

Customer Lease Agreement Number: \_\_\_\_\_ LEASE AGREEMENT BETWEEN Airvantage Lesotho (PTY) LTD (HEREINAFTER "LESSOR" OR "AVL") AND  
 " \_\_\_\_\_ Customer Name" (HEREINAFTER, "LESSEE") SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

**Summary**

Date: .....

Equipment: .....

Equipment ID: ..... E.g., "SAMSUNG SM-A135F"

Agreement ID: ..... E.g.,13913823

**Lessor**

Name: Airvantage Lesotho

Address: Private Bag, A104, Maseru, Lesotho, 100

Email: [supportls@airvantage.co.za](mailto:supportls@airvantage.co.za)

Tel.: +260XXXXXXXXXX

VAT:

**Lessee**

Name: .....

Address: .....

Email: .....

Tel.: .....

ID No.: .....

Lessee hereby requests Airvantage Lesotho (thereafter referred to as AVL) to lease to him/her the equipment described herein (hereinafter, "Equipment"), and Lessor hereby agrees to lease the Equipment and to lease it to Lessee in accordance with the following terms and conditions. Lessee hereby agrees to lease the Equipment and pay the full amount (hereinafter, the "lease amount") to be paid in instalments, in the amounts provided herein and in quantities and terms provided in this Agreement, as described in the Payment Schedule below. Lessee states that the source of the funds used to perform its obligations hereunder shall be legal.

<b>Payment Schedule</b>		
<b>A) Lease amount of Equipment including VAT ("Lease" or "I" or "Lease Instalments")</b>	Periodic amount payable for the leasing of the Equipment including VAT	LSL ..... E.g., "Monthly amount"
<b>B) "Initial Payment" (non-refundable)</b>	Initial payment amount	LSL ..... E.g., "Deposit"
<b>C) Date of application of Initial Payment</b>	Date that initial payment was made	..... E.g., "First Date"
<b>D) Number and Frequency ("Instalments")</b>	Periodicity with which Instalments of Rent must be made e.g MONTHLY	..... E.g., "Monthly amount" MONTHLY installments, paid on or before the last day of each month.
<b>E) "Term"</b>	Subject to Clause 19, Term commences on the date that the Initial Payment is received ("Start Date") until the date the last Instalment payment is due (e.g. 12 months)	..... E.g., "X months"
<b>F) Form of Payment</b>	Payment options: cash, credit, debit, or e-payment	..... E.g., "M-Pesa" (only option for payment)
<b>G) Date of Payment</b>	Customer may elect date most suited for them (ie 25 <sup>th</sup> , 30 <sup>th</sup> , 31 <sup>st</sup> )	..... E.g., "25 <sup>th</sup> ,30 <sup>th</sup> & 31 <sup>st</sup> "

AVL's technology allows for locking equipment remotely. If all or part of a payment is not made by you on or before its due date, the Equipment shall automatically be locked by the AVL locking software ("AVL System") and Lessee shall not be able to use the Equipment (and/or access to Equipment apps etc.), except to call a local emergency number and customer service number, and the Equipment shall remain locked until all payments are up-to-date. Additionally, for so long as the Equipment is locked by the AVL System, Lessee shall not receive any notice nor shall it be able to see the icons of the Applications.

BY SIGNING THIS AGREEMENT YOU SPECIFICALLY ACKNOWLEDGE THAT THE AIRVANTAGE SYSTEM IS EMBEDDED IN YOUR EQUIPMENT AND YOU FURTHER CONSENT TO THE LOCKING OF YOUR EQUIPMENT UNDER THE CIRCUMSTANCES DESCRIBED ABOVE.

Signature \_\_\_\_\_

I confirm that I have read the attached Terms and Conditions for additional information on non-payment, default and any prepayment required for the full amount before the scheduled payment date.

Signature \_\_\_\_\_

## **TERMS AND CONDITIONS OF HANDSET LEASE AGREEMENT**

### **1. AGREEMENT**

- 1.1. This is the following Terms and Conditions (“Terms”), any updates to them, make up the Handset Lease agreement between you and Airvantage Lesotho Limited.
- 1.2. Please read these Terms carefully as they will be binding on you and your personal representatives and assignees from the time you apply for a device lease. If you do not agree with any of these Terms you will not be able to proceed with your Application and you must select the “Cancel” option.
- 1.3. If there is any provision in the Agreement that you do not understand, please ask us for an explanation before signing by contacting us telephonically on 114 or visiting your nearest participating Vodacom branch.
- 1.4. We will keep these Terms up-to-date at www..... If we make a change, we'll let you know either by updating the Website or getting in touch directly. Offer and Product-specific terms may also apply.

### **2. DEFINITIONS AND INTERPRETATION**

- 2.1. In these Terms:
  - 2.1.1. **“Agreement”** means these Terms, as read with the provisions contained in your Application, our Website User Terms and Privacy Policy and any changes that we make to them from time to time;
  - 2.1.2. **“Airvantage”** means Airvantage Lesotho Limited (Registration number 50329), incorporated in Lesotho as a limited liability company under the Companies Act and duly licensed as a financial leasing business and its affiliates, located at Cnr Kingsway & Balfour Road, Victoria Hotel Offices, Suite 211 – 212, Maseru, 100, Lesotho.
  - 2.1.3. **“Airvantage App”** means the software application known as Airvantage App as published, updated and upgraded by Airvantage from time to time;
  - 2.1.4. **“Airvantage Transaction Information”** means your Lease account information held by us in relation to this Agreement, including personal information, credit data, conduct information, account information, transaction history, and any other information related to this Agreement which may be required by Vodacom to support you, assist in the collaboration with us, make payments from your M-PESA Account and to comply with its contractual or legal obligations;
  - 2.1.5. **“Applicant”** means any person who applies for a Lease and accepts these Terms;
  - 2.1.6. **“Application”** means each of the steps taken during the process from the time you opt-in via the Interface to apply for a Lease until conclusion of this Agreement;
  - 2.1.7. **“Customer”** means any Applicant and any person who leases a Handset from us and has accepted this Agreement;
  - 2.1.8. **“Customer Care Centre”** means our customer care centre;
  - 2.1.9. **“Event of Default”** refers to any of the circumstances set out in clause 23 below;
  - 2.1.10. **“Fees”** means the Fees applicable for the Lease as communicated by us from time to time in accordance with this Agreement and includes any charges, and applicable taxes thereon under the laws of Lesotho;
  - 2.1.11. **“Initial Payment”** means the upfront initiation and administration fee that you must pay us to proceed with the Lease;
  - 2.1.12. **“Interface”** means the USSD and the Airvantage App or any other prescribed interface through which M-PESA Subscribers may apply for a Lease from us;
  - 2.1.13. **“M-PESA”** means the money transfer and payment service that is managed and operated exclusively by VCL Financial Services and licensed by the Central Bank of Lesotho;
  - 2.1.14. **“M-PESA Account”** means your M-PESA wallet registered in your name;

- 2.1.15. **"M-PESA Agreement"** means all of the various terms and conditions you have agreed to with Vodacom to open and operate the M-PESA Account (including any amendments and/ or additions thereto from time to time) which shall be read together and constitute the contract between you and Vodacom for all and any aspects of the M-PESA service as an M-PESA Subscriber;
  - 2.1.16. **"M-PESA Information"** means all and any M-PESA Subscriber Credit Data and M-PESA Subscriber Data, M-PESA Advance Subscriber Credit Data which relates to you and your M-PESA Account and which you have authorised Vodacom to share with us pursuant to this Agreement;
  - 2.1.17. **"M-PESA Subscriber"** means a person who has registered to use the M-PESA service and concluded an M-PESA Agreement;
  - 2.1.18. **"M-PESA Subscriber Credit Data"** means data relating to your credit activity within the M-PESA System;
  - 2.1.19. **"M-PESA Subscriber Data"** means an M-PESA Subscriber's name and any of such subscriber's national identity card number, military card number, diplomatic identity card number, alien card number, passport number or driving license number, as reflected in Vodacom's records from time to time;
  - 2.1.20. **"M-PESA Advance Subscriber Credit Data"** means information relating to the use by an M-PESA subscriber of the M-PESA Service and the Vodacom Network;
  - 2.1.21. **"MSISDN"** Mobile Subscriber Integrated Services Digital Network Number (Mobile Number);
  - 2.1.22. **"Obligations"** means any and all obligations, howsoever arising, including Payment Obligations, which you have to use in terms of or arising from this Agreement from the Start Date until the expiration or termination of this Agreement (including contingent obligations) and/or any default or breach of this Agreement;
  - 2.1.23. **"Outstanding Payment Obligations"** means such portion of the Payment Obligations that remain due, owing and payable by you to us from time to time;
  - 2.1.24. **"Parties"** means the parties to this Agreement;
  - 2.1.25. **"Payment"** means payment(s) made, or to be made by you to us in terms of this Agreement;
  - 2.1.26. **"Payment Obligations"** means such of your Obligations in terms of and pursuant to this Agreement which involve any Payments to be made by you to us, howsoever and from whatsoever cause arising;
  - 2.1.27. **"Recovery Expenses"** include all and any costs and /or expenses paid and or incurred by us to recover your Payment Obligations, including legal costs on an attorney/own client scale;
  - 2.1.28. **"Lease"** means the Lease by you of a Lease Handset in terms of this Agreement;
  - 2.1.29. **"Lease Handset"** means selected Handsets which we make available for Lease to qualifying M-PESA Subscribers;
  - 2.1.30. **"Lease Payment Day"** means the day on which Lease Amounts are due and payable by you to us in terms of this Agreement;
  - 2.1.31. **"Lease Amount"** means the amount that you will need to pay us each month for the Lease of a Handset as agreed to by you in the Application;
  - 2.1.32. **"Lease Limit"** means the maximum value of a Handset which you qualify to lease from us based on your Lease Score;
  - 2.1.33. **"Lease Score"** means our evaluation of your propensity to be able to satisfy your Payment Obligations for a Lease derived from various factors, including your M-PESA Information, using our proprietary Lease scoring algorithm;
  - 2.1.34. **"Start Date"** means the date on which we receive payment of the Initiation Fee;
  - 2.1.35. **"Term"** means the period from the Start Date until the date on which all Payment Obligations owing by you to us in terms of this Agreement have been satisfied in full;
  - 2.1.36. **"Total Lease"** means the total amount which you will be required to pay us for the Lease comprising the sum of the Lease Amounts and the Initiation Fee;
  - 2.1.37. **"USSD"** means the USSD service provided by Vodacom;
  - 2.1.38. **"Vodacom"** means Vodacom Lesotho, a public limited liability company incorporated in Lesotho under the Companies Act;
  - 2.1.39. **"Vodacom App"** means the software application known as Vodacom App as published, updated and upgraded by Vodacom from time to time;
  - 2.1.40. **"Website"** the Airvantage website, [www.airvantage.co.za](http://www.airvantage.co.za);
  - 2.1.41. **"We," "our," and "us,"** means Airvantage and includes our successors and assigns;
  - 2.1.42. **"You" or "your"** means the Customer and includes the Customer's personal representatives and assigns.
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
  - 2.3. Provisions, terms, explanations and annotations contained in your Application shall be incorporated by reference in this Agreement and be read together with it.
  - 2.4. Provisions, agreements, consents and terms and conditions which apply as part of the process of your interactions with us or a third party acting on our behalf on an Interface, in person, on our Website or otherwise,

shall be binding on you and shall be incorporated by reference into these Terms. You acknowledge and agree that you have read and understand such provisions, agreements, consents and terms and conditions accordingly.

