

Gedling

Borough Council



Contract for the provision of IT Services
to

Nottingham City Council

-by-

Gedling Borough Council

This Contract is dated the 1 day of April 2018

Parties

- (1) Nottingham City Council of Loxley House, Station Street, Nottingham, NG2 3NG ('NCC'); and

- (2) Gedling Borough Council of Civic Centre, Arnot Hill Park, Arnold, Nottingham NG5 6LU ('GBC')

Background

- (A) NCC, as the accountable body for East Midlands Councils ('EMC'), requires IT Support for EMC, and
- (B) GBC has the expertise and is willing to provide such IT Support;
- (C) It is agreed that GBC shall provide IT Support to EMC on the terms and conditions set out in this contract.

Agreed Terms

1. Interpretation

1.1 Definitions

Business Day: a day other than a Saturday, Sunday or public holiday in England when Banks are open for business.

Charges: the charges set out in Schedule 2 payable by NCC for the supply of the Services by GBC to EMC.

Conditions: these terms and conditions set out below.

Contract: this agreement between NCC and GBC for the supply of Services to EMC in accordance with the agreed terms and any Schedules.

Data Protection Legislation: (i) the DPA 1998; and then (ii) the GDPR and any applicable national implementing laws, regulations and secondary legislation as amended from time to time and the DPA 2018 subject to Royal Assent to the extent that it relates to the processing of personal data and privacy, (iii) any successor legislation to the GDPR or the DPA 2018 relating to the processing of personal data and privacy

Data Controller and Data Processor shall have the same meanings as are assigned to the terms "controller" and "processor" in the GDPR

Data Subject, Personal Data and Personal Data Breach: shall have the same meaning as given in the GDDPR;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data breach;

Data Subject Access Request: 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;

Default: any failure of either party to carry out and comply with their respective obligations under this Contract

DPA 1998: the Data Protection Act 1998

DPA 2018: the Data Protection Act 2018

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Services: the services to be provided by GBC to EMC pursuant to this Contract as described in Schedule 1

Services Start Date: the day on which GBC is to start provision of the Services, as set out in Clause 2.2 below

Sub-processor: any third party appointed to process Personal Data related to the Contract on behalf of the Supplier

1.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or reenacted.
- (b) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to writing, or written, includes fax and e mail.

2. Start Date and term

2.1 This agreement shall start on 1 April 2018 and shall be for a term of 1 year, unless terminated in accordance with clause 7, or extended in accordance with clause 2.2 below.

2.2 The parties may extend this Contract beyond the term stated above by a further period or periods of up to 1 year. If the either party wishes to extend this Contract it shall give to the other party at least 3 months' written notice of such wish before the expiry of the Initial Term or extension period; any agreement to extend must be in writing and signed by both parties.

3. **Supply of Services**

3.1 GBC shall supply the Services to EMC from the Services Start Date (see clause 2.1 above) in accordance with this Contract and the Schedules.

3.2 In supplying the Services GBC shall:

- (a) perform the Services with all professional care, skill and diligence in accordance with good industry practice; and
- (b) comply with all statutes, orders, regulations or rules of law which shall apply to the due and adequate performance of this Contract, for the duration of the Contract; and
- (c) ensure its employees, servants, agents or sub-contractors observe and comply with relevant rules and regulations as may be in force at any time; and
- (d) comply with all reasonable monitoring requirements specified in the Schedules in relation to the Services.

4. **Nottingham City Council's obligations**

4.1 NCC shall, and shall procure that EMC shall:

- (a) co-operate with GBC in all matters relating to the Services; and
- (b) use reasonable endeavours to ensure that any information provided to GBC is complete and accurate; and
- (c) replace the back-up tape each day and ensure a number of recent tapes are kept far enough off site to ensure safety should either site be destroyed; and

- (d) to store back up tapes referred to above in a secure, fireproof safe, if possible; and
- (e) Maintain software and hardware support contracts on all IT assets to allow for support calls and upgrades to take place; and
- (f) comply with all obligations referred to in this Contract including the Schedules; and
- (g) provide such information as GBC may reasonably request and GBC considers necessary, in order to carry out the Services in a timely manner; and
- (h) provide access to premises as reasonably required by GBC to carry out the Services; and
- (i) ensure all staff using the hardware and software are fully trained to use such hardware and/or software; and
- (j) pay costs in accordance with Clause 5 below; and
- (k) obtain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.

