

MOTOR VEHICLE IMPORT FINANCING FACILITY AGREEMENT

This 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: _____ (Hereinafter referred to as the "Customer" which expression shall, where the context so admits include the Customer's personal representatives, successors, heirs, and assigns whether immediate or derivative) on the other part.</p>
<p>Both hereafter collectively referred to as the "Parties" or separately as "Party".</p>	

BACKGROUND:

- A. The Customer is the person whose details are set out in Section 1 of Part 2 of the Motor Vehicle Importation Application Form and whose signature appears hereunder.
- B. The Customer has been referred to Momentum by a Momentum Partner Financial Institution for Momentum to source, purchase, ship, clear, register, deliver to the Customer, and finance the purchase, importation and aforementioned costs, of a motor vehicle on behalf of the Customer ("**Vehicle**") pursuant to the Memorandum of Understanding entered into by Momentum and Momentum Partner Financial Institution.
- C. Pursuant to Recital (B) above, the Customer has applied to Momentum:
 - a) for an import financing facility to be utilised towards the sourcing, purchase, importation, registration and registration of the Vehicle by Momentum on behalf of the Customer; and
 - b) for Momentum to facilitate the importation of the Vehicle on the Customer's behalf and deliver it to the Customer.
- D. The Momentum Partner Financial Institution has undertaken due diligence on the Customer and has approved the Customer to be granted import financing facilities by Momentum and has notified Momentum in writing through the Approval Note of the amount approved by the Momentum Partner Financial Institution to comprise the import financing facilities that Momentum shall finance and utilise to purchase and import the Vehicle for the Customer.
- E. Momentum has at the request of the Customer agreed to grant and make available to the Customer, import 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) as set out in the Approval Note and the Confirmation Notice (this sum hereinafter called the "**Maximum Principal Amount**") or such lower amount as may from time to time be fixed by Momentum or Momentum Partner Financial Institution in their sole and absolute discretion on the terms and conditions of, inter alia, this Agreement, for the purchase and importation of the Vehicle from the Territory by the Customer to Kenya comprising the Import Financing Facility.
- F. 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, sourcing, purchasing, importation, registration and delivery of the Vehicle and subject to all covenants, terms, and conditions set out in this Agreement entered into by Momentum and the Customer.
- G. The Parties have signed this Agreement, consisting of the Special Conditions and the General Conditions.

SIGNED by the said **CUSTOMER**

Signature:

.....

Name:

.....

I. SPECIAL CONDITIONS FOR THE MOTOR VEHICLE IMPORT FINANCING FACILITY

1.	Service Type:	Motor Vehicle Import Financing Facility
2.	Maximum Principal Amount:	KShs ____
3.	Service Fee Amount:	KShs ____
4.	The Momentum Partner Financial Institution:	
5.	Repayment conditions:	Pursuant to this Agreement and Memorandum of Understanding

6. Pursuant to the terms of the Memorandum of Understanding:
 - (a) the Customer has been referred to Momentum by a Momentum Partner Financial Institution for Momentum to source, purchase, ship, clear, register, deliver to the Customer, and finance the purchase, importation and aforementioned costs, of the Vehicle on behalf of the Customer; and
 - (b) the Momentum Partner Financial Institution has confirmed to Momentum that it has undertaken due diligence on the Customer and has approved the Customer to be granted import financing facilities by Momentum and has notified Momentum in writing through the Approval Note of the amount approved by the Momentum Partner Financial Institution to comprise the import financing facilities that Momentum shall finance and utilise to purchase and import the Vehicle for the Customer.
7. Pursuant to terms of this Agreement:
 - (a) at the request of the Customer, Momentum has made available the Import Financing Facility to the Customer which Import Financing Facility funds shall be applied to finance the purchase, importation, clearance and registration of the Vehicle by Momentum on behalf of the Customer pursuant to the terms of this Agreement, and which Vehicle shall secure the repayment of the borrowed Import Financing Facility amount in accordance with the provisions of this Agreement.
8. The Customer 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 Customer ought to execute and do, and to exercise any powers and rights under this Agreement.
9. This Agreement sets out the complete terms and conditions which shall be applicable to the importation of the Vehicle, and the Import Financing Facility requested by the Customer and granted by Momentum.
10. The Customer 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 and/or the Momentum Partner Financial Institution by email or by WhatsApp or by any electronic means, or a hard copy. The Customer 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.
11. The Customer by signing these Special Conditions hereby irrevocably agrees to be bound by the Agreement, and the execution of these Special Conditions by the undersigned, the Customer shall constitute the execution of the Agreement by the Customer.
12. All other terms and conditions of the Agreement, not specified in these Special Conditions, are set out in the General Conditions of the Agreement, which are binding for both Parties.
13. 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.
14. This Agreement and any amendments or variations thereto take effect on their date of application.
15. Momentum is hereby authorized to attach these Special Conditions of the Agreement to the General Conditions of the Agreement.

