

**Dated 1<sup>st</sup> April 2003**



**NCH CHILDREN'S SERVICES LTD**

**-AND-**

**(ROTHERHAM METROPOLITAN BOROUGH COUNCIL)**

**ROTHERHAM BRIDGES**

**(SERVICE TO CARE LEAVERS)**

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**THIS CONTRACT** is made the 1<sup>st</sup> day of April 2003

**BETWEEN THE PARTIES;**

- (1) **NCH CHILDREN'S SERVICES LTD** of, registered address: 85 Highbury Park N5 1UD, ("The Provider"), regions address: 12 Granby Road, Harrogate, HG1 4ST

**AND**

- (2) **THE BOROUGH COUNCIL OF** Rotherham

**1. DEFINITIONS**

1 "The Service" define what the service is

1.2 "Service User(s)" means (who is the service provided to)

1.3 "Service Specification" means NCH Children's Services Ltd service specification for providing the Rotherham Bridges service.

1.4 "Staff" shall include all persons involved in the provision of the Service by the Provider whether paid or unpaid, full or part time, temporary, permanent or agency.

1.5 "The Council" means the council of the Metropolitan Borough Council of Rotherham and its successors.

1.6 "The Provider" means NCH Children's Services Ltd

1.7 "Contract" means the Agreement concluded between the Purchaser and the Provider comprising the Conditions, the Specification and Schedules as varied from time to time pursuant to the terms thereof and such other terms as are agreed by the Provider and Purchaser.

1.8 "The Contract Manager" means the person appointed by the Provider to co-ordinate the provision of the Service, whose name, address, telephone number, fax number and e-mail address will be supplied to the Purchaser on the commencement date.

1.9 "Authorised Officer" means the Officer of the Purchaser authorised to evaluate and monitor the supply of the Service from the Provider and to act on behalf of the Purchaser in all matters pertaining to this Agreement.

1.10 English law shall govern the construction, validity and performance of the Contract.

1.11 The Contract shall constitute the entire agreement and understanding between the Provider and the Purchaser with respect to all matters that the Contract refers to except where either party is liable for fraudulent misrepresentation or concealed fraud.

1.12 "The Premises" means Hollowgate House, Hollowgate, Rotherham

## **2. COMMENCEMENT OF CONTRACT AND REVIEW**

- 2.1** The Contract shall commence on 1<sup>st</sup> April 2003 and shall be reviewed for extension on 31st March 2006 unless terminated earlier in accordance to the provisions of clause 14.
- 2.2** Where the Contract is extended, the Contract shall commence on such date as shall be agreed by the Provider and the Purchaser in accordance with the Contract. The contract price will be reviewed on every anniversary of the contract date; the price will be increased in accordance with clause 4.

## **3. SERVICE**

- 3.1** The Provider shall provide the Service specified to the Purchaser in accordance with the Contract and the Service Specification annexed in Schedule three (3). The Provider will ensure that all staff used for the provision of the service are police checked and are fit and proper persons to have confidential information on children and their carers.

## **4. PRICE, PAYMENT AND CONSIDERATION**

- 4.1** The Purchaser shall pay the Provider up to the Price **£479,400 (2004/05)**. This shall be exclusive of any Value Added Tax. Thereafter costs shall be determined in accordance with Clause 4.6 below.
- 4.2** If any supply made or referred to in this Agreement is or becomes chargeable to VAT then such VAT shall be added to and paid in addition to any sum owing for such supply upon the production of a proper VAT invoice in respect to that supply. The first three quarter invoices shall be based on the contract price; the third quarter invoice to be based on actuals up to the total contract price.
- 4.3** Payment of the Price and all Costs shall be quarterly in advance, on submission of an invoice by the Provider.
- 4.4** If the Purchaser suspends or withdraws the Service and/or the Purchaser is in breach of the Contract for any period, ("The Default Period"), the Provider may claim from the Purchaser the proportion of the Price related to the Default Period and any other reasonable costs incurred as a result of the Default Period, ("The Default Sum"). The Purchaser shall pay the Default Sum within fourteen (14) days of receipt of written notice of the Default Sum from the Provider as specified within the notice
- 4.5** In the event of a renewal of this Contract beyond the contractual period, the Purchaser and the Provider shall agree the Price payable by the Purchaser including, increases in the General Index of Retail Prices NJC scale and salary increases and any other reasonable costs in providing the service.
- 4.6** The Provider will increase the price annually by the percentage increase in the General Index of Retail Prices NJC scale and salary increases. In addition any other reasonable cost increases in providing the service will be agreed through negotiation between

purchaser and provider. Failure to agree price increases will result in a proportionate reduction in service levels.

