

## 1. Scope of application

1.1 These Standard Terms and Conditions for Maintenance and Support Contract ("STC Maintenance and Support") form an integral part of the Maintenance and Support Contract ("Contract") concerning maintenance of hardware and support of software ("Service" or "Services").

1.2 If, in any request for proposal, Group Company refers to the STC Maintenance and Support, these shall be deemed to be agreed and accepted upon submission of a written bid.

## 2. Scope of Services

2.1 Hardware Services shall include maintenance (esp. preventive maintenance for purposes of perpetuation of functionality) and corrective maintenance involving either the repair or replacement of any defective component (eliminating of malfunctions and errors to restore functionality). Any component that is replaced shall become property of Group Company upon delivery.

2.2 Software Service shall include the elimination of any malfunction and the correction of any error. The contractual price shall include new functionalities and licenses therefore.

2.3 On request of Group Company and subject to an additional charge, the following shall apply:

a) The Service shall also include all software customization that is needed to make the software compatible with any changes in Group Company's operating, database and/or data carrier systems.

b) Supplier shall also eliminate malfunctions arising from circumstances that are attributable to Group Company or any third party.

2.4 Insofar as Supplier agreed to maintain the hardware and/or support the software, Supplier agrees to perform these Services throughout the entire period during which Group Company intend to use these Services. Said period shall amount at least six years.

2.5 Supplier shall provide Group Company with information regarding technical optimizations and improvements in the software that are relevant to maintenance processes and outcomes on a regular basis. Supplier shall in particular draw Group Company's attention to the consequences of optimized software for the hardware affected. Any implementation of technical optimizations or delivery/installation of any updated/upgraded software done by Supplier shall be subject to Group Company's prior approval.

## 3. Realization

3.1 Supplier shall report to Group Company in good time any fact or circumstance that could substantially streamline, reduce the cost of, complicate or preclude any Intervention.

3.2 Group Company shall grant Supplier access to Group Company's premises insofar as such access is required for intervention purposes, and shall supply, in accordance with Supplier's specifications, the requisite power outlets and network connections, as well as storage space for any work materials that may be needed.

3.3 Group Company shall provide Supplier with any necessary System documentation of any kind whatsoever.

## 4. Deployment of staff

4.1 The personnel used by Supplier for Service shall possess the required skills and qualifications.

4.2 Each party shall provide the other party with the names and positions/roles of essential supervisory and/or managerial personnel, who shall be deployed as stipulated in the Contract (maintenance schedule). Any replacement of such personnel shall be subject to prior written authorization of Group Company.

4.3 Supplier shall only deploy staff with the authorizations required.

## 5. Engagement of third parties

5.1 Any engagement of third parties (subcontractor) shall be subject to prior approval by Group Company and shall be without prejudice to Supplier's obligation to assume full responsibility for supplying Group Company with the Service in a contractually compliant manner.

5.2 Group Company shall be entitled to obligate Supplier to engage third parties for contractual Services. In such a case, Group Company shall be liable for the consequences of any faulty performance by any such third party, insofar as Supplier proves that said third party acted properly and complied with the relevant instructions and requirements.

## 6. Change requests

6.1 Group Company shall be entitled to submit written Change Requests concerning the Services at any time. Within ten days following receipt of any such Change Request, Supplier shall submit to Group Company a written notification indicating whether the requested change is realizable; and any effect such change may have on any future Services, as well as the price and delivery dates thereof. Within ten days following receipt of said notification, Group Company shall determine whether or not the Change in question will be implemented. Unless otherwise agreed, Supplier shall continue carrying out its Services according to plan during the period in which any Change Request is being evaluated.

6.2 Supplier shall be prohibited from rejecting any Change Request insofar as the change in question is practicable and does not alter the overall nature or characteristics of the Services.

6.3 Any Change Request of the Supplier shall indicate in writing the reasons for said change.

6.4 Any change in any Services, price, delivery date, or contractual provision shall be subject to realization of an amendment to the Contract. Any change in the price of the Services shall be calculated on the basis of the original price.

## 7. Documentation

Supplier shall regularly document and update all relevant and necessary hardware and software related matters, and shall submit the entirety of such market-compliant documentation to Group Company, either on paper or in a write-enabled electronic format, at Group Company's discretion.