SIGNED by the said **CUSTOMER** 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 MOTOR VEHICLE IMPORT FINANCING FACILITY AGREED TERMS

DEFINITIONS AND INTERPRETATION

1.1 Definitions:

“Agreement” means this Motor Vehicle Import Financing Facility Agreement, its Schedules, annexures, addenda and any amendments as well as all Import Financing Facility Account documentation used by Momentum in respect of the financing, sourcing, purchasing, importation and financing of the purchase of the Vehicle; together with the documentation in respect of the Import Financing Facility Account, payment instructions, demands, letters and notices by Momentum in respect of the Import Financing Facility, irrespective of the format thereof;

“Approval Note” means the letter, note or notice sent to Momentum by the Momentum Partner Financial Institution confirming that it has undertaken due diligence on the Customer, and has approved the Customer to be granted the Import Financing Facility by Momentum and notifies Momentum of the Import Financing Facility Limit amount, being the amount approved by the Momentum Partner Financial Institution to comprise the Import Financing Facility that Momentum will finance and utilise to purchase and import the Vehicle for the Customer;

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

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

“Confirmation Notice” means the written confirmation by Momentum to the Customer:

- (a) setting out the approved Import Financing Facility amount in respect of the Vehicle that Momentum has approved and for avoidance of doubt shall not exceed the amount approved by the Momentum Partner Financial Institution in its Approval Note to Momentum;
- (b) setting out the Deposit amount required to be paid by the Customer to Momentum to be applied towards the purchase and importation of the Vehicle; and
- (c) accepting the Customer’s application to Momentum for the financing of the importation of the Vehicle 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 Import Financing Facility, the tentative timelines of the importation, and other terms described therein, and includes any amendments and/or supplementals;

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

“Customer” means the person whose names, address, signature and other details appears on the Special Conditions of this Agreement, being the person who has applied for Import Financing Facility and whose name is described in the Approval Note, and has accepted the terms and conditions of this Agreement, and whose signature is appended thereunder and

shall, where the context so admits, include his/her/their heirs, successors, personal representatives, administrators and permitted assigns as the case may be;

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

“Delivery Note” means the Momentum’s delivery note that shall be signed by the Customer upon receipt of the delivered Vehicle and its keys from Momentum’s delivery agents as evidence of receipt and acceptance of the Vehicle by the Customer which delivery note shall set out the Customer’s Import Financing Facility Account number; the Customer’s full names, postal and physical address, and national identity card or passport number; point of delivery; Vehicle registration number, model, make, colour, registration date, chassis number and mileage at delivery, and other pertinent details;

“Deposit” means the amount payable to Momentum by the Customer immediately after Momentum has informed the Customer that it has accepted the Customer’s application for financing the importation of the Vehicles on the Customer’s behalf, which amount shall be not less than twenty five per cent (25%) of the total landed cost of the Vehicle, and all costs and expenses incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Vehicle to the Customer, plus interest more particularly set out in the Confirmation Notice;

“Event of Default” shall mean any of the events or occurrences specified in clause 17 hereof, or as otherwise specified in the Transaction Documents;

“Financier’s Undertaking” means the professional undertaking to be issued to Momentum by the Momentum Partner Financial Institution, conveying the Momentum Partner Financial Institution’s commitment to settle Momentum’s invoice in respect of the Import Financing Facility amount claimed by Momentum for the Vehicle, the amount to be paid;

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

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

“Fees” means the service fee applicable and charged by Momentum for the Import Financing Facility depending on the CIF Price of the Vehicle, which service fee shall be as per the table below:

Vehicle CIF Price	Fees
Below KES 1,000,000	KES 20,000
Between KES 1,000,000 and KES 1,499,999	KES 30,000
Between KES 1,500,000 and KES 1,999,999	KES 35,000
Between KES 2,000,000 and KES 2,999,999	KES 45,000
Between KES 2,000,000 and KES 2,999,999	KES 55,000
Over KES 3,999,999	KES 65,000

“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 Customer in terms of this Agreement and which constitutes the principal debt;

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

“Momentum Partner Financial Institution” means the financial institution that has entered into the Memorandum of Understanding with Momentum, whose details are set out in Special Conditions of the Motor Vehicle Import Financing Facility document and in the Approval Note;

“Memorandum of Understanding” means the memorandum of understanding, its schedules, annexures, addenda and any amendments as well as all documentation entered into by Momentum and the Momentum Partner Financial Institution whereby the Momentum Partner Financial Institution will refer its clients to Momentum for Momentum to finance, source, purchase, import, ship, clear, register, deliver motor vehicles to them, and Momentum Partner Financial Institution will thereafter take over the Import Financing Facility and repay Momentum the Import Financing Facility and all amounts it has utilised to finance the purchase, importation and aforementioned costs, of motor vehicles;

