

GENERAL PROVISIONS

of the Asset Financing Loan Agreement

1. DEFINITIONS AND INTERPRETATION

Agreement	means the asset financing loan agreement concluded between Mogo Auto and the Borrower and which is constituted of the Special Provisions and General Provisions, and all the relevant annexes, amendments and other elements which form a part of the Agreement;	Mogo Auto	means MOGO AUTO LIMITED, a limited liability company incorporated in the Republic of Kenya under Registration Number PVT-AJUR7BX and having its registered office in Nairobi in the said Republic and of Post Office Box Number 29107-00100, Nairobi;
Asset	means the motor vehicle defined in the Special Provisions of the Agreement for the purchase of which Mogo Auto provides a Loan to the Borrower and which serves as security for the fulfillment of the Borrower's obligations under the Agreement;	In-Charge	means the registration of Mogo Auto's security right and charge on the Asset 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 Loan Facility. The In-Charge may be drawn as a continuing security so as to secure subsequent advances agreed with Mogo Auto or other obligations of the Borrower;
Loan amount (Loan)	means the amount specified in the Special Provisions of the Agreement, that Mogo Auto lends to the Borrower in accordance to the provisions of the Agreement and which the Borrower is obliged to repay to Mogo Auto in accordance to the provisions of the Agreement;		
Balloon Instalment	includes the remaining outstanding Loan Facility under the Agreement for the entire period, specified in Clause 2.2.3 of this T&C regardless of the payment date of the instalment. The Balloon Instalment replaces the corresponding consecutive twelve (multiple of twelve) standard Monthly Instalments. Upon payment, the Borrower repays all of its outstanding Loan Facility amount obligations under the Agreement in accordance with the provisions of Clause 2.2 of this T&C;	Security Agreement	means a security agreement creating a first ranking priority perfected registrable security right and interest of Mogo Auto in the Asset, registered with the NTSA-TIMS and the Collateral Registry operated by the Business Registration Service created under the Movable Property Security Rights Act, No. 13 of 2017 of the laws of Kenya, relating to the Asset, securing repayment of the Loan Facility. The Security Agreement may be drawn as a continuing security so as to secure subsequent advances agreed with Mogo Auto or other obligations of the Borrower;
Borrower	means the party as defined in the Special Provisions of the Agreement;	Monthly Instalment	means the monthly payment that are due and payable in accordance with the Repayment schedule;
Business Day	means a day other than a Saturday, Sunday or gazetted public holiday on which banks are open for general business in Nairobi;	Credit Reference Bureau	means all registered credit reference bureaus being utilized by Mogo Auto from time to time;
Loan Facility	means the aggregate amount of the Loan Amount, the interest, issuance fee, administration fee and all other fees and costs that Borrower is obliged to pay to Mogo Auto in accordance with the Agreement;	Loan Term	means the term in which the Borrower shall repay the Loan Facility to Mogo Auto, as defined and agreed in the Special Provisions of the Agreement;
Day	means a calendar day and in the calculation of days, the first day is excluded and the last day is included;	Repayment schedule	means the schedule listing the due dates and amounts of each Monthly Instalment the Borrowers should pay to Mogo Auto. The Repayment schedule is attached to the Special Provisions of the Agreement as it Schedule 1;
Foreign Exchange Rate	means exchange rate announced by Oanda (or any other regulated financial services provider or central bank) on daily basis. In case where the exchange rate is not announced for the given date, the previous period exchange rate shall be considered to be effective;	Special Provisions	mean the special provisions of the Agreement, which indicate basic information about the Parties of the Agreement, the Loan amount, information on collateral/security instruments, if any, the Loan Term and other information related to the Loan Facility. The Special Provisions are an integral part of the Agreement;
Terms and Conditions (T&C)	mean these General provisions of the Agreement, which govern all other terms and conditions of provision and repayment, the Loan Facility and cost of insurance of the asset etc., and which are an integral part of the Agreement;	Parties or Party	means Mogo Auto and/or the Borrower, jointly or separately as the case may be.
Seller	means a business or person selling a motor vehicle comprising the Asset and the term includes a 'dealer' engaged in the motor vehicle business who sells motor vehicles at retail to the general public;		

2. CONTRACTUAL PAYMENTS

2.1. The Borrower hereby COVENANTS with Mogo Auto as follows:

- 2.1.1. the Borrower will pay the Loan Facility including the interest and any other charges and costs at the times and in the manner stated in the Agreement being in tenor and total amount payable or by such revised Monthly Instalments or such revised repayment period as Mogo Auto may require until the whole of the Loan Facility amount with interest thereon and all other charges and costs shall be fully paid;
- 2.1.2. the Borrower shall make each such Monthly Instalment punctually on the said respective days so appointed to Mogo Auto (details set out in the Repayment schedule) and shall perform and observe all the covenants, conditions and stipulations herein contained or implied and on the part of the Borrower to be performed and observed;
- 2.1.3. if any Monthly Instalment shall not be paid by the Borrower to Mogo Auto on the date due for payment, that total amount of principal sum and interest then remaining outstanding shall thereupon immediately become due and Mogo Auto shall be entitled to exercise all or any of Mogo Auto rights hereby and under the Agreement and the law conferred on Mogo Auto; and

- 2.1.4. the Borrower shall pay to Mogo Auto after as well as before any judgment, interest at the rate agreed and provided in the Agreement; and such other rate or rates as Mogo Auto shall at its sole discretion from time to time decide with full power to Mogo Auto to charge different rates for different accounts and such interest shall be calculated on daily balances and compounded Monthly Instalments from the date thereof until payment in the usual mode of Mogo Auto.
- 2.2. The Balloon Payment
 - 2.2.1. For the agreements with the Loan Term of more than twelve (12) months where this is provided for in the Agreement, the Borrower may avail himself/herself of the right to pay a Balloon Instalment with which to repay early on its obligations under the Agreement.
 - 2.2.2. The Balloon Instalment could be paid by the Borrower in the period from the day following the maturity of the respective eleventh (multiple of eleven) standard Monthly Instalment to the maturity of the respective twelfth (multiple of twelve) standard Monthly Instalments. The payment period and amount of the Balloon Instalment are explicitly stated in the Repayment schedule.
 - 2.2.3. In order to exercise its right to use Balloon Instalment, the Borrower shall pay the Balloon Instalment to the specified amount and within the specified period explicitly indicating the following text in the description of the bank transfer payment order: "*Balloon Instalment under (Agreement number)*".
 - 2.2.4. The right to Balloon Instalment does not limit the Borrower's right to repay the obligations under the Agreement in advance at any other time of the Loan Term.
 - 2.2.5. The payment of the Balloon Instalment does not relieve the Borrower from its obligations to repay all remaining contractual payments.

3. CURRENCIES

- 3.1. Mogo Auto has the right to vary, convert or revise any amounts outstanding in respect of the Loan Facility as per the prevailing USD exchange rates as published by the Central Bank of Kenya from time to time or such currency as Mogo Auto considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Borrower.
- 3.2. Mogo Auto shall not be liable to the Borrower for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.

