

Department for Education

Sanctuary Buildings
Great Smith Street
LONDON
SW1P 3BT

THIS AGREEMENT is made on 30 September 2020

BETWEEN:-

- (1) **THE SECRETARY OF STATE FOR EDUCATION** whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Department**"); and
- (2) **PETER DWYER LTD**, whose registered office is situated [REDACTED], ("**the Contractor**").

RECITALS:-

- (A) The Department and the Contractor entered into a contract for Children's Services Commissioner for Middlesbrough Borough Council dated 19 February 2020 with the Department's reference number of RFX254/February 2020/Middlesbrough Borough Council/Peter Dwyer Ltd ("**Original Contract**").
- (B) The Department and the Contractor have agreed to vary the terms of the Original Contract as set out in this Agreement.
- (C) The Department's reference number for this Variation Agreement is 02/2020.

IT IS AGREED as follows:-

1. **CONSIDERATION**

In consideration of each of the parties entering into this Agreement (such consideration being agreed by the parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), the parties have agreed to vary the Original Contract in accordance with the DfE Dynamic Purchasing System, RFX254/February 2020/Middlesbrough Borough Council/Peter Dwyer Ltd, order number: RDx243

2. **VARIATION OF THE ORIGINAL CONTRACT**

- 2.1 The parties agree with effect from the date of this Agreement the Original Contract shall be varied as set out in Annex 1 and Annex 2 attached.
- 2.2 Subject to the variations set out in Annex 1 and Annex 2, the Original Contract shall continue in full force and effect in all respects.
- 2.3 In addition to the amendments set out in Annex 1 and Annex 2, the Original Contract shall be construed and interpreted with such further consequential amendments as are necessary to give effect to the amendments set out in Annex 1 of this Agreement, as if such further amendments were also expressly set out in Annex 1.
- 2.4 Except as provided in Clause 2.3 and Annex 1 and Annex 2, the parties agree that no other liabilities, financial or otherwise, shall accrue to the Department because of this Variation Agreement.

3. **SEVERABILITY**

The provisions of this Agreement are intended by the parties to be severable in the event that any part of it is held to be illegal or unenforceable (in whole or in part) and such part shall not affect the validity and enforceability of the remaining provisions or the remainder of the affected provision under this Agreement.

4. **AUTHORITY AND COSTS**

Each party undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Agreement.

5. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 5.1 Subject to Clause 5.2 below, this Agreement is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Agreement. Accordingly, the parties confirm that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 5.2 It is the intention of the parties that any other department, officer or agency of the Crown, may as required from time to time act as the Department's agent in enforcing the Department's rights under this Agreement.

6. **GOVERNING LAW AND JURISDICTION**

The parties agree that this Agreement and any dispute arising under or in any way connected with the subject matter of this Agreement (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England, and the parties submit to the jurisdiction of the English Courts.

EXECUTED by the parties on the first date in this Agreement.

**Authorised to sign for and on behalf of
the Secretary of State for Education**

Signature

[Redacted Signature]

Date:

Name in Capitals:
Carolán Goggin

Address in full:

Piccadilly Gate,
Store Street,
Manchester,
M1 2WD

**Authorised to sign for and on behalf of
the Contractor**

Signature

[Redacted Signature]

Date:

Date:

Name in Capitals:

[Redacted Name]

[Redacted Address]

[Redacted Address]

ANNEX 1

VARIATIONS TO ORIGINAL CONTRACT

All references to Clauses in this Annex 1 are to Clauses in the Original Contract.

1. The parties have agreed to vary the Original Contract in accordance with the DfE Dynamic Purchasing System, RFX254/February 2020/Middlesbrough Borough Council/Peter Dwyer Ltd, order number: RDx243. It shall be amended to include the following definitions:
2. The department wishes to extend the original contract from 1 June 2020 to 30 September 2020 (4 months) to enable the Commissioner to provide 2/3 days support per month up to that point to support, guide and challenge the Council on its children's services improvement journey. There will be no additional financial outlay.
3. If additional days are required they will be negotiated and agreed with the Department prior to the work taking place.

Annex 2

VARIATIONS TO ORIGINAL CONTRACT

All references to Clauses in this Annex 2 are to Clauses in the Original Contract.

4. The parties have agreed to vary the Original Contract in accordance with the DfE Dynamic Purchasing System, RFX254/February 2020/Middlesbrough Borough Council/Peter Dwyer Ltd, order number: RDx243. It shall be amended to include the following definitions:
5. The Department wishes to further extend the original contract from 1 October 2020 to 24 May 2021 (an additional 8 months from Annex 1 variation) to enable the Commissioner to carry out additional commissioner-led checkpoint reviews.

Rationale

- Intensive engagement carried out pre-Government lockdown and scrutiny of the Council's response to COVID-19 provided the Commissioner with sufficient evidence to inform a confident recommendation a few weeks in advance of the original deadline (28 May 2020).
 - However, the Department recognised the ongoing circumstances with COVID-19 may limit the Council's ability to improve at pace and, in addition, makes the ongoing improvement journey unpredictable.
 - To mitigate against this risk, the Minister approved the Commissioner's recommendation subject to continued Commissioner support (as covered in Annex 1) and additional commissioner-led checkpoint reviews built into the monitoring arrangements.
 - Annex 2 refers to both checkpoint reviews.
 - The Department intends to carry out the first of these checkpoint reviews in November 2020 and the second in May 2021.
 - Each checkpoint review will be conducted over a period of 5 days.
 - Continuing commissioner support and additional checkpoints are intended to mitigate potential disruption to improvement activity and services brought about by COVID-19 and will provide additional assurances about service improvements over a longer period of time.
6. This extension covers the 10 days required for both checkpoint reviews @ £790 per day excluding VAT. The total cost implication for this extension is therefore £7,900 excluding VAT.
 7. If additional days are required they will be negotiated and agreed with the Department prior to the work taking place.