

The British Council:

[THE BRITISH COUNCIL, incorporated by Royal Charter and registered as a charity (under number 209131 in England & Wales and number SC037733 in Scotland), with its principal office at 1 Redman Place, Stratford, London E20 1JQ] **OR** **[insert name of appropriate local entity where relevant outside the UK] [where appropriate add the following wording] [operating through its local office at [insert office address and details]]**

The Service Provider:

[Name] of **[insert address]**.

Date:

[insert date when signed by the second party to sign (which should be the British Council)]

This Agreement is made on the date set out above subject to the terms set out in the schedules listed below which both the British Council and the Service Provider undertake to observe in the performance of this Agreement.

The Service Provider shall supply to the British Council, and the British Council shall acquire and pay for, the Services described in Schedule 2 and on the terms of this Agreement.

Schedules

Schedule 1	Special Terms
Schedule 2	Services & Deliverables
Schedule 3	End Client Requirements
Schedule 4	Safeguarding and Protecting Children and Vulnerable Adults
Schedule 5	Standard Terms
Schedule 6	Data Processing Schedule

This Agreement shall only become binding on the British Council upon its signature by an authorised signatory of the British Council subsequent to signature by or on behalf of the Service Provider.

In the event of any conflict between the terms set out in the various Schedules, the Schedules shall prevail in the order in which they appear in the Agreement.

For the purposes of the Project and the provision of the Services, the terms of this Agreement shall prevail over any other terms and conditions issued by the British Council (whether on a purchase order or otherwise).

IN WITNESS whereof the parties or their duly authorised representatives have entered into this Agreement on the date set out above.

Signed by the duly authorised representative of THE BRITISH COUNCIL

Signed by *[insert name of Service Provider]*

Name:	Signature :
Position :		

Schedule 1

Special Terms

Commencement Date	[INSERT date when services are to commence]
End Client	[Not Applicable] OR [The Service Provider acknowledges that it is acting as a sub-contractor for the provision of Services to [insert name, for example, the European Commission, Department for International Development etc]
Project	[INSERT Details of Project in connection with which the services are provided]
Services	As detailed in Schedule 2.
Service Completion Date	[INSERT: date when services are to be completed]
Deliverables	As set out in Schedule 2.
Milestones (if applicable)	<p>[Drafting note: if not relevant, mark as: [Not Applicable]]</p> <p>[OR if relevant, include the detail in Schedule 2 and state the following in this box: [As set out in Schedule 2.]]</p>
Location	<p>[Drafting note: Standard wording to include (see guidance note):] The Service Provider may undertake the work at any place of their choosing and for the avoidance of doubt is not required to regularly attend British Council premises at set times.</p> <p>[Drafting note: Include additional wording where Service Provider may occasionally be required to attend at a certain premises/location:] [However, the Service Provider may from time to time be required (at the request of the British Council) to provide the Services (or any part of them) from, or otherwise attend, the locations specified below including for the purpose of participating in [meetings with clients/specified educational events/conferences] relating to the Project and/or [attend meetings to review progress of the Project with the British Council]. The locations which the Service Provider may be required to attend are: [INSERT RELEVANT PREMISES FOR PARTICULAR SERVICE PROVIDER'S PROJECT]].</p>
Fees	<p>[SELECT APPROPRIATE OPTION:</p> <p>[OPTION 1 [A fixed fee of [GBP] will be paid on completion of the Services.]</p> <p>OR</p>

	<p>[OPTION 2] [A fixed fee of [GBP] will be paid in instalments on completion of the Milestones as set out below:]</p> <table border="1"> <tr> <td>Milestone</td><td>Instalment of Fee (GBP)</td></tr> <tr> <td>INSERT</td><td>INSERT</td></tr> </table> <p>OR</p> <p>[OPTION 3] [A fee based on a daily/hourly rate of [GBP] subject to an overall maximum budget of [GBP].]</p>	Milestone	Instalment of Fee (GBP)	INSERT	INSERT				
Milestone	Instalment of Fee (GBP)								
INSERT	INSERT								
Invoicing procedure	<p>[Drafting note: select invoicing procedure depending on options selected in Fees section above. Please also see guidance note for further details on invoicing procedures.]</p> <p>The Service Provider shall raise invoices for [INSERT WORDING FROM OPTIONS BELOW]</p> <p>[OPTION 1]: [the Charges on completion of the Services] OR</p> <p>[OPTION 2]: [the relevant instalment of the Charges (Fees and any Expenses) on achievement of the relevant Milestone as set out in these Special Terms] OR</p> <p>[OPTION 3]: the Charges [[monthly] in arrears.]</p>								
Expenses	<p>[INSERT IF ANY AGREED details of agreed expenses or mileage rates/fixed subsistence claims per day etc]</p>								
Insurance Cover	<p>[INSERT Details of insurance policies and level of cover Service Provider is required to hold. For example:</p> <table border="1"> <tr> <th>Insurance Cover</th><th>Indemnity Limit</th></tr> <tr> <td>[Public liability]</td><td>£[1,000,000] per occurrence and in the aggregate (annual total of all losses)</td></tr> <tr> <td>[Professional indemnity]</td><td>£[1,000,000] per occurrence and in the aggregate (annual total of all losses)</td></tr> <tr> <td>[Medical and travel]</td><td>as appropriate</td></tr> </table> <p>[NB: Delete those rows which are not applicable]</p> <p>or such other insurance cover types and indemnity limits as may be agreed between the parties in writing from time to time.</p>	Insurance Cover	Indemnity Limit	[Public liability]	£[1,000,000] per occurrence and in the aggregate (annual total of all losses)	[Professional indemnity]	£[1,000,000] per occurrence and in the aggregate (annual total of all losses)	[Medical and travel]	as appropriate
Insurance Cover	Indemnity Limit								
[Public liability]	£[1,000,000] per occurrence and in the aggregate (annual total of all losses)								
[Professional indemnity]	£[1,000,000] per occurrence and in the aggregate (annual total of all losses)								
[Medical and travel]	as appropriate								

<p>[Optional: Service Provider's Liability]</p> <p>Delete row if not to be used.</p>	<p>[Note: Only use this provision where the British Council has agreed that the Service Provider should be allowed to limit its liability. If not, delete this row from the draft].</p> <p>Subject to the limitation of liability provisions in clause 19 of the Standard Terms (Schedule 5), the total liability of the Service Provider to the British Council shall not exceed [insert figure in numbers and words] for each claim or instance of liability.</p>
<p>Do the "Safeguarding and Protecting Children and Vulnerable Adults" provisions apply?</p>	<p><input type="checkbox"/> YES. The provisions of Schedule 4 shall apply to and are incorporated into this Agreement.</p> <p><input type="checkbox"/> NO. The provisions of Schedule 4 do not apply to this Agreement.</p>
<p align="center">Service of Notices (Clause 25 of Schedule 5)</p>	
<p>To the British Council:</p>	<p>To the Service Provider:</p>
<p>[The British Council 1 Redman Place Stratford London E20 1JQ]</p> <p>Email: [insert email address(es) to which notices may be sent]</p>	<p>[Insert address] [For the attention of: INSERT]</p> <p>Email: [insert email address(es) to which notices may be sent]</p>

Schedule 2

Service & Deliverables

[DRAFTING NOTE SERVICES & DELIVERABLES: insert details of the services to be provided by the Service Provider plus any Deliverables (ie materials, documents, reports, products etc) which will be provided by the Service Provider as a result of providing the Services.

[DRAFTING NOTE MILESTONES if any services/deliverables are required to be provided on/by a certain date, the relevant requirement and the relevant date should be specified here. If there are **no** such Milestones, mark '**N/A**' in the relevant box in the Special Terms and nothing needs to be included within this Schedule 2]

Schedule 3

End Client Requirements

[EITHER:]

[Not Applicable]

[OR:]

[Insert any terms required to be flowed down by British Council's client (where relevant) to any subcontractor. This may include any relevant terms of reference.]

Schedule 4

Safeguarding and Protecting Children and Vulnerable Adults

[NB please note the following guidance on when to use this extended Safeguarding clause:]

- *Please include this clause if the other party is carrying out activity with children and/or vulnerable adults. This is in addition to the Safeguarding clause in Schedule 5.*
- *If the other party is not carrying out activity with children and/or vulnerable adults this clause may be deleted, however you must retain the Safeguarding clause in Schedule 5.*
- *Regardless of whether this extended clause is used or not used, please ensure the Safeguarding Clause in Schedule 5 of the Agreement remains as this is a Standard Term and should not be deleted.]*

[EITHER:]

[Not applicable].

[OR:]

- 1.1 [The Service Provider warrants that, in relation to all activities in connection with the Project, where any of the Location(s) are in England or Wales, it will comply with all legislation, codes of practice and statutory guidance relevant at any time in such Location(s) to the safeguarding and protection of children and vulnerable adults (including the UN Convention on the Rights of the Child and the Children Act 1989), and with the British Council's Safeguarding Policy and Adults at Risk Policy, as may be amended from time to time.
- 1.2 Where the Location(s) is/are outside of England or Wales, the Service Provider warrants that, in relation to all activities in connection with the Project, it will comply with all legislation, codes of practice, and statutory guidance relevant at any time in the Location(s) to the safeguarding and protection of children and vulnerable adults, and with the detail and principles of the Children Act 1989 and the UN Convention on the Rights of the Child (to the extent that such legislation is not directly applicable in the Location(s)), and with the British Council's Safeguarding Policy and Adults at Risk Policy, as may be amended from time to time.
- 1.3 The Service Provider acknowledges that, for the purposes of the Safeguarding Vulnerable Groups Act 2006¹, and any regulations made thereunder, as amended from time to time (the "**SVGA**"), and where any of the Location(s) are in England or Wales, it is the "**Regulated Activity Provider**" in respect of any "**Regulated Activity**" (both as defined in the SVGA) carried out in connection with the Project and that it will comply in all respects with the SVGA and any regulations or orders made

¹ "Safeguarding Vulnerable Groups Act 2006" means the UK Act, the purpose of which is to make provision in connection with the protection of children and vulnerable adults by preventing those deemed unsuitable to work with children and vulnerable adults (adults at risk), from gaining access through work (whether paid or unpaid).

thereunder. Equivalent provisions in equivalent legislation applicable in any Location(s) other than England and Wales shall apply in those Location(s).

- 1.4 The Service Provider shall ensure that it is (and that any other party (including any Substitute Provider as defined in Schedule 5) engaged by it to carry out activities with children, vulnerable adults and/or Regulated Activity in connection with the Project is):
- 1.4.1 subject to a valid enhanced disclosure check undertaken through the UK Disclosure & Barring Service, or the equivalent local check (as set out in clause 1.4.3 below), including a check against the adults' barred list² or the children's barred list³, as appropriate; and
 - 1.4.2 where applicable, the Service Provider shall monitor the level and validity of the checks under this clause 1.4 for any other party (including any of the Service Provider's Substitute Provider) engaged by it to carry out activities with children, vulnerable adults and/or Regulated Activity in connection with the Project;
 - 1.4.3 pursuant to clause 1.4.1 above, equivalent local checks, include, but are not limited to, the ACRO Criminal Records Office, 'International Child Protection Certificate' online criminal records checks and Code of Good Conduct' or any other services as detailed at the following link: <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>;
 - 1.4.4 The Service Provider must provide to the British Council, documentary evidence of the relevant disclosure and/or criminal records checks carried out pursuant to this clause in advance of undertaking any activities involving children and/or vulnerable adults in connection with the Project.
- 1.5 The Service Provider warrants that at all times during the Term, it is not, and has no reason to believe that any person who is or will be engaged by the Service Provider in connection with the Project is, barred from carrying out such engagement.
- 1.6 The Service Provider shall immediately notify the British Council of any information that the British Council reasonably requests to enable the British Council to be satisfied that the obligations of this Schedule 4 have been met.
- 1.7 The Service Provider shall refer information about any person engaged by it to carry out activities with children, vulnerable adults and/or Regulated Activity in connection with the Project to the UK Disclosure & Barring Service, or the equivalent local service as set out in clause 1.4.3, where it removes permission for such person to carry out the Regulated Activity (or would or might have, if such person had not otherwise

² References to the "adults' barred list" means the list maintained by the Disclosure and Barring Service of individuals who are not permitted to work with vulnerable adults in a Regulated Activity if advanced checks reveal information which could potentially make the individual eligible to be on one of the barred list.

³ References to the "children's barred list", means the list maintained by the Disclosure and Barring Service of individuals who are not permitted to work in a Regulated Activity with children.

ceased to engage in the Regulated Activity) because, in its opinion, such person has harmed or poses a risk of harm to children and/or vulnerable adults.

- 1.8 The Service Provider shall not use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out activities with children, vulnerable adults and/or Regulated Activity or who may otherwise present a risk to children or vulnerable adults.
- 1.9 The Service Provider shall immediately contact the British Council to report any credible suspicions of, or actual incidents of activity related to the Project which contravene the obligations contained in this Schedule 4,
- 1.10 Pursuant to clause 1.9 above, the Service Provider shall cooperate fully with investigations into such events, whether led by British Council, End Client (if any) and/or their agents or representatives.]

Schedule 5

Standard Terms

1 Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise).

“Agreement” means these terms and conditions including the Special Terms and any Schedules.

“Background IPR” means any Intellectual Property Rights (other than Project IPR) belonging to (or licensed to) either party before the Commencement Date or not created in the course of or in connection with the Project.

“British Council Entities” means the subsidiary companies and other organisations Controlled by the British Council from time to time, and any organisation which Controls the British Council (the **“Controlling Entity”**) as well as any other organisations Controlled by the Controlling Entity from time to time.

“British Council Requirements” means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents notified to the Service Provider in writing from time to time or set out on the British Council’s website at http://www.britishcouncil.org/new/about-us/jobs/folder_jobs/register-as-a-consultant/policies-for-consultants-and-associates/ or such other web address as may be notified to the Service Provider from time to time (as such documents may be amended, updated or supplemented from time to time during the term of this Agreement). For the purposes of this Agreement any references to “staff” and “employees” in any documents contained in the British Council Requirements shall be interpreted as being references to the Service Provider.

“Business Day” means a day, other than a Saturday, Sunday or public holiday in England.

“Capacity” means as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

“Charges” means, together, the Fees and the Expenses.

“Code” means the Department of Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the Freedom of Information Act 2000 (issued under section 45 of that Act) (November 2004) as may be updated or re-issued from time to time and any other relevant codes of practice published by the Department of Constitutional Affairs or its successor bodies.

“Commencement Date” means the date specified in the Special Terms.

“Confidential Information” means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, finances, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of the British Council (or a British Council Entity) or the Service Provider (as

the case may be) and all personal data and special categories of personal data within the meaning of the Data Protection Legislation.

“Control” means the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and **“Controlled”** shall be construed accordingly).

“Deliverables” any outputs of the Services including any document, drawing, map, plan, diagram, design, picture or other image, tape, disk, or other device or record embodying information in any form including any web page, information portal, “blog”, online content or electronic file products, materials, and all materials embodying them in whatever form, including hard copy and electronic form, provided by the Service Provider to the British Council and/or a British Council Entity in the course of providing the Services, including those items specified as deliverables in the Special Terms.

“End Client” means, where applicable, the ultimate third party recipient of services from the British Council as identified in the Special Terms (if any) and in respect of which the Service Provider is providing its Services as a sub-contractor.

“End Client Requirements” means the specific requirements of the End Client (if any), as set out in Schedule 2 or as otherwise notified by the British Council to the Service Provider in writing.

