

1. KINTO SA Master Terms <https://www.lexus.co.za/kinto/masterterms>

The Parties to this Agreement are as detailed in the separate Master Agreement concluded between the Parties, which Master Agreement incorporates these KINTO SA Master Terms. The Agreement between the Parties comprises the terms of the Master 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 Manufacturer approved accessory, which is not fitted to such Vehicle at the time of the manufacture of the Vehicle, and which is fitted by an Authorised Supplier on behalf of the Customer, the cost of which becomes part of the overall Vehicle cost paid by KINTO SA, 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 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 SA;

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 SA. This may have a number of consequences including disputes arising under this Agreement may be heard before courts with jurisdiction over the area in which the premises of KINTO SA are located.

2.1.4. "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 contracted by KINTO SA to supply such for the repairs and maintenance of the Vehicle;

2.1.5. "Billing Date" means the day of each calendar month selected by the Customer on which the Monthly Rental becomes due, and on which the Debit Order collection will be made, and if no date is selected by Customer, the Billing Date will be the first day of each month;

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

2.1.7. "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;

- 2.1.8. “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 11;
- 2.1.9. “Contract Period” means, in relation to a Vehicle, the period specified in the Schedule or as recalculated in terms of this Agreement, as determined from the Commencement Date, expressed in completed calendar months;
- 2.1.10. “Contract Usage” means, in relation to a Vehicle, the Contract Kilometers divided by the Contract Period, expressed as kilometers to be driven per month;
- 2.1.11. “Customer” means the natural or juristic person whose details are set out in the Master 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 SA shall not be obliged to enquire into the authority of any such signatory;
- 2.1.12. “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;
- 2.1.13. “Debit Order” means a payment method mandated by the Customer to KINTO SA allowing KINTO SA to recover the Monthly Rentals and other amounts owing in terms of this Agreement from the Customer’s bank account;
- 2.1.14. “Delivery” means the physical delivery of the 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;
- 2.1.15. “Delivery Date” means the date on which Delivery takes place;
- 2.1.16. “Delivery Document” means the document signed by the Customer or its authorised representative evidencing Delivery of the Vehicle to the Customer and acceptance thereof;
- 2.1.17. “Early Termination” means the termination of this Agreement in respect of a Vehicle prior to the Expiry Date contained in the Schedule or amended Schedule;
- 2.1.18. “Early Termination Date” means the date on which the Early Termination has occurred or will occur;
- 2.1.19. “Early Termination Fee” means, in relation to a Vehicle repossessed from or surrendered by the Customer, an amount which is equal to the outstanding capital value less 80% (eighty per cent) of MM Trade Value on Early Termination Date, plus applicable Excess Kilometer Fee, make good charges, an administration fee and other outstanding amounts incurred up to settlement date, plus VAT;
- 2.1.20. “EFT” means Electronic Funds Transfer, by which the Customer will pay the monthly rentals and other amounts owing in terms of this Agreement to Kinto SA.
- 2.1.21. “Excess Kilometers” means, in relation to a Vehicle, the number of kilometers travelled by such Vehicle in excess of the Contract Usage;
- 2.1.22. “Excess Kilometer Fee” means, in relation to a Vehicle, the amount payable by the Customer to KINTO SA in respect of each Excess Kilometer travelled by such Vehicle, which charge is specified in the Schedule relating to such Vehicle, plus Value Added Tax (“VAT”) at the statutory rate;
- 2.1.23. “Expiry Date” means the expiry date of the Agreement as specified in the Schedule;
- 2.1.24. “Fair Wear and Tear” with reference to clause 12.3.2 means the degree of deterioration deemed to be reasonable when the Vehicle is returned to KINTO SA;
- 2.1.25. “Input VAT” means the Input VAT or “input tax” which a registered VAT Vendor is entitled to deduct from the sum of the amounts of output tax and refunds as defined in section 16(3) of the VAT Act (Act 89 of 1991), (the “VAT Act”). As a general

rule, a Customer which is a registered VAT vendor is not entitled to deduct input tax on the acquisition of a motor car as defined in section 1(1) 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) provides certain exceptions that allow a registered VAT vendor, in limited circumstances, to deduct input tax on the acquisition of a motor car. Whilst KINTO SA will provide estimated amounts of Input VAT (input tax) which it believes may be deducted by a registered VAT vendor, the amount and validity of Input VAT (input tax) claimed is the sole responsibility of the Customer;

- 2.1.26. **“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;
- 2.1.27. **“KINTO Protect”** means the KINTO Protect Limited Liability product feature and related benefits as contained in the Master Agreement and Master Terms, which are only applicable to Customers which elect to receive the KINTO Protect benefits, and which is limited to accidents and incidents which occur within the RSA;
- 2.1.28. **“Liability”** means the liability of the Customer to compensate KINTO SA for damages to or Total Loss of the Vehicle as contained in clause 10 (Liability of Customer for Damages or Total Loss of Vehicle) and Annexure 1 (KINTO Protect Limited Liability) of this Agreement and clause 2 of the Master Agreement;
- 2.1.29. **“Liability Value”** means the amount or amounts which the Customer is liable to pay to KINTO SA in the event that the Vehicle is damaged or becomes a Total Loss, plus VAT, as contained in clause 10 (Liability of Customer for Damages or Total Loss of Vehicle) and Annexure 1 (KINTO Protect Limited Liability) of this Agreement and clause 2 of the Master Agreement;
- 2.1.30. **“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 Vehicle, also referred to in this Agreement as the Customer;
- 2.1.31. **“Make Good Charges”** means the cost of placing the Vehicle in a Fair Wear and Tear condition, plus VAT;
- 2.1.32. **“Manufacturer”** means the manufacturer, importer or distributor of a specific Vehicle or Accessory by KINTO SA;
- 2.1.33. **“Monthly Rental”** means the monthly rental amount payable by the Customer specified in the Schedule or as recalculated in terms of this Agreement, plus VAT;
- 2.1.34. **“MM Trade Value”** means the relevant trade price for a vehicle as published monthly in the Mead & McGrouther Auto Dealers Digest;
- 2.1.35. **“Odometer”** means an instrument fitted to the Vehicle for the purposes of inter alia measuring distances travelled by the Vehicle, or any other measuring device which performs a similar function, and which has been approved by KINTO SA;
- 2.1.36. **“Offer to Rent” (“OTR”)** means the Customer’s instruction to KINTO SA, on KINTO SA’s standard terms and conditions and which jointly and severally forms part of this Agreement for a Vehicle. Customer acknowledges choosing the Vehicle from the supplier and that KINTO SA is unaware of the purpose for which it has been chosen;
- 2.1.37. **“Order Cancellation Fee”** means the fee payable by the Customer on cancellation of an Offer To Rent and/or Vehicle Order for whatsoever reason prior to Delivery and such fee shall be determined by reference to the costs and/or losses incurred by KINTO SA or the Authorised Supplier, plus VAT;
- 2.1.38. **“the Parties”** means KINTO SA and the Customer;
- 2.1.39. **“Personal Information”** has the meaning given to it in POPIA;
- 2.1.40. **“POPIA”** means the Protection of Personal Information Act, 2013;
- 2.1.41. **“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;

2.1.42. “**Schedule**” means, as the context may require, the original and all amended Schedules to this Agreement issued in respect of each specific Vehicle rented by KINTO SA 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 the Vehicle. All Schedules not signed and returned to KINTO SA by a Customer within 7 (seven) days after signing the Vehicle Delivery Document shall be deemed binding on the Customer in all respects;

This clause 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 SA by you within 7 days after you have signed the Vehicle Delivery Document and/or Schedule. 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.

2.1.43. “**Schedule Commencement Date**” means, in relation to a Vehicle, the date of commencement of this Agreement in respect of each Vehicle as specified in the Schedule relating to such Vehicle;

2.1.44. “**Settlement Value**” of the Vehicle as at any date means the higher of the outstanding capital value of the 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;

2.1.45. “**Service**” means the provision of repair and maintenance services to the Vehicle by an Authorised Supplier;

2.1.46. “**Signature Date**” means the date of signature of this Agreement by the Party signing last in time and is the Effective Date of this Agreement;

2.1.47. “**Signed**” means physically or electronically signed in terms of the Electronic Communications and Transactions Act, Act 25 of 2002;

2.1.48. “**Sundry Fitted Items**” means those items fitted to the Vehicle and paid for by the Customer, and which do not form part of the Rental.

2.1.49. “**SVR**” means both the Stolen Vehicle Recovery device and the standard factory fitted Lexus Connect device fitted to the Vehicle as consented to by the Customer in terms of clause 16.3. Such consent shall also include 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 SA 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 the Vehicle in the event of theft with KINTO SA appointed recovery agents in order to recover the Vehicle;

2.1.50. “**Title Holder**” means the legal owner as registered in terms of the National Road Traffic Act, Act 93 of 1996, being KINTO SA, which has the sole right to alienate the Vehicle;

2.1.51. “**Total Loss**” means a Vehicle which is lost, stolen, and not recovered or considered uneconomical to repair;

2.1.52. “**Vehicle**” means the Vehicle included or to be included in a Schedule including all standard and optional equipment and Accessories thereto as detailed in such Schedule;

2.1.53. Any reference to the singular includes the plural and vice versa;

2.1.54. Any reference to natural persons includes legal persons and vice versa; and

2.1.55. Any reference to a gender includes the other gender.

2.1.56. The clause headings in this Agreement have been inserted for convenience only and shall not be considered when interpreting this Agreement.