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

“Purchase Order Form” means the purchase order form found in Part 1 of the Motor Vehicle Importation Application Form, that forms part of the Transaction Documents specifying the pertinent information required concerning the Vehicle that the Customer wants purchased and imported by Momentum;

“Import Financing Facility Account” means the electronic account and records maintained by Momentum in relation to the Customer’s Import Financing Facility transactions;

“Import Financing Facility Limit” means the maximum amount approved by Momentum Partner Financial Institution and notified to Momentum through the Approval Note sent to Momentum, and availed by Momentum to the Customer on credit, in the Customer’s Import Financing Facility Account for utilization by Momentum to source,

purchase, import, clear, register and deliver the Vehicle to the Customer;

“Import Financing Facility Term” means the period set by Momentum in respect to the sourcing, purchase, importation, clearance, registration and delivery of the Vehicle and repayment of the outstanding Import Financing Facility to Momentum, by Momentum Partner Financial Institution which period shall be sixty (60) days from the date of commencing of the search and sourcing of the Vehicle unless renewed or extended by Momentum at its sole discretion;

“Release Letter” means the letter, note or notice sent to Momentum by the Momentum Partner Financial Institution authorising Momentum to deliver the Vehicle to the Customer, setting out the full names and national identity card or passport of the Customer, registration number and model of the Vehicle, conveying the Momentum Partner Financial Institution’s commitment to settle Momentum’s invoice in respect of the Import Financing Facility amount claimed by Momentum for the Vehicle, the amount to be paid, and invoice number and date of the invoice;

“Supplier” means the person, firm or company in the Territory from whom Momentum sources and arranges for the inspection, purchase and shipping of the Vehicles to Kenya and includes individuals, auction houses and dealers;

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

“Transaction Fees” includes any fees and charges payable for the transfer of funds into and out of the Customer’s Import Financing Facility to mobile network operators, and banks which vary between different mobile network operators and banks;

Transaction Documents: means the Motor Vehicle Importation Application Form, Purchase Order Form, the Confirmation Notice, the Motor Vehicle Import Financing Facility Agreement, Financier’s Undertaking and Release Letter, made between Momentum and the Customer in relation to the importation and financing of the Vehicle includes any amendments, variations and/or supplements made or entered into from time to time;

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

1.2 Rules of interpretation:

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

- (h) any obligation on a Party not to do something includes an obligation not to allow that thing to be done; and
- (i) the Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, Articles, Clauses, and Schedules, shall be construed as references to recitals of, articles of, clauses of and schedules to this Agreement, and references to paragraphs in a Clause or Schedule shall be construed as reference to paragraphs of that Clause or Schedule, unless indicated otherwise.

2. APPOINTMENT OF MOMENTUM, AND PURCHASE AND IMPORTATION OF VEHICLE

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

3. RIGHTS AND DUTIES OF MOMENTUM

- 3.1 Momentum shall use all reasonable endeavours to source and arrange for the purchase and importation of the Vehicle on behalf of the Customer. Subject to the terms of this Agreement and any directions that the Customer may give from time to time, Momentum may perform its duties under this Agreement as it thinks fit.
- 3.2 Momentum shall negotiate the CIF Price to purchase the Vehicle in United States Dollars ("USD") currency or any other relevant currency.
- 3.3 Momentum shall arrange and facilitate:
 - (a) the identification of an appropriate vehicle that reasonably matches the description of the Vehicle as per the Customer's requirements notified by the Customer to Momentum in the Purchase Order Form and the legal requirements on the age, roadworthiness, location of the steering, among others;
 - (b) the bidding and purchase of the Vehicle;
 - (c) the inspection of the Vehicle by a reputable and accredited vehicle inspection services company;
 - (d) the shipping of the Vehicle from the Territory to Kenya;
 - (e) the insurance of the Vehicle while in transit with a reputable insurance company;
 - (f) the clearance of the Vehicle at the port of arrival including payment of all requisite import duties, taxes and fees to the Kenya Revenue Authority ("KRA"), the port authorities, the container freight station, the clearing and forwarding agent, among others;
 - (g) the registration of the Vehicle by the National Transport and Safety Authority ("NTSA"); and
 - (h) the delivery of the Vehicle;

- (i) from the port of arrival to the Customer's premises as notified by the Customer to Momentum and hand over to the Customer; and
- (ii) subject to receipt of Financier's Undertaking and Release Letter by Momentum from the Momentum Partner Financial Institution, all at the sole cost of the Customer.

