

The BMW Associates Degree Program

At Chabot College

Memorandum of Understanding

This agreement (“Agreement”) is extended as of December 9, 2014

BMW: BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07677
(hereinafter known as “BMW”)

Chabot: Chabot College
25555 Hesperian Boulevard
Hayward, CA 94545
(Hereinafter known as “Chabot”)

District: Chabot-Las Positas Community College District
Board of Trustees
76000 Dublin Blvd., 3rd Floor
Dublin CA 94568
(Hereinafter know as “District”)

WHEREAS, Chabot College (“Chabot”) and BMW of North America, LLC (“BMW NA”) have agreed to operate a BMW sanctioned Associates Degree Program (“ADP”) and commenced offering it to students in March 18, 2015; the parties wish to extend the agreement to March 18, 2018.

WHEREAS, the parties wish to provide delivery of a quality program by establishing parameters which will enable all parties to effectively conduct the business of training new BMW technicians in the best interest of BMW of North America, LLC, BMW Dealers, ADP graduates and BMW customers.

WHEREAS, the parties wish to enter into an agreement which will provide guidelines for such a problem;

WHEREAS, the terms and conditions set forth hereunder shall be read in conjunction with the terms and conditions set forth in the agreement between the parties, said agreement dated December 9, 2014.

WHEREAS, the terms and conditions set forth in these recitals shall be hereby incorporated into the terms and conditions of this agreement;

THEREFORE, the parties do agree as follows:

Term

This Agreement is effective as of the date stated above and shall remain in force for an initial period of thirty six (36) months (the “Initial Term”), unless extended by the hereinbefore referenced parties by mutual written agreement.

GENERAL

This Agreement contains the entire understanding of the parties and supersedes all previous oral or written representations or agreements with respect to its subject matter and may not be changed, modified, or discharged except in writing signed by both parties. No waiver or a breach shall be deemed a waiver of any subsequent breach.

PROGRAM LOCATION

It is agreed that the BMW ADP shall be offered at the campus of Chabot College located at 25555 Hesperian Boulevard, Hayward, CA 94545.

ADP CLASS SIZE

Initial class size shall not commence with more than 30 people. It is anticipated that such a starting class size will effectively graduate 15 students per year once the first full cycle of 2 years has been completed.

INSTRUCTORS

All primary and secondary staff for the program will be employed by Chabot. One trained instructor for the program will be designated as the Technical Team Leader (“TTL”) as agreed by both parties. The TTL will be a full time BMW ADP instructor. Instructor assignments will be made in accordance with the applicable collective bargaining agreement.

All program instructors must be certified by BMW to deliver the classes for which they are assigned. BMW also has programs which instructors must attend in order to attain BMW Group “Facilitator” Certification. ADP instructors must also achieve this certification when the opportunity to attend the classes is offered by BMW NA.

Instructors must be mutually approved to deliver the program classes by the College Dean and the BMW STEP Program Manager prior to being assigned to the program. At the point in time where the second concurrent class cycle commences, not less than 2 instructors must be fully certified by BMW to deliver BMW training.

1. STUDENT ACCEPTANCE REQUIREMENTS

Each student registering for the ADP will be required to meet certain program requirements, such as:

- High School graduate or posses a GED
- Have not more than 2 current moving violations on their MVR and no DUI's within the last 10 years
- Have a valid driver's license
- Must be able to drive a standard shift transmission
- Must have clearly expressed an interest in working for a BMW or MINI dealership within the United States.
- Be drug free. Must be able to pass a drug test at any time and have no criminal record.
- Have a score not less than the current minimum standard set by BMW NA on the required "WorkKeys" tests. Current requirements at the start date of this agreement are; not less than a 5 on "Reading for Information" and "Applied Technology".
- Pass all collegiate entrance requirements set forth by Chabot

2. COURSES AND CREDENTIALS OFFERED

BMW NA will specify the courses to be taught in the ADP and will determine the completion requirements and credentials offered. Completion requirements will be in the form of specific skills, knowledge and abilities that relate to each area of competence. The program credentials will be equal to, but not less than, "Level 3". Collegiate credits issued by Chabot will not be less than 62. The graduates will be referred to as Chabot ADP or BMW ADP graduates, as they will be graduates of Chabot College. Written and oral communication referring to ADP program graduates will make a clear distinction between BMW ADP and BMW STEP programs in order to support the distinct separation of the two program brands.

A student who completes the ADP by collegiate grading standards is not entitled to BMW NA credentials; therefore completion of the ADP class does not imply that BMW NA credentials will be issued. Competency must be demonstrated and approval administered by the BMW ADP TTL and BMW STEP Programs Management prior to the issuance of any credentials. BMW NA reserves the right to refuse BMW NA credentials to any ADP student for the purpose of preserving the integrity of those credentials as they relate to best conduct and practices of industry professionals and BMW NA.

3. PROGRAM LENGTH

The ADP will have a scheduled duration of no more than two and a half years. Students that are unable to fulfill the degree program requirements within that time span may still qualify as BMW ADP graduates although in each instance approval of the Chabot College Dean, BMW ADP TTL and a BMW STEP Manager will be required in order to avoid unreasonable lapses of time between classes.

4. TRANSFERRING STUDENTS

Students may transfer into the BMW ADP at Chabot from other schools providing they meet the requirements of Chabot and the objectives of the program set in place by BMW NA.

5. SPECIAL REQUIREMENTS

A. BMW's OBLIGATIONS

- BMW shall identify, approve and provide BMW certification training at no cost to two (2) Chabot Instructors.
- No less than 3 operational ISIDs and one ISIS server or equivalent network connection will be provided by BMW.
- 6-10 BMW vehicles will be provided relevant to the delivery of the courses being delivered. *(It is understood that the normal development of the program and product line will have an ongoing effect on the vehicle compliment).*
- One SSS2 will be provided to Chabot by BMW.
- BMW will provide all Special Tools required to perform the tasks necessary to complete the required objectives set forth by the BMW STEP Program Manager.
- BMW will supply at no cost to Chabot all Training Manuals relevant to the courses specified for the ADP for each student and ADP instructor.
- BMW will supply Chabot with replacement parts for vehicles required during normal training activities.
- BMW will provide Chabot with reimbursement for all vehicle fuel costs relating to testing vehicles for return to BMW NA.
- BMW will provide transportation of training vehicles to and from Chabot.
- BMW will provide ADP students active support in seeking employment at BMW Retail Centers.

B. Chabot's OBLIGATIONS

- Chabot shall identify qualified instructors with the required BMW certification. Training costs due to Instructor turn-over will be the responsibility of Chabot.
- Chabot shall pay all reasonable travel and living expenses at cost while instructors are attending training which is required for them to remain "Approved" within the scope of the program.
- All hand tools outside of the scope of BMW Special Tools necessary to perform the required tasks in the shop area in appropriate quantities relative to student population.
- Chabot shall execute BMW's Loan of Vehicle Agreement, a form of which is attached hereto as **Appendix I - Vehicle Loan Agreement** for each vehicle placed into service for the BMW ADP.
- BMW loaned vehicles shall be parked indoors and protected from theft.
- Chabot will be responsible for the theft, loss, damage or destruction to any BMW tools, equipment and property used in the ADP program.
- Program instructors shall be ASE Master-certified (or attain ASE Master Certification within the first 12 months of employment) and have a minimum of five (5) years of field experience. Instructors shall be full-time employees of Chabot. Chabot shall be fully responsible for instructor recruitment, initial selection screening, and employment. BMW shall assist Chabot as a consultant in the selection and technical development of instructors. Recruitment and hiring will be in accordance with all laws, regulations and District policies which are applicable to recruitment and hiring, including, but not limited to, those which prohibit discrimination in recruitment and hiring. BMW will have no employment relationship or liability, express or implied, with Chabot instructors. Chabot also shall assume full liability for instructors assigned to the Program. Chabot shall make instructors available for BMW technical training and instructor certification sufficiently prior to conducting training.
- Chabot shall actively assist all ADP students in evaluation and application to an authorized BMW Retail Center. Chabot shall not actively encourage ADP students to seek employment outside of the BMW Dealer network as it is not in the best interest of the parties concerned.
- Chabot will be responsible for the condition of the vehicles delivered to Chabot by BMW for the delivery of the program. Such vehicles on the request of BMW in the normal course of business will be returned in a "Like New" condition less "Normal Wear and Tear" suffered during typical training procedures. No reasonable request for parts to be withheld by BMW. Failure to return vehicles to BMW NA in the aforementioned condition will result in a charge back to Chabot for the cost of repairs. Program vehicles will be stored in a secure indoor area.
- Chabot will designate not less than 500 square feet of classroom space, not less than 2500 square feet of shop space and not less than 300 square feet of storage to the ADP. Classroom space may be shared to the benefit of all collegiate programs but will not be denied to scheduled ADP classes. Likewise, shop space may also be shared with other ongoing programs but will be made

100% available to all ADP students during normal program hours. During off class hours shop space will be used for indoor vehicle storage in such a manner that restricts non ADP student access to BMW vehicles.

- Chabot will not share BMW materials or procedures with other entities or persons outside of the ADP without the permission of BMW.
- Chabot will review with the TTL all vehicle use as approved by BMW and monitor fuel costs assigned to BMW and instructors performing test drives. Fuel costs for Instructor drives relating to product familiarity are the responsibility of the instructor. Each instance will be approved by BMW and logged in the vehicle log book as well as a running spreadsheet for each vehicle.

6. CONFIDENTIAL AND PROPRIETARY INFORMATION

- A. All training materials provided by BMW shall remain the property of BMW. This specifically includes, but is not limited to, trainer's guides, student handouts and all training aids supplied by BMW. Chabot may not make any changes in the training materials without the prior written consent of BMW. Chabot shall not copy any BMW materials, in whole or in part, for any use other than the training assignments covered in this Agreement. Chabot shall return to BMW all BMW training materials in its possession upon the termination of this Agreement.
- B. Chabot shall not use any confidential information for any purpose, or disclose it to anyone other than Chabot personnel, without prior written approval from BMW, except as is necessary to fulfill its obligations under the terms of this Agreement. Chabot shall advise its personnel of the restrictions on the use and disclosure of the confidential information and take appropriate action to ensure their compliance.
- C. Chabot shall strictly comply with any and all applicable federal and state laws and regulations.

7. EXCLUSIVITY

- A. The terms of this Agreement do not constitute an exclusive agreement and do not place any restrictions on either party with regard to the conduct of similar Training Programs, except as noted in Paragraphs 7 B and C, below.
- B. During the term of this Agreement, Chabot shall not provide dedicated, manufacturer-specialized training for or with respect to any other automotive manufacturer ("Other Manufacturer") at the same location of any of its BMW training facilities.
- C. No such Other Manufacturer may be granted terms and conditions that are more favorable than those granted herein to BMW. For purposes of this Agreement, BMW shall be considered a "favored nation".

8. COVENANT NOT TO SOLICIT

During the term of this agreement, and for a period of twelve (12) months from the date of termination of the Agreement, BMW agrees that it shall not, either directly or indirectly, solicit for employment, any Chabot employee involved in the program, without the express written

permission of the Chabot Dean or Human Resources Department, such permission not to be unreasonably withheld. Likewise, Chabot agrees that during the term of this agreement, and for a period of twelve (12) months from the date of termination of the Agreement, that it shall not, either directly or indirectly, solicit for employment any BMW employee involved in the Training Programs without express written permission of BMW, such permission not to be unreasonably withheld.

9. NON-DISCRIMINATION

Neither Chabot nor BMW shall discriminate against any program participant or applicant or against any employee or applicant for employment, because of race, color, religion, sex, sexual preference, age, national origin, disability (mental or physical), medical condition, domestic partner status, gender identity, veteran status, or any other protected classification or perception that the person is a member of a protected class.

10. INDEMNIFICATION AND INSURANCE

- A. BMW shall maintain a program of insurance or self-insurance to provide general liability coverage, with limits of at least one million dollars (\$1,000,000) for each occurrence and three million dollars (\$3,000,000) in the annual aggregate. If such coverage is written on a claims-made basis, coverage shall continue for a period of not less than three (3) years following termination of this MOU. Upon request, BMW shall provide at least twenty-five (25) days prior written notice to the District of any substantial change to or cancellation of said coverage.
- B. District shall procure and maintain a full force and effect insurance company acceptable to BMW, or shall maintain a self-insurance program acceptable to BMW, which provides coverage for the negligent or otherwise wrongful acts or omissions of the District, its officers, directors, employees, agents, faculty and students. Such coverage shall have limits of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate. District shall, upon request, provide BMW with certificate(s) of the foregoing coverage. District shall provide at least twenty-five (25) days prior written notice to BMW of any substantial change to or cancellation of said coverage.
- C. Chabot shall strictly comply with any and all applicable federal and state laws and regulations.
- D. Chabot agrees to defend, indemnify and hold harmless, BMW, its partners, successors, assigns, heirs, legal representatives, officers, directors, employees and agents, from any and all losses, liabilities, injuries, damages, alleged claims and suits, whether justified or not, which may arise as a result of the breach of this Agreement by or the alleged negligence or willful misconduct of Chabot, its officers, employees, and agents (specifically excluding any employee of BMW) in the course of or in connection with providing the program, or the claims of any participant or applicant for participation in the program, or of any employee or applicant for employment by Chabot relating to his or her employment or any of its other duties and responsibilities hereunder. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative procedures (with counsel reasonably approved by BMW), even if such claims, suits or procedures are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, settlements or other sums due against any indemnified person. BMW, at its sole expense,

may employ additional counsel of its choice to associate with counsel representing Chabot and the indemnified parties.

- E. The obligations of Chabot under this paragraph shall survive the completion of all activities to be performed by Chabot and the termination or expiration of the Agreement.
- F. BMW agrees to defend, indemnify and hold harmless, Chabot, its partners, successors, assigns, heirs, legal representatives, officers, directors, employees and agents, from any and all losses, liabilities, injuries, damages, alleged claims and suits, whether justified or not, which may arise as a result of the alleged negligence or willful misconduct of BMW, its officers, employees, and agents (specifically excluding any employee of Chabot) in the course of or in connection with providing the program, or the claims of any participant or applicant for participation in the program, or of any employee or applicant for employment by Chabot relating to his or her employment. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative procedures (with counsel reasonably approved by Chabot), even if such claims, suits or procedures are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, settlements or other sums due against any indemnified person. Chabot, at its sole expense, may employ additional counsel of its choice to associate with counsel representing BMW and the indemnified parties.
- G. The obligations of BMW under this paragraph shall survive the completion of all activities to be performed by BMW and the termination or expiration of the Agreement.
- H. In any and all claims under this INDEMNIFICATION AND INSURANCE section, the indemnification obligation shall not be limited in any way by any limitation on or for Chabot under Servicemen's compensation acts, disability benefit acts or employee benefit acts.

11. TRADEMARKS AND SERVICE MARKS

- A. Chabot shall not use any trademark, or service mark of BMW or of any parent, subsidiary, or affiliates of BMW in any published form, literature, other documents, or any other media other than program materials used in accordance with this agreement, without the express written approval of BMW. Furthermore, Chabot shall not give any press release or press interview on any matter pertaining to BMW without first obtaining the approval of BMW.
- B. BMW shall not use any trademark, or service mark of Chabot or of any parent, subsidiary, or affiliates of Chabot in any published form, literature, or other documents, or any other media, other than program materials used in accordance with this agreement, without the express written consent of Chabot. Furthermore, BMW shall not give any press release or press interview on any matter pertaining to Chabot without first obtaining the approval of Chabot. Chabot shall not unreasonably withhold approval for any of the hereinbefore-mentioned usage.
- C. The program conducted at Chabot Community College will be referred to by both parties as "BMW ADP" or the "BMW Associates Degree Program".

12. INDEPENDENT CONTRACTOR

The parties agree that Chabot is an independent contractor in providing the Training Programs and that this Agreement is not intended to create an employer/employee, principal/agent, partnership or joint venture relationship between the parties or between BMW and any subcontractor of Chabot. The services to be provided by Chabot shall be provided by personnel who are employees of Chabot, and Chabot assumes full responsibility for their acts and for their supervision, daily direction and control. Chabot shall pay, and be responsible for, the salaries and expenses of, and all Social Security, taxes, unemployment insurance, worker's compensation, disability benefits and any similar taxes and withholdings relating to such employees.

13. RIGHTS AND REMEDIES

The rights and remedies of the parties available under this Agreement shall be in addition to, and not a limitation of, any rights and remedies of the parties available at law or in equity.

14. CHOICE OF LAW

California law applicable to contracts made and fully performed within the State of California shall govern this Agreement and the performance hereunder.

15. GRADUATE PLACEMENT

It is expected that Chabot and BMW will assist with the successful placement of ADP graduates wherever possible. BMW field staff must be consulted for the purposes of placing ADP students and graduates at BMW Centers.

16. RECRUITING, STAFFING AND FINANCIAL AID

Chabot shall be solely responsible for student recruitment, staffing, and financial aid for the BMW ADP. However, it is understood that BMW has a responsibility to maintain the image of the variants of Service Technician Education Programs (STEP) of which ADP is a part of, as well as the BMW Brand image. Therefore, BMW reserves the right to give specific directions regarding any promotional activity or publication which may be seen as having an effect on those entities.

Similarly, BMW recognizes the responsibilities of Chabot with regards to the ADP and will designate specific person(s) to contact at BMW NA in order to assist Chabot in the development of promotional material.

17. TERMINATION

- A. Either party may terminate this Agreement if (a) the other party fails to perform any of its obligations and does not cure such failure within a period of thirty (30) days (or such longer period as the other party may authorize in writing) after it has been served written notice specifying such failure; or (b) the other party is subject to any administrative or governmental action or measure which suspends or terminates its business; or (c) the other party ceases to conduct its operation in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against the other party, or a receiver or custodian is appointed or applied for the other party, an assignment of the benefit of creditors or a transfer of all substantially all of its property is made by the other party.
- B. In the event that BMW elects to terminate this agreement prior to the normal termination date due to Chabot's inability to properly deliver BMW training in a manner consistent with

corporate standards it will be at a date determined by BMW with consideration for students currently enrolled in the BMW ADP but without requiring BMW to compromise the quality of training delivered.

- C. If Chabot elects to terminate this agreement prior to the normal termination date due to BMW's inability to meet its obligations as specified by the contract, Chabot would be obligated to do so at a date that would not interrupt classes already in session and accounted for in BMW's annual business plan for training production.
- D. Not later than six months prior to contract termination, the parties agree to negotiate in good faith, renewal or termination conditions. Such termination conditions will be negotiated in such a manner as to fairly conclude classes already in session and with regards to BMW business commitments.

18. NOTICES

All written notices sent under this agreement shall be deemed to have been duly served, if delivered in person to an officer of the corporation for whom it was intended or if delivered at or sent by registered or certified mail or reputable overnight courier service to the following business address:

Chabot: Chabot College
 25555 Hesperian Blvd.
 Hayward, CA 94545
 Attn: Vice President, Stacy Thompson

BMW: BMW of North America, LLC
 250 Chestnut Ridge Road
 Woodcliff Lake, NJ 07675
 Attn: Program Manager, BMW Group University
 cc: Corporate Counsel

In recognition of the above agreements both parties acknowledge with their signatures below.

**Chabot Las Positas
 Community College District
 Board of Trustees**

BMW of North America, LLC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Chabot College

BMW of North America, LLC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Chabot College

BMW of North America, LLC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I – VEHICLE LOAN AGREEMENT

LOAN OF VEHICLE AGREEMENT

Agreement, entered into this ____ day of _____, 20____, by and between BMW of North America, LLC, having a place of business at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677-7731 ("BMW NA") and _____, an individual located at _____ ("Driver" in all references means "District Driver").

In consideration of the promises hereinafter made to each other, the parties hereto agree as follows:

1. VEHICLES PROVIDED; PROMOTIONAL CONSIDERATIONS

BMW NA agrees to provide the vehicle (the "Vehicle") for use by Driver in accordance with the terms of this Agreement during the period identified in Exhibit A, unless cancelled or terminated. In consideration therefore, Driver agrees to provide the services and considerations to BMW listed in Exhibit B attached hereto.

2. DELIVERY OF VEHICLE; TERM OF USE

BMW NA will release the Vehicle to Driver at a mutually agreed upon time and location identified in Exhibit A. Thereafter and until Driver returns the Vehicle to BMW NA as hereinafter provided, Driver shall be solely responsible for the Vehicle. BMW NA shall not be liable to Driver for any failure or delay in obtaining the Vehicle or making it available to Driver for any reason whatsoever. Driver shall execute BMW NA's form of delivery receipt upon receipt of the Vehicle.

Driver shall return the Vehicle to BMW NA on the date set forth in Exhibit A. BMW NA may terminate this Agreement in the event Driver breaches any of the terms and conditions of this Agreement of his duties and responsibilities hereunder. BMW NA may inspect the Vehicle at any time and Driver shall, upon notice, return the Vehicle to BMW NA for the purpose of that inspection.

3. INTENDED USE

Driver shall permit the Vehicle to be operated only by persons who hold a valid license to operate such motor vehicle, who are at least eighteen (18) years of age, who are insurable. Driver shall not permit the Vehicle to be used in any improper or unsafe manner or in violation of any federal, state, county, or local law, statute, ordinance, rule or regulation, or to tow or push any vehicle.

Driver shall be solely responsible for and shall pay all fines, forfeitures and penalties incurred by reason of the use of the Vehicle and hereby agrees to indemnify and hold BMW NA harmless there from. Driver shall not permit the Vehicle to be operated in any manner that would cause any insurance agreement coverage relating to the Vehicle to be suspended or cancelled. If the Vehicle is stolen, lost or confiscated by any person or public authority through any errors or omissions attributable to the Driver, Driver shall make BMW NA whole for all damages and expenses sustained by BMW NA. BMW NA may, without releasing Driver from any liability to BMW NA, immediately terminate this Agreement. Driver shall not tamper, disconnect or otherwise interfere with the operation of the speedometer, odometer, emission control equipment, or any other part of the Vehicle.

4. MAINTENANCE AND REPAIRS

Ordinary operating expenses such as gas, oil, grease, tire repair, other incidentals, and any maintenance and repairs not covered by warranty or the full maintenance program ("Full Maintenance Program") are the responsibility of Driver. Driver shall have all maintenance and repairs performed at an authorized BMW dealership. All repairs determined to be the result of abuse or failure to properly maintain the Vehicle are the responsibility of Driver.

5. WARRANTY

BMW NA makes no warranty other than that expressed in the manufacturer's New Vehicle Limited Warranty, a printed copy of which is furnished with the Vehicle. BMW NA authorizes Driver to obtain, on BMW NA's behalf as owner of the Vehicle, such warranty service as is necessary and provided for under the standard express warranty referred to above. Said warranty service shall be performed at the BMW facility or at an authorized BMW dealer.

6. PROCEDURE ON ACCIDENTS

In the event of an accident, a police report must be completed. Within twenty-four (24) hours of the occurrence of any accident involving the Vehicle, Driver shall report the accident using the Accident/Incident Form provided by BMW NA, to the BMW Claims Processing Center c/o Marsh USA Inc., 601 Merritt 7, Norwalk, CT 06856-6010, phone number 1-800-2729-BMW, with a copy to BMW NA. If any claim is made or action commenced for death, personal injury or property damage resulting from the condition, use or operation of the Vehicle, Driver shall promptly notify BMW NA thereof and furnish BMW NA a copy of every demand, notice, summons, process and pleading received in connection therewith. Driver shall cooperate with BMW NA and the insurer in defending any claims or suits which may be brought against BMW NA, and shall indemnify BMW NA in accordance with Section 9.

