

1. KINTO Master Terms

The Parties to this Agreement are as detailed in the Master Rental Agreement concluded between the Parties, which Master Rental Agreement incorporates these KINTO Master Terms. The Agreement between the Parties comprises the terms of the Master Rental Agreement concluded between the Parties, as well as these terms and conditions (as well as all documents, Schedules and annexes incorporated into this document) which are collectively referred to as the Agreement.

Please read the terms and conditions of this Agreement carefully. All of the provisions of this Agreement are important, but please pay special attention to the parts that are inside a box with bold writing. These parts highlight and contain information about clauses in the Agreement that have important consequences for the Customer (who is referred to as "you" in these boxes). They are only intended to bring such clauses to your attention, and to explain their fact, nature, and effect. They are aids to understanding only and are not terms and conditions themselves. They do not limit the meaning or application of the relevant clauses, and do not apply only to the situations and examples described in the boxes or to similar situations or examples.

2. Interpretation

2.1. In this Agreement, unless inconsistent with or otherwise indicated by the context –

2.1.1. **"AARTO"** means the Administrative Adjudication of Road Traffic Offences Act, Act 46 of 1998 as amended;

2.1.2. **"Accessory"** means, in relation to a Vehicle, any non-standard item which is not fitted in such Vehicle at the time of the manufacture of the Vehicle (including but not limited to an air conditioner, a radio or a towbar) and which is specified in the Schedule relating to the Vehicle;

2.1.3. **"the/this Agreement"** means the Agreement as set out in this document (including all Schedules and annexures hereto) and the Master Rental Agreement, which is incorporated into this Agreement by reference thereto. Should you have entered into this Agreement electronically, you are advised that according to law, the Agreement is deemed to have been entered into at the registered business premises of KINTO;

This Clause 2.1.3 is important as it specifies that this Agreement, if concluded electronically, will be deemed by a court to have been entered into at the registered business premises of KINTO. This may have a number of consequences including that disputes arising under this Agreement may be heard before courts with jurisdiction over the area in which the premises of KINTO are located.

2.1.4. **"Authorised Representative"** means any person authorised under a resolution of the Customer to represent the Customer from time to time, and the signature of any such person shall be binding on the Customer.

2.1.5. **Authorised Supplier** means a "dealer", "dealership", "supplier", "service provider", "workshop" or "panel beater" or similar terms appointed by the Manufacturer or importer of a Vehicle or, if not appointed by the Manufacturer or importer contracted by KINTO to supply such for the repairs and maintenance of the Vehicle.

2.1.6. **"Billing Date"** means the first day of each month;

2.1.7. **"Breach of Contract"** means and includes any Event of Default;

2.1.8. **"Business Day"** means a day which is not a Saturday, Sunday or South African public holiday;

2.1.9. **"Collection Date"** means the day of each calendar month selected by the Customer on which the Monthly Rental becomes due and payable, and on which the Debit Order collection will be made, being the 1st (first) day of the month for Business Entity Customers, and the date selected by Private Individual Customers in Annexure 1 of the Master Rental Agreement, and if no date is selected by Private Individual Customer, the Billing Date will be the first day of each month;

2.1.10. **"Contract"** means, in relation to a specific Vehicle, the terms and conditions applicable to the specific Vehicle, including the Contract Period and Contract Kilometers, and all other matter(s) applicable to the specific Vehicle, which are contained in the Schedule, or amended Schedule relating to such Vehicle, which Contract(s) and Schedule(s) shall be subject to the overarching application of this Agreement;

2.1.11. **"Contract Kilometers"** means, in relation to a Vehicle, the kilometer distance specified in the Schedule relating to such Vehicle, or as amended pursuant to a restructure as set out in clause 6 (Maximum and Excess Kilometers and Related Fees);

2.1.12. **"Contract Period"** means, in relation to a Vehicle, the period specified in the Schedule relating to such Vehicle or as recalculated in terms of this Agreement, as determined from the relevant Schedule Commencement Date, expressed in completed calendar months;

2.1.13. **"Contract Usage"** means, in relation to a Vehicle, the Contract Kilometers divided by the Contract Period, expressed as kilometers to be driven per month;

2.1.14. **"Corrupt Act"** means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004.

2.1.15. **"Customer"** means the natural or juristic person whose details are set out in the title page of the Master Rental Agreement, and includes any person, employee or entity to which the Customer has delegated authority to act on the Customer's behalf, and the signature of any such person or entity shall be binding on the Customer, and KINTO shall not be obliged to enquire into the authority of any such signatory;

2.1.16. **"Data Protection Legislation"** means any and all laws, including, without limitation, regulations, directives, professional rules or any other requirements of government or any government agency, body or authority, or any regulatory or course, pertaining or relating to the protection or confidentiality of data or of Personal Information, including POPIA the Promotion

of Access to Information Act 2 of 2000, the Electronic Communications and Transactions Act 25 of 2002, the Consumer Protection Act 68 of 2008 and the Cybercrimes Act 19 of 2020;

- 2.1.17. **"Debit Order"** means a payment method mandated by the Customer to KINTO allowing KINTO to recover the Monthly Rentals and other amounts owing in terms of this Agreement from the Customer's bank account;
- 2.1.18. **"Default"** means:
 - 2.1.18.1. an Event of Default (including Breach of Contract); or
 - 2.1.18.2. any event or circumstance specified in Clause 15 (Breach, Default and Cancellation) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Agreement or any combination of any of the foregoing) be an Event of Default.
- 2.1.19. **"Delivery"** means the physical delivery of a Vehicle to and acceptance thereof by the Customer after it has been inspected as set out in Clause 4.4 and accepted by the Customer or its designated Authorized Representative and Delivered shall be construed accordingly.
- 2.1.20. **"Delivery Date"** means the date on which Delivery takes place;
- 2.1.21. **"Delivery Note"** means the document signed by the Customer or its Authorised Representative evidencing Delivery of the Vehicle to the Customer and acceptance thereof.
- 2.1.22. **"Early Termination"** means the termination of this Agreement as a result of a Default, Breach of Contract, Voluntary Surrender, Repossession, mutual agreement, and/or a Schedule in respect of a Vehicle prior to the Expiry Date contained in the Schedule or an amended Schedule in relation to that Vehicle.
- 2.1.23. **"Early Termination Date"** means the date on which the Early Termination occurs.
- 2.1.24. **"Early Termination Fee"** means, in relation to a Vehicle which is the subject of an Early Termination, an amount which is the higher of either;
 - 2.1.24.1. the outstanding capital value of that Vehicle less 80% (eighty per cent) of MM Trade Value on Early Termination Date or;
 - 2.1.24.2. market value as determined by KINTO in its absolute discretion, plus applicable Excess Kilometer Fee, Make Good Charges, an administration fee and other outstanding amounts in respect of that Vehicle incurred up to Early Termination Date, plus VAT.
- 2.1.25. **"Event of Default"** means any event or circumstance specified in Clause 15 (Breach, Default and Cancellation).
- 2.1.26. **"Excess Payment"** means the amount that is payable if a Customer elects the benefits of KINTO Protect in the event of an accident or incident occurring in respect of a Vehicle, provided that such claim is accepted by KINTO Protect.
- 2.1.27. **"Excess Kilometers"** means, in relation to a Vehicle, the number of kilometers travelled by such Vehicle in excess of the Contract Usage;
- 2.1.28. **"Excess Kilometer Fee"** means, in relation to a Vehicle, the amount payable by the Customer to KINTO in respect of each Excess Kilometer travelled by such Vehicle, which charge is specified in the Schedule relating to such Vehicle, plus VAT at the statutory rate as set in section 7(1) of the VAT Act and relevant regulations, where necessary.
- 2.1.29. **"Expiry Date"** means, in relation to a Vehicle, the expiry date as specified in the Schedule relating to that Vehicle.
- 2.1.30. **"Fair Wear and Tear"** with reference to Clause 13.5 of the Master Rental Agreement means, in respect of a Vehicle the degree of deterioration deemed to be reasonable when that Vehicle is returned to KINTO having regard to Annexure 2 (Fair Wear and Tear Examples) but excludes the items listed in Clauses 13.5.1 to 13.6 of the Master Rental Agreement.
- 2.1.31. **"FICA"** In terms of Section 21 and 22 of the Financial Intelligence Centre Act (FICA), 38 of 2001, and the Regulations thereto, (Know Your Customer or KYC process), KINTO is required to ensure that it has received, verified and recorded/updated the Customer's details correctly.
- 2.1.32. **"FMR Fixed Contract"** means a Contract which is not subject to adjustment of rental due to changes in interest rates. If you have selected the FMR Fixed Rental quotation option, then the resulting contract will be a Full Maintenance Fixed Monthly Rental Contract, subject to your adherence to the contract parameters.
- 2.1.33. **"FMR Variable Contract"** means a Contract which is subject to adjustment of rental due to changes in interest rates. If you have selected the FMR Variable Rental quotation option, then the resulting contract will be for a Full Maintenance Variable Monthly Rental Contract linked to the Prime interest rate as quoted by the Standard Bank of South Africa Limited, subject to interest rate fluctuations and your adherence to the contract usage parameters.
- 2.1.34. **"Input VAT"** means the Input VAT or "input tax", being the VAT incurred on the supply of goods or services to the VAT vendor which a registered VAT Vendor is entitled to deduct from the sum of the amounts of output tax, to the extent that input tax is incurred for the purpose of consumption, use or supply, in the course of making taxable supplies as defined in section 16(3) of the VAT Act. As a general rule, a Customer which is a registered VAT vendor is not entitled to deduct input tax on the importation, acquisition, lease or rental of a motor car in terms of section 17(2)(c) of the VAT Act, irrespective of the purpose for which the motor car was acquired or rented. The proviso contained in section 17(2)(c) of the VAT Act provides certain exceptions that allow a registered VAT vendor, in limited circumstances, to deduct input tax on the acquisition of a motor car where the motor car is acquired by the vendor for the sole purpose of making a taxable supply (sale, lease or rental) in the ordinary course of an enterprise that continuously or regularly supplies motor cars. Whilst KINTO will provide estimated amounts of Input VAT which it believes may be deducted by a registered VAT vendor, the amount and validity of Input VAT claimed is the sole responsibility of the Customer.
- 2.1.35. **"Intellectual Property"** means the intellectual property of a Party, whether registered or not, including but not limited to trademarks, patents, copyright, know how, business processes and the like;
- 2.1.36. **"KINTO"** means KINTO South Africa (Proprietary) Limited a company duly incorporated in South Africa with Registration Number: 2022/256006/07, with registered address at Stand 1, Wesco Park, Old Pretoria Road, Sandton, herein after referred to as **KINTO** or **we**.
- 2.1.37. **"KINTO Protect"** means the KINTO Protect product feature, whereby a Customer may elect to receive the benefits of

KINTO Protect as referred to in Clause C of the Master Rental Agreement and the liability of the Customer for Damages or Total Loss of Vehicle as contained in Clause 11 of these Master Terms.

