

TERMS AND CONDITIONS THAT SHALL APPLY TO THE SAHIIH LOGBOOK FINANCING FACILITY (IF APPROVED)

GRANT OF SAHIIH LOGBOOK FINANCING FACILITY:

1. BASIS OF AGREEMENT

- 1.1 This document represents the Standard Sahiih Logbook Financing Conditions of Momentum Credit Limited and form an integral part of the Financing Documents (as such terms are defined below) agreed to by the Customer (as such terms are defined below), unless Momentum and the Customer expressly agree otherwise.
- 1.2 The Customer should carefully read and understand these Standard Sahiih Logbook Financing Conditions as well as the Financing Documents which will govern the Sahiih Logbook Financing (as such term is defined below).
- 1.3 By applying to Momentum for the Sahiih Logbook Financing, the Customer agrees to comply with and be bound by these Standard Sahiih Logbook Financing Conditions from time to time in force governing the Sahiih Logbook Financing.
- 1.4 These Standard Sahiih Logbook Financing Conditions are hereby incorporated either in full text or by reference, and any updates, variations, amendments made thereunder, thereafter are incorporated by reference and made a part of the Financing Documents with the same force and effect as if they were incorporated by full text and shall supplement the terms of the Financing Documents.

2. DEFINITIONS

In this Agreement, unless otherwise stated or otherwise required by the context hereof, the following terms have the following meanings:

Business Day: a day other than a Saturday, Sunday or gazetted public holiday in Kenya when banks in Nairobi are open for business;

Customer: means the party whose name and particulars are set out in Part 1 of Section D of the Ijarah Financing Facility Application Form herein and shall, where the context so admits, include his/her/their heirs, successors, personal representatives, administrators and permitted assigns as the case may be;

Events of Default: means the events specified in clause 14.1 herein or any event or circumstance which, with the lapse of time and/or the giving of notice and/or a determination being made under the relevant paragraph, would constitute any of the events mentioned in clause 14.1 herein;

Facility Period: means the payment period of the Ijarah Rental Payments in relation to the Facility as set out in Part 8 of Section D of the Ijarah Financing Facility Application Form herein;

Facility: means the Ijarah asset financing facility based on the Shari'ah principle of Ijarah Muntahiyah Bittamlik for the amount of Momentum's Purchase Price;

Financing Documents: means this Agreement, the Motor Vehicle Sale Agreement, the Ijarah Agreement, the Maintenance Agreement, the Notice of Sale and the Security Documents;

Gift-back Undertaking: means the undertaking by

Momentum under clause 6.3 of these Standard Sahiih Logbook Financing Conditions, in favour of the Customer relating to the Momentum's undertaking to gift-back the Motor Vehicle to the Customer Momentum upon the settlement of the Facility by the Customer which will entail the payment of the last Ijarah Rental Payment and in full;

Ibra': means the rebate or reduction in the outstanding balance of the Outstanding Amounts granted by Momentum to the Customer in accordance with the Shari'ah principle of *Ibra'*;

Ijarah Agreement: means the Ijarah agreement between Momentum and the Customer relating to the lease of the Motor Vehicle by the Customer from Momentum under the Shari'ah principle of Ijarah and includes any amendments, variations and/or supplementals made or entered into from time to time;

Sahiih Logbook Financing: means the Shariah compliant logbook financing facility product offered by Momentum, whereby Momentum purchases a motor vehicle belonging to a customer who is in need of funds, pays the customer an agreed amount of money, then leases out the motor vehicle back to the customer for a specified duration of time, who will then use the motor vehicle as they had been using it before while paying back Momentum specified monthly rental amounts constituting the principal and Momentum's profit and charges, and at the end of the agreed lease period and on completion of payment of the last monthly rental in full, the motor vehicle will be gifted back to the customer by Momentum and the original logbook handed back to the customer;

Ijarah Muntahiyah Bittamlik: means the Shari'ah principle relating to Ijarah (lease) contract where the benefits or usufruct of the Motor Vehicle is transferred by the owner (lessor) to the lessee at an agreed rental amount for an agreed period of time or lease period in which such lease will end with transfer of ownership by the owner (lessor) to the lessee;

Ijarah Rental Payments: means the Ijarah rental payments payable by the Customer to Momentum pursuant to the Ijarah Agreement in the amount and on the dates as set out in the Ijarah Agreement;

Letter of Hibah: means the letter from Momentum gifting the Motor Vehicle to the Customer pursuant to the Gift-back Undertaking, relating to the gifting of the Motor Vehicle by Momentum to the Customer and includes any amendments, variations and/or supplementals made or issued from time to time;

Letter of Offer: means the letter of offer issued by Momentum to the Customer offering the Facility to the Lessee, or offering to vary the Facility and setting out the terms and conditions of the Facility for acceptance by the Customer and includes any amendments and/or supplementals;

Maintenance Agreement: means the maintenance agreement entered into and executed between Momentum and the Customer relating to the appointment of the Customer by Momentum as an unpaid maintenance agent under the Shari'ah principle of Wakalah in which the **Customer shall assume the responsibility to assist** Momentum in carrying out and performing all servicing, maintenance, repairs required for the Motor Vehicle and in procuring the taking out of the relevant Takaful Cover in respect of the Motor Vehicle for and on behalf of Momentum and includes any amendments, variations, additions thereto and/or supplementals made or entered into from time to time;

Momentum's Purchase Price: means the total amount of the Ijarah financing facility as set out in Letter of Offer which comprises the principal Facility amount disbursed by Momentum to the Customer, Momentum's profit, fees, charges, and expenses that are due and payable by the Customer to Momentum under the Financing Documents. For avoidance of doubt, the Momentum's Purchase Price shall be the total sale price of the Motor Vehicle as per the Motor Vehicle Sale Agreement, and shall have the same meaning with Total Ijarah Rental;

Motor Vehicle Sale Agreement: means the Motor Vehicle Sale Agreement made between Momentum and the Customer relating to the purchase of the Motor Vehicle by Momentum from the Customer at Momentum's Purchase Price and includes any amendments, variations and/or supplementals made or entered into from time to time;

Motor Vehicle: means the motor vehicle more particularly described in Section E of the Ijarah Financing Facility Application Form herein;

Notice of Sale: means the notice of sale from Momentum to the Customer pursuant to the Purchase Undertaking, relating to the sale of the Motor Vehicle by Momentum to the Customer requiring the Customer to purchase back the Motor Vehicle from Momentum at the Momentum's Purchase Price and includes any amendments, variations and/or supplementals made or issued from time to time;

Outstanding Amounts: means the aggregate of the payments due and payable by the Customer to Momentum pursuant to the Ijarah Agreement and any of the following:

- a) the payment in respect of the principal Facility amount being part of the Ijarah Rental Payments;
- b) the payments due and payable by the Customer to Momentum pursuant to the Purchase Undertaking upon any occurrence of Event of Default by the Customer;
- c) the payments due and payable by the Customer to Momentum pursuant to the Notice of Sale upon early settlement of the Facility or expiry of the Facility Period, where applicable; or
- d) the payments (if any) which Momentum determines to be outstanding at any particular time and/or any part thereof, as well as all other monies whatsoever including but not limited to fees, charges, damages and expenses that are due and payable by the Customer to Momentum under the Financing Documents;

Purchase Undertaking: means the undertaking by the Customer under clause 6.1 of these Standard Sahih Logbook Financing Conditions, in favour of Momentum relating to the Customer's undertaking to purchase the Motor Vehicle from Momentum pursuant to the Notice of Sale and includes any amendments or variations thereof and additions thereto from time to time executed in supplemental thereto or in substitution thereof;

Security Agreement: means the legal charge over the Motor Vehicle in the form and substance acceptable to Momentum executed or to be executed by the Customer in favour of Momentum pursuant to clause 9.1 herein;

Security Documents: means the Security Agreement (where applicable) and the other additional documents and shall include any security documents for the time being or from time to time constituting security for the obligations, liabilities and indebtedness of the Customer and reference to "Security Document" includes reference to any one thereof;

Security Parties: means the Customer and/or any other party from time to time required by Momentum to provide security to Momentum for the Customer's obligations under the Facility and references to "Security Parties" includes reference to each or any one thereof;

Standard Sahih Logbook Financing Conditions: means these terms and conditions for Sahih Logbook Financing;

Takaful Cover: means the Islamic Takaful Cover in the amount set out in Part 7 of Section D of the Ijarah Financing Facility Application Form herein to be taken out by the Customer covering the Motor Vehicle;

This Agreement: means these Standard Sahih Logbook Financing Conditions constituting the facility agreement made between Momentum and the Customer in relation to the Facility in accordance with the financing procedure of Momentum which sets out the terms and conditions of the Facility and links the Financing Documents and includes any amendments, variations and/or supplementals made or entered into from time to time;

Total Ijarah Rental: means the Momentum's Purchase Price; and

Total Loss Incident: means any incident or occurrence that results in the total theft, loss or destruction of, or damage to the whole of the Motor Vehicle or any incident or occurrence that makes the Motor Vehicle permanently unfit and/or unsafe for any economic use and the repair or remedial work in respect thereof is uneconomical.

3. MOTOR VEHICLE SALE ARRANGEMENT

Subsequent to the execution of the Facility Agreement, **Momentum** and the Customer hereby agree that the Customer shall sell the Motor Vehicle specifically to Momentum at Momentum's Purchase Price upon the terms and subject to the conditions of the Motor Vehicle Sale Agreement.

4. IJARAH ARRANGEMENT

Subsequent to the execution of the Motor Vehicle Sale Agreement, Momentum and the Customer hereby agree that the Customer shall lease the Motor Vehicle from Momentum based on the Shari'ah principle of Ijarah upon the terms and subject to the conditions of the Ijarah Agreement. The Customer shall make the Ijarah Rental Payments for the lease of the Motor Vehicle to Momentum in the amount and on the dates as set out in the Ijarah Agreement.

5. MAINTENANCE ARRANGEMENT

Pursuant to the Ijarah Agreement, Momentum and the Customer hereby agree that a maintenance arrangement relating to the Motor Vehicle shall be executed between Momentum and the Customer whereby the Customer shall be appointed as the unpaid maintenance agent of Momentum based on the Shari'ah principle of Wakalah in which the Customer shall be responsible to assist Momentum in carrying out and performing all maintenance required for the Motor Vehicle and in procuring the taking out of the relevant Takaful insurance cover in respect of the Motor Vehicle for and on behalf of Momentum upon the terms and subject to the conditions of the Ijarah Agreement.

6. UNDERTAKINGS (WAD')

6.1 Purchase Undertaking (Wad')

Pursuant to the Ijarah Agreement, the Customer undertakes to purchase the Motor Vehicle from Momentum upon the occurrence of an Event of Default.

6.2 Lease Undertaking (Wad')

Pursuant to the Ijarah Agreement:

- a) Momentum undertakes to lease the Motor Vehicle to the Customer;
- b) the Customer undertakes to:
 - i. lease the Motor Vehicle from Momentum; and
 - ii. make the Ijarah Rental Payments for the lease of the Motor Vehicle to Momentum in the amount and on the dates as set out in the Ijarah Agreement,

based on the Shari'ah principle of Ijarah upon the terms and subject to the conditions of the Ijarah Agreement and these Standard Sahih Logbook Financing Conditions.

6.3 Gift-back Undertaking (wad')

Pursuant to the Ijarah Agreement and the Letter of *Hibah*, Momentum undertakes to gift back the Motor Vehicle to the Customer:

- a) upon early settlement of the Facility;
- b) upon maturity of the Facility or expiry of the Facility Period;
- c) upon settlement of the Facility by the Customer; or
- d) upon the terms of these Standard Sahih Logbook Financing Conditions,

and shall:

- a) prepare and lodge a Cancellation Notice in respect of the Motor Vehicle with the Collateral Registry to discharge the Motor Vehicle ("**Cancellation Notice**"), and
- b) discharge the Motor Vehicle from the Transport Integrated Management System ("**TIMS**") portal of the National Transport and Safety Authority ("**NTSA**"); and
- c) notify the Customer of the filing of the Cancellation **Notice and the discharge of the Motor Vehicle on NTSA TIMS portal and provide of copy of the filed Cancellation Notice to the Customer.**

7. MOTOR VEHICLE SALE ARRANGEMENT

Pursuant to the Purchase Undertaking, Momentum and the Customer hereby agree that upon the occurrence of the event set out in clause 6.1 herein, the Customer shall purchase the Motor Vehicle from Momentum at the Momentum's Purchase Price upon the terms and subject to the conditions of the Notice of Sale.

8. CONDITIONS PRECEDENT

8.1 Conditions Precedent for the Facility:

Notwithstanding any other provisions herein contained Momentum shall not be bound to make available or continue to make available the Facility or any part thereof unless and until the following conditions precedent have been fulfilled to the full satisfaction of Momentum:

- a) receipt by Momentum of certification that the Financing Documents are in order and that the terms and conditions are valid and enforceable, accompanied by:
 - i. a search conducted at the Collateral Registry confirming that the Motor Vehicle is free from all encumbrances;
 - ii. a search conducted at the NTSA TIMS portal confirming that the Motor Vehicle is owned by the Customer and is free from all encumbrance

- iii. a search result conducted on the Customer at Integrated Population Registration Services ("IPRS") on the Customer's identity;
 - iv. receipt of a credit record from licenced Credit
 - v. Reference Bureaus ("CRBs");
 - vi. for refinancing facility from another bank or financial institution, receipt by Momentum of the:
 - A. redemption statement; and
 - B. a letter of undertaking from such bank or financial institution to discharge their security right or charge over the Motor Vehicle and to deliver original log book and other documentation of the Motor Vehicle, held by them if Momentum pays to them the redemption amount, inform and content acceptable to Momentum (if applicable);
 - vii. the Financing Documents and charge, in form and content acceptable to Momentum, to be duly executed and stamped and submitted to Momentum;
 - a) receipt by Momentum of the original logbook and all other documents pertaining to the ownership of the Motor Vehicle as Momentum may require;
 - b) receipt by Momentum of a full valuation report of the Motor Vehicle by Momentum's approved valuers;
 - c) the Motor Vehicle has a valid comprehensive insurance cover commensurate with the term of the Facility or the Customer has agreed that Momentum will acquire a comprehensive insurance cover on behalf of the Customer for the Motor Vehicle and thereafter: (i) deduct the premium cost from the Facility amount;
 - d) the registration of any security to be provided to Momentum, with such registries including TMS and Collateral Registry, as Momentum may deem necessary or expedient;
 - e) receipt by Momentum of all Takaful Cover certificates required by Momentum including but not limited to:
 - i. comprehensive motor vehicle Takaful cover to cover the Motor Vehicle against Total Loss Incident, against the risk of fire and other risks as Momentum deems fit; and
 - ii. credit life Takaful cover to cover Momentum in the event of the Customer's death, disability, terminal illness, unemployment, or other insurable risk that is likely to impair the Customer's ability to earn an income or pay their monthly instalments under this Facility Agreement, which Takaful Covers shall be in form and content acceptable to Momentum, from a Takaful operator on Momentum's panel or such other Takaful operator acceptable to Momentum;
 - f) Momentum is satisfied that the execution, delivery and performance of the Financing Documents have been duly authorized and approved by all necessary parties and that the same do not contravene any laws, rules or regulations or any contractual or other restrictions binding upon the Customer and/or the Security Parties;
 - g) the receipt by Momentum of all relevant undertakings, disclaimers, confirmations required by Momentum to Momentum's satisfaction;
 - h) completion of all legal documentation to the satisfaction of Momentum;
 - i) if the Motor Vehicle, is encumbered and is subject to a charge or assignment, the receipt by Momentum of all relevant undertakings, disclaimer, confirmations and consents from the existing charge or assignee;
 - j) fulfilment of all conditions precedent stated herein and any other additional conditions precedent as may be set out herein and any other conditions precedent as deemed fit and may be required by Momentum;
 - k) no Event of Default or breach of terms by the person from whom performance is required under this Agreement and/or the other Security Documents shall have happened and be continuing;
 - l) the Customer is not in default in payment of any monies due to Momentum or any other financial institution; and
 - m) the Customer shall have complied with all operational requirements relating to the operation of the Facility as may be stipulated by Momentum.
- 8.2 Compliance with the Conditions Precedent:** Notwithstanding clause 8.2 herein, pending the fulfilment in the manner satisfactory to Momentum of the conditions precedent hereinbefore stipulated, Momentum may at its absolute discretion cancel or terminate the Facility and/or not to release the Facility or any part or parts thereof. In the event that Momentum decides to cancel or terminate the Facility and/or not to release the Facility or any part or parts thereof, and in the event that this Agreement, the Motor Vehicle Sale Agreement and the Ijarah Agreement have been executed, Momentum shall exercise the Purchase Undertaking and the Customer shall pay to Momentum, the Momentum's Purchase Price.
- 8.3 Waiver of Conditions Precedent:** It is hereby expressly acknowledged and declared that the conditions precedent herein contained are inserted for the sole benefit of Momentum and therefore may be waived wholly or in part by Momentum at its sole and absolute discretion without prejudicing the rights of Momentum under any document and such waiver shall not prejudice the rights of Momentum from insisting on the Customer's compliance with any such waived conditions precedent at any subsequent time.
- 8.4 Disbursement:**
- a) Disbursement of the Facility is subject to completion of all legal documentation and receipt of the relevant undertakings and/or confirmations by Momentum.
 - b) The Facility shall be disbursed fully or partially (in tranches, staggered or step up) directly to:

- i. the Customer's bank account; or
 - ii. in case of refinancing facility from another bank or financial institution, to that bank or financial institution.
- 8.5 **Utilization of the Facility:** Momentum is hereby authorized by the Customer to pay the Facility or such part or parts thereof directly to the Customer, the existing security charge or assignee, the Takaful company or to any other person, as the case may be, at such times in such manner by such amounts and upon such contingencies and conditions as Momentum may in its absolute discretion decide, in respect of which claims for payment or payments are requested have been duly carried out and completed or such variations in the manner of payment as Momentum may in its absolute discretion deem fit and the acknowledgement of receipt by the aforesaid parties shall be as good and sufficient and effective as if the same had been made or given by the Customer personally AND it is hereby further irrevocably agreed and confirmed by the Customer that the Customer shall not be entitled to object to or to restrain such payment by Momentum.
- 8.6 **Payment for the Customer's benefit:** The payment of the Facility or such part or parts thereof, as the case may be, by Momentum to the parties as aforesaid in the manner set out herein shall be deemed to be effective payment thereof to or for the benefit of the Customer PROVIDED HOWEVER that the conditions precedent set out in clause 8.1 herein shall have been fulfilled and complied with by the Customer.
- 8.7 **Excess of the Facility:** In the case of refinancing, if there be an excess in the amount of the Facility with that of the balance remaining payable by the Customer to the existing security chargee/assignee, as the case may be, such excess amount shall be disbursed by Momentum directly to the Customer.
- 8.8 **Other Terms and Conditions:** The Customer shall also comply with all the terms and conditions in the Letter of Offer.
- 9. FINANCING DOCUMENTS**
- 9.1 **Security Documents:** For the purpose of better securing the payment of the Facility and all other monies due and owing under this Agreement and the other Security Documents, the Customer shall execute the Security Agreement over the Motor Vehicle.
- 9.2 **Undertakings:** The Customer hereby agree and undertake:
- a) to advise Momentum immediately of any threatened, impending or existing legal proceedings affecting the Customer or the Motor Vehicle;
 - b) that there is no change that would be detrimental to the financial standing of the Customer PROVIDED ALWAYS that Momentum has the absolute discretion to decide whether a change is detrimental or not; and
- c) to advise Momentum immediately of any change in the financial standing of the Customer.
- 9.3 **Other Security Documents:** Notwithstanding clause 8.1 herein, where required by Momentum, the Customer shall also execute to execute and deliver to Momentum the other Security Documents which Momentum may require to secure the payment of the Outstanding Amounts and the indebtedness or any part thereof.
- 9.4 **Continuing Security:** The security given by the Customer under this clause are expressly intended to be and shall be a continuing security for all monies whatsoever now or hereafter or from time to time owing and due to Momentum by the Customer pursuant to the Facility.
- 9.5 **Liens and Other Securities:** Nothing contained herein shall prejudice or affect any lien to which Momentum is entitled or any other securities which Momentum may at any time or from time to time hold for or on account of the monies hereby owing nor shall anything contained herein operate so as to merge or otherwise prejudice or affect any bill, note, guarantee, mortgage or other security which Momentum may for the time being have for any money owing hereunder or any right or remedy of Momentum hereunder.
- 9.6 **Covenant to Provide Further Security:** The Customer will at any time and when required by Momentum execute in favor of Momentum or as Momentum shall direct such further legal or other instruments and documents as Momentum shall require of and on all the Customer's rights, title and interests in any property or asset or business now belonging to or which may hereafter be acquired by or belonging to the Customer (including any seller's lien) and the benefit of all licenses held in connection therewith to secure all monies and liabilities hereby agreed to be paid, such mortgages, charges, assignments, transfers, agreements or other assurances to be prepared by or on behalf of Momentum at the cost of the Customer and to contain all such terms and conditions for the benefit of Momentum as Momentum may require or stipulate;
- 10. REPRESENTATIONS AND WARRANTIES**
- 10.1 **Representations and Warranties:**
- The Customer hereby represents and warrants to Momentum as follows:
- a) valid and binding: that the Financing Documents constitute the legal, valid and binding obligations on the Customer in accordance with their respective terms and conditions;
 - b) non-violation: that the execution, delivery and performance of the Security Documents by the Customer: (A) shall not violate the provisions of any law or regulation or any order or decree of any governmental authority, agency or court to which the Customer is subject; (B) shall not violate the provisions of any contract or other undertaking or instrument to which the Customer is party to or which is/are binding upon the Customer; and (C) shall not result in the creation or imposition of any

- obligation to create or impose any mortgage, lien, pledge or charge on any of the Customer's assets or revenues pursuant to the provisions of any such mortgage, contractor other undertaking or instrument;
- c) consents: that all consents, approvals or authorizations of any relevant authority which are required on the part of the Customer or which are advisable for or in connection with the execution, delivery, performance, legality and enforceability of the Transactions Documents have been obtained and are in full force and any conditions contained therein or otherwise applying thereto have been complied with;
 - d) no default: that the Customer are not in default under any agreement to which the Customer is a party or by which Customer is bound and no bankruptcy or winding up proceedings are pending nor any litigation, arbitration or administrative proceedings are presently current or pending or threatened which default bankruptcy, winding-up, arbitration or administrative proceedings as the case may be might materially affect the solvency of the Customer and might impair the Customer's ability to perform the Customer's respective obligations under the Financing Documents;
 - e) power and authorizations: that the Customer have the full and absolute power, right and authority to execute the Transactions Documents and that there is and shall be no person or party having priority over Momentum in respect of the Motor Vehicle and/or the security provided to Momentum, save and except as Momentum may agree in writing in its absolute discretion;
 - f) payment of Outgoings: all taxes, assessments and other charges imposed or to be imposed by the Government or any other competent authorities and other charges or levies and other outgoings in respect of the Motor Vehicle, whether before or after the date of the execution of this Agreement shall be solely borne and paid by the Customer;
 - g) no security: none of the assets, properties and rights of the Customer is affected by any security interest and the Customer is not a party to, nor is he or any of his assets bound by, any order, agreement or instrument under which the Customer is, or in certain events may be, required to create, assume or permit to arise any security interest;
 - h) information: all information furnished by the Customer in connection with the Customer do not contain any untrue statement or omit to state any fact the omission of which makes any statements made therein in the light of the circumstances under which they are made, misleading, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by the Customer and the Customer is not aware of any material facts or circumstances that have not been disclosed to Momentum which might, if disclosed, adversely affect the decision of a person considering whether or not to provide finance to the Customer;
 - i) disclosure: the Customer has fully disclosed in writing to Momentum all facts relating to the Customer which the Customer knows or should reasonably know and which are material for disclosure to Momentum in the context of the Facility;
 - j) Motor Vehicle: subject to the Security Agreement, the is the legal and/or beneficial owner of the Motor Vehicle or has obtained the consent from the owner of the Motor Vehicle (which consent shall be issued to Momentum), to secure the Facility with the Motor Vehicle;
 - k) Event of Default: no Event of Default has occurred and/or is continuing;
 - l) no immunity: the Customer is subject to civil and commercial law with regard to his obligations under the Transactions Documents and the execution, delivery and performance of the Transactions Documents constitute private and commercial acts rather than governmental or public acts and neither the Customer, nor any of his properties enjoy any immunity on the grounds of sovereignty or otherwise in respect of his obligations under this the Transactions Documents;
 - m) Takaful: no event or circumstance has occurred, nor has there been any omission to disclose a fact which, in any such case, to the best of the Customer's knowledge and belief after due enquiry would entitle any Takaful cover provider to avoid or reduce its liability under any of the Takaful coverage and all Takaful or insurance coverage required under the
 - n) Security Documents to be effected by the Customer have been so effected and are valid and binding and in full force and effect and all contributions due have been paid;
 - o) information: that all the financial statements, information, particulars and declarations furnished, provided or made by the Customer in respect of the Customer's application for the Facility are complete, true, accurate and correct in all respects; approval of the Shari'ah Committee/Counsellor: that the Customer understands that the Facility has been endorsed by the Shari'ah Committee appointed by Momentum and hereby agrees and undertakes that the approval is final, conclusive and binding upon the Customer; and
 - p) Halal: that the Motor Vehicle shall at all times be used for Halal purposes and will not be used in any manner which is in contravention with Shari'ah.
- 10.2 Other Representations and Warranties:**
- The obligations of Momentum to grant the Facility including the disbursement of Momentum's Purchase Price under the Motor Vehicle Sale Agreement shall also be subject to the following conditions:
- a) Momentum is satisfied that no event has occurred so as to render the Outstanding Amounts immediately payable and no Event of Default under any agreement or arrangement referred to in this Agreement and the other Financing Documents shall have happened and be continuing;

- b) there shall not have been occurred any default in the performance by any party therein of any covenant or agreement contained in any of the agreements and arrangements referred to in paragraph (1) hereof;
- c) the matters represented by the Customer as set out in clause 10.1 herein are true and correct in all respects;
- d) no extraordinary circumstances or changes of law or other governmental action shall have occurred which shall make it improbable that the Customer will be able to observe and perform the covenants and obligations on the Customer's part to be observed and performed under the provisions of this Agreement and the other Financing Documents; and
- e) no extraordinary circumstances or change of law or circumstances or other governmental action shall have occurred or is likely in the opinion of Momentum to occur which shall in the opinion of Momentum render it unlawful to grant the Facility on the security contemplated under the Security Documents.

10.3 Truth and Correctness of Representations and Warranties

- a) The Customer acknowledges that Momentum has accepted this Agreement on the basis of and in full reliance upon, the aforesaid representations and warranties, which are correct and complied with in all material respects so long as this Agreement shall remain in force and each of the above representations and warranties will be correct and complied with in all material respects so long as the Facility shall remain available.
- b) The truth and correctness of all the matters stated in the representations and warranties under clause 10.1 herein shall form the basis of Momentum's commitment to make available or continue to make available the Facility to the
- c) Customer. If any such representations and/or warranties made shall at any time hereafter be found to have been incorrect in any material respect then and in such event and notwithstanding anything to the contrary hereunder Momentum shall have the right at its absolute discretion and subject to Shari'ah principles to review, suspend or terminate the Facility.

11. COVENANTS

- 11.1 **Affirmative Covenants:** The Customer undertakes with Momentum that until all his liabilities and obligations hereunder and until the Facility have been discharged, the Customer shall at all times during the Facility Period, undertake all undertakings herein below:
 - a) grant to Momentum the preemptive right to make available to the Customer any additional facilities, ("**Preemptive Right Facilities**") provided that the Customer qualifies for such Preemptive Right Facilities and no Event of Default has arisen. This preemptive right shall terminate in the event any Event of Default occurs or arises, or the Customer's liabilities and obligations hereunder and the Facility have been discharged; and

- b) forthwith notify or cause to be notified to Momentum of the occurrence of any Event of Default or any event of default in relation to other indebtedness of the Customer which in his/her reasonable opinion might adversely affect his/her ability to comply with his/her obligations hereunder;
 - c) furnish to Momentum on demand such information in respect of his/her properties and assets or statement of his/her income, as Momentum may from time to time require;
 - d) punctually pay his/her indebtedness to Momentum when due and owing;
 - e) comply with any directive of Momentum which may be issued from time to time;
 - f) pay the rates, taxes and all other charges whatsoever payable from time to time in respect of the Motor Vehicle as and when the same become due and payable; and
 - g) keep the Motor Vehicle in satisfactory repair and condition. In default whereof, it shall be lawful for but not obligatory upon Momentum to carry out such repairs and if Momentum shall carry out such repairs, the costs and expenses thereof shall be indemnified by the Customer.

- 11.2 **Negative Covenants:** The Customer hereby covenants with Momentum that from the date of this Agreement until all his liabilities and obligations hereunder and under the other Security Documents have been discharged, the Customer shall not without the written consent of Momentum first had and obtained do any of the following matters:

- a) create or permit to arise or subsist or cause to be created or permitted to arise or subsist any encumbrance over the Motor Vehicle without the prior written consent of Momentum except the security provided herein;
- b) do or permit or cause to be done or permitted to occur any act, thing or event whereby any Takaful cover effected in respect of the Motor Vehicle, may be or become avoided, vitiated, discharged or unenforceable; and
- c) assign, transfer, sell or otherwise howsoever deal with the Customer's rights, title and interest in the Motor Vehicle or any part thereof or any interest therein.

12. CHANGES IN CIRCUMSTANCES

- 12.1 **Illegality:** If by reason of any change after the date of this Agreement in applicable law regulation or regulatory requirement or in the interpretation or application thereof by any governmental or other authority charged with the administration thereof whereby it shall become unlawful for Momentum to comply with its obligations hereunder or to continue to make available the Facility, Momentum shall promptly inform the Customer of the relevant circumstances whereupon: (a) any outstanding obligations

of Momentum shall forthwith be terminated and cancelled; and (b) the Customer shall be obliged to forthwith upon demand refund to Momentum all monies paid to the Customer together with any other monies covenanted to be paid by the Customer under and in relation to this Agreement.

12.2 **Notification:** Any notification by Momentum concerning any of the matters referred to in clause 12.1 herein shall, save for any manifest error be conclusive and binding on the Customer.

12.3 Force Majeure:

a) **Non-applicability of Force Majeure:** In relation to its payment obligations under the Financing Documents, the Customer agrees not to invoke:

- i. any event qualified under Kenyan law as an external, unforeseeable, absolutely invincible and inevitable event ("**force majeure**") or as an unforeseeable and unavoidable event ("**fortuitous event**");
- ii. any exceptional event qualified under Kenyan law as causing the fulfilment of any or all of the Customer' obligations based on any Finance Document to become excessively onerous ("**hardship**"); or
- iii. any event which is beyond its control or does not depend of its own fault in relation to the failure to perform any obligation binding on it under any Finance Document.

b) **No liability for Force Majeure:** Momentum shall not be liable for any failure in performing any of its obligations hereunder or any claim in respect of any loss, damage or injury to earnings, profit, goodwill or business caused directly or indirectly or other fault if such failure, loss, damage or other fault is caused by circumstances beyond the reasonable control of Momentum including but not

c) limited to any fire, earthquake, flood, epidemic, accident, explosion, casualty, lockout, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war or act of God.

13. PAYMENTS IN RELATION TO THE FACILITY

13.1 **Payments in relation to the Facility:** The payments obligations of the Customer in relation to the Facility pursuant to the Ijarah Agreement, the Purchase

Undertaking and the Notice of Sale shall be paid and satisfied entirely by payments by the Customer to Momentum in accordance with the respective aforementioned documents.

