



Purchasing Terms and Conditions: **Section 5: Venue Hire & Catering**

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1. Introduction

- 1.1 BMW requires the Service Provider to render services to BMW as and when required and the Service Provider has agreed to render such services to BMW.
- 1.2 These terms and conditions shall at all times solely apply to the rendering of services by the Service Provider to BMW and shall constitute the basis of a non-exclusive agreement between the parties unless otherwise expressly agreed between the parties in writing.
- 1.3 Any special conditions, work specifications, annexures, schedules and letter of acceptance as well as any written records agreed to by BMW and the Service Provider after the acceptance by the Service Provider of these terms and conditions shall be regarded as being incorporated in the agreement.
- 1.4 The Service Provider acknowledges by the signing of the letter of acceptance that it has read, understood and accepted the terms and conditions and shall be bound hereby.
- 1.5 The Service Provider shall acquaint itself at all times with the content of these Purchasing Terms and Conditions as it appears on BMW's Supplier Net at www.supnet.bmw.co.za, as amended from time to time.

2. Interpretation

- 2.1 In these terms and conditions and any annexure hereto, unless the context clearly indicates a contrary intention expressions which denote:
 - 2.1.1 any gender shall include the other gender;
 - 2.1.2 a natural person shall include a created entity (whether corporate or unincorporated) and *vice versa*;
 - 2.1.3 the singular shall include the plural and *vice versa*.
- 2.2 The clause headings in these terms and conditions have been inserted for convenience only and shall not be taken into account in interpreting these terms and conditions.
- 2.3 Words and expressions defined in any clause of these terms and conditions shall, for the purpose of the clause in question and any clause following, bear the meaning assigned to such words and expressions in that clause.

3. Definitions

In these terms and conditions the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- 3.1 **“agreement”** shall mean the agreement entered into between BMW and the Service Provider for the rendering of services in terms of these terms and conditions and shall include any Purchase Order and /or Outline Agreement issued in terms hereof as well as any special conditions or records of matters agreed to in writing between the parties.
- 3.2 **“BMW”** shall mean **BMW (South Africa) (Proprietary) Limited**, Registration Number: 1960/000196/07, a company with limited liability duly incorporated and existing under the company laws of the Republic of South Africa and having its registered address at 6 Frans du Toit Street, Rosslyn, Akasia, 0200, and its principal place of business at 1 Bavaria Avenue, Randjespark, Extension 17, Midrand, 1685 and shall include its wholly-owned subsidiary **BMW Financial Services (South Africa)(Proprietary) Limited**, Registration Number: 1990/004670/07, a company with limited liability duly incorporated and existing under the company laws of the Republic of South Africa and having its registered address and principal place of business at 1 Bavaria Avenue, Randjespark, Extension 17, Midrand, 1685.
- 3.3 **“confidential information”** shall mean all information that is not readily available in the normal course of business to third parties.
- 3.4 **“function”** shall mean a specific event held on a specific date or period of time as specified in the Purchase Order.
- 3.5 **“function date”** shall mean the date reserved for a function booking.
- 3.6 **“function room layout”** shall mean the style in which furniture and equipment are set up within a particular function venue for a particular function.
- 3.7 **“function venue”** shall mean the specific venue booked by BMW for the duration of the function as specified in the Purchase Order.
- 3.8 **“function venue rental period”** shall mean the period during which BMW hires space for rental from the Service Provider.

- 3.9 **“goods recipient”** shall mean the duly authorized BMW representative stipulated on the Purchase Order to receive the services from the Service Provider on behalf of BMW.
- 3.10 **“HSE Specifications”** shall mean the prescribed Safety, Health and Environmental conditions, policies, principles, training materials, standards and procedures as stipulated and/or utilized by BMW from time to time.
- 3.11 **“letter of acceptance”** shall mean the required written communication signed by the Service Provider as acceptance of these terms and conditions.
- 3.12 **“meals and refreshments”** shall mean but are not limited to tea, coffee, hot and cold drinks, alcoholic beverages, mineral water, confectionery items, breakfast, finger meals, lunch, dinner, cocktails and mints.
- 3.13 **“parking”** shall mean a safe security patrolled parking area or secure undercover parking.
- 3.14 **“Purchase Order”** shall mean the official printed Purchase Order issued by BMW in terms of which BMW requests and the Service Provider renders services to BMW.
- 3.15 **“Outline Agreement”** shall mean the agreement entered into between BMW and the Service Provider in terms of these terms and conditions and shall include all Purchase Orders issued in terms of the Outline Agreement.
- 3.16 **“services”** shall mean the services required to be rendered by the Service Provider as specified in the Purchase Order. In the event that the Service Provider supplies and/or delivers and/or uses dangerous goods and substances as defined in the National Road Traffic Act No. 93 of 1996 (as amended from time to time) in the fulfillment of its obligations in terms of these terms and conditions, the provisions of annexure “A3” of the Purchasing Terms and Conditions shall be applicable and shall be deemed to be incorporated herein.
- 3.17 **“Service Provider”** shall mean the party appointed by BMW for the rendering of services in terms of these terms and conditions and shall be referred to as “Supplier” in the Outline Agreement and/or Purchase Order.
- 3.18 **“telecommunications and presentation facilities”** shall mean the provision of telecommunications, IT services, video conferencing, business centre services, equipment, data projectors, screens, podiums, flip charts and in-house PA systems.