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

4. CONDITIONS PRECEDENT AND ACCEPTANCE

- 4.1 No application for the purchase and importation of the Vehicle submitted by the Customer shall be deemed to be accepted by Momentum, and Momentum shall no obligation to the Customer until:
 - (a) Momentum has received the Approval Note from the Momentum Partner Financial Institution;
 - (b) the Customer has filled the Purchase Order Form in Part 1 of the Motor Vehicle Importation Application Form setting out his/her requirements in respect of the Vehicle to be sourced, purchased and imported by Momentum on his/her behalf;
 - (c) the Customer has notified Momentum of his/her approved choice from the list of vehicles that correspond to the details set out in the Purchase Order Form, within one (1) days of being provided with a list of the vehicles available that correspond to the details of the Vehicle;
 - (d) the Customer and/or the Momentum Partner Financial Institution, has provided Momentum with sufficient identification information and documentation to satisfy the Know Your Client ("KYC") legal requirements;
 - (e) the Customer has paid to Momentum the Deposit 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 notifying Momentum of his/her approval of the selected Vehicle;
 - (f) Momentum has confirmed the availability and CIF Price of the Vehicle from the Supplier; and
 - (g) Momentum has received and accepted the Supplier's invoice.
 - 4.2 With confirmation Momentum will procure the delivery of a proforma invoice from the Supplier detailing the CIF Price and shall pay the balance of the CIF Price to the Supplier on behalf of the Customer.
 - 4.3 Upon receipt of payment by the Supplier of the CIF Price, Momentum will procure the inspection, shipping, clearing, registration and delivery of the Vehicle to the Customer together with the Information Pack.
- ## 5. PAYMENT OF THE DEPOSIT, COSTS AND MOMENTUM'S IMPORT FINANCING FACILITY
- 5.1 The Customer hereby **COVENANTS** with Momentum that the following costs and amounts shall be on the account of the Customer:
 - (a) the costs of financing the purchase and importation of the Vehicle, which costs comprise the balance of the CIF Price, all costs and expenses incurred by Momentum in

sourcing, purchasing, importing, clearing, registering and delivering the Vehicle to the Customer as set out in clause 7 of this Agreement, together with Momentum's Fee, less the Deposit paid; paying all costs, fees, charges, taxes relating to: (A) the preparation of this Agreement; and (B) the registration of the Vehicle in the joint names of Momentum Partner Financial Institution and the Customer by NTSA;

- (b) paying all costs and expenses of any nature incurred by Momentum in taking steps to enforce its rights under this Agreement and in the Vehicle; and
- (c) paying for all searches and valuation assessments of Vehicle undertaken by Momentum or Momentum Partner Financial Institution (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 Import Financing Facility),
- (d) being the Import Financing Facility amount and comprising of the Maximum Principal Amount and the costs set out in this clause 5.1 and clause 7, until the whole of the Import Financing Facility amount with interest thereon and all other charges and costs is fully paid by the Momentum Partner Financial Institution.

5.2 A certificate signed by an authorized officer of Momentum, shall be sufficient proof, until the contrary is proven, of the amount owed by the Momentum Partner Financial Institution and/or the Customer to Momentum in terms of the Import Financing Facility for the purposes of obtaining any legal relief against the Customer and/or the Momentum Partner Financial Institution.

6. CURRENCIES

6.1 Momentum has the right to vary, convert or revise any amounts outstanding in respect of the Import Financing Facility as per the prevailing USD exchange rates or other relevant currency as published by the Central Bank of Kenya from time to time as Momentum considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Customer and the Momentum Partner Financial Institution.

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

7. THE VEHICLE CIF PRICE AND EXPENSES

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

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

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

- (a) import duty (any duty levied by KRA upon import of the Vehicle);

- (b) value added tax ("VAT") (any VAT levied KRA upon import of the Vehicle);
- (c) import declaration fee ("IDF");
- (d) excise duty;
- (e) railway development levy;
- (f) merchant shipping ("MS") levy;
- (g) radiation inspection fee;
- (h) NTSA 3rd sticker charges;
- (i) container freight station ("CFS") fees;
- (j) clearing and forwarding agent's fees;
- (k) daily parking charges at Mombasa Port car park, if any;
- (l) any minor repairs or service that may be necessary before the Vehicle can be delivered to the Customer, if any;
- (m) the Vehicle transport charges from Mombasa to the Customer's premises;
- (n) the Vehicle inspection fee (for commercial imported vehicles);
- (o) NTSA's Vehicle registration fee;
- (p) Valuation costs
- (q) one (1) year comprehensive insurance premium; and
- (r) other costs (any costs including storage or other charges resulting from the Customer's default).

7.4 Momentum shall furnish the Customer with a written statement setting out the details of the foregoing expenses for the Customer's records, within one (1) days of delivery of the Vehicle to the Customer.

