

**CONTRACT FOR IMPROVEMENT ADVICE FOR ROTHERHAM METROPOLITAN
BOROUGH COUNCIL**

THIS CONTRACT IS DATED 3rd JUNE 2016

Parties

- 1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown ("the Department"); and
- 2) Lincolnshire County Council of County Offices, Newland, Lincoln, LN1 1YL ("the Contractor").

Recitals

The Contractor has agreed to provide challenge and support to deliver improvement in children's social care in Rotherham Metropolitan Borough Council on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is DfE/LCC – Rotherham - 01/2016.

1 Interpretation

1.1 In this Contract the following words shall mean:-

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| "the Services" | the services to be performed by the Contractor as described in Schedule 1; |
| "Affiliate" | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| "Central Government Body" | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, |

executive, or tribunal);

(c) Non-Ministerial Department; or

(d) Executive Agency;

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| "the Contract Manager" | Sean Hilditch, DfE |
| "Contractor Personnel" | all employees, agents, Contractors and contractors of the Contractor and/or of any Sub-contractor; |
| "the Contractors Contract Manager" | Debbie Barnes, Lincolnshire County Council |
| "Confidential Information" | the Department's Confidential Information and/or the Contractor's Confidential Information; |
| "Contracting Department" | any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department; |
| "Contractor Personnel" | all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor; |
| "Control" | means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly; |
| "Crown" | means Queen Elizabeth II and any successor |
| "Crown Body" | any department, office or agency of the Crown; |
| "Department's Confidential Information" | all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked |

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| | "confidential") or which ought reasonably be considered to be confidential; |
| "Environmental Information Regulations" | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations; |
| "FOIA" | the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation; |
| "Her Majesty's Government" | means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government |
| "Information" | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| "Personal Data" | shall have the same meaning as set out in the Data Protection Act 1998; |
| "Property" | means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract. |
| "Regulatory Bodies" | those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and "Regulatory Body" shall be construed accordingly. |
| "Request for Information" | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| "SME" | means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions. |

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| "Sub-contractor" | the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents; |
| "Working Day" | any day other than a Saturday, Sunday or public holiday in England and Wales. |

- 1.2 References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.
- 1.3 Reference to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.

2 Commencement and Continuation

The Contractor shall commence the Services on 6 May 2016 and, subject to Clause 10.1 shall complete the Services on or before 31 March 2017

This Contract shall be deemed to have been effective from 6 May 2016.

3 Contractor's Obligations

- 3.1 The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule.
- 3.2 The Contractor shall comply with the accounting and information provisions of Schedule 2.
- 3.3 The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

4 Departments Obligations

The Department will comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.

5 Changes to the Department's Requirements

- 5.1 The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.

- 5.2 The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

6 Management

- 6.1 The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.
- 6.2 The Contractor shall address any enquiries about procedural or contractual matters in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

7 Contractor's Employees and Sub-Contractors

- 7.1 Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the "Sub-contractor") it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:

7.1.1 10 days, where the Sub-contractor is an SME; or

7.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.

- 7.2 The Department shall be entitled to withhold payment due under clause 7.1 for so long as the Contractor, in the Department's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.
- 7.3 The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.
- 7.4 The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.
- 7.5 The Contractor, its employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements

(including those relating to security arrangements) as may be in force from time to time.

- 7.6 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.

8 **Copyright**

Copyright in all reports and other documents and materials arising out of the performance by the Contractor of their duties under this Contract are to be assigned to and shall vest in the Crown absolutely. This condition shall apply during the continuance of this Contract and after its termination howsoever arising.

9 **Warranty and Indemnity**

- 9.1 The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
- 9.2 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:
- 9.2.1 require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
- 9.2.2 assess the cost of remedying the failure ("the assessed cost") and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.
- 9.3 The Contractor shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.
- 9.4 The Contractor shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection

with any breach of the terms of this Contract or otherwise through the default of the Contractor

- 9.5** All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.6** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