5. **Charges and Payment**

- 5.1 In consideration for the provision of the Services, NCC shall pay to GBC the Charges set out in this clause 5 and in Schedule 2.
- 5.2 All amounts payable by NCC exclude amounts in respect of VAT which NCC shall additionally be liable to pay to GBC at the prevailing rate (if applicable) and subject to a VAT invoice.
- 5.3 NCC shall pay each undisputed invoice which is properly due and submitted to it by the Council within 30 days of receipt, to a bank account nominated in writing by the Council.
- 5.4 If NCC fails to make any payments due to the Council under this contract by the due date for payment, then, without limiting GBC's remedies under clause 9, NCC shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the date due until actual payment of the overdue amount, whether

before or after judgement. NCC shall pay the interest together with the overdue amount.

6. **Insurance**

6.1 During the term of this contract GBC shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities (minimum sum insured £10,000,000) which may arise under or in connection with this Contract, and shall produce to NCC on request both the insurance certificate giving details of the cover and the receipt for the current year's premium in respect of each insurance.

7.0 **Termination**

7.1 If there is default by one party to this Contract the other party may by written notice terminate this Contract forthwith.

7.2 Notwithstanding clause 7.1, where in the event of any Default the aggrieved party is of the opinion that the Default is capable of remedy, the aggrieved party may serve on the other party a Default Notice requiring remedy of the default within an expressed time limit. If the Default continues, the aggrieved party may serve a persistent Default Notice requiring immediate remedy of the Default. If the Persistent Default notice is not complied with the aggrieved party may by notice terminate the Contract forthwith.

7.3 GBC shall be entitled (at its option) to cancel this Contract and to recover from NCC the amount of any loss resulting from such cancellation if:

- (a) NCC shall have offered, promised or given a financial or other advantage to another person, and NCC intends the advantage to induce a person to perform improperly, or reward a person for improper performance of a relevant function or activity in relation to obtaining or execution of the contract or any other contract with GBC; or NCC knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the contract or any other contract with GBC; or
- (b) If the like acts shall have been done by any person associated with NCC or acting on its behalf (whether with or without the knowledge of NCC); or

(c) In relation to any contract with GBC, NCC or any person associated with it or acting on its behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

7.4 Premature termination of this Contract shall not prejudice the accrued rights of either party.

7.5 Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

8 **Exit arrangements**

8.1 On termination of this Contract for whatever reason GBC shall, if so requested by NCC, provide all assistance reasonably required by NCC to facilitate the smooth transition of the Services to NCC or to EMC or any replacement service provider appointed by NCC.

9 **Force Majeure**

9.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.

10 **Assignment**

10.1 Neither party may assign, transfer or sub-contract any or all of its rights or obligations under this Contract without the prior written consent of the other party.

11 **Data Protection**

11.1 The parties agree and acknowledge that for the purposes of the Data Protection Legislation EMC is the Data Controller and GBC is the Data Processor.

11.2 GBC shall notify the EMC immediately if it considers that any of the EMC's instructions infringe the Data Protection Legislation.

11.3 GBC shall in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) only process that Personal Data in accordance with Schedule 4, unless GBC is required to do otherwise by law;
- (b) ensure that it has in place appropriate technical and organisational measures as appropriate to protect against a Data Loss Event having taken account of:
 - i) the nature of the data to be protected;
 - ii) harm that might result from a Data Loss Event;
 - iii) state of technological development; and
 - iv) the cost of implementing any measures;
- (c) ensure that all personnel who have access to and/or process Personal Data do not process Personal Data except in accordance with the Contract;
- (d) ensure that it takes all reasonable steps to ensure the reliability and integrity of any personal engaged in the provision of the Services and have access to Personal data and ensure that they:
 - i) are aware of and comply with GBC's obligations under this Clause 11;
 - ii) are obliged to keep the Personal Data confidential;
 - iii) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (e) not transfer any Personal Data outside the United Kingdom;
- (f) assist EMC in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) immediately notify EMC without any undue delay upon becoming aware of a Data Loss Event or suspected Data Loss Event;
- (h) at the written direction of EMC delete or return Personal Data (and any copies of it) to EMC on termination of the Contract unless GBC is required by law to retain the Personal Data; and
- (i) maintain complete and accurate records and information to demonstrate compliance with this clause and allow for audits by the EMC or the EMC's designated auditor.

