

**BMW Retailer Agreement  
for  
Named Vehicle Protection Programs**

**October 2021, BMW Canada Inc.**



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## RETAILER AGREEMENT FOR VEHICLE PROTECTION PROGRAMS

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between BMW Canada Inc. (“**BMW**”) with offices at 50 Ultimate Drive, Richmond Hill, Ontario, L4S 0C8, and \_\_\_\_\_, carrying on business as with offices at \_\_\_\_\_ (the “**Retailer**”).

### WHEREAS:

BMW and Retailer are currently parties to a Retailer Agreement made as of August 1, 2010, in respect of Vehicle Protection Programs currently administered by LGM Financial Services Inc. (the “**Initial Agreement**”), as amended by (i) an Amending Agreement, dated as of May 1, 2011 (the “**First Amendment**”), and (ii) an Amending Agreement, dated as of June 1, 2013 (the “**Second Amendment**”, which together with the Initial Agreement and the First Amendment are collectively referred to as the “**Original Agreement**”);

BMW and Retailer have agreed to enter into this Retailer Agreement, in place of the Original Agreement, to set out the terms and conditions upon which Retailer will continue to promote, sell and/or distribute Protection Products, as hereinafter defined.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, it is agreed by and between the parties as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, and unless the context otherwise requires, the following words and expressions shall have the following meanings:

- “*Administrator*” means the entity, if any, that BMW has then appointed to handle claims under, or otherwise administer, the applicable Program on its behalf;
- “*Affiliate*” of a person means any other person that directly or indirectly controls, is controlled by, or is under common control with, such person. The term “*control*” (including the terms “*controlled by*” and “*under common control with*”), means, in relation to a person, the right or power of another person, directly or indirectly, to
- (a) appoint a majority of the board of directors or other governing body of the first mentioned person whether resulting from
    - (i) the holding of a majority of the voting rights of that person, and/or
    - (ii) powers or rights granted pursuant to the constitutional documents of that person, and/or
    - (iii) powers or rights granted pursuant to an agreement between some or all of the shareholders or other owners of that person, or
  - (b) otherwise exercise *de facto* control over decisions or the management and policies of such first mentioned person whether through the ownership of voting securities, by contract or otherwise;

- “Agreement”* means this agreement (including, without limitation, the Program Rules) and all schedules forming part of this agreement, and includes any amendments thereto made in accordance with the terms hereof;
- “Applicable Law”* means
- (a) all applicable federal, provincial, or municipal laws, statutes, regulations, by-laws, codes, orders, ordinances or rules,
  - (b) all applicable rules, directives, regulations, guidelines, policies and other requirements of each regulatory, administrative or governmental authority or self-regulatory body,
  - (c) all applicable judgments, orders and injunctions of any court or tribunal of competent jurisdiction,
- that are in existence on the Effective Date or come into existence during the currency of this Agreement, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor to any of the foregoing;
- “Business Day”* means any day other than a Saturday, Sunday, and statutory or civic holiday observed in the Province of Ontario;
- “Business Hours”* means the hours from 9:00 a.m. to 5:00 p.m. (local time) on any Business Day;
- “Confidential Information”* means any and all documents, materials and other information whatsoever of BMW or its Affiliates (including third-party materials and other information in the possession, custody or control of BMW or its Affiliates), regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which has or will come into the knowledge, possession, custody or control of Retailer in connection with or as a result of the relationship of the parties under this Agreement or the Original Agreement. Confidential Information shall include all new materials and other information produced or derived at any time and from time to time from any of the foregoing information. For the purposes of this definition, “materials” and “information” and include, without limitation, financial information, business results or prospects, sales and marketing plans (including development plans for each Program), operating procedures, ways of doing business, trade secrets, processes, techniques, computer programs, and other data and information. Notwithstanding the foregoing, “Confidential Information” does not include
- (a) information which is in the public domain when it is received by or becomes known to Retailer or which subsequently enters the public domain through no fault of Retailer (but only after it enters the public domain),
  - (b) information which is already known to or in the possession of Retailer at the time of its disclosure to Retailer by or on behalf of BMW and is not the subject of an obligation of confidence of any kind,
  - (c) information which is received by Retailer without an obligation of confidence of any kind from a third party who Retailer had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, and
  - (d) information which is disclosed by Retailer pursuant to a requirement

of law or by operation of law, provided that Retailer has disclosed only that part of the Confidential Information which it was required to disclose and has notified BMW prior to such disclosure in a timely fashion in order to permit BMW to attempt to prevent or restrict such disclosure should it so elect.

