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 bid, 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 supplier may submit additional alternatives if they offer better value for money, are more environmentally friendly or are otherwise in the interests of Swiss Post. If the bid differs from the invitation to tender, the supplier shall point this out explicitly.

2.3 The supplier 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 the 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 and of any type of software which 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 kept 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. Standby time, response time and resolution time

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 and the time 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 a contractual penalty as specified in Article 0.

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 and 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. Agreements to the contrary (in particular, the obligation to maintain lists directly with the service provider) remain reserved.

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 other regulatory requirements, in particular those relating to the information security, data protection and data security of Swiss Post.

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 involve third parties to provide its services (e.g. suppliers, subcontractors) after informing Swiss Post in writing in advance, provided Swiss Post does not object to their involvement. The service provider will remain responsible for the contractual performance of the services provided by the engaged third parties.

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 (Occupational health and safety regulations, working conditions and the principle of equal pay for men and women), 20 (Confidentiality) and 21 (Data protection and postal secrecy).

14. Occupational health and safety regulations, working conditions and the principle of equal pay for men and women

14.1 If the service provider has its head offices or branch offices in Switzerland, it will comply with the provisions on health and safety and working conditions that apply in Switzerland as well as with the principle of equal pay for men and women. Working conditions shall be those set forth in the collective and standard employment contracts or, in their absence, the customary working conditions that apply at the location and to the occupation in question. If the service provider has its head office abroad, it will comply with the applicable provisions at the place where the service is performed.

15. Place of performance and transfer of benefits and risk

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 upon delivery and/or installation of the hardware.

16. Remuneration and invoicing

16.1 The contractually agreed remuneration shall cover all services required to fulfil the contract properly. 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 deadlines 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 0) shall have a permanent temporally, geographically and substantively unlimited right to use standard software including releases and patches. It shall not be associated with any particular hardware.

18.3 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.

18.4 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.

18.5 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 the legal dispute. In the event of an out-of-court settlement, the service provider need only make the agreed payment to the third party provided it has approved the payment 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 any of these options 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.

20. Confidentiality

20.1 The parties undertake to treat all facts and information that are neither evident nor publicly accessible as strictly confidential. In case of doubt, the facts and information shall be treated confidentially. The parties undertake to implement all economically reasonable as well as technically and organizationally feasible measures to ensure that confidential facts and information are effectively protected against unauthorized access and disclosure.

20.2 The duty to maintain confidentiality shall also be adhered to prior to concluding the agreement, and will continue to apply after termination of the contractual relationship.

20.3 In the event that Swiss Post discloses confidential information within its own Group or to third parties involved, no breach of the duty of confidentiality shall be deemed to have occurred. 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 impose the obligations arising from this Article 20 on their employees and any additional auxiliary staff.

20.7 If either party breaches the aforementioned duty of confidentiality, it shall pay a contractual penalty as specified in Article 0 to the other party unless it can be proved that it was not at fault.

21. Data protection and postal secrecy

21.1 General

Data protection and information security precautions are based on the relevant data protection legislation (specifically, the Swiss Federal Act on Data Protection, the Data Protection Ordinance and, where applicable, the GDPR). The parties undertake to comply with the applicable provisions in each case. Personal data may be processed solely for the purpose of, and to the extent required for, the performance and execution of the contract. Data processing must be proportionate, based on good faith and transparent. The service provider shall inform Swiss Post in advance of any disclosure of data.

In the event of any contradictions, any potential DPA shall take precedence over the GTC and the underlying contract, unless the DPA specifies otherwise.

21.2 Technical and organizational measures

Measures must be in place to protect personal data from unauthorized processing, unintentional deletion, loss, destruction, alteration or damage by means of appropriate technical and organizational measures. This includes both technical, i.e. digital, measures, as well as the guarantee that the premises where the data is processed are protected against access by unauthorized parties.

21.3 Rights of data subjects

The service provider undertakes to assist Swiss Post on request and as far as feasible with meeting the entitlements of data subjects under data protection law, in particular in cases of entitlements to disclosure, rectification and deletion of data, and to inform Swiss Post if a data subject contacts the service provider directly regarding data held by Swiss Post.

21.4 Data protection impact assessment

In cases that present high risk to the rights of the data subject, in particular in cases specified as such under the law, the service provider must carry out a data protection impact assessment and notify Swiss Post of the assessment and its results. The service provider shall assist Swiss Post where necessary and feasible for carrying out the assessment, in drawing up a data protection impact assessment for Swiss Post and in the drafting of other relevant documentation.

21.5 Disclosure of data abroad
In the event that data is disclosed in a third country, the service provider must take all necessary measures. In particular, in the case of insecure third countries, the service provider shall conclude all necessary contracts, specifically standard contractual clauses, and present all measures taken if requested to do so by Swiss Post.

21.6 Postal secrecy

If the service provider gains knowledge of matters concerning Swiss Post and the payment transactions of Swiss Post's customers, it undertakes to comply with postal secrecy in accordance with article 321ter of the Swiss Criminal Code.

21.7 Imposition of obligations

The parties shall impose the obligations arising from this Article 21 on their employees and any additional auxiliary staff.

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 a contractual penalty as specified in Article 0 unless it can be proved that it was not at fault.

23. Contractual penalties

23.1 Failure to keep within timings and deadlines

The contractual penalty 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.

- 0.5 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 contractual penalties referred to in Article 0 shall also be payable if the services are accepted.

23.2 Duty of confidentiality
The contractual penalty will amount to 10% of the annual remuneration for each violation, but not more than CHF 50,000 per case.

23.3 Payment of the contractual penalty does not provide exemption from compliance with the contractual obligations. The contractual penalty shall be paid in addition to any compensation claims.

23.4 Annual remuneration is the agreed fixed price for the year concerned. Where no fixed price has been agreed, the calculation of the contractual penalty 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. Swiss Post may report deficiencies 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 0 or releases as referred to in Article 0), 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 may at its choosing deduct the value of the defect from the fee, carry out the necessary measures itself or 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, where 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 be liable for any damages they cause to the other party if they fail to prove that they are not at fault. Liability for personal injury is unlimited.

25.2 The parties shall be liable for the conduct of their agents and any third parties engaged (e.g. subcontractors, suppliers) as well as for their own staff.

26. Changes to services

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

26.2 If Swiss Post wishes to make a change, the service provider shall advise in writing within 20 days whether the change 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 change proposed by Swiss Post if the change is objectively possible and the overall nature of the services to be provided is preserved. Swiss Post shall decide within 20 days of receipt of the communication whether the change is to be implemented.

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

26.4 Changes, especially changes 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 changes proposed are being considered, unless Swiss Post gives instructions to the contrary.

27. Commencement and duration

27.1 This contract takes 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 three months for Swiss Post.

27.3 The right to termination without notice on serious grounds is always reserved. Serious grounds include in particular:
- The occurrence of events or circumstances which make the continuation of the contractual relationship unacceptable to the terminating party, in particular the serious or repeated violation of contractual obligations
- The official publication of initiated bankruptcy proceedings or moratorium on debt enforcement on one of the parties

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 after 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 Amendments and additions to the contract must be made in writing.

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

30.3 Should any individual provision of the contract be deemed invalid or unlawful, the validity of the contract itself will not be affected. In such cases, the relevant provision shall be replaced, as far as possible, by a valid provision that is of equal value economically.

31. Applicable law and place of jurisdiction

31.1 Swiss law will apply exclusively. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention) do not apply.

31.2 The sole place of jurisdiction is Bern.

Swiss Post Ltd, June 2024