### 3. INTRODUCTION

- 3.1. You are an M-PESA Subscriber.
- 3.2. We own and operate a financial leasing business and offer Handset Leases to qualifying M-PESA Subscribers in collaboration with Vodacom.
- 3.3. We fund the lease of the Lease Handsets and Vodacom is the supplier and point of sale of the Lease Handsets.
- 3.4. You wish to apply for a Lease on the Terms of this Agreement.

### 4. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 4.1. Before applying for a Lease, you should carefully read and understand these Terms and all of the explanations and information given on your Application journey because together they govern any Lease by you from us, including your Payment Obligations and what happens if you breach this Agreement.
- 4.2. These Terms are available at [www.airvantage.co.za](http://www.airvantage.co.za) and also at [www.vodacom.co.ls](http://www.vodacom.co.ls) . Where you are unable to read and understand these Terms from an electronic device you are requested to collect a printed version from a designated Vodacom Shop. A list of designated Vodacom Shops can be found on the Vodacom website.
- 4.3. If you do not agree with these Terms or any step in your Application, please click "Cancel" on the Interface.
- 4.4. You will be deemed to have read, understood and accepted these Terms and no further actions are required to render the Agreement binding and enforceable:
  - 4.4.1. when you select the "Accept" option on the Interface referring to these Terms and /or
  - 4.4.2. by making the Initial Payment.
- 4.5. We may from time to time vary these Terms and your continued Lease constitutes your acceptance to be bound by the terms of any such change.

### 5. APPLICATION CRITERIA

- 5.1. To qualify for a Lease, you must:
  - 5.1.1. be a registered and active M-PESA Subscriber on the Application date and have been so registered and active for at least three (3) months (or such other period as we in our discretion, may determine) immediately preceding the Application date;
  - 5.1.2. be at least eighteen (18) years old, which you hereby warrant that you are;
  - 5.1.3. satisfy any other qualifying criteria we may, in our discretion, require, including your Lease Score;
  - 5.1.4. not have any Outstanding Payment Obligations or be in default of another Lease Agreement or your M-PESA Agreement.
- 5.2. We reserve the right to verify the authenticity and status of your M-PESA Account and M-PESA Information and any other information you give us or we obtain about you to assess your Application.
- 5.3. We may decline your Application if we, in our sole discretion, are not satisfied that you have met our minimum requirements or for any reason whatsoever.

### 6. LEASE SCORE

- 6.1. We may from time to time prescribe the minimum and maximum Lease Value you may be able to request from us.
- 6.2. Your Lease Score and our assessment of your eligibility will be determined by Airvantage's scoring metric.
- 6.3. Your Lease Score will be assessed based on various matters including the M-PESA Information in respect of which you have given Consent.
- 6.4. Such scoring may be communicated through SMS and/ or the relevant Interface.
- 6.5. The Lease Score is subject to review from time to time and we reserve the right to vary your Lease Score without giving any reasons.
- 6.6. You may check your Lease Score using the appropriate menu option provided on your M-PESA Account, through the USSD.
- 6.7. You may apply for a Lease Handset multiple times within and subject to your Lease Score.

## 7. APPLICATION PROCESS

- 7.1. You must apply for a Lease through any Interface or through your M-PESA Account by following the Interface commands and prompts. You may also go into a Vodacom Store and they will assist you with the process.
- 7.2. We will present you with the Lease Handset options available for Lease and the relevant key terms for each option. These key terms ("Key Terms") summarise and describe the Handset, Lease Amounts and terms of Lease payment and will constitute the details of your Lease Agreement with us.
- 7.3. You must choose the Lease option you wish to apply for as prompted by the instructions on the Interface based on the Key Terms.
- 7.4. We will utilise your Lease Score and M-PESA Account Information as well as any previous Airvantage Transaction Information to make a decision on your Application. We may also require your confirmation of personal information and such further information as we deem necessary and/ or the law requires to make a decision on your Application. Failure to provide such information within the time frame we require may result in a decline or delay in your Application.
- 7.5. We shall be entitled to conduct an assessment of your creditworthiness as a VCL Financial Services customer and M-PESA Subscriber. This will include the exchange and analysis of information about you (including Personal Information) as M-PESA Subscriber, to ascertain your propensity to satisfy the Payment Obligations.
- 7.6. We reserve the right at our sole discretion and, without assigning any reason, to approve or decline such Application. **We are never obliged to accept your Application and you will have no claim against us if we decline it.**
- 7.7. If your Application is declined, you should continue to transact on M-PESA in order to build a transaction history and enhance your Leases Score to improve your chances of becoming eligible for a Lease.
- 7.8. You may apply for a Lease on more than one MSISDN provided that you qualify on each MSISDN and on the basis that these terms and conditions will apply in full to each such MSISDN.
- 7.9. Our acceptance or decline of your Application will be communicated through an SMS sent to your MSISDN associated with your Device or otherwise delivered via the Interface. You acknowledge and accept that our acceptance of your Application for a Lease creates a separate and distinct contractual relationship between you and us outside the terms and conditions that apply to your relationship with Vodacom as an M-PESA Subscriber.

