

## 1. Scope of application

1.1 These Standard Terms and Conditions for Cloud Services Contracts ("STC Cloud") form an integral part of the Application Service Providing Contract ("Contract") concerning application services ("Service" or "Services").

1.2 The SIX Code for Suppliers ([https://www.six-group.com/dam/about/downloads/responsibility/supplier\\_code\\_en.pdf](https://www.six-group.com/dam/about/downloads/responsibility/supplier_code_en.pdf)) form an integral part of these STC Cloud. Supplier shall be obliged to act in full compliance with this code.

## 2. Realization

2.1 Depending on the specific contractual agreement, Supplier's Service shall include the provision and/or operation of an application ("Software as a Service"), an IT infrastructure ("Infrastructure as a Service"), an IT platform ("Platform as a Service") or a business process ("Business Process as a Service") that will be used by SIX over an Internet connection or other telecommunications connection. This includes as well the use of the corresponding documentation. The Contract price shall include the provision of any new functionalities and the licenses therefor.

2.2 On request of SIX and subject to a separate charge, Supplier shall correct any malfunctions arising from circumstances attributable to SIX.

2.3 Supplier shall be prepared to ensure operation of the relevant application throughout the entire period of its planned use. Said period shall amount at least six years.

2.4 Supplier shall provide SIX with information on a regular basis regarding technical optimizations and improvements to the Service.

## 3. On-call, maintenance and malfunction correction times

3.1 On-call times: Supplier shall provide its Services in accordance with the times agreed in the Contract.

3.2 Maintenance time: Supplier shall complete any maintenance during the maintenance time agreed in the Contract. It shall maintain availability of sufficient amounts of defect-free spare parts, tools and measuring devices.

3.3 Supplier shall also continue to provide maintenance outside the maintenance time at the request of SIX and at an additional charge.

3.4 Malfunction correction time: This shall mean the maximum amount of time that elapses until a problem has been corrected and use and functionality of the Service has been restored as specified in the Contract.

## 4. Deployment of staff

4.1 The personnel used by the Supplier to provide the Services shall possess the requisite 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. Any replacement of such personnel shall be subject to prior written authorization of SIX.

4.3 Supplier shall only deploy staff with the authorizations required. Insofar as personnel of the Supplier have access to the IT systems of SIX (IT user account), Supplier shall, prior to the relevant personnel accessing such systems, provision of that personnel's criminal records. In addition, Supplier shall inform the SIX procurement specialist involved with the Contract in writing immediately upon becoming aware of any entries in any of the Supplier personnel's respective criminal records and about any pending criminal proceedings of such personnel.

## 5. Engagement of third parties

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

5.2 SIX shall be entitled to obligate Supplier to engage third parties for contractual Services. In such a case, SIX 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.

5.3 Insofar as the agreed services include data processing on behalf of SIX, as of May 2018 Supplier shall prove beforehand that the subcontractor has implemented the required technical and organizational measures and has the necessary know-how in order to be able to fully adhere to the EU General Data Protection Regulation (EU-GDPR). In addition, Supplier shall contractually oblige the subcontractor and any involved employees of the subcontractor to strict confidentiality as well as to fulfill any other obligations arising from the EU-GDPR or any other applicable data protection legislation.

## 6. Changes in contractual Services

6.1 SIX shall be entitled to submit written Change Requests concerning the Service at any time. Within ten days following receipt of any such Change Request, Supplier shall submit to SIX a written notification indicating whether the requested change is realizable; and any effect such change may have on any future Service, as well as the price and delivery dates thereof. Within ten days following receipt of said notification, SIX shall determine whether or not the Change in question will be implemented. Unless otherwise agreed, Supplier shall continue carrying out its Service 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 made by SIX if the change in question is practicable and does not alter the overall characteristics of the Service.

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

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

## 7. Documentation

Supplier shall submit the necessary documentation to SIX, whereby said documentation shall be provided on paper and electronically, and in the languages specified in the Contract and Supplier shall make updates if necessary.

## 8. Data storage and backup

8.1 For the purpose of storing data in connection with use of the application, Supplier shall provide SIX with a dedicated data server. The storage capacity provided to SIX and the data server specifications shall be specified in the Contract (specifications). The transfer of data to the data server shall be carried out by agreement between the contracting parties. The use of other data servers, particularly such that are located abroad, is permitted only with prior written authorization from SIX.

8.2 SIX shall have access to the stored data at any time during the agreed period of use. Supplier shall waive any right of retention. SIX shall be solely responsible for the saving and processing of data.

8.3 Supplier shall be responsible for backing up the data of SIX stored on the data server. The intervals for backups and their storage period are specified in the Contract (specifications).

Supplier may overwrite the stored data following expiry of this storage period. On request from SIX, Supplier shall provide SIX with a copy of the data stored on the data server whenever required and promptly, but no later than on termination of the Contract. The data shall be provided by agreement between the contracting parties on a suitable data carrier and in a suitable format and at no charge. Supplier shall delete the data of SIX stored on the data server no earlier than following transfer of the data to SIX in connection with termination of the Contract, provided SIX does not advise Supplier, within sixty (60) days following such transfer, that the data transferred are unreadable or incomplete. Any failure to so advise Supplier shall be deemed to constitute approval for deletion of the data. Once SIX has approved deletion of the data, Supplier shall delete all data. Following complete deletion of all data, Supplier shall confirm this for SIX in writing.

## 9. Default

9.1 If Supplier fails to meet any delivery and availability deadline defined in the Contract, Supplier shall automatically be deemed to be in default of its contractual obligations.

9.2 In the event of any instance of default (particularly with respect to availability), and provided there is no other rule agreed upon in the contract it shall pay a contractual penalty to SIX according to the following: The contractual penalty shall be calculated on the basis of the availability agreed in the Contract. For each one-half (1/2) percent variance, Supplier shall owe SIX 20% of the annual remuneration up to a maximum, however, of the annual remuneration.

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

9.4 If Supplier is in Default within two consecutive months, SIX has the right to terminate the Contract as a whole or parts thereof.

## 10. Reports

Immediately following provision of the Service, Supplier shall provide a report which shall be reviewed and signed by both parties. The report shall also indicate the date and time of any error messages, the time at which the Service was restored, the causes of the malfunction, including any updating of the documentation.

## 11. Warranty

Supplier warrants that the application, when used in accordance with the Contract, shall perform the functions described in the Contract. Otherwise, the Service shall be deemed to have a defect covered by warranty ("Defect"). Any availability of the application that is less than contractually agreed shall also be deemed to be a Defect.

## 12. Notice of Defects

12.1 Notice regarding any Defects shall be provided as soon as reasonably possible upon detection. SIX shall not be required to any duty of examination.

12.2 Claims in respect of any willfully concealed Defects may be made during a period of ten (10) years from detection.

## 13. Rectification of Defects

13.1 Any Defects in connection with the Service shall be rectified after consultation with SIX.

13.2 In the event that any subsequent improvement or replacement should fail, SIX shall be entitled to withdraw from this Contract.

## 14. Breach of intellectual property rights

14.1 Supplier warrants that performance of the Service does not infringe any intellectual property rights (intangible property and related rights; "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 SIX in writing. If the third party asserts claims directly against SIX, SIX shall notify Supplier promptly in writing and Supplier shall, upon first request of SIX and to the extent possible under the relevant code of procedure, participate in the lawsuit. If possible, SIX 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 SIX in connection with any such claim. Clause 21.1 shall not apply. To the extent that SIX is responsible for the breach of the Rights, claims against Supplier are excluded.

14.3 If, pursuant to the Rights asserted, SIX 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, SIX may withdraw from the Contract with immediately effect. Supplier shall indemnify SIX within the framework of clause 20.

## 15. Security Regulations

15.1 Insofar as Supplier has access to the premises of SIX and/or any SIX data or information systems, Supplier shall comply with any access or security regulations.

15.2 Supplier shall be required to advise all its personnel involved in the performance of the Contract of their duty to comply with the specified security regulations, and shall formally bind such personnel to comply with same. In particular, all personnel of Supplier who spend time in the premises of SIX and who handle business information and data as well as computer equipment and documentation shall sign the form "Rules of behaviour 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 SIX on first request.

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

## 16. Prices and terms of payment

16.1 Supplier shall provide the Services based on fixed (recurring) standard prices or on a cost per service basis.

16.2 The prices shall include all elements needed to provide the Service concerned. In particular, the prices shall include any insurance costs and any government charges such as customs charges and taxes.

16.3 Supplier shall provide an invoice for any amount due, which shall be payable by SIX within thirty (30) days following receipt of the invoice.

## 17. Term and Termination

17.1 In the event that the Contract is concluded for an indefinite period, it may be terminated by Supplier subject to twelve (12) months' notice and by SIX subject to one months' notice, given as from the end of any calendar month. SIX has the right to terminate the Contract in whole or in part.

17.2 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.

17.3 On termination or expiration of the Contract, Supplier undertakes to promptly return to SIX 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 within the scope of the Contract.

## 18. Non-disclosure

18.1 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.

18.2 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 SIX, which shall form an integral part of the Contract (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)). The signed non-disclosure declarations shall be retained by Supplier and handed over to SIX upon first request.

18.3 If Supplier uses related companies or other companies to fulfill contractual obligations, it shall ensure that the personnel involved from these companies are also informed about the obligations set out under 18.2 and that they sign the non-disclosure declaration.

18.4 A contractual penalty amounting to EUR 50,000 shall be imposed on Supplier for any breach of clause 18.

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

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

18.7 SIX shall have the right to disclose the content of this contract to other SIX Group Companies.

## 19. Protection and security of personal data and other data

19.1 If Supplier processes personal data when performing the Contract, it shall be responsible for compliance with the Swiss Data Protection Law as well as any other applicable data protection provisions, in particular the EU General Data Protection Regulation.

19.2 SIX shall be entitled to transfer personal data SIX has received from Supplier in connection with the performance of the contract to other SIX Group companies in Switzerland and abroad for further processing.

19.3 Insofar as the agreed services include a data processing on behalf of SIX, the following clauses shall apply:

19.4 Supplier shall process personal data only in compliance with the contract. Any other way of processing shall only be allowed upon prior written approval by SIX.

19.5 Supplier shall undertake to take the economically reasonable technical and organizational measures to ensure personal data arising in the framework of execution of the Contract are effectively protected against loss, damage and unauthorized access and processing. In particular, as of May 2018 Supplier shall ensure to comply with all data security requirements according to Art. 32 of the EU-GDPR.

18.6 Insofar as Supplier transmits personal data to a subcontractor located in a country without equivalent data protection level, Supplier shall conclude the EU standards clauses with this subcontractor.

18.7. Supplier shall be obliged to implement economically reasonable technical and organizational measures to enable SIX to answer requests from data owners for protection of their rights. This includes in particular the right of disclosure as well as correction, deletion and portability of data of persons concerned.

18.8 As of May 2018 Supplier shall be obliged to support SIX in fulfilling its obligations to ensure data security according to Art. 32 EU-GDPR, in fulfilling its obligations to report data protection breaches according to Art. 33 und 34 EU-GDPR and its obligations in connection with privacy impact assessments according to Art 35 and 36 EU-GDPR. Supplier shall be obliged to inform SIX immediately about any breach of data protection (e.g. loss of SIX data or unauthorized access to SIX data).

18.9 After termination of the agreed data processing Supplier shall be obliged, at the option of SIX, to either delete or return the data, provided there is no legal obligation to store or archive the respective data.

18.10 Supplier shall be obliged to provide SIX upon request any information necessary to prove fulfillment of the obligations according to this clause 16.

## 20. Liability

20.1 The contracting parties are liable to each other for any damage, loss or injury caused to the other party by breach of contract unless they are able to prove that no fault can be attributed to them. Liability for any personal injury shall be unlimited. In all cases, liability shall be limited to any damage, loss or injury effectively incurred and proven. In case of slight negligence the liability shall be capped at the double amount of the contract value.

20.2 The contracting parties shall not be liable to each other for any indirect or consequential damage or loss such as lost profit, unrealized savings or third-party claims.

20.3 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, SIX shall have the right to withdraw from the Contract.

20.4 This section shall be subject to clause 14-2.

## 21. Right to audit

21.1 SIX, its external audit company and its supervisory authorities shall have a comprehensive and unrestricted right to conduct examinations and inspections at all times.

21.2 Supplier is obliged to assist SIX and its external audit company and supervisory authorities in such examinations with the means at its disposal and to issue all relevant documents upon first request.

21.3 If Supplier uses related companies or other companies to fulfill its contractual obligations, Supplier shall make this clause 21 contractually binding on these companies, so that SIX, its external audit company and its supervisory authorities can claim this right of examination directly in respect of these companies.

21.4 The costs of such an examination shall be borne by SIX. However, if the examination finds that Supplier is in breach of contractual provisions, Supplier shall bear the costs of the examination in full.

21.5 SIX shall also have the right to inspect Supplier's own audit reports.

## **22. Source Code**

If Supplier can no longer provide, operate or maintain the Cloud Services as a result in particular of pledge, the threat of bankruptcy, debt restructuring proceedings or for other reasons, SIX shall be entitled to access the source code for the applications concerned. To protect itself in respect of the obligation to issue this source code, SIX may at any time require that the source code be deposited and kept up to date with an independent third party or in a way that is protected by technical measures on a system designated by SIX. The costs for this shall be borne by Supplier.

## **23. Supplier's status as an independent contractor**

23.1 In its capacity as an independent contractor ("selbständig erwerbstätige Person" under 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 SIX in Supplier's own name.

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

## **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 SIX, Supplier shall allow SIX to examine Supplier's liability insurance policy.

## **25. Assignment**

26.1 Any assignment of the Contract by both parties to a third party shall require prior written authorization from the other party.

26.2 SIX shall be entitled to assign the Contract to any other SIX of SIX.

## **26. Written form**

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

## **27. Reference information**

Supplier shall be required to obtain prior approval in writing from SIX in respect of any information it provides as a reference.

## **28. Disclosure**

SIX shall have the right to disclose the provisions of the Contract with Supplier to its end users and to the Swiss Federal Data Protection and Information Commissioner (FDPIC).

## **29. 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.

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

30.1 The Contract shall be governed by the laws Germany, 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).

30.2 The exclusive place of jurisdiction for any disputes arising out of or in connection with the Contract shall be Frankfurt, Germany.