- 4.7** Interest at an annual rate of 2.5% over base lending rate of HSBC will be incurred on sums, which are not paid at the end of 30 days from the due date or from date of invoice whichever is later unless the Purchaser has notified the Provider in writing that it disputes the payment or invoice setting out its reasons and it is subsequently determined that the said payment or invoice is incorrect. Interest will also be charged at the above rate by the provider, for those sums disputed by the Purchaser, which later are found to be correct.

## **5. INSURANCE AND INDEMNITIES**

- 5.1** The Provider shall maintain the following insurances:

- Employers Liability to the maximum of £5 millions
- Public Liability insurance to the maximum of £5 millions

And shall provide the Purchaser with proof of these insurances upon their request.

- 5.2** The Provider shall be liable for, and indemnify the Purchaser against, any expense, liability, loss, claim or proceedings whatsoever arising under statute or at common law in respect of personal injury to or the death of, or damage to the property of, any person whomsoever arising out of, or in the course of or caused by the provision of the Service by the Provider, the Provider's employees, or sub-contractors unless the same is due to any act of neglect of the Purchaser or any person for whom the Purchaser are responsible.

- 5.3** The Purchaser shall be liable for, and indemnify the Provider against, any expense, liability, loss, claim or proceedings whatsoever arising under statute or at common law in respect of personal injury to or the death of, or damage to the property of, any person whomsoever arising out of, the Purchaser's negligence under the Contract unless the same is due to any act of negligence of the Provider or any person for whom the Provider is responsible.

## **6. NON-ASSIGNMENT/SUB-CONTRACTING**

- 6.1** The Purchaser shall not transfer, assign or sub-contract the Contract or any of the Provider's obligations, powers or benefits under the Contract without the previous written consent of the Provider. Any assignment or sub-contracting of the service by the Provider will be agreed with the Purchaser and that the Purchaser will not unreasonably delay or prevent such agreement.

## **7. HEALTH AND SAFETY & EMPLOYMENT**

- 7.1** The Provider shall adopt safe methods of work and comply with all other requirements of the Health and Safety at Work Act 1974 in order to protect the health and safety of its personnel and those of the Purchaser and all other persons.

- 7.2** The Provider shall supply the Purchaser with any information required by the Purchaser in accordance with The Transfer of Undertakings (Protection of Employment) Regulations 1981.
- 7.3** The Provider shall carry out police and other checks on all of its staff and the Provider shall require that all of its staff complete declarations under the Rehabilitation of Offenders Act 1974. The Provider shall not employ anyone with a criminal record, (including “spent” convictions), without obtaining the prior written approval of the Purchaser.
- 7.4** The Provider shall ensure as far as possible that it has sufficient staff to provide the Service at all times in accordance with the Contract. Where shortfalls in staffing levels do occur, agency staff maybe used, any additional costs incurred will be included in the invoice to the Purchaser.
- 7.5** The provider shall ensure as far as possible that it has sufficient staff to provide the Service at all times in accordance with the contract. Where shortfall in staffing does occur the provider will in agreement with the Council put in place appropriate strategies to maintain an agreed level of service until the shortage in staffing has been remedied.
- 7.6** The Provider shall provide the Service wherever possible, using suitably qualified and experienced Staff who are competent to carry out the Service. The Provider shall provide adequate training for all of its Staff in order to comply with statutory and regulatory requirements and the Contract.
- 7.7** The Provider will be responsible for the management, supervision, and direction of all staff employed in the provision of the services.

