



TAKAFUL PRIVATE CAR CERTIFICATE

SHARI'AH AND LEGAL DOCUMENT

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PRIVATE CAR CERTIFICATE

1.0 THE TAKAFUL AGREEMENT

- 1.1** You as named in the **Schedule** agree to participate in Takaful Motor Private and pay the contribution into the **Participant Risk Fund (PRF)** based on **Tabarru'**. You authorize **Us** based on **Wakalah** to manage the **PRF** and in return, **We** will receive the **Wakalah** Fee.
- 1.2** You also agree that a portion of distributable surplus arising from the **PRF** will be distributed to eligible participants and a portion of the distributable surplus will be received by **Us** as a performance incentive based on **Ju'alah**. If the **PRF** is in deficit, **You** agree to accept an interest-free loan which will be provided by **Us** to the **PRF** based on **Qard**.

2.0 CONSUMER TAKAFUL CONTRACT

- 2.1** Where **Your Car** is used for any purpose that is not related to **Your** trade, business or profession, the following applies. This **Certificate** is issued pursuant to:
- (a) the payment of contribution as specified in the **Takaful Schedule** to the **Participant Risk Fund (PRF)** under the principle of **Takaful** to help other participants in the event as defined in this **Certificate**;
 - (b) the answers given in **Your** Proposal Form (or when **You** applied for this **Takaful**); and

any other disclosures made by **You** between the time of submission of **Your** Proposal Form (or when **You** applied for this **Takaful**) and the time this **Certificate** is entered into. The answers and any other disclosures given by **You** shall form part of this **Certificate of Takaful** between **You** and **Us**. However, in the event of any pre-certificate misrepresentation made in relation to **Your** answers or in any disclosures given by **You**, only the remedies in Schedule [*] of the Insurance Act 2020 will apply.

- 2.2** It is **Our** responsibility to manage the **PRF** on behalf of the participants under the principle of **Wakalah**.
- 2.3** This **Certificate** reflects the terms and conditions of the **Certificate of Takaful** as agreed between **You**, **Us** and participants of the **PRF**.

3.0 DEFINITIONS OF WORDS HIGHLIGHTED IN THE CERTIFICATE

In this **Certificate**, **Schedule** and **Certificate of Takaful**, unless the context otherwise requires, the following words shall have the meanings as defined below.

1. ACCESSORIES

This refers to the standard factory-fitted tools of the **Car** including air-conditioners and spare tyres and may include radio/ cassette player/compact disc player and the like if specified in the **Schedule**.

2. ACT OF TERRORISM

This refers to an act by any person(s) or group that uses force or violence and/or the threat of force or violence, whether they are acting alone or on behalf of or in connection with any organisation(s) or government(s) and done for political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

3. ADJUSTER

This refers to a person or entity registered under the Insurance Act 2020 who is appointed by **Us** to investigate the cause and circumstances of a loss and to determine the amount of loss.

4. AUTHORISED DRIVER

This refers to any person who drives **Your Car** with **Your** consent or permission provided he or she holds a valid driving licence of the relevant type and is not disqualified to drive by law or for any other reason.

5. CAR

This refers to the motor vehicle described in the **Schedule** and includes the manufacturer's standard options and **Accessories** fitted to it and any other non-standard options or descriptions that are specifically listed in the **Schedule**.

6. CERTIFICATE

Certificate includes the **Schedule**, the **Certificate of Takaful** and the **Schedule**.

7. CERTIFICATE OF TAKAFUL

This **Certificate** is a prescribed form that **We** are required to issue to **You** under the Traffic Act CAP 403, and National Transport and Safety Authority Act 2012, and it outlines the particulars of any conditions subject to which the **Certificate** is issued.

8. CHEATING

This follows the meaning as defined under Section [*] of the Penal Code which is as follows: Whoever by deceiving any person, whether or not such deception was the sole or main inducement:

- (a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property; or
- (b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation, or property, is said to “cheat”.

9. CRIMINAL BREACH OF TRUST

This follows the meaning as defined in the Shari’ah Law which is as follows:

Whoever, being in any manner entrusted with property, or with any dominion over property either solely or jointly with any other person, dishonestly misappropriates, or converts to his own use, that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal certificate, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

10. ENDORSEMENT

This refers to the document that **We** issue to **You** to confirm any changes or extensions of the coverage to the basic **Certificate**.

11. EXCESS

This refers to the amount that must be borne by **You** first for each claim. The amount of the **Excess** is shown in the **Schedule**. **You** have to pay the **Excess** irrespective of who is at fault in the **Incident**.

12. HOUSEHOLD

This refers to all members of **Your** or **Your Authorised Driver’s** immediate family i.e., spouse, children including legally adopted children, parents, brother(s) and sister(s) staying under one roof with **You** in the case of **Your** immediate family, or with **Your Authorised Driver**, in the case of his immediate family.

13. INCIDENT

Any event which could lead to a claim under this **Certificate**.

14. JU’ALAH

This refers to a contract where a party offers a specified reward to another party who achieved a determined result. Under this **Certificate**, **You** allow **Us** to receive a portion of distributable surplus arising from the **PRF** as performance incentive for **Our** achievement in managing the **PRF** which results in the surplus.

15. LIMITATIONS AS TO USE

According to **Your Certificate of Takaful (CT)**, **Your Car** can only be used for “Social, domestic and pleasure purposes and for the Participant’s business”. The **CT** also states that “The **Certificate** does not cover use for hire or reward, racing, pace-making, reliability, trial speed-testing, the carriage of goods other than samples in connection with any trade or business”.

