

## TERMS

**1. Acceptance.** By executing a BMW ConnectedDrive Subscriber Agreement, accepting the Terms online, or using the Services, you agree to these Terms. These Terms are between the subscriber ("you") and BMW of North America, LLC ("BMW NA") and govern the provision of BMW ConnectedDrive Services. These Terms include arbitration, jury waiver, and limitation of liability provisions that limit your rights. Please review the Terms in detail. If you do not agree to the Terms, do not execute a BMW ConnectedDrive Subscriber Agreement, accept the Terms online, or use the Services.

**2. Services.** Subject to payment of any applicable fees, execution of any BMW ConnectedDrive Subscriber Agreement, and acceptance of the Terms, BMW will provide, through its authorized service providers, emergency call, accident-assistance call, agent-assisted remote services, concierge (collectively "BMW Assist"), infotainment services, and other services (collectively "Services") in accordance with these Terms. You may find descriptions of Services at <http://bmwusa.com/explore/connecteddrive>, in your vehicle's owner's manual, or obtain them by contacting BMW Assist Customer Care at (888) 333-6118. BMW may change the Services or Terms as described under section 11. BMW may suspend or terminate these Services in accordance with these Terms. BMW may use the Services to locate the vehicle, as BMW deems reasonable, in accordance with these Terms. BMW, or its authorized service providers, may contact you by voice call or text message to the telephone number(s) that you provide or by email regarding matters related to Services, including through the use of an automatic telephone dialing system or a prerecorded voice. You shall notify BMW promptly if your contact information changes. BMW may, but is not obligated to, use in-vehicle communication (for example message display) to inform you about Services, trials, expirations, renewals, or other messages.

**3. Wireless Services.** The Services may use commercial mobile wireless services purchased from one or more third-party providers for the Services (the "Underlying Wireless Carrier"). This agreement does not give you any rights against the Underlying Wireless Carrier. The Underlying Wireless Carrier is, however, an intended third-party beneficiary of the protections of this agreement. If your vehicle is equipped with Wi-Fi Hotspot, you may connect your personal device to the Hotspot; however, access to the internet requires you to register with the Underlying Wireless Carrier and purchase a data plan. For new vehicles, a preliminary trial offer may be available.

**4. Service Limitations.** The Services are provided by BMW using an embedded telematics device installed in your vehicle (the "telematics control unit") that receives global positioning satellite (GPS) signals and communicates via wireless and landline communications networks, which may result in a voice and data connection with a response center. The telematics control unit is not intended to place or receive personal calls and may only place calls to our service providers as permitted under this agreement. The availability and use of Services are subject to many limitations including the following: (a) emergency call and service requests (eCall and Teleservices) may already be pre-activated and may not require your activation; (b) personalized Services (including, where available, advanced real-time traffic information, news, weather, remote door unlock, or vehicle finder) only become available upon execution of the agreement, acceptance of terms, payment of any applicable fees, and use of applicable online accounts or apps; (c) certain Services are available only if your vehicle ignition is on; (d) all Services require your vehicle battery to be charged and operational; (e) depending on regulatory requirements or market availability, Services may be available within the United States, Canada, Puerto Rico, and in certain other countries or U.S. territories; (f) if your vehicle is being operated outside the Services availability area, the Services may be subject to data usage limitations or restricted entirely; (g) Services are available only when your vehicle's telematics control unit is in range of a transmission site of the Underlying Wireless Carrier or a transmission site of another company that has agreed to carry its calls and there is sufficient network capacity at that moment; (h) Services will not be available if the wireless network requires the use of PIN codes; (i) Services may be impaired by landline and wireless communications problems caused by atmospheric or topographical conditions, busy cells, capacity limitations, equipment problems, equipment maintenance, and other factors and conditions; (j) there are places, particularly in remote areas, with no service at all from the Underlying Wireless Carrier; (k) Services may be affected by inherent limitations of your vehicle's electrical system and architecture, or if any of the components of your vehicle's telematics control unit have been damaged or are defective; (l) Services are not available if the GPS system is not working (map CD or DVD may be required) or the signals are obstructed; (m) certain programming limitations of the GPS system may impair the ability to determine your vehicle's precise location; (n) Services may be limited to geographic areas where map data and emergency (911) contact information is available in our databases which may be less than that which is otherwise generally available; (o) Services may be limited or unavailable based on the information provided from third-party service providers; and (p) Services may be limited due to your vehicle's telematics control unit's use of digital cellular telephone signals. If the Underlying Wireless Carrier or BMW terminates or restricts digital service, the Services may not be available.

