

ASSET FINANCING LOAN AGREEMENT No. [number]

This Asset Financing Loan Agreement is made on [signing date], between

MOGO AUTO	THE BORROWER
MOGO AUTO LIMITED Registration number PVT-AJUR7BX Legal address: Mara Road 209/1901 Block A, KMA Centre, Nairobi, Kenya, P.O. Box 29107 E-mail: info@mogo.co.ke Website: www.mogo.co.ke Phone number: 0768 469 112	Full name of the client National ID number: [redacted] Address: [redacted] E-mail: [redacted] Phone number: [redacted]

WHEREAS:

- a. Mogo Auto carries on the business of offering various financial facilities and accommodations including asset financing as well as corporate and individual loans within Kenya and elsewhere in Africa;
- b. The Borrower has applied with Mogo Auto for a financing and Mogo Auto has approved the financing to the Borrower pursuant to the terms and conditions of the Agreement and the Parties have negotiated and agreed that it is mutually beneficial to enter into the Agreement.

The Parties have signed this Asset financing loan agreement, consisting of Special Provisions and General Provisions (Terms and Conditions), hereinafter referred to as **"the Agreement"**:

SPECIAL PROVISIONS

1.	Financial service type:	<input type="checkbox"/> Car loan	<input type="checkbox"/> Logbook loan
2.	The Asset identification:	Vehicle make: [redacted]	Vehicle model: [redacted]
		Registration No.: [redacted]	VIN/Chasis: [redacted]
3.	The Asset total price:	KSH [redacted]	
4.	Deposit – the part of the Asset price paid by the Borrower (if applicable):	KSH [redacted]	
5.	Loan amount:	KSH [redacted]	
6.	Interest rate:	[redacted] % on flat rate basis	
7.	Term:	[redacted] months / until [redacted]	
8.	Loan repayment conditions:	Pursuant to the Repayment schedule attached as the Schedule 1 to these Special Provisions	
9.	Loan amount (including fees added to principal)	KSH [redacted]	
10.	Application fee:	KSH [redacted] added to principal	
11.	Insurance fee (if applicable):	KSH [redacted] according to the Insurance terms and conditions	
12.	Loan monitoring fee:	KSH [redacted] per month	
13.	Loan processing fee:	KSH [redacted] added to principal	
14.	Fee for change of terms of Agreement:	2,000 KES per each change of the Agreement	

15. Mogo Auto shall disburse the Loan amount in one tranche to the Seller or the Borrower, depending on the type of financial service, after the following conditions have been met (i) signing of the Security Agreement, the Agreement, the Asset sale and purchase agreement, all security documentation in respect thereof, (ii) receipt of original Asset logbook, copies of the certificate of incorporation or registration, or national identity card or passport and PIN certificate of the Seller or the Borrower, as the case may be, (iii) receipt of copies of the national identity card or passport and PIN certificate of the Borrower, (iv) the deposit amount payment to the Seller by the Borrower, if applicable, (v) (in case the Asset is being purchased from the Seller) delivery to, acknowledgement of receipt and sufficiency of, and acceptance of a Legal Undertaking by the Seller from Mogo Auto that the necessary payments shall be effected by Mogo Auto to the Seller within fourteen (14) days after the successful completion of transfer of the Asset on the NTSA-TIMS system.
16. **Disbursement of the Loan:** Upon satisfaction of the conditions precedent set out in clause 15 of the Special Provision of the Agreement, the total Loan amount thereunder will immediately be transferred by Mogo Auto to: (a) the Borrower directly; or (b) the Seller in the manner set out in clause 16 and clause 17 of the Special Provisions of the Agreement, and the Borrower irrevocably authorises Mogo Auto to effect such transfer.
17. **Deposit:** Where the Loan amount will be disbursed as purchase price payable to the Seller as consideration for sale of the Asset to the Borrower and Mogo Auto, the Borrower shall be required to pay to the Seller within one (1) business day an amount equivalent to the amount set out in clause 4 of Special Provisions as a deposit and in part payment of the purchase price of the Asset. Failure by the Borrower to pay such deposit in full and in time shall be an event of default under clause 8.1 of the General Provisions of the Agreement. Upon receipt by the Seller of the full deposit within the agreed time period and satisfaction of the conditions precedent set out in clause 15 of the Special Provisions, Mogo Auto shall disburse to the Seller the Loan amount.
18. All other terms and conditions of the Agreement, not specified in these Special Provisions, are set out in the General Provisions of the Agreement, which are binding for both Parties. By signing these Special Provisions of the Agreement, the Borrower confirms that he/she has received a copy of the General Provisions of the Agreement, he/she has read all the provisions of the Agreement, including the General Provisions, they are clear and understandable to him/her and he/she undertakes to comply with the provisions of the Special Provisions and General Provisions of the Agreement in full and properly.
19. The Parties agree that the terms of the General Provisions of the Agreement are confirmed as if the same were set out in these Special Provisions of the Agreement in full and that such terms shall for all purposes be deemed incorporated in these Special Provisions of the Agreement.
20. Mogo Auto is hereby authorized to attach these Special Provisions of the Agreement to the General Provisions of the Agreement.

