

## RESTRICTED - COMMERCIAL

### Conditions of Contract for the Purchase of Software, Hardware, and Relate Services – CSCC7

#### 1 Definitions

1.1 In these Conditions:

1.1.1 "**Conditions**" means these terms and conditions;

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

1.1.3 "**Documentation**" means the Goods related documentation listed in the Purchase Order;

1.1.4 "**Embedded Code**" means code which is internal to, and stored on solid state devices within, the Hardware and which is supplied to us by you as an integral part of the Hardware;

1.1.5 "**Fees**" means the fees set out in the Purchase Order;

1.1.6 "**Firmware**" means machine readable software which is capable of being archived and which is supplied to us by you as an integral part of the Hardware;

1.1.7 "**Goods**" means the goods or equipment to be supplied to us by you under a Purchase Order, as more particularly described in the Goods Specification. Goods may take the form of Software or Hardware, separately or together;

1.1.8 "**Goods Specification**" means the functional and performance specification for the Goods as set out in the Purchase Order ;

1.1.9 "**Hardware**" means any computer, computer terminal, computer peripheral, communications equipment and related hardware, and any components supplied by you to us under a Purchase Order;

1.1.10 "**Intellectual Property Rights**" means patents, trade marks, service marks, design rights, registered design rights, copyright, database rights, know-how, trade or business names, and other similar rights, arising in any country in the world, and includes applications for any of them;

1.1.11 "**Licensed Materials**" means the Software, Embedded Code and Firmware licensed to us under Condition 10;

1.1.12 "**Operating Environment**" means the environment in which the Goods are to operate. A brief description of the Operating Environment is included in the Purchase Order and may consist of any existing communications or other IT infrastructure within the Premises to which the Goods are required to connect and/or with which the Goods are required to operate;

1.1.13 "**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;

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

1.1.15 "**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 Goods and Services such as the price, quantity and description;

1.1.16 "**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;

1.1.17 "**Service Implementation Plan**" means the plan and timetable for the implementation of the Services included within the Purchase Order;

1.1.18 "**Services**" means the services provided to us by you under a Purchase Order, as more particularly described in the Services Description;

1.1.19 "**Services Description**" means the description of the Services included within the Purchase Order;

1.1.20 "**Software**" means any computer software supplied by you to us under a Purchase Order;

1.1.21 "**Support and Maintenance Services**" means any support and maintenance services to be provided to us by you, as described in the Purchase Order ;"**Use**" means to use the Software, Embedded Code or Firmware in question on any computing or communications equipment;

1.1.22 "**we**" means Capability Scotland; and

1.1.23 "**you**" means you, the person, partnership or company who supplies us with Goods and Services under a Purchase Order and a reference to "your" shall be interpreted accordingly;

1.2 In interpreting the Contract, the terms of the Purchase Order take precedence over any provision in these Conditions which conflicts or is inconsistent with the Purchase Order.

#### 2 Supply of the Goods and the Services

You must:

2.1 supply us with the Goods specified in the Purchase Order;

2.2 provide us with the number of copies of Documentation specified in the Purchase Order (if any); and

2.3 provide us with the Services specified in the Purchaser Order;

all in accordance with the Contract.

#### 3 Delivery

3.1 You will deliver the Goods to us at the address and on the date for delivery set out in the Purchase Order between 0900 and 1700 hours, unless a specific time is mentioned in the Purchase Order.

3.2 If you enter the Premises to deliver the Goods (or in connection with the Services) and cause any damage or injure someone, you will pay to us the amount of money we have to pay to fix or repair the damage (which may involve the buying of a replacement) or to compensate for the injury. You will also pay us any costs and expenses we may have which are related to our having to deal with the incident.

3.3 The date of delivery set out in the Purchase Order is critical to us. If you fail to deliver on that date (and at the time (if any) set out in the Purchase Order), we may refuse to accept the Goods by telling you in writing. If we do so, we will not have to pay you and we will also be able to cancel some parts of the Contract, or the whole Contract. If you still deliver the Goods after you have been told by us that we will refuse to accept them, you must remove them at your own cost within a reasonable timescale that we set

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you, and if you do not we will be able to dispose of them or destroy them and you will be responsible for any costs or charges we incur in doing so. If we do any of these things, any other rights we have to take action against you for the failure to deliver on time will not be affected.

