



BMW GROUP PURCHASING CONDITIONS FOR GOODS AND/OR SERVICES WITHIN THE UNITED KINGDOM

(Version 03/2016)

These terms and conditions and any schedules attached and any other documents incorporated in the Purchase Order is the agreement (“**Agreement**”) between Affiliates of Bayerische Motoren Werke Aktiengesellschaft or their foreign branches which are registered in the United Kingdom (hereinafter collectively referred to as “**BMW**”), and the supplier (hereinafter referred to as the “**Supplier**”) in respect of the purchase of goods or services (hereinafter referred to as “**Goods**” or “**Services and Deliverables**” as appropriate) within the United Kingdom unless agreed otherwise in writing.

1. Basis of Agreement

- 1.1 BMW shall issue a Purchase Order to the Supplier which constitutes an offer by BMW to purchase Goods and/or Services and Deliverables from the Supplier in accordance with this Agreement.
- 1.2 The Purchase Order shall be deemed to be accepted and a binding contract to supply the Goods and/or Services and Deliverables specified in the Purchase Order on the earlier occurrence of:
 - 1.2.1 the Supplier issuing written acceptance of the Purchase Order; or
 - 1.2.2 any act by the Supplier consistent with fulfilling the Purchase Order.
- 1.3 In the event that the Supplier does not perform any act in relation to a Purchase Order, which would constitute acceptance of such Purchase Order within fifteen (15) working days after the Supplier’s receipt of the Purchase Order, BMW shall be entitled, but not obliged, to revoke such Purchase Order without incurring any liability to the Supplier.
- 1.4 Subject to Clause 32 (Entire Agreement) this Agreement shall apply to the provision of Goods and/or Services and Deliverables to the exclusion of any other terms including any terms that the Supplier seeks to impose or incorporate or which may otherwise be implied by trade, custom or practice or course of dealing.
- 1.5 BMW makes no guarantee, representation or warranty as to the level, quantity or value of business or Purchase Orders that it may place with the Supplier.

2. Supplier’s Performance

- 2.1 Delivery dates and quantities shall apply as set out in the Purchase Order or as otherwise stipulated by BMW. The Supplier acknowledges that delivery times and quantities are of the essence and BMW may reject and/or return at the Supplier’s expense any Goods and/or Services and Deliverables or part thereof received before or after the delivery date or in excess of the quantity specified in the Purchase Order.



- 2.2 The Supplier agrees to take all actions necessary and appropriate to ensure that Goods and/or Services and Deliverables are received by BMW as required under the Agreement. The Supplier will inform BMW promptly of any occurrence, which will or may result in any delay of delivery at any time or which will or may result in the Supplier’s inability to supply the quantities specified in the Purchase Order. The Supplier shall also advise BMW in writing of corrective measures which the Supplier is taking to minimize the effect of such occurrence.
- 2.3 Except for Force Majeure as set forth in Clause 28 below in the event that the Supplier fails for any reason whatsoever to effect delivery consistent with the delivery dates specified in the Purchase Order, BMW shall be entitled to recover from the Supplier all actual, consequential and incidental losses and damages including, but not limited to, losses and damages relating to and arising out of incremental cost of labour, transportation, production changes and storage.
- 2.4 Each party shall nominate an appropriate individual to act as that party’s Contract Manager. Each party will notify the other in writing of any changes to the appointment of its Contract Manager.
- 2.5 The Supplier shall verify all the information provided to it by BMW and shall ensure that it has a thorough understanding of what it is providing in terms of Goods and/or Services and Deliverables and carries out all necessary due diligence required to enable it to fully perform the provision of Goods and/or Services and Deliverables, and bears full responsibility for such actions.
- 2.6 The Supplier acknowledges that third parties engaged by BMW on planning and/or monitoring tasks are not authorised to represent BMW. In particular they shall not be authorised to extend delivery dates or to approve invoices, day rates or quantity surveys.

3. Supply of Goods

- 3.1 The Supplier will supply the Goods to BMW in accordance with this Agreement.
- 3.2 The Supplier warrants, represents and undertakes that the Goods:
 - 3.2.1 conform with all descriptions and specifications provided by each of the parties;
 - 3.2.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979 and any amendments thereto or any similar legislation) and fit for any purpose held out by the Supplier or made known to the Supplier by BMW, expressly or by implication, and in this respect BMW relies on the Supplier’s skill and judgment;
 - 3.2.3 where applicable, are free from defects in design, materials and workmanship; and
 - 3.2.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
 - 3.2.5 will be supplied in an efficient and professional manner and that the Goods are the



best available quality, material and workmanship free from material defects and are fit for purpose in conformity with the agreed specifications and/ or patterns as detailed in the Purchase Order or as defined by BMW in writing for a period of two years beginning from the date of acceptance unless stated otherwise in the Purchase Order.

- 3.3 If the Supplier is obliged to supply customised Goods, a formal inspection and written acceptance from BMW is required. If inspection of the Supplier’s performance requires commencement of operations or initial use for test purposes, the acceptance procedure shall take place upon successful completion of such test and written confirmation of the same by BMW.
- 3.4 If the results of the inspections or testing as detailed in Clause 3.3 above cause BMW to be of the opinion that the Goods do not conform or are unlikely to conform with the Purchase Order or to any specifications and/or patterns supplied or advice by BMW to the Supplier, BMW shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition BMW shall have the right to require and witness further testing and inspection. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier’s obligations under this Agreement
- 3.5 Where appropriate and required by BMW the acceptance procedure shall be carried out as a joint inspection on site and the proceedings and results of the acceptance procedure are to be recorded in an acceptance report, which shall be signed by both parties.
- 3.6 Payments made by BMW shall not constitute acceptance.
- 3.7 The Supplier will ensure that:
 - 3.7.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 3.7.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered in instalments, the outstanding balance of Goods remaining to be delivered; and
 - 3.7.3 if the Supplier requires BMW to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 3.8 Acceptance of any delivery note shall not be deemed a variation of this Agreement or acceptance of any other terms and conditions which may be included with the delivery note or any other documentation.
- 3.9 The Supplier will deliver the Goods:



- 3.9.1 on the date specified in the Purchase Order or, if no such date is specified, then within ten (10) Business Days of the date of the Purchase Order, and the time for delivery of the Goods is of the essence;
- 3.9.2 to the delivery address set out in the Purchase Order or as instructed by BMW before delivery ("**Delivery Address**"); and
- 3.9.3 between 9.00am and 5.00pm on Business Days.
- 3.10 Delivery shall not be deemed complete until the Goods are safely unloaded at the Delivery Address and signed for as received by BMW.
- 3.11 Without prejudice to the rights and obligations of the parties under this Agreement, title of the Goods shall pass to BMW on delivery or payment of the Charges, whichever occurs sooner.
- 3.12 The risk of damage to or loss of the Goods shall not pass to BMW until delivery is completed in accordance with this Agreement.
- 3.13 Without prejudice to any other right or remedy which BMW may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Agreement, BMW shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by BMW:
 - 3.13.1 to rescind the Purchase Order;
 - 3.13.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
 - 3.13.3 at BMW's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled;
 - 3.13.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
 - 3.13.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Agreement; and
 - 3.13.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of this Agreement.

4. Supply of Services

- 4.1 The Supplier will for the duration of the Term provide the Services to BMW in accordance



with the terms of this Agreement.

- 4.2 The Supplier will meet any performance dates for the Services specified in this Agreement or notified to the Supplier by BMW, and time is of the essence.
- 4.3 In providing the Services, the Supplier warrants, represents and undertakes that:
 - 4.3.1 the Services conform with all descriptions and specifications provided by each of the parties;
 - 4.3.2 in respect of BMW's computer or communication systems or other BMW Materials it does not cause any material fault or malfunction or introduce any computer viruses or other malicious code; and
 - 4.3.3 it has the expertise, ability and resource to provide the Services and perform the Services in an efficient and professional manner.
- 4.4 Payments made by BMW shall not constitute acceptance.
- 4.5 Without prejudice to any other right or remedy which BMW may have, if any Services are not performed in accordance with, or the Supplier fails to comply with, any of the terms of this Agreement, BMW shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Services have been accepted by BMW:
 - 4.5.1 to rescind the Purchase Order;
 - 4.5.2 to reject the Services (in whole or in part) on the basis that a full refund for the Services so rejected shall be paid forthwith by the Supplier;
 - 4.5.3 at BMW's option to give the Supplier the opportunity at the Supplier's expense either to remedy and perform the Services in accordance with the Agreement and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled;
 - 4.5.4 to refuse to accept any further Services without any liability to the Supplier;
 - 4.5.5 to carry out at the Supplier's expense any work necessary to make the Services comply with the Agreement; and
 - 4.5.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of this Agreement.

