

CONDITIONS FOR THE MOTOR VEHICLE IMPORT FINANCING FACILITY

AGREED TERMS:

I. DEFINITIONS AND INTERPRETATION

I.1 Definitions:

“Agreement” means this Agreement, its Schedules, annexures, addenda and any amendments as well as all account documentation used by Momentum in respect of the 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;

“Bullet Payment” means any payment of the entire Outstanding Repayment of the Import Financing Facility at any time before the expiry of the Import Financing Facility 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 Vehicle imported inclusive of the cost, insurance and freight up to the port of Mombasa in Kenya;

“Confirmation Notice” means the written confirmation by Momentum to the Customer accepting the Customer’s application to Momentum for the 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 Deposit required from the Customer, 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 (“**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 Section I of this Agreement, being the person who has applied for Facility, and has accepted the terms and conditions of this Agreement, and whose signature is appended thereunder and shall, where the context so admits, include his/her/their heirs, successors, personal representatives, administrators and permitted assigns as the case may be;

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

“Delivery Note” means the Momentum’s delivery note that shall be signed by the Customer upon receipt of the delivered Vehicle and its keys from Momentum’s delivery agents as evidence of receipt and acceptance of the Vehicle by the Customer which delivery note shall set out the Customer’s 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 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 Vehicles, and all costs and expenses incurred by Momentum in sourcing, purchasing, importing, registering and delivering the Vehicles to the Customer, plus interest more particularly set out in the Confirmation Notice;

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

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

“Import Financing Facility” means the Maximum Principal Amount together with interest, charges, penalties and costs in respect thereof lent to the Customer by Momentum for the payment of the CIF Price, shipping, registration and delivery of the Vehicles to the Customer pursuant to the terms of this Agreement, which Import Financing Facility shall automatically transition into Motor Import Financing Long term. ;

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

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

“Information Package” means the information pack containing, inter alia, copies of the original proforma invoice, bill of lading and de-registration documents and their translation copies, the Vehicle’s owner’s manual and the jointly registered logbook registered in the names of Momentum and the Customer, the Notice to Registrant of the Initial Notice issued by the Collateral Registry (under the rule 8(3) of the Movable Property Security Rights Act, No. 13 of 2017 of the laws of Kenya) in respect of the registered security right of Momentum on the Vehicle, a written expense statement listing the details of the expenses set out in clause 7.2 of this Agreement, and signed counterparts of the Transaction Documents which will be handed over to the Customer at the time of delivery and handover of the Vehicle to the Customer;

“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 which is loaned to and borrowed by the Customer in terms of this Agreement and which constitutes the principal debt;

“Monthly Instalment Payment” means the monthly instalment payment obligation to be met by the Customer in

respect to the Import Financing Facility as per the terms and conditions of the Agreement;

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

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

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

“Motor Import Financing Long Term” means a financing facility offered by Momentum with a maximum loan term of 36 months.

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

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

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

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

“Repayment Period(s)” means the monthly or thirty (30) days intervals within which the Customer is expected to meet the Customer’s Minimum Repayment;

“Maximum Import Financing Facility Term” means the 36 -month period set by Momentum in respect to the Customer’s access to the Import Financing Facility

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

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

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

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

“Transaction Documents” means this Agreement, Momentum’s Motor Vehicle Import Financing Application Form,

the Confirmation Notice and the Security Agreement, made between Momentum and the Customer in relation to the importation and financing of the Vehicle 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 and payment of funds to Momentum by the Customer in respect of the Import Financing Facility, payable to Mobile Network Operators and banks which vary between different Mobile Network Operators and banks;

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

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

1.2 Rules of interpretation:

- (a) words importing persons or Parties shall include firms and corporations and all references to persons shall include their permitted successors and assigns;
- (b) words importing the singular only also include the plural and vice versa where the context requires;
- (c) words importing the masculine shall include the feminine and neuter and vice versa;
- (d) the headings and marginal notes in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only;
- (e) a reference to writing or written includes email (unless otherwise expressly provided in this Agreement);
- (f) any words following the terms **“including”**, **“include”**, **“in particular”**, **“for example”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (g) where the context permits, **“other”** and **“otherwise”** are illustrative and shall not limit the sense of the words preceding them;
- (h) any obligation on a Party not to do something includes an obligation not to allow that thing to be done; and
- (i) the Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, Articles, Clauses, and Schedules, shall be construed as references to recitals of, articles of, clauses of and schedules to this Agreement, and references to paragraphs in a Clause or Schedule shall be construed as reference to paragraphs of that Clause or Schedule, unless indicated otherwise.

