

Deed of Subordination and Priority

The parties listed in Schedule 1 (Initial Debtors)

Public Trust (Supervisor)

Bank of New Zealand (Security Trustee)



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DEED OF SUBORDINATION AND PRIORITY

Date: 28 August 2018

PARTIES

The parties listed in Schedule 1 (*Initial Debtors*)

Public Trust in its capacity as trustee for the Bondholders (*Supervisor*)

Bank of New Zealand in its capacity as security trustee for the Finance Parties (*Security Trustee*)

BACKGROUND

- A The Debtors have incurred, or will incur, indebtedness to the Lenders pursuant to the Bank Documents.
- B Certain Debtors have incurred indebtedness to the Bondholders pursuant to the Bond Documents.
- C The Debtors, the Security Trustee and the Supervisor have agreed to enter into, and comply with, the provisions of this Deed.
- D For the purposes of the Facility Agreement, this Deed is a "Bond Deed of Subordination", each of the Bond Documents is a "Material Contract" and the Bonds constitute "Subordinated Debt" (as those terms are defined in the Facility Agreement).

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

Bank Debt means all present and future indebtedness and liabilities of the Debtors to the Finance Parties, absolute, contingent or otherwise, whether or not matured, whether or not liquidated, and whether or not owed solely or jointly by the Debtor or any other person or to the Finance Parties solely or jointly, including without limitation (a) liabilities which a Finance Party acquires by purchase, security assignment or otherwise, (b) interest and fees, (c) damages, (d) claims for restitution, (e) costs and (f) including without limitation any other amounts owing under the Bank Documents;

Bank Documents means:

- (a) the Facility Agreement;
- (b) the Trade Finance Facility;

- (c) the Security Trust Deed;
- (d) any Hedging Arrangement pursuant to a Derivative Product;
- (e) each Transactional Banking Document;
- (f) the Bank Security; and
- (g) each other document constituting or evidencing the Bank Debt,

and each other document which the parties agree will be a *Bank Document*;

Bank Security means each guarantee or indemnity, security interest, interest in real property of a security nature and each mortgage, charge, lien or pledge granted by a Debtor in favour of the Security Trustee as security for the Bank Debt including, without limitation, the Security under, and as defined in, the Facility Agreement;

Bond Debt means all present and future indebtedness and liabilities of the Debtor to the Bondholders under the Bond Documents, whether absolute, contingent or otherwise, as principal, surety or otherwise, whether or not matured, whether or not liquidated, and whether or not owed solely or jointly by the Debtor or to the Bondholders solely or jointly under the Bond Documents including (a) interest, (b) damages, (c) claims for restitution (d) costs, and (e) all other amounts owing under the Bond Documents;

Bond Default Date means a date on which the Supervisor is entitled to enforce the Bond Security by reason of an event of default under the Bond Documents. For the avoidance of doubt, it shall not be an event of default under the Bond Documents where the Parent is not permitted to make the relevant payment pursuant to the terms of this Deed.

Bond Documents means:

- (a) the Trust Deeds; and
- (b) the Bond GSA,

and each other document which the parties agree will be a *Bond Document*;

Bond GSA means the Security Agreement dated on or about the date of this Deed between the Parent, the Supervisor and the Initial Debtors;

Bond Maturity Date means in relation to any Bonds, the Maturity Date as defined in the relevant Trust Deeds for those Bonds;

Bond Security means each guarantee or indemnity, security interest, interest in real property of a security nature and each mortgage, charge, lien or pledge granted by the Debtor in favour of the Supervisor as security for any Bond Debt including, without limitation, the Bond GSA;



Bondholders means each Holder as defined in the Master Trust Deed;

Bonds has the meaning given to that term in the Master Trust Deed;

Business Day means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland;

Collateral means the property subject to the Security;

Date of Enforcement means the date on which the Security Trustee takes any Enforcement action;

Debt means, the whole or either of the following:

- (a) the Bank Debt;
- (b) the Bond Debt,

or where the context requires, the aggregate of all of them;

Debtor means each Initial Debtor and each other person that becomes a 'Debtor' under this Deed by executing a Deed of Accession;

Deed of Accession means a deed of accession in the form set out in Schedule 2;

Derivative Product has the meaning given to it in the Facility Agreement;

Enforcement means the exercise by the Security Trustee of any right available to it by way of enforcement or realisation of a security interest under the Bank Security (including, without limitation, the service of a notice under section 119 of the Property Law Act 2007 or the appointment of a receiver);

Event of Default means an event of default under, and as defined in, the Facility Agreement;

Facility Agreement means the 'Multi Option Facility Agreement' dated 4 May 2018 between, among others, the Parent, Oxford Finance Limited and Turners Property Holdings Limited (as borrower), the Debtors (as initial guarantors) and the Security Trustee (as security trustee);