5. Quality / Documentation

- 5.1 The Supplier shall provide BMW with all documents, information and data that are deemed necessary to satisfy national and international official requirements.



- 5.2 If BMW demands initial or test samples, the Supplier may only commence production of the Goods once written approval has been issued by BMW.
- 5.3 BMW shall provide the Supplier with all documents, information and data that are deemed necessary for the performance of the Agreement. Documents or means of production provided to the Supplier (e.g. dies, templates, matrices, data, models, gauges, die-plates, patterns, samples, tools, drawings and other information) ("**Production Aids**") are lent to the Supplier and must be returned upon BMW's request or at the latest after completion or termination of the Purchase Order.
- 5.4 The Production Aids made available to the Supplier or manufactured on the basis of information gained from BMW may neither be duplicated nor sold, transferred by way of security, pledged nor otherwise passed on or used for third parties in any way without the express written consent of BMW. This also applies to the items manufactured with the help of these Production Aids.
- 5.5 The Supplier must document all tests which are carried out during performance of the Purchase Order and their results. Such documentation must be kept for five years from the date of acceptance and made available to BMW if requested.
- 6. Payment and Set-Off**
- 6.1 Unless agreed otherwise payment shall be effected only after performance and/or delivery in accordance with the terms of the Agreement and receipt of an auditable and verifiable invoice by BMW, which shall include the BMW Purchase Order number, Supplier number and VAT number ("**Auditable Invoice**"). For the calculation of payment due dates, deliveries carried out prior to the agreed delivery dates shall be deemed to have been received on the agreed delivery dates.
- 6.2 If deposit payments are agreed upon, these shall only be made in return for a bank guarantee as shall be approved by BMW from time to time.
- 6.3 BMW shall be entitled to withhold payment of any Charges in whole or in part without breaching this Agreement where it determines that there is a dispute regarding the Goods and/or Services and Deliverables or if any invoice is inaccurate. BMW shall pay the balance of any invoice which is not disputed by BMW. Each party may charge interest in respect of any disputed amount that is found to be payable.
- 6.4 BMW shall pay each invoice properly due, issued and submitted to BMW in accordance with the Purchase Order. If a fixed price is agreed, the Supplier shall only invoice the Goods and/or Services and Deliverables upon either acceptance by BMW of agreed upon milestones or confirmation by BMW that the Goods and/or Services and Deliverables have been successfully completed according to the agreed upon acceptance criteria. BMW shall pay the charges with such charges as set out in the Purchase Order being the only, full and fixed remuneration of the Supplier for the Goods and/or Services and Deliverables. For the avoidance of doubt invoices which are not submitted to BMW within six (6) months of the receipt of Goods and/or Services and Deliverables shall not be considered due and payable.



- 6.5 The parties to this Agreement may charge simple interest at the rate of 4% per annum above the Bank of England base rate from time to time on any overdue sums, including, but not limited to, invoices for duly provided and invoiced Goods and/or Services and Deliverables not paid by BMW and overcharges by the Supplier. Interest will be charged from the due date for such payment until the actual date of payment. For the avoidance of doubt, no interest will be payable on the late payment of invoices not submitted in accordance with this Clause 6. This Clause 6 shall not apply to payments that are in dispute in accordance with Clause 6.3 above.
- 6.6 Payment shall be made by way of bank transfer.
- 6.7 BMW may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier against any amount owed by BMW to the Supplier.

7. Complementary Goods and/or Services and Deliverables and Obligations

- 7.1 The Supplier shall, where required by BMW, without requiring any additional remuneration, take all necessary measures to reach the contractual objective, even if such measures are not expressly indicated in the Agreement, including:
 - 7.1.1 procurement of all necessary equipment, non-productive material and facilities;
 - 7.1.2 cleaning of the construction site and restoration of the original condition of the assembly site;
 - 7.1.3 disposal of waste accumulated during performance;
 - 7.1.4 adequate illumination of the working site;
 - 7.1.5 protection of working sites against accidents, damage, theft or similar.
- 7.2 The Supplier shall provide BMW, where required, with sufficient quantities of spare parts for machinery and equipment for a period of ten years after BMW’s acceptance.

8. Warranties

- 8.1 Each party warrants, represents and undertakes to the other that it has full capacity and authority to enter into and perform this Agreement and to grant or transfer any rights, title or interest granted or transferred free from all encumbrances and without restriction.
- 8.2 The Supplier warrants, represents and undertakes to BMW that:
 - 8.2.1 the Goods and/or Services and Deliverables will comply with applicable laws and conform to any description or specification stated in this Agreement; and
 - 8.2.2 there are no actions, suits, or proceedings or investigations by the Supplier or by Regulators or any other persons pending or threatened against or affecting the Supplier before any Regulator, court or administrative body, mediator or arbitration



tribunal or with any person or body that might affect the ability of the Supplier to meet and carry out its obligations under this Agreement.

8.3 The Supplier hereby undertakes and warrants to BMW to comply with all laws, statutes, regulations, orders, rules, codes, industry or self-regulatory standards, guidance, directions and principles that apply to the operation of this Agreement, the Services and the Deliverables, which are determined or enacted:

- 8.3.1 under English and Welsh law; or
- 8.3.2 by the European Union; or
- 8.3.3 by Regulators. (**“Applicable Laws”**)

9. Compliance

9.1 The Supplier shall comply with its obligations under the Equality Act and shall procure that its Personnel do the same, in particular the obligations under Section 26 of the Equality Act not to harass and/or subject others to less favourable treatment.

9.2 The Supplier agrees to indemnify the BMW Group and keep the BMW Group indemnified from and against any and all losses, costs, claims, demands, liabilities, expenses (including legal expenses) or damages that are suffered or incurred by any the BMW Group company arising out of or in connection with any failure of the Supplier to comply with its obligations under Clause 9.1 above. The Supplier agrees to hold the BMW Group harmless from and against any liability that may accrue under this Clause 9.2.

9.3 Where relevant to the Goods and/or Services and Deliverables the Supplier shall comply with BMW’s health and safety policy, any policies of BMW that relate to BMW’s compliance with Applicable Laws and any updated or amended versions of the same policies that are notified and provided to BMW together with any other of BMW’s policies that the parties agree will apply.

9.4 Nothing in this Agreement including any audits and any guidance and training that may be provided or facilitated by BMW will make the BMW Group responsible for the Supplier’s compliance with Applicable Laws.

9.5 In providing the Goods and/or Services and Deliverables to BMW, the Supplier will for the Term of this Agreement:

- 9.5.1 comply with all Applicable Law and Good Industry Practice relevant to the provision of the Goods and/or Services and Deliverables;
- 9.5.2 maintain all licences, permissions, authorisations, consents and any other rights necessary to allow the Supplier to lawfully perform its obligations in accordance with this Agreement;
- 9.5.3 cooperate with, and comply with, all reasonable instructions given by BMW or



Regulators in all matters relating to the provision of the Goods and/or Services and Deliverables;

- 9.5.4 maintain a suitable Business Continuity Plan, which includes having made all reasonable efforts to protect against cyber risks and an obligation on the Supplier to carry out a full test implementation of its Business Continuity Plan at least once every twelve (12) months; and
 - 9.5.5 maintain full and accurate Records and accounts to evidence the Supplier's performance of its obligations under this Agreement.
- 9.6 The Supplier will not do anything that:
- 9.6.1 will breach or will cause BMW to breach Applicable Law; or
 - 9.6.2 would or would be likely to bring BMW or any Affiliate of BMW into disrepute or damage the reputation, good name, goodwill or Intellectual Property Rights of BMW's customer's business or the business of any Affiliate of BMW. This Clause 9.6.2 shall survive termination of this Agreement and may be enforced by any Affiliate of BMW as if they were a party to this Agreement.
- 9.7 The Supplier will inform BMW immediately on becoming aware of:
- 9.7.1 any breach of its obligations under this Agreement; or
 - 9.7.2 any factor or circumstance which might reasonably be expected to have an adverse effect on the Supplier's provision of the Goods and/or Services and Deliverables or performance of any of its obligations under this Agreement.