2.1.57. 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.

- 2.1.58. 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.
- 2.1.59. 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.
- 2.1.60. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa ("RSA").
- 2.1.61. Annexures to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof.
- 2.1.62. 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.

3. Agreement to Rent

- 3.1. KINTO SA rents to the Customer the Vehicle 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 Commencement Date specified in the Schedule and shall remain in force for the Contract Period.
- 4.2. The Customer shall be entitled to terminate this Agreement in respect of any Vehicle prior to the Expiry Date specified in the Schedule subject to the provisions of clause 12.
- 4.3. The Customer shall, at its own cost, take delivery of the Vehicle from an Authorised Supplier and shall hold the Vehicle on behalf of KINTO SA for the duration of the Contract Period.
- 4.4. The Customer shall inspect the Vehicle on behalf of KINTO SA by signing a Vehicle Delivery Document and/or Schedule confirming acceptance and suitability of the Vehicle for the Customer's purpose before taking Delivery and shall accept delivery on behalf of KINTO SA.
- 4.5. The Customer shall not act as agent for KINTO SA except for the purposes of inspecting the Vehicle and accepting delivery thereof.
- 4.6. The Offer To Rent shall constitute an irrevocable instruction to KINTO SA to place an order for the Vehicle. The Customer shall be liable for any Order Cancellation Fee which may arise.
- 4.7. KINTO SA 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 SA.
- 4.8. If any Schedule is not returned duly signed to KINTO SA 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, 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 SA 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, 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 SA in terms of this Agreement for any reason whatsoever;
- 5.1.3. All overdue amounts shall bear interest at the prime overdraft rate per annum plus 2% (two per cent), as charged by the bankers of KINTO SA from time to time;
- 5.1.4. Any unpaid fines which prevent KINTO SA from disposing of the Vehicle on termination of its Contract shall be recoverable from the Customer together with an applicable administration fee, plus VAT; and
- 5.1.5. The Customer shall be obliged to make the Monthly Payments due under this Agreement until such time as the Vehicle is returned.

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, damages, liability, or harm you or others may suffer.

6. Maximum and Excess Kilometers and Related Fees

- 6.1. The factory-installed Odometer on the Vehicle shall be used to determine the number of kilometers travelled by the Vehicle. Should the Odometer be unavailable or fail to function, and KINTO SA is required to calculate the Excess Kilometer Fee, the kilometers travelled during any period of failure shall be estimated by KINTO SA in its reasonable discretion.
- 6.2. Should the Vehicle have exceeded the agreed Contract Usage during the term of a Contract or on termination for whatever reason, the Customer shall pay KINTO SA the Excess Kilometer Fee.
- 6.3. During the term of a Contract KINTO SA 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 SA 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 the Vehicle exceeds the total Contract distance as specified in the Schedule, the Customer shall notify KINTO SA in writing and KINTO SA shall be entitled to claim return of the Vehicle, in which event the Customer shall be deemed to have elected to terminate the Agreement in terms of clause 12 and the provisions of clauses 6.1 and 6.2 will become applicable to determine the amount owed by the Customer to KINTO SA.

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, damages, liability, or harm you or others may suffer.

7. Registration, License Fees and Fines

- 7.1. KINTO SA shall be responsible for the initial registration of the Vehicle and keep custody of the registration document of the Vehicle and shall be the Titleholder of the Vehicle.
- 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 Vehicle and shall be obliged to affix subsequently issued license discs to the windscreen of the Vehicle.
- 7.3. The Customer acknowledges that it shall not be necessary for KINTO SA to prove that the Customer or his representative was driving the Vehicle at the time of any incident and that the fact that the 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, damages, liability, or harm you or others may suffer.