- 2.1.38. **"Liability"** means the liability of the Customer to compensate KINTO for loss, costs and damages to or in respect of the Total Loss of the Vehicle as contained in clause 11 (Liability of Customer for costs, loss, damages to, or Total Loss of Vehicle), or upon forfeiture of the benefits under KINTO Protect as contained in clause 11.2 resulting in payment of the Liability Charge by the Customer upon demand from KINTO as contained in clause 11.4.2, and Annexure 1 (KINTO Protect) of this Agreement and clause C of the Master Rental Agreement;
- 2.1.39. **"Liability Charge"** means the amount or amounts which the Customer is liable to pay to KINTO upon demand for loss, costs and damages to or Total Loss of the Vehicle, plus VAT, as contained in clause C of the Master Rental Agreement, clause 11 (Liability of Customer for costs, loss, damages to, or Total Loss of Vehicle) and Annexure 1 (KINTO Protect) of the KINTO Master Terms, including but not limited to the outstanding capital value of the Vehicle taking into account the Contract Usage parameters plus the applicable Excess Kilometer Fee, towing charges, storage fees, release fees, legal fees, make good charges, inspection fee, an administration fee, interest and other outstanding amounts in respect of that Vehicle incurred up to the date of the incurrence of the Liability;
- 2.1.40. **"Licensed Owner"** means the user as licensed in terms of the National Road Traffic Act, 93 of 1996 and who has use and enjoyment of the Vehicles, also referred to in this Agreement as the Customer.
- 2.1.41. **"Make Good Charges"** means, in respect of a Vehicle, the cost of placing that Vehicle in a Fair Wear and Tear condition, plus VAT.
- 2.1.42. **"Manufacturer"** means the manufacturer, importer or distributor of a specific Vehicle or Accessory.
- 2.1.43. **"Material Adverse Effect"** means a material adverse effect or a material adverse change in:
 - 2.1.43.1. the consolidated financial condition, assets or business of the Customer;
 - 2.1.43.2. the ability of the Customer to perform and comply with obligations under the Agreement or any other Agreement document to which it is a party;
 - 2.1.43.3. the ability of any Surety Entities to perform and comply with their obligations in terms of any Agreement document which it is a party to;
 - 2.1.43.4. the legality, validity or enforceability of any of the Agreement documents or the rights or remedies of KINTO under any of the Agreement documents; or
- 2.1.44. **"Monthly Rental"** means the monthly rental amount payable by the Customer specified in the Schedules or as recalculated in terms of this Agreement, plus VAT.
- 2.1.45. **"MM Trade Value"** in respect of a Vehicle, means the relevant trade price for a vehicle as published monthly in the Mead & McGrouther Auto Dealers Digest.
- 2.1.46. **"Odometer"** means an instrument fitted to a Vehicle for the purposes of, *inter alia*, measuring distances travelled by that Vehicle, or any other measuring device which performs a similar function, and which has been approved by KINTO.
- 2.1.47. **"Order Cancellation Fee"** means the fee payable by the Customer on cancellation of a Vehicle Order for whatsoever reason prior to Delivery and such fee shall be an amount equal to the costs and/or losses incurred by KINTO or the Authorised Supplier, plus VAT.
- 2.1.48. **"Parties"** means KINTO, the Customer and each Surety Entity and Party shall mean any one of them.
- 2.1.49. **"Personal Information"** has the meaning given to it in POPIA.
- 2.1.50. **"POPIA"** means the Protection of Personal Information Act, 2013.
- 2.1.51. **"Prime Rate"** means the publicly quoted rate of interest per annum charged by The Standard Bank of South Africa Limited, from time to time at any relevant time, on monies advanced or credit provided on unsecured overdraft to corporate borrowers, being a nominal annual rate.
- 2.1.52. **"Privacy Policy"** means the KINTO Privacy Policy which can be viewed on www.toyota.co.za/KINTO or www.lexus.co.za/KINTO.
- 2.1.53. **"Process"** means collect, receive, record, organise, collate, store, develop, update, modify, retrieve, alter, consult, use, disseminate or perform any other act or action, including any other act or action which may be treated or defined as Processing in terms of POPIA, and the word **"Processed"** shall have a corresponding meaning.
- 2.1.54. **"Repossession"** means the process by which KINTO takes physical possession of the Vehicle after a Customer Default, which constitutes an Early Termination and is subject to the provisions of Clause 13 "Termination".
- 2.1.55. **"Schedule"** means, as the context may require, each Schedule in such form as issued by KINTO in respect of each specific Vehicle rented by KINTO to the Customer denoting, amongst others the Contract pertaining to the specific Vehicle, including the Contract Kilometers, Contract Period, Contract Usage, the description and identification of that Vehicle. All Schedules not signed and returned to KINTO by a Customer within 7 (seven) days after signing that Vehicle Delivery Note shall be deemed binding on the Customer in all respects.

This Clause 2.1.55 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you are considered to have accepted the Schedule not signed and returned to KINTO by you within 7 days after you have signed the Vehicle Delivery Notice. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you for what is stated in this clause.

- 2.1.56. **"Schedule Commencement Date"** means, in relation to a Vehicle, the date of commencement of this Agreement in respect of that Vehicle as specified in the Schedule relating to such Vehicle.
- 2.1.57. **"Settlement Value"** of a Vehicle as at any date means the higher of the outstanding capital value of that Vehicle taking into account the Contract Usage parameters plus the applicable Excess Kilometer Fee; or 80% of M&M Trade Value plus the Excess Kilometer Fee, plus VAT.
- 2.1.58. **"Service"** means the provision of repair and maintenance services to a Vehicle by an Authorised Supplier.
- 2.1.59. **"Signature Date"** means the date of signature of this Agreement by the Party signing last in time.
- 2.1.60. **"Signed"** means physically or electronically signed in terms of the Electronic Communications and Transactions Act, Act 25 of 2002.
- 2.1.61. **"Surety Entity"** means one or more of the Sureties as may be required in terms of the Agreement,
- 2.1.62. **"SVR"** means the Stolen Vehicle Recovery device fitted to a Vehicle as consented to by the Customer in terms of Clause 17 (Data Protection and Consents).
- 2.1.63. **"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
- 2.1.64. **"Territory"** or **"RSA"** means the Republic of South Africa.
- 2.1.65. **"Title Holder"** means the legal owner as registered in terms of the National Road Traffic Act, Act 93 of 1996, being KINTO.
- 2.1.66. **"Total Loss"** means a Vehicle which is lost, stolen or not recovered or considered uneconomical to repair.
- 2.1.67. **"Uneconomical to repair"** shall be determined by KINTO in its discretion acting reasonably provided that if KINTO notifies the Customer of its determination and the Customer disputes such determination, it shall be required to notify KINTO of such dispute in writing within 5 Business Days of receipt of such determination or the determination will be deemed to be accepted.
- 2.1.68. **"VAT"** means value added tax as provided for in the VAT Act, and any general service Tax or other Tax of a similar nature.
- 2.1.69. **"VAT Act"** means the Value-Added Tax Act, 89 of 1991, as amended;
- 2.1.70. **"Vehicle"** means any vehicle being any new and used Toyota and Lexus and Light Commercial Vehicle included or to be included in a Schedule together with all standard and optional equipment and Accessories thereto as detailed in such Schedule.
- 2.1.71. **"Vehicle Order"** means the Customer's instruction to KINTO, for the rental of a Vehicle or an offer to rent a Vehicle.
- 2.1.72. **"Voluntary Surrender"** means an arrangement whereby the Customer agrees with KINTO to return the Vehicle prior to the Contract Termination Date, which includes the surrender of the Vehicle and/or its keys to KINTO, and constitutes a Default and Breach of Agreement and is subject to the provisions of Clause 13 "Termination".
- 2.1.73. **"ZAR", "Rand" or "R"** means South African Rand, the lawful currency of South Africa.
- 2.2. **Interpretation**
 - 2.2.1. Any reference to the singular includes the plural and *vice versa*.
 - 2.2.2. Any reference to natural persons includes legal persons and *vice versa*.
 - 2.2.3. Any reference to a gender includes the other gender.
 - 2.2.4. The Clause headings in this Agreement have been inserted for convenience only and shall not be considered when interpreting this Agreement.
 - 2.2.5. A reference is made in this Agreement to a Clause, Section or Schedule, such reference shall be to a Clause, Section or Schedule to this Agreement unless otherwise indicated.
 - 2.2.6. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
 - 2.2.7. Whenever the words **include**, **includes** or **including** are used in this Agreement, they shall be deemed to be followed by the words **without limitation**.
 - 2.2.8. The words **hereof**, **herein** and **hereunder** and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
 - 2.2.9. Words and expressions defined in any Clause or sub-Clause shall, for the purposes of the Clause of which that Clause or sub-Clause form part, bear the meaning assigned to such words and expressions in that Clause or sub-Clause.
 - 2.2.10. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive Clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation Clause.
 - 2.2.11. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.
 - 2.2.12. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of the Agreement.
 - 2.2.13. Where the day on or by which anything is to be done is a non-Business Day, it shall be done on or by the first Business Day thereafter and when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a non-Business Day, in which event the last day shall be the next succeeding Business Day.
 - 2.2.14. Schedules and Annexures to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof.
 - 2.2.15. If any conflict arises in respect of the provisions contained in the body of this Agreement and any annexure attached hereto, the provisions contained in the body of this Agreement shall take precedence.

- 2.2.16. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.
- 2.2.17. A provision of law is a reference to that provision as extended, applied, amended or re-enacted, and includes any subordinate legislation.
- 2.2.18. A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been waived.
- 2.2.19. In this Agreement, unless otherwise expressly stated to the contrary in a Agreement document, or unless inconsistent with the context, any reference to:
- 2.2.19.1. the **Customer, KINTO, any Surety Entity** or any **Party** or any other person shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees to, or of, its rights and/or obligations under the Agreement documents;
 - 2.2.19.2. the **Agreement** or any other agreement or instrument is a reference to that Document or other agreement or instrument as amended, novated, supplemented, extended or restated, including an amendment providing for any increase in the amount of a facility or any additional facility or replacement facility;
 - 2.2.19.3. an **amendment** includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and **amend** will be construed accordingly;
 - 2.2.19.4. **assets** include businesses, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
 - 2.2.19.5. **authority** includes any court or any governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;
 - 2.2.19.6. a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
- 2.3. **Successors and Assigns**
- 2.3.1. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 2.3.2. References to a person are also to its permitted successors and assigns.
- 2.3.3. No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

3. Agreement to Rent

- 3.1. KINTO rents to the Customer the Vehicle or Vehicles described in the Schedule to this Agreement issued from time to time as the case may be, in accordance with the terms and conditions of this Agreement.

4. Duration of Agreement and Delivery

- 4.1. This Agreement shall, in respect of each Vehicle for which a Schedule has been issued, commence on the Schedule Commencement Date and shall remain in force for the Contract Period.
- 4.2. The Customer shall be entitled to terminate the operation of the Agreement in respect of any Vehicle prior to the Expiry Date specified in the Schedule subject to the provisions of Clause 13.
- 4.3. The Customer shall, at its own cost, take delivery of the Vehicles from an Authorised Supplier and shall hold the relevant Vehicles on behalf of KINTO for the duration of the Contract Period.
- 4.4. The Customer shall inspect the Vehicles on behalf of KINTO by signing a Vehicle Delivery Document and/or Schedule confirming acceptance and suitability of the Vehicles for the Customer's purpose before taking Delivery and shall accept delivery on behalf of KINTO. The Customer acknowledges choosing a Vehicle from the supplier and that KINTO is unaware of the purpose for which it has been chosen and is not responsible therefore.
- 4.5. The Customer shall not act as agent for KINTO except for the purposes of inspecting the Vehicles and accepting delivery thereof.
- 4.6. The Vehicle Order shall constitute an irrevocable instruction to KINTO to place an order for a Vehicle.
- 4.7. The Customer shall be liable for any Order Cancellation Fee which may arise.
- 4.8. KINTO shall complete a Schedule in respect of each Vehicle ordered by and delivered to the Customer and shall deliver such Schedule electronically or by hand to the Customer for electronic or physical signature, which the Customer is obliged to sign and return to KINTO.
- 4.9. If any Schedule is not returned duly signed to KINTO within 7 (seven) days of the Schedule Commencement Date, the Customer agrees that such Schedule shall automatically be deemed correct and binding in all respects as if it had been duly executed by or on behalf of the Customer and that the provisions of this Agreement shall apply thereto.

This Clause 4 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of these clauses, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability or harm you or others may suffer.

5. Payment, Fees, and Charges

5.1. Monthly Rental

- 5.1.1 The Customer shall pay to KINTO the Monthly Rental for the Contract Period as specified in the Schedule, or as recalculated in terms of this Agreement, plus VAT at the statutory rate in terms of the VAT Act, free of exchange and without deduction.
- 5.1.2 The Customer shall not be entitled to withhold payment of the Monthly Rental and/or any other fees, charges or amounts owed by the Customer to KINTO in terms of this Agreement for any reason whatsoever.
- 5.1.3 All overdue amounts shall bear interest at the Prime Rate plus 2% (two per cent).
- 5.1.4 Any unpaid fines which prevent KINTO from disposing of a Vehicle on termination of its Contract shall be recoverable from the Customer together with an applicable administration fee, plus VAT.
- 5.1.5 The Customer shall be obliged to make the Monthly Payments due under this Agreement until such time as the relevant Vehicle is returned.
- 5.1.6 Failure by the Customer to make any payment due under this Agreement shall constitute a Default which may lead to Early Termination of the Contracts under the Agreement, collection charges, Repossession of the Vehicle, Early Termination Fees and Legal Cost, all of which constitute a charge due and payable by the Customer on demand by KINTO.

This Clause 5 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability or harm you or others may suffer.

6. Maximum and Excess Kilometers and Related Fees

- 6.1. The factory-installed Odometer on a Vehicle shall be used to determine the number of kilometers travelled by that Vehicle. Should the Odometer be unavailable or fail to function, and KINTO is required to calculate the Excess Kilometer Fee, the kilometers travelled during any period of failure shall be estimated by KINTO in its reasonable discretion. The Customer shall promptly notify KINTO in the event that the Odometer has ceased to function.
- 6.2. Should a Vehicle have exceeded the agreed Contract Usage during the term of a Contract or on termination for whatever reason, the Customer shall pay KINTO the Excess Kilometer Fee.
- 6.3. During the term of a Contract KINTO will have the right to adjust, re-assess and levy payments due in respect of Monthly Rental and/or Excess Kilometer Fees where the kilometers travelled, as determined in accordance with Clause 6.1, exceed the pro rata monthly Contract distance allowed as set out in the applicable Schedule by more than 10% (ten per cent). Alternatively, KINTO will be entitled to levy interim Excess Kilometer fees in such an event.
- 6.4. If at any time during the period of this Agreement, the Odometer reading of a Vehicle exceeds the total Contract distance as specified in the Schedule, the Customer shall notify KINTO in writing and KINTO shall be entitled to claim return of that Vehicle, in which event the Customer shall be deemed to have elected to terminate the Agreement in respect of that Vehicle in terms of Clause 13 and the provisions of Clauses 6.1 and 6.2 will become applicable to determine the amount owed by the Customer to KINTO in respect of that Vehicle.

This Clause 6 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability, or harm you or others may suffer.

7. Registration, License Fees and Fines

- 7.1. KINTO shall be responsible for the initial registration of the Vehicles and keep custody of the registration document of the Vehicles and shall be the Titleholder of the Vehicles.
- 7.2. Except for the original license disc referred to in Clause 7.1 above, the Customer shall be responsible for the cost of and obtaining subsequent annual license renewals, and all other fees, fines and costs relating to the use of the Vehicles, and shall be obliged to affix subsequently issued license discs to the windscreen of the Vehicles.
- 7.3. The Customer acknowledges that it shall not be necessary for KINTO to prove that the Customer or his representative was driving a Vehicle at the time of any incident and that the fact that the relevant Vehicle was under the control of the Customer will be sufficient proof of the liability of the Customer in this respect.

This Clause 7 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability, or harm you or others may suffer.

8. Service and Repairs

- 8.1. Subject to the Customer delivering the Vehicles for Service, KINTO shall pay for:
 - 8.1.1. all maintenance and service tasks in respect of the Vehicle as recommended in the Vehicle's service booklet, including the supply of engine oil, transmission oil and service products at the times specified in the service booklet.
 - 8.1.2. all repairs required because of Fair Wear and Tear; and
 - 8.1.3. for the replacement of tyres limited to the number selected and contained in the Schedule.
- 8.2. Notwithstanding Clause 8.1, KINTO shall **not be liable** for any other costs incurred in maintenance and operation of the Vehicles, all of which shall be for the account of the Customer and include but are not limited to the following:
 - 8.2.1. damage caused as result of an accident, neglect, abuse, improper handling or *force majeure*;
 - 8.2.2. the use in the Vehicles of oils, parts and other service products not approved by its Authorised Supplier;
 - 8.2.3. the failure to have the Vehicles maintained timeously as per the Authorised Supplier's specifications;
 - 8.2.4. persons other than Authorised Suppliers having performed work on the Vehicles;
 - 8.2.5. repair of damaged glass, including windscreens, lenses, sealed beams, and mirrors;
 - 8.2.6. repair to or maintenance of any item which was not fitted to the Vehicles by the Authorised Supplier or unless specified in the Schedule;
 - 8.2.7. cost of rust prevention, rust inspection, paint and trim preservation, body cleaning or treatment or engine cleaning, of minor damage to the paint, body, trim and related items not covered by the Manufacturer's warranty or attended to in the normal course of recommended periodical maintenance and services;
 - 8.2.8. costs of and incidental to any Services which are occasioned or partly occasioned by failure of the Customer to perform any obligation in terms of or referred to in the Agreement;
 - 8.2.9. any alteration to the Vehicles;
 - 8.2.10. recovery, towing, travelling and related costs;
 - 8.2.11. all fuel consumed by the Vehicles;
 - 8.2.12. any maintenance, service or repair costs incurred after expiry or termination of the Agreement;
 - 8.2.13. all topping-up of lubricants between services;
 - 8.2.14. the replacement of any part or item missing from the Vehicles;
 - 8.2.15. carrying out of any modifications required by law; and
 - 8.2.16. any other maintenance and repair which is carried out without KINTO written authorisation.
- 8.3. If repairs and replacements are required to be effected to the Vehicles due to the misuse or abuse by the Customer of the Vehicles, the Customer shall be liable for the full costs of such repairs and replacements which shall be paid directly to the relevant Authorised Supplier. Should the Customer dispute any claim of misuse or abuse, KINTO shall appoint a technical advisor to determine whether the Vehicle has been misused or abused resulting in repairs being required. This determination shall be final and binding on the Parties.
- 8.4. KINTO shall not be liable for maintenance and repair costs incurred outside the RSA.

This Clause 8 (and the documentation incorporated by reference into this clause) is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability, or harm you or others may suffer.

9. The Customer Obligations regarding the Use of the Vehicle

- 9.1.1. The Customer shall ensure that each Vehicle is maintained in good repair and condition by an Authorised Supplier.
- 9.1.2. In compliance with road traffic regulations, the Customer shall fit the Vehicles with new tyres of the same make and specification as tyres originally supplied which KINTO shall pay for subject to the inclusion of such tyres in the schedule. The Customer shall be responsible for the cost of all replacement tyres in excess of the number of tyres included in the Schedule and shall return the Vehicles on termination with the tyres in a roadworthy condition.
- 9.1.3. The Customer shall not make or permit any servicing, repairs, or adjustments to the Vehicles other than in terms of Clause 9.1.1 except that the Customer shall at its cost:
 - 9.1.3.1. be responsible for the periodic checking of oils, battery, brake and clutch fluids, water, tyre condition and pressures and all other items which require periodic driver checking for the proper functioning of the Vehicles.
 - 9.1.3.2. provide all fuel and oil topping up required for the proper operation of the Vehicles and shall only use such fuel and oils as specified by the Manufacturer of the Vehicles.

10. General

- The Customer shall –
 - 10.1. only use the Vehicle in the ordinary course of the Customer's business;
 - 10.2. not use the Vehicle to carry fare-paying passengers, for hiring or driving instruction;
 - 10.3. not acquire any right, title, or interest in or to any Vehicle, except as is provided in this Agreement. KINTO shall always remain the Title Holder of the Vehicles and the Customer shall not prejudice KINTO ownership in any way;
 - 10.4. not dispose, sell, lease, lend, pledge or otherwise alienate or encumber any Vehicle;
 - 10.5. operate a Vehicle within the agreed Contract Usage parameters and advise KINTO in writing of any deviation thereto which is not expected to be rectified prior to the Expiry Date;

- 10.6. not permit a Vehicle to be used for any hazardous purpose or in breach of any law or regulation or the requirements of any local government or local authority;
- 10.7. promptly settle all fines arising from the use of the Vehicles in compliance with traffic regulations prior to the termination of a Vehicle's Contract;
- 10.8. not permit the removal of the Vehicles outside the RSA without obtaining the prior written consent of KINTO by way of a "Border Letter" and effecting comprehensive and third-party insurance cover or similar insurance in respect of the Vehicles as required by the country in which the Vehicle is to be taken and indemnifies KINTO and KINTO Protect against any claim arising of whatever nature;
- 10.9. only permit the Vehicles to be operated by a properly qualified driver having the required valid license and/or a valid professional driving permit as applicable, it being agreed that any driver of the Vehicle shall be deemed to be an agent of the Customer;
- 10.10. permit KINTO or its representative to inspect the Vehicles as KINTO may reasonably request from time to time;
- 10.11. permit KINTO to take all actions deemed by KINTO in its sole discretion necessary in an Event of Default and/or as may be necessary to secure or immobilise the Vehicle;
- 10.12. be responsible for the cost of removing signwriting or restoring the Vehicles to its original specifications, Fair Wear and Tear excepted;
- 10.13. not fit any Accessories or make any further modifications without KINTO's prior written consent; and the Breach of any of Clauses 10.1 to 10.13 by the Customer shall constitute an Event of Default.

This Clause 10 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability, or harm you or others may suffer. This Clause 10 also requires you to indemnify us (i.e. hold us harmless) against claims, loss, damages, and harm that may be suffered by us and other persons or entities as a result of the events set out in clauses 10.8 and 10.11. This means that you would be liable to make payment of these claimed amounts on our behalf.

- 11. **Liability of Customer for costs, loss, damages to, or Total Loss of Vehicle**
 - 11.1. All risk in respect of the Vehicle shall pass to the Customer on Delivery until its physical return to KINTO as provided for in terms of this Agreement. The Customer hereby indemnifies KINTO against any loss, costs, damages or expense that KINTO may sustain or incur as a consequence of costs, loss, damages to or Total Loss of the Vehicles (or any of them) howsoever sustained.
 - Prevention of Loss
 - 11.2. The Customer shall take all reasonable steps and precautions to prevent accidents, damages and/ or losses to the Vehicle including, but not limited to ensuring i) compliance with and adherence to laws and regulations applicable to the Customer and the use of the Vehicle pursuant to the terms of this Agreement; and ii) compliance with the KINTO Protect Terms and Conditions and the terms and conditions of this Agreement. Non-compliance may lead to the rejection and/or forfeiture of benefits in terms of KINTO Protect and/or Liability for the Customer, in which event the full Liability Charge becomes payable by the Customer to KINTO on demand in the event of accidents and losses in respect of the Vehicle.
 - Rejection and/or forfeiture of benefits under KINTO Protect
 - 11.3. KINTO Protect will not apply where loss, cost, damage or Total Loss of a Vehicle has been deliberately or recklessly caused by the Customer or any member of the Customer's staff, employees, household or family, or anybody who acts on the Customer's behalf, and/or in contravention with the provisions and regulations of the National Road Traffic Act, (Act 93 of 1996) ("**NRTA**") as amended and Road Traffic Ordinances of the Republic of South Africa, including but not limited to the following Sections of the NRTA:
 - 11.3.1. Section 59 regarding compliance with speed limits,
 - 11.3.2. Section 63:
 - (1) No person shall drive a vehicle on a public road recklessly or negligently.
 - (2) Without restricting the ordinary meaning of the word "recklessly" any person who drives a vehicle in willful or wanton disregard for the safety of persons or property shall be deemed to drive that vehicle recklessly.
 - 11.3.3. Section 65 which prohibits driving under the influence of intoxicating liquor or drug having narcotic effect, or with excessive amount of alcohol in blood or breath;
 and the benefits of KINTO Protect will in such instances be rejected and/or forfeited in respect of all costs, losses, damages or Total Loss to the Vehicle incurred under such circumstances, and the Customer will be liable to KINTO for the Liability Charge upon demand.
 - 11.4. In the event that the benefits under KINTO Protect are rejected and/or forfeited, the following shall apply:
 - 11.4.1. if the Vehicle is not a Total Loss, then the Customer shall be liable for all costs for the repair of the Vehicle by a Toyota or Lexus dealer as applicable or by an Authorised Supplier;

- 11.4.2. if the Vehicle is a Total Loss, KINTO shall terminate the Vehicle contract, calculate the Liability Charge and the Customer shall be fully liable for payment of the Liability Charge upon demand upon presentation of invoice.

Customer Election

- 11.5. The Customer has elected whether or not to receive the benefits of KINTO Protect in terms of the Master Rental Agreement.
- 11.6. In the event of any costs, loss, damage, or Total Loss of a Vehicle in an accident or otherwise, the Customer shall:
- 11.6.1. comply with the stipulations contained in Annexure 1, including but not limited to traffic and other law regarding the care of any injured persons; and
- 11.6.2. report such accident or incident to KINTO and the South African Police Service within 10 (ten) days and comply with all instructions regarding the towing and repair of the damaged vehicle.

Benefits of KINTO Protect if elected by Customer

- 11.7. If the Customer **has elected** the benefits of KINTO Protect;
- 11.7.1. the Customer must provide KINTO with support, documents assistance and evidence as may be required in respect of the loss, damage, or destruction events in respect of a Vehicle(s), failure to comply with any such requirements, shall constitute a material breach under this Agreement and KINTO shall be entitled to claim the full amount of the loss from the Customer equal to the Liability Charge, and;
- 11.7.2. continue to pay the Monthly Rental in respect of the Vehicle until such time as KINTO Protect has assessed that the incident or accident falls within the ambit of the KINTO Policy.

Consequences if KINTO Protect declined by Customer

- 11.8. If the Customer **has not elected** the benefits of KINTO Protect:
- 11.8.1. in the event of a Total Loss, the Customer shall continue to pay the Monthly Rentals until such time as full payment for the Settlement Value of the Vehicle is paid to KINTO;
- 11.8.2. in the event that the Vehicle is not a Total Loss, ensure that the Vehicle is repaired in accordance with the requirements of KINTO.
- 11.9. In the event of a dispute regarding "**Uneconomical to repair**", the matter shall be referred to an independent expert. KINTO and the Customer shall together agree on the identity of and appoint a person of appropriate qualifications and experience (the **Relevant Expert**) to determine the dispute.
- 11.10. If KINTO and the Customer fail to agree the identity of the Relevant Expert within 5 Business Days of either Party having notified the other that it wishes to refer the dispute to expert determination, the Relevant Expert must be appointed, at the request of the KINTO by Toyota Insurance Management South Africa Pty Ltd on the basis that the Relevant Expert:
- 11.10.1. shall act as an independent expert and not as an arbitrator;
- 11.10.2. shall be required to provide a written determination of the matter referred to it as soon as reasonably possible and, in any event, within 10 days of the referral having been made to it (or such longer period as KINTO and the Customer may agree);
- 11.10.3. shall determine who shall be liable for its costs; and
- 11.10.4. shall state the grounds for its determination in writing and in reasonable detail.
- 11.11. A determination of the Relevant Expert in respect of the matter in dispute shall, in the absence of fraud or manifest error, be final and binding on the Parties.
- 11.12. Refer to Clause 19 (Customer Paid Accessories) relating to the exclusion of Customer Paid Accessories from KINTO Protect.

This Clause 11 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability, or harm you or others may suffer.

This Clause 11 also requires you to indemnify us (i.e. hold us harmless harmless) against claims, loss, cost, damages, and harm that may be suffered by us and other persons or entities as a result of the events set out in clause 11.1. This means that you would be liable to make payment of these claimed amounts on our behalf.

12. Adjustment of Rental, Contract Period and Maximum Kilometers

- 12.1. The Customer has the right at any time prior to 3 (three) months before the Contract Expiry Date, to approach KINTO for an amendment of the Contract Usage parameters, provided that the terms and conditions of this Agreement and the Schedule shall remain in force and effect until such renegotiated Contract Usage parameters have been concluded in an amended Schedule signed by both Parties pursuant to Clauses 4.8 and 4.9.
- 12.2. KINTO will be entitled to adjust the Monthly Rental stipulated in the Schedule, if at any time during the term of the Agreement if:
- 12.2.1. there is a change in the factors affecting the conditions under which KINTO Protect has been accepted or declined;
- 12.2.2. there is a change in the cost of providing any of the Services to the Customer;

- 12.2.3. there is a change in the statutory rate at which VAT is levied or any increase in or introduction of a levy, tax, duty or impost by statute, ordinance, by-law, regulation or competent authority which becomes payable by KINTO in respect of the Vehicle or in respect of the use or ownership of a Vehicle and if any of the abovementioned factors are included or taken into account in the calculation of the Monthly Rental; or
- 12.2.4. the Monthly Rental is determined based on a variable interest rate and there is a change in such rate; or
- 12.2.5. if KINTO is required to make any modification to a Vehicle and expends an amount in connection with such modification to comply with any statute, ordinance, by-law or regulation.
- 12.3. KINTO will advise the Customer in writing by means of an amended Schedule of any adjustment in terms of Clause 12.2. Any failure by KINTO to vary the Monthly Rental pursuant to Clause 12.2 will not be deemed a waiver of any rights which KINTO may have in terms of this Agreement.

This Clause 12 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause.

13. Termination

13.1. Early Termination, which includes Voluntary Surrender and Repossession

- 13.1.1. The Customer may at any time prior to the Expiry Date, remove a Vehicle from the operation of the Agreement, cancel the Schedule and Voluntarily Surrender the Vehicle on written notice to KINTO, to a site or premises designated by KINTO in writing, and the date on which the Vehicle, its spare keys, spare wheel, tools and Accessories is delivered by the Customer to the designated site shall be the Early Termination Date.
- 13.1.2. If the Customer breaches the Agreement or a Schedule during the term thereof, KINTO shall be entitled to Repossess the Vehicle, to which the Customer hereby irrevocably consents, and which shall be deemed to be an Early Termination.
- 13.1.3. If during the course of a Repossession of a Vehicle in terms of the Agreement the Customer Voluntarily Surrenders the Vehicle or its keys to an authorised representative of KINTO, such will be regarded as a Voluntary Surrender and not an involuntary Repossession.
- 13.1.4. In the event of a Voluntary Surrender or Repossession of the Vehicle, KINTO shall be entitled in its sole discretion to sell or otherwise deal with the Vehicle within 7 days of such Voluntary Surrender or Repossession unless a written settlement agreement is concluded with the Customer.
- 13.1.5. In the event of an Early Termination in respect of a Vehicle the Customer will be liable to KINTO for payment of the Early Termination Fee in respect of that Vehicle, together with all other amounts due and payable to KINTO.

13.2. Termination on Contract Expiry Date or Early Termination

- 13.2.1. Upon the expiry of this Agreement in respect of a Vehicle or on the Contract Expiry Date or by the Early Termination procedure as provided for in Clause 13.1 the Customer must return the relevant Vehicle as contemplated in Clause 13.3 (**Condition of a Vehicle on Return**), failing which KINTO will collect that Vehicle from the Customer and charge a distance based collection fee, in line with prevailing industry rates, to do so.
- 13.2.2. In the event of the Customer not returning the relevant Vehicle on the Contract Expiry Date or by early termination as provided for this Clause 13.1:
 - 13.2.2.1. the Customer shall remain liable to make Monthly Rental payments to KINTO for the period from the Expiry Date or Early Termination Date until the return of the relevant Vehicle as stipulated in the applicable Schedule.
 - 13.2.2.2. KINTO has the right to demand the immediate return of the relevant Vehicle by the Customer.
 - 13.2.2.3. KINTO has the right to assess the relevant Vehicle in accordance with Clause 6.3.

13.3. Condition of a Vehicle on Return

- 13.4. The Customer agrees that any and all repairs required to a Vehicle will be carried out by an Authorised Supplier prior to the return of the relevant Vehicle. If repair work must be done after return of the relevant Vehicle, Customer shall be liable for an extension of the Agreement to cover the period of repair during which the Customer shall continue to pay the Monthly Rental.
- 13.5. Upon termination of a Vehicle in accordance with this Agreement, the Customer must deliver the relevant Vehicle to the original supplying Toyota or Lexus dealer, or the most convenient Toyota or Lexus dealer, in good condition and repair, Fair Wear and Tear excepted, together with spare keys, service booklet, and any other documents appertaining to the relevant Vehicle, tools, spare wheel and tyre, mats and Accessories, which must be of the same type or quality as fitted to the relevant Vehicle at the commencement of/or during that Vehicle's Contract. The Customer is responsible for and shall be obliged to pay the cost of placing the relevant Vehicle in the required condition, Fair Wear and Tear excepted. The Customer acknowledges that it shall be liable to reimburse KINTO for the excessive wear and tear costs which includes:
 - 13.5.1. replacing missing keys, tools, equipment, manuals, batteries, spare wheel and tyres, and any other item supplied with the relevant Vehicle at the Schedule Commencement Date; and
 - 13.5.2. repairing any item excluded from fair wear and tear conditions listed in Clause 13.4; and
 - 13.5.3. replacing any missing items; and
 - 13.5.4. rectifying any defective repairs made to the relevant Vehicle in repairing accident damage; and
 - 13.5.5. performing professional valet cleaning of the relevant Vehicle; and
 - 13.5.6. removing any decals, transfers, marks or paint placed on the relevant Vehicle.

- 13.6. Examples of fair, and unacceptable and/or excessive, wear and tear are set out in Annexure 2 (Fair Wear and Tear).
- 13.7. KINTO shall be under no obligation to carry out the repair work to rectify unacceptable repairs carried out by the Customer, damages, abuse and/or excessive wear and tear.
- 13.8. KINTO or its authorised representative shall inspect a Vehicle on its return to KINTO and prepare a termination report in respect of the Vehicle, reflecting the condition of a Vehicle and items to be replaced or repaired at the Customer's cost, which report shall be final and binding on the Customer.

This Clause 13 (and the documentation incorporated by reference into this clause) is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, cost, damages, liability, or harm you or others may suffer.

14. Claims and Liability

The Customer shall have no claim against KINTO of any nature whatsoever under this Agreement arising out of or in any way directly or indirectly connected with the condition of a Vehicle, failure or delay in delivering a Vehicle, the Customer's deprivation of the use of a Vehicle or for any consequential, indirect and/or special damages, including but not limited to, any loss of profit or any inconvenience suffered by the Customer which directly or indirectly arises out of this Agreement.

This Clause 14 is important because it limits and excludes obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, cost, damages, liability, or harm you or others may suffer.

15. Breach, Default and Cancellation

- 15.1. Should any Party—
 - 15.1.1. fail to observe and perform any of the terms, conditions and/or obligations contained in this Agreement; or
 - 15.1.2. fail to pay amounts due to KINTO in terms of this Agreement on or before the agreed due date; or
 - 15.1.3. fail to notify KINTO of a change to its physical or postal address, bank account, e-mail address, telephone numbers or other contact information within 7 days of such change; or
 - 15.1.4. fail to notify KINTO of any change in circumstances, Material Adverse Effect or change in circumstances or change in Vehicle usage; or
 - 15.1.5. tamper with or remove the Odometer or SVR from the Vehicle;
 - 15.1.6. commit any act of insolvency, or being a natural person, assign, surrender, or attempt to assign or surrender his estate, or being a partnership, be dissolved; or
 - 15.1.7. suffer any default judgment against him which remains unsatisfied for 7 (seven) days or be refused rescission of any default judgment; or
 - 15.1.8. be liquidated or placed under business rescue or be wound-up, whether provisionally or finally; or
 - 15.1.9. compromise with its creditors or endeavor or attempt to do so; or
 - 15.1.10. fail to remedy such breach within 14 (fourteen) days of receipt of written notice of remedy same; then the aggrieved party shall be entitled, in its sole and absolute election and without prejudice to any rights it may have in law to either:
 - 15.1.11. immediately terminate the Agreement with written notice to the defaulting party; or
 - 15.1.12. enforce specific performance by the defaulting party of its obligations in terms of the Agreement.
- 15.2. In the event that either party is given written notice in terms of clause 15.1 to remedy any breach, and the defaulting party subsequently remedies the same, then upon the occurrence of a further breach in terms of clause 15.1, whether it is the same breach or not, the non-defaulting party shall be entitled to cancel the Agreement without having to provide the defaulting party with any further written notice in accordance with clause 15.1.
- 15.3. Should the Customer abandon the Vehicle, default in the punctual payment of any Monthly Rental or other amount due in terms of this Agreement that is not the subject of a bona fide dispute, allow the Vehicle to be seized under any legal process issued against the Customer, have made any misrepresentation in connection with this Agreement or its financial affairs, do or suffers to be done anything which might prejudice the rights of KINTO under this Agreement or not comply with any applicable laws, statutes, regulations and /or codes relating to anti-bribery and corruption, then KINTO shall be entitled, in its sole and absolute discretion, and without prejudice to any rights it may have at law, including the right to claim damages, to terminate this Agreement including any and all underlying Contracts, and KINTO shall be entitled to claim payment of all Monthly Rentals and other amounts then due in respect of the Vehicle, including the applicable Early Termination Fee, and in addition, KINTO shall be entitled to claim, all of which shall be deemed to be due and payable forthwith. In addition, the Customer shall be required to return the Vehicle in accordance with this Agreement, failing which KINTO shall be entitled to Repossess the Vehicle, the costs of which shall be for the Customer's account.

- 15.4. In the event of termination of this Agreement by either KINTO or the Customer in terms of clauses 15.1, 15.2 and 15.3 above, the Customer shall be obliged, at his own risk and expense, to immediately return the Vehicle to KINTO or appointed Authorised Supplier, and the Customer shall be liable for all amounts then due in accordance with the Agreement as at date of termination of the Agreement.
- 15.5. In addition to the legal remedies to the disposal of KINTO in terms of clause 15.3, and in the event that the Vehicle could not be recovered and was not returned to KINTO, then KINTO will be entitled to claim as damages, the Settlement Value of the Vehicle on date of cancellation of the Agreement.

This Clause 15 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause.

16. Confidentiality

- 16.1. All information made available to or obtained by one Party from the other Party in connection with or as a result of the implementation of this Agreement or any documents pursuant hereto which is not a matter of public knowledge or lawfully available from any other source and the Intellectual Property of a Party shall be and remain confidential between the Parties during the currency of this Agreement and shall not, without the prior written consent of the disclosing Party, be disclosed to any third person, other than any Government Minister, Governmental body or Department or Statutory Body who shall have lawfully requested it, any Court of competent jurisdiction which shall have directed it, any bank or other recognised financial institution making a loan or giving financial accommodation to the disclosing Party for the financing of work to be undertaken in terms of this Agreement.
- 16.2. The receiving Party shall take or cause to be taken such reasonable precautions as may be necessary to prevent the disclosure of any information and data made available or obtained from the disclosing Party which is not a matter of public knowledge or lawfully available from any other source and to obtain similar confidentiality undertakings in writing from its employees, contractors, sub-contractors, agents, and members.

This Clause 16 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts.

17. Data Protection and Consents

- 17.1. The Customer acknowledges that KINTO cannot perform its obligations under this Agreement without Processing certain Personal Information, including the Personal Information provided by the Customer to KINTO (the "**Customer Data**").
- 17.2. Accordingly, the Customer hereby expressly consents to share the Customer Data with KINTO, and further consents to the Processing of the Customer Data by KINTO, in accordance with this Agreement.
- 17.2.1. The Customer by its signature of the Agreement, expressly consents and authorises KINTO, to collect and Process the Customer Data to perform the activities (and KINTO's obligations) under this Agreement, as well as the activities contemplated in the KINTO Privacy Policy). Without limiting or derogating from the generality of the preceding sentence, the Customer consents to:
- 17.2.1.1. the fitment of an SVR to any Vehicle and the tracking, monitoring and data analysis of Personal Information conducted by KINTO as contemplated in this Agreement; and
 - 17.2.1.2. the release of tracking, monitoring and data analysis of Personal Information recorded by any tracking organisation in respect of any Vehicle which is the subject of this Agreement in an Event of Default;
 - 17.2.1.3. the activation of location, connectivity, gyroscope, accelerometer and battery level settings, tracking, geolocation and determination of driver behaviour, which data will be received by KINTO which will not use, collect or store such personal information other than that which is needed to track driving behaviour and to share the location of a Vehicle in the event of theft or Default with KINTO appointed recovery agents in order to recover that Vehicle.
- 17.3. The Parties record that KINTO will Process the Customer Data in accordance with the provisions of this Agreement. When Processing the Customer Data, KINTO will take all reasonable and appropriate technical and organisational precautions and measures necessary to prevent any (i) loss of, damage to, or unauthorised destruction of the Customer Data; or (ii) unauthorised or unlawful access to or Processing of the Customer Data. For this purpose, KINTO will:
- 17.3.1. identify all reasonably foreseeable internal and external risks to Customer Data in its possession or under its control;
 - 17.3.2. establish and maintain appropriate safeguards against the risks identified;
 - 17.3.3. regularly verify that the safeguards are effectively implemented; and
 - 17.3.4. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 17.4. The Customer hereby warrants, represents and undertakes that in respect of all Customer Data, all the consents necessary to ensure compliance by the Customer and KINTO with applicable laws, including Data Protection Legislation, have been obtained from the person or entity to whom such Personal Information relates, as well as any regulators or other third parties, in relation to:
- 17.4.1. the transmission by the Customer to KINTO in accordance with this Agreement or otherwise permitted by law;
 - 17.4.2. the transmission by the Customer or KINTO of the Customer Data to the third parties in accordance with this Agreement or otherwise permitted by law; and

- 17.4.3. the Processing by KINTO of any Customer Data received by KINTO from the Customer, in any country in which the Customer Data is held by KINTO.
- 17.5. The Customer hereby indemnifies and holds KINTO harmless from and against all losses, damages, costs, expenses, penalties and fines that KINTO may sustain or incur arising from a breach by the Customer of this clause 17.

This Clause 17 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. This clause also contains statements which are acknowledgements of fact by you. You will not be able to deny that the statements are true. We may take action against you and may have claims against you as a result of these statements.

This Clause 17 is also important because it limits and excludes obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, cost, damages, liability, or harm you or others may suffer.

This Clause 17 also requires you to indemnify us (i.e. hold us harmless) against claims, loss, cost, damages, and harm that may be suffered by us and other persons or entities as a result of the events set out in clause 17.5. This means that you would be liable to make payment of these claimed amounts on our behalf.

18. Warranties

The parties warrant that:

- 18.1. they have full capacity and all necessary rights, consents, permissions and licenses to enter into this Agreement, and;
- 18.2. in proceeding with the execution of their obligations under and in terms of this Agreement they will comply with all statutory requirements imposed on them in terms of the appropriate legislation of the RSA.

This Clause 18 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. This clause also contains statements which are acknowledgements of fact by you. You will not be able to deny that the statements are true. We may take action against you and may have claims against you as a result of these statements.

19. CUSTOMER PAID ACCESSORIES

- 19.1. It is agreed that the Customer may fit non-standard accessories ("Customer Accessories") at its own cost and risk.
- 19.2. Such Customer Accessories will not be recorded on the KINTO fleet management system and will not appear on any associated KINTO documentation.
- 19.3. Such Customer Accessories are excluded from the benefits of KINTO Protect.
- 19.4. Subject to Clause 12.3 (Condition of Vehicle on Return) and Annexure 2 (Fair Wear and Tear), the Customer is entitled to remove all such Customer Accessories fitted at its own cost and risk provided that the Customer shall be liable for make good costs in the event that the fitment and/or removal thereof have damaged the Vehicle beyond a Fair Wear and Tear condition.

This Clause 19 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, costs, damages, liability, or harm you or others may suffer.

20. Consumer Protection Act, Electronic Communications and Transactions Act and other laws

- 20.1. If this Agreement (or any Contract governed by this Agreement) is regulated by or subject to the Consumer Protection Act 2008, the Electronic Communications and Transactions Act 2002 or any other laws which cannot lawfully be limited or excluded (collectively the "**Consumer Laws**"), it is not intended that any provision of this Agreement contravene any provision of the Consumer Laws. Therefore, all provisions of this Agreement must be treated as being qualified, to the extent necessary, to ensure that the provisions of the Consumer Laws are complied with.
- 20.2. No provision of this Agreement (or any Contract governed by this Agreement):
- 20.2.1. does or purports to limit or exempt KINTO from any liability (including, without limitation, for any loss directly or indirectly attributable to KINTO's gross negligence or willful default or that of any person acting for or controlled by KINTO) to the extent that the law does not allow such a limitation of exemption;
- 20.2.2. requires the Customer to assume risk or liability for any particular liability or loss to the extent that the law does not allow such an assumption of risk or liability; and/or
- 20.2.3. limits or excludes any warranties or obligations which are implied into this Agreement (or any contract governed by this Agreement) by the Consumer Laws (to the extent applicable) or which KINTO give under the Consumer Laws (to the extent applicable), to the extent that the law does not allow them to be limited or excluded.

21. Indemnities

- 21.1. The Customer hereby indemnifies KINTO (including any of its Affiliates, employees, directors, officers, partners and agents) against any cost, loss or liability incurred by KINTO in connection with or as a result of:
- 21.1.1. the occurrence of any Event of Default;
 - 21.1.2. a failure by the Customer or any Surety Entity to pay any amount due under this Agreement on its due date;
 - 21.1.3. investigating or taking any other action in connection with any event which it reasonably believes is a Default;
 - 21.1.4. the taking, holding, protecting or enforcing of the Agreement documents;
 - 21.1.5. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - 21.1.6. the taking, holding, protecting or enforcing of the Cession in Security Agreement and any other Security Interest given in favour of KINTO;
 - 21.1.7. instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement;
 - 21.1.8. any investigative, administrative or judicial proceedings or hearing commenced or threatened by any person, arising out of or in connection with the Agreement or the transactions contemplated thereby.
- 21.2. The Customer indemnifies KINTO, each Affiliate of KINTO and each officer or employee of KINTO or its Affiliates, against, and must pay to it on demand the amount of any cost, loss or liability incurred by KINTO (or officer or employee of KINTO or Affiliate) in connection with or arising out of the rental of any Vehicles (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the rental of a Vehicle), unless that loss or liability is caused by the gross negligence or wilful misconduct of KINTO or its Affiliate (or employee or officer of KINTO or Affiliate). Any Affiliate or any officer or employee of KINTO or its Affiliate may rely on this Clause 21.2.
- 21.3. The Customer shall, within 3 (three) Business Days of demand, pay to KINTO the amount of all costs and expenses (including legal fees on the scale as between attorney and own client whether incurred before or after judgement) incurred by KINTO in connection with the enforcement of, or the preservation of any rights under the Agreement, any Agreement documents and/or any proceedings instituted by or against KINTO as a consequence of taking or holding the Cession in Security Agreement or enforcing these rights.

22. Representations

- 22.1. Each of the Customer and each Surety Entity makes the following representations and warranties set out in this Clause 22 to KINTO on each of the dates set out in this Clause 22 provided that in the case of any Surety Entity (other than the Customer), it makes such representation only in relation to itself;
- 22.1.1. in respect of a Business Entity Customer, which is a limited liability company, close corporation or other juristic person duly incorporated and validly existing under the laws of its jurisdiction of incorporation; or a Trust duly established and validly existing under the laws of South Africa, or a natural person;
 - 22.1.2. it has the power to own its assets and carry on its business as it is being conducted;
 - 22.1.3. the obligations expressed to be assumed by it in this Agreement, each of the Agreement documents which it is a party to and each Schedule to which it is a party are legal, valid binding and enforceable obligations;
 - 22.1.4. the entry into and performance by it of, and the transactions contemplated by, the Agreement documents do not and will not conflict with:
 - 22.1.4.1. any law or regulation applicable to it;
 - 22.1.4.2. its constitutional documents; or
 - 22.1.4.3. any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under that agreement or instrument;
 - 22.1.5. it has the legal capacity and power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Agreement documents and each Schedule and the transactions contemplated by those documents;
 - 22.1.6. no limit on its powers will be exceeded as a result of the giving of suretyships, guarantees or indemnities contemplated in the Agreement;
 - 22.1.7. any factual information provided by the Customer or Surety to KINTO was true, complete and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given and is not misleading in any respect;
 - 22.1.8. no information has been given or withheld by the Customer which, if disclosed, might result in the information or projections referred to above being untrue or misleading in any material respect;
 - 22.1.9. the Customer has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintains policies and procedures designed to promote and achieve compliance with those laws;
 - 22.1.10. the Customer:
 - 22.1.10.1. is a Sanctioned Entity or has been or is targeted under any Sanctions; or
 - 22.1.10.2. has violated or is violating any applicable Sanctions.
 - 22.1.11. its annual audited financial statements and its management accounts most recently supplied and to be supplied to KINTO fairly represent its financial condition and operations in all material respects as at the end of and for the relevant financial year or accounting period save to the extent expressly disclosed in such financial statements;
 - 22.1.12. no Material Adverse Effect exists or has occurred and is continuing.
- 22.2. The representations in this Clause 22 are deemed to be made by the Customer and each Surety Entity on the Signature Date, the Effective Date and each date that the Aggregate Rental Amount is paid.

23. Information undertakings – All Customers

The undertakings in this Clause 24 remain in force from the Signature Date for so long as any amount is outstanding under the Agreement, or any Commitment is in force. The Customer shall:

- 23.1. shall ensure that no right, title or interest is disposed of, hypothecated or given as Security in any form to any person and upon the termination of each vehicle's contract, must be returned to KINTO in condition of Fair Wear and Tear. **Breach of this stipulation shall constitute an Event of Default;**
- 23.2. comply with any know your customer or similar identification procedures (whether in terms of the Financial Intelligence Centre Act, 2001 or otherwise);
- 23.3. not create or permit to subsist any Security Interest over any of the Vehicles which are rented by the Customer under this Agreement and any related Accessories;
- 23.4. conduct its businesses in compliance with all applicable anti-corruption laws; and maintain and implement policies and procedures designed to promote and achieve compliance with such laws;
- 23.5. ensure that all Vehicles rented from KINTO in term of this Agreement do not to leave the Territory, being the Republic of South Africa, without a "Border Letter" issued by KINTO detailing the country or countries to be visited and the applicable dates of such visits. No border letter will be issued to a Customer without a three-month perfect record of payment. **Breach of this stipulation shall constitute an Event of Default.**

24. Information undertakings – Business Entities Only

The undertakings in this Clause 24 remain in force from the Signature Date for so long as any amount is outstanding under the Agreement, or any Commitment is in force. The Customer shall supply to KINTO:

- 24.1. all documents dispatched by the Customer to its creditors generally (or any class of them) notifying such creditor or any financial distress, inability of the Customer to pay debts as they fall due or any adverse event which would have an adverse effect on a group of creditors) at the same time as they are dispatched;
- 24.2. promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against the Customer, and which has, or is reasonably likely to have, a Material Adverse Effect;
- 24.3. promptly, such further information regarding the financial condition, assets, business and operations of the Group and/or any member of the Group as KINTO may reasonably request;
- 24.4. promptly, notice of any change in authorised signatories of the Customer or any Surety Entity (to the extent applicable) accompanied by specimen signatures of any new authorised signatories; and
- 24.5. promptly upon request, such additional information or documentation as KINTO may require in order to verify that any signatory referred to in Clause 24.4 has been duly authorised.
- 24.6. promptly, the Customer and each Surety Entity will promptly notify KINTO of a Change in Control.

25. Business Days

- 25.1. Any payment under the Agreement documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 25.2. During any extension of the due date for payment of any amount under this Agreement, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

26. Notices

26.1. Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by e-mail or courier. Delivery by mail is not permitted.

26.2. Addresses

The address and e-mail (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

26.2.1. in the case of the Customer:

Address : _____

for the attention of : _____

E-mail : _____

26.2.2. in the case of KINTO:

Address : Stand 1, Wesco Park

Old Pretoria Road
Sandton
2146

for the attention of : Chief Executive Officer
E-mail : operations@kinto-mobility.co.za ,

or any substitute address or e-mail or department or officer as the Party may notify in writing to the other Party on not less than 5 Business Days' notice.

27. Domicilia

- 27.1. Each Party chooses its physical address provided under or pursuant to Clause 26.2 above (Addresses) as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be served.
- 27.2. Any Party may by written notice to the other Parties change its domicilium from time to time to another address, not being a post office box or a poste restante, in South Africa, provided that any such change shall only be effective on the fourteenth day after deemed receipt of the notice by the other Parties under Clause 28 (Delivery).

28. Delivery

- 28.1. Any communication, notice or document (for purposes of this clause a communication) made or delivered by one person to another under or in connection with this Agreement will only be effective when received by the recipient and, unless the contrary is proved, shall be deemed to be received:
- 28.1.1. if delivered by hand, at the time of delivery; and
- 28.1.2. if by way of courier service, on the seventh Business Day following the date of such sending,
- 28.1.3. and if a particular department or officer is specified as part of its address details provided under Clause 26.2 above (Addresses), if addressed to that department or officer.
- 28.2. Any communication to be made or delivered to KINTO will be effective only when actually received by that Party and then only if it is expressly marked for the attention of the department or officer specified in Clause 26.2 (Addresses) (or any substitute department or officer as the Cessionary shall specify for this purpose) or sent to the nominated e-mail address specified in 26.2 (Addresses) or any substitute e-mail address specified by the Cessionary for this purpose.
- 28.3. Any communication which becomes effective, in accordance with this Clause 28, after 17h00 in the place of receipt shall be deemed only to become effective on the following day.

29. Electronic communication

- 29.1. Any communication to be made between the Parties under or in connection with this Agreement may be made by electronic mail or other electronic means.
- 29.2. Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 28.1.

30. General

- 30.1. The Customer shall not be entitled to cede any of its rights and/or delegate any of its obligations under this Agreement without KINTO's prior written consent, which consent shall not be unreasonably withheld. KINTO may in its sole discretion cede, transfer, delegate or otherwise deal with its rights and/or obligations under this Agreement without the Customer's consent.
- 30.2. The Customer agrees that KINTO may in its sole discretion institute any proceedings, which may arise directly or indirectly out of or in connection with this Agreement in any competent Court having jurisdiction over the Customer, notwithstanding that the value of the claim, which is the subject of such proceedings, may exceed the jurisdiction of such Court.
- 30.3. A certificate signed by a manager or director of KINTO, whose position it shall not be necessary to prove, as to any amount alleged to be owed by the Customer to KINTO or by KINTO to the Customer shall constitute prima facie evidence of the amount owing by the Customer or KINTO as the case may be.
- 30.4. As at the date of the Schedule, the Schedule has been completed in all material respects and the Customer hereby expressly waives any right/defense which it may have arising from the omission of any information from the Schedule or the failure or refusal of the Customer to execute the Schedule. The Customer hereby authorises KINTO to complete the Schedule as soon as the required information becomes available to itself.
- 30.5. KINTO shall allocate any payments received from or on behalf of the Customer to any indebtedness of the Customer to KINTO, whether in terms of this Agreement or from whatsoever other cause arising firstly to settle unpaid interest, secondly to settle unpaid fees or charges and thereafter to reduce the principal debt owing. Should KINTO appropriate as provided herein, the Customer shall forthwith make payment of any shortfall.
- 30.6. This Agreement constitutes the whole agreement between the Parties as to the subject-matter hereof and no agreements, representations, or warranties between the Parties other than those set out herein are binding on the Parties.
- 30.7. No latitude, extension of time or other indulgence which may be given or allowed by a Party to any other Party in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

- 30.8. All costs and disbursements incurred by KINTO in recovering possession of the Vehicle, or in tracing the Customer and/or locating the Vehicle and in disposing of the Vehicle, collecting and endeavouring to collect all or any amounts payable by the Customer to KINTO hereunder, or otherwise, and all collection charges, storage charges, costs of valuation of the Vehicle, costs of sale, and all other fees and charges of a like nature shall be for the account of the Customer and shall be payable to KINTO as and when incurred.
- 30.9. The Customer agrees that it will be responsible for all costs which arise in the event of the accidental activation of the tracking device which is not cancelled immediately with the tracking company, including but not limited to helicopter and ground agent tracking.
- 30.10. KINTO shall be entitled to recover all costs incurred in instructing any independent vehicle tracking and recovery agent to assist in the Repossession, recovery and/or attaching of the Vehicle in terms of this Agreement.
- 30.11. No variation, addition to or consensual cancellation of this Agreement and no waiver of any right under this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties to this Agreement. E mail communication shall not constitute "writing" for the purposes of this clause.
- 30.12. If, at any time, any provision of the Agreement is or becomes illegal, invalid, unenforceable or inoperable in any respect under any law of any jurisdiction, neither the legality, validity, enforceability or operation of the remaining provisions nor the legality, validity, enforceability or operation of that provision under the law of any other jurisdiction will in any way be affected or impaired. The term inoperable in this Clause 30.12 shall include, without limitation, inoperable by way of suspension or cancellation.
- 30.13. The Customer renounces in respect of each Agreement document, to the extent permitted under applicable law, the benefits of each of the legal exceptions of excussion, division, revision of accounts, no value received, *errore calculi, non causa debiti, non numeratae pecuniae* and cession of actions, and declares that it understands the meaning of each that legal exception and the effect of that renunciation.
- 30.14. The Customer acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of the Agreement documents and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Customer acknowledges that all of the provisions of each Agreement document and the restrictions therein contained are part of the overall intention of the Parties in connection with the Agreement documents.
- 30.14.1. Each Agreement document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement document.
- 30.15. Neither Party shall acquire any rights of any nature whatsoever with regards to the Intellectual Property of the other Party in accordance with this Agreement.
- 30.16. The Customer agrees that KINTO is entitled to determine the Settlement Value of the Vehicle as defined.

This Clause 30 is important because you take on risk, legal responsibilities, and liability. As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm, and injury which may be suffered by you and others for what is stated in this clause. In addition, they limit and exclude obligations, liabilities, and legal responsibilities that we and other persons or entities may otherwise have to you. As a result of this clause, your rights and/or remedies against us and these other persons and entities are limited and excluded. This clause also limits and excludes your right to recover or make claims for losses, cost, damages, liability, or harm you or others may suffer.

31. Governing Law

Each Agreement document and any non-contractual obligations arising out of or in connection with an Agreement document is, unless otherwise expressly stated to the contrary in an Agreement document, governed by South African law.

32. Jurisdiction

- 32.1. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Division, Johannesburg) (or any successor to that division) in regard to all matters arising from the Agreement documents (including a dispute relating to the existence, validity or termination of an Agreement document and any non-contractual obligation arising out of or in connection with an Agreement document) (a dispute), unless otherwise expressly stated to the contrary in an Agreement document.
- 32.2. The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with any Agreement document.

33. Contract Reassessment Policy

- 33.1. The Customer may request KINTO to re-assess Vehicle Contracts in the event of a change in the utilisation of a vehicle which results in a likely deviation from the contracted usage parameters and to consent to such change in parameters, which consent KINTO shall not unreasonably withhold.
- 33.2. In the event of poor driver behaviour or condition of Vehicle, KINTO in its sole discretion may re-assess the Contract terms and conditions and apply such reassessment to the Contract without the consent of the Customer.

34. Suretyship

- 34.1. This Agreement is subject to the execution of the Suretyship, which may be required by KINTO in its sole discretion at any time during the term of the Agreement, and to which the Customer irrevocably consents.

ANNEXURE 1

KINTO PROTECT – EXCLUSIONS, REPORTING OF INCIDENTS AND OTHER TERMS (ONLY APPLICABLE IF KINTO PROTECT HAS BEEN VALIDLY ELECTED BY THE CUSTOMER)

In the event of any conflict between the provisions of the KINTO Master Rental Agreement, the KINTO Master Terms and this Annexure 1, the KINTO Master Rental Agreement shall take precedence over the KINTO Master Terms, which in turn shall take precedence over Annexure 1.

KINTO Protect

With the KINTO Protect product feature, your liability in respect of the cost of any loss suffered as a result of accident damage to the Vehicle or Total Loss of the Vehicle is subject to the terms of the KINTO Protect Terms and Conditions, which includes this document.

What is excluded from KINTO Protect

The items listed below are excluded from KINTO Protect :

- Improper use of Vehicle;
- Customer Accessories;
- Loss or damage to property left in the vehicle;
- Contravention of the National Road Traffic Act (Refer to clauses 11.2, 11.3, and 11.4 of the Master Rental Agreement);
- The driver of the vehicle was under the influence of alcohol or a prohibited substance;
- The driver of the vehicle does not have a valid driving licence;
- Unauthorised use of the vehicle by someone using the vehicle without your knowledge and consent and you have not laid a criminal charge against him/her with the police within 48 hours - the criminal charge may not be withdrawn;
- If you, or anyone you allow to drive the vehicle, or anyone acting on your behalf, leaves the vehicle's keys in or on the vehicle;
- If the vehicle is used to carry fare-paying passengers, for hiring or driving instruction;
- If the vehicle is used in any type of race, competition, rally or at a track day;
- If the vehicle exceeds its registered carrying capacity for people or cargo;
- Damages due to consequential loss;
- Anything that will be paid for under the Road Accident Fund;
- The indemnification of other parties on your behalf.

In the event of an accident or incident as a result of any of the aforementioned, the Customer shall not be entitled to the benefits of KINTO Protect and the Customer shall be liable for all cost, loss, damage or Total Loss of the Vehicle equal to the Liability Charge, which shall be payable on demand.

Sharing of information

We respect the confidentiality of your information. However, to ensure sound practices and prevent fraud, we confirm and disclose information relating to claims and financial history where applicable.

You agree that we may monitor, track and analyse vehicle use and driver behaviour via the standard telematics unit installed in the vehicle. The information gathered will be stored and used in accordance with the KINTO Privacy Policy.

KINTO Protect changes and cancellation

KINTO reserves the right to cancel KINTO Protect and/or the relevant Contract or Contracts at any time by giving you 31 Days notice electronically or by post to your last known address if:

- You have had 2 (two) incidents where you are at fault;
- We are notified by the Police or other lawful authority that the Vehicle is being used in any unlawful activity, in which case you become fully liable for all loss, cost, damages and Total Loss of the Vehicle as contained in clause 11 (Liability of Customer for costs, loss, damages to, or Total Loss of Vehicle) equal to the Liability Charge.

Important time limits in connection with Incidents

- Inform us when anything happens to the vehicle which may result in a loss to KINTO within 24 hours;

- Report vehicle theft and/or accident to the South African Police Service and obtain a copy of the Accident Report (AR) Document with the SAPS Case Number:
 - If a person is killed or injured in the accident, it must be reported within 24 hours of the occurrence;
 - If no injuries or fatalities occurred but there was property damage, the accident must be reported on the first working day after the incident.
- Provide us with any information, evidence, documents, and co-operation asked for, within 14 days of our request;
- If the vehicle has been stolen and recovered, assist KINTO in identifying the vehicle within 21 days of being requested to do so.