10. Acting Fairly And Anti-Bribery

- 10.1 The Supplier shall act in good faith and in a professional, fair and courteous manner in accordance with good industry practice towards BMW or any relevant third party and shall not act in any way which may bring the Trademarks, good name, reputation or goodwill of the BMW Group into disrepute or otherwise compromise the same.
- 10.2 The Supplier shall report any allegation made by any third party of any conduct which does not comply with Clause 10.1, in writing to BMW no later than two working days after such an allegation has been made.
- 10.3 The Supplier shall comply with all Applicable Laws, regulations, codes and sanctions relating to anti-bribery, anti-corruption, anti-slavery and acting fairly in particular the Bribery Act and the MSA and it shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 or the MSA.
- 10.4 The Supplier shall have in place and maintain its own anti-bribery and anti-corruption policies to prevent bribery and corruption throughout its business and shall observe its policies in particular within the business relationship with BMW under this Agreement. At



BMW's request the Supplier shall provide BMW with its relevant anti-bribery and anti-corruption policies and any substantially or significantly amended or varied versions thereto from time to time.

- 10.5 The Supplier shall have in place and maintain adequate procedures (for example commitment of top-level management, risk assessment, anti-bribery, anti-slavery and anti-corruption guidelines, communication and training, due diligence procedures, monitoring and review measures) to ensure compliance with its obligations under Clause 10.3 and Clause 10.4 and shall actively monitor and enforce the same procedures. Further the Supplier shall at the request of BMW provide BMW with such supporting evidence of such compliance as BMW may reasonably request.
- 10.6 The Supplier shall ensure that the adequate procedures referred to in Clause 10.5 are proportionate to the degree of bribery, slavery and corruption risk to which the Supplier is or may be exposed to and to the nature, scale and complexity of its business activities.
- 10.7 The Supplier shall ensure that it's Personnel and associated persons who carry out the Services for or on its behalf including its Personnel, Affiliates, agents, joint venture partners, suppliers, subsidiaries and sub-contractors, enter into a written agreement with the Supplier agreeing to comply with terms that are equivalent to the terms of this Clause 10. The Supplier shall be responsible for ensuring compliance with the terms of this Clause 10 by such persons and shall be directly liable to BMW for any breach by such persons of the terms of this Clause 10.
- 10.8 The Supplier shall implement due diligence procedures for it suppliers, subcontractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains or in connection with slavery and human trafficking.
- 10.9 The Supplier shall document its compliance with the provisions set out in this Clause 10 and shall provide such documentation to BMW upon request or to a Regulator or any law enforcement agency pursuant to their powers and authority under Applicable Law.
- 10.10 The Supplier shall promptly report to BMW any demand, offer, promise or request for any undue financial or other advantage of any kind that is made or received in connection with the negotiations or performance of this Agreement.
- 10.11 The Supplier or any of its Personnel or associated persons acting for it under the Agreement, shall not induce or reward BMW or any of BMW's employees, agents, sub-contractors or any other person that has an interest or benefit in the negotiation or performance of this Agreement to act or perform improperly under this Agreement, nor shall it bribe, solicit or offer, promise, give or request, agree, accept or receive a bribe or any undue financial or other advantage of any kind (or allow the same to be done) itself or on its behalf or on the BMW Group's behalf or on behalf of any of the BMW Group's employees, agents, sub-contractors or on behalf of any other person that has an interest or benefit in the negotiation and performance of this Agreement.
- 10.12 Without limitation to any other right of termination to which BMW may be entitled under this Agreement, BMW shall be entitled to terminate this Agreement if the Supplier



breaches any of its obligations under this Clause 10 and the Supplier fails to remedy its breach (if capable of remedy) within the period of thirty (30) days following the date of notice by BMW specifying the breach and the requirement for it to be remedied by the Supplier.

- 10.13 The Supplier agrees to indemnify the BMW Group and to keep the BMW Group indemnified on a continuing basis in full from and against any and all losses, demands, costs, claims, actions, proceedings, damages, liabilities and expenses (including any legal expenses) arising as a result of or in connection with any breach of the obligations under this Clause 10 by the Supplier, its Personnel or any other person that is associated with the Supplier in the performance of this Agreement. The Supplier agrees to hold the BMW Group harmless from and against any liability that may accrue under this Clause 10.13.
- 10.14 For the purposes of the anti-bribery provisions prescribed under this Clause 10, adequate procedures and associated persons shall have the meanings ascribed to these expressions in the Bribery Act and any guidance issued under the Bribery Act.

11. Personnel

- 11.1 The Supplier warrants that its Personnel are appropriately experienced, qualified, capable, competent, trained and efficient to perform the Services in accordance with good industry practice. The Supplier shall provide to BMW upon request such information about its Personnel as BMW may require regarding their qualifications and competence.
- 11.2 The Supplier shall appoint and allocate those of its Personnel who are specifically named as Key Personnel as its Personnel who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by the parties as being key to the success of the implementation, provision and/or operation of the Services and Deliverables and who shall be retained on the implementation, provision and/or operation of the Services and Deliverables for such time as each Key Personnel person is required to perform the role which has been allocated to them. The Supplier shall ensure that the Key Personnel have the appropriate authority to act on behalf of it on the matters for which they are stated to be responsible.
- 11.3 The Supplier shall not remove or replace any of the Key Personnel unless:
 - 11.3.1 requested to do so by BMW;
 - 11.3.2 the person is declared to be on long-term sick;
 - 11.3.3 the element of the Services in respect of which the individual was allocated has been completed to BMW's satisfaction;
 - 11.3.3.1 the person resigns from their employment with the Supplier; or
 - 11.3.3.2 the Supplier obtains the prior written consent of BMW.
- 11.4 The Supplier shall notify BMW of the identity and background of any proposed



replacement or additional Key Personnel as soon as a suitable replacement or additional person has been identified and proposed. BMW shall be entitled to interview any such person and may object to any such proposed appointment within seven working days of being notified in writing of the identity and background of the proposed person or meeting any such replacement or additional person if, in its opinion BMW considers the proposed replacement or additional person to be unsuitable. The Supplier shall not allocate or deploy as Key Personnel any person that BMW has not approved as being suitable.

- 11.5 At the request of BMW the Supplier shall ensure that it's Personnel attend and participate in any specific training that BMW may require in respect of BMW's relevant products, services, systems and processes or any other matters that are relevant to the provision of the Services and Deliverables. At the request of either party meetings shall be convened for the purposes of discussing the provision of the training including each party's responsibility for the cost of providing it. The payment or reimbursement of any day to day out of pocket expenses incurred by the Supplier's Personnel such as travel and accommodation expenses will be subject to the prior written authorisation of BMW in accordance with Clause 6 (Payment and Set-Off).
- 11.6 The Supplier shall at the request of BMW add to, remove or replace (or procure the same) any of its Personnel. Further, the Supplier shall immediately at BMW's request, remove from the performance of the Services any of its Personnel whom BMW has reasonable grounds to believe have harassed and/or subjected others to less favourable treatment contrary to Section 26 of the Equality Act. Upon receiving such a notice from BMW under this Clause 11.6, the Supplier shall promptly replace the individual Personnel concerned with another individual Personnel who possesses the necessary training, skills and qualifications to provide the Services in accordance with this Agreement.
- 11.7 The Supplier shall ensure that the Personnel are appropriately, properly and presentably dressed at all times whilst on premises occupied by BMW or the BMW Group.
- 11.8 The Personnel shall at all times remain under the direction and supervision of the Supplier, and no relationship of employee / employer shall exist between any of the Supplier's Personnel and the BMW Group respectively.
- 11.9 The Supplier agrees to indemnify the BMW Group against:
 - 11.9.1 any and all losses, costs, action or claims (including, but not limited to, all demands for income tax, penalties and interest made by HM Revenue and Customs or any other such Regulator, agency or authority) brought against or suffered by the BMW Group in connection with the termination of the employment of any Personnel and against any costs, damages, fines, judgments, expenses and liabilities whatsoever (including reasonable professional fees) suffered or incurred, directly or indirectly, in relation to any such action or claim; and
 - 11.9.2 any and all actions, costs, claims, expenses and liability whatsoever (including reasonable professional fees) arising in connection with the employment of any of the Personnel. The Supplier agrees to hold the BMW Group harmless from and against any liability that may accrue under this Clause 11.9.