2. APPOINTMENT OF MOMENTUM AND CONTRACT OF PURCHASE

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

3. RIGHTS AND DUTIES OF MOMENTUM

- 3.1 Momentum shall use all reasonable endeavours to source and arrange for the purchase of the Vehicle on behalf of the Customer. Subject to the terms of this Agreement and any directions that the Customer may give from time to time, Momentum may perform its duties under this Agreement as it thinks fit.
- 3.2 Momentum shall negotiate the CIF Price to purchase the Vehicle in United States Dollars ("USD").
- 3.3 Momentum shall arrange and organise on behalf of the Customer:
 - (a) the identification of the appropriate Vehicle as per the Customer's requirements notified by the Customer to Momentum and the legal requirements on the age, roadworthiness, location of the steering, among others;
 - (b) the bidding and purchase of the Vehicle;
 - (c) the shipping of the Vehicle from the Territory to Kenya;
 - 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;
 - (d) registration of the Vehicle by the National Transport and Safety Authority ("NTSA"); and
 - (e) delivery of the Vehicle from the port of arrival to the location nominated by the Customer as notified by the Customer to Momentum and hand the Vehicle over to the Customer, all the sole cost of the customer.
- 3.4 Upon selection of the Vehicle, Momentum shall provide the Customer with a best estimate of the cost breakdown relating to the purchase and importation of the Vehicle. While this estimate is given by Momentum using its acquired knowledge and experience, this remains indicative and shall be treated as a guide only, and Momentum will not guarantee that the cost breakdown is accurate or complete in all respects.

4. CONDITIONS PRECEDENT AND ACCEPTANCE

- 4.1 No application for the purchase and importation of the Vehicle submitted by the Customer shall be deemed to be accepted by Momentum, and Momentum shall no obligation to the Customer until:
 - (a) the Customer has submitted to Momentum a filled-in Motor Import Financing application form setting out his/her requirements in respect of the Vehicle to be sourced and imported by Momentum on his/her behalf, within days of submitting the application for importation;

- (b) the Customer has notified Momentum of his/her approved choice from the list of vehicles that correspond to the details set out in the Purchase Order Form, within One (1) day of being provided with a list of the vehicles available that correspond to the details of the Vehicle; the Customer has provided Momentum with sufficient identification information and documentation to satisfy the Know Your Client ("KYC") legal requirements;
- (c) 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 I hereunder within One (1) day of notifying Momentum of his/her approval of the selected Vehicle;
- (d) Momentum has confirmed the availability and CIF Price of the Vehicle from the Supplier; and
- (e) Momentum has received and accepted the Supplier's invoice.

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

5. PAYMENT OF THE DEPOSIT, COSTS AND MOMENTUM'S IMPORT FINANCING FACILITY

- 5.1 Subject to the provisions of clause 7.1 of this Agreement, the Customer hereby **COVENANTS** with Momentum as follows:

- (a) the Customer shall repay the Import Financing Facility amount comprising of the Maximum Principal Amount and the costs set out in this clause 5.1(a) and clause 7, at the times and in the manner stated in this Agreement being in tenor and total amount payable or by such revised monthly instalments or such revised Repayment Period as Momentum may require until the whole of the Import Financing Facility amount with interest thereon and all other charges and costs shall be fully paid;

costs: the Customer shall solely be responsible for:

- (i) the costs of financing the importation of the 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 Vehicle to the Customer as set out in clause 7 of this Agreement, together with Momentum's financing fee being eight per cent (8%) of the Import Financing Facility;
- (ii) paying all costs, fees, charges, taxes relating to: (A) the preparation and registration of this Agreement, the Security Agreement and the NTSA-TIMS In-Charge; (B) the subsequent registration of the transfer of the Vehicle from the joint names of Momentum and the Customer, to the Customer and/or subsequent buyer's names; (C) the discharge of the Security Agreement and the In-Charge upon repayment of the Import Financing Facility;
- (iii) paying all costs and expenses of any nature incurred by Momentum in taking steps to enforce its rights under this Agreement and the Security Agreement, in the Vehicle as collateral; and
- (iv) paying for all searches and valuation assessments of Vehicle 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 Import Financing Facility);