8. DELIVERY

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

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

- (a) Momentum has received signed Financier's Undertaking and Release Letter from the Momentum Partner Financial Institution;
- (b) Momentum has completed the registration of the Vehicle on the NTSA-TIMS platform in the names of the Momentum Partner Financial Institution and the Customer; and
- (c) GPS tracking devices have been installed on the Vehicle by authorised agents of the Momentum Partner Financial Institution.

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

- (a) copies of the Customer's driving licence, national identity card or passport, if the Customer shall personally take delivery of the Vehicle; or
- (b) (i) copies of the driving licence, national identity card or passport of the Customer; (ii) an original signed

counterpart of a letter from the Customer authorising another person other than the Customer to accept delivery of the Vehicle; and (iii) copies of the driving licence, national identity card or passport of that other person, if the Customer is unable to take delivery of the Vehicle,

8.4 For avoidance of doubt:

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

9. PROPERTY AND RISK

- 9.1 Ownership of the Vehicle shall vest in Momentum, and shall only pass to the Momentum Partner Financial Institution and the Customer upon receipt by Momentum of a signed Financier's Undertaking and
- 9.2 Release Letter from the Momentum Partner Financial Institution.
- 9.3 Risk in the Vehicle passes to the Customer and Momentum Partner Financial Institution on delivery to the Customer's premises, and the Customer or Momentum Partner Financial Institution, shall take out comprehensive insurance policies to cover such risks after delivery.
- 9.4 Momentum will take up suitable freight insurance for the Vehicle while being shipped from the Territory to the Port of Mombasa and shall follow up with the insurer to obtain compensation in respect of any theft, total loss or damage to the Vehicle during shipping, and from offloading at the Port of Mombasa to delivery to the Customer.

10. MOMENTUM WARRANTIES, CUSTOMERS' RESPONSIBILITIES AND CANCELLATION

10.1 Momentum shall warrant and undertake to the Customer:

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

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

- (a) the Vehicle conforms to all applicable Kenyan road use and safety legislation and/or any other laws which may be applicable, before using, or allowing the use of, the Vehicle on the public roads, including the possession of a current inspection certificate, stickers, lifesaver signs, first-aid kit and fire extinguisher (where applicable),

insurance and qualification of the driver or authorised user to operate the Vehicle;

- (b) the condition of the brakes, steering, lights, coolant levels, relevant oil levels, windscreen wipers and washer, horn, indicators, reflectors, tyres are in satisfactory condition; and
- (c) the Vehicle is kept and maintained in good and serviceable condition in compliance with the law, all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules.

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

10.4 Subject to the terms of clause 10.5 below and Appendix 2, the Customer's Deposit shall be refundable less any costs incurred by Momentum, if the events under Appendix 2 of this Agreement occur. Any such cancellation shall be in accordance with the terms set out in Appendix 2 hereto.

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

11. IMPORT FINANCING FACILITY LIMIT

11.1 Notwithstanding the issuance of the Approval Note to Momentum by the Momentum Partner Financial Institution, the Customer's application for the Import Financing Facility will be appraised according to Momentum's appraisal procedures. Momentum reserves the right at its sole discretion and, without assigning any reason, to approve or decline the application. Communication of Momentum's acceptance or decline of the Customer's application will be via SMS, email or any other means that Momentum deems appropriate.

11.2 Momentum may adjust the Import Financing Facility Limit approved by Momentum Partner Financial Institution by lowering the Import Financing Facility Limit at its sole discretion and, without assigning any reason. The new Import Financing Facility Limit will be communicated through SMS, email, Momentum's mobile app, telephone call to the Customer.

12. CREDIT SCORING

12.1 The Customer's Import Financing Facility Limit will be determined by the Customer's credit score as determined by Momentum or by any other means as Momentum deems fit from time to time at its sole discretion.

13. REPAYMENT OF THE IMPORT FINANCING FACILITY AND PAYMENT OPTIONS

13.1 The Import Financing Facility amount due from the Momentum Partner Financial Institution to Momentum shall be paid in full and in cleared funds within fifteen (15) days from the payment due date notified by Momentum to the Momentum Partner Financial Institution in writing

including the outstanding principal, the interest charged Fees, and other costs and such other payment notified to the Momentum Partner Financial Institution by Momentum.

13.2 All payments to Momentum must be made via Momentum's bank transfer to the bank account specified by Momentum to the Momentum Partner Financial Institution as per the details set out in Appendix 1 hereunder and the Memorandum of Understanding entered into by Momentum and the Momentum Partner Financial Institution or via any other means as specified by Momentum.

14. INTEREST, FEES AND OTHER CHARGES

14.1 The Momentum Partner Financial Institution is responsible for the payment of all applicable interest, charges and Fees in respect of the Import Financing Facility.

14.2 The Fees payable under this Import Financing Facility will be paid by the Momentum Partner Financial Institution upon notification by Momentum. Momentum shall furnish the Momentum Partner Financial Institution with the Import Financing Facility statement.

14.3 Except as may otherwise be notified, the Fees are inclusive of all applicable taxes including Value Added Tax and applicable excise duty at the prevailing rate. Momentum shall have the right to revise the Fees upon any changes to applicable taxes and duties.

14.4 Interest Charges: The total interest chargeable on the Import Financing Facility is calculated at a flat rate of eight per cent (8%) per month on the base of the principal amount plus capitalized fees (where applicable).

14.5 The Customer's warranties

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

14.7 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;

14.8 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; and

14.9 the Customer has all powers, and have taken all actions necessary, to enter into and perform this Agreement pursuant to its terms.

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

14.11 he/she have not been induced to enter into this Agreement and he/she is not for any other reason relying upon any statement of fact or opinion or any representation, collateral contract or other assurance or warranty save as expressly contained or referred to in this Agreement or any document referred to in this Agreement and irrevocably and unconditionally waives any right the Customer may have to claim damages for any representation (whether or not contained in this Agreement) for any breach of any warranty not contained in this Agreement unless such misrepresentation or warranty was made or given fraudulently; and or to rescind this Agreement

14.12 his/her obligations under this Agreement are his/her legal, valid and binding obligations, enforceable against him/her in accordance with their respective terms;

14.13 he/she has the power to enter into and perform and comply with his/her obligations under this Agreement;

14.14 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;

14.15 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; and

14.16 he/she has applied to the Momentum Partner Financial Institution for grant of credit and financing facilities in respect of the purchase and importation of the Vehicle by Momentum.

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

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

15. LIABILITY AND INDEMNIFICATION

15.1 Neither party will be liable for:

- (a) loss of data or use;
- (b) any form of indirect, consequential or special loss; or
- (c) any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether such loss is direct or indirect; and
- (d) in each case, however arising.

15.2 Other than as set out above, Momentum limits its liability in respect of Vehicle, and otherwise arising under or in connection with this Agreement.

15.3 Except where Momentum is in breach of its obligations under this Agreement, the Customer shall indemnify and hold harmless Momentum all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, settlement costs and legal and other professional costs and expenses) suffered or incurred by Momentum as a result of any action, demand or claim:

- (a) that Momentum in breach of any applicable laws as a result of any act or omission of the Customer; or
- (b) made against Momentum by a third party arising from or caused by the Customer's breach of this Agreement;
- (c) incurred by Momentum by reason of being held out as the Customer's agent;
- (d) any alleged or actual infringement, of any third party's rights;
- (e) any claim made against Momentum in respect of any liability, loss, damage, injury, cost or expense sustained by Momentum or a third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises as a consequence of a breach or negligent performance or failure or delay in performance

of this Agreement or violation of any laws by the Customer or negligence, acts, errors or omissions by the Customer; or

- (f) if the Momentum Partner Financial Institution fails to pay or settle the Import Financing Facility amount for any reasons whatsoever.

16. EVENTS OF DEFAULT AND TERMINATION

16.1 Upon the happening of any of the following events, an Event of Default shall be deemed to have occurred and Momentum shall have no obligation to complete the transaction contemplated in this Agreement including its obligations hereunder, and all sums disbursed or expended by Momentum and all accrued and unpaid interest thereon shall, at the option of Momentum, become immediately due and payable upon Momentum's first demand in writing, and Momentum shall be released from any and all obligations to the Customer and the Momentum Partner Financial Institution under the terms of this Agreement, if:

- (a) the Customer or the Momentum Partner Financial Institution defaults in any payment hereby secured or in the performance of any covenant, warranty, representation or other obligation under this Agreement or the Memorandum of Understanding;
- (b) the Customer or the Momentum Partner Financial Institution commits or attempts or purports to commit any breach of the covenants of this Agreement or the Memorandum of Understanding or defaults in making the settlement of the Import Financing Facility amount in full;
- (c) the Customer or the Momentum Partner Financial Institution fails to co-operate with Momentum as per the terms of this Agreement or the Memorandum of Understanding;
- (d) the Customer or the Momentum Partner Financial Institution fails to deliver any KYC documents or any other documents requested by Momentum;
- (e) in Momentum's sole opinion, any deterioration occurs in the Customer's or the Momentum Partner Financial Institution's financial position during the term of this Agreement or the Memorandum of Understanding;
- (f) the Customer fails to pay the full Deposit amount and/or in time;
- (g) the Customer appoints any importing agent or clearing agent in respect of the Vehicle other than Momentum;
- (h) any representation, undertaking, warranty, documents, statements or particulars made in connection with this Agreement or the Memorandum of Understanding or supplied by or on behalf of the Customer including without limitation, information on the Customer and the Vehicle is, in Momentum's opinion, materially incorrect, or are found to be fraudulent or untrue or misleading;
- (i) if the Customer is convicted under any law related to use of the Import Financing Facility or any other related services;
- (j) if Momentum reasonably suspects or believe that the Customer or the Momentum Partner Financial Institution is in breach of the terms of this Agreement or the Memorandum of Understanding (including non-payment of any amount due from the Customer or the Memorandum of Understanding where applicable);
- (k) if the Customer uses the Import Financing Facility for any criminal purposes or where Momentum detects any

abuse or misuse or breach of law or fraud or attempted fraud relating to the Import Financing Facility;

- (l) the Customer or the Momentum Partner Financial Institution commits any act of bankruptcy;
- (m) an order is made for the sequestration of the Customer's or the Momentum Partner Financial Institution's assets or a petition is filed against the Customer or the Momentum Partner Financial Institution to declare him/her/it bankrupt or insolvent, as the case may be;
- (n) the Customer or the Momentum Partner Financial Institution is subject to any administrative or governmental action which suspends or terminates his/her/its employment or business;
- (o) the Customer or the Momentum Partner Financial Institution 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/its employment or business or makes a voluntary assignment or transfer of all or substantially all of his/her/its property;
- (p) the Customer or the Momentum Partner Financial Institution is in default under any agreement to which he/she/its 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/its prior to the stated maturity thereof by reason of default;
- (q) if a receiver or both is appointed over the Customer's or the Momentum Partner Financial Institution's property or assets or any part thereof;
- (r) if at any time the Customer or the Momentum Partner Financial Institution is unable to pay his/her/its debts as they fall due for payment or if there is reasonable apprehension that the Customer or the Momentum Partner Financial Institution is unable to pay his/her/its debts, or Momentum receives any notice that the Customer or the Momentum Partner Financial Institution has admitted any inability to pay his/her/its debts as they become due;
- (s) if any government or any other competent authority nationalises, seizes or otherwise expropriates or assumes custody or control of all or any substantial part of the property, assets or business of the Customer or the Momentum Partner Financial Institution, or such authority gives notice of its intention to perform any such action as hereinbefore in this sub-clause set out; or
- (t) it becomes unlawful or impossible for Momentum to provide or fund the Import Financing Facility, or any security required ceases to be valid, legal, enforceable and binding.

16.2 Momentum shall at any time, with notice to the Customer and the Momentum Partner Financial Institution, and at its own discretion, terminate or vary the business relationship with the Customer and/or the Momentum Partner Financial Institution or suspend the Import Financing Facility as a result of any of the following:

- (a) on occurrence of an Event of Default in clause 17.1 above;
- (b) if Momentum is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;

- (c) where such a suspension or variation is necessary as a consequence of technical problems or for reasons of the Customer's safety;
- (d) to facilitate, update or upgrade the contents or functionality of the Import Financing Facility from time to time; or
- (e) if the Momentum decides to suspend or cease provision of the Import Financing Facility for any commercial reasons or for any other reason as we may determine.

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

17. CONSEQUENCES OF DEFAULT

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

- (a) an Event of Default or cross default under clause 17.3 occurs;
- (b) the Customer or the Momentum Partner Financial Institution commits a breach of or shall fail to observe or perform any of the other conditions herein or in the Memorandum of Understanding, expressed or implied; or
- (c) the principal (or any part thereof) and other monies hereby secured becomes immediately due and payable hereunder, then Momentum shall have the unfettered discretion and right to take any or all of the actions set out in clause 18.2 below.

17.2 In the event any of the matters specified in clause 18.1 above occurs, Momentum shall:

- (a) terminate the Import Financing Facility;
- (b) declare that the Import Financing Facility (inclusive all Fees and charges) and all other amounts outstanding under these this Agreement is immediately due and payable, whereupon the Customer shall be required to settle the Import Financing Facility with immediate effect;
- (c) take all lawful measures including engaging debt collection agencies, auctioneers and instruct Momentum's advocates to file a civil suit against the Customer and the Momentum Partner Financial Institution to recover the amount in default;
- (d) where the Customer has an existing insurance premium finance facility running concurrently with the Import Financing Facility and fails to remit one of any of the insurance premium finance facility monthly instalments on their due date, on the eighth (8th) day after the due date, a repayment shall be initiated by Momentum in the insurance premium finance facility and the same amount added to the Customer's Import Financing Facility Account;

17.3 Momentum reserves its right to do all such other acts and things, and shall exercise all its rights, powers and remedies, as may be incidental or conducive to any of the matters and powers set out in this Agreement.