11.10 The Supplier acknowledges and agrees that it shall be responsible for all payments that are due to its Personnel including salaries, other bonus, fees, commission, profit-related pay, pension, pension related benefits, other remuneration and/or benefits, and any associated income tax liabilities, National Insurance and similar contributions arising in respect of the foregoing as well as for employer's and public liability insurance and any other associated costs.

12. TUPE

12.1 The Supplier hereby warrants that the Personnel, whether individually or collectively, shall not constitute an organised grouping for the purposes of TUPE, nor have as their principal purpose of employment the carrying out of the Services.

12.2 If on the termination or expiry of this Agreement or on any the BMW Group company or any Subsequent Supplier providing BMW with services that are similar to the Services (or some of them) in succession to the Supplier, any contract of employment relating to any person engaged in providing the Services (or some of them) has effect or is alleged to have effect as if originally made between any the BMW Group company or any Subsequent Supplier and that person ("**Relevant Person**"), the following will apply:

12.2.1 BMW will within ten working days of becoming aware of that effect or alleged effect notify the Supplier;

12.2.2 The Supplier will use reasonable commercial efforts, within ten working days of being so notified, to find suitable alternative employment for and make an offer of employment to the Relevant Person; and

12.2.3 Unless the offer is accepted and the Supplier provides evidence to BMW and the Subsequent Supplier that the offer has been accepted within fifteen working days of the notification referred to in Clause 12.2.1 above, the relevant the BMW Group company or Subsequent Supplier (whichever may be the transferee or alleged transferee for the purposes of TUPE) may terminate (or purport to terminate) the contract of employment of the Relevant Person.

12.3 The Supplier will indemnify BMW and any Subsequent Supplier and keep BMW and any Subsequent Supplier indemnified from and against any and all losses, damages, liabilities (including liability to taxation), claims, costs and expenses including fines, penalties, legal and other professional fees and expenses ("**Losses**") arising from or related to:

12.3.1 Such termination (or purported termination) of employment;

12.3.2 The costs of employing the Relevant Person from the date of the transfer or alleged transfer to the date on which his or her employment terminates;

12.3.3 Any claim by the Relevant Person in respect of any fact or matter to the extent that such claim concerns or arises from their employment or the termination of their employment before or after the transfer or alleged transfer to the BMW Group company or Subsequent Supplier;



- 12.3.4 Any claim by the Relevant Person in respect of which any BMW Group company or the Subsequent Supplier incurs liability as a result of the operation of TUPE; and
- 12.3.5 Any claim relating to any failure to comply with the information and consultation obligations under TUPE.
- 12.4 The Supplier will indemnify and keep indemnified any the BMW Group company and Subsequent Supplier against all Losses (as defined in Clause 12.3 above) arising from or related to any claim made by or in respect of any person dismissed by the Supplier, any Supplier Affiliate or its or their sub-contractors for which it is alleged that any the BMW Group company or Subsequent Supplier may be liable by virtue of TUPE.
- 12.5 Notwithstanding any other provisions of this Agreement, any The BMW Group company or any Subsequent Supplier may enforce these TUPE Terms in accordance with the Contracts (Rights of Third parties) Act 1999. BMW and the Supplier do not require the consent of any BMW Group company or Subsequent Supplier to rescind or vary this Agreement at any time, even if that variation or rescission affects the benefits conferred on such BMW Group company or Subsequent Supplier.
- 12.6 These TUPE Terms shall survive the expiry or termination of this Agreement.

13. Intellectual Property Rights

- 13.1 All right, title and interest including all Intellectual Property Rights that are legally capable of being assigned under Applicable Law in and to the Deliverables and any other product of the Services, shall immediately upon their creation vest in BMW. Accordingly, the Supplier hereby assigns to BMW with full title guarantee all such Intellectual Property Rights that the Supplier has now or may have in the future throughout the world to BMW absolutely so far as possible in perpetuity.
- 13.2 If and to the extent that the Deliverables and any other product of the Services are not legally capable of being assigned to BMW pursuant to Clause 13.1 above then the Supplier shall notify and identify which Deliverables cannot be assigned to BMW and it shall at the request of BMW grant or it shall procure the grant of an irrevocable and royalty free licence for BMW or the relevant the BMW Group company to use the Deliverables under the most advantageous terms available that at least allow BMW to use them for the minimum usage and duration requirements that are specified by BMW. The form and terms of any such licence shall be subject to the prior written approval of BMW.
- 13.3 The Supplier hereby waives or it shall procure the waiver of all moral rights anywhere in the world that may subsist in and to the Services, the Deliverables and any other product of the Services. The Supplier shall notify BMW of any non waiver of moral rights in a timely manner furnishing BMW with all relevant details including the applicable Deliverable and the identity of the author.
- 13.4 The Supplier shall do or procure to be done all such further acts and execute all agreements and other documents as BMW may require from time to time in order to give BMW the full benefit of this Agreement including its obligations under this Clause 13 the



responsibility for any applicable costs and expenses shall be agreed between the parties.

- 13.5 The Supplier agrees to indemnify the BMW Group and keep the BMW Group indemnified from and against any and all losses, costs, claims, damages, expenses (including legal fees and expenses) and charges, suffered or incurred by the BMW Group arising from or by reason of any third party claim that the BMW Group's use, possession, sale or licensing of the Deliverables and/or receipt of the Services infringes the Intellectual Property Rights of any third party. The Supplier shall hold the BMW Group harmless from and against any liability that may accrue under this Clause 13.5.
- 13.6 In the event that a third party makes or threatens any claim that the use by the BMW Group of the Deliverables or Goods and/or Services infringes Intellectual Property Rights or moral rights that belong to the third party making the claim or allegation then, without limitation to any other of BMW's rights and remedies, the Supplier shall promptly upon BMW's request and at BMW's election and at no cost to BMW, remedy the infringement or alleged infringement by:
- 13.6.1 procuring for BMW the right to continue using the material, Goods and/ or Services or the Deliverable (or relevant part thereof) which is the subject of the claim; or
 - 13.6.2 replace or modify or procure the replacement or modification of such material or Deliverable with equivalent materials so that the material or Deliverable ceases to infringe the Intellectual Property Rights, provided that:
 - 13.6.3 the performance and functionality of the replaced or modified item is at least equivalent to the standard of performance and functionality of the original item;
 - 13.6.3.1 the replaced or modified item does not have an adverse effect on any other Goods and/or Services, Deliverables or BMW Materials;
 - 13.6.3.2 there is no additional cost or expense to BMW; and
 - 13.6.3.3 the terms of this Agreement will apply to the replaced or modified Goods and/or Services and Deliverables.
- 13.7 If the remedies specified in Clause 13.6.1 or Clause 13.6.2 do not avoid or resolve the claim of infringement of Intellectual Property Rights then BMW may terminate this Agreement by written notice with immediate effect.
- 13.8 All right, title and interest including Intellectual Property Rights in and to all the BMW Group Background IPR, BMW Materials and BMW Data is vested in and shall remain vested in the BMW Group.
- 13.9 All right, title and interest including Intellectual Property Rights in and to all Supplier Background IPR and Supplier Materials is vested in and shall remain vested in the Supplier.



14. Confidentiality

- 14.1 Each party shall keep, treat and maintain all Confidential Information that it receives from the other party securely and strictly confidential and use it only when necessary for the performance of this Agreement.
- 14.2 Each party may disclose Confidential Information to those of its relevant Affiliates, employees, officers and professional advisers under 'need-to-know' circumstances provided that such employees, officers and professional advisers are made aware of the obligation of confidentiality contained within this Agreement and are bound to keep any Confidential Information disclosed to them confidential.
- 14.3 The obligations of confidentiality under this Clause 14 shall not apply to information that is purported to be Confidential Information but which is:
 - 14.3.1 lawfully available in the public domain otherwise than by breach of confidentiality by a party or its advisers;
 - 14.3.2 being lawfully within the knowledge of the relevant party at the time of disclosure, otherwise than by breach of confidentiality by a party or its advisers;
 - 14.3.3 having lawfully entered the public domain after it has been received by the relevant party otherwise than by breach of confidentiality by a party or its advisers; or
 - 14.3.4 is required to be made under Applicable Law or by any court of competent jurisdiction, by a Regulator or by any legally binding order of any court or tribunal provided that the disclosure or use is strictly limited only to the extent required and the relevant party notifies the other party and makes the person requiring the disclosure of the Confidential Information aware that the information is confidential.
- 14.4 Each party shall be entitled to seek and apply for the granting of equitable relief including injunctive relief or specific performance in respect of any misuse or threatened or actual breach by the other party of this Clause 14.
- 14.5 Unless it is required to do so under Applicable Law, the Supplier shall not issue or make any media or press release or other public announcement, statement, document or communication that contains or discloses information which relates or refers to or arises out of this Agreement or any matters contained within it including the resolution of any complaints without the prior written consent of BMW.
- 14.6 The provisions of this Clause 14 shall survive the termination of this Agreement.

15. Termination

- 15.1 BMW may terminate this Agreement with immediate effect by giving written notice to the other if the Supplier:
 - 15.1.1 commits a material or persistent breach of this Agreement and if such breach is



remediable fails to remedy it within thirty days of receipt of written notice of the breach, specifying the breach and requiring its remedy; or

15.1.2 is affected by insolvency.

15.2 BMW may by written notice to the Supplier terminate this Agreement (in whole or part) with immediate effect if:

15.2.1 the Supplier undergoes a Change of Control and BMW reasonably determines that such a Change of Control is to BMW's detriment;

15.2.2 the Supplier acquires or is acquired by a competitor of any the BMW Group company;

15.2.3 any of the Supplier's Personnel are found to be guilty of fraud, dishonesty or serious misconduct;

15.2.4 the Supplier breaches the terms of any other agreement the Supplier has with any the BMW Group company;

15.2.5 in the event that to continue with this Agreement would place the BMW Group company or the Supplier in breach of Applicable Laws;

15.2.6 any Regulator or law enforcement agency requires or advises that this Agreement be terminated; or

15.2.7 the Supplier breaches or is in default of any warranty given by it under this Agreement.

15.3 The Supplier may terminate this Agreement with immediate effect by giving written notice to BMW if:

15.3.1 It persistently fails to pay the Supplier where there is no dispute over payment and if such failure to pay is not remedied within forty five days of receipt of written notice of the breach, specifying the breach and requiring its remedy; or

15.3.2 It is affected by insolvency.

15.4 BMW may at any time and without stating any reason therefore, terminate this Agreement immediately.

16. Consequences Of Termination

16.1 Upon termination of this Agreement by BMW for any reason:

16.1.1 BMW's sole liability shall be to pay the Supplier the proportion of the charges applicable to the Goods and/or Services and Deliverables carried out and /or delivered prior to termination and any outstanding unavoidable commitments



necessarily and solely incurred in properly performing this Agreement prior to termination that are not reflected in such Charges;

- 16.1.2 BMW shall not pay for any commitments that the Supplier entered into after the date of notice of termination or those that the Supplier is able to mitigate and BMW shall not be obliged to pay any Charges for the Goods and/or Services and Deliverables which at the date of termination BMW is entitled to reject or has already rejected. BMW shall only pay for commitments that BMW has validated to its satisfaction;
 - 16.1.3 BMW's total liability under Clause 16.1.1 above shall not in any circumstances exceed the charges that would have been payable by BMW to complete the Services and/or deliver the Goods if this Agreement had not been terminated; and
 - 16.1.4 BMW shall be entitled to terminate any Purchase Order with effect from the date of service of notice of termination of this Agreement.
- 16.2 Upon termination of this Agreement by BMW under Clause 15.1.1, 15.2.3, 15.2.4, or 15.2.7, BMW shall without limitation to any other of its rights, have the right to recover from the Supplier any additional cost of having the Goods provided and / or the Services completed by a third party.
- 16.3 In the event of termination of this Agreement for any reason or from the date of service of notice by a party to terminate this Agreement, or at any time during the termination notice period at the request of BMW the Supplier shall provide such assistance as is required by BMW to transfer the Goods and/ or Services provision to another supplier.
- 16.4 Upon termination of this Agreement for whatever reason the Supplier shall:
- 16.4.1 undertake at no additional cost to BMW, to preserve all documents and systems and shall continue to diligently perform all duties and responsibilities, hereunder, provide access, assistance, information and consultation to BMW and any successor to the Supplier (in each case) as may be necessary for the transition of the Goods and/or Services and Deliverables to BMW or any third party, deliver to BMW all property owned by BMW and all of the Confidential Information, documents and copies thereof in the possession, power, custody or control of the Supplier and shall do all such acts and things and execute all such deeds and documents as BMW's legal counsel may require the Supplier to execute in order to transfer or assign to BMW such property and such Confidential Information and documents, and not thereafter utilise or exploit the Confidential Information and documents in any way whatsoever, and undertakes and warrants that it shall not thereafter use or exploit the Confidential Information and documents in any way whatsoever; and immediately cease to use and remove all reference to BMW and/or any other the BMW Group company and the trademarks from any materials in any media for any uses including the Supplier's promotional materials and websites and the Supplier shall not refer to its relationship with BMW or the BMW Group by any means or for any purposes whatsoever; and



- 16.4.2 at BMW's direction and request take and shall procure that any necessary third party takes all such actions and measures including the execution of any necessary agreements, deeds and documents as BMW may require that may be necessary to give effect to its obligations under this Agreement such as any transfer or assignment of any physical or non-physical property.
- 16.5 Any termination of this Agreement, howsoever occasioned, shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

17. Indemnity

- 17.1 Subject to the Supplier's obligation to indemnify the BMW Group under Clause 13.5 (Intellectual Property Rights), the Supplier shall indemnify the BMW Group and hold it harmless against any and all losses, costs, claims, damages and expenses whether direct or indirect (including any interest, fines, legal and other professional fees and expenses) awarded against or incurred or paid by the BMW Group as a result of or in connection with any claim made against the BMW Group by a third party arising out of, or in connection with the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its Personnel, agents or sub-contractors.
- 17.2 In connection with the Goods and/or Services and Deliverables or otherwise, if the Supplier's Employees, agents, subcontractors or other representatives (hereinafter **"Supplier's Agents"**) are on or are present at any premises of BMW, the Supplier shall be and is responsible for the acts and omissions of the Supplier's Agents when they are on or are present at BMW's premises and agrees to indemnify and hold BMW harmless against liability for damage to property or injury or death to persons arising out of acts or omissions of the Supplier's Agents whether pursuant to the Agreement or otherwise. The indemnity in this Clause shall not apply insofar as the claim is caused by the negligence or fraud of BMW.
- 17.3 In the event of a claim by a third party against BMW, which may be the subject of indemnification provided for in this Clause 17 BMW shall provide written notification thereof to the Supplier. The Supplier shall provide BMW with such reasonable assistance in the response and prosecution of any defence as BMW may request.
- 17.4 The parties hereby agree that any provision which the parties have made in this Agreement for liquidated damages shall not prevent BMW seeking or obtaining additional damages for its actual loss in the circumstances.
- 17.5 The provisions of this Clause 17 shall survive the termination or expiry of the Agreement.

18. Insurance

- 18.1 The Supplier shall have in force and shall maintain at its own cost insurance policies with a reputable insurance provider that cover the risks and amounts specified in Clause 18.2.



- 18.2 The insurance policies referred to in this Clause 18 shall cover the following risks and amounts or where greater any insurance cover required under Applicable Law:
- 18.2.1 employer's liability insurance in accordance with its statutory obligations and covering all Personnel;
 - 18.2.2 general public and product liability insurance with a bodily injury and property damage limit of not less than £5 million (British pounds sterling) per occurrence;
 - 18.2.3 wherever the Services are of a professional nature, professional indemnity insurance of not less than £5 million (British pounds sterling) per occurrence or series of occurrences arising from the same event; and
 - 18.2.4 breach of Clauses 14 (Confidentiality) and 13 (Intellectual Property Rights).
 - 18.2.5 Such insurance shall be maintained throughout the Term and for a period of five (5) years following termination of this Agreement for any reason.
- 18.3 The Supplier shall within ten working days of any request by BMW provide BMW with all such documentation as is necessary to prove the Supplier's continuing compliance with its obligations to insure under this Clause 18 including a copy of the insurance policy or insurance certificate. If the Supplier cannot provide evidence of such insurance to BMW on request, BMW may arrange such insurance and recover the cost from the Supplier.
- 18.4 The Supplier shall promptly give BMW written notice in the event of cancellation or any material change in any of the policies referred to in Clause 18.2.
- 18.5 Nothing contained in this Clause 18 or the terms of any insurance policy or the level of any cover shall relieve, limit or exclude the Supplier's liability under this Agreement.

