

PROJECT REF: HPBC10196

PROJECT: CORPORATE DESKTOP ENCRYPTION & PORT CONTROL SOLUTION

CONDITIONS OF CONTRACT

1.0 Form of Contract

1.1 Sufficiency of Information/Acceptance

The Supplier shall be deemed to have satisfied himself as to the accuracy and sufficiency of prices stated by him (details of which are attached), which shall (except insofar as is otherwise provided in the contract) cover all his obligations under the contract and shall be deemed to have obtained for himself all necessary information as to risks, contingencies.

1.1.1 The Supplier warrants and represents to and undertakes with the Council that:

(ii) all information, representation and other matters of fact communicated (whether in writing or otherwise) to the Council by the Supplier his employees or agents in connection with the Contract Documents are true, complete and accurate in all respects;

(iii) he has not applied to contract with the Council in reliance upon any representation or statement (whether made orally in writing or otherwise) which may have been made by or on behalf of the Council;

(iv) he has full power and authority to enter into the contract and to perform the Service;

(v) he is of sound financial standing and has sufficient working capital available to him to perform the Service in accordance with the contract for the entire duration of the Contract Period.

1.2 Documents mutually explanatory

1.2.1 Except as otherwise expressly provided herewith the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Authorised Officer (hereinafter mentioned) who shall thereupon issue to the Supplier appropriate instructions in writing and the Supplier shall carry out and be bound by such instructions.

1.3 In the event of any inconsistency between the Conditions and any provisions in any of the other Contract Documents the Conditions shall prevail.

1.4 Variation of Conditions

1.4.1 Following the formation of a binding agreement no deletion from, addition to or variation of the conditions shall be valid or of any effect unless agreed in writing by the Council and signed personally by the Council's Head of Legal and Democratic Services.

1.5 Copyright

- 1.5.1 Copyright in the Contract Documents shall vest in the Council but the Supplier may obtain or make at his own expense any further copies required for use by the Supplier in performance of the Service.

2.0 Authorised Officer

- 2.1 The Authorised Officer shall be the Strategic Director of the service or such other representative appointed by him in writing.
- 2.2 The Council shall forthwith give notice in writing to the Supplier of the replacement of the Authorised Officer.
- 2.3 From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. Immediately any such appointment is made the Authorised Officer will give written notice thereof to the Supplier.

3.0 Variation of the Service

- 3.1 The Authorised Officer shall be entitled to issue to the Supplier instructions in writing in relation to all or any of the following:-
 - 3.1.1 To omit any part of the Service or to cease to provide any part of the Service during such times and for such period or periods as the Authorised Officer may determine.
 - 3.1.2 To provide the Service or any part thereof in such manner as the Authorised Officer may reasonably require providing that a requirement to provide the Service to the contract standard shall not be a variation.
 - 3.1.3 To provide such services additional to the Service as the Authorised Officer may reasonably require provided that such additional services shall be the same as or similar to the Service.
 - 3.1.4 To vary the Service or any part thereof.
- 3.2 The Valuation of Variations made pursuant to this condition shall be ascertained by the Authorised Officer in accordance with the following provisions:
 - 3.2.1 Where part of the Service are omitted from or ceases to be provided under the Contract or where the variation is of a similar character to and is executed under similar conditions to the Service the valuation shall be determined in accordance with the cost per item set out in the Contract Documents but where the variation is not of a similar character to or is not executed under similar conditions to the Service the valuation shall be made at a fair rate taking into account all the circumstances.
 - 3.2.2 For the avoidance of doubt no increase in the contract price or additional payments shall be made in respect of the variation if there is a compensating reduction or re-organisation of any other part of the Service.

4.0 Supplier's Obligations

- 4.1 During the Contract Period the Supplier shall provide the Service in a proper, skilful and workmanlike manner and to the entire satisfaction of the Authorised Officer.
- 4.2 The Supplier shall ensure that neither his employees nor agents shall do any act or thing at any location owned or occupied by the Council other than the proper performance of the Service.
- 4.3 The Supplier must not at any time during the Contract Period park any vehicles at any location which cause nuisance disturbance or annoyance

to the Council members of the public or owners or occupiers of adjoining or neighbouring premises.