SIGNED by the said **BORROWER**

In the presence of:
WITNESS

.....

Signature:

Name:

EXECUTED on behalf of **MOGO AUTO LIMITED** by duly authorized representative in the presence of:

Signature:

Name:

REPAYMENT SCHEDULE

All in KSH

No.	Payment Date	Outstanding principal amount	Monthly Instalment	Insurance fee <i>(if applicable)</i>
1.	xx/xx/20xx	xxxxx	xxxxx	xxxxx
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
Etc.				

The Borrower shall be entitled to use Balloon Payment option stipulated in clause 2.2 of the T&C and repay each twelve month the outstanding Loan amount. The Balloon Payment option does not limit the Borrower's right to repay the outstanding Loan amount at any other time according to the provisions of the Agreement.

I confirm that I was acquainted with my Repayment schedule and I understand the terms.

SIGNED by the said **BORROWER**
 In the presence of:
 WITNESS

.....

Signature:

Name:

EXECUTED on behalf of **MOGO AUTO LIMITED** by duly authorized representative in the presence of:

Signature:

Name:

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;
Balloon Payment	means a lump sum payment of the total outstanding Loan Facility at the relevant payment date. Applicable for the agreements with the Loan Term of more than twelve (12) months. Includes equal Monthly Instalments of the Loan Facility for the entire Loan Term and an option to pay a Balloon Instalment under the provisions of Clause 2.2 of the T&C;	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;
Borrower	means the Party as defined in the Special Provisions of the Agreement;	Legal Undertaking	means an acceptable professional undertaking to the Seller issued by Mogo Auto's advocates with the Seller as beneficiary for an amount equal to, at least the Loan Facility and which will be payable on registration of transfer of the Asset (as per the motor vehicle sale and purchase agreement signed by the Borrower and Mogo Auto and/or the Seller, if applicable, for purposes hereof) to Borrower and Mogo Auto;
Business Day	means a day other than a Saturday, Sunday or gazetted public holiday on which banks are open for general business in Nairobi;	Monthly Instalment	means the monthly payment that are due and payable in accordance with the Repayment schedule;
Balloon Instalment	includes the remaining outstanding Loan Facility under the Agreement for the entire period, specified in Clause 2.2.3 of the 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 the T&C;	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;
Day	means a calendar day and in the calculation of days, the first day is excluded and the last day is included;	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;
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;	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;
Credit Reference Bureau	means all registered credit reference bureaus being utilized by Mogo Auto from time to time;	Parties or Party	means Mogo Auto and/or the Borrower, jointly or separately as the case may be;
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;	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.
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 etc., and which are an integral part of the Agreement;		
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;		
Loan amount (including fees added to principal)	means the aggregate amount of the Loan amount, application fee and Loan processing fee;		

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 **CONTRACTUAL PAYMENT** 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 4.2 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 **Interest rate:** The rate of interest on the Loan Facility is set in the Special provisions of the Agreement. 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 (KES 500.00) per letter sent;

4.10.2. Asset repossession fee: up to 30,000 KES;

4.10.3. repossessed Asset storage fee per day: up to 1,000 KES;

4.10.4. sale maintenance charges: up to 10% 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. In case these amounts are added to the principal, amounts are converted to USD according to the Foreign Exchange Rate at the date of conversion.

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 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 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.

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 NTSA-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 15 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 or the Borrower 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 names; (iii) the discharge of the Security Agreement and the In-Charge upon repayment of the Loan Facility;
 - 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 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 Special Provisions of 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.