19. Data Protection

- 19.1 Each party shall comply with its respective obligations under the Data Protection Laws in relation to all Personal Data that may be processed in the performance and operation of this Agreement.
- 19.2 If and to the extent the Supplier is required to Process Personal Data on the BMW's behalf, BMW will at all times remain the Data Controller and the Supplier will at all times remain the Data Processor of the Personal Data.
- 19.3 The Supplier will, when Processing Personal Data on behalf of BMW:
- 19.3.1 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Goods and Services and only in accordance with BMW's reasonable instructions from time to time, and will not Process the Personal Data for any other purpose;
 - 19.3.2 take appropriate technical and organisational measures to protect the Personal



Data against unauthorised or unlawful Processing and against loss, destruction, damage, or accidental alteration or disclosure;

19.3.3 immediately notify BMW if any Personal Data is lost or disclosed in breach of the Supplier's obligations under this Agreement;

19.4 When acting as a Data Processor, the Supplier shall:

19.4.1 not store, modify, copy, amend, abstract, summary, précis or alter in whole or part BMW Personal Data except as instructed by BMW for the necessary performance by the Supplier of its obligations under this Agreement or unless specifically authorised in writing by BMW;

19.4.2 not publish, disclose or divulge any of BMW Personal Data to any third party (including for the avoidance of doubt a Data Subject) unless it is authorised or directed to do so in writing by BMW or as otherwise permitted under this Agreement;

19.4.3 store and maintain BMW Personal Data separately and distinct from any other data or databases that are maintained by it in relation to any other of its activities that do not comprise of the Goods and/or Services and Deliverables or any other of its activities under this Agreement; and

19.4.4 at all times maintain a back-up copy of BMW Personal Data ensuring that up-to-date back-ups are held in safe and secure off-site storage.

19.5 The Supplier shall not cause or permit BMW Personal Data to be transferred outside the European Economic Area without first obtaining the prior written consent of BMW, where BMW consents to such a transfer, the Supplier shall comply with:

19.5.1 the obligations of a Data Controller under the Eighth Data Protection Principle of the DPA by providing an adequate level of protection for the rights and freedoms of individuals ("Data Subjects") whose Personal Data is being transferred; and

19.5.2 any instructions or conditions that BMW may notify and require such as entering into the so called European Commission approved Model Clauses.

19.6 At the written request of BMW that may be provided at any time, the Supplier shall deliver to BMW a copy of all or part of BMW Personal Data that is in its possession or control.

19.7 Upon termination of this Agreement or upon BMW notifying the Supplier that it is not necessary for the Supplier to process BMW Personal Data (whichever occurs sooner), the Supplier shall immediately cease to use BMW Personal Data and shall at the discretion of BMW return or destroy it including all copies of it.

19.8 The Supplier will:

19.8.1 notify BMW within five (5) Business Days if it receives a request from a Data



Subject for access to that person's Personal Data;

19.8.2 provide BMW with full cooperation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data;

19.8.3 have no right to outsource, appoint a sub-processor or subcontract any of its obligations under these Data Protection Terms without the prior written consent of BMW; and

19.8.4 notify BMW immediately in the event that it becomes aware of any breach by it of the Data Protection Laws or of any serious breach of security in relation to BMW Personal Data being processed and provide BMW with an explanation of the cause of the breach and its proposals to remedy the breach. The Supplier shall as soon as may be practicable implement and maintain all measures and steps that are necessary to remedy the breach and to minimise the likelihood of a future breach.

19.9 Without limitation to the rights and obligations under Clause 23 (Right to Audit) upon notification by a Regulator or upon receipt of written request of BMW giving the Supplier notice, the Supplier agrees that a Regulator or BMW or its appointed representatives may enter its relevant premises to audit, examine and inspect the Supplier's procedures, premises, equipment, facilities, materials and documentation from or on which BMW Personal Data has been processed or is processed or is to be processed pursuant to this Agreement by the Supplier and/or the Personnel or its agents, as BMW may require to enable it to assess and monitor the Supplier's compliance with its obligations under these terms. The Supplier agrees that it will co-operate with and assist BMW or a Regulator in the operation of any audit and that BMW may make and retain copies of any of the materials that it audits and inspects.

20. Variation

20.1 No amendment or variation to this Agreement shall be effective unless agreed in writing by an authorised representative of the Supplier and two Authorised Representatives of BMW.

20.2 BMW may from time to time change its requirements and, from the date agreed between the parties, the Supplier shall supply Goods and/or Services and Deliverables in accordance with the amended requirement, which shall be documented in a revised version of the relevant Section or other part or provision of this Agreement. Any other proposed amendments or variations to the terms of this Agreement including any in respect of the Charges or the Term shall form the subject of negotiation between the parties and will be valid only if represented in the form described in Clause 20.1 above.

21. Severability

21.1 The invalidity or unenforceability for any reason of any provision of this Agreement shall not prejudice or affect the validity or enforceability of its other provisions and all provisions that are not affected by such invalidity or unenforceability shall remain in full force and effect. The parties agree to attempt to replace the invalid or unenforceable provision with a valid and enforceable substitute provision, the effect of which is as close as possible to the



intended economic, legal and commercial objectives and effect of the invalid or unenforceable provision.

22. Waiver

22.1 No waiver by either party shall be effective unless it is made in writing. No failure or delay on the part of either party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy be construed as a waiver of any succeeding or continuing breach of the same or other provision, nor shall any delay or omission on the part of either party in exercising or availing itself of any right, power or privilege that it has or may have under this Agreement operate as a waiver of any breach or default by the other party. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided under general law.

23. Right to Audit

23.1 During the Term and during a period of six years thereafter, upon providing the Supplier with not less than two working days' written notice, BMW itself or by its instructed auditors or other professional advisers may enter the Supplier's relevant premises to conduct audits of the Supplier during working hours. The Supplier agrees that Regulators may enter the Supplier's premises to conduct audits of the Supplier in accordance with the rights of audit under this Clause 23 or pursuant to the powers and authority that Regulators have under Applicable Law.

23.2 The Supplier shall produce, maintain and preserve the Records in accordance with Good Industry Practice or as are required under Applicable Laws that are necessary for the purpose of enabling BMW and any Regulator to conduct audits in order to:

23.2.1 Fulfil any legally enforceable request by a Regulator or other law enforcement agency;

23.2.2 Undertake verification of any of the Charges, costs and third party fees charged to BMW;

23.2.3 Undertake verification that the Services are being provided and all obligations of the Supplier are being performed in accordance with this Agreement; or

23.2.4 Identify or investigate suspected fraud.

23.3 The Supplier agrees that BMW or a Regulator may access, inspect, refer to and make and retain copies of all Records.

23.4 BMW agrees that any of the Supplier's Confidential Information obtained in the course of any audit is treated and kept confidential in accordance with Clause 14 (Confidentiality).

23.5 Should any audit or inspection of the Records by BMW reveal that:



- 23.5.1 the Supplier has failed to perform its obligations under this Agreement then, without limitation to any other rights or remedies of BMW, at the request of BMW the Supplier will promptly produce and deliver to BMW a remediation plan setting out how and when the Supplier will effectively solve and address the failures. Once BMW has approved the Supplier's remediation plan the Supplier will promptly undertake the steps and actions specified in the remediation plan to the satisfaction of BMW at no additional cost to BMW;
 - 23.5.2 BMW has overpaid any charges, the Supplier shall pay BMW the amount overpaid within 7 working days from the date of receipt of an invoice or notice to do so; and
 - 23.5.3 BMW has underpaid any charges, BMW shall pay to the Supplier the amount of the under-payment within 7 working days from the date of receipt of an invoice for such amount.
- 23.6 The Supplier agrees that it will provide all required and appropriate assistance and co-operation to BMW and any Regulator or any law enforcement agency that audits, examines or investigates its Records and those of its business activities and operations that are relevant to the Services and the operation of this Agreement. The Supplier shall immediately notify BMW of any investigation by HMRC, a Regulator or any law enforcement agency furnishing BMW with all relevant information including the reason and purpose of the investigation.