4. INTEREST

- 4.1. **Loan repayment:** The Borrower shall be required to pay interest on the Loan Facility and the principal on the frequency as set out in the Repayment schedule which is enclosed to the Special provisions of the Agreement.
- 4.2. **Interest rate:** The rate of interest on the Loan Facility is set in the Special provisions of the Agreement.
- 4.3. **Calculation:** Subject to the provisions of the section 2 of the T&C, interest in respect of the Loan Facility will be calculated as set out in the Repayment schedule.
- 4.4. **Default:** Save as may otherwise be provided herein, if the Borrower does not pay any sum payable hereunder on its due date for payment, the Borrower shall (without prejudice to the exercise by Mogo Auto of any other right or remedy in favour of Mogo Auto) pay to Mogo Auto (as well after as before any demand or judgment or the liquidation of the Borrower) interest at the rate of:
 - 4.4.1. (with respect to the interest payable), ranging between zero decimal five per cent (0.5%) to one per cent (1%) per day on the specific unpaid interest payment (which interest shall be payable together with the unpaid interest payment itself); and
 - 4.4.2. (with respect to the principal amount), ranging between zero decimal five per cent (0.5%) to one per cent (1%) per day on the unpaid principal sum (which principal sum shall be payable together with the interest); (herein after referred to as "**the Default Rate**") being the rate specified by Mogo Auto in writing to the Borrower as the rate to be charged on default, and which rate shall apply on all monies due from (and including) the date of the same becoming due until actual payment of such monies (together with all accrued interest) in full, or such rate as may be applied by Mogo Auto in its sole discretion from time to time.
- 4.5. The Borrower hereby acknowledges and agrees that the Default Rate represents a reasonable pre-estimate of the loss to be suffered by Mogo Auto in funding the default of the Borrower.
- 4.6. The interest payable in clause 4.4 of the T&C shall be calculated with reference to:
 - 4.6.1. the total amount which is payable but is unpaid;
 - 4.6.2. the term for which payment is defaulted as aforementioned; and
 - 4.6.3. the default interest that may be charged in respect thereof.
- 4.7. **Alteration of interest:** Due to market conditions, Mogo Auto may alter the interest charges by giving the Borrower advance notice as specified in the Special Provisions of the Agreement.
- 4.8. **Debt collection costs:** If any payment of default interest required to be paid under the Agreement or any part of it is not paid on the due date, the default interest in arrears shall, (without prejudice to any or all of the rights and remedies accruing to Mogo Auto consequent on such default) be capitalised and shall be immediately added to the Loan Facility and shall bear interest accordingly at the rate specified in clause 4.2 of the T&C, from the day when the default interest is capitalised.
- 4.9. All costs (including all debt collection costs including without limitation, sending of SMS, letters, phone calls, costs of debt collection service providers, advocates or other professional or technical advisers of Mogo Auto in respect of their costs, fees and disbursements for services rendered), charges, expenses, claims, damages and other amounts properly paid or incurred by Mogo Auto in obtaining or attempting to obtain payment of any outstanding amounts, shall: (a) bear interest at the rate set out in clause 4.2 of the T&C from the time of the same having been expended or incurred until the same shall be repaid; (b) be repaid with interest to Mogo Auto on demand; and (c) the interest payable in clause 4.2 of the T&C be capitalized in the manner set out in clause 4.8 of the T&C.
- 4.10. Subject to the foregoing provisions, the following non-exhaustive list shall constitute the fees, penalties, among others chargeable by Mogo Auto for debt collection purposes:
 - 4.10.1. postal costs related to sending of demand letters and related correspondence to the Borrower in default: Kenya Shillings Five Hundred (KSH 500.00) per letter sent;
 - 4.10.2. Asset repossession fee: up to 10,000 KES
 - 4.10.3. repossessed Asset storage fee per day: up to 200 KES
 - 4.10.4. sale maintenance charges: up to 10,000 KES of repossessed car sale price
 - 4.10.5. picking and banking of cheque on behalf of client: 500 KES or such rate or amounts as may be applied by Mogo Auto in its sole discretion from time to time.

5. DURATION AND REPAYMENT

- 5.1. **Loan Term:** The Loan Facility is granted for a maximum repayment period set out in the Special Provisions of the Agreement.
- 5.2. **Undertaking:** The purpose of the Loan Facility is to provide asset finance to the Borrower for the purchase of the Asset, and in that regard, the Borrower undertakes:
 - 5.2.1. to do all and whatever is necessary to proceed with and finalise the registration of the Asset transfers or security rights and charge registrations envisaged herein and in the Security Agreement without delay;
 - 5.2.2. to co-operate fully with Mogo Auto and require the co-operation of the Seller to resolve any issues that may arise without limitation, in respect of the Loan Facility, the Asset, the sale transaction and registration of the transfer with NTSA-TIMS, the In-Charge and the Security Agreement; and
 - 5.2.3. subject to any other provision for earlier repayment, to repay the Loan Facility in full within the aforesaid Loan Term.

- 5.3. **Extension:** Notwithstanding the provisions of clause 5.2 of the T&C, Mogo Auto may within its sole discretion, extend the aforesaid Loan Term on such terms and conditions as Mogo Auto may prescribe.
- 5.4. **Priority of payments:** Any payment received by Mogo Auto, in respect of the Loan Facility, including in the event of a default by the Borrower, will go firstly towards costs, thereafter interest and thereafter any outstanding Loan Facility amount.
- 5.5. **Early repayment:** The Borrower is entitled to repay the full outstanding balance on the Loan Facility account at any stage without any penalty on condition that he/she shall notify Mogo Auto at least thirty (30) days in advance of their intention. In case the loan is in USD and the repayment is done in KES, Mogo Auto will convert the outstanding amount to KES according to Foreign Exchange Rate.
- 5.6. **Non-retention:** All payments by the Borrower shall be without retention, set-off, deduction, counterclaim, condition or restriction and be free and clear of and without deduction whether for or on account of any present or future taxes or otherwise in the currency of the Loan Facility disbursed.
- 5.7. **Taxes:** If the Borrower is legally compelled to retain or to deduct any type of tax including value added tax, customs duty, excise duty or any type of duty or other statutory charges or costs from any amount payable to Mogo Auto including the debt collection costs, any indemnity, the amounts payable by the Borrower must be increased as such to ensure that Mogo Auto receives the full amount provided for herein.
- 5.8. **Prepayments:** in the event that the Borrower pays for more than two Monthly Instalment invoices ahead of time, Mogo Auto will recalculate the Repayment schedule only upon specific request by the Borrower.
- 5.9. **Change of terms:** Mogo Auto shall apply a 2,000 KES fee per each change of payment schedule.

6. SECURITY

- 6.1. **Provision of security:** The disbursement of the Loan Facility is subject to the conditions, that the Borrower provides security:
 - 6.1.2. in the form of a duly executed Security Agreement over the Asset;
 - 6.1.3. in the form of a duly executed motor vehicle sale and purchase agreement over the Asset; and
 - 6.1.4. by accepting the transfer of the Asset to the joint names of Mogo Auto and the Borrower and accepts the creation of an In-Charge over the Asset on the N TSA-TIMS portal, to the satisfaction of Mogo Auto.
- 6.2. **Delivery of documentation:** The Borrower undertakes: (a) to deliver; or (b) the delivery, to Mogo Auto by the Seller, of the documents set out in clause 10 of the Special Provisions of the Agreement and consents to their custody by Mogo Auto.

7. THE BORROWER'S WARRANTIES

- 7.1. The Borrower hereby represents and warrants to Mogo Auto as at the date of the Agreement that:
 - 7.1.1. he/she have not been induced to enter into the 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 the Agreement or any document referred to in the Agreement and irrevocably and unconditionally waives any right the Borrower may have to claim damages for any representation (whether or not contained in the Agreement) for any breach of any warranty not contained in the Agreement unless such misrepresentation or warranty was made or given fraudulently; and or to rescind the Agreement;
 - 7.1.2. his/her obligations under the Agreement are his/her legal, valid and binding obligations, enforceable against him/her in accordance with their respective terms;
 - 7.1.3. he/she has the power to enter into and perform and comply with his/her obligations under the Agreement;
 - 7.1.4. 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 the Agreement have been taken, fulfilled and done; and
 - 7.1.5. his/her entry into and/or performance of or compliance with his/her obligations under the Agreement does not and will not violate any law to which he/she is subject.
- 7.2. **Information:** The Borrower warrants that all information which may be submitted to Mogo Auto from time to time is and will be, to his/her knowledge and belief, complete and correct. In case of any material change in any information submitted to Mogo Auto, or if the Borrower becomes aware of any circumstances which will or may prevent any of the transactions envisaged hereunder to be finalized, the Borrower will inform Mogo Auto immediately in writing thereof.
- 7.3. **Revocation:** The Borrower undertakes not to revoke any of the executions undertaken herein and necessary to give effect to any of the transactions contemplated hereunder.

