

## 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 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 Maintenance and Support. Supplier shall be obliged to act in full compliance with this code.

## 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 SIX 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 SIX 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 SIX's operating, database and/or data carrier systems.

b) Supplier shall also eliminate malfunctions arising from circumstances that are attributable to SIX 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 SIX intend to use these Services. Said period shall amount at least six years.

2.5 Supplier shall provide SIX 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 SIX'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 SIX's prior approval.

## 3. Realization

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

3.2 SIX shall grant Supplier access to SIX'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 SIX 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 SIX.

4.3 Supplier shall only deploy staff with the authorizations required. Insofar as the deployed staff shall have access to the IT systems of SIX (IT user account), Supplier shall look into and collect extracts from their criminal records, which are not older than 3 months. In addition, Supplier shall inform the involved SIX procurement specialist at an early stage before deployment and in writing about any entries in the respective criminal records and about any pending criminal proceedings of the employees the Supplier is aware of.

## 5. Engagement of third parties

5.1 Any engagement of third parties (subcontractor) 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 Service 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 maintenance and support 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 fulfil any other obligations arising from the EU-GDPR or any other applicable data protection legislation.

## 6. Change requests

6.1 SIX 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 SIX 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, SIX 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 SIX, either on paper or in a write-enabled electronic format, at SIX'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 SIX 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 SIX and at an additional charge.

9.2 Response time: The maximum amount of time that elapses between receipt of SIX'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 a correction of malfunction of the category "critical", Supplier shall due payment of a contractual penalty of EUR 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. A critical malfunction is a System problem that completely disables the hardware / software or for which no workaround solution is currently available other than reinstalling the previous release or providing a new patch or release. A critical malfunction affects system functionality and availability in a manner that necessitates immediate action. 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 defaults on a correction of a malfunction of the category "critical" twice within a month or three times within a year, SIX shall be entitled to terminate the Contract in whole or in part.

## 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 SIX immediately upon formation of said rights.

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

13.3 Payment by SIX 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 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. The rule of clause 21.1 does not apply. To the extent that SIX is responsible for the breach of the Rights, claims against Supplier shall be 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.

## 15. Source code

Insofar as Supplier is unable to provide any Service for any reason whatsoever, SIX shall be entitled to provision the Service proprietarily or have the Service provisioned by a third party. In any such case, SIX shall be entitled to access the relevant source code. In the interest of ensuring that the relevant source code issuance obligations are fulfilled, SIX 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 SIX's system of SIX'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 SIX and/or any SIX 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 SIX 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 SIX on first request.

16.3 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.

## 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 SIX assumes 8 working hours per working day. However, SIX expects a commitment to work that is in line with professional business standards and if required to work more than 8 working hours per day. Additional working hours may not be charged. If Supplier works less than 8 hours per day, only the actual working hours are to be charged. Travel time is not considered as working hours.

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 Any statements in timesheets deviating from rules agreed upon in the contract or these STC shall only be valid if they have been approved by the SIX procurement in writing.

17.5 The remuneration for stand-by services shall be agreed upon separately.

17.6 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 yearly average of the sliding wage scale (moyenne annuelle de l'échelle mobile des salaires) in the Grand Duchy of Luxembourg, that is published from time to time by the national statistical institute of Luxembourg "STATEC" or any substitute index replacing the existing sliding wage scale.

17.7 SIX shall make payment of any amount owed within thirty (30) days following receipt of the invoice.

## 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 SIX with one month's notice, as from the end of any calendar month. SIX shall have 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 The Contract may be terminated by Group Company, with immediate effect in the event of bankruptcy ("faillite" / "liquidation judiciaire" / "banqueroute"), receivership or management by an

administrator ("gestion contrôlée" / "sursis de paiement"), judicial liquidation or similar collective creditor proceedings against Supplier.

18.4 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.

## 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 recognizes in particular that Group Company, as a regulated Luxembourg payment institution under the supervision of the Commission de Surveillance du Secteur Financier ("CSSF"), is under an obligation of professional secrecy, in application of article 30 of the law of 10 November 2009 on payment services, as amended (hereafter the "Law on Payment Services").

19.3 In application of article 30 of the Law on Payment Services, all persons working for a payment institution shall be required to keep secret any information confided to them in the context of their professional activities. Disclosure of such information shall be punishable by the sanctions laid down in Article 458 of the Penal Code.

19.4 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 (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 SIX on first request.

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

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

19.7 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 Swiss Data Protection law as well as any other applicable data protection provisions, in particular the EU General Data Protection Regulation (EU-GDPR).

20.2 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.

20.3 Insofar as the agreed services include data processing by Supplier on behalf of SIX, the following clauses shall apply:

20.4 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.

20.5 Supplier shall undertake to implement the economically reasonable technical and organizational measures to ensure personal data of SIX are effectively protected against loss, damage and unauthorized and unlawful access and processing. In particular, as of May 2018 Supplier shall ensure compliance with all data security requirements according to Art. 32 of the EU-GDPR.

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

20.7. 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.

20.8 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).

20.9 Upon 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.

20.10 Supplier shall be obliged to provide SIX upon request any information necessary to prove fulfilment of the obligations according to this clause 20.

## **21. Liability**

21.1 The 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. In case of ordinary negligence the liability shall be capped at the double amount of the contract value.

21.2 The Parties 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.

21.3 The rules in this section shall be subject to clause 14.2.

## **22. Liability insurance**

22.1 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.

22.2 At the behest of SIX, Supplier shall allow SIX to examine Supplier's liability insurance policy.

## **23. Assignment**

23.1 Any assignment of the Contract by both parties to any third

party shall be subject to prior written authorization of the other party.

2.2 Notwithstanding the foregoing, SIX shall be entitled to assign the Contract to any other SIX of SIX.

## **24. Written form**

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

## **25. 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.

## **26. Use of SIX as a reference**

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

## **27. Right to audit**

27.1 SIX, its external audit company and its supervisory authorities shall have a comprehensive and unrestricted right to conduct examinations and inspections at all times in order to verify the correct fulfilment of the contract.

27.2 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.

27.3 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.

27.4 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.

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

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

28.1 The Contract shall be governed by Luxembourg 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).

28.2 The exclusive place of jurisdiction for any disputes arising out of or in connection with the Contract shall be Luxembourg.