

I. GENERAL CONDITIONS FOR THE MOTOR VEHICLE TRADE-IN AND IMPORT FINANCING FACILITY

AGREED TERMS:

I. DEFINITIONS AND INTERPRETATION

I.1 Definitions:

“Agreement” means this Motor Vehicle Trade-In and Import Financing Facility Agreement, its Schedules, annexures, addenda and any amendments as well as all Import Financing Facility account documentation used by Momentum in respect of:

- (a) the financing, sourcing, purchasing, importation and financing of the purchase of the Imported Vehicle; and
- (b) the trade-in of the Trade-in Vehicle,

together with the documentation in respect of the Import Financing Facility account, payment instructions, demands, letters and notices by Momentum in respect of the Import Financing Facility, 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;

“Buyer” means the person or entity to whom the Selling Agent procures and concludes a sale contract in respect of the Trade-in Vehicle pursuant to the terms of the Motor Vehicle Sale Agency Agreement;

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

“Custodial Services” means the services of:

- (c) safekeeping and holding of the Customer’s Trade-in Vehicle’s title and logbook by the Custodian on its corporate Transport Integrated Management System (“TIMS”) account of the National Transport and Safety Authority (“NTSA”), pending the sale of the Trade-in Vehicle; and
- (d) subsequent to paragraph (a) above, the transfer of the Trade-in Vehicle’s title and logbook to the Buyer upon receipt by Custodian of notification from the Selling Agent and/or Momentum that the purchase price has been paid in full to Momentum by the Buyer, pursuant to the terms of this Agreement and the Irrevocable Consent to Transfer;

“Letter of Offer” means the written confirmation by Momentum to the Customer:

- (a) setting out the Trade-in Valuation Amount in respect of the Trade-in Vehicle that Momentum will credit into Momentum’s Import Financing Facility account of the Customer, to be applied towards settling the cost of the Imported Vehicle, and credited in advance of the sale of the Trade-in Vehicle by the Selling Agent;

- (b) offering to repair, refurbish, find potential buyers and sell the Motor Vehicle on behalf of the Customer;
- (c) setting out the terms and conditions of the trade-in transaction including the valuation of the Trade-in Vehicle, for acceptance by the Customer; and
- (d) accepting the Customer’s application to Momentum for the financing of the importation of the Imported Vehicle and for facilitating the sourcing, purchase and importation of the Imported Vehicle, which notice sets out the principal, the interest, fees and other costs that will comprise the Import Financing Facility, the tentative timelines of the importation, and other terms described therein,

and includes any amendments and/or supplementals;

“Credit Reference Bureau” refers to:

- (a) the credit reference bureaus duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013 by the Central Bank of Kenya (“CBK”), as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of customer credit information; and
- (b) third party credit data sharing platforms set up and operated by the microfinance associations including the Digital Lenders Association of Kenya and Association of Microfinance Institutions of Kenya to collect and facilitate the sharing of customer credit information amongst its registered members;

“Custodian” means OT Law LLP incorporated in Kenya as a limited liability partnership under the Limited Liability Partnerships Act (No. 42 of 2011 of the laws of Kenya) and includes its successors, assigns and delegates of the Custodian;

“Customer” means the person whose names, address, signature and other details appears on the Special Conditions of this Agreement, being the person who has applied for Facility, 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 Import Financing Facility account 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;

“Device” includes the Customer’s mobile phone handset, Mpesa enabled SIM Card, computer and/or other Device which when used together enables the Customer access the Momentum’s mobile application, or USSD platform or online web-based platform and to make a Request, to access other services and products of Momentum, and make enquiries;

“Event of Default” shall mean any of the events or occurrences specified in clause 18 hereof, or as otherwise specified in the Transaction Documents;

“Import Financing Facility” means the Maximum Principal Amount together with interest, charges, penalties and costs in respect thereof lent to the Customer by Momentum for the payment of the CIF Price, shipping, registration and delivery of the Imported Vehicle to the Customer pursuant to the terms of this Agreement;

“Imported 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 Trade-in Request 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 the motor vehicle was purchased, which Vehicle will be charged as security for the repayment of the debt by the Customer to Momentum; and. For avoidance of doubt a reference to the term **“Vehicles”** shall refer to one or more motor vehicles that Momentum has financed (within the Maximum Principal Amount), the sourcing, purchase, shipping, clearing, registration and delivery thereof on behalf of the Customer;

“Fees” means the Fees applicable for the time being for Import Financing Facility;

“In-Charge” means the registration of Momentum’s security right and charge on the Vehicle on the Transport Integrated Management System (**“TIMS”** or **“NTSA-TIMS”**) operated by the National Transport and Safety Authority (**“NTSA”**) created under the National Transport and Safety Authority Act, No. 33 of 2012 of the laws of Kenya, in the approved format, securing repayment of the Import Financing Facility. The In-Charge may be drawn as a continuing security so as to secure subsequent advances credit facilities and advances agreed with Momentum or other obligations of 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 Imported Vehicle’s owner’s

manual and the jointly registered logbook registered in the names of Momentum and the Customer, the Notice to Registrant of the Initial Notice issued by the Collateral Registry under the rule 8(3) of the Movable Property Security Rights Act, No. 13 of 2017 of the laws of Kenya in respect of the registered security right of Momentum on the Vehicle and signed counterparts of the Transaction Documents;

“IPRS” means the Integrated Population Registration System operated by the Government;

“Irrevocable Consent to Transfer” refers to the notice comprising the irrevocable consent of the Customer:

- (a) to the Custodian to transfer the title and logbook; and
- (b) to Momentum and/or the Selling Agent to deliver physical possession

of the Trade-in Vehicle to the Buyer after the Buyer has paid the Final Purchase Amount of the Trade-in Vehicle in full to Momentum, in the format set out hereto in Schedule I of the Custody Services Agreement;

“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;

“Maximum Principal Amount” means the amount set out in the Special Conditions of this Agreement and which is loaned to and borrowed by the Customer in terms of this Agreement and which constitutes the principal debt, which principal debt shall be amount outstanding after Momentum has off-set the debt by the Trade-in Valuation Amount monies received from the sale of the Trade-in Vehicle and credited into the Import Financing Facility account of the Customer and utilized by Momentum in partial settlement of the total importation cost of the Imported Vehicle;

“Monthly Instalment Payment” means the monthly instalment payment obligation to be met by the Customer in respect to the Import Financing Facility as per the Special Conditions of this Agreement;

“Mobile Money Services Provider” means a Mobile Network Operator that has been duly authorized by the Central Bank of Kenya under applicable laws to offer Mobile Money Services in Kenya;

“Mobile Network Operator” means a mobile network operator in Kenya registered with the Communications Authority of Kenya and includes Safaricom;

“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;

“Mpesa” means the mobile money transfer and payment service that is managed and operated exclusively by Safaricom in Kenya and licensed by the Central Bank of Kenya;

“Network” means a mobile cellular network operated by a Mobile Network Operator in Kenya registered with the Communications Authority of Kenya;

“Outstanding Repayment” means any amount including Fees, outstanding principal, interest and any costs that is due and payable by the Customer to Momentum in respect to the Import Financing Facility;

“Trade-in Request Form” means the trade-in request 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 Imported Vehicle, the pertinent information required concerning the motor vehicle that the Customer wants imported;

“Final Purchase Amount” means the purchase price monies in respect of the Trade-in Vehicle as notified to the Buyer by the Selling Agent, which monies the Buyer will pay to Momentum instead of the Customer and which will be utilized by Momentum to set-off the Customer liabilities to Momentum including the Import Financing Facility granted by Momentum to the Customer;

“Selling Agent” refers to Eezy Track Limited, a company 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 Eezy Track;

“Maximum Import Financing Facility Term” means the twenty-four (24) months’ period set by Momentum in respect to the Import Financing Facility;

“Security Agreement” means a security agreement creating a first ranking priority perfected registrable security right and interest of Momentum in the Vehicle, registered with the NTSA-TIMS and the Collateral Registry operated by the Business Registration Service created under the Movable Property Security Rights Act, No. 13 of 2017 of the laws of Kenya, relating to the Vehicle, securing repayment of the Import Financing Facility. The Security Agreement may be drawn as a continuing security so as to secure subsequent credit facilities and advances agreed with Momentum or other obligations of the Customer.

“SIM Card” means the subscriber identity module which when used with the appropriate mobile phone handset enables the Customer to access the Network;

“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;

“Trade-in Valuation Amount” means the purchase price offered by Momentum to the Customer in respect of the Trade-in Vehicle which purchase price shall be based on the initial and final inspection and valuation undertaken on the Trade-in Vehicle by the Momentum’s agents including the Selling Agent, which purchase price amount will be credited by Momentum into the Customer’s Import Financing Facility account, and in advance of the sale of the Trade-in Vehicle, and which amount is set out in the Letter of Offer signed by the Customer, except that Momentum:

- (a) shall set-off the Trade-in Valuation Amount against the Import Financing Facility amount; and
- (b) may reduce the Trade-in Valuation Amount in accordance with the terms of clauses 2.5 and 2.6 of this Agreement;

“Trade-in Vehicle” means the used motor vehicle more particularly described in Section [NUMBER] of the Motor Vehicle Trade-in and Importation Application Form, lawfully owned by the Customer, and which is provided by the Customer to Momentum to be sold by the Selling Agent at the Trade-in Valuation Amount in partial settlement of the purchase price of the Imported Vehicle to be imported by Momentum for the Customer pursuant to this Agreement;

“Transaction Fees” includes any fees and charges payable for the transfer and payment of funds to Momentum by the Customer in respect of the Import Financing Facility, payable to Mobile Network Operators and banks which vary between different Mobile Network Operators and banks;

“Transaction Documents” means the Motor Vehicle Trade-in and Importation Application Form, Trade-in Request Form, the Letter of Offer, the Motor Vehicle Sale and Transfer Agreement, the Motor Vehicle Import Financing Facility Agreement, the Motor Vehicle Sale Agency Agreement, the Custody Services Agreement and the Security Agreement made between Momentum and the Customer in relation to the sale of the Trade-in Vehicle, and importation and financing of the Imported Vehicle includes any amendments, variations and/or supplementals made or entered into from time to time; and

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

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, SALE OF TRADE-IN VEHICLE AND PURCHASE OF IMPORTED VEHICLE

2.1 Appointment of Momentum:

The Customer appoints Momentum:

- (a) to source and finance the purchase, importation, registration and delivery of the Imported Vehicle from the Territory;
- (b) to facilitate the sale of the Trade-in Vehicle by instructing:
 - (i) the Selling Agent to find potential buyers for the Trade-in Vehicle and sell the Trade-in Vehicle on behalf of the Customer with the monies received from the sale of the Trade-in Vehicle to be credited into the Import Financing Facility account of the Customer and utilized by Momentum in partial settlement of the purchase price of the Imported Vehicle; and
 - (ii) the Custodian to provide the Custodial Services for the Trade-in Vehicle's title and logbook, and to

effect the transfer of the Trade-in Vehicle to the Buyer procured by the Selling Agent,

and Momentum agrees to the appointment on the terms of this Agreement.