**5. Terminating or Transferring Services.** You or a subsequent owner of your vehicle may terminate Services to your vehicle. If you sell your vehicle during the initial BMW-paid Services period, all Services on the vehicle transfer to the new owner. If you purchased any optional Services either during the initial Services period or anytime thereafter and sell your vehicle, those Services remain with the vehicle unless you terminate them. If you decide to terminate any such Services,

please refer to Section 8 Term, Termination and Disabling Services for further details. You may terminate or disable your Services by contacting BMW Assist Customer Care at (888) 333- 6118. You may remove your vehicle from your ConnectedDrive account on <https://connecteddrive.bmwusa.com>, or by contacting BMW Assist Customer Care at (888) 333-6118, or you may remove your vehicle from your ConnectedDrive account using the myBMW smartphone app, or successor app, if available for your vehicle.

**6. Your Duties.** You shall (a) be fully responsible for the protection of your ConnectedDrive account login credentials; (b) follow the instructions for use of your vehicle's telematics control unit and the Services; (c) accurately furnish all contact and other information requested by BMW and notify BMW immediately of any change in the information or in the ownership of your vehicle; (d) accurately and truthfully report information to BMW (such as when using emergency call or stolen vehicle tracking services); (e) properly maintain your vehicle and the telematics control unit; (f) not use the Services in violation of any laws or for any unlawful or abusive purpose; (g) not use the Services in any manner unintended by BMW, the service providers, or the Underlying Wireless Carrier; (h) not use the Services in any manner that could harm BMW, the service providers, the Underlying Wireless Carrier, or any other person; (i) use the map routing and traffic information, concierge, and all other content included in the Services only for your own personal use and not resell, retransmit, or modify the information and content; (j) comply with any other reasonable requirements or restrictions requested or imposed by BMW, the service providers, or the Underlying Wireless Carrier; and (h) be responsible for the use of your account credentials.

**7. Primary and Secondary Subscribers.** As the Primary Subscriber, you manage the account and Services for the vehicle. Up to six Secondary Subscribers may be added to the account. As a Primary Subscriber, you may (a) add or remove other users as Secondary Subscribers, (b) handover the Primary Subscriber role to a Secondary subscriber for the same vehicle (that is who will become the Primary Subscriber) and (c) purchase Services as applicable. Primary Subscriber's actions under the account apply to and bind Secondary Subscribers. If your vehicle is so equipped, vehicle login may result in automatic setup as a Primary Subscriber or Secondary Subscriber associated with the login credentials. You are responsible for managing the settings in your vehicle that activate or deactivate the automatic setup. Both the Primary Subscriber and the Secondary Subscriber agree to be bound by the Terms.

**8. Term, Termination, and Disabling Services.** By entering into this agreement, you become a subscriber to the Services ("Subscriber"). The initial term of this agreement is the BMW Paid and Customer Paid Periods specified (a) on the first page of this agreement, (b) in confirmation communications via email or postal service from BMW received upon agreement execution, or (c) as shown under your account at <https://connecteddrive.bmwusa.com>. Thereafter, a choice of renewal plans may be available based on vehicle eligibility. Please contact BMW Assist Customer Care at (888) 333-6118 or visit <https://connecteddrive.bmwusa.com> for details. You may terminate some or all of the Services. You may disable the Services in their entirety. You may also disable the devices from your Underlying Wireless Carrier in the vehicle where available. You may terminate or disable the Services by calling the BMW at (888) 333- 6118 or visit <https://connecteddrive.bmwusa.com> for details. You will need to execute a Customer Instruction to Disable Services in order to disable the Services. You will need to contact your Underlying Wireless Carrier to disable the devices in your vehicle. If you terminate but do not disable your Services, your vehicle may still connect to cellular networks and enable Wi-Fi Hotspot usage until you terminate your data plan with the Underlying Wireless Carrier. Terminating or disabling the Services does not result in the termination or disabling of any active data plan for your in-vehicle Wi-Fi Hotspot with the Underlying Wireless Carrier. If you choose to terminate or disable the Services and would also like to terminate any data plan with the Underlying Wireless Carrier, you must terminate any data plan directly with the Underlying Wireless Carrier.

**9. Subscription Fees and Refund Policy.** The subscription fee for any Services or renewal you select must be paid in full before Services commence. By providing your credit card information, you authorize our service provider, on behalf of BMW, to charge your account for all fees, taxes, and other amounts due under this agreement. So long as you are not otherwise in breach of this agreement, subscription fees are 100% refundable within the first 30 days from purchase date. Subscription fees are not eligible for refunds if request is made after 30 days from purchase date. Any promotional items (for example, coupons or gift cards) associated with Services cannot be redeemed for cash. If discounted Services are refunded, any associated promotional items will expire. If BMW changes the Services, BMW may, but is not required to, offer refund or credit associated with such change. Only a Primary Subscriber can request a refund.

**10. Taxes and Other Charges.** You are responsible for and agree to pay, as applicable, all sales and telecommunications taxes and all other taxes, fees, and charges imposed on you, BMW, the service provider, the Underlying Wireless Carrier, or the telematics control unit manufacturer in connection with the purchase and installation of the telematics control unit and the provision and use of the Services. Any applicable taxes, fees, and charges will be charged to you.

**11. Modification to Services or Terms.** From time to time, BMW may, in its sole discretion, modify these Services or Terms by giving you notice on its website or app. We may give you notice by posting a new version of the Services or Terms online at <https://connecteddrive.bmwusa.com> or in the myBMW App. Unless BMW states otherwise in its notice,

the amended Services or Terms will be effective immediately. Your continued access or use of the Services after our notice indicates your acceptance to the modified Services or Terms. If you do not agree with any modification, then you may not use the Services. BMW may, in its sole discretion, change, suspend, or terminate the Services with prior notice to you (including on its website or app), including, without limitation, as a result of changes in laws, wireless carrier, or technology. You shall frequently monitor our websites, including <https://connecteddrive.bmwusa.com> or a website that replaces that website, or app for modifications to the Services or Terms. From time to time, BMW may, in its sole discretion, make minor or non-material changes to the Services or Terms without prior notice.

**12. Termination or Modification for Excessive Use.** If BMW determines, in its sole discretion, that (i) your usage of the Services interferes or could interfere with BMW's ability to provide Services to its other subscribers or (ii) your usage constitutes a nuisance or is otherwise not consistent with these Terms, then BMW may, in its sole discretion, suspend, modify, or terminate the Services, without advance notice. These rights are in addition to those under section 13 Default and Termination below.

**13. Responsibility in Emergency Situations.** When our service provider receives an emergency signal from your vehicle, our service provider will attempt to determine if an emergency exists. If so, the service provider may attempt to contact you and the appropriate public safety access point ("PSAP") to request assistance and may also attempt to call one of your third-party emergency contacts. By providing emergency contact information for those individuals you select as emergency contacts, you and the emergency contact hereby authorize BMW to contact them in such emergency situations. Neither BMW nor the service provider guarantees that the service provider will actually receive an emergency signal or call from your vehicle or that the service provider will successfully contact the appropriate emergency agency or your third-party emergency contacts if it does receive an emergency signal or call, or that emergency personnel will respond to the call or locate your vehicle. BMW, the service provider, or the Underlying Wireless Carrier are not responsible for any failure or delay of a PSAP in responding to an emergency or for the quality of service delivered, whether the failure is the fault of BMW, the service provider, the Underlying Wireless Carrier, or any other third-party service provider.

**14. Default and Termination.** If you fail to timely pay any amount due under this agreement, BMW may terminate this agreement upon 10 days' prior written notice to you. If BMW determines, in its sole discretion, that you have breached the Terms and such breach impacts BMW's, the Underlying Wireless Carrier's, or any other service provider's ability to service its other customers, BMW may, in its sole discretion, suspend, or terminate this agreement without prior notice. If BMW determines, in its sole discretion, that you have breached section 21 Export Compliance, BMW may suspend or terminate this agreement without prior notice. If BMW determines that you have breached any other term of this agreement, BMW may terminate this agreement upon 30 days' written notice to you. These rights are in addition to any others BMW may have. If BMW brings an action to enforce its rights against you, you shall pay all reasonable costs of enforcement, including attorneys' fees. If BMW terminates this agreement, you may not access the Services, and you will not be entitled to a refund or credit.

**15. Force Majeure.** BMW or the service providers will not be responsible for the failure to provide Services to you if caused by any of the following: any act or omission of the Underlying Wireless Carrier or any other wireless carrier (including interruption of wireless service), or any emergency agency or any other third-party service provider or product provider; equipment failures or shortages; damage to the response center, any land or wireless communications networks, or the GPS system; acts of nature, acts of God, labor strikes, pandemics, epidemics, or war; or any other act or event that is outside of the reasonable control of BMW or the service providers. Under any of these circumstances, BMW may, in its sole discretion, suspend or terminate all or some of the Services or terminate this agreement without prior notice to you and without any liability, credit, or refund.

**16. Third-Party Beneficiaries.** BMW affiliates, the service providers and their affiliates, BMW centers and their affiliates, the Underlying Wireless Carrier and its affiliates, and any other third-party service or product providers involved in delivering the Services (for example, providers of map data, traffic and routing information, concierge, and other content) are intended third-party beneficiaries of this agreement. The disclaimer of warranties, limitations of liability, and other protections of this agreement extend to these third-party beneficiaries. To the extent any of these third-party beneficiaries impose further terms on providing services (for example, the end user terms covering navigation and location data), by using the Services, you also agree to be bound by those additional terms. A copy of any additional terms can be obtained upon request at [customer care@bmwassist.com](mailto:customer care@bmwassist.com).

**17. Disclaimer of Warranties.**

- a. Your vehicle's limited warranty includes the telematics control unit in your vehicle but does not cover the Services or any wireless services.
- b. YOUR USE OF THE SERVICES OR ANY WIRELESS SERVICES IS AT YOUR OWN RISK. BMW, THE SERVICE

PROVIDERS, THE UNDERLYING WIRELESS CARRIER, AND ANY OTHER THIRD-PARTY BENEFICIARY EXERCISE NO CONTROL OVER AND HAVE NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT OR INFORMATION TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICES OR THE UNDERLYING WIRELESS CARRIER'S WIRELESS SERVICE. BMW, THE SERVICE PROVIDERS, UNDERLYING WIRELESS CARRIER, AND ANY OTHER THIRD-PARTY BENEFICIARY EXPRESSLY DISCLAIM ANY RESPONSIBILITY FOR SUCH CONTENT AND INFORMATION.

c. THE SERVICES, UNDERLYING WIRELESS CARRIER'S SERVICES, ANY WIRELESS SERVICES, AND RELATED CONTENT AND MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, AVAILABILITY OF THE SERVICES OR QUIET ENJOYMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

d. BMW, THE SERVICE PROVIDERS, UNDERLYING WIRELESS CARRIER, AND ANY OTHER THIRD-PARTY BENEFICIARY DO NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, OR BE UNINTERRUPTED, SECURE, ERROR FREE, OR WITHOUT LOSS OF CONTENT, DATA, OR INFORMATION. TRANSMISSIONS RELATED TO THE SERVICES OR OVER ANY WIRELESS NETWORKS MAY NOT BE SECURE. ANY DATA, MATERIAL, OR INFORMATION OF ANY KIND WHATSOEVER UPLOADED, DOWNLOADED, OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES AND ANY WIRELESS SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK.

e. YOU ARE SOLELY RESPONSIBLE FOR ANY LOSS OF DATA, MATERIAL, OR INFORMATION DURING, OR THAT RESULTS FROM, YOUR USE OF THE SERVICES OR ANY WIRELESS SERVICES INCLUDING, BUT NOT LIMITED TO, SENDING, RECEIVING, UPLOADING, OR DOWNLOADING DATA, MATERIAL, OR INFORMATION.