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“Equality Legislation” means any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non discrimination and human rights as may be in force from time to time in England and Wales or in any other territory in which, or in respect of which, the Service Provider provides the Services.

“Expenses” mean any agreed expenses that may be payable by the British Council to the Service Provider as set out in the Special Terms or otherwise agreed pursuant to clause 5.6.

“Fees” means the sums payable by the British Council to the Service Provider for the Services (and any Deliverables), as set out in the Special Terms.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Force Majeure Event” means an act, event, omission or accident beyond the reasonable control of affected party which was not reasonably foreseeable and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that party, including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, epidemic, pandemic or other spread of infectious disease or the imposition of any measures to prevent the spread of disease, nuclear, chemical or biological contamination, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

“Information Disclosure Requirements” means the requirements to disclose information under:

- (a) the Code;
- (b) the FOIA; and
- (c) the Environmental Information Regulations.

“Insurance Cover” means the insurance policies and the level of cover the Service Provider is required to maintain as specified in the Special Terms.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Location” means the premises or location which the Service Provider may from time to time be requested to attend by the British Council in connection with the Provision of the Services, as set out in the Special Terms.

“Milestones” means a date by which a part of the Services is to be completed as specified in the Special Terms (where applicable).

“Permitted Recipients” has the meaning given in clause 8.2.1.

“Project” means the project in connection with which the Service Provider provides its Services as further described in the Special Terms.

“Project IPR” means all Intellectual Property Rights that arise or are obtained or developed by either party, or by a contractor on behalf of either party, in respect of the Deliverables in the course of or in connection with the Project.

“Request for Information” means a request for information (as defined in the FOIA) relating to or connected with this Agreement or the British Council more generally or any apparent request for such information under the Information Disclosure Requirements.

“Service Completion Date” means the date by which all Services are to be performed as specified in the Special Terms.

“Services” means the services to be provided by the Service Provider in connection with the Project as described in the Special Terms.

“Substitute Provider” has the meaning given in clause 23.2.

“Term” has the meaning given in clause 2.1.

“Termination Date” means the date of termination of this Agreement, howsoever arising.

“Third Party IPR” means any Intellectual Property Rights not belonging to either party to this Agreement but used by the Service Provider in the creation of the Deliverables and/or in the course of or in connection with the Project.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms
- 1.7 Any reference to this Agreement includes the Special Terms and the Schedules.
- 1.8 Without prejudice to clause 1.9, except where the context requires otherwise, references to:
 - 1.8.1 services being provided to, or other activities being provided for, the British Council;
 - 1.8.2 any benefits, warranties, indemnities, rights and/or licences granted or provided to the British Council; and
 - 1.8.3 the business, operations, customers, assets, Intellectual Property Rights, agreements or other property of the British Council,shall be deemed to be references to such services, activities, benefits, warranties, indemnities, rights and/or licences being provided to, or property belonging to, each of the British Council and the British Council Entities and this Agreement is intended to be enforceable by each of the British Council Entities.
- 1.9 The obligations of the British Council shall not be interpreted as obligations of any of the British Council Entities.
- 1.10 Where this Agreement has been translated into a language other than the English language, the English language version shall prevail.

2 Commencement & duration

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, unless earlier terminated in accordance with the terms of this Agreement, until it expires on the Service Completion Date (“**Term**”).

3 Provision of Services

- 3.1 The Service Provider shall:

- 3.1.1 provide the Services and any Deliverables in accordance with Schedule 2 and the terms of this Agreement;
 - 3.1.2 ensure that the Services and any Deliverables will conform in all respects with the provisions of Schedule 2 and that the Deliverables (where applicable) will be fit for any purpose expressly or implicitly made known to the Service Provider by the British Council;
 - 3.1.3 provide the Services with all reasonable care, skill and ability and in accordance with the highest professional standards in the Service Provider's industry, profession or trade;
 - 3.1.4 ensure that any Deliverables provided (where applicable) are free from defects in workmanship, installation and/or design;
 - 3.1.5 use all reasonable endeavours to meet any Milestones (where applicable) specified in the Special Terms;
 - 3.1.6 perform the Services by the Service Completion Date;
 - 3.1.7 before the date on which the Services are to start, ensure it has in place all necessary licences, consents, qualification, approvals and permissions for the provision by it of the Services and any Deliverables to the British Council and comply with all applicable laws in relation to the Services; and
 - 3.1.8 ensure it has all necessary equipment and resources to enable it to provide the Services and any Deliverables to the British Council in accordance with Schedule 2 and the terms of this Agreement.
- 3.2 Notwithstanding clause 3.1, the parties acknowledge and agree that the Service Provider shall, in its absolute discretion, determine the manner in which the Services shall be performed and the Service Provider shall have autonomy over its working methods and where and when the Services are provided, subject only to the terms of this Agreement and the requirements of Schedule 2. The British Council shall not have the right, nor shall it seek, to exercise direction, control or supervision over the Service Provider.
- 3.3 On termination of this Agreement, the British Council shall not be obliged to offer and the Service Provider shall not be obliged to accept any further work, contract, engagement or project. Neither party wishes to create or imply any mutuality of obligation between them either in the course of the provision of the Services or following termination of this Agreement.
- 3.4 If the Service Provider is unable to provide the Services for any reason, the Service Provider shall notify the British Council of that fact as soon as reasonably practicable. For the avoidance of doubt, no Charges shall be payable in accordance with clause 5 in respect of any period during which the Services are not provided.
- 3.5 Unless the Service Provider has been specifically authorised to do so by the British Council in writing, the Service Provider shall not have any authority to incur any expenditure in the name of or for the account of the British Council, nor shall it hold itself out as having authority to bind the British Council.
- 3.6 The Service Provider shall comply with the British Council Requirements and complete and return any forms or reports from time to time required therein.

- 3.7 The Service Provider shall comply with the End Client Requirements (if any). The Service Provider shall not do anything to put the British Council in breach of the End Client Requirements (if any).
- 3.8 Without prejudice to clauses 3.6 and 3.7, the Service Provider shall comply with any health and safety and/or security procedures or any other applicable policies or procedures of the British Council (and/or where applicable, the End Client or other relevant third party) from time to time in force at any relevant Location which the British Council has requested that the Service Provider attend in accordance with this Agreement, as notified by the British Council to the Service Provider.
- 3.9 The Service Provider may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:
- 3.9.1 the British Council will not be liable to bear the cost of such functions; and
- 3.9.2 at the British Council's request the third party shall be required to enter into direct undertakings with the British Council, including with regard to confidentiality.
- 3.10 The Service Provider shall use its reasonable endeavours to ensure that it does not become involved in any conflict of interests between the interests of the British Council and/or the End Client and the interests of the Service Provider itself or any client of the Service Provider. The Service Provider shall notify the British Council in writing as soon as is practically possible of any potential conflict of interests and shall follow the British Council's reasonable instructions to avoid, or bring to an end, any conflict of interests. In the event that a conflict of interests does arise, the British Council shall be entitled to terminate this Agreement on immediate written notice.
- 3.11 The Service Provider shall not at any time during the Term do or say anything which damages or which could reasonably be expected to damage the interests or reputation of the British Council or the End Client (if any) or their respective officers, employees, agents or contractors.

4 British Council's Obligations

- 4.1 The British Council shall:
- 4.1.1 co-operate with the Service Provider in all matters relating to the Services and appoint a British Council manager in relation to the Services, who shall have the authority to represent the British Council on day-to-day matters relating to this Agreement; and
- 4.1.2 inform the Service Provider of the British Council Requirements and any other health and safety rules and regulations and any other reasonable security requirements, policies and British Council instructions that apply at the Location which the Service Provider has been requested by the British Council to attend in accordance with this Agreement and/or in the country in which any part of the Services are being provided from time to time during the Term.
- 4.2 The Service Provider acknowledges and agrees that if it considers that the British Council is not or may not be complying with any of the British Council's obligations, it

shall only be entitled to rely on this as relieving the Service Provider's performance under this Agreement:

- 4.2.1 to the extent that it restricts or precludes performance of the Services by the Service Provider; and
- 4.2.2 if the Service Provider, promptly after the actual or potential non-compliance has come to its attention, has notified details to the British Council in writing.

5 Charges

- 5.1 In consideration for the provision of the Services, the British Council shall pay the Fees to the Service Provider, less any deductions for income tax and national insurance contributions as required by law.
- 5.2 Subject to the other provisions of this clause 5, the Fees are an all-inclusive fee (except for those additional Expenses specifically referred to in this Agreement) and cover all preparation, report writing and all other work, which is carried out in the Location(s). It is expected that the Service Provider will meet all costs and expenses necessary to provide the Services under this Agreement, including: the costs of medical and travel insurance and insurance for personal possessions of the Service Provider.
- 5.3 The Fees will be reimbursed by the British Council and are fixed at the level specified in the Special Terms for the duration of this Agreement.
- 5.4 The Service Provider shall submit to the British Council an invoice for the Fees in accordance with the invoicing procedure specified in the Special Terms. All such invoices shall include the purchase order number (as provided by British Council) and be accompanied by a statement setting out the Services being invoiced in sufficient detail to justify the Fees charged (including any information required by, and to be provided in the format set out in, the British Council Requirements and/or any End Client Requirements (where applicable)).
- 5.5 Unless stated otherwise, the Fees are exclusive of value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction, which, if properly chargeable, the British Council shall pay at the prevailing rate within 30 days following receipt from the Service Provider of a valid and accurate tax invoice. In the event that the British Council is required by the laws or regulations of any applicable jurisdiction to deduct any withholding tax or similar taxes from the Fees, the British Council shall deduct and account for such taxes before paying the remainder of the Fees to the Service Provider and shall notify the Service Provider in writing of all such sums properly deducted.
- 5.6 In addition to the Fees the British Council will reimburse the Service Provider for its Expenses incurred as a direct consequence of the engagement, in accordance with the invoicing procedure specified in the Special Terms and accompanied by supporting documentation (including all receipts and vouchers for expenditure incurred) if required and subject to such expenses either being:
 - 5.6.1 as set out in or calculated in accordance with the Special Terms; or
 - 5.6.2 otherwise being agreed with the British Council separately in writing in advance.

- 5.7 Under current UK legislation it is the responsibility of a supplier to assess its VAT liability for the supply of services. Where UK VAT is applicable, the Service Provider's invoice should show all the necessary entries thereon to make it a valid tax invoice for VAT purposes; and in particular it must show the amount of VAT charged separately. However, the British Council may be of the opinion that the Services being supplied under this Agreement may not be subject to UK VAT, due to the place of supply not being the UK, and the charging of UK VAT would therefore be inappropriate. The British Council reserves the right to dispute payment of the UK VAT charged by the Service Provider until the issue has been resolved by a ruling in writing obtained from HM Revenue & Customs by the Service Provider, and that ruling shown to the British Council.
- 5.8 The Service Provider shall indemnify and keep indemnified the British Council from and against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the British Council at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under this Agreement. Any amounts due under this clause 5.8 shall be paid in cleared funds by the Service Provider to the British Council not less than seven calendar days before the date on which the tax or other liability is payable by the British Council. The British Council may grant the Service Provider further time to pay where this is deemed appropriate by the British Council taking account of the relevant circumstances.
- 5.9 Subject to clauses 5.10 to 5.13 below, the British Council shall, unless agreed otherwise by the parties in writing, pay each of the Service Provider's valid and accurate invoices by automated transfer into the Service Provider's nominated bank account no later than 30 days after an undisputed and tax accurate invoice is received.
- 5.10 Provided that it notifies the Service Provider in writing in advance, and works in good faith to resolve any issues or disputes, the British Council shall be entitled to withhold payment of any sums in respect of any Services or Deliverables which have not been provided by the Service Provider to the British Council's satisfaction and in accordance with the terms of this Agreement.
- 5.11 In the event that the British Council makes any overpayment in connection with this Agreement (or any other agreement between the parties), the British Council may, upon written notice to the Service Provider, deduct the amount of such overpayment from any future invoice or require repayment of such sum within 30 days after the date on which it serves written notice on the Service Provider.
- 5.12 The British Council shall be entitled to deduct from the Charges (and any other sums) due to the Service Provider any sums that the Service Provider may owe to the British Council at any time.
- 5.13 Should the British Council or any British Council Entity become required by law to deduct income tax and National Insurance contributions from the Charges, the British Council or applicable British Council Entity shall inform the Service Provider of the deadline by which invoices must be submitted for inclusion in the next monthly payroll and payment shall not be made until the Service Provider has supplied to the British Council or applicable British Council Entity all information as the British Council or applicable British Council Entity shall reasonably require for the purpose of making the relevant deductions.
- 5.14 If the British Council fails to pay any sum properly due and payable (other than any sum disputed in good faith) by the due date for payment, the Service Provider may

charge interest on the amount of any such late payment at the rate of 4% per annum above the official bank rate set from time to time by the Bank of England. Such interest will accrue on the overdue sum from the date on which payment was due to the date on which payment is actually made (whether before or after judgment). The parties hereby acknowledge and agree that this rate of interest is a substantial remedy for any late payment of any sum properly due and payable.

- 5.15 Payment in full or in part of the sums claimed under this clause 5 shall be without prejudice to any claims or rights of the British Council or (where applicable) any British Council Entity against the Service Provider in respect of the provision of the Services.

6 Quality and performance

- 6.1 Any person authorised by the British Council and/or the End Client shall be entitled, subject to reasonable notice, to inspect work being undertaken in relation to the Services at reasonable times at the Service Provider's premises (or at the premises of any Substitute Provider of the Service Provider).
- 6.2 The British Council reserves the right to reject or require re-performance (at no additional cost to the British Council) of any Services (and to reject and require the replacement of any associated Deliverables) which are defective or which are otherwise not in accordance with the requirements of this Agreement.
- 6.3 If at any time within 12 months following the date of provision of any Services, any such Services (or any part thereof and/or any associated Deliverables) are found to be defective or otherwise not in accordance with the requirements of this Agreement, the Supplier shall promptly on request and without charge, remedy the deficiency by re-performing the relevant Services and replacing any defective or non-compliant Deliverables associated with those Services (as required).

7 Other activities

- 7.1 Nothing in this Agreement shall prevent the Service Provider from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the course of this Agreement, provided that such activity does not cause a breach of any of the Service Provider's obligations under this Agreement.

8 Confidential information & Freedom of Information

- 8.1 For the purposes of this clause 8:
- 8.1.1 the "**Disclosing Party**" is the party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other party; and
- 8.1.2 the "**Receiving Party**" is the party which receives Confidential Information relating to the other party.
- 8.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Agreement:
- 8.2.1 is given only to such of: (a) in the case of British Council its staff; and/or (b) for either party, its professional advisors, or consultants engaged to advise it in connection with this Agreement; and/or (c) in the case of the Service Provider, any Substitute Provider, in all cases, as is strictly necessary for

the performance of this Agreement and only to the extent necessary for the performance of this Agreement ("**Permitted Recipients**"); and

- 8.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any of its Permitted Recipients otherwise than for the purposes of this Agreement.
- 8.3 The Service Provider shall ensure that its Permitted Recipients are aware of the Service Provider's confidentiality obligations under this Agreement.
- 8.4 The provisions of clauses 8.2 and 8.3 shall not apply to any Confidential Information which:
 - 8.4.1 is or becomes public knowledge (otherwise than by breach of this clause 8);
 - 8.4.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
 - 8.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 8.4.4 is independently developed without access to the Confidential Information; or
 - 8.4.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.
- 8.5 In the event that the Service Provider fails to comply with this clause 8, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.
- 8.6 The provisions under this clause 8 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
- 8.7 The Service Provider acknowledges that the British Council is subject to the Information Disclosure Requirements and shall assist and co-operate with the British Council to enable the British Council to comply with those requirements.
- 8.8 Where the British Council receives a Request for Information in relation to information that the Service Provider or any of its sub-contractors is holding on behalf of the British Council and which the British Council does not hold itself, the British Council shall as soon as reasonably practicable after receipt and in any event within five calendar days of receipt, forward the Request for Information to the Service Provider and the Service Provider shall:
 - 8.8.1 provide the British Council with a copy of all such information in the form that the British Council requires as soon as practicable and in any event within 10 calendar days (or such other period as the British Council acting reasonably may specify) of the British Council's request; and
 - 8.8.2 provide all necessary assistance as reasonably requested by the British Council to enable the British Council 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, as applicable.

8.9 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the British Council may nevertheless be obliged to disclose the Service Provider's Confidential Information in accordance with the Information Disclosure Requirements:

8.9.1 in certain circumstances without consulting the Service Provider; or

8.9.2 following consultation with the Service Provider and having taken its views into account,

provided always that where clause 8.9.1 above applies, the British Council shall, in accordance with the recommendations of the Code, take reasonable steps to draw this to the attention of the Service Provider after any such disclosure.

8.10 The provisions of this clause 8 shall survive the termination of this Agreement, however arising.

9 Data Processing

9.1 Each party shall comply with its respective data processing obligations as set out in Schedule 6.

10 Intellectual property

10.1 Subject to clause 8, each party shall give full disclosure to the other of all Background IPR owned by or licensed to it which is relevant to the Project (and the Service Provider shall give the British Council full disclosure of any Third Party IPR it intends to use).

10.2 All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it (or its licensors).

10.3 Each party warrants to the other party that its Background IPR does not, so far as it is aware, infringe the rights of any third party and none of its Background IPR is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.

10.4 The Service Provider hereby assigns to the British Council with full title guarantee by way of present and future assignment all its right, title and interest in and to the Project IPR.

10.5 The Service Provider shall provide a waiver in favour of the British Council of all moral rights arising under the Copyright, Designs and Patents Act 1988, as amended or revised, or any similar provisions of law in any jurisdiction, relating to the Deliverables.

10.6 The British Council hereby grants to the Service Provider an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Project IPR and the British Council's Background IPR in, and to the extent necessary for, the performance of the Services.

10.7 The Service Provider hereby grants to the British Council an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Service Provider's Background IPR included in the Deliverables.

10.8 The Service Provider is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR required by the Service Provider and

the British Council for use of the Deliverables (such licences, permissions or consents to be in writing, copies of which the Service Provider shall provide to the British Council on request). In addition, the Service Provider warrants that the provision of the Services and/or the Deliverables does not and will not infringe any third party's Intellectual Property Rights.

- 10.9 The Service Provider undertakes at the British Council's request and expense to execute all deeds and documents which may reasonably be required to give effect to this clause 10.
- 10.10 Nothing in this Agreement shall prevent the Service Provider from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that it does not result in a disclosure of the British Council's Confidential Information or an infringement of Intellectual Property Rights.
- 10.11 Each party shall promptly give written notice to the other party of any actual, threatened or suspected infringement of the Project IPR or the other party's Background IPR of which it becomes aware.

11 Audit

- 11.1 The Service Provider will fully co-operate with and assist the British Council in meeting its audit and regulatory requirements by providing access for the British Council, the End Client, their internal auditors (which shall include, for the purposes of this Agreement the British Council's internal audit, security, safeguarding and operational risk functions), their external auditors or any agents appointed by the British Council and/or the End Client or their regulators (or any person appointed by such body) to conduct appropriate reviews and inspections of the activities and records of the Service Provider (and to take copies of records and documents) relating to the performance of the Services and to the accuracy of the Charges. The Service Provider shall maintain all records relating to this Agreement (including the provision of the Services and the payment of all Charges and expenses) for a period of seven (7) years following the year in which the provision of the Services under this Agreement is completed or such longer period as the British Council may notify to the Service Provider in writing from time to time.
- 11.2 The Service Provider shall bear its own cost in relation to any reasonable number of audits carried out by the British Council and/or the End Client. Where any audit reveals any breach or non-compliance by the Service Provider, the Service Provider shall also bear the costs of the British Council and/or the End Client carrying out such audit.

12 Publicity

- 12.1 The Service Provider shall not publicise the terms of this Agreement or use the name of the British Council or any trade name or trade mark used by the British Council or refer to the British Council in any other way in any press release, promotional literature, publications or advertising material, including any website, "blogs", social media or other online services, without the prior written consent of the British Council. In particular, neither the Service Provider nor any Service Provider Personnel shall use the British Council's logo or other branding without having previously obtained such prior written consent.

13 Safeguarding and Protecting Children and Vulnerable Adults

- 13.1 The Service Provider will comply with all applicable legislation and codes of practice, including, where applicable, all legislation and statutory guidance relevant to the safeguarding and protection of children and vulnerable adults and with the British Council's Safeguarding Policy and Adults at Risk Policy included in the British Council Requirements as amended from time to time, which the Service Provider acknowledges may include submitting checks by the UK Disclosure & Barring Service (DBS) and/or equivalent local checks⁴.
- 13.2 The Service Provider must provide to the British Council, documentary evidence of the relevant disclosure and/or the criminal records checks in advance of undertaking any activities involving children and/or vulnerable adults in connection with the Project under this Agreement.
- 13.3 In addition, the Service Provider will ensure that, where it engages any other party to supply any of the Services under this Agreement (including any Substitute Provider), that that party will also comply with the same requirements as if they were a party to this Agreement.

14 Anti-Corruption, Anti-Collusion and Tax Evasion

- 14.1 The Service Provider shall:
- 14.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - 14.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
 - 14.1.3 comply with the British Council's anti-fraud and corruption policy forming part of the British Council's Requirements.
- 14.2 The Service Provider shall not engage in any activity, practice or conduct which would constitute either a UK or foreign tax evasion facilitation offence under the Criminal Finances Act 2017.
- 14.3 The Service Provider acknowledges and agrees that British Council may, at any point during the Term and on any number of occasions, carry out searches of relevant third party screening databases (each a "**Screening Database**") to ensure that the Service Provider is not listed as being a politically exposed person, disqualified from being a company director, involved with terrorism, financial or other crime, subject to regulatory action or export, trade or procurement controls or otherwise representing a heightened risk of involvement in illegal activity (together, the "**Prohibited Entities**"). The Service Provider warrants that it will not make payment to, transfer property to, or otherwise have dealings with, any Prohibited Entity.

⁴ Equivalent local checks include, but are not limited to, the ACRO Criminal Records Office, 'International Child Protection Certificate' online criminal records checks and Code of Good Conduct' or any other services as detailed at the following link: <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants> (when/if link does not work contact the British Council Project manager)

14.4 If the Service Provider fails to comply with any of its obligations under this clause 14 or the Service Provider is listed in the Screening Database in the circumstances set out in clause 14.3, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:

14.4.1 terminate this Agreement without liability to the Service Provider immediately on giving notice to the Service Provider; and/or

14.4.2 require the Service Provider to take any steps the British Council reasonably considers necessary to manage the risk to the British Council of contracting with the Service Provider (and the Service Provider shall take all such steps); and/or

14.4.3 reduce, withhold or claim a repayment (in full or in part) of the Charges payable under this Agreement; and/or

14.4.4 share with third parties information about such non-compliance.

15 Equality, Diversity and Inclusion

15.1 The Service Provider shall ensure that it does not, in its position as a provider of services, in any way discriminate within the meaning of the Equality Legislation.

15.2 The Service Provider shall comply with any equality or diversity policies or guidelines included in the British Council Requirements.

16 Anti-slavery and human trafficking

16.1 In performing its obligations under this Agreement, the Service Provider shall:

16.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;

16.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

16.1.3 include in contracts with its Substitute Provider, equivalent provisions to those set out in this clause 16.

16.2 The Service Provider represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

16.3 If the Service Provider fails to comply with any of its obligations under clause 16.1, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:

16.3.1 terminate this Agreement without liability to the Service Provider immediately on giving notice to the Service Provider; and/or

16.3.2 require the Service Provider to take any steps the British Council reasonably considers necessary to manage the risk to the British Council

of contracting with the Service Provider (and the Service Provider shall take all such steps); and/or

16.3.3 reduce, withhold or claim a repayment (in full or in part) of the Charges payable under this Agreement; and/or

16.3.4 share with third parties information about such non-compliance.

17 Insurance

17.1 During the Term the Service Provider shall maintain in force, with a reputable insurance company, the Insurance Cover and shall produce to the British Council on request both the insurance certificate giving details of relevant Insurance Cover and the receipt for the current year's premium in respect of the same.

18 Indemnity

18.1 The Service Provider shall have liability for and shall indemnify the British Council and any British Council Entity from and against all loss or liability in connection with physical damage to property, death or personal injury caused by or arising out of the negligence of, or breach of this Agreement by, the Service Provider.

19 Limitation on Liability

19.1 The limitations and/or exclusions on liability in this clause 19 apply to every liability arising under or in connection with this Agreement (howsoever arising) including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

19.2 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be limited under any applicable law.

19.3 Subject to clauses 19.2 and 19.4, neither party shall be liable to the other for any indirect loss or damage, multiplication of compensatory damages, punitive or exemplary damages, fines, penalties, fees costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.

19.4 Nothing in this Agreement shall exclude or restrict the liability of the Service Provider to the British Council: (a) for any breach by the Service Provider of clause 8 (Confidentiality) or clause 9 (Data Processing) of Schedule 5 or for any breach of Schedule 6 (Data Processing); or (b) under the indemnities in clause 22 (Status) of Schedule 5.

19.5 Subject to clause 19.2 and 19.3, the British Council's total liability to the Service Provider in respect of any one claim or series of linked claims under this Agreement shall not exceed an amount equal to the sum of the Charges paid under this Agreement in the twelve (12) month period immediately preceding the event which gives rise to the relevant claim or series of linked claims.

19.6 The provisions of this clause 19 shall survive the termination of this Agreement, however arising.

20 Termination

- 20.1 Without prejudice to any other rights or remedies either party may have, either party may terminate this Agreement with immediate effect without notice and without any liability to make any further payment to the other party (other than in respect of amounts accrued before the Termination Date) if at any time the other party:
- 20.1.1 is in material breach of this Agreement which breach is irremediable or, if capable of remedy, the other party fails to remedy that breach within a period of 30 days after being notified to do so;
 - 20.1.2 an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/ or manage or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action (in any jurisdiction) in consequence of debt; or
 - 20.1.3 ceases, or threatens to cease, to carry on business.
- 20.2 Without prejudice to any other rights or remedies which the British Council may have, the British Council may terminate this Agreement without liability to the Service Provider immediately on giving notice to the Service Provider if:
- 20.2.1 the performance of the Services is delayed, hindered or prevented by a Force Majeure Event (as defined in clause 24) for a period in excess of 28 days;
 - 20.2.2 the Service Provider is in persistent breach of any of its obligations under this Agreement, whether or not such breach is capable of remedy. For the purposes of this clause 20.2.2, three or more non-material breaches of the terms of this Agreement may together constitute a persistent breach;
 - 20.2.3 the Service Provider is:
 - (i) convicted of a criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or
 - (ii) is in the reasonable opinion of the British Client (or the End Client (if any)) negligent and/or incompetent in the performance of the Services;
 - 20.2.4 the engagement of the Service Provider by the British Council on the terms of this Agreement is determined by the British Council or HM Revenue & Customs to be employment for tax purposes;
 - 20.2.5 the Service Provider is in breach of clauses 8, 14 or 16.

- 20.3 The British Council shall be entitled to terminate this Agreement at any time with immediate effect (or with effect from such time as the British Council specifies in its notice of termination) by serving written notice on the Service Provider if:
- 20.3.1 the agreement with its End Client terminates;
 - 20.3.2 the End Client instructs the British Council in writing to terminate this Agreement;
 - 20.3.3 a provider of funding to the British Council for the Services instructs the British Council in writing to terminate this Agreement; or
 - 20.3.4 the funding for the Project is otherwise withdrawn or ceases.
- 20.4 In any circumstances where the British Council has the right to terminate this Agreement it may instead, by serving written notice on the Supplier, opt to suspend the provision of the Services for a reasonable period and the British Council shall not be required to pay any Charges in respect of such period of suspension.
- 20.5 The British Council shall be entitled to terminate this Agreement at any time on giving one week's written notice to the Service Provider.

21 Obligations on termination

- 21.1 On the Termination Date the Service Provider shall immediately deliver to the British Council:
- 21.1.1 all copies of information and data provided by the British Council to the Service Provider for the purposes of this Agreement (including all Confidential Information in its possession or control) and the Service Provider shall certify to the British Council that it has not retained any copies of such information or data, except for one copy which the Service Provider may use for audit purposes only and subject to the confidentiality obligations in clause 8; and
 - 21.1.2 all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete and all Intellectual Property Rights in such materials shall automatically pass to the British Council (to the extent that they have not already done so by virtue of clause 10.4).
- 21.2 During the period between service of a notice of termination and the Termination Date, the Service Provider shall provide the British Council with all reasonable assistance and information to enable an efficient handover to a new service provider (or to the British Council).
- 21.3 Termination of this Agreement, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 21.4 The British Council shall pay the Charges up to the Termination Date. In addition, if the Agreement is terminated by the British Council pursuant to clause 20.5 or by the Service Provider pursuant to clause 20.1 above, the British Council shall reimburse the Service Provider for the reasonable costs or expenses that the Service Provider can demonstrate that it has properly incurred specifically for the purposes of the Project

and which it cannot recover or which it cannot utilise in connection with another British Council project provided that the Service Provider shall use its reasonable endeavours to mitigate the level of such costs and expenses.

22 Status

- 22.1 For the purpose of this clause 22: (i) **Tax Authority** means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect tax in the United Kingdom or elsewhere; and (ii) references to the British Council shall be deemed to include references to any applicable British Council Entity.
- 22.2 The relationship of the Service Provider to the British Council will be that of independent contractor and nothing in this Agreement shall render it an employee, worker, agent or partner of the British Council and the Service Provider shall not hold itself out as such.
- 22.3 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly, the Service Provider shall:
- 22.3.1 co-operate fully and promptly with any request by the British Council relating to any matter arising in connection with the Service Provider's or the British Council's tax compliance procedures to the extent that it relates or may relate to the arrangements contemplated by this Agreement including this clause 22;
 - 22.3.2 promptly provide such information as the British Council shall require from time to time: (a) to enable the British Council to determine status for tax purposes in relation to the provision of Services under or in connection with this Agreement; and (b) in order to comply with any obligation on the British Council to deduct tax or national insurance contributions from the Charges due under clause 5;
 - 22.3.3 promptly inform the British Council of any material change to any information or documentation previously provided in compliance with this clause; and
 - 22.3.4 promptly provide any other information or documentation that it considers (or ought reasonably consider) to be materially relevant to enable the British Council to make any determinations and to comply with any of its legal obligations referred to in clause 22.3.2;
 - 22.3.5 authorise, request or procure the disclosure of information from the relevant Tax Authority to the British Council as the British Council may request in the event of an enquiry by such a Tax Authority relating to or in connection with the arrangements contemplated by this Agreement including this clause 22;

and the Service Provider shall indemnify the British Council for and in respect of any and all liability, assessment or claim (including interest, fines, penalties, costs and expenses) incurred, paid or payable by the British Council as a result of any failure by the Service Provider to provide information, or failure to provide complete, accurate and up-to-date information, as may be requested by the British Council for the purposes set out in this clause 22.3, where such recovery is not prohibited by law.

22.4 The Service Provider shall be fully responsible for and shall indemnify the British Council for and in respect of the following:

22.4.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Service Provider or its Substitute Provider in respect of the Services, where such recovery is not prohibited by law. The Service Provider shall further indemnify the British Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the British Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

22.4.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Service Provider or its Substitute Provider against the British Council arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the British Council;

provided always that the indemnity in clause 22.4.1 does not apply to any income tax or National Insurance contributions deducted by the British Council if: (a) the provision of Services under or in connection with this Agreement is determined by the British Council to be employment for tax purposes; and (b) the British Council makes the deductions from the Charges under clause 5.1 of this Agreement prior to payment to the Service Provider.

22.5 The British Council may at its option satisfy the indemnities in this clause 22 (in whole or in part) by way of deduction from payments due to the Service Provider.

23 Assignment, subcontracting and substitution

23.1 Either party may at any time assign, novate, mortgage, charge, declare a trust over or deal in any manner with the whole of this Agreement or subcontract, delegate or appoint a substitute in respect of any part of this Agreement, provided that:

23.1.1 the relevant party gives prior written notice of such dealing to the other party; and

23.1.2 in the case of the Service Provider, the Service Provider shall ensure that its replacement provider:

(i) is suitably qualified, skilled and experienced to the British Council's satisfaction to provide the Services (or any part of them) under this Agreement; and

(ii) agrees to the British Council's screening requirements as provided for in clause 14.3 of this Agreement. Where such replacement provider is ineligible to provide Services to British Council pursuant to such screening requirements, the Service Provider agrees to find an alternative replacement provider,

and each party shall (at the requesting party's expense) execute all such documents and carry out all such acts as reasonably required to give effect to this clause 23.1.

- 23.2 Where the Service Provider subcontracts, delegates or appoints a substitute in respect of part only of this Agreement pursuant to clause 23.1 by appointing a replacement provider to perform the Services in its place (otherwise than through an assignment or novation of the whole of the Agreement) ("**Substitute Provider**"), the Service Provider shall:
- 23.2.1 continue to invoice the British Council in accordance with clause 5 and be responsible for the remuneration of the Substitute Provider;
 - 23.2.2 remain responsible for all acts and omissions of the Substitute Provider as if they were its own. Any obligations on the Service Provider to do, or to refrain from doing, any act or thing shall include an obligation on the Service Provider to procure that any Substitute Provider, also does, or refrains from doing, such act or thing. For the avoidance of doubt, this includes a requirement on the Service Provider to procure that any Substitute Provider complies with the applicable British Council Requirements;
 - 23.2.3 where any Substitute Provider appointed by the Service Provider under this clause 23 is processing personal data in connection with the Services, the Substitute Provider will be a third-party processor under this Agreement. The Service Provider will ensure that it has in place a written agreement with any such Substitute Provider which incorporates terms and which are substantially similar to those set out in Schedule 6; and
 - 23.2.4 ensure the Substitute Provider is subject to no less stringent obligations of confidentiality as are provided for in this Agreement.

24 Force Majeure

- 24.1 Subject to clauses 24.2 and 24.3, neither party shall be in breach of this Agreement if it is prevented from or delayed in carrying on its business and/or material obligations under this Agreement by a Force Majeure Event.
- 24.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 24.2.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 24.2.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - 24.2.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 24.3 Nothing in this clause 24 shall excuse a party for non-performance (or other breach) of this Agreement if such non-performance (or other breach) results from the acts or omissions of any of that party's employees, agents, consultants and/or sub-contractors (except where such acts or omissions are caused by a Force Majeure Event).

25 Notices

- 25.1 Notice given under this Agreement shall be in writing, sent for the attention of the person signing this Agreement on behalf of the recipient party and to the address given on the front page of this Agreement (or such other address or person as the relevant party may notify to the other party), or by email, and shall be delivered:
- 25.1.1 personally, in which case the notice will be deemed to have been received at the time of delivery;
 - 25.1.2 by pre-paid, first-class post if the notice is being sent to an address within the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the second (2nd) normal working day in the country specified in the recipient's address for notices after the date of posting;
 - 25.1.3 by international standard post if being sent to an address outside the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the seventh (7th) normal working day in the country specified in the recipient's address for notices after the date of posting; or
 - 25.1.4 by email to the relevant email address specified in the Special Terms (or such other email address as the relevant party may notify to the other party), in which case, the notice will be deemed to have been received at the time of transmission, or if this time falls outside of working hours, when working hours resume, in each case provided that no out of office auto-reply or error message is received by the sender in response within one hour after transmission of the notice. If an out of office auto-reply or error message is received by the sender in response within one hour after transmission of the notice, then no valid notice has been delivered and the notice must be sent by one of the alternative methods listed above.
- 25.2 To prove service of notice under clauses 25.1.1 to 25.1.3 above, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

26 Entire agreement

- 26.1 This Agreement constitutes the entire agreement between the parties and any British Council Entity and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 26.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 26.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 26.4 Nothing in this clause shall limit or exclude any liability for fraud.

27 Variation

- 27.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

28 Counterparts

- 28.1 This Agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 28.2 Where this Agreement is executed in counterparts, following execution each party must promptly deliver the counterpart it has executed to the other party. Transmission of an executed counterpart of this Agreement by email in PDF, JPEG or other agreed format shall take effect as delivery of an executed counterpart of this Agreement.

29 Third party rights

- 29.1 Subject to clause 1.8, this Agreement does not create any rights or benefits enforceable by any person not a party to it except that a person who under clause 23 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 29.2 The parties agree that no consent from the British Council Entities or the persons referred to in this clause is required for the parties to vary or rescind this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such third parties).

30 Governing law, Jurisdiction and Dispute Resolution Procedure

- 30.1 This Agreement and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.2 Subject to the remainder of this clause 30, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Agreement or its subject matter.
- 30.3 In the event that any claim or dispute arises out of or in connection with this Agreement, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 14 calendar days after such notice or by such later date as the parties may otherwise agree in writing). If the parties are unable to resolve the dispute or claim in accordance with this clause 30.3, either party may commence proceedings in accordance with clause 30.2.
- 30.4 Nothing in this clause 30 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Agreement or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

Schedule 6

Data Processing Schedule

[Drafting note: we have included only controller-processing clauses within this draft. These have been adopted 'as is' from the 'Agreement for the purchase of professional or consultancy services (long form)' which is on the contracts portal (version dated 10 February 2021)].