10 Termination

- 10.1** This Contract may be terminated by either party giving to the other party at least 7 days notice in writing.
- 10.2** In the event of any breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.
- 10.3** In the event of a material breach of this Contract by either party, the other party may terminate this Contract with immediate effect by notice in writing.
- 10.4** This Contract may be terminated by the Department with immediate effect by notice in writing.
- 10.4.1** in England and Wales, a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or he or she makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors; or
- 10.4.2** in Scotland, if the Contractor becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) act 1985; or
- 10.4.3** where the Contractor is a firm or a number of persons acting together in any capacity (including as trustees), any event referred to in Sub-Clauses 10.4.1 or 10.4.2 occurs in respect of any partner in the firm or any of those persons (including any trustees);
- 10.4.4** the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;

- 10.4.5 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;
- 10.4.6 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to the payment of Social Security contributions;
- 10.4.7 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to payment of taxes;
- 10.4.8 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.
- 10.5 Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

11 Status of Contractor

- 11.1 In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.
- 11.2 The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

12 Confidentiality

- 12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

12.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

12.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 12.2 Clause 12 shall not apply to the extent that:

12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);

12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- 12.2.3** such information was obtained from a third party without obligation of confidentiality;
- 12.2.4** such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 12.2.5** it is independently developed without access to the other party's Confidential Information.
- 12.3** The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 12.4** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.
- 12.5** The Contractor shall ensure that their employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.
- 12.6** Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:
- 12.6.1** on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;
- 12.6.2** to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 12.6.3** to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 12.6.4** on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 12.6.5** on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
- 12.6.6** on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 12.7** The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 12 is made aware of the Department's obligations of confidentiality.

- 12.8** Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9** The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.10** Subject to Clause 12.9, the Contractor hereby gives his consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.11** The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 12.12** The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

13 Freedom of Information

- 13.1** The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.
- 13.2** The Contractor shall and shall procure that its Sub-contractors shall:
- 13.2.1** transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 13.2.2** provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and
 - 13.2.3** provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 13.3** The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 13.4** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.
- 13.5** The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:
- 13.5.1 in certain circumstances without consulting the Contractor; or
- 13.5.2 following consultation with the Contractor and having taken their views into account;
- provided always that where 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 13.6** The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

14 **Access and Information**

The Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.

15 **Transfer of Responsibility on Expiry or Termination**

- 15.1** The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 15.2** Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.
- 15.3** The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

16 **Tax Indemnity**

- 16.1** Where the Contractor is liable to be taxed in the UK in respect of consideration

received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

- 16.2** Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 16.3** The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- 16.4** A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5** The Department may terminate this contract if-
- (a) in the case of a request mentioned in Clause 16.3 above if the Contractor:
 - (i) fails to provide information in response to the request within a reasonable time, or
 - (ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
 - (b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.
- 16.6** The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 16.7** The Contractor warrants and represents to the Department that he is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from him in relation to any payments or arrangements made under this Contract. The Contractor shall promptly and regularly pay all National Insurance Contributions due from him as a self-employed person and shall account to the HM Revenue and Customs for all taxes due from him in respect of the payments made to him under this Contract.
- 16.8** If, notwithstanding Clause 16.7, the HM Revenue and Customs and/or any other appropriate agency consider that the Contractor is an employee of the Department for the purposes of tax and/or national insurance contributions; then the

Department shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Contractor under the terms of this Contract, such sums as the HM Revenue and Customs and/or other agencies require in respect of income tax and employee national insurance contributions. The deduction of such tax and national insurance contributions will not affect the status of the Contractor as self-employed for all other purposes.

- 16.9** Without prejudice to the provisions of Clause 16.8 above, the Contractor shall indemnify the Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.
- 16.10** The Contractor authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the Department is obliged as a matter of law to comply with such request.
- 16.11** The Contractor shall register for value added tax if and when required by law and shall promptly notify the Department for Work and Pensions of his liability for Class 2 and, where appropriate, Class 4 national insurance contributions.

17 Data Protection Act

- 17.1** With respect to the parties' rights and obligations under this Contract, the parties agree that the Department is the Data Controller and that the Contractor is the Data Processor. For the purposes of this Clause 17, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing shall have the meaning prescribed under the DPA.
- 17.2** The Contractor shall:
- 17.2.1** Process the Personal Data only in accordance with instructions from the Department (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Department to the Contractor during the period of the Contract);
 - 17.2.2** Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any Regulatory Body;
 - 17.2.3** Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage

to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 17.2.4 Take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 17.2.5 Obtain prior written consent from the Department in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
- 17.2.6 Ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause17;
- 17.2.7 Ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Department;
- 17.2.8 Notify the Department within five Working Days if it receives:
 - 17.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 17.2.8.2 a complaint or request relating to the Department's obligations under the Data Protection Legislation;
- 17.2.9 Provide the Department with full cooperation and assistance in relation to any complaint or request made, including by:
 - 17.2.9.1 providing the Department with full details of the complaint or request;
 - 17.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Department's instructions;
 - 17.2.9.3 providing the Department with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Department); and
 - 17.2.9.4 providing the Department with any information requested by the Department;
- 17.2.10 Permit the Department or the Department's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Department to enable the Department to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- 17.2.11 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Department); and

17.2.12 Not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

- 17.2.12.1 the Contractor shall submit a request for change to the Department which shall be dealt with in accordance with any Change Control Procedure
- 17.2.12.2 the Contractor shall set out in its request for change details of the following:
 - (a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - (c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (d) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Department's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- 17.2.12.3 in providing and evaluating the request for change, the parties shall ensure that they have regard to and comply with then-current Department, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
- 17.2.12.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the Department may notify in writing, including:
 - (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the parties; and
 - (b) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Authority on such terms as may be required by the Department, which the Contractor acknowledges may

include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).”

17.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Department to breach any of its applicable obligations under the Data Protection Legislation.

18 Amendment and variation

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.

19 Assignment and Sub-contracting

The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

20 The Contract (Rights of Third Parties) Act 1999

This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

21 Waiver

No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

22 Notices

22.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

22.2 The notice, demand or communication shall be deemed to have been duly served:

22.2.1 if delivered by hand, when left at the proper address for service;

22.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;

22.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

23 Dispute resolution

23.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.

23.2 Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

23.3 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

24 Discrimination

24.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

24.2 The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

25 Law and Jurisdiction

This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

As witness the hands of the parties

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

Signature



Name in CAPITALS: SUZANNE LUNN

Position in Organisation: Deputy Director

Address in full

Sanctuary Buildings,

Great Smith Street, London, SW1P 3BT

Date

30/6/16

Authorised to sign for and on
behalf of Lincolnshire County Council

Signature



Name in CAPITALS : DEBBIE
BARNES

Position in Organisation: Director of
Children's Services

Address in full

County Offices, Newland, Lincoln,
LN1 1YL

Date

13/6/16

1 Background

- .1 In February 2015 five Commissioners were appointed to exercise all executive functions, as well as some non-executive functions (e.g. licensing and appointment and dismissal of statutory officers), of Rotherham Council. Since then there has been some good improvement progress across the Council. New Directions, made on 11 February 2016, put in place arrangements for the Council to resume control of certain functions, but others, including children's social care, remain with Commissioners.
- .2 The intervention has been reviewed in light of progress reported and Malcolm Newsam's resignation as Children's Social Care Commissioner. A new executive Commissioner has been appointed to hold the decision making powers for children's social care and would work at the corporate centre to support the proper integration and prioritisation of children's services across the whole council. An improvement adviser is required to support her and Rotherham's Director of Children's Services at an operational level and oversee improvement.
- .3 In February 16 Commissioners provided a comprehensive overview of the progress made in Rotherham including key milestones across children's services, in relation to supporting victims of Child Sexual Exploitation in Rotherham, and general improvements to the Council's corporate centre. Malcolm Newsam provided his 5th report to the Secretary of State for Education which set out a series of possible tests to consider if services are to be returned to the Council. Progress highlights can be summarised as:
 - strengthened leadership, better Governance, more confident and knowledgeable lead member;
 - sound performance management which evidences that there are no longer widespread failures in the service and there is good compliance with statutory arrangements;
 - completed organisational restructuring including the introduction of the Multi Agency Safeguarding Hub and early help pathways and services; and
 - transformed specialist CSE services including through the multi-agency Evolve team resulting in successful outcomes; pioneering work has led to successful convictions and exemplary support for victims and juvenile perpetrators and new Reach Out services, partly funded by DfE.
- .4 Despite significant progress, the report identifies that there is more work to do to ensure improvement is sustained and some way to go before children's services are prioritised appropriately across the council, that the service still needs better quality first line managers, and a culture of robust supervision and quality of practice.
- .5 The report sets out the key tests proposed which would need consideration alongside Commissioners' restoration protocol, they are:
 - well-functioning corporate services, prioritising children's social care;
 - stable and capable leadership, with less reliance on temporary managers;

- improved quality and effectiveness of practice and a widely understood and embedded transformation programme; strong and supportive partnerships – with clear priorities jointly resourced;
- robust financial management and more effective commissioning;
- compelling workforce strategy, a settled structure, more permanent staff and better professional development; and
- effective performance management and quality assurance, a greater emphasis on outcomes.

