;

2.2.1.17 the term **proceeds** has, with reference to any asset or property, the meaning ascribed to it under the MPSR Act and, in any event, shall include any and all amounts from time to time paid or to be paid or payable under or in connection with such asset or property; and

2.2.1.18 the words **reasonable**, **reasonably**, **unreasonably**, and words of similar import, when applied to Momentum's satisfaction, acceptance, determination, consent, discretion or approval, take into account any special consideration affecting decisions of Momentum and are based on its policies, practices, and procedures, and law and regulations applicable to it.

2.2.2 If a definition imposes substantive rights or obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.

2.2.3 Where any term is defined within the context of any particular clause or paragraph in these this Agreement or these Standard Terms (as the case may be), the term so defined shall bear the meaning ascribed to it for all purposes in this Agreement notwithstanding that that term has not been defined in this Paragraph 2 (*Definitions and interpretation*).

2.2.4 In the event there is any conflict between the provisions of these Standard Terms and the provisions of the Commercial Terms, the provisions of the Commercial Terms shall prevail in respect of such conflict.

2.2.5 If, by the terms of this Agreement, any act would be required to be performed on, or within a period ending on, a day other than a Business Day, the act shall be deemed to have been duly performed if performed on, or by the next Business Day after, that day.

3. ACCEPTANCE OF DEBTORS AND LIMITS

3.1 For purposes of the Services, the Customer shall present to Momentum for its acceptance a list of its debtors to whom it has issued, or will from time to time issue, Invoices together with:

3.1.1 copies of the Supply Contracts based upon which such Invoices originate;

3.1.2 any other information or documents that it holds related to the business relationship with the respective debtors, including the overdue amounts, the late payments or the current or past Litigations with the debtor; and

3.1.3 any other documents or information that Momentum may require in connection with the debtor, the Invoices and/or related Receivables.

3.2 After analysing the information referred to in Paragraph 3.1, Momentum shall communicate to the Customer the list of Debtors accepted by it for purposes of the Services and the respective Customer Limits and other applicable limits established in this respect for purposes of this Agreement.

3.3 Notwithstanding any provision to the contrary in this Agreement, Momentum reserves the right to, at any time, without any justification or prior formality, revoke any acceptance of an Offer or decrease, suspend or cancel the acceptance of any Debtor, the Overall Limits, Customer Limits or the Initial Instalment Limit.

3.4 Upon exercise of any of its rights in Paragraph 3.3, Momentum shall, within three (3) Business Days of exercising such right notify the Customer of the action taken by Momentum and stipulate the actions (if any) to be taken by the Customer and the prescribed period within which the Customer should take such actions.

3.5 In case Momentum decides to withdraw its approval to provide Services with respect to a Debtor, the Debtor's obligation with respect to the Services shall continue until the Debtor discharges such obligations to Momentum and there are no more outstanding obligations to Momentum relating to the Debtor.

4. FACTORING SERVICES

4.1 Offers

4.1.1 The Customer may from time to time (and shall at agreed intervals) offer to sell eligible Receivables to Momentum through an offer which shall be:

4.1.1.1 in the form set out in Appendix I hereto (*Form of Offer*) or such other form prescribed by Momentum from time to time determine;

4.1.1.2 accompanied by:

4.1.1.2.1 the original of each relative Invoice duly acknowledged as received by the Debtor;

4.1.1.2.2 a copy of the relevant Supply Contract based on which the Invoices have been generated;

4.1.1.2.3 such evidence as Momentum may require of the delivery of the goods, the carrying out of the work or the performance of the services in respect of which such Invoice has been issued;

4.1.1.2.4 particulars of credits granted to any Debtor and not previously notified to Momentum and the original of every credit note issued in respect of those credits duly acknowledged as received by the Debtor;

4.1.1.2.5 any associated guarantees, delivery notes or other documents or information; and

4.1.1.2.6 any other information or documents relating to the business relationship with the respective Debtor, including the overdue amounts, the late payments or the current or past Litigations with the Debtor; and in accordance with this Agreement, provided that Momentum may at its sole and absolute discretion waive or defer any of the conditions set out in this Paragraph.

4.1.2 The delivery to Momentum of the Offer shall constitute an offer, which shall be irrevocable for a period of thirty (30) days from the date of delivery thereof, to sell to Momentum each Receivables included in the Offer.

4.1.3 The Receivable to which an Offer relates must comply with the following requirements, in the form and substance satisfactory to Momentum:

4.1.3.1 is an Approved Receivable;

4.1.3.2 relates to goods and services delivered by the Customer to a Debtor under a valid and enforceable Supply Contract;

4.1.3.3 is not subject to any Litigation or other judicial action, challenge, objection, claim, including refusal to pay made by a Debtor or other person;

4.1.3.4 does not relate to sales on consignment or deposit, or barter or, in general, any sale under a condition precedent or subsequent;

4.1.3.5 does not relate to sales where the Customer has agreed to or accepted payments in advance, cash on delivery or cash on sale terms;

4.1.3.6 does not relate to a Debtor who is under any Insolvency Event;

4.1.3.7 does not relate to a Debtor who is an Affiliate of the Customer;

4.1.3.8 has not already been sold or assigned, or is not subject to any other Encumbrance, in any way in favour of a third party and is freely and unrestrictedly assignable;

4.1.3.9 the Maturity Date has not expired; and

4.1.3.10 meets such other eligibility criteria as Momentum may determine from time to time, provided always that such Offer shall apply to each Receivable included in the list, whether or not, through inadvertence or otherwise, the Receivable is eligible.

