

## RESTRICTED - COMMERCIAL

### CAPABILITY SCOTLAND STANDARD CONDITIONS OF CONTRACT FOR SERVICES WHICH INCLUDE MINOR WORKS - CSCC11

#### 1 Definitions

1.1 In this Contract:-

**"CDM Regulations"** means the Construction (Design and Management) Regulations 1994

**"Conditions"** means the terms and conditions contained or referred to in this document

**"Contract"** means contract between you and us for the Services, which is made up of the Purchase Order, the Drawings, the Specification, and the Conditions, and includes any variation made under the Conditions

**"Contract Manager"** means the person(s) referred to as our project or contract manager for the Works and Services (who may be one of our employees, or an independent consultant) and notified to you as able to make binding decisions on our behalf, including any replacement(s) we notify to you

**"Date for Completion"** means the date when the Works are to be completed, as set out in the Purchase Order, subject to any extension of time under Condition 14 (*Extension of Time*)

**"Defects Liability Period"** means the period of one year from the date of Practical Completion or such other period as may be stated in the Purchase Order

**"Delay Damages"** means liquidated damages at the rate specified in the Purchase Order, or if the Purchase Order does not specify any rate of liquidated damages, such damages as are payable at common law, for the period that the Works are uncompleted after the Date for Completion

**"Drawings"** means all drawings, plans, sketches, elevations and sections showing our requirements for the Works sent with or referred to in the Purchase Order or the Specification

**"Instructions"** means instructions given to you under this Contract

**"Materials"** means goods and materials used or to be used in the Works

**"Planning Supervisor"** means our planning supervisor for the Works (who may be the Contract Manager, one of our employees, or an independent consultant) under Reg. 6 (5) of the CDM Regulations, including any substitute(s)

**"Premises"** means any buildings or premises occupied by Capability Scotland or any other premises named in the Purchase Order

**"Price"** means the price for the Services, as stated in the Purchase Order, subject to any variation under the Conditions

**"Principal Contractor"** means you or any other person acting as principal contractor under Reg. 6 (5) of the CDM Regulations, including any substitute

**"Purchase Order"** means our form headed "*Purchase Order*", or the contract award letter we sent to you, for the Services;

**"Rules and Regulations"** means all applicable legislation and regulations (including any that are in draft form or are out for consultation), and the legal standards or requirements in them

**"Services"** means the carrying out of the Works and any other services which are to be provided to us by you under the Purchase Order;

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“**Site**” means the Premises or any other place where the Works are to be done as stated in the Purchase Order

“**Specification**” means any specification or documentation setting out our requirements for the Services (including any specific requirements for the Works) sent with or referred to in the Purchase Order

“**VAT**” means value added tax at the rate in force at the time of the supply of the relevant goods or services

“**we**” means Capability Scotland

“**Working Day**” means any day other than a Saturday, Sunday, or public or bank holiday

“**Works**” means the works described in the Purchase Order, including any variations made under the Contract

“**Works Payment**” means the amount we are to pay you for all Works under this Contract, as stated in the Purchase Order, subject to any variation under the Conditions

“**you**” means the person stated in the Purchase Order as the contractor (including your successors and permitted assignees)

“**your Personnel**” means any person you use for the Works, e.g. any employee, agency worker, temporary worker, supplier or sub-contractor (including any personnel of a sub-contractor).

1.2 Any reference to a numbered condition without further clarification shall be a reference to the condition with that number in these Standard Conditions

1.3 When “*the Contract*” is referred to in these Conditions, it means these Conditions, the Drawings, the Specification and the Purchase Order read together, subject to Condition 53 (*Discrepancies*).

1.4 References to any gender shall include all other genders. The singular shall include the plural, and vice-versa

1.5 The headings of the Conditions shall not be used to interpret the effect of the conditions.

1.6 In this Contract, references to a statute or statutory provision include any changes which are made to it

1.7 If any term, condition, clause or sub-clause is invalid, it does not make any other term, condition, clause or sub-clause invalid

1.8 If you are a partnership, the Contract applies to all partners jointly and severally

### **MAIN OBLIGATIONS**

#### **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.

2.2 You will start and complete each part of 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.

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2.4 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 Premises as a reason for a failure on your part to supply the Services.

2.5 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 Carry out Works**

In addition to meeting the requirements for Services under Condition 2 (*Provision of Services*), you will carry out the Works

3.1 in a good and workmanlike manner

3.2 with the skill and care reasonably to be expected of a properly qualified and competent contractor experienced in doing work similar in scope, value, complexity and purpose as the Works

3.3 diligently and in accordance with any programme agreed between us

3.4 in accordance with the Contract and any instructions given by us or the Contract Manager, and

3.5 to our reasonable satisfaction.