**18. Limitations of Liability and Indemnification.**

a. The Services are provided to you merely as a convenience and are not intended as a substitute for insurance. The amount of fees for Services are not related to the value of your vehicle or its contents or to the potential cost of any injury or loss suffered by you or anyone else. You should obtain and maintain adequate insurance covering such injuries and losses.

b. EXCEPT WHERE PROHIBITED BY LAW, YOU RELEASE BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER, AND ALL OTHER THIRD-PARTY BENEFICIARIES FROM ANY AND ALL CLAIMS, LIABILITIES, AND LOSSES ARISING FROM OR RELATING TO:

- i. THE SERVICES, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE TOTAL OR PARTIAL FAILURE OF PERFORMANCE OF THE SERVICES, EVEN IF CAUSED BY THE NEGLIGENCE OF BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER, OR ANY THIRD-PARTY BENEFICIARY, OR THE ERRORS OR MALFUNCTION OF THE VEHICLE'S UNDERLYING TECHNOLOGY OR TELEMATICS HARDWARE;
- ii. THE DISCLOSURE OF INFORMATION RELATING TO THE STOLEN CAR RECOVERY EFFORTS OR OTHER LEGALLY REQUIRED OR COMPELLED DISCLOSURES;
- iii. ANY MONITORING OR RECORDED CONVERSATIONS;
- iv. LIABILITIES AND LOSSES (INCLUDING PHYSICAL INJURY OR DEATH) THAT YOU OR OTHERS MAY SUFFER ARISING FROM OR RELATING TO EMERGENCY SITUATIONS OR THE SERVICES;
- v. THE UNAVAILABILITY OF THE SERVICES OR ANY WIRELESS SERVICES, INCLUDING, WITHOUT LIMITATION, THE INABILITY TO REACH 911 OR OTHER EMERGENCY SERVICES OR ANY FAILURE OR FAULT RELATING TO EQUIPMENT OR SERVICES PROVIDED TO YOU; AND
- vi. THE COLLECTION, USE, AND DISCLOSURE OF WIRELESS COMMUNICATION INFORMATION.

THESE RELEASES EXTEND TO ANY PARTY MAKING CLAIMS UNDER YOU, INCLUDING, WITHOUT LIMITATION, YOUR INSURANCE COMPANY THAT MAY HAVE A RIGHT OF SUBROGATION.

c. EXCEPT WHERE PROHIBITED BY LAW, BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER, OR ANY THIRD-PARTY BENEFICIARY ARE NOT LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS OR SAVINGS ARISING FROM OR RELATING TO THE SERVICES, THE AGREEMENT, OR THE BMW ASSIST UNIT, EVEN IF BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER, OR ANY THIRD-PARTY BENEFICIARIES ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS UNDER THIS SECTION 17 APPLY TO ALL CLAIMS, INCLUDING, WITHOUT LIMITATION, CLAIMS IN CONTRACT OR TORT (SUCH AS NEGLIGENCE, PRODUCT LIABILITY, AND STRICT LIABILITY).

d. EXCEPT WHERE PROHIBITED BY LAW, IF BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER OR ANY OTHER THIRD-PARTY BENEFICIARY IS FOUND LIABLE FOR ANY REASON, THE AGGREGATE LIABILITY OF BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER OR ANY OTHER THIRD-PARTY BENEFICIARY FOR ANY CLAIM ARISING FROM OR RELATING TO THE AGREEMENT OR SERVICES IS LIMITED TO THE GREATER OF (1) TOTAL AMOUNT PAID BY YOU FOR THE SERVICES DURING THE 12 MONTHS PRECEDING THE DATE YOUR CLAIM AROSE OR (2) \$100. THIS AMOUNT IS THE SOLE AND EXCLUSIVE LIABILITY OF BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER, AND ANY OTHER THIRD-PARTY BENEFICIARIES TO YOU AND IS NOT PAYABLE AS LIQUIDATED DAMAGES OR AS A PENALTY.

e. BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER, OR THIRD-PARTY BENEFICIARIES WOULD NOT HAVE AGREED TO PROVIDE THE SERVICES TO YOU IF YOU DID NOT AGREE TO THIS LIMITATION OF LIABILITY UNDER SECTION 18.

f. EXCEPT WHERE PROHIBITED BY LAW, YOU MAY NOT BRING ANY CLAIMS AGAINST BMW, THE SERVICE PROVIDERS, THE UNDERLYING WIRELESS CARRIER, OR THIRD-PARTY BENEFICIARIES MORE THAN ONE YEAR AFTER THE CLAIM ARISES.

g. You shall indemnify BMW, the service providers, the Underlying Wireless Carrier, and all other third-party beneficiaries against all claims, liabilities, and losses brought by third parties, in whole or in part, arising from or relating to (i) the agreement or your use of the Services and (ii) your failure to notify us if you change your phone number, including but not limited to all claims, expenses, and damages related to or arising under the Telephone Consumer Protection Act.

h. Some jurisdictions may not allow certain limitations and exclusions of liability, so the above limitations or exclusions may not apply to you. In such states, our liability to you is limited to the greatest extent permitted by law.

#### **19. Disputes and Arbitration.**

a. Our customer service department is available to address any concerns you may have regarding the Services. You may call us at (888) 333- 6118, e-mail us at [customercare@bmwassist.com](mailto:customercare@bmwassist.com), or send us regular mail at the address listed in section 22 of this Agreement. You shall promptly raise disputes or issues for attempted resolution by our customer service team before bringing any claims in court or arbitration.

b. ANY CONTROVERSY, DISPUTE, OR CLAIM, WHETHER BASED ON CONTRACT, TORT, STATUTE, OR OTHER LEGAL OR EQUITABLE THEORY (INCLUDING BUT NOT LIMITED TO ANY CLAIM OF FRAUD, MISREPRESENTATION, OR FRAUDULENT INDUCEMENT) ARISING OUT OF OR RELATING TO THIS AGREEMENT, TO ANY BREACH HEREOF, OR TO ANY TORTIOUS CONDUCT OCCURRING, WHETHER BY ACTION OR INACTION, IN THE PERFORMANCE OF OR FAILURE TO PERFORM ANY OBLIGATION HEREUNDER, WILL BE SETTLED BY INDEPENDENT BINDING ARBITRATION INVOLVING A NEUTRAL ARBITRATOR AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES AND THE SUPPLEMENTARY PROCEDURES FOR CUSTOMER-RELATED DISPUTES, AS MODIFIED BY THIS AGREEMENT, EXCLUDING ANY RULES OR PROCEDURES GOVERNING OR PERMITTING CLASS ACTIONS. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ARBITRATION IS NOT A COURT PROCEEDING. THE RULES OF ARBITRATION DIFFER FROM THE RULES OF COURT. THERE IS NO JUDGE AND JURY IN AN ARBITRATION PROCEEDING. NO ARBITRATOR HAS AUTHORITY TO AWARD RELIEF IN EXCESS OF WHAT THIS AGREEMENT PROVIDES. IN THE EVENT THE FOREGOING ARBITRATION REQUIREMENTS DO NOT APPLY, YOU WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY TRIAL BY JURY, AND A JUDGE WILL DECIDE ANY AND ALL DISPUTES. NOTWITHSTANDING THE ABOVE, EITHER PARTY MAY SEEK FROM ANY COURT HAVING JURISDICTION HEREOF ANY INTERIM, PROVISIONAL, OR INJUNCTIVE RELIEF THAT MAY BE NECESSARY TO PROTECT THE RIGHTS OR PROPERTY OF ANY PARTY OR TO MAINTAIN THE STATUS QUO BEFORE, DURING, OR AFTER THE PENDENCY OF THE ARBITRATION. THE INSTITUTION AND MAINTENANCE OF ANY JUDICIAL ACTION OR PROCEEDING FOR ANY SUCH INTERIM, PROVISIONAL, OR INJUNCTIVE RELIEF SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OR OBLIGATION OF EITHER PARTY TO SUBMIT THE DISPUTE TO ARBITRATION.

c. ANY ARBITRATION WILL BE CONDUCTED BY THE PARTIES IN THEIR INDIVIDUAL CAPACITIES ONLY AND NOT AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION, AND THE PARTIES WAIVE THEIR RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS BASIS.

#### **20. Privacy.**

a. In addition to the privacy provisions herein, the BMW Privacy Policy, which is incorporated herein, governs our collection, use, disclosure, sharing, or other processing of the information that we collect about you. We may change the

BMW Privacy Policy in accordance with its terms, including by posting a revised version on our website, or a website that replaces that website, or app. The current Privacy Policy can be accessed at <https://www.bmwusa.com>. Comments or inquiries about our Privacy Policy, or requests for a copy, should be directed to BMW Customer Relations and Services at (800) 831-1117, by e-mail at [privacy@bmwusa.com](mailto:privacy@bmwusa.com), or by writing to BMW, Customer Relations and Services, P.O. Box 1227, Westwood, NJ 07675-1227. The terms provided herein are in addition to the BMW Privacy Policy.

b. Where permitted by applicable law and depending on Services availability and functionality, in providing you the Services, BMW may collect, retain, use, and share and otherwise process, including using your vehicle's sensing, on-board diagnostic modules, cameras, and other hardware, among other things, the following:

- i. Contact data (such as last name, first name, address, email address, and others) and account data (for example, payment method);
- ii. Vehicle data, such as an electronic or other record of your vehicle's description, status, control messages, precise location, direction of travel, vehicle service reminders, diagnostic trouble codes, tire pressure, service dates and condition, fuel and odometer readings, state of charge, battery voltage, coolant temperature, service requirements, and other telematics or vehicle service information;
- iii. Incident data, such as data about collisions, the direction from which your car was hit, which airbags have deployed, and safety belt usage; information about anyone making a Services call from your vehicle or under your account, including the date, time, and duration of the call, information and recommendations provided to you during the call, and any BMW Assist response specialist notes written during a call; and other information;
- iv. Location data, such as your vehicle's location or other information when (1) you or other occupants in your vehicle request Services; (2) your airbag deploys or a severe impact occurs; (3) your vehicle is equipped to provide stolen vehicle recovery and you report your vehicle as stolen; or (4) as required or permitted by law;
- v. Service data, such as data from your vehicle as it relates to providing Services, dynamic traffic information (traffic jams, road hazards, parking spaces, and other information), environmental information (such as local weather in your area), user profile information (such as personalized news, email, infotainment providers, and others), and other information;
- vi. If the vehicle is so equipped and Services and functions activated, video or image data relating to certain user-triggered or automatically-triggered events from on-board interior and exterior cameras; and
- vii. Other data as permitted or required by applicable law.

c. We may use the information we collect from or about you or your vehicle to deliver the Services, manage subscriber account, improve occupant and vehicle safety, prevent fraud or misuse of the Services, analyze and research, improve your service experience at BMW centers, enhance overall ownership experience, provide relevant in-car or in-app information, businesses, locations, advertising, and other purposes.

d. We may share certain information that we collect with our service providers, such as the call centers, wireless carriers, roadside assistance, emergency and concierge service providers, BMW dealers, members of the BMW Group, and other entities that assist with delivery of the Services. We may also share information as necessary with third parties for analysis and research purposes. We may also disclose information to individuals designated by you to be contacted in an emergency. By providing emergency contact information for those individuals you select as emergency contacts, you represent and warrant that you have obtained authorization for BMW to contact these individuals for the purpose described herein. When required, we may disclose information, including location data, vehicle telematics data, any audio or video, or other collected data, to comply with the law, in legal proceedings, to respond to subpoenas or court orders, in cooperation with law enforcement agencies, to enforce the terms of this agreement, or protect the rights of BMW or others. We may also use and share your information as requested by you to provide you with our Services, including providing you with the services you requested from service providers or third parties or providing your vehicle data to the third party or service provider that you requested to have access to your vehicle information. These service providers or third parties may include insurance carriers, insurance services providers, dealers, advertiser, advertising services providers, or others.

e. For quality assurance or security purposes, calls to service providers may be monitored or recorded. You consent to such monitoring and recording. When stolen vehicle recovery service is properly initiated, a BMW Assist Response Specialist will attempt to determine the location of the vehicle without the occupant's knowledge, in order to assist in recovering the vehicle.

f. When using the concierge Service, our concierge service provider may disclose information that you provide to them to other third-party service providers in order to provide the products and services that you request. This section and the BMW Privacy Policy do not apply to those providers.

g. You consent to wireless communications relating to your vehicle to enable our service providers to deliver the Services to you and other occupants of your vehicle and the collection, use, and disclosure of information.

h. You may make a request to access, correct, or delete your personal information in accordance with applicable laws by calling (888) 333- 6118, by sending an email to [customer care@bmwassist.com](mailto:customer care@bmwassist.com), or by logging into your account on <https://connecteddrive.bmwusa.com>.

## **21. Export Compliance.**

- a. You shall comply with all laws and regulations applicable to the Services and your use of the Services.
- b. You may not use, export, re-export, import, sell, or transfer any aspect of the Services except as authorized by United States law and any other applicable laws and regulations.
- c. You represent and warrant that you will not use the Services for any purposes prohibited by US law, including, without limitation, the development, design, manufacture, or production of nuclear missiles or chemical or biological weapons.
- d. You may not export or re-export Services to (i) any US embargoed countries; (ii) anyone on the US Treasury Department's list of Specially Designated Nationals or the US Department of Commerce Denied Persons List or Entity List; or (iii) any other jurisdiction subject to applicable restrictive measures lists, such as trade, military, economic, or financial sanctions, laws, or embargoes.
- e. You represent and warrant that you are not listed on or located in any US Government list of prohibited or restricted parties, including the Treasury Department's list of Specially Designated Nationals or the US Department of Commerce Denied Person's List or Entity List or any other applicable restrictive measures lists such as trade, military, economic or financial sanctions, laws, or embargoes, including lists of specially designated nationals or blocked persons lists mandated, imposed, or adopted by the relevant authorities of the United States or other jurisdictions.
- f. BMW may refuse, suspend, cancel, or terminate the Services, without notice and without liability, for any actual or reasonably-perceived breach of this section.

**22. Security on Wireless Networks.** The Services may employ wireless networks that use radio channels to transmit voice, video, and data. BMW does not guarantee the privacy nor security of such transmissions over the wireless networks.

## **23. Miscellaneous.**

- a. You represent and warrant that you have the right, power, and authority to enter into this agreement and provide us with the information described herein.
- b. A waiver of any part of this agreement in one instance will not be a waiver of any other part or any other instance.
- c. You shall provide us with notice in writing. BMW's notices to you will be deemed given (i) if deposited in the U.S. mail, postage prepaid, addressed to you at the last known address as shown on our records, (ii) if delivered to you by email to the last known email address as shown on our records, or (iii) if given via our website <https://connecteddrive.bmwusa.com> (or a website that replaces that website) or app for modifications to the Services or Terms. Notices to our service provider shall be deemed given when received at P.O. Box 100035 Fort Lauderdale, FL 33310, Attn: BMW Assist Customer Care. Notices to BMW shall be deemed given when received at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677 Attn: Customer Relations.
- d. We may assign this agreement, in whole or in part and in its own discretion, without notifying you. You may not assign this agreement. Any assignment in violation of these terms is void and without effect.
- e. If any portion of this agreement is held to be invalid or unenforceable by a court, the balance of the agreement will continue to be valid and enforceable.
- f. This agreement is governed by New Jersey law without giving effect to its conflict of laws provisions. Except as otherwise described under section 19, any action that arises out of relating the agreement or Services must be brought in state or federal courts of Newark, New Jersey.
- g. This agreement, including disclaimer of warranties and limitations of liability, will be enforceable against your heirs, successors, and assigns.

- h. This agreement and the documents to which it refers form the entire agreement between us on these subjects.
- i. This agreement is not for the benefit of any third party except as expressly provided above.
- j. If for any reason a dispute or claim under the agreement proceeds in court rather than arbitration: (i) you and BMW waive any right to a jury trial; (ii) the dispute or claim will proceed solely on an individual, non-class, non-representative basis; and (iii) neither you nor BMW may be a class representative or class member or otherwise participate in any class, representative, consolidated, or private attorney general proceeding.
- k. The agreement may be signed, delivered, and retained in electronic form.
- l. The section headings are provided merely for convenience and must not be given any legal import.
- m. Provisions of the Terms relating to limitation of liability, indemnification, venue, choice of law, and any other provisions that by their nature should survive, will survive the termination of these Terms.
- n. Access, use, or disclosure of Services in violation of these Terms may cause immediate and irreparable harm to BMW or any third-party beneficiaries for which money damages may not constitute an adequate remedy. BMW may obtain specific performance and injunctive or other equitable relief, in addition to its remedies at law or equity.