3.19 **"terms and conditions"** shall mean the terms and conditions set out herein and shall include the annexures attached hereto.

4. Nature of Relationship Between the Parties

4.1 The Service Provider shall at all times remain an independent contractor in relation to BMW and nothing herein contained shall constitute the relationship of employer and employee or any partnership between BMW and the Service Provider.

4.2 The parties agree that any person provided by the Service Provider to render services shall not be an employee of BMW and shall under no circumstances be deemed to be an employee of BMW, but shall at all times remain an employee of the Service Provider. Such person shall be remunerated for his services by the Service Provider and the Service Provider hereby undertakes as employer of such person to comply with all rights and obligations which may arise out of an employer/employee relationship, whether by statute or common law.

4.3 It is recorded that neither the Service Provider nor its employees are agents for BMW and will accordingly not in any way whatsoever represent that they act as agents for and on behalf of BMW and have any authority or power to contract in the name of, or to create any liability whatsoever, on behalf of BMW and as such shall not bind BMW in any way.

5. Outline Agreement

5.1 BMW shall be entitled to issue an Outline Agreement to the Service Provider from time to time, an example of which is contained in Annexure "B" of the Purchasing Terms and Conditions.

5.2 The Outline Agreement shall be issued in writing and be made out on the official BMW printed Outline Agreement form.

5.3 The Outline Agreement shall record any period of validity of the Outline Agreement and the services and rates that are permitted to be requested from and rendered by the Service Provider to BMW and shall remain fixed for the period of validity stipulated therein.

5.4 BMW shall be entitled, but not obliged, to request services from the Service Provider in accordance with the Outline Agreement.

6. Purchase Orders

- 6.1 BMW shall be entitled to issue a Purchase Order to the Service Provider from time to time, an example of which is contained in Annexure "B" of the Purchasing Terms and Conditions.
- 6.2 The Purchase Order shall be issued in writing and be made out on the official BMW printed Purchase Order form.
- 6.3 The Purchase Order shall contain necessary information in regard to the services such as the description of services, service rates, quality, quantity, date, place and means of execution, goods recipient, details and terms of payment and the requirement of written acceptance.
- 6.4 If specified on the Purchase Order, the Service Provider shall accept and confirm the Purchase Order in writing and shall deliver its written acceptance to BMW within 10 (ten) working days of the date of the said Purchase Order. BMW shall be entitled to cancel the Purchase Order by notification in writing at any time prior to acceptance thereof by the Service Provider, without incurring any liability whatsoever to the Service Provider.
- 6.5 In all other cases, the Purchase Order shall be deemed to have been accepted by the Service Provider unless the Service Provider has advised BMW to the contrary in writing within 10 (ten) working days of the date of the said Purchase Order.
- 6.6 BMW shall be entitled at any time before twenty-one (21) days of proper performance by the Service Provider in terms of a Purchase Order, to amend or vary a Purchase Order with regard to the rental of space, specification of the goods, date and place of delivery, date and time of a function, packaging, quality and quantity of the provision of services by the Service Provider, and the transportation of goods by means of written notification to the Service Provider.