8. BREACH

- 8.1. **Events of Default:** Mogo Auto may, without prejudice to any other rights it may have (including termination hereof), refuse to make any amounts available under the Loan Facility, and to claim immediate payment of all amounts outstanding under the Loan Facility, all of which amounts will then become due and payable in full, if:
 - 8.1.1. the Borrower fails to comply with any provisions of the Agreement and/or the Security Agreement, all of which are material;
 - 8.1.2. the Borrower fails to co-operate or to require the co-operation of the Seller, or the Seller fails to co-operate with Mogo Auto as per the terms of clause 5.2.2 of the T&C;
 - 8.1.3. the Borrower fails to pay any contractual payment due in terms of the Agreement,
 - 8.1.4. the Borrower fails to pay the full deposit amount and/or in time;
 - 8.1.5. any representation or warranty made in connection with the Agreement or any documentation supplied by or on behalf of the Borrower is, in Mogo Auto's opinion, materially incorrect;
 - 8.1.6. any guarantor commits any breach of their obligations to Mogo Auto, whether as guarantor or otherwise;
 - 8.1.7. a provisional or final order is passed placing the Borrower:
 - 8.1.7.1. under sequestration (where the Asset is placed in the hands of a trustee for the benefit of Borrower's creditors) or any other legal disability;
 - 8.1.7.2. in liquidation or under judicial management;
 - 8.1.8. any compromise or arrangement between the Borrower and his/her creditors is sanctioned or otherwise becomes effective;
 - 8.1.9. warrant of execution issued by any competent court attaching any of the Borrower's assets remains unsatisfied for more than seven (7) days after the date on which it is issued;
 - 8.1.10. the Asset's sale and purchase, or transfer transaction referred to hereinabove fails;
 - 8.1.11. in Mogo Auto's sole opinion, any deterioration occurs in the Borrower's financial position during the term of the Agreement;
 - 8.1.12. the Borrower commits any act of bankruptcy;
 - 8.1.13. the Borrower transfers any assets in favour of any of his/her creditors or attempts to make any arrangement, compromise or settlement of any nature with any creditors;
 - 8.1.14. the Borrower made any incorrect or untrue statement or representation in respect of the Loan Facility or his/her financial affairs or does anything which may prejudice Mogo Auto's rights in terms of the Loan Facility or allows it to be prejudiced; or
 - 8.1.15. the Borrower fails to maintain the Asset as required by Mogo Auto.

8.2. **Consequence of Termination:** The full balance due under the Agreement together with any penalty, interest and all other charges and expenses owing to Mogo Auto shall become immediately due and payable to Mogo Auto and without giving notice to the Borrower or affecting any of Mogo Auto's rights under the Agreement.

8.3. **Damages:** Mogo Auto may elect to claim damages in lieu of any penalty provided for herein.

9. INFORMATION

9.1. **Statements:** The Statements in respect of the Loan Facility account will be made available to the Borrower, at his/her cost, as and when requested.

9.2. **Certificate:** A certificate signed by an authorized officer of Mogo Auto, shall be sufficient proof, until the contrary is proven, of the amount owed by the Borrower to Mogo Auto in terms of the Loan Facility for the purposes of obtaining any legal relief against the Borrower.

10. DISPOSAL, GIFTING OR CHARGING OF ASSET

10.1. The Borrower shall not sell, transfer, dispose, gift, charge or in any way further alienate, burden, encumber or give up possession of the Asset or any part of it without the prior written consent of Mogo Auto.

10.2. The Borrower may not use the Asset or any part thereof for purposes other than the intended use notified to Mogo Auto at the time that the Loan Facility was granted, without the prior written consent of Mogo Auto.

11. NOTICES

11.1. **Form of Notice:** Any notice given under the Agreement shall be in writing and may be served personally or by registered or recorded delivery mail or by facsimile transmission or electronic mail or electronic means with confirmed delivery.

11.2. **Address:** Each Party's address for the services of notice shall be the one mentioned in the Special Provisions of the Agreement, or such other address as one Party may specify by written notice to the other.

11.3. **Determination of service:** A notice shall be deemed to have been served:

11.3.1. if it was served in person at the time of service;

11.3.2. if it was served by post, forty-eight (48) hours after it was posted; and

11.3.3. if it was served by facsimile transmission or electronic mail, at the time of transmission provided an error free transmission report is received by the sender.

12. WITHDRAWAL FROM AGREEMENTS

Mogo Auto may, at any time before the payment of the Loan (or any part thereof) to or on behalf of the Borrower, withdraw from the Agreement and the Borrower will have no claim against Mogo Auto if Mogo Auto does so.

13. JOINT AND SEVERAL LIABILITY

13.1. Should there be more than one Borrower, then:

13.1.1. each of them shall be jointly and severally liable with the other as co-principal debtor for every indebtedness and obligation of the Borrower to Mogo Auto; and

13.1.2. all references to "the Borrower" shall be construed as reference to all of the Borrowers, jointly and severally, unless otherwise indicated.

14. COSTS

14.1. The Borrower shall solely be responsible for:

14.1.1. paying all costs, fees, charges, taxes relating to: (i) the preparation and registration of the Agreement, the Security Agreement and the In-Charge; (ii) the registration of the transfer of the Asset from the Seller to the joint names of Mogo Auto and the Borrower and subsequent registration of the transfer of the Asset from the joint names of Mogo Auto and the Borrower to the Borrower's sole name; (iii) the discharge of the Security Agreement and the In-Charge upon repayment of the Loan Facility provided that where the Borrower does not have a registered NTSA TIMS account in satisfaction of clauses 5.2.1 and 5.2.2 or if the Borrower so wishes, shall be at liberty to waive his right to joint registration, not being a waiver of any liability under this Agreement, and without further claim to Mogo Auto until after full settlement and payment of all instalments due and payable;

14.1.2. paying all costs and expenses of any nature incurred by Mogo Auto in taking steps to enforce its rights under the Agreement and the Security Agreement, in the Asset as the collateral; and

14.1.3. paying for all searches and valuation assessments of Asset undertaken by Mogo Auto (no warranties whatsoever in respect of the Asset, its title, condition, the purchase price or the insurance amount are given or implied in the granting of the Loan Facility).

15. LIABILITY FOR LOSS

Mogo Auto will not be liable for any loss incurred by the Borrower in terms of the Agreement, save and except where such loss is caused by Mogo Auto's gross negligence, gross misconduct and/or willful misconduct.

16. BORROWER'S CONSENT TO DISCLOSURE OF CONFIDENTIAL INFORMATION

16.1. The Borrower hereby irrevocably consent to Mogo Auto (and other companies in Mogo Auto group) collecting, receiving, compiling and retaining any customer credit information on the Borrower from any licensed Credit Reference Bureau or any other source for purpose of:

16.1.1. assessing the Borrower's creditworthiness;

16.1.2. deciding whether or not to grant the Borrower credit; and

16.1.3. filing Mogo Auto customer credit information with the Credit Reference Bureaus.

