BMW Group

Special Terms and Conditions for Cloud Services (Status 03/2017)

**This is an English translation of the German STC and for convenience only.
Only the German version of these STC is legally binding.**

1. Scope and Definitions

By way of supplementation to Section 1 of the GTCs, the following shall apply:

1.1 The Special Terms and Conditions set forth below ("**STCs**") shall apply to the use of Cloud Services by the BMW Group.

1.2 The present STCs shall supplement the "General Terms and Conditions for Indirect Purchasing" ("**GTC**") of the BMW Group, as from time to time amended. The GTCs shall apply unless these STCs otherwise provide for a separate rule or specify a different rule in derogation from the GTCs.

1.3 In the event of any conflict between the GTCs and these STCs, these STCs shall take precedence over the GTCs.

1.4 "**Cloud Services**" within the meaning of these STCs are one of the three following service models:

   a) Software as a Service ("**SaaS**"): The Contractor provides applications/software to the BMW Group on a platform/software environment and within an infrastructure (network, storage space and computing power) in which the Contractor is responsible for operation, maintenance, remediation of faults and the requisite licensing.

   b) Platform as a Service ("**PaaS**"): The Contractor provides a platform/software environment and the infrastructure (network, storage space and computing power) to the BMW Group and provides the BMW Group the opportunity to develop or operate applications/software thereon, with the Contractor bearing responsibility for operation, maintenance, remediation of faults and the requisite licensing of the platform/software environment and infrastructure.

   c) Infrastructure as a Service ("**IaaS**"): The Contractor provides an infrastructure (network, storage space and computing power) to the BMW Group and allows the BMW Group to use that infrastructure as it wishes for its own purposes, with the Contractor bearing responsibility for operation, maintenance, remediation of faults, and requisite licensing of the infrastructure.

1.5 Organisational Types of Cloud Services

   a) "**Private Cloud**" is an organisational type of Cloud Services in which resources are used solely by a pre-defined group of users. In that context, it is of no consequence whether the infrastructure is located directly at the institution of the group of users or at a service provider. Organisation and management may likewise be directly vested in that institution or they may be the responsibility of a third party.

   b) "**Public Cloud**" is an organisational type of Cloud Services in which resources are not deployed solely for the BMW Group in a segregated fashion, but rather are provided to a host of unknown users. They may include multiple companies and individuals, an entire sector or the public at large.

1.6 Unless otherwise agreed, the basis for the Cloud Services under these STCs is a Private Cloud.

2. Service Provision

By way of supplementation to Section 3 of the GTCs, the following shall apply:

2.1 Unless otherwise agreed, the Contractor is obliged to ensure uninterrupted availability of the Cloud Services throughout the contract term in a manner enabling the BMW Group to use them at any time in line with the contract. Before the Contractor implements changes (e.g. interfaces) to the Cloud Services which are relevant to the BMW Group, it must give BMW such timely information in writing as BMW requires in order to continue its contractual use of the Cloud Services without interruption.

2.2 The Contractor is required to regularly maintain the Cloud Services at no additional cost to BMW. Such maintenance includes, in addition to bug fixes and patches, in particular the provision of new programme versions such as updates, upgrades and new releases.

2.3 For purposes of accessing protected areas of the Cloud Services, the Contractor shall furnish BMW with the necessary access data and methods (e.g. any access software which may be necessary), and in particular shall provide the agreed number of licences, usernames and associated passwords in a timely manner prior to commencement of operations. Upon request by BMW, the Contractor shall furnish to BMW at any time throughout the contract term a copy of such access data and methods free of charge.

2.4 The Contractor shall perform the Services in line with the state of the art from time to time, and in accordance with recognised quality and market standards.

2.5 The Contractor hereby confirms its agreement that it shall cooperate with third parties engaged by BMW throughout the contract term to coordinate the provision of services with the systems and services provided by such engaged parties. This duty shall, in particular, include the following:

   a) Provision of information with respect to all systems, data, IT environments and technologies, including interfaces, used in performing the Services.

   b) Performance of support services and acts of cooperation with third parties engaged by BMW.

2.6 Section 3.10 of the GTCs shall apply, subject to the proviso that the Contractor has created or adapted software on a customised basis for the BMW Group.

3. Place of Performance

3.1 Unless otherwise agreed, the place of performance shall be the location of the Contractor.

3.2 The Contractor shall perform the agreed Services at its locations as designated for this purpose in accordance with Section 4, at which it shall have the corresponding technical and organisational facilities. Safety precautions such as fire safety, disaster protection and access controls must comport at least with the requirements of law.

4. Data Centre Locations/Storage Locations of BMW Data

4.1 The Contractor shall for purposes of its Service Provision solely use data centres located at the sites agreed under the contract. The foregoing applies both to external backup servers and to emergency computing centres

which are used in the event of an outage of processes or resources or in the event of an emergency under Section 13.1.

4.2 The Contractor is not permitted to fully or partially relocate the BMW data or the data centre without BMW's prior written consent.

4.3 The Contractor must, when identifying the data centre, disclose to BMW, in addition to the precise address thereof, information regarding security certifications. In addition, the Contractor shall inform BMW as to whether the data centre is operated by the Contractor or whether the Contractor itself is a sub-contractor.

5. Commencement of Operations

5.1 It shall be the responsibility of BMW, after the Contractor has provided the access data and methods to it, to review the Cloud Services, pursuant to Section 2.3, as to their proper functionality and operational readiness in line with its Purchase Order, and to inform the Contractor in writing of the results of its review.

5.2 Upon request of BMW, the Contractor shall

a) support BMW in respect of the commencement of operation of the Cloud Services, and

b) offer induction and training services to BMW, enabling BMW to use the Cloud Services in a comprehensive and competent manner.

5.3 Wherever the Contractor has a duty under BMW's Purchase Order to collect, process or use personal data at the direction of BMW, a successful test during start-up operations within the meaning of Section 5.1 shall, in particular, include the following:

a) The Contractor must conclude an agreement in proper form on contract data processing with BMW, in line with Section 14.2 of the GTCs, and

b) BMW must, prior to commencement of the data processing, be satisfied of the proper performance of the technical and organisational measures in place at the Contractor.

6. Compensation

By way of supplementation to Section 9 of the GTCs, the following shall apply:

6.1 Unless otherwise agreed, the agreed compensation shall not be due and payable before completion of successful testing by BMW under Section 5.1.

6.2 Where the compensation is specified by intervals of time, the Contractor shall in each case invoice BMW for its Services after performing them at the agreed intervals for invoicing.

6.3 BMW may withhold a reasonable amount of contract penalties (if the Parties have agreed on these), damages for default, additional expense or any security from the Contractor's compensation.

6.4 To the extent that BMW withholds payment of compensation, the Contractor may not refuse to perform its Services (e.g. withhold or cease performance of the Service)

a) where the Contractor has not advised BMW in advance of its refusal expressly and in writing, and set a reasonable grace period, and

b) where, in light of the circumstances, in particular in light of the relative *de minimis* nature of the residual portion, refusal would constitute a breach of good faith.

BMW may provide security to avert the exercise of the Contractor's right to refuse performance. The provision of security by a surety is not permitted.

7. Data in Cloud Services

By way of supplementation to Section 15 of the GTCs, the following shall apply:

7.1 The Contractor's duty to surrender Data under Section. 15.7 of the GTCs shall also include the configuration files of the programmes used through the Cloud Services, and, in the case of "**SaaS**" service models, it shall additionally include the normalised database model (in particular: a depiction of the structure of the database and the relationship of the associated data tables). These constitute BMW Data within the meaning of Section 15.2 of the GTCs.

7.2 With respect to the surrender of Data, BMW may, at its option, choose to have the Contractor deliver the Data to it on a data medium or transfer it via a network. The Data must be in a common standard format, which the Contractor shall agree with BMW prior to initial operations under Section 5.

7.3 Without BMW's prior written consent, the Contractor is not authorised to make changes to the structure of BMW Data or the data format.

8. Information Security

By way of supplementation to Section 16 of the GTCs, the following shall apply:

8.1 Data separation within the meaning of Section 16.1 of the GTCs must, at a minimum, be undertaken in a logical way, e.g. by separating Data via access rights when the Data is held within the same storage. Where Parties have agreed to implement physical separation, the Contractor shall ensure that this is done by means of geographically separating the Data via dedicated physical systems and connections.

8.2 The Contractor must maintain certificates ISO 27017 and ISO 27018 or a comparable level of protection in place without interruption throughout the contract term and shall promptly furnish to BMW evidence thereof upon its request.

9. Warranty

By way of supplementation to Section 12 of the GTCs, the following shall apply:

9.1 A defect shall specifically be deemed present if the Cloud Services do not comport with the requirements specified in the contract (e.g. Service Levels or Key Performance Indicators) or are not fit for their contractually intended purpose or for their ordinary use.

9.2 The Parties shall promptly inform one another in writing as soon as they identify or suspect a defect in respect of the Cloud Services. Within its scope of responsibility, the Contractor shall, independently and at its own cost and expense, investigate the cause of the defect and take all necessary action to avoid a recurrence of the defect in the future. The Contractor shall inform BMW unbidden at regular intervals regarding the respective status and success of such measures.

9.3 Where the Parties have agreed Service Levels with respect to Services by the Contractor and in the event such levels are not achieved have provided for contract penalties in favour of BMW, BMW's right to abate the compensation shall not apply if the cause for the defect simultaneously leads to a failure to achieve an agreed Service Level and thereby triggers a contract penalty. BMW's right to assert other claims based on defects, in particular statutory claims, shall remain unaffected hereby.

10. Use of Cloud Services

By way of supplementation to Section 13 of the GTCs, the following shall apply:

10.1 By providing the Cloud Services, the Contractor grants BMW a right to use the Cloud Services, unlimited in geographical and substantive scope, but limited in time to the term of the contract, which shall include the right to use the relevant documentation and user handbooks.

10.2 The right under Section 10.1 shall, in particular, include the following forms of use:

a) Uploading, storing and downloading of data, to or from the Cloud Services,

b) Use of production, integration, testing and backup systems, including the so-called sandboxes, of the Cloud Services,

c) Loading user interfaces of software to the working memory of end devices and any duplications of the user interface which may be created thereby,

d) Use of all bug fixes and patches provided as well as of new program versions such as updates, upgrades and new releases, including the relevant documentation, specifically also for testing purposes,

e) Use of all language versions of the Cloud Services and documentation,

f) Provision of the Cloud Services to all of the BMW Group entities, and use thereof at all such entities, insofar as BMW itself is entitled to use them,

g) Use of the Cloud Services by third parties for purposes of the BMW Group in the sense of an extended workbench,

h) Use of Cloud Services by third parties (e.g. dealers and end customers) in connection with products and services offered by the BMW Group, and

i) Use of access software (including, in particular, downloading, installing, running and loading to workingmemory) where the Contractor provides these to BMW for its use of the Cloud Service.

10.3 The provisions in Section 13.3 of the GTCs shall only apply to modules and interfaces which have been customised for or developed for the BMW Group and to interfaces within the/into the Cloud Services.

11. Audits

The right granted by the Contractor to BMW pursuant to Section 16.6 b) of the GTCs to perform Audits to verify compliance with Information Security shall apply *mutatis mutandis* likewise to Audits for compliance with the agreed processes and quality requirements.

12. Ongoing reporting obligations of the Contractor

By way of supplementation to Section 3 of the GTCs, the following shall apply:

12.1 At such time as the Cloud Services are provided and following any change of the scopes relative to BMW, the Contractor shall, upon request, forward to BMW the inventory and quantity data as well as the number of access events in respect of the Cloud Services used by BMW ("**Reporting Data**"), broken down by the respective BMW Group entity within Germany and abroad.

12.2 The Reporting Data must be forwarded in machine-readable form in accordance with BMW's format requirements.

12.3 The acceptance or receipt of the Reporting Data provided by the Contractor shall not constitute an acknowledgement by BMW of the Reporting Data's correctness or completeness.

12.4 The Contractor must promptly inform BMW regarding planned new programme versions such as updates, upgrades and new releases for Cloud Services and must provide them to BMW in its BMW environment for testing purposes and disclose the interfaces.

13. Emergency Measures

13.1 "**Emergency**" shall mean a longer outage of processes or resources which give rise to not insignificant losses to BMW or are liable to do so to a high degree of likelihood.

13.2 The Contractor must have or implement plans of action for Emergencies ("**Disaster Recovery Plan**") which provide suitable and effective measures to reduce the scale of potential losses. The Disaster Recovery Plan must include communication channels which have been coordinated with BMW and business continuation and restoration plans. In particular, workaround solutions must be assured which can be provided within a short time, and the return to normal operations within a reasonable time must be ensured ("**Business Continuity**"). In addition the Contractor shall ensure that it is able to continuously meet the requirements agreed in the Service Levels (**"IT Service Continuity"**).

13.3 The Contractor shall test the Disaster Recovery Plan at regular intervals with respect to the effectiveness and suitability of the measures throughout the entire contract term. The test results shall be reported to the responsible contact at BMW.

13.4 The Contractor shall coordinate its Disaster Recovery Plan with the BMW Group's internal disaster recovery plans.

14. Termination

By way of supplementation to Section 6 of the GTCs, the following shall apply:

14.1 The contract term is shown in the BMW Purchase Order. Where the contract is made for a defined term, neither Party shall be entitled to terminate the contract by ordinary termination during its term. Where the parties have rights of termination under the law applicable to contracts for works and services, such rights are neither precluded nor restricted hereby.

14.2 "Good Cause" within the meaning of Section 6.4 of the GTCs shall likewise be present in the event of a repeated breach of Service Levels by the Contractor.

14.3 In cases covered by Section 6.5 of the GTCs, BMW shall be entitled to exercise a right of extraordinary termination in lieu of a right of rescission.

14.4 In the event of any change of control of the Contractor, BMW may terminate the contract if BMW

a) has justified grounds to believe that the Contractor will be controlled by a competitor of the BMW Group following the change of control,

b) has well-founded doubts that the abilities or financial stability required by the Contractor to provide the services in line with the contract will no longer be present following the change of control, or

c) has well-founded doubts that the confidentiality obligations will continue to be complied with following the change of control.

In the event of a termination, BMW shall not be obliged to pay any indemnity payments. The Contractor shall likewise have no claim for specific performance or damages as a result of any such termination.

"**Change of Control**" is defined as the sale of all or a substantial portion of all of the Contractor's assets, a merger or consolidation of the Contractor with another or into another corporate entity, organisation or person, acquisition of the Contractor by another corporate entity, organisation or person, and any change of ownership in respect of more than fifty per cent of the voting rights in the Contractor as a result of one or several associated transactions.

15.   **Change to the Scope of Use and Exit of an Entity from the BMW Group**

In the event that any entity or partial entity exits the BMW Group during the contract term, the Contractor shall be obliged, upon request of the exiting entity or partial entity, to offer the use of the Cloud Services to it on the same terms during the contract term, if and to the extent that the Cloud Services have hitherto been used within that entity or partial entity. The Contractor must furnish the technical and organisational prerequisites required for this purpose.

16.   **Supplemental Terms on Termination**

16.1   An extension of the contract term is only effective with BMW's prior consent.

16.2   BMW shall have the right to continue its use of the Cloud Services on the same terms and conditions on a monthly basis in each case, for a term of twelve (12) months, at a maximum, beyond the end of the contract term, for purposes of preparing and implementing migration of the Cloud Services to a follow-on service provider. The exercise of this right shall require notice by BMW to the Contractor.

16.3   Where the contract term ends prematurely for reasons for which BMW is not responsible, the Contractor shall, notwithstanding the obligations under Section 15.8 of the GTCs and Section 7 of these STCs,

a)   promptly offer to BMW the necessary termination support, particularly in respect of migrating the Cloud Services to a follow-on service provider, no later than six (6) months prior to the end of the contract term, or if fewer than six (6) months of the contract term are remaining at the time notice of the contract termination is given, and

b)   to forward to BMW unbidden and promptly upon the end of the period of service an itemisation of the data held within the Cloud Services.

16.4   Where, under an "**SaaS**" service model, the contract term ends prematurely for reasons for which BMW is not responsible, the Contractor shall, upon request of BMW, perform the following, in addition to the obligations set forth in Section 16.3:

a)   The Contractor shall hand over to BMW the installable software contained within the Cloud Services and the associated source code, including the documentation thereto (specifically: interface documentation and documentation on operating interfaces), on a data storage medium readable by BMW, provided that the Contractor is entitled to corresponding rights to such software, and

b)   The Contractor shall grant to BMW a non-exclusive, irrevocable right of use, unlimited in geographical and substantive scope, but limited in temporal scope to the originally agreed con-

tract term, with respect to the software and the source code.

Unless otherwise agreed, BMW shall pay compensation in respect of the respective Cloud Services, or the provision of the software including the source code and documentation under the first sentence hereof, letter a) and the grant of the right of use under letter b) at standard market prices, minus any payments made by BMW up to the time of contract termination.

Upon request of BMW, the Contractor shall enter into a separate escrow agreement with BMW regarding the escrow arrangements for the software, the associated source code and documentation within the meaning of Section 16.4, first sentence a), with such escrow agent as BMW shall specify. The Contractor shall be entitled to object to the designation of an escrow agent for good cause if the escrow agent specified by BMW is unsuited to holding the software, source codes and documentation in escrow. Unless otherwise agreed, BMW shall bear the costs of the escrow agent. The Contractor shall bear the costs in other respects arising out of the escrow.

16.5   The Contractor shall have no right of retention in respect of BMW's claims under Sections 16.3 and 16.4.