7. Obligations of the Service Provider

- 7.1 The Service Provider shall render the services to BMW as described in the Purchase Order, and as agreed between the parties in writing from time to time.
- 7.2 The Service Provider warrants that the services rendered to BMW in terms of these terms and conditions shall be rendered with the necessary level of skill and expertise as is required by the specific task and according to the standard applicable in the relevant industry from time to time. Notwithstanding the generality of the foregoing the Service Provider shall:

- 7.2.1 depending on the function booking and the needs and requirements of BMW, provide the following:
 - 7.2.1.1 suitable chairs, in accordance with the function requirements;
 - 7.2.1.2 suitable function room layout;
 - 7.2.1.3 if required, suitable telecommunication and presentation facilities; suitable meals and refreshments; suitable parking; writing pads, pens, mints and mineral water.
- 7.2.2 perform its obligations in terms of these terms and conditions in a good, proper, efficient and workmanlike manner and in accordance with sound principles, standards, methods and practice generally accepted in the Republic of South Africa and that degree of skill, care and diligence normally practiced by a prudent service provider whilst performing work and/or service of a similar nature;
- 7.2.3 at all times treat the environment with care and respect and comply with all environmental legislation in force;
- 7.2.4 perform its obligations at the times and the locations as detailed in the Purchase Order, and/or any other document agreed to between the parties in writing, and in addition perform as soon as is possible in response to any request from BMW within the scope of these terms and conditions;
- 7.2.5 as an integral part of any work performed clean up the work site and generally maintain a high standard of housekeeping.
- 7.3 In the event that the services, in the absolute discretion of BMW, do not conform to the required standard of expertise, skill or performance as required in terms of these terms and conditions, BMW shall be entitled to notify the Service Provider of this fact and to request rectification of the non-performance within a specified period of time, failing which BMW shall be entitled to terminate the agreement between the parties in accordance with the provisions in regard to breach and termination as set out hereunder.
- 7.4 The Service Provider and BMW acknowledge and agree that notwithstanding the provisions of these terms and conditions, the parties may from time to time agree in writing that BMW is entitled to use alternative resources for the rendering of services.
- 7.5 The Service Provider shall ensure that it and all its employees, agents, servants, sub-contractors and any party or entity rendering services to BMW in terms of these

terms and conditions are fully aware of and agree to be bound by the provisions of these terms and conditions, including but not limited to the terms and conditions relating to confidentiality and indemnity.

8. Obligations of BMW

8.1 BMW shall:

- 8.1.1 notify the Service Provider, no less than fourteen (14) days prior to a function, of all function details, including but not limited to, number of invitees and function requirements;
- 8.1.2 notify the Service Provider of amendments to the number of invitees and function requirements, no less than forty-eight (48) hours before the commencement of the function.
- 8.1.3 pay the deposit of not more than 50% of the function venue, sixty (60) days prior to the function.
- 8.1.4 not be allowed to hang, attach or affix any notice, presentation, poster or other similar matter to the walls, ceilings, floors, railings and doors of the Service Provider without the Service Provider's prior written approval.
- 8.1.5 vacate the function venue by the time mutually agreed to with the Service Provider.
- 8.1.6 be responsible for the payment of any reasonable and undisputed damage caused to the venue, or damage to furnishings, utensils and equipment due to the gross negligence of BMW.

9. Compliance with Rules, Regulations and Legislation

- 9.1 The Service Provider shall at all times comply with BMW's security and traffic requirements, rules and regulations as well as the HSE Specifications.
- 9.2 The Service Provider shall at all times comply with the provisions of any legislation relating to the subject matter of these terms and conditions, including but not limited to the Occupational Health and Safety Act No. 85 of 1993 and the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993, and shall ensure good standing in terms of the latter Act, and in particular ensure that all contributions are paid timeously to the Compensation Commissioner.
- 9.3 The Service Provider –

- 9.3.1 confirms that the operation of its business is undertaken, at all times, in an environmentally compatible manner to minimize the ecological effect thereof on human beings and the environment;
- 9.3.2 in the event of goods being manufactured, undertakes to utilise a manufacturing process that is based on environmentally compatible production and recycling processes, thereby optimising the use of natural resources and an effective environmental management system. In this regard the Service Provider undertakes to reduce and/or phase out the use of hazardous chemical substances as defined in Tables 1 and 2 of the South African Regulations relating to hazardous chemical substances. Where this is not reasonably practical, the Service Provider will implement and maintain processes to effectively reduce exposure, control and monitor the impact that exposure may have on its employees and other parties.
- 9.3.3 shall, when called upon by BMW to do so, provide BMW with risk assessment reports, legal compliance reports and other key performance data (such as injury statistics) which reports will contain information not older than 24 months.
- 9.3.4 confirms that it shall at all times during the operation of its business take cognisance of the duty of social responsibility towards its employees, which duty shall include, but shall not be limited to the preservation of human dignity, the principle of non-discrimination, the ban on bribery and blackmail and the maintenance of adequate working conditions.
- 9.4 The Service Provider shall, if so required by BMW, comply in full with the terms and conditions of Annexure “A1” of the Purchasing Terms and Conditions.
- 9.5 In the event that the Supplier supplies and/or delivers and/or uses dangerous goods and substances as defined in the National Road Traffic Act No. 93 of 1996 (as amended from time to time) in the fulfillment of its obligations in terms of this agreement, the provisions of Annexure “A3” of the Purchasing Terms and Conditions shall be applicable and shall be deemed to be incorporated herein.
- 10. Sub-Contracting**
- 10.1 The Service Provider shall not sub-contract any supply of services to BMW to a third party without BMW's prior written consent.

