

MOTOR VEHICLE IMPORT FINANCING AGREEMENT- DEALERS

This Dealers Motor Vehicle Import Financing Agreement, ("Agreement") is made on _____ day of _____, 20 _____ between, the Parties:

(1) MOMENTUM	(2) THE CUSTOMER
<p>MOMENTUM CREDIT LIMITED Registration number: CPR/2010/29811 Physical address: 9th Floor, International House, Mama Ngina Street, Nairobi Postal address: P.O. Box 29175 – 00100, Nairobi, Kenya, E-mail: info@momentumcredit.co.ke Website: www.momentumcredit.co.ke Phone number: 0709 434 000 (hereinafter referred to as the "Momentum" which expression shall, where the context so requires, include the Momentum's successors in title and assigns (whether immediate or derivative)) of the first part.</p>	<p>Client Name: _____ National ID number: _____ Address: _____ E-mail: _____ Phone number: _____</p> <p>(hereinafter referred to as the "Dealer" which expression shall, where the context so admits include the Dealer's personal representatives, successors, heirs, and assigns whether immediate or derivative) of the other part.</p>
<p>Both hereafter collectively referred to as the "Parties" or separately as "Party".</p>	

BACKGROUND:

- A. The Dealer conducts the business of sourcing, importing and selling motor vehicles to the Kenyan public.
- B. The Dealer has applied to Momentum for a financing facility to be utilised towards:
 - a) the sourcing, inspection, purchase, importation, port clearance costs, customs duty and levies, applicable taxes, registration charges and delivery of the Vehicles from the Territory to Kenya, and finally, delivery to the Dealer's Momentum approved vehicle showroom or car yard; or
 - b) payment of port clearance costs, custom duty and levies, applicable taxes, registration charges and delivery of the Vehicles from the Territory to Kenya, and finally, delivery to the Dealer's Momentum approved vehicle showroom or car yard; as requested by the Dealer in the Purchase Order Form (all the terms defined in the General Conditions for the Dealers Motor Vehicle Financing Facility) by Momentum on behalf of the Dealer.
- C. Momentum has at the request of the Dealer agreed to grant and make available to the Dealer, financing facilities and such financial accommodation, financing, credit and advances as hereinafter referred to in an aggregate maximum principal amount (in whatever currency or currencies denominated) of up to the maximum principal amount (this sum hereinafter called the "**Maximum Principal Amount**") as may from time to time be fixed by Momentum in its sole and absolute discretion on the terms and conditions of, inter alia, this Agreement, for the purpose of financing the applicable costs of the Vehicles as stated hereinabove in Recital B ("**Costs**").
- D. The Parties have negotiated and agreed that it is mutually beneficial to enter into this Agreement to govern their relationship and establish the boundaries of responsibilities of the Parties with regard to the financing of the Costs of the Vehicles, and subject to all covenants, terms, and conditions set out in this Agreement entered into by Momentum and the Dealer,
- E. The Parties have signed this Agreement, consisting of the Special Conditions and the General Conditions.

I. SPECIAL CONDITIONS FOR THE DEALERS MOTOR VEHICLE IMPORT FINANCING FACILITY

1.	Service type:	Dealers Motor Vehicle Financing Facility
2.	Maximum Principal Amount:	KShs ____
3.	Repayment conditions:	Pursuant to this Agreement

- 4. Pursuant to terms of this Agreement, and at the request of the Dealer, Momentum has made available the Facility comprising of the Maximum Principal Amount and other fees and costs as hereinafter provided, to the Dealer which Facility funds shall be applied to finance Costs of the Vehicles by Momentum on behalf of the Dealer pursuant to the terms of this Agreement.
- 5. The issuance of the Facility is subject to the conditions that the Dealer, to the satisfaction of Momentum: (a) provides security in the form of a duly executed Security Agreement over the Asset; and (b) accepts the transfer of the Asset to the joint names of Momentum and the Dealer and further accepts the creation of an In-Charge over the Asset.
- 6. The Dealer authorizes Momentum to be his attorney and in his/her name and on his behalf to execute and do any assurances, acts and things which the Dealer ought to execute and do under this Agreement, and exercise any powers and rights in this Agreement.
- 7. This Agreement sets out the complete terms and conditions which shall be applicable to the Facility requested by the Dealer and granted by Momentum.
- 8. This Agreement and any amendments or variations thereto take effect on their date of application.
- 9. The Dealer hereby acknowledges that he/she has accessed or received a copy of the Agreement comprising of these Special Conditions and the General Conditions found at this URL link <https://momentumcredit.co.ke/terms-and-conditions/> or from Momentum by email or by WhatsApp or by any electronic means, or a hard

copy. The Dealer acknowledges that he/she has read, has understood, and agrees to both the Special Conditions and the General Conditions that he/she accessed or received.

- 10. The Dealer by signing these Special Conditions hereby irrevocably agrees to be bound by the Agreement.
- 11. All other terms and conditions of the Agreement and definitions, not specified or defined in these Special Conditions, are set out and defined in the General Conditions of the Agreement, which are binding for both Parties.

- 12. The Parties agree that the terms of the General Conditions of the Agreement are confirmed as if the same were set out in these Special Conditions of the Agreement in full and that such terms shall for all purposes be deemed incorporated in these Special Conditions of the Agreement.
- 13. Momentum is hereby authorized to attach these Special Conditions of the Agreement to the General Conditions of the Agreement.

SIGNED by the said **DEALER** in the presence of:
WITNESS

.....

Signature:

Name:

EXECUTED on behalf of **MOMENTUM CREDIT LIMITED** by duly authorized representative in the presence of:
WITNESS

.....

Signature:

Name:

II. GENERAL CONDITIONS FOR THE DEALERS MOTOR VEHICLE FINANCING FACILITY

I. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

"Agreement" means this Dealers Motor Vehicle Financing Vehicle Financing Agreement, its Schedules, annexures, addenda and any amendments as well as all account documentation used by Momentum in respect of:

- (a) the financing, sourcing, purchasing, importation and financing of the purchase of the Vehicles together with the documentation in respect of the Facility account, payment instructions, demands, letters and notices by Momentum in respect of the Facility; and
- (b) the Facility Account, Requests, payment instructions, demands, letters and notices by Momentum in respect of the Facility, irrespective of the format thereof, which Agreement sets out the terms and conditions under which the Dealer will borrow from time to time and repay the funds comprising the Facility for purchase of the Vehicles, irrespective of the format thereof;

"Asset" means the motor vehicle which is solely owned by the Dealer, and mortgaged, pledged or charged as security for the repayment of any Outstanding Repayment by the Dealer to Momentum and includes any other general security that the Dealer pledges or provides to Momentum, and all existing and any future additional parts, replacement parts and other improvements on the Asset. For avoidance of doubt a reference to the term **"Assets"** shall refer to one or more motor vehicles that Dealer owns, that have mortgaged, pledged or charged as security for the repayment of any Outstanding Repayment by the Dealer to Momentum;

"Bullet Payment" means any payment of the entire Outstanding Repayment of Facility at any time before the expiry of the Facility Term other than the final payment;

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

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

"Confirmation Notice" means the written confirmation by Momentum to the Dealer accepting the Dealer's application to Momentum for the financing of the importation of the Vehicles and for facilitating the sourcing, purchase and importation of the Vehicle, which notice sets out the principal, the interest, fees and other costs that will comprise the Facility, the Processing Fee required from the Dealer, the tentative timelines of the importation, and other terms described therein;

"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, as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of Dealer 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 Dealer credit information amongst its registered members;

"Dealer" means the person or entity whose names, address, signature, directors' signature and other details appears on the Special Conditions of this Agreement who is in the business of buying and selling motor vehicles, being the person or entity which has applied for the Facility, and has accepted the terms and conditions of this Agreement, and whose

signature or directors' signatures are 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;

"Event of Default" shall mean any of the events or occurrences specified in clause 22 hereof, or as otherwise specified in the Transaction Documents;

"Facility" means the Maximum Principal Amount as fixed by Momentum as its sole and absolute discretion together with interest, charges, penalties and costs in respect thereof lent to the Dealer by Momentum for the payment of the CIF Price, shipping, registration and delivery of the Vehicles to the Dealer pursuant to the terms of this Agreement, which Facility shall be available to the Dealer for borrowing and repayment by the Dealer pursuant to the provisions of this Agreement, and includes all the benefits enjoyed by the Dealer as a result of being able to access the Facility as per this Agreement;

"Fees" means the Fees applicable for the Facility;

"Good Industry Practice" means standards, practices, methods and procedures conforming to legal, regulatory and financial requirements, and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected time to time from a skilled and experienced person or body engaged in a similar type of undertaking as a Party in this Agreement under the same or similar circumstances;

"In-Charge" means the registration of Momentum's security right and charge on the Vehicles 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 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 Dealer;

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

"IPRS" means the Integrated Population Registration System operated by the Government;

"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 Dealer in terms of this Agreement and which constitutes the principal debt;

"Monthly Lumpsum Repayment" means the minimum monthly payment obligation to be met by the Dealer in respect to the Facility as per the terms of this Agreement, commencing to be made One Hundred and Five (105) days or Sixty (60) days thirty (30) days from the date of this Agreement in accordance with the Facility Term;

"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 Dealer;

“Outstanding Repayment” means any amount including Fees, Outstanding Principal, interest and any costs that is due and payable by the Dealer to Momentum in respect to the Facility;

“Processing Fee” means the one-off processing fee of Kenya Shillings Thirty Thousand (Kes 30,000.00) payable to Momentum immediately after Momentum has informed the Dealer that it has accepted the Dealer’s application for financing the importation of the Vehicles on the Dealer’s behalf where the Dealer shall be one searching for the Vehicles, more particularly set out in the Confirmation Notice;

“Purchase Order Form” means the purchase order form completed online or downloaded, completed and returned offline or forming part of the Motor Vehicles Financing Application Form of Momentum specifying:

- (a) the name and address of the Dealer;
- (b) in relation to the Vehicles, the following details: make, model, year, kilometres or miles, fuel type, transmission type, four-wheel drive, all-wheel drive or two-wheel drive, colour, preferred price, trim level, package, options;
- (c) the details of any Assets available to be utilised as security by Momentum, if any;
- (d) in relation to Vehicles to be cleared and registered by Momentum, the amounts required thereof, and description of the Vehicles;
- (e) and any other pertinent information required concerning the Vehicles that the Dealer wants;

“Request” means a request for access to the Facility funds, received by Momentum from the Dealer by way of a physical written application or through an online application or other manner approved by Momentum, through upon which Momentum is authorized to act and includes any instruction from the Dealer from the foregoing means;

“Facility Account” means an electronic account maintained by Momentum in relation to the Dealer’s Facility transactions or any other transactions connected with the Dealer including Requests;

“Facility Documents” means, individually and collectively, this Agreement, Security Agreement, written requests, resolutions and certifications of the Dealer, and such other documents as Momentum may require the Dealer to give or cause to be given to or for the benefit of Momentum as evidence of the Facility and includes any amendments, variations and/or supplementals made or entered into from time to time;

“Facility Limit” means the highest Maximum Principal Amount, notified to the Dealer in the Confirmation Notice, fixed by Momentum as its sole and absolute discretion and availed by Momentum to the Dealer on credit, in the Dealer’s Dealer Facility Account for his/her access and use, and shall not exceed Kenya Shillings Two Million (Kes 2,000,000.00), or as fixed by Momentum as its sole and absolute discretion;

“Facility Term” means the period set by Momentum in respect to the Dealer’s access to the Facility Account which period shall be:

- (a) One Hundred and Five (105) days where the Dealer has applied to Momentum to finance, source, purchase, import, clear, register and deliver the Vehicles from the Territory under Momentum’s Suppliers’ Accounts from the Momentum’s Suppliers; or
- (b) Sixty (60) days where the Dealer has applied to Momentum to finance the payment of port clearance costs, custom duty and levies, applicable taxes and charges, registration charges and the delivery of the Vehicles from the port of Mombasa to the Dealer’s

Momentum approved vehicle showroom or car yard, from the approval of the Dealer’s Facility application unless renewed or extended by Momentum at its sole discretion;

“Security Agreement” means a security agreement creating a first ranking priority perfected registrable security right and interest of Momentum in the Asset, 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 Asset, securing repayment of the 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 Dealer.

“Supplier” means the person, firm or company in the Territory from whom Dealer sources the Vehicles from, and to whom Momentum pays the CIF Price to, for the inspection, purchase, freight insurance and shipping of the Vehicles to Kenya and the term includes individuals, auction houses and dealers PROVIDED THAT Momentum shall approve such Suppliers prior to the Dealer sourcing the Vehicles;

“Territory” means Japan, Dubai, Singapore, United Kingdom and any other countries where the Vehicles will be sourced from by the Dealer and which countries Momentum shall in its sole and absolute discretion approve from time to time;

“Transaction Documents” means this Agreement, Momentum’s Dealers Motor Vehicles Financing Application Form, the Confirmation Notice, Security Agreement, made between Momentum and the Dealer in relation to the importation and financing of the Vehicles includes any amendments, variations and/or supplementals made or entered into from time to time;

“Transaction Fees” includes any fees and charges payable for the transfer of funds to the Dealer by Momentum or by Dealer to Momentum or by Momentum to the Supplier’s bank, payable to mobile network operators and banks;

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

“Vehicle” means the motor vehicles that the Dealer requests Momentum to finance:

- (a) the purchase and shipping of from the Supplier, to inspect, to ship to Kenya, clear register and deliver to the Dealer on the Dealer’s behalf, under the Supplier’s contract in which their terms and conditions are incorporated, further described in the Purchase Order Form (and includes all existing and any future additional parts, replacement parts and other improvements on the Vehicles (whether or not attached to the Vehicles)), but shall include only the accessories that the Supplier provided as noted in the Vehicles’ purchase-sale report provided to Momentum when the Vehicles are purchased; or
- (b) the payment of port clearance fees and settling of import and custom fees, and registration charges, where such motor vehicles have been purchased and imported by the Dealer or another person on behalf of the Dealer.

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 inspection, purchase, shipping, clearing, registration and delivery thereof on behalf of the Dealer.

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 does not include email (unless otherwise expressly provided in this Agreement);
- (f) any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (g) where the context permits, **"other"** and **"otherwise"** are illustrative and shall not limit the sense of the words preceding them;
- (h) any obligation on a Party not to do something includes an obligation not to allow that thing to be done; and
- (i) the Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, Articles, Clauses, and Schedules, shall be construed as references to recitals of, articles of, clauses of and schedules to this Agreement, and references to paragraphs in a Clause or Schedule shall be construed as reference to paragraphs of that Clause or Schedule, unless indicated otherwise.

2. APPOINTMENT OF MOMENTUM AND CONTRACT OF PURCHASE

- 2.1 The Dealer appoints Momentum to arrange for and finance the inspection, purchase, importation, registration and delivery of the Vehicles from the Territory, and Momentum agrees to the appointment on the terms of this Agreement. For avoidance of doubt, the Vehicles:
- (a) shall be purchased under Momentum's Suppliers' Accounts from the Momentum's Suppliers;
 - (b) cleared at the port and registered by Momentum's duly appointed clearing and forwarding agents.
- 2.2 For this purpose, the Dealer:
- (a) applies to Momentum for the Facility, which Facility funds Momentum shall apply towards financing of:
 - (i) the sourcing, inspection, purchase, importation, port clearance costs, customs duty and levies, applicable taxes, registration charges and delivery of the Vehicles from the Territory to Kenya, and finally, delivery to the Dealer's Momentum approved vehicle showroom or car yard, or to be collected by the Dealer from the port or other collection location with the prior written consent of Momentum; or
 - (ii) port clearance costs, custom duty and levies, applicable taxes, registration charges and delivery of the Vehicles from the Territory to Kenya, and finally, delivery to the Dealer's Momentum approved vehicle showroom or car yard PROVIDED THAT in this instance, the Dealer shall have imported the Vehicle itself without any financing from Momentum as requested by the Dealer in the Purchase Order Form; and
 - (b) gives Momentum authority to enter into a contract for the purchase of the Vehicles from the Suppliers in the Territory on the terms of this Agreement on the Dealer's behalf and in its name. The Dealer shall honour the contract which Momentum enters in this way. Under no circumstances whatsoever shall Momentum be deemed to be a party to any contract (other than this Agreement), nor be liable in any way under any contract (other than this Agreement) howsoever arising.
- 2.3 While this Agreement continues, the Dealer agrees not to appoint any other person to arrange for purchase of the Vehicle, or clearance of the Vehicle, as the case may be.

3. RIGHTS AND DUTIES OF MOMENTUM

3.1 Momentum shall have the right:

- (a) to approve or reject in its sole discretion and with no obligation to provide reasons thereof, the request for financing: (i) the purchase of Vehicles; or (ii) or clearance of the Vehicle, as the case may be, that the Dealer wishes to purchase or clear (as the case may be) after receiving the Purchase Order Forms from the Dealer setting out the details of the Vehicles, Suppliers, Territory and the proposed shipping date, or clearance amount, as the case may be; and
- (b) to collect and retain in safe custody all physical logbooks in respect of the Vehicles and the Assets pending the repayment the Facility amount in full by the Dealer, in accordance to the terms of clause 5.1.

3.2 Subject to the terms of clause 3.1 above, Momentum shall use all reasonable endeavours to finance and arrange for the purchase, shipping and registration, or clearance of the Vehicle, as the case may be, of the Vehicles on behalf of the Dealer. Subject to the terms of this Agreement and any directions that the Dealer may give from time to time, Momentum may perform its duties under this Agreement as it thinks fit.

3.3 Momentum shall have the right to negotiate the CIF Price to purchase the Vehicles in United States Dollars ("**USD**") or any other relevant but currency but may elect not to exercise this right if it so wishes.

3.4 Momentum shall finance up to the Maximum Principal Amount and shall arrange and organise on behalf of the Dealer:

- (a) for Vehicles that will be imported by Momentum on behalf of the Dealer:
 - (i) the inspection of the Vehicles to ensure compliance of the legal requirements on the age, roadworthiness, location of the steering, among others by a reputable and accredited Vehicles inspection services company;
 - (ii) the purchase of the Vehicle;
 - (iii) the shipping of the Vehicles from the Territory to Kenya;
 - (iv) the insurance of the Vehicles while in transit with a reputable insurance company;
 - (v) the clearance of the Vehicles 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;
 - (vi) registration of the Vehicles by the National Transport and Safety Authority ("**NTSA**");
 - (vii) a suitable insurance cover for the Vehicles; and
 - (viii) delivery of the Vehicles from the port of arrival to the Momentum's approved car showrooms of the Dealer and hand the Vehicles over to the Dealer,
 - (b) for Vehicles that will be imported by the Dealer itself without financing from Momentum, where the Dealer has applied to Momentum for financing of the for Vehicles that will be cleared by Momentum on behalf of the Dealer, the clearance of the Vehicles at the port of arrival as specified in clause 2.2(a)(ii), the 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, all at the sole cost of the Dealer.
- 3.5 Upon receiving the Purchase Order Forms from the Dealer setting out the Vehicles that the Dealer wishes to purchase, Momentum shall provide the Dealer with a best estimate of the cost breakdown relating to the: (a) purchase and

importation of the Vehicle, or (b) or clearance of the Vehicle, as the case may be. 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 TO THE FACILITY AND ACCEPTANCE OF APPLICATION FOR FACILITY BY MOMENTUM

4.1 No application for the financing: (a) the purchase and importation of the Vehicles, or (b) or clearance of the Vehicles, as the case may be, submitted by the Dealer shall be deemed to be accepted by Momentum, and Momentum shall no obligation to the Dealer until:

- (a) the Dealer has provided Momentum with a post-dated cheques equivalent in number with the number of Facility instalments for the facility period to the Lumpsum Repayment and authorizes Momentum to bank the cheques on the respective Monthly Lumpsum Repayment due date. In the event that the Dealer expressly requests Momentum not to bank the said cheques, the Dealer shall make payments using other alternative means as specified by Momentum. On final settlement of the Outstanding Repayment amount of the Facility, Momentum shall return to the Dealer any issued but unbanked cheques;
- (b) the Dealer has to submit to Momentum a filled-in Purchase Order Form setting out details in respect of the Vehicles to be purchased and imported by Momentum on his/her behalf, the Supplier, the Territory, or to be cleared, as the case may be, and other pertinent details;
- (c) the Dealer has provided Momentum with sufficient identification information and documentation to satisfy the Know Your Client ("KYC") legal requirements;
- (d) the Dealer has, either:
 - (i) paid Momentum the Processing Fee in cleared funds, by means of cheque payable to Momentum or by bank transfer to the Momentum's bank account whose details are set out in Appendix 1 hereunder within one (1) days of receiving Momentum's approval of the Dealer's application for the Facility; ; or
 - (ii) the Dealer has provided an Asset other than the Vehicle acceptable to Momentum and of a value equivalent or more than the Facility as a security for the Facility and has successfully concluded the creation of an In-Charge of the Asset in favour of Momentum, and submitted the original logbook of the Asset to Momentum, which logbook is in the joint names of Momentum and the Dealer, and Momentum has successfully registered its security interest in the Assets with the Collateral Registry;
 - (iii) paid Momentum all costs including all third-party costs incurred or to be incurred by Momentum under clause 4.1(d)(ii) by means of cheque payable to Momentum or by bank transfer to the Momentum's bank account whose details are set out in Appendix 1 hereunder. within one (1) day of receiving Momentum's approval of the Dealer's application for the Facility;
- (e) Momentum has approved the request for financing and the Vehicles;
- (f) the Dealer has confirmed and approved on email, the Vehicles notified to the Dealer by Momentum as available for purchase and shipping;
- (g) Momentum is:
 - (i) in receipt of:
 - acceptance of the bid or CIF Price amount by the Supplier in writing; and

- a pro forma invoice from the Supplier detailing the CIF Price; or

(ii) in receipt of bill of lading and other pertinent documents in respect of the Vehicle to be cleared, as the case may be.

4.2 With receipt of the items set out in clause 4.1(a) to 4.1(c) above, Momentum will procure the payment of the CIF Price to the Supplier, or clear the port fees, and import duty and other applicable charges in respect of the Vehicle as the case may be, on behalf of the Dealer.

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:

- (a) Vehicles to the Momentum's approved car show rooms of the Dealer; and
- (b) the Information Pack, to the Dealer.

5. THE DEALER'S COVENANTS

5.1 Subject to the provisions of clause 11.1 of this Agreement, the Dealer hereby **COVENANTS** with Momentum as follows:

- (a) to repay the Facility amount comprising of the Maximum Principal Amount and the costs set out in this clause 5.1 and clause 7 incurred and paid by Momentum on behalf of the Dealer, at the times and in the manner stated in this Agreement being in Monthly Lumpsum Repayments payable or by such revised Monthly Lumpsum Repayments or such revised Facility Term as Momentum may require until the whole of the Facility amount with interest thereon and all other charges and costs shall be fully paid;

costs: the Dealer shall solely be responsible for:

- (i) the costs of financing the importation of the 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 Vehicles, or all costs and expenses incurred by Momentum in clearing, registering and delivering the Vehicles to the Dealer, as the case may be, as set out in clause 7 of this Agreement,
- (ii) paying all costs, fees, charges, taxes relating to the Vehicles and the Assets, including for: (A) the preparation and registration of this Agreement, the Security Agreement, the NTSA-TIMS In-Charge, the Initial Notices with the Collateral Registry and other relevant documents in respect of the Vehicles and the Assets; (B) the subsequent registration of the transfer of the Vehicles and the Assets from Momentum or from the joint names of Momentum and the Dealer, to the Dealer and/or subsequent buyer's names; (C) the discharge of the Security Agreement and the In-Charge upon repayment of the 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 Vehicles and the Assets; and
- (iv) paying for all searches and valuation assessments of Vehicles and the Assets undertaken by Momentum (no warranties whatsoever in respect of the Vehicle, their title, condition, the purchase price or the insurance amount are given or implied in the granting of the Facility);
- (v) The Dealer shall make each such agreed payments including Monthly Lumpsum Repayments punctually on the said respective day so appointed, to Momentum, commencing thirty (30) days from the receipt of the items set out in clause 4.1(a) to 4.1(c) by Momentum from the Dealer, and shall perform and observe all the covenants,

conditions and stipulations herein contained or implied and on the part of the Dealer to be performed and observed; and

- (vi) if any payments including Monthly the Lumpsum Repayments shall not be paid by the Dealer to Momentum on the date due for payment, that total amount of principal sum and interest then remaining outstanding shall thereupon immediately become due and Momentum shall be entitled to exercise all or any of Momentum's rights hereby and under this Agreement and the law conferred on Momentum;
- (b) to 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; and
- (c) the car showrooms or show yard of the Dealer which showrooms or show yard the Vehicles will be delivered to and parked there for display to the public and interested buyers, shall be approved by Momentum;
- (d) the Vehicles and Assets shall not be driven or used for any purposes other than for display purposes only at Momentum approved showrooms or show yard. In the event that the Vehicles have to be delivered anywhere else other than to a buyer who has paid for them, they will be delivered on a flatbed truck and not driven except when there is critical need to move the Vehicles and Assets urgently to prevent them from being displayed or stored at a place where there is minimal risk of being damaged by fire, vandalism, or political violence or theft.

5.2 For avoidance of doubt, Momentum shall have the right to terminate this Agreement immediately by written notice to the Dealer if the Supplier breaches any terms of this clause 5.

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

6. CURRENCIES

6.1 Momentum has the right to vary, convert or revise any amounts outstanding in respect of the Facility as per the prevailing USD foreign currency 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 Dealer.

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

7. VEHICLES CIF PRICE AND EXPENSES

7.1 The price payable by Momentum on the Dealer's behalf in purchasing the Vehicles from the Supplier shall be the CIF Price of the Vehicles quoted to the Dealer plus all the costs and expenses incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Vehicles to the Dealer. 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 charges) shall be the responsibility of the Dealer.

7.2 In addition to the CIF Price, the Dealer agrees to be responsible for all expenditure incurred by Momentum in sourcing, purchasing and importing the Vehicles under this

Agreement on behalf of the Dealer and, shall pay these amounts to Momentum. The additional costs that the Dealer will be responsible for, include without limitation:

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

7.3 Where the Dealer had requested Momentum for financing; of the clearance and registration of a Vehicle that the Dealer wishes to be cleared, the Dealer agrees to be responsible for all expenditure incurred by Momentum in clearing the custom duties, levies, port clearance charges and registration fees of the Vehicle to be paid by Momentum under this Agreement on behalf of the Dealer and, shall pay these amounts to Momentum. The additional costs that the Dealer will be responsible for, include without limitation:

- (a) import duty (any duty levied by KRA upon import of the Vehicle);
- (b) value added tax ("VAT") (any VAT levied KRA upon import of the Vehicle);
- (c) import declaration fee ("IDF");
- (d) excise duty;
- (e) railway development levy;
- (f) merchant shipping ("MS") levy;
- (g) radiation inspection fee;
- (h) NTSA 3rd sticker charges;
- (i) container freight station ("CFS") fees;
- (j) clearing and forwarding agent's fees;
- (k) daily parking charges at Mombasa Port car park, if any;
- (l) any minor repairs or service that may be necessary before the Vehicles can be delivered to the Dealer, if any, and if the Dealer will request Momentum to deliver the Vehicle to the Dealer;
- (m) Vehicles transport charges from Mombasa to the Momentum's approved car showrooms or show yards of the Dealer;
- (n) Vehicles inspection fee (for commercial vehicles);
- (o) NTSA's Vehicles registration fee;

- (p) valuation costs;
- (q) insurance premium for a suitable insurance cover if agreed with the Dealer;
- (r) other costs (any costs including storage or other charges resulting from the Dealer's default).

7.4 Momentum shall furnish the Dealer with:

- (a) a written statement setting out the details of the foregoing expenses in clause 7.2 for the Dealer's records; and
- (b) Information Package, within one (1) days of delivery of the Vehicles to the Momentum's approved car showrooms or show yards of the Dealer.

8. DELIVERY

8.1 Momentum shall be responsible for the delivery of the Vehicles to Momentum's approved car showrooms, or show yards or storage yard of the Dealer or other location specified by the Dealer to Momentum but at the Dealer's cost.

8.2 The Vehicles will be delivered to the Dealer after the following conditions have been met:

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

8.3 Delivery Note. The Vehicles being delivered shall be accompanied by delivery notes stating the Dealer's Momentum's Facility account number; the Dealer's full names, postal and physical address, and national identity card or passport number; point of delivery; Vehicles' registration numbers, model, make, colour, registration date, chassis number and mileage at delivery; and other pertinent details.

8.4 The Dealer or the Dealer's authorised recipient shall sign the delivery notes and stamp the delivery note with the Dealer's official stamp or seal (if the Dealer is a company or other entity), and provide Momentum's agents delivering the Vehicles with:

- (a) copies of the Dealer's (if the Dealer is an individual) or the Dealer's authorised recipient's national identity card or passport; or
- (b) (i) an original signed counterpart of a letter from the Dealer authorising another person other than the Dealer to accept delivery of the Vehicle; and (ii) copies of the national identity card or passport of that other person, if the Dealer (if an individual) is unable to take delivery of the Vehicle,

8.5 For avoidance of doubt:

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

- (ii) if the place where the Dealer wishes to receive the delivery of the Vehicle changes;

- (c) the applicable period for the examination of Vehicle and giving notice of defects shall commence only when the signed delivery note is received by Momentum; and

- (d) the Dealer shall have two (2) weeks to examine the Vehicle and give notice of any defects to Momentum. Momentum shall not be liable for any defects in the Vehicle after two (2) weeks lapses.

9. PROPERTY AND RISK

9.1 Ownership of each of the Vehicles shall remain with Momentum and shall not pass to the Dealer or a subsequent buyer in respect of each Vehicle until the portion of Momentum's Facility that was used to finance the purchase, shipping, clearance, registration and delivery of that particular Vehicle is paid in full to Momentum by the Dealer in cleared funds whereby Momentum will cause the Asset to be discharged and the Vehicle ownership transferred to the Dealer or the subsequent buyer, as the case may be.

9.2 Risk in the Vehicles passes to the Dealer on delivery to the Dealer's Momentum's approved car showrooms or show yards of the Dealer and the Dealer agrees to maintain the comprehensive insurance policies taken by Momentum on behalf of the Dealer for each Vehicle to cover such risks after delivery.

9.3 Momentum shall not be held responsible for any theft, total loss or damage to the Vehicles in the Territory, in transit or in Kenya. Momentum will take up suitable: (a) freight insurance for the Vehicles while in transit; (b) comprehensive motor vehicle insurance immediately the Vehicle is registered, and shall only be liable for following up with the insurer to obtain compensation in respect of any theft, total loss or damage to the Vehicles while in the Territory, in transit or when being delivered to the Dealer in Kenya.

10. MOMENTUM WARRANTIES, DEALERS' RESPONSIBILITIES AND CANCELLATION

10.1 Where Momentum shall finance the purchase, shipping, clearance, registration and delivery of that particular Vehicle, Momentum shall warrant and undertake to the Dealer:

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

10.2 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 Vehicles, procure shipping and delivery, insurance, inspect, clear with KRA, register and deliver the Vehicles to the Dealer, it shall not be liable for any additional expenses, costs, charges or claims incurred as a result of delay of the delivery of the Vehicles and the failure of the Vehicles 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 Dealer's account.

10.3 The transaction contemplated under this Agreement may be cancelled in accordance with the terms set out in Appendix 2 hereto.

10.4 The Dealer 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 Dealer.

11. THE FACILITY

11.1 Pursuant to the terms of this clause 11:

- (a) if there exists no Event of Default in clause 22 of this Agreement and any of the Transaction Documents; and
- (b) if the Dealer shall have settled the Facility in part or in full, the amounts repaid by the Dealer; the Dealer shall become eligible to apply to Momentum for another Facility pursuant to this Agreement.

11.2 Subject to the terms of clause 11.1 above, the outstanding principal balance of this Facility ("Facility") will not exceed at any time the Maximum Principal Amount.

11.3 Funds borrowed and repaid under the Facility may be re-borrowed, but subject to the following conditions and limitations (in addition to any other conditions or limitations set forth in this Agreement):

- (a) if, at any time, the aggregate amount borrowed by the Dealer and remaining outstanding exceeds the Maximum Principal Amount, the Dealer shall, no later than five (5) days following receipt of a notice thereof by the Dealer from Momentum, pay such amount that exceeds the Maximum Principal Amount; and
- (b) the Facility shall be borrowed and repaid subject to the terms and conditions of this Agreement entered into by the Dealer and Momentum.

12. THE PURPOSE OF THE FACILITY

The Facility funds shall be used by the Dealer exclusively for financing: (a) the purchase and importation of Vehicles; (b) the clearance and registration of Vehicles, as the case may be or as otherwise agreed in writing with Momentum.

13. ACCESSING THE FACILITY FUNDS

The funds comprising the Facility and available to the Dealer shall be requested as set forth in this clause 13.

13.1 The Dealer hereby irrevocably authorizes Momentum to act on all requests received by Momentum from the Dealer in regards to the Facility. The Dealer agrees that Momentum shall hold him liable in respect of any such requests. Momentum may at its sole discretion decline to approve, carry out, accept or allow any requests beyond the scope of the Facility as offered from time to time.

13.2 Momentum shall be deemed to have acted properly and to have fully performed all its obligations upon its compliance with a Request. Momentum may ask for further information or confirmation (whether written or otherwise) from the Dealer before complying with a Request but shall not be obliged to comply with a Request in the absence of such further information or confirmation.

14. FACILITY LIMIT

14.1 The Dealer's Request application for the Facility will be appraised according to Momentum's Facility appraisal procedures, including the forced sale value of the Assets. Momentum reserves the right at its sole discretion and, without assigning any reason, to approve or decline such Requests application. Communication of Momentum's acceptance or decline of the Dealer's Request application will be via SMS, email or any other means that Momentum deem appropriate.

14.2 Momentum may from time to time prescribe the Facility Limit that the Dealer may be able to Request on the Facility apply for. Such limits will be communicated through SMS, email, Momentum's mobile app, Momentum's website, telephone call or may be obtained from any Momentum's branch nearest to the Dealer.

14.3 The Facility Limit is subject to review from time to time and Momentum reserves the right to vary the Dealer's Facility Limit without giving any reasons. Momentum shall notify the Dealer of any variation to the Facility Limit and the Dealer's continued

use of the Facility will constitute acceptance of the Dealer's revised Facility Limit.

14.4 The Facility Limit will be continuously updated upwards or downwards automatically by Momentum's scoring engine or manually by Momentum's staff or by any other means that Momentum shall deem necessary at its sole discretion. The new Facility Limit will apply (based on Momentum's sole discretion):

- (a) every three (3) months commencing three (3) months from the approval of the Dealer's Facility application;
- (b) on expiry of the Facility Term;
- (c) when a Dealer makes a Bullet Payment to settle all the Facility's Outstanding Amounts. The Facility shall then be renewed with the new Facility Limit; and
- (d) at any other time as deemed necessary by Momentum.

15. CREDIT SCORING

15.1 The Dealer's Facility Limit and Momentum's continued approval of the Dealer's Requests will be determined by the Dealer's credit score or by any other means as Momentum deems fit from time to time at its sole discretion.

15.2 The Dealer's credit score will be assessed based on various metrics including the Dealer's CRB records, bank and Mpesa Statements, the Dealer's credit score and repayment history on the Dealer's existing Facility Limit.

16. REPAYING THE FACILITY

16.1 Upon approval by Momentum and provided that no Event of Default has occurred, the Facility shall be available to the Dealer from the commencement of this Agreement and shall therefore continue until the Dealer requests Momentum in writing for the termination of the Facility or defaults on his/her obligations under this Agreement or the Transaction Documents, or until it the Facility Term expires or Momentum terminates the Facility and notifies the Dealer in writing.

16.2 Subject to the terms of clause 15.1 above, the Facility will be renewed by Momentum after completion of payment of any Outstanding Repayments by the Dealer.

16.3 At the end of every nine (9) months, the Assets and the Vehicles will be delivered to a valuer chosen by the Dealer from a list of Momentum approved valuers for valuation, and for the Vehicles tracking history to be reassessed. Based on the valuation and tracking reports provided to Momentum: (a) the Facility may be renewed, terminated or extended by Momentum; and/or (b) the Dealer's Limits will be reviewed either upwards or downwards or maintained at its then current number, at the sole discretion of Momentum and without any obligation to assign reasons wherefore.

16.4 Any funds available in the Dealer's Facility Account shall be frozen on the tenth (10th) day from the Facility's monthly due date in case of default of any Monthly Repayment.

16.5 All The Lumpsum repayments made by the Dealer in respect to the Facility shall be applied in the following order of priority:

- (a) the interest payable under this Agreement;
- (b) Fees and Costs; and
- (c) the outstanding principal under this Agreement.

"Costs" shall include the Processing Fee, any and all fees and costs incurred by Momentum in connection with the negotiation and preparation of the Facility Documents and Transaction Documents, including legal fees, and closing of the Facility as herein provided, and further including, without limitation, the Facility Fee.