## 8. CONSENT AND INFORMATION AUTHORISATION

- 8.1. The M-PESA Account Information is necessary and required by Airvantage for vetting and assessment of eligibility of an M-PESA Subscriber for the selected Handset Lease, the making of an offer and, where applicable, the conclusion, implementation, operation and enforcement of any agreement concluded with Airvantage for a Handset Lease.
- 8.2. You hereby agree, authorize and consent to:
  - 8.2.1. the exchange between Vodacom and Airvantage (and each of their representatives, employees, service providers, business partners and nominated credit bureaux and / or credit reference agencies) of your M-PESA Account Information and your Airvantage Transaction Information, for all purposes necessary and incidental to creating and updating your Lease Score and in relation to your Application, the implementation, conclusion, operation, breach, termination and/ or enforcement of this Agreement, the offerings of any related Vodacom or Airvantage products and services and/ or monitoring Leases and amounts advanced and payments made for record keeping purposes;
  - 8.2.2. Airvantage obtaining and procuring your Personal Information contained at Home Affairs from the Government of Lesotho and to the disclosure and provision of such Personal Information by the Government of Lesotho to us for purposes and in relation to all aspects of a Handset Lease Agreement and your qualification therefore;
  - 8.2.3. Airvantage verifying your Personal Information in our custody against the information received from the Government of Lesotho in your respect as contained at Home Affairs.
- 8.3. You confirm that both Vodacom and Airvantage shall be entitled to rely on the authorisations given by you in this clause for purposes of compliance with all applicable data privacy laws. **and that you shall have no claim against either Party for the relevant collection, use, processing and/ or exchange of the information or the outcomes produced therefrom.**
- 8.4. You acknowledge, agree and understand that:
  - 8.4.1. the authorisation and consent contained in this clause is material to the conclusion, implementation and enforcement of this Agreement and shall be valid and binding from the date you sign this Agreement and will endure until you have satisfied all of your Obligations to Airvantage pursuant to any Handset Lease Agreement (including the enforcement thereof);
  - 8.4.2. if this authorisation and consent is purportedly cancelled, withdrawn and/ or terminated, for any reason whatsoever, any offer from Airvantage and/ or any Handset Lease Agreement in existence

with you at the time of such cancellation, withdrawal and/or termination will also terminate on the terms and conditions thereof and the cancellation, withdrawal and/or termination of this authorisation and consent will not be valid and binding until such time as all and any Handset Lease Agreement you have is/are duly enforced by us.

- 8.5. Accordingly, you hereby undertake and agree that You will not terminate, withdraw or contravene any of the provisions of the Consent during the course of this Agreement and until all Obligations which you may have to us in terms of this Agreement are satisfied in full.
- 8.6. A failure to comply with the provisions of clause 8.5, will be a material breach of this Agreement and shall result in a termination of this Agreement and all Payment Obligations becoming immediately due and payable as liquidated damages.

## 9. AIRVANTAGE LOCKING SYSTEM AUTHORITY

- 9.1. **Our technology, the Airvantage locking software (“AVL System”) allows for locking of devices remotely. By signing this Agreement, you specifically acknowledge and agree that the AVL System shall be embedded in your Lease Handset and you further consent to the locking of your Lease Handset under the circumstances described in clause 9.2 below and understand and agree that you will have no claim against us for any reason whatsoever in the event that your Lease Handset is so locked.**
- 9.2. **You understand and agree that if all or any part of a Payment Obligation is not made by you on or before its due date and after due notice being received pursuant to clause 14.8, the Lease Handset shall automatically be locked by the AVL System and you will not be able to use the Lease Handset (and/or access the Lease Handset apps etc.), except to call a local emergency number, customer service or to initiate payment of the overdue amount. The Lease Handset shall remain locked until all Payments Obligations are up-to-date. While the Lease Handset is locked by the AVL System, your Lease Handset will have limited operational capabilities. On completion of payment of the Outstanding Payments Obligations, the AVL System will no longer be able to lock your Lease Handset.**

## 10. INITIAL PAYMENT

- 10.1. You must pay us or authorise the payment to us of the Initial Fee (deposit) via your M-PESA Account upon our acceptance of your Application to initiate the Lease.
- 10.2. If the Initial Payment is not made or is not successfully completed, the Lease Application will be deemed to have failed and no agreement between you and us for the Lease will exist. You will have no claim against us if the Agreement fails because we did not receive the Initial Payment.
- 10.3. These Terms will still apply to your Application.

## 11. DELIVERY

- 11.1. Upon acceptance of your Application, you will receive a delivery reference number (“Delivery Reference”).
- 11.2. You will need to take delivery of your Lease Handset from the relevant Participating Vodacom Store by presentation of your Delivery Reference, together with proof of identity.
- 11.3. Collection by you of the Lease from the denoted Participating Vodacom Shop will constitute delivery by us to you of the leased Handset.
- 11.4. You cannot send a third party to collect the Handset on your behalf.

## 12. TERMS OF LEASE

- 12.1. Subject to continued compliance by you with your Obligations under this Agreement, we hereby grant you use and enjoyment of the Lease Handset from the Start Date and you hereby accept such grant on the terms and conditions contained in this Agreement.
- 12.2. You understand and agree that we are and shall remain the owner of the Lease Handset for the duration of this Agreement and that the rights of use and enjoyment referred to in clause 12.1 are by virtue of your Lease of the Lease Handset and not your ownership thereof.
- 12.3. Accordingly, you shall not be entitled to sell, let, loan, pledge, or in any other manner encumber, dispose of or transfer the Lease Handset. If you do so this will be a Default Event and you will remain liable to pay us the Total Lease Amount which shall immediately become due and payable in one lump sum as liquidated damages for your default of the Agreement.
- 12.4. You will remain responsible for all Payment Obligations to us even if you cease to be an M-PESA Subscriber or if the Lease Handset is lost, damaged or destroyed.
- 12.5. We shall be entitled to charge you for any Recovery Expenses incurred by us in the event of a default by you in terms of clause 12.3.



### 13. DURATION

- 13.1. Subject to any default and/ or rights of termination contained in the Agreement, this Agreement shall commence once we receive the Initial Payment and continue for the Term or until Payment Obligations are satisfied in full, whichever is the later.