Retailer acknowledges and agrees that Confidential Information of BMW includes (e) all documents, materials and other information concerning BMW's or its Affiliates' past, present and future customers, suppliers, operations and affairs, which, for greater certainty, includes any and all information obtained or collected from applicants and Customers under each Program, (f) all materials and information (including Personal Information) that BMW or its Affiliates is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law, and (g) without in any way limiting the generality of the immediately prior clauses (e) and (f), all executed Protection Products and all applications for Protection Products;

- “Customer”* means a purchaser or lessee of a vehicle who has purchased a Protection Product (or to whom a Protection Product has been issued in the case of a warranty) and includes that person's successors and assigns;
- “Effective Date”* means the date first above-written, and is the date that this Agreement comes into effect;
- “person”* includes an individual, company, corporation, partnership, unincorporated association, trust, trustee, or other legal representative, government or government agency, authority or entity howsoever designated or constituted;
- “Permitted Use”* means the use by Retailer of the Confidential Information solely in connection with Retailer's rights, duties and obligations under this Agreement and, where applicable, such rights, duties and obligations that continue after termination of this Agreement. Permitted Use includes, without limitation, disclosure of Confidential Information to BMW's or its Affiliates' employees, consultants and representatives, or to Administrator's employees, agents, independent contractors and representatives, or to Retailer's agents, independent contractors, representatives, or to other persons as expressly permitted under this Agreement, on a need-to-know basis in respect of this Agreement, subject to the provisions of this Agreement;
- “Personal Information”* means information about an identifiable individual or that may identify an individual, including information regarding the employees and customers of BMW and its Affiliates, such as an individual's name, address, age, gender, identification number, income, family status, citizenship, employment, assets, liabilities, source of funds, payment records, credit information and personal references;
- “Program”* means a vehicle service (including warranty service) or other protection program(s) described or referenced in Schedule “A” hereto;
- “Program Material”* means any Protection Product (whether issued, cancelled or terminated) and any Protection Product Form, and any application form, enrollment form, claims form, brochure, advertising and other promotional material, used or to be used in connection with a Program, and any other document or form provided to Retailer by or on behalf of BMW and related to a Program or this Agreement or the Original Agreement (including, without limitation, Program manuals and/or training materials);

<i>“Program Rules”</i>	shall have the meaning ascribed to that term in Section 3.4 hereof;
<i>“Protection Product”</i>	means each vehicle service contract, warranty, waiver, or other certificate or instrument, as the case may be, available under a Program that is sold or issued to a Customer;
<i>“Protection Product Form”</i>	in respect of a Program means the applicable form of service contract, warranty, waiver, or other certificate or instrument annexed as Schedule “B” hereto on the Effective Date or as later amended, supplemented or replaced by BMW in accordance with Section 2.2 hereof;
<i>“Retailer Agreement”</i>	means that certain automotive Retailer Agreement between BMW Canada Inc. and Retailer, under which BMW Canada Inc. granted to Retailer certain rights to distribute and maintain BMW and/or MINI-branded vehicles;
<i>“Service Desk”</i>	shall have the meaning ascribed to that term in Section 2.1 hereof;
<i>“Term”</i>	shall have the meaning ascribed to that term in Section 7.1 hereof.

## **1.2 References to Statutes**

All references in this Agreement to any statute refer to such statute as the same may be amended, consolidated and to any restated or successor legislation of comparable effect.

## **1.3 Number and Gender**

Unless the context otherwise requires, words importing the singular only shall include the plural, and vice versa, and words importing gender shall include the masculine, feminine and neuter genders.

## **1.4 Captions and Section Headings**

The division of this Agreement into separate articles, sections, subsections, schedules and exhibits, and the use of headings and captions, are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.5 Expressions such as “Herein”**

In this Agreement, “hereto”, “herein”, “hereby”, “hereunder”, “hereof”, and similar expressions refer to this Agreement and not to any particular article, section, subsection, paragraph, subparagraph, clause, subclause or any other portion of this Agreement.

## **1.6 Currency**

Any dollar amounts stated herein are stated in Canadian currency and all amounts owing from time to time under this Agreement shall be payable in Canadian currency.

## **1.7 Severability**

In the event that any provision of this Agreement is void or unenforceable by reason of any provision of Applicable Law, it will be deemed to be deleted herefrom and the remaining provisions hereof will continue in full force and effect.

## **1.8 Continuity of Treatment; Original Agreement**

Retailer shall treat all Customer contracts that were outstanding under the Original Agreement immediately before the coming into force of this Agreement on the Effective Date, as if such contracts were originated under this Agreement. Without limiting the generality of the foregoing, Retailer’s obligations, duties and liabilities in respect of such contracts shall be determined in accordance with the provisions of this Agreement.

## **ARTICLE 2 OBLIGATIONS OF BMW**

### **2.1 General**

BMW shall do or cause the following to be done:

- (a) provide the availability of each Program during the Term hereof;
- (b) provide to Retailer such information and materials as BMW in its sole discretion deems appropriate for the purpose of facilitating the marketing and promotion of the each Program;
- (c) provide to Retailer such training and training materials concerning each Program as BMW in its sole discretion deems appropriate; and
- (d) provide bilingual support to applicants, Customers and the Retailer in respect of inquiries regarding applications, registrations and claims under each Program, and in such regard, maintain a bilingual, call centre/service desk (“**Service Desk**”) with access by such means and at such times as BMW in its sole discretion deems appropriate.