10.2 Where BMW does give its written consent to the appointment of a sub-contractor, this will be done upon terms and conditions determined by BMW in its sole discretion, which conditions will include, but not be limited to, the requirement that any proposed sub-contractor undertakes in writing to comply fully, without exception, with the provisions of these terms and conditions.

10.3 The Service Provider shall in any event remain fully responsible to BMW for any obligation arising out of these terms and conditions, notwithstanding the fact that the supply of services has been sub-contracted and further notwithstanding the fact that BMW may, in certain circumstances, effect direct payment to such sub-contractor.

11. Deposit

11.1 BMW shall pay the deposit specified in accordance with the terms and conditions herein. All further payments will be made in accordance with the Purchase Order.

11.2 The payment of the deposit shall not be affected by amendments to the function numbers and function requirements. Any amendments approved by an authorized BMW representative will be made to a separate invoice after the function.

11.3 Any refunds due to BMW shall be paid within ten (10) days of the presentation of the final invoice to BMW.

12. Invoicing, Charges and Payment

12.1 The Service Provider shall issue invoices to BMW in accordance with the Purchase Order, in respect of the deposit, the balance due and any amendments approved by an authorized BMW representative.

12.2 The invoices shall be issued in duplicate and the duplicate copy shall be clearly marked as such.

12.3 The invoices shall be delivered to the duly authorized BMW representative identified on the Purchase Order as the goods recipient.

12.4 The invoices shall contain the following information:

A detailed description of the services, place where services are rendered, Purchase Order number and date, details of all additional agreed disbursements and expenses as well as supporting documents.

12.5 The prices specified on the Purchase Order and/or Outline Agreement shall remain fixed for the time period stipulated in the Purchase Order and/or Outline Agreement

and shall include all costs relating to the services unless otherwise agreed between the parties in writing.

- 12.6 The prices shall be exclusive of VAT.
- 12.7 The Service Provider shall be liable for the charges of any competent authority including but not limited to stamp duty, taxes, customs duties and other charges.
- 12.8 BMW shall pay the Service Provider in accordance with the terms of payment as reflected on the Purchase Order.
- 12.9 BMW shall not be liable to the Service Provider for any additional costs or expenses not expressly agreed upon between the parties in writing.
- 12.10 BMW shall be entitled to set off any amounts owed by the Service Provider to BMW against any amounts owing by BMW to the Service Provider.
- 12.11 The Service Provider shall credit BMW with all discounts received from its sub-contractors, including but not limited to cash discounts, bonuses, commissions and rebates.

13. Postponement

- 13.1 In the event that the function is postponed, the parties shall mutually agree on the terms and conditions of the postponement in writing.
- 13.2 If a function is subsequently cancelled, penalties as per the cancellation clause will apply based on the dates reserved on the Purchase Order.

14. Cancellation

- 14.1 In the event of any cancellation by BMW between fifteen (15) to fifty-nine (59) days prior to the function date, the parties agree that BMW shall have the opportunity to reserve an alternative function date.
- 14.2 In the event of any outright cancellation by BMW the following penalties will apply:
 - 14.2.1 between thirty (30) to fifty-nine (59) days prior to the function date a cancellation of 10% of the value of the function venue will be charged to and will be payable by BMW;
 - 14.2.2 between fifteen (15) and twenty-nine (29) days prior to the function date a cancellation of 25% of the value of the function venue will be charged to and will be payable by BMW;
 - 14.2.3 between seven (7) and fourteen (14) days prior to the function date a

cancellation of 50% of the value of the function venue will be charged to and will be payable by BMW;

14.2.4 between one (1) and six (6) days prior to the function date a cancellation fee of 100% of the value of the function venue will be charged to and will be payable by BMW.

15. Income Tax

15.1 The Service Provider shall make all of the necessary disclosures to the South African Revenue Services in regard to its conduct of business as envisaged in this agreement as well as in regard to any contractor and/or any employee working for the Service Provider.

16. Insurance and Liability

16.1 The Insurance and Liability Provisions are set out in Annexure "A2" of the Purchasing Terms and Conditions.

16.2 The Service Provider shall effect the appropriate insurance covering its liability in terms of clause 4 of Annexure "A 2" of the Purchasing Terms and Conditions.

17. Indemnity

17.1 The Service Provider hereby indemnifies and holds BMW and any of its employees harmless against any claim, damage or loss of whatsoever nature and howsoever caused which BMW and/or any BMW employee and/or any other person may sustain as a result, directly or indirectly, of the rendering of the services by the Service Provider in terms of these terms and conditions and/or any action, negligence and/or omission by the Service Provider, its employees, agents, servants and/or sub-contractors.

17.2 Without limiting the generality of the foregoing, the Service Provider specifically indemnifies BMW against any claim, demand, cause of action, liability, loss or expense arising by reason out of claims of government authorities or others of any actual or asserted failure of the Service Provider to comply with any law, regulation, rule, order or guideline of any governmental or statutory authority or body.

17.3 Neither BMW nor its employees shall be liable for any loss and/or damage of whatsoever nature or howsoever caused suffered by the Service Provider, its employees, agents, servants and/or sub-contractors or any other person whatsoever, arising directly or indirectly out of the rendering of services by the Service Provider to BMW.

18. Confidentiality and Non-Disclosure

- 18.1 The Service Provider acknowledges that in order to equip it appropriately for the fulfillment of its obligations hereunder, it may be necessary for BMW to disclose to it, or the person assigned by it, certain confidential information, trade secrets, technical data and other information relating to BMW or its methods of carrying on business. In this regard it is recorded that:
- 18.1.1 Confidential information includes all information proprietary to BMW, whether or not reduced to writing or tangible medium of expression.
 - 18.1.2 Confidential, specifically but without limitation includes information relating to the intellectual property and business practices of BMW.
 - 18.1.3 Intellectual property includes, but shall not be limited to, information relating to the research and development, inventions, discoveries, developments, improvements, methods and processes, know-how, drawings, blueprints, specifications, product briefs, algorithms, computer programmes and software, compositions, works, concepts, ideas, prototypes, models, samples, screens, moulds, lasts, dies, formulae, writings, notes, patents, copyrights, trade mark, trade names, trade secrets and patent, trade mark and copyright applications.
 - 18.1.4 Business practices includes, inter alia, information relating to intellectual property, business plans, financial information, products, services, manufacturing processes and methods, costs, sources of supply, advertising and marketing plans, customer information and lists, sales, profits, pricing methods, personnel and business relationships.
 - 18.1.5 Confidential information also includes comparable information that BMW may receive or has received from others who do business with BMW.
- 18.2 The Service Provider undertakes to protect confidential information of BMW, and not to use, disclose, copy, divulge or allow access to any information relating to BMW's affairs, business, operating methods, trade secrets, customers, technical data, data bases and any other information received from BMW in connection with or ancillary to these terms and conditions.

- 18.3 The Service Provider acknowledges that this undertaking shall continue after the termination of the agreement and shall survive as long as the confidential nature of the information is maintained.
- 18.4 The Service Provider undertakes not to disclose to any third party any information concerning any project, assignment or task undertaken for BMW and furthermore undertakes not to disclose to use on behalf of BMW any confidential information belonging to a third party, unless written authorization from the third party is obtained to the satisfaction of BMW.
- 18.5 The Service Provider represents and warrants that its obligations as provided for hereunder are not in conflict with any prior obligations to third parties.
- 18.6 Any and all undertakings given by the Service Provider in terms of these terms and conditions shall be deemed to have been given by and shall be binding upon its members and/or assigns and/or employees and/or sub-contractors, whether they were members and/or assigns and/or employees at the same time of signature of these terms and conditions or whether they subsequently became members and/or assigns and/or employees.
- 18.7 The Service Provider acknowledges by his signature hereto on behalf of the Service Provider, that he is aware of the provisions of this clause and undertakes to make the provisions of this clause known to all other members and/or assigns and/or employees.
- 18.8 The parties hereto agree that the Service Provider shall not acquire, by implication or otherwise, any right in or title to or license in respect of confidential information disclosed pursuant to these terms and conditions.

19. Intellectual Property Rights

- 19.1 All intellectual property rights including copyright, patent right and any other similar rights in any works or systems created and/or procured as a result of the performance of the Service Provider and/or any sub-contractor in terms of these terms and conditions shall vest in and are hereby transferred to BMW, unless specifically agreed otherwise in writing. For this purpose works created in terms of these terms and conditions shall be deemed to have been created under the control and direction of BMW.
- 19.2 The ownership and intellectual property rights of all plans, drawings, designs, specifications, business practices and all other documents provided by BMW to the

Service Provider shall remain the property of BMW and such item shall be returned to BMW on termination of this contract or on demand.

- 19.3 The Service Provider undertakes that it shall not do any act which might or would give cause to invalidate or expunge any registration or title to the trade name and/or trade marks of BMW and/or BMW AG. The Service Provider hereby acknowledges that nothing contained in these terms and conditions shall afford the Service Provider any rights in or to any such trade marks, names, initials, designs, copyrights or patents of BMW or BMW AG and especially the Service Provider acknowledges that it has and acquires no rights whatsoever to or to the use of any of the names, trade marks, initials and designations "BMW", save only with the permission and to the extent permitted by BMW during the term of these terms and conditions and in connection with the services provided for herein.
- 19.4 BMW reserves to itself the right to withdraw any written consent furnished by it for the use of its trade name and trade marks as provided for hereunder.

20. Protection of Personal Information

- 20.1 In this clause, the following expressions shall have the meanings set out opposite them:
- 20.1.1 "Cloud computing" shall mean the practice of using remote servers on the internet or internet-enabled devices to process data;
- 20.1.2 **"Personal Information"** shall mean any information relating to BMW, its holding company, subsidiaries, associated and affiliated companies, directors, officers, employees, agents, contractors and customers, including (without limitation) information of the nature contemplated in the definition of "personal information" in POPI and information processed by the Service Provider pursuant to or as a result of this Agreement;
- 20.1.3 **"POPI"** shall mean the Protection of Personal Information Act, 2013, including any regulations and amendments thereto from time to time;
- 20.1.4 **"Process"** shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 20.1.4.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consolation or use;

20.1.4.2 dissemination by means of transmission, distribution or making available in any other form; or

20.1.4.3 merging, linking, as well as restriction, degradation, erasure or destruction of information.

- 20.2 The Service Provider shall strictly comply with all provisions of POPI relating to the Processing of Personal Information. Failure by the Service Provider's to comply with POPI or any of the provisions of this clause shall be deemed to constitute a material breach of these terms and conditions and shall entitle BMW, in its sole discretion, to immediately terminate this Agreement.
- 20.3 The Service Provider shall Process Personal Information only for purposes relating directly to these terms and conditions and the rendering of the services in terms hereof. Unless provided for in terms of the provisions of these terms and conditions or otherwise as may be agreed to by BMW in writing, the Service Provider shall not modify, merge with other data, commercially exploit or engage in any other practice or activity that may in any manner adversely affect the integrity, security or confidentiality of the Personal Information.
- 20.4 All Personal Information shared by BMW with the Service Provider during the subsistence of these terms and conditions shall constitute confidential information and as such, the Service Provider shall comply with all the confidentiality and/or non-disclosure provisions contained in these terms and conditions, and as such the Service Provider shall not disclose any Personal Information to any third party without BMW's prior written consent.
- 20.5 The Service Provider shall implement and maintain adequate technical and organizational security and safety measures to protect the integrity of Personal Information Processed by it under these terms and conditions and to avoid any damage or unauthorised access to or loss of any such Personal Information.
- 20.6 The Service Provider shall immediately notify BMW if Personal Information has been lost or damaged, or accessed or acquired by an unauthorised person, and the Service Provider shall comply with any instructions and/or directives which BMW may issue in the event of any such circumstances.
- 20.7 BMW shall be entitled to verify compliance of the technical and organizational security and safety measures implemented by the Service Provider, or appoint auditors to do so, upon reasonable prior notice to the Service Provider. BMW shall

respect the operational sequences of the business of the Service Provider and the Service Provider shall assist BMW in the execution of the inspections in the best possible way.

