

RESTRICTED - COMMERCIAL

CSCC6 - Conditions of Contract for the Provision of Advisory Service

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;

"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;

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

"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;

"Rules and Regulations" means all applicable legislation, orders and regulations and legal standards or requirements set down under such legislation, orders and regulations;

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

"You" means you, the person who supplies us with Services under a Purchase Order.

2 Provision of Services

2.1 The Services must-

2.1.1 be provided to our reasonable satisfaction,

2.1.2 be carried out to a high standard of care and accuracy, and

2.1.3 conform in full with the requirements and specification set out in the Purchase Order.

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, before a date or time that we will tell you, give us detailed programmes of the order in which you will provide the Services and details of 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, before or at a date or time that we will tell you, give us progress reports on the carrying out of the Services and meet with us to discuss and review the Services provided.

3 Payment

3.1 You will invoice us monthly in arrears for Services carried out on the basis of and at prices or rates not higher than those set out in this Contract and, in relation to expenses, as agreed and as set out in the Contract.

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. With each invoice you must send such evidence of the work done or expenses paid by you in carrying out the Services as we may ask you for.

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 and that you sent with the invoice any evidence required of work done or expenses paid.

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 (including the start or completion date for the Services), by writing to you.

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

4.3 If we do this after you have started providing the Services, you will comply with the changes as soon as possible 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. You are not our agent or representative and you have no authority to act on our behalf except where you are given specific authority under this Contract. You will not act in any way which would give the impression that you are our employee or our agent or representative unless you are specifically authorised to do so under this Contract.

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.

5.3 You will ensure that you do not smoke whilst on duty. In accordance with the Smoking, Health and Social Care (Scotland) Act 2005 all enclosed or substantially enclosed areas within the Premises are non smoking areas and smoking is strictly prohibited in those areas. Smoking is only permitted in certain outside areas which will be shown to you on request.

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5.4 If you require to be at the Premises in connection with the Services you will comply with any instructions we issue to you relating to the Premises, including instructions relating to security, access and health and safety.

6 Equipment and Materials

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

7 Equipment, Materials and documents supplied to you

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

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

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

7.4 If we ask for any equipment and/or 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.

7.5 If you have any equipment and/or 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 [and, we will pay you the reasonable cost, if any, of disposal].

7.6 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 18.7. If this is the case you will return them to us at the same time that the termination report is produced.

8 Records

8.1 You will maintain complete and accurate records of the Services, including records of time

spent and work done, claims for payment, receipts and vouchers for costs incurred by you and 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 when required give us or our auditors access to your records and allow us or our auditors to take copies of your records of the Service.

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

9 Corrupt Gifts or Payments

9.1 You must not do anything that gives or offers to any member of our staff any kind of inducement or reward, including giving or offering corporate hospitality, in relation to this Contract or any other contract. It may be a criminal offence to do any of those things.

10 Environment

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

10.2 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 way you provide the Services minimises the impact on the environment.

10.3 If you think that a change to the Contract or to any 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 other environmentally friendly materials, or where a change would result in increased energy efficiency or in other ways reduce 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 change or vary our requirements for Services as set out in Condition 4.

11 Health and Safety

11.1 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.

11.2 You will comply with all relevant health & safety Rules and Regulations, and any other similar requirements which are applicable to the Services.

12 Indemnity and Insurance

12.1 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 action taken against us, damage to property or because of injury or death. You will also pay us any costs and expenses we may have incurred or be liable to pay in relation to the loss.

12.2 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 incurred or be liable to pay in connection with that claim.

12.3 In providing services under this Contract you are self-employed, and you will make sure that you pay the Inland Revenue or any other Government Department any tax, national insurance or similar payments on the basis that you are self-employed. If we are required 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.

13 Equalities Considerations

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

13.2 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.

14 Confidentiality

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

14.2 You will not disclose to or discuss with any third party any advice or report given or to be given by you to Capability Scotland unless that is necessary for the purpose of the Purchase Order or the advice or report has been published by Capability Scotland. You will not make any adverse comment about Capability Scotland or make comment about its deliberations. You may disclose to or discuss with a third party, or publish, your personal opinions on matters within your expertise, even if they are the subject of the Services, but must not do so in your capacity as adviser to Capability Scotland unless Capability Scotland has given you written consent. Any such article must not, either directly or impliedly, be written in a manner which could be interpreted as being the opinion of the Capability Scotland.

14.2 We may:

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

14.2.2 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 Communities 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; and

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

15 Intellectual property

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

15.2 You must not breach any Intellectual Property Rights of any third party. Where you

produce for us anything where Intellectual Property Rights are owned by a third party you will ensure that you have and obtain the necessary consent or licence to use the property for the purpose of this Contract including for any intended use by Capability Scotland, for example publication.

15.3 All Intellectual Property Rights in any items produced (in whatever form) by you for us in connection with the Services shall not belong to you but 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.

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

16 Publicity

16.1 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.

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

17 Termination on Insolvency

17.1 We may write to you immediately terminating the Contract 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".

17.2 If we terminate the Contract under Condition 17.1 it will not affect any other rights we may have against you in relation to the Contract.

18 Termination

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

18.2 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.

18.3 If you become incapable of completing the Contract we can terminate the Contract immediately by telling you in writing.

18.4 If we terminate the Contract under Conditions 17 or 18.2 or 18.3, we may instruct somebody else to complete the Contract.

18.5 If we 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.

18.6 We may cancel the Contract at any time for any reason by giving you 30 days' notice in writing. [If we cancel the Contract we will only be liable to pay you for work done before cancellation and for providing a termination report.]

18.7 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 Capability Scotland based upon that work.

19 Recovery of Sums Due

19.1 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.

20 Assignment and Sub-Contracting

20.1 You are not allowed to sub-contract, transfer or assign the Contract or any part of it.

21 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

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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.
- 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.

22 Notices

22.1 Any notice to be sent by you or by us in connection with the Contract can be sent by letter or 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.

22.2 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.

23 Arbitration

23.1 If there is any dispute between you and us in relation to the Contract, either you or us can, by sending a notice to the other, require that a senior representative from each side meet to try and resolve the dispute, within seven days of the notice.

23.2 If the dispute is not resolved within a further seven days of such meeting, either you or us may approach the President of the Law Society of Scotland to appoint a single arbiter to resolve the dispute.

23.3 The arbitration will take place in Scotland, and will be commenced and conducted in accordance with the Scottish Arbitration Code 1999, or any code which replaces this.

24 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.