13.2 Compensation:

a) Notwithstanding anything contained in this Agreement, the Customer hereby agrees, covenants and undertakes as follows:

- i. **During the Facility Period:** For any delay or failure to pay any Ijarah Rental Payments in respect of the Facility on the due date from the date of first disbursement of the Facility until the last date of the Facility Period, the Late payments and defaulted payments shall attract a late

payment fee on the outstanding amount payable by the Customer to Momentum at the rate of zero decimal three three per cent (0.33%) daily rate on the outstanding amount; and

ii. **After the Facility Period:** If the Ijarah Rental Payments remain unpaid after the Facility Period, the unpaid payments shall attract a late payment fees on the outstanding amount payable by the Customer to Momentum at the rate of zero decimal three three per cent (0.33%) daily rate on the outstanding principal balance.

b) The amount of such compensation shall not be compounded on the overdue amount and/or principal balance as the case may be.

c) The amount referred above shall be spent on charitable activities under the approval and guidance of Shari'ah Supervisory Board of Momentum.

13.3 **Ibra' (Rebate):** Subject to Shari'ah principles, Momentum may at its absolute discretion permit the Ibra' (rebate) of such amount of the Outstanding Amounts and/or other monies remaining unpaid by the Customer upon various circumstances and in accordance with various methods and formula adopted by Momentum. Momentum's calculation of such Ibra' (rebate) shall be treated as final and binding.

13.4 **Partial Payment or Prepayment:** The Customer shall be allowed to request for the partial settlement of the Outstanding Amounts through excess payment or additional payment over the Ijarah Rental Payments.

14. EVENTS OF DEFAULT

14.1 Events of Default:

a) If at any time and for any reason, whether within or beyond control of the Customer, any one (1) of the following events occurs, that is to say:

i. non-payment: the Customer fails to make payment of the monies owing to Momentum under the Financing Documents on the due date or on demand, if so payable;

ii. default in payment: the Customer shall make default in the payment on due dates of any one or more of the Ijarah Rental Payments or other sums or monies herein agreed or covenanted by the Customer to be paid;

non-performance: the Customer fails to observe or perform any of the agreements, covenants, stipulations, terms and conditions on the part of the Customer under the Financing Documents;

iv. jeopardy: Momentum decides in its sole discretion that the continuation of the grant of the Facility or any part thereof would be likely to be detrimental to its own position or otherwise undesirable or that its security hereunder is inadequate or in jeopardy or that any event or events has/have occurred or a situation exists which could or might prejudice the Customer's ability to perform his obligations hereunder in accordance with the terms hereof, or any of the Security Documents as the case may be;

- v. bankruptcy: any step is taken for bankruptcy of the Customer or a petition for bankruptcy is presented against the Customer and such Customer commits any act of bankruptcy;
- vi. death or incapacity: the Customer dies or becomes incapacitated or of unsound mind or serves any custodial sentence or terminates or threatens to terminate his obligations under the Security Documents;
- vii. event or events: any event or events has or have occurred or a situation exists which could or might, in the opinion of Momentum, prejudice the ability of the Customer to perform any of his obligations under any of the Security Documents in accordance with the terms hereof or thereof;
- viii. non-registration: the transfer of the Motor Vehicle in favour of the Momentum or any of the Security Documents cannot be registered or perfected for any reason whatsoever or the Security Agreement cannot be registered or is invalid for any reason whatsoever;
- ix. unlawfulness: it is or will become unlawful by the laws of Kenya for the Customer to perform or comply with anyone or more of their respective obligations under the Security Documents or makes it impossible or unlawful for Momentum to continue its making available the Facility to the Customer or the receipt by Momentum of the Outstanding Amounts or any part thereof;
- x. nationalization: the Motor Vehicle or assets of the Customer shall be condemned, seized or otherwise appropriated for more than forty-five (45) days, or custody or remain unremedied for more than forty-five (45) days, or custody or control for such property or assets shall be assumed and retained for more than forty-five (45) days by any person acting or purporting to act under the authority of the government, or the Customer shall have been prevented for a period of more than forty-five (45) days from exercising all or any substantial part of his property or assets by any such person;
- xi. appointment of receiver, legal process: an encumbrancer takes possession of, or a trustee or administrative or other receiver or similar officer is appointed in respect of, all or any part of the business or assets of the Customer or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within seven (7) days after being levied, enforced or sued out, or any security interest which may for the time being affect any of his/its/their assets becomes enforceable;
- xii. indebtedness due: any debt, guarantee or other obligation whatsoever constituting indebtedness of the Customer becomes due prior to its scheduled maturity (by demand acceleration or otherwise) or such indebtedness shall not be paid at the maturity thereof or within any grace period allowed for payment thereof or if the Customer is otherwise in breach of or default under any agreement, deed or mortgage pursuant to which such indebtedness was created, incurred or assumed;
- xiii. normal control over the Motor Vehicle or judgement outstanding: the Customer shall fail to satisfy any judgement passed or order given against the Customer by any court of competent jurisdiction and no appeal against such judgement or order is pending in any appropriate appellate court;
- xiv. revocation of authorizations: any authorization exemption or undertaking referred to in the Financing Documents shall be revoked terminated restricted or modified in a manner unacceptable to Momentum or an event or events shall have occurred which in the opinion of Momentum (which opinion shall be conclusive and binding on the Customer makes it improbable that the Customer will be able to perform or indicates that the Customer is unwilling to perform his obligation under the Financing Documents);
- xv. misrepresentation: any representation or warranty or statement made (or acknowledged in writing to have been made) by the Customer in connection with the delivery of the Financing Documents, or if repeated at any time with reference to the facts and circumstances subsisting at such time would not be accurate in all material respects and written notice thereof is given to the Customer by Momentum requiring the remedy thereof, and the subsequent failure by the Customer to remedy the same within the period stipulated thereunder;
- xvi. misrepresentation on the ownership of the Motor Vehicle: there is any misrepresentation of facts regarding the ownership of the collateral at the onset of the Facility;
- xvii. a third party claims ownership of the Motor Vehicle either through a sale agreement or possession of a logbook and/or alleges fraud; or Momentum receives a letter, notice, a court order or any notification that is likely to prejudice its interest in the Motor Vehicle from any government agency;
- xviii. non-Halal purposes or activities: the Motor Vehicle is used or occupied by the Customer for "non-halal" purposes or activities as determined by the Shari'ah Supervisory Board of Momentum at its absolute discretion;
- xix. false or misleading information: any of the credit information furnished by the Customer to Momentum is found to be untrue or misleading in any respect whatsoever, or if the information furnished by the Customer to Momentum has changed in any way whatsoever;
- xx. Cross Default: If any sum shall be due from the Customer and or any guarantors (collectively, "the Obligors") to Momentum and or any other third party from time to time or at any time or if any of the Obligors may be or become liable to Momentum anywhere on any banking, financing, any other credit facilities or any other account current or otherwise ("the account(s)") or in any other manner whatsoever including but not limited to liability of any of the Obligors incurred to Momentum as sureties or guarantors,

then, at once or at any time thereafter, Momentum may, by notice to the Customer, declare that an Event of Default has occurred and simultaneously or at any time thereafter, irrespective of whether any event mentioned herein is continuing, Momentum may by written notice to the Customer:

- A. declare the Facility to be terminated;
 - B. invoke the Purchase Undertaking against the Customer;
 - C. declare the Outstanding Amounts together with any other sum then payable by the Customer under the Financing Documents to be immediately due and payable; and
 - D. declare the security created by the Security Documents to immediately become enforceable.
- 14.2 Each of paragraphs (i) to (xviii) above is to be construed independently and no one Event of Default limits the generality of any other Event of Default.