7. INSURANCE, LICENSING AND TAXES

Driver agrees to have his personal insurance carrier provide primary insurance coverage on the Vehicle, in accordance with Exhibit C attached. Driver shall provide to BMW NA evidence that the Vehicle is covered under his insurance policy and submit any and all insurance renewals which may be in effect during the term of the Vehicle loan.

All expenses, if any, of titling, registering, licensing and paying sales taxes on the Vehicle subject to this Agreement shall be paid Driver, directly or by reimbursing BMW NA. Taxes assessed on the use of the Vehicle by Driver, such as income taxes, shall be the sole responsibility of Driver. Driver shall receive a tax form 1099 which will reflect the fair market value of the vehicles (including taxes) during the period of use.

8. OWNERSHIP

Driver acknowledges that it does not have and will not obtain any title to the Vehicle or any property right or interest, legal or equitable therein, except solely the right to use and operate each Vehicle in the manner set forth herein and subject to all the terms hereof, and that as between the parties, BMW NA has the entire title to the Vehicle.

9. INDEMNIFICATION

- A. Driver agrees to defend, indemnify and hold harmless BMW of North America, LLC and Bayerische Motoren Werke AG, their divisions and subsidiaries and their respective officers, directors, agents and employees (the "BMW Parties") from any and all claims, demands, obligations, causes of action and lawsuits (including the payment of reasonable attorney fees) arising out of Driver's use or operation of the Vehicle and his duties and responsibilities as set forth hereunder, and/or the failure of Driver or those acting under him to conform to the statutes, ordinances, regulations or other requirements of any governmental authority in connection with Driver's use or operation of the Vehicle, as set forth hereunder, except, Driver shall not be responsible for claims, demands, obligations, causes of action and lawsuits which arise from the sole negligence of the BMW Parties.
- B. The BMW Parties agree to indemnify and hold harmless Driver from that portion of any and all claims, demands, obligations, causes of action and lawsuits (including the payment of reasonable attorney fees) arising in connection with any manufacturing and/or design defect in the Vehicle.

10. CANCELLATION FOR BREACH

- A. BMW NA reserves the right to cancel or terminate all or part of this Agreement, without liability to Driver, if Driver repudiates or breaches any of the terms of this Agreement or fails to deliver the Vehicle for repair to an authorized BMW dealership or such other service facility as may be directed by BMW NA in writing; and does not correct such failure or breach within ten (10) days after receipt of written notice from BMW NA specifying such failure or breach.
- B. In the event this Agreement is canceled, Driver shall immediately return the Vehicle to the location as set forth in Exhibit A.

11. OBLIGATIONS CONTINUING BEYOND THE AGREEMENT TERMINATION DATE

The indemnities and assumptions of responsibility of Driver and the BMW Parties shall continue in full force and effect notwithstanding the termination or cancellation of this Agreement whether by expiration of time, by operation of law or otherwise.

12. RETURN OF VEHICLE

At the end of the term of this Agreement, or at such other time as may be required by the terms of this Agreement, Driver shall return the Vehicle in the same condition as delivered, reasonable wear and tear excepted, to BMW NA at such location listed in Exhibit A. If Driver does not return the Vehicle, BMW NA may repossess the Vehicle, at Driver's sole expense, at any time, wherever the Vehicle may be located and may enter upon the premises of Driver for that purpose and shall hold the Vehicle when so repossessed free and clear of this Agreement and any rights of Driver hereunder. If any Vehicle is lost, stolen or destroyed or is declared a total constructive loss through any errors or omissions attributable to the Driver, and only to the extent thereof (subject to BMW NA's agreement as to such condition), Driver shall promptly notify BMW NA thereof, hold any wreckage for disposal by BMW NA, and Driver shall promptly pay BMW NA the residual value ("Residual Value") of the vehicle. The Residual Value of the Vehicle shall be

calculated by BMW NA consistent with its standard practices of calculating residual value and the actual Residual Value shall be determined as the Residual Value of the Vehicle just prior to the Vehicle's loss, theft or destruction (constructive or actual).

13. APPLICABLE LAW

This Agreement is to be governed by and construed according to the laws of the State of California. Any provision which in any way contravenes the statutes, regulations, ordinances, executive orders or other rules of law of any state or jurisdiction where this Agreement is to be performed shall be deemed not to be a part of this Agreement in such state or jurisdiction but only to the extent necessary to comply with same.

14. SEAT BELT USAGE

It is a policy of BMW of NA that usage of all company-owned vehicles requires all occupants to use seat belts as a condition of this Agreement. Therefore, as a condition of acceptance of the Vehicle, Driver agrees to require all occupants to use seat belts.

15. NO IMPLIED WAIVERS

Failure by either party at any time to require performance by the other party of any provision hereof shall in no way affect the right to require full performance any time hereafter, nor shall the waiver by either party of a breach of any provision of this Agreement constitute a waiver or any succeeding breach of same or any other provision, nor constitute a waiver of the provision itself.

16. NO ASSIGNMENT

Neither party shall assign, transfer, sublet or lease its rights or delegate its obligations under this Agreement, and will not pledge, mortgage or otherwise encumber, or permit to exist upon or be subjected to any lien or charge, any right or interest of either party hereunder without the approval of the other party.

17. RELATIONSHIP OF THE PARTIES

Driver and BMW NA are independent contracting parties, and nothing contained in this Agreement shall be deemed to create a partnership, joint venture or agency relationship between them, nor does it grant either party any authority to assume or create any obligation on behalf of or in the name of the other.

18. NOTICES

Any notice required or permitted to be given by either party under or in connection with this Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid or by cable confirmed by letter as aforesaid to the addresses indicated in the first paragraph of this Agreement, unless otherwise indicated by the parties.

19. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to the subject matter covered herein and cancels and supersedes all previous agreements between the parties relating to the subject matter covered herein. Any modification to this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, this Agreement is being signed by Driver and BMW NA on the dates stated below, but in the term of the Agreement shall be governed by the date of Vehicle release and Vehicle return as set forth in Exhibit A.

BMW OF NORTH AMERICA, LLC

By: _____ Title: _____

Witness: _____ Date: _____

_____[DRIVER]_____

By: _____

Title: _____

Witness: _____

Date: _____

EXHIBIT A

DELIVERY RECEIPT

I acknowledge receipt of the vehicle described below bearing the vehicle identification number _____ . I acknowledge that I have inspected the vehicle described and that such vehicle is in acceptable condition on _____ (delivery date). I have picked this vehicle up at _____ (place of receipt) and shall return the vehicle at _____ (place of return).

VEHICLE DESCRIPTION

Year

Make

VIN No.

Model

Body

Ignition

Odometer

Cyl.

Key No.

Reading

DESCRIPTION OF MAINTENANCE PLAN

[See Attached Brochure]

Name of District Driver

EXHIBIT B—DRIVER DUTIES AND RESPONSIBILITIES
(No entry)

EXHIBIT C

Insurance Requirements

Automobile Liability -

- Including coverage for non-owned vehicles
- Bodily injury and Property Damage:
\$1,000,000 Combined Single Limit per Occurrence
- BMW NA Named as Additional Insured

Automobile Physical Damage Coverage -

- Replacement Cost Collision and Comprehensive (Including Theft)
- BMW of North America LLC named as Loss Payee
- Loss deductible cannot exceed \$1,000

All coverages must be:

- written by an insurance company with an A.M. Best rating of "A" or better
- written on an occurrence form
- include thirty (30) days notice of cancellation to BMW NA
- include Waiver of Subrogation against BMW NA, except for loss or damage arising out of a product defect
- primary to any insurance coverage carried by BMW NA

Certificates of insurance with these conditions must be provided to the Insurance Department of BMW NA. Please send certificate of insurance to James Burton, BMW Insurance Manager, BMW of North America, LLC, 300 Chestnut Ridge Road, Woodcliff Lake, NJ 07677-7731.