16. MARKET VALUE

This refers to the reasonable cost to buy another car of the same make, model, age and general condition similar to **Your Car** at the time of loss. The **Market Value** of **Your Car** at the time of loss would be determined according to the terms of the option that **You** had chosen at the time **You** obtained this **Certificate**. If **You** had opted for a **Motor Vehicle Valuer** to determine **Your Sum Covered** then the **Market Value** would be based on that **Motor Vehicle Valuer** as described in clause 17 below. However, if **You** had not opted for a **Motor Vehicle Valuer** then the **Market Value** of **Your Car** in the event of dispute would be determined by an **Adjuster** from **Our** panel and this value should be equal to the cost of acquiring a replacement car of the same make, model and age of **Your Car** at the time of loss. If this valuation is not available or appears in **Our** opinion to be unduly low or high then valuation will be determined by another **Adjuster** agreed by both **You** and **Us**.

17. MOTOR VEHICLE VALUER

This refers to an entity registered in Kenya under the Insurance Act 2022 to determine the **Market Value** of **Your Car** at the time **You** obtained/renewed this **Certificate** as well as at the time of the loss. **You** can opt to use the valuation recommended by a valuer as the **Sum Covered** to avoid the consequences of under-coverage as described in Section 4.2e. Alternatively, **You** may choose to determine the **Sum Covered Yourself** but **You** would be subject to Section 4.2e if **You** are under-covered.

18. MINIMUM CONTRIBUTION

The minimal contribution described in the **Schedule**.

19. PARTICIPANT RISK FUND or PRF

This refers to a fund established to pool a portion of contributions paid by participants, on the basis of **Tabarru'** for the purpose of meeting claims associated with events or risks specified in this **Certificate**. This fund is collectively owned by the pool of participants.

20. PERIOD OF TAKAFUL

The period shown in the **Schedule** when the cover provided by this **Certificate** is operative. Cover is only valid from the inception date of the **Takaful Certificate** or from when **You** and **We** agree that cover should commence.

21. QARD

This refers to a contract of lending money by a lender to a borrower where the latter is bound to repay an equivalent replacement amount to the lender. Under this **Certificate**, **We** will lend an amount of money to the **PRF** without interest if the **PRF** is in deficit.

22. REPAIRER

This refers to motor repair workshops approved by **Us** or any **Repairer** that **We** have given **You** a special permission to use, for a claim.

23. ROAD

Section 2 of the Road Transport Act 1987 defines "Road" as "any public road and any other road to which the public has access and includes bridges, tunnels, lay-bys, ferry facilities, interchanges, roundabouts, traffic islands, road dividers, all traffic lanes, side tables, median strips, overpasses, underpasses, approaches, entrance and exit ramps, toll plazas, service areas, and other structures and fixtures to fully effect its use".

24. SCHEDULE

This document shows **Your** name and address, the **Period of Takaful**, the sections of this **Certificate** which apply, the contribution **You** have paid, the **Car** which is covered, the **Sum Covered** and details of any extensions or **Endorsements**.

25. SUM COVERED

This is the maximum that **You** will be paid for a claim under Section 5. This amount is shown in the **Schedule**. The **Sum Covered** must be sufficient to cover the cost to replace **Your Car** in the event of an **Incident** that completely destroys it.

26. TABARRU'

This refers to a donation for charitable purposes. Under this **Certificate**, You donate a portion of the contribution to the **PRF** based on **Tabarru'** to help other participants. **Tabarru'** takes into effect when **You** contribute to the **PRF**.

27. TAKAFUL

This refers to a mutual assistance scheme based on the principles of brotherhood, solidarity and cooperation where each participant agrees to contribute a sum(s) of money on the basis of **Tabarru'** into a common fund to provide financial assistance payable to the participant, person covered or the beneficiary on the occurrence of pre-defined events.

28. WAKALAH

This refers to a contract where a party, as principal authorizes another party as his agent to perform a particular task on matters that may be delegated, with or without the imposition of a fee. Under this **Certificate**, **You** authorize **Us** to manage the **PRF** based on **Wakalah** and in return, **We** will receive a **Wakalah** fee.

29. WE, OUR, US

This refers to Takaful Insurance of Africa that is issuing **You** this **Certificate** representing the participants of the **PRF**.

30. YOU, YOUR, YOURSELF

This refers to the **Certificate** holder or person described in the **Schedule** as “the Participant”.

4.0 LOSS OR DAMAGE TO YOUR OWN CAR

4.1a: WHAT IS COVERED	4.1b: WHAT IS NOT COVERED
<p>You will be indemnified if Your Car is lost or damaged during the Period of Takaful arising from the following Incidents:</p> <ul style="list-style-type: none"> (i) accidental collision or overturning; (ii) collision or overturning caused by mechanical breakdown; (iii) collision or overturning caused by wear and tear; (iv) impact damage caused by falling objects provided no convulsions of nature is involved; (v) fire, explosion or lightning; (vi) breakage of windscreen, windows or sunroof including lamination/tinting film, if any; (vii) burglary, housebreaking or theft; (viii) malicious act; or (ix) while in transit i.e., being carried from one place to another (including during loading and unloading) of Your Car by: <ul style="list-style-type: none"> a. road; b. rail; c. inland waterway i.e., across a river or canal etc.; or d. across the sea by ferry or ship or any sea faring vessels etc. between the island of Penang and the mainland. 	<p>The events which are not covered are the exceptions listed below. These exceptions are specific to Section 4 and are in addition to exceptions listed in Section 8 and the applicable Endorsements.</p> <p>We will not pay for the following losses:</p> <p>(i) Consequential Losses Any direct or indirect losses of any kind that may arise as a consequence of any Incident other than that provided for in Section 4.2.</p> <p>(ii) Loss of Use Any expense or financial loss that You may incur because You cannot use Your Car e.g., cost of hiring replacement car, travelling expenses etc.</p> <p>(iii) Depreciation The loss of value of Your Car due to the damage sustained or the time taken to repair the Car, and/or for any loss or damage that results over a prolonged period of time due to wear and tear, rust and corrosion.</p> <p>(iv) Breakdown or Malfunction of Parts Any mechanical, electrical or electronic breakdown, equipment or computer malfunction, or any other failure or breakdown to Your Car.</p> <p>(v) Damage to Tyre(s) Any damage to the tyre(s) of Your Car unless other parts of Your Car are also damaged at the same time.</p> <p>(vi) Convulsions of Nature Any loss or damage to Your Car caused by flood, typhoon, hurricane, storm, tempest, volcanic eruption, earthquake,</p>