### **2.2 Form of Protection Product**

Subject always to Section 4.3 hereof, the parties hereto agree that each Protection Product sold or issued under a Program shall be in the form of the applicable contract(s) or other document(s) appearing in Schedule “B” hereto.

## **ARTICLE 3 OBLIGATIONS OF THE RETAILER**

### **3.1 Promotion of Program**

Retailer shall use commercially reasonable best efforts to promote within its dealership and to eligible persons purchasing, leasing or financing vehicles through its efforts, a Protection Product available under each Program. Without limiting the generality of the foregoing, Retailer shall offer each applicable, then-available form of Protection Product to each such person.

### **3.2 Sales and Distribution Duties**

In connection with the sale or issuance of each Protection Product by Retailer, Retailer shall

- (a) confirm the eligibility of each applicant in accordance with the provisions hereof including, without limitation, the Program Rules,
- (b) deliver to the Customer or prospective customer, the applicable distribution guide, product guide and/or other compliance document(s), if any, as and when required to be delivered to the Customer or prospective customer in accordance with the Program Rules and/or Applicable Law,
- (c) calculate the amount, if any, payable for the Protection Product in accordance with the Program Rules,
- (d) verify that all applicant and other information recorded on the Protection Product is true, complete and accurate in all respects,
- (e) unless the purchase price of the Protection Product is financed through BMW or unless there is no charge for the Protection Product pursuant to the express terms of the Protection Product Form, collect and remit to or to the order of BMW in accordance with the Program Rules, the full purchase price therefore, less any compensation that the Program Rules expressly states may be retained by the Retailer; if the purchase price of the Protection Product is to be financed through BMW, then ensure that all required documents for such purpose are properly completed and delivered to BMW and otherwise comply with the Program Rules,
- (f) unless the purchase price of the Protection Product is financed through BMW or unless there is no charge for the Protection Product pursuant to the express terms of the Protection Product Form, ensure that all applicable taxes including, without limitation, goods and services tax, harmonized sales tax and/or



provincial sales tax, payable by the Customer as a result of purchasing a Protection Product, is charged; unless the purchase price of the Protection Product is financed through BMW, collect and forward all such tax to or to the order of BMW in accordance with the Program Rules,

- (g) report the sale of the Protection Product in the manner prescribed by the Program Rules, and
- (h) without in any way limiting the generality of Section 3.4 hereof, perform all of those other sales and distribution duties and functions to be performed by it as set forth in the Program Rules.

In connection with each Program, Retailer shall

- (i) issue Protection Products only to eligible persons purchasing, leasing or financing vehicles through its efforts, provided that the full purchase price therefor, if any, (together with applicable taxes) has been financed or paid in accordance with the Program Rules,
- (j) record each Protection Product issued by it,
- (k) deliver to BMW or to such other person as it may direct from time to time, and within two (2) Business Days of the issuance of each Protection Product by Retailer, BMW's copies of the Protection Product, and otherwise process each Protection Product in accordance with the Program Rules,
- (l) provide to BMW or to such other person as it may direct from time to time, sales information and reports and such other information and reports as BMW may reasonably request from time to time in respect of the Program, according to the frequency, content and format as BMW may reasonably request from time to time,
- (m) create, update and maintain an accurate inventory of all applications and Protection Products received from or on behalf of BMW, and account to BMW on monthly basis, for all Protection Products issued by Retailer, and
- (n) without in any way limiting the generality of Section 3.4 hereof, perform all of those other administrative duties and functions to be performed by it as set forth in the Program Rules.

### **3.3 Claims Duties**

Retailer shall administer all claims under each Program in accordance with the provisions hereof including, without limitation, the Program Rules. Retailer acknowledges and agrees that with respect to a Program that provides for repair and/or replacement services in respect of a vehicle

- (a) it is obliged to perform repair and replacement services in respect of any Protection Product issued under such Program, notwithstanding that the particular Protection Product may not have been issued by Retailer, and
- (b) it shall perform such repair and replacement services under such Program in accordance with the provisions of the applicable Protection Product and this Agreement including, without limitation, the Program Rules.

Unless BMW otherwise expressly directs in writing to the contrary, all replacement parts utilized in repairs and replacements under the Protection Products shall be genuine BMW new or remanufactured parts, or BMW-approved parts.

Retailer acknowledges that neither BMW nor anyone acting on its behalf, shall be responsible for administering any claim under a Protection Product for which Retailer has failed to submit the Protection Product in accordance with the Program Rules (including, without limitation, in accordance with the timeframe noted therein).