11.4 Before allowing any Sub-processor to process any Personal Data relating to this Contract, GBC must:

- (a) notify NCC in writing of the intended Sub-processor and processing;
- (b) obtain the prior written consent of NCC;
- (c) enter into a written agreement with the Sub-processor incorporating terms which are substantially similar to those set out in this Clause 11; and
- (d) provide NCC with such information regarding the Sub processor as NCC may reasonably require.

11.5 GBC shall remain fully liable for the acts or omission of any Sub processor.

12 **Freedom of Information**

12.1 GBC is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIR'). NCC shall and shall procure that EMC shall:

- (a) Provide all necessary assistance and cooperation reasonable requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR;
- (b) Transfer to the Council any requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
- (c) Not respond directly to a request for information unless authorised by the Council in writing to do so.

12.2 NCC acknowledges that the GBC may be required under the FOIA or the EIRs to disclose information (including commercially sensitive information) without consulting or obtaining the consent of NCC/EMC. GBC will take reasonable steps to notify NCC/EMC of any request for information to the extent that it is permissible and reasonably practical for it to do so but GBC shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure with the provisions of the FOIA and/or the EIRs.

13 **Liability**

- 13.1 GBC's total liability to NCC and EMC under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the Charges payable to GBC under this Contract.

14 **Entire Agreement**

- 14.1 This Contract (including the Schedules) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings between them, whether written or oral, relating to its subject matter.

15 **Variation**

- 15.1 No variation of this Contract shall be effective unless it is in writing and signed by both parties.

16 **Waiver**

- 16.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of any right or remedy shall not:

- (a) Waive that or any other right or remedy; or
- (b) Prevent or restrict the further exercise of that or any other right or remedy.

17 **Notices**

- 17.1 Any notice or other communication (other than the service of any proceedings or documents in any legal action) given to a party under or in connection with this Contract shall:

- (a) be in writing, addressed to that party at its office as detailed in this Contract, and shall be delivered personally, or sent by pre-paid first class post or other next day delivery service, commercial courier, fax or e mail.
- (b) be deemed to have been received: if delivered personally, at that date and time of delivery; if sent by prepaid first class post or other next working day delivery service, at 10.00am on the second Business Day after posting; if delivered by commercial courier, on the date and time on the courier's signed receipt; if sent by fax or e mail, one Business Day after transmission.

18 **Confidentiality**

- 18.1 Each party undertakes that it shall not at any time disclose to any person any confidential information relating to this Contract except as permitted by clause 12.2.
- 18.2 Each party may disclose the other party's confidential information :
 - (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out that party's obligations under this Contract;
 - (b) as may be required by law (including in connection with the Freedom of Information Act), or any governmental or regulatory authority.
- 18.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Contract.

19 **Third Party Rights**

- 19.1 No one other than the parties to this agreement shall have any right to enforce its terms.

20 **Governing Law**

- 20.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) shall be governed by, and in accordance with, the laws of England and Wales.
- 20.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Signed by 

Name..... Stuart Young

Position: Executive Director

For and on behalf of **Nottingham City Council**

Signed by Helen E Barrington

Name: HELEN BARRINGTON

Position: DIRECTOR OF ORGANISATIONAL DEVELOPMENT
& DEMOCRATIC SERVICES

For and on behalf of **Gedling Borough Council**

Schedule 1 – Services

Nottinghamshire City Council's shall be:

Name:
Position:
Address:
Direct line telephone E
mail:

East Midland's Council's Representative shall be:

Name:
Position:
Address:
Telephone number:
E mail:

GBC's Representative shall be:

Name: Gary Bennett
Position: R and D Manager
Address: Gedling Borough Council, Civic Centre, Arnot Hill Park, Arnold,
Nottingham NG5 6LU Direct line telephone: 0115 901 3871
E mail : gary.bennett@gedling.gov.uk

The Services:

Definitions:

Engineering Day is the work of one engineer for one day, if two attend on the same day it is two engineering days.

Incident is an unplanned interruption or reduction in quality of an existing service. There are broken into minor, major and disaster.

- **Minor** – Faults that affect a single device, can be worked around or have a limited impact on operations. This includes, but isn't limited to the examples below:
 - Unlocking an account when a user has forgotten a password
 - Unblocking a website on the proxy
 - A single PC cannot be used
 - A PC cannot print or access the Internet
- **Major** - Faults that affect the whole network, prevent most operational work and cannot be worked around. These would take one to two engineering days to resolve. This includes, but isn't limited to the examples below:
 - Failure of a major component such as the server, MFD or Internet connection which affects the entire network.
 - Malware outbreaks which can be contained and cleaned up easily.
- **Disaster** – Major disasters that prevent the operation of the network and requires more the two engineering days to resolve. This includes, but isn't limited to the examples below:
 - A disaster affecting the whole network such as a fire or structural failure of the building.
 - A Malware outbreak which affects the whole network.

Request for Change (RFC) is a formal request for a change or amendment to an existing service. RFCs are broken down into minor and major:

- **Minor** – Changes on a single device or software component. This includes, but isn't limited to the examples below:
 - Install a piece of software
 - Move a piece of software from one PC to another
 - Install a printer driver on the server
 - Adding and removing users from the network
 - Changing a user's security permissions

- **Major** – Changes or upgrades to multiple devices, the introduction of new services, redesign of the network, assistance to 3rd parties in implementing new systems. This includes, but isn't limited to the examples below:
 - Moving to a new office space
 - Introduction of a new Multifunction printer
 - Replacement of major system components, such as security systems, servers, network components, telephone systems
 - Rollout of new software to all PCs
 - Manual reconfiguration of all PCs

Helpdesk is a telephone service provided by Gedling IT for reporting Incidents and RFCs. It is manned Monday to Friday 8am to 5:30pm except for Bank Holidays and any other Council wide concessionary days.

Gedling ICT Services shall provide to EMC:

Normal IT Support:

1. A telephone helpdesk service for reporting Incidents and RFCs. It is expected there will be around 100 calls per year, although there is no cap on this number.
2. Remote patching of existing hardware and software components.
3. Remote resolution of incidents & minor RFCs.
4. Two onsite days a year, initially to be used to complete outstanding incidents, software/hardware patching and minor RFCs that require onsite work. If there is any time left, the rest of the days can be used for any purpose, for example advice and ad-hoc training. The Engineer will be on site for a minimum of 6 hours per day.
5. Onsite response to Major Incidents.
6. General advice on security and service planning, including when components reach the end of their useful life.
7. Liaison with hardware and support companies as required for fixing incidents.
8. Organise the tape cycle and check backups are working.
9. Disposal of equipment securely, passing on disposal costs (if any) incurred from our supplier.

Out of scope support:

10. This will include all Major requests for change and Disaster Incidents; as described above

Schedule 2 – Charges

The Council's Bank details for payment are:

Bank name: HSBC plc

Address: 104 Front St, Arnold. Nottingham, NG5 7EG

Sort Code: 40-08-46

Account number: 51474146

Please quote your account/invoice number

Charges

Normal Service: £6,000 per year, to be invoiced in April 2018.

Out of Scope Support: Charges are to be agreed prior to commencement of any work, unless it is necessary to react immediately in which case urgent works will be conducted and charges agreed later; estimates/charges for out of scope work to be based on a rate of £250 per engineer day, or £125 per half day or part thereof.

Schedule 3 – Data Processing

SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Description	Details
Subject matter of the processing	The provision of IT services and support.
Duration of the processing	GBC may process Personal Data on behalf of the EMC throughout the duration of the Contract.

<p>Nature and purpose of the processing</p>	<p>GBC may retrieve, consult, use and align whilst having remote access or on-site access to EMC's system for the purposes of fixing a report fault only.</p> <p>GBC may collect, record and store Personal Data relating to the employee reporting a fault when recording the fault reported.</p> <p>GBC may record, store, erase or destroy Personal Data whilst providing the back-up services.</p>
<p>Type of Personal Data</p>	<p>Includes name, address, date of birth, NI number, telephone number, images, email address, gender, ethnicity, health information.</p>
<p>Categories of Data Subjects</p>	<p>Customer, employees, members, contractors, consultants and agents of EMC</p>
<p>Return or destruction of Personal Data</p>	<p>Access for the purpose of fixing a reported fault – no data may be recorded or stored. No data to return or destroy.</p> <p>Recording of employee's data when reporting a fault – GBC to destroy after 7 (seven) years</p> <p>Back-up – GBC to destroy after 7 (seven) years</p>