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

17.5 No relaxation, forbearance, delay or indulgence by Momentum in enforcing any of the terms and conditions of this Agreement nor the granting of time by Momentum to the Customer and/or the Momentum Partner Financial Institution 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.

17.6 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.

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

18.1 The Customer hereby expressly consents and authorizes Momentum to register, share, store, request, disclose, receive, record, verify or utilize the Customer's personal information, credit history, identity or information or data relating to the Customer's Import Financing Facility Account with respect to the moneys, services and facilities granted under the Import Financing Facility and any details of the Customer's creditworthiness, as the case may be:

- (a) to and from Momentum's service providers, dealers, agents or any other entity that may be or become Momentum's affiliate or subsidiary or holding company for reasonable commercial purposes relating to the Import Financing Facility;
- (b) to a Credit Reference Bureau. It is hereby understood and agreed that by signing this Agreement, the Customer authorizes Momentum to access any information available to assess his application and also gives Momentum permission to register details of the conduct of the Customer's Import Financing Facility Account with any Credit Reference Bureau, and the Customer waives any claim he may have against Momentum in respect of such disclosure.
- (c) to debt-collection agencies;
- (d) to Momentum's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
- (e) for reasonable commercial purposes connected to the Customer's use of the Import Financing Facility, such as marketing and research related activities;
- (f) from IPRS; and
- (g) in business practices including but not limited to quality control, training and ensuring effective systems operation, and the Customer waives any claim he/she may have against Momentum in respect of such disclosure.

18.2 The Customer authorizes Momentum to disclose any information relating to the Customer's Import Financing Facility Account or any other related account to any local, foreign or international law enforcement or governmental

agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as Momentum may deem necessary.

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

18.4 The Customer shall notify the Momentum branch nearest to the Customer's by sending an email to cx@momentumcredit.co.ke or calling 0709434000, of any changes to the Customer's personal information or update the same through the Customer's device on Momentum's USSD, mobile app, website, letter, email or any other means that Momentum may deem necessary including but not restricted to the Customer's name and address. Until such notice is received, the Customer's personal information shall be deemed to be that which the Customer provided in the Customer's application for the Import Financing Facility.

19. INDEMNITY

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

20. LIMITATION OF LIABILITY AND FORCE MAJEURE

20.1 Momentum), will be payable by the Customer to Momentum on demand.

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

20.3 Momentum will not be liable for any failure to perform caused by reasons beyond Momentum's control or resulting directly or indirectly from the action or inaction of the government, any government authority, or any riot, strike, boycott, blockade, act of God, revolution, civil strike or any change in legislation or extreme change in market conditions. For avoidance of doubt, inability of the Customer to pay Momentum is not a force majeure event.

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

21. DATA PROTECTION

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

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

- (a) must provide personal data which is required for facilitating the processing of the Import Financing Facility, the establishing and maintenance of business and for the fulfilment of Parties' contractual and legal obligations to the each other;
- (b) consents to Momentum processing the data as per its internal data policy and the data protection laws;
- (c) has given consent to Momentum to continue holding and processing the data provided even after all obligations under the Import Financing Facility have been settled, for a variety of purposes including but not limited to cross selling, research, product development, analysis of market trends, operation of Momentum's regulations and procedures;
- (d) is at liberty to exercise its rights as a data subject and as is provided by the Data Protection Act, No. 24 of 2019 of the laws of Kenya ("**Data Protection Act**"); and
- (e) consents to the use of their personal data from time to time by Momentum to market Momentum's products. The Customer may opt out of receiving marketing communication at any time within the duration of the Import Financing Facility by officially communicating to Momentum through the prescribed channels of communication.

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

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

22. FURTHER ASSURANCE

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

23. WITHDRAWAL FROM AGREEMENTS

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

24. JOINT AND SEVERAL LIABILITY

Should there be more than one borrower, then:

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

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

25. INDEPENDENT CONTRACTOR

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

26. COUNTERPARTS AND ELECTRONIC SIGNATURES

26.1 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.

26.2 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.

27. 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.

28. ASSIGNMENT

28.1 The Customer shall not be entitled to assign all or any part of his/her rights, obligations or benefits hereunder without the prior written consent of Momentum.

28.2 The Customer hereby waives any notice of the transfer, factoring, delegation, ceding, novation or assignment of all or any part of Momentum's rights and/or obligations under this Agreement or any Transaction Document or other agreement to which the Customer and Momentum are parties, to any person, and agrees to remain bound by the terms of this Agreement, that Transaction Document or that other agreement subsequent to any such action by Momentum.

29. 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.

30. 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.

31. 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.

32. NOTICES

32.1 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.

32.2 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.

32.3 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.

33. VOLUNTARY SUBMISSION

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

34. 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.

35. 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.

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