## **8. DATA PROTECTION AND CONFIDENTIALITY**

- 8.1** The Provider shall not, whether during or after the Provider’s appointment, disclose or allow to be disclosed to any person, (except on a confidential basis to its professional advisers), any information of a confidential nature acquired by the Provider in the course of carrying out its duties under the Contract except as may be required by law or as directed by the Purchaser. Nothing in the above should be taken as placing any restriction on the Provider informing statutory monitoring bodies of the contents of the Contract.
- 8.2** The Provider shall comply with the Data Protection Acts 1984 and 1988, and any subsequent statute, orders or regulations insofar as performance of the services gives rise to obligations thereunder.

## **9 INTELLECTUAL PROPERTY**

- 9.1** All intellectual property rights (including but not limited to, patent, patent application, know-how, trademark, service mark, design right, copyright or similar commercial or industrial right, registered design) in all documents and drawings prepared by the Provider to the Purchaser in connection with the delivery of the service shall remain vested by the Provider.

## **10. QUALITY MANAGEMENT, MONITORING AND EVALUATION**

- 10.1** The provider shall put procedures in place, jointly agreed with the Council, to adequately manage, monitor and evaluate the Service to ensure that the Service is delivered in accordance with Contract.
- 10.2** All representatives for the Council and the Provider as identified shall hold an Annual Review meeting no later than two months before the end of the financial year, to monitor the contractual and operational performance of the parties' obligations under the Contract.
- 10.3** The Provider shall allow relevant Council staff access to the Premises and the Service Users at all reasonable times.
- 10.4** The Provider shall notify the Council as soon as practicable that it cannot or may not fulfil its obligations under the Contract.
- 10.5** The Provider shall allow service users the choice of using either the Council's complaints procedure or the Providers. The complaints procedure shall be provided to all Service Users at the point of referral.
- 10.6** Where the Council or its representative has completed a best value review of the Providers service, and the service fails to meet the standards set by the review. The Council will allow the Provider a reasonable period (agreed by both parties) to remedy the service, so raising the standards to that required.

## **11. LIAISON AND DISPUTE RESOLUTION**

- 11.1** The Purchaser and the Provider shall liaise closely in the management of the Contract,

**The Purchaser and Provider shall use their best endeavours to resolve by Agreement any dispute, disagreement or point of discord between them.**

In order to resolve a dispute, the following procedure is to be used: -

- 11.1.1** inform the other party of the need for a meeting between Contract Manager and Authorised Officer within twenty (20) working days, or such other period that might be agreed.
- 11.1.2** if the dispute remains unresolved, then a further meeting involving Senior Representatives of both parties may be requested within a further twenty (20) working days, or other such period that might be agreed;
- 11.1.3** if the dispute is still not resolved, then the matter will, if both Purchaser and Provider agree, be referred to independent mediation as soon as reasonably practicable. The mediator shall be an individual agreeable to both parties; If the parties are unable to agree on a Mediator or if the Mediator agreed upon is

unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he or she is unable or unwilling to act, apply to the Centre for Dispute Resolution of 100 Fetter Lane, London EC4A 1DD (“CEDR”) to appoint a Mediator. Costs for this process will be equally divided between the parties.

- 11.1.4** if the dispute is still unresolved then the parties can agree to refer the matter to arbitration or notice of termination of the contract will be able to be served or litigation enacted.

## **12. SEVERANCE**

- 12.1** Should any provision of the Contract be prohibited by law or adjudged by a court to be unlawful, void or unenforceable then such provision shall to the extent required be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

## **13. VARIATION**

- 13.1** The Contract may be varied with the agreement of the Purchaser and the Provider. Such agreement shall not be unreasonably withheld or delayed.
- 13.2** The contract may be extended by up to year at a time subject to the written agreement of the Purchaser and the Provider, and on the basis of a change in conditions of Contract.
- 13.3** Any variation and/or extension to the Contract shall be in writing and executed as a Deed by the Purchaser and the Provider.