24. No Partnership and Exclusivity

- 24.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties. Save as expressly provided in this Agreement, no relationship of principal and agent shall exist between the parties and neither party shall hold itself out as being an agent of the other party nor shall it bind the other party in any way.
- 24.2 Nothing in this Agreement shall constitute an exclusive arrangement between the parties for the provision or receipt of the Services. BMW may at any time perform the Services or part of the Services itself or procure them from a third party.

25. Third party Rights

- 25.1 Save as otherwise expressly provided in this Agreement, nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement under the Contracts (Rights of Third parties) Act 1999.
- 25.2 Those BMW Group companies that benefit from the Goods and/or Services and Deliverables shall be entitled to enforce the Supplier's obligations under this Agreement.

26. Dispute Resolution Procedure

- 26.1 The Parties shall attempt, in good faith, to resolve any dispute arising out of or in connection with this Agreement promptly by negotiation as follows:



- 26.1.1 the dispute shall be referred for discussion between the Contract Managers;
- 26.1.2 if the Parties are unable to resolve the dispute in accordance with Clause 26.1.1 within thirty (30) days of the commencement of the discussions, the dispute shall be referred for a further period of thirty (30) days to appropriate nominated executives or officers of each Party who are suitably senior, experienced and authorised to discuss and settle the dispute.
- 26.2 If the Parties fail to agree on a resolution to a dispute in accordance with Clause 26.1, either Party may refer any dispute for mediation under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) in London for the time being in force in accordance with CEDR's Model Mediation Agreement for the time being in force.
- 26.3 Unless otherwise agreed by the Parties, in any mediation each Party shall bear its own costs and the charges and expenses of CEDR and the mediator shall be borne equally between the Parties. The mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute and calling on the Parties to agree the appointment of a mediator.
- 26.4 Nothing in this Clause 26 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required or otherwise for the purposes of preserving a Party's rights and remedies.

27. Notices

- 27.1 Excluding those communications regarding the day to day operation and management of this Agreement between the Contract Managers, any formal notice or demand to be served under this Agreement shall be in writing, and shall not be sent by email, and shall be served during working hours by the serving party to the other party's registered office address. Each party agrees to notify the other party of any change to its registered office address in a timely manner and in accordance with Clause 20 (Variation).
- 27.2 The notice or demand served by first class post shall be deemed duly served forty-eight hours after posting.

28. Force Majeure

- 28.1 Neither party shall be liable for any delay or failure to perform its obligations under this Agreement if such a delay or failure has been caused by a Force Majeure Event.
- 28.2 A party that is affected by a Force Majeure Event shall give written notice to the other providing details about the delay or inability and the nature of the Force Majeure Event in question. The operation of this Agreement shall be suspended during the period (and only during the period) in which the affected party is unable to perform its duties and obligations.
- 28.3 Notwithstanding the foregoing a party experiencing the Force Majeure Event shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the



duration of a Force Majeure Event and shall include in any notice it gives under Clause 28.2 its proposals to overcome such event.

- 28.4 Upon the cessation of the Force Majeure Event, the affected party shall give written notice to the other party. If the Force Majeure Event prevents either party from performing any of its material obligations under this Agreement for a period of more than 28 days the other party shall be entitled to terminate this Agreement forthwith on giving written notice.

29. Environment

- 29.1 While performing the Services under this Agreement, the Supplier shall use the necessary resources (in particular materials, energy and water) efficiently and shall reduce the environmental impact (in particular with respect to waste, wastewater, air pollution and noise) to a minimum. This also applies to the effort and expense of transportation and logistics.
- 29.2 The Supplier shall promptly upon demand furnish BMW with any and all information required for the quantitative assessment of the Supplier's resource efficiency relating to the total annual scope of Purchase Orders placed by and supplied to BMW (e.g. total energy consumption; CO₂ emissions; total water consumption; process waste water; metric tons of waste; VOC emissions). In addition, the Supplier shall provide on BMW's request data for a lifecycle assessment relating to goods or parts thereof (including data with regard to the material input) according to the data collection format for life cycle assessment of the VDA.
- 29.3 The Supplier shall comply with the requirements stated in BMW Standard 93008-1 to 4 (substances of concern) throughout the entire life cycle of the Deliverables. The Supplier is responsible for registration and, where necessary, authorisation or notification of chemical substances contained in Deliverables in accordance with the statutory requirements that apply to the market concerned (e.g. REACH). In the event of a chemical substance being imported, the Supplier assumes responsibility for all obligations such as named above and all associated expenditure. Furthermore, the Supplier will promptly upon request furnish BMW with any and all information about goods and substances contained therein, even if such goods have already been delivered, and such declarations and confirmations required by BMW to fully and timely fulfil its statutory information duties (e.g. under Art.33 of REACH).
- 29.4 The Supplier shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Clause 29.

30. Social Responsibility

- 30.1 It is of paramount importance to BMW that corporate activities take account of the social responsibility to employees and society as a whole. This applies both to BMW itself and its suppliers. BMW's and the Supplier's aim shall be to comply with the Directives of the UN Initiative Global Compact (Davos, 01/99) and the principles and rights set out and approved by the International Labour Organisation (ILO) in its "Declaration on fundamental principles and rights at work" (Geneva 06/08). The following principles are of particular



importance:

- 30.1.1 preservation of human dignity and human rights, ban on child and forced labour;
 - 30.1.2 implementation of equal opportunities and family-friendly policies;
 - 30.1.3 no discrimination on the basis of any legally protected characteristic including religion or belief, race (including origin, nationality and colour), age, disability, marital status or civil partnership, sexual orientation, political affiliation, membership of a trade union or the like and gender, gender reassignment, pregnancy or maternity and veteran status;
 - 30.1.4 the protection of indigenous rights;
 - 30.1.5 ban on bribery and blackmail;
 - 30.1.6 maintenance of adequate social working conditions;
 - 30.1.7 protection from individual arbitrary personnel measures;
 - 30.1.8 provision of conditions that enable employees to enjoy a reasonable standard of living;
 - 30.1.9 positive and negative freedom of association;
 - 30.1.10 maintenance of employability by basic and advanced training;
 - 30.1.11 provision of information to personnel on the objectives, economic situation and current topics that affect the Supplier and the personnel;
 - 30.1.12 responsible action by all personnel in relation to the environment;
 - 30.1.13 compliance with industrial health and safety standards; and
 - 30.1.14 compliance with current laws and regulations.
- 30.2 The Supplier shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Clause 30.

31. Trademarks

- 31.1 The Supplier shall have no right to use and nothing contained in this Agreement shall be construed as conferring on the Supplier any right to use by any means and for any purposes including advertising, promotion, endorsement, association, publication or otherwise any Trademark or derivative thereof.
- 31.2 Save as expressly provided under the terms of this Agreement, neither party may use the other party’s name or trademarks for any purposes whatsoever without the proprietor



party's prior written consent and under any terms of use of the proprietor party.

32. Entire Agreement

- 32.1 This Agreement embodies and sets out the entire agreement and understanding of the parties and supersedes and extinguishes all prior oral or written representations, undertakings, agreements, understandings or arrangements relating to the subject matter of this Agreement.
- 32.2 Each party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 32.3 Each party agrees that its only remedy in respect of any representation or warranty in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 32.4 Nothing in this Clause 32 shall limit or exclude either party's liability for fraud or for any statements made fraudulently or negligently prior to the commencement of this Agreement.

33. Costs

- 33.1 Each party shall be responsible for and pay its own respective legal and other costs incurred in relation to the negotiation, preparation, execution, implementation and performance of this Agreement.