- 4.4 The Supplier shall ensure that no damage is caused to any Council equipment used in or during the performance of the Contract and shall reimburse the Council for the cost of repair of any damage caused to the Council equipment or property by the Supplier his employees or agents.

4.0 Control and Supervision of Supplier's Employees

- 5.1 The Supplier shall appoint a Contract Manager empowered to act on behalf of the Supplier for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been made or given to the Supplier.
- 5.2 The Supplier shall forthwith give notice in writing to the Authorised Officer of the identity, address and telephone number of the person appointed as Contract Manager and of any subsequent appointment.
- 5.3 The Supplier shall forthwith give notice in writing to the Authorised Officer of the identity address and telephone number of any person authorised to act for any period as deputy for the Contract Manager and when such deputy ceases to be so authorised.
- 5.4 The Contract Manager shall inform the Authorised Officer promptly of and confirm in writing any instances of activity or omission on the part of the Council which prevent or hinder or which may prevent or hinder the Supplier from complying with the Contract. The provision of information under this condition shall not in any way release or exclude the Supplier from any of its obligations under the Contract.
- 5.5 The Supplier shall provide and shall ensure that his employees wear at all times when engaged on the provision of the Service such identification including photographic identification as may be specified by the Council.
- 5.6 When requested to do so any employee of the Supplier shall disclose his identity and status as an employee of the Supplier and shall not attempt to avoid so doing.

6.0 Supplier's Employees

- 6.1 The Supplier shall ensure that every person employed in connection with the Service are at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the Service.

7.0 Confidentiality

- 7.1 The Supplier shall not without the written consent of the Authorised Officer during the Contract Period or at any time thereafter make use of for his own purposes or disclose to any person (except as may be required by law) the Contract Documents or any information contained therein or in any material provided to the Supplier by the Council or prepared by the Supplier for the purposes of the Contract all of which information shall be deemed to be confidential.

- 7.2 The Supplier shall neither dispose nor part with possession of any confidential material provided to the Supplier by the Council for the purposes of the Contract or prepared by the Supplier for the purpose of the Contract other than in accordance with the express written instructions of the Council.
- 7.3 The Supplier shall not and shall ensure his employees do not divulge to any third party any information which comes into his or their possession in the course of providing the Service.
- 7.4 The Supplier shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this condition.

8.0 Health and Safety

- 8.1 The Supplier shall at all times comply with the requirements of the Health & Safety at Work Etc Act 1974 and of any Acts, Regulations or Orders pertaining to health & safety.
- 8.2 The Supplier shall provide his Safety policy document (which shall have regard to the Council's General Statement of Safety Policy) to the Authorised Officer within seven days of the commencement date. The Supplier shall forthwith nominate a person to be responsible for health and safety matters, the identity of such person to be supplied to the Council. Whilst on premises owned or occupied by the Council the Supplier shall ensure that his employees comply with the Council's General Statement of Safety Policy and with the requirements of the Council's Safety Officer.
- 8.3 The Authorised Officer shall be empowered to suspend the provision of the Service or part thereof in the event of non compliance by the Supplier with this condition or with its legal duties in health and safety matters. The Supplier shall not resume provision of the Service or such part until the Authorised Officer is satisfied that the non-compliance has been rectified.

9.0 Agency

- 9.1 Neither the Supplier nor his employees shall in any circumstances hold himself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by these conditions.
- 9.2 Neither the Supplier nor his employees shall in any circumstances hold himself or themselves out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 9.3 Neither the Supplier nor his employees shall in any circumstances hold himself or themselves out as having the powers to make, vary, discharge or waive any byelaw or regulation of any kind.

10.0 Observance of Statutory Requirements

- 10.1 The Supplier shall comply with all statutory and other provisions to be observed and performed in connection with the Service and shall indemnify the Council against all actions, claims, demands, proceedings,

damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this condition.

11.0 Gratuities

11.1 The Supplier shall not, whether himself or by any person employed by him to provide the Service, solicit or accept any gratuity, tip or any other form of money, taking or reward, collection or charge for any part of the Service other than charges properly approved by the Council in accordance with the provisions of the Contract.