## **14. TERMINATION**

- 14.1** Termination of the Contract in any event shall be without prejudice to any party's rights or remedies in respect of any default or breach of contract that may have arisen prior to the date of termination.
- 14.2** The Purchaser may terminate the Contract immediately and without notice, (subject to written notice to the Provider following as soon as reasonably practicable afterwards):
- 14.2.1** If the Provider becomes insolvent or goes into compulsory or voluntary liquidation, (save for the purposes of reconstruction or amalgamation), or if an Administrator, Administrative Receiver or Receiver is appointed in respect of the whole or any part of the Provider's assets, or if the Provider makes an assignment for the benefit of, or composition or arrangement with its creditors, or goes into liquidation or threatens to do any of these things;



- 14.2.2** If the Provider or any of its Staff or any other person acting on the Provider's behalf has offered, given or agreed to give any gift or consideration of any kind as an inducement or reward for doing or not doing something or for showing favour or disfavour in relation to the Contract and/or any other agreement(s) with the Purchaser;
- 14.2.3** If the Provider or any of its Staff or any other person acting on the Provider's behalf has committed any offence under the Prevention of Corruption Act 1906 to 1916;
- 14.3** The Provider may terminate the contract immediately upon written notice to the Purchaser if the Purchaser is in serious breach of the contract, serious breach includes but is not limited to breaches of equal opportunities, long term funding is not assured and health and safety concerns.
- 14.4** The Provider may give notice to the Purchaser to terminate this contract if the Purchaser has failed to make any payment or late payment in accordance with this contract or the Purchaser interferes with or obstructs the progress of the service. These clauses are without prejudice to any other rights or remedies the Provider may possess as result of the contract
- 14.5** In the event that the Provider invokes sub-clauses (**14.3, 14.4, 14.6**), then the provider shall cease to perform without liability the service from the termination date; in addition the Provider shall be able to recover all costs and outstanding payments and any additional costs actually and indirectly incurred by reason of default by the Purchaser. This will include but will not be limited to redundancy costs, building costs and other overheads and running down costs.
- 14.6** The Purchaser and the Provider may mutually terminate the Contract in giving six (6) month's written notice of their intention to terminate to the other party. The Purchaser shall pay the Provider, up until the date of termination.
- 14.7** Should the Agreement be terminated by the Purchaser or should the Agreement not be renewed at the end of the final period, the Purchaser will assume all responsibilities, obligations and liabilities under the lease of the "premises" until its expiry.

## **15. NOTICES**

- 15.1** Any notice or other communication given under the Contract shall be in writing and may be delivered by personal service or sent by first class prepaid post or by fax to such address or number notified by either party for this purpose.
- 15.2** Unless the contrary is proved, any such notice or communication shall be deemed to have been given to and received by the addressee:
- 15.2.1** if delivered by personal service, at the time it is left at the address of or handed to a representative of the party to be served, (which representative shall not necessarily have to be the Contract Manager or Authorized Officer;

**15.2.2** if sent by first class prepaid post, 2 working days following the date of posting.

**15.2.3** if sent by fax, on the date of transmission unless such date is not a working day or is after 5pm on a working day in which case the next working day following the date of transmission.

## **16. FORCE MAJEURE**

**16.1** If either party is affected by Force Majeure, that party shall give notice of the nature and extent of the event of Force Majeure to the other party as soon as reasonably practicable. None of the parties shall be deemed to be in breach of the Contract or liable to each other because of an event of Force Majeure that party has notified the other party. The time for performance of any obligation under the Contract shall be extended accordingly and as agreed between both parties.

## **17. WAIVER AND CUMULATIVE RIGHTS**

**17.1** No failure or delay by either party to exercise any right, power, privilege or remedy under the Contract shall operate as a waiver. All such rights, powers, privileges and remedies are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available at law or in equity.

**IN WITNESS WHEREOF** the parties hereto have executed the Contract as a deed the day and year first above written:

**SIGNED ON BEHALF**

**OF (Rotherham Metropolitan Borough Council) by:**

Authorised Officer

In the presence of (witness):

Date:

**SIGNED ON BEHALF**

**OF NCH CHILDREN'S SERVICES LTD by:**

Director of Social Work

In the presence of (witness):

Date: