

TERMS AND CONDITIONS- PESA NA PESA

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 your PESA na PESA (as hereinafter defined) as opened by you (as hereinafter defined) with AVL Capital Ltd/AVLC Group (as hereinafter defined).

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

1.3 The Customer accepts and acknowledges that this is a legal and binding agreement between the Customer and AVL Capital Limited/AVLC GROUP once accepted by both parties.

1.4 "We," "our," and "us," means AVL Capital Limited/ AVLC GROUP and includes its successors in title and assigns;

1.5 "You" or "your" means the Customer and includes your personal representatives and heirs;

1.6 The word "Customer" shall include both masculine and the feminine gender as well as juristic persons;

1.7 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.8 Headings in these Terms and Conditions are for convenience purposes only and they do not affect the interpretation of this Agreement.

1.9 The Customer accepts that the Terms and Conditions will be read in addition to the Privacy Policy issued by AVL Capital Ltd/ AVLC GROUP as to the management of your information by us. By accepting these Terms and Conditions, you accept the terms under the Privacy Policy.

2 DEFINITIONS

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

2.1.1. "AVL Capital" means AVL Capital Limited incorporated in Kenya as a limited liability company in compliance to The Kenyan Companies Act of 2015 and duly licensed under Kenya Information And Communications Act (Chapter 411A of the Laws of Kenya) and includes subsidiaries of AVL Capital as may from time to time be specified by AVL to you;

2.1.2. "Credit Reference Bureau" means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2008 to inter alia, collect and facilitate the sharing of customer credit information;

2.1.3. "Customer" means the person/ individual in whose name the PESA na PESA Account with AVL Capital is existing; Any reference to customer shall mean an individual.

2.1.4. "Contact Centre" means the Customer Care Centre outlet as may be notified to the Customer by AVL Capital/ AVLC GROUP from time to time;

2.1.5. "E-Money" means the electronic monetary value depicted to your selected Utility payment representing an equal amount of cash;

2.1.6. "Equipment" includes your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access mobile Network;2

2.1.7. "IPRS" means the Integrated Population Registration System set up and maintained by the Government of Kenya under the Ministry of State for Immigration and Registration of Persons;

2.1.8. "Immediate payment" means voluntary instant repayment of loan advanced before the due date.

2.1.9 "Customer Account" means the account held and operated by the customer.

2.1.10. "PESA na PESA" means a mobile lending platform that uses money transfer and payments system.

2.1.11. "PESA na PESA System" means the system operated by AVL Capital for the provision of the Mobile money lending Service using the Mobile Networks;

2.1.12. " PESA na PESA PIN" means your personal identification number being the secret code used to access and operate the PESA na PESA System and your loan Account;

2.1.13. "PESA na PESA Subscriber" means any person registered to use the PESA na PESA System to send or receive money or make payments;

2.1.14. "PESA na PESA Service" means the service offered by AVL Capital to borrow and repay loans through mobile phone;

2.1.15. "Loan Auto recovery" means automated recovery of the loan advanced from the customer account on the due date.

2.1.16 "PESA na PESA Menu" means the PESA na PESA Menu on the PESA na PESA System;

2.1.17. "PESA na PESA Account" means a loan account opened and operated in accordance with the terms and conditions herein contained;

2.1.18 "PESA Na PESA Loan" means the loan facility advanced by AVL Capital

2.1.19 "Network" means the mobile cellular network operated by various mobile networks;

2.1.20. "Request" means a request or instruction received by AVL Capital from you or purportedly from you through the Network and the System and upon which AVL Capital is authorized to act;

2.1.21. "Late Repayment Penalty" means penalty percentage charged on any outstanding loan amount after the due date; Costs are subject to change at any time at AVL Capital's sole discretion subject to terms and conditions.

2.1.22. "Services" shall include any form of Lending services or products that AVL Capital may offer you pursuant to this Agreement and as you may from time to time subscribe to and "Service" shall be construed accordingly;

2.1.23. "SIM Card" means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the Network and to use the PESA na PESA System;

2.1.24. "SMS" means a short-customized message service consisting of a text message transmitted from one mobile phone to another;

2.1.25. "System" means AVL Capital's electronic lending and communications software enabling the Customer to communicate with AVL Capital for purposes of the Services. The System and the Services will for the purpose of this Agreement be accessed through the PESA na PESA System

2.1.26. "Transaction Fees" includes the processing fees, the penalty fees and any other fees and charges payable for the use of the Services.