12.0 Indemnity and Insurance

12.1 The Supplier shall indemnify and keep indemnified the Council against any action, claim, demand, proceedings, damages, costs, charges and expenses whatsoever resulting from or relating to the injury to or death of any person and loss of or damage to any property including property belonging to the Council except and to the extent that it may arise out of the act, default or negligence of the Council its employees or agents not being the Supplier or employed by the Supplier.

12.2 Without thereby limiting its responsibilities under this condition the Supplier shall insure with an insurance company approved by the Council against all third party claims including the injury to or death of any person and loss of or damage to any property arising out of or in consequence of the Supplier's obligations under the Contract against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.

12.3 The insurance in respect of any such personal injury to or death of any person arising under a Contract of Service with the Supplier and arising out of an incident occurring during the course of such person's employment shall comply with the Employer's liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1972 and any statutory orders made thereunder.

12.4 For all claims other than under Condition 12.3 against which this condition requires the Supplier to insure, the insurance cover shall be in the sum of £ 5,000,000 (five million pounds) or such greater sum as the supplier may choose in respect of any one incident and the Supplier's insurance policy effecting such cover shall have the interest of the Council endorsed thereon or shall otherwise expressly by its terms confer its benefits upon the Council.

13.0 Security

13.1 The Supplier shall ensure that his employees maintain the security of the Council's premises and land.

13.2 The Supplier shall comply with the Council's security procedures including any made for the purpose of the Data Protection Act 1984. In particular but without prejudice to the generality of the foregoing the Supplier shall not read and shall prohibit his employees from reading any documents whether printed, typed or hand written and whether or not produced by computer or word processor or the information displayed on any screen or listen to the contents of any tape or electronically produced recording.

- 13.3 The Supplier shall hold access keys as required by the Authorised Officer and particularly where any part of the Service are to be provided outside normal working hours. In such circumstances the Supplier shall be responsible for the security of any location owned or occupied by the Council and shall ensure that such location is properly secure both whilst the Service are being provided and after any part of the Service has been provided.
- 13.4 The Supplier shall issue to any of his employees who shall at any time have access to any location owned or occupied by the Council security passes in such form as the Council may from time to time determine and issue to the Supplier.
- 13.5 The Supplier shall be responsible for the safe keeping of any keys, passes and other means of access provided to the Supplier by the Council and shall only permit such keys, passes and other means of access to be given to those of the Supplier's employees whose names and addresses have been supplied to the Council and then only to the extent required for the purpose of providing the Service. In addition the Supplier shall ensure that the Authorised Officer is informed immediately of the loss of any keys and other means of access and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a result of such loss.

14.0 Payments

14.1 Payments shall be made in accordance with the agreed payment terms and an invoice

will be submitted by the Supplier and payment will be made within 30 days from receipt of the invoice.

14.2 Any variation shall be agreed in writing in advance by the Authorised Officer in any month and should be itemised separately and an invoice or credit note submitted at the end of the month.

15.0 Value Added Tax

15.1 In addition to the sum specified in the above Condition the Council shall pay to the Supplier such Value Added Tax as may be properly chargeable by the Supplier in connection with the provision of the Service. The Supplier shall issue a tax invoice in respect thereof.

16.0 Assignment and Sub-Contracting

16.1 The Council shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Supplier.

16.2 The Supplier shall not:

16.2.1 Assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;

16.2.3 Sub-contract the provisions of the Service or any part thereof to any person without the previous written consent of the Council which consent shall be in the discretion of the Council and if given shall not

relieve the Supplier from any liability or obligation under the Contract and the Supplier shall be responsible for the acts, defaults or neglect of any sub-supplier, his employees or agents in all respects as if they were the acts, defaults or neglect of the Supplier his employees or agents.

17.0 Termination

17.1 If the Supplier, his employee or any person acting on his behalf (whether with the Supplier's knowledge or not) offers, gives or agrees to give any person any gift or consideration of any kind as an inducement or reward for doing or not doing or having done or not done anything in relation to the obtaining of the Contract or any other contract with the Council or for showing favour or not showing disfavour to any person in relation to the Contract or any other contract with the Council, or, if in relation to the Contract or any other contract with the Council the Supplier or any person employed by the Supplier or acting on the Supplier's behalf has committed any offence under the Prevention of Corruption Acts 1889 -1916 or has given any fee or reward to any member or officer of the Council by virtue of their office or employment other than such member or officer's proper remuneration the Council shall be entitled to terminate the Supplier's employment under the Contract and without prejudice to Condition 17.3 to recover from the Supplier the amount of any loss resulting from such termination.