	<p>landslide, landslip, subsidence or sinking of the soil/earth or other convulsions of nature.</p> <p>(vii) Excess The amount of Excess stated in the Schedule. This is the first amount that You have to bear in respect of each and every claim under the Certificate.</p> <p>(viii) Loss of Electronic Data Loss of electronic data and any consequences arising from it, directly or indirectly caused by or in connection with a computer virus. This includes loss of use, reduced functionality, or any other associated loss or expense in connection with the electronic data.</p> <p>(ix) Cheating or Criminal Breach of Trust Any loss or damage, including theft, caused by or attributed to the act of Cheating or Criminal Breach of Trust by any person.</p>
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4.2 BASIS OF SETTLEMENT

4.2.1 This section explains how **We** will settle **Your** claim once **We** accept that it is payable under Section 4.0. If **Your Car** is damaged as a result of any **Incident**, **We** have the option of doing the following:

A. IF YOUR CAR IS REPAIRABLE

4.2.2 If in **Our** opinion **Your Car** is economical to repair, **We** have the option to:

- (a) arrange for **Your Car** to be repaired at **Our** approved **Repairer** and pay the cost of repairing **Your Car** to the condition which is as near as possible to the condition it was in before the loss happened;
- (b) pay **You** in cash the amount **We** estimate it would cost to repair **Your Car**; or
- (c) reinstate or replace **Your Car** with one of the same make, model, age and general condition.

B. IF YOUR CAR IS NOT REPAIRABLE

4.2.3 If in **Our** opinion, the damage to **Your Car** is so great that it would not be safe or economical to repair, **We** will declare **Your Car** “Beyond Economic Repair” (“BER”) and **You** will be paid up to the maximum amount as stated in (d) below or offer **You** a settlement sum equivalent to the **Market Value**. **We** may also opt to replace **Your Car** with one of the same make, model, age and general condition. If **We** take any of these actions, this **Certificate** shall be automatically terminated once **We** make payment.

In cases where the valuation of the **Adjuster** varies from **Market Value** by more than 10%, **We** would also have the option to offer a settlement value which is equal to the cost of acquiring a replacement car of the same make, model and age of the **Car** at the time of loss. It is **Our** option to offer **You** a replacement of the **Car**, should **You** not agree with the offer.

C. REPLACEMENT PARTS

4.2.4 If the spare parts or **Accessories** required to repair **Your Car** are not available in Kenya, or if **We** choose to pay for the loss or damage in cash, **We** will settle **Your** claim on the following basis:

- (a) the last known parts price list issued in Kenya by the manufacturer or their agent. If the price list in Kenya does not exist, **We** will use the price at the manufacturer’s production plant and include reasonable cost of transportation to Kenya (but not the cost of air freight); and
- (b) the reasonable labour cost of fitting such spare parts or **Accessories** in Kenya.

D. THE MAXIMUM AMOUNT WILL BE PAID TO YOU

4.2.5 If **Your Car** is **BER** or stolen and not recovered, the amount payable under the **Certificate** will be the **Market Value** at the time of the loss or the **Sum Covered** as shown in the **Schedule**, whichever sum is the lesser. Upon **Our** payment of the said amount, this **Certificate** shall be automatically terminated. The **Market Value** is to be determined according to clauses 17 and 18 of Section 7.

E. UNDER-COVERAGE

- 4.2.6 If the **Sum Covered** of **Your Car** is less than the **Market Value** at the time of the loss, **We** will only pay part of the loss in proportion to the difference between the **Market Value** and the **Sum Covered** as shown in the formula below:

$$\text{Sum Covered} / \text{Market Value} \times \text{Assessed Loss}$$

The balance has to be borne by **You**. However, this will only apply if the under-covered amount is more than 10% of the **Market Value**.

F. BETTERMENT

If new original parts are used to repair **Your Car** and as a result of which **Your Car** is in a better condition than it was before the damage, **You** would be required to contribute to its betterment, a proportion of the costs of such new original parts. **Your** contribution would be according to the following scale:

Age of Your Car (Years)	Rate of Betterment
less than 5	0
5	15%
6	20%
7	25%
8	30%
9	35%
10 and above	40%

To determine the rate of betterment to be applied, the age of **Your Car** will be calculated based on when it was originally registered in Kenya:

a. as a locally assembled car	Date of Original Registration
b. as a new imported Completely Built Unit (CBU) car	Year of Manufacture
c. as an imported second-hand/used/reconditioned car	Year of Manufacture

4.3 TOWING COSTS

If **Your Car** cannot be driven as a result of any damage to it that is covered by this **Certificate**, an amount up to a maximum of Kes [*] will be paid for the necessary and reasonable costs to remove **Your Car** to the nearest approved **Repairer** or to a safe place of storage while awaiting repair or disposal.