Finance Party means the Security Trustee, the Facility Agent (as that term is defined in the Facility Agreement), the Lenders, the Trade Finance Lender and any other person that is, at the relevant time, a Beneficiary (as that term is defined in the Security Trust Deed);

Hedging Arrangement has the meaning given to it in the Facility Agreement;

Lenders has the meaning given to that term in the Facility Agreement;



Master Trust Deed means the master trust deed dated on or about the date of this Deed between the Parent and the Supervisor

Parent means Turners Automotive Group Limited;

Parties means the Security Trustee and the Supervisor and each is a *Party*;

PPSA means the Personal Property Securities Act 1999;

Security means the Bank Security and/or the Bond Security (as the context requires);

Security Trust Deed means the Security Trust Deed 4 May 2018 between, among others, the Parent, the Debtor and the Security Trustee;

Supplemental Deed has the meaning given to that term in the Master Trust Deed;

Termination Date means the date upon which the Security Trustee confirms in writing to the Debtor that it is satisfied that:

- (a) the Finance Parties have received final payment in full of all the Bank Debt; and
- (b) the Finance Parties are not under any further actual or contingent obligation to provide any financial accommodation to or at the request of the Debtors (other than, in the opinion of the relevant Finance Party, immaterial financial accommodation).

Transactional Banking Document has the meaning given to it in the Facility Agreement;

Supervisor means Public Trust and any other person who becomes the Supervisor under this Deed by executing a Deed of Accession;

Trade Finance Facility means the trade finance facility agreement dated 4 May 2018 between Turners Fleet Limited, Buy Right Cars (2016) Limited and ASB Bank Limited as lender; and

Trade Finance Lender means the lender under the Trade Finance Facility.

Trust Deeds means the Master Trust Deed and each Supplemental Deed and *Trust Deed* means any of them.

1.2 **Construction of Certain References**

In this Deed, unless the context otherwise requires, any reference to:

costs includes any charges, fees, commissions, indemnities, taxes, damages, losses, expenses (including, without limitation, all legal fees, disbursements and expenses), liabilities, fines and penalties;



the *dissolution* of a person also includes the winding-up or liquidation of that person and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

distribution means a 'Distribution' as defined in the Companies Act 1993;

guarantee includes any guarantee, indemnity, letter of credit, suretyship, bond, third party security or any other obligation (whatever called and of whatever nature):

- (a) to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services or otherwise) for the payment or performance of; or
- (b) otherwise to be responsible or assume liability for or in respect of,

any indebtedness or obligation of another person;

indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, and whether incurred alone, severally, jointly or jointly and severally, as principal or surety or otherwise) relating to the payment or repayment of money and "indebted" shall be construed accordingly;

liability means any present or future liability (actual or contingent) together with:

- (a) any permitted novation, deferral or extension of that liability;
- (b) any further advance which may be made under any agreement expressed to be supplemental to any document in respect of that liability, together with all related interest, fees and costs;
- (c) any claim for damages or restitution in the event of rescission of that liability or otherwise;
- (d) any claim flowing from any recovery by a payment or discharge in respect of that liability on the grounds of preference or otherwise; and
- (e) any amount (such as post-insolvency interest) which would be included in any of the above but for its discharge, non-provability, unenforceability or non-allowability in any insolvency or other proceedings;

person includes any individual, any association of persons (whether corporate or not), any trust and any state or agency of a state (in each case whether or not having separate legal personality);

a reference to *property* includes any personal property and real property;

real property includes all freehold and leasehold land, all estates and interests in land and buildings, structures and fixtures (including trade fixtures) for the time being on that land;



a *security interest* includes:

- (a) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (b) a *security interest* as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor;

the terms *consumer goods, equipment, default, financing change statement, financing statement, perfection, possession, personal property, security interest* and *seriously misleading* each have the meaning given thereto in the PPSA;

any document or agreement includes such document or agreement as amended modified, novated or replaced from time to time;

any enactment includes that enactment as amended, modified and/or replaced from time to time; a gender includes all other genders;

a party to this Deed or any other document or agreement includes a reference to that party's successors and permitted assigns; and

the singular includes the plural and vice versa.

1.3 **Headings**

Headings and the table of contents shall be ignored in construing this Deed.

1.4 **Debtor**

Where two or more persons are named in this Deed as the Debtor, *Debtor* shall be a reference to each of these persons severally as well as to any two or greater number of them jointly.