15. REMEDIES OF MOMENTUM

15.1 **Remedies:** Upon demand and/or the occurrence of any Event of Default, Momentum shall be entitled to exercise such rights

- a) that are available to it under the Financing Documents and/or at law including any of the following rights and powers:
- b) the right to enter and take possession of the Motor Vehicle or any part or parts thereof and if permissible under any of the applicable Acts, to be registered as the owner and proprietor thereof;
- c) the right to sell or lease the Motor Vehicle or any part or parts thereof upon such terms as Momentum in its absolute discretion shall deem fit;
- d) the right to receive the rents and profits of the Motor Vehicle;
- e) the right and power to sell and assign the Motor Vehicle by public auction or private treaty as the absolute and unencumbered owner thereof at such price or prices and in such manner as Momentum shall in its absolute discretion deem fit free from any interest of the Customer hereunder or otherwise and the right to bid at any such sale;
- f) the right to sue and institute by way of a civil suit or action for the recovery of the Outstanding Amounts whether before first realizing the Motor Vehicle or otherwise or concurrently with any of the other rights and remedies of Momentum herein or at law; and
- g) and the Customer shall and hereby expressly agree covenant and undertake to do and execute all acts, deeds, instruments and things which Momentum may require or stipulate for the purpose of effecting and/or completing anything and/or any transaction mentioned in this clause herein but without prejudice to the powers or the rights of Momentum in its capacity as the beneficial owner of the Motor Vehicle by virtue of the Purchase Agreement.

15.2 **Application of Monies:** All monies received by Momentum from any proceedings instituted or step taken pursuant to the Financing Documents shall be applied by Momentum:

- a) 1stly: in or towards payment to Momentum of the principal Facility amount due and remaining unpaid or the balance thereof for the time being owing;
- b) 2ndly: in payment of all costs, charges and expenses incurred and payments made by Momentum under the provisions of the Financing Documents (if any) and any taxes payable under any written law for the time being in force on the disposal of the Motor Vehicle;
- c) 3rdly: in or towards payment to Momentum of all other monies due and remaining unpaid under the Financing Documents;
- d) 4thly: in or towards payment to Momentum of all of the Customer's liabilities to Momentum of whatsoever nature, agreement or contract or otherwise with Momentum and all such monies available under this premise, are specifically held in trust for Momentum for the satisfaction of such liabilities; and
- e) 5thly: any surplus shall be paid to such person(s) entitled thereto,

PROVIDED ALWAYS THAT if Momentum shall be of the opinion that the security may prove deficient the same shall not prejudice the right of Momentum to receive the full amount to which it would have been entitled or any lesser amount which the sum ultimately realised from the security may be sufficient to pay the Outstanding Amounts.

15.3 **Deficiency in Proceeds of Sale:** If the net proceeds of any sale of the Motor Vehicle under the provisions herein or the applicable Acts or otherwise are less than the balance of:

- a) **the principal Facility amount**, then Momentum as the purchaser and lessor of the Motor Vehicle shall forbear enforcing or suing the Customer' for such balance of the principal Facility amount; and/or
- b) **all monies** owing after deduction and payment from the proceeds of such sale of the principal Facility amount, other than the principal Facility amount, then any outstanding rental payments due, all fees (including the fees of Momentum's lawyers on a full indemnity basis) dues, costs, rents, rates, taxes and other outgoings and all the costs and expenses incurred in connection with the making and carrying into effect of such sale, the Customer shall notwithstanding that Momentum may be the purchaser of the Motor Vehicle, pay Momentum the difference between all such monies owing and the net proceeds of such sale PROVIDED that nothing stated herein shall be construed in any manner whatsoever to bind or require Momentum to exercise its rights of sale of the Motor Vehicle first before enforcing or suing on the Customer' personal covenant to pay on demand or to restrict, affect or diminish Momentum's rights at law or in equity.

15.4 Concurrent Remedies and Cumulative Remedies:

Notwithstanding any provision hereof, it is hereby expressly agreed that immediately upon the occurrence of the Event of Default Momentum shall thereafter have the right to concurrently exercise all or any of the rights and remedies available to Momentum whether by this Agreement or any of the Security Documents or at law or otherwise including without limitation the right to pursue its remedies of sale and possession pursuant to the provisions herein and any of the Security Documents or the applicable Acts and the right to recover by civil suit all monies due and owing by the Customer to Momentum. The remedies provided herein are cumulative and are not exclusive of any other remedies provided by law.

15.5 Existing facility: In the event that the Customer has an existing facility including without limitation to an insurance premium finance facility, running concurrently with this Sahih Logbook Financing Facility and fails to remit any monthly installments with respect to the other facility on the due date for the that other facility: on the fifteenth (15th) day after the due date of that other facility, or any other day as decided by Momentum at its sole discretion, a repayment shall be initiated by Momentum for that other facility and the same amount shall be added to this Facility account.

15.6 If the Customer defaults on any of the facilities issued to them alongside the or if such facilities are still outstanding upon the full payment of the Sahih Logbook Financing Facility, which facilities may include Sahih Logbook Financing Facility separate from the one detailed in this Facility application form, Invoice Factoring and/or an Insurance Premium Finance facility, the lender is entitled to exercise the rights to offset and withhold any collateral held by the company during such default or such a circumstance.

16. INDEMNITY

16.1 The Customer shall not do or suffer to be done any act, matter or thing in or respecting the Motor Vehicle which contravenes the provisions of the Financing Documents or any act, order, rule, regulation or by-law now or hereafter affecting the same and the Customer shall at all times hereafter indemnify and keep indemnified Momentum against all costs, expenses, claims and demands in respect of any such act, matter or thing done or omitted to be done in contravention of the said provisions.

16.2 In addition and without prejudice to the powers, rights and remedies conferred on Momentum herein, the Customer shall indemnify Momentum against any damage, loss or expense (including but not limited to legal expenses on advocate and client basis) which Momentum may sustain or incur as a consequence of any default in payment by the Customer of any sum payable hereunder.

17. COSTS, FEES AND EXPENSES

17.1 All costs, charges and expenses incurred hereunder by Momentum including any expenditure incurred in the preservation and/or enforcement of this Agreement and the other Security Documents and any documents related

thereto or in the giving of any notice or in the making of any demand, under or pursuant to or in respect of this Agreement and all other monies whatsoever paid by Momentum in respect of the said costs, charges, expenses and expenditure or otherwise howsoever and all or any sums of monies paid or expended by Momentum under or pursuant to the provisions of the applicable Acts, this Agreement and the other Security Documents and any documents related thereto express or implied, shall be payable by the Customer to Momentum on demand calculated from the date it is due until full payment.

17.2 In the event of default by the Customer in payment of any monies payable by the Customer to any person or authority whomsoever under or pursuant to the provisions of this Agreement and the other Security Documents, it shall be lawful for (but not obligatory upon) Momentum to make such payments on behalf of the Customer, whereupon Momentum reserves the absolute right to demand from the Customer repayment of all such monies expended by Momentum.

17.3 Unless otherwise stated to the contrary in the Letter of Offer, all legal and incidental expenses in connection with the preparation and completion of the Security Documents together with any fees or expenses (inclusive of duty, disbursement, discharge of charge/receipt, reassignment fee (if applicable) and valuation fees (if applicable)) shall be borne by the Customer.

17.4 Unless otherwise stated to the contrary in the Letter of Offer, in the event the Customer terminates the Facility at any time before the disbursement, the Customer shall be fully liable to reimburse Momentum for all legal expenses, charges and disbursements paid (inclusive of duty, disbursement, discharge of charge/receipt, reassignment fee (if applicable) and valuation fees (if applicable)) in relation to the Facility.

18. BENEFIT OF AGREEMENT

18.1 Assignment by Momentum:

a) Momentum may assign or, novate its rights under this Agreement or any part thereof and/or, transfer its obligations under this Agreement or any part thereof, subject to the terms of this Agreement, and:

i. for this purpose may disclose to a potential assignee or transferee or any other person who derives or may derive rights or obligations under or by reference to this Agreement such information about the Customer as shall have been made available to Momentum generally;

ii. where Momentum transfers its obligations or any part thereof, the Customer shall execute such documents as are reasonably necessary to release Momentum to the extent of the transfer and join the transferee as a party herein; and

b) where Momentum transfers all its obligations and rights hereunder the Customer shall thereafter deal solely with the transferee with respect to payments, notices and other matters relating to the administration of this Agreement.

All costs of and incidental to any assignment and sale shall be borne and paid for by Momentum unless the assignment and/or sale arose out of circumstances set out by the Customer.

18.2 Assignment by the Customer:

The Customer shall not assign, novate, transfer or purport to assign, transfer or novate this Agreement or any of the Security Documents.

19. GENERAL PROVISIONS

19.1 **Evidence of Indebtedness:** For all purposes, including any legal proceedings relating to the Facility a certificate or a statement of account signed by any one of Momentum's officers as to any amount due to Momentum shall, in the absence of manifest error, be conclusive evidence that such amount is in fact due and payable and shall not be questioned on any account whatsoever.

19.2 **Rights cumulative, waivers:** The rights of Momentum under this Agreement are cumulative and may be exercised as often as it may consider appropriate and are in addition to the rights of Momentum under any applicable law. The rights of Momentum in relation to the Facility (whether arising under this Agreement or under any applicable law) shall not be capable of being waived or varied otherwise than by an expressed waiver or variation in writing, and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on Momentum's part or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

19.3 Disclosure of Information:

- a) The Customer hereby irrevocably consents for Momentum to disclose any documents or records of, or information about the Financing Documents, the Facility, or the assets, or affairs of the Customer, whether or not confidential and whether or not the disclosure would be in breach of any law or of any duty owed to the Customer:
 - i. to the Central Bank of Kenya, any Governmental Agency or such other authority having jurisdiction over Momentum; or
 - ii. to Momentum's auditors, lawyers and other professional advisers; or
 - iii. to licenced credit reference bureaus; or
 - iv. to any branch, subsidiary or parent company of Momentum; or
 - v. for or in connection with any legal action, suit or proceedings relating to the Facility or security; or

- vi. to any third party, if required by any law, regulation or by-law; or
- vii. to any party pursuant to any arrangement, composition, restructuring or any proposed arrangement, composition or restructuring between the creditors of the Customer; or
- viii. pursuant to any law and legal provisions; or
- ix. to any person, body authority, credit bureau and/or agency as Momentum deems proper.

b) Momentum may disclose to any person who derives or may derive rights or obligation under or by reference to the Security Documents (including but not limited to an assignee or transferee or prospective assignee or transferee) such information about the Customer in relation to the Facility or the Security Documents as shall have been made available to Momentum generally.

19.4 **No payment of interest:** For the avoidance of doubt and notwithstanding any other provision to the contrary herein contained, it is hereby agreed and declared that nothing in this Agreement shall oblige any party hereto nor shall any party be entitled to pay interest (by whatever name called) on any amount due or payable to any of the other parties hereto or to receive any interest on any amount due or payable to such party.

19.5 **Modifications and indulgence:** Momentum may at any time without in any way affecting the security hereby created:

- a) determine, vary, reduce or increase any credit or other facility granted to the Customer;
- b) grant to the Customer or any surety or guarantor any time of indulgence or waiver or consent or release;
- c) compound with the Customer or any surety or guarantor or any other person; and/or
- d) deal with exchange, release vary or modify or obtain from perfecting or enforcing the security documents and any security held or to be held by Momentum for or on accounts of the monies hereby secured or any part thereof.

19.6 Governing Law, Dispute Resolution and Jurisdiction:

- a) This Agreement shall be governed by and shall be construed in all respects in accordance with the laws of Kenya and Shari'ah principles and in relation to any legal action or proceedings arising out of or in connection with this Agreement ("**Proceedings**").
 - b) By executing this Agreement:
 - i. the Customer agrees submit all Shari'ah related issues, and all disputes, claims, controversies, differences, questions or claims for compensation or otherwise ("**Disputes**") to the Shari'ah Supervisory Board of Momentum for resolution, and shall attempt in good faith to negotiate a settlement to the issue or Dispute between them and Momentum within twenty
- (20) calendar days of either Party notifying the other of the Dispute. If the Parties reach an agreement on the dispute, the agreement will be recorded in writing and will be binding on the parties once it is signed; and

- ii. the Customer hereby submits to the exclusive jurisdiction of the courts of law of the Republic of Kenya to settle any Dispute if negotiations and/or efforts to resolve the Dispute by Shari'ah Supervisory Board of Momentum fail, and waives any right to challenge jurisdiction, or venue in such courts with regard to any suit, action, or proceeding under or in connection with this Agreement, or any objections to Proceedings in any such courts on the grounds that the Proceedings have been brought in an inconvenient forum.
- c) Such submission in clause 19.6(c) however not affect the right of Momentum to take Proceedings in any other jurisdiction nor shall the taking of Proceedings in any jurisdiction preclude Momentum from taking Proceedings in any other jurisdiction and Momentum shall be at liberty to initiate and take actions or Proceedings or otherwise against the court of Kenya and/or elsewhere as it may deem fit.
 - d) The obligations of the Parties under this Agreement will not cease, or be suspended or delayed by the reference of a Dispute to negotiation and each Party will comply fully with the requirements of this Agreement and the law at all times.
 - e) Unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it will be conducted in confidence.
- 19.7 Time is of the Essence:** Time shall be of essence with regard to the performance of the Customer's obligation under this Agreement.
- 19.8 Data Protection**
- a) It is hereby understood and agreed that the data herein has been directly obtained from the Customer who has provided the data voluntarily to Momentum to facilitate the processing of the Facility sought by the Customer.
 - b) It is hereby understood and agreed that by signing this Agreement, the Customer:
 - i. will provide personal data that is required by Momentum for facilitating the processing of the Facility, the establishing and maintenance of business and for the fulfillment of the Momentum's contractual and legal obligations;
 - ii. consents to Momentum processing the data as per its internal company policy and the law;
 - iii. consents to Momentum to continue holding and processing the data provided even after all obligations under the Facility has been settled for a variety of purposes including but not limited to cross selling, research, product development, analysis of market trend operation of Momentum's regulations and procedures;
 - iv. 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; and
 - v. consents to the use of their personal data from time to time by Momentum to market its products. The Customer may opt out of receiving marketing communication at any time within the duration of their Facility by officially communicating to Momentum through the prescribed channels of communication.
 - c) Momentum undertakes to ensure the personal data provided by the Borrower is collected, processed, shared, stored and used in accordance with the Data Protection Act.
 - d) 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.
- 19.9 Facility Cancellation:**
- a) Where the Facility is cancelled at any stage of processing before disbursement of the funds by either the Customer or Momentum for any valid reason, the Customer shall be obligated to pay any Facility origination costs incurred including but not limited to tracking device removal costs of Kenya Shillings Seven Thousand, Seven Hundred and Twenty-Five (KSh.7,925.00).
 - b) The Customer shall request Momentum to cancel the Facility at any time before disbursement of the funds in writing by sending an e-mail to cx@momentumcredit.co.ke or by an official letter.
 - c) If the Facility is cancelled after receipt of the funds, the Customer shall refund the disbursed amount plus the Facility origination costs within forty-eight (48) hours of receipt of the said funds, and shall notify Momentum of the refund in writing by way of an e-mail to cx@momentumcredit.co.ke or an official letter accompanied with the proof of refund. Failure to which clauses 13.2, 14.1 and 15 of these Standard Sahih Logbook Financing Conditions shall take effect.
- 19.10 Notice:**
- a) Any notice, document, information or communication under or in connection with this Agreement shall be in writing and in English language, and shall be delivered personally, or by post, or facsimile or e-mail or comparable means of communication to the addresses given in this Agreement or at facsimile numbers or such e-mail address or at such other address or facsimile numbers as the recipient may have notified to the other party herein in writing. Any notice or communication given as provided in this clause shall be deemed received by the party to whom it is addressed:
 - i. if delivered by hand, when so delivered;
 - ii. if sent by registered post, on the third (3rd) Business Day after posting;
 - iii. if sent by e-mail, within twenty-four (24) hours of transmission (from the time it was sent) if sent to the correct e-mail address and no notice of delivery failure is received; and

- iv. if by facsimile, upon the issue to the sender of a transmission control or other like report from the dispatching facsimile machine which shows the relevant number of pages comprised in the notice have been successfully transmitted.
 - b) By appending your signature in the Security Agreement, Motor Vehicle Sales Agreement, Ijarah Agreement, Maintenance Agreement Signature Pages herein, you acknowledge that you have read, reviewed, well understood, and are fully agreeable to the all the terms and conditions stipulated in the full electronic versions of the Security Agreement, Motor Vehicle Sales Agreement, Ijarah Agreement, Maintenance Agreement made accessible to you or sent to you by Momentum via e-mail, facsimile, cable, parties acting for and behalf of Momentum including its sales agents, and physical versions of such documents or via any other means that Momentum deems necessary at its sole discretion.
 - c) Without prejudice to any other clause in these Standard Sahih Logbook Financing Conditions, all notices concerning the Sahih Logbook Financing may be sent via short messaging service ("SMS"), WhatsApp, phone call, e-mail, registered mail, physical delivery or any other communication mode as Momentum deem necessary at its sole discretion.
- 19.11 Service of Legal Process:**
- a) The service of any legal process may be given by registered post sent to the respective address for service of the parties herein and such legal process shall be deemed to have been duly served after the expiration of five (5) days from the date it is posted and if delivered by hand on the day when it is delivered and duly acknowledged.
 - b) No change in the address of service howsoever brought about shall be effective or binding on Momentum unless the Customer has given to Momentum actual notice of the change of address for service and nothing done in reliance on clause 19.11(a) herein shall be affected or prejudiced by any subsequent change in the address of service over which Momentum has no actual knowledge of at the time the act or thing was done or carried out.
- 19.12 Variation of Terms:** It is hereby expressly agreed and declared by the parties hereto that notwithstanding any of the provisions of this Agreement to the contrary, the provisions and terms of this Agreement may at any time and from time to time and subject to Shari'ah principles, be varied or amended by Momentum by means of exchange of letters or such other means as Momentum deems fit upon from time to time and thereupon such amendments and variations shall be deemed to become effective and the relevant provisions of this Agreement shall be deemed to have been amended or varied accordingly and shall be read and construed as if such amendments and variations had been incorporated in and had formed part of this Agreement at the time of execution hereof.
- 19.13 Severability:** Any term, condition, stipulation, provision, covenant or undertaking contained herein which is illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, prohibition or unenforceability in any jurisdiction shall not invalidate or render illegal, void or unenforceable any such term, condition, stipulation, provision, covenant or undertaking in any other jurisdiction.
- 19.14 Letter of Offer:** The Letter of Offer which has been duly accepted by the Customer shall form part of this Agreement. Unless otherwise stated, all references, terms, conditions and provisions as set out in the Letter of Offer which are not specifically stated in this Agreement are incorporated herein whether or not repeated herein and shall form part of this Agreement and shall be binding upon the parties hereto and their successor-in-title and assigns of Momentum and permitted assigns of the Customer. Subject to such alterations or variations where necessary to make the provisions of the Letter of Offer consistent with the provisions of this Agreement, in the event of any conflict or discrepancy between the provisions of the Letter of Offer and this Agreement, the provisions of this Agreement shall prevail for the purpose of interpretation and enforcement of this Agreement.
- 19.15 Custody of Documents:**
- a) Momentum shall have custody and possession of the original copy of the logbook in respect of the Motor Vehicle immediately upon issuance thereof by the relevant authority.
 - b) For so long as any monies shall be owing by the Customer to Momentum and during the continuance of this Agreement, Momentum shall have the custody and possession of the original copy of whatsoever documents evidencing any title to or right in the Motor Vehicle or any benefits or rights annexed, appurtenant or relating thereto or in any way connected therewith.
- 19.16 Consolidation and Right of Set-off:** It is hereby expressly agreed and declared that unless Momentum otherwise agrees any security whether given now or hereafter shall not be discharged or released except on payment of not only all monies secured hereby but also all monies whatsoever and howsoever owing or payable or due from the Customer to Momentum (whether such liability be present, future, actual, contingent, primary, secondary, collateral, secured or unsecured, several or joint) under any other account or accounts of whatsoever nature (whether current, deposit or financing account), agreement or contract or otherwise with Momentum.
- 19.17 Set-Off:** If the Motor Vehicle is put up for sale by way of auction or private treaty pursuant to the provisions herein contained or the provisions of the applicable Acts or otherwise, Momentum shall be entitled to set off the unpaid Outstanding Amounts and any other monies owing to Momentum against any monies

payable by the Customer as the purchaser at such sale in the event Momentum exercising its rights under this Agreement or the applicable Acts, as the case may be, to bid at such sale.

19.18 **Involuntary Loss:** Momentum shall not be answerable for any involuntary loss happening in or about the exercise or execution of any power, right, privilege and remedy conferred on Momentum by this Agreement, and the other Security Documents or by law.

19.19 **Enforcement of this Agreement:** This Agreement is in addition to and not in substitution of any other rights or securities which Momentum may have from or against the Customer or under any of the Security Documents and may be enforced in accordance with the terms hereof without first having recourse to any of such other rights or securities and without taking any steps or proceedings against any Security Parties as aforesaid.

19.20 **Avoidance of Payments:** No assurance, security or payment which may be avoided under any law to bankruptcy and no release, settlement or discharge given or made by Momentum on the faith of any such assurance, security or payment, shall prejudice or affect Momentum's rights to recover from the Customer the monies hereby owing to the full extent hereunder. Any such release, settlement or discharge shall be deemed to be made subject to the condition that it will be void if any payment or security which Momentum may previously have received or may hereafter receive from any person in respect of the monies hereby owing is set aside under any applicable law or proves to have been for any reason invalid

19.21 **Further Assurance:** The Customer shall from time to time and at any time, whether before or after this Agreement or any of the Security Documents shall have become enforceable, execute and do or cause to be executed and done all such instruments, documents, acts and things as Momentum may reasonably require for perfecting the security intended to be hereby constituted and for facilitating the realization of the Motor Vehicle charged or to be charged to Momentum and the exercise by it of all the powers, authorities and discretion which Momentum may think expedient. For such purposes a certificate in writing signed by or on behalf of Momentum to the effect that any particular instrument, document, act or thing required by it is reasonably required by it shall be conclusive evidence of the fact.

19.22 **Third-party rights:** No person other than a Party to this Agreement shall have any rights to enforce any term of this Agreement.

19.23 **Waiver of Sharia Defense and Approval by the Momentum Shari'ah Supervisory Board:**

a. The transaction contemplated in these Standard Logbook Financing Conditions and the Financing Documents has been approved by Shari'ah Supervisory Board of Momentum, whose ruling with regard to Shari'ah matters shall be final and binding for the Parties.

b) Neither Party shall be entitled to raise any objections or defenses or claims based on the basis that any term of these Standard Logbook Financing Conditions and the Financing Documents, the transaction envisaged therein or certain clauses contained therein, is not in compliance with the principles of the Shari'ah.

c) The Customer waives the right to bring any defense or claim based on the non-compliance of the transaction contemplated in these Standard Logbook Financing Conditions and the Financing Documents with Shari'ah principles.

d) The Customer acknowledges and accepts that he/she has had the opportunity to read the terms of this Security Agreement and to seek Shari'ah advice of his/her own on the terms thereof and the transaction itself, and has accepted that the transaction is compliant with Shari'ah and is comfortable with the transaction from an Islamic- ethical perspective.

20. Notice Period

The offer contained in our Letter of Offer is available to the Customer for acceptance for a period of no less than one (1) month from the date of this Letter of Offer after which date the Customer should have read understood the terms and conditions mentioned above, the offer will lapse on expiry of this period unless extended in writing by Momentum. The Customer is at liberty to consult independently on any term or condition in these Standard Logbook Financing Conditions and the Financing Documents.

IN AGREEMENT and UNDERSTANDING thereof, the Customer accepts such offer on such terms and conditions setout above and hereby affixes their respective signature:

WITNESSED by and on behalf of MOMENTUM CREDIT LIMITED:

Names: _____

Position: _____

Signature: _____

Date: _____

CUSTOMER (please sign here):

Names: _____

National ID/Passport Number: _____

Signature: _____

Date: _____