4.2 Acceptance

4.2.1 Prior to acceptance of an Offer (and without affecting the Customer's obligations under this Agreement), Momentum will be entitled to conduct its legal and financial due diligence on the Customer, its Debtors and/or the Receivables. For this purpose, the Customer acknowledges and consents to Momentum requesting, collecting, receiving, compiling, retaining, utilizing, disclosing, exchanging and obtaining any information about the Customer from credit reference bureaus, relevant industry associations, the IPRS, government registries, law enforcement or other competent regulatory or governmental agencies; Momentum Affiliates; Momentum's professional advisors or other sources as it may deem necessary, in each case to Momentum's sole satisfaction.

4.2.2 The Customer shall promptly give Momentum any information that Momentum may require in relation to the aforesaid due diligence and/or provision of the Services.

4.2.3 Momentum may, at any moment, verify with a Debtor, the existence and extent of Receivables presented by the Customer to Momentum or make such other inquiries as it may deem fit in regard to any Receivable, the relative Invoice, the Customer and/or the Debtor.

4.2.4 If Momentum wishes to accept any Offer in whole or in part, it will pay to the Customer the initial instalment of the purchase price for the Receivables to which such acceptance relates as calculated in accordance with Paragraph 4.3.3.1, and such payment shall constitute acceptance of the Offer as regards the Receivables to which it relates, on and subject to the terms and conditions of this Agreement.

4.2.5 Momentum shall be under no obligation to accept an Offer and Momentum may refuse to accept an Offer including in the following situations:

4.2.5.1 the Offer fails to meet the conditions in Paragraph 4.1;

4.2.5.2 the provided documents do not conform with the provisions of the Supply Contract;

4.2.5.3 the Customer's fails to duly perform its obligations under the Supply Contract;

4.2.5.4 there exists an unrecovered amounts due by the Customer to Momentum;

4.2.5.5 the Overall Limit, Customer Limit and/or the Initial Instalment Limits have been exceeded or expired;

4.2.5.6 Momentum is unable to contact the Debtor; or

4.2.5.7 Litigation, a Material Adverse Effect and/or an Event of Default has occurred.

4.3 Purchase Price

4.3.1 Purchase price computation

The purchase price for the Purchased Receivables comprised in each Offer shall, subject as mentioned below, be equal to the aggregate outstanding amount as shown in the Offer after deducting the Fees.

4.3.2 Deductions from the purchase price

Momentum shall be entitled (if it so elects and in or towards satisfaction of the Customer's obligations) to deduct from the purchase price:

4.3.2.1 any stamp duty on any assignment of the Receivable which has not been paid by the Customer; and

4.3.2.2 any other sum which, on the date of Momentum's acceptance of the relevant Receivable or, as the case may be, the date when any instalment of the purchase price becomes payable to the Customer, is presently due and payable to Momentum by the Customer.

4.3.3 Payment of the purchase price

4.3.3.1 Subject to the Overall Limits or other applicable limits not being exceeded, the initial instalment of the purchase price (the **initial instalment**) payable by Momentum in respect of the Purchased Receivables comprised in each Offer shall be a sum not exceeding the Initial Instalment Limit (or such other percentage as shall have previously been agreed in writing between the Customer and Momentum) after deducting from such amount the Fees.

4.3.3.2 When, in relation to a Purchased Receivable:

4.3.3.2.1 the Customer shall, as agent and trustee of Momentum, have collected from the Debtor a sum amounting in total to not less than the initial instalment and shall have duly accounted to Momentum in full for that sum; or

4.3.3.2.2 Momentum shall itself have collected from the Debtor an amount equal to the initial instalment, Momentum shall pay to the Customer, less any deductions authorised by this Agreement, a further instalment of the purchase price equal to the amount by which that sum exceeds the initial instalment.

4.3.3.3 When, in relation to a Purchased Receivable:

4.3.3.3.1 the Customer shall, as agent and trustee of Momentum, have collected any further sum from the Debtor and shall have duly accounted to Momentum for that sum; or

4.3.3.3.2 Momentum shall itself have collected that sum, Momentum shall pay, less any deductions specified above, a further instalment equal to the amount of the sum so collected and accounted for or collected by itself.

5. COLLECTION SERVICES

5.1 Collection by Momentum

5.1.1 Momentum shall have the sole and exclusive right of collecting and enforcing payment of Purchased Receivables and, save as provided in Paragraph 5.1.4, the Customer shall not:

5.1.1.1 interfere with or attempt to interfere with the collection by Momentum of Purchased Receivables;

5.1.1.2 request any Debtor to make payment in respect of them otherwise than to Momentum or as Momentum may from time to time direct;

5.1.1.3 otherwise attempt to divert the Purchased Receivables from Momentum; and

5.1.1.4 receive or collect or attempt to receive or collect from the Debtors the Purchased Receivables.

5.1.2 The Customer may appoint Momentum as its collection agent with respect to other Receivables or debts (the **Unsold Receivables**) and the Customer shall promptly and not later than fourteen (14) days of such appointment issue a notice of the appointment to the Debtor in the form set out in Appendix 3 or in any other manner that Momentum may require. The provisions of Paragraph 5.1.1 shall *mutatis mutandis* apply upon such appointment.