8. Service and Repairs

- 8.1. Subject to the Customer delivering the Vehicle for Service, KINTO SA 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 in the normal use of the Vehicle; 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 SA shall not be liable for any other costs incurred in maintenance and operation of the Vehicle, 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 Vehicle of oils, parts and other service products not approved by its Authorised Supplier;
- 8.2.3. the failure to have the Vehicle maintained timeously as per the Authorised Supplier's specifications;
- 8.2.4. persons other than Authorised Suppliers having performed work on the Vehicle;
- 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 Vehicle 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 Vehicle;
- 8.2.10. recovery, towing, travelling and related costs;
- 8.2.11. all fuel consumed by the Vehicle;
- 8.2.12. any maintenance, service or repair costs incurred after expiry or termination of the Agreement; all topping-up of lubricants between services;
- 8.2.13. the replacement of any part or item missing from the Vehicle; carrying out of any modifications required by law; and
- 8.2.14. any other maintenance and repair which is carried out without KINTO SA written authorisation.
- 8.3. If repairs and replacements are required to be affected to the Vehicle due to the misuse or abuse by the Customer of the Vehicle, 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 SA 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 SA 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, damages, liability, or harm you or others may suffer.

9. The Customer Obligations regarding the Use of the Vehicle

Service and Repairs

- 9.1. The Customer shall ensure that the Vehicle is maintained in good repair and condition by an Authorised Supplier;
- 9.2. In compliance with road traffic regulations, the Customer shall fit the Vehicle with new tyres of the same make and specification as tyres originally supplied which KINTO SA 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 Vehicle on termination with the tyres in a roadworthy condition;
- 9.3. The Customer shall not make or permit any servicing, repairs, or adjustments to the Vehicle other than in terms of clause 9.1 except that the Customer shall at its cost –
 - 9.3.1. 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 Vehicle; and
 - 9.3.2. provide all fuel and oil topping up required for the proper operation of the Vehicle and shall only use such fuel and oils as specified by the Manufacturer of the Vehicle.

General

- 9.4. The Customer shall –
 - 9.4.1. only use the Vehicle in the ordinary course of the Customer's business;
 - 9.4.2. not acquire any right, title, or interest in or to the Vehicle, except as is provided in this Agreement. KINTO SA shall always remain the Title Holder of the Vehicle and the Customer shall not prejudice KINTO SA ownership in any way.
 - 9.4.3. not sell, lease, lend, pledge, or otherwise alienate or encumber the Vehicle;
 - 9.4.4. operate the Vehicle within the agreed Contract Usage parameters and advise KINTO SA in writing of any deviation thereto which is not expected to be rectified prior to the Expiry Date;
 - 9.4.5. not permit the 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;
 - 9.4.6. promptly settle all fines arising from the use of the Vehicle in compliance with traffic regulations prior to the termination of a Vehicle's Contract;
 - 9.4.7. not permit the removal of the Vehicle outside the RSA without obtaining the prior written consent of KINTO SA by way of a "Border Letter" affecting comprehensive and third-party insurance cover or similar insurance in respect of the Vehicle as required by the country in which the Vehicle is to be taken and indemnifies KINTO SA and KINTO Protect against any claim arising of whatever nature;
 - 9.4.8. only permit the Vehicle 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;
 - 9.4.9. permit KINTO SA or its representative to inspect the Vehicle as KINTO SA may reasonably request from time to time;
 - 9.4.10. be responsible for the cost of removing signwriting or restoring the Vehicle to its original specifications, fair wear and tear excepted; and
 - 9.4.11. not fit any Accessories or make any further modifications without KINTO SA's prior written consent.

This clause 9 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, damages, liability, or harm you or others may suffer. This clause 9 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 your non-compliance with clause 9. This means that you would be liable to make payment of these claimed amounts on our behalf.

10. Liability of Customer for Damages or Total Loss of Vehicle

- 10.1. All risk in respect of the Vehicle shall pass to the Customer on Delivery until its physical return to KINTO SA as provided for in terms of this Agreement. The Customer hereby indemnifies KINTO SA against any loss or expense that KINTO SA may sustain or incur as a consequence of damage to or Total Loss of the Vehicle however sustained.
- 10.2. The Customer has elected whether or not to receive the KINTO Protect Limited Liability benefit in terms of the Master Agreement.
- 10.3. In the event of any loss, damage, or Total Loss of the Vehicle in an accident or otherwise, the Customer shall:
- 10.3.1. comply with traffic and other law regarding the care of any injured persons;
 - 10.3.2. report of such accident or incident to the South African Police Service within the stipulated period of 24 hours;
 - 10.3.3. report of such accident or incident to KINTO SA within 24 hours and comply with all instructions regarding the towing and repair of the damaged vehicle; and
 - 10.3.4. if the Customer **has elected** the benefits of KINTO Protect it must provide KINTO Protect 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 SA shall be entitled to claim the full amount of the loss from the Customer; and
 - 10.3.5. continue to pay the Monthly Rental in respect of the Vehicle until such time as KINTO SA has assessed that the incident or accident falls within the ambit of KINTO Protect Limited Liability.
- 10.4. The KINTO Protect terms and conditions are available at: <https://www.lexus.co.za/kinto/kintoprotect>
- 10.5. If the Customer has not elected the benefits of KINTO Protect:
- 10.6. in the event of a Total Loss, continue to pay the Monthly Rentals until such time as full payment for the Settlement Value of the Vehicle is rendered to KINTO SA; and
- 10.7. in the event that the Vehicle is not a Total Loss, ensure that the Vehicle is repaired in accordance with the requirements of KINTO SA.