17.2 If the Supplier:

17.2.1 commits a breach of any of his obligations under this contract;

17.2.2 becomes bankrupt or makes a composition or arrangement with his creditors or has a proposal in respect of his company for voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;

17.2.3 has an application made under the Insolvency Act 1986 to the Court for the appointment of an Administrative Receiver;

17.2.4 has a Winding Up Order made (except for the purposes of amalgamation or reconstruction) or a resolution for voluntary winding up passed;

17.2.5 has a provisional Liquidator, Receiver or Manager of his business or undertaking duly appointed;

17.2.6 has an Administrative Receiver as defined in the Insolvency Acts 1986 appointed;

17.2.7 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;

17.2.8 is in circumstances which entitle the court or a creditor to appoint or have appointed a Receiver, a Manager or Administrative Receiver or which entitle the court to make a Winding Up Order;

- 17.2.9 suffers execution to be levied on his goods;
then in any such circumstances the Council may without prejudice to any accrued rights or remedies under the Contract terminate the Supplier's employment under the Contract by notice in writing having immediate effect.
- 17.3 If the Supplier's employment is terminated as provided in the above Conditions and is not reinstated the Council shall;
- 17.3.1 cease to be under obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Supplier's employment have been calculated and provided such calculation shows a sum or sums due to the Supplier;
- 17.3.2 be entitled to repossess any of its materials, clothing, equipment, vehicles or other goods loaned or hired to the Supplier and to exercise a lien over any of the materials, clothing, equipment, vehicles or other goods belonging to the Supplier for any sum due hereunder or otherwise from the Supplier to the Council;
- 17.3.3 be entitled to employ and pay other persons (whether or not employees of the Council) to provide and complete the provisions of the Service or any part thereof and be under no obligation to employ the least expensive method of provision of the Service;
- 17.3.4 be entitled to deduct from any sum or sums which would but for this Condition have been due from the Council to the Supplier under this Contract or any other contract or be entitled to recover the same from the Supplier as a debt any loss or damage to the Council resulting from or arising out of the termination of the Supplier's employment. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Supplier's employment and in making alternative arrangements for the provision of the Service or any part thereof;
- 17.3.5 when the total costs loss/and or damage resulting from or arising out of the termination of the Supplier's employment has been calculated and deducted so far as practicable from any sum or sums which but for this Condition would have been due to the Supplier any balance shown as due to the Council shall be recoverable as a debt or alternatively the Council shall pay to the Supplier any balance due to the Supplier.
- 17.4 The rights of the Council under this Condition are in addition to and without prejudice to any other rights the Council may have whether against the Supplier directly or pursuant to any guarantee, indemnity or bond.

18.0 Recovery of Sums Due to the Council

- 18.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Supplier to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Contract or any other contract with the Council.

19.0 Notices

- 19.1 Any Demand, Notice or other communication required to be given hereunder shall be sufficiently served on the Council if it is sent by pre-paid First Class or Recorded Delivery post or delivered by hand to the Head of Legal & Democratic Services High Peak Borough Council, Council Offices, Hayfield Road, Chapel-en-le-Frith, High Peak, SK23 0QJ or such other address or addresses as the Head of Legal and Democratic Services shall notify to the Supplier in writing.
- 19.2 Any Demand, Notice or other communication required to be given hereunder shall be sufficiently served on the Supplier if it is sent by pre-paid First Class or Recorded Delivery post or delivered by hand to the registered office, principal place of business or if it is delivered by hand to a director, proprietor or the Contract Manager, his duly authorised deputy or other responsible representative of the Supplier.

20.0 Waiver

- 20.1 Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Supplier of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or of any part thereof or the right of the Council to enforce any provision in accordance with its terms.

21.0 Severance

- 21.1 If any provision of the Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provisions of the Contract all of which shall remain in full force and effect.

22.0 Whole Contract

- 22.1. The Contract Documents as defined in Condition 1 constitute the whole agreement and understanding of the parties as to the subject matter of the Contract and there are no prior or contemporaneous agreements between the parties with respect thereto.