5.0 LIABILITY TO THIRD PARTIES

1a. WHAT IS COVERED	1b. WHAT IS NOT COVERED
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<p>You and/or Your Authorised Driver will be indemnified for the amount which You and/or Your Authorised Driver are legally liable to pay any third party (including third party's costs and expenses) for:</p> <ul style="list-style-type: none"> (i) death or bodily injury to any person except those specifically excluded under this Certificate; and/or (ii) damage to property except those specifically excluded under this Certificate. <p>as a result of an Incident arising out of the use of Your Car on a Road. This cover is extended to Your Authorised Driver provided Your Authorised Driver also complies with all the terms and conditions of this Certificate.</p>	<p>These exceptions are specific to Section 4 and are in addition to the Exceptions stated in Section 6 of this Certificate and any other applicable Endorsement. We will not pay for:</p> <ul style="list-style-type: none"> (i) death or bodily injury to any passenger being carried for hire or reward; (ii) death or bodily injury to any person where such death or injury arises out of and in the course of the employment of such person by You or by Your Authorised Driver; (iii) damage to property belonging to or in the custody of or control of or held in trust by You or Your Authorised Driver and/or any member of You or Your Authorised Driver's Household; (iv) liability to any person being carried in or upon or entering or getting onto or alighting from Your Car unless he/she is required to be carried in or on Your Car by reason of or in pursuance of his/ her certificate of employment with You or Your Authorised Driver and/or his/her employer; (v) liability caused by a passenger travelling in or alighting from Your Car; (vi) any claims brought against You by any driver of Your Car, whether authorised or not; (vii) any claims brought against any person in any country in courts outside Kenya and/ or (viii) all legal costs and expenses which are not incurred in or recoverable in Kenya or COMESA.
<h2>2. LIMITS OF OUR LIABILITY</h2>	
<p>The following will be paid for any one claim, or series of claims arising from one Incident, in any one Period of Takaful:</p> <ul style="list-style-type: none"> (i) unlimited amount for death or bodily injury to third party; and/or (ii) up to a maximum of Kes [*] for third party property damage. 	
<h2>3. MAXIMUM LEGAL COSTS</h2>	
<p>If You or Your Authorised Driver is charged for reckless and dangerous driving or careless or inconsiderate driving under the Traffic Act CAP 403 or any other offence related to the said Incident, legal cost incurred will be paid up to a maximum of Kes [*] to defend You or Your Authorised Driver provided always that such costs are incurred in Kenya, and provided that Our prior written consent had been secured.</p> <p>Only legal cost will be paid and any penalty imposed on You or Your Authorised Driver will not be paid.</p>	
<h2>4. RIGHTS OF RECOVERY</h2>	
<p>We have a right to refuse to pay You any indemnity or Your Authorised Driver if either of You commit a breach of any Certificate conditions or where the claim falls outside the scope of cover provided by Us under this Certificate. However, if We are legally required to pay any judgment sum in respect of a claim under Section 5 of this Certificate because of laws in force in Kenya, which We would otherwise not have to pay, We have the right to ask You or Your Authorised Driver to repay to Us the amount of that payment and any costs We have incurred in connection with the claim.</p>	

6.0 GENERAL EXCEPTIONS – THESE APPLY TO THE WHOLE CERTIFICATE

- 6.1 This section lists down circumstances under which this **Certificate** does not provide cover at the time of happening of the **Incident**. This is in addition to those already listed in Sections 41b and 51b.

1. UNLICENSED DRIVERS

There is no cover under this **Certificate** if **You** or **Your Authorised Driver** do not have a valid driving licence to drive **Your Car**. This will not apply if **You** or **Your Authorised Driver** have an expired licence but are not disqualified from holding or obtaining such driving licence under any existing laws, by-laws and regulations.

2. ALCOHOL, DRUGS AND OTHER INTOXICATING SUBSTANCES

There is no cover under this **Certificate** if **You** or **Your Authorised Driver** is under the influence of alcohol or intoxicating liquor, narcotics, dangerous drugs or any other deleterious drugs or intoxicating substance to such an extent that **You** or **Your Authorised Driver** are incapable of having proper control of **Your Car**.

You or **Your Authorised Driver** shall be deemed as incapable of having proper control of **Your Car** if after a toxicology or equivalent test, it is shown that the alcohol level in the breath, blood or urine of **You** or **Your Authorised Driver** is higher than the prescribed limit in the Traffic Act CAP 403 of 80mg of alcohol in 100ml of blood (or equivalent in respect of breath or urine) or other equivalent legislation that is in force at the material time.

3. FRAUD AND EXAGGERATED CLAIMS

If any claim is in any part fraudulent or exaggerated, or if **You** or anyone acting on **Your** behalf, uses fraudulent means to get any benefit under this **Certificate**, the entire claim will not be paid or payable. If **We** are required to make payment of any such claim to a third party, **We** shall be entitled to recover the sum paid and any costs incurred from **You**.

4. UNLAWFUL PURPOSE

There is no cover under this **Certificate** if **You** or **Your Authorised Driver** use **Your Car** for an unlawful purpose or to attempt an unlawful purpose i.e., in violation of Shari'ah principles, the criminal law or a recognised law of the country where **Your Car** was being used.

5. USE FOR RACING ETC.

There is no cover under this **Certificate** if **You** use or **You** allow **Your Authorised Driver** to use **Your Car**: (a) to practise for or to take part in any motor sport, competition (other than treasure hunt), rally, pace-making, reliability trial or speed test; or (b) on any racetrack.

6. USE OUTSIDE KENYA

Unless **We** provide otherwise, this **Certificate** does not cover **You** in respect of claims arising whilst **Your Car** was being used or driven outside Kenya or COMESA. In Kenya or COMESA, **Our** liability under this **Certificate** is governed by the Road Transport Act 1987 and the terms and conditions of this **Certificate**, and **Our** liability outside Kenya or COMESA is governed by the terms and conditions of this **Certificate** only.

For an additional contribution, **Your Certificate** can be extended to cover the use of **Your Car** outside Kenya only if **You** obtain the prescribed extension cover.