17. MONTHLY LUMP SUM REPAYMENT AND PAYMENT OPTIONS

17.1 The Monthly Lumpsum Repayment amount due by the Dealer to Momentum shall be paid on or before the monthly payment Lumpsum Repayment due date as follows:

17.2 by a part payment of the total Outstanding Repayment amount which shall be inclusive of: (i) the outstanding principal for the month; (ii) the interest charged or accrued for the month, being four per cent (4%) per month and incurred on a daily basis;

17.3 monthly vehicle tracking fees; and

17.4 by such other payment notified to the Dealer from time to time by Momentum.

17.5 All the Lumpsum Repayments 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 Dealer as per the details set out in Appendix 1 hereunder. Payments may also be made through deductions from the Dealer's bank account or via any other means as specified by Momentum.

17.6 The Dealer expressly accepts that if he fails to pay any outstanding Lumpsum Repayment 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 clause 23 of this Agreement and applicable laws.

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

17.8 Nothing in this clause 17 shall be construed to stop the Dealer from making a Bullet Payment in respect of the Outstanding Amounts.

18. INTEREST, FEES AND OTHER CHARGES

18.1 The Dealer is responsible for the payment of all applicable interest, charges and Fees for the utilisation of the Facility.

18.2 The Lumpsum Repayment, Fees, charges and costs payable under this Facility will be paid by the Dealer upon request by Momentum sales agents or relationship officers. Momentum's team shall furnish the Dealer with the Facility statement if the Dealer is uncertain about the applicable Fees, charges or costs.

18.3 Some Fees will be deducted at source while others will be spread throughout the Dealer's Facility Term.

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

18.5 The Fees charged shall be inclusive of any Transaction Fees payable in respect of third-party services including to banks, clearing houses, mobile network providers and mobile money services providers.

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

18.7 Interest Charges:

- (a) Interest shall be charged on the Outstanding Principal on a daily basis until the balance is fully repaid.
- (b) The total interest chargeable on the Facility is calculated at a flat rate of **four per cent (4%)** per month on the base of the principal amount plus capitalized fees (where applicable) subject to the Facility Term, incurred on a daily basis daily. In accordance with globally accepted International Financial Reporting Standards ("IFRS"), principal and interest repayments on the Facility amortization schedule shall be calculated on the basis of an equivalent reducing balance interest rate of up to a maximum of **four per cent (4%)** which is in turn equivalent

to **zero point one three per cent (0.13%)** on a daily basis subject to the Facility Term, which shall form the basis of calculating the outstanding amount due in the event of a pre-payment. The interest shall be calculated based on the reducing balance principal equivalent to **four per cent (4%)** per month.

19. APPLICABLE INTEREST ON OUTSTANDING DUES AND BANK CHARGES ACCRUED

19.1 Interest on Outstanding Repayment of 0.33% shall be charged on an Outstanding Repayment amount from the eighth (8th) day from the Facility monthly due date in payment of the due instalment, on a daily basis until full payment of the amount due.

19.2 Where a cheque provided by the Dealer is dishonoured:

- (a) the actual costs incurred by Momentum for each dishonoured cheque shall be recovered from the Dealer;
- (b) Momentum shall be entitled to exercise its rights under clause 23 of this Agreement; and
- (c) Momentum shall halt banking of the subsequent Dealer's cheques in its custody until the Dealer's Facility Account is regularized or fully settled.

19.3 The Dealer shall:

- (a) notify Momentum when the Dealer secures buyer(s) for the Vehicles including the Assets; and
- (b) request the buyer(s) to pay the agreed purchase price of the Vehicles, including the Assets, to Momentum's escrow account, which sale proceeds of the sold Vehicles or Assets shall be applied by Momentum to reduce or settle the Outstanding Amounts including Fees, and costs of the Facility.

19.4 Upon receipt of the full payment of the Facility, Outstanding Amounts and related charges Momentum shall:

- (a) deliver the original logbook and any other title document of the Vehicles to the Dealer or the buyer(s);
- (b) discharge Momentum's registered security interest in the Assets at the Collateral Registry;
- (c) inform NTSA to discharge the In-charge of the Assets and the corresponding joint ownership of the Assets;
- (d) transfer the ownership of the Vehicles to the Dealer or to the buyer(s), (if requested by the Dealer); and
- (e) make available the repaid funds for borrowing again by the Dealer to finance the purchase, shipping, registration and delivery of other Vehicles by Momentum on the Dealer's behalf.

19.5 The Dealer 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 account. The Dealer 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 Facility and the Dealer's dealings with Momentum or incurred by Momentum in any legal, arbitration or other proceedings arising out of any dealings in respect of the Facility and all other Fees, expenses and taxes, duties, impositions and expenses incurred by Momentum in complying with Requests.

20. THE DEALER'S WARRANTIES

20.1 The Dealer warrants and represents to Momentum that as at the date of this Agreement:

- (a) no suit, action, or other proceeding shall be pending or threatened which seeks to restrain or prohibit the consummation of the transactions contemplated by this

Agreement, or to obtain damages or other relief in connection therewith; and

- (b) no event or circumstance shall have occurred and be continuing which constitutes or would upon the giving of notice or passage of time, constitute an Event of Default or a failure of any condition of this Agreement.

20.2 The Dealer 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 Dealer 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) the Vehicles and the Assets (as the case may be) shall remain registered jointly in the names of the Dealer and Momentum during the duration of the Facility;
- (g) he will keep and maintain the Vehicles and the Assets 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;
- (h) that he will not use the Vehicles and the Assets nor permit them to be used for any purpose not permitted by the terms and conditions of the insurance policy of the Vehicles and the Assets nor permit to be done any act or thing by reason of which such insurance policy may be invalidated;
- (i) he will not take, or permit to be taken, the Vehicles and the Assets out of the Republic of Kenya;
- (j) to punctually pay all licenses, duties, fees and registration charges in respect of the Vehicles and the Assets as and when they fall due;
- (k) to allow for the tracking of the Vehicle and the Assets, including but not limited to the following obligations: (a) in the event that the Vehicles and/or the Assets 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 Vehicles and/or the Assets will not be in use; and (b) to arrange to have the said Vehicles and/or the Assets to be held at a Momentum approved motor Vehicles storage yard; and
- (l) if the GPS tracking device installed in the Vehicles and/or the Assets malfunctions during the course of this Agreement, to

cooperate with Momentum and Momentum's Vehicles tracking service provider to ensure that the Vehicles and/or the

Assets is delivered or availed to the Momentum's Vehicles 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 Dealer fails to co-operate with Momentum and Momentum's Vehicles tracking service provider as provided in this clause, Momentum shall immediately repossess the Vehicle and the Assets, in any event after twenty-four (24) hours of the Dealer being notified on the need to deliver the Vehicles and the Assets for the resolution of the GPS tracking device's malfunction and stored at a Momentum motor Vehicles storage yard, at the Dealer's cost.

20.3 The Dealer 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 Dealer becomes aware of any circumstances which will or may prevent any of the transactions envisaged hereunder to be finalized, the Dealer will inform Momentum immediately in writing thereof.