23.0 Amendments

- 23.1 No amendments to the Contract shall be binding unless in writing and signed by the duly authorised representative of the Council and of the Supplier and expressed to be for the purpose of such amendment.

24.0 Data Protection Act 1998/ Freedom of Information Act 2000

24. 1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of this contract:
- 24.1.1 The Council shall be entitled to publish and/or release any and all terms or conditions of this contract, the contents of any documentations and/or information relating to the formation of this contract under the provisions of the Freedom of Information Act 2000 and/or Data Protection Act 1998 as it sees fit;
- 24.1.2 nothing contained in this contract shall prevent the council from disclosing and/or publishing under the provisions of the Data Protection

Act 1998 and/or Freedom of Information Act 2000 any term or condition or information contained in or relating to the formation of this contract

24.2 The Supplier shall:

24.2.1 co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the Data Protection Act 1998 and/or Freedom of Information Act 2000;

24.2.2 supply all such information and documentation at no cost to the Council and within seven days of receipt of any request;

24.3 The Supplier shall not publish or otherwise disclose any information contained in this contract or in any negotiations leading to it without the council's previous written consent unless the supplier is bound to publish and/or disclose such information under the Data Protection Act 1998 and/or Freedom of Information Act 2000 and such information is not exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000.

25.0 Whistleblowing

Whilst operating under the terms of this Contract if you have serious concerns or doubts about the honesty and integrity of a Council employee which may involve dangerous practice, fraud, corruption, sexual or physical abuse or anything else which may be unethical conduct or a possible offence, then the Council asks and expects that you raise these concerns under its Whistleblowing Policy. A full copy of the policy is available from the Council's Personnel Service.

26.0 Work Sheets

The Supplier will supply work sheets detailing work carried out according to requirements issued by the service concerned.

27.0 Guarantee Bond

For contracts with a value of £75,000 or more, a contract security Bond may be requested to be provided by the Supplier in the form approved by the Council at the Suppliers cost.

AGREEMENT

CORPORATE DESKTOP ENCRYPTION & PORT CONTROL SOLUTION

THIS Contract is made the _____ day of _____ 20xx

HIGH PEAK BOROUGH COUNCIL ('The Council') of Council Offices,
Hayfield Road, Chapel en le Frith, High Peak SK23 0QJ of the one part and [
enter Supplier Name ###] ('the Supplier') of [### enter Supplier
Address ###]

WHEREAS

- (1) The Council wishes to have provided the Service ("the Service") set out in the contract and
- (2) The Supplier is willing to perform the Service in accordance with the provisions thereto

NOW IT IS AGREED between the Council and the Supplier as follows:

- (A) This document together with the
 - (i) Specification and Tender;
 - (ii) General Conditions of Contract;
 - (iii) Pricing Schedule

("the Contract Documents") constitutes the sole Contract or Agreement between the Council and the Supplier for the performance by the Supplier of the Service.

- (B) The Supplier shall provide the Service in an efficient effective and safe manner to the complete satisfaction of the Council and in such manner

as shall promote and enhance the image and reputation of the Council from the date hereof and terminating on [### enter End Date ###]. ('the Contract Period'). Upon satisfactory performance of the Contract the Contract will have the option to extend the Contract Period for a further [### enter Extention Period – Number & Words ###] years.

(C) Provided that the Supplier shall provide the Service in accordance with the provisions herein contained or referred to, to the complete satisfaction of the Council, the Council will pay to the Supplier all sums due to the Supplier in accordance with the provisions herein contained or referred to.

(D) In the event of a conflict of the terms of the Specification and Tender, and Conditions of Contract, the Conditions of Contract shall prevail.

(E) No term of this agreement may be enforced by any person who is not a party to

this agreement by virtue of Section 1 of the Contract (Rights of Third Parties) Act 1999

IN WITNESS the parties hereto have hereunto set their respective hands the day and year first before written

SIGNED on behalf of
HIGH PEAK BOROUGH COUNCIL
in the presence of

SIGNED on behalf of ### ENTER SUPPLIER NAME ###
in the presence of

Witness signature

Witness name

Witness address