The update and refresh of Rotherham's Improvement Plan is underway – the work is being led by an Interim Director of Improvement and is being considered against Ofsted's key judgements, Ofsted's inspection recommendations from the intervention notice in 2014, Ofsted's feedback from improvement visits undertaken in August and October 2015 and March 2016, the improvement priorities for the Council and partners identified by Commissioner Newsam in 2015 and the September 2016 'Tests'.

Currently there is an Improvement Board which meets monthly to oversee and drive the improvement. The next meeting is on 25 May and the refreshed plan will be considered then.

A Children's Social Care Commissioner, Patricia Bradwell, has been appointed by Department for Communities and Local Government as the executive decision maker. This contract with Lincolnshire County Council is to support her in that role and to act as Practice Leader by providing challenge, advice and support to Rotherham's Director of Children's Services and his team in progressing improvement plans for children's services. The contract's aims and objectives are set out below, Schedule 1 provides more detail on the anticipated tasks, the individual tasks and the capacity to deliver them can be varied by agreement with the contract manager and the contractor.

2 Aim

2.1 The Contractor shall use all reasonable endeavours to provide :

- advice and assistance to the Commissioner for Children's Social Care;
- challenge and support to Rotherham's improvement; and
- reports on progress to the Department for Education.

3 Objectives

3.1 The Contractor shall use all reasonable endeavours to achieve the following objectives:

- support Cllr. Bradwell in her role as Executive Commissioner in Rotherham
- monitor, support, advise and challenge Rotherham to improve performance and social care practice;
- provide sharp, evidenced, progress assessments and alert DfE to any emerging issues;
- work collaboratively and engage with DfE and the senior leadership team in Rotherham, Commissioners, elected members, front line staff and partners in all aspects of support and challenge;

- identify and share good and innovative practice with local authorities and DfE case lead; and
- work with case lead to plan and run DfE reviews.

4 Methodology

The Contractor shall perform the tasks detailed in the Schedule of Work.

SCHEDULE OF WORK

| Task | Output | Date Required |
|--|--|----------------|
| Assessment of priorities and agreed scope of work with Rotherham | Document | April 2016 |
| Attendance at meeting with Departmental and Rotherham staff to finalise role and scope of work | Meetings and document | May 2016 |
| Attendance at key meetings in the authority in order to provide improvement scrutiny and support | Timetable agreed with Departmental case lead, but expected to be on average one day a week by the contract manager | May 2016 |
| Prepare for and chair the monthly improvement board | Document reviews and meeting | Monthly |
| Provide sharp, evidenced, progress assessments and reports | Agreed reports | Monthly |
| Plan and deliver with DfE an improvement review | Review and report | July 2016 |
| Assist Rotherham's DCS to undertake the following: <ul style="list-style-type: none"> • A critical analysis of the financial strategy and make recommendations • An analysis of spend to make recommendations for potential service transformation to enable budget reduction in non children social care areas • Development of a sufficiency strategy inc residential care and accommodation for care leavers • Review commissioning arrangements for Child and Adolescent Mental Health Services and make recommendations on an | Documents and recommendations | September 2016 |

| | | |
|--|---|---|
| alternative service specification and commissioning strategy. | | |
| <p>Provide support to improve quality of practice and achieve permanence for children in care promptly. By undertaking the following:</p> <ul style="list-style-type: none"> • peer review to make recommendations for improvement to services for looked after children and care leavers • initial diagnosis of independent reviewing service through peer approach • analysis of adoptions and fostering arrangements and recommendations • mentoring and coaching to key managers | | September 2016 |
| <p>Provide support to improve the effectiveness of services for young people who are at risk of being looked after by :</p> <ul style="list-style-type: none"> • Providing analysis to understand the needs of those at risk • Supporting the design of cusp of care services • Development of a business plan for a service aimed at reducing the need for children to be looked after • Supporting the design of workforce development to enable the workforce to gain skills required | Analysis, business plan | September 2016 |
| <p>Assurance process to assess whether SEND services provided in Rotherham would be evaluated well by Ofsted and CQC. This would involve a peer review to make recommendations for service improvement</p> | Process / review, document and recommendations | September 2016 |
| <p>Strategic review of performance assurance framework with recommendations for improvement to enable a holistic approach to performance assurance</p> <p>Two programmes of case auditing aligned to the Ofsted framework, including analysis of Rotherham's 'annex A' and case auditing / sampling, targeting cases in line with key lines of enquiry identified</p> | <p>Document and recommendations</p> <p>Findings and recommendations</p> | <p>September 2016</p> <p>September 2016</p> |

| | | |
|---|----------------------------|----------------|
| through annex A. | | |
| Lincolnshire's LSCB to provide: <ul style="list-style-type: none"> • a peer review – subject to the scope of the request from RSCB; and • peer review to assess partner commitment to implementing early help | Review and recommendations | September 2016 |

End of schedule 1

1 Table

| No of Days related to objectives and tasks | Cost | Total | Invoice date |
|---|--------------|--------|--------------|
| <p>20 days : Assist to undertake the following: A critical analysis of the financial strategy and make recommendations Advice on the development of a sufficiency strategy inc residential care and accommodation for care leavers An analysis of spend to make recommendations for potential service transformation to enable budget reduction in non children social care areas Review commissioning arrangements for Child and Adolescent Mental Health Services and make recommendations on an alternative service specification and commissioning strategy.</p> | £600 per day | 12,000 | |
| <p>30 Days : Provide support to improve quality of practice and achieve permanence for children in care promptly. By undertaking the following:</p> <ul style="list-style-type: none"> • peer review to make recommendations for improvement to services for looked after children and care leavers • initial diagnosis of independent reviewing service through peer approach • analysis of adoptions and fostering arrangements and recommendations • mentoring and coaching to key managers | £600 per day | 18,000 | |
| <p>12 days : Provide support to improve the effectiveness of services for young people who are at risk of being looked after by :</p> <ul style="list-style-type: none"> • Providing analysis to understand the needs of those at risk • Supporting the design of cusp of care services • Development of a business plan for a service aimed at reducing the need for children to be looked after • Supporting the design of workforce development to enable the workforce to gain skills required | £600 per day | 7200 | |
| <p>10 Days: Assurance process to asses whether SEND services provided in Rotherham would be</p> | £600 per day | 6000 | |

| | | | |
|--|----------------------------|---------------|------------------------|
| evaluated well by Ofsted and CQC. This would involve a peer review to make recommendations for service improvement | | | |
| 50 Days: Strategic review of performance assurance framework with recommendations for improvement to enable a holistic approach to performance assurance, to include a peer review of legal services. Two programmes of case auditing aligned to the Ofsted framework, including analysis of Rotherham's 'annex A' and case auditing / sampling, targeting cases in line with key lines of enquiry identified through annex A. | £600 per day | 30,000 | |
| 20 days Lincolnshire's LSCB to provide: • a peer review – subject to the scope of the request from RSCB; and • peer review to assess partner commitment to implementing early help | £600 per day | 12,000 | |
| 22 Days – DCS time at 1 day a week for attendance at monthly improvement board, progress reporting to DfE and advice to Executive Commissioner | £600 per day | 13,200 | |
| | | | |
| | Grand Total inc VAT | 98,400 | September 2016. |

'the above prices are inclusive of VAT and expenses'

- 2 Funds allocated to a particular expenditure heading in the table at paragraph 1 ("the Table") are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Table may not be altered except with the prior written consent of the Department.
- 3 The Contractor shall maintain full and accurate accounts for the Service against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.
- 4 The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.
- 5 Invoices shall be prepared by the Contractor 'on the invoice dates specified in the Table' in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor or his or her nominated representative or accountant

shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Service in accordance with the Contract and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.

- 6 Invoices shall be sent, within 30 days of the end of schedule of work to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool FY5 3TA, quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days will be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.
- 7 The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
- 8 If this Contract is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
- 9 On completion of the Service or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
- 10 The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.
- 11 It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

End of Schedule 2