- 20.8 The Service Provider shall provide BMW upon request with any information required to meet BMW's obligations in law relating to the processing of Personal Information and make the necessary documentation available within a reasonable time.
- 20.9 The Service Provider shall ensure that its personnel and /or any other authorised person or entity which processes Personal Information on its behalf receives adequate and appropriate training in the care and handling of Personal Information in terms of POPI and any other applicable data privacy legislation.
- 20.10 The Service Provider shall maintain adequate records of all processing of Personal Information, including the training of the Service Provider's personnel with regard to the Protection of Personal Information and any applicable data privacy legislation.
- 20.11 The Service Provider shall not transfer any of the Personal Information across the borders of the Republic of South Africa or use any Cloud computing solutions without BMW's prior written approval.
- 20.12 In the event that the Service Provider sub-contacts any of its obligations in terms of these terms and conditions, it shall do so only by way of a written agreement with the sub-contractor which imposes the same obligations relating to the protection of Personal Information on the sub-contractor as are imposed on the Service Provider under these terms and conditions. Where the sub-contractor fails to fulfil its data protection obligations under such written agreement, the Service Provider shall remain fully liable to BMW for the performance of the sub-contractor's obligations under such agreement.
- 20.13 The Service Provider confirms that it has met all requirements for registration, if any, in terms of the laws applicable to these terms and conditions.
- 20.14 Upon this Agreement coming to an end for whatever reason, the Service Provider shall return to BMW or destroy, if instructed by BMW to do so, all such Personal Information in its possession, or in the possession of its agents, sub-contractors or any third party who may have had access and/or possession of the Personal Information, in accordance with such procedures which BMW may prescribe from time to time.

- 20.15 The Service Provider shall indemnify and hold BMW harmless against any claim, loss, damage, cost and expense (including legal fees) relating to or arising from the Service Provider breaching any of the provisions of this clause
- 20.16 Insofar as BMW processes any personal information of the Service Provider, BMW shall conduct such processing within the ambit of prevailing data privacy legislation and shall adhere to such provisions to the fullest extent. For the sake of clarity, such processing shall include, but not be limited to the sharing of personal information with BMW's legal and tax advisors or consultants, service providers, agents, affiliate companies and governmental authorities as well as the trans-border flow of such personal information to such entities abroad.

21. Environment

- 21.1 The Service Provider shall, during the performance of its obligations in terms of this Agreement, use the necessary resources (including, but not limited to materials, energy and water) efficiently and shall reduce the environmental impact thereof (in particular in relation to waste, waste water, air pollution and noise) to a minimum. The Service Provider shall also apply these measures to the operations and cost of transportation and logistics.
- 21.2 In the event that the performance of the Service Provider's obligations in terms of this Agreement may or will have any environmental impact, it will establish and maintain a certified environmental management system in accordance with the requirements of "ISO 14001" or an acknowledged and certified environmental management system derived from "ISO 14001" no later than two years following the commencement of this Agreement, and provide evidence thereof to BMW by submission of a corresponding certificate.
- 21.3 The Service Provider shall ensure that all and any of its sub-contractors are contractually bound to comply with the terms of this Provision **21** ("Environment").

22. Social Responsibility

- 22.1 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 to its Service Providers and Suppliers. BMW and the Service Provider / Supplier acknowledge their compliance with the principles and rights set by the International Labour Organisation (ILO) in its "Declaration on fundamental principles and rights at work" (Geneva 06/98), the Directives of the UN Initiative Global

Compact (Davos, 01/99) and the UN Guiding Principles on Business and Human Rights (2011). The following principles are of particular importance:

- Preservation of human rights,
- Elimination of forced, compulsory, and child labour,
- Positive and negative freedom of association,
- Elimination of discrimination on the basis of gender, origin, religion or belief, membership of a trade union or the like, handicap, age, sexual identity, nationality, marital status, political affiliation, veteran status, or other characteristics protected by local law,
- Compliance with occupational health and safety standards,
- Protection from individual arbitrary personnel measures,
- Maintenance of employability by basic and advanced training,
- Maintenance of adequate social working conditions,
- Provision of conditions that enable employees to enjoy a reasonable standard of living,
- Remuneration, which permits employees to secure their livelihoods including their social and cultural participation (living wage),
- Implementation of equal opportunities and family-friendly policies,
- The protection of indigenous rights,
- Ban on bribery, corruption and blackmail,
- Compliance with current laws and regulations.
-

In view thereof, the Service Provider / Supplier shall take adequate measures in order to prevent corruption offences within its company.

22.2 It shall be Service Provider's responsibility to cause all and any of its sub-contractors to act according to the regulations of this Provision **22** (Social Responsibility).

23. Cession, Delegation and Assignment of Rights

23.1 The Service Provider shall not be entitled to sell, delegate, cede, assign or in any way alienate or dispose of the whole or any part of the rights and obligations created in terms of these terms and conditions without prior written consent of BMW.