What you are Liable for in the event of an incident (If applicable)

First amounts payable:

- Basic Liability Amount per Incident: R5,500 (Five thousand five hundred Rand)

Additional:

- Driver under 25 years of age: Liability Amount per Incident: R2,500 (Two thousand five hundred Rand);
- No third party involved (Single Vehicle Accident): Liability Amount per Incident: R2,500 (Two thousand five hundred Rand);
- Second incident within 12 months - excluding windscreen repair incidents: Liability Amount per Incident: R2,500 (Two thousand five hundred Rand);
- Windscreen incidents: R0 (nil).

Note: The Excess Payment amounts stated are per condition above, and are cumulative if more than one condition applies in an incident.

Towing and storage

KINTO has a dedicated towing provider who will assist you in the event of an accident. You will be personally responsible for the cost of the towing and storage of your vehicle if you do not call our towing number and/or do not use our appointed towing operator. Please call KINTO Protect on 010 5101791.

Steps to follow after an incident

When there is an incident that causes any damage to the Vehicle, or third-party property, whether or not the accident or damage is caused by the Vehicle described in the rental agreement you must:

1. Take reasonable precautions to prevent or minimise further loss, damage or theft;
2. Co-operate fully with us and any third party, in relation to any investigation or legal proceedings associated with the accident, theft or damage sustained in connection with the vehicle.

At the scene of the accident

1. Never admit to being at fault.
2. If your vehicle needs to be towed, call us on 010 5101791.
3. Where possible, take photographs of the damage, scenery and other important details.
4. Obtain the following details from the other parties involved and of any witnesses to the accident:
 - Driver's Name & Surname
 - ID number
 - Contact numbers – mobile, work and home
 - Physical address
 - Drivers licence details
 - Vehicle Details - description, registration number, licence disc
 - Insurer details – Insurer name, broker, policy number, contact numbers.

When asking for the above particulars, please mention that you will be giving their personal information to us in accordance with the KINTO Privacy Policy.

After the accident or theft

KINTO MASTER TERMS

1. Call us on 010 5101791 or e-mail claims@vapsure.co.za within 24 hours to report the damage or incident or as soon as reasonably practicable.
2. Report the accident to the South African Police Service within 24 hours and provide us with a copy of the Accident Report document and the police case number.
3. Complete and lodge the appropriate Incident Report in the format provided by KINTO Protect together with all supporting information and documentation, accurately and within 7 days. The appropriate Incident Report can be downloaded from <http://www.toyota.co.za/kinto> or <http://www.lexus.co.za/kinto>.
4. Do not admit any fault, make any offer of/or settlement, without our written agreement;
5. You must obtain our written approval before repairing any damage;
6. Comply with instructions and guidance provided by KINTO or Vap-Sure.

Windscreen replacement or repairs

1. Complete and lodge the appropriate Incident Report in the format provided by KINTO Protect together with all supporting information, documentation and pictures of the chip and/or crack. The appropriate Incident Report can be downloaded from <http://www.toyota.co.za/kinto> or <http://www.lexus.co.za/kinto>.
2. Our service provider will be sent out to repair the damage. If unrepairable, the service provider will notify us and make arrangements for replacement of the windscreen.

Administration of Incidents and Claims

KINTO has appointed Vap-Sure to administer all incident related matters. Their particulars are as follows:

Name: Vap-Sure Underwriting Managers Proprietary Limited

24/7 Call Centre number: 010 5101791

E-mail: claims@vapsure.co.za

Please call the above number for accidents, incidents, thefts, accident related towing, and roadside assistance.

In the event of a complaint, please e-mail complaints@vapsure.co.za

KINTO MASTER TERMS

ANNEXURE 2 FAIR WEAR AND TEAR EXAMPLES

Examples of Acceptable Fair Wear and Tear	Examples of Unacceptable and/or Excessive Wear and
<u>Bumpers and mouldings</u>	
Marks covering an area less than 10cm ² by 0.5mm deep.	Broken bumpers and mouldings.
Dents covering an area less than 20cm ² and not more than 0.5mm deep and 2 per bumper or moulding.	Cracked / split / bent / twisted bumpers.
	Misalignment.
	Gouging.
	Excessive paint chips.
<u>Body Panels, Exterior Trim and Paintwork</u>	
Scratches if not through colour coating – no more than 3 per panel / 9 per car. Excludes through to metal.	Exposed undercoat or metal.
Chips – 6 chips per panel up to 3mm diameter.	Scrapes / deep scratches.
Dents – 2 per panel, 8 per car at 30mm diameter by 2mm deep.	Hail damage.
Minor stone pitting.	Misaligned, buckled, and distorted panels.
	Poor panel / paint repairs.
	Any rust.
	Foreign matter etched into paintwork (e.g., tar, resin, paint).
	Roof and gutter damage caused by the fitting of a roof rack.
	Damaged radiator grille, vehicle logos and model designation badges.
<u>Accessories and equipment</u>	
Removal of any accessory fitted at the customer's expense provided this does not cause damage to the vehicle.	Broken aerial.
	Removal of original Vehicle accessories
	Missing cigarette lighters, badges, knobs, trims, tools, jack, key and spare keys, spare wheel, spare tyre, service books.
<u>Glass, lights, and mirrors</u>	
Light scratching and minor chipping of windscreen or headlights and taillights, etc.	Windshield, side, and rear glass: Any cracks, scratches and deep stone chips which will cause the Vehicle to fail a roadworthy test.
Minor pitting.	Broken mirror glass, lights, or surrounds.
	Damage to electronics in front or rear screens.
<u>Underbody</u>	
Minor dents and deformations as long as it has not caused corrosion.	Oil leaks.
	Extensive rust / corrosion.
	Damaged exhaust system.
	Poor repairs.
	Twisted or bent chassis.
	Any damage to underbody which will cause the Vehicle to fail a roadworthy test.
<u>Interior and boot - carpet and trim</u>	
Clean and tidy condition with minor scuffing.	Burns – cigarette or other.
Fading caused by normal exposure to sunlight.	Cuts, rips or tears to upholstery, head lining, sun visors,

KINTO MASTER TERMS

Examples of Acceptable Fair Wear and Tear	Examples of Unacceptable and/or Excessive Wear and
	etc.
Stains that are removable.	Stains from food, cosmetics, oil, paint, solvent, glue, chemicals, dirt, odour, or other substances which cannot be removed using a standard upholstery cleaner.
	Damage to seat structure.
	Damage to boot lining.
	Mismatched colours.
	Any missing interior item.
	Damage to any switch, control, knob, electronic device or other interior item.
<u>Dashboard, fascia, and door trims</u>	
Moderate scratches / markings.	Tears and splits.
Fading caused by normal exposure to sunlight.	Burns.
Removable stains and scuffing.	Holes or damage.
	Missing items / accessories (e.g., radio, ashtray, cup holder).
<u>Tyres, wheels and trim (including spare)</u>	
Each tyre and the spare tyre and rim is in a roadworthy condition and is of the same type and specification all-round the vehicle.	Broken / cracked tyres and wheel trims.
Wheel / Hubcap: Scrapes and scratches covering not more than 10% of the surface area.	Mismatched tyres and wheel trims.
	Tyres that do not meet South African Roadworthy Standards.
	Uneven tyre wear.
	Replacement tyres / wheels that do not meet manufacturer recommendations.
	Retreads.
<u>Engine and drivetrain components, air conditioner, Accessories, radiator, batteries and equipment</u>	
	Damaged or missing item.

ANNEXURE 3

KYC AND FICA REQUIREMENTS

This Agreement is subject to the provision by Customer of the Know Your Customer ("KYC") and Financial Intelligence Centre Act ("FICA") information set forth in Clause 23 (Information undertakings – All Customers) of the Agreement. The Customer may not order any Vehicles unless it has provided all the documents and other evidence listed below for all of the Surety Entities (if applicable) in form and substance reasonably satisfactory to KINTO, which in turn shall notify the Customer promptly upon being so satisfied.

Company, Close Corporation and other CIPC Registered Entities/Surety Entity

- (1) COR 14.3 – CIPC Registration Certificate
- (2) Latest/amended Memorandum of Incorporation (MOI)
- (3) Certificate of change of name of company – if applicable
- (4) COR 21.1 - Notice of Registered Office and Postal address
- (5) CIPC Disclosure Certificate not older than 3-months
- (6) List of active directors/officers, copies of their Identity Documents and proof of residential address (utility bill reflecting the person's physical address – not older than 3 months)
- (7) Copy of latest annual financial statements signed by directors and auditor.
- (8) Copy of latest signed management accounts if annual financial statement are more than 6 months old.
- (9) Recent SARS Tax Clearance Certificate / SARS PIN.
- (10) Official SARS document reflecting the company's VAT Registration number.
- (11) Copy of verified bank statements for last 6-months
- (12) Bank confirmation letter, not older than 1 months
- (13) Company letterhead confirming contact details/business address.
- (14) Signed resolution authorising person(s) to act on behalf of the company.
- (15) Source of Funds Declaration
- (16) Confirmation of Shareholding of the Company, stamped by the company secretary/auditors of the company.
- (17) In respect of each director, and each authorised person, and each shareholder holding more than 25% of the voting rights of the company:
 - (i) Certified Copy of the Identity document
 - (ii) Proof of residential address (utility bill reflecting the person's physical address – not older than 3 months).

Private Individual/Surety Entity

- (1) ID Card front and back in a jpg/jpeg format or a Green barcoded ID picture in a jpg/jpeg format
- (2) Selfie picture of the applicant saved in a jpg/jpeg format.
- (3) Proof of residence not older than 3 months (utility bill reflecting the person's physical address – not older than 3 months)
- (4) Confirmation of a bank account not older than 3 months.
- (5) Latest 3 months bank statement
- (6) Latest proof of income.

Trust/Surety Entity

- (1) Certified Copy of the Trust Deed or copy of other founding documentation by which the trust is created.
- (2) Certified Copy of the Letter of Authority issued and stamped by the Master of the High Court, authorising trustees to act on behalf of the trust.
- (3) Copy of latest audited annual financial statements of the trust, signed by trustees and auditor.
- (4) Copy of latest signed management accounts if annual financial statements are more than 6 months old.
- (5) Official SARS document reflecting the Trust's Income tax number.
- (6) Official SARS document reflecting the company's VAT Registration number.
- (7) Copy of verified bank statements for last 6-months
- (8) Bank confirmation letter, not older than 1 months
- (9) Trust letterhead confirming contact details/business address.
- (10) Signed resolution authorising person(s) to act on behalf of the trust, signed by ALL the Trustees
- (11) Source of Funds Declaration
- (12) In respect of the Founder, each Trustee, each authorised person, and each beneficiary of the Trust:
 - (i) Certified Copy of the Identity document
 - (ii) Proof of residential address (utility bill reflecting the person's physical address – not older than 3 months)

Please note: All documents to be signed by a director and certified as true copies of the original.