2.1.27. "Credit Limit" means the maximum pre- approved amount that a customer can borrow on this service.

2.1.28. "Mobile Network Operator" means a mobile network operator in Kenya registered with the

2.1.29. Communications Authority of Kenya;

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

2.1.31. "Mobile Money Service" means the money transfer and payments service provided by the Mobile Money Providers through the Mobile Money System;

2.1.32. "Mobile Money System" means the system operated by the Mobile Money Providers in Kenya for the provision of the Mobile Money Service;

2.1.33. "Mobile Money Account" means your mobile money store of value, being the record maintained by Mobile Money Providers in Kenya of the amount of E-Money from time to time held by you in the Mobile Money Provider's System;

3 ACCEPTANCE OF THE TERMS AND CONDITIONS

3.1. Before applying to open the PESA na PESA Account via AVL Capital's PESA na PESA System you should carefully read and understand these Terms and Conditions which will govern the use and operation of the PESA na PESA Account.

3.2 If you do not agree with these Terms and Conditions, please click "No" on the PESA na PESA Menu.

3.3 You will be deemed to have read, understood and accepted these Terms and Conditions: –

3.3.1 Upon clicking "Yes" option on the PESA na PESA Menu requesting you to confirm that you have read, understood and accepted the Terms and Conditions as stated in the website www.avlc-group.com; and/or

3.3.2 upon registration of an PESA na PESA account and/or by using or continuing to use and operate the PESA na PESA account.

3.4. By applying to open the PESA na PESA Account with AVL Capital, you agree to comply with and be bound by these Terms and Conditions for the time being and from time to time in force governing the operation of the PESA na PESA Account and you affirm that these Terms and Conditions herein are without prejudice to any right that AVL Capital may have with respect to the PESA na PESA Account in law or otherwise.

3.5. These Terms and Conditions may be amended or varied by AVL Capital from time to time and the continued use of your PESA na PESA Account constitutes your agreement to be bound by the terms of any such amendment or variation.

3.6. You acknowledge and accept that PESA na PESA offers the PESA na PESA Account only electronically and you agree to do business with AVL Capital and to operate the PESA na PESA Account only by electronic means via the PESA na PESA Menu on AVL Capital's PESA na PESA System. Any query and complaint you may have relating to the Services shall be addressed to AVL Capital/AVLC GROUP through the Contact Centre. For the avoidance of doubt, you acknowledge and accept that you will not be allowed or entitled to receive or demand the Services pertaining to the PESA na PESA

Account at AVL Capital's/ AVLC GROUP offices unless otherwise advised by AVL Capital in its sole discretion.

3.7 By using the PESA na PESA Ussd/ App or any of the Services, you consent to us collecting and using technical information about the Equipment and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Services to you. If you use these Services, you consent to the following actions by AVL Capital, affiliates and licensees: transmission, collection, retention, maintenance, processing and use of your data to determine our credit scoring services or to improve our Services and/or your experience while using the App.4

4 ACCOUNT OPENING

4.1. In order to open an PESA na PESA Account with AVL Capital, you must be at least 18 years old, a registered and active Mobile Subscriber with a mobile service provider with which AVL Capital has an agreement with for the provision of this service. AVL Capital reserves the right to verify with the IPRS the authenticity of your details.

4.2. You may open an PESA na PESA Account solely by way of an electronic application made by you using your Equipment via the PESA na PESA Menu on AVL Capital's PESA na PESA System.

4.3. You hereby agree and authorize AVL Capital to request for your personal information held by IPRS and licensed credit reference bureaus pursuant to the agreement between you and AVL Capital for the provision of Mobile Money products and services including your phone number, name, date of birth, ID or Passport Number and such other information that will enable AVL Capital to identify you and comply with the regulatory "Know Your Customer" requirements (together the "Personal Information"). You also hereby agree and authorize AVL Capital to request IPRS for information relating to your ID as AVL Capital shall require for purposes of providing you the Services. You hereby consent to the disclosure of the Personal Information to AVL Capital and to the aforesaid use of the Personal Information by AVL Capital.