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, 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 clause 10.1. This means that you would be liable to make payment of these claimed amounts on our behalf.

11. Adjustment of Rental, Contract Period and Maximum Kilometers

- 11.1. The Customer has the right at any time prior to 3 (three) months before the Contract Expiry Date, to approach KINTO SA 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.
- 11.2. KINTO SA will be entitled to adjust the Monthly Rental stipulated in the Schedule, if at any time during the term of the Agreement if –
- 11.2.1. there is a change in the factors affecting the conditions under which KINTO Protect has been accepted or declined;
 - there is a change in the cost of providing any of the Services to the Customer;

- 11.2.2. 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 impose by statute, ordinance, by-law, regulation, or competent authority which becomes payable by KINTO SA in respect of the Vehicle or in respect of the use or ownership of the Vehicle and if any of the abovementioned factors are included or taken into account in the calculation of the Monthly Rental;
- 11.2.3. the Monthly Rental is determined based on a variable interest rate and there is a change in such rate; and
- 11.2.4. if KINTO SA 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.
- 11.3. KINTO SA will advise the Customer in writing by means of an amended Schedule of any adjustment in terms of clause 11.2. Any failure by KINTO SA to vary the Monthly Rental pursuant to clause 11.2 will not be deemed a waiver of any rights which KINTO SA may have in terms of this Agreement.

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.

12. Termination

12.1. Early Termination

- 12.1.1. The Customer may at any time prior to the Expiry Date, terminate the Agreement and surrender the Vehicle on written notice to KINTO SA, being the Early Termination Date;
- 12.1.2. If the Customer breaches the Agreement during the term thereof, KINTO SA shall be entitled to repossess the Vehicle, which shall be deemed to be an Early Termination; and
- 12.1.3. In the event of an Early Termination the Customer will be liable to KINTO SA for payment of the Early Termination Fee.

12.2. Termination on Contract Expiry Date or Early Termination

- 12.2.1. Upon the expiry of this Agreement, or on the Contract Expiry Date, or by the early termination procedure as provided for in clause 12.1, the Customer must return the Vehicle as contemplated in clause 12.3, failing which KINTO SA will collect the Vehicle from the Customer and charge a distance based collection fee, in line with prevailing industry rates, to do so;
- 12.2.2. In the event of the Customer not returning the Vehicle on the Contract Expiry Date or by early termination as provided for this clause 12.2 –
 - 12.2.2.1. the Customer shall remain liable to make Monthly Rental payments to KINTO SA for the period from the Expiry Date or Early Termination Date until the return of the Vehicle as stipulated in the Schedule;
 - 12.2.2.2. KINTO SA has the right to demand the immediate return of the Vehicle by the Customer; and
 - 12.2.2.3. KINTO SA has the right to reassess the Vehicle in accordance with clause 6.3.

12.3. Condition of Vehicle on Return

- 12.3.1. The Customer agrees that the removal of Sundry Fitted Items and any and all repairs required to the Vehicle will be carried out by an Authorised Supplier prior to the return of the Vehicle. If repair work must be done after return of the 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 and;
- 12.3.2. Upon termination of a Vehicle in accordance with this Agreement, the Customer must deliver the Vehicle to the closest Authorised Supplier dealer in good condition and repair, Fair Wear and Tear excepted (as defined), together

with spare keys, service booklet, and any other documents appertaining to the Vehicle, tools, spare wheel and tyre, mats, and Accessories, which must be of the same type or quality as fitted to the Vehicle at the commencement of/ or during the Vehicle's Contract. The Customer is responsible for and shall be obliged to pay the cost of placing the Vehicle in the required condition, fair wear and tear excepted. The fair wear and excessive wear and tear factors and costs include replacing missing keys, tools, equipment, manuals, batteries, spare wheel and tyres, and any other item supplied with the Vehicle at the Commencement Date; and repairing any item excluded from fair wear and tear conditions listed in clause 12.3.5; and replacing any missing items; and rectifying any defective repairs made to the Vehicle in repairing accident damage; and performing professional valet cleaning of the Vehicle; and removing any decals, transfers, marks or paint placed on the Vehicle.

