

## 1. Scope of application

1.1 These Standard Terms and Conditions for Work and Labor Contract ("STC Work and Labor") form an integral part of the Work and Labor Contract ("Contract") concerning purchase and the design of information systems ("Hardware"), the manufacture of individual software, as well as any other contractual products or services ("Deliverables"). In the event of a conflict between provisions of these STC Work and Labor and the Contract, the Contract shall prevail.

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 Work and Labor. Supplier shall be obliged to act in full compliance with this code.

## 2. Realization

2.1 Supplier shall submit reports to SIX on a regular basis concerning the Deliverables and shall keep Supplier informed with respect to any evolution, factor or circumstance that could result in any change in the Deliverables from a technical, business, financial or economic standpoint.

2.2 Supplier shall report promptly to SIX any circumstance or factor that could jeopardize provisioning of the Deliverables.

2.3 SIX shall communicate to Supplier, in good time, any requirements or other data that are relevant for performance of the Contract. Further provisions concerning SIX's duty to cooperate can be agreed upon in the Contract.

## 3. Deployment of staff

3.1 For rendering the Deliverables, Supplier shall deploy only carefully selected and appropriately trained staff who shall be replaced in case they lack expertise or otherwise endanger performance of the Contract.

3.2 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.

3.3 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.

## 4. Engagement of third parties

4.1 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 Deliverables in a contractually compliant manner.

4.2 SIX shall be entitled to obligate Supplier to engage third parties for contractual Deliverables. In such a case, SIX shall be liable for the consequences of any faulty

Deliverables by any such third party, insofar as Supplier proves that said third party acted properly and complied with the relevant instructions and requirements.

4.3 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.

## 5. Change requests

5.1 SIX shall be entitled to submit written Change Requests concerning the Deliverables 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 Deliverables, 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 work according to plan during the period in which any Change Request is being evaluated.

5.2 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 Deliverables.

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

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

## 6. Documentation

6.1 Prior to the acceptance procedure for the Deliverables, Supplier shall provide SIX with fully reproducible and market-compliant documentation of the operational Deliverables, 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.

6.2 If any defect is detected in the Deliverables, Supplier shall update the documentation and source code promptly, insofar as necessary.

## 7. Instruction

Supplier shall assume responsibility for and the cost of initial training of SIX personnel, whereby the scope of such training shall be defined in the Contract. Insofar as said scope is not defined in the Contract, an installation manual and an operating manual shall be deemed to fulfill the entirety of Supplier's training obligations pursuant to this clause. Supplier warrants the instruction from Acceptance (clause 9) on.

## 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. Acceptance of the Deliverables

9.1 SIX shall prove (tests, demonstrations, etc.) the Deliverables ("Acceptance Testing"), in collaboration with Supplier, and shall submit to Supplier a written description of any defect in the Deliverables that is revealed by Testing.

9.2 The Deliverables shall be deemed to have been fully accepted insofar as all Hardware and individual software that are delivered pursuant to the Contract possess no defect of any kind during a sixty (60) days operating period in the relevant production environment. An acceptance certificate shall be drawn up following Acceptance and shall be signed by both parties.

9.3 Any defect that comes to light during the Acceptance Testing process or during the sixty days operating period shall be classified as follows:

minor defect: a minor defect shall mean any defect that constitutes a minor impediment to use of the Deliverables in accordance with the contractually defined purpose thereof.

major defect: a major defect shall mean any defect that constitutes a major impediment to use of the Deliverables in accordance with the contractually defined purpose thereof.

disabling defect: a disabling defect shall mean any defect that completely precludes use of the Deliverables in accordance with the contractually defined purpose thereof.

9.4 Insofar as any minor or major defect comes to light, SIX shall determine whether or not the Deliverables can be put into operation.

9.5 Insofar as any disabling defect comes to light, the Deliverables shall not be deemed to have been accepted.

9.6 Insofar as Supplier fails to provide the Deliverables in a contractually compliant manner within a reasonable grace period set by SIX, SIX shall be entitled to take any of the following actions in SIX's discretion:

- extend the grace period;
- deduct the reduced value from Supplier's remuneration;
- terminate the Contract in whole or in part
- reclaim the applicable documentation and the work that has been done to date, and have any remaining work carried out by SIX a third party at Supplier's expense and risk.

9.7 Insofar as Acceptance is unsuccessful, a contractual penalty amounting to ten (10) percent of the total price shall be imposed on Supplier, in addition to the rights referred to in clause 9.6.

## 10. Default

10.1 Insofar as Supplier fails to meet a contractual deadline for a fixed milestone, Supplier shall automatically be deemed in default. In case of flexible milestones SIX shall grant Supplier a reasonable grace period and Supplier shall only be deemed in default if Supplier fails to deliver until end of grace period.

10.2 Insofar as Supplier defaults Supplier shall pay SIX a contractual penalty amounting to 0.2 percent of the remuneration under the Contract due per day of default, up to a maximum of 10 percent of said amount. Application of the foregoing shall be excluded.

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 as Supplier defaults, SIX shall grant Supplier another reasonable grace period. Insofar as Supplier is still in default after the grace period, Supplier shall pay SIX a contractual penalty amounting to EUR 3'000 for each day of the additional grace period as well as for any further days of default and SIX shall be entitled to terminate the Contract in whole or in part.

## 11. Warranty period

11.1 The warranty period shall be at least two (2) years upon date of acceptance pursuant to clause 9.

11.2 The warranty period for any defect that is rectified shall start again as from the date of said rectification.

11.3 Supplier's warranty obligations shall be waived insofar as SIX makes any changes in the source code, in the Hardware or any standard interface.

## 12. Notice of defect

12.1 Notice regarding any defect in the Deliverables shall be provided as soon as reasonably possible during the warranty period.

12.2 Notice of any willfully concealed defect may be made within a period of ten (10) years following the date of Acceptance.

## 13. Termination

13.1 SIX shall be entitled to terminate the Contract due to any of the following reasons:

- unsuccessful Acceptance (clause 9)
- any default on contractual delivery or performance deadline (clause 10)

13.2 SIX shall be entitled to terminate the Contract at any time insofar as SIX indemnifies Supplier therefor as provided by law.

## 14. Consequences of termination

On termination of the Contract, Supplier shall return to SIX immediately and without no additional costs all paper and electronic documentation and data related to the Contract and shall retain no copy of such data and/or documentation.

Supplier shall also return to SIX all technical equipment received of SIX under the Contract.

Stipulations that, by their nature, are designed to survive termination, including but not limited to clauses 15; 16; 21; and 29, shall continue to apply after termination of the Contract.

## 15. Intellectual property rights

15.1 Any intellectual property rights (intangible property and related rights; "Rights") produced by Supplier pertaining to the Deliverables within the framework of production and maintenance, belong to SIX immediately upon formation of said rights. The foregoing shall apply in particular to any documentation or evaluation that is elaborated in printed or machine readable form, and in particular to any source code, programs, analysis, design and/or program documentation, as well as to any data that is stored on any storage medium whatsoever. SIX shall therefore be entitled to use the Deliverables in any manner whatsoever, including for the purpose of modifying, copying, and/or commercializing them as well as assigning them to a third party. Insofar as Supplier has involved a subcontractor when performing the contract and some of the Rights pertaining to the Services have been produced by the subcontractor, Supplier shall be accountable that the subcontractor assigns these rights to SIX. SIX may grant Supplier rights to use the Deliverables produced under the Contract.

15.2 Any pre-existing Rights shall remain in force and with Supplier, provided these rights and the respective work elements are explicitly mentioned in the contract. Insofar as the work contains elements with pre-existing rights which are not explicitly mentioned in the Contract and therefore not approved by SIX to be included in the work, the pre-existing rights shall be transferred to SIX immediately upon payment of the fee. Supplier shall inform SIX about pre-existing Rights. With respect to pre-existing Rights appertaining to parts of the Deliverables, SIX shall receive a non-exclusive, transferrable right to use without restrictions in terms of time, space and substance, which grants SIX the possibility to use and dispose of the Deliverables within the meaning of clause 15.1. Supplier undertakes not to establish any Rights based on those pre-existing Rights which might be asserted against the possibilities of use granted here. In particular, supplier undertakes to transfer or license these rights only subject to the rights of use of SIX.

15.3 Payment by SIX shall constitute compensation for said Rights.

15.4 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.

15.5 SIX shall be entitled to make copies of any used standard software for archiving and backup purposes, and to use said software as backup software during any downtime period, without incurring any additional charge for such use.

## 16. Breach of intellectual property rights

16.1 Supplier warrants that performance of the Deliverables does not infringe the Rights of any third parties.

16.2 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 23.1 does not apply. To the extent that SIX is responsible for the breach of the Rights, claims against Supplier shall be excluded.

16.3 If, pursuant to the Rights asserted, SIX is unable to use the contractually owed Deliverables in whole or in part, Supplier has the option of changing its Deliverables in such a way that they do not breach the Rights of third parties but nonetheless comply with the contractually owed Deliverables, or of obtaining a licence from the third party at its own expense. If Supplier fails to implement any of these options within a reasonable period, SIX may terminate the Contract with immediately effect.

## 17. Source code

Insofar as Supplier is no longer able to provide technical support and maintenance for any reason whatsoever, especially due to levy of execution, bankruptcy, composition proceedings, SIX shall be entitled to access Supplier's source code. In the interest of ensuring that said source code is readily available, SIX shall be entitled to require, at any time that the source code be safeguarded either by being deposited at an independent third party or via realization of the relevant technical measures on a system of SIX's choice; and that such source code be kept updated. The cost and expense of all such measures shall be assumed by Supplier.

## 18. Maintenance and upkeep

18.1 Supplier shall maintain the interoperability of the Deliverables (e.g. Hardware and individual and standard software) that is accepted, whereby said interoperability shall be provided for a period of forty-eight (48) months following expiration of the warranty period referred to in clause 11.

18.2 Supplier shall supply SIX with replacement and extension components for the Hardware and the Deliverables, under conditions that are usual in the market, for a period of no less than six (6) years following Acceptance (pursuant to clause 9).

18.3 Supplier shall provide SIX with technical support (maintenance and repairs) for the Deliverables (e.g. Hardware as well as standard and individual software) for a period of no less than four (4) years following expiration of the warranty period, insofar as such maintenance and repairs are requested by SIX. There Deliverables e.g. releases, updates, upgrades established thereby are subject to clause 15.1.

## 19. Security regulations

19.1 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.

19.2 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" (form 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.

19.3 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.

## 20. Compensation and terms of payment

20.1 Company shall provide the Deliverables on the basis of fixed prices or on a cost per service basis subject to a maximum amount.

20.2 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. Statements in time sheets deviating from rules agreed upon in the Contract or these STC Work and Labor are only valid if approved by SIX procurement in writing. In addition, travel time shall not be regarded as working hours.

20.3 The prices shall include the cost of all elements that are necessary in order to perform the Contract and in particular installation, testing and documentation costs, incidental expenses, licensing fees, packaging costs, shipping, insurance and off-loading costs, any taxes or other government charges.

20.4 Payment shall be owed upon Acceptance, pursuant to Clause 9. SIX shall make payment of any amount owed within thirty (30) days following receipt of the invoice.

## 21. Non-disclosure

21.1 Supplier shall keep confidential all information, documentation and data that are acquired by Supplier in connection with the process of provisioning the contractual Deliverables ("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.

21.2 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 of SIX (non-disclosure 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 submitted to SIX on first request.

21.3 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 21.

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

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

21.6 SIX shall have the right to disclose the content of the Contract to other SIX Group companies.

## 22. Processing of personal data

22.1 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").

22.2 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.

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

22.4 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.

22.5 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.

22.6 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.

22.7 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.

22.8 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).

22.9 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.

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

## 23. Liability

23.1 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. Liability shall be capped at the double amount of the contract value. liability shall be capped at the double amount of the contract value. This limitation shall not apply

in case the damage or loss is the result of wilful misconduct or gross negligence.

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

23.3 The rules in this clause shall be subject to clause 16.2.

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

24.1 In its capacity as an independent contractor, 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.

24.2 If Supplier is classified as a non-independent contractor rather than (pursuant to Article 24.1 hereof) an independent contractor, SIX shall be entitled to indemnification of 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 Company as a non-independent contractor. SIX shall be entitled to deduct such expenditures from any relevant Supplier invoice.

#### **25. Liability insurance**

25.1 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 Deliverables.

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

#### **26. Assignment**

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

26.2 Notwithstanding the foregoing, SIX shall be entitled to assign the Contract to any other SIX Group Companies.

#### **27. Written form**

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

#### **28. 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.

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

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

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

30.1 The Contract shall be governed by the law of the Netherlands, 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 Amsterdam, the Netherlands.