4.4. You hereby agree and authorize AVL Capital/ AVLC GROUP to obtain and procure your Personal Information from the Government of Kenya and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to AVL Capital/ AVLC GROUP.

4.5. You hereby further acknowledge and authorize AVL Capital to verify your Personal Information received from Mobile Networks pursuant to Clause 4.3 against the information received from the Government of Kenya in your respect.

4.6. You hereby agree and authorize AVL Capital to obtain and procure your Personal Information and Relevant Information from your respective Mobile Money Provider and you further agree and consent to the disclosure and provision of such Personal Information by the Mobile Money Provider and further to Indemnify and hold AVL Capital and the Mobile Money Provider harmless with respect to any claims, losses, liabilities and expenses (including legal fees and expenses) that may arise as a result of the disclosure and reliance on such Personal Information and/or Relevant Information.

4.7. You hereby agree and authorize AVL Capital to obtain and procure your Personal Information from the Credit Reference Bureaus and you further agree and consent to the disclosure and provision of such Personal Information by the Credit Reference Bureaus.

4.8. AVL Capital reserves the right to request for further information from you pertaining to your application for an PESA na PESA Account at any time. Failure to provide such information within the time required by AVL Capital may result in AVL Capital declining to accept your application for PESA na PESA Account.

4.9. Acceptance by AVL Capital of your application for a PESA na PESA loan shall be done via SMS sent to the registered Mobile Phone Number.

4.10. AVL Capital reserves the right to decline your application for a PESA na PESA Account or to revoke the same at any stage at AVL Capital's sole discretion and without assigning any reason or giving any notice thereto.

5 TYPESOFACCOUNT

As a Mobile Service Subscriber, you may, subject to these terms and conditions register for a PESA na PESA Account using the PESA na PESA menu on your equipment and/or to borrow money from AVL Capital as follows:

5.1. PESA na PESA Account

5.1.1. As a holder of PESA na PESA Account and having received a confirmation message bearing your credit limit, you may, subject to these terms and conditions apply for a loan using the request loan menu on your equipment. The transaction fees payable to Mobile Network for transactions effected in respect of your Account from time to time will apply to any transactions effected in respect of your PESA na PESA Account using AVL Capital's PESA na PESA System.

5.1.2. Where you apply for a loan from AVL Capital, your application shall be appraised according to the applicable loan appraisal processes of AVL Capital. AVL Capital reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.

5.1.3. Subject to approval of your application for a loan AVL Capital shall allocate you a limit of an amount to be determined by AVL Capital in its sole discretion subject to a minimum amount of Kenya Shillings One Thousand (Kshs.1000/=) or such other minimum and maximum amount as AVL Capital may from time to time in its sole discretion determine (the "Loan/Limit").

5.1.4. The limit approved can be used to pay for the Utility provided in the PESA na PESA menu subject to any deductions on account of applicable Transaction and processing fees.

5.1.5. You shall repay the Loan within the term agreed upon at the time of loan request.

5.1.6. In consideration of AVL Capital granting you the Loan, you shall pay prescribed processing fees on the loan which shall be determined by AVL Capital from time to time. The processing fees must be paid by you when you make your Loan repayment.

5.1.7. Transaction and processing fees are subject to change at any time at AVL Capital's sole discretion subject to terms and conditions.

5.1.8. You shall make all payments due from you to AVL Capital in respect of the Loan and Transaction Fees using Safaricom's MPESA Service only unless otherwise agreed by AVL Capital in its discretion.

5.1.9. In the event that you do not repay the Loan in full within the loan term after the date of disbursement of the Loan, AVL Capital will automatically charge a late repayment penalty fee which shall be calculated on any outstanding amount in respect of the loan.