- 12.3.3. Examples of fair, and unacceptable and/or excessive wear and tear are set out in Annexure 2;
- 12.3.4. KINTO SA 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; and
- 12.3.5. KINTO SA or its authorised representative shall inspect the Vehicle on its return to KINTO SA and prepare a termination report in respect of the Vehicle, reflecting the condition of the 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 12 (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, damages, liability, or harm you or others may suffer.

13. Claims and Liability

- 13.1. The Customer shall have no claim against KINTO SA of any nature whatsoever under this Agreement arising out of or in any way directly or indirectly connected with the condition of the Vehicle, failure, or delay in delivering the Vehicle, the Customer's deprivation of the use of 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 13 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, damages, liability, or harm you or others may suffer.

14. Breach and Cancellation

- 14.1. Should either Party –
 - 14.1.1. fail to observe and perform any of the terms, conditions and/or obligations contained in this Agreement;
 - 14.1.2. 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;
 - 14.1.3. suffer any default judgment against him which remains unsatisfied for 7 (seven) days or be refused rescission of any default judgment;
 - 14.1.4. be liquidated or placed under business rescue or be wound-up, whether provisionally or finally;
 - 14.1.5. compromise with its creditors or endeavor or attempt to do so; and
 - 14.1.6. 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:

- 14.1.7. immediately terminate the Agreement with written notice to the defaulting party; or
 - 14.1.8. enforce specific performance by the defaulting party of its obligations in terms of the Agreement.
- 14.2. In the event that either party is given written notice in terms of clause 14.1 to remedy any breach, and the defaulting party subsequently remedies the same, then upon the occurrence of a further breach in terms of clause 14.1, 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 14.1.
- 14.3. Should the Customer;
- 14.3.1. abandon the Vehicle,
 - 14.3.2. have KINTO Protect cancelled, become uninsured or uninsurable,
 - 14.3.3. use the Vehicle for any unlawful activity,
 - 14.3.4. 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,
 - 14.3.5. allow the Vehicle to be seized under any legal process issued against the Customer,
 - 14.3.6. have made any misrepresentation in connection with this Agreement or its financial affairs,
 - 14.3.7. do or suffers to be done anything which might prejudice the rights of KINTO SA under this Agreement or not comply with any applicable laws, statutes, regulations and/or codes relating to anti-bribery and corruption,

then KINTO SA 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, 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 SA shall be entitled to claim the value of the remainder or unexpired Monthly Rentals for the Contract Period, less the Fair Market Value of the Vehicle, 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.

- 14.4. In the event of termination of this Agreement by either KINTO SA or the Customer in terms of clauses 14.1, 14.2 and 14.3 above, the Customer shall be obliged, at his own risk and expense, to immediately return the Vehicle to KINTO SA 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.
- 14.5. In addition to the legal remedies at the disposal of KINTO SA in terms of clause 14.3, and in the event that the Vehicle could not be recovered and was not returned to KINTO SA, then KINTO SA will be entitled to claim as damages, the Settlement Value of the Vehicle on date of cancellation of the Agreement.

This clause 14 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.

15. Confidentiality

- 15.1. 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.
- 15.2. 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 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.

16. Data Protection and Consents

- 16.1. The Customer acknowledges that KINTO SA, cannot perform its obligations under this Agreement without Processing certain Personal Information, including the Personal Information provided by the Customer to KINTO SA (the "Customer Data").
- 16.2. Accordingly, the Customer hereby expressly consents to share the Customer Data with KINTO SA, and further consents to the Processing of the Customer Data by KINTO SA, in accordance with this Agreement.
- 16.3. The Customer by its signature of the Agreement, expressly consents and authorises KINTO SA, to collect and Process the Customer Data to perform the activities (and KINTO SA's obligations) under this Agreement, as well as the activities contemplated in the KINTO SA Privacy Policy. Without limiting or derogating from the generality of the preceding sentence, the Customer consents to the fitment of an SVR and the standard factory fitted Lexus Connect device to the Vehicle and the tracking, monitoring and data analysis of Personal Information conducted by KINTO SA as contemplated in this Agreement.
- 16.4. The Parties record that KINTO SA will Process the Customer Data in accordance with the provisions of this Agreement. When Processing the Customer Data, KINTO SA 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 SA will:
- 16.4.1. identify all reasonably foreseeable internal and external risks to Customer Data in its possession or under its control; establish and maintain appropriate safeguards against the risks identified;
- 16.4.2. regularly verify that the safeguards are effectively implemented; and
- 16.4.3. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 16.5. 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 SA 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:
- 16.5.1. the transmission by the Customer to KINTO SA in accordance with this Agreement or otherwise permitted by law;
- 16.5.2. the transmission by the Customer or KINTO SA of the Customer Data to the third parties in accordance with this Agreement or otherwise permitted by law; and
- 16.5.3. the Processing by KINTO SA of any Customer Data received by KINTO SA from the Customer, in any country in which the Customer Data is held by KINTO SA.
- 16.6. The Customer hereby indemnifies and holds KINTO SA harmless from and against all losses, damages, costs, expenses, penalties and fines that KINTO SA may sustain or incur arising from a breach by the Customer of this clause 16 or any other claim that may arise in respect of the Customer Data (save to the extent that such a claim arises from a breach by KINTO SA of the provisions of this clause 16).