2.2 Appointment of the Custodian:

The Customer shall appoint the Custodian:

- (a) to provide Custodial Services for the Trade-in Vehicle's title and logbook; and
- (b) to effect the transfer of the Trade-in Vehicle to the Buyer procured by the Selling Agent upon the conclusion of a sale contract between the Buyer and the Customer,

in respect of the Trade-in Vehicle, pursuant to the terms of this Agreement and the Motor Vehicle Custody Services Agreement.

2.3 Appointment of the Selling Agent:

The Customer shall appoint the Selling Agent as its exclusive selling agent for the marketing and sale of the Trade-in Vehicle, and the Selling Agent shall:

- (a) market, advertise, obtain enquires and orders for Trade-in Vehicle from potential buyers;
- (b) conclude a sale contract with the Buyer for sale of Trade-in Vehicle; and
- (c) ensure that the Buyer pays the agreed Final Purchase Amount including any all-surplus monies to Momentum in cleared funds to the bank account nominated by Momentum in writing,

pursuant to the terms of this Agreement and the Motor Vehicle Sale Agency Agreement.

2.4 Subject to the terms of clauses 2.5 and 2.6 below, the Customer shall trade-in the Trade-in Vehicle to Momentum at the Trade-in Valuation Amount in partial settlement of the purchase price of the Imported Vehicle to be imported by Momentum for the Customer pursuant to the terms of this Agreement.

2.5 FOR AVOIDANCE OF DOUBT, the Trade-in Valuation Amount set out in the Letter of Offer shall not be the final amount but may be adjusted downwards by Momentum at its sole discretion in accordance with any deterioration of the physical and mechanical condition of the Trade-in Vehicle discovered or found during the final inspection and valuation after handover of the Trade-in Vehicle to Momentum and the Selling Agent by the Customer and prior to delivery of the Imported Vehicle to the Customer.

2.6 **Trade-in Valuation Amount Adjustments.** Momentum shall have the right to reduce the Trade-in Valuation Amount of the Trade-in Vehicle pursuant to clause 2.5 hereof after undertaking the final inspection and valuation of the Trade-in Vehicle to reflect any deterioration of the physical and/or mechanical condition



of the Trade-in Vehicle and the reduced value of the Trade-in Vehicle thereof, and shall increase the Import Financing Facility amount accordingly. In the event that Momentum seeks to reduce the Trade-in Valuation Amount pursuant to this clause, Momentum shall provide written notice to the Customer explaining the reason(s) for such reduction and the new Trade-in Valuation Amount. The Customer agrees that any failure or delay notifying the Customer of such reduction shall not make the reduction ineffective.

- 2.7 For the purpose set out in clause 2.1(a), the Customer gives Momentum authority to enter into a contract for the purchase of the Imported Vehicle from the Territory on the terms of this Agreement on the Customer's behalf and in its name. The Customer shall honour all the contracts which Momentum, the Selling Agent and the Custodian enters into under this clause 2. 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.
- 2.8 While this Agreement continues, the Customer agrees not to appoint any other person:
- (a) to source and arrange for purchase of the Imported Vehicle other than Momentum;
 - (b) to market and sell the Trade-in Vehicle other than the Selling Agent; and
 - (c) to provide the Custodial Services for the Trade-in Vehicle's title and logbook other than the Custodian.

3. RIGHTS AND DUTIES OF MOMENTUM

- 3.1 Momentum shall use all reasonable endeavours to source and arrange for the purchase of the Imported 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 Imported Vehicle in United States Dollars ("**USD**") currency.
- 3.3 Momentum shall arrange and facilitate:
- (a) the appointment of the Selling Agent who will market the Trade-in Vehicle, find potential buyers and sell it on behalf of the Customer;
 - (b) the identification of the appropriate Imported 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;
 - (c) the bidding and purchase of the Imported Vehicle;

- (d) the inspection of the Imported Vehicle by a reputable and accredited Imported Vehicle inspection services company;
- (e) the shipping of the Imported Vehicle from the Territory to Kenya;
- (f) the insurance of the Imported Vehicle while in transit with a reputable insurance company;
- (g) the clearance of the Imported 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;
- (h) the registration of the Imported Vehicle by the National Transport and Safety Authority ("**NTSA**"); and
- (i) the delivery of the Imported Vehicle from the port of arrival to the Customer's premises as notified by the Customer to Momentum and hand the Imported Vehicle over to the Customer,

all at the sole cost of the Customer.

- 3.4 Upon selection of the Imported Vehicle, Momentum shall provide the Customer with a best estimate of the cost breakdown relating to the purchase and importation of the Imported 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 Imported 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:
 - (i) a signed counterpart of the Letter of Offer wherein he/she had accepted the Trade-in Valuation Amount offer given by Momentum for the Trade-in Vehicle;
 - (ii) a filled-in Trade-in Request Form setting out his/her requirements in respect of the Imported Vehicle to be sourced and imported by Momentum on his/her behalf, within Five (5) days of submitting the signed Letter of Offer;
 - (b) the Customer has notified Momentum of his/her approved choice from the list of Imported Vehicles that correspond to the details set out in the Trade-in Request Form, within two (2) days of being provided with a list of the Imported Vehicles available that correspond to the details of the Imported Vehicle;



- (c) the Customer has provided Momentum with sufficient identification information and documentation to satisfy the Know Your Client (“KYC”) legal requirements;
 - (d) Momentum has confirmed the availability and CIF Price of the Imported Vehicle from the Supplier;
 - (e) Momentum has received and accepted the Supplier’s invoice;
 - (f) the Trade-in Vehicle conforms to the description of vehicles that can be traded-in as set out under Momentum’s list of approved trade-in vehicles;
 - (g) the Customer has:
 - (i) submitted the Trade-in Vehicle and its ownership documentation for physical inspection, examination and valuation by Momentum’s agents including the Selling Agent;
 - (ii) has accepted the offer of the Trade-in Valuation Amount given by Momentum for the Trade-in Vehicle after completion of the physical inspection, examination and valuation of the Trade-in Vehicle, by signing the Letter of Offer;
 - (iii) delivered the original logbook of the Trade-in Vehicle to Momentum;
 - (iv) transferred the title and logbook of the Trade-in Vehicle to the Custodian; and
 - (v) signed and submitted to Momentum the Irrevocable Consent to Transfer, the Motor Vehicle Custody Services Agreement, Motor Vehicle Sale Agency Agreement, the Motor Vehicle Sale and Transfer Agreement and Security Agreement, in respect of the Trade-in Vehicle.
- 4.2 With confirmation Momentum will procure the delivery of a proforma invoice from the Supplier detailing the CIF Price and shall pay the balance of the CIF Price to the Supplier on behalf of the Customer.
- 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 Imported Vehicle to the Customer together with the Information Pack.

5. COSTS AND IMPORT FINANCING FACILITY

- 5.1 The Customer hereby **COVENANTS** with Momentum as follows:
- (a) the Customer shall repay the Import Financing Facility amount comprising of the Maximum Principal Amount and the costs set out in this clause 5.1(d) and clause 7, at the times and in the manner stated in this Agreement being in tenor and total amount payable or by such revised Monthly Instalment Payments or such revised Maximum Import Financing Facility Term as Momentum may require until the whole of the Import Financing Facility amount with

interest thereon and all other charges and costs shall be fully paid;

costs: the Customer shall solely be responsible for:

- (i) the costs of financing the importation of the Imported Vehicle, which costs comprise the balance of the CIF Price, all costs and expenses incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Imported Vehicle to the Customer as set out in clause 7 of this Agreement, together with Momentum’s financing fee being eight per cent (8%) of the Import Financing Facility;
 - (ii) paying all costs, fees, charges, taxes relating to: (A) the preparation and registration of this Agreement, the Security Agreement and the NTSA-TIMS In-Charge; (B) the subsequent registration of the Imported Vehicle from the joint names of Momentum and the Customer, to the Customer and/or subsequent buyer’s names; (C) the discharge of the Security Agreement and the In-Charge upon repayment of the Import Financing Facility;
 - (iii) paying all costs and expenses of any nature incurred by Momentum in taking steps to enforce its rights under this Agreement and the Security Agreement, in the Imported Vehicle as collateral; and
 - (iv) paying for all searches and valuation assessments of Imported Vehicle undertaken by Momentum (no warranties whatsoever in respect of the Imported Vehicle, their title, condition, the purchase price or the insurance amount are given or implied in the granting of the Import Financing Facility);
- (b) the Customer shall enjoy a moratorium, commencing from the date of approval of the Customer’s application for the Import Financing Facility and expiring on the date of delivery of the Imported Vehicle to the Customer, from making any Monthly Instalment Payments to Momentum during which time Momentum shall source, purchase, import, register and deliver the Imported Vehicle to the Customer. Notwithstanding the foregoing, the moratorium shall not affect interest charged by Momentum which interest shall continue to accrue but will only be payable when the Customer resumes paying the Monthly Instalment Payments;
- (i) the Customer shall make each such payments punctually on the said respective days so appointed to Momentum and 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;



(ii) if any Monthly Instalment Payment shall not be paid by the Customer to Momentum on the date due for payment,

(A) an Event of Default under clause 18 of this Agreement shall be deemed to have occurred;

(B) the provisions and consequences of default set out in clause 19 of this Agreement shall apply; and

(C) if the Imported Vehicle is in the custody of Momentum shall not deliver or release it to the Customer;

(c) the Customer shall pay to Momentum after as well as before any judgment, interest at the rate agreed and provided in this Agreement; and such other rate or rates as Momentum shall at its sole discretion from time to time decide with full power to Momentum to charge different rates for different accounts and such interest shall be calculated on daily balances and compounded monthly from the date thereof until payment in the usual mode of Momentum.

5.2 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 Import Financing Facility 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 the Import Financing Facility 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. IMPORTED VEHICLE CIF PRICE AND EXPENSES

7.1 The price payable by Momentum on the Customer's behalf in purchasing the Imported Vehicle from the Supplier shall be the CIF Price of the Imported Vehicle quoted to the Customer:

(a) plus, all the costs and expenses incurred by Momentum in sourcing, purchasing, importing, clearing, registering and delivering the Imported Vehicle to the Customer; and

(b) less the Trade-in Valuation Amount comprising the selling price of the Trade-in Vehicle which selling price will be credited by Momentum into the Import Financing Facility account of the Customer Momentum and shall be used to set-off the Trade-in

Valuation Amount against the total purchase cost of the Imported Vehicle.

7.2 Any subsequent increase to the CIF Price 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.

7.3 In addition to the CIF Price, the Customer agrees to be responsible for all expenditure incurred by Momentum in sourcing, purchasing and importing the Imported Vehicle 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 Imported Vehicle);

(b) value added tax ("VAT") (any VAT levied KRA upon import of the Imported 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 Imported Vehicle can be delivered to the Customer, if any;

(m) Imported Vehicle transport charges from Mombasa to the Customer's premises;

(n) Imported Vehicle inspection fee (for commercial Imported Vehicles);

(o) NTSA's Imported Vehicle registration fee;

(p) Valuation costs

(q) one (1) year comprehensive insurance premium;

(r) other costs (any costs including storage or other charges resulting from the Customer's default).

