



I. GENERAL CONDITIONS FOR THE ZERO PERCENT FINANCING MOTOR VEHICLE IMPORTATION

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 10.4, 13 AND 14.

AGREED TERMS:

I. DEFINITIONS AND INTERPRETATION

I.1 Definitions:

"Agreement" means this Agreement, its Schedules, annexures, addenda and any amendments as well as all account documentation used by Momentum in respect of the sourcing, purchasing and importation of the Vehicle together with the documentation in respect of the Customer's Motor Vehicle Importation account, payment instructions, demands, letters and notices by Momentum in respect of Motor Vehicle Importation, irrespective of the format thereof;

"Business Day" means a day other than a Saturday, Sunday or gazetted public holiday on which banks are open for general business in Nairobi;

"CIF Price" means the price of the Vehicle imported inclusive of the cost, insurance and freight up to the port of Mombasa in Kenya;

"Confirmation Notice" means the written confirmation by Momentum to the Customer accepting the Customer's application to Momentum for the importation of the Vehicle and for facilitating the sourcing, purchase and importation of the Vehicle, which notice sets out the Vehicle Purchase Amount, Momentum's Fees and other costs that will comprise the Motor Vehicle Importation transaction, the Vehicle Purchase Amount required from the Customer, the tentative timelines of the importation, and other terms described therein;

"Customer" means the person whose names, address, signature and other details appears on the Special Conditions of this Agreement, being the person who has requested for the provision of the Motor Vehicle Importation services, and has accepted the terms and conditions of this Agreement, and whose signature is appended thereunder and shall, where the context so admits, include his/her/their heirs, successors, personal representatives, administrators and permitted assigns as the case may be;

"Day" means a calendar day and in the calculation of days, the first day is excluded and the last day is included;

"Delivery Note" means the Momentum's delivery note that shall be signed by the Customer upon receipt of the delivered Vehicle and its keys from Momentum's delivery agents as evidence of receipt and acceptance of

the Vehicle by the Customer which delivery note shall set out the Customer's number; the Customer's full names, postal and physical address, and national identity card or passport number; point of delivery; Vehicle registration number, model, make, colour, registration date, chassis number and mileage at delivery; and other pertinent details;

"Vehicle Purchase Amount" means the full amount payable to Momentum immediately after Momentum has informed the Customer that it has accepted the Customer's application for the importation of the Vehicle on the Customer's behalf, which amount shall be not less than one hundred per cent (100%) of the CIF Price of the Vehicle, and all costs and expenses incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Vehicle to the Customer more particularly set out in the Confirmation Notice;

"Momentum Fees" means the service fee and processing fee set out in clause 5.1(a)(i)(A) and (B) charged by Momentum for the provision of Motor Vehicle Importation services to the Customer;

"Information Package" means the information pack containing, inter alia, copies of the original proforma invoice, bill of lading and de-registration documents and their translation copies, the Vehicle's owner's manual and the logbook registered in the names of the Customer, and signed counterparts of the Transaction Documents;

"Know Your Customer" or "KYC" refers to the customer due diligence obligations prescribed by relevant laws, or prescribed or recommended by the government or Central Bank of Kenya from time to time;

"Momentum" means Momentum Credit Limited incorporated in Kenya as a limited liability company under the Companies Act (No. 17 of 2015 of the laws of Kenya) and includes its successors, assigns and subsidiaries of Momentum as may from time to time be specified by Momentum to the Customer;

"Motor Vehicle Importation services" means the services provided to the Customer by Momentum whereby Momentum sources and arranges for the purchase, importation, shipping, clearance, registration and delivery of the Vehicle on behalf of the Customer from the Territory in return for the Momentum Fees;

"Purchase Order Form" means the purchase order form completed online or downloaded, completed and returned offline or forming part of the Transaction Documents specifying the name and address of the Customer, and in relation to the Vehicle, the pertinent information required concerning the Vehicle that the Customer wants imported;

"Supplier" means the person, firm or company in the Territory from whom Momentum sources and arranges



for the inspection, purchase and shipping of the Vehicles to Kenya and includes individuals, auction houses and dealers



“Territory” means any country where Momentum will source and import the Vehicles from;

“Transaction Documents” means this Agreement, Momentum’s Motor Vehicle Importation Application Form, Letter of Offer, Purchase Order Form and the Confirmation Notice, between Momentum and the Customer in relation to the importation of the Vehicle, Delivery Note and includes any amendments, variations and/or supplementals made or entered into from time to time;

“VAT” means value added tax, as defined by the Value Added Tax Act, No. 35 of 2013 of the laws of Kenya.