1.5 **Supervisors' Limitation of Liability**

- (a) *Supervisor's capacity*: Each party to this document acknowledges that the Supervisor enters into this Deed as trustee for the Bondholders (in this clause, the *Trust*) and not in its personal capacity.
- (b) *Liability limited to trust assets*: Subject to sub-clause (d) below, notwithstanding any other provision of this Deed, any liability incurred by the Supervisor pursuant to this Deed can be enforced against the Supervisor only to the extent to which it can be satisfied out of the assets of the Trust. This limitation of the Supervisor's liability applies notwithstanding any other provision of this Deed and extends to:
 - (i) all liabilities and obligations of the Supervisor in any way connected with any representation, warranty, conduct, omission, agreement or transaction relating to this Deed;



- (ii) every delegate, attorney, agent or other similar person appointed by the Supervisor.
- (c) *No personal action against Supervisor*: Subject to sub-clause (b), no party to this document may sue the Supervisor personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Supervisor or prove in any liquidation of or affecting the Supervisor.
- (d) *Exceptions*: The Supervisor acknowledges and agrees that sub-clauses (b) and (c) will not apply to any liability of the Supervisor as a result of the gross negligence, fraud or wilful misconduct of the Supervisor.

1.6 **Security Trustee's Limitation of Liability**

- (a) Each party to this document acknowledges that the Security Trustee enters into this Deed as trustee for the Finance Parties (in this clause, the *Trust*).
- (b) *Liability limited to trust assets*: Subject to sub-clause 1.5(d) below, notwithstanding any other provision of this Deed, any liability incurred by the Security Trustee pursuant to this Deed can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the assets of the Trust. This limitation of the Security Trustee's liability applies notwithstanding any other provision of this Deed and extends to:
 - (i) all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction relating to this Deed;
 - (ii) every delegate, attorney, agent or other similar person appointed by the Security Trustee.
- (c) *No personal action against Security Trustee*: Subject to sub-clause 1.5(b), no party to this document may sue the Security Trustee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Security Trustee or prove in any liquidation of or affecting the Security Trustee.

- 1.7 *Exceptions*: The Security Trustee acknowledges and agrees that sub-clauses 1.5(b) and 1.5(c) will not apply to any liability of the Security Trustee as a result of the gross negligence, fraud or wilful misconduct of the Security Trustee.

2 **PRIORITY OF SECURITY INTERESTS**

- 2.1 The Bond Security is subordinated to the Bank Security for the purposes of section 70 of the PPSA.
- 2.2 If required by the Security Trustee, the Supervisor will immediately register financing change statements or any other priority instrument in relation to that subordination.



2.3 If, at any time, the Security Trustee is satisfied (in its sole discretion) that:

- (a) the whole of the Bank Debt has been fully paid;
- (b) no Finance Party is required to advance any further amount under any Bank Document; and
- (c) no payment received or to be received by a Finance Party may be avoided, or required to be repaid by a Finance Party, whether under any law relating to insolvency or otherwise,

if requested in writing by the Supervisor, the Security Trustee will discharge its registration of any financing statement relating to the Security Trustee's security interest in the Collateral.

3 **RANKINGS**

3.1 **Security**

The Security shall rank in the following order:

- (a) *First*: the Bank Security in relation to the Bank Debt, following payment of any prior or preferential encumbrances or creditors at law; and
- (b) *Second*: the Bond Security in relation to the Bond Debt.

3.2 **Debt**

Each of the Parties and the Debtors agree that the Debt owed by the Debtors to the Parties shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Debt as follows:

- (a) *First*: the Bank Debt; and
- (b) *Second*: the Bond Debt.

4 **PPSA**

4.1 The Security Trustee has priority over the Supervisor in respect of any Collateral in terms of section 109 of the PPSA, and may take possession of and sell that Collateral in circumstances contemplated in the Bank Security.

5 **PERFECTION**

5.1 **Registration**

Each Party (*warranting party*):

- (a) represents and warrants to the other Party that the warranting party has perfected, by registering a financing statement, the warranting party's security interest (if any) in the Collateral; and

- (b) will ensure that the warranting party's security interest (if any) in the Collateral is continuously perfected,

provided that nothing in this clause 5 applies to any items of Collateral that are *serial numbered goods* as defined in the Personal Properties Securities Regulations 2001 that are *consumer goods* or *equipment*.

5.2 Possession

If, at any time, the Supervisor has possession of any Collateral, for the purposes of perfection and/or priority in relation to the Supervisor's security interest, the Supervisor will not release or give up that possession to any person other than the Security Trustee except as, but only to the extent, required:

- (a) by law or order of a court of competent jurisdiction or with the written consent of the Security Trustee; or
- (b) for a Party to enforce its security (provided that such enforcement is conducted in accordance with the priority principles set out in this Deed).