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

21. INDEMNIFICATION

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

22. EVENTS OF DEFAULT AND TERMINATION

22.1 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 Dealer under the terms of this Agreement, if:

- (a) the Dealer defaults in any payment hereby secured or in the performance of any covenant, warranty, representation or other obligation under this Agreement;
- (b) the Dealer 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 Lumpsum Repayments;
- (c) the Dealer fails to co-operate with Momentum as per the terms of this Agreement;
- (d) the Dealer fails to deliver any KYC documents or any other documents or any details in respect of the Vehicle or the Asset or the Facility, as requested by Momentum;
- (e) in Momentum's sole opinion, any deterioration occurs in the Dealer's financial position during the term of this Agreement;
- (f) any representation, undertaking, warranty, documents, statements or particulars made in connection with this Agreement or supplied by or on behalf of the Dealer including without limitation, information on the Dealer and the Vehicles or the Assets is, in Momentum's opinion, materially incorrect, or are found to be fraudulent or untrue or misleading;
- (g) if the Vehicles or the Assets or accessories or major parts (including, chassis, engine, transmission, body) to the

Vehicles or the Assets is changed or modified or removed which change or modification or removal is likely to prejudice Momentum's financial interest;

- (h) if Momentum receives a letter, a court order or any notification that is likely to prejudice its interest in the Vehicles or the Assets from any government agency;
 - (i) if the Dealer shall:
 - (i) use or permit the Vehicles or the Assets 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 Vehicles or the Assets by Momentum;
 - (iii) takes or attempts to take the Vehicles or the Assets outside Kenya's legal international boundaries where courts of law of Kenya do not exercise jurisdiction;
 - (iv) alters substantially the Vehicles or the Assets including without limitation, the Vehicles or the Assets 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 Vehicle or the Assets, without notifying Momentum and obtaining Momentum's prior written consent;
 - (j) if the Dealer is convicted under any law related to use of the Facility or any other related services;
 - (k) if Momentum reasonably suspects or believe that the Dealer is in breach of the terms of this Agreement (including non-payment of any amount due from the Dealer where applicable);
 - (l) if the Dealer uses the 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 Facility;
 - (m) the Dealer commits any act of bankruptcy;
 - (n) an order is made for the sequestration of the Dealer's assets or a petition is filed against the Dealer to declare him/her bankrupt, as the case may be;
 - (o) the Dealer is subject to any administrative or governmental action which suspends or terminates his/her employment or business;
 - (p) the Dealer 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;
 - (q) the Dealer 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;
 - (r) if a receiver or both is appointed over the Dealer's property or assets or any part thereof;
 - (s) if at any time the Dealer is unable to pay his/her debts as they fall due for payment or if there is reasonable apprehension that the Dealer is unable to pay his/her debts, or Momentum receives any notice that the Dealer has admitted any inability to pay his/her debts as they become due;
 - (t) 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 Dealer or such authority gives notice of its intention to perform any such action as hereinbefore in this sub-clause set out; or

- (u) it becomes unlawful or impossible for Momentum to provide or fund the Facility, or any security required ceases to be valid, legal, enforceable and binding.

22.2 Momentum shall at any time, with notice to the Dealer, and at its own discretion, terminate or vary the business relationship with the Dealer or suspend the Facility as a result of any of the following:

- (a) on occurrence of an Event of Default in clause 22.1 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 Dealer's safety;
- (d) to facilitate, update or upgrade the contents or functionality of the Facility from time to time; or
- (e) if the Momentum decides to suspend or cease provision of the Facility for any commercial reasons or for any other reason as we may determine.

22.3 Cross-Default: A default by the Dealer of a material term, covenant, warranty or undertaking of any Transaction Document including this Agreement or other agreement to which the Dealer 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 Dealer 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.

23. CONSEQUENCES OF DEFAULT

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

- (a) an Event of Default or cross default under clause 22.3 occurs;
- (b) the Dealer commits a breach of or shall fail to observe or perform any of the other conditions herein expressed or implied;
- (c) the Vehicles or the Assets 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,

Momentum shall:

- i. terminate the Facility;
- ii. declare that the Facility (inclusive all Fees and charges) and all other amounts outstanding under these this Agreement is immediately due and payable, whereupon the Dealer shall be required to settle the Facility with immediate effect;
- iii. freeze any of the Dealer's unutilized funds in the Dealer's Facility account, deny the Dealer access to the funds, any decline any Requests, until such Outstanding Repayments are settled in full by the Dealer;
- iv. submit information concerning the default to Credit Reference Bureaus;
- v. take all lawful measures including engaging debt collection agencies, auctioneers and instruct Momentum's advocates to file a civil suit against the Dealer to recover the amount in default;
- vi. if a Dealer defaults on any of the facilities and services granted to him by Momentum alongside the 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 Vehicles during such default;

- vii. where the Dealer has an existing insurance premium finance facility running concurrently with the Facility and fails to remit one of any monthly instalments 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 Dealer's Facility account;

(e) Momentum's Power of Sale:

- (i) The security constituted by this Agreement and the Transaction Documents, that is, on the Vehicles and/or the Assets 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 Dealer 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 Vehicles and/or the Assets may for the time being be upon, without incurring any liability to the Dealer for, or by any reason of, that entry and the Dealer 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 Vehicle and/or the Assets;

(C) sell or dispose of the same by private sale or public auction or let or concur in the selling or letting of the Vehicle and/or the Assets 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 Dealer 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 Vehicle and/or the Assets 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 Vehicle and/or the Assets 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 Dealer or any other person left or present in the Vehicle and/or the Assets 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 Dealer and be

recoverable by Momentum as liquidated damages but any increase to the aforesaid shall belong to the Dealer.

- (iv) During the currency of this Agreement, Momentum shall be entitled to the exclusive possession of the invoices, deeds, documents of title and log books and other registration books relating to the Vehicles and the Assets but nevertheless all the liabilities attending ownership of the Vehicles and the Assets shall be borne by and be the responsibility of the Dealer.

- (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 Dealer 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.

23.2 The Dealer 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 Dealer's Facility Account and the Dealer's dealings with Momentum or incurred by Momentum in any legal, arbitration or other proceedings arising out of any dealings in respect the Facility and all other fees, expenses and taxes, duties, impositions and expenses incurred by Momentum in complying respect with the Dealer's Request Facility Account.

23.3 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.

23.4 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.

24. INSURANCE

24.1 The Dealer shall comprehensively insure the Vehicles and the Assets for the duration of this Agreement. Further, to protect its interests, Momentum shall acquire a trade credit insurance and a credit life insurance for the Facility. All such insurance costs shall be solely borne by the Dealer.

24.2 Momentum shall communicate to the Dealer regarding the expiry of current insurance thirty (30) days, and fourteen (14) days to expiry. If the Dealer opts to incur the cost of renewing their comprehensive insurance cover upon expiry, Momentum shall permit the Dealer to procure such comprehensive insurance cover from any Momentum approved insurance companies and notified to the Dealer. The Dealer 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.

24.3 Momentum reserves the exclusive right to comprehensively insure the Vehicles and the Assets if the Dealer fails to or neglects or is unable to do so, and shall charge the insurance premium fee on the Facility, three (3) days to the expiry of the existing insurance cover and the comprehensive insurance cover taken by Momentum shall be communicated to the Dealer.

