

Special Terms and Conditions for Digital Services (Status 08/2020)

1. Scope and Definitions

1.1 The Special Terms and Conditions set forth below ("**STC**") shall apply to the procurement of Content and Digital Services by BMW, which BMW Group intends to resell and distribute inter alia under the brand name "BMW ConnectedDrive", "Rolls-Royce Connected", "ConnectedRide" and/or "MINI Connected".

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

1.3 Definitions:

API Application Programming Interface(s) provided by Contractor to BMW Group as set out in the specification

BMW Customer Any person having been granted the right to use Digital Services, including but not limited to the use in a BMW Vehicle.

Change of Control 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.

Digital Services Any requested service consisting of transmission or provision of Data (e.g. via API) used for short-term storage or streaming into vehicles or mobile devices

Reporting Data Reports required for the evaluation of Digital Services, including but not limited to reports on usage and availability of Digital Services.

Sales Markets Countries as outlined in the specification.

2. Service Provision

By way of supplementation to Clause 3 of the GTC, the following shall apply:

2.1 The Contractor shall ensure uninterrupted availability of the Digital Services throughout the contract term within the Sales Markets in a manner enabling the BMW Group to use the Digital Services at any time in accordance with the specification.

2.2 The Contractor shall perform the Digital Services in accordance with the state of the art, and in accordance with recognised quality and market standards.

2.3 The Contractor shall inform BMW in writing at minimum of 90 days in advance about planned changes and modifications which might be relevant for or have any impact on BMW Group. The planned changes or modifications shall not be executed without the written consent of BMW.

BMW shall not be entitled to refuse or delay its consent to changes or modifications, if they are required by applicable law, a governmental order or mandatory technical reasons. In any case, BMW may refuse its consent, if changes or modifications require a significant investment by the BMW Group or if quality, availability or performance of the Digital Services is endangered by the changes and modifications.

2.4 BMW may inform the Contractor about additional requirements, and Contractor shall implement such requirements in due course, to the extent such additional requirements do not increase its costs for the provision of the Digital Services.

2.5 The Contractor is required to maintain the Digital Services regularly with appropriate technical and organizational measures against the accidental, unauthorized or unlawful access to the Digital Services at no additional costs to BMW.

2.6 The Contractor shall furnish BMW with the access data and methods necessary for the BMW Group to make use of the Digital Services (e.g. account data), and shall provide BMW with the for this purpose agreed number of licences, usernames and associated passwords in a timely manner prior to commencement of the Digital Services.

3. Advertising and Marketing

By way of supplementation to Clause 17.6 of the GTC, the following shall apply:

3.1 For the sake of clarification the Contractor has no right to use any trademark (or contraction, abbreviation or similarities thereof) of BMW Group in advertising, publicity or otherwise.

3.2 BMW shall be solely responsible for the marketing and sale of the Digital Services to BMW Customers (e.g. product offering, registration of customers, pricing). For the sake of clarification, it is not required that BMW Customers accept any conditions of use issued by the Contractor.

4. Remuneration

By way of supplementation to Clause 9 of the GTC, the following shall apply:

4.1 Unless otherwise agreed, the remuneration shall not be due and payable before BMW has successfully completed the testing of the Digital Services provided by Contractor.

4.2 Where the remuneration is specified by intervals of time, the Contractor shall in each case invoice BMW the provision of the Digital Services after rendering them at the agreed intervals for invoicing.

4.3 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 remuneration.

BMW kann eine angemessene Höhe für Vertragsstrafen (sofern die Parteien diese vereinbart haben), Schadensersatz für Verzug, Aufwandsentschädigung oder eine Sicherheit aus der Vergütung des Auftragnehmers zurückhalten.