7.4 Momentum shall furnish the Customer with a written statement setting out the details of the foregoing expenses for the Customer's records upon delivery of the Imported Vehicle to the Customer.



8. DELIVERY

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

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

- (a) Momentum has received signed Security Agreements, and all security documentation in respect thereof from the Customer for the Imported Vehicle;
- (b) Momentum has completed the charging of the Imported Vehicle on the NTSA-TIMS platform with the co-operation of the Customer and on the Collateral Registry of the Business Registration Service; and
- (c) GPS tracking devices have been installed on the Imported Vehicle.

8.3 **Delivery Note.** The Imported Vehicle being delivered shall be accompanied by a delivery note stating the Customer's Import Financing Facility account number; the Customer's full names, postal and physical address, and national identity card or passport number; point of delivery; Imported Vehicle registration number, model, make, colour, registration date, chassis number and mileage at delivery; and other pertinent details. The Customer shall sign the delivery note, and provide Momentum's agents delivering the Imported Vehicle with:

- (a) copies of the Customer's driving licence, national identity card or passport, if the Customer shall personally take delivery of the Imported Vehicle; or
- (b) (i) copies of the driving licence, national identity card or passport of the Customer; (ii) an original signed counterpart of a letter from the Customer authorising another person other than the Customer to accept delivery of the Imported 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 Imported 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 Imported Vehicle and accident involving the Imported Vehicle if the Customer authorises another person other than the Customer to accept delivery of the Imported Vehicle;
- (b) the Customer shall notify Momentum in writing at least one (1) Business Day in advance prior to delivery of the Imported Vehicle to the Customer by Momentum:
 - (i) if another person other than the Customer shall take delivery of the Imported Vehicle and the identification details of that person;

- (ii) if the place where the Customer wishes to receive the delivery of the Imported Vehicle changes.

9. PROPERTY AND RISK

9.1 Ownership of the Imported Vehicle shall be jointly between the Customer and Momentum and shall not fully pass to the Customer until such time as Momentum's Import Financing Facility is paid in full by the Customer in cleared funds.

9.2 Risk in the Imported Vehicle passes to the Customer on delivery to the Customer's premises and the Customer shall take out comprehensive insurance policies to cover such risks after delivery.

9.3 Momentum will take up suitable freight insurance for the Imported 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 Imported Vehicle during shipping, and from offloading at the Port of Mombasa to delivery to the Customer.

10. CUSTOMER'S RIGHT OF SALE IN RESPECT OF THE TRADE-IN VEHICLE

10.1 Prior to the delivery of the Imported Vehicle to the Customer by Momentum, the Customer shall have the right to source for buyers for the Trade-in Vehicle and sell the Trade-in Vehicle to the Buyer.

10.2 If the Customer shall opt to exercise the right of sale in clause 10.1 above, he/she shall not sell the Trade-in Vehicle at a price less than the Trade-in Valuation Amount provided in clause 1.1(a) of the Letter of Offer. In the event that the Customer sells the Trade-in Vehicle at a sale price lower than the Trade-in Valuation Amount, then he/she shall top up the difference between the amount paid by the Buyer and the Trade-in Valuation Amount and shall pay to Momentum the full Trade-in Valuation Amount.

10.3 All monies from the sale conducted by the Customer in clauses 10.1 and 10.2 above shall be paid in cleared funds to the Momentum's bank account set out in the Appendix to the Letter of Offer. For avoidance of doubt the amount to be paid into the bank account shall be the full Trade-in Valuation Amount.

10.4 Momentum shall have no claims on amounts paid above the Trade-in Valuation Amount set out in clause 1.1(a) of the Letter of Offer by the Buyer and such surplus amounts shall be remitted to the Customer by Momentum within three (3) working days or utilised by Momentum to reduce the interest payable by the Customer on the Import Financing Facility with the Customer's consent.

10.5 Momentum shall have no obligation to request the Custodian to transfer the logbook of the Trade-in Vehicle to the Buyer until the Trade-in Valuation Amount is paid to Momentum in full.



11. PARTIES WARRANTIES, RESPONSIBILITIES AND CANCELLATION

11.1 Momentum's Warranties:

Momentum shall warrant and undertake to the Customer:

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

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

- (a) the Imported 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 Imported Vehicle on the public roads, including the possession of a current inspection certificate, stickers, lifesaver signs, first-aid kit and fire extinguisher (where applicable), insurance and qualification of the driver or authorised user to operate the Imported Vehicle;
- (b) the condition of the brakes, steering, lights, coolant levels, relevant oil levels, windscreen wipers and washer, horn, indicators, reflectors, tyres are in satisfactory condition; and
- (c) the Imported 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.

11.3 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 Imported Vehicle, procure shipping and delivery, insurance, inspect, clear with KRA, register and deliver the Imported 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 Imported Vehicle and the failure of the Imported 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 Import Financing Facility account.

11.4 Subject to the terms of clause 11.5 below and Appendix 2, the Customer has the right to cancel the transaction contemplated under this Agreement, if the events under paragraph 1 of Appendix 2 of this Agreement occur. Any such cancellation shall be in accordance with the terms set out in Appendix 2 hereto.

11.5 The Customer shall indemnify Momentum for any material losses, costs and expenses incurred by Momentum (including foreign exchange losses) resulting from any such failure or inability to proceed with or cancellation of the transaction by the Customer.

11.6 The Customer's Warranties:

The Customer:

- (a) guarantees that he/she/it is the true and lawful owner of the Trade-in Vehicle and that it is free of all encumbrances and any and all claims, legal or otherwise;
- (b) warrants that at the date of signature of this Agreement there are no outstanding government fees, duty or taxes or other penalties outstanding against the Trade-in Vehicle;
- (c) warrants that the information and documentation including those in respect of KYC and the title of the Trade-in Vehicle provided to Momentum is accurate, complete, up-to-date and true, and can be relied upon;
- (d) warrants that he/she/it has disclosed to Momentum, its agents and the Selling Agent all physical and mechanical defects, any issues, whether actual or potential relating to the condition of the Trade-in Vehicle;
- (e) warrants that the odometer in the Trade-in Vehicle to the best of his/her/its knowledge reflects the actual mileage of the Trade-in Vehicle;
- (f) will co-operate fully with the Buyer, Momentum, the Custodian and the Selling Agent to resolve any issues that may arise in relation to this Agreement, the Transaction Documents and the sale of the Trade-in Vehicle without limitation, the sale transaction, and registration of the transfer;
- (g) shall deliver and hand over the Trade-in Vehicle to Momentum or its agents upon delivery of the Imported Vehicle to him/her, with all the standard accessories of the Trade-in Vehicle including but not limited to floor mats, jack, wheel spanner, life saver, two sets of keys, original wheels and tires, and spare tire;
- (h) is of legal age and legally competent to enter into this Agreement; and
- (i) hereby undertakes to indemnify the Buyer, Momentum, Custodian and the Selling Agent from any claims whatsoever that may arise from or be brought against them and arising from anything done or failed to have been done during the Customer's ownership of the



Trade-in Vehicle including without limitation claims on customs duty and other taxes by the KRA.

11.7 All representations and warranties contained in this Agreement shall continue in full force and effect after execution of this Agreement. If either party later learns that a warranty or representation that it made is untrue, it is under a duty to promptly disclose this information to the other party in writing.

11.8 No representation or warranty contained herein shall be deemed to have been waived or impaired by any investigation made by or knowledge of the other party to this Agreement.

12. INSTALMENT PAYMENTS AND PAYMENT OPTIONS

12.1 The Monthly Instalment Payment amounts due by the Customer to Momentum shall be paid on or before the Monthly Instalment Payment due date as follows:

- (a) by the total Monthly Instalment Payment due amount which shall be inclusive of: (i) the outstanding principal for the month; (ii) the interest charged or accrued for the month; and (iii) monthly Imported Vehicle tracking fees, as set out in the Special Conditions of this Agreement; and
- (b) by such other payment notified to the Customer from time to time by Momentum.

12.2 All payments to Momentum must be made via Momentum's Mpesa paybill number or by cash deposit or bank transfer to the bank account specified by Momentum to the Customer as per the details set out in Appendix I hereunder. Payments may also be made through deductions from the Customer's bank account or via any other means as specified by Momentum.

12.3 The Customer expressly accepts that if he fails to pay any outstanding amounts when due, or which may be declared due prior to, or past the date when it would have become due, or commits any default under this Agreement with Momentum, then, Momentum shall, at its sole discretion, without prejudice, exercise all or any of its rights and remedies available in the terms of this Agreement and applicable laws.

12.4 The Customer accepts that, at Momentum's sole discretion, Momentum or its appointed representatives and agents, may at any time follow up with the Customer for payment against amounts due on the Customer's Import Financing Facility Account.

12.5 The Customer agrees to pay all debt collection costs (including legal costs) and all charges incurred by Momentum for related and incidental matters including, debt collection charges for amounts due, penalties and fees for returned payments and dishonoured cheques, and similar expenses, and in the event of legal action initiated, any legal costs including, advocate costs incurred by Momentum in obtaining legal advice in connection with the Customer's Import Financing Facility Account and the

Customer's dealings with Momentum or incurred by Momentum in any legal, arbitration or other proceedings arising out of any dealings in respect Import Financing Facility and all other fees, expenses and taxes, duties, impositions and expenses incurred by Momentum in connection with the Import Financing Facility.

13. INTEREST, FEES AND OTHER CHARGES

13.1 The Customer is responsible for the payment of all applicable interest, charges and Fees for the utilisation of the Import Financing Facility.

13.2 The Fees payable under this Import Financing Facility will be paid by the Customer upon request by Momentum sales agents or relationship officers. Momentum's team shall furnish the Customer with the Import Financing Facility statement if the Customer is uncertain about the applicable Fees, charges or costs.

13.3 Some Fees will be deducted at source while others will be spread throughout the Customer's Maximum Import Financing Facility Term.

13.4 All Fees and charges are subject to change at any time at Momentum's sole discretion.

13.5 The Fees charged shall be inclusive of any Transaction Fees payable in respect of third-party services including to Mobile Network Providers and Mobile Money Services Providers.

13.6 Except as may otherwise be notified, Fees are inclusive of all applicable taxes including Value Added Tax at the prevailing rate. The Customer therefore hereby irrevocably grants Momentum permission to revise the Fees upon any changes to applicable taxes and duties.

13.7 Interest Charges:

- (a) Interest shall be charged on the outstanding principal on a monthly basis as set out in the Special Conditions of this Agreement subject to the Maximum Import Financing Facility Term, until the Import Financing Facility is fully repaid.
- (b) The total interest chargeable on the Import Financing Facility is calculated at a flat rate of **2.25%** per month on the base of the principal amount plus capitalized fees (where applicable) subject to the Import Financing Facility Term. In accordance with globally accepted International Financial Reporting Standards (IFRS), principal and interest repayments on the Import Financing Facility amortization schedule shall be calculated on the basis of an equivalent reducing balance interest rate of up to **3.787%** subject to the Import Financing Facility Term, which shall form the basis of calculating the outstanding amount due in the event of a pre-payment.



14. APPLICABLE INTEREST ON OUTSTANDING DUES AND BANK CHARGES ACCRUED

- 14.1 Interest on Outstanding Repayment of **0.33%** shall be charged on an Outstanding Repayment amount from the fourth (4th) day of lateness in payment of the due Monthly Instalment Payment, on a daily basis until full payment of the amount due.
- 14.2 Where a cheque provided by the Customer is dishonoured, the actual costs incurred by Momentum for each cheque shall be recovered from the Customer.
- 14.3 Consequently, Momentum shall be entitled to repossess and sell the Imported Vehicle in such manner as it may in its sole discretion determine to be in its best interest and the Customer is obligated to co-operate accordingly.
- 14.4 The Customer accepts that, Momentum or its appointed representatives or agents, may at any time follow up with him/her for payment against amounts due on his/her Import Financing Facility Account. The Customer shall be liable for all debt collection costs (including legal costs), all charges incurred by Momentum for related and incidental matters including, debt collection charges incurred, penalties for returned payments and similar expenses, and in the event of legal action initiated by either Party, any legal charges including, attorney costs incurred by Momentum in obtaining legal advice in connection with the Import Financing Facility and the Customer's dealings with Momentum or incurred by Momentum in any legal, arbitration or other proceedings arising out of any dealings in respect the Import Financing Facility and all other Fees, expenses and taxes, duties, impositions and expenses incurred by Momentum in complying with Requests.

15. ACCOUNT CLOSURE

Upon: (a) receiving the full Outstanding Repayments or outstanding payment of the Import Financing Facility amount and related charges from the Customer; or (b) takeover of the Import Financing Facility Account by a partner bank of Momentum, or other bank, or a third-party financial institution ("**Financier**") and receipt by Momentum of the full Outstanding Repayment or outstanding Import Financing Facility amount, as the case may be, Momentum shall, either at its own volition or at the Customer's request, close the Import Financing Facility Account and shall:

- (i) return the logbook and any other title document of the Imported Vehicle to the Customer or hand them over to the Financier;
- (ii) discharge Momentum's registered security interest in the Imported Vehicle at the Collateral Registry;
- (iii) inform NTSA to discharge the In-charge of the Imported Vehicle and the corresponding joint ownership of the Imported Vehicle; and

- (iv) remove the GPS tracking device installed by the Momentum's motor Imported Vehicle tracking service provider.

16. THE CUSTOMER'S WARRANTIES

- 16.1 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;
 - (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 an Event of Default or a failure of any condition of this Agreement;
 - (c) the Customer owns, and will at all times own, the Trade-in Vehicle subject only to liens and encumbrances notified to Momentum;
 - (d) the Customer has all powers, and have taken all actions necessary, to enter into and perform this Agreement pursuant to its terms;
 - (e) the Customer has all approvals and consents required for the ownership, operation and maintenance of the Trade-in Vehicle; and
 - (f) the Trade-in Vehicle otherwise complies with all applicable laws and regulations.
- 16.2 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 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 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;



- (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;
 - (f) he/she shall not sell, dispose, encumber or pledge, or attempt to sell, dispose, encumber or pledge the Imported Vehicle without notifying Momentum prior to such sale or disposal;
 - (g) the Imported Vehicle shall remain registered jointly in the names of the Customer and Momentum during the duration of the Import Financing Facility;
 - (h) he will keep and maintain the Imported Vehicle in good order and condition (fair wear and tear only expected) and will be fully responsible for any loss thereof or damage thereto however occasioned;
 - (i) that he will not use the Imported Vehicle nor permit it to be used for any purpose not permitted by the terms and conditions of the insurance policy of the Imported Vehicle nor permit to be done any act or thing by reason of which such insurance policy may be invalidated;
 - (j) he will not take, or permit to be taken, the Imported Vehicle out of the Republic of Kenya;
 - (k) to punctually pay all licenses, duties, fees and registration charges in respect of the Imported Vehicle as and when they fall due;
 - (l) to allow for the tracking of the Imported Vehicle, including but not limited to the following obligations:
 - (a) in the event that the Imported Vehicle will not be in use for more than a two (2) weeks' period during the duration of this Agreement, to notify Momentum of this fact and the specific dates when the Imported Vehicle will not be in use; and (b) to arrange to have the said Imported Vehicle to be held at a Momentum approved motor Imported Vehicle storage yard; and
 - (m) if the GPS tracking device installed in the Imported Vehicle malfunctions during the course of this Agreement, to cooperate with Momentum and Momentum's Imported Vehicle tracking service provider to ensure that the Imported Vehicle is delivered or availed to the Momentum's Imported Vehicle tracking service provider for repair or replacement of the GPS tracking device and restoration of the transmission signal to normal status. For avoidance of doubt, if the Customer fails to co-operate with Momentum and Momentum's Imported Vehicle tracking service provider as provided in this clause, Momentum shall immediately repossess the Imported Vehicle, in any event after twenty-four (24) hours of the Customer being notified on the need to deliver the Imported Vehicle for the resolution of the GPS tracking device's malfunction and stored at a Momentum motor Imported Vehicle storage yard, at the Customer's cost.
- 16.3 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.
- 16.4 The Customer undertakes not to revoke any of the executions undertaken herein and necessary to give effect to any of the transactions contemplated hereunder.
- 17. LIABILITY AND INDEMNIFICATION**
- 17.1 The liability of the Customer for direct damage and loss caused by defective title, errors on the logbook, the failure of the Trade-in Vehicle to comply with its specification or applicable motor vehicle related laws or regulations in force shall be unlimited. The Selling Agent and/or Momentum will promptly notify the Customer of any such failure.
- 17.2 Momentum shall not be liable for:
- (a) any loss of data or use;
 - (b) any form of indirect, consequential or special loss; or
 - (c) any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether such loss is direct or indirect whether or not the likelihood of such losses or damages was known by Momentum; and
 - (d) in each case, however arising.
- 17.3 Other than as set out above, Momentum limits its liability in respect of Trade-in Vehicle, and otherwise arising under or in connection with this Agreement to the Trade-in Valuation Amount.
- 17.4 Momentum gives no warranty in respect of the Trade-in Vehicle.
- 17.5 Except where Momentum is in breach of its obligations under this Agreement, the Customer shall indemnify and hold harmless Momentum all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, settlement costs and legal and other professional costs and expenses) suffered or incurred by Momentum as a result of any action, demand or claim:
- (a) that Momentum in breach of any applicable laws as a result of any act or omission of the Customer; or
 - (b) made against Momentum by a third party arising from any defect in the title of the Customer to the Trade-in Vehicle or caused by the Customer's breach of this Agreement;



- (c) incurred by Momentum by reason of being held out as the Customer's agent;
- (d) any alleged or actual infringement, of any third party's rights arising out of the sale of the Trade-in Vehicle by the Selling Agent to buyer; or
- (e) any claim made against Momentum in respect of any liability, loss, damage, injury, cost or expense sustained by Momentum or a third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the sale of the Trade-in Vehicle, as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement or violation of any laws by the Customer or negligence, acts, errors or omissions by the Customer.

18. EVENTS OF DEFAULT AND TERMINATION

18.1 Upon the happening of any of the following events, an Event of Default shall be deemed to have occurred and Momentum shall have no obligation to complete the transaction contemplated in this Agreement including its obligations hereunder, and all sums disbursed or expended by Momentum and all accrued and unpaid interest thereon shall, at the option of Momentum, become immediately due and payable upon Momentum's first demand in writing, 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 any payment hereby secured or 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 repeatedly defaults and/or is inconsistent in making the Monthly Instalment Payments;
- (c) the Customer fails to co-operate with Momentum as per the terms of this Agreement;
- (d) the Customer opts to exercise his/her right to sell the Trade-in Vehicle pursuant to the terms of clause 10.1 but fails to pay to Momentum the Trade-in Valuation Amount received from the Buyer or the Buyer fails to pay the Trade-in Valuation Amount to Momentum, in full and in cleared funds;
- (e) the Customer fails to deliver any KYC documents or any other required information and documentation regarding the Trade-in Vehicle within seven (7) days of issuance of being requested by Momentum;
- (f) in Momentum's sole opinion, any deterioration occurs in the Customer's financial position during the Maximum Import Financing Facility Term;
- (g) the Customer refuses to co-operate with the Selling Agent and the Custodian on any sale transaction of the Trade-in Vehicle procured, negotiated and concluded by the Selling Agent or refuse to execute any documentation requested by the Selling Agent in respect of the sale transaction procured, negotiated and concluded by the Selling Agent;
- (h) the Customer appoints any selling agent or other reseller in respect of the Trade-in Vehicle other than the Selling Agent;
- (i) where the Customer has physical possession of the Trade-in Vehicle, he/she fails to immediately deliver the Trade-in Vehicle to Momentum and/or Selling Agent for handover to the Buyer, upon being requested to do so, and time shall be of the essence;
- (j) any representation, warranty or condition made or implied by the Customer herein is incorrect or misleading in any material respect;
- (k) any other event or series of events whether related or not has or have occurred which in the opinion of Momentum (which opinion shall be final and binding) could or might affect or prejudice the Customer's ability or willingness to comply with all or any of his/her obligations hereunder;
- (l) any of the documents given to Momentum is or becomes for any reason whatsoever invalid or unenforceable;
- (m) the Trade-in Vehicle is registered in a different jurisdiction other than Kenya including without limitation South Sudan, Uganda, Tanzania, Burundi, among others;
- (n) the Customer fails to deliver the Trade-in Vehicle for valuation in accordance with the terms of this Agreement the Letter of Offer;
- (o) the Trade-in Vehicle does not conform to the warranties or information as provided herein and in the Letter of Offer;
- (p) the Customer cancels his/her request for the purchase and importation of the Imported Vehicle by Momentum prior to or at delivery;
- (q) the Customer disputes and/or rejects any revised Trade-in Valuation Amount arrived at by Momentum as per clauses 2.5 and 2.6 of this Agreement after the completion of the final inspection and valuation of the Trade-in Vehicle by the Selling Agent;
- (r) the final valuation of the Trade-in Vehicle varies significantly from the initial physical valuation; or
- (s) to the extent allowed by law, the Trade-in Valuation Amount is incorrect due to technical issues;
- (t) the Customer fails:
 - (i) to deliver the original logbook of the Trade-in Vehicle to Momentum; and