7. FAILURE TO TAKE PRECAUTION

Additional damages will not be paid if after an **incident** or breakdown:

- (a) **You** left **Your Car** unattended or failed to take proper precaution to prevent further loss or damage;
or
- (b) **You** continue to drive **Your Car** in an unroadworthy condition before any repair is done.

Claims that arise will not be paid if, when using **Your Car**, **You** do not take reasonable precaution to keep **Your Car** secured. This includes but is not limited to leaving **Your Car** unattended while unlocked or with ignition key left in or on **Your Car**.

8. WAR RISK

There is no cover under this **Certificate** for any loss or liability (including any cost of defending any action) connected in any way directly or indirectly to:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operation (whether war is declared or not), civil war, **Act of Terrorism**, mutiny, rebellion or revolution; or
- (b) strike, riots or civil commotion assuming the proportion of or amounting to an uprising, insurrection or military or usurped power.

For an additional contribution, **Your Certificate** can be extended to cover strikes, riots and civil commotion.

9 NUCLEAR RISK

There is no cover under this **Certificate** for any accident, loss or damage to any property or any loss or liability arising therefrom (including consequential losses and costs of defending any actions) connected in any way with operations using the nuclear fission or fusion process, or handling of radioactive material. This includes, but is not limited to:

- (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators and similar devices;
- (b) the use, handling or transportation of radioactive material in relation to any **Act of Terrorism**;
- (c) the use, handling or transportation of any weapon or explosive device employing nuclear fission or fusion; or
- (d) the use, handling or transportation of radioactive material.

10. CONVULSIONS OF NATURE

There is no cover (unless specifically participated) for any loss, damage or liability caused by flood, typhoon, hurricane, storm, tempest, volcanic eruption, earthquake, landslide, landslip, subsidence or sinking of the soil/earth or other convulsions of nature.

For an additional contribution, **Your Certificate** can be extended to cover flood, typhoon, hurricane, storm, tempest, volcanic eruption, earthquake, landslide, landslip, subsidence etc.

11. CONTRACTUAL LIABILITY

Any liability that arises by virtue of an agreement will not be paid by virtue of agreement but for which **We** would not have been liable in the absence of such agreement.

12. UNAUTHORISED DRIVER

Any **Incident**, loss, damage or liability caused, sustained or incurred whilst **Your Car**, in respect of which indemnity is provided by this **Certificate**, is being driven by any person other than an **Authorised Driver** or person driving on **Your** order or with **Your** permission.

13. COMMUNICABLE DISEASE EXCLUSION

13.1 Notwithstanding any provision, clause or term to the contrary within this **Certificate** and/or any **Endorsement** thereof, **Certificate** excludes any loss, damage, liability, claim, cost, expense or other sum of whatsoever nature, directly or indirectly caused by a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto.

13.2 As used herein:

13.2.1 "Communicable Disease" means any infectious, communicable or contagious disease, or any mutation or variation thereof, which can be transmitted by means of any substance or agent from any organism to another organism including, but not limited to, where:

13.2.1.1 the substance or agent includes, but is not limited to, a virus, bacterium, parasite, organism or other pathogen or any variation thereof, whether deemed living or not, and

13.2.1.2 the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms.

13.2.2 “caused by” means relating to; in connection with; arising under; arising out of; arising from; as a result of; resulting from; as a consequence of; attributable to; contributed to by; caused by; involving; and any other term commonly used and/or understood to reflect or describe a nexus and/or connection from one thing to another whether direct or indirect.

7.0 CONDITIONS – THESE APPLY TO THE WHOLE CERTIFICATE

This section spells out the terms and conditions that **You** must observe to ensure this **Certificate** remains effective. Basically, these conditions are of three types:

- (a) What **You** must do
- (b) What **You** must not do
- (c) What **We** can do

CONDITIONS PRECEDENT TO CERTIFICATE LIABILITY

7.1 The following conditions are conditions precedent to **Our** liability to pay **You** any indemnity under this **Certificate** and have to be observed by **You** strictly. **We** can repudiate this **Certificate** and/or will not pay claims under the **Certificate** if **You** breach any of the relevant conditions. These conditions also apply to **Your Authorised Driver** and any legal representative who seek indemnity under this **Certificate**.

1. DUTY OF DISCLOSURE

7.2 The duty of disclosure is different for a Consumer **Takaful** Contract and for a Non-Consumer **Takaful** Contract. They are separately outlined below:

A. CONSUMER TAKAFUL CONTRACT

7.3 Where **You** have applied for this **Takaful** wholly for purposes unrelated to **Your** trade, business or profession, **You** had a duty to take reasonable care not to make a misrepresentation in answering the questions in the Proposal Form (or when **You** applied for this **Takaful**) i.e. **You** should have answered the questions fully and accurately. Failure to have taken reasonable care in answering the questions may result in avoidance of **Your Certificate of Takaful**, refusal or reduction of **Your** claim(s), change of terms or termination of **Your Certificate of Takaful** in accordance with Insurance Act 2020. **You** were also required to disclose any other matter that **You** knew to be relevant to **Our** decision in accepting the risks and determining the rates and terms to be applied.

7.4 **You** also have a duty to tell **Us** immediately if at any time after **Your Certificate of Takaful** has been entered into, varied or renewed with **Us**, any of the information given in the Proposal Form (or when **You** applied for this **Takaful**) is inaccurate or has changed.

B. NON-CONSUMER TAKAFUL CONTRACT

7.5 Where **You** have applied for this **Takaful** for purposes related to **Your** trade, business or profession, **You** had a duty to disclose any matter that **You** know to be relevant to **Our** decision in accepting the risks and determining the rates and terms to be applied, and any matter a reasonable person in the circumstances could be expected to know to be relevant, otherwise it may result in avoidance of **Your Certificate of Takaful**, refusal or reduction of **Your** claim(s), change of terms or termination of **Your Certificate of Takaful**.