16.2. The Borrower hereby expressly consent and authorize the receipt, utilization, disclosure, sharing, provision and exchange of data (both positive and negative information regarding his payment record) by Mogo Auto relating to the Borrower:

16.2.1. with Credit Reference Bureaus and with other financial institutions through the Credit Reference Bureaus;

16.2.2. with any law enforcement or competent regulatory or governmental agencies;

16.2.3. to and from Mogo Auto's service providers, dealers, agents or associated entities;

16.2.4. to Mogo Auto's professional advisors or to any court;

16.2.5. to affiliates and service providers of Mogo Auto who have entered into confidentiality agreements with Mogo Auto in Kenya and outside for the purposes of determining credit worthiness of the Borrower among others;

16.2.6. for reasonable commercial purposes connected to the Loan Facility, such as marketing and research; and

16.2.7. in business practices including but not limited to quality control, training and ensuring effective systems operation.

17. GENERAL

- 17.1. **Cross-Default:** A default by the Borrower of a material term, covenant, warranty or undertaking of any transaction document including the Agreement or other agreement to which the Borrower and Mogo Auto 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 Mogo Auto to recall with immediate effect the whole of the monies remaining payable hereunder by the Borrower to Mogo Auto on demand or to repudiate the Agreement if no monies have been disbursed and no costs have been incurred by Mogo Auto as the case may be.
- 17.2. **No Waiver:** The Borrower agrees that no indulgence, assent, express or implied, to any breach by Mogo Auto of any one or more of the provisions of the Agreement shall constitute a waiver, abandonment or novation of any other breach or of any of the rights of Mogo Auto in terms of the Agreement.
- 17.3. **Assignment:**
- 17.3.1. The Borrower's rights and obligations under the Agreement may not be assigned and transferred to a third person, without the prior written consent of Mogo Auto having accepted such third person as new borrower, which consent shall be discretionary to Mogo Auto, provided however that in case the Borrower is deceased, the obligation to repay the outstanding Loan Facility shall be assigned to his/her legal successors, in accordance with the law;
- 17.3.2. Upon signing of the Agreement, the Borrower hereby irrevocably grants his/her unconditional consent for Mogo Auto to assign and transfer the Agreement, and any of its rights and obligations hereunder, to a third person, which will become the new creditor, subject to a written Notice to the Borrower on the occurred assignment and on the identity of the new creditor;
- 17.3.3. Upon signing of the Agreement, the Borrower hereby irrevocably grants his/her unconditional consent for Mogo Auto to transfer (cede) claims or parts thereof arising from the Agreement to an unlimited number of third parties, having the right to re-assign such claims to an unlimited number of other parties (jointly the assignees), provided however that in these cases Mogo Auto shall continue to manage the Agreement and remain the contractual party under the Agreement, acting as a creditor agent (trustee) of such assignees, and the Borrower shall remain obliged to make payments hereunder to Mogo Auto directly. The Borrower does not object that Mogo Auto discloses to assignees any information derived from the Agreement, and the Borrower agrees and understands that Mogo Auto is not obliged to inform the Borrower about Mogo Auto's assignment of claims to assignees pursuant to this clause.
- 17.3.4. The Borrower agrees that Mogo Auto offering (advertising) to third parties the possibility to assign the claims arising from the Agreement, is entitled to publicly disclose to third parties, including by publishing on the website the following information about the Borrower and the Asset: the gender of the Borrower, location, monthly net revenues, expenses, credit history, age, model of the Asset, colour, manufacture year, engine capacity, mileage, value, images and other information about the Borrower and the Asset. By public disclosure (promoting) of the possibility to assign claims arising from the Agreement pursuant to clause 17.3.3 of the T&C, Mogo Auto undertakes not to disclose publicly the Borrower's name, personal ID number, telephone number, email address, address and picture, as well as the Asset state registration number.
- 17.4. **Cumulation of Remedies:** Subject to any other express provision of the Agreement to the contrary, no remedy for a breach of any provision of the Agreement which is conferred by any provision of the Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one remedy by any Party shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 17.5. **Nature of Relationship:** Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture or agency between any of the Parties hereto and none of them shall have any authority to bind the others in any way whatsoever other than as contemplated or provided for in the Agreement.
- 17.6. **Accrual of Liabilities:** Termination of the 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.
- 17.7. **Entire Agreement:** The Agreement and the documents referred to in it contain the whole Agreement between the Parties relating to the transactions contemplated by the Agreement and supersedes all previous agreements, assurances, warranties, understandings, arrangements, promises or representations between the Parties whether written or oral, relating to its subject matter. No amendment to the Agreement will be valid unless ratified in writing by both Parties and executed by authorized representatives of the Parties.
- 17.8. **Severability:** Each of the provision of the Agreement is severable and distinct from the others. If any provision of the Agreement shall to any extent be held, in whole or in part, to be illegal or unenforceable under any enactment or rule of law, that provision shall to that extent be deemed not to form part of the Agreement and the enforceability of the remainder of the Agreement shall not be affected thereby. In case any conflict arises between the Special Provisions of the Agreement and the General Provisions of the Agreement regarding the same matter, the provisions of the Special Provisions shall prevail.
- 17.9. **Governing Law:** The Agreement shall be governed by and construed and interpreted in accordance with the Laws of Kenya.
- 17.10. **Jurisdiction:** By executing the 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 the Agreement.

GENERAL PROVISIONS

of the Security Agreement

DEFINITIONS AND INTERPRETATION

Agreement	means the security agreement concluded between Mogo Auto and the Borrower and which is constituted of the Special Provisions and General Provisions, and all the relevant annexes, amendments and other elements which form a part of the Agreement;	Mogo Auto	means MOGO AUTO LIMITED, a limited liability company incorporated in the Republic of Kenya under Registration Number PVT-AJUR7BX and having its registered office in Nairobi in the said Republic and of Post Office Box Number 29107-00100, Nairobi;
Asset Financing Loan Agreement	means the Asset Financing Loan Agreement entered into by the Borrower and Mogo Auto for the grant of the Loan Facility;	Borrower	means the Party as defined in the Special Provisions of the Agreement;
Day	means a calendar day and in the calculation of days, the first day is excluded and the last day is included;	Parties or Party	means Mogo Auto and/or the Borrower, jointly or separately as the case may be;

Encumbrance	means any mortgage, charge (whether fixed or floating) pledge, lien, hypothecation, assignment, security interest, trust arrangement, title retention or other encumbrance securing or any right conferring a priority of payment in respect of any obligation of any person;	Relevant Agreement	means each agreement for the maintenance, repair or upkeep of the Secured Asset and any guarantee, warranty or security for the performance of any such agreement; and all other contracts, guarantees, appointments, warranties, indemnities and other documents relating to the Secured Asset to which the Borrower is a party, which are in his/her favour or of which he has the benefit;
Event of Default	refers to occurrences which are in breach of the terms of the Agreement;	Insurance Policies	means all the contracts and policies of insurance effected or maintained from time to time in respect of the Secured Asset;
Loan Facility	means the cash amount stipulated in the Asset Financing Loan Agreement and which is loaned to and borrowed by the Borrower in terms of the Asset Financing Loan Agreement and which constitutes the principal debt together with interest, charges, penalties and costs in respect thereof;	Security	means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;
Secured Liabilities	means the amounts set out in the Asset Financing Loan Agreement, all present and future monies, obligations and liabilities of the Borrower to Mogo Auto, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Asset Financing Loan Agreement or the Agreement (including, without limitation, those arising under section 17 of the T&C of the Agreement), together with all interest (including, without limitation, default interest) accruing in respect of such monies, obligations or liabilities;	Secured Asset	means the vehicle or movable asset, described in the Special Provisions of the Agreement (including any component parts of the vehicle from time to time held by the Borrower (whether or not attached to the vehicle)), together with all additions, alterations, substitutions, replacements, renewals or modifications of or to the vehicle from time to time, and all accessories to the vehicle from time to time (including maintenance and other records, manuals, handbooks, data, drawings and schematics relating to the vehicle or documents relating to warranties and patent indemnities given by manufacturers or suppliers of the vehicle and parts thereof);
Terms and Conditions (T&C)	mean these General provisions of the Agreement and which are an integral part of the Agreement;	Special Provisions	mean the special provisions of the Agreement, which indicate basic information about the Parties of the Agreement, the Asset Financing Loan Agreement, the Security and other information related to the Secured Liabilities. The Special Provisions are an integral part of the Agreement.

1. The Borrower HEREBY COVENANTS with Mogo Auto as follows:

- 1.1. the Borrower will repay the Secured Liabilities comprising for avoidance of doubt the Loan Facility and any other charges at the times and in the manner stated in the Asset Financing Loan Agreement and the Agreement;
 - 1.2. perform and observe all the covenants, conditions and stipulations herein contained or implied and on the part of the Borrower to be performed and observed other than the payment of the loan and interest;
 - 1.3. if any instalment shall not be paid by the Borrower to Mogo Auto on the date due for payment, that total amount of principal sum and interest then remaining outstanding shall thereupon immediately become due and Mogo Auto shall be entitled to exercise all or any of Mogo Auto's rights hereby under the Asset Financing Loan Agreement and under the Movable Property Security Rights Act conferred on the Lender;
 - 1.4. it is hereby agreed that if and when the said sums so owing by the Borrower to Mogo Auto shall have been demanded or shall have become payable without demand, interest shall be paid at such rates set out in the in the Asset Financing Loan Agreement on the sum or sums so owing or outstanding from the time of such demand or from the time when the said sum or sums become payable until actual payment thereof (as well after as before any judgment);
 - 1.5. save as may otherwise be provided herein, if the Borrower does not pay any sum payable hereunder on its due date for payment, the Borrower shall (without prejudice to the exercise by Mogo Auto of any other right or remedy in favour of Mogo Auto) pay to Mogo Auto (as well after as before any demand or judgment or the liquidation of the Borrower) interest at the Default Rate being the default rate specified in the Asset Financing Loan Agreement or such other rate as Mogo Auto shall in its sole discretion apply on all monies due from (and including) the date of the same becoming due until actual payment of such monies (together with all accrued interest) in full and the Borrower hereby acknowledges and agrees that the Default Rate represents a reasonable pre-estimate of the loss to be suffered by Mogo Auto in funding the default of the Borrower; and
 - 1.6. all payments due to be made by the Borrower hereunder whether of principal, interest or otherwise shall be made without any set off or counterclaim, condition or restriction and be free and clear of and without deduction whether for or on account of any present or future taxes or otherwise. If at any time, whether now or in the future any applicable law, regulation or regulatory requirement or any competent taxing authority requires the Borrower to make any deduction or withholding in respect of taxes from any payment due under the Agreement for the account of Mogo Auto, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that after the making of such deduction or withholding, Mogo Auto receives a net sum equal to the sum which Mogo Auto would have received had no such deduction or withholding been required to be made and the Borrower shall indemnify Mogo Auto against any losses or costs incurred by Mogo Auto by reason of any failure by the Borrower to make any such deduction or withholding.
- 2. As a continuing Security** for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee to Mogo Auto by way of first priority rights, the Secured Asset; by way of first ranking fixed charge; and assigns to Mogo Auto, subject to a proviso for reassignment and amendment on irrevocable discharge in full of the Secured Liabilities:
- 2.1. all his/her rights in each Insurance Policy, including the proceeds of any claims under any Insurance Policy;
 - 2.2. the benefit of each Relevant Agreement;
 - 2.3. the benefit of all other contracts, guarantees, appointments, warranties relating to the Secured Asset and other documents to which the Borrower is a party, which are in his/her favour or of which he has the benefit (including, in each case, but without limitation, the right to demand and receive all monies whatsoever payable to or for his/her benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatsoever accruing to or for his/her benefit arising from any of them), to the extent not effectively assigned under clause 1.1 or clause 1.2 of the T&C of the Agreement; and
 - 2.4. all authorisations (statutory or otherwise) held or required in connection with the use of any Secured Asset, and all rights in connection with them.
- 3. The Borrower's liability** under the Agreement in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:
- 3.1. any security, guarantee, indemnity, remedy or other right held by, or available to, Mogo Auto that is or becomes wholly or partially illegal, void or unenforceable on any ground;

3.2. any other act or omission that, but for this clause 3, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

4. The Borrower acknowledges that Mogo Auto has entered into the Agreement in reliance upon, among other things, the Warranties and on the undertakings provided by the Borrower in the Agreement. The Borrower represents and warrants to Mogo Auto and further covenants with Mogo Auto as follows:

- 4.1. that the Warranties are true and accurate in all respects and not misleading as at the date of the Agreement and will be true and accurate in all respects and not misleading up to the time the Borrower has repaid the said Secured Liabilities and any other charges as stated in the Agreement, as if they had been given again at such time;
- 4.2. each Warranty shall be separate and independent and shall not be limited by reference to any other paragraph of the Agreement, or by anything in the Agreement;
- 4.3. that the Borrower:
 - 4.3.1. is the sole legal and beneficial owner of, and has good, valid and marketable title to the Secured Asset and has the right and full power to assign and transfer the Secured Asset to Mogo Auto and that the Secured Asset is free and clear from any security or encumbrances other than the Security created by the Agreement;
 - 4.3.2. has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Asset or any interest in them;
 - 4.3.3. will at his/her own cost do and execute all such acts deeds matters and things for the better assigning of the Secured Asset to Mogo Auto as Mogo Auto may from time to time reasonably require;
 - 4.3.4. shall keep Mogo Auto fully informed of the Borrower's physical and postal addresses of his/her place(s) of business, work or occupation and residence and undertakes to advise Mogo Auto of any changes of the same as soon as possible and in any event within seven (7) calendar days thereof; and
 - 4.3.5. shall also keep Mogo Auto fully informed of the physical address of premises where the Secured Asset is kept and undertakes to advise Mogo Auto of any changes of the same as soon as possible and in any event within seven (7) calendar days thereof;
- 4.4. if after the signing of the Agreement:
 - 4.4.1. the Borrower becomes aware that any of the Warranties was not true and accurate in all respects or was misleading as of the date of the Agreement; or
 - 4.4.2. any event occurs or matter arises of which the Borrower becomes aware which results or may result in any of the Warranties not being true and accurate in all respects or being misleading, the Borrower shall notify Mogo Auto as soon as practicable and in any event within forty eight (48) hours setting out full details of the matter and the Borrower (as applicable) shall make any investigation concerning the event or matter and take such action, at his/her own cost, as Mogo Auto may reasonably require;
- 4.5. that the Secured Asset nor any part of it is or will be treated as being fixed to any land, premises or other property;
- 4.6. that there is no breach of any law or regulation that materially and adversely affects the Secured Asset;
- 4.7. no facility necessary for the enjoyment and use of the Secured Asset is subject to terms entitling any person to terminate or curtail its use;
- 4.8. the Agreement constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower and is and will continue to be effective Security over all and every part of the Secured Asset in accordance with its terms;
- 4.9. that all existing and future claims and rights to set-off by the Borrower against monies payable under the Agreement are hereby waived;
- 4.10. that all such other covenants and obligations as are implied under the Movable Property Security Rights Act shall apply to the Agreement;
- 4.11. that there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Secured Asset; and
- 4.12. Mogo Auto shall have the right to damages for breach of any Warranty in the amount necessary to put Mogo Auto into the position which would have existed had the Warranty been true and accurate and not misleading, together with all costs and expenses (including legal fees, experts' fees and consultants' fees on an indemnity basis and all costs and expenses incurred in the recovery of the amounts payable under the claim for breach of any Warranty) incurred directly as a result of or in connection with the breach of any Warranty.