1.1 In this Schedule 6:

- 1.1.1 “**Controller**” means a “controller” for the purposes of the GDPR (as such legislation is applicable);
- 1.1.2 “**Data Protection Legislation**” shall mean any applicable law relating to the processing, privacy and use of Personal Data, as applicable to either party or the Services under this Agreement, including the DPA and/or the GDPR, and /or any corresponding or equivalent national laws or regulations; and any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; all guidance, guidelines, codes of practice and codes of conduct issued by any relevant regulator, authority or body responsible for administering Data Protection Legislation (in each case whether or not legally binding);
- 1.1.3 “**Data Subject**” has the same meaning as in the Data Protection Legislation;
- 1.1.4 “**DPA**” means the UK Data Protection Act 2018;
- 1.1.5 “**GDPR**” means, as applicable, the General Data Protection Regulation (EU) 2016/679 or the UK GDPR as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended);
- 1.1.6 “**International Organisation**” has the same meaning as in the GDPR;
- 1.1.7 “**Personal Data**” means “personal data” (as defined in the Data Protection Legislation) that are Processed under this Agreement;
- 1.1.8 “**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, corruption, loss, alteration, unauthorised disclosure of, unauthorised access, attempted access (physical or otherwise) or access to, Personal Data transmitted, stored or otherwise processed;
- 1.1.9 “**Processing**” has the same meaning as in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly;
- 1.1.10 “**Processor**” means a “processor” for the purposes of the GDPR (as such legislation is applicable);
- 1.1.11 “**Sub-Processor**” means a third party engaged by the Processor for carrying out processing activities in respect of the Personal Data on behalf of the Processor;

- 1.1.12 **“Supervisory Authority”** means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK or any other member state of the European Union; and
- 1.1.13 **“Third Country”** means a country or territory outside the UK.
- 1.2 For the purposes of the Data Protection Legislation, the British Council is the Controller and the Service Provider is the Processor in respect of the Personal Data.
- 1.3 Details of the subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects whose Personal Data is being Processed in connection with the Services are set out in the Annex to this Schedule 6.
- 1.4 The Service Provider shall:
- 1.4.1 Process the Personal Data only to the extent, and in such manner, as is necessary for the purpose of carry out its duties under this Agreement and in accordance with the British Council's written instructions and this clause (unless otherwise required by applicable laws as referred to in 1.5.3);
 - 1.4.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
 - 1.4.3 ensure it has taken all reasonable steps to ensure the reliability and integrity of any persons authorised to Process the Personal Data;
 - 1.4.4 ensure that any persons authorised to Process the Personal Data are:
 - (i) subject to appropriate obligations of confidentiality; and
 - (ii) subject to adequate training in the use, protection and handling of Personal Data;
 - 1.4.5 not engage any Sub-Processor to carry out its Processing obligations under this Agreement without obtaining the prior written consent of the British Council and, where such consent is given, the Service Provider procuring by way of a written contract that such Sub-Processor will, at all times during the engagement, be subject to data Processing obligations equivalent to those set out in this clause. The British Council reserves the right during this Agreement to request evidence from the Service Provider to support compliance with this clause 1.4.5 and the Service Provider shall provide such evidence within three Working Days;
 - 1.4.6 assist and co-operate with the British Council as requested to ensure the British Council's compliance with its obligations under the Data Protection Legislation with respect to:

- (i) carrying out and/or reviewing data protection impact assessments where necessary in accordance with Article 35 of the GDPR;
 - (ii) implementing such technical and organisational measures to enable the British Council to respond to requests from Data Subjects exercising their rights under the Data Protection Legislation, which shall include but not be limited to:
 - (A) providing Personal Data and details of the Processing of Personal Data to the British Council in response to Data Subjects' exercising their rights of access; and
 - (B) deleting and/or rectifying Personal Data in response to a request from a Data Subject; and
- 1.4.7 not Process or otherwise transfer any Personal Data to any Third Country without prior written consent from the British Council and, where such consent is given, (whether in the Annex to this Schedule 6 or separately), the Service Provider shall comply with the following conditions;
 - (i) provide appropriate safeguards in relation to the transfer;
 - (ii) ensure the Data Subject has enforceable rights and effective legal remedies;
 - (iii) comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - (iv) comply with reasonable instructions notified to it in advance by the British Council with respect to the Processing of the Personal Data; and
 - (v) only transfer Personal Data to the relevant Third Country where the relevant requirements under Articles 44 to 50 of the GDPR are met.

1.5 The Service Provider shall notify the British Council promptly:

- 1.5.1 if it becomes aware that in following the instructions of the British Council, it shall be breaching the Data Protection Legislation;
- 1.5.2 on receipt of notice of any complaint made to a Supervisory Authority or any finding by a Supervisory Authority in relation to its Processing of Personal Data, whether it is Personal Data being Processed under this Agreement or otherwise;
- 1.5.3 if the Service Provider believes it is under a legal obligation to Process the Personal Data other than in accordance with the British Council's instructions and provide the British Council with details of such legal obligation, unless the law prohibits such information on important grounds of public interest;
- 1.5.4 (and in any event within 3 days) of:

- (i) a request received by the Service Provider or a Sub-Processor from a Data Subject for access to that person's Personal Data; and
- (ii) a complaint or request received by the Service Provider or a Sub-Processor from a Data Subject relating to the British Council's obligations under the Data Protection Legislation;

and the Service Provider shall provide the British Council with full co-operation and assistance in relation to any such complaint or request including where the complaint or request was received by the Service Provider, a Sub-Processor or the British Council.

1.6 The Service Provider shall:

- 1.6.1 notify the British Council promptly (and in any event within 24 hours) of becoming aware of any actual, suspected or threatened Personal Data Breach of any component of the Personal Data;
- 1.6.2 ensure that such notice includes details of the nature of the breach, including the categories and approximate number of Data Subjects and records concerned and the remediation measures being taken to mitigate and contain the breach; and
- 1.6.3 provide prompt assistance as requested by the British Council following the notification of an actual, suspected or threatened Personal Data Breach referred to in 1.6.1.

1.7 In the event of a notification under clause 1.6, the Service Provider shall not notify the Data Subject or any third party unless such disclosure is required by Data Protection Legislation or other law or is otherwise approved by the British Council.

1.8 The Service Provider and its Sub-Processors shall maintain accurate written records of the Processing it carries out in connection with this Agreement and on request by the British Council, make available all information necessary to demonstrate the Service Provider's compliance under Data Protection Legislation and the terms of this Agreement.

1.9 The Service Provider and its Sub-Processors shall allow for and contribute to audits, including inspections, by the British Council (or its authorised representative) in relation to the Processing of the British Council's Personal Data by the Service Provider and its Sub-Processors to support the Service Provider in their compliance of clause 1.8.

1.10 The Service Provider warrants that in carrying out its obligations under this Agreement it will not breach the Data Protection Legislation or do or omit to do anything that might cause the British Council to be in breach of the Data Protection Legislation.

1.11 The Service Provider shall indemnify and keep indemnified the British Council and the British Council Entities against all Personal Data losses suffered or incurred by, awarded against or agreed to be paid by, the British Council or British Council Entities arising from a breach by the Service Provider (or any Sub-Processor) of (a) its data protection obligations under this Agreement; or (b) the Service Provider (or any Sub-Processor) acting outside or contrary to the lawful instruction of the British Council.

1.12 On termination or expiry of this Agreement, the Service Provider (or any Sub-Processor) shall, except to the extent it is required to retain a copy by law, stop

Processing the Personal Data and return and/or destroy it at the request of the British Council. The Service Provider shall return the Personal Data in an open machine-readable format, via a secure agreed route at no cost to the British Council and the Service Provider shall provide confirmation of destruction of any other copies including details of the date, time and method of destruction.

- 1.13 These clauses may be amended at any time by the British Council giving at least 30 days' written notice to the other stating that applicable controller to processor standard clauses laid down by the European Commission or adopted by the UK Information Commissioner's office or other Supervisory Authority are to be incorporated into this Agreement and replace clauses 1.1 to 1.4 above.

Schedule 6 - Annex:

Data Processing details

Description	Details
Duration of Processing	[Clearly set out the duration of the processing including dates]
Nature/purpose of Processing	<p>The purpose of this processing is to enable the Service Provider to comply with its obligations under this Agreement.</p> <p>The nature of the processing is: [Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, marketing, statutory obligation, grant distribution and management, event management recruitment assessment etc]</p>
Type of Personal Data	[Examples here include: name, address, date of birth, National identification number, telephone number, pay, images, biometric data etc]
Categories of Data Subjects	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, Service Providers, patients, students / pupils, members of the public, users of a particular website etc]
Countries or International Organisations Personal Data will be transferred to	[name the countries and International Organisations (where applicable) Where not applicable state N/A. NB: “ International Organisation ” is defined in the GDPR as “an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.”]
Sub-processors	[name and contact address of Sub-Processor(s) (where applicable) and brief description of the nature of processing of personal data that they are undertaking under this agreement, where not applicable state N/A]