5. Reporting Data

By way of supplementation to Clause 3 of the GTC, the following shall apply:

- 5.1 During the contract term, the Contractor shall unsolicited provide BMW with Reporting Data on a monthly basis separately for each Sales Market.
- 5.2 The Contractor shall provide the Reporting Data in machine-readable form in accordance with BMW's format requirements.
- 5.3 The acceptance or receipt of the Reporting Data provided by the Contractor shall not constitute an acknowledgment by BMW of the Reporting Data's correctness or completeness.

6. Use of BMW Data and Reporting Data

The Contractor shall not be entitled to use, to copy, to disseminate, to exhibit, to alter, to adapt or link (e.g. for Big Data) BMW Data or Reporting Data for its own use or for other business relationships.

7. Warranty

By way of supplementation to Clause 12 of the GTC, the following shall apply:

- 7.1 To the extent the Digital Services do not comply with the specification (e.g. service levels or key performance indicators), are not available or are not fit for the contractually intended purpose or for ordinary use, the Digital Services shall be deemed defective.
- 7.2 The parties shall promptly inform each other in writing as soon as they identify or suspect a defect in respect of the Digital Services. Within its scope of responsibility, the Contractor shall, independently and at its own cost and expense, investigate the cause of the defect, fix it 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.
- 7.3 Where the parties have entered into a Service Level Agreement ("SLA") with respect to the Digital Services, remedies according to the SLA due to non-compliance with one or more service level criteria shall exclusively apply, unless agreed otherwise between the parties. BMW's right to assert other claims based on defects, in particular statutory claims, shall remain unaffected.

8. Rights of Use

By way of supplementation to Clause 13 of the GTC, the following shall apply:

- 8.1 By providing the Digital Services, the Contractor grants to BMW Group for the agreed contract term an irrevocable, non-exclusive, non-transferable right to use the Digital Services for its intended purpose within the Territories and within the scope of the contract, which shall include the right to use the relevant documentation and user handbooks.

BMW Group is authorized to sell, distribute and make the Digital Services accessible and available to third parties.

- 8.2 The right under Clause 8.1 shall, in particular, include the following forms of use:
 - a) commercialize, copy, disseminate, exhibit, alter or adapt the Digital Services for availability in vehicles and mobile devices via any distribution channel (e.g. platforms),
 - b) combine the Digital Services in whole or in extracts with other content of the BMW Group or third parties and use, disseminate or exhibit the

Digital Services in this form for availability in vehicles and mobile devices via any distribution channel,

- c) uploading, storing and downloading of Data related to the Digital Services to BMW storage, vehicles and mobile devices,
- d) use of all bug fixes and patches provided as well as of new program versions such as updates, upgrades and new releases of the API, including the relevant documentation, specifically also for testing purposes,
- e) use of the agreed language versions of the Digital Services.

- 8.3 The provisions in Clause 13.5 of the GTC shall only apply to modules and API's, which have been customized or developed for the BMW Group and to API's with respect to the Digital Services.

- 8.4 The rights of use according to Clause 8.1 concerning copyrights comprise in particular the right to copy, to disseminate, to exhibit, to alter and to adapt; further they comprise the use for presentation and marketing purposes, as well as for description in user guides for the relevant Digital Services and to mark this information with any trademark of the BMW Group.

9. Termination

By way of supplementation to Clause 6 of the GTC, the following shall apply:

- 9.1 In case a contract term is shown in the BMW Purchase Order, neither Party shall be entitled to terminate the contract by ordinary termination during this term. An extension of the contract term is only effective with BMW's prior written consent.
- 9.2 "Cause" within the meaning of Clause 6.5 of the GTCs shall also be a repeated breach of Service Levels by the Contractor.
- 9.3 In cases covered by Clause 6.6 of the GTC, BMW shall be entitled to exercise a right of extraordinary termination in lieu of a right of withdrawal for the unfulfilled part of the contract.
- 9.4 In the event of any Change of Control of the Contractor, BMW may extraordinarily 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 Digital 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.

- 9.5 Beyond the end of the contract term BMW shall have the right to continue its use of the Digital Services under the same terms and conditions on a monthly basis in each case, for a term of six (6) months at a maximum.