“Vehicle” means the motor vehicle that the Customer instructs Momentum to source and arrange for purchase and shipping from the Supplier on the Customer’s behalf, under the Supplier’s contract in which their terms and conditions are incorporated, further described in the Purchase Order Form (and includes all existing and any future additional parts, replacement parts and other improvements on the Vehicle (whether or not attached to the Vehicle)), but shall include only the accessories that the Supplier provided as noted in the motor vehicle purchase sale report provided to Momentum when and where the motor vehicle was purchased. For avoidance of doubt a reference to the term **“Vehicles”** shall refer to one or more motor vehicles that the Customer has instructed Momentum to source, purchase, ship, clear, register and deliver on behalf of the Customer.

1.2 Rules of interpretation:

- (a) words importing persons or Parties shall include firms and corporations and all references to persons shall include their permitted successors and assigns;
- (b) words importing the singular only also include the plural and vice versa where the context requires;
- (c) words importing the masculine shall include the feminine and neuter and vice versa;
- (d) the headings and marginal notes in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only;
- (e) a reference to writing or written includes email (unless otherwise expressly provided in this Agreement);
- (f) any words following the terms **“including”**, **“include”**, **“in particular”**, **“for example”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

- (g) where the context permits, **“other”** and **“otherwise”** are illustrative and shall not limit the sense of the words preceding them;
- (h) any obligation on a Party not to do something includes an obligation not to allow that thing to be done; and
- (i) the Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, Articles, Clauses, and Schedules, shall be construed as references to recitals of, articles of, clauses of and schedules to this Agreement, and references to paragraphs in a Clause or Schedule shall be construed as reference to paragraphs of that Clause or Schedule, unless indicated otherwise.

2. APPOINTMENT OF MOMENTUM AND CONTRACT OF PURCHASE

- 2.1 The Customer appoints Momentum to source and arrange the purchase, importation, shipping, clearance, registration and delivery of the Vehicle from the Territory to the Customer, and Momentum agrees to the appointment on the terms of this Agreement.
- 2.2 For this purpose, the Customer gives Momentum authority to enter into a contract for the purchase of the Vehicle from the Territory on the terms of this Agreement on the Customer’s behalf and in its name. The Customer shall honour the contract which Momentum enters in this way. Under no circumstances whatsoever shall Momentum be deemed to be a party to any contract (other than this Agreement), nor be liable in any way under any contract (other than this Agreement) howsoever arising.
- 2.3 While this Agreement continues, the Customer agrees not to appoint any other person to source and arrange for purchase of the Vehicle.

3. RIGHTS AND DUTIES OF MOMENTUM

- 3.1 Momentum shall use all reasonable endeavours to source and arrange for the purchase of the Vehicle on behalf of the Customer. Subject to the terms of this Agreement and any directions that the Customer may give from time to time, Momentum may perform its duties under this Agreement as it thinks fit.
- 3.2 Momentum shall negotiate the CIF Price to purchase the Vehicle in United States Dollars (**“USD”**) currency.
- 3.3 Momentum shall arrange and organise on behalf of the Customer:
 - (a) the identification of the appropriate Vehicle as per the Customer’s requirements notified by the Customer to Momentum and the legal requirements on the age, roadworthiness, location of the steering, among others;
 - (b) the bidding and purchase of the Vehicle;



- (c) the inspection of the Vehicle by a reputable and accredited vehicle inspection services company;
- (d) the shipping of the Vehicle from the Territory to Kenya;
- (e) the insurance of the Vehicle while in transit with a reputable insurance company;
- (f) the clearance of the Vehicle at the port of arrival including payment of all requisite import duties, taxes and fees to the Kenya Revenue Authority (“KRA”), the port authorities, the container freight station, the clearing and forwarding agent, among others;
- (g) registration of the Vehicle by the National Transport and Safety Authority (“NTSA”); and
- (h) delivery of the Vehicle from the port of arrival to the Customer’s premises as notified by the Customer to Momentum and hand the Vehicle over to the Customer,

all at the sole cost of the Customer.

- 3.4 Upon selection of the Vehicle, Momentum shall provide the Customer with a best estimate of the cost breakdown relating to the purchase and importation of the Vehicle. While this estimate is given by Momentum using its acquired knowledge and experience, this remains indicative and shall be treated as a guide only, and Momentum will not guarantee that the cost breakdown is accurate or complete in all respects.

4. CONDITIONS PRECEDENT AND ACCEPTANCE

- 4.1 No application for the purchase and importation of the Vehicle submitted by the Customer shall be deemed to be accepted by Momentum, and Momentum shall no obligation to the Customer until:
- (a) the Customer has submitted to Momentum a filled-in Purchase Order Form setting out his/her requirements in respect of the Vehicle to be sourced and imported by Momentum on his/her behalf;
 - (b) the Customer has notified Momentum of his/her approved choice from the list of vehicles that correspond to the details set out in the Purchase Order Form, after being provided with a list of the vehicles available;
 - (c) the Customer has provided Momentum with sufficient identification information and documentation to satisfy the KYC requirements;
 - (d) the Customer has paid to Momentum the Vehicle Purchase Amount in cleared funds, by means of cheque payable to Momentum or by bank transfer to the Momentum’s bank account whose details are set out in Appendix I hereunder after notifying

Momentum of his/her approval of the selected Vehicle;

- (e) Momentum has confirmed the availability and CIF Price of the Vehicle from the Supplier; and
- (f) Momentum has received and accepted the Supplier’s invoice.

- 4.2 With confirmation Momentum will procure the delivery of a pro forma invoice from the Supplier detailing the CIF Price and shall pay the CIF Price to the Supplier.

- 4.3 Upon receipt of payment by the Supplier of the CIF Price, Momentum will procure the inspection, shipping, clearing, registration and delivery of the Vehicle to the Customer together with the Information Pack.

5. PAYMENT OF THE VEHICLE PURCHASE AMOUNT AND COSTS

- 5.1 The Customer hereby **COVENANTS** with Momentum as follows:

- (a) the Customer shall pay the Vehicle Purchase Amount comprising of the CIF Price and the costs set out in this clause 5.1(a) and clause 7, in the manner stated in this Agreement being the total amount payable;

costs: the Customer shall solely be responsible for:

- (i) the costs of financing the importation of the Vehicle, which costs comprise the CIF Price, all costs and expenses incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Vehicle to the Customer as set out in clause 7 of this Agreement, together with Momentum’s Fees comprising:
 - (A) Momentum’s service fee as per the final quote approved by the customer.
 - (B) Momentum’s processing fee being **three decimal five per cent (3.5%)** of the Vehicle Purchase Amount;
 - (ii) paying all costs, fees, charges, taxes relating to:
 - (A) the preparation of this Agreement; and (B) the subsequent registration of the Vehicle in the names of the Customer;
 - (iii) paying all costs and expenses of any nature incurred by Momentum in taking steps to enforce its rights under this Agreement; and
- (b) the Customer shall perform and observe all the covenants, conditions and stipulations herein contained or implied and on the part of the Customer to be performed and observed;
- (c) if any amount in respect of the Motor Vehicle Importation and/or the Vehicle Purchase Amount shall not be paid by the Customer to Momentum



on the date due for payment, the Motor Vehicle Importation transaction shall not commence or proceed, as the case may be.

5.2 FOR AVOIDANCE OF DOUBT:

- (a) the Vehicle Purchase Amount set out in this Agreement and the Confirmation Notice shall not be the final amount but shall be adjusted upwards by Momentum at its sole discretion in accordance with any exchange rate losses and costs incurred by Momentum, any tax, duty, government fees and charges incurred, plus any unforeseen charges, costs, fees, expenses incurred by Momentum while providing the Motor Vehicle Importation services. Momentum shall provide written notice to the Customer explaining the reason(s) for such increase and the new Vehicle Purchase Amount prior to delivery of the Imported Vehicle to the Customer. The Customer shall pay the extra amount as invoiced by Momentum. The Customer agrees that any failure or delay providing written reasons or notifying the Customer of such increase shall not make the increase ineffective; and
- (b) the Customer shall indemnify Momentum for any tax, duty, government fees, charges, losses, costs and expenses incurred by Momentum (including foreign exchange losses) incurred by Momentum over and above the Vehicle Purchase Amount set out in this Agreement and our Quotation.

5.3 A certificate signed by an authorized officer of Momentum, shall be sufficient proof, until the contrary is proven, of the amount owed by the Customer to Momentum in terms of the Motor Vehicle Importation transaction for the purposes of obtaining any legal relief against the Customer.

6. CURRENCIES

6.1 Momentum has the right to vary, convert or revise any amounts outstanding in respect of Motor Vehicle Importation transaction as per the prevailing USD exchange rates as published by the Central Bank of Kenya from time to time or such currency as Momentum considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Customer.

6.2 Momentum shall not be liable to the Customer for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.

7. VEHICLE CIF PRICE AND EXPENSES

7.1 The price payable by Momentum on the Customer's behalf in purchasing the Vehicle from the Supplier shall be the CIF Price of the Vehicle plus all the costs and expenses incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Vehicle to the Customer. Any subsequent increase to

the CIF Price and costs beyond the Momentum's control (including without limitation fluctuations in currency or changes in relevant taxes or duties or demurrage) shall be the responsibility of the Customer.

7.2 In addition to the CIF Price, the Customer agrees to be responsible for all expenditure incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Vehicle to the Customer under this Agreement on behalf of the Customer and, shall pay these amounts to Momentum. The additional costs that the Customer will be responsible for, include without limitation:

- (a) import duty (any duty levied by KRA upon import of the Vehicle);
- (b) value added tax ("**VAT**") (any VAT levied KRA upon import of the Vehicle);
- (c) import declaration fee ("**IDF**");
- (d) excise duty;
- (e) railway development levy;
- (f) merchant shipping ("**MS**") levy;
- (g) radiation inspection fee;
- (h) NTSA 3rd sticker charges;
- (i) container freight station ("**CFS**") fees;
- (j) clearing and forwarding agent's fees;
- (k) daily parking charges at Mombasa Port car park, if any;
- (l) any minor repairs or service that may be necessary before the Vehicle can be delivered to the Customer, if any;
- (m) vehicle transport charges from Mombasa to the Customer's premises;
- (n) vehicle inspection fee (for commercial vehicles);
- (o) NTSA's vehicle registration fee;
- (p) Valuation costs
- (q) other costs (any costs including storage or other charges resulting from the Customer's default).

7.3 Momentum shall furnish the Customer with a written statement setting out the details of the foregoing expenses for the Customer's records, after delivery of the Vehicle to the Customer.

8. DELIVERY

8.1 Momentum shall be responsible for the delivery of the Vehicle to the Customer but at the Customer's cost.

8.2 The Vehicle will be delivered to the Customer after the following conditions have been met:



- (a) Momentum has received signed Transaction Documents from the Customer for the Vehicle;
- (b) any extra amount above the Vehicle Purchase Amount set out in the Special Conditions of this Agreement and the Confirmation Notice, invoiced by Momentum to the Customer, which extra amount is a sum of amounts in respect of any exchange rate losses and costs incurred by Momentum, any extra tax, duty, government fees and charges incurred, plus any unforeseen charges, costs, fees, expenses incurred by Momentum while providing the Motor Vehicle Importation services, has been paid by the Customer; and
- (c) Momentum has completed the registration of the Vehicle.

8.3 Delivery Note. The Vehicle shall be delivered to the Customer together with a Delivery Note. The Customer shall sign the Delivery Note, and provide Momentum's agents delivering the Vehicle with:

- (a) copies of the Customer's national identity card or passport, if the Customer will personally take delivery of the Vehicle; or
- (b) (i) copies of the national identity card or passport of the Customer; (ii) an original signed counterpart of a letter from the Customer authorising the other person other than the Customer to accept delivery of the Vehicle; and (iii) copies of the driving licence, national identity card or passport of that other person, if the Customer is unable to take delivery of the Vehicle,

8.4 For avoidance of doubt:

- (a) the Customer shall indemnify and hold Momentum harmless from any claim, loss, damage, expense, cost, liabilities, including theft of the Vehicle and accident involving the Vehicle if the Customer authorises another person other than the Customer to accept delivery of the Vehicle;
- (b) the Customer shall notify Momentum in writing at least one (1) Business Day in advance prior to delivery of the Vehicle to the Customer by Momentum:
 - (i) if another person other than the Customer shall take delivery of the Vehicle and the identification details of that person; and
 - (ii) if the place where the Customer wishes to receive the delivery of the Vehicle changes.

9. PROPERTY AND RISK

9.1 Ownership of the Vehicle shall fully pass to the Customer when Momentum receives the full Vehicle Purchase Amount from the Customer in cleared funds.

9.2 Risk in the Vehicle passes to the Customer on passing of ownership of the Vehicle to the Customer in clause 9.1 above whether or not delivery has been made.

9.3 Momentum will take up suitable freight insurance for the Vehicle while being shipped from the Territory to the Port of Mombasa and shall follow up with the insurer to obtain compensation in respect of any theft, total loss or damage to the Vehicle during shipping, and from offloading at the Port of Mombasa to delivery to the Customer.

10. MOMENTUM WARRANTIES, CUSTOMERS' RESPONSIBILITIES AND CANCELLATION

10.1 Momentum shall warrant and undertake to the Customer:

- (a) that the Vehicle and its condition will comply with the Territory's laws and motor vehicle exportation standards;
- (b) that the Vehicle and its condition will comply with the relevant Kenyan importation and motor vehicle laws and standards as set by the KRA, Kenya Bureau of Standards ("KEBS") and NTSA; and
- (c) that it shall verify the sincerity, suitability, compliance with the law, accuracy and bona fides of Vehicle and the Supplier.

10.2 After taking delivery of the Vehicle, it shall be the Customer's responsibility to ensure that:

- (a) the Vehicle conforms to all applicable Kenyan road use and safety legislation and/or any other laws which may be applicable, before using, or allowing the use of, the Vehicle on the public roads; and
- (b) the Vehicle is kept and maintained in good and serviceable condition in compliance with the law, all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules.

10.3 While Momentum shall take reasonable steps, and use good industry practices to source, bid for, pay the CIF Price for the purchase and shipping of the Vehicle, procure shipping and delivery, insurance, inspect, clear with KRA, register and deliver the Vehicle to the Customer, it shall not be liable for any additional expenses, costs, charges or claims incurred as a result of delay of the delivery of the Vehicle and the failure of the Vehicle to conform with the agreed quality or projected delivery timelines, or deviation from the specified route, or other importation and shipping instructions and if any of these additional costs are incurred by Momentum, Momentum shall have the right to charge these costs to the Customer's account.

10.4 The Customer shall not cancel this Agreement for any reason. If the Customer wishes not to proceed with the transaction for any reason after the signing of this



Agreement and payment of the Vehicle Purchase Amount to Momentum, he/she has the liberty of offering to sell the Vehicle to Momentum or to other third parties, or requesting Momentum to provide selling agent services and procure a buyer for the Vehicle after completion of registration of the Vehicle by NTSA.

11. THE CUSTOMER'S WARRANTIES

11.1 The Customer warrants and represents to Momentum that as at the date of this Agreement:

- (a) no suit, action, or other proceeding shall be pending or threatened which seeks to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain damages or other relief in connection therewith; and
- (b) no event or circumstance shall have occurred and be continuing which constitutes or would upon the giving of notice or passage of time, constitute a failure of any condition of this Agreement.

11.2 The Customer hereby represents and warrants to Momentum as at the date of this Agreement that:

- (a) he/she have not been induced to enter into this Agreement and he/she is not for any other reason relying upon any statement of fact or opinion or any representation, collateral contract or other assurance or warranty save as expressly contained or referred to in this Agreement or any document referred to in this Agreement and irrevocably and unconditionally waives any right the Customer may have: (i) to claim damages for any representation (whether or not contained in this Agreement) for any breach of any warranty not contained in this Agreement unless such misrepresentation or warranty was made or given fraudulently; and or (ii) to rescind this Agreement;
- (b) his/her obligations under this Agreement are his/her legal, valid and binding obligations, enforceable against him/her in accordance with their respective terms;
- (c) he/she has the power to enter into and perform and comply with his/her obligations under this Agreement;
- (d) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents and authorizations) for his/her entry into and performance of this Agreement have been taken, fulfilled and done; and
- (e) his/her entry into and/or performance of or compliance with his/her obligations under this Agreement does not and will not violate any law to which he/she is subject.

11.3 The Customer warrants that all information which may be submitted to Momentum from time to time is and

will be, to its knowledge and belief, complete and correct. In case of any material change in any information submitted to Momentum, or if the Customer becomes aware of any circumstances which will or may prevent any of the transactions envisaged hereunder to be finalized, the Customer will inform Momentum immediately in writing thereof.

11.4 The Customer undertakes not to revoke any of the executions undertaken herein and necessary to give effect to any of the transactions contemplated hereunder.

12. INDEMNIFICATION

Except where Momentum is in breach of its obligations under this Agreement, the Customer shall indemnify and hold harmless Momentum against any liability incurred by reason of being held out as the Customer's agent, including without limitation all costs and expenses reasonably incurred by Momentum in instituting proceedings, defending proceedings, settling or attempting to settle any claim brought against or by a third party (including the Supplier) in relation to the Vehicle.

13. CANCELLATION AND TERMINATION

13.1 Upon the happening of any of the following events, Momentum shall have no obligation to commence, or proceed or complete the transaction contemplated in this Agreement including its obligations hereunder, and shall cancel the transaction and refund back to the Customer the Vehicle Purchase Amount paid less Momentum's Fees, any sums expended and costs incurred by Momentum, and Momentum shall be released from any and all obligations to the Customer under the terms of this Agreement, if:

- (a) the Customer defaults in the performance of any covenant, warranty, representation or other obligation under this Agreement;
- (b) the Customer commits or attempts or purports to commit any breach of the covenants of this Agreement or fails to make the full payment of the Vehicle Purchase Amount;
- (c) the Customer fails to co-operate with Momentum as per the terms of this Agreement;
- (d) the Customer fails to deliver any KYC documents or any other documents requested by Momentum;
- (e) any representation, undertaking, warranty, documents, statements or particulars made in connection with this Agreement or supplied by or on behalf of the Customer including without limitation, information on the Customer is, in Momentum's opinion, materially incorrect, or are found to be fraudulent or untrue or misleading;



- (f) if Momentum receives a letter, a court order or any notification from any government agency stopping the Motor Vehicle Importation transaction;
- (g) if the Customer is convicted under any law related to use of the Motor Vehicle Importation transaction or any other related services;
- (h) if the Customer uses the Motor Vehicle Importation transaction for any criminal purposes or where Momentum detects any abuse or misuse or breach of law or fraud or attempted fraud relating to the Motor Vehicle Importation transaction; or
- (i) it becomes unlawful or impossible for Momentum to provide Motor Vehicle Importation services, or any security required ceases to be valid, legal, enforceable and binding.

13.2 Momentum shall at any time, with notice to the Customer, and at its own discretion, cancel and terminate or suspend the Motor Vehicle Importation transaction as a result of any of the following:

- (a) on occurrence of the events in clause 13.1 above;
- (b) if Momentum is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
- (c) where such a suspension or variation is necessary as a consequence of technical problems or for reasons of Momentum's safety; or
- (d) if the Momentum decides to cancel or suspend or cease provision of the Motor Vehicle Importation services for any commercial reasons or for any other reason as we may determine.

14. CONSEQUENCES OF CANCELLATION

14.1 If at any time during the continuance of this Agreement:

- (a) an event under clause 13.1 occurs; or
- (b) the Customer commits a breach of or shall fail to observe or perform any of the other conditions herein expressed or implied,

then Momentum shall have the unfettered discretion and right to take any or all of the actions set out in clause 14.2 below.

14.2 In the event any of the matters specified in clause 14.1 above occurs, Momentum shall:

- (a) cancel the Motor Vehicle Importation transaction; and
- (b) refund back the Vehicle Purchase Amount paid by the Customer less Momentum's Fees, any sums expended and costs incurred by Momentum.

14.3 No relaxation, forbearance, delay or indulgence by Momentum in enforcing any of the terms and conditions of this Agreement nor the granting of time by Momentum to the Customer shall prejudice, affect or restrict the rights or the powers of Momentum hereunder nor shall any waiver of any breach thereof operate as a waiver of any subsequent breach thereof.

14.4 Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.

15. THE CUSTOMER'S PERSONAL INFORMATION AND DATA PROTECTION

15.1 The Customer hereby expressly consents and authorizes Momentum to register, share, store, request, disclose, receive, record, verify or utilize the Customer's personal information and data, identity or information or data relating to the Customer with respect to the Motor Vehicle Importation transaction, as the case may be:

- (a) to and from Momentum's service providers, dealers, agents or any other entity that may be or become Momentum's affiliate for reasonable commercial purposes relating to the Motor Vehicle Importation transaction;
- (b) to Momentum's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal proceedings;
- (c) to third parties involved in the provision of the Motor Vehicle Importation services, other facilities, underwriting of insurance policies, updating of databases, or provision of user support;
- (d) has given consent to Momentum:
 - (i) to process the data as per Momentum internal data policy and the Data Protection Act, No. 24 of 2019 of the laws of Kenya ("**Data Protection Act**") and is at liberty to exercise its rights as a data subject as is provided by the Data Protection Act; and
 - (ii) to continue holding and processing the data provided even after all obligations under the Motor Vehicle Importation transaction have been settled, for a variety of purposes including but not limited to cross selling, research, product development, analysis of market trends, operation of Momentum's regulations and procedures and marketing of Momentum's products. The Customer may opt out of receiving marketing communication at any time by officially communicating to Momentum through Momentum's data



protection personnel at
cx@momentumcredit.co.ke;

(e) consents to the use of their personal data from time to time by Momentum:

- (i) for reasonable commercial purposes connected to the Customer's use of the Motor Vehicle Importation services, such as marketing and research related activities; and
- (ii) in business practices including but not limited to quality control, training and ensuring effective systems operation,

and the Customer waives any claim he/she may have against Momentum in respect of such disclosure or usage.

15.2 The Customer authorizes Momentum to disclose any information relating to the Customer's account or any other related account to any local, foreign or international law enforcement or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as Momentum may deem necessary.

15.3 The Customer shall notify the Momentum branch nearest to the Customer's by sending an email to retailofficers@momentumcredit.co.ke or calling 0709434434, of any changes to the Customer's personal information or update the same through Momentum's website, letter, email or any other means that Momentum may deem necessary including but not restricted to the Customer's name and address. Until such notice is received, the Customer's personal information shall be deemed to be that which the Customer provided in the Customer's application for the Motor Vehicle Importation transaction.

16. INDEMNITY

All costs and other charges necessarily incurred by Momentum and arising out of or by reason of Momentum complying with its obligations under this Agreement (including, but not limited to, legal charges on a full indemnity basis, fees, duties, taxes and costs and expenses which Momentum may incur in taking action for recovery of any indebtedness by the Customer to Momentum), will be payable by the Customer to Momentum on demand.

17. LIMITATION OF LIABILITY AND FORCE MAJEURE

17.1 **Momentum shall not be responsible for any loss or damage suffered by the Customer due to any circumstances whatsoever that are beyond Momentum's control, fraud, illegal action or omission, unavailability of funds, improper or incomplete instructions by the Customer, except where such loss is caused by Momentum's**

gross negligence, gross misconduct and/or willful misconduct.

17.2 **Momentum** will not be liable for any failure to perform caused by reasons beyond **Momentum's** control or resulting directly or indirectly from the action or inaction of the government, any government authority, or any riot, strike, boycott, blockade, act of God, revolution, civil strike or any change in legislation or extreme change in market conditions.

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

18. FURTHER ASSURANCE

When required by Momentum, the Customer will execute such further agreements and documents are required by Momentum, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

19. WITHDRAWAL FROM AGREEMENTS

Momentum may, at any time before the purchase of the Vehicle, withdraw from this Agreement, refund back Vehicle Purchase Amount, less any costs incurred by Momentum and the Customer will have no claim against Momentum if Momentum does so.

20. JOINT AND SEVERAL LIABILITY

Should there be more than one Customer, then:

20.1 each of them shall be jointly and severally liable with the other as co-principal for any obligation of the Customer to Momentum; and

20.2 all references to "**the Customer**" shall be construed as reference to all the Customers, jointly and severally, unless otherwise indicated.

21. INDEPENDENT CONTRACTOR

The relationship of Customer to Momentum is that of an independent contractor, and nothing in this Agreement shall be construed as creating any other relationship including without limitation, joint venture, agency, partnership or employer-employee relationship.

22. COUNTERPARTS AND ELECTRONIC SIGNATURES

22.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all ancillary documents may be executed by hand or electronic signature and delivered by facsimile,



electronic mail or other means as may be mutually agreed by any of the parties to any other Party and the receiving Party may rely on the receipt of such document so executed and delivered as if the original had been received.

- 22.2 The Parties agree that if this Agreement is executed and/or transmitted electronically neither Party shall contest the validity of this Agreement or any electronic signature or acknowledgement thereof, on the basis that this Agreement, or acknowledgement contains an electronic signature.

23. ENTIRE AGREEMENT

This Agreement constitute the entire agreement between Parties, with respect to its subject matter and supersedes all prior oral and written agreements, understandings, negotiations, promises, representations of any kind and there are no conditions to this Agreement which are not expressed therein.

24. ASSIGNMENT

- 24.1 The Customer shall not be entitled to assign all or any part of his/her rights, obligations or benefits hereunder without the prior written consent of Momentum.
- 24.2 The Customer hereby waives any notice of the transfer, factoring, delegation, ceding, novation or assignment of all or any part of Momentum's rights and/or obligations under this Agreement or any Transaction Document or other agreement to which the Customer and Momentum are parties, to any person, and agrees to remain bound by the terms of this Agreement, that Transaction Document or that other agreement subsequent to any such action by Momentum.

25. AMENDMENT, MODIFICATION AND WAIVER

No amendment, modification or waiver of any provision of this Agreement or consent to departure therefrom shall be effective unless by written agreement signed by both Parties.

26. NO WAIVER

No breach of any provision of this Agreement shall be deemed waived unless it is waived in writing by Momentum. No course of dealing and no delay on the part of Momentum in exercising any right will operate as a waiver thereof or otherwise prejudice Momentum's rights, powers, or remedies. No right, power, or remedy conferred by this Agreement upon Momentum will be exclusive of any other rights, power or remedy referred to this Agreement, or now or hereafter available at law, in equity, by statute, or otherwise.

27. SEVERABILITY

If any provision of this Agreement, or the application of it to any Party or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of

such provision to other Parties or circumstances, shall not be affected thereby, the provisions of this Agreement being severable in any such instance.

28. NOTICES

- 28.1 All waivers, elections, options, notices, demands, and consents which either Party may be required or may desire to give under this Agreement ("**Notice**") shall be in writing and may be served personally or by registered or recorded delivery mail or by facsimile transmission or electronic mail with confirmed delivery.
- 28.2 Each Party's address for the service of notice or communication shall be the one mentioned in this Agreement, or such other address as one Party may specify by written notice to the other.
- 28.3 Notice shall be deemed to have been served:
- (a) If it was served in person at the time of service;
 - (b) If it was served by post, forty-eight (48) hours after it was posted; and
 - (c) If it was served by facsimile transmission or electronic mail, at the time of transmission provided an error transmission report is not received by the sender.

29. VOLUNTARY SUBMISSION

Both Parties acknowledge that they have entered into this Agreement voluntarily without duress or coercion.

30. GOVERNING LAW

This Agreement and any dispute or claim arising out of it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Kenya.

31. JURISDICTION

By executing this Agreement, both Parties consent to the exclusive jurisdiction of the courts of law of the Republic of Kenya to settle any issue, dispute, claim, controversy, difference, question or claims for compensation or otherwise, between them and waive any right to challenge jurisdiction or venue in such courts with regard to any suit, action, or proceeding under or in connection with this Agreement.



Appendix I: Motor Vehicle Importation Transaction Payments

All payments required to be made under the Motor Vehicle Importation transaction can be done:

Part 1. By bank transfer or cash Vehicle Purchase Amount at Momentum's bank account provided below:

Account Name: Momentum Credit Limited

Account Number: 7177250035

Bank Code: 40407000

Bank: NCBA Kenya

Branch: Mama Ngina Street

Branch Code: 07003

SWIFT Code: CBAFKENXXXX

Part 2. By Safaricom Mpesa Till Number provided below:

Safaricom Mpesa Till Number: 801480



Appendix 2: Cancellation of the transaction

- I. The transaction contemplated under this Agreement may be cancelled by Momentum:
 - (a) the vehicle selected by the Customer, while being inspected at the country of exportation is found not comply with the pre-export verification of conformity criteria, and the replacement vehicle falls under either paragraph I(e) or I(f) of this Appendix 2;
 - (b) a vehicle that corresponds with the Customer's specifications cannot be found;
 - (c) a vehicle that corresponds with the target price cannot be found; or
 - (d) Momentum does not wish to continue with the transaction.

If the transaction is cancelled by Momentum, Momentum will refund back to the Customer, the Vehicle Purchase Amount paid less Momentum's Fees, any sums expended and costs incurred by Momentum, if any