5.1.3 The Customer shall, upon request, co-operate and afford Momentum all such assistance as Momentum may require including lending its name in legal proceedings to procure collection and enforcement of Purchased Receivables and , where Momentum is appointed as a collection agent as set out in Paragraph 5.1.2 above, the Unsold Receivables, and, for such purpose, Momentum may institute and conduct legal proceedings in the Customer's name and shall have full control of such proceedings.

5.1.4 In addition, at the request of Momentum, and for the purpose of facilitating the collection and receipt by Momentum from Debtors of Purchased Receivables, the Customer shall act as agent and trustee of Momentum and in such capacity shall at its own expense collect on behalf of Momentum (and take all such action or legal or other proceedings to enforce payment as Momentum may require) from the Debtors the Purchased Receivables.

5.1.5 Forthwith upon receipt of any money in respect of a Purchased Receivable, the Customer shall:

5.1.5.1 remit to Momentum (accompanied by and listed on a signed payment Schedule in the form required by Momentum) the actual money, cheques, direct debit receipts and bills of exchange so received from, or on account of, the Debtor without any deduction whatsoever (duly endorsed where such endorsement is requested); or

5.1.5.2 if instructed so to do by Momentum, pay without any deduction, all such money, cheques and bills of exchange as actually received:

5.1.5.2.1 into the Collection Account or any other bank account from time to time nominated by Momentum; or

5.1.5.2.2 at the direction of Momentum, into a trust account in the joint names of Momentum and the Customer or designated as Momentum may require,

and, until such money is received by Momentum, the same shall be held in trust by the Customer for Momentum.

5.1.6 Notwithstanding the provisions of this Paragraph 5, Momentum may, at any time by notice in writing immediately, terminate the agency referred to in Paragraph 5.1.4.

5.1.7 If the total amount due from any Debtor comprises both Purchased Receivables the Unsold Receivables, any payment received from such Debtor shall, as between the Parties to this Agreement, be deemed to have been paid by the Debtor:

5.1.7.1 first in or towards satisfaction of the sums then due by the Debtor in respect of the Purchased Receivables; and

5.1.7.2 secondly in or towards satisfaction of any sums then due from the Debtor in respect of the Unsold Receivable.

5.2 Miscellaneous provisions

5.2.1 Notwithstanding any provision of this Agreement, Momentum reserves the right to take such steps as Momentum determines, to ensure the collection and enforcement of payment of Purchased Receivables and , where Momentum is appointed as a collection agent as set out in Paragraph 5.1.2 above, the Unsold Receivables, that remain outstanding after the Maturity Date including among others:

5.2.1.1 making telephone calls and notifications addressed to a Debtor;

5.2.1.2 hiring a debt recovery service provider;

5.2.1.3 requesting the Debtor and the Customer to co-operate to ensure the collection and enforcement of such outstanding Receivables; and

5.2.1.4 instituting and conducting legal proceedings in the Customer's name over which Momentum will have full control, but before instituting them Momentum shall give written notice to the Customer of its intention to do so, and the Customer shall cooperate with Momentum in the collection and enforcement of payment including providing any assistance and information as may be required by Momentum.

5.2.2 While performing the Collection Services, Momentum shall have full authority with respect to the Receivables and in particular, the right to negotiate the Receivables.

5.2.3 The Customer shall not provide credits or discounts to Debtors in relation to Receivables. However, if a Debtor becomes entitled to a credit or customer discount in respect of any Receivable, the Customer shall immediately deliver to Momentum a credit note in respect of such Receivable together with all documents and information relating to it that Momentum may require, and Momentum shall be entitled to recover an amount equivalent to the discount or credit from the Customer.

6. ADMINISTRATION SERVICES

6.1 Momentum will maintain any accounts it considers appropriate and convenient to record the transactions referred to in this Agreement.

6.2 Momentum shall within seven (7) days after the last day of each month, send to the Customer a statement of account, which, save for manifest error, will constitute conclusive evidence of the state of the account of the Customer at the date of the account unless the Customer notifies Momentum in writing, within ten (10) days from receipt of a statement that the Customer questions all or any part of it.

6.3 Momentum reserves the right to rectify discrepancies, add and/or alter the entries in the statements, without prior notice to the Customer. Momentum will however inform the Customer of any rectification, additions and/or alterations effected on the statements after the changes are effected.

7. FEES AND COSTS

7.1 The Customer shall, in connection with the Services, pay the Fees at the rate and in the manner set out in the Commercial Terms as set out in Schedule 3.

7.2 Momentum shall be entitled to deduct:

7.2.1 the Fees in respect of the Factoring Services from the respective initial instalment; and

7.2.2 the Fees in respect of the Administration Services and the

Collection Services and other Fees or charges payable by the Customer under this Agreement from the Collection Account.

7.3 The Customer shall pay to Momentum all stamp duty on any assignments and the amount of all costs, charges and expenses of whatsoever nature which may be incurred by Momentum in collecting or enforcing or attempting to collect or enforce the Receivables (including the Purchased Receivables) or by way of enforcement of any of the obligations assumed by the Customer under this Agreement, and the Customer's obligations under this Agreement shall continue in force without any right of set-off or counterclaim against Momentum until Momentum shall have received in full the outstanding amount of the Purchased Receivables.

7.4 If the Customer shall fail to pay any sum becoming due and payable by it to Momentum under this Agreement, the Customer shall pay interest on such sum from the date when the same became due and payable up to the actual payment date at the Interest Rate (as well after as before any judgment obtained under this Agreement). Interest shall accrue on a day-to-day basis, calculated according to the number of actual days elapsed and a year of three hundred and sixty five (365) days.

7.5 Any amount payable to Momentum under this Agreement is, where not otherwise provided in this Agreement, to be due and payable on demand.

8. RECOURSE

8.1 Unless otherwise agreed by the parties in the Commercial Terms, Momentum has the right of recourse against the Customer and it is entitled to request from the Customer the immediate reimbursement of the amounts paid for the Purchased Receivables in the following situations:

8.1.1 where the Debtor is an Affiliate of the Customer or there are any other connections between the Customer and the Debtor which would entitle the Debtor to oppose to the payment;

8.1.2 the Receivable to be collected is neither certain and liquidable, nor enforceable on the date declared by the Customer;

8.1.3 the occurrence of Litigation which is not resolved in favour of the Customer within six (6) months;

8.1.4 the Customer has provided Momentum with inaccurate or patently incomplete information with respect to the Purchased Receivables and/or the Debtor, rendering difficult or impossible the collection of the Receivable or determining an increase of the collection expenses or causing losses to Momentum, which would not have occurred under the conditions of a correct and complete information;

8.1.5 the Customer does not provide Momentum with the documents it needs, in the form and on the required term, in order for Momentum to exercise its rights against the Debtor;

8.1.6 the payment of the Purchased Receivables has been made directly to the Customer, who did not return the corresponding amounts to

Momentum in accordance with Paragraph 5.1.5;

8.1.7 the failure to pay the Purchased Receivable is caused by an event outside the control of the Debtor or by a fortuitous event;

8.1.8 the Customer has breached the provisions of any applicable laws with respect to the Purchased Receivables;

8.1.9 if in connection with the Purchased Receivables criminal investigation, public prosecutor or other relevant authorities are pursuing an investigation activity;

8.1.10 if the Purchased Receivables are subject to a restrain measure taken by the competent body, such as a confiscation or a seizure;

8.1.11 if the Assignment in favour of Momentum is or becomes effectively or legally inoperative;

8.1.12 the Customer has changed the payment or the delivery conditions of the Supply Contract without the prior written consent of Momentum;

8.1.13 the Debtor invokes the set-off against the Customer for the Purchased Receivables;

8.1.14 at the moment when the Purchased Receivable was assigned, the Customer knew that an Insolvency Event had occurred with respect to the Debtor;

8.1.15 if, upon the occurrence of an Insolvency Event against the Debtor, the registration of the Purchased Receivable with the list of creditors is not allowed for reasons other than Momentum's own negligence;

8.1.16 any situations of fraud or forgery related to the Purchased Receivables; and

8.1.17 in the case of Purchased Receivables exceeding the Overall Limits, the Customer Limits and/or the Initial Instalment Limits.

8.2 For the Receivables in relation to which Momentum has exercised its right of recourse against the Customer, the Customer shall reimburse to Momentum all the amounts of money that Momentum has paid to the Customer in connection with those Receivables, together with all the accrued interest, fees and other amounts payable by the Customer to Momentum, without the Customer being allowed to invoke any withholding, set-off or other exception.

8.3 The Receivables in relation with which Momentum exercised its right to recourse shall be reassigned to the Customer after the full recovery of the amounts due by the Customer to Momentum.

8.4 If any amount payable by the Customer to Momentum is not paid on its due date, Momentum may, in addition to other right or remedy available to it:

8.4.1 provide information regarding the Customer's default to such credit reference bureaus as Momentum shall determine; and/or

8.4.2 decline to provide any further Services to the Customer.

8.5 The total amount payable to Momentum with respect to a Purchased Receivables shall not exceed the nominal invoice value of the Purchased Receivable.

9. LEGAL ASSIGNMENT

9.1 Notwithstanding anything to the contrary contained in this Agreement (including the Assignment), Momentum shall not be liable to observe and perform any of the conditions and obligations assumed by the Customer in relation to the Receivables and shall not in any circumstances incur any liability whatsoever in respect of the Receivables.

9.2 The Customer shall:

9.2.1 execute or re-execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions on terms required by Momentum) and do all such acts (including payment of all stamp duties or fees, bringing and prosecuting proceedings and procuring the prompt execution by any other relevant person of any such instruments and documents aforesaid) as Momentum may specify (and in such form as Momentum may require):

9.2.1.1 to perfect the Assignment or for the exercise of any rights, powers and remedies of Momentum or any receiver appointed by it;

9.2.1.2 to facilitate the realisation of the Receivables; and/or

9.2.1.3 to obtain the full benefit of this Agreement (including the Assignment).

9.2.2 endorse on the original and every copy of each Invoice relating to a Receivable a notice in the following form or in such other form as Momentum may, from time to time, notify in writing to the Customer:

The debt arising under this invoice has been assigned to and is payable only to [insert name, address and account number of Momentum], whose receipt is the only valid discharge. If this invoice is not found to be correct in all respects, [insert name of Momentum] must be notified immediately.'

9.2.3 give notice of the Assignment to the relevant Debtors (including, without limitation, giving notice in accordance with section 60 of the MPSR Act) in the form set out in Appendix 2 hereto (*Notification of Assignment*) or such other form as Momentum may require.

9.3 Notwithstanding anything contained in this Agreement or elsewhere, Momentum shall be entitled, at its absolute discretion and at any time, to give notice to any Debtor of the Assignment or purchase of any Purchased Receivable but so that the giving of notice shall not, in any way, release the Customer from the obligations assumed by it under this Agreement.

9.4 For purposes of the MPSR Act:

9.4.1 The Customer hereby authorises Momentum and/or its agents to register an initial notice and such amendment notices as may be required from time to time under the provisions of the MPSR Act in connection with the Assignment to the satisfaction of Momentum.

9.4.2 Section 30 (1) of the MPSR Act is varied to the extent that the registration of the initial notice in respect of the Assignment shall be valid for so long as the Purchased

Receivables and/or any sum payable by the Customer to Momentum remains outstanding and the provisions of sections 30 (2) and (3) shall not apply to the Assignment.

9.4.3 Sections 73 and 75 of the MPSR Act shall not apply to the Assignment and accordingly, Momentum shall not be required to give any notification or proposal to the Customer or procure any consent or approval of the Customer in connection with the exercise of any powers or remedies of Momentum under the Assignment.

9.4.4 Without prejudice to any other remedies available to Momentum and for purposes of Section 71 of the MPSR Act, the Customer hereby gives its express consent for Momentum to obtain possession of the Receivables without an application to court and the Customer hereby expressly waives any objections it may have to such possession being taken.

9.5 No restrictions shall apply to the Assignment or to the exercise by Momentum of its right to consolidate all or any of the security created in favour of Momentum or to its power of sale, which powers may be exercised by Momentum without notice to the Customer on or at any time after the occurrence of an Event of Default.

10. FURTHER ASSURANCE AND POWER OF ATTORNEY

10.1 The Customer shall from time to time and at all times execute all such further instruments and documents and do all such things as Momentum may deem desirable for the purpose of obtaining the full benefit of this Agreement (including the Assignment) and of the rights, obligations, duties and responsibilities conferred or intended to be conferred on Momentum by this Agreement including procuring the execution by any other relevant person of any such instruments and documents aforesaid.

10.2 The Customer hereby irrevocably appoints Momentum to be its attorney and in its name and on its behalf to act in its sole discretion to do all such acts, matters and things and to execute, seal and deliver and otherwise perfect any assignment, assurance, agreement, transfer or instrument it may deem desirable for:

10.2.1 carrying out any obligation imposed on the Customer by this Agreement; and

10.2.2 enabling Momentum to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on it by or pursuant to this Agreement or by law.

10.3 The Customer shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of its powers.

11. GENERAL UNDERTAKINGS AND COVENANTS

11.1 The Customer hereby undertakes to Momentum that it shall:

11.1.1 comply with the provisions of this Agreement;

11.1.2 promptly obtain all consents or authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability and admissibility in evidence of this Agreement;

11.1.3 keep all books required by law, and all proper accounts and minute books including all necessary and proper accounts of its dealings in relation to the Receivables, the Invoices and copies of all Supply Contracts relating to them, and such accounts and copies shall, at all times, be open for inspection by Momentum or its authorized representatives;

11.1.4 provide all information and deliver copies of such books, records and accounts to Momentum, at the Customer's own expense, when requested by Momentum;

11.1.5 cause a proper audit of its books of account to be completed in relation to each of its financial years. The audited accounts and a report of the Customer's directors shall be delivered to Momentum not later than three (3) months after the end of each financial year;

11.1.6 supply Momentum with quarterly financial statements relating to its business and management accounts in such form and at such times as Momentum may reasonably require;

11.1.7 immediately or in advance, notify Momentum in writing of:

11.1.7.1 any change in the terms upon which the Customer contracts for supplying goods, carrying on work or performing services;

11.1.7.2 any Event of Default;

11.1.7.3 any event which is likely to have a Material Adverse Effect;

11.1.7.4 change in the nature of the Customer's business;

11.1.7.5 the opening or closing of any bank account or change in any of the Customer's bank accounts;

11.1.7.6 any of change of Control in respect of the Customer; and

11.1.7.7 all appointments to, removals and resignations from the Customer's board of directors;

11.1.8 report to Momentum details of reclaimed, repossessed or returned merchandise, customers' claims and disputes and any other matter affecting Purchased Receivable immediately upon becoming aware of these;

11.1.9 provide Momentum with specimen signatures of all persons authorised to sign Offers and other documents relating to this Agreement on behalf of the Customer;

11.1.10 deliver to Momentum upon the execution of this Agreement and upon the opening subsequently of any account with any bank a letter in a form specified by Momentum in respect of each such account duly completed and signed on the Customer's behalf;

11.1.11 on request by Momentum deliver assignments in the form Momentum requires of all insurance policies which relate to Purchased Receivables;

11.1.12 to take all measures for the amicable settlement of any Litigation;

11.1.13 submit tax compliance certificate and proof of filling of annual returns annually by 31st July;

11.1.14 not to enter into any merger, amalgamation, demerger or corporate restructuring without prior consent of Momentum;

11.1.15 not utilise the purchase price of the Purchased Receivables for other purposes other than working capital;

11.1.16 procure that no set-off or counterclaim or right to a deduction will at any time be allowed to arise with respect to any Purchased Receivable;

11.1.17 not discount any bill of exchange or other negotiable instrument with any third party;

11.1.18 advise Momentum of all such facts and circumstances as it may suspect or which may come to its knowledge affecting the credit of any Debtor or which otherwise might affect the interests of Momentum, and in particular any request by the Debtor for an extension of any time within which to pay any sum otherwise due and of any dispute or claim which may arise between the Customer and the Debtor in relation to the Purchased Receivables immediately the Customer becomes aware of the same;

11.1.19 not bring any Litigation or other judicial action, challenge, objection, claim, including refusal to pay in relation to any Purchased Receivables or suffer or permit such action to be brought by any other person;