### **4 Design of Works**

4.1 Where the Purchase Order states that the Works includes the design of the Works or any part of them, this Condition 4 shall apply.

4.2 You will design the Works (or the relevant part of them) with the skill and care reasonably to be expected of a properly qualified and competent designer of the relevant discipline experienced in designing works similar in scope, value, complexity and purpose as the Works.

4.3 Exercising that standard of skill and care you will design the Works (or the relevant part of them):-

4.3.1 to meet the requirements of any relevant planning permission

4.3.2 to comply with all relevant Rules and Regulations

4.3.3 to satisfy any specific requirements we mention in the Purchase Order

4.3.4 in line with any programme agreed between us, and

4.3.5 in accordance with the Contract and any instructions given by us or the Contract Manager.

### **5 Materials & Quality of the Works**

5.1 You will only supply Materials that are

5.1.1 new and of good quality

5.1.2 as described in the Specification and Drawings

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5.1.3 of the appropriate British Standards and codes of practice in force at the time of supply

5.1.4 fit for their intended purposes

5.2 You may not substitute any Materials described in the Specification and Drawings without first obtaining the prior written approval of us or the Contract Manager.

5.3 If you think that any Materials specified in the Specification or Drawings should not be included in the Works, you will tell us about them in writing before using them.

5.4 You will supply all plant and equipment you need for the Works. We will not pay you for them.

5.5 You must get our permission before delivering anything to the Premises. You will follow any specific instructions we give you about how and when deliveries are to be made.

5.6 You will be responsible for the security of the Works (including all Materials and your plant and equipment). You carry the risk of damage or destruction of the Works up to the date completion is certified under Condition 17 (*Practical Completion of the Works*) and we will not be liable if any property belonging to you or your Personnel is stolen, lost or damaged.

5.7 If we ask, you will remove from the Premises any Materials, plant or equipment which we think are hazardous or dangerous.

5.8 You will keep the Premises tidy and free from debris and rubbish caused by the Works. , Unless we agree otherwise, at the end of each working day, and when the Works are completed, you must take away all plant, equipment and unused Materials, remove all waste and leave the Premises neat and tidy.

5.9 If the Purchase Order states that you are to be accredited under a quality assurance scheme, you warrant that you are accredited with that scheme and undertake to remain so until the Contract Manager certifies the making good of defects under Condition 19.6 (*Defects Liability Period*). You will immediately tell us in writing if you are no longer accredited for any reason, giving us details and proposals for either becoming accredited again or obtaining alternative accreditation. Any alternative must be to our reasonable satisfaction.

## 6 Inspection & Tests of the Works

6.1 We may inspect or carry out any tests on the Works at any time. Where possible, we will tell you in advance when we will carry out the inspection.

## 7 CDM Regulations / Health & Safety

7.1 You will carry out the Works 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.

7.2 You must ensure that all plant or equipment used for the Works is safe, complies with all relevant health & 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.

7.3 You will comply with all of the CDM Regulations that apply to you (both as Principal Contractor and if applicable as a designer). You will liaise with the Planning Supervisor to allow him to carry out his duties under the CDM Regulations.

7.4 If a Health & Safety Plan is required under the CDM Regulations or any other rules and regulations, you will not start the Works until we or the Contract Manager tells you the health & Safety Plan is accepted. Acceptance of it does not affect your obligations under the Contract. You will tell the Contract Manager and the Planning Supervisor about all changes you make to the plan.

7.5 We may appoint someone else as Principal Contractor under the CDM Regulations if we think it is necessary for

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compliance with the CDM Regulations. If we do so, you will not have any extension of time for any delays it causes and you will pay our reasonable costs.

7.6 You will give the Contract Manager all relevant information about the Works that is needed for the production of the health & safety file under the CDM Regulations. You will comply with any timescale given to you by the Contract Manager as long as it is reasonable.

7.7 You will comply with all other relevant health & safety Rules and Regulations, and any other similar requirements which apply to the Works. You will also follow any instructions on health and safety that we issue to you.

7.8 You will not put us in breach of the CDM Regulations and any applicable health & safety Rules and Regulations.

7.9 If any action is taken against us, or we incur any loss, because you have breached any of this Condition 7, you will pay to us whatever we have to pay out under that action and the amount of our loss, as well as all costs and expenses that we may have in relation to the action or loss.

### ***INSTRUCTIONS & VARIATIONS***

#### **8 The Project Manager**

8.1 The Contract Manager will tell you about our decisions under the Contract.

8.2 We authorise the Contract Manager to act for us under this Contract, except for anything excluded by the Purchase Order or that we tell you about during the Contract.

8.3 We will identify any other person authorised to act for us on any excluded matters, but the Contract Manager may still tell you about their decisions and actions.

#### **9 Instructions**

9.1 The Contract Manager may give you Instructions about anything relevant to the Contract, including:-

9.1.1 the design, quality or quantity of the Works,

9.1.2 the variation of the Specification and the Drawings; and

9.1.3 the delivery of the Services

9.2 The Contract Manager must give Instructions in writing, except when there is an emergency, when he can give verbal instructions. The Contract Manager will confirm a verbal Instruction in writing within 5 Working Days but it is effective as soon as it is given.

9.3 As soon as you receive a written Instruction or confirmation of a verbal Instruction, you will send the Contract Manager an acknowledgment of it.

9.4 You will comply with all Instructions within the timescale stated in them, or if no timescale is stated, within a reasonable time.

9.5 You are not entitled to terminate the Contract on the grounds of anything in an Instruction even if it is a major variation of the Works.

#### **10 Our Changes**

10.1 We may vary the Works, or any part of them, at any time. The Contract Manager will give you an Instruction if a variation is required.

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10.2 If we decide to do this before you start the Works, we will tell you about the variation as soon as we reasonably can before you were originally due to start.

10.3 If we decide to do this after you have started the Works, you will comply with the Instruction as soon as it is reasonably possible for you to do so after we have told you about it.

### **11 Valuation of Instructions**

11.1 We will, if possible, agree with you any necessary changes to the Price and the time for completion of the Works before the Contract Manager issues any Instruction. This will include any extra payments for disruption and prolongation. You will be reasonable about these changes.

11.2 If the Purchase Order sets out relevant charges for dayworks, or some other schedule of rates for variations, we will pay those charges or rates.

11.3 If we have not agreed with you the changes (if any) to the Price and the time for completion of the Works, you will still go ahead with the Instruction. Any changes to the Price and the time for completion will then be assessed by the Contract Manager on a fair and reasonable basis, and applying or adapting any rates or similar prices in the Purchase Order.

11.4 You will give the Contract Manager any information he asks for to allow him to value any Instruction.

11.5 The value of an Instruction will be added to or deducted from the Price, as appropriate, but the Price will not be increased and you will not be given any additional time to complete the Works if the Instruction was needed because of any breach or negligence by you or your Personnel.

### ***TIME & PERFORMANCE***

#### **12 Duration of Services**

12.1 The provision of the Services will commence and end on the dates specified in the Purchase Order, except

12.1.1 for the Works which will be carried out in accordance with the time period(s) specified by Condition 13 (Commencement and Completion of Works); or

12.1.2 where the Contract is earlier terminated in accordance with the provisions of the Contract

#### **13 Commencement and Completion of Works**

13.1 You will start the Works on the start date set out in the Purchase Order. If no start date is shown, you will start the Works no later than 10 Working Days after the date of the Purchase Order. You will tell the Contract Manager when you are to start.

13.2 You will carry out the Works with all due diligence so that they are completed by the Date for Completion.

13.3 If we ask, you will give us detailed programmes of the order in which you will carry out the Works and (if appropriate) method statements. We may tell you in what order to provide the Services and you will comply with that request.

#### **14 Extensions of Time**

14.1 You must tell the Contract Manager in writing as soon as you become aware of anything that might delay the completion of the Works by the Date for Completion. You will take reasonable steps to reduce or eliminate the effect of any delay. You must give the Contract Manager evidence of the cause of the delay and tell him how much of an extension of time you think is needed, and why.

14.2 The Contract Manager will change the Date for Completion to a later date if you need more time to complete the

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Works for any of the following reasons:-

14.2.1 we or the Contract Manager do not do what we are supposed to do under the Contract, or are late in doing it (except where that is due to your or your Personnel's default or negligence)

14.2.2 the Planning Supervisor does not carry out his duties properly under the CDM Regulations

14.2.3 Any other circumstances outside your control or that of your Personnel, and which could not reasonably have been foreseen (excluding anything due to your or your Personnel's default or negligence)

14.2.4 You suspend the Works under Condition 42.4 (*Suspension of the Works*)

14.3 The Contract Manager will assess the extension of time after you give him the evidence and information mentioned in Condition 14.1.

14.4 The Contract Manager can put back the Date for Completion himself without you asking him to, if he thinks more time to complete the Works is required.

14.5 The process in this Condition 14 can be repeated as often as necessary.

### **15 Contractor Performance Management**

15.1 Specific performance targets relating to the quality or standard of Services delivered under the Contract will be agreed prior to contract award and these targets will be jointly reviewed periodically to ensure their appropriateness.

15.2 You will be responsible for meeting the performance targets and providing the required information to us. We will be ultimately responsible for measuring your performance. You will at all times provide the output required with a high standard of care and accuracy.

15.3 You must effectively monitor your own performance to ensure that our requirements under the Contract are being fully met, except for any areas where it has been agreed that we will undertake the monitoring role.

15.4 If required by us, performance review meetings may take place and their requirement and frequency will be determined by the Contract Manager.

15.5 If you are required to collate performance data then this must be in user-friendly management information reports. The format, content and frequency of these reports must be agreed with us and submitted at least 5 working days prior to each performance review meeting.

15.6 You will supply us with any management information as we may reasonably request from time to time, and will do so within 5 working days of any such request and at no charge to us.

15.7 We may request that you jointly develop a risk register with us. This would identify potential problems, and their causes, and assess the probability of occurrence of risks and the relative impacts.

15.8 We will then agree which party is best able to manage the risks, and devise strategies to minimise the risks. You will fully participate in this process and will fully manage all risks for which you are responsible.

### **16 Key Performance Indicators (KPIs)**

16.1 If formal KPIs are included within the Contract documentation then the following shall apply

16.1.1 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.

16.1.2 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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16.1.3 A KPIs scoring sheet will be completed by us, and discussed with you at each performance review meeting. This form enables your performance to be measured in a consistent, objective and accurate manner.

16.1.4 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.

16.1.5 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.

16.1.6 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.

16.1.7 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.

### **17 Practical Completion of the Works**

17.1 The Contract Manager will certify the date when the Works have been completed in accordance with the Contract.

17.2 You must have complied sufficiently with Condition 7.6 (*CDM Regulations/ Health & Safety*) before the certificate can be issued.

17.3 We will carry out within 10 Working Days of the Date for Completion, or if later the date when the Works are actually completed, any tests or inspections on the Works which are required before the certificate can be issued. If we reasonably require a longer period to test or inspect the Works we will inform you before the expiry of this period.

### **18 Delay Damages for the Works**

18.1 If you do not complete the Works by the Date for Completion, you shall immediately be liable to pay us Delay Damages.

18.2 We may deduct the Delay Damages (for common law damages, based on the Contract Manager's assessment of the amount) from payments to be made to you.

18.3 If the Delay Damages exceed the sums payable to you, you shall pay us the difference within 5 Working Days of our asking for it.

18.4 The Contract Manager shall tell you in writing of his assessment (if any) of the Delay Damages, but any delay or failure to do so shall not affect our entitlement under Condition 18.1.

18.5 Our rights to receive Delay Damages are not affected by anything that we do or say to you, or that we fail to do or say. We will only have waived our rights to Delay Damages if we or the Contract Manager have specifically told you so in writing and mentioned this Condition 18.5.

### **19 Defects Liability Period**

19.1 You will at your cost fix all defects in the Works that appear in the Defects Liability Period and that are due to:-

19.1.1 Frost

19.1.2 Shrinkages or

19.1.3 your failure to comply with the Contract.



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19.2 You will fix these defects as quickly as possible after the Contract Manager tells you about them and in urgent cases within any deadline specified by the Contract Manager. In doing so, you will cause the least reasonably possible disturbance and inconvenience to us and our personnel, and observe any restrictions on the manner of working imposed by us or the Contract Manager.

19.3 If you do not fix the defects the Contract Manager has told you about in line with this Condition, we may do anything necessary to fix them. You shall repay to us all the money we spend in doing so, within 5 Working Days of our asking for it.

19.4 We shall pay to you the costs of fixing any defects to the extent that you show us that the defects were caused by something other than:-

19.4.1 your or your Personnel's neglect or default, or

19.4.2 circumstances within your or your Personnel's control

19.5 The Defects Liability Period shall apply in full to all work carried out by you or us to fix any defects under this Condition 19.

19.6 After the end of the Defects Liability Period for the Works (including any extended period under Condition 19.5), the Contract Manager will certify the date when you have made good all defects in the Works.

### **PAYMENT**

#### **20 Payment for Works**

20.1 After the date the Works are certified as complete under Condition 17 (*Practical Completion of the Works*), you will invoice us for the Works Payment.

#### **21 Payment for other Services**

21.1 You will invoice us for any Services additional to the Works carried out on the basis and at the price or rates set out in the Purchase Order.

#### **22 Invoicing Arrangements**

22.1 You will address your invoices to Finance, Capability Scotland, Vantage Point, 24 St John's Road, Edinburgh EH12 6NZ and send them by 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 Works or 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.

22.2 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.

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

22.4 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.

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### 23 Payment & Withholding Notices

23.1 When any money is paid or to be paid under this Contract, we shall tell each other in writing of the amount, and the basis on which it was calculated. We each agree to do this not later than 5 Working Days after the date the payment is due under this contract, or would have been due if:-

23.1.1 the other person had complied with the Contract, and

23.1.2 no set-off or abatement was permitted for any money claimed under any other contracts.

23.2 The final date for payment of a sum due under this Contract is the same as the due date.

23.3 We each agree not to withhold payment of money that is due after its due date unless we (or you as appropriate) have given a written notice of intention to withhold payment (“withholding notice”). A notice under condition 23.1 will be acceptable if it meets the requirements of Condition 23.4.

23.4 To be valid, a withholding notice must:-

23.4.1 specify the amount (or amounts) to be withheld and each ground for withholding payment, and

23.4.2 be given not later than 7 days before the due date for payment of the relevant sum.

### 24 Recovery of sums/set-off

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.

### 25 Interest

25.1 We each agree to pay interest on any money that is due but not paid on time.

25.2 The interest rate is 4% above the base rate of the Royal Bank of Scotland plc.

25.3 Interest shall not be compounded.

### 26 VAT

26.1 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.

26.2 If we have to pay VAT to any other contractor to finish the Works because you have not done so, and we cannot recover it, you will pay us the amount by which the VAT paid to that other contractor is greater than the VAT that we would have paid to you if you had finished the Works.

26.3 If either of us are to pay each other any costs under this Contract, VAT will not be included on those costs except where the payee is unable to recover the VAT as input tax.

### 27 Tax

27.1 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 HM Revenue & Customs or any other Government Department any tax, national insurance or similar payments on the basis that you are not self-employed.

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27.2 If we have to make any such payment to HM Revenue & Customs or any other Government Department because they consider that in carrying out the Works you are not to be treated as self-employed, you will pay to us an amount equal to any money we have to pay.

### **RISKS AND INSURANCES**

#### **28 Protection of the Works**

28.1 You will take all reasonable measures and precautions to take care of the Site and Materials and protect them against loss or damage by fire and other causes.

28.2 You will take all reasonable and proper steps for protecting, securing, lighting and watching all parts of the Site and the Works that could be dangerous to people.

28.3 All Materials on the Site are in your custody and protection. You will comply with all statutory regulations about the storage and use of Materials brought on the Site, even if these regulations do not apply to us or our premises.

#### **29 Loss or damage**

29.1 In this condition "loss or damage" means any loss or damage caused by or connected with the carrying out or purported carrying out of the Services, and includes:-

29.1.1 Loss or damage to property

29.1.2 Personal injury to any person, and the sickness or death of any person

29.1.3 Loss or damage to the Works or any Materials

29.1.4 Loss of profits or loss of use due to any loss or damage

29.2 You will make good all loss or damage without delay and at your own cost. We may tell you not to do so and to compensate us instead.

29.3 You will pay us the amount of all loss or damage which we have as a result of your negligence, any breach by you of the Contract, or any damage or injury caused by you in carrying out the Services. You will also pay us our costs and expenses if we become involved in a claim or legal proceedings involving loss or damage. We will tell you about any claims or proceedings when we first learn of them.

29.4 You will pay us the amount of all loss or damage which we have as a result of any other person making a claim that the Services or any part of them 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.

29.5 You are not responsible for loss or damage to the extent that it is caused by

29.5.1 Us or our others acting for us

29.5.2 Any risk that we have accepted under this Contract

29.5.3 Other circumstances outside your or your Personnel's control which could not reasonably have been foreseen, but this exception does not apply to loss or damage in Condition 30.1.3 (*Insurances*)

#### **30 Insurances**

30.1 You must take out and maintain with a reputable insurance company construction all-risks insurance (including transit and off-site risks) in our joint names (and with any other names we request) against loss or damage to the Works and Materials for the full reinstatement value plus 15% for professional fees (or such other figure for fees as is shown in the Purchase Order). This insurance is to be valid from the date you start the Works until the works are

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certified practically completed under Condition 17 (*Practical Completion of the Works*).

30.2 You must insure yourself against all the other potential liabilities there may be to us under the Contract, at an appropriate level of cover and with a reputable insurance company.

30.3 You must take out and maintain (and make sure that your Personnel maintain) public liability insurance and employers' liability insurance with reputable insurance companies at levels which are appropriate and which comply with all legal requirements.

30.4 We can take out insurance if you do not do so or if your insurances are not sufficient. We will deduct the cost and any other expenses we have from any sums we are due to pay you, and you will repay us any shortfall.

30.5 Within 15 Working Days of the date of the Purchase Order, you will send to the Contract Manager a certificate from your brokers or insurers confirming that insurances have been placed in accordance with this Contract. You will also do this whenever any insurances are renewed.

30.6 If we ask, you will immediately show us the insurance policies without delay, and evidence that the most recent premiums have been paid.

30.7 Your obligations under the Contract are not affected by any insurances you place.

### ***CONTRACTOR'S OTHER OBLIGATIONS***

#### **31 Your Personnel**

31.1 You will make available adequate resources for the Services, and ensure that your Personnel are competent, properly trained and suitably qualified.

31.2 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.

31.3 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). You will at your cost take any steps reasonably required by the Contract Manager to prevent unauthorised persons being admitted to the Premises whilst you are carrying out the Works.

31.4 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.

31.5 The key personnel are those specified in the Purchase Order and anyone else who we tell you is to be treated as a key person. You will make the key personnel available to carry out the Services or any part of them which we specify. You will not make any change or replacement to the key personnel unless we have first agreed to that in writing.

31.6 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.

31.7 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.

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31.8 You will ensure that your Personnel working at the Premises do not smoke whilst on duty. Smoking is only permitted at the Premises in designated areas.

31.9 You will ensure that any of your Personnel working at the Premises only access those parts of the Premises necessary to carry out the Services, and then only at times when they are actually working on the Services.

31.10 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 on time and as specified in the Purchase Order.

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

### **32 Non-compliance with instructions**

32.1 If you do not comply with any Instructions by the time required, we may do whatever is needed to carry it out, including instructing others to do work and supply Materials or provide the Services. This does not affect our other rights.

32.2 If our reasonable costs and expenses of carrying out the Instruction exceed what we would have paid you if you had done it, you will pay us the difference. We may deduct it from any other sum we owe you.

### **33 Environmental**

33.1 You will comply with all relevant environmental Rules and Regulations in carrying out the Services.

33.2 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 must make every effort to minimise the impact on the environment of the carrying out the Services.

33.3 If you think that a change to the Contract, the Specification or the Drawings would reduce the overall environmental impact of the Contract (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), you will tell us in writing and confirm whether or not this change would affect the price of the Services or any part of them. We will consider the proposed change and may ask for a change on the basis set out in Condition 8 (*Instructions & Variations*).

### **34 Records & Audits**

34.1 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 our last payment to you.

34.2 If we ask, you will give us and our auditors access to your records, and allow us and our auditors to take copies of your records as required.

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

### **35 Other Works**

35.1 You agree that we can carry out other works on the Site at the same time as the Works. You will allow us reasonable use of your facilities for our other works.

35.2 You will not be liable for damage to the other works except where caused by your or your Personnel's breach of contract or negligence.

35.3 Any damage caused to the Works by our contractors on the other works is agreed to be damage caused by our

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breach or negligence, for the purposes of Condition 29 (*Loss or Damage*).

### **ASSIGNATION & SUB-CONTRACTING**

#### **36 Assignment**

36.1 We may transfer or assign the Contract or any of our rights or obligations under it (in whole or in part) without your consent, as long as the transferee or assignee is able to pay any money still due under the Contract.

36.2 Unless we agree, you may not transfer or assign the Contract or any of your rights or obligations under it (in whole or in part).

#### **37 Sub-contracting**

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

37.2 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.

37.3 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.

### **USE OF INFORMATION**

#### **38 Intellectual Property**

38.1 In this Condition “**Intellectual Property Right**” means any patent, trademark, registered design, copyright or other similar right.

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

38.3 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. If we ask, you will sign any document that we require as evidence of the transfer of Intellectual Property Rights to us under this Condition.

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

#### **39 Confidentiality**

39.1 Unless we agree, you must keep all information that you obtain from us, or becomes known to you about this Contract, as secret. This does not apply to information that is already known to the public.

39.2 We may disclose information in relation to any tender or competitive process which we have followed for 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.

39.3 If we ask, you agree to give us references from your Bank, your current or past clients, or other referees.

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

#### **40 Publicity**

40.1 Unless the Contract Manager has first agreed to it in writing, and our Head of Fundraising & Communications has approved in writing what you want to do, you will not

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40.1.1 mention our name in connection with the Contract, or disclose the existence of the Contract, in any publicity material or any other publication

40.1.2 take or publish any photographs of the Premises or the Works

and you will take reasonable steps to ensure that your Personnel do not do so.

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

### **41 Documents Supplied to You**

41.1 If we have given you any documents or other information for the Services (including the Specification and Drawings), you will return them (and all copies that you have made) to us immediately on completion of the Works or on termination, unless you need them to prepare a termination report under Condition 47 (*Consequences of Termination*).

41.2 You will return everything kept back for the termination report when you give us the termination report.

### ***SUSPENSION & TERMINATION***

#### **42 Suspension of the Works**

42.1 We may suspend the Works or any part of them at any time. We will tell you in writing if we decide to do this.

42.2 You will suspend the Works and (if we ask you) leave the Site after we tell you about the suspension.

42.3 If all the Works have been suspended for more than four months, you can tell us in writing that you want to end the Contract. If we do not give you an Instruction to resume the suspended Works within a further 10 Working Days, you can at any time after that write to us terminating the Contract (but you cannot terminate the Contract if we have already told you to resume).

42.4 Contractual time limits and dates shall be adjusted by the period of the suspension.

#### **43 General Termination Provision**

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

#### **44 Termination for Insolvency**

44.1 We may immediately terminate the Contract:

44.1.1 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

44.1.2 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".

44.2 We will tell you in writing if we are terminating the Contract for any of these reasons.

#### **45 Termination – your breach**

45.1 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.

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45.2 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.

45.3 If you become incapable of completing the Contract, either through illness or for some other reason, we can terminate the Contract immediately by telling you in writing.

45.4 If we terminate the Contract under Conditions 45.2 or 45.3, we may instruct somebody else to complete the Contract. They will be able to use the Materials plant and equipment you have left at the Premises, without charge.

45.5 If we do instruct somebody else to complete the Contract, we will not pay you any money until the Works or any other part of the Services has been completed. We will deduct what we have had to pay somebody else to complete the Contract from the money we are due to pay to you. If the money we pay to somebody else to complete the Contract 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.

### **46 Termination – Capability Scotland’s breach**

46.1 If we do not pay you any money that is due within 45 Working Days of the due date, you can tell us in writing that if we do not pay the sum due within another 15 Working Days, you will terminate the Contract.

46.2 If we have not paid you the sum due within that additional 15 Working Days, you can tell us in writing that the Contract is terminated.

### **47 Consequences of Termination**

47.1 If the Contract is terminated for any reason (whether by you or us):-

47.1.1 you will stop any ongoing Works and other Services as soon as possible and leave the Site immediately on the termination

47.1.2 you will provide us with a termination report on the work done under the Contract, which will include your recommendations to us based on that work, and

47.1.3 it will not affect any other rights we may have against you under the Contract or at common law.

## ***LIABILITY OF THE PARTIES***

### **48 Fair Dealing**

Throughout the Contract:-

48.1 We shall deal fairly, in good faith, and in mutual co-operation with one another, and

48.2 You shall deal fairly, in good faith, and in mutual co-operation with your Personnel.

### **49 Performance Bond**

49.1 If the Purchase Order says this Condition applies, you shall send to us within 10 Working Days of the date of the Purchase Order, a performance bond, for 10% of the Price (or for such amount as stated in the Purchase Order) (“**the Bond**”).

49.2 The Bond shall be granted by the sureties named in the Purchase Order or by such sureties as we approve in writing.

49.3 You will ensure that the Bond is signed by the sureties in a self-proving manner.

### **50 Parent Company Guarantee**



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50.1 If the Purchase Order says this Condition applies, you shall send to us within 10 Working Days of the date of the Purchase Order, a parent company guarantee ("**the PCG**").

50.2 The PCG shall be granted by your ultimate holding company or by such other company as we approve in writing.

50.3 You will ensure that the PCG is signed by the granter in a self-proving manner.

### **51 Relationship**

51.1 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.

51.2 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.

### ***OTHER PROVISIONS***

#### **52 Provisions About the Contract**

52.1 Amendments to the Contract will only be effective if in writing

52.2 We may give written notice to each other that we do not want the other person to perform their obligations under this Contract.

52.3 This Contract is the entire agreement of the parties for the Services. It supersedes all prior discussions and statements.

52.4 To the extent possible all warranties or conditions that might normally be implied by operation of law are excluded.

52.5 Nothing in this Contract will restrict the liability of a party for its fraudulent acts or fraudulent statements.

#### **53 Discrepancies**

53.1 Where there is a discrepancy between the Specification and the Drawings, the Specification shall take precedence.

53.2 Where there is a discrepancy between the Conditions and the Purchase Order, the Purchase Order shall take precedence.

53.3 Where there is a discrepancy between the Conditions and any other item forming part of the Contract (other than the Purchase Order), the Conditions shall take precedence.

53.4 Figured dimensions on all Drawings shall take precedence over scaled dimensions.

53.5 The Contract Manager may instruct a different order of precedence from that stated in this Condition 53.

#### **54 Anti-Corruption**

54.1 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 to which we are a party. In addition, you must not offer any of our employees any kind of corporate hospitality.

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54.2 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.

### **54.3 Equal opportunities & non-discrimination**

54.4 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.

54.5 You will 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 your Personnel 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.

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

54.7 You will take all reasonable steps to ensure that all Materials 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.

54.8 If any part or all of the Services are to be carried out at your premises, you will ensure that the premises comply fully with the requirements of the Disability Discrimination Act 1995.

### **55 Applicable Law**

This Contract is governed by the law of Scotland.

### **56 Adjudication**

56.1 Each of us may at any time refer a dispute difference or question under or relating to the Works to adjudication.

56.2 The adjudicator will be any person named in the Purchase Order or appointed by any adjudicator nominating body named in the Purchase Order or if no adjudicator nominating body is named, the referring party shall request an adjudicator nominating body (as that term is defined in the Scheme for Construction Contracts (Scotland) Regulations 1998) to select a person to act as adjudicator.

56.3 The referral notice shall set out the principal facts and arguments. Copies of all relevant documents held by the referring party will be given to the other with the notice.

56.4 The adjudicator shall issue his decision (sending it to the Contract Manager as well as to you and us) not earlier than 10 and not later than 28 days after receipt of the referral notice, or such longer period as we each agree. The adjudicator may extend the period of 28 days by up to 14 days if the referring party agrees. The adjudicator's decision shall nevertheless be valid if issued after the time allowed.

56.5 The adjudicator has power to apportion his fee between the parties, and to decide who shall be liable for the legal and other expenses of the parties.

56.6 The adjudicator may award damages, and interest, and may specify the interest rate and whether it is to be compounded, all as he considers meets the justice of the case.

56.7 The adjudicator shall provide reasons for his decision.

### **57 Court Action**

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57.1 Subject to Condition 56 (*Adjudication*), you will only take court action against us in either the Sheriff Court of Edinburgh or the Court of Session, but we are free to take action against you in the Sheriff Court of Edinburgh, the Court of Session or in the courts of any other country.

57.2 This Condition will continue to apply during the Contract and after it has ended.

**58 Notices**

58.1 Any notice to be sent under the Contract must be sent by recorded delivery letter or e-mail.

58.2 Notices must 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 5 Working Days after the change is notified.

58.3 If sent to the correct address, a notice will be treated as received 48 hours after posting (if a letter) and 24 hours after transmission (if e-mail), even if it is not actually received or is received later.

**59 Variation of Price**

59.1 The rates and other charges stated in the Pricing Schedule will be Firm for years 1- & 2 inclusive of the Contract. These rates and charges will be Fixed for the remaining period of the Contract and shall be subject to Variation of Price (VOP) formula. Any such variation shall be calculated in accordance with the following formula:

$$VOP \text{ Formula: } P_i = P_o \frac{(RPIX_{n-1})}{(RPIX_{n-2})}$$

Where  $P_i$  = New Price for current year

$P_o$  = price for previous year

When  $RPIX_{n-2}$  = 12 month average index value for the period 2 years prior to current year

$RPIX_{n-1}$  = 12 month average index value for the period 1 year prior to current year

Example - Year 3 prices will be calculated as follows:

New Price = Year 2 price + 100% of percentage movement of RPIX in Year 2 compared to Year 1. In this example it is 2.2% as per the following example:

Contract Year 1    Contract Year 2

168.1	172.4
169.0	172.8
169.6	173.5
170.8	174.7
172.1	175.2
172.5	175.1
171.4	174.8
172.0	175.3
172.8	176.4
172.6	176.6
172.2	177.0
172.5	177.2

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Average = 171.3 Average = 175.1

Annual % change to be applied to Contract Year 2 Price in Contract Year 4 = 2.2%

59.2 For subsequent years of the Contract advance the formula by one year per year.

59.3 The Index figures referred to in Clause 61.2 above shall be taken from the Retail Price Index RPIX) (all items excluding mortgage interest payments).

59.4 In the event that any changes occur in the basis of any of the indices (e.g. a change in datum or a revised statistical base), during the period of the Contract and before final adjustment of the fixed Contract rates and charges, or should the Tables referred to cease to be published, Capability Scotland and the Contractor shall agree revised formulae and or indices which will have substantially the same effect as those specified herein. Capability Scotland will specify these formulae and the Contractor shall agree to accept such formulae for the purpose of VOP calculations.

61.5 Fixed annual rates and charges for the current contract year shall become agreed Firm rates and charges within 4 months of the start of that Contract year.

61.6 Within 2 months of Firm prices being agreed for each contract year, the Contractor must submit the necessary paperwork to ensure correct payment is received or deducted to cover any difference between the Fixed and Firm prices.