

## RESTRICTED - COMMERCIAL

### CAPABILITY SCOTLAND STANDARD CONDITIONS OF CONTRACT FOR THE ENGAGEMENT OF A PERFORMER CSCC9

#### 1 Definitions

In these conditions:-

“We” means Capability Scotland;

“You” means you, the person who supplies us with the Performance;

“Performance” means the performance services to be provided to us by you as set out in an Engagement Letter;

“Engagement Letter” means an engagement and contract award letter sent to you by us, and any accompanying specification or documentation setting out our requirements for the Performance and detailing the fee and the other financial arrangements;

“Contract” means the contract between you and us for the provision of the Performance which is made up of the Engagement Letter and these Conditions. When “Contract” is referred to in these Conditions, it means these Conditions and the Engagement Letter read together;

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

“Premises” mean any buildings or premises occupied by Capability Scotland;

“your Personnel” means any person you use in connection with the Performance, for example, any co-performer, employee, agency worker, temporary worker, contractor or any personnel of a contractor.

#### 2 The Performance

2.1 The Performance must be provided to our reasonable satisfaction and to high standards of care and diligence. The Performance must conform in full with the requirements and specification set out in the Engagement Letter.

2.2 You will carry out the Performance and attend any rehearsals on the dates and at the times set out in the Engagement Letter.

#### 3 Payment

3.1 You will invoice us for the Performance after it has been completed on the basis and at the fee set out in the Engagement Letter.

3.2 You will address your invoice to Finance, Capability Scotland, Vantage Point, 24 St John’s Road, Edinburgh, EH12 6NZ and e-mail to Finance@Capability.scot. Your invoice must clearly identify the purchase order number on the Engagement Letter. If a Purchase Order number is not clearly identified on each invoice, the invoice may be returned to you without payment.

3.3 Fees and prices are exclusive of Value Added Tax unless otherwise stated in the Engagement Letter. If any Value Added Tax is to be paid, you will show this separately on your invoices.

3.4 Unless otherwise stated in the Engagement Letter, we will pay all valid invoices within 60 days of having received them, provided that the Performance has been completed to our satisfaction.

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

## **RESTRICTED - COMMERCIAL**

### **4 Changes to the Performance**

4.1 We may change or vary our requirements for the Performance, or any part of it, at any time, but we will only be able to change our requirements if we have been able to agree with you the change to the fee (if any) which is necessary as a result of the change to our requirements. In reaching agreement with us on any change to the fee which is necessary, you will not be unreasonable.

### **5 Relationship**

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

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

### **6 Your Personnel**

6.1 You will ensure that your Personnel (if there are any) are competent, properly trained and suitably qualified to perform their duties in connection with the Performance.

6.2 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 requirement to be escorted at all times on the Premises, and the carrying, display and return of security passes).

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

6.4 You will ensure that you and your Personnel behave at all times in an appropriate manner considering the environment in which Capability Scotland operates.

6.5 You will ensure that you and your Personnel working at the Premises do not smoke other than in designated areas.

### **7 Materials and equipment**

7.1 Other than as may be detailed in the Engagement Letter, you will at your own expense supply all the materials and equipment you need for the Performance.

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

7.3 You will be responsible for the security of all your materials and equipment which you use for the Performance. We will not be liable if any property belonging to you or your Personnel is stolen, lost or damaged.

7.4 If we ask, you will remove from the Premises any materials or equipment which we think are hazardous or dangerous.

7.5 After the Performance you must take away all equipment and materials, remove all waste (unless we tell you not to) and leave the Premises neat and tidy.

### **8 Records**

8.1 You will maintain complete and accurate records of the payments made by us to you for a minimum period of three years from the date of the last payment made by us to you. If we ask, you will give us or our auditors access to

## **RESTRICTED - COMMERCIAL**

your records and allow us or our auditors to take copies of your records as required.

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

### **9 Corrupt Gifts or Payments**

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

### **10 Environment**

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

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

### **11 Health and Safety**

11.1 You will carry out the Performance 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.

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

11.3 You must ensure that all equipment used in connection with the Performance 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 attending the Performance and those working at and visiting the Premises.

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

11.5 If any action is taken against us or we incur any loss because you have not undertaken the Performance in a safe manner, or have breached or caused us to breach any applicable health & 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 and you will also pay us any costs and expenses that we may have in relation to the action or loss.

### **12 Indemnity**

12.1 You will pay us the amount of any loss which we incur as a result of your negligence, any breach by you of the Contract, or any damage or injury caused by you in connection with the Performance. 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.

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

### **13 Equalities Considerations**

13.1 We are an equal opportunities employer and service provider. You must also be an equal opportunities employer

## **RESTRICTED - COMMERCIAL**

and service provider and comply fully with equal opportunities legislation.

13.2 You will ensure that you do not discriminate against anyone unlawfully, or treat anyone unfairly, on the grounds of their sex, racial group (including colour, race, nationality, national or ethnic origin), disability, sexual orientation, religion, gender identity, age, trade union membership/non-membership/activities or marital, family or part-time status. You will also make sure that your Personnel do not do so either.

### **14 Confidentiality**

14.1 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.

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

### **15 Intellectual property**

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

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

15.3 We shall be entitled to record the Performance and broadcast the audio and/or video over the internet ("webcasting"). The Performance may be webcast live (or near-live) and a recording will be archived for as long as we choose for further webcast on an on-demand basis. Webcasts will be available free of charge. Given the nature of the internet, the Performance may be broadcast and available anywhere in the world. If there is media interest we shall also be entitled to make the recording or parts of it available to the media on a free of charge basis for them to broadcast and/or to report upon. This, and the process of webcasting, will involve the copying of the recording and we shall be entitled to do this.

15.4 You consent to the arrangements described in Condition 15.3 and in particular confirm that: 1) you consent to our using your name or likeness in connection with the availability of the webcast; 2) you confirm that the Performance, our providing a recording of it to the media and the webcast will not infringe the intellectual property rights of any third party; 3) you agree that we will own the copyright in the recordings and the webcast; 4) you agree that you shall not be entitled to any additional fee or royalties for the webcast or our providing a recording to the media, and you agree that this is fair and reasonable given that we are making the Performance available on a free of charge basis and are not commercially exploiting the recording; and 5) you irrevocably grant to us all the licences and consents necessary for us to record, copy and webcast the Performance and to provide a recording to the media.

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

### **16 Publicity**

16.1 We shall be entitled to use your name or likeness in connection with the advertising and promotion of the Performance and the webcast of it.

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

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

### **17 Termination on Bankruptcy**

17.1 We may immediately terminate the Contract by telling you in writing if someone takes action against you which

## **RESTRICTED - COMMERCIAL**

could lead to you being made bankrupt or insolvent or if you make any arrangement with people who you owe money to which could be regarded as an "arrangement with creditors".

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

### **18 Termination**

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

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

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

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

### **19 Recovery of Sums Due**

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

### **20 Assignment and Sub-Contracting**

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

### **21 Notices**

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

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

### **22 Governing Law**

22.1 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.