5. The Borrower covenants with Mogo Auto that he/she will at all times during the continuance of the Agreement:

- 5.1. co-operate fully with Mogo Auto and require the co-operation of the seller of the Secured Asset to resolve any issues that may arise without limitation, in respect of the Loan Facility, the Secured Asset, the Security, the sale transaction and registration of the transfer and the Security and the Agreement;
- 5.2. at his/her own expense keep and maintain the Secured Asset in good and serviceable condition (fair wear and tear excepted) in compliance with the law, all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules. The Borrower shall indemnify, keep indemnified and reimburse Mogo Auto for the cost of any repairs to the Secured Asset incurred by it necessitated by the negligent acts or omissions or wilful misconduct of Borrower, its assignees, invitees, employees, contractors and agents;
- 5.3. punctually pay for all servicing of and repairs and other work done to the Secured Asset and spare parts and accessories thereof and keep the Secured Asset free from liens, distress, execution or any other legal process;
- 5.4. will be fully responsible for any loss thereof or damage thereto however occasioned;
- 5.5. will give immediate notice in writing of any such loss or damage to Mogo Auto which may in its absolute discretion require the Borrower to effect at the Borrower's expense any necessary repairs by a person or company approved by it in writing or provide another equivalent security of the same value if the loss or the damage is beyond repair;
- 5.6. as required by Mogo Auto under the Asset Financing Loan Agreement, Mogo Auto shall have the right but not the obligation to insure and keep insured the Secured Asset at the cost of the Borrower in the joint names of the Borrower and Mogo Auto at the prevailing market rates with such insurance company approved by Mogo Auto, and if required by Mogo Auto, comprehensive insurance to the Secured Asset's full replacement value without excess or restriction;
- 5.7. to irrevocably grant Mogo Auto the right to renew the insurance policy after every twelve (12) months following the date of its issuance;
- 5.8. subject to clause 5.6 of the T&C of the Agreement, will not without the prior consent in writing of Mogo Auto make any changes in either such Insurance Policy or in such insurance company;
- 5.9. not use the Secured Asset or permit the same to be used for any purpose not permitted by the terms and conditions of the hereinbefore mentioned Insurance Policy nor do or permit to be done any act or thing by reason of which the same may be invalidated and not to otherwise use the Secured Asset for an illegal or immoral purpose;
- 5.10. provide Mogo Auto with a set of spare keys of the Secured Asset during the duration of the Agreement and any other related agreement;
- 5.11. keep the Secured Asset in the Borrower's actual possession and control properly sheltered and protected;
- 5.12. not to remove any parts of the Secured Asset including but not limited to any GPS tracking device installed thereon without consent of Mogo Auto, obtained in writing first except where such removal shall be in the opinion of Mogo Auto rendered necessary by reason of the same having been worn out or has become obsolete or damaged and in such case replace the parts so worn out or damaged (unless no longer required) by others of similar quality and of equal or greater value and when necessary renew and replace all such parts and effects now compromised in the Secured Asset when the same shall be worn out or destroyed;

- 5.13. punctually pay all licenses, duties, fees and registration charges payable in respect of the Secured Asset and those required for the lawful and proper operation of the Secured Asset as and when the same fall due **PROVIDED ALWAYS** that if the Borrower shall fail to make any such payment as aforesaid Mogo Auto may without being bound to do so pay the same to the proper authorities and all expenses incurred by it in so doing be a debt due from the Borrower to Mogo Auto and the same shall be considered included in the Agreement;
 - 5.14. maintain all licenses and consents which are required by law to be maintained in relation to the Secured Asset;
 - 5.15. within three (3) days of receiving any notice or document from any government department, county government or public authority, board or agency relating to any matter which might affect the Secured Asset, give particulars thereof to Mogo Auto;
 - 5.16. not sell, assign, transfer, part with possession of or otherwise dispose in any manner or purport to do so, all or any part of, or any interest in the Secured Asset or any of it or any component part thereof and not remove, change or interfere with any identification number, registration number, trade mark or other identification mark upon the Secured Asset whether placed or affixed by government, manufacturer or Mogo Auto or any one or more of them or any part thereof and will not without prejudice to the generality of the foregoing, create, purport to create or permit to subsist any security on, or in relation to, the Secured Asset other than any security created by the Agreement or permit to exist any lien on the Secured Asset or pledge over the Secured Asset either in the event of such Secured Asset being taken for repairs thereto or otherwise howsoever or create or grant or purport to create or grant, any interest in the Secured Asset in favour of a third party;
 - 5.17. not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the Security held by Mogo Auto or diminish the value of any of the Secured Asset (except for expected fair wear and tear) or the effectiveness of the Security created by the Agreement;
 - 5.18. permit Mogo Auto or its duly authorized agent at all reasonable times to enter upon the premises or other place where the Secured Asset may be from time to time being kept or used or operated for the purpose of inspecting and examining the condition thereof and the records relating to that Secured Asset, and to mark or affix its identification and registration marks, which marks shall not be removed, changed, disfigured or concealed in any way, at all reasonable times and on reasonable prior notice and forthwith execute all repairs and works required to be done to the Secured Asset or any of it or any component part thereof including any faulty GPS tracking devices, in accordance with any written notice given to the Borrower and if the Borrower shall not within fourteen (14) days after service of such notice aforesaid commence the execution of repairs and works to be executed, allow Mogo Auto to execute such repairs and costs thereof together with interest thereon shall be considered included in the Agreement;
 - 5.19. make any payment of any instalment of the principal and interest payable herein or in the payment of any other monies hereby secured on the agreed date;
 - 5.20. observe or perform all of his/her obligations hereunder;
 - 5.21. inform Mogo Auto immediately, however, not later than within thirty (30) minutes, of the Secured Asset being stolen, or impounded by anyone for any reason;
 - 5.22. notify Mogo Auto within twenty four (24) hours of the Secured Asset being involved in an accident to the extent that the Secured Asset cannot be lawfully operated or used, or in case an insurance event arises or an insurance claim becomes payable;
 - 5.23. notify Mogo Auto within seven (7) days of a change of the Borrower's next of kin including death or incapacitation of the next of kin including on the grounds of mental health or emigration or extended travel outside the country or the next of kin's contacts provided by the Borrower during the application process;
 - 5.24. the Borrower shall not, without notifying Mogo Auto and obtaining Mogo Auto's prior written consent:
 - 5.24.1. use or permit the Secured Asset to be used in any way contrary to law;
 - 5.24.2. tamper with, uninstall, disconnect, deliberately damage, remove, take offline the GPS tracking device installed in the Secured Asset by Mogo Auto;
 - 5.24.3. take the Secured Asset outside Kenya's legal international boundaries where courts of law of Kenya do not exercise jurisdiction;
 - 5.24.4. alter substantially the Secured Asset, 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;
 - 5.24.5. use the Secured Asset for taxi or ride hailing services, both digital and traditional taxi hailing services; or
 - 5.24.6. allow other drivers other than those mentioned to Mogo Auto during the application process, to operate the Secured Asset;
 - 5.25. the Borrower consents to the installation of a GPS tracking device on the Secured Asset by Mogo Auto which device shall have tracking, geo-fencing and engine immobilisation capabilities and which shall remain the property of Mogo Auto, whether or not Mogo Auto has charged the Borrower for its installation and Mogo Auto shall be allowed to remove and cater away the device at upon satisfactory performance of the Agreement and other transaction documents and agreements, and completion of repayment of the Loan Facility amount. Upon satisfaction of the provisions of clause 26 and on receipt of the memorandum of satisfaction from Mogo Auto, the Borrower shall at its own cost avail the Secured Asset at any of Mogo Auto's authorized dealerships for the GPS tracking device to be uninstalled, taken offline or disconnected;
 - 5.26. the Borrower shall:
 - 5.26.1. be fully responsible for all import taxes, levies, duties; inspection and registration issues arising in relation to the Secured Asset which shall be to his/her sole cost. The Borrower shall indemnify, keep indemnified and hold Mogo Auto harmless from any import taxes, levies, duties; inspection and registration issues arising in relation to the Secured Asset;
 - 5.26.2. comply with the requirements of any law and regulation relating to or affecting the Secured Asset or the use of them or any part of them; and
 - 5.26.3. obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Asset or its use or that are necessary to preserve, maintain or renew the Secured Asset.
- 6.** Events of Default - the breach of any of the covenants set out in section 4 and section 5 of the T&C of the Agreement by the Borrower will constitute an event of default, as well as the following events:
- 6.1. the Borrower makes arrangements or composition with his/her creditors or any assignment for the benefit of such creditors;
 - 6.2. any deterioration occurs in the Borrower's financial position including loss of employment, significant business loss or other financial difficulties occurs, during the term of the Agreement and the Asset Financing Loan Agreement;
 - 6.3. distress or execution is levied or threatened upon any of the Borrower's property and remains undischarged for a period of seven (7) days;
 - 6.4. the Borrower ceases or threatens to cease to carry on his/her business;
 - 6.5. a receiver of the Borrower's undertakings or any part thereof is appointed; or
 - 6.6. the Borrower does or suffers to be done any act likely to prejudice the effectiveness of Mogo Auto's rights under the Security of the Secured Asset or there is good reason to assume that the Borrower's financial position or standing has materially deteriorated.
- 7.** The Borrower shall indemnify, keep indemnified and hold Mogo Auto harmless from all claims and all direct and indirect liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, Mogo Auto as a result of or in connection with occurrence of any event of default, or breach or negligent performance or failure or delay in performance of the Agreement, or of any Warranty or obligation of the Borrower under the Agreement or breach of the law.
- 8.** Any Insurance Policy effected by the Borrower under the provisions of clause 5.6 of the T&C of the Agreement shall vest in Mogo Auto who shall be entitled to the full benefit thereof including all claims there under which may at any time be outstanding. Any monies received by virtue of such Insurance Policy shall at the discretion of Mogo Auto, either be applied in replacing or restoring any loss or damage in respect of which the same shall be received or go towards liquidation of the amount for the time being due to the hereunder.
- 9.** If at any time during the continuance of the Agreement:

- 9.1. an event of default occurs;
- 9.2. the Borrower commits a breach of or shall fail to observe or perform any of the other conditions herein expressed or implied;
- 9.3. the Secured Asset shall be seized or expropriated whether lawfully or not by government or any other authority; or
- 9.4. the principal (or any part thereof) and other monies hereby secured shall have become immediately due and payable hereunder, then the Security constituted by the Agreement shall become immediately enforceable and Mogo Auto 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 Borrower and notwithstanding any subsequent acceptance of any payment of the principal money or interest due on this security:
 - 9.4.1. enter (either personally or by its servants or agents or by its receiver) upon the land or premises whereof the Secured Asset may for the time being be upon, without incurring any liability to the Borrower for, or by any reason of, that entry and the Borrower shall use its all endeavours to allow Mogo Auto or its Receiver access (including obtaining any necessary consents or permits of other persons);
 - 9.4.2. take possession or collect and remove the Secured Asset;
 - 9.4.3. sell or dispose of the same by private sale or public auction or let or concur in the selling or letting of the Secured Asset 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 Borrower or otherwise; and
 - 9.4.4. 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.

10. The power of Mogo Auto to sell or dispose of the Secured Asset by private sale or public auction shall be subject to such stipulations as Mogo Auto 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 Secured Asset 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 Borrower or any other person left or present in the Secured Asset 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.

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

12. During the currency of the Agreement Mogo Auto shall be entitled to the exclusive possession of the invoices, deeds, documents of title and log books and other registration books relating to the Secured Asset but nevertheless all the liabilities attending ownership of the Secured Asset shall be borne by and be the responsibility of the Borrower.

13. No relaxation, forbearance, delay or indulgence by Mogo Auto in enforcing any of the terms and conditions of the Agreement nor the granting of time by Mogo Auto to the Borrower shall prejudice, affect or restrict the rights or the powers of Mogo Auto hereunder nor shall any waiver of any breach thereof operate as a waiver of any subsequent breach thereof.

14. In the Agreement references to indemnifying any person against any circumstances include indemnifying and keeping him/her harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for the circumstance.

15. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that the terms and conditions contained in the 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.

16. The Borrower hereby:

- 16.1. irrevocably appoints Mogo Auto as the Borrower's true and lawful attorney in his name and on his/her behalf to act and sign any deed and execute, seal and deliver any documents which Mogo Auto may require for perfecting Mogo Auto's title to or for vesting the Secured Asset in Mogo Auto or Mogo Auto's nominee or in any purchaser and otherwise generally to sign, seal, deliver and otherwise perfect any such legal or other mortgage, charge or assignment and transfer by way of mortgage all such deeds and documents, make any declarations and do all such acts and things as may be required for the full exercise of the powers hereby and as under the Movable Property Security Rights conferred on Mogo Auto including any sale, lease or disposition or realization or in getting of the Secured Asset and take all actions otherwise required to be performed by the Borrower;
- 16.2. covenants with Mogo Auto to ratify and confirm any deed, document, act and thing and all transactions which any such attorney may lawfully execute or do. No person relying upon such power of attorney shall be concerned or entitled to make any determination or require any court judgment on the validity of the power of attorney;
- 16.3. waives any claims against any person acting on the instructions given by Mogo Auto pursuant to the power of attorney; and
- 16.4. agrees to indemnify and hold harmless any person who may act in reliance upon the power of attorney and pursuant to instructions given by Lender.

17. Where Mogo Auto finances the purchase of the Secured Asset from a seller on behalf of the Borrower, the Borrower affirms that he/she:

- 17.1. conducted all requisite due diligence on the Secured Asset and the seller;
- 17.2. inspected the Secured Asset;
- 17.3. had independently confirmed to his/her satisfaction all information that he/she considers material to the purchase of the Secured Asset;
- 17.4. is aware of all its defects; and
- 17.5. had agreed to purchase the Secured Asset **AS IS, WHERE IS, WITH ALL FAULTS**, with no right of setoff or reduction in the purchase price comprising the loan amount and no right of claim against Mogo Auto whatsoever.

18. Mogo Auto:

- 18.1. disclaims the making of any representations or conditions or warranties, express or implied, regarding the Secured Asset or matters affecting the Secured Asset, whether made by Mogo Auto, on its behalf or otherwise including, without limitation, the physical condition the Secured Asset, title to the Secured Asset, compliance with laws and regulations, and the fitness of the Secured Asset for use;
- 18.2. shall not be liable for any discrepancies or differences in the colour of the Secured Asset, the condition of the Secured Asset and the description of the Secured Asset; and
- 18.3. not be party to any disagreements between the Borrower and the seller, and the Borrower acknowledges that, to the extent required to be operative, the disclaimers of warranties contained in this section 18 are conspicuous disclaimers for purposes of any applicable law, rule or regulation and shall indemnify, keep indemnified and hold Mogo Auto harmless from all claims and all direct and indirect liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, Mogo Auto as a result of or in connection with the matters set out in section 17 and the section 18 of the T&C of the Agreement.

19. The Borrower shall pay legal, valuation, and all other costs and expenses of and incidental to the preparation and enforcement of the Agreement and pending payment by the Borrower, the said costs and expenses shall be a first charge upon the Secured Asset.

20. The Security hereby given to Mogo Auto hereunder shall be without prejudice and in addition to any other security whether by way of pledge, legal or equitable mortgage or charge or otherwise which Mogo Auto may now or at any time hereafter hold on any other property and

assets of the Borrower for and in respect of all or any part of the indebtedness of the Borrower to Mogo Auto or any interest thereon.