- 24.4 If the Dealer expressly allows Momentum to charge the said comprehensive insurance cover on their Facility or Momentum exercises its right under clause 24.3 to comprehensively insure the Vehicles and the Assets at the Dealer's cost, there will be no refunds whatsoever made to the Dealer.
- 24.5 Where the Dealer 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 Dealer.
- 24.6 The Dealer undertakes to endorse Momentum as the principal beneficiary of any dues arising from an insurance claim relating to the Vehicle and the Assets.
- 24.7 Momentum shall be entitled to the full benefit of the comprehensive insurance cover thereof including claims that might at any time be outstanding. Any monies received by virtue of such insurance shall at the sole discretion of Momentum be applied in replacing or restoring any loss or damage in respect of Vehicles and Assets or be applied to the settlement of any Outstanding Amounts including Fees, and costs for the time being due by the Dealer to Momentum under this Agreement.
- 25. THE DEALER'S PERSONAL INFORMATION AND CREDIT REFERENCE BUREAUS**
- 25.1 The Dealer hereby expressly consents and authorizes Momentum to register, share, store, request, disclose, receive, record, verify or utilize the Dealer's personal information, credit history, identity or information or data relating to the Dealer's Facility account with respect to the moneys, services and facilities granted under the Facility and any details of the Dealer's creditworthiness, as the case may be:
- 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 Facility;
 - to a Credit Reference Bureau. It is hereby understood and agreed that by signing this Agreement, the Dealer authorizes Momentum to access any information available to assess his application and also gives Momentum permission to register details of the conduct of the Dealer's account with any Credit Reference Bureau, and the Dealer waives any claim he may have against Momentum in respect of such disclosure.
 - to debt-collection agencies;
 - to Momentum's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
 - for reasonable commercial purposes connected to the Dealer's use of the Facility, such as marketing and research related activities;
 - from IPRS; and in business practices including but not limited to quality control, training and ensuring effective systems operation, and the Dealer waives any claim he/she may have against Momentum in respect of such disclosure.
- 25.2 The Dealer authorizes Momentum to disclose any information relating to the Dealer's 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.
- 25.3 The Dealer authorizes Momentum to disclose, respond, advise exchange and communicate the details or information pertaining to the Dealer's Facility account to third parties involved in the administration of the Dealer's Facility account, other facilities, underwriting of insurance policies, updating of databases, or provision of user support.
- 25.4 The Dealer shall notify the Momentum branch nearest to the Dealer's by sending an email to cx@momentumcredit.co.ke or calling 0709434311, of any changes to the Dealer's personal information or update the same on Momentum's USSD, mobile app, website, letter, email or any other means that Momentum may deem necessary including but not restricted to the Dealer's name and address. Until such notice is received, the Dealer's personal information shall be deemed to be that which the Dealer provided in the Dealer's application for the Facility.
- 26. 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 Dealer to Momentum), will be payable by the Dealer to Momentum on demand.
- 27. LIMITATION OF LIABILITY AND FORCE MAJEURE**
- 27.1 Momentum shall not be responsible for any loss or damage suffered by the Dealer 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 Dealer, except where such loss is caused by Momentum's gross negligence, gross misconduct and/or wilful misconduct.
- 27.2 **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 Dealer to pay Momentum is not a force majeure event.
- 27.3 Under no circumstances shall Momentum be liable to the Dealer 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.
- 28. DATA PROTECTION**
- 28.1 It is hereby understood and agreed that the data herein has been directly obtained from the Dealer who has provided the data to Momentum to facilitate the processing of the Facility sought by the Dealer.
- 28.2 It is hereby understood and agreed that by signing this contract the Dealer:
- must provide personal data which is required for facilitating the processing of the Facility, the establishing and maintenance of business and for the fulfilment of Parties' contractual and legal obligations to the each other;
 - consents to Momentum processing the data as per its internal data policy and the data protection laws;
 - has given consent to Momentum to continue holding and processing the data provided even after all obligations under the 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 Dealer may opt out of receiving marketing communication at any time within the duration of the Facility by officially communicating to MCL through the prescribed channels of communication.
- 28.3** Momentum undertakes to ensure the personal data provided by the Dealer is processed in accordance with the Data Protection Act.
- 28.4** For queries and more information on Momentum's data protection policy, the Dealer may contact Momentum's data protection personnel at cx@momentumcredit.co.ke.
- 29. FURTHER ASSURANCE**
When required by Momentum, the Dealer will execute such further legal or other charges or assignments in favour of Momentum over all or any of the Vehicles, Assets and any other vehicles owned by the Dealer 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 Dealer in such form as Momentum requires.
- 30. RESTRICTION ON DEALING**
The Dealer covenants that he/she will not without notifying Momentum and obtaining the prior consent in writing of Momentum:
- 30.1** 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 Vehicle and/or the Assets;
- 30.2** assign, discount, factor, pledge, or charge the Vehicle and/or the Assets; or
- 30.3** part with possession of, transfer, sell, lease or otherwise dispose the Vehicles and/or the Assets or any part thereof or attempt or agree to do so.
- 31. WITHDRAWAL FROM AGREEMENTS**
Momentum may, at any time before the purchase of the Vehicle, withdraw from this Agreement and the Dealer will have no claim against Momentum if Momentum does so.
- 32. JOINT AND SEVERAL LIABILITY**
Should there be more than one borrower, then:
- 32.1** each of them shall be jointly and severally liable with the other as co-principal debtor for every indebtedness and obligation of the Dealer to Momentum; and
- 32.2** all references to "**the Dealer**" shall be construed as reference to all the borrowers, jointly and severally, unless otherwise indicated.
- 33. INDEPENDENT CONTRACTOR**
The relationship of Dealer 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.
- 34. COUNTERPARTS AND ELECTRONIC SIGNATURES**
34.1 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.
- 34.2** 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.
- 35. 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.
- 36. ASSIGNMENT**
36.1 The Dealer 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.
- 36.2** The Dealer 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 Dealer 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.
- 37. 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.
- 38. 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.
- 39. 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.
- 40. NOTICES**
40.1 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.
- 40.2** 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.
- 40.3** 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.

41. VOLUNTARY SUBMISSION

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

42. 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.

43. 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 1: Facility repayment

Repayments of the 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: 0104773002

Currency: KES

Bank Code: 16

Bank: Citibank N A

Branch: Upper Hill

Branch Code: 000

SWIFT Code: CITIKENA

OR

Part 2. **By Momentum's Safaricom Mpesa Paybill Number provided below:**

Mpesa Till Number: 801480

Account Name: ID Number

Cancellation of the transaction

1. The transaction contemplated under this Agreement may be cancelled under clause 10.3 and clause 10.4 of this Agreement if:
 - (a) the Dealer fails to proceed with the transaction;
 - (b) the Dealer for any valid reason is unable to proceed with the transaction;
 - (c) the Dealer notifies Momentum of his wish to cancel the importation of the Vehicles;
 - (d) the vehicle selected by the Dealer, while being inspected at the country of exportation is found not comply with the pre-export verification of conformity criteria, and the replacement vehicle falls under either paragraph 1(e) or 1(f) of this Appendix 2;
 - (e) a vehicle that corresponds with the Dealer's specifications cannot be found;
 - (f) a vehicle that corresponds with the target price cannot be found;
 - (g) Momentum does not wish to continue with the transaction; or
 - (h) the Dealer does not wish to continue with the transaction.
2. The following shall apply to any transaction cancelled by the Dealer:
 - (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 Vehicle and ending on completion of the inspection of the Vehicle) of the transaction; or
 - (ii) at the pre-shipment stage (the period between the completion of inspection of the Vehicle, and the shipping of the Vehicle) of the transaction, Momentum shall surcharge the Dealer a cancellation fee being three [NUMBER] per cent ([NUMBER]3%) of the Vehicle's total price, 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 Vehicle from the country of exportation and delivery to the Dealer):
 - (i) the cancellation by the Dealer shall be considered an Event of Default under clause 22 of this Agreement;
 - (ii) Momentum will clear the Vehicle at the Port of Mombasa, pay all requisite taxes, duty, fees and charges and shall thereafter dispose sell the Vehicle, . In the event the sale proceeds obtained from the sale of the Vehicle are not sufficient to meet Momentum's costs, Momentum shall repossess and sell the Assets and any other vehicles that the Dealer will have charged to Momentum, as per the terms of clause 23 of this Agreement, require the Dealer to pay with immediate notice any outstanding deficit amounts of the Facility, and/or sue the Dealer; and
 - (iii) all costs, losses and expenses incurred by Momentum (including foreign exchange losses) resulting from such cancellation of the transaction by the Dealer, shall be Dealerborne by the Dealer. If there will be any outstanding amounts due from the Dealer, the processes set out in clause 23 above and paragraph 2(b)(ii) of this Appendix 2 shall apply.