- (v) the Customer shall enjoy a moratorium, commencing from the date of approval of the Customer's application for the Import Financing Facility and expiring on the notification of delivery of the Vehicle to the Customer, from making any monthly instalments to Momentum during which time Momentum shall source, purchase, import, register and deliver the Vehicle to the Customer. Notwithstanding the foregoing, the moratorium shall not affect interest charged by Momentum which interest shall continue to accrue but will only be payable when the Customer resumes paying the monthly instalments;
- (vi) the Customer shall make each such payments punctually on the said respective days so appointed to Momentum and shall perform and observe all the covenants, conditions and stipulations herein contained or implied and on the part of the Customer to be performed and observed;
- (vii) if any instalment shall not be paid by the Customer to Momentum on the date due for payment:
 - (A) an Event of Default under clause 22 of this Agreement shall be deemed to have occurred;
 - (B) the provisions and consequences of default set out in clause 23 of this Agreement shall apply;

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

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

6. CURRENCIES

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

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

7. 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, importing, registering and delivering the Vehicle to the Customer. 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.

7.2 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) vehicle transport charges from Mombasa to the Customer's premises;
- (n) vehicle inspection fee (for commercial vehicles);
- (o) NTSA's vehicle registration fee;
- (p) Valuation costs
- (q) one (1) year comprehensive insurance premium;
- (r) other costs (any costs including storage or other charges resulting from the Customer's default).

7.3 Momentum shall furnish the Customer with a written statement setting out the details of the foregoing expenses for the Customer's records, as part of the Information Package.

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 Security Agreements, and all security documentation in respect thereof from the Customer for the Vehicle;
- and
- (b) GPS tracking devices have been installed on the Vehicle.

8.3 **Delivery Note.** The Vehicle being delivered shall be accompanied by a delivery note stating the Customer's Momentum's 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

- (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, which letter shall contain a statement by the Customer undertaking to indemnify, and hold harmless, Momentum from and against any loss, damage, cost, expense, theft, liability or claim arising out of or in connection with or suffered by Momentum while relying on the Customer's letter;
- (iii) copies of the driving licence, national identity card or passport of that other person; and
- (iv) photograph of that other person, if the Customer is unable to take delivery of the Vehicle, and shall permit Momentum's agents delivering the Vehicle to take photographs of the Customer or instruct the person authorised by the Customer to accept delivery of the Vehicle to permit Momentum's agents to take his/her photograph at the point of delivery.

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 be jointly between the Customer and Momentum and shall not fully pass to the Customer until such time as Momentum's loan is paid in full by the Customer in cleared funds.
- 9.2 Risk in the Vehicle passes to the Customer on 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 Vehicle to conform with the agreed quality or projected delivery timelines, or deviation from the specified route, or other importation and shipping instructions and if any of these additional costs are incurred by Momentum, Momentum shall have the right to charge these costs to the Customer's account.
 - 10.4 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. INSTALMENT PAYMENTS AND PAYMENT OPTIONS

- 11.1 The monthly Instalment Payment amounts due by the Customer to Momentum shall be paid on or before the monthly Instalment payment due date as follows:
 - (a) by the total monthly Instalment Payment due amount which shall be inclusive of: (i) the outstanding principal for the month; (ii) the interest charged or accrued for the month; and
 - (b) monthly vehicle tracking fees; and
 - (c) by such other payment notified to the Customer from time to time by Momentum.
- 11.2 All payments to Momentum must be made via Momentum's MPESA paybill number or by cash deposit or bank transfer to the bank account specified by Momentum to the Customer as per the details set out in Appendix 1 hereunder. Payments may also be made through deductions from the Customer's bank account or via any other means as specified by Momentum.
- 11.3 The Customer expressly accepts that if he fails to pay any outstanding amounts when due, or which may be declared due prior to, or past the date when it would have become due, or commits any default under this Agreement with Momentum, then, Momentum shall, at its sole discretion, without prejudice, exercise all or any of its rights and remedies available in the terms of this Agreement and applicable laws.

The Customer accepts that, at Momentum's sole discretion, Momentum or its appointed representatives and agents, may at any time follow up with the Customer for payment against amounts due on the Customer's Import Financing Facility Account.
- 11.4 The Customer agrees to pay all debt collection costs (including legal costs) and all charges incurred by Momentum for related

and incidental matters including, debt collection charges for amounts due, penalties and fees for returned payments and dishonoured cheques, and similar expenses, and in the event of legal action initiated, any legal costs including, advocate costs incurred by Momentum in obtaining legal advice in connection with the Customer's Import Financing Facility Account and the Customer's dealings with Momentum or incurred by Momentum in any legal, arbitration or other proceedings arising out of any dealings in respect the Import Financing Facility and all other fees, expenses and taxes, duties, impositions and expenses incurred by Momentum in connection with Import Financing Facility.

13.4 The Customer accepts that, Momentum or its appointed representatives or agents, may at any time follow up with him/her for payment against amounts due on his/her account. The Customer shall be liable for all debt collection costs (including legal costs), all charges incurred by Momentum for related and incidental matters including, debt collection charges incurred, penalties for returned payments and similar expenses, and in the event of legal action initiated by either Party, any legal charges including, attorney costs incurred by Momentum in obtaining legal advice in connection with the Import Financing Facility and the Customer's dealings with Momentum or incurred by Momentum in any legal, arbitration or other proceedings arising out of any dealings in respect the Import Financing Facility and all other Fees, expenses and taxes, duties, impositions and expenses incurred by Momentum in complying with Requests.

14. ACCOUNT CLOSURE

14.1 Upon: (i) receiving the full Outstanding Repayment or outstanding payment of the Import Financing Facility amount and related charges from the Customer; or (ii) takeover of the Import Financing Facility Account by a partner bank of Momentum, or other bank, or a third-party financial institution ("**Financier**") and receipt by Momentum of the full Outstanding Repayment or outstanding Facility amount, as the case may be, Momentum:

- (a) shall, either at its own volition or at the Customer's requests to close the Import Financing Facility Account
- (b) and shall
 - (i) return the logbook and any other title document of the Vehicle to the Customer or hand them over to the Financier;
 - (ii) discharge Momentum's registered security interest in the Vehicle at the Collateral Registry; inform NTSA to discharge the In-charge of the Vehicle and the corresponding joint ownership of the Vehicle; and
 - (iii) remove the GPS tracking device installed by the Momentum's motor vehicle tracking service provider; or

15. THE CUSTOMER'S WARRANTIES

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

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 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.

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

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

12. INTEREST, FEES AND OTHER CHARGES

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

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

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

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

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

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

12.7 Interest Charges:

- (a) Interest shall be charged on the outstanding principal on a monthly basis subject to the Maximum Import Financing Facility Term, until the Import Financing Facility is fully repaid
- (b) The total interest chargeable on Import Financing is calculated at a flat rate of two-point-two five percent (3%) per month on the base of the principal amount plus capitalized fees (where applicable) subject to the Import Financing Facility. In accordance with globally accepted International Financial Reporting Standards (IFRS), principal and interest repayments on the loan amortization schedule shall be calculated on the basis of an equivalent reducing balance interest rate of 4.65% per month which shall form the basis of calculating the outstanding amount due in the event of early loan settlement.

13. APPLICABLE INTEREST ON OUTSTANDING DUES AND BANK CHARGES ACCRUED

Interest on Outstanding Repayment of 0.33% shall be charged on an Outstanding Repayment amount from the

13.1 fifth (5th) day from the facility due date in payment of the due instalment, on a daily basis until full payment of the amount due.

13.2 Where a cheque provided by the Customer is dishonoured, the actual costs incurred by Momentum for each cheque shall be recovered from the Customer.

13.3 Consequently, Momentum shall be entitled to repossess and sell the Vehicle in such manner as it may in its sole discretion determine to be in its best interest and the Customer is obligated to co-operate accordingly.

- (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;
 he/she shall not sell, dispose, encumber or pledge, or attempt to sell, dispose, encumber or pledge the Vehicle without notifying Momentum prior to such sale or disposal;
- (f) the Vehicle shall remain registered jointly in the names of the Customer and Momentum during the duration of the Import Financing Facility;
- (g) he will keep and maintain the Vehicle in good order and condition (fair wear and tear only expected) and will be fully responsible for any loss thereof or damage thereto however occasioned;
- (h) that he will not use the Vehicle nor permit it to be used for any purpose not permitted by the terms and conditions of the insurance policy of the Vehicle 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 Vehicle out of the Republic of Kenya;
- (j) to punctually pay all licenses, duties, fees and registration charges in respect of the Vehicle as and when they fall due;
- (k) if the GPS tracking device installed in the Vehicle malfunctions during the course of this Agreement, to cooperate with Momentum and Momentum's vehicle tracking service provider to ensure that the Vehicle is delivered or availed to the Momentum's vehicle tracking service provider for repair or replacement of the GPS tracking device and restoration of the transmission signal to normal status. For avoidance of doubt, if the Customer fails to co-operate with Momentum and Momentum's vehicle tracking service provider as provided in this clause, Momentum shall immediately repossess the Vehicle, in any event after twenty-four (24) hours of the Customer being notified on the need to deliver the Vehicle for the resolution of the GPS tracking device's malfunction and stored at a Momentum motor vehicle storage yard, at the Customer's cost.

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

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

16. INDEMNIFICATION

Except where Momentum is in breach of its obligations under this Agreement, the Customer shall indemnify and hold harmless Momentum against any liability incurred by reason of being held

out as the Customer's agent, including without limitation all costs and expenses reasonably incurred by Momentum in instituting proceedings, defending proceedings, settling or attempting to settle any claim brought against or by a third party (including the Supplier) in relation to the Vehicle.

17. EVENTS OF DEFAULT AND TERMINATION

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

- (a) the Customer defaults in any payment hereby secured or in the performance of any covenant, warranty, representation or other obligation under this Agreement;
- (b) the Customer commits or attempts or purports to commit any breach of the covenants of this Agreement or repeatedly defaults and/or is inconsistent in making the monthly repayments;
- (c) the Customer fails to co-operate with Momentum as per the terms of this Agreement;
- (d) the Customer fails to deliver any KYC documents or any other documents requested by Momentum;
- (e) in Momentum's sole opinion, any deterioration occurs in the Customer's financial position during the term of this Agreement;
- (f) the Customer fails to pay the full deposit amount and/or in time;
- (g) any representation, undertaking, warranty, documents, statements or particulars made in connection with this Agreement or supplied by or on behalf of the Customer including without limitation, information on the Customer and the Vehicle is, in Momentum's opinion, materially incorrect, or are found to be fraudulent or untrue or misleading;
- (h) if the Vehicle or accessories or major parts (including, chassis, engine, transmission, body) to the Vehicle is changed or modified or removed which change or modification or removal is likely to prejudice Momentum's financial interest;
- (i) if Momentum receives a letter, a court order or any notification that is likely to prejudice its interest in the Vehicle from any government agency;
- (j) if the Customer shall:
 - (i) use or permit the Vehicle to be used in any way contrary to law;
 - (ii) tamper with, uninstall, disconnect, deliberately damage, remove, take offline the GPS tracking device installed in the Vehicle by Momentum;
 - (iii) takes or attempts to take the Vehicle outside Kenya's legal international boundaries where courts of law of Kenya do not exercise jurisdiction;
 - (iv) alters substantially the Vehicle including without limitation, the vehicle identification numbers, marks, description for instance, the colour, the engine, gear box, chassis, and their numbers, VIN number, the registration number, type; or

- (v) allow unqualified drivers to operate the Vehicle, without notifying Momentum and obtaining Momentum's prior written consent;
 - (k) if the Customer is convicted under any law related to use of the Import Financing Facility or any other related services;
 - (l) if Momentum reasonably suspects or believe that the Customer is in breach of the terms of this Agreement (including non-payment of any amount due from the Customer where applicable);
 - (m) 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;
 - (n) the Customer enters into an agreement to sell, sells or disposes or encumbers or pledges the Vehicle without informing and obtaining Momentum prior consent;
 - (o) the Customer commits any act of bankruptcy;
 - (p) an order is made for the sequestration of the Customer's assets or a petition is filed against the Customer to declare him/her bankrupt, as the case may be;
 - (q) the Customer is subject to any administrative or governmental action which suspends or terminates his/her employment or business;
 - (r) the Customer makes a general assignment for the benefit of creditors or transfers any assets in favour of any of creditors, or ceases or threatens to cease to carry on his/her employment or business or makes a voluntary assignment or transfer of all or substantially all of his/her property;
 - (s) the Customer is in default under any agreement to which he/she is a party (whether as principal or guarantor) in respect of borrowed money or otherwise and is obliged to repay any amount borrowed by he/she prior to the stated maturity thereof by reason of default;
 - (t) if a receiver or both is appointed over the Customer's property or assets or any part thereof;
 - (u) if at any time the Customer is unable to pay his/her debts as they fall due for payment or if there is reasonable apprehension that the Customer is unable to pay his/her debts, or Momentum receives any notice that the Customer has admitted any inability to pay his/her debts as they become due;
 - (v) if any government or any other competent authority nationalises, seizes or otherwise expropriates or assumes custody or control of all or any substantial part of the property, assets or business of the Customer or such authority gives notice of its intention to perform any such action as hereinbefore in this sub-clause set out; or
 - (w) 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.
- 17.2** Momentum shall at any time, with notice to the Customer, and at its own discretion, terminate or vary the business relationship with the Customer or suspend the Import Financing Facility as a result of any of the following:
- (a) on occurrence of an Event of Default in clause 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 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.
- 17.3** Cross-Default: A default by the Customer of a material term, covenant, warranty or undertaking of any Transaction Document including this Agreement or other agreement to which the Customer and Momentum are parties, or the occurrence of a material event of default under any such other agreement which is not cured after any required notice and/or cure period, shall entitle Momentum recall with immediate effect the whole of the monies remaining payable hereunder by the Customer to Momentum on demand or to repudiate this Agreement if no monies have been disbursed and no costs have been incurred by Momentum, as the case may be.
- 18. CONSEQUENCES OF DEFAULT**
- 18.1** If at any time during the continuance of this Agreement:
- (a) an Event of Default under clause 17.1 or cross default under clause 17.3 occurs;
 - (b) the Customer commits a breach of or shall fail to observe or perform any of the other conditions herein expressed or implied;
 - (c) the Vehicle is seized or expropriated whether lawfully or not by government or any other authority; or
 - (d) the principal (or any part thereof) and other monies hereby secured becomes immediately due and payable hereunder, Momentum shall:
 - (e) terminate the Import Financing Facility;
 - (f) 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;
 - (g) freeze any of the Customer's unutilized funds in the Customer's Facility account, deny the Customer access to the funds, any decline any Requests, until such Outstanding Repayments are settled in full by the Customer;
 - (h) submit information concerning the default to Credit Reference Bureaus, where permitted by CBK;
 - (i) take all lawful measures including engaging debt collection agencies, auctioneers and instruct Momentum's advocates to file a civil suit against the Customer to recover the amount in default;
 - (j) if a customer defaults on any of the facilities and services granted to him by Momentum alongside the Import Financing Facility, which facilities may include, invoice factoring facility and/or insurance premium finance facility, Momentum is entitled to exercise its rights to offset and withhold the Vehicle during such default;
 - (k) where the Customer has an existing insurance premium finance facility running concurrently with the Import Financing Facility and fails to remit one of any monthly 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 Customer's Facility account;

(l) Momentum's Power of Sale:

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

(A) enter (either personally or by its servants or agents) upon the land or premises whereof the Vehicle may for the time being be upon, without incurring any liability to the Customer for, or by any reason of, that entry and the Customer shall use its all endeavours to allow Momentum or its servants or agents access (including obtaining any necessary consents or permits of other persons);

(B) take possession or collect and remove the Vehicle;

(C) sell or dispose of the same by private sale or public auction or let or concur in the selling or letting of the Vehicle in such a manner and generally on such terms and conditions as it shall think fit and to carry out any such sale or letting into effect in the name of the Customer or otherwise; and

(D) do all such other acts and things, and to exercise all its rights, powers and remedies, as may be incidental or conducive to any of the matters and powers aforesaid.

(ii) The power of Momentum to sell or dispose of the Vehicle by private sale or public auction shall be subject to such stipulations as Momentum may deem fit including without prejudice to the generality of the foregoing power to allow time for payment of any purchase money or to buy in the Vehicle at such auction and to rescind or vary the terms of any contract or sale and to resell without being answerable or liable for any loss or expenses occasioned thereby including the loss of any valuables and property of the Customer or any other person left or present in the Vehicle at the time of seizure and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper.

(iii) The receipt of Momentum shall be a conclusive discharge to any purchaser at such sale for any of the purchase money and upon any sale purporting to be made in exercise of the power herein expressed or implied and no purchaser shall be bound to inquire as to the propriety or regularity of any such sale or be affected by notice express or constructive that any such sale is improper or irregular. Any deficiency between the aforesaid purchase price and the sum due to Momentum, hereunder at the time of such sale together with all expenses pertaining to the same shall be made good by the Customer and be recoverable by Momentum as liquidated damages but any increase to the aforesaid shall belong to the Customer.

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

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

18.2 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.

18.3 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.

19. INSURANCE

19.1 The Customer shall comprehensively insure the Vehicle for the duration of this Agreement.

i. Momentum shall communicate to the Customer regarding the expiry of current insurance thirty (30) days, and fourteen (14) days to expiry. If the Customer opts to incur the cost of renewing their comprehensive insurance cover upon expiry, Momentum shall permit the Customer to procure such comprehensive insurance cover from any Momentum approved insurance companies and notified to the Customer. The Customer shall provide to Momentum with evidence of payment of the comprehensive insurance cover premium within seven (7) days of renewal of the comprehensive insurance cover.

ii. Momentum reserves the exclusive right to comprehensively ensure the Vehicle if the Customer fails to or neglects or is unable to do so, and shall charge the insurance premium fee on the Import Financing 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 Customer.

19.2 If the Customer 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 Vehicle at the Customer's cost, there will be no refunds whatsoever made to the Customer.

19.3 Where the Customer notifies Momentum of his wish to cancel the comprehensive insurance cover taken by Momentum on their express instructions, there will be no refunds whatsoever made to the Customer.

19.4 The Customer undertakes to endorse Momentum as the principal beneficiary of any dues arising from an insurance claim relating to the Vehicle.

19.5 The Customer further undertakes to endorse Momentum as its principal insurance agent and thereby Momentum reserves the right to automatically renew the Customer's Insurance Cover upon its expiry or termination.

19.6 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 Vehicle or be applied to the settlement of any Outstanding Amounts including Fees, and costs for the time being due by the Customer to Momentum under this Agreement.

20. Credit Reference Bureaus

20.1 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 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
- (c) account with any Credit Reference Bureau, and the Customer waives any claim he may have against Momentum in respect of such disclosure.
- (d) to debt-collection agencies;
- (e) to Momentum's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
- (f) for reasonable commercial purposes connected to the Customer's use of the Import Financing Facility, such as marketing and research related activities;
- (g) from IPRS; and
- (h) 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.

20.2 The Customer authorizes Momentum to disclose any information relating to the Customer'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.

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

20.4 The Customer shall notify the Momentum branch nearest to the Customer's by sending an email to cx@momentumcredit.co.ke or calling 0709434311, 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.

21. 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.

22. LIMITATION OF LIABILITY AND FORCE MAJEURE

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

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

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

23. DATA PROTECTION

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

23.2 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 MCL through the prescribed channels of communication.

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

23.4 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.

24. 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.

25. RESTRICTION ON DEALING

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

25.1 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;

25.2 assign, discount, factor, pledge, or charge the Vehicle; or

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

26. 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.

27. JOINT AND SEVERAL LIABILITY

Should there be more than one borrower, then: 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

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

28. 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.

29. COUNTERPARTS AND ELECTRONIC SIGNATURES

29.1 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.

29.2 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.

30. 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.

31. ASSIGNMENT

31.1 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.

31.2 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.

32. 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.

33. 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.

34. 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.

35. NOTICES

35.1 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.

35.2 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.

35.3 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.

36. VOLUNTARY SUBMISSION

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

37. 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.

38. 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.

IN **AGREEMENT** and **UNDERSTANDING** thereof, the Borrower accepts such offer on such terms and conditions set out above and hereby affixes their respective signature:

1. WITNESS (ADVOCATE):

Names: _____
 Position: _____
 Phone No: _____
 Signature: _____
 Date: _____

BORROWER (please sign here):

Surname: _____
 Other Names: _____
 Phone No: _____
 Signature: _____
 Date: _____

Declaration

I _____ hereby declare that I have submitted the required Deposit of Kes _____ in line with the quote provided to me by Momentum in line with this MIF facility and have entered into an agreement with Momentum to finance and facilitate the importation of a _____ (vehicle make), _____, _____ (Vehicle Model) as stipulated herein above. _____

Date: _____

Client Signature: _____