34. Assignment and Sub-contracting

- 34.1 This Agreement is personal to the Supplier. The Supplier shall have no right to sub-contract, assign, novate, transfer, charge or otherwise part or deal with any or all of its rights and/or obligations under or pursuant to this Agreement without the prior written consent of BMW. The Supplier shall actively monitor and enforce the provisions of any permitted sub-contract and shall continue to be fully responsible, liable and accountable as primary obligor to BMW in respect of any sub-contracted obligations.
- 34.2 The Supplier shall make full disclosure to BMW of any conflict of interest it may have in relation to its selection of any proposed sub-contractor and in all cases, the Supplier shall check with BMW as to the status of BMW's own supplier list, and use BMW's preferred suppliers when required by BMW.
- 34.3 The Supplier shall provide BMW with a copy of any proposed form of sub-contract, together with any other information that BMW may require.
- 34.4 The Supplier shall ensure that any authorised sub-contractor provides its services in accordance with Applicable Law and good industry practice.
- 34.5 The Supplier shall (unless otherwise agreed by BMW in writing) ensure that the terms of any sub-contract will not conflict with the terms of this Agreement or place the Supplier in



breach of the terms of this Agreement. Further, the Supplier shall use all reasonable endeavours to ensure that the terms of any sub-contract that it enters into after the commencement of this Agreement:

- 34.5.1 the right for BMW to receive and retain a copy of the final signed sub-contract without breaching any obligation of confidentiality;
- 34.5.2 the right under the Contracts (Rights of Third parties) Act 1999, for BMW to enforce the terms of that sub-contract as if it were the Supplier;
- 34.5.3 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and obligations under the sub-contract to BMW or any Subsequent Supplier without restriction (including any need to obtain any consent or approval) or payment by BMW;
- 34.5.4 a provision which restricts and prevents the sub-contractor from assigning, novating, transferring, sub-contracting or otherwise parting or dealing with its rights and obligations under the sub-contract with the Supplier; and
- 34.5.5 the right for BMW and applicable Regulators to conduct audits and inspections of the sub-contractor under terms that are no less restrictive than the audit provisions that are contained under Clause 23 (Right to Audit).

35. Governing Law / Place of Venue and Jurisdiction / Dispute Resolution

- 35.1 This Agreement shall be governed by the Applicable Law.
- 35.2 In the event of any dispute between the parties arising from or in connection, or related to this Agreement or its performance, construction or interpretation, the parties shall first endeavour to resolve it in accordance with the dispute resolution procedure that is set out in Clause 26.
- 35.3 In the event that a dispute arises between the parties with regard to the Goods and/or Services, the Supplier shall not be entitled to withhold its Goods and/or Services and Deliverables pending the resolution of such dispute and shall continue to perform its obligations in accordance with the terms of this Agreement.
- 35.4 The parties hereby submit any dispute arising from in connection with, or related to this Agreement or its enforceability to the exclusive jurisdiction of the Courts of England and Wales.



Glossary

In this Agreement the following words and expressions shall have the following meanings unless this Agreement states otherwise:

“Additional Services” means those (if any) Services to be provided by the Supplier at the request of BMW that are in addition to the Services that are specified at the Commencement Date;

“Affiliate” means in relation to either Party, any subsidiary undertaking or holding undertaking of a Party or any subsidiary of such holding undertaking (where “subsidiary undertaking” and “holding undertaking” have the meanings given in section 1162 Companies Act 2006);

“Authorised Representative” means a duly authorised signatory of this Agreement or their successor;

“The BMW Group” means BMW and its Affiliates;

“BMW Materials” means any equipment, tools, drawings, specifications, systems, materials, facilities and information (other than BMW Personal Data) owned by or licensed to the BMW Group that may be made available by BMW or its Affiliates to the Supplier under this Agreement;

“Background IPR” means any and all Intellectual Property Rights that are owned by or licensed by third parties to either party and which are or have been developed independently of this Agreement and the Goods and/or Services, whether prior to the commencement of this Agreement or otherwise;

“Business Continuity Plan” means the Supplier’s plan that has as its purpose the assured continuity of the provision of the Deliverables, the Services and any Additional Services in the event of a Disaster;

“Business Day” means a day other than a Saturday, Sunday or public holiday in England;

“Change of Control” means a change of control where the expression ‘Control’ has the meaning given to it in section 840 of the Income and Corporation Taxes Act 1988, save that any such change which results wholly from an intra-group transfer or reconstruction or any internal re-organisation shall not constitute a change of control under this Agreement;

“Charges” means the fees, charges or other amounts that are payable by BMW to the Supplier for the Services with such fees and charges being specified in any Purchase Order;

“Confidential Information” means all information, data or materials received from the other (including, without limitation, drawings, sketches, photographs, vehicle prototypes, models, computer software, ideas, design, know-how, formulae, processes, copyrights, inventions, techniques, new product details, business plans and such other matters as may reasonably be regarded by either party as confidential and any copies thereof in any media whatsoever) shall be kept strictly confidential at all times;



“Consents” means all permissions, consents, powers, approvals, certificates, permits, licences, agreements and authorisations (whether statutory, regulatory, contractual or otherwise) that are necessary for the provision of the Services, in particular those that are required by Regulators;

“Contract Manager” means each Party’s contract manager being its representative in respect of the day to day operation and management of this Agreement that is appointed by it in accordance with this Agreement;

“DPA” means the Applicable Law that is the Data Protection Act 1998 and the expressions “Personal Data” “Data Subject” “Notification” “Data Processor” “Data Controller” and “Processing” shall have the meanings ascribed to these expressions under the DPA;

“Data Protection Laws” means Applicable Laws that concern the processing of Personal Data and privacy including where applicable the guidance and codes of practice issued by the UK Information Commissioner’s Office (a Regulator) that are relevant to the conduct of each party under this Agreement, with such Applicable Law including the DPA, the Data Protection (Processing of Sensitive Personal Data) Order 2000 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“Deliverables” means all documents, products and materials developed by the Supplier as part of or in relation to the Services, in any form or media, including drawings, maps, plans, diagrams, designs, computer programs, data, specifications and reports (including drafts);

“Disaster” means any unplanned event that is beyond the Supplier’s reasonable control which significantly impairs the ability of the Supplier to perform the Services or any or all of its other obligations under this Agreement;

“Employment Particulars” means for each of the Employees, their employment start date, date of birth, gross annual salary, bonus, commission, profit related pay, pension and pension related benefits, and any other employment related benefits;

“Force Majeure Event” means an event which is beyond the reasonable control of the Party that has been affected by it and which such affected Party could not reasonably anticipate or mitigate, with such events including any act of God (other than one arising from or related to directly or indirectly from volcanic ash), fire, act of government or state, war, act of terrorism, civil commotion, insurrection, embargo, prevention from a hindrance in obtaining raw materials, energy or other suppliers, but not including a Party’s own strike or other industrial action;

“Intellectual Property Rights” means any and all patents, patent applications, know how, trademark, trademark applications, trade names, registered designs (whether registered or unregistered), copyright, database rights or other similar intellectual property rights whether in existence at the date hereof or created in the future;

“Key Personnel” means those Personnel together with any additional Key Personnel and any replacements for such Key Personnel approved by BMW from time to time in accordance with this Agreement;



“MSA” means the Modern Slavery Act 2015;

“Party” or “Parties” means the individual reference to each party to this Agreement being the Supplier or BMW or their permitted successors and assigns, and the Supplier and BMW shall be referred to together as the Parties;

“Personnel” means the Employees and other individuals who are directly or indirectly engaged by the Supplier to perform the Services, (including but not limited to the Key Personnel, if any);

“Purchase Order” means BMW’s official numbered purchase order for the Services issued by BMW or one of its Affiliates;

“REACH” means EC Regulation EC/1907/2006;

“Records” means all relevant accounts, documents, materials and records.

“Regulators” means any government department and regulatory, statutory and other person, entities, committees and bodies which have authority under Applicable Law whether under statute, rules, regulations, codes of practice or otherwise to supervise, regulate, investigate or influence any part of the matters dealt with in this Agreement in particular the Services or the Deliverables or any other affairs of the Supplier (or Affiliates of the Supplier) or the BMW Group with such regulatory bodies including regulators such as the Financial Conduct Authority, the Financial Ombudsman Service, the Advertising Standards Authority, the Environment Agency, Ofcom, the Information Commissioner’s Office and the Competition and Markets Authority or any new or successor regulator from time to time;

“Subsequent Supplier” means any third party that may be appointed by BMW to provide services which are similar to any of the Services in succession to the Supplier whether following termination or expiry of this Agreement or otherwise;

“Supplier Materials” means tools, equipment, systems, cabling and materials of any nature to be used by the Supplier or its sub-contractors to provide the Goods and/or Services but not included in the Deliverables.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Acquired Rights Directive (2001/23/EC), any applicable legislation implementing the same, and any similar or related legislation;

“Term” means the duration that this Agreement will have full force and effect with such duration being specified in Clause 2 (Term) of the General Terms;

“Trademark” means any of the trademarks or service marks whether registered or unregistered that are owned by or licensed to BMW or BMW Group in particular those trademarks or service marks that are owned by the BMW Group company that is Bayerische Motoren Werke Aktiengesellschaft, Munich.