### 14. PAYMENT OBLIGATIONS

- 14.1. You agree and shall be responsible to pay us by way of direct deduction from your M-PESA Account pursuant to the M-PESA Account Authority given by you in clause 15:
- 14.1.1. the Initial Payment and each Lease Amount (together the "Total Lease") as and when such payment is due for the Term of this Agreement on the basis selected by you in the Key Terms;
  - 14.1.2. any Recovery Expenses which become due and payable by you to us; and
  - 14.1.3. any other Payment Obligations which may arise from this Agreement.
- 14.2. Provided you are not in default of the Agreement, Lease Amounts shall be payable weekly/or monthly during the Term, as agreed and selected by you in the Key Terms, until the Total Lease is paid in its entirety.
- 14.3. You shall not be entitled to withhold any Payment Obligations or part thereof.
- 14.4. You will not set-off or deduct against any Payment Obligations, any present or future claim which you may have against us from any cause arising.
- 14.5. All payments made by you or on your behalf, to us in terms of this Agreement must be made without counterclaim and shall be free of exchange, bank costs and other charges applicable to you or any relevant third party.
- 14.6. We will credit your payment of Payment Obligations on the date they are received by us.
- 14.7. Partial and/ or non-payments of your Payment Obligations on the due date for payment thereof is default of your Payment Obligations to us.
- 14.8. If all or part of a Payment Obligation is not made by its due date, a push notification will be sent to your Lease Handset, detailing that there is an Outstanding Payment Obligation. A three (3) day grace period will commence. Failure to pay during this grace period will result in the Lease Handset automatically being locked by the AVL System. Once locked, you will not be able to use the Lease Handset, except to call a local emergency number, a customer service number or to initiate payment. The Lease Handset shall remain locked until all Payments Obligations are up-to-date.
- 14.9. You acknowledge that you would have had to make payment of the purchase price of the Lease Handset, but due to our assistance, we have purchased the Lease Handset on your direct instruction and we have entered into this Agreement with you on the basis that, amongst others, the purchase price that we paid for the Lease Handset is recovered over the duration of the Agreement.
- 14.10. On your death or bankruptcy, your Obligations shall remain in full force and effect until such a time as they shall be duly satisfied.
- 14.11. You agree that if you fail to timely pay amounts due, we may cede and/ or assign our rights in terms of this Agreement for collection without notice to you.
- 14.12. You confirm and warrant that the source of the funds used for your Payment Obligations is legal.

### 15. M-PESA ACCOUNT AUTHORITY

- 15.1. You hereby irrevocably authorise us to automatically recover and that Vodacom pay us all Lease Amounts and each other Payment Obligation on the due date for payment thereof in full, from your M-PESA Account. This authorisation and instruction shall apply to the payment of the Payment Obligations by you to us in terms of this Agreement, howsoever arising.
- 15.2. You acknowledge that, in order to effect these instructions, Vodacom shall automatically debit the amounts due from the credits deposited or received into your M-PESA Account at any time until the Payment Obligations are satisfied in full. No further actions or authorisations shall be required to effect this instruction.
- 15.3. In the event that you default on any of your Obligations under the Agreement, including, without limitation, if you change the M-PESA Account, block our withdrawals, or otherwise hinder or impede the exercise of our rights hereunder, you hereby authorise us to debit any of your other banking accounts for any portion of the Payment Obligations that were not remitted, in breach of this Agreement. Further, You hereby authorise all of your banking institutions to accept and to charge any debit entries initiated by us to any of your bank accounts.
- 15.4. You understand that this authorisation and instruction is a fundamental condition inducing us to enter into the Agreement, and consequently if you terminate the authority, such termination shall be deemed to be a Default Event.
- 15.5. In the event of a Lease Payment Date falling on a Sunday or public holiday the Lease Amount will be deducted from the M-PESA Account on the Business day following the Sunday or public holiday concerned.



- 15.6. In the event that any instruction for a Payment Obligation, or any part thereof is returned unpaid or is unprocessed then:
- 15.6.1. You will be in breach of this Agreement and a Default Event will have occurred;
  - 15.6.2. We may, in our sole and absolute discretion (and without prejudice to any other rights we may have against you pursuant to this Agreement and/ or in Law), give you written notice by way of e-mail, or otherwise recording such late, part or non-payment of the relevant Payment Obligations and implement an immediate and automatically applicable change to the amount payable from your M-PESA account to cater for such late, part or non-payment of the relevant Payment Obligations; and
  - 15.6.3. We shall be entitled to and may levy an unpaid M-PESA instruction fee on such unpaid or unprocessed instruction, which will form part of the Recovery Fees and be added to your Payment Obligations.
- 15.7. We may re-submit any unpaid or unprocessed instructions, or part thereof, at any time after initial failed submission until such time as it is paid to us.
- 15.8. In the event of all or any of the Payment Obligations becoming immediately due and payable by you to us, following a breach of this Agreement, the happening of a Default Event and/ or termination of this Agreement or pursuant to any other provision of this Agreement which specifically provides therefore we shall be entitled, without further instruction, to deduct the full amount of any Outstanding Payment Obligations as at that date (whether due for payment or not), as liquidated damages, via the M-PESA Account as one lump sum payment.
- 15.9. We may terminate this Agreement and our relationship with you and suspend your access to the Lease Handset and further Applications if you fail to pay your Payment Obligations in full within the Lease Term.
- 15.10. Any funds available in your M-PESA Account shall be applied towards the amount due to us in the following order of priority:
- 15.10.1. first in repayment of all Fees and Recovery Costs;
  - 15.10.2. secondly towards payment of the Total Lease.
- 15.11. **This Authorisation shall constitute a valid and binding request for payment from Vodacom on the basis set out in your M-PESA Agreement and both Airvantage and Vodacom shall be entitled to rely thereon and you shall have no claim of any nature whatsoever against us or Vodacom for payments made from your M-PESA Account pursuant to the authorisation and instruction contained in this clause 15.**
- 15.12. Vodacom shall be deemed to have acted properly and to have fully performed all its Obligations upon their compliance with the authorisation and instruction contained in this clause 15. No further acts shall be necessary to effect the payment by Vodacom to us pursuant to this authorisation and instruction.
- 15.13. **You hereby agree to hold us harmless for any fees you may incur or rejected transactions that may result from a debit of the Payment Obligations in accordance with the terms of this Agreement.**
- 15.14. **You agree not to terminate or cancel registration of your Vodacom mobile phone number (MSISDN) when you have any Outstanding Obligations.**

