

## TRINITY HOUSE STANDARD CONDITIONS OF CONTRACT EXPERT SERVICES (CP3)

These Conditions govern the supply of Services and may only be varied with the written approval of Trinity House. No conditions put forward by the Contractor shall form any part of the Contract unless agreed in writing.

### 1. DEFINITIONS

**“Confidential Information”** means any information, which has been designated as confidential (whether or not it is marked as "confidential") by either party in writing or that ought to reasonably be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, Personnel and suppliers of the Contractor, including intellectual property rights.

**“Conditions”** mean the conditions contained within this document;

**“Contract”** means the agreement between Trinity House and the Contractor, consisting of these Conditions and the Purchase Order for the provision of the Services.

**“Contractor”** means the person, firm or company, to whom the Purchase Order has been issued;

**“Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or any Sub-Contractor engaged in the performance of the Contract;

**“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”** take the meaning given in the GDPR 2016/679;

**“Data Breach Event”** means any event that results, or may result, in the unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**“DPA 2018”** means the Data Protection Act 2018

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679)

**“Law”** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

**“LED”** means the Law Enforcement Directive (Directive (EU) 2016/680);

**“Party or Parties”** means a Party to the contract between Trinity House and the Contractor

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**“Premises”** means any of location of Trinity House or any Other Contracting Body to which the Services shall be delivered or performed pursuant to a Purchase Order;

**“Project”** means the services to be provided as specified in the Purchase Order;

**“Purchase Order”** means the Trinity House purchase order setting out Trinity House’s requirements;

**“Service(s)”** means the services, and associated deliverables to be provided as specified on the Purchase Order;

**“Sub-Processor”** means any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;

**“Trinity House”** means the Corporation of Trinity House of Deptford Strond of Trinity House, Tower Hill, London, EC3N 4DH, in its capacity as a General Lighthouse Authority.

## **2. THE PROJECT**

2.1 The Contractor shall complete the Project with reasonable skill care and diligence in accordance with the Contract.

2.2 The Contractor shall provide the Client with such reports of his work on the Project at such intervals and in such form as Trinity House may from time to time require.

2.3 Trinity House reserves the right by notice to the Contractor to modify its requirements in relation to the Project. Any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement, the matter shall be determined by arbitration in accordance with the provisions of Clause 22.

## **3. CONTRACTOR PERSONNEL**

3.1 The Contractor shall provide Trinity House with a list of the names of all individuals regarded by the Contractor as key Personnel and, if and when instructed by Trinity House, all other persons who may be at any time concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as Trinity House may reasonably require. Trinity House may at any time by notice to the Contractor designate any person concerned with the Project or any part of it as a key person. The Contractor shall not without the prior written approval of Trinity House make any changes to the key Personnel for the purposes of the Project.

3.2 Trinity House will process any personal data obtained in respect to the Contractor’ Personnel in accordance with the requirements of applicable data protection laws.

3.3 The Contractor shall take the steps reasonably required by Trinity House to prevent unauthorised persons being admitted to the Premises. If Trinity House gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Contractor shall take all reasonable steps to comply with such notice.

3.4 The decision of Trinity House as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key Personnel and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

3.5 The Contractor shall bear the cost of any notice, instruction or decision of Trinity House under Clause 3 in its entirety.

## **4. VARIATION**

Trinity House reserves the right by notice in writing to modify the quality or quantity of the Services. Any alteration to the price of the Contract as a result shall be agreed in writing between Trinity House and the Contractor.

## **5. STATUS OF CONTRACTOR**

5.1 The relationship between the Contractor and Trinity House shall be deemed for all purposes to be that of an independent contractor.

5.2 In carrying out the Contract the Contractor shall be acting as principal and not as agent of Trinity House. Accordingly:

(a) the Contractor shall not (and procure that his servants and agents do not) say or do anything that might lead any other person to believe that the Contractor is acting as agent of Trinity House;

(b) nothing in this Contract shall impose any liability on Trinity House in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of Trinity House to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of Trinity House, its staff or agents.

5.3 Notwithstanding Condition 6.1 in the event that Trinity House under current or future legislation is found liable for further income tax, and/or national insurance contributions in respect of payments made by Trinity House under this Contract such income tax and/or national insurance shall be deducted from any sums due to the Contractor under this Contract. If this Contract has come to an end for any reason by the time Trinity House receives the demand for such income tax, or national insurance contributions the Contractor hereby acknowledges liability in connection with such demand.

## **6. FEES, EXPENSES & PAYMENT**

6.1 Trinity House shall pay to the Contractor fees at the rate specified in the Purchase Order which may only be varied with the written agreement of Trinity House at its absolute discretion. In the case of individuals the fees for labour shall be paid net of income tax deducted at the standard rate unless the individual provides written proof from the Inland Revenue or the Inland Revenue states that he or she may be paid free of any such deduction.

6.2 The Contractor shall be entitled to be reimbursed by Trinity House the amount of all expenses reasonably and properly incurred by him in the performance of his duties hereunder, subject to the production of such evidence thereof as Trinity House may reasonably require.

6.3 Unless otherwise agreed in writing by Trinity House, payment will be made within 30 days of receipt of the Goods or Services or the correct invoice, whichever is the later.

6.4 Value Added Tax, where applicable, shall be shown as a strictly net extra charge.

## **7. SUB-CONTRACTING**

7.1 The Contractor shall not sub-contract any of his duties or responsibilities under this Contract without the prior written consent of Trinity House.

7.2 Sub-contracting shall not relieve the Contractor of any obligation or duty attributable to him under this Contract.

7.3 Where Trinity House consents to the placing of sub-contracts, a copy of each sub-contract shall be sent by the Contractor to Trinity House immediately as it is issued.

## **8. PRICE & PAYMENT**

8.1 The price of the Services shall be as stated on the Purchase Order and may only be varied with the prior written agreement of Trinity House at its absolute discretion. In the case of individuals the fees for labour shall be paid net of income tax deducted at the standard rate unless the individual provides written proof from HMRC, or HMRC states in writing that he or she may be paid free of any such deduction.

8.2 Unless otherwise agreed in writing by Trinity House, payment will be made within 30 days of receipt of the Services or the correct invoice therefor, whichever is the later.

8.3 Value Added Tax, where applicable, shall be shown as a strictly net extra charge.

## **9. AUDIT**

The Contractor shall keep and maintain until two years after completion of the Contract records to the satisfaction of Trinity House of all expenditures, which are reimbursable by Trinity House, and of the hours worked and costs incurred by the Contractor or in connection with any employees of the Contractor paid for by Trinity House on a time charge basis. The Contractor shall on request afford Trinity House such access to those records as required by Trinity House in connection with the Contract.

## **10. HEALTH, SAFETY AND THE ENVIRONMENT**

10.1 The Contractor shall carry out his obligations under the Contract in such ways as to eliminate risk of harm to the environment and to comply with all relevant environmental laws.

10.2 While on property owned or occupied by Trinity House the Contractor shall comply, and ensure that its Personnel comply, with all relevant health and safety and environmental laws and all other requirements of Trinity House in respect of health, safety and the environment, including (where applicable) the health, safety and environmental policies of Trinity House, which Trinity House will provide to the Contractor on the Contractor's request.

10.3 Trinity House shall ensure that it, its officers, employees, servant and/or agents comply with all relevant health and safety and environmental legislation and that it provides a safe working environment for the Contractor while the Contractor is on property owned or occupied by Trinity House.

## **11. DATA PROTECTION**

11.1 The Parties acknowledge that for the purposes of the Contract, Trinity House is the Controller and the Contractor is the Processor of Personal Data.

11.2 The Parties agree to comply with all applicable data protection laws, including the DPA 2018 and the GDPR.

11.3 The Contractor shall if deemed necessary, provide all reasonable assistance to Trinity House in the preparation and completion of a Data Protection Impact Assessment.

11.4 The Contractor and its Personnel shall:

(a) process Personal Data in accordance with the Contract and any requirements dictated by law only;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by Trinity House as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that it takes all reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that they are aware of and comply with the Contractor's duties under this clause and are subject to appropriate confidentiality undertakings accordingly.

(d) not transfer Personal Data outside of the EU unless the Contractor has obtained the prior written consent of Trinity House and has entered into a separate agreement governing the transfer of such data.

(e) delete or return Personal Data (and any copies of it) to Trinity House on termination of the Contract unless the Contractor is required to retain the Personal Data by law.

11.5 Subject to clause 11.6, the Contractor shall immediately notify and provide Trinity House with reasonable assistance if it:

- (a) receives a Data Subject Access Request;
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's data obligations;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

11.6 The Contractor's obligation to notify under clause 11.5 shall include the provision of further information to Trinity House in phases, as details become available.

11.7 The Contractor shall maintain complete and accurate records to demonstrate its compliance with this clause.

11.8 The Contractor shall allow Trinity House or its chosen auditor to complete an audit of its records to assess compliance with the data obligations within this clause.

11.9 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) obtain the written consent of Trinity House;
- (b) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
- (c) provide Trinity House with such information regarding the Sub-processor as Trinity House may reasonably require.

11.10 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

## **12. INDUCEMENTS & REWARDS**

The Contractor shall not offer or give or agree to give, to any employee or representative of Trinity House any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with Trinity House or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Contractor is drawn to the criminal offences created by the Bribery Act 2010.

## **13. INDEMNITY & INSURANCE**

13.1 The Contractor shall indemnify Trinity House, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against Trinity House, its servants or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract.

13.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the indemnity in Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of Trinity House, or any its servants or agents); the indemnity contained in Condition 13.1 shall not apply to the extent that the

loss, damage or injury is caused by the negligent or wilful act or omission of Trinity House, its servants or agents.

13.3 The Contractor shall have in force and shall require any sub-contractor to have in force:

(a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) public and professional liability insurances for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £2,000,000 for any one incident and unlimited in total, unless otherwise agreed by Trinity House in writing.

13.4 The policy or policies of insurance referred to in Condition 13.3 shall be shown to Trinity House whenever requested, together with satisfactory evidence of payment of premiums.

## **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 All intellectual property rights of any description (including but not limited to patents, design rights (registered or unregistered), database rights, copyrights, trademarks, and know-how) in any data, designs, documents, drawings, inventions, reports, results, software or other materials generated by the Contractor or its sub-contractors in performance of the Contract shall vest in and be the property of Trinity House.

14.2 On termination of the Contract or at any time so requested by Trinity House, the Contractor shall deliver up to Trinity House any data, designs, documents, drawings, inventions, reports, results, software or other materials in the Contractor's possession, custody or control generated by the Contractor or its sub-contractors in performance of the Contract.

14.3 Where the Contractor uses existing intellectual property of which he is the owner in performance of the Contract he hereby grants Trinity House a royalty-free irrevocable licence to use the same and shall notify Trinity House in writing of all such rights. The Contractor shall indemnify Trinity House against all losses, costs and expenses, including legal fees on an indemnity basis, incurred by Trinity House in using such rights.

14.4 The Contractor shall indemnify Trinity House against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from or incurred by the use of the Contractor, in the performance of the Contract, or the use by Trinity House following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the intellectual property rights of a third party.

14.5 The Contractor will not use the name of Trinity House or any other name, mark, device or logo identifying or associated with Trinity House without first obtaining the written approval of Trinity House.

14.6 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **15. FORCE MAJEURE**

15.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control. Industrial disputes and failures by sub-contractors are not force majeure hereunder.

15.2 If the period of delay or non-performance arising out of the force majeure circumstances continue for 90 days, the affected Party may terminate the Contract by providing written notice to the other Party.

## **16. INSOLVENCY**

If the Contractor becomes insolvent or bankrupt or (being a company) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purpose of reconstruction), Trinity House may, without prejudice to any other of its rights, terminate the Contract forthwith by notice to the Contractor or any other person in whom the contract may have become vested.

## **17. RECOVERY OF SUMS DUE**

Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with Trinity House.

## **18. EQUALITY**

The Contractor shall comply and shall procure that all servants, employees or agents of the Contractor and all Sub-Contractors comply with the Equality Act 2010 and all other relevant equality laws for the time being in force and any policies and procedures established by Trinity House in respect of, and to ensure compliance, with such equality laws.

## **19. FREEDOM OF INFORMATION**

The Contractor acknowledges that whilst Trinity House is not designated as a public authority pursuant to the Freedom of Information Act 2000 (“**FOIA**”), Trinity House has elected to act within the spirit of the FOIA where appropriate, and as such will provide such information as requested, with the exception of information which would be exempt from disclosure in accordance with the provisions of the FOIA.

## **20. CONFIDENTIALITY**

20.1 The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of confidentiality and then only to the extent necessary for the performance of the sub-contract) all information given by Trinity House in connection with the Contract or which becomes known to the Contractor through performance of the Contract (“Confidential Information”).

20.2 The parties acknowledge that, except for any information which would be exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. Trinity House shall be responsible for determining in its absolute discretion whether any of the content of the Contract would be exempt from disclosure in accordance with the provisions of the FOIA.

20.3 Trinity House may be required to publish the Contract to the general public. Notwithstanding any other term or Condition of the Contract, the Contractor hereby gives his consent for Trinity House to publish the Contract in its entirety, (but with any information which would be exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

20.4 The provision of this Condition 20 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **21. PREVENTION OF FRAUD**

21.1 The Contractor shall take all reasonable steps in regard to itself and its Personnel to prevent the occurrence of fraudulent activity.

21.2 The Contractor shall notify Trinity House immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Contractor or any of its Personnel to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

21.3 If the Contractor or its Personnel breaches any of its obligations under Clause 21 or commits any fraud in relation to the Contract or any other contract with Trinity House, Trinity House may recover in full from the Contractor, and the Contractor shall on demand indemnify Trinity House, in full against any and all losses sustained by Trinity House in consequence of the relevant breach or commission of fraud, including the cost reasonably incurred by Trinity House of making other arrangements for the supply of the Goods and/or Services.

## **22. DISPUTE RESOLUTION**

22.1 If any dispute arises between Trinity House and the Contractor in relation to the Contract, the Parties shall in good faith attempt to negotiate a settlement.

22.2 If the dispute is not resolved between Trinity House and the Contractor pursuant to Clause 26.1 within 60 days of a dispute being notified in writing to the other Party then, if the Parties agree, the dispute may be referred to a mediator as follows:

22.2.1 The mediator will be appointed by agreement of the Parties. In the event of a failure to agree within 14 days of a proposal by one Party, the mediator will be appointed by the Centre for Effective Dispute Resolution (CEDR).

22.2.2 Within 14 days of the appointment of the mediator the Parties will meet with the mediator in order to agree the procedure to be adopted for the negotiations.

22.2.3 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

22.2.4 If the Parties reach agreement on the resolution of the dispute during mediation the agreement will be reduced to writing and once signed by the Parties shall be binding on them.

22.3 Should the mediation fail, in whole or in part, any Party may upon giving written notice refer the referred dispute to the arbitration of two persons one to be appointed by Trinity House and one by the Contractor, in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The seat, or legal place, of the arbitration shall be England. The arbitration shall take place in London, England. All arbitration proceedings shall be conducted in the English language. This arbitration agreement shall be governed by English law.

## **23. TERMINATION**

23.1 If the Contractor becomes insolvent or bankrupt or (being a company) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purpose of reconstruction), the Contractor shall notify Trinity House in writing immediately. Trinity House may, without prejudice to any other of its rights, terminate the Contract forthwith by notice to the Contractor or any other person in whom the Contract may have become vested.

23.2 If the Contractor commits a breach of the Contract and fails within 20 days of notice from Trinity House to take such steps as may be necessary to remedy such breach, Trinity House may, without prejudice to any of its other rights terminate the Contract forthwith by notice to the Contractor.

23.3 Notwithstanding any provision to the contrary in the Contract, the Contract may be terminated by Trinity House at any time by giving to the Contractor 30 days' written notice.

23.4 Termination of the Contract shall not prejudice any rights, powers or remedies of any Party which had arisen on or before the date of termination of the Contract. Upon termination of the Contract each Party shall (if required by the other Party) promptly return to the other all data, materials and other property of the other held by it.



#### **24. NOTICES**

Any notice given under or pursuant to the Contract shall be sent to the address of Trinity House or the Contractor given on the Purchase Order, or to such other address as the parties advise the other by notice. Notices may be served personally or by post or by prepaid registered or recorded delivery post or transmitted by facsimile transmission or email resulting in the receipt of a written communication in permanent form. Letters shall be deemed served 48 hours after posting and other means of transmission shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

#### **25. WAIVER**

No delay or omission by Trinity House in exercising any of its rights or remedies under this Contract or under any applicable law shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

#### **26. SEVERANCE**

In the event that any provision of this Contract shall be void and unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect.

#### **27. HEADINGS**

The headings in these Conditions are for ease of reference only and shall not affect their interpretation.

#### **28. GOVERNING LAW**

These Conditions shall be subject to and interpreted in accordance with English law