11.1.20 promptly report to Momentum all disputes, rejections, returns and re-sales of good sold under each Purchased Receivable and all credits allowed by the Customer against any Purchased Receivable;

11.1.21 comply, in all respect, with all laws, if failure to do so has or is reasonably likely to have a Material Adverse Effect;

11.1.22 carry on and conduct its business in a proper and efficient manner;

11.1.23 make all relevant tax payments and returns in relation to the products and services which are subject of the Purchased Receivables;

11.1.24 give immediate written notice to Momentum if the Customer creates any Encumbrance over all or any of its assets;

11.1.25 not create or allow to be created any Encumbrances over any of its rights, title and interest in and relating to the Supply Contract, or the Purchased Receivables or assign, transfer, enter into any arrangement for the sale, discounting, factoring or other disposal of all or any of the Purchased Receivables in favour of any person other than Momentum;

11.1.26 not deal with such Purchased Receivables (or purport to do any of the above) except as expressly provided for in this Agreement, and will not grant any extension of time for payment or waiver or other indulgence without the prior written consent of Momentum; and

11.1.27 not agree with the Debtor any extension of time for payment of any Receivable, or waive or modify the terms of the Supply Contract with the Debtor.

11.2 The Customer confirms that in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12. REPRESENTATIONS AND WARRANTIES

12.1 The Customer represents and warrants to Momentum on the Effective Date that:

12.1.1 it is a duly registered and validly existing under the laws of its jurisdiction of incorporation or registration;

12.1.2 it has the power to own its assets and carry on its business as it is being conducted;

12.1.3 it has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, this Agreement and the transactions contemplated by it;

12.1.4 the entry into and performance by it of, and the transactions contemplated by this Agreement do not and will not contravene or conflict with:

12.1.4.1 its constitutional documents;

12.1.4.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or

12.1.4.3 any law or regulation or judicial or official order, applicable to it;

12.1.5 it has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in this Agreement and to make them admissible in evidence in its jurisdiction of incorporation. All such authorisations are in full force and effect;

12.1.6 its obligations under this Agreement are legal, valid, binding and enforceable in accordance with its terms;

12.1.7 no Event of Default has occurred or is continuing, or is reasonably likely to result of entry into, the performance of, or any transaction contemplated by this Agreement;

12.1.8 no other event or circumstance is outstanding which constitutes (or, with the expiry ofthe giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on the Customer or to which any of its assets is subject which has or is reasonably likely to have a Material Adverse Effect;

12.1.9 no Litigation or other litigation, arbitration or administrative proceedings are taking place, pending or, to the Customer's knowledge, threatened against it, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a Material Adverse Effect;

12.1.10 the information supplied by, or on its behalf, to Momentum in connection with this Agreement is or shall be, at the time it was, is or will be supplied or at the date it was or is stated to be given (as the case may be), complete, true and accurate in all material respects;

12.1.11 all information, reports and other papers and data furnished to Momentum are accurate, correct and complete in all material respects;

12.1.12 the Customer has made all necessary and prudent inquiries and conducted due diligence on each Debtor to confirm the Debtor's credit-worthiness and reputation;

12.1.13 the Customer's financial statements provided to Momentum have been prepared according to the International Financial Reporting Standards;

12.1.14 there has not been any significant negative change in its business or financial condition, as of the date when the financial statements are stated to have been prepared;

12.1.15 the Customer has not agreed to any extension of time for payment of any Purchased Receivable, or any waiver or modification of the terms of any contract with a Debtor except as provided for in this Agreement;

12.1.16 as regards every Receivable both at the time that the Offer and at the time the purchase price or part thereof relating to such Receivable is advanced by Momentum:

12.1.16.1 each copy of an Invoice delivered to or shown to Momentum is and shall be a true and genuine copy of the original sent to the Debtor named therein and accurately reflects all terms of the transaction from which such Invoice;

12.1.16.2 the goods sold or services provided under each Invoice will be up to the point of sale, the sole property of the Customer;

12.1.16.3 each Receivable is and will remain free and clear of all Encumbrance except in favour of Momentum;

12.1.16.4 the Customer will be the legal and beneficial owner of the Receivables relating to that Invoice and entitled to assign the same to Momentum free from any Encumbrance and that such Receivables will be legally enforceable by Momentum and will remain to be paid in full, and will not be old, overdue, contingent or disputed, and that the particulars of such Receivables in the Invoice will be true and accurate in all respects;

12.1.16.5 the Customer will not have sold or assigned or offered to have sold or assigned the Receivables to any person other than Momentum, and that there will be no set-off, counterclaim, deduction or extension of time applicable to such Receivables and no justification for the non-payment of the full amount of those Receivables to the Customer by the Debtor;

12.1.16.6 the amount payable by the Debtor in respect of any Invoice will not be less than the gross face value, subject only to early settlement discount;

12.1.16.7 the Supply Contract under which such Invoice arises fulfills all statutory and other requirements for its validity and all goods and services to which the Invoice relates will have been delivered and performed and that all requirements of such Supply Contract concerning the nature, amount, quality, condition and delivery of goods and services, or upon which payment of that Invoice is or may be dependent, will have been fulfilled;

12.1.16.8 all facts, figures and statements of any kind and all signatures appearing on every Supply Contract and other document supplied to Momentum as evidence of, or relating to, the Receivables is or will be true and genuine;

12.1.16.9 all relative Receivables shall be due for payment in accordance with the payment terms stated in, and under the Supply Contract incorporating; and

12.1.16.10 the Customer shall not have received payment of the Receivable or any part thereof.