7.6 **You** also have a duty to tell **Us** immediately if at any time after **Your** contract of **Takaful** has been entered into, varied or renewed with **Us**, any of the information given in the Proposal Form (or when **You** applied for this **Takaful**) is inaccurate or has changed.

2. CLAIMS PROCEDURES

7.7 If **Your Car** is involved in any **Incident** that could lead to a claim under this **Certificate**, **You** must do the following:

- (a) Notify **Our** claims department of the **Incident** and get a Claim Form. **You** must notify **Us** of the **Incident** as soon as possible but in any event:
 - (i) Within seven (7) days if **You** are not physically disabled or hospitalised following the **Incident**; or
 - (ii) Within thirty (30) days or as soon as practicable if **You** are physically disabled and hospitalised as a result of the **Incident**.

We may allow a longer notification period if **You** can provide specific proof and justification for the delay.

- (b) Report the **Incident** to the police as required by law and do all that is required to assist the police authorities to secure a conviction against the offender.
- (c) Complete the Claim Form in full and return it to **Us** within twenty-one (21) days from the date of **Your** notification as per (a) above. **You** are required to answer all the questions in detail in all applicable sections and provide **Us** with all the necessary documents to support **Your** claim. **We** will not be held responsible if there is any delay on **Your** part to submit the Claim Form duly completed together with all the necessary documents.

A longer claims submission period may be allowed by **Us** subject to specific proof and justification by **You** for the delay.

- (d) If there are any claims made against **You** by a third party, **You** must immediately notify **Us** of the same and **You** must send to **Us** any notification of claim, notice of impending prosecution or inquest, summons, writ or any letters from the solicitors of the third party as soon as **You** receive such documents, but in any event within fourteen (14) days from the date of receipt of any of the documents.
- (e) Send **Your Car** to any of **Our** approved **Repairer** so that **We** can inspect **Your Car** before **We** give approval to proceed with repairs or take reasonable action to safeguard **Your Car** from further loss or damage. **We** can refuse to pay any claim under this **Certificate** if **You** breach this condition.
- (f) **You** must obtain **Our** consent in writing before **You** repair **Your Car** or incur any expenses in connection with a claim under this **Certificate**. **You** must NOT do any of the following:
 - (i) Admit any responsibility for any **Incident**; or
 - (ii) Negotiate or settle any claims made against **You** by a third party, unless **We** write and inform **You** that **You** can.

We will decide whether to negotiate, defend or settle, in **Your** name, **Your Authorised Driver's** name and/or on **Your** behalf, any claims made against **You** or **Your Authorised Driver** by a third party. If in **Our** assessment the third-party claim made against **You** or **Your Authorised Driver** for property damage will exceed the limit of liability of Kes [*], the full amount of **Our** liability will be paid to **You** or the third party and hand over the further conduct of any defence, settlement or proceeding to **You** completely. After doing so **We** will not be liable under this **Certificate** to make any more payments to **You** or any claimant or any other person arising from the same **Incident**.

The conditions above also apply to anyone else who wishes to claim under the terms and conditions of this **Certificate**. "Anyone else" may refer to personal representative or administrator/estate of the participant.

3. CANCELLATION

7.8 Either **You** or **We** may cancel this **Certificate** at any time during the **Period of Takaful**.

- (a) Cancellation by **You**:
 - (i) **You** can cancel this **Certificate** at any time by returning the **Certificate of Takaful (CT)** to **Us** or, if the **CT** has been lost or destroyed, **You** must provide **Us** with a duly certified Statutory Declaration (SD) to confirm this.
 - (ii) After returning the **CT** or SD **You** will be entitled to a refund of the contribution (**Wakalah** fee and **Tabarru'** portion) for the unexpired period calculated on a pro-rata basis from the date of receipt by **Us** of the **CT** or SD in the event that the **Certificate** is lost or destroyed or not received by **You**.

- (iii) The **Certificate** will automatically lapse once **You** sell or dispose off **Your Car** because **Your** permissible **Takaful** interest in the **Car** will cease. If **You** want to transfer the **Certificate** to the new buyer, **You** have to get **Our** prior consent.
- (b) Cancellation by **Us**:
 - (i) **We** may also cancel this **Certificate** by giving **You** fourteen (14) days notice in writing by registered post to **Your** last address known to **Us**.
 - (ii) After returning the **CT** or **SD** **You** will be entitled to a pro-rata refund of contribution (Wakalah fee and Tabarru' portion) for the unexpired period calculated on a pro-rata basis from the date **We** receive the **CT** or **SD** from **You** to the expiry date of the **Certificate**.

There will not be any refund of contribution for any cancellation of **Certificate** (either by **You** or by **Us**) if **You** have paid the **Minimum Contribution** only or if a claim has been made on this **Certificate**.

4. IF THERE IS MORE THAN ONE TAKAFUL/INSURANCE COVERING THE SAME CAR

- (a) **You** must inform **Us** in writing if **You** have taken out any other **Takaful/Insurance** in respect of **Your Car** during the **Period of Takaful**.
- (b) If a claim arises under this **Certificate** and such a loss is also claimable under the other **Takaful** certificate(s)/Insurance policy(ies) taken by **You**, **We** will only contribute **Our** rateable proportion of the whole loss. **We** will not be liable to pay the claim first and then seek recovery from the other co-Takaful operators/coinsurers who is/are also liable for the loss.

5. SUBROGATION

7.9 We reserve the right to undertake in **Your** name and **Your** behalf:

- (a) the full conduct, control and settlement of any proceedings;
- (b) recover compensation or secure indemnity from any third party in respect of anything covered by this **Certificate** at **Our** own expense and benefit.