## 16. WARRANTIES

- 16.1. You will have the benefit of the standard manufacturer's warranty on the Leased Handset. The law gives you a warranty that the Lease Handset conforms to the description in this Agreement.
- 16.2. In the event that the Lease Handset is defective and/or not fit for purpose, i.e., suffers from a ("Manufacturing Defect") you must dial 114 where you will be informed in detail of the procedure to enforce the warranty offered directly by the manufacturer in respect of Manufacturing Defects, if applicable. If damages are found to be caused by your negligence (water damage, being dropped, misused, etc.), this will be communicated to you by the Lease Handset manufacturer and you will be responsible for the cost of repairs, while maintaining full responsibility for all Lease Payments to AVL.
- 16.3. **Except for the warranty referred to in 16.1, and to the extent permitted by law, the Lease Handset is provided on an "as is" and "with all faults" basis and without warranties of any kind. To the extent permitted by applicable law, we make no, and expressly disclaim any, representations or warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose concerning the Lease Handset leased. We do not authorise any person to make any warranties on our behalf. This does not deprive you of any warranty rights you may have against anyone else.**
- 16.4. **You understand and agree that we are not the supplier of the Lease Handsets, which are derived from third party suppliers and therefore we will not be liable to you (and you have no recourse to us) should a Lease Handset in any manner be defective.**
- 16.5. **You agree to hold Airvantage, its executives, officers and employees harmless from any claim, action, requirement, demand and/or complaint made by third parties against us for the use of the Lease Handset.**

## 17. RISK OF LOSS

- 17.1. **You use the Lease Handset at your own risk. You acknowledge and agree that we shall not be responsible for any loss, damages, claim or costs you may suffer and/ or incur as a result of your use of the Lease Handset and you hereby indemnify us accordingly.**
- 17.2. **Notwithstanding any other provision of this Agreement, you assume the risk of:**
  - 17.2.1. **the partial or total loss or deterioration of any Lease Handset, even in case of force majeure;**
  - 17.2.2. **in general, all risks, losses, theft, impairment, destruction or damages of the Lease Handset for any reason whatsoever, whether partial or total;**
  - 17.2.3. **any events that occur whilst you are in arrears with any Payment Obligations due.**
- 17.3. **If any of the above events arise:**
  - 17.3.1. **you are still responsible for performance of all your Obligations under this Agreement in the agreed manner, (specifically, those relating to the full timeous payment of the stated Total Lease);**
  - 17.3.2. **you shall not be released from the payment Obligations hereunder and/ or under other instruments derived herefrom;**
  - 17.3.3. **you shall be liable to compensate us for the loss of or damage to the Lease Handset, in which event you will provide us any supporting documentation or information we may reasonably request to evidence the circumstances and nature of the damage and / or loss.**
- 17.4. **Because of these risks, you may wish to, but are not required to, obtain insurance covering the Lease Handset. You may obtain insurance from anyone you want. Your decision to buy or not buy insurance, and your choice of an insurance provider, is not a factor in our decision to approve this Lease Agreement.**

## 18. USE OF LEASE HANDSET

- 18.1. **You agree to keep the Lease Handset in good condition at all times while subject to this Agreement.**
- 18.2. **You are responsible for all maintenance and servicing of the Lease Handset.**
- 18.3. **In case of any damage or malfunction to the Lease Handset, please refer to your rights and Obligations in clauses 16 and 17.**
- 18.4. **You shall not modify, nor allow others to modify, the Lease Handset in any way whatsoever. This includes, in such a way that directly or indirectly affects the AVL System. Any attempt to modify, or any modification made, to the Lease Handset shall be a material breach of the Agreement and we shall be entitled to terminate the Agreement with immediate effect and the Total Lease plus all other Payment Obligations shall be payable immediately.**
- 18.5. **You will not use, nor will you permit the use of, the Lease Handset in violation of any law.**
- 18.6. **You agree that if the Lease Handset is "locked" by the network operator or Lease Handset manufacturer due to multiple failed attempts to enter the access password, there is the possibility of having to make a payment, by you, in order to unlock the Lease Handset, following the respective procedure with AVL and with the support of the establishment where you acquired the Lease Handset. AVL is not responsible for the user forgetting the password and you indemnify us accordingly. The forgetting of the password shall cause an ongoing lock of the Lease Handset and if the logic card must be replaced, you will be required to pay the cost of the repair.**

## 19. USE OF BUNDLES ADDED TO AGREEMENT

- 19.1. **Bundles credited daily will expire daily.**
- 19.2. **Bundles will be credited within 24hrs of purchase.**
- 19.3. **Daily bundles expire at midnight and will not roll-over to the next day.**
- 19.4. **Non-payment of monthly instalments may lead to bundles not being credited.**
- 19.5. **Bundles will cease to be credited once the term of the lease agreement has been completed.**
- 19.6. **A customer will be credited for daily integrated bundle for the period of their contract even if they have settled due amount.**
- 19.7. **Customers will be credited with the integrated bundle on payment of first deposit of 30%.**
- 19.8. **Bundling fee will be included in the customer instalment cost.**