5.1.10. AVL Capital shall be entitled to terminate this Agreement and close your PESA na PESA Account in accordance with the provisions of Clause 13 without prejudice to any of its rights accruing hereunder if you fail to repay the Loan and/or the Transaction Fees due thereon whereupon they shall become immediately due and payable.

5.1.11. AVL Capital reserves the right to vary the terms of the Loan including the fees payable thereon from time to time having regard to the policies of AVL Capital.

5.1.12. You hereby expressly consent and authorize AVL Capital to disclose, respond, advise exchange and communicate the details or information pertaining to your loan Account to Credit Reference Bureau as required under the Banking Act or any other regulatory body.

6 FEES

6.1. You hereby agree to pay all Transaction Fees payable in connection with your use of the Services.

6.2. This includes: Non- refundable costs for Identification and Credit Score to be provided at the Credit Reference Bureau upon registration as a pre-condition for limit allocation. This is a One-off costs reviewed twice a year. Costs are subject to change at any time at AVL Capital's sole discretion subject to terms and conditions.

6.3. There will be a one-off penalty of Kes 50.00 loaded on the 31st day of the loan

6.4 There will be a 30% interest applied monthly bur accrues daily.

6.5 One cannot access the limit available if their loan has attracted any penalty fee.

6.6 Transaction and processing fees are subject to change at any time at AVL Capital's sole discretion subject to terms and conditions.

6.7 In the event that you do not repay the Loan in full within the loan term after the date of disbursement of the Loan, AVL Capital will automatically charge a late repayment penalty fee which shall be calculated on any outstanding amount in respect of the loan

6.8 On the 45th day, one will not be able to borrow and can resume borrowing after paying the loan in full.

6.9 RIGHTTOSETOFF

6.9.1. AVL Capital may, without notice, set off against any account or indebtedness of the Customer; Any time or other deposit

6.9.2. This may be in excess amounts of Customers limit

6.9.3. AVL Capital may, upon notice to the Customer, set off his due loan against any other account or indebtedness in respect of which the Customer is liable.

6.9.4. In such circumstances upon receipt of an Indemnity satisfactory to AVL Capital against costs and the Customer's expense, AVL Capital will give the Customer any assistance necessary in obtaining a refund.

7. STATEMENTS

7.1. You may request for a statement or activity report in respect of your PESA na PESA account from AVL Capital.

7.2. The Loan Account Statement shall provide details of the last 5 (five) transactions or such other number of transactions as determined by AVL Capital.

7.3. The statement shall be available electronically.

7.4. Save for a manifest error, PESA na PESA Account Mini Statement issued to you aforesaid in respect of your PESA na PESA Account shall be conclusive evidence of the transactions carried out on your PESA na PESA Account for the period covered in the PESA na PESA Account Mini Statement.

8. IRREVOCABLE AUTHORITY OF ROAMTECH

8.1. it's your sole responsibility to familiarize yourself with the operating procedures for the service as will be provided by AVL Capital upon your registration to the Service. AVL Capital will not be liable for any losses incurred as a result of your errors either of commission and/or omission.

8.2 You hereby irrevocably authorize AVL Capital to act on all Requests received by AVL Capital from you (or purportedly from you) through the System and to hold you liable in respect thereof, notwithstanding that any such requests are not authorized by you or are not in accordance with any existing mandates given by you.

8.3. If you request AVL Capital to cancel any transaction or instruction after a Request has been received by AVL Capital from you, AVL Capital may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.

8.4. AVL Capital shall be entitled to accept and to act upon any Request, even if that Request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, AVL Capital believes that it can correct the incomplete or ambiguous information in the Request without any reference to you being necessary.

8.5. AVL Capital is authorized to effect such orders in respect of your PESA na PESA Account as may be required by any court order or competent authority or agency under the applicable laws.

8.6. In the event of any conflict between any terms of any Request received by AVL Capital from you and these Terms and Conditions, these Terms and Conditions shall prevail.

9. CUSTOMERS EQUIPMENT AND CUSTOMERS RESPONSIBILITIES

9.1. You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the System and the Services.

9.2. You shall be responsible for ensuring the proper performance of your Equipment. AVL Capital shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall AVL Capital be responsible for any computer virus or related problems that may be associated with the use of the System, the Services and the Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and AVL Capital shall not be responsible for losses or delays caused by any such service provider.