6. DISPUTE RESOLUTION

- 7.9** If there are differences or disputes on any matters relating to this **Certificate** involving amounts exceeding Kes [*], an Arbitrator shall be jointly appointed by **You** and **Us** in writing to resolve the differences or disputes. If no agreement is reached on who is to be the Arbitrator within one month of being required to do so then **You** and **We** shall be entitled to appoint an Arbitrator each. Both Arbitrators shall then proceed to hear the difference or dispute. If the Arbitrators cannot agree on the amount within thirty (30) days, then the Association of Kenyan Insurance (AKI) shall resolve the matter. If the disputed sum is less than Kes [*], **You** may refer the matter to the **Insurance Regulatory Authority** to resolve the dispute.

7. OTHER MATTERS

7.10 We will only be liable to pay **You** any indemnity under this **Certificate** if **You**:

- (a) Comply with all the terms and conditions of this **Certificate**. These conditions are also applicable to **Your Authorised Driver** and any legal representative who seek protection under this **Certificate**;
- (b) Maintain **Your Car** in a reasonably efficient and roadworthy condition. **You** must get **Our** consent if **You** make any modification that will enhance or in any way affect the performance of **Your Car**;
- (c) Take reasonable care to avoid any situation that could result in a claim. This **Certificate** will not cover **You** if **You** or **Your Authorised Driver** are reckless i.e., where **You** recognise a serious risk but deliberately do not take steps to prevent it. This includes but is not limited to leaving **Your Car** unattended while unlocked or with ignition keys left in or on **Your Car**; and
- (d) Make **Your Car** available to **Us** for inspection at all reasonable times upon request.

8. REFERENCE TO MOTOR VEHICLE MARKET VALUATION

- 7.11 This refers to the motor vehicle **Market Valuation Entity** licensed by IRA to determine the **Sum Covered** of **Your Car** at the time **You** obtain/renewed this **Certificate** as well as the **Market Value** at the time of the loss.
- 7.12 When a claim is made, the **Market Value** of **Your Car** would be determined by an **Adjuster**, agreed to by both **You** and **Us** and this value would be accepted as the cost of acquiring a replacement car of the same make, model and age of **Your Car** at the time of loss.
- 7.13 The valuation done by the **Adjuster** will be conclusive evidence in respect of the **Market Value** of **Your Car** in any legal proceedings against **Us**.

9. TERMINATION OF THIS CERTIFICATE

- 7.14 This **Certificate** shall automatically terminate upon occurrence of any of the following:
- (a) upon cancellation of this **Certificate** by **You**;
 - (b) upon cancellation of this **Certificate** by **Us**;
 - (c) when there is fraud or misrepresentation of material fact during application;
 - (d) when **We** made the claim settlement for **Your Car** due to "Beyond Economic Repair" or stolen;
 - (e) when the **Certificate** expires at the end of **Period of Takaful**; or
 - (f) upon cancellation due to Shari'ah Non-Compliance as per Additional Condition 1.
- 7.15 If the termination is due to (a) and (b), please refer to "Condition 3 – Cancellation" for contribution (**Wakalah** fee and **Tabarru'** portion) refund. If the termination is due to (c) and (f), **We** will refund to **You** the contribution in full. If the termination is due to (d) and (e), **We** will not refund to **You** the contribution.
- 7.16 Any contribution receipt by **Us** after the termination of this **Certificate** will not create any liability to **Us** but **We** will refund such contribution to **You** without profit.

10. BENEFITS

- 7.17 All the benefits specified in this **Certificate** will be payable from the **PRF**.

11. CUSTOMER SERVICE CHARTER

- 7.18 You may visit Our website to know more about **Our Customer Service Charter**.

12. LEGAL PROCEEDING CLAUSE

- 7.19 No action at law or in equity shall be brought to recover on this **Certificate** prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of this **Certificate**. If the person covered shall fail to supply the requisite proof of loss as stipulated by the terms and conditions of this **Certificate**, the person covered may, within a grace period of one (1) calendar year from the time that the written proof of loss to be furnished, submit the relevant proof of loss to **Us** with cogent reason(s) for the failure to comply with the **Certificate** terms and conditions. The acceptance of such proof of loss shall be at the sole and entire discretion of **Us**. After such grace period has expired, **We** will not accept, for any reason whatsoever, such written proof of loss.

13. PREVALENT CERTIFICATE WORDING

- 7.20 For avoidance of doubt, the English version of this Certificate Wording will prevail at all times.

14. COMPLIANCE TO PROPERTY IN ACCORDANCE TO SHARI'AH CLAUSE

- 7.21 It is hereby agreed and declared that this **Certificate** will not cover and is not intended to cover business, property, materials, stock, cash or any other financial instrument (collectively "Property") and/or any liability of whatsoever nature, whether temporary or permanent, arising from any such Property if at any time after the inception of the **Certificate** **We** shall find such Property to be Shari'ah non-compliant. In any such case, **We** shall *reserve the right* to cancel this **Certificate** and refund any contribution received in respect thereof.

Subject otherwise to the terms and conditions of the **Certificate**.

15. DISTRIBUTION OF SURPLUS

- 7.22 20% of the distributable surplus arising from the **PRF** as determined by **Us** will be distributed to eligible participants in the form of cash back. **We** will receive 10% of the distributable surplus as performance incentive based on **Ju'alah**.

16. WAKALAH FEE

- 7.23 The **Wakalah** fee chargeable under this **Certificate** is 50% of the contribution. The **Wakalah** fee will be deducted upfront upon payment of the contribution.

17. SANCTIONS EXCLUSION CLAUSE

- 7.24 **We** shall not be deemed to provide cover nor be liable to pay any claim or pay any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America, or any of its states and any other locally applicable laws and regulations. **We** may terminate this **Certificate** with immediate effect and shall not thereafter be required to transact any business with **You** in connection with this **Certificate**, including but not limited to, making or receiving any payments under this **Certificate**.

18. RIGHT TO TERMINATE DUE TO ANTI MONEY LAUNDERING AND COUNTER FINANCING OF TERRORISM

- 7.25 If **We** discover, or have justified suspicion, that this **Certificate** is exploited for money laundering activities or to finance terrorism, **We** reserve the right to terminate this **Certificate** immediately. **We** shall deal with all contributions paid and all benefits or sums payable in respect of this **Certificate** in any manner which **We** deem appropriate, including but not limited to handing it over to the relevant authorities.

19. DATA PROTECTION ACT 2019

- 7.26 **You** may make inquiries or request for access to or correction of **Your** Personal Data or limit the processing of **Your** Personal Data at any time hereafter by submitting such request to **Us** via email to **TalkToUs@takafulafrica.co.ke**. **We** will retain **Your** personal information only for as long as necessary to fulfil the purpose for which it was collected or to comply with legal, regulatory or internal policy requirements.
- 7.27 **You** have expressly acknowledged and consent to **Your** Personal Data to be stored, processed and disclosed by **Us** for the purposes and in accordance with **Our** Privacy Notice as published on **Our** website.

20. MANAGEMENT OF FUND

- 7.28 Pursuant to the authorization given to **Us** by **You** and the rest of the participants, **We** will manage the **PRF** in accordance with Shari'ah principles and in a manner that preserve the interest of the participants. **We** have the discretion to conduct any actions deemed necessary for the benefits of the participants and the fund, including but not limited to investing the fund and securing adequate retakaful, subject to Shari'ah and regulatory requirements.

21. DEFICIENCY & LOSS RECTIFICATION

- 7.29 If the **PRF** is in deficit, **We** will provide an interest-free loan to the **PRF** based on **Qard** to rectify the deficit. Any profit arising from the loan will be owned by **PRF** (pool of participants) and the loan will be repaid when the **PRF** returns to surplus position. **We** may waive **Our** rights to receive the repayment of the loan. If the **PRF** is in deficit or suffers loss due to **Our** mismanagement or negligence, **We** will make an outright transfer to rectify the deficit or loss.

22. NOTICE

- 7.30 Any correspondence, notice, request, instruction required by **Us** must be in writing, whether by written notice or via electronic means.

8.0 COMPLIMENTARY PERSONAL ACCIDENT COVER FOR DRIVER AND PASSENGERS – APPLICABLE ONLY FOR COMPREHENSIVE COVER

A. BENEFITS

- 8.1 Each driver and/or passenger(s) of **Your Car** will be entitled to Accidental Death and Permanent Disablement benefits of Kes [*] per life in one lump sum.

B. CONDITIONS FOR BENEFITS PAYMENT

- 8.2 The eligible Person Covered is driving or riding as a passenger boarding or alighting from **Your Car** shall sustain injuries which directly and independently of all other causes resulted in death or Permanent Disablement within twelve (12) months from the date of accident.

- (a) Person Covered means the driver and/or passenger(s) of **Your Car**.
- (b) Permanent Disablement means total loss by severance or total and permanent loss of use of the following conditions:
 - (i) Total paralysis;
 - (ii) Loss of two limbs;
 - (iii) Loss of both hands or of all fingers and both thumbs; or
 - (iv) Total loss of sight of both eyes.

Such condition must continue uninterrupted for a period of six (6) months and verified by **Our** appointed medical practitioner to be beyond hope of recovery.

C. TERRITORIAL LIMIT

- 8.3 Kenya or COMESA

D. EXCLUSIONS

- 8.4 No benefit will be payable under any of the following circumstances:

- (a) suicide or attempted suicide, provoked homicide or assault;
- (b) if the Person Covered does not hold a valid driving licence to drive **Your Car** or is not qualified for holding or obtaining such a valid driving licence under the regulations of the Kenya Traffic Act;
- (c) while **Your Car** is used for hire, racing, road rally, pace-making, speed-testing or for any purpose in connection with motor trade;
- (d) whilst the driver of **Your Car** is under the influence of intoxicating liquor or drugs;
- (e) wilful, criminal, illegal or intentional acts, or neglect;
- (f) using **Your Car** for a Shari'ah non-compliant purpose.

E. SPECIAL PROVISION

- 8.5 If the number of Person Covered at the time of the occurrence exceeds the number stated as the seating capacity in the Vehicle Registration Card, **Our** limit of liability per person will be reduced by the ratio of the number of passengers declared to that of the actual number of passengers.

9.0 SIGN OFF

Kindly signify your acceptance of the foregoing terms and conditions of this **Certificate** by signing it. For and on behalf of TAKAFUL INSURANCE OF AFRICA (TIA)

AUTHORIZED SIGNATORY OF TIA

DATE

AGREED AND ACCEPTED for on behalf of

AUTHORIZED SIGNATORY OF PARTICIPANT /

-

DATE

IMPORTANT NOTICE

We care about the service that **We** provide for **Our** customers, and our staff makes every effort to maintain as high a standard as possible. In the event that

We do not meet **Your** expectations and **You** are dissatisfied in some way, **We** would like to know and would ask **You** to write to **Our**:

Customer Relationship Management Department,
Takaful Insurance of Africa,
Head Office, Renaissance Corporate Park,
Elgon Road, Upperhill, Nairobi, Kenya
P.O. BOX 1811 - 00100, Nairobi, Kenya
Landline: 020-7909299
General: 0703-808010
Medical: 0725-808010/0738-888555
Claims: 0737-808010
E-mail: TalkToUs@takafulafrica.co.ke