## 20. EARLY TERMINATION

- 20.1. **You may end this Lease before the end of the scheduled Term by notifying us in writing at least thirty (30) days before you terminate or by making payment of all outstanding and unpaid amounts. If you terminate the Agreement early under this paragraph, you must pay us the sum of any past due Lease Amounts still owing and all other Payment Obligations and other unpaid amounts due under this Agreement ("Settlement Value").**

- 20.2. We may terminate this Lease at any time before the end of the scheduled Term if the Lease Handset is a total loss or you default (as described below). If we do, we will send you written notice, and you must immediately return the Lease Handset and pay the full Settlement Value to us.
- 20.3. You will be permitted to make payment in advance of any Payment Obligations or part thereof at any time prior to the due date of the last scheduled Lease payment, without penalty upon payment to us. Advance payments will be credited to your Airvantage account accordingly. Advance payments may not extend the lease term in any way.
- 20.4. You may get your Settlement Value or your Payment Obligation Balance at any point through the Airvantage App, or USSD prompts.
- 20.5. The Settlement Value will only be binding for the date stated.

## 21. OPTIONS AT END OF THE TERM

- 21.1. At the end of the scheduled Term, provided that you are up to date with your Obligations, you may choose to:
  - 21.1.1. exercise your upgrade option, if applicable;
  - 21.1.2. return the Lease Handset to us at the place and in the manner, we tell you and make any Outstanding Payment Obligations under this Agreement; or
  - 21.1.3. purchase the Lease Handset at the fair market value determined by agreement between the Parties and failing agreement in this regard, the Parties agree that the purchase price shall be an amount equivalent to the final Lease Amount payable by you to us as set out in the Key Terms; or
  - 21.1.4. obtain from us one or more extensions of the Term of this Agreement regarding the Lease Handset, in which case any Lease Amounts must be agreed in writing by both Parties.
- 21.2. We will send you a notice about these options before the end of the scheduled Term;
- 21.3. Any of the options mentioned above chosen by you must be notified in writing to us at least one month prior to the expiration of the scheduled Term, otherwise, it shall be understood that you agree to purchase the Lease Handset from us.
- 21.4. **Purchase of the Lease Handset at a nominal value - where the purchase is an additional amount payable as purchase price and not the final Lease payment itself.**

## 22. BREACH OF TERMS AND CONDITIONS

- 22.1. If you breach these Terms and then fail to comply with these Terms within 30 days after notice consequently delivered to you, we shall be entitled to require immediate payment in full of all Payment Obligations, whether due or not, and/or forthwith terminate the contractual relationship with you without any consequential liability to you or any other person.
- 22.2. Your Lease Handset may be locked by the AVL System during the notice period as more fully described in clause 9.

## 23. DEFAULT EVENT

- 23.1. You will be in default under this Agreement if:
  - 23.1.1. you fail to make full payment of any Payment Obligation by its due date;
  - 23.1.2. any representation or statement or particulars made by you are found to be incorrect;
  - 23.1.3. you commit any breach or fail to observe, keep or perform any of the terms, conditions covenants or provisions of this Agreement or your M-PESA Agreement;
  - 23.1.4. there is reasonable apprehension that you are unable to pay your debts or we receive any notice that you have admitted any inability to pay your debts as they become due;
  - 23.1.5. you become the subject of any bankruptcy or insolvency proceeding;
  - 23.1.6. you are convicted under any criminal law in force related to the Lease or your M-PESA Account services or any other related services;
  - 23.1.7. any judgement or decree in any legal proceedings is passed against you which is not satisfied within seven (7) days of demand;
  - 23.1.8. a Garnishee or Attachment Order or a lien created against any of your deposits with Vodacom or any other third party or assets maintained by you is made;
  - 23.1.9. you attempt to modify or allow others to modify the AVL System or the Lease Handset; and/ or
  - 23.1.10. you fail to return the Lease Handset when required to do so.

## 24. CONSEQUENCES OF DEFAULT

- 24.1. At any time after an Event of Default has occurred which is continuing, we may, without prejudice to any other right or remedy granted to us under any law:

- 24.1.1. Lock the Lease Handset by the AVL System in accordance with the inherent consequences that this involves, such as the impossibility of partial or total access to the Lease Handset during the time that the default continues;
- 24.1.2. hold any of your funds standing in credit to your M-PESA Account as collateral and security for any Outstanding Payment Obligations. You hereby agree and confirm that Vodacom is entitled, in its discretion, to prevent or restrict you from withdrawing in whole or in part the funds in your M-PESA Account for so long as and to the extent of the Outstanding Payment Obligations in respect of this Agreement, without Airvantage or Vodacom giving any notice to you and/or without incurring any liability to you whatsoever in that connection;
- 24.1.3. exercise our rights pursuant to the cession in security given in clause 25 over funds held by you in any of your M-PESA Accounts with Vodacom and that Airvantage may, without notice, set off against any Outstanding Payment Obligation;
- 24.1.4. submit information concerning the Event of Default to Credit Reference Bureaus as required under the Banking Act or any other regulatory body; and /or
- 24.1.5. take reasonable measures including engaging an independent debt-collection agency, to recover the amount in default. These costs will be for your account and form part of the Payment Obligations.

## 25. **CESSION IN SECURITY**

- 25.1. As security for your Obligations, whether actual, prospective or contingent, direct or indirect, whether a claim to payment of money or to the performance of any other Obligation, whether or not the said Obligations were within the contemplation of the Parties at the Start Date, you hereby pledge and cede in securitatem debiti (as security for your Obligations), to and in favour of Airvantage, all Your rights, title and interest in and to any proceeds standing to the credit of any of the your M-PESA Accounts and any other of your bank accounts and/or cash or near cash instruments held by you.