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. 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 16 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, damages, liability, or harm you or others may suffer.

This clause 16 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 clause 16.6. This means that you would be liable to make payment of these claimed amounts on our behalf.

17. Warranties

The parties warrant that:

- 17.1. they have full capacity and all necessary rights, consents, permissions, and licenses to enter into this Agreement; and
- 17.2. 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 South Africa.

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.

18. Patent, proprietary rights and intellectual property

- 18.1. 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.

19. General

- 19.1. The Customer shall not be entitled to cede any of its rights and/or delegate any of its obligations under this Agreement without KINTO SA's prior written consent, which consent shall not be unreasonably withheld. KINTO SA 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.
- 19.2. The Customer agrees that KINTO SA 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.
- 19.3. A certificate signed by a manager or director of KINTO SA, whose position it shall not be necessary to prove, as to any amount alleged to be owed by the Customer to KINTO SA or by KINTO SA to the Customer shall constitute prima facie evidence of the amount owing by the Customer or KINTO SA as the case may be.
- 19.4. 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 SA to complete the Schedule as soon as the required information becomes available to itself.
- 19.5. KINTO SA shall allocate any payments received from or on behalf of the Customer to any indebtedness of the Customer to KINTO SA, 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 SA appropriate as provided herein, the Customer shall forthwith make payment of any shortfall.

- 19.6. 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.
- 19.7. 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.
- 19.8. All costs and disbursements incurred by KINTO SA 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 SA 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 SA as and when incurred.
- 19.9. KINTO SA shall be entitled to recover all costs incurred in instructing any independent vehicle tracking and recovery agent to assist in the recovery and/or attaching of the Vehicle in terms of any legal process.
- 19.10. The Customer agrees that KINTO SA is entitled to determine the Settlement Value of the Vehicle as defined.
- 19.11. 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.

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, damages, liability, or harm you or others may suffer.

20. Domicilia and Notices

- 20.1. The Customer chooses its *domicilium citandi et executandi* at the physical address indicated for the Customer on Master Agreement, which address the Customer acknowledges to be its business address.
- 20.2. KINTO SA chooses its *domicilium citandi et executandi* at the address indicated on the Master Agreement.
- 20.3. Any legal notice to be given or to be made for any purpose under this Agreement shall be in writing and shall be delivered by hand to the respective addresses referred to in clause 20.1 and clause 20.2.
- 20.4. KINTO SA and the Customer shall be entitled to change their respective addresses referred to in clauses 20.1 and 20.2 by giving the other of them written notice to that effect.
- 20.5. Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received (unless the contrary is proved) on the day of delivery.
- 20.6. All correspondence between the Parties of a transactional nature, including the sending and receiving of quotations, orders, and Schedules, but excluding correspondence relating to breach, termination and/or cancellation, may be conducted by e-mail using the addresses provided by the Parties on the front page of this Agreement, and shall be legally binding on the Parties.

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

- 21.1. 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.
- 21.2. No provision of this Agreement (or any Contract governed by this Agreement):
 - 21.2.1. does or purports to limit or exempt KINTO SA from any liability (including, without limitation, for any loss directly or indirectly attributable to KINTO SA's gross negligence or wilful default or that of any person acting for or controlled by KINTO SA) to the extent that the law does not allow such a limitation of exemption;
 - 21.2.2. 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
 - 21.2.3. 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 SA give under the Consumer Laws (to the extent applicable), to the extent that the law does not allow them to be limited or excluded.