24. Breach and Termination.

24.1 If either party breaches any provision of these terms and conditions and fails to remedy such breach within 10 (ten) days of the date of written notice by the other party (the aggrieved party) requiring it to do so, then the aggrieved party shall be entitled, in addition to any other remedy available to it at law:

24.1.1 to cancel the agreement between the parties; or

24.1.2 to claim specific performance; and

24.1.3 to claim damages.

24.2 In the event of the Service Provider:

24.2.1 being provisionally or finally sequestrated or liquidated or committing any act of insolvency in terms of the Insolvency Act No. 24 of 1936;

24.2.2 being placed under provisional or final judicial management or having judgment and/or execution levied against its assets;

24.2.3 having assigned, ceded or delegated the agreement without the prior written consent of BMW having been obtained; or

24.2.4 having entered into a compromise with its creditors;

24.2.5 having breached the provisions in regard to confidentiality and non-disclosure hereof;

24.2.6 being prevented from performing its duties hereunder for a continuous period of two weeks for whatever reason;

24.2.7 being guilty of any conduct which, in the opinion of BMW, is prejudicial to the interests of BMW;

BMW shall be entitled to terminate the agreement with immediate effect by giving written notice to the Service Provider and claim such damages (including consequential damages) as it may have suffered.

24.3 BMW shall be entitled to terminate the agreement at any time upon 60 (sixty) days written notice to the Service Provider.

25. Domicile and Notices

25.1 BMW hereby chooses as its domicilium citandi et executandi for the service of legal process in terms of these terms and conditions the following address:

1 Bavaria Avenue, Randjespark Ext. 17, Midrand

(For Attention Legal Services & Compliance Department).

25.2 BMW hereby chooses as its postal address for the service of notices in terms of these terms and conditions the following address:

P O Box 2955, Pretoria, 0001

25.3 The Service Provider shall indicate in the letter of acceptance an address in Republic of South Africa as its domicilium citandi et executandi for the service of legal process in terms of these terms and conditions and a postal address in the Republic of South Africa for the service of notices in terms of these terms and conditions

25.4 Either party shall be entitled from time to time, by written notice to the other, to change its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante, provided that the change shall become effective only ten (10) days after the service of the notice in question.

25.5 Any notice or communication required or permitted to be given in terms of these terms and conditions shall be valid and effective only if given in writing.

25.6 All notices required to be given by either party to the other shall be deemed to have been validly given on the date upon which such notice is delivered to the addressee's domicilium citandi et executandi or ten (10) days after the date upon which such notice is posted to the addressee by prepaid registered post, addressed to the addressee at its postal address.

25.7 Either party shall be entitled from time to time, by written notice to the other, to change its postal address to any other address within the Republic of South Africa, provided that the change shall become effective only ten (10) days after service of the notice in question.

26. Jurisdiction

26.1 The parties hereto consent to the jurisdiction of the Magistrate's Court for any dispute or claim arising from these terms and conditions. Notwithstanding the aforementioned, nothing herein contained shall be interpreted so as to preclude a party from instituting proceedings in the relevant High Court.

27. Applicable Law

27.1 These terms and conditions (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the parties in terms of and arising out of the conclusion, breach and termination of the provisions of these terms and conditions) shall be interpreted and governed in all respects by the laws of the Republic of South Africa.

28. Severability

28.1 If any provision of these terms and conditions are or become invalid or unenforceable, such provision shall be divisible and the remainder of these terms and conditions shall nevertheless, be valid and binding.

29. Non Variation

29.1 No amendment, consensual cancellation or other modification of these terms and conditions, including the provisions of this clause, shall be valid or binding on a party hereto unless reduced to writing and executed by both parties hereto.

30. Non-Waiver

30.1 No latitude, extension or other indulgence which may have been given or allowed by either party ("the grantor") to the other in respect of any obligation hereunder shall under any circumstances operate as a waiver or novation of, or otherwise affect, any of the grantor's rights in terms hereof or arising here from, or preclude the grantor from enforcing at any time and without notice, strict and punctual compliance with each and every provision hereof.

31. Entire Agreement

31.1 These terms and conditions contain the entire agreement between the parties and no conditions, warranties or representations made by any party prior to the date of these terms and conditions, shall be of any force or effect nor shall any agent or representative have any authority to make representations, statements, warranties or agreements that are not herein expressed unless the same are made in writing and signed by duly authorized representative of each party.

32. Costs

- 32.1 Each party shall bear their own costs in regard to the negotiation, preparation and conclusion of the agreement between the parties.