



## Information Technology

### General Terms and Conditions governing the Maintenance of Hardware and Software

#### 1. Subject matter and scope

1.1 These General Terms and Conditions (GTCs) shall govern the conclusion, content and implementation of contracts concerning the maintenance of hardware and standard and/or stand-alone software.

#### 2. Bid

2.1 The offer, including a demonstration, shall be made free of charge unless otherwise stipulated in the invitation to tender.

2.2 The bid shall be based on Swiss Post's invitation to tender. The service provider may submit additional alternatives if they offer better value for money, are more environmentally friendly or otherwise in the interests of Swiss Post. If the bid differs from the invitation to tender, the service provider shall indicate this clearly.

2.3 The service provider shall show the value added tax separately in the bid.

2.4 The bid shall be binding for the period stated in the invitation to tender. If this is not stated, a period of three months from receipt of bid shall apply.

#### 3. Definitions

3.1 Hardware maintenance: services provided by the service provider to maintain and repair hardware, including firmware.

3.2 Software maintenance: services provided by the service provider to keep the software running in accordance with Swiss Post's requirements in the most up-to-date version used by Swiss Post.

3.3 Standard software: software that is manufactured to cater for a majority of different customers without taking into account the specified requirements of Swiss Post at code level.

3.4 Stand-alone software: software that is developed for a specific purpose of Swiss Post, including any modifications of software that have been commissioned by Swiss Post.

3.5 Releases: further developments of standard and stand-alone software including firmware, designated as minor versions (updates) or major versions (upgrades). New releases feature new functionalities, error corrections and/or improved performance.

3.6 Incidents: faults affecting the usability of the hardware or software. This includes faults caused by third parties, in particular by the interaction between multiple computer systems and/or components.

3.7 Patch: lines of code used to correct software components, which are subsequently inserted into a computer program.

3.8 Workaround: a provisional solution that circumvents an incident without eliminating the actual cause of the fault.

#### 4. Hardware maintenance

4.1 Hardware maintenance encompasses preventive maintenance (in order to ensure efficient operation of the hardware) and corrective maintenance (elimination of faults and errors to restore operational efficiency) by repairing and replacing faulty parts, including any workarounds, and by installing technical upgrades.

4.2 The service provider shall be obliged to ensure for the term of the contract that perfect replacement material is readily available or can be obtained within a reasonable time.

#### 5. Software maintenance

5.1 Unless agreed otherwise in the contract, software maintenance shall encompass corrective (fault rectification), adaptive (adaptation to changed circumstances) and perfective (functionality enhancement) maintenance. It shall therefore encompass the issuing of new releases and patches and the establishment of workarounds.

#### 6. Support

6.1 As part of maintenance services, support shall consist in the provision to Swiss Post with advice and assistance with regard to the use of the hardware and/or software comprising the subject-matter of the contract.

6.2 The service provider undertakes to set up an efficient support organization and to hold it in readiness. It must ensure that Swiss Post is able to make enquiries both by telephone and electronically. The service provider shall inform Swiss Post of the communication channels to be used for support enquiries and shall notify it of any changes with regard to the responsible contact person without delay.

6.3 The support service shall include in particular (non-exhaustive list):

- establishment of the cause of reported incidents;
- provision of assistance with the installation of patches;
- launch of new releases and provision of assistance with their installation;
- provision of advice and assistance on site or via remote access under the conditions set out in the contract.



## **7. Remote access**

7.1 If the service provider provides services by remote access, it must protect all data traffic against unauthorized access by third parties and in particular ensure that the obligations set out in Articles 20 and 21 are fulfilled.

## **8. Incidents caused by external factors**

8.1 At the request of Swiss Post, the service provider shall investigate the cause of an incident and its rectification, even if it is likely to have been caused by the interaction between multiple systems and/or components. The parties shall set out in advance how these services are to be remunerated in cases in which it has been established that the incident was not caused by the hardware or software maintained by the service provider.

## **9. On-call, response and resolution times**

9.1 During the on-call time specified in the contract, the service provider shall receive reports via the agreed communication channels concerning incidents and enquiries and provide its hardware and software maintenance and support services. At the request of Swiss Post and for a separate contractually agreed fee, the service provider shall also provide its services outside the on-call time.

9.2 The response time is the period within which the service provider commences the analysis and rectification of a fault after an incident has been reported.

9.3 The resolution time is the period between the time when the report of an incident is received until it has been successfully rectified.

9.4 The maximum permissible response and resolution times are set out in the contract and are based on the priority allocated to an incident.

9.5 If the service provider fails to act within the times referred to in this Article 9, it shall pay liquidated damages as specified in Article 23.1.

## **10. Documentation and reports**

10.1 The service provider shall provide Swiss Post electronically or in writing with an updated, complete and reproducible set of documentation (installation and user manual) in the agreed languages and in the agreed quantity.

10.2 Swiss Post may copy the documentation for use under the terms of the contract.

10.3 The service provider shall issue a report after completion of individual hardware and software maintenance operations and forward it to Swiss Post.

## **11. Instruction und information**

11.1 The service provider shall be responsible for providing a level of instruction to be agreed on the basis of capacity and the number of persons involved in respect of maintenance work that affects operation and in respect of new releases.

11.2 The service provider shall apprise Swiss Post of facts and circumstances that render maintenance and support significantly easier, cheaper, more difficult or even impossible. The service provider shall inform Swiss Post regularly of technical hardware upgrades and new releases. It shall draw to Swiss Post's attention any effects that the use of new releases will have on the hardware concerned and on any interfaces.

## **12. Deployment of employees**

12.1 The service provider shall deploy only carefully selected and well trained employees. It shall replace employees who do not have the necessary specialist knowledge or who otherwise compromise or jeopardize fulfilment of the contract. In particular, it shall take account of Swiss Post's interest in maintaining continuity.

12.2 The service provider shall deploy only employees who have the necessary authorizations to provide the services.

12.3 The service provider shall inform Swiss Post in writing upon request of the names and job titles of the employees deployed to perform the contract.

12.4 The service provider shall only replace the employees deployed who have been designated by the parties as key persons with the written approval of Swiss Post. Swiss Post shall only withhold such approval for good cause.

12.5 The service provider undertakes to comply with Swiss Post's internal regulations, rules of conduct and security measures (in particular those relating to computer and data security).

12.6 The provisions of this Article 12 shall also apply to other personnel of the service provider deployed to perform the contract, such as self-employed staff.

## **13. Involvement of third parties**

13.1 The service provider may not involve third parties to provide its services (e.g. subcontractors, suppliers) without the prior written approval of Swiss Post. It shall remain responsible for ensuring that the third parties involved provide the services in accordance with the provisions of the contract.

13.2 The service provider shall impose on any third parties involved the duties set out in this Article 13 and the duties arising from Articles 14 (Health and safety regulations, working conditions and equality of pay for women and men), 20 (Confidentiality clause) and 21 (Data protection and postal secrecy).



#### **14. Health and safety regulations, working conditions and equality of pay for women and men**

14.1 Service providers with their registered office or a branch office in Switzerland shall comply with Swiss health and safety regulations, working conditions and the principle of equality of pay for women and men. Working conditions shall be those set forth in collective and standard employment contracts or, in their absence, the customary working conditions that apply at the location and to the occupation in question. Service providers with their registered office outside Switzerland shall comply with the relevant regulations that apply at the place where the service is provided.

#### **15. Place of performance and transfer of benefits and risks**

15.1 Swiss Post shall designate the place of performance. If this has not been determined, the location of the hardware and/or the place where the software has been installed shall be deemed to be the place of performance.

15.2 Benefits and risks shall be transferred to Swiss Post on delivery and/or installation of the hardware.

#### **16. Fees and invoicing**

16.1 The fee set under contract shall cover all services required for proper contractual performance. In particular, the fee shall cover the cost of spare parts and documentation, all support services, instruction and information, the assignment/granting of all rights, expenses, packing, transport, insurance and unloading costs and public charges (e.g. value added tax, waste disposal charges, customs duties).

16.2 If the hardware and/or software to be maintained has/have been supplied by the service provider as part of a procurement contract, the fee payable shall be reduced until such time as the warranty periods arising under the procurement contract have expired.

16.3 The service provider shall issue invoices in accordance with a payment schedule or after providing the services. Value added tax shall be stated separately on the invoice and may not be charged retrospectively.

16.4 The contractually agreed payment conditions and payment periods shall apply.

16.5 Advance payments may only be made in exceptional circumstances and provided that it has been agreed that the service provider will furnish Swiss Post at its own cost with security in the form of a bank or insurance guarantee from a bank of primary standing.

16.6 Where Swiss Post and/or Swiss Post companies (direct and indirect equity interests of at least 50 percent) use the services of the service provider, the relative fees shall be cumulated for the purposes of calculating discounts.

#### **17. Import regulations**

17.1 The service provider guarantees compliance with any import regulations and that the necessary permits have been obtained.

#### **18. Protective rights and usage rights over the software supplied by the service provider**

18.1 All protective rights (intellectual property rights and related rights as well as the prospective entitlement to such rights) over stand-alone software including releases and patches shall lie in full with Swiss Post.

18.2 Swiss Post and its companies (cf. Article 16.6) shall have a permanent temporally, geographically and substantively unlimited right to use standard software including releases and patches. This software shall not be associated with any particular hardware.

Swiss Post and its companies may make a number of copies at no additional charge for back-up and archival purposes, in particular with a view to operating redundant systems.

Swiss Post and its companies shall be entitled to arrange for standard software including releases and patches to be operated – solely for its own purposes – on the premises of a third party as part of an outsourcing operation.

Swiss Post shall be entitled to resell standard software including releases and patches, to the extent that it ceases to use them.

#### **19. Infringement of protective rights**

19.1 The service provider shall mount a defence against third-party claims arising from infringement of protective rights without delay at its own cost and risk. It shall notify Swiss Post immediately of such claims in writing and shall not object to any intervention by Swiss Post in any legal proceedings. If the third party makes the claims directly against Swiss Post, the service provider shall at Swiss Post's first request participate in the dispute to the extent permitted under the relevant procedural rules. The service provider undertakes to bear all the costs (including damages payments), incurred by Swiss Post as a result of court action and/or any out of court settlement of a legal dispute. In the event of an out of court settlement, the service provider need only make the agreed payment to the third party if it has consented to the settlement beforehand.

19.2 If the maintenance work gives rise to a claim of infringement of protective rights that renders impossible the usage of the contractually protected services in full or in part, the service provider shall replace the relevant parts of the hardware and/or software with others that fulfil the contractual requirements or shall at its own expense procure a licence from the third party. If the service provider fails to exercise either option within a reasonable period, Swiss Post shall be entitled to withdraw from the



contract with immediate effect. The service provider must under all circumstances hold Swiss Post harmless in all respects, irrespective of fault.

## 20. Confidentiality clause

- 20.1 Any facts and information that are not in the public domain or generally accessible shall be treated as confidential by both parties. In case of doubt, facts and information should be treated as confidential. Both parties undertake to take all financially reasonable and technically and organizationally feasible precautions in order to protect confidential facts and information effectively against access by and disclosure to unauthorized persons.
- 20.2 This duty of confidentiality shall also apply prior to conclusion of the contract and shall continue beyond termination of the contractual relationship.
- 20.3 No breach of the duty of confidentiality shall be deemed to have occurred in the event that confidential information has been disclosed by Swiss Post within its own group or to third parties involved. This shall apply to the service provider insofar as disclosure is necessary for the performance of the contract or provisions of the contract are disclosed by it within the group.
- 20.4 The duty of confidentiality does not apply if an obligation to disclose the confidential information exists due to an enforceable official or judicial order or mandatory law. The other party must be informed beforehand, insofar as this is legally permissible. No prior information is required in the case of announcements by Swiss Post within the scope of public procurement law.
- 20.5 The service provider may not publicize the fact that a business relationship exists or has existed with Swiss Post, and shall not cite Swiss Post as a reference without written consent.
- 20.6 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 20.
- 20.7 If either party breaches the aforementioned duty of confidentiality, it shall pay liquidated damages as specified in Article 23.2 to the other party unless it can be proved that it was not at fault.

## 21. Data protection and postal secrecy

- 21.1 The parties undertake to comply with the provisions of Swiss data protection laws.
- 21.2 Personal data may be processed solely for the purpose of and to the extent required for the performance and execution of the contract. The service provider shall inform Swiss Post in advance of any disclosure of data. Insofar as the service provider has access to the postal and payment transactions of Swiss Post's customers, it undertakes to comply with the requirement of postal secrecy as described in Article 321<sup>ter</sup> of the Swiss Criminal Code.

21.3 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 21.

21.4 When required by Swiss Post, in particular when the European Data Protection Ordinance (EU-DSGVO) applies or when personal data is transferred outside Switzerland, the processing of personal data by the service provider is based on an additional data protection agreement.

## 22. Default

- 22.1 If the service provider fails to comply with firmly agreed deadlines (expiration date transactions), it shall automatically be deemed to be in default, and in other cases after being sent a reminder.
- 22.2 If the service provider is in default, it shall pay liquidated damages as specified in Article 23.1 unless it can be proved that it was not at fault.

## 23. Liquidated damages

23.1 Failure to comply with time limits and deadlines

The liquidated damages shall amount to

- CHF 1,000 per hour or part thereof, subject to a maximum total of one annual fee per occurrence, for the failure to adhere to the time limits specified in Article 9.
- 0.05 percent per day of delay, subject to a maximum total of 10 percent of the annual fee per occurrence, for the failure to adhere to the deadlines specified in Article 22.

The liquidated damages referred to in Article 23.1 shall also be payable if the payments are accepted.

23.2 Duty of confidentiality

Liquidated damages shall amount to 10 percent of the annual fee for each instance of infringement, up to a maximum of CHF 50,000 per occurrence.

23.3 Payment of liquidated damages shall not release the service provider from the requirement to comply with its contractual obligations. Liquidated damages shall be payable in addition to any damages due.

23.4 The annual fee shall be deemed to be the fixed price agreed for the year in question. If no fixed price has been agreed to, the calculation of liquidated damages shall be based on the fee paid for the previous year; in the first year of the contractual relationship this will be the fee payable for the current year.

## 24. Warranty

24.1 The service provider warrants that its services feature the agreed and warranted characteristics and that they will be suitable for use for the intended purpose and comply with the relevant legal requirements. It shall provide a guarantee for its services for at least 24 months from handover or installation of the hardware or software respectively. Deficiencies may be reported at any time during the guarantee period. The service



provider shall also be required after expiry of the guarantee period to settle any claims arising from the warranty rights below, provided that the deficiencies were reported within the guarantee period.

24.2 The service provider guarantees that it holds all of the rights required to provide its services in accordance with the contract. In particular, it warrants that any modifications and further developments of the hardware and software carried out as part of the maintenance work will not infringe the protective rights of third parties.

24.3 If the service provider supplies defective products (e.g. spare parts as referred to in Article 4.2 or releases as referred to in Article 5.1), Swiss Post may at its choosing deduct the value of the defect from the fee, demand a supply of fault-free products or a repair. Where material defects are found, Swiss Post shall be entitled to withdraw from the contract.

24.4 If Swiss Post demands a repair or replacement, the supplier shall rectify the defects within the stated period and bear all resulting costs. If the service provider has failed to complete the required replacement or repair, or has not done so successfully, Swiss Post at its choosing deduct the value of the defect from the fee, carry out the necessary measures itself, arrange for this to be done by a third party at the service provider's cost and risk or withdraw from the contract. The service provider shall allow Swiss Post or third parties appointed by it access to the source code, insofar this is necessary for the repair and it holds the relevant rights. If the service provider fails to hand over the required source code within a period of 30 days of a request to do so, Swiss Post shall be entitled to open the source code itself by decompiling it or arrange for this to be done by third parties.

24.5 If loss, damage or injury occurs as the result of a defect, the service provider shall also be liable to pay compensation as described in Article 25.

## 25. Liability

25.1 The parties shall bear liability for any loss, damage or injury caused to the other party, unless it can be proved that the relevant party was not at fault. Liability for personal injury shall be unlimited.

25.2 The parties shall bear liability for the conduct of the auxiliary persons and third parties whom they involve (e.g. subcontractors, suppliers) in the same manner as for their own.

## 26. Variations

26.1 The parties shall be entitled to submit a proposal to vary the services in writing at any time.

26.2 If Swiss Post wishes to make a variation, the service provider shall advise in writing within 20 days whether the variation is possible and the effects that it will have on the services to be provided and on the fee and any deadlines. It may not withhold consent to a variation

proposed by Swiss Post if the variation is objectively possible and the overall nature of the services is preserved. Swiss Post shall decide within 20 days of receipt of the communication whether the variation is to be implemented.

26.3 If the service provider wishes to make a variation, Swiss Post shall be entitled to accept or reject such a proposal within 20 days of receipt of the communication.

26.4 Variations, especially variations of the scope of the services, the fee and the deadlines, must be set out in an addendum to the contract before work commences.

26.5 The service provider shall continue to work in accordance with the contract while the variations proposed are being considered, unless Swiss Post gives instructions to the contrary.

## 27. Inception and duration

27.1 This contract shall take effect upon signature by both parties, unless a different inception date has been stipulated in the contract.

27.2 If a contract has been entered into for an indefinite period, unless agreed otherwise, it may be terminated in writing at the end of a calendar month. However, the service provider may not terminate the contract before five years since inception have passed. Termination may in addition relate only to individual parts of the contract. Unless agreed otherwise, the notice period shall be 12 months for the service provider and 3 months for Swiss Post.

27.3 The contract may be terminated at any time without notice for good cause. "Good cause" shall include the following in particular:

- the occurrence of an event or state of affairs that renders the continuation of the contractual relationship unreasonable for the terminating party, such as a serious or repeated breach of contractual duties;
- an official publication of the opening of bankruptcy proceedings or of a composition moratorium in relation to a party.

## 28. Consequences of termination

28.1 Upon termination of the contract, the service provider must return to Swiss Post unsolicited all operating resources, data and documents placed at its disposal during the contractual relationship and destroy any copies. In addition, the service provider shall be required to return all documents and source code from stand-alone software supplied by the service provider that have been developed for Swiss Post during the contractual relationship, unless they are already in the possession of Swiss Post. The above items must be returned within 30 days of termination of the contract.



## **29. Assignment and pledging**

29.1 The service provider shall neither assign nor pledge any amounts owed to it by Swiss Post without the written approval of Swiss Post.

## **30. Amendments to the contract, discrepancies and partial invalidity**

30.1 Any amendments or supplements to this contract must be adopted in writing.

30.2 In the event of any discrepancies, the terms of the contract shall prevail over the GTCs the GTCs shall prevail over the bid.

30.3 If individual terms of the contract are found to be invalid or unlawful, this shall not affect the validity of the contract. Should this occur, the term in question shall be replaced by a valid term that is commercially equivalent as far as possible.

## **31. Applicable law and place of jurisdiction**

31.1 Swiss law shall be exclusively applicable. The provisions of the United Nations Convention on the International Sale of Goods of 11 April 1980 (Vienna Sales Convention) shall not apply.

31.2 The sole place of jurisdiction is Bern.

Die Schweizerische Post AG, February 2024