9.3. You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by AVL Capital concerning the use of the System and Services.

9.4. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your PESA na PESA PIN secret and secure. You shall ensure that your PESA na PESA PIN does not become known or come into possession of any unauthorized person. AVL Capital shall not be liable for any disclosure of your PESA na PESA PIN to any third party and you hereby agree to indemnify and hold

AVL Capital harmless from any losses resulting from any PESA na PESA PIN disclosure.

9.5. You shall take all reasonable precautions to detect any unauthorized use of the System and the Services. To that end, you shall ensure that all communications from AVL Capital are examined and checked by you or on your behalf as soon as practicable after receipt by you in such a way that any unauthorized use of and access to the System will be detected.

9.6. You shall immediately inform AVL Capital through the Contact Centre in the event that:

9.6.1. You have reason to believe that your PESA na PESA PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or

9.6.2. You have reason to believe that unauthorized use of the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.

9.7. You shall at all times, follow the security procedures notified to you by AVL Capital from time to time or such other procedures as may be applicable to the Services from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your PESA na PESA Account's confidentiality. In particular, you shall ensure that the Services are not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorized to do so.

9.8. You shall not at any time operate or use the Services in any manner that may be prejudicial to Avl Capital.

10. EXCLUSION OF LIABILITY

10.1. AVL Capital shall not be responsible for any loss suffered by you should the Services 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 AVL Capital'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.

10.2. AVL Capital will not be liable for any losses or damage suffered by you as a result of or in connection with: -

10.2.1. Unavailability of sufficient funds in your PESA na PESA Account;

10.2.2. Failure, malfunction, interruption or unavailability of the System, your Equipment, the Network and PESA na PESA System;

10.2.3. the money in your MPESA Account being subject to legal process or other encumbrance restricting payments or transfers thereof;

10.2.4. Your failure to give proper or complete instructions for payments or transfers relating to your PESA na PESA Account;

10.2.5. Any fraudulent or illegal use of the Services, the System and/or your Equipment; or

10.2.6. Your failure to comply with these Terms and Conditions and any document or information provided by AVL Capital concerning the use of the System and the Services.

10.3. If for any reason other than a reason mentioned in subparagraphs 10.1 or 10.2, the Services are interfered with or unavailable, AVL Capital's sole liability under this Agreement in respect thereof shall be to re-establish the Services as soon as reasonably practicable.

10.4. Save as provided in subparagraph 10.3 AVL Capital shall not be liable to you for any interference with or unavailability of the Services, howsoever caused.

10.5. Under no circumstances shall AVL Capital be liable to you for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Services even where the possibility of such loss or damage is notified to AVL Capital.

10.6. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

11 INTELLECTUAL PROPERTY RIGHTS

You acknowledge that the intellectual property rights in the System (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that AVL Capital provides to you through the System or otherwise are vested either in AVL Capital or in other persons from whom AVL Capital has a right to use and to sub-license the System and/or the said documentation. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of AVL Capital.

12 INDEMNITY

12.1. In consideration of AVL Capital complying with your instructions or Requests in relation to the PESA na PESA Account, you undertake to indemnify AVL Capital and hold it harmless against any loss, charge, damage, expense, fee or claim which AVL Capital suffers or incurs or sustains thereby and you absolve AVL Capital from all liability for loss or damage which you may sustain from AVL Capital acting on your instructions or requests or in accordance with these Terms and Conditions.

12.2. The indemnity in clause 12.1 shall also cover the following:

12.2.1. All demands, claims, actions, losses and damages of whatever nature which may be brought against AVL Capital or which it may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond AVL Capital's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by AVL Capital.

12.2.2. Any loss or damage that may arise from your use, misuse, abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs.

12.2.3. Any unauthorized access to your PESA na PESA Account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment.

12.2.4. Any loss or damage occasioned by the failure by you to adhere to these Terms and Conditions and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by AVL Capital as a consequence of any breach by these Terms and Conditions.

12.2.5. Any damages and costs payable to AVL Capital in respect of any claims against AVL Capital for recompense for loss where the particular circumstance is within your control.

13 TERMINATION

13.1. AVL Capital may at any time, upon notice to you, terminate or vary its business relationship with you and close your PESA na PESA Account and in particular but without prejudice to the generality of the foregoing AVL Capital may cancel credit limit which it has granted and require the repayment of outstanding debts resulting therefrom within such time as AVL Capital may determine.

13.2. Without prejudice to AVL Capital's rights under clause 13.1, AVL Capital may at its sole discretion suspend, decline loan application or close your PESA na PESA Account:10

13.2.1. If you use the PESA na PESA Account for unauthorized purposes or where AVL Capital detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;

13.2.2. If your PESA na PESA Account or agreement with AVL Capital is terminated for whatever reason;

13.2.3. If AVL Capital is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;

13.2.4. If AVL Capital reasonably suspects or believes that you are in breach of these Terms and Conditions (including non-payment of any Loan amount due from you where applicable);

13.2.5. Where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;

13.2.6. To facilitate update or upgrade the contents or functionality of the Services from time to time;

13.2.7. Where you remain inactive for any period of time determined by AVL Capital in its reasonable discretion; or

13.2.8. If AVL Capital decides to suspend or cease the provision of the Services for commercial reasons or for any other reason as it may determine in its absolute discretion.

13.2.8. If you have had a current or past listing with Credit Reference Bureau for a Non-performing account with any institution.

13.3. You may close your PESA na PESA Account at any time upon payments of all outstanding amounts owed to AVL Capital/PESA na Pesa.

13.4. If your PESA na PESA Account has any credit balance at the time of its closure, we will return any such balance to you, less any applicable fees. If your PESA na PESA loan is in arrears at the time of closure of your PESA na PESA Account, you agree to pay to us immediately all amounts you owe us.

13.5. Termination shall however not affect any accrued rights and liabilities of either party.

13.6. If AVL Capital receives notice of your demise, AVL Capital will not be obliged to allow any operation or withdrawal from your PESA and PESA Account by any person except upon production of Grants of Letters of Administration or Probate by your legal representatives duly appointed by the Court.

14. DISCLOSURE OF INFORMATION

14.1. You hereby expressly consent and authorize AVL Capital to disclose receive record or utilize your personal information or information or data relating to your PESA na PESA Account and any details of your use of the Services:

14.1.1. 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;

14.1.2. to and from AVL Capital's service providers, dealers, agents or any other company that maybe or become AVL Capital's subsidiary or holding company for reasonable commercial purposes relating to the Services;

14.1.3. to a Credit Reference Bureau;11

14.1.4. to AVL Capital's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;

14.1.5. to Mobile Network Operators in connection with the Mobile Money Service and the Services;

14.1.6. For reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and

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

15. MISCELLANEOUS

15.1. These Terms and Conditions (as may be amended from time to time) form a legally binding agreement binding on you and your personal successors.

15.2. This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.

15.3. AVL Capital may vary or amend at any time and without notice to you these Terms and Conditions and the Transaction Fees. Any such variations or amendments may be published in the daily newspapers, on AVLC GROUP website and/or by any other means as determined by AVL Capital/AVLC GROUP and any such variations and amendments shall take effect immediately upon publication.

15.4. No failure or delay by either yourself or AVL Capital in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.

15.5. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

15.6. If any provision of these Terms and Conditions shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.

15.7. Any addition or alteration to these Terms and Conditions may be made from time to time by AVL Capital/AVLC GROUP and of which notice has been given to you by way of publication as provided in subparagraph

15.3 shall be binding upon you as fully as if the same were contained in these Terms and Conditions.

16. NOTICES

16.1. AVL Capital may send information concerning the PESA na PESA Account via SMS to the Mobile Network Mobile Phone number associated with your PESA na PESA Account.

16.2. You acknowledge that you have no claim against AVL Capital for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the PESA na PESA Account.

17. DISPUTE RESOLUTION, JURISDICTION AND ARBITRATION

17.1. You may contact the Contact Centre to report any disputes, claims or PESA na PESA Account discrepancies.

17.2. Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.

17.3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.

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