6 THE PARTIES

6.1 The subordination and priority arrangements set out in this Deed will have effect in each and every circumstance notwithstanding:

- (a) any rule of law or equity to the contrary (including, but not limited to, any application of the rule in Clayton's Case (1816) 1 Mer. 529 or the rule in *Hopkinson v Rolt* (1861) 9 H.L. Case. 514);
- (b) the dates of the Security, its order of registration or the date upon which a Party may receive notice of another Party's Security;
- (c) the date upon which any of the Bond Debt or Bank Debt arises or of any fluctuations in the amount of such Bond Debt or Bank Debt (as the context requires);
- (d) any party granting to the Debtor or any other person, time or indulgence, further credit, loans or advances, or entering into any arrangement, composition or variation of rights with or abstain from perfecting, asserting, calling, exercising or enforcing any remedies, securities, guarantees or other rights which it may now or hereafter have from or against the Debtor or any other person;
- (e) any sums which may from time to time be paid to the credit of any account or accounts of the Debtor with a party;
- (f) the fact that any account or accounts of the Debtor with a party may at any time or times be or appear to be in credit;
- (g) a security interest is not enforceable;

- (h) the fact that any part of the money secured by the Security may be advanced or readvanced after the date of the other Security or after notice of the Security to the other Party or after money has been advanced under the Security; or
- (i) any other matter which might otherwise alter or postpone the priority of the Security or prejudice the subordination arrangements set out in this Deed.

6.2 If the interest of a third party in any Collateral has priority over a Party's security interest in that Collateral as a result of that Party's:

- (a) failure to ensure its security interest is continuously perfected in accordance with the PPSA; or
- (b) financing statement in relation to that Collateral being held to be seriously misleading,

the other Party may, by written notice, exclude that Collateral from the application of this Deed. After such exclusion, the priority position of each Party in relation to that Collateral only shall be determined in accordance with the PPSA and nothing in these subordination and priority arrangements will oblige that other Party to do or suffer anything inconsistent with the other Party's priority position outside of these arrangements where that priority position is or would be more favourable to the other Party than under these arrangements.

6.3 Any provision in the Security or any other agreement or arrangement entered into before the date of this Deed, which is inconsistent with these subordination and priority arrangements, will be superseded or varied to the extent necessary to give full effect to these arrangements.

6.4 Each Party shall use its best endeavours to notify the other Party in writing promptly following the exercise of any right to accelerate its Debt or enforce its security.

7 **RECEIPT OF PAYMENTS**

7.1 If any Party (*Recipient*):

- (a) receives or recovers a payment or distribution in cash or in kind of, or on account of, any Debt;
- (b) accepts any assets in respect of any Debt; or
- (c) receives a discharge of any of the Debt by the exercise of any rights against the Debtor (whether of set-off, combination of accounts or otherwise),

which is not permitted by the provisions of this Deed, whether upon the dissolution of the Debtor or for any other reason, then the Recipient shall:

- (d) hold each such payment and any such assets on trust as bare trustee to pay the relevant amount (plus interest (if any)) and turn over the relevant funds



and/or assets to the other Party in or towards the discharge of the Debt in accordance with clause 3.2 of this Deed.

Any such amount paid, or the value of any such assets held, by the Recipient on account of being trustee for the benefit of the other Party and paid over to the other Party shall be treated, for the purposes of the obligations of the Debtor in respect of the Debt owing to the Recipient, as if it had not been paid or turned over by the Debtor. The Debt owing to the Recipient shall accordingly be deemed not to be discharged to that extent.

7.2 *Perpetuity Period of Trust:* The trust constituted by clause 7.1(d) of this Deed shall be for a term of 21 years from the date of this Deed.

7.3 *Duties of Recipient as trustee:* Pending the payment by a Recipient to the other Party of any of the Debt so taken or received or the turning over of any assets so accepted, the Recipient shall:

- (a) not co-mingle any such amount to be paid or any assets to be turned over to the other Party with its or their other assets; and
- (b) place any such amount to be paid to the other Party in a separate, interest-bearing account (to be designated as a trust account) with any bank or financial institution in New Zealand.

The Recipient as trustee shall account to the other Party for any of the Debt so taken or received by it or assets so accepted by it.

7.4 *Failure of Trust:* If and to the extent that the trust constituted by clause 7.1(d) of this Deed is for any reason not properly constituted or is otherwise not effective, the Recipient agrees (on an indemnity basis) immediately on demand to pay to the other Party any of the Debt so taken, recovered or received or any assets so accepted or any discharge received by the Recipient as described in clause 7.1 of this Deed.

7.5 *Dissolution:* In the event of the dissolution of the Debtor:

- (a) the liquidator is hereby authorised to pay moneys in accordance with the arrangements set out in clause 3;
- (b) any payment or distribution of any nature which shall be payable or deliverable upon or with respect to the Debt shall be paid or delivered by the liquidator or other person making the distribution in accordance with clause 3;
- (c) each Party shall, upon the dissolution of the Debtor, take such action as may be reasonably required by the other Party in order to enable it to enforce payment of the Debt and to collect and receive all payments and distributions in respect of the Debt.