ANNEXURE 1 : KINTO PROTECT <https://www.lexus.co.za/kinto/kintoprotect>

Kinto Protect Limited Liability

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 SA Master Agreement and this document.

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 SVR tracking unit installed in the vehicle. The information gathered will be stored and used in accordance with our Privacy Policy.

KINTO Protect Changes and Cancellation

KINTO SA may change or cancel KINTO Protect 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.

Important time limits in connection with Incidents

- Inform us when anything happens to the vehicle which may result in a loss to KINTO SA within 2 days;
- Report vehicle theft and/or accident to the police, within 24 hours and obtain a case number;
- Provide us with any information, evidence, documents, and co-operation asked for, within 14 days of our request; and
- If the vehicle has been stolen and recovered, assist KINTO SA 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)

- 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).

Note: The Liability Amounts stated are cumulative if all stated conditions apply in an incident.

Towing and Storage

KINTO SA 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 0800 220 000 for towing assistance.

What is excluded from KINTO Protect

The items listed below are excluded from KINTO Protect if the loss, damage, or destruction of the vehicle is the result of any of the following:

- Loss or damage to property left in the vehicle;
- Contravention of the National Road Traffic Act;
- 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 and/or ignition 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;
- Incidents that occur when the vehicle is outside South Africa, including the indemnification of other parties on your behalf.

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 Schedule to the Master Agreement you must:

- Take reasonable precautions to prevent or minimise further loss, damage, or theft;
- 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 0800 220 000.
3. Where possible, take photographs of the damage, accident scene 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 our Privacy Policy which can be viewed on <https://www.lexus.co.za/kinto>

After the Accident or Theft

1. Call us on 0800 220 000 within 24 hours to report the damage or incident or as soon as reasonably practicable;
2. Report the accident to the police within 24 hours and provide us with the police case number and police report;
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 <https://www.lexus.co.za/kinto/kintoprotect>
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; and
6. Comply with instructions and guidance provided by KINTO SA or Vap-Sure.

Windscreen Replacement or Repairs

Complete and lodge the appropriate Incident Report in the format provided by KINTO Protect together with pictures of the chip and/or crack. 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. The appropriate Incident Report can be downloaded from <https://www.lexus.co.za/kinto/kintoprotect>.

Administration of Incidents and Claims

KINTO SA 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: 0800 139 111

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

ANNEXURE 2 : FAIR WEAR AND TEAR EXAMPLES

<https://www.lexus.co.za/kinto/masterterms/fairwearandtear>

Examples of Acceptable Fair Wear and Tear	Examples of Unacceptable and/or Excessive Wear and Tear
Bumpers and Mouldings	
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/gouges.
	Excessive paint chips.
Body Panels, Exterior Trim and Paintwork	
Scratches if not through colour coating – no more than 3 per panel / 9 per car. Excludes through to metal.	Exposed undercoat or metal; any rust.
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.
	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.
Accessories and Equipment	
Removal of any Sundry Fitted Items fitted at the customer's expense provided this does not cause damage to the vehicle.	Removal of any Sundry Fitted Items fitted at the customer's expense which does cause damage to the vehicle, e.g., holes drilled in body work to bolt on a Sundry Fitted Item.
	Removal of original Vehicle accessories.
	Missing or broken cigarette lighters, badges, knobs, trims, tools, key and spare keys, spare wheel, spare tyre, service books, etc.
Glass, Lights and Mirrors	
Light scratching and minor headlights and taillights, etc.	Windshield, side, and rear glass: Any cracks, scratches and deep stone chips which will cause the Vehicles to fail a roadworthy test.
Minor pitting.	Broken mirror glass, lights, or surrounds.
	Damage to electronics in front or rear screens.
Underbody	
Minor dents and deformations as long as they have not caused corrosion.	Oil leaks.
	Extensive rust / corrosion.
	Damaged exhaust system.
	Poor repairs.
	Twisted or bent chassis.
Interior and Boot - Carpet and Trim	

Examples of Acceptable Fair Wear and Tear	Examples of Unacceptable and/or Excessive Wear and Tear
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, 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 other interior item.
Dashboard, Fascia and Door Trims	
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.)
Tyres, Wheels and Trim (Including Spare)	
Each tyre and the spare tyre and rims are in a roadworthy condition and is of the same tyre and rim specification as originally supplied.	Mismatched tyres and wheel trims, specifications different from originally supplied Vehicle.
Wheel / Hubcap: Scrapes and scratches covering not more than 10% of the surface area.	Broken / cracked 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.
Engine and drivetrain components, Air Conditioner, Accessories, Radiator, Batteries and Equipment	
	Damaged or missing item.