21. Mogo Auto shall be entitled and is hereby authorized to transfer, cede, novate, delegate, deal with or assign the benefits of the Agreement or any right or rights or obligations hereunder including the right conferred on Mogo Auto to enter upon land or premises to inspect the Secured Asset and to repossess the same, at any time, without the consent of the Borrower and may also disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Secured Asset and the Agreement that Mogo Auto considers appropriate.

22. The Borrower shall not assign any of its rights, or transfer any of its rights or obligations, under the Agreement.

23. Any change in the constitution of Mogo Auto or its absorption or amalgamation with any other person, liquidation, declaration of insolvency, or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights hereunder or the Security created hereby.

24. The Security shall be a continuing Security for the payment of the Secured Liabilities including without limitation, any interest, penalty, fee and charge thereon as may be outstanding from time to time notwithstanding the death, bankruptcy or incapacity of the Borrower or any settlement of account or other matter whatsoever and is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, lien, pledge, bill, note, mortgage or other security (whether created by the deposit of documents or otherwise) now or hereafter held by or available to Mogo Auto and shall not in any way be prejudiced or affected thereby or by the invalidity thereof or by Mogo Auto now or hereafter dealing with exchanging, releasing, varying or abstaining from perfecting or enforcing any of the same or any rights which the Borrower may now or hereafter have or giving time for payment or indulgence or compounding with any other person liable.

25. Each of the provisions of the Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable; the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. In case any conflict arises between the Special Provisions of the Agreement and the General Provisions of the Agreement regarding the same matter, the provisions of the Special Provisions shall prevail.

26. The Security shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by Mogo Auto of all or any part of the monies and liabilities hereby guaranteed.

27. Upon the final balance of the loan herein and any other monies secured by the Agreement having been paid off by the Borrower together with all interests and other charges due hereon and upon payment by the Borrower of all costs and expenses incurred by Mogo Auto in relation to the Agreement, Mogo Auto shall forthwith deliver to the Borrower the original logbook and effect a transfer of the Secured Asset and any valid Insurance Policies relating to the Secured Asset to the names of the Borrower at the cost of the Borrower, and shall at the cost of the Borrower execute a memorandum of satisfaction in respect of the Agreement and cause the same to be registered in accordance with the Movable Property Security Rights Act.

28. Where the expression the "Borrower" shall consist of two (2) or more persons such expression shall throughout mean and include such two or more persons and each of them and shall so far as the context admits be construed as well in the plural as in the singular and all covenants, assignments, charges, agreements and undertakings herein expressed or implied on the part of the Borrower shall be deemed to be joint and several. The Security and the undertaking in clause 1 of T&C of the Agreement and all other covenants, charges, agreements and undertakings herein contained shall extend and apply to any money that, is or may become liable in whatever currency denominated, owing or obligation or liability incurred by any such persons to Mogo Auto whether solely or jointly with each other or with any other person and none of the persons included in the expression the "Borrower" shall as against Mogo Auto be entitled to any of the rights or remedies legal or equitable of a surety as regards the indebtedness or liabilities of any of the other persons included in the expression the "Borrower".

29. Subject to clause 30 of the T&C of the Agreement, on the expiry of the period of the Agreement (but not otherwise), Mogo Auto shall, at the request and cost of the Borrower, as per Section 67 of the Movable Property Security Rights Act, serve the Borrower a notification in writing to pay the monies owing and any other notices required under the Movable Property Security Rights Act to be served or sent to the Borrower.

30. Any release, discharge or settlement between the Borrower and Mogo Auto shall be deemed conditional on no payment or security received by Mogo Auto in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

30.1. Mogo Auto or its nominee may retain the Agreement and the Security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Asset, for any period that Mogo Auto deems necessary to provide Mogo Auto with security against any such avoidance, reduction or order for refund; and

30.2. Mogo Auto may recover the value or amount of such Security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

31. A certificate or determination by Mogo Auto as to any amount for the time being due to it from the Borrower shall be, in the absence of any manifest error, conclusive evidence of the amount due.

32. The Borrower shall, at its own expense, take whatever action Mogo Auto or any receiver may reasonably require for:

32.1. creating, perfecting or protecting the security intended to be created by the Agreement;

32.2. facilitating the realisation of any Secured Asset; or

32.3. facilitating the exercise of any right, power, authority or discretion exercisable by Mogo Auto or any receiver in respect of any Secured Asset, including, without limitation, (if Mogo Auto or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Asset (whether to Mogo Auto or to its nominee) and the giving of any notice, order or direction and the making of any registration.

33. If the whole or any part of the Secured Asset is lawfully expropriated by any competent authority, the Borrower irrevocably appoints Mogo Auto and in Mogo Auto's interest to receive all compensation and to make any claims and sign any documents as Mogo Auto may consider necessary or desirable. Mogo Auto will pay to the Borrower any amount received by Mogo Auto in regard to such expropriation after deducting the amounts due under the Agreement and, the costs incurred by Mogo Auto.

34. A default by the Borrower of a material term, covenant, warranty or undertaking of any transaction document including the Agreement or other agreement to which the Borrower and Mogo Auto 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 Mogo Auto enforce its rights under the Agreement.

35. In these presents, unless the context otherwise requires:

35.1. words importing the masculine gender only shall include the feminine gender and neuter gender and the words importing singular number only shall include the plural number also and vice versa;

35.2. reference to clauses, sections and schedules shall be construed as reference to clauses, sections and schedules to the Agreement and the Asset Financing Loan Agreement;

35.3. clause, schedule and paragraph headings do not affect the interpretation of the Agreement;

35.4. the schedules form part of the Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to the Agreement includes the schedules;

35.5. a reference to the Agreement is a reference to the Agreement as amended or varied or novated in accordance with its terms from time to time;

35.6. a reference to writing or written includes e-mail (unless otherwise expressly provided in the Agreement);

35.7. any statute or any provision of any statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any subsidiary statutory instrument, order, by-law or regulation made from time to time thereunder or under any such re-enactment;

35.8. any obligation on a party not to do something includes an obligation not to allow that thing to be done;

- 35.9. the expression "*person*" shall include any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority, department or other body (whether corporate or unincorporated) (whether or not having separate legal personality) (wherever and however incorporated or established) and that person's personal representatives, heirs, successors and permitted assigns;
- 35.10. the word "*tax*" shall be construed so as to include any tax, levy, impost, assessment, duty or other charge of a similar nature (including without limitation, value added tax, stamp duty and any other penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and "*taxation*" shall be construed accordingly and expression "*competent taxing authority*" means, in respect of any state or administrative division thereof, any governmental authority, monetary agency or central bank having power to collect or levy taxes;
- 35.11. 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;
- 35.12. where the context permits, "*other*" and "*otherwise*" are illustrative and shall not limit the sense of the words preceding them.
- 36.** Any notice to be given hereunder to the Borrower shall be deemed to be duly served if left at the principal place of business of the Borrower or if sent by post to the Borrower to the address hereinabove referred to provided that in the case of any notice served by post such notice shall be deemed to have been given and served five (5) days after posting provided further that proof is given that the notice was properly addressed and adequately stamped and put in the post.
- 37.** Nothing contained in this Agreement is intended to, or shall be deemed to, establish or shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.
- 38.** The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Kenya.
- 39.** The Parties irrevocably agree that the courts of Kenya shall have exclusive jurisdiction to settle any dispute, controversy or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 40.** Unless the Agreement has already been repudiated or terminated, the Parties shall, (notwithstanding that any dispute is subject to the dispute resolution procedure set out in the Agreement), continue to carry out their obligations in accordance with the Agreement.