8 SUBORDINATION

8.1 Subordination of Bond Debt

Notwithstanding the provisions of any agreement or other document constituting or evidencing any of the Bond Debt, but subject to clause 8.3, the Debtors and the Supervisor hereby covenant and agree for the benefit of the Security Trustee that the Bond Debt is subordinated and subject in point of priority and right of payment to the prior payment in full of all of the Bank Debt.

8.2 No Payment of Bond Debt

Subject to clause 8.3, the Debtors covenant for the benefit of the Security Trustee that, notwithstanding anything to the contrary contained in any agreement or other document constituting or evidencing any of the Bond Debt, it will not, prior to the Termination Date (unless otherwise approved by the Security Trustee in writing):

- (a) pay, prepay or repay any principal, interest or other amounts in respect of the Bond Debt;
- (b) redeem, purchase or otherwise acquire, directly or indirectly, any of the Bond Debt;
- (c) apply any money or assets in discharge of any of the Bond Debt;
- (d) create or suffer or permit to exist any security interest securing, or give a guarantee in respect of, any of the Bond Debt other than as disclosed to and previously approved in writing by the Security Trustee, and, for this purpose, the Security Trustee hereby irrevocably approves the Bond GSA;
- (e) make any distribution to, or for the order of, a Bondholder;
- (f) take or omit any action whereby the subordination contemplated by this Deed may be impaired; or
- (g) discharge any of the Bond Debt by way of set-off (or otherwise).

8.3 Permitted Payments to Bondholders

Notwithstanding the foregoing provisions:

- (a) provided that no Event of Default is continuing or will occur as a result, the Parent may:
 - (i) make periodic interest payments to the relevant Bondholders in accordance with the relevant Trust Deeds for any Series of Bonds and may make any gross-up payments required by the relevant Trust Deeds in respect of those interest payments;
 - (ii) pay the principal amount of the Bonds due on each Bond Maturity Date;
 - (iii) make payment to the Supervisor pursuant to an indemnity set out in the Master Trust Deed;



- (iv) reimburse the Supervisor for its expenses in accordance with the Master Trust Deed;
- (b) the Parent may pay distributions to Bondholders in their capacities as shareholders in the Parent, provided that distribution is paid with the Security Trustee's prior written consent and to all shareholders on the same basis;
- (c) clause 8.2 does not prevent or limit:
 - (i) the Parent from registering the transfer of Bonds;
 - (ii) in the case of any convertible Bonds, adjustments to the basis of conversion of the Bonds in accordance with the relevant Trust Deed;
- (d) the Parent may convert and convertible Bonds into ordinary shares in the Parent in accordance with the relevant Trust Deeds;
- (e) following the Date of Enforcement, the proceeds realised from enforcement of the Bond Security may (and must) be applied in accordance with the provisions set out in clause 3.2.

8.4 **Enforcement of the Bond Debt**

The Supervisor covenants for the benefit of the Security Trustee that, except as is expressly provided in this Deed (including clause 8.3) or otherwise approved by the Security Trustee in writing and notwithstanding anything to the contrary contained in any agreement or other document constituting or evidencing any of the Bond Debt, it will not, prior to the date which is 90 days after a Bond Default Date:

- (a) demand, declare to be due and owing, ask or sue for, take or receive payment or distribution or accept any assets in respect of, all or any of the Bond Debt, directly or indirectly and whether in any composition by the Debtor with its creditors, by exercise of set-off, counterclaim, consolidation of accounts or in any other manner;
- (b) prove in competition with the Security Trustee in the dissolution of the Debtor;
- (c) take, accept or receive the benefit of any security interest, guarantee, indemnity or other assurance against financial loss in respect of the Bond Debt other than pursuant to the Bond Documents;
- (d) take or omit any action whereby the subordination contemplated by this Deed may be impaired;
- (e) take any action with a view to the winding-up, receivership, administration or statutory management of the Debtor;
- (f) create or, to the extent within the Supervisor's control, suffer or permit to exist any security interest over or affecting any of its right, title or interest in,



to, under or derived from, any of the Bond Debt (except for the security approved under clause 8.2(d)),

provided that, following the Date of Enforcement, nothing shall prevent the Supervisor from accelerating the Bond Debt in order to determine the Bond Debt for the purposes of clause 3.

8.5 **Additional Bond Debt**

The Parent covenants, and the Supervisor agrees and acknowledges, for the benefit of the Security Trustee that the Parent will not issue Bonds with an outstanding principal amount at any time in excess of \$30,000,000 (in aggregate), or increase the aggregate amount of the principal indebtedness of outstanding Bonds at any time above \$30,000,000 (in aggregate), without the prior written consent of the Security Trustee.