## 8. Import requirements / Export restrictions

Supplier guarantees compliance with any export restrictions and import regulations from the place of origin to the place of delivery according to the Contract. Supplier informs Group Company in writing about any export restrictions of the country of origin.

## **9. On-call, response, intervention and malfunction elimination times**

9.1 On-call times: Supplier shall provide its Services during the contractually defined on-call times. Supplier shall maintain continuous availability of sufficient amounts of defect-free spare parts, tools, and measuring devices.

Supplier shall provide Services outside of the defined maintenance times, insofar as requested by Group Company and at an additional charge.

9.2 Response time: The maximum amount of time that elapses between receipt of Group Company's initial report of a problem and the initial response of a Supplier's system specialist via phone, email or fax.

9.3 Intervention time: The maximum amount of time that elapses before a Supplier's system specialist undertakes an initial intervention with a view to correcting a specific problem that has been reported.

9.4 Malfunction correction time: The maximum amount of time that elapses until a reported problem has been eliminated and the system is fully operational as provided in the Contract.

## **10. Default**

10.1 Insofar as Supplier fails to meet any contractual on-call time, response time, intervention time, malfunction correction time or delivery deadline, Supplier shall automatically be deemed to have defaulted on Supplier's contractual obligations ("Default").

10.2 If Supplier defaults on any on-call time, response time, intervention time, or malfunction correction time, Supplier shall due payment of a contractual penalty of CHF 1000.- for each started hour of Default, subject to a per Contract maximum amounting to the total compensation payable over the course of one year. Application of the foregoing shall be excluded insofar as Supplier can prove that said default is not attributable to Supplier.

10.3 Payment of any such penalty shall be deducted from any damages Supplier is required to pay, but shall not relieve Supplier of any contractual duty whatsoever.

10.4 If Supplier is in Default, Group Company has the right to terminate the Contract as a whole or parts thereof.

## **11. Reports**

Immediately following the completion of any Services, Supplier shall provide an report which shall be reviewed and signed by both parties. The Report shall indicate the exact time at which an intervention of the hardware or software began, the hardware or software element that was serviced, any component or other element that was replaced, the corrective measures that were taken, and the amount of time needed for the intervention. The report shall also indicate the date and time of any error messages, the time at which system functionality was restored, the cause of the malfunction, and a description of any documentation and/or source code updating necessitated by the Intervention.

## **12. Warranty**

Supplier shall warrant that Supplier shall provide its services competently, professionally, successfully, and with due care and diligence.

## **13. Intellectual property rights**

13.1 Any intellectual property rights (intangible property and related rights; "Rights") produced by Supplier pertaining to the Services (esp. to the source code and documentation), belong to Group Company immediately upon formation of said rights.

13.2 Any pre-existing Rights shall remain in force. Supplier shall inform Group Company about pre-existing Rights.

13.3 Payment by Group Company shall constitute compensation for said Rights.

13.4 Both parties retain the right to use and dispose of ideas, processes and methods that are not legally protected as well as jointly developed know-how.

## **14. Breach of intellectual property rights**

14.1 Supplier warrants that performance of the Service does not infringe the Rights of any third parties.

14.2 Supplier shall, at its own expenses, risk and without delay, defend against claims by third parties concerning breach of Rights. Should a third party initiate proceedings against Supplier, Supplier shall without delay inform Group Company in writing. If the third party asserts claims directly against Group Company, Group Company shall notify Supplier promptly in writing and Supplier shall, upon first request of Group Company and to the extent possible under the relevant code of procedure, participate in the lawsuit. If possible, Group Company shall give Supplier sole control over the defense thereof, and of any process related to reaching an out of court settlement of such claim. Supplier shall assume any costs (including compensation for damages) incurred by Group Company in connection with any such claim.

14.3 If, pursuant to the Rights asserted, Group Company is unable to use the contractually owed Service in whole or in part, Supplier has the option of changing its Service in such a way that they do not breach the Rights of third parties but nonetheless comply with the contractually owed Service. If Supplier fails to change the Service within a reasonable period, Group Company may withdraw from the Contract with immediately effect. Supplier shall indemnify Group Company within the framework of clause 21. To the extent that Group Company is responsible for the breach of the Rights, claims against Supplier are excluded.

## **15. Source code**

Insofar as Supplier is unable to provide any Service for any reason whatsoever, Group Company shall be entitled to provision the Service proprietarily or have the Service provisioned by a third party. In any such case, Group Company shall be entitled to access the relevant source code. In the interest of ensuring that the relevant source code issuance obligations are fulfilled, Group Company shall be entitled to require at any time during the term of the Contract that the source code be safeguarded either by being deposited with a trustworthy Company, or via realization of the relevant technical measures on a Group Company's system of Group Company's choosing; and that the source code be kept updated. The cost and expense of all such measures shall be assumed by Supplier.

## **16. Security regulations**

16.1 Insofar as Supplier accesses the premises of Group Company and/or any Group Company data and information systems, Supplier shall comply with any access or security regulations.

16.2 Supplier shall advise all personnel and third parties involved in performing the Contract to abide by the access and security regulations and shall formally obligate said personnel to abide by this covenant.

In particular, all personnel of Supplier who spend time in the premises of Group Company and who handle business information and data as well as computer equipment and documentation shall sign the form "Rules of behavior for external personnel" (to be found on [http://www.six-group.com/dam/about/downloads/terms-conditions/rules\\_external\\_personnel\\_en.pdf](http://www.six-group.com/dam/about/downloads/terms-conditions/rules_external_personnel_en.pdf)). Supplier shall keep the signed forms on file and hand over to Group Company on first request.

16.3 Insofar as Supplier accesses the information systems of Group Company, Group Company shall have the right to monitor, record and evaluate Supplier's activities in the information systems.

## 17. Compensation and terms of payment

17.1 Supplier shall provide its Services based on fixed standard prices or on a cost per service basis ("Prices").

17.2 Group Company assumes 8.4 working hours per working day. However, Group Company expects a commitment to work that is in line with professional business standards and if required to work more than 8.4 working hours per day. Additional working hours may not be charged. If Supplier works less than 8.4 hours per day, only the actual working hours are to be charged.

17.3 The Prices shall include all elements that are needed for the Intervention concerned, and in particular the following: spare part installation, testing and documentation costs; optimization and customization costs; remote software support; packaging, shipping, transport, travel and insurance costs; out of pocket expenses; any government charge such as customs charges and taxes.

17.4 Supplier shall be entitled to raise its prices, subject to three months notice prior to the beginning of the subsequent calendar year but limited to the increase of the Swiss Consumer Price Index for the current calendar year.

17.5 Group Company shall make payment of any amount owed within thirty (30) days following receipt of the invoice.

17.6 Group Company shall be entitled to request, at any time, that Supplier participate in electronic invoicing (e-invoicing) of SIX within three (3) months following receipt of this request, whereby any cost and expense arising thereof shall be assumed by Supplier. Supplier hereby authorizes Group Company to provide any subcontractor involved in the billing process with any necessary information related to Supplier e.g. information about Supplier, contract, order, invoice, etc.

## 18. Term

18.1 If the Contract is concluded for an indeterminate period of time, it shall be subject to termination by Supplier with 12 months' notice and by Group Company with one month's notice, as from the end of any calendar month. Group Company has the right to terminate the Contract in whole or in part.

18.2 The Contract may be terminated with immediate effect in the event of any material breach of the Contract by either party. In such a case, the remuneration for any Services that have been provided shall be pro rata temporis, subject to the right of either party to bring a claim for damages.

18.3 On termination or expiration of the Contract, Supplier undertakes to promptly return to Group Company all paper and electronic documentation and data in relation to the Contract. Supplier shall do so at no charge and shall not retain a copy of such documentation and/or data. Supplier furthermore undertakes to return all technical equipment received.

## 19. Nondisclosure

19.1 Supplier shall keep confidential all information, documentation and data that are acquired by Supplier in connection with the process of provisioning the contractual Services ("business secrets"), and shall in particular be prohibited from making Confidential Information available or accessible to any third party or otherwise disclosing Confidential Information. The foregoing shall also apply to any information that falls within the scope of banking secrets.

19.2 Supplier shall advise all personnel involved in performing the Contract of said personnel's obligation to keep business, banking- and exchange secrets confidential, and shall formally obligate said personnel to abide by this covenant. Supplier shall in particular obligate all such personnel to sign the non-disclosure declaration ("Geheimhaltungserklärung") of Group Company (declaration to be found on [http://www.six-group.com/dam/about/downloads/terms-conditions/confidentiality\\_statement\\_en.pdf](http://www.six-group.com/dam/about/downloads/terms-conditions/confidentiality_statement_en.pdf)), which shall form an integral part of the Contract. All such signed documents shall be kept on file by Supplier and be submitted to Group Company on first request.

19.3 A contractual penalty amounting to the contract value, but not less than CHF 25'000, shall be imposed on Supplier for any breach of clause 19.

19.4 The confidentiality obligations predates conclusion of the Contract and persists after termination of the contractual relationship.

19.5 This non-disclosure obligations shall prevail pre-existing obligations of non-disclosure.

## 20. Data protection and data security

20.1 If Supplier processes personal data when performing the Contract, it shall be responsible for compliance with the statutory data protection provisions. Supplier undertake to take the economically reasonable and technically and organizationally possible measures to ensure that personal data arising in the framework of execution of the Contract are effectively protected against unauthorized knowledge by third parties.

20.2 Supplier shall only process personal data transferred by Group Company in accordance with the directives of Group Company. If Supplier is of the view that any directive issued by Group Company infringes any statutory data protection provision, it shall immediately so advise Group Company.

20.3 Group Company shall be entitled to transfer personal data to other companies within SIX in Switzerland and abroad.

## 21. Liability

21.1 The parties are liable to each other for any damage, loss or injury caused by the other party unless they are able to prove that no fault can be attributed to them.

21.2 Supplier and/or its engaged third parties shall under no circumstances be liable for any damage, loss or injury caused by any force majeure (e.g. war, civil unrest, terrorist attacks, flooding, strikes, forces of nature). If Supplier is prevented from performing the Contract for more than thirty (30) days, Group Company shall have the right to withdraw from the Contract.

## 22. Supplier's status as an independent contractor

22.1 In its capacity as an independent contractor (referred to as a **selbständig erwerbstätige** Person in Swiss law), Supplier shall assume sole responsibility for payment of all taxes, social security benefits, and the like that are payable by Supplier, and shall obtain any insurance coverage desired by Supplier in Supplier's own name.

22.2 If Supplier is classified as a non-independent contractor rather than an independent contractor, Group Company shall be entitled to indemnification of Supplier to the extent that Group Company is required to pay any taxes, social security charges, insurance premiums or the like that are attributable to said classification of Company as a non-independent contractor. Group Company shall be entitled to deduct such expenditures from any relevant Supplier invoice.

### **23. Non-solicitation**

23.1 Supplier shall refrain from making any attempt – either on its own account or for any third party – to head-hunt any employee that is involved in performing the Contract.

23.2 Should Supplier violate said prohibition against head-hunting, Supplier shall be subject to a contractual penalty amounting to CHF 100,000 or one year of the head-hunted employee's salary, whichever amount is greater. The foregoing shall be without prejudice to either party's right to lodge claims for damages.

### **24. Liability insurance**

24.1 Supplier shall obtain liability insurance that covers any damages that may be attributable to Supplier or the personnel thereof, whereby the amount of the coverage obtained shall be concomitant with the value of the Services.

24.2 At the behest of Group Company, Supplier shall allow Group Company to examine Supplier's liability insurance policy.

### **25. Assignment**

25.1 Any assignment of the Contract by both parties to any third party shall be subject to prior written authorization of the other party.

25.2 Notwithstanding the foregoing, Group Company shall be entitled to assign the Contract to any other group company of SIX.

### **26. Written form**

Changes and amendments to the Contract as well as termination of the Contract shall be in writing.

### **27. Severability**

Should any provision of the Contract be or become void, ineffective or unenforceable in full or in part, the validity and enforceability of all of the remaining provisions shall not be affected. The void, ineffective or unenforceable provision shall be regarded as replaced by the effective and enforceable provision that corresponds as closely as possible to the economic objective of the void, ineffective and unenforceable provision. The same shall apply to any gaps in the Contract.

### **28. Use of Group Company as a reference**

Any use of Group Company as a reference shall be subject to Group Company's prior written authorization.

### **29. Applicable law; place of jurisdiction**

29.1 The Contract shall be governed by Swiss law, to the exclusion of the provisions of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11 April 1980).

29.2 The exclusive place of jurisdiction for any disputes arising out of or in connection with the Contract shall be Zürich in Switzerland.