### **3.4 Compliance with Rules and Regulations**

Retailer shall at all times comply with all then-current rules, regulations and other requirements of BMW in respect of each Program as may from time to time be communicated to Retailer by or on behalf of BMW (such then current rules, regulations and other requirements being herein collectively referred to as the "**Program Rules**"), to the

extent, however, that the Program Rules, do not conflict with the provisions of this Agreement. The Program Rules will include, without limitation, the applicable prices, rates and formula(e) for calculating the amount payable by the Customer for a Protection Product, the conditions or eligibility requirements for accepting an application for a Protection Product, the claims and servicing procedures under the Program, and the compensation payable to Retailer for the sale of a Protection Product and for any repair or replacement services performed by Retailer under the Program. The Program Rules are hereby deemed to be incorporated by reference into and to form a part of this Agreement, and shall be effective immediately upon notice to Retailer given in accordance with the terms hereof.

### **3.5 Compliance with Law**

In performing the services required of it hereunder, and in otherwise exercising its powers and discharging its duties hereunder, Retailer shall act honestly and in good faith and shall at all times comply with all Applicable Law including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) and an *Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada) (Canada's so-called 'anti-spam' law), which are in any way related to or connected with the conduct of Retailer's business or this Agreement.

### **3.6 Return of Protection Products and Other Program Material**

Upon demand by BMW or upon the termination of this Agreement, whichever shall first occur, Retailer shall deliver to BMW, all Program Material and other information and material of every kind and nature whatsoever relating to each Program, whether in written, graphic, electronic or other form, which were made available at any time by or on behalf of BMW to Retailer and which are in the possession, power or control of Retailer, which information and material Retailer acknowledges are the exclusive property of BMW.

### **3.7 Advertising**

Retailer shall obtain BMW's prior written approval of all promotional materials to be used directly or indirectly by Retailer in promoting each Program. Without in any way limiting the generality of the foregoing, Retailer shall not use or make reference to BMW's name, logos or other marks or identify or refer to BMW or any of its Affiliates in publicity releases or advertising or promotional materials, or in any sales or marketing effort whatsoever, without BMW's prior written approval.

### **3.8 Confidentiality**

Retailer shall

- (a) maintain the Confidential Information in strictest confidence using at least the same means that it uses, or would reasonably be expected to use, to protect its own confidential and proprietary information of a similar nature as the Confidential Information,
- (b) not, directly or indirectly, disclose any of the Confidential Information to a third party (except as expressly permitted under this Agreement) without the prior written consent of BMW,
- (c) not, directly or indirectly, use any of the Confidential Information for any purposes other than the Permitted Use,
- (d) not make copies or partial copies of the Confidential Information except as required for its Permitted Use, and
- (e) notify BMW forthwith in writing in the event of,
  - (i) any actual, threatened, suspected or notified breach of the provisions of this Section 3.8, and
  - (ii) any actual, threatened, suspected or notified loss of, inability to account for, or any actual, threatened, suspected or notified unauthorized access to, use or disclosure of, Confidential Information, providing full particulars thereof.

Without in any way limiting the generality of the foregoing, Retailer undertakes and agrees with BMW that Retailer shall keep the terms and conditions of this Agreement strictly confidential.

Retailer agrees that BMW shall be entitled to injunctive relief to prevent breaches of the provisions of this Section and to specifically enforce the provisions of this Section in addition to any other remedy to which BMW may be entitled at law or in equity.

Upon demand by BMW or upon termination of this Agreement, whatever shall first occur, Retailer shall return to BMW all originals and copies of Confidential Information that is then in Retailer's possession, power or control, and shall remove all digital representations thereof in any form from all electronic storage media in its possession, power or control.

### **3.9 Books and Records**

Retailer shall keep and maintain regular, accurate and full records of all transactions and other matters relating to this Agreement and each Program including, without limitation, books of account, ledgers, correspondence, documents, files, and other records. This section shall survive the termination of this Agreement and shall remain in full force and effect for the benefit of BMW for a period of seven (7) years thereafter.

### **3.10 Audit**

BMW and/or its authorized representatives shall have the right from time to time, and during Business Hours, to enter Retailer's place of business and/or any place where its books, documents, files, records and other information (collectively "Records") are kept, and Retailer shall fully co-operate in providing or causing to be provided such information and facilities as may be reasonably necessary or desirable to permit BMW and its authorized representatives to review, examine, inspect, verify, and audit, any aspect of this Agreement and/or make copies and extracts of all Records and other materials (whether in paper, electronic, or other form) in the possession, power or control of Retailer related to a Program or this Agreement, and to interview officers, employees, agents, representatives and consultants of Retailer in respect thereof. Audits may be operational audits, systems audits, security audits, accounting audits, financial audits or compliance audits or any combination thereof. BMW shall not be responsible for any time or other costs (other than reasonable photocopying costs) incurred by Retailer in respect of any such audit or examination. BMW shall be entitled, at its own expense, to make and take away copies of the relevant portions of such Records. Subject to the foregoing, BMW shall bear the cost of any audit provided, however, that if an audit reveals any material violation of this Agreement, or any concealment, fraud or misrepresentation, by Retailer (including its directors, officers, employees, agents, representatives, or other persons acting or purporting to act on its behalf) or other grounds for termination of this Agreement, then Retailer shall bear the reasonable cost of such audit. Notwithstanding any other provision of this Agreement, the provisions of this Section shall survive and continue in full force and effect for a period of seven (7) years following the termination of all Protection Products that were at any time subject to this Agreement.

### **3.11 Additional Obligations**

Retailer shall maintain in a secure and safe place, and upon BMW's request shall account for, all applications, Protection Product Forms and other forms concerning each Program, whether executed or unexecuted.

Retailer (including its directors, officers, employees, agents, representatives, or other persons acting or purporting to act on its behalf), shall not, directly or indirectly, persuade or induce or attempt to persuade or induce, any Customer to cancel or terminate their Protection Product(s).

## **ARTICLE 4 RELATIONS BETWEEN THE PARTIES**

### **4.1 Independent Contractor**

Nothing contained in this Agreement and no course of dealings between the parties, no matter what the duration, shall create or be deemed to create the relationship of a joint venture, partnership, employer, employee, trustee, fiduciary or association between the BMW and Retailer, and it is the express intent of BMW and Retailer that the relationship of the parties hereto is that of independent contractors.

## **4.2 Authority**

The authority of Retailer is limited to that expressly granted in this Agreement, and without limiting the generality of the foregoing, Retailer is not authorized to and shall not at any time

- (a) bind or commit BMW in any way whatsoever to any other person or create, incur or assume any debt, obligation or liability whatsoever, whether express or implied, on behalf of BMW to any other person,
- (b) supplement, delete from, cancel or otherwise alter, amend or modify any Protection Product or any application, enrollment form, Protection Product Form, or other BMW form, document, agreement or instrument of any kind,
- (c) without limiting the generality of clauses (a) and (b) immediately above, and except as expressly provided in the Protection Product Form, provide to any Customer or applicant, any warranties, undertakings or guarantees of any nature whatsoever which may tend to involve the responsibility or liability of BMW,
- (d) waive any of BMW's rights or requirements, except with BMW's prior and express written consent,
- (e) quote prices for a Protection Product in excess of the maximum price therefor published by BMW and then in effect,
- (f) issue, use or allow to be distributed, displayed or published, any brochure, advertisement, form or other matter in any way related to BMW or any Program, without the prior written consent of a duly authorized officer of BMW,
- (g) misrepresent the terms and conditions of any Protection Product or Protection Product Form, or misrepresent any of the features of any Program, or make any representation concerning the terms and conditions of a Protection Product that is not contained in the applicable Protection Product Form provided by BMW, or
- (h) hold itself out as an agent of BMW.

## **4.3 Other Rights of BMW**

In addition to all of BMW's other rights under this Agreement, and without in any way limiting its rights under Section 3.4 hereof, BMW in its sole and absolute discretion may at any time and from time to time do any of the following:

- (a) modify, amend or replace any Protection Product Form;
- (b) modify or alter the terms and conditions under which any Protection Product Form may be sold or issued or regulate its sale or issuance in any way;
- (c) add any new vehicle service (including warranty service) or other protection program(s) to Schedule "A" hereto, and add any new vehicle service contract, warranty, waiver, or other certificate or instrument to Schedule "B" hereto;
- (d) discontinue or withdraw any Program or Protection Product Form; or
- (e) cease offering any Program or Protection Product Form in any part of Canada.

## **ARTICLE 5 FEES AND PAYMENT**

### **5.1 Sales Fees**

For each *bona fide* sale of a Protection Product by Retailer, BMW shall pay or credit to Retailer, the applicable fee determined in accordance with the Program Rules, according to the terms set forth therein.

## **5.2 Repair and Replacement Fees**

In consideration of the repair and replacement services performed by Retailer hereunder, BMW shall pay or credit to Retailer, compensation in accordance with the provisions of the Program Rules.

## **5.3 Entire Compensation**

Retailer acknowledges and agrees that paying or crediting the compensation set forth in the Program Rules shall be compensation in full for all services performed and expenses incurred by Retailer in connection with the applicable Program.

## **5.4 Refunds**

Retailer agrees, in accordance with the terms of the Program Rules, to reimburse BMW for all amounts paid or credited to Retailer in respect of the sale of each Protection Product that is cancelled by the Customer within the cancellation period provided in the applicable Protection Product.

## **5.5 Changes to Compensation**

Without in any way limiting the generality of Section 3.4 hereof, BMW shall have the right at any time and from time to time in its sole discretion and upon notice to Retailer, to amend, in whole or in part, the then current compensation provisions of the Program Rules including, without limitation, the right to

- (a) increase or decrease the prices or rates set out therein,
- (b) change the manner or method of computing any compensation payable hereunder to Retailer, and
- (c) change the manner or method of computing or applying the reimbursement amounts described in Section 5.4 hereof and/or the circumstances under which such reimbursements are to be made.

Any such change shall not affect compensation which has already accrued to Retailer at the time of the change under a Protection Product.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

Retailer covenants and agrees with and represents and warrants as follows to BMW:

- (a) Retailer is and will continue to be at all times during the term of this Agreement, a corporation that is validly existing under its governing legislation;
- (b) Retailer has all necessary power, authority and capacity to enter into this Agreement and to perform its obligations hereunder; the entering into of this Agreement by Retailer and the performance of its obligations hereunder has been authorized by all necessary corporate action;
- (c) this Agreement constitutes a legally valid and binding obligation of Retailer enforceable against it in accordance with its terms;
- (d) Retailer holds, and so long as it has any obligations under this Agreement will continue to hold, all necessary permits, licences and other governmental registrations and authorizations required to own its property and assets and to carry on its business in all jurisdictions in which it presently carries on its business; without in any way limiting the generality of the foregoing, Retailer holds, and so long as it has any obligations under this Agreement will continue to hold, all necessary permits, licences and other governmental registrations and authorizations required to perform its obligations under this Agreement and to sell and distribute Protection Products;
- (e) neither Retailer nor any of its directors, officers, employees or representatives have made or will make any oral or written statement, representation or promise to any Customer or applicant for a Protection Product other than as set out in the applicable Protection Product Form last provided by BMW;

- (f) each applicant for a Protection Product was of legal age at the time such person executed the Protection Product, and the Protection Product records the correct legal name of the applicant(s) therefor;
- (g) all applicant, vehicle and other information recorded on each Protection Product is true, complete and accurate in all respects;
- (h) Retailer shall confirm and verify that each applicant (including any co-applicant) for a Protection Product is eligible to acquire such Protection Product and has read and understood the completed form of Protection Product and all of its contents prior to the applicant(s) executing same; and
- (i) all repairs and replacements and any other servicing performed in connection herewith by or on behalf of Retailer, will be performed in a professional manner according to industry best practices, giving proper consideration to safety.

## **ARTICLE 7 TERM AND TERMINATION**

### **7.1 Term**

This Agreement shall take effect on and as of the Effective Date and shall continue in full force and effect thereafter until such time as terminated pursuant to the provisions of this Article (such period referred to herein as the “Term”).

### **7.2 Termination for Convenience**

This Agreement may be terminated by either BMW or Retailer at any time upon thirty (30) days’ prior written notice to the other, whether or not the other has breached or failed to perform any term or condition hereof. Any termination under this Section shall be without any liability, cost, penalty or obligation on the part of the party so electing to terminate.

### **7.3 Termination on Certain Events**

BMW may terminate this Agreement immediately upon written notice to Retailer upon the occurrence of any one or more of the following events:

- (a) the Retailer Agreement terminates or Retailer ceases at any time to be an authorized BMW or MINI retailer, as applicable,
- (b) the bankruptcy or insolvency of Retailer; the filing against Retailer of a petition in bankruptcy; the making of an assignment for the benefit of creditors of Retailer; the appointment of a receiver, receiver manager, trustee or other similar official for Retailer or any of the assets of Retailer, or the institution by or against Retailer of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) or otherwise,
- (c) the institution by or against Retailer of any formal or informal proceedings for the dissolution or liquidation or settlement of claims against or winding up of affairs of, Retailer,
- (d) Retailer ceases or threatens to cease to carry on business,
- (e) Retailer breaches or fails to perform or observe any covenant, condition or provision of this Agreement or any other agreement with BMW now or hereafter existing,
- (f) Retailer makes now or at any time hereafter, any statement, representation or warranty in this Agreement or otherwise which is or becomes false or misleading in any material respect, or
- (g) Retailer (including any of its directors, officers, employees, agents, representatives, or other persons acting or purporting to act on its behalf), either directly or indirectly persuades or induces or attempts to persuade or induce any Customer to cancel or terminate a Protection Product held by such Customer.

#### **7.4 Obligations upon Termination**

Upon the giving or receiving of a notice of termination of this Agreement, Retailer shall

- (a) refrain from accepting any further applications for Protection Products,
- (b) refrain from issuing any further Protection Products after the effective date of such termination, and
- (c) pay to BMW any amounts due to it hereunder up to the date of termination and not paid on termination, which amounts shall be paid to BMW within five (5) days of termination.

#### **7.5 Effect of Termination**

If this Agreement is terminated for any reason whatsoever, Retailer shall, at BMW's sole discretion and in consideration of the payment of the applicable fees under the Program Rules, continue to perform repair and replacement services in respect of subsisting Protection Products issued under each applicable Program, notwithstanding that any particular Protection Product may not have been issued by Retailer. Retailer acknowledges and agrees that termination of this Agreement between Retailer and BMW shall have no effect whatsoever upon the rights and benefits obtained by Customers under the Program(s) or the Protection Products.

If this Agreement is terminated pursuant to clauses 7.3(e), (f) or (g), or if any of the events specified in such clauses shall occur after termination pursuant to any provision of this Article or for any other reason, then any and all claims to compensation that might otherwise then be due or thereafter become due under the terms of this Agreement, shall become forfeited and void at the sole option of BMW without further notice to Retailer.

#### **7.6 Survival**

The provisions contained in this Agreement that by their express terms are stated to survive, or by their sense and context are intended to survive, the termination hereof by either or both parties, shall so survive the termination of this Agreement. Without limiting the generality of the foregoing, Articles 1, 4, 5, 6, 8 and 9 and Sections 3.3, 3.4, 3.5, 3.6, 3.8, 3.9, 3.10, 3.11, 5.4, 7.4, 7.5 and 7.6 and clauses 3.2(e), (f), (k), (l) and (m) hereof, shall survive the termination of this Agreement and shall continue in full force and effect thereafter.

### **ARTICLE 8 INDEMNITY AND REMEDIES**

#### **8.1 Indemnity**

Without in any way limiting any of its obligations under the Retailer Agreement including, without limitation, its obligations regarding indemnification thereunder, Retailer irrevocably and unconditionally agrees that, while this Agreement is in effect and after its expiry or earlier termination, Retailer shall indemnify, defend and hold harmless BMW, its Affiliates, and each of its and their respective present and former shareholders, directors, officers, employees, agents, successors and assigns (BMW and such other persons being hereinafter referred to as the "**BMW Indemnitees**"), and each of them, from and against all claims, demands, actions, suits, proceedings, losses, costs, expenses (including reasonable legal fees), fines, penalties, obligations and other liabilities of any nature whatsoever, whether foreseen or unforeseen, which may be made or brought against any of the BMW Indemnitees or of which any of the BMW Indemnitees may suffer or incur, (including, without limitation, an amount paid to settle an action), based upon, related to or in any way connected with

- (a) any breach or non-performance of any covenant or obligation to be performed by Retailer hereunder or under any other written agreement related to this Agreement,
- (b) any misrepresentation made to BMW in connection with this Agreement or any other document related to this Agreement, made by Retailer or any of its Affiliates including any if its or their respective directors, officers, employees, agents, representatives, or other persons acting or purporting to act on its or their behalf,
- (c) any negligence or misconduct (including, without limitation, fraud or bad faith) by Retailer including its directors, officers, employees, agents, representatives, or other persons acting or purporting to act on its behalf, and

- (d) anything done or omitted to be done by Retailer including its directors, officers, employees, agents, representatives, or other persons acting or purporting to act on its behalf, or anything purported to be done or omitted to be done by Retailer including its directors, officers, employees, agents, representatives, or other persons acting or purporting to act on its behalf, in connection with a Program, a Protection Product or this Agreement, including, without limitation, the repair, replacement or servicing of any part or parts of a vehicle under a Program.

## **8.2 Rights and Remedies Cumulative**

No right or remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to, and not in substitution for, any other right or remedy referred to herein or now or hereafter existing in equity, at law, by virtue of statute, or otherwise and each such right and remedy may be exercised by a party from time to time concurrently or independently and as often and in such order as the party may deem expedient.

## **8.3 Right of Set-Off**

Without in any way limiting any of its rights under the Retailer Agreement, and notwithstanding any other provision of this Agreement, BMW may at any time and from time to time set-off against any amount otherwise owing by BMW to Retailer under this Agreement or any other agreement, any amount which Retailer may owe BMW under this Agreement or any other agreement. Such amount otherwise owing by BMW to Retailer shall thereafter for all purposes of this Agreement be deemed to be reduced by the amount so set-off by BMW.

# **ARTICLE 9 GENERAL**

## **9.1 Entire Agreement**

This Agreement, the BMW Standards and any other documents referred to herein or contemplated hereby set forth the entire agreement between BMW and the Retailer and contains all of the representations, warranties, terms, conditions, provisos, covenants, understandings and agreements agreed upon by them with reference to the subject matter hereof. All other representations, warranties, terms, conditions, provisos, covenants, understandings and agreements, whether oral or written, are waived and are superseded by this Agreement. For greater certainty, the Original Agreement is terminated immediately upon the coming into force of this Agreement.

## **9.2 Amendments, Forebearance, Non-waiver**

No waiver, alteration, amendment, modification, or cancellation of any of the provisions of this Agreement shall be binding upon a party unless made in writing and duly signed by the party or parties to be bound. If a party hereto fails to act, exercise a right available under this Agreement or insist on the other party's strict compliance with the provisions of this Agreement, or if there develops a custom or practice which is at variance with the provisions of this Agreement, then such failure or custom or practice shall not be construed as a waiver of the party's rights to take any such action, exercise any such right or demand strict compliance with this Agreement thereafter. Similarly, a party's waiver of any particular breach or breaches by the other party to this Agreement shall not affect the first party's rights in respect of any later breach, nor shall the acceptance of any payment under this Agreement be construed as a waiver of any breach of this Agreement.

