

THIS VARIATION AGREEMENT is made on 30th May 2018

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) **UCL Consultants Ltd** whose registered office is situated at The Network Building, 97 Tottenham Court Road, London, W1T 4TP ("**Contractor**").

RECITALS:-

- (A) The Department and the Contractor entered into a Contract for Services dated 1st March 2018 with the Department's reference number of EOR/SBU/2017/038 ("**Original Contract**") for the purposes of researching school improvement practices.
- (B) The Department and the Contractor have agreed to vary the terms of the Original Contract as set out in this Variation Agreement.
- (C) The Department's reference number for this Variation Agreement is 01.

IT IS AGREED as follows:-

1. **CONSIDERATION**

In consideration of each of the parties entering into this Variation 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 Clause 17.

2. **VARIATION OF THE ORIGINAL CONTRACT**

- 2.1 The parties agree with effect from the date of this Variation Agreement the Original Contract shall be varied as set out in Annex 1 attached.
- 2.2 Subject to the variations set out in Annex 1, 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, 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 Variation 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, 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 Variation 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 Variation 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 Variation Agreement.

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

5.1 Subject to Clause 5.2 below, this Variation 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 Variation Agreement. Accordingly, the parties confirm that no term of this Variation Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Variation 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 Variation Agreement.

6. **GOVERNING LAW AND JURISDICTION**

The parties agree that this Variation Agreement and any dispute arising under or in any way connected with the subject matter of this Variation 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 Variation Agreement.

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

Signature

Date

Name in Capitals

Address in full

**Authorised to sign for and on behalf of
UCL Consultants Ltd**

Signature

Date

Name in Capitals

Address in full

ANNEX 1

VARIATIONS TO ORIGINAL CONTRACT

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

- 1 The existing definitions in Clause 1 Interpretation shall be amended and new definitions added to read as below:

Data Protection

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”, “Pseudonymisation”	take the meaning given in the GDPR
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
“DPA 2018”	Data Protection Act 2018
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable laws about the processing of personal data and privacy;
“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.
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679)
“Information Commissioner”	takes the meaning given in DPA 2018, and “Information Commissioner’s Office” shall be construed accordingly
“LED”	Law Enforcement Directive (Directive (EU) 2016/680)
“Protective Measures”	appropriate technical and organisational measures which may include: Pseudonymisation of and

encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

“Sub-processor” any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract

2. Clause 7 of Schedule Three shall be amended in its entirety to read as below:

7 Data Protection

- 7.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 4 by the Department and may not be determined by the Contractor.
- 7.2 The Contractor shall notify the Department immediately if it considers that any of the Department's instructions infringe the Data Protection Legislation.
- 7.3 The Contractor shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 7.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 4, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Department before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Department as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 4);

- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Department or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:
 - (i) the Department or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Department;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;
- (e) at the written direction of the Department, delete or return Personal Data (and any copies of it) to the Department on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

7.5 Subject to clause 7.6, the Contractor shall notify the Department immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

7.6 The Contractor's obligation to notify under clause 7.5 shall include the provision of further information to the Department in phases, as details become available.

7.7 Taking into account the nature of the processing, the Contractor shall provide the Department with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 7.5 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:

- (a) the Department with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Department following any Data Loss Event;
 - (e) assistance as requested by the Department with respect to any request from the Information Commissioner's Office, or any consultation by the Department with the Information Commissioner's Office.
- 7.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Department determines that the processing is not occasional;
 - (b) the Department determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Department determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 7.9 The Contractor shall allow for audits of its Data Processing activity by the Department or the Department's designated auditor.
- 7.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 7.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Department in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Department;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - (d) provide the Department with such information regarding the Sub-processor as the Department may reasonably require.
- 7.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 7.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 7.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Department may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

2 A new **Schedule Four Processing, Personal Data and Data Subjects** shall be inserted.

Schedule Four Processing, Personal Data and Data Subjects

The Contractor shall comply with any further written instructions with respect to processing by the Department.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<p><i>Confidential views from leaders of multi-academy trusts, local authorities and teaching school alliances on school improvement practices.</i></p> <p><i>The project is a joint venture between UCL and Isos Partnership (Isos as sub-contractor). Data will be shared between them, adhering to the same data protocol outlined here.</i></p>
Duration of the processing	<i>April to September 2018.</i>
Nature and purposes of the processing	<i>The use of personal data includes storing personal names and emails; recording confidential online responses to survey questions and interviews following case study visits; organising and analysing that data; writing up findings ensuring participant anonymity.</i>
Type of Personal Data	<p><i>Contact names at Multi-Academy Trusts (MATs) and Teaching School Alliances (TSAs) – used in survey targeting.</i></p> <p><i>Contact email addresses at MATs and TSAs – used in survey targeting.</i></p> <p><i>Names of staff in trusts, LAs, and TSAs being interviewed as part of case study work.</i></p>
Categories of Data Subject	<i>School, MAT and TSA senior leadership staff. Staff involved with school improvement practice.</i>

<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>Interview data from case study visits and survey responses will not be retained by the contractor. It will be destroyed after 6 months.</i></p>
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