- (ii) to transfer the Trade-in Vehicle to the Custodian on NTSA – TIMS portal;
 - (iii) to execute the Irrevocable Consent to Transfer in blank and deliver it to the Momentum; or
 - (iv) to execute the Motor Vehicle Custody Services Agreement, or Motor Vehicle Sale and Transfer Agreement in blank and deliver it to the Momentum;
 - (u) 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 and the Imported Vehicle is, in Momentum's opinion, materially incorrect, or are found to be fraudulent or untrue or misleading;
 - (v) if the Imported Vehicle or accessories or major parts (including, chassis, engine, transmission, body) to the Imported Vehicle is changed or modified or removed which change or modification or removal is likely to prejudice Momentum's financial interest;
 - (w) if Momentum receives a letter, a court order or any notification that is likely to prejudice its interest in the Imported Vehicle from any government agency;
 - (x) if the Customer shall:
 - (i) use or permit the Imported Vehicle to be used in any way contrary to law;
 - (ii) tamper with, uninstall, disconnect, deliberately damage, remove, take offline the GPS tracking device installed in the Imported Vehicle by Momentum;
 - (iii) takes or attempts to take the Imported Vehicle outside Kenya's legal international boundaries where courts of law of Kenya do not exercise jurisdiction;
 - (iv) alters substantially the Imported Vehicle including without limitation, the Imported Vehicle identification numbers, marks, description for instance, the colour, the engine, gear box, chassis, and their numbers, VIN number, the registration number, type; or
 - (v) allow unqualified drivers to operate the Imported Vehicle, without notifying Momentum and obtaining Momentum's prior written consent;
 - (y) if the Customer is convicted under any law related to use of the Import Financing Facility or any other related services;
 - (z) if Momentum reasonably suspects or believe that the Customer is in breach of the terms of this Agreement (including non-payment of any amount due from the Customer where applicable);
 - (aa) if the Customer uses the Import Financing Facility for any criminal purposes or where Momentum detects any abuse or misuse or breach of law or fraud or attempted fraud relating to the Import Financing Facility;
 - (bb) the Customer enters into an agreement to sell, sells or disposes or encumbers or pledges the Imported Vehicle without informing and obtaining Momentum prior consent;
 - (cc) the Customer commits any act of bankruptcy;
 - (dd) an order is made for the sequestration of the Customer's assets or a petition is filed against the Customer to declare him/her bankrupt, as the case may be;
 - (ee) the Customer is subject to any administrative or governmental action which suspends or terminates his/her employment or business;
 - (ff) the Customer makes a general assignment for the benefit of creditors or transfers any assets in favour of any of creditors, or ceases or threatens to cease to carry on his/her employment or business or makes a voluntary assignment or transfer of all or substantially all of his/her property;
 - (gg) the Customer is in default under any agreement to which he/she is a party (whether as principal or guarantor) in respect of borrowed money or otherwise and is obliged to repay any amount borrowed by he/she prior to the stated maturity thereof by reason of default;
 - (hh) if a receiver or both is appointed over the Customer's property or assets or any part thereof;
 - (ii) if at any time the Customer is unable to pay his/her debts as they fall due for payment or if there is reasonable apprehension that the Customer is unable to pay his/her debts, or Momentum receives any notice that the Customer has admitted any inability to pay his/her debts as they become due;
 - (jj) if any government or any other competent authority nationalises, seizes or otherwise expropriates or assumes custody or control of all or any substantial part of the property, assets or business of the Customer or such authority gives notice of its intention to perform any such action as hereinbefore in this sub-clause set out; or
 - (kk) it becomes unlawful or impossible for Momentum to provide or fund the Import Financing Facility, or any security required ceases to be valid, legal, enforceable and binding.
- 18.2 Momentum shall at any time, with notice to the Customer, and at its own discretion, terminate or vary the business relationship with the Customer or suspend the Import Financing Facility as a result of any of the following:



- (a) on occurrence of an Event of Default in clause 18.1 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 the Customer's safety;
- (d) to facilitate, update or upgrade the contents or functionality of the Import Financing Facility from time to time; or
- (e) if the Momentum decides to suspend or cease provision of the Import Financing Facility for any commercial reasons or for any other reason as we may determine.

18.3 Cross-Default: A default by the Customer of a material term, covenant, warranty or undertaking of any Transaction Document including this Agreement or other agreement to which the Customer and Momentum are parties, or the occurrence of a material event of default under any such other agreement which is not cured after any required notice and/or cure period, shall entitle Momentum recall with immediate effect the whole of the monies remaining payable hereunder by the Customer to Momentum on demand or to repudiate this Agreement if no monies have been disbursed and no costs have been incurred by Momentum, as the case may be.

19. CONSEQUENCES OF DEFAULT

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

- (a) an Event of Default or cross default under clause 18.3 occurs;
- (b) the Customer commits a breach of or shall fail to observe or perform any of the other conditions herein expressed or implied;
- (c) Trade-in Vehicle or the Imported Vehicle is seized or expropriated whether lawfully or not by government or any other authority; or
- (d) the principal (or any part thereof) and other monies hereby secured becomes immediately due and payable hereunder,

then Momentum shall have the unfettered discretion and right to take any or all of the actions set out in clause 19.2 below.

19.2 In the event any of the matters specified in clause 19.1 above occurs, Momentum shall:

- (a) terminate this Agreement and the transactions contemplated under it;
- (b) terminate the Import Financing Facility;

- (c) cancel the purchase and importation of the Imported Vehicle;
- (d) declare that the Import Financing Facility (inclusive all Fees and charges) and all other amounts outstanding under these this Agreement is immediately due and payable, whereupon the Customer shall be required to settle the Import Financing Facility with immediate effect;
- (e) recover from the Customer any direct damages that Momentum will have suffered;
- (f) in its sole discretion, deny access to the Trade-in Vehicle and Imported Vehicle until the breach has been cured;
- (g) freeze any of the Customer's unutilized funds in the Customer's Import Financing Facility Account, deny the Customer access to the funds, any decline any Requests, until such Outstanding Repayments are settled in full by the Customer;
- (h) submit information concerning the default to Credit Reference Bureaus, where permitted by CBK;
- (i) take all lawful measures including engaging debt collection agencies, auctioneers and instruct Momentum's advocates to file a civil suit against the Customer to recover the amount in default;
- (j) if a customer defaults on any of the facilities and services granted to him by Momentum alongside the Import Financing Facility, which facilities may include, invoice factoring facility and/or insurance premium finance facility, Momentum is entitled to exercise its rights to offset and withhold the Imported Vehicle during such default;
- (k) where the Customer has an existing insurance premium finance facility running concurrently with the Import Financing Facility and fails to remit one of any Monthly Instalment Payments on their due date for the insurance premium finance facility, on the eighth (8th) day after the due date, a repayment shall be initiated by Momentum in the insurance premium finance facility and the same amount added to the Customer's Import Financing Facility Account;

(l) Momentum's Power of Sale:

- (i) The security constituted by this Agreement and the Transaction Documents, that is, the Trade-in Vehicle and the Imported Vehicle shall become immediately enforceable and Momentum in its absolute discretion or its agents may immediately thereupon or at any time thereafter without any previous or further notice or demand or concurrence on the part of the Customer and notwithstanding any subsequent acceptance of any payment of the principal money or interest due on this security:



- (A) enter (either personally or by its servants or agents) upon the land or premises whereof the Trade-in Vehicle and the Imported Vehicle may for the time being be upon, without incurring any liability to the Customer for, or by any reason of, that entry and the Customer shall use its all endeavours to allow Momentum or its servants or agents access (including obtaining any necessary consents or permits of other persons);
 - (B) take possession or collect and remove the Trade-in Vehicle and the Imported Vehicle;
 - (C) sell or dispose of the same by private sale or public auction or let or concur in the selling or letting of the Trade-in Vehicle and the Imported Vehicle in such a manner and generally on such terms and conditions as it shall think fit and to carry out any such sale or letting into effect in the name of the Customer or otherwise; and
 - (D) do all such other acts and things, and to exercise all its rights, powers and remedies, as may be incidental or conducive to any of the matters and powers aforesaid.
- (ii) The power of Momentum to sell or dispose of the Trade-in Vehicle and the Imported Vehicle by private sale or public auction shall be subject to such stipulations as Momentum may deem fit including without prejudice to the generality of the foregoing power to allow time for payment of any purchase money or to buy in the Trade-in Vehicle and the Imported Vehicle at such auction and to rescind or vary the terms of any contract or sale and to resell without being answerable or liable for any loss or expenses occasioned thereby including the loss of any valuables and property of the Customer or any other person left or present in the Trade-in Vehicle and the Imported Vehicle at the time of seizure and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper.
- (iii) The receipt of Momentum shall be a conclusive discharge to any purchaser at such sale for any of the purchase money and upon any sale purporting to be made in exercise of the power herein expressed or implied and no purchaser shall be bound to inquire as to the propriety or regularity of any such sale or be effected by notice express or constructive that any such sale is improper or irregular. Any deficiency between the aforesaid purchase price and the sum due to Momentum, hereunder at the time of such sale together with all expenses pertaining to the same shall be made good by the Customer and be recoverable by Momentum as liquidated damages but any increase to the aforesaid shall belong to the Customer.

- (iv) During the currency of this Agreement, Momentum shall be entitled to the exclusive possession of the invoices, deeds, documents of title and logbooks and other registration books relating to the Trade-in Vehicle and the Imported Vehicle but nevertheless all the liabilities attending ownership of the Trade-in Vehicle and the Imported Vehicle shall be borne by and be the responsibility of the Customer.
- (v) 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.

19.3 PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that the terms and conditions contained in this Agreement shall be in addition to and not in substitution for terms and conditions implied herein by virtue of Section 67 of the Movable Property Security Rights Act except so far as such implied terms and conditions are inconsistent with the terms and conditions hereof in which case the terms and conditions hereof shall prevail.

19.4 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.

20. INSURANCE

Vehicles: for the purposes of this clause 20 shall refer to the Imported Vehicle and the Trade-in Vehicle

20.1 The Customer:

- (a) shall comprehensively insure:
 - (i) the Imported Vehicle for the duration of this Agreement;
 - (ii) the Trade-in Vehicle for the duration prior to handover to Momentum and the Selling Agent, to their full reinstatement value against the insured risks at his/her own cost;
- (b) promptly pay all premiums in respect of any insurance policy on the Vehicles and do all other things necessary to keep such policy in full force and effect; and
- (c) not do, or omit to do, or permit to be done, or omitted, anything that may invalidate or otherwise prejudice any insurance policies relating to the Vehicles.

20.2 Momentum shall communicate to the Customer regarding the expiry of current insurance of the Vehicles thirty (30) days, and fourteen (14) days to expiry. If the Customer



opts to incur the cost of renewing the comprehensive insurance cover of the Vehicles upon expiry, Momentum shall permit the Customer to procure such comprehensive insurance cover from any Momentum approved insurance companies and notified to the Customer. The Customer shall provide to Momentum with evidence of payment of the comprehensive insurance cover premium within seven (7) days of renewal of the comprehensive insurance cover.