## **9.3 Assignment**

Neither this Agreement nor any of Retailer's rights or obligations hereunder may be assigned by Retailer without the prior written consent of BMW. BMW may assign this Agreement, and any of its rights or obligations hereunder, to any person on notice to Retailer.

## **9.4 Further Assurances**

Retailer shall at its own expense and upon the request of BMW at any time and from time to time, promptly execute and deliver, or cause to be executed and delivered, all such further acknowledgements, consents, assurances and other documents, and promptly do, or cause to be done, all such further acts and things as BMW may reasonably request in order fully to effect the purposes of this Agreement.

## **9.5 Incorporation by Reference**

The provisions of the Retailer Agreement under the headings "BMW Standards Generally", "Use of Trademarks", "Trademark Infringement", "Corporate Identity", "No Action to Attack Trademarks", "Ownership of Copyright and Trademarks", "Force Majeure", "Notices", and "Insurance", and under similarly but not identically worded



headings, together with any other provisions of the Retailer Agreement necessary to give such provisions meaning, are with the necessary changes required by the context, hereby deemed to be incorporated by reference into and to form a part of this Agreement.

**9.6 Governing Law and Attornment**

This Agreement shall be governed by and construed in all respects in accordance with the law of the Province of Ontario. Each of the parties hereto (a) irrevocably submits to the exclusive jurisdiction of the courts of Ontario for the purpose of any suit, action or other proceeding arising out of this Agreement, the subject matter hereof or any of the transactions contemplated hereby brought by any party or its successors or permitted assigns, and (b) hereby waives, and agrees not to assert, by way of motion, as a defence or otherwise, in any such suit, action or proceeding, to the fullest extent permitted by Applicable Law, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement, or the subject matter hereof or any of the transactions contemplated hereby may not be enforced in or by such courts; provided, however, that the foregoing shall not in any way limit or restrict a party from taking any action or proceeding in any other jurisdiction in order to enforce any judgment rendered in the Province of Ontario.

**9.7 Time of the Essence**

Time is and shall be in all respects of the essence of this Agreement and of each and every part hereof.

**9.8 Language**

The parties hereto acknowledge that they have requested and are satisfied that this Retailer Agreement and all related documents be drawn up in the English language. Les parties aux présentes reconnaissent qu'elles ont exigées que la présente convention et tout document qu'en s'y rattache soient rédigées et exécutées en anglais et s'en déclarent satisfaites.

**9.9 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument. Delivery of this Agreement may be made by facsimile transmission or other electronic means and when so transmitted shall be effective as is delivered and received personally.

**9.10 Enurement**

The Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above written.

**BMW CANADA INC.**

\_\_\_\_\_  
(Full Legal Name of Retailer)

Per: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

Per: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

Per: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

Per: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

We have authority to bind BMW.

We have authority to bind the Retailer.

<b>REQUIRED RETAILER INFORMATION</b>			
<b>Contact Information</b>			
<b>Function</b>	<b>Name</b>	<b>Email Address</b>	<b>Telephone No.</b>
Retailer Principal			
General Manager			
Controller			
Business Manager (1)			
Business Manager (2)			
Business Manager (3)			
<b>General Information</b>			
Retailer Number			
Retailer Telephone Number			
Retailer Fax Number			
Retailer Email Address			
Retailer GST/HST Registration No.			
Retailer QST Registration No.			
Retailer PST Registration No. (B.C.)			
Retailer PST Licence No. (Saskatchewan)			
Retailer RST Registration No. (Manitoba)			

**SCHEDULE "A"**

**PROGRAM(S)**

As of the Effective Date, the Programs are the following:

**(a) Tire & Rim Protection Service Program**

(The vehicle tire and rim protection service program which, until changed by BMW, makes available to certain BMW owners and lessees, certain tire and rim protection services)

**(b) Appearance Protection Service Program**

(The vehicle appearance protection service program which, until changed by BMW, makes available to certain BMW owners and lessees, certain vehicle appearance protection services.)

**(c) Anti-theft Protection Service Program**

(The vehicle anti-theft protection service program which, until changed by BMW, makes available to certain BMW owners and lessees, certain vehicle anti-theft protection services.)

**(d) Limited Debt Waiver Program**

(The program which, until changed by BMW, makes available to certain BMW owners who have financed the purchase of their vehicle through BMW under a Conditional Sales Agreement, a limited waiver pursuant to which BMW agrees (subject to certain terms and conditions) to waive upon the occurrence of certain event(s), a certain dollar amount that the customer owes under the Conditional Sales Agreement.)

**SCHEDULE "B"**

**PROTECTION PRODUCT FORMS**

See following pages.

Retailer acknowledges and agrees that it is not necessary to include in this Schedule, any French language versions of the Protection Product Forms, and that any such French language versions of the corresponding English forms will be deemed to be included in this Schedule.