## 26. **POWER OF ATTORNEY**

- 26.1. As security for the performance by you of your Obligations under this Agreement, by signing the Agreement, you appoint us and each of our directors, officers and employees jointly and severally to be your attorney to do any such things we consider that we require in order to organize, collect, realise or perfect our rights or to secure the performance by you of any of your Obligations under the Agreement.

## 27. **STATEMENTS**

- 27.1. You may access, at your request, statement(s) or activity report(s) in respect of your Lease through the Airvantage App or the USSD or via your M-PESA Account.
- 27.2. You will be notified of all transactions on your MPESA Account and Handset Lease account by way of SMS.

## 28. **YOUR PERSONAL INFORMATION**

- 28.1. In compliance with the provisions of the relevant data protection legislation in Lesotho, we will treat your personal data obtained hereunder confidentially and keep it secure.
- 28.2. You hereby expressly consent and authorize us to disclose received records or utilize your personal information or data relating to your MPESA Account and your Airvantage Account with respect to the Lease and any details in relation to this Agreement:
  - 28.2.1. to and from our service providers, dealers, agents or any other company that may be or become our affiliate or subsidiary or holding company for reasonable commercial purposes relating to this Agreement;
  - 28.2.2. to a Credit Reference Bureau;
  - 28.2.3. to independent debt-collection agencies;
  - 28.2.4. to our lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
  - 28.2.5. for reasonable commercial purposes connected to your Handset Lease, such as marketing and research related activities; and
  - 28.2.6. in business practices including but not limited to quality control, training and ensuring effective systems operation.
  - 28.2.7. if we are legally required to do so

- 28.3. You authorize us to disclose, respond, advise exchange and communicate the details or information pertaining to this Agreement to third parties involved in the administration of your Airvantage Account updating of databases, or provision of user support.
- 28.4. You shall notify us of your nearest Vodacom Shop and of any changes to your Personal Information in writing or update the same through the Airvantage App or the USSD including but not restricted to your name and address. Until such notice is received, your Personal Information shall be deemed to be that which you provided in your Application to apply for the Lease.
- 28.5. We will continue to process your Personal Information to the extent that it is adequate and necessary for the relevant purposes referred to in this clause and our Privacy Policy, which can be found at [www.airvantage.co.za](http://www.airvantage.co.za)

## 29. **INDEMNITY**

- 29.1. You undertake to indemnify us and hold us harmless against any loss, charge, damage, expense, fee or claim which we may suffer or incur or sustain thereby and you absolve us from all liability for loss or damage which you may sustain from us acting on your instructions or requests or in accordance with this Agreement.

## 30. **COMPLAINTS, DISPUTE RESOLUTION, JURISDICTION AND ARBITRATION**

- 30.1. You may contact the Vodacom Customer Care Center: 114 to report any complaints, disputes, claims or discrepancies in your Handset Lease Account. Alternatively, you can visit any Vodacom Shop.
  - 30.1.1 We will take all reasonable measures within our means to resolve your complaint in terms of these Ts & Cs and our complaints handling procedures, which are available on request from any Vodacom Shop or the Vodacom Customer Care Centre. Where a notification regarding your complaint or any other matter is expected from us but not received, you are entitled to follow up on the complaint within a reasonable time after non-receipt of such notification.
- 30.2. 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 (Lesotho Branch). Such arbitration shall be conducted in the English language in Lesotho in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act.
- 30.3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
- 30.4. This Agreement shall be governed by and construed in accordance with the laws of Lesotho.

31. **NOTICES**

31.1. Without prejudice to any other clause in these Terms, all notices concerning this Agreement may be sent via SMS to the Handset Lease MSISDN and shall be deemed to be received if we do not receive a delivery failure notice.

32. **CONTACT**

32.1. You can contact us through our Customer Services department by calling customer service at 114# or by email at [supportls@airvantage.co.za](mailto:supportls@airvantage.co.za).

32.2. Customer Services' operating hours are Monday to Friday, 9:00am to 5:30pm (closed on Saturdays, Sundays and public holidays).

33. **FINANCIAL CONSUMER PROTECTION REGULATIONS**

33.1. To the extent that you may be entitled to the protections of the Financial Consumer Protection Regulations, please note that important clauses which may limit our risk or liability or create some risk or liability for you or require you to indemnify us or a third party or serve as an acknowledgement, by you, of a fact, are in bold. These provisions do not seek to restrict, limit or avoid any statutory right you may have.

34. **COOLING OFF PERIOD**

34.1. You have the right to cancel this Agreement and return the Lease Handset within 7 days (the "Return Period") of the date of this Agreement in accordance with your cooling off rights. To return the Lease Handset, you may be required to pay a repackaging and/ or restocking fee.

34.2. Your cooling off right will not apply if you have used the Lease Handset.

35. **MISCELLANEOUS**

35.1. This Agreement, as amended by us from time to time, constitutes the entire agreement between you and us and supersedes all and any prior undertakings, agreements and understandings between you and us.

35.2. No failure or delay by either yourself or on our part 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.

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

35.4. If any provision of these Terms is 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.

35.5. Any variations or amendments to these Terms shall be binding upon you as fully as if the same were contained in these Terms.

35.6. You shall not assign, cede or otherwise transfer your rights and/or duties under this Agreement in any way.

35.7. We may without notice to You, cede any or all of our rights and/or delegate our Obligations under the M-PESA Account Authority contained in clause 15 either absolutely or as security to any other person or persons (notwithstanding that a cession and/or delegation to more than one person may result in a splitting of claims against you, which splitting of claims you hereby agree to) and on any such cession and/or delegation taking place, you shall, if so required by any cessionary, make all payments directly to such cessionary.

35.8. You warrant and confirm that you have the capacity to enter into this Agreement.