12.2 Each of the representations and warranties in this Paragraph 12 (*Representations and Warranties*) is deemed to be repeated by the Customer on each day that this Agreement remains in force.

12.3 The Customer shall indemnify and hold Momentum harmless from any direct, indirect, or consequential damage or loss which Momentum may sustain as a result of the breach, no matter howsoever minor, of any of the representations and warranties contained herein (all of which are continuing and irrevocable) or of reliance by Momentum upon any misstatement, fraud, deceit or criminal act on the part of any officer, employee, or agent of the Customer, or any costs (including legal fees and expenses) incurred by Momentum in the enforcement of any rights granted to Momentum hereunder.

12.4 Each of the representations and warranties in this Paragraph 12 (*Representations and Warranties*) shall be construed as a separate representation or warranty, and (unless expressly provided to the contrary in writing) shall not be limited by the terms of any of the other representation or warranty or by any other term of this Agreement.

13. EVENTS OF DEFAULT

13.1 Each of the events or circumstances set out in this Paragraph 13.1 is an Event of Default:

13.1.1 failure by the Customer to make any payment in accordance with the provisions of this Agreement;

13.1.2 failure by the Customer to make any payment with respect to any other indebtedness owed by the Customer to Momentum under any other agreement whatsoever.

13.1.3 breach in the performance of any other term and condition of this Agreement or any covenant by the Customer;

13.1.4 occurrence of any Insolvency Event in respect of the Customer;

13.1.5 occurrence of any Litigation;

13.1.6 there being an adverse change in the financial or trading position or prospects of the Customer which in Momentum's reasonable opinion is material;

13.1.7 a change of Control occurs in relation to the Customer;

13.1.8 the Customer participates or is deemed to be participating in illegal activities money laundering, cheque kiting or corrupt activities or is charged or convicted of such activities by any court of competent jurisdiction;

13.1.9 it becoming unlawful for any Party to perform all or any of its obligations under this Agreement;

13.1.10 the Customer repudiates or evidences an intention to repudiate this Agreement and/or any Assignment;

13.1.11 the Customer ceases, or threatens to cease, to carry on business; or

13.1.12 any representation or warranty made by the Customer hereunder being incorrect in any material respects as of the date of which it is made or deemed to be made, or there being any material adverse change of the position as set out in such representation or warranty.

13.2 At any time after an Event of Default has occurred, Momentum may, without prejudice to its other rights or remedies, by notice to the Customer:

13.2.1 (without prejudice to the accrued rights and obligations) terminate this Agreement hence terminate its business relationship with the Customer;

13.2.2 cancel all outstanding obligations of Momentum under this Agreement whereupon they shall immediately be cancelled; and/or

13.2.3 enforce the Assignment and/or any other security held by Momentum including exercising any rights available to Momentum under the MPSR Act in connection with the Assignment.

14. SET-OFF AND DEDUCTIONS

14.1 The Customer irrevocably authorises Momentum to, and Momentum may, at any time without notice to the Customer, set-off any amount due to Momentum from the Customer against any amount due from Momentum to the Customer or set-off any liability of the Customer to Momentum against any liability of Momentum to the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set-off are expressed in different currencies, Momentum may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Momentum of its rights under this Paragraph shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

14.2 All payments made by or due from the Customer under this Agreement shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if the Customer is required by law or regulation to make such deduction or withholding, it shall:

14.2.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

14.2.2 pay to the relevant taxation or other authorities, as appropriate, the full amount of the deduction or withholding;

14.2.3 furnish to Momentum, within the period for payment permitted by the relevant law, either;

14.2.3.1 an official receipt of the relevant taxation or other authorities concerned on payment to them of amounts so deducted or withheld; or

14.2.3.2 if such receipts are not issued by the taxation or other applicable authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and pay to Momentum such additional amount as is necessary to ensure that the net full amount received by Momentum after the required deduction or withholding is equal to the amount that Momentum would have received had no such deduction or withholding been made.

15. LIABILITY AND INDEMNITY

15.1 Momentum shall not be responsible for any loss or damage suffered by the Customer due to any circumstances whatsoever that are beyond Momentum's control, fraud, illegal action or omission, unavailability of funds, improper or incomplete instructions for payments or transfers relating to the Customer's nominated bank account.

15.2 Under no circumstances shall Momentum be liable to the Customer for any loss of profit or anticipated savings or for data or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with this Agreement even where the possibility of such loss or damage is notified to Momentum.

15.3 Momentum will not be liable for any losses suffered by the Customer as a result of or in connection with, among other things:

15.3.1 the failure of the Customer, the Debtor or any other person to give proper or complete particulars in respect the Receivables, or other information provided pursuant to this Agreement;

15.3.2 the Customer's failure to comply with this Agreement and any document or information provided by Momentum concerning the use or the Services.

15.4 The Customer undertakes to indemnify Momentum and hold the indemnified party harmless against any loss which Momentum suffers or incurs or sustains thereby and the Customer absolves Momentum from all liability for loss which Momentum may sustain:

15.4.1 from Momentum acting on the basis of the information provided by the Customer or in accordance with this Agreement including losses sustained by Momentum in connection with the provision of the Services; and/or

15.4.2 as a result of breach or non-compliance by the Customer with the provisions of this Agreement.

16. TERMINATION

16.1 Subject to Paragraph 16.2, either Party shall have the right to terminate this Agreement by issuing ninety (90) days prior notice of termination in writing to the other Party.

16.2 The Customer may not terminate this Agreement while any sum payable by the Customer to Momentum under this Agreement are outstanding.

16.3 Without affecting any other right or remedy available to it, Momentum shall have a right to terminate this Agreement immediately upon the occurrence of an Event of Default provided that where in the reasonable opinion of Momentum, such Event of Default is capable of cure, Momentum shall not terminate this Agreement without providing the Customer a period of thirty (30) days to cure such Event of Default and provide Momentum with necessary documents satisfactorily evidencing cure of such Event of Default.

17. EFFECT OF TERMINATION

17.1 Upon notice of termination of this Agreement, the Customer shall offer no further Receivables to Momentum under this Agreement but the provisions of this Agreement shall, subject to Paragraph 17.2, continue to govern the rights and obligations of the Customer and Momentum in relation to any existing Purchased Receivables.

17.2 If this Agreement shall be terminated, Momentum shall be entitled to withhold (by way of security for the due payment of any sums which then or subsequently may be or become due to Momentum) the whole or any part of the sums which might then or subsequently otherwise be due from Momentum to the Customer provided that the amount so withheld at any time shall not exceed the Outstanding Amount of the Purchased Debts.

17.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

18. RIGHTS AND REMEDIES

18.1 The waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

18.2 The Customer expressly agrees and covenants with Momentum that the Customer shall not plead limitation under the Limitation of Actions Act (Chapter 22 of the Laws of Kenya) or any other similar enactment.

18.3 The rights and remedies of Momentum under this Agreement are cumulative and not exclusive of any right or remedy provided by law.

19. SEVERABILITY

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Paragraph 19 (*Severability*) shall not affect the validity and enforceability of the rest of this Agreement.

20. ASSIGNMENT

20.1 The Customer shall not be entitled to assign this Agreement nor all or any of its rights and obligations thereunder without the prior written consent of Momentum.

20.2 Momentum shall have a full and unfettered right to assign or transfer the whole or any part of the benefit of this Agreement free from any equities and the assignees, transferees and other successors whether immediate or derivative of Momentum shall be entitled to enforce and proceed upon this Agreement in the same manner as if named herein. The Customer hereby consents to such assignment or transfer.

20.3 This Agreement shall continue to bind the Customer notwithstanding any amalgamation or merger that may be effected by Momentum with any other company and notwithstanding any reconstruction by Momentum involving the formation of and transfer of the whole or any part of the undertaking and assets of Momentum to a new company and notwithstanding the sale or transfer of the whole or any part of the undertaking and assets of Momentum to another company, whether the company with which Momentum amalgamates or merges or the company to which Momentum transfers the whole or any part of its undertaking and assets shall or shall not differ in its name, objects, character or constitution, it being the intent that this Agreement shall remain valid and effectual in all respects and for all purposes in favour of, against and with reference to, and that the benefit of this Agreement and all rights conferred upon Momentum by this Agreement may be assigned to and enforced by, any such company and proceeded on in the same manner to all intents and purposes as if such company had been named in this Agreement instead of and/or in addition to Momentum.

20.4 Momentum shall be entitled to impart any information concerning the Customer to any such assignee, transferee or successor or any proposed assignee or other successor or to any credit reference agency to help other persons make credit decisions with respect to the Customer. Momentum shall also be entitled to obtain information from credit reference agencies about the Customer and its directors from time to time.

21. RIGHT OF CONSOLIDATION

Momentum shall have the right to consolidate all security Momentum may from time to time hold from the Customer on any account whatsoever and it is hereby agreed that no security shall be discharged except on payment not only of all monies secured by that security but also of all monies payable to Momentum under this agreement or any other agreement whatsoever.

22. NOTICES

22.1 Any notice given by a Party under this Agreement will:

22.1.1 be in writing and in English;

22.1.2 be signed by, or on behalf of, the Party giving it or, in the case of email, contain appropriate information identifying the sender; and

22.1.3 be sent to the relevant Party at the address set out in this Agreement or, if sent by email, to an email address nominated by the Parties.

22.2 Notices may be given, and are deemed received:

22.2.1 by hand: on receipt of a signature at the time of delivery; or

22.2.2 by post: at 9.00 am on the fifth Business Day after posting; or

22.2.3 by email: 24 hours from delivery if sent to the correct e-mail address and no notice of delivery failure is received.

22.3 All references to time are to the local time at the place of deemed receipt.

23. DATA PROTECTION

23.1 Each Party warrants that throughout the term of this Agreement and after the term for as long as any personal data processed under this Agreement is held by a party it shall comply with the Data Protection Legislation and the Data Processing Policy.

23.2 The Customer hereby agrees undertakes to procure that the Debtor consent to the collection, use, disclosure and processing by Momentum of the Debtor's information set out in any Offer, letter or other documents or agreement exchanged between the Parties and/or otherwise provided by the Customer or possessed by Momentum for the purposes envisaged under this Agreement and/or stated in the Data Processing Policy.

24. VARIATION

24.1 Momentum may at any time without notice and in its sole discretion vary or amend these Standard Terms. Any such variation or amendment may be varied through an addendum and/or published on Momentum's website or other means determined by Momentum and such variations or amendments shall take effect immediately upon publication and shall be binding on the Parties as if they were contained in these Standard Terms.

24.2 The Customer's continued making of any Offer(s), acceptance and/or utilisation of the Services shall constitute the Customer's agreement to be bound by the terms of the variations and amendments referred to in Paragraph 24.1.