3.4 If we sign a delivery note for the Goods, that does not mean that we accept the Goods or that all the correct Goods have been delivered.

3.5 If for any reason we cannot take delivery of the Goods on the date of delivery, you must keep the Goods safely until we can take delivery of them, and have told you to deliver them to us. We will pay you for the amount you have had to pay to store them, provided this is a reasonable amount. We may require evidence of the amount you have to pay to store the Goods, and if you do not have this evidence, we may not pay you these storage costs.

3.6 If Goods have been damaged in transit, we will have a reasonable time from delivery to tell you, and we can choose whether you must repair or replace them. You will do this free of charge, and as quickly as possible. Alternatively, we can choose to cancel the Contract, and if we do this you must arrange to take the damaged Goods away free of charge and as quickly as possible.

3.7 If there is more than one delivery of the Goods under a Purchase Order, the delivery note for the last delivery under a Purchase Order must be clearly marked to show that it is the last.

### 4 Labelling and Packaging

4.1 You must pack and mark the Goods in a suitable manner and must avoid unnecessary packaging. If we ask you to pack the Goods in a certain way you must do so. You must comply with relevant European and other packaging Rules and Regulations, the requirements of the carrier you use, and any relevant Rules and Regulations which deal with the transportation of the Goods.

4.2 As well as your other obligations in relation to packaging, you must try to use packaging made from recycled materials, and use packaging materials which can in turn be recycled or re-used or incinerated for energy recovery.

4.3 You will mark the package with the number of the Purchase Order. You will also mark the package with the name of the contents.

4.4 You will mark each package in a consignment with the total number of packages in the consignment, and the number of that package, e.g. 3 of 7. You will do this even if there is only one package in a consignment.

4.5 You will make sure that all containers of hazardous goods (and any documents that relate to hazardous goods) have prominent and suitable warnings.

4.6 If someone takes action against us or we incur any loss because you have not complied with any of Conditions 4.1 to 4.5 you will pay to us the amount of money we have to pay because of that action and the amount of our loss. You will also pay us any costs and expenses we may have relating to the action or loss.

### 5 Environment

5.1 Immediately after delivery, you will take away with you all packaging relating to the Goods and which we tell you are no longer needed by us. If you leave any packaging materials behind, we may re-cycle, re-use or dispose of these, but if we ask you to, you will arrange for these to be uplifted free of charge and as quickly as possible. You will try to re-use or re-cycle any packaging materials which you take away, or use them for energy recovery through incineration.

### 6 Title and risk

6.1 Risk of damage to or destruction of the Goods will transfer to us on delivery of the Goods to us in accordance with the Contract. Title to the Goods supplied by you to us under the Contract (including any media on which any Software is supplied) will transfer from you to us upon our acceptance of the Goods under Condition 7 or 8.

6.2 Condition 6.1 will not affect your liability for your negligence or our liability for our negligence, which in either case causes damage to or the loss of any of the Goods at any time.

### 7 Acceptance Testing

7.1 This Condition 7 applies to the extent that we tell you that the Goods (or some of them) should be subjected to acceptance tests. You must make available these Goods to allow us to carry out acceptance tests on them over a period of 30 days from the date of delivery of the Goods to us.

7.2 We will decide what acceptance tests we will carry out, and you will co-operate with us and provide us with any help which we request for the purposes of carrying out these tests, so that we can decide whether the Goods meet the Goods Specification and the terms of the Contract.

7.3 If we are satisfied in light of the results of the acceptance tests that the Goods meet the Goods Specification and the terms of the Contract, we will tell you in writing that we accept the Goods.

7.4 If we are not satisfied in light of the results of the acceptance tests that the Goods, or any element of the Goods, meet the Goods Specification or the terms of the Contract, we will have the option, in addition to any other rights we may have, to decide to do one or more of the following:

7.4.1 extend the acceptance testing period for so long as we want. During this extended period you must correct the faults, and once you have done this we will re-perform the acceptance tests, and you must help us to do this if we ask you to; and/or

7.4.2 accept the Goods in part, and pay a reasonable Fee for them (based on the Fee for the Goods), or such other amount as we may agree with you; and/or

7.4.3 return the Goods to you in whole or in part, and terminate the Contract in relation to those Goods immediately by telling you in writing. If we do this, you must pay us a full refund of any amount paid in advance by us for such Goods as quickly as possible.

7.5 If we decide to extend the acceptance testing period under Condition 7.4.1, and we are still not satisfied with the results of the acceptance tests by the end of that period, we will again have the option, in addition to any other rights we may have, to decide to do one or more of the things set out in Conditions 7.4.1, 7.4.2 and 7.4.3.

### 8 Acceptance where there is no Acceptance Testing

8.1 This Condition 8 will apply to any Goods in respect of which we decide not to carry out acceptance testing. After you have delivered the Goods to us, we may tell you that we do not accept the Goods because they do not meet the requirements of the Contract or because they are (or some of them are) defective. We will tell you

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if we accept or reject the Goods within a reasonable time after delivery. In the case of Goods supplied to us by you for use with other Goods which we decide should be subject to acceptance testing under Condition 4, we do not have to accept Goods under this Condition until we are satisfied with the results of these acceptance tests. We may also choose to accept some of the Goods and reject the rest. If we reject the Goods, we can choose that:

8.1.1 you must repair the Goods; or

8.1.2 you must replace the Goods with other goods which comply fully with the requirements of the Contract; or

8.1.3 we will return the Goods to you. If we do this, you must pay us a full refund of any amount paid in advance by us for such Goods.

You must do as we choose as quickly as possible and free of charge. If we choose for you to repair or replace the Goods, and we are not satisfied with the repair or replacement, we can tell you that we are rejecting the Goods (or some of them) and you must pay us a full refund of any amount paid in advance for such Goods as quickly as possible.

8.2 If we choose to return any Goods to you under Condition 7.4 or 8.1, you will pay us the costs of having them delivered to you. We will not be responsible if the Goods are damaged or destroyed in transit to you.

### 9 Provision of the Services

9.1 You will start and complete and otherwise provide the Services in accordance with the timetable set out in the Service Implementation Plan. If at any time you fall behind the timetable in providing the Services you must use your best efforts to catch up with it, including (where this will help) by devoting additional resource to the provision of the Services.

9.2 If we ask, you will give us a detailed account of how you will provide the Services. We may tell you to provide the Services in a different order to that set out in the Service Implementation Plan, and you will do so as long as we have given you reasonable advance warning of any such change. If we ask, you will also give us progress reports on the carrying out of the Services and you will meet with us to discuss and review the Services provided.

9.3 The Services will normally be provided at the Premises. We are entitled to assume that you will be able to carry out the Services at the Premises. You will not be able to use the condition of the Premises or any other aspect of the Premises as an excuse for a failure on your part to supply the Services.

9.4 If we ask, you will allow us to have access to your premises (and the premises of any of your sub-contractors) to inspect them, and to observe any 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.

9.5 If you are providing Support and Maintenance Services, you will provide them in accordance with any provisions of the Purchase Order that specifically relate to such Support and Maintenance Services, as well as the other provisions of the Contract which apply to the Services generally.

### 10 Right to Use Software

10.1 The Contract will not transfer to us ownership of the Intellectual Property Rights in any Licensed Materials which are incorporated within the Goods.

10.2 You give to us, or you must ensure, prior to delivering any Software to us, that any other relevant person gives to us:

10.2.1 a non-exclusive right to Use the Software for the proper conduct of any acceptance tests; and

10.2.2 if we accept the Software under Condition 7 or 8, a non-exclusive right to Use the Software and to copy and adapt the Documentation, in both cases for the purposes of conducting our business. This right will, subject to Condition 30.5, last for so long as we Use the Software and you cannot withdraw the right unless we agree you can.

10.3 You give to us, or you must ensure, before we begin to use any Hardware, that any other relevant person gives to us:

10.3.1 a non-exclusive right to Use the Embedded Code and the Firmware for the proper conduct of any acceptance tests; and

10.3.2 if we accept the Hardware under Condition 7 or 8, a non-exclusive right to Use the Embedded Code and the Firmware, and to copy and adapt the Documentation, in both cases for the purposes of using the Hardware to conduct our business. This right will last for so long as we Use the Hardware,

and you cannot withdraw the right unless we agree you can.

10.4 We will not make any copies of the Software except where this is required as part of the normal use of the Software. If we do make copies, we will only make a number of copies that is reasonable for the purpose of back-up, operational security, and disaster recovery.

10.5 We will not change the Software, nor allow it to be combined with or become included in any other programs, nor will we decompile or disassemble the object code version of it, except where this is allowed by law.

10.6 You accept that we may decide to enter into outsourcing, facilities management and similar arrangements from time to time during the course of our business. We therefore need the ability to allow outsourcing, facilities management and disaster recovery contractors to Use the Licensed Materials. Accordingly, we may allow any of these contractors to Use any or all of the Licensed Materials to allow them to provide these services to us. We will ensure that these contractors comply with the terms of the Contract that relate to the Use of the Licensed Materials.

10.7 In addition, we may allow our consultants, contractors or agents to Use the Licensed Materials on our behalf for any purpose permitted in terms of this Condition 10. We will be responsible for ensuring that these consultants, contractors or agents comply with the terms of the Contract that relate to the Use of the Licensed Materials.

### 11 Guarantees

11.1 You guarantee to us that:

11.1.1 you have full capacity and authority and all necessary consents to enter into and to perform the Contract, and that the Contract has been signed on your behalf by someone who is authorised to do so;

11.1.2 the Goods will meet the Goods Specification and all other applicable provisions of the Contract;

11.1.3 unless otherwise agreed in writing the Goods will operate in a normal office environment and be fully compatible with the Operating Environment;

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11.1.4 you have the full capacity and authority to grant the rights set out in Condition 10;

11.1.5 the Documentation includes a complete set of operating manuals in respect of the Goods to which it relates;

11.1.6 no-one will seek to challenge our title to the Goods or our right to Use them nor, in relation to the Licence Materials, our right to Use them in accordance with the Contract;

11.1.7 the Goods will function and perform in accordance with the Documentation;

11.1.8 the Services will meet the Services Description in all respects;

11.1.9 you will provide the Services with all due skill, care and diligence, including in accordance with good industry practice; and

11.1.10 if the provision of the Services involves any materials, they will be of sound quality, workmanship and design.

### 12 Defects after Acceptance

12.1 If we ask you to do so in writing, you must promptly correct at your own expense any defect in the Goods that develops after the acceptance of the Goods which is caused by:

12.1.1 defective design of the Goods (but for the avoidance of doubt excluding any coding errors in the Software) and/or defective Hardware component(s); or

12.1.2 a failure on your part (including any failure of your sub-contractors, servants or agents) to discharge your obligations in accordance with the Contract.

In the case of Software you will correct defects that develop within 90 days after acceptance of the Software concerned and in the case of Goods other than Software you will correct defects that develop within 12 months after acceptance of the Goods. Where the Goods concerned have not been subjected to acceptance testing these periods will run from the date of delivery of the Goods to us in accordance with the Contract.

12.2 If you fail to correct any defect in accordance with Condition 12.1, we may correct it, and deduct the cost of doing so from any sums of money due or which may become due to you

by us.

12.3 If under this Condition 12, replacement parts are fitted by you, the parts removed will become our property.

### 13 Payment

13.1 We will pay you the Fees for the Goods and Services, subject to your compliance with your obligations under the Contract.

13.2 You must issue us with a valid VAT invoice for each Fee or instalment of such Fee, no earlier than the date on which payment of each sum becomes due, as specified in the Purchase Order. You must address your invoices to Finance, Capability Scotland, Vantage Point, 24 St John's Road, Edinburgh, EH12 6NZ and send by e-mail to [Finance@Capability.scot](mailto:Finance@Capability.scot). Each invoice must clearly identify the Purchase Order to which it relates. If a Purchase Order number is not clearly identified on each invoice, the invoice may be returned to you without payment.

13.3 If there is more than one delivery of Goods under the Purchase Order, you will send the Finance Office a separate invoice for each delivery. If there is more than one invoice under the Purchase Order, for any reason, each invoice must identify the part of the Goods or Services to which that invoice relates. The last invoice in respect of a Purchase Order must be clearly marked to show that it is the last.

13.4 Unless otherwise stated in the Purchase Order we will pay all invoices within 60 days of having received them (or, if the invoice relates to Goods, and the invoice arrives before the Goods, within 60 days of having received the Goods) provided that we are satisfied with the Goods and that any Services to which the invoice relates have been completed to our satisfaction.

13.5 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.

13.6 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](mailto: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.

13.7 You must submit invoices to us denominated in sterling. In the event that the United Kingdom joins the European Monetary Union (and provided always that the exchange rate for conversion between sterling and the euro has been fixed), we will, at any time thereafter, as long as we have informed you in writing at least 3 months in advance, be entitled to require you at no additional charge to us to convert the Fees from sterling into euros (in accordance with EC Regulation number 1103/97). You must thereafter submit all invoices to us denominated in euros.

### 14 Changes to our Order

14.1 Before you deliver the Goods we may change any of the requirements set out in the Purchase Order including any of the following:

14.1.1 the quantity of the Goods required;

14.1.2 the delivery date; and/or

14.1.3 the location to which the Goods must be delivered.

We will only be permitted to do this if we tell you a reasonable time before the Goods were originally due to be delivered.

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

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

### 15 Relationship

15.1 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.

15.2 As you are our independent contractor, we will not be liable for anything you do or fail to do

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including anything you do which causes any person to make a claim against you.

### 16 Your Personnel

16.1 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.

16.2 Your Personnel may require to provide a Disclosure Scotland Certificate before they start work on the Services at the Premises. You will be informed of this requirement prior to starting work on our premises. We may refuse to grant any of your Personnel clearance to work on our premises. If we do refuse clearance you can not use that as a reason to delay or stop carrying out the Services.

16.3 You will comply with, and will ensure that all your Personnel comply with, any instructions we issue to you relating to security and access to the Premises (including the carrying, display and return of security passes).

16.4 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.

16.5 The key Personnel will be those people who are named as such in the Purchase Order, and also any other Personnel which we notify to you in writing during the Contract are to be treated as such.

16.6 The key Personnel will be made available by you to carry out the Services.

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

16.8 You will ensure that your Personnel behave at all times in an appropriate manner considering the environment that Capability Scotland operates in, and, will ensure that they are generally presentable and (if appropriate) dressed in uniforms, which are clean and in good repair.

16.9 You will ensure that your Personnel working at the Premises 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 premises and smoking is strictly prohibited in those areas. Smoking is only permitted in certain outside areas which will be shown to your Personnel on request..

16.10 Any uniforms to be worn by your Personnel working at the Premises (and any proposed changes to uniforms) must be approved by us in advance.

16.11 You will ensure that any of your Personnel working at the Premises only access those parts of the Premises which it is necessary for them to access to provide the Services, and then only at times when they are actually providing the Services.

16.12 We may at any time require that any of your Personnel be removed from the Premises or stop carrying out the Services. You will be responsible for ensuring that that person leaves the Premises and/or stops taking part in the provision of the Services. You must get that person's security pass back if they have one, and return it to us. 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 in accordance with the Service Implementation Plan, the Services Description, and otherwise in accordance with the Contract.

16.13 We will not be liable for any costs or additional costs which arise from any of our requirements under this Condition.

### 17 Materials, plant and equipment for the Services

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

17.2 You must get our permission before delivering to the Premises any materials, plant and equipment you will need to provide the Services. You will follow any instructions we give you about how materials, plant and equipment are to be delivered and at what times they may be delivered.

17.3 You will be responsible for the security of all the materials, plant and equipment you use in providing the Services. We will not be liable if any property belonging to you or your Personnel is stolen, lost or damaged.

17.4 If we ask, you will remove from the Premises

any materials, plant or equipment which we think are hazardous or dangerous.

17.5 At the end of each working day, and when the Services are completed, you must take away all plant, equipment and unused materials, remove all waste (unless we tell you not to) and leave the Premises neat and tidy.

### 18 Materials and documents supplied to you

18.1 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.

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

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

18.4 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.

18.5 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.

18.6 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 31.4. If this is the case, you will return them to us at the same time as you provide the termination report to us.

### 19 Euro functionality

19.1 To the extent possible, the Goods should:

19.1.1 comply with all legal requirements applicable to the euro in the United Kingdom, including the rules on conversion and rounding set out in the EC Regulation number 1103/97; and

19.1.2 be capable of displaying and printing, and incorporating in all relevant screen layouts, all symbols and codes adopted by the EU

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Commission in relation to the euro.

19.2 Where this is not possible you must ensure that the Goods are capable of upgrade prior to the commencement of any transitional period preceding implementation of the euro by the United Kingdom government (or that they are so capable prior to the commencement of the acceptance procedures if such transitional period has already begun at that time).

### 20 Records

20.1 You will maintain complete and accurate records of your performance of the Contract, including all payments made by us to you in respect of the Goods and the Services for a minimum period of 3 years from the date of the last payment made by us to you under the Contract. 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.

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

### 21 Corrupt Gifts or Payments

21.1 You must not do anything that gives or offers any kind of inducement or reward to any of our employees in relation to the 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.

### 22 Environment

22.1 You will ensure that the production and supply of the Goods and the provision of the Services complies with all relevant environmental Rules and Regulations.

22.2 If the Goods include any products derived from natural sources such as trees, other plants or animal sources then you must make sure that the natural resources used are from sustainable sources, and comply with EU and other applicable international trading Rules and Regulations, such as CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora).

22.3 Where possible, the Goods and any materials you use in providing the Services should incorporate materials that can be re-used, re-cycled or incinerated for energy recovery. You

should make every effort to ensure that the provision of the Services and all processes used in the production and supply of the Goods minimises the impact on the environment.

22.4 If you think that a change to the Contract or to the Goods Specification or the Services Description would reduce the overall environmental impact of the Contract or the Goods or the provision of the Services (for example by the increased use of recycled or re-furnished or otherwise environmentally friendly materials, or by the production of Goods with a longer life span, or that a change would result in increased energy efficiency or reduce in other ways the impact on the environment) then you will tell us (whether or not this change would affect the Fees for the Goods or the Services). We will consider the proposed change and may ask for a change on the basis set out in Condition 14.

### 23 Health and Safety

23.1 You will carry out appropriate tests and checks before the Goods are delivered to us to make sure that the Goods are safe, that they meet all relevant health and safety Rules and Regulations, and that they will not put the health and safety of people who will be using them at risk.

23.2 If we find that Goods you have delivered to us are dangerous or unsafe, we will tell you and you must immediately do everything you can to make the Goods as safe as possible and, if we ask, remove the Goods from our Premises. You will pay us a full refund of the Fees we paid for the Goods if this happens.

23.3 You will tell us everything we need to do to make sure that when the Goods are being used, they can be used correctly and in a safe manner and will not put the health and safety of the people who will be using them at risk.

23.4 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.

23.5 You will comply with all relevant health and 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

23.6 You must ensure that all plant or equipment used in the delivery of the Services is safe, complies

with all relevant health and safety Rules and Regulations, and does 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.

23.7 You will ensure that you do not cause us to be in breach of any applicable health and safety Rules and Regulations.

23.8 If any action is taken against us or we incur any loss because the Goods are not safe, or because you have not told us how to use them correctly or in a safe manner, or because you have not supplied the Services in a safe manner, or have breached or caused us to breach any applicable health and safety Rules and Regulations, you will pay to us whatever money we have to pay out in connection with that action and/or the amount of our loss. You will also pay us any costs and expenses that we may have in relation to the action or loss.

### 24 Intellectual Property

24.1 All Intellectual Property Rights in any items produced (in whatever form) by you for us in connection with the Services (other than any Software, Hardware or Goods generally) 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.

24.2 You must ensure that the use and possession of the Goods and the Services by or for us (including the Use of any Software, Embedded Code or Firmware in accordance with the rights given to us under Condition 9), does not infringe the Intellectual Property Rights of anyone else.

24.3 You will pay us the amount of any losses, costs or expenses or other liability of any sort which we incur as a result of someone making a claim against us, alleging that the use or possession of the Goods and/or the Services, or any element of either (including the packaging of the Goods), by or for us breaches that person's Intellectual Property Rights.

24.4 You will tell us promptly in writing if any claim is made against you by someone alleging that you are infringing their Intellectual Property Rights, if that claim might affect the use or possession of the Goods and/or the Services by or for us.

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24.5 We will tell you promptly in writing if any claim is made against us to which Condition 23.3 may apply. You must at your own expense conduct any litigation arising from such claim and all negotiations in connection with it, and we agree to grant you exclusive control of any such litigation and such negotiations.

24.6 If you ask us to, we will give you all reasonable assistance for the purpose of contesting any claim made to which Condition 24.3 or 24.4 may apply. You must pay to us all costs and expenses (including but not limited to legal costs and disbursements) incurred in giving this assistance.

24.7 We will not make any admissions which may harm the defence or settlement of any claim to which Condition 24.3 or 24.4 may apply.

24.8 If a claim is made, or if you reasonably believe a claim is likely to be made, to which Condition 24.3 may apply, you may at your own cost and within a reasonable time either:

24.8.1 modify any or all of the Goods and/or the Services, or provide alternative goods and/or services provided there is no reduction in or loss of functionality, if this would avoid the infringement or the alleged infringement. If you do this the terms of the Contract will apply to these goods and/or services as if they were the original Goods and/or Services supplied to us under the Contract, and in the case of goods we will therefore have the right to either accept or reject them in accordance with Condition 4 or 8, whichever applies; or

24.8.2 arrange for us to get the right to use the Goods and/or the Services on terms which are acceptable to us.

24.9 Conditions 24.1 to 24.8 do not apply in so far as any claim relates to:

24.9.1 any use for or by us of the Goods and/or the Services in combination with any item not supplied by you where that use of the Goods and/or the Services directly gives rise to the claim; or

24.9.2 any modification carried out for or by us to any item supplied by you under the Contract if you have not agreed to this in writing beforehand.

24.10 If a claim has been made which is covered by Condition 24.3 or 24.4, and you are not able

to take any of the actions envisaged by Condition 24.8, then:

24.10.1 we can terminate the Contract (either in whole or in part) immediately by telling you in writing that we are terminating it; and

24.10.2 you will also be liable to us for the cost of obtaining replacement goods and/or services, together with any additional costs incurred in installing them.

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

### 25 Indemnity and Insurance

25.1 You will pay us the amount of any loss which we incur as a result of any defect in the Goods or any damage or injury caused by you in the supply of the Services or as a result of your negligence or as a result of any breach by you of the Contract. 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.

25.2 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.

25.3 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.

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

### 26 Equalities Considerations

26.1 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.

26.2 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.

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

26.4 You will take all reasonable steps to ensure that all Goods supplied under the 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.

26.5 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.

### 27 Confidentiality

27.1 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.

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

27.3 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

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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;

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

### 28 Publicity

28.1 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 Communications has approved what you want to do in writing.

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

### 29 Termination on Insolvency

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

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

29.1.2 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 to whom you owe money, which could be regarded as an "arrangement with creditors".

29.2 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.

### 30 Termination

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

30.2 If you do not do this within 30 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.

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

30.4 In addition, we may terminate the Contract at any time for any reason by giving you 30 days' notice in writing.

30.5 If we are using (or allowing anyone else to use) any Software other than in accordance with the rights granted to us under Condition 10, and we do not stop doing so within 30 days of receipt of written notice from you asking us to stop doing so, then you may at any time by telling us in writing, terminate our right to Use (and to allow anyone else to Use) that Software. If you do this, we will, at your request, either return to you, or destroy all copies of that Software and any Documentation relating to it.

30.6 In any case where we are entitled to terminate the Contract other than under Condition 29 or 30.4, we will be entitled to choose to terminate the Contract only in relation to the Goods and/or Services directly affected by the circumstances giving rise to our right to terminate. If we tell you in the notice of termination that we send to you that we are only terminating the Contract in relation to such Goods and/or Services, the Contract will terminate in relation to those Goods and/or Services, but will otherwise remain in full force and effect.

### 31 Consequences of Termination

31.1 If the Contract terminates, any rights of action or remedies that may have arisen beforehand or which may arise as a result of the termination will not be affected.

31.2 If we terminate the Contract (or part of the Contract) other than under Condition 29 or 30.4, we may instruct somebody else to perform the Contract (or relevant part of it) and we will be allowed to use any materials you have left at the Premises, without charge.

31.3 If we do instruct somebody else to complete the Contract (or relevant part of it), we will not pay you any money until the Contract (or relevant part of it) has been completed. We will deduct what we have had to pay somebody else to complete the

Contract (or relevant part of it) from any amounts we are due to pay you under the Contract (or relevant part of it). If the amount we pay to somebody else to complete the Contract (or relevant part of it) is more than we would have been obliged to pay to you under the Contract (or relevant part of it), we will not pay you anything further, and you will pay us the difference.

31.4 If we terminate 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.

### 32 Recovery of Sums Due

32.1 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 the 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.

### 33 Assignment and Sub-Contracting

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

33.2 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.

33.3 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.

### 36 Notices

36.1 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 address or e-mail for each party shown in the Purchase Order. Either of us can change the address or fax number for notices by telling the other in writing the new address or fax number,



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but the previous address or fax number will continue to remain valid for 7 days after the change is notified.

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

### **37 Governing Law**

37.1 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.

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