- 20.3 Momentum reserves the exclusive right to comprehensively insure the Vehicles if the Customer fails to or neglects or is unable to do so, and shall charge the insurance premium fees thereof on the Import Financing Facility, three (3) days to the expiry of the existing insurance covers and the comprehensive insurance covers taken by Momentum shall be communicated to the Customer.
- 20.4 If the Customer expressly allows Momentum to charge the said comprehensive insurance covers on their Import Financing Facility or Momentum exercises its right under clause 20.3 to comprehensively insure the Vehicle at the Customer's cost, there will be no refunds whatsoever made to the Customer.
- 20.5 Where the Customer notifies Momentum of his wish to cancel the comprehensive insurance cover taken by Momentum on their express instructions, there will be no refunds whatsoever made to the Customer.
- 20.6 The Customer undertakes to endorse Momentum as the principal beneficiary of any dues arising from an insurance claim relating to the Vehicles.
- 20.7 If the any of Vehicles is stolen, damaged or destroyed by a risk against which the Customer has insured, the Customer shall:
- (a) notify the Selling Agent and Momentum of the event within twenty-four (24) hours of the occurrence of the event;
 - (b) make a claim under the insurance policy in respect of that theft, damage or destruction; and
 - (c) notify the insurer to pay any insurance money in respect of the claim to Momentum which money will be used, at the sole discretion of Momentum:
 - (i) to restore, repair, rebuild or replace the Vehicles; or
 - (ii) to compensate Momentum in respect of the Trade-in Valuation Amount credited by Momentum into the Momentum's account of the Principal, and in advance of the sale of the Trade-in Vehicle to the Buyer; or
 - (iii) by Momentum in settlement of any Outstanding Amounts including Fees, and costs for the time being due by the Customer to Momentum under this Agreement.

20.8 In case of a write-off claim of the Trade-in Vehicle, the compensation to be made by the insurer or a cash payment by the Customer shall be paid to Momentum before the Imported Vehicle is delivered to the Principal.

20.9 Momentum shall be entitled to the full benefit of the comprehensive insurance covers of the Vehicles hereof including claims that might at any time be outstanding.

20.10 Momentum reserves the right to terminate this Agreement with no liability whatsoever to the Customer with the exception of:

- (a) the liability to return back the Trade-in Vehicle to the Customer if the Trade-in Vehicle has not been sold and is in the possession of Momentum or the Selling Agent; or
- (b) the liability to pay the Trade-in Valuation Amount to the Customer less costs incurred by Momentum if the Trade-in Vehicle has been sold:
 - (i) if such insurance or compensation amounts stated in this clause 20 are not paid by the Customer or the Vehicles insurer to Momentum; or
 - (ii) if the Customer fails to insure the Vehicles as required under clause 20.1 above,

and may proceed to sell the Imported Vehicle to recover any costs incurred as well as sue the Customer for any outstanding amounts.

21. THE CUSTOMER'S PERSONAL INFORMATION AND CREDIT REFERENCE BUREAUS

21.1 The Customer hereby expressly consents and authorizes Momentum to register, share, store, request, disclose, receive, record, verify or utilize the Customer's personal information, credit history, identity or information or data relating to the Customer's Import Financing Facility Account with respect to the moneys, services and facilities granted under the Import Financing Facility and any details of the Customer's creditworthiness, 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 or subsidiary or holding company for reasonable commercial purposes relating to the Import Financing Facility;
- (b) to a Credit Reference Bureau. It is hereby understood and agreed that by signing this Agreement, the Customer authorizes Momentum to access any information available to assess his application and also gives Momentum permission to register details of the conduct of the Customer's Import Financing Facility Account with any Credit Reference Bureau, and the Customer waives any claim he may have against Momentum in respect of such disclosure.



- (c) to debt-collection agencies;
- (d) to Momentum's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
- (e) for reasonable commercial purposes connected to the Customer's use of the Import Financing Facility, such as marketing and research related activities;
- (f) from IPRS; and
- (g) 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.

21.2 The Customer authorizes Momentum to disclose any information relating to the Customer's Import Financing Facility 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.

21.3 The Customer authorizes Momentum to disclose, respond, advise exchange and communicate the details or information pertaining to the Customer's Import Financing Facility Account to third parties involved in the administration of the Customer's Import Financing Facility Account, other facilities, underwriting of insurance policies, updating of databases, or provision of user support.

21.4 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 the Customer's Device on Momentum's USSD, mobile app, 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 Import Financing Facility.

22. 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.

23. LIMITATION OF LIABILITY AND FORCE MAJEURE

23.1 **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 wilful misconduct.**

23.2 **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. For avoidance of doubt, inability of the Customer to pay Momentum is not a force majeure event.

23.3 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.

24. DATA PROTECTION

24.1 It is hereby understood and agreed that the data herein has been directly obtained from the Customer who has provided the data to Momentum to facilitate the processing of the Import Financing Facility sought by the Customer.

24.2 It is hereby understood and agreed that by signing this contract the Customer:

- (a) must provide personal data which is required Import Financing Facility, the establishing and maintenance of business and for the fulfilment of Parties' contractual and legal obligations to the each other;
- (b) consents to Momentum processing the data as per its internal data policy and the data protection laws;
- (c) has given consent to Momentum to continue holding and processing the data provided even after all obligations under the Import Financing Facility 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;
- (d) is at liberty to exercise its rights as a data subject and as is provided by the Data Protection Act, No. 24 of 2019 of the laws of Kenya ("**Data Protection Act**"); and
- (e) consents to the use of their personal data from time to time by Momentum to market Momentum's



products. The Customer may opt out of receiving marketing communication at any time within the duration of the Import Financing Facility by officially communicating to MCL through the prescribed channels of communication.

24.3 Momentum undertakes to ensure the personal data provided by the Customer is processed in accordance with the Data Protection Act.

24.4 For queries and more information on Momentum's data protection policy, the Customer may contact Momentum's data protection personnel at cx@momentumcredit.co.ke.

25. FURTHER ASSURANCE

When required by Momentum, the Customer will execute such further legal or other charges or assignments in favour of Momentum over all or any of the Imported Vehicle and any other Imported Vehicles owned by the Customer both present and future including but not limited to all rights and remedies relating thereto both present and future to secure all moneys, obligations and liabilities hereby covenanted to be paid or otherwise hereby secured or to facilitate the realisation of Momentum's security or the exercise of the powers conferred on Momentum or a receiver appointed by it such further charges or assignments to be prepared by or on behalf of Momentum at the cost of the Customer in such form as Momentum requires.

26. RESTRICTION ON DEALING

The Customer covenants that he/she will not without notifying Momentum and obtaining the prior consent in writing of Momentum:

26.1 create or attempt to create or permit to subsist any mortgage, debenture, charge or pledge upon or permit any lien or other encumbrance to arise or affect the Imported Vehicle;

26.2 assign, discount, factor, pledge, or charge the Imported Vehicle; or

26.3 part with possession of, transfer, sell, lease or otherwise dispose the Imported Vehicle or any part thereof or attempt or agree to do so.

27. WITHDRAWAL FROM AGREEMENTS

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

28. JOINT AND SEVERAL LIABILITY

Should there be more than one borrower, then:

28.1 each of them shall be jointly and severally liable with the other as co-principal debtor for every indebtedness and obligation of the Customer to Momentum; and

28.2 all references to "the Customer" shall be construed as reference to all the borrowers, jointly and severally, unless otherwise indicated.

29. 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.

30. COUNTERPARTS AND ELECTRONIC SIGNATURES

30.1 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.

30.2 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.

31. 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.

32. ASSIGNMENT

32.1 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.

32.2 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.

33. 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.



34. 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.

35. 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.

36. NOTICES

- 36.1 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.
- 36.2 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.
- 36.3 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.

37. VOLUNTARY SUBMISSION

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

38. 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.

39. 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: Import Financing Facility Repayment

Repayments of the Import Financing Facility can be done:

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

Account Name: Momentum Credit Limited
Account Number: 7177250035

Bank: NCBA
Branch: Mama Ngina
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 under clause 11.4 and clause 11.5 of this Agreement if:
 - (a) the Customer fails to proceed with the transaction;
 - (b) the Customer for any valid reason is unable to proceed with the transaction;
 - (c) the Customer notifies Momentum of his wish to cancel the importation of the Imported Vehicle;
 - (d) the Customer notifies Momentum of his wish to cancel the sale of the Trade-in Vehicle;
 - (e) any of the documents given to Momentum by the Customer, is or becomes for any reason whatsoever invalid or unenforceable;
 - (f) the Customer does not provide all required information and documentation regarding the Trade-in Vehicle within seven (7) days of issuance of the Letter of Offer;
 - (g) the Trade-in Vehicle is registered in a different jurisdiction other than Kenya including without limitation South Sudan, Uganda, Tanzania, Burundi, among others;
 - (h) the Customer fails to deliver the Trade-in Vehicle for valuation for the initial or final inspection and valuation;
 - (i) the Trade-in Vehicle does not conform to the warranties or information as provided herein and under the Transaction Documents;
 - (j) the physical and mechanical condition of the Trade-in Vehicle upon handover to the Selling Agent as well as the final valuation of the Trade-in Vehicle varies significantly from the initial condition and valuation;
 - (k) the Customer disputes and rejects any revised Trade-in Valuation Amount arrived at by Momentum after the completion of the final inspection and valuation of the Trade-in Vehicle by the Selling Agent;
 - (l) to the extent allowed by law, the Trade-in Valuation Amount is incorrect due to technical issues or glitches;
 - (m) the Imported 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 Imported Vehicle falls under either paragraph I(e) or I(f) of this Appendix 2;
 - (n) a vehicle that corresponds with the Customer's specifications cannot be found;
 - (o) a Vehicle that corresponds with the target price cannot be found;
 - (p) Momentum does not wish to continue with the transaction; or
 - (q) the Customer does not wish to continue with the transaction.
2. The following shall apply to any transaction cancelled by the Customer:
 - (a) if the transaction is cancelled:
 - (i) at the vehicle inspection stage (the period commencing when Momentum instructs its motor vehicle inspection service provider to inspect the Imported Vehicle and ending on completion of the inspection of the Imported Vehicle) of the transaction; or
 - (ii) at the pre-shipment stage (the period between the completion of inspection of the Imported Vehicle, and the shipping of the Imported Vehicle) of the transaction,
 - (iii) Momentum shall surcharge the Customer three per cent (3%) of the Imported Vehicle's total importation cost, comprising of the CIF Price plus all other costs, charges and expenses; and
 - (b) if the transaction is cancelled at the post shipment stage (the period between the shipping of the Imported Vehicle from the country of exportation and delivery to the Customer):
 - (i) the cancellation by the Customer shall be considered an Event of Default under clause 18 of this Agreement;
 - (ii) Momentum will clear the Imported Vehicle at the Port of Mombasa, pay all requisite charges and shall dispose the Imported Vehicle, require the Customer to pay with immediate notice any outstanding amounts of the Import Financing Facility;
 - (iii) Momentum shall demand a cancellation fee of KES 25,050.00 from the Customer as a condition precedent for Momentum to instruct the Custodian to transfer the Trade-in Vehicle back to the Customer;
 - (iv) all costs, losses and expenses incurred by Momentum (including foreign exchange losses) resulting from such cancellation of the transaction by the Customer, shall become immediately due and payable on demand by the Customer; and



- (v) Momentum shall sue the Customer for any outstanding amounts set out in this paragraph 2(b) of Appendix 2.