9 **COVENANTS AND UNDERTAKINGS**

The Debtors and the Supervisor each covenants with the Security Trustee that, prior to the Termination Date, the provisions of this Deed shall not be impaired, abrogated, discharged or otherwise affected by any amendment, supplement, restatement or variation to the Facility Agreement or any other Bank Document.

10 **REPRESENTATIONS**

The Supervisor and each Debtor (in relation to itself) makes the following representations and warranties to the Security Trustee that:

- (a) the entry into and performance by it of, and the transactions contemplated by, this Deed does not and will not conflict with:
 - (i) any law or regulation applicable to it including the NZX Listing Rules;
 - (ii) any agreement or instrument binding upon it or its assets (including the Bank Documents and the Bond Documents); or
- (b) it is a company duly incorporated and validly existing under the laws of New Zealand and it has the power to own its assets and to carry on its business as it is being conducted; and
- (c) subject to general equitable principles and insolvency and other laws generally applicable to creditors' rights, the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations.

11 **ACCESSION OF NEW DEBTOR AND NEW TRUSTEE**

- 11.1 The Parent shall procure that any subsidiary of it which grants new Security to the Security Trustee and/or the Supervisor following the date of this Deed promptly



accede to this Deed as a Debtor and agrees to be bound by its terms by executing a Deed of Accession.

11.2 The Supervisor must not, under the Master Trust Deed, appoint any person as a replacement trustee unless:

- (a) the appointment is in compliance with the provisions of the Master Trust Deed; and
- (b) the new trustee has acceded to this Deed and agreed to be bound by its terms by executing a Deed of Accession.

12 **ASSIGNMENT**

12.1 **Benefit and Burden of this Deed**

This Deed shall be binding upon and enure for the benefit of the parties and their respective successors and any permitted assignee and transferee.

12.2 **By the Debtor**

The Debtors may not assign any or all of their respective rights and benefits under this Deed without the prior written consent of the Security Trustee and the Supervisor.

12.3 **By the Security Trustee and the Supervisor**

The Security Trustee and the Supervisor may assign any or all of their respective rights and benefits under this Deed in accordance with the terms of the Bank Documents or the Bond Documents (as applicable).

13 **NOTICES**

All notices, demands, requests, approvals and other communications under this Deed to one party from the other shall be in writing and signed by that party or a director or other authorised officer of the party giving the same and may be sent by facsimile or delivered personally or by prepaid post to the following respective addresses:

The Debtor:

c/- Turners Automotive Group Limited

Level 8
34 Shortland Street
PO Box 1232
Auckland 1140

Facsimile: 09 308 4982
Attention: Chief Executive Officer

The Security Trustee:

**Bank of New Zealand
Delivery address**

Level 6, 80 Queen Street
Auckland 1010

Postal address



Private Bag 92208
Auckland 1142

Email: institutional.banking.syndications@bnz.co.nz
Facsimile: +64 9 375 1200
Attention: Director – Syndications & Agency

Supervisor: **Public Trust**
Level 9
34 Shortland Street
Auckland 1010

Attention: Manager Client Services

14 **GENERAL**

14.1 **Termination**

Prior to the Termination Date, the obligations of the Debtor under clauses 7 and 8 of this Deed may be terminated by written notice to the Debtor from the Security Trustee (which the Debtor may only require the Security Trustee to give if there is no Bank Debt owing to a Finance Party).

14.2 **No rights**

The Debtor shall not have any rights hereunder and none of the undertakings or representations and warranties included in this Deed on the part of the Parties are given (or shall be deemed to have been given) to, or for the benefit of, the Debtor.

14.3 **Acknowledgement**

The Supervisor and each Debtor acknowledges that the Security Trustee has entered into the Bank Documents and has allowed, and continues to allow, the Bank Debt to be incurred by the Debtor in full reliance upon the covenants set out in this Deed.

14.4 **Amendments**

No amendment to this Deed shall be effective unless all of the parties have consented in writing to such amendment.

14.5 **Discretion**

Subject to the express terms of this Deed, any right or power which may be exercised or any determination which may be made under this Deed by the Security Trustee may be exercised or made at its absolute and unfettered discretion.

14.6 **Partial Invalidity**

The illegality, invalidity or unenforceability of any provision of this Deed shall not affect the legality, validity or enforceability of any other provision of this Deed or any other agreement or document whatsoever.

14.7 **Expiry**

With effect from the Termination Date, the Parties shall have no further rights or obligations to each other under this Deed (except for rights and obligations that accrued prior to termination).



14.8 **Costs**

- (a) *Costs and Expenses*: The Debtor shall on demand reimburse the Security Trustee and the Supervisor for all costs and expenses (including legal fees and fees charged by other advisers to the Security Trustee or the Supervisor) and any taxes thereon, reasonably incurred by the Security Trustee or the Supervisor in the negotiation, preparation, execution and ongoing administration of this Deed (and any amendments, variations, waivers or supplements to or of the same).
- (b) *Enforcement Expenses*: The Debtor shall from time to time on demand reimburse the Security Trustee and the Supervisor for all costs and expenses (including legal fees) and fees charged by other advisers to the Security Trustee or the Supervisor and any taxes thereon incurred in or in connection with the preservation and/or enforcement of any of the Security Trustee's rights or the Supervisor's rights under this Deed.
- (c) *Stamp Duty*: The Debtor shall pay all stamp, registration and other documentary taxes to which this Deed, or any payment made or to be made under this Deed, is or at any time may be subject and shall indemnify and hold the Security Trustee and the Supervisor harmless against any liabilities, costs, claims and expenses directly or indirectly resulting from any failure so to pay or delay in paying any such taxes.

14.9 **Reinstatement**

If any payment received or recovered by (i) the Security Trustee in respect of the Bank Debt or (ii) the Supervisor or Bondholders in respect of the Bond Debt is avoided by law or has to be refunded to any liquidator or other person, that payment will be deemed not to have discharged the Bank Debt or the Bond Debt (as the context requires) in respect of which the payment was received or recovered and, accordingly, if the Termination Date has occurred in such circumstances, it will be deemed not to have occurred.

14.10 **No waiver**

Time is of the essence for this Deed but no failure to exercise, and no delay in exercising, any right or remedy of the Security Trustee or the Supervisor under this Deed is to operate as a waiver of such right or remedy, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy. No waiver by the Security Trustee or an the Supervisor of any rights or remedies under this deed is to be effective unless it is in writing signed by the Security Trustee or, as the context requires, the Supervisor.

14.11 **Privity**

The Supervisor acknowledges that, in terms of the Contract and Commercial Law Act 2017, this Deed is made for the benefit of, and is intended to be enforceable by, the Security Trustee and any receiver appointed thereby.

14.12 **Several Liability**

The obligations of each Party under this Deed are several, and none of them is responsible for the obligations of any other of them.



14.13 Execution by Counterpart or Facsimile

This Deed may be signed in any number of counterparts (including a secured PDF copy) all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

14.14 Conflict

If there is any conflict between the provisions of this Deed and any other document (including the Bank Documents and the Bond Documents) then this Deed will prevail.

14.15 Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by each party immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by that party into the custody of the other parties or their solicitors; or
- (b) transmission by a party or its solicitors (or any other person authorised in writing by that party Debtor) of a photocopied or scanned copy of an original of this Deed, executed by that party, to the other parties or their solicitors.

14.16 Governing Law

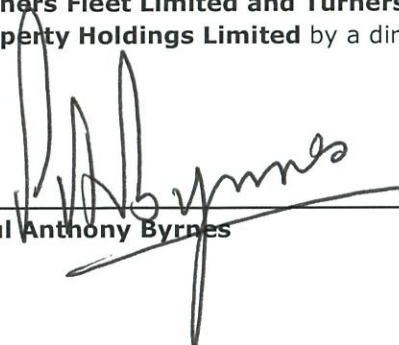
This Deed shall be governed and construed in accordance with New Zealand law and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.



EXECUTED AS A DEED


The Initial Debtors


Turners Automotive Group Limited,
Oxford Finance Limited, Buy Right Cars
(2016) Limited, EC Credit Control (NZ)
Limited, Payment Management Services
Limited, Turners Group NZ Limited,
Turners Fleet Limited and Turners
Property Holdings Limited by a director:




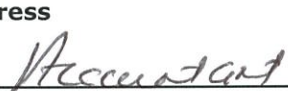
Paul Anthony Byrnes

in the presence of:



Signature


Name


Address



Occupation


Estate Management Services Limited and
EC Web Services Limited by a director:

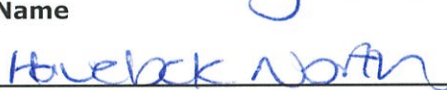



Matthew Harrison

in the presence of:



Signature


Name


Address



Occupation



The Supervisor

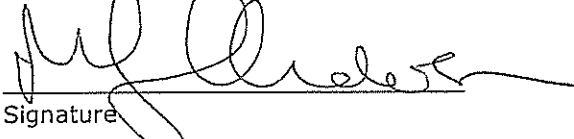
PUBLIC TRUST

by its attorney:

S 75 

SIMON JOHN SHERPA
SENIOR MANAGER CLIENT SERVICES
PUBLIC TRUST
AUCKLAND

in the presence of:



Signature

Name

Michael Anderson
Director
AUCKLAND

Address

Occupation

**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

I, Simon John Sherpa, of Auckland, hold the office of Senior Manager Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 18 April 2018, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand; and
- 2 at the date hereof I hold the position of Senior Relationship Manager with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: *20 August 2018*

SJS

Signature of attorney



Security Trustee

Bank of New Zealand
by its attorneys:

Attorney

Ian Peter Johnson

Name of Attorney

Attorney

Katharine Louisa Davies

Name of Attorney

in the presence of:

Name: **Jessica Lee McLauchlan**

Occupation: **Banker**

Address: **80 Queen Street**



**CERTIFICATE OF NON-REVOCATION
OF POWER OF ATTORNEY**

We, **Ian Peter Johnson**, Head of Syndications & Agency
and **Katharine Louisa Davies**, Associate Director
both of Auckland, New Zealand, Bank Officers, certify:

1. That by deed dated 8 May 2015, Bank of New Zealand, of Level 4, 80 Queen Street, Auckland, New Zealand, appointed us its attorneys.
2. A copy of the deed is deposited with Land Information New Zealand under number PA 10097085.1.
3. That we have not received notice of any event revoking the power of attorney.

SIGNED at Auckland this 28 day of August 2018

Ian Peter Johnson

SIGNED at Auckland this 28 day of August 2018

Katharine Louisa Davies



SCHEDULE 1
INITIAL DEBTORS

- (a) Turners Automotive Group Limited (company number 247933)
- (b) Oxford Finance Limited (company number 525530)
- (c) Buy Right Cars (2016) Limited (company number 39980)
- (d) EC Credit Control (NZ) Limited (company number 639706)
- (e) Estate Management Services Limited (company number 2215481)
- (f) Payment Management Services Limited (company number 4392758)
- (g) EC Web Services Limited (company number 3683257)
- (h) Turners Group NZ Limited (company number 73426)
- (i) Turners Fleet Limited (company number 101812)
- (j) Turners Property Holdings Limited (company number 1221406)

SCHEDULE 2
FORM OF DEED OF ACCESSION - NEW DEBTOR / NEW SUPERVISOR

DATE:

PARTY

[] ("[New Debtor/New Supervisor]").

DEED

1 INTERPRETATION

- 1.1 In this Deed, "**DOPAS**" means the Deed of Priority and Subordination dated [] between, among others, Turners Automotive Group Limited, Public Trust and Bank of New Zealand.
- 1.2 Unless otherwise defined in this Deed, terms defined in clause 1.1 of the DOPAS shall apply to and be incorporated into this Deed.

2 ACCESSION AND ACKNOWLEDGMENT

With effect from the date of this Deed:

- 2.1 The [New Debtor/New Supervisor] accedes as a [Debtor/Supervisor] under the DOPAS.
- 2.2 The [New Debtor/New Supervisor] agrees to be bound by all the terms and conditions of the DOPAS as if it were a party to the DOPAS with the rights and obligations of a [Debtor/Supervisor] under the DOPAS.
- 2.3 The [New Debtor/New Supervisor] acknowledges and agrees that, subject to and in accordance with the terms of the DOPAS, the Bond Debt is subordinated and subject in point of priority and right of payment to the prior payment of all of the Bank Debt.
- 2.4 Pursuant to section 14 of the Property Law Act 2007, and without limiting clause 2.3 above, it is declared that there shall be deemed to be incorporated in this Deed all the representations, covenants, powers, conditions and provisions of the DOPAS in the same manner and to the same extent as if the representations, covenants, powers, conditions and provisions had been mutatis mutandis set out in full in this Deed and made applicable to the [New Debtor/New Supervisor], and the [New Debtor/New Supervisor] accordingly covenants and agrees jointly and severally with each other [Debtor/Supervisor] to duly perform and comply with and be bound by the representations, covenants, powers, conditions and provisions.
- 2.5 The [New Debtor/New Supervisor] covenants to, promptly following execution of this Deed, deliver an executed copy of this Deed to Bank of New Zealand



and the Supervisor as notice of the [New Debtor's/New Supervisor's] accession to the DOPAS.

- 2.6 The [New Debtor/New Supervisor] represents that it has the power to enter into this Deed and has taken all necessary action to enter into the transactions referred to in the Deed and to execute this Deed in order to make this Deed binding on the [New Debtor/New Supervisor].
- 2.7 This Deed will be governed by and construed in accordance with the laws of New Zealand.

Executed as a deed:

Executed as a **Deed** for and on behalf of
[New Debtor/New Supervisor] in the
presence of:

Director

Director

in the presence of:

Name:

Occupation:

Address: