

CAPABILITY SCOTLAND STANDARD CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES (OFF-SITE) – CSCC2

1 Definitions

In these conditions:-

"We" means Capability Scotland (a company limited by guarantee, registered in Scotland, number SC011330, and is recognised by the Inland Revenue as a Scottish Charity, number SC36524), and "us" and "our" are also used in relation to Capability Scotland Limited;

"You" means you, the person, partnership or company who supplies us with Services under a Purchase Order;

"Services" means the services to be provided to us by you under a Purchase Order;

"Purchase Order" means our form headed "Purchase Order" or a contract award letter sent to you by us, and any accompanying specification or documentation setting out our requirements for the Services which includes the price and specification of the Services;

"Contract" means the contract between you and us for the provision of the Services which is made up of the Purchase Order and these Conditions. When "Contract" is referred to in these Conditions, it means these Conditions and the Purchase Order read together;

"Rules and Regulations" means all applicable legislation and regulations, including those that are in draft form or are out for consultation, and legal standards or requirements set down under such legislation and regulations;

"Premises" mean any buildings or premises occupied by Capability Scotland;

"your Personnel" means any person you use when providing the Services to us, for example, any employee, agency worker, temporary worker, sub-contractor or any personnel of a sub-contractor.

2 Provision of Services

2.1 The Services must be provided to our reasonable satisfaction and must be carried out to a high standard of care and accuracy. The Services must conform in full with the requirements and specification set out in the Purchase Order. If the provision of the Services will incorporate any materials, these must be of sound quality, workmanship and design.

2.2 You will start and complete the Services on and by the dates set out in the Purchase Order.

2.3 If we ask you will give us detailed programmes of the order in which you will provide the Services and how you will provide the Services. We may tell

you in what order to provide the Services and you will comply with that request. If we ask, you will also give us progress reports on the carrying out of the Services and will meet with us to discuss and review the Services provided.

2.4 If we ask, you will allow us and ensure that we have access to your premises (and the premises of your sub-contractors) to inspect them, and to observe work being performed there under the Contract. We will give you reasonable notice before making any such request, and will not ask for access other than during normal working hours.

3 Payment

3.1 You will invoice us monthly in arrears for Services carried out on the basis and at the price or rates set out in the Purchase Order.

3.2 You will address your invoice to Finance, Capability Scotland, Vantage Point, 24 St John's Road, Edinburgh, EH12 6NZ and e-mail to Finance@Capability.scot. Each invoice must clearly identify the Purchase Order to which it relates. If there is more than one invoice under a Purchase Order, each invoice must identify the part of the Services to which that invoice relates, and the last invoice in respect of a Purchase Order must be clearly marked to show that it is the last. If a Purchase Order number is not clearly identified on each invoice, the invoice may be returned to you without payment.

3.3 Prices are exclusive of Value Added Tax unless otherwise stated in the Purchase Order. If any Value Added Tax is to be paid, you will show this separately on your invoices.

3.4 Unless otherwise stated in the Purchase Order, we will pay all valid invoices within 60 days of having received them, provided that the Services have been completed to our satisfaction.

3.5 If we are late in paying an invoice please write to Finance, Capability Scotland, Vantage Point, 24 St John's Road, Edinburgh, EH12 6NZ or e-mail Finance@Capability.scot. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with your legal rights or our legal rights to dispute the sum due.

4. Changes to the Services

4.1 We may change or vary our requirements for the Services, or any part of them.

4.2 If we decide to do this before you start providing the Services, we will tell you about the changes as soon as we reasonably can before you were originally due to begin providing the Services.

4.3 If we decide to do this after you have started providing the Services, you will comply with the changes as soon as it is reasonably possible for you to do this after we have told you of the change.

4.4 We will only be able to change our requirements if we have been able to agree with you the change to the price (if any) which is necessary as a result of the change to our requirements. In reaching agreement with us on any change to the price which is necessary, you will not be unreasonable.

5. Relationship

5.1 You are and must at all times act as an independent contractor. You are not our employee, agent or representative and you have no authority to act on our behalf. You will not act in any way which would give the impression that you are our employee, agent or representative.

5.2 As you are our independent contractor, we will not be liable for anything you do or fail to do including anything you do which causes any person to make a claim against you.

6. Your Personnel

6.1 You will ensure that you make available adequate resources for the provision of the Services, and that your Personnel are competent, properly trained and suitably qualified to perform the Services.

6.2 If you or any of your Personnel require to be at the Premises in connection with the Services you will comply with, and will ensure that all your Personnel comply with, any instructions we issue to you relating to the Premises, including instructions relating to security, access and health and safety.

6.3 If we ask, you will give us a list of the names and addresses of your Personnel involved in providing the Services and the tasks which each person will be carrying out together with any other information or documents we may ask to see.

6.4 The key personnel shall be those specified as such in the Purchase Order, and also those personnel which we notify to you in writing during the Contract are to be treated as such.

6.5 The key personnel will be made available by you to carry out the Services.

6.6 You will not make any change or replacement to key personnel unless we have agreed to that change or replacement.

6.7 We may at any time require that any of your Personnel stop carrying out the Services. You will be responsible for ensuring that that person stops

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taking part in the provision of the Services. You will replace that person with somebody else who can carry out the Services to the standard required under the Contract and you must ensure that you still carry out the Services on time and as specified in the Purchase Order.

6.8 We will not be liable for any costs or additional costs which arise because of any requirements we have under this Condition.

7. Materials

7.1 You will at your own expense supply all the materials you need to provide the Services.

8. Materials and documents supplied to you

8.1 If we provide you with materials free of charge for you to provide the Services, those materials will still belong to us and will not become your property.

8.2 You will keep the materials in good condition and you will use them only to provide the Services and for no other purpose.

8.3 If you or your Personnel damage or lose any of the materials we provide, you will pay for the cost of repair or replacement.

8.4 If we ask for any materials to be returned, you will do this immediately. You will be liable for any cost associated with returning this equipment and/or materials. Liability will be your responsibility until the goods are received by us.

8.5 If you have any materials belonging to us at the end of the Contract, you will return them to us immediately unless we tell you to dispose of them in some other way in which case you will comply with our instructions.

8.6 If we have supplied you with any documents or other information, you will return them to us immediately at the end of the Contract, unless you need them to prepare a termination report as required under Condition 19.6. If this is the case you will return them to us at the same time that termination report is produced.

9. Records

9.1 You will maintain complete and accurate records of the Services including all payments made by us to you for a minimum period of three years from the date of the last payment made by us to you. If we ask, you will give us or our auditors access to your records and allow us or our auditors to take copies of your records as required.

9.2 This Condition will apply during the Contract and after it has ended.

10. Corrupt Gifts or Payments

10.1 You must not do anything that gives or offers any kind of inducement or reward to any of our employees in relation to this Contract or any other contract. It may be a criminal offence to do any of those things. You must not offer any of our employees any kind of corporate hospitality.

11. Environment

11.1 You will ensure that in providing the Services you comply with all relevant environmental Rules and Regulations.

11.2 Where possible, any materials which you use in the delivery of the Services should be able to be re-used, re-cycled or incinerated for energy recovery. You should make every effort to ensure that the provision of the Services minimises the impact on the environment.

11.3 If you think that a change to the Contract or to the specification would reduce the overall environmental impact of the Contract or the provision of the Services (for example by the increased use of re-cycled or re-furnished or otherwise environmentally friendly materials, or that a change would result in increased energy efficiency or reduce in other ways the impact of the Services on the environment) then you will tell us (whether or not this change would affect the price of the Services). We will consider the proposed change and may ask for a change on the basis set out in Condition 4.

12. Health and Safety

12.1 You will supply the Services in a safe manner and in a way which will not cause any risk to the health or safety of any of our employees and of any other person, including those working at and visiting the premises where the Services are being carried out.

12.2 You will comply with all relevant health & safety Rules and Regulations, and any other similar requirements which are applicable to the Services. You will also follow any instructions on health and safety we may issue to you.

12.3 If any action is taken against us or we incur any loss because you have not supplied the Services in a safe manner, you will pay to us whatever money we have to pay out in connection with that action and/or the amount of our loss and you will also pay us any costs and expenses that we may have in relation to the action or loss.

13. Indemnity and Insurance

13.1 You will pay us the amount of any loss which we incur as a result of your negligence, any breach

by you of the Contract, or any damage or injury caused by you in the supply of the Services. This includes losses which we have because of damage to property or because of injury or death. You will also pay us any costs and expenses we may have in relation to the loss.

13.2 You will pay us the amount of any losses which we have as a result of any other person making a claim that the Services or any part thereof breaches any intellectual property rights such as patents or copyrights that that person is entitled to. You will also pay us any costs and expenses we may have in connection with that claim.

13.3 You must insure yourself (and make sure that any sub-contractor insures itself) against all the potential liabilities there may be to us under the Contract, at an appropriate level of cover and with a reputable insurance company. You must maintain (and make sure that any sub-contractor maintains) public liability insurance and employers' liability insurance with reputable insurance companies at levels which are appropriate and which comply with all legal requirements. If we ask, you will immediately show us the insurance policies without delay, and evidence that the most recent premiums have been paid.

13.4 If you are an individual you will, if we ask, provide us with evidence of your self-employed status. We are entitled to assume you are self-employed, and you will make sure that we do not have to bear the cost of paying the Inland Revenue or any other Government Department any tax, national insurance or similar payments on the basis that you are not self-employed. If we have to make any such payment to the Inland Revenue or any other Government Department because they consider that in carrying out the Services you are not to be treated as self-employed, you will pay to us an amount equal to any money we have to pay.

14. Equalities Considerations

14.1 We are an equal opportunities employer and service provider. You must also be an equal opportunities employer and service provider and comply fully with equal opportunities legislation.

14.2 You will ensure that you do not discriminate against anyone unlawfully, or treat anyone unfairly, on the grounds of their sex, racial group (including colour, race, nationality, national or ethnic origin), disability, sexual orientation, religion, gender identity, age, trade union membership/non-membership/activities or marital, family or part-time status. You will also make sure that anyone acting on your behalf, your employees and sub-contractors involved in the Contract do not do so either, and that those involved in the management or operation of the Contract receive appropriate training on equal opportunities legislation and associated good practice.

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14.3 You should carry out appropriate monitoring of your equal opportunities policies and employment practices and provide us with evidence of this, if we ask.

14.4 You will take all reasonable steps ensure that all Goods supplied under this Contract are produced in accordance with the employment legislation of, and all International Labour Organisation (ILO) conventions that have been ratified by, the country of their origin, in particular in relation to working conditions and the use of child labour.

14.5 Should part or all of the Services be performed at your premises, you will ensure that the premises comply fully with the requirements of the Disability Discrimination Act 1995.

15. Confidentiality

15.1 Unless we agree, all information which you obtain from us or becomes known to you in connection with this Contract must be kept secret. This does not apply to information which is already known to the public.

15.2 We may seek references from your Bank, from your current or past clients, or other referees which you give us;

15.4 We may disclose information in relation to any tender or competition process which we have followed in relation to the Contract. This information could be published in the Official Journal of the European Union or in other similar publications. Information we might disclose includes the number of tenders which we received, the name of the successful tenderer, the winning contract price, the specification of the Services, the terms and conditions of contract, the quality and performance standards which we set, and your performance against these standards;

15.5 This Condition applies during the Contract and after it has ended.

16. Intellectual property

16.1 In this Condition "Intellectual Property Right" means any patent, trademark, registered design, copyright or other similar right.

16.2 You must not breach any Intellectual Property Rights of any third party.

16.3 All Intellectual Property Rights in any items produced (in whatever form) by you for us in connection with the Services shall belong to us and be our property. You will, if we ask, sign any document that we require as evidence of the transfer of Intellectual Property Rights to us under this Condition.

16.4 This Condition will apply during the Contract and after it has ended.

17. Publicity

17.1 You will not mention our name in connection with the Contract or disclose the existence of the Contract in any publicity material or any other publication unless we have previously agreed to this and our Head of Fundraising & Communications has approved in writing what you want to do.

17.2 This Condition will apply during the Contract and after it has ended.

18. Termination on Insolvency

18.1 We may immediately terminate the Contract by telling you in writing:

18.1.1 if someone takes action against you which could lead to you being made bankrupt or insolvent or if you make any arrangement with people who you owe money to which could be regarded as an "arrangement with creditors"; or

18.1.2 if you are a company, if you are insolvent or any action is taken to wind up the company, or any official (such as an administrator, liquidator or receiver) is appointed to manage any of the affairs or assets of the company or you make any arrangement with people who you owe money to which could be regarded as an "arrangement with creditors".

18.2 If we do take any of the above action it will not affect any other rights we may have against you in relation to the Contract.

19. Termination

19.1 If we think that you have breached this Contract in any way, we will tell you and you must, if possible, take steps to remedy that breach to our satisfaction.

19.2 If you do not do this within 7 days of us telling you that you have breached the Contract (or if we do not think that you will be able to do this), we can terminate the Contract immediately by telling you in writing.

19.3 If we terminate the Contract under Conditions 19.1 or 19.2, we may instruct somebody else to complete the Contract.

19.4 If we do instruct somebody else to complete the Services, we will not pay you any money until the Services have been completed. We will deduct what we have had to pay somebody else to complete the Services from the money we are due to pay to you. If the money we pay to somebody else to complete the Services is more than we

would have paid to you under the Contract, we will not pay you anything further and if this is the case, you will pay us the difference.

19.5 We may cancel the Contract at any time for any reason by giving you 30 days' notice in writing.

19.6 If we terminate or cancel the Contract, you will provide us with a termination report on the work done under the Contract, and that termination report will include your recommendations to us based on that work.

20. Recovery of Sums Due

20.1 If you owe us any money under the Contract, and at the same time we owe or are due to pay you money, either under this Contract or for any other reason, we can deduct the money you owe us from the money we owe or are due to pay you.

21. Assignment and Sub-Contracting

21.1 Unless we agree, you are not allowed to sub-contract, transfer or assign the Contract or any part of it.

21.2 If you sub-contract any work under the Contract, you will still be responsible to us for carrying out the Contract. We can take action against you if your sub-contractor does not do what it is meant to do.

21.3 Where you sub-contract any work under the Contract, that sub-contract must contain a clause requiring you to pay your sub-contractor within 30 days of you receiving a valid invoice from your sub-contractor.

22 General Legal Obligations

In addition to the obligations referred to in Conditions contained in these Terms and Conditions of Contract you will comply with all other relevant Rules and Regulations and hold any licence, permit and/or certificate required by law for the performance of the Contract.

23. Key Performance Indicators (KPIs)

If formal KPIs are included within the contract documentation then the following shall apply:

- KPIs are a list of indicators which state the expected level of performance and quality of service to be delivered. These do not represent all the outputs required but the chosen KPIs to be formally measured.

- You will attend performance review meetings and the frequency of these meetings is indicated on the KPI document and may be varied by us as appropriate.

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- A KPIs scoring sheet will be completed by us, and discussed with you at each performance review meeting. This sheet enables your performance to be measured in a consistent, objective and accurate manner.
- Each KPI will be scored and weighted individually, following which an overall total score for the performance of the service in that reporting period will be calculated.
- We will be looking for you to maintain a high performance level and aim to achieve a period-on-period increase in total KPI score as well as improvements in individual areas.
- Should any instances of sub-standard performance occur we will agree an action plan with you and record this on a 'Contractor Corrective Action Report' (CCAR). Continued failure in performance may lead to termination procedures being invoked.
- Amendments to KPIs will be documented in the minutes of the performance review meetings. Any revised KPIs will be formalised into the Contract via a formal contract variation at least annually, or earlier, depending upon the significance of the revision.

24. Notices

24.1 Any notice to be sent by you or by us in connection with the Contract can be sent by letter or by e-mail. Notices should be sent to the addresses shown on the Purchase Order. Either of us can change the address for notices by telling the other in writing the new address, but the previous address will continue to remain valid for 7 days after the change is notified.

24.2 If sent to the correct address, a notice will be treated as received 48 hours after sending if a letter or 24 hours if e-mail even if it is not actually received.

25. Governing Law

25.1 The Contract is made under the law of Scotland and the Scottish courts will have authority to settle any dispute. You will only take court action against us in the Scottish courts but we are free to take action against you either in the Scottish courts or the courts of any other country.