II. GENERAL CONDITIONS FOR THE MOTOR VEHICLE SALE AGENCY AGREEMENT

AGREED TERMS:

40. DEFINITIONS AND RULES OF INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

40.1 Definitions:

Agreement: means this Motor Vehicle Sale Agency Agreement, as it may be amended from time to time, and includes all schedules and annexures to this Motor Vehicle Sale Agency Agreement, as they may be amended from time to time.

Business Day: means a day other than Saturday, Sunday or gazetted public holidays when banks generally are open for non-automated business in Nairobi.

Buyer: means the person or entity to whom the Selling Agent procures and concludes a sale contract in respect of the Trade-in Vehicle pursuant to the terms of this Agreement.

Letter of Offer: means the letter of offer issued by Selling Agent to the Principal: (a) setting out the Trade-in Valuation Amount of the Trade-in Vehicle that Momentum will credit Momentum's account of the Principal in respect of the Trade-in Vehicle, and in advance of the sale of the Trade-in Vehicle; (b) offering to repair, refurbish, find potential buyers and sell the Trade-in Vehicle on behalf of the Principal; and (c) setting out the terms and conditions of the trade-in transaction, for acceptance by the Principal and includes any amendments and/or supplementals.

Custodial Services: means the services of:

- (a) safekeeping and holding of the Principal's Trade-in Vehicle's title and logbook by the Custodian on its corporate Transport Integrated Management System ("TIMS") account of the National Transport and Safety Authority ("NTSA"), pending the sale of the Trade-in Vehicle; and
- (b) subsequent to paragraph (a) above, the transfer of the Trade-in Vehicle's title and logbook to the Buyer upon receipt by Custodian of notification from the Selling Agent and/or Momentum that the purchase price has been paid in full to Momentum by the Buyer, pursuant to the terms of this Agreement, the Motor Vehicle Custody Services Agreement and the Irrevocable Consent to Transfer.

Custodian: means OT Law LLP incorporated in Kenya as a limited liability partnership under the Limited Liability Partnerships Act (No. 42 of 2011 of the laws of Kenya) and includes its successors, assigns and delegates of the Custodian.

Effective Date: means the date of signature of the Special Conditions of this Agreement by both parties.

Irrevocable Consent to Transfer: refers to the notice comprising the irrevocable consent of the Principal: (a) the Custodian to transfer the title and logbook; and (b) to Momentum and/or the Selling Agent to deliver physical possession of the Trade-in Vehicle, original logbook and keys to the Buyer after the Buyer has paid the Purchase Amount of the Trade-in Vehicle in full to Momentum, in the format set out hereto in Schedule I of the Motor Vehicle Custody Services Agreement.

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 Principal.

Trade-in Vehicle: means the used motor vehicle more particularly described in Section [NUMBER] of the Motor Vehicle Trade-in and Importation Application Form, owned by the Principal, and which is provided by the Principal to Momentum at the Trade-in Valuation Amount in partial settlement of the purchase price of a higher value motor vehicle to be imported by Momentum for the Principal pursuant to the Motor Vehicle Import Financing Facility Agreement.

Principal: means the person whose names, address, signature and other details appears on the Special Conditions of this Agreement and in the Transaction Documents, being the person who has applied for the Trade-in product, being the lawful, registered owner of the Trade-in Vehicle and has accepted the terms and conditions of this Agreement, and whose signature is appended hereunder and shall, where the context so admits, include his/her/their heirs, successors, personal representatives, administrators and permitted assigns as the case may be.

Purchase Amount: means the purchase price monies in respect of the Trade-in Vehicle as notified to the Buyer by the Selling Agent, which monies the Buyer will pay to Momentum instead of the Principal or the Selling Agent and which will be utilized by Momentum to set-off the Principal liabilities to Momentum including the motor vehicle trade-in and import facility granted by Momentum to the Principal under the Motor Vehicle Import Financing Facility Agreement signed by the Principal.

Selling Agent: refers to Eezy Track Limited, a company 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 Eezy Track.

Trade-in Valuation Amount: means the purchase price offered by Momentum to the Principal in respect of the Trade-in Vehicle which purchase price shall be based on the valuation undertaken on the Trade-in Vehicle by the Selling Agent, which purchase price amount will be credited by Momentum into the Momentum's account of the Principal, and in advance of the sale of the Trade-in Vehicle, which amount is set out in the Letter of Offer signed by the Principal, except that Momentum shall set-off the Trade-in Valuation Amount against the total purchase amount of the imported vehicle, and for avoidance of doubt, the Trade-in Valuation Amount shall be less than the actual amount received from the Buyer.

Transaction Documents: means the Motor Vehicle Trade-in and Importation Application Form, the Letter of Offer, this Agreement, the Motor Vehicle Import Financing Facility Agreement, the Motor Vehicle Sale Agency Agreement and the Custody Services Agreement signed by the Principal.

40.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this deed.

40.3 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and words in the plural shall include the singular.
- (b) a reference to one gender shall include a reference to the other genders.
- (c) a reference to any party shall include that party's personal representatives, successors and permitted assigns.
- (d) references to clauses and the Schedule are to the clauses and the Schedule of this deed.
- (e) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under them.

40.4 The Schedule forms part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedule.

41. APPOINTMENT AND SCOPE

41.1 The Principal appoints the Selling Agent as its exclusive selling agent for the sale of the Trade-in Vehicle on the terms of this Agreement, and the Selling Agent agrees to act in such capacity. The Principal will not itself do such things, or appoint other agents to do so.

41.2 Subject to clause 41.1, the Principal also agrees not to appoint any agent or other reseller in respect of the Trade-in Vehicle.

41.3 The Selling Agent:

- (a) may (with Momentum's prior consent and cost) repair and refurbish the Trade-in Vehicle including repaint, buff, undertake paint correction among other acts to improve the sale prospects of the Trade-in Vehicle;
- (b) will market, advertise, obtain enquires and orders for Trade-in Vehicle from potential buyers; and
- (c) will negotiate and conclude a sale contract between the Principal and the Buyer for sale of Trade-in Vehicle to the Buyer.

41.4 The Selling Agent will, in all dealings with Customers and generally, make clear that it acts as agent for the Principal.

41.5 Notwithstanding anything contrary stated in this Agreement, the Principal shall have no powers to cancel the appointment of the Selling Agent nor terminate this Agreement for whatever reason.

42. TERM

42.1 This Agreement will take effect on the Effective Date and shall expire upon occurrence of the events set out in clause 3.2 unless terminated earlier by the Selling Agent.

42.2 This Agreement shall expire immediately upon payment of the agreed Purchase Amount by the Buyer to Momentum.

42.3 Immediately upon the occurrence of the event described in clause 3.2 above:

- (a) the Selling Agent shall surrender the original logbook of the Trade-in Vehicle to the Buyer;
- (b) the Custodian shall apply to NTSA TIMS for transfer of the Trade-in Vehicle to the Buyer; and
- (c) the Principal shall immediately deliver the Trade-in Vehicle to Momentum and/or Selling Agent who shall then deliver the Trade-in Vehicle and its keys, and hand them over to the Buyer, if the Principal had physical possession of the Trade-in Vehicle. Time shall be of the essence.

42.4 Subject to applicable law, neither party will have any liability to the other for damages, compensation or otherwise by reason only of the expiration or termination of this Agreement in accordance with clause 42.1.

43. RIGHTS AND DUTIES OF THE PRINCIPAL

43.1 The Principal will act in good faith towards the Selling Agent.

43.2 The Principal will provide the Selling Agent with any information the Selling Agent requires to perform its obligations. At the Selling Agent's request, this will include information needed to verify the identification particulars of the Principal and particulars about the Trade-in Vehicle.

43.3 The Principal shall not change or protest or negotiate further the agreed Purchase Amount of the Trade-in Vehicle.

43.4 The Principal shall not refuse to co-operate with the Selling Agent and the Custodian on any sale transaction of the Trade-in Vehicle procured, negotiated and concluded by the Selling Agent or refuse to execute any documentation requested by the Selling Agent in respect of the sale transaction procured, negotiated and concluded by the Selling Agent.

43.5 The Principal will:

- (a) immediately after execution of this Agreement and other transaction documents:
 - (i) deliver the original logbook of the Trade-in Vehicle thereof to Momentum; and
 - (ii) shall apply to NTSA TIMS to transfer of the Trade-in Vehicle to the Custodian;
- (b) execute the Irrevocable Consent to Transfer in blank and deliver it to Momentum;
- (c) execute the Trade-in Vehicle Custody Services Agreement and deliver it to Momentum to hold on behalf of the Custodian;
- (d) execute the Motor Vehicle Sale and Transfer Agreement in blank and deliver it to Momentum;
- (e) promptly deal with any after-sales enquiry from the Buyer and/or Selling Agent;

43.6 The Principal represents that:

- (a) it has all approvals and consents required for the ownership, operation and maintenance of the Trade-in Vehicle; and
- (b) the Trade-in Vehicle otherwise complies with all applicable laws and regulations.

43.7 Provided that the Selling Agent performs its obligations hereunder, the Principal will indemnify the Selling Agent against any liability (including costs and expenses in defending proceedings) which the Selling Agent may reasonably incur:

- (a) by reason only of being held out as the Principal's agent or otherwise in the performance of this Agreement; or
- (b) through any failure by the Principal to comply with clauses 4.5 and 43.6.

44. RIGHTS AND DUTIES OF THE SELLING AGENT

44.1 The Selling Agent may, subject to this Agreement, perform its duties as it sees fit.

44.2 The Selling Agent will:

- (a) in the name of and for the Principal, procure, negotiate and conclude a sale contract for the Trade-in Vehicle;
- (b) actively market and promote the Trade-in Vehicle;

- (c) comply with relevant laws and regulations, and maintain all necessary licences and approvals, in its performance of this Agreement;
- (d) promptly inform the Principal of any after-sales enquiry or complaint concerning the Trade-in Vehicle;
- (e) otherwise communicate to the Principal all information available to him and relevant to this Agreement;
- (f) store the Trade-in Vehicle securely; and
- (g) investigate and inform the Principal any complaints, problems or claims relating to the Trade-in Vehicle.

44.3 The Selling Agent will not make any statement or give any warranty or guarantee in respect of the Trade-in Vehicle without the Principal's prior written consent, except giving a guarantee to the Principal that the Selling Agent will ensure that the Buyer pays the agreed Purchase Amount in full to Momentum prior to or immediately upon concluding the sale of the Trade-in Vehicle.

44.4 The Selling Agent may (at Momentum's request and cost):

- (a) repair and refurbish the Trade-in Vehicle including repaint, buff, undertake paint correction among other acts to improve the sale prospects of the Trade-in Vehicle;
- (b) modify the Trade-in Vehicle; or
- (c) subcontract its obligations hereunder.

44.5 The Selling Agent being in the business of selling motor vehicles on behalf of other customers reserves all its rights, (during this Agreement and after its expiry or termination, however occurring), to be concerned and be interested, directly or indirectly, in the sale, supply and promotion motor vehicles other than the Trade-in Vehicle.

45. PURCHASE AMOUNT

The Selling Agent shall ensure that the Principal is paid the agreed Trade-in Valuation Amount by Momentum and in cleared funds to the bank account nominated by Momentum in writing.

46. WARRANTIES

46.1 The Principal:

- (a) guarantees that he/she/it is the true and lawful owner of the Trade-in Vehicle and that it is free of all encumbrances and any and all legal claims;
- (b) warrants that at the date of signature of this Agreement there are no outstanding government fees, duty or taxes or other penalties outstanding against the Trade-in Vehicle;

- (c) warrants that the odometer in the Trade-in Vehicle to the best of his/her/its knowledge reflects the actual mileage of the Trade-in Vehicle;
- (d) will co-operate fully with the Buyer, Momentum, the Custodian and Eezy Track to resolve any issues that may arise in relation to this Agreement and the sale of the Trade-in Vehicle without limitation, the sale transaction, and registration of the transfer;
- (e) is of legal age and legally competent to enter into this Agreement; and
- (f) hereby undertakes to indemnify Momentum, Custodian and the Selling Agent from any claims whatsoever that may arise from or be brought against them and arising from anything done or failed to have been done during the Principal's ownership of the Trade-in Vehicle including without limitation claims on customs duty and other taxes by the Kenya Revenue Authority.

46.2 All representations and warranties contained in this Agreement shall continue in full force and effect after execution of this Agreement. If either party later learns that a warranty or representation that it made is untrue, it is under a duty to promptly disclose this information to the other party in writing.

46.3 No representation or warranty contained herein shall be deemed to have been waived or impaired by any investigation made by or knowledge of the other party to this Agreement.

47. TERMINATION

47.1 This Agreement may be terminated at any time by Selling Agent if:

- (a) the Principal commits a material breach, or series of breaches resulting in a material breach, of the Agreement and such breach is not remediable, or is not remedied within seven (7) days of written notice to do so;
- (b) any representation, undertaking, warranty, documents, statements or particulars made in connection with this Agreement or supplied by or on behalf of the Principal including without limitation, information on the Principal and the Trade-in Vehicle is, in Momentum or Selling Agent's opinion, materially incorrect, or are found to be fraudulent or untrue or misleading or is breached by the Principal;
- (c) the Principal petitions for bankruptcy or passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the Principal, or a winding-up order is made in relation to the Principal; or
- (d) a trustee in bankruptcy, receiver or administrative receiver is appointed in relation to the Principal or any of his assets.

47.2 This Agreement will shall not terminate automatically in the event of the death of the Principal but shall continue in force and shall only expire:

- (a) after:
 - (i) conclusion of a sale contract over the Trade-in Vehicle; and
 - (ii) payment of the Purchase Amount of the Trade-in Vehicle by the Buyer to Momentum; and
- (b) after:
 - (i) the Selling Agent has delivered the original logbook of the Trade-in Vehicle to the buyer;
 - (ii) the Principal has delivered the Trade-in Vehicle to Momentum or the Selling Agent, in the event that the Principal had physical possession of the Trade-in Vehicle;
 - (iii) Momentum or the Selling Agent has delivered physical possession of the Trade-in Vehicle to the Buyer; and
 - (iv) the Custodian has applied to NTSA TIMS for transfer of the Trade-in Vehicle to the buyer.

47.3 Termination will be without prejudice to the accrued rights and liabilities of the parties.

47.4 The provisions of clauses 1, 41.3, 42.4, 43.2, 43.5(e), 43.6, 44.2(e), 44.2(f), 44.3, 44.5, **Error! Reference source not found.** and 48 will survive termination of this Agreement, however occurring.

48. LIABILITY

48.1 Neither party excludes or limits liability:

- (a) for death or personal injury caused by its negligence; or
- (b) under any indemnity given by it hereunder.

48.2 The liability of the Principal for direct damage and loss caused by defective title, errors on the logbook, the failure of the Trade-in Vehicle to comply with its specification or applicable motor vehicle related laws or regulations in force shall be unlimited. The Selling Agent will promptly notify the Principal of any such failure.

48.3 Neither party will be liable for:

- (a) loss of data or use;
- (b) any form of indirect, consequential or special loss; or
- (c) any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether such loss is direct or indirect and whether or not the likelihood of such losses or damages was known by the Selling Agent; and
- (d) in each case, however arising.

48.4 Other than as set out above, the Selling Agent limits its liability in respect of Trade-in Vehicle, and otherwise arising under or in connection with this Agreement to the Purchase Amount.

48.5 The Selling Agent gives no warranty in respect of the Trade-in Vehicle.

49. INDEMNIFICATION

49.1 The Principal shall indemnify and hold harmless the Selling Agent from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Selling Agent as a result of any action, demand or claim:

- (a) that the Selling Agent is in breach of any applicable laws as a result of any act or omission of the Principal; or
- (b) made against the Selling Agent by a third party arising from any defect in the title of the Principal to the Trade-in Vehicle or caused by the Principal's breach of this Agreement;
- (c) any alleged or actual infringement, of any third party's rights arising out of the sale of the Trade-in Vehicle by the Selling Agent to buyer; or
- (d) any claim made against the Selling Agent in respect of any liability, loss, damage, injury, cost or expense sustained by the Selling Agent or a third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the sale of the Trade-in Vehicle, as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement or violation of any laws by the Principal or negligence, acts, errors or omissions by the Principal.

49.2 The Principal shall not indemnify the Selling Agent against any breach occasioned either wholly or partly by the Selling Agent itself.

49.3 By appending his signature in the Special Conditions of this Agreement, the Principal acknowledges that he has read, reviewed, well understood, and is fully agreeable to the all the terms and conditions stipulated in the full electronic versions of this Agreement, made accessible to him or sent to him by Momentum and/or the Selling Agent via e-mail, facsimile, short messaging service ("SMS"), parties acting for and behalf of Momentum, the Selling Agent and/or the Custodian including their sales agents, and physical versions of such documents or via any other means that the the Selling Agent deems necessary at its sole discretion.

49.4 Without prejudice to any other clause in this Agreement, all notices concerning this Agreement may be sent via SMS,

WhatsApp, phone call, e-mail, registered mail, physical delivery or any other communication mode as the Selling Agent deem necessary at its sole discretion.

50. INSURANCE

50.1 Pending the sale of the Trade-in Vehicle to the Buyer, the Principal:

- (a) shall insure and keep the Trade-in Vehicle comprehensively insured to its full reinstatement value against the insured risks at his/her own cost;
- (b) promptly pay all premiums in respect of any insurance policy on the Trade-in Vehicle and do all other things necessary to keep such policy in full force and effect; and
- (c) not do, or omit to do, or permit to be done, or omitted, any thing that may invalidate or otherwise prejudice any insurance policies relating to the Trade-in Vehicle.

50.2 If the Trade-in Vehicle is stolen, damaged or destroyed by a risk against which the Principal has insured, the Principal shall:

- (a) notify the Selling Agent and Momentum of the event within twenty-four (24) hours of the occurrence of the event;
- (b) make a claim under the insurance policy in respect of that theft, damage or destruction; and
- (c) notify the insurer to pay any insurance money in respect of the claim to Momentum which money will be used to repair or rebuild the Vehicles or compensate Momentum in respect of the Trade-in Valuation Amount credited by Momentum into the Momentum's account of the Principal, and in advance of the sale of the Trade-in Vehicle to the Buyer.

50.3 In case of a write-off claim, the compensation to be made by the insurer or a cash payment by the Principal shall be paid to Momentum before the imported vehicle is delivered to the Principal.

50.4 The Selling Agent and Momentum reserve the right to terminate this Agreement and the Motor Vehicle Trade-in and Import Financing Agreement with no liability whatsoever to the Principal with the exception of: (a) the liability to return back the Trade-in Vehicle to the Principal if the Trade-in Vehicle has not been sold and is in the possession of Momentum or the Selling Agent; or (b) the liability to pay the Trade-in Valuation Amount to the Principal less costs incurred by Momentum: (i) if such insurance or compensation amounts stated in clause 11.2(b), 11.2(c) and 11.3 are not paid by the Principal or insurer; or (ii) if the Principal fails to insure the Trade-in Vehicle as required under clause 11.1 above, and may proceed to sell the imported vehicle to recover any costs incurred.

51. GENERAL

- 51.1 **Time:** Unless stated otherwise, time is not of the essence of any date or period herein.
- 51.2 **Priority:** The terms of this Agreement prevail over those of its Schedule and Appendices.
- 51.3 **Waiver:** No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 51.4 **Relationship:** The parties are principal and agent, and not partners, or employer and employee.
- 51.5 **Notices:** Notices under this Agreement will be in writing and sent to the person(s) and addresses set out in the Motor Vehicle Trade-in and Importation Application Form. They may be given, and will be deemed received:
- (a) by registered post: two (2) Business Days after posting;
 - (b) by hand: on delivery; and
 - (c) by e-mail: at the time of transmission provided an error transmission report is not received by the sender.
- 51.6 **Rights and remedies:** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 51.7 **Variations and Amendments:** This Agreement, or any term hereof, may be changed, varied or waived only by a written amendment, signed by the party against whom enforcement of such change or waiver is sought.
- 51.8 **Delegation and Assignment:** Subsequent to the execution of the Agreement, the Custodian may assign any or all of its rights and delegate any or all of its duties hereunder to any person or entity, including the Selling Agent and Momentum Credit Limited; provided that the Custodian shall remain primarily liable for the proper performance of Custodial Services. The Principal may not assign this Agreement or any or all of its rights or obligations under the Agreement without obtaining the prior written consent of the Custodian.
- 51.9 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 51.10 **Further Actions:** Each party agrees to perform such further acts and execute such further documents as are necessary to effectuate the purposes hereof.
- 51.11 **Entire Agreement:** This Agreement embodies the entire agreement and understanding between the parties with respect its contents and supersedes all prior

agreements and understandings relating to the subject matter hereof.

- 51.12 **Governing Law:** This Agreement and any dispute or claim arising out of 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.
- 51.13 **Jurisdiction:** By executing this Agreement, the Principal consents to the exclusive jurisdiction of the courts of law of the Republic of Kenya to settle any disputes, claims, controversies, differences, questions or claims for compensation or otherwise (“**Dispute**”) if any good faith negotiations and/or efforts to resolve the Dispute fail, and waives 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.
- 51.14 **Invalidity:** If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby.
- 51.15 **Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 51.16 **Electronic Signatures:** The electronic signature of any party to this Agreement shall constitute the valid and binding execution hereof by such party.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



CUSTOMER CARE CONTACTS

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