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| --- | --- |
| **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 Client:** | **[*insert name and address details (and company number, if appropriate)*]** |
| **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 Client undertake to observe in the performance of this Agreement.

The British Council shall supply to the Client, and the Client shall acquire and pay for, the services described in Schedule 2 on the terms of this Agreement.]

**Schedules**

|  |  |
| --- | --- |
| **Schedule 1** | Special Terms |
| **Schedule 2** | Description of the Services |
| **Schedule 3** | Charges |
| **Schedule 4** | Standard Terms |
| **Schedule 5** | 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 Client.

**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**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |   | Signature: |   |
| Position: |   |  |  |

**Signed by the duly authorised representative of [*insert name of Client*]**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |   | Signature: |   |
| Position: |   |  |  |

1.

**Schedule 1**

Special Terms

Terms defined in this Schedule 1 shall have the same meanings when used throughout this Agreement.

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 provision of the Services and any Goods, 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).

1. Commencement Date and Term
	1. The British Council shall provide the Services to the Client on the terms and conditions of this Agreement from **[*insert date*]** **[**until completed in accordance with Schedule 2**]** **OR** **[**for a period of **[*insert duration*]] [**and, after that, shall continue to be supplied unless this Agreement is terminated by one of the parties giving to the other not less than **[*insert number*]** months' notice, **[**such notice to expire on **[*insert date*]** or at any time after that date**]],** unless this Agreement terminated in accordance with clause 1.2 below or clause 11 of Schedule 4.
	2. Notwithstanding anything to the contrary elsewhere in this Agreement, or to any other rights or remedies which the parties may have, the British Council may terminate this Agreement without liability to the Client on giving the other not less than **[*insert number*]** months' written notice.
2. Project Plan
	1. Project Plans shall be agreed in the following manner:
		1. the Client shall provide the British Council with a request for a Project Plan, setting out the requirements and specifications of the services which it is requesting from the British Council, including a description of what work is to be done, dates by which **[**it **OR** each stage of the work**]** is requested to be started and finished, Deliverables, In-put Materials and such other information as the British Council may request to allow the British Council to prepare a draft Project Plan;
		2. the British Council shall, as soon as reasonably practicable, provide the Client with a draft Project Plan; and
		3. the British Council and the Client shall discuss and agree the draft Project Plan and when it has been agreed, they shall both sign a copy of it and it shall be deemed incorporated into Schedule 2 and be subject to this Agreement.
	2. **[**The British Council shall charge for the preparation of the Project Plan on a time and materials basis in accordance with clause  4 of Schedule 4.**]**
	3. Once the Project Plan has been agreed and signed in accordance with clause 2.1.3 above no amendment shall be made to it except in accordance with clause 5 and clause 18 of Schedule 4.
3. Working Hours

For the purposes of this Agreement “**Working Hours**” and “**Working Days**” shall mean **[insert relevant working hours/working days details for territory in which Services are to be provided or premises at which Services are to be provided [e.g. 9 a.m. to 5 p.m. local time Monday to Friday OR 10 a.m. to 6 p.m. local time Sunday to Thursday]]**.

1. British Council’s Liability

The total liability of the British Council to the Client pursuant to clause 9 of Schedule 4 shall not exceed £**[*insert amount*] [OR** the price paid for the Services**]**.

1. Service of notices

For the purposes of clause 24 of Schedule 4, notices are to be sent to the following addresses:

|  |  |
| --- | --- |
| To the British Council | To the Client |
| **[*The British Council******1 Redman Place******Stratford******London******E20 1JQ*]****[Attention: *insert name and job title*]** | **[*Insert address*]****[Attention: *insert name and job title*]** |
| **Email: [*insert email address(es) to which notices may be sent*]** | **Email: [*insert email address(es) to which notices may be sent*]** |

1.

**Schedule 2**

Description of the Services

**[*Insert* *description of the [training]/[consultancy] services to be provided under the Agreement*.]**

**Schedule 3**

Charges

**Part 1 - Price**

**[*Insert* d*etails of price, for example the fixed price or daily rate. Include details of any price review mechanisms, such as annual increases in line with inflation etc*.]**

**[**The British Council's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day worked during Working Hours.**]**

**[**The British Council shall be entitled to charge an overtime rate of **[**x**]**% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Project or the Services outside of Working Hours.**]**

**Part 2 - Payment**

**[*Insert* t*he payment schedule, which should include the dates on which instalments are to be invoiced and the amount of each instalment*.]**

1.

**Schedule 4**

Standard Terms

1. Interpretation
	1. The definitions and rules of interpretation in this clause apply in this Agreement.

“**Background IPR**” means any Intellectual Property Rights (other than Project IPR) belonging to either party before the date of this Agreement or not created in the course of or in connection with the Project;

“**British Council's Equipment**” means any equipment, including tools, systems, cabling or facilities, provided by the British Council or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client;

“**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 Client in writing or set out on the British Council’s website at <https://www.britishcouncil.org/partner/international-development/jobs/policies-consultants> or such other web address as may be notified to the Client from time to time (as such documents may be amended, updated or supplemented from time to time during the term of this Agreement);

“**British Council's Manager**”means the British Council's manager for the Services appointed under clause 2.3;

“**Client's Equipment**”means any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services;

“**Client's Manager**”means the Client's manager for the Project and/or the Services, appointed in accordance with clause 3.1;

“**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;

“**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, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of the British Council or the Client (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**” means all Documents, products and materials developed by the British Council or its agents, subcontractors, consultants and employees in relation to the Project Plan and the Services in any form, including computer programs, data, reports and specifications (including drafts);

“**Document**” means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

“**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 Client receives the Services;

“**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 the 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.

“**In-put Material**” means all Documents, information and materials provided by the Client relating to the Services, including computer programs, data, reports and specifications;

“**Intellectual Property Rights**” means any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trade marks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of 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;

“**Pre-existing Materials**” means all Documents, information and materials provided by the British Council relating to the Services which existed prior to the commencement of this Agreement, including computer programs, data, reports and specifications;

“**Project**” means a project as described in the Project Plan;

“**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 the course of or in connection with the Project;

“**Project Milestones**” means those milestones or events to be completed as part of the Project, as set out in the Project Plan;

“**Project Plan**” means the detailed plan describing a Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services agreed in accordance with clause 2 of Schedule 1;

“**Request for Information**” means a request for information (as defined in 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;

“**Services**” means the training/consultancy services to be provided by the British Council under this Agreement as set out in Schedule 2 and the Project Plan, together with any other services which the British Council provides or agrees to provide to the Client;

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

“**VAT**” means value added tax chargeable under English law for the time being and any similar additional tax.

* 1. In this Agreement:
		1. any headings in this Agreement shall not affect the interpretation of this Agreement;
		2. a reference to a statute or statutory provision is (unless otherwise stated) a reference to the applicable UK statute 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;
		3. where the words “include(s)” or “including” are used in this Agreement, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them;
		4. without prejudice to clause 1.2.5, except where the context requires otherwise, references to:
			1. services being provided to, or other activities being provided for, the British Council;
			2. any benefits, warranties, indemnities, rights and/or licences granted or provided to the British Council; and
			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. obligations of the British Council shall not be interpreted as obligations of any of the British Council Entities; and
		2. where this Agreement has been translated into a language other than the English language, the English language version shall prevail.
1. British Council's obligations
	1. The British Council shall provide the Services, and deliver the Deliverables to the Client, in accordance with Schedule 2 andthe Project Plan in all material respects.
	2. The British Council shall use reasonable endeavours to meet any performance dates or Project Milestonesspecified in Schedule 2 andthe Project Plan, but any such dates shall be estimates only and time for performance by the British Council shall not be of the essence of this Agreement.
	3. The British Council shall appoint the British Council's Manager in respect of the Project who shall have authority contractually to bind the British Council on all matters relating to the Services and the Project. The British Council shall use reasonable endeavours to ensure that the same person acts as the British Council's Manager throughout the term of this Agreement, but may replace the British Council’s Manager from time to time where reasonably necessary in the interests of the British Council's business.
	4. The British Council shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises and that have been communicated to it under clause 3.1.4, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
2. Client's Responsibilities
	1. The Client shall:
		1. co-operate with the British Council in all matters relating to the Services and appoint the Client's Manager in relation to the Services and the Project, who shall have the authority contractually to bind the Client on matters relating to the Services and the Project.
		2. provide, for the British Council, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by the British Council;
		3. provide, in a timely manner, such In-put Material and other information as the British Council may reasonably require, and ensure that it is accurate in all material respects;
		4. inform the British Council of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;
		5. ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant standards or requirements;
		6. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the British Council's Equipment, the use of In-put Material and the use of the Client's Equipment in relation to the British Council's Equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start; and
		7. keep, maintain and insure the British Council's Equipment in good condition from time to time and shall not dispose of or use the British Council's Equipment other than in accordance with the British Council's written instructions or authorisation.
	2. If the British Council's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the British Council shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.
	3. The Client shall be liable to pay to the British Council, on demand, all reasonable costs, charges or losses sustained or incurred by the British Council (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to the British Council confirming such costs, charges and losses to the Client in writing.
	4. The Client shall not, without the prior written consent of the British Council, at any time from the date of this Agreement to the expiry of 6 months after the termination of this Agreement, solicit or entice away from the British Council or employ or attempt to employ any person who is, or has been, engaged as an employeeof the British Council in the provision of the Services.
	5. Any consent given by the British Council in accordance with clause 3.4 shall be subject to the Client paying to the British Council a sum equivalent to 20% of the then current annual remuneration of the British Council's employee or, if higher, 20% of the annual remuneration to be paid by the Client to that employee.
3. Charges and payment
	1. In consideration of the provision of the Services by the British Council, the Client shall pay the charges as set out in Schedule 3, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 4.2 shall apply if the British Council provides Services on a time and materials basis and clause 4.3 shall apply if the British Council provides Services for a fixed price. The remainder of this clause 4 shall apply in either case.
	2. Where Services are provided on a time and materials basis:
		1. the charges payable for the Services shall be calculated in accordance with the British Council's fee rates, as set out in Schedule 3;
		2. all charges quoted to the Client shall be exclusive of VAT, which the British Council shall add to its invoices at the appropriate rate;
		3. the British Council shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services or Project, and the British Council shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 4.2.4; and
		4. the British Council shall invoice the Client monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 4.2 and clause 4.4.
	3. Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in Part 1 of Schedule 3 or in the Project Plan. The Client shall pay the total price to the British Council (without deduction or set-off) in instalments, as set out in Part 2 of Schedule 3 or in the Project Plan. At the end of a period specified in Part 2 of Schedule 3 or in the Project Plan in respect of which an instalment is due, the British Council shall invoice the Client for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause 4.4.
	4. Any fixed price and daily rate contained in Part 1 of Schedule 3 or in the Project Plan excludes:
		1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the British Council engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the British Council for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the British Council in addition; and
		2. VAT, which the British Council shall add to its invoices at the appropriate rate.
	5. The parties agree that the British Council may review and amend its prices in accordance with any review procedure set out in Schedule 3.
	6. The Client shall pay each invoice submitted to it by the British Council, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the British Council.
	7. Without prejudice to any other right or remedy that it may have, if the Client fails to pay the British Council on the due date, the British Council may:
		1. 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 from the date on which payment was due to the date on which payment is actually made. 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; and/or
		2. suspend all Services until payment has been made in full.
	8. Time for payment shall be of the essence of this Agreement.
	9. All sums payable to the British Council under this Agreement shall become due immediately on its termination, despite any other provision. This clause 4.9 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
	10. The British Council may, without prejudice to any other rights it may have, set off any liability of the Client to the British Council against any liability of the British Council to the Client.
4. Change control
	1. The Client's Manager and the British Council's Manager shall meet regularly to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
	2. If either party requests a change to the scope or execution of the Services, the British Council shall, within a reasonable time, provide a written estimate to the Client of:
		1. the likely time required to implement the change;
		2. any necessary variations to the British Council's charges arising from the change;
		3. the likely effect of the change on the Project Plan; and
		4. any other impact of the change on this Agreement.
	3. If the Client wishes the British Council to proceed with the change, the British Council has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Project Plan (if applicable) and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied in accordance with clause 18.
	4. Notwithstanding clause 5.3, the British Council may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the British Council requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.
	5. The British Council may charge for the time it spends assessing a request for change from the Client on a time and materials basis in accordance with clause 4.
5. Intellectual property rights
	1. Subject to clause 7, each party shall give full disclosure to the other of all Background IPR owned by it which is relevant to the Project (and the British Council shall give the Client full disclosure of any Third Party IPR it intends to use).
	2. All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it.
	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.
	4. The Client 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.
	5. The British Council hereby grants to the Client an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Project IPR and the British Council’s Background IPR in and in connection with the Deliverables and for any purpose relating to the Project.
	6. The Client hereby grants to the British Council an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Client’s Background IPR included in the Deliverables.
	7. The British Council is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR required by the Client and the British Council for use of the Deliverables (such licences, permissions or consents to be in writing, copies of which the British Council shall provide to the Client on request). In addition, the British Council warrants that the provision of the Services and/or the Deliverables does not and will not infringe any third party’s Intellectual Property Rights.
	8. The Client warrants that it has in place contractual arrangements with all individuals engaged by the Client in connection with this Agreement assigning to the Client their Intellectual Property Rights such that the Client can enter into the assignments and licences set out in this clause 6.
	9. The Client 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 6.
	10. Nothing in this Agreement shall prevent either party 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 other party’s Confidential Information or an infringement of Intellectual Property Rights.
	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.
6. Confidentiality
	1. For the purposes of this clause 7:
		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
		2. the “**Receiving Party**” is the party which receives Confidential Information relating to the other party.
	2. The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Agreement:
		1. is given only to such of its staff and professional advisors or associates engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement; and
		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 member of its staff or its professional advisors or associates otherwise than for the purposes of this Agreement.
	3. The provisions of clause 7.2 shall not apply to any Confidential Information which:
		1. is or becomes public knowledge (otherwise than by breach of this clause 7);
		2. was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
		3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
		4. is independently developed without access to the Confidential Information; or
		5. must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.
	4. In the event that the Client fails to comply with this clause 7, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.
	5. The provisions under this clause 7 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
	6. The Client 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.
	7. Where the British Council receives a Request for Information in relation to information that the Client 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, forward the Request for Information to the Client and the Client shall:
		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
		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. The Client 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 Client’s Confidential Information in accordance with the Information Disclosure Requirements:
		1. in certain circumstances without consulting the Client; or
		2. following consultation with the Client and having taken its views into account,

provided always that where clause 7.8.1 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 Client after any such disclosure.

* 1. The provisions of this clause 7 shall survive the termination of this Agreement, however arising.
1. The British Council’s property
	1. All materials, equipment and tools, drawings, specifications and data supplied by the British Council to the Client (including Pre-existing Materials and the British Council's Equipment) shall, at all times, be and remain, as between the British Council and the Client, the exclusive property of the British Council, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the British Council, and shall not be disposed of or used other than in accordance with the British Council's written instructions or authorisation.
2. Limitation of liability
	1. This clause 9 sets out the entire financial liability of the British Council (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:
		1. any breach of this Agreement, including any deliberate breach of this Agreement by the British Council, or its employees, agents or subcontractors;
		2. any use made by the Client of the Services, the Deliverables or any part of them; and
		3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
	2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
	3. Nothing in this Agreement limits or excludes the liability of the British Council:
		1. for death or personal injury resulting from negligence; or
		2. for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the British Council; or
		3. for any other liability which cannot be excluded or limited under applicable law.
	4. Subject to clause 9.2 and clause 9.3:
		1. the British Council shall not, to the greatest extent permitted by law, be liable for:
			1. loss of profits; or
			2. loss of business; or
			3. depletion of goodwill and/or similar losses; or
			4. loss of anticipated savings; or
			5. loss of goods; or
			6. loss of contract; or
			7. loss of use; or
			8. loss of corruption of data or information; or
			9. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or
			10. any punitive, exemplary or multiplied damages; and
		2. the British Council's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the amount specified in clause 0 of Schedule 1.
3. Data Processing
	1. In this clause:

“**Controller**” means a “controller” for the purposes of the GDPR (as such legislation is applicable);

“**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);

“**Data Subject**” has the same meaning as in the Data Protection Legislation;

“**DPA**” means the UK Data Protection Act 2018;

“**GDPR**” means, as applicable, the General Data Protection Regulation (EU) 2016/679 or the UK GDPR as defined in the DPA (as amended);

“**Personal Data**” means “personal data” (as defined in the Data Protection Legislation) that are Processed under this Agreement;

“**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, corruption, loss, alteration or unauthorised disclosure of unauthorised access, attempted access (physical or otherwise) or access to, Personal Data transmitted, stored or otherwise processed;

“**Processing**” has the same meaning as in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly;

“**Processor**” means a “processor” for the purposes of the GDPR (as such legislation is applicable);

“**Sub-Processor**” means a third party engaged by the Processor tocarrying out processing activities in respect of the Personal Data on behalf of the Processor;

“**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

“**Third Country**” means a country or territory outside the UK.

* 1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
	2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the British Council is the Processor in respect of the Personal Data. Schedule 5 sets out the scope, nature and purpose of Processing by the British Council, the duration of the Processing and the types of Personal Data and categories of Data Subject.
	3. Without prejudice to the generality of clause 10.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the British Council for the duration and purposes of this Agreement.
	4. Without prejudice to the generality of clause 10.2, the British Council shall, in relation to any Personal Data processed in connection with the performance by the British Council of its obligations under this Agreement:
		1. Process that Personal Data only on the written instructions of the Client unless otherwise required by applicable laws as referred to in clause 10.8.3;
		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 Subject and ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;
		3. not transfer any Personal Data to any Third Country unless the prior written consent of the Client has been obtained (whether in Schedule 5 or separately) and the following conditions are fulfilled:
			1. the Client or the British Council has provided appropriate safeguards in relation to the transfer;
			2. the data subject has enforceable rights and effective legal remedies;
			3. the British Council complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
			4. the British Council complies with reasonable instructions notified to it in advance by the Client with respect to the Processing of the Personal Data;
		4. assist the Client, at the Client's cost, in responding to any request from a Data Subject, and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
		5. notify the Client without undue delay on becoming aware of a Personal Data Breach;
		6. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Agreement unless required by Applicable Law to store the Personal Data;
		7. maintain complete and accurate records to demonstrate compliance with this clause; and
		8. allow for assurance activities by the Client or the Client’s designated auditor and information to demonstrate its compliance with this clause 10.
	5. The Client consents to the British Council appointing the third party detailed in Schedule 5 as a Sub-Processor of Personal Data under this Agreement. The British Council confirms that it has entered or (as the case may be) will enter into a written Agreement with the Sub-Processor incorporating terms which are substantially similar to those set out in this clause 10. As between the Client and the British Council, the British Council shall remain contractually responsible for any Sub-Processor appointed by it pursuant to this clause 10.
	6. Either party may, at any time on not less than 30 days’ notice, revise this clause 10 by replacing it with any 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 or with similar terms forming part of an applicable certification scheme (which shall apply in replacement of this clause 10 by attachment to this Agreement).
	7. The British Council shall notify the Client promptly:
		1. if it becomes aware that in following the instructions of the Client, it shall be breaching the Data Protection Legislation;
		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;
		3. if the British Council believes it is under a legal obligation to Process the Personal Data other than in accordance with the Client’s instructions and provide the Client with details of such legal obligation notwithstanding clause 10.5.1, unless the law prohibits such information on important grounds of public interest.
1. Termination
	1. Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other if:
		1. the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than **[**14**]** days after being notified in writing to make such payment; or
		2. the other party commits a breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
		3. the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
		4. the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
		5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
		6. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
		7. a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
		8. a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
		9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
		10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.3 to clause 11.1.9 (inclusive); or
		11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
		12. the other party’s financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
		13. there is a change of Control of the other party.
	2. On termination of this Agreement for any reason:
		1. the Client shall immediately pay to the British Council all of the British Council's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the British Council may submit an invoice, which shall be payable immediately on receipt;
		2. the Client shall, within a reasonable time, return all of the British Council's Equipment, Pre-existing Materials and Deliverables. If the Client fails to do so, then the British Council may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
		3. the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
	3. On termination of this Agreement (however arising) the following clauses shall survive and continue in full force and effect:
		1. Clause 6
		2. Clause 7;
		3. Clause 8
		4. Clause 9;
		5. Clause 11; and
		6. Clause 25.
2. Anti-corruption

Each party warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with other parties.

1. Safeguarding and Protecting Children and Vulnerable Adults
	1. The Client 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 Safeguarding Policy included in the British Council Requirements as amended from time to time, which the Supplier acknowledges may include submitting checks by the UK Disclosure & Barring Service (DBS) and/or equivalent local checks[[1]](#footnote-1).
	2. The Client 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.
	3. In addition, the Client will ensure that, where it engages any other party in connection with this Agreement, that that party will also comply with the same requirements as if they were a party to this Agreement.
2. Equality, Diversity and Inclusion
	1. The Client shall ensure that it does not, whether as an employer or provider of services and/or goods, discriminate within the meaning of the Equality Legislation.
	2. The Client shall comply with any equality or diversity policies or guidelines included in the British Council Requirements.
3. Assignment
	1. The Client shall not, without the prior written consent of the British Council, assign, transfer, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under this Agreement.
	2. The British Council may assign or novate this Agreement to: (i) any separate entity Controlled by the British Council; (ii) any body or department which succeeds to those functions of the British Council to which this Agreement relates; or (iii) any provider of outsourcing or third party services that is employed under a service contract to provide services to the British Council. The Client warrants and represents that it will (at the British Council’s reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 15.2.
4. Waiver

A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

1. Entire agreement

This Agreement and any documents referred to in it constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersede, cancel and replace all prior agreements, licences, negotiations and discussions between the parties relating to it. Each party confirms and acknowledges that it has not been induced to enter into this Agreement by, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) not expressly incorporated into it. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

1. Variation

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

1. Severance

If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

1. Counterparts

This Agreement may be executed in counterparts, each of which when executed shall constitute a duplicate original, but all counterparts shall together constitute one agreement. 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.

1. Third party rights
	1. Subject to clause 1.2.4, 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 15 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
	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).
2. No partnership or agency

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) and neither party shall incur any expenditure in the name of or for the account of the other.

1. Force Majeure
	1. Subject to clauses 23.2 and 23.3, 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 hereunder by a Force Majeure Event.
	2. A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
		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;
		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
		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.
	3. Nothing in this clause 23 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 consultants and/or sub-contractors (except where such acts or omissions are caused by a Force Majeure Event).
2. Notice
	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:
		1. personally, in which case the notice will be deemed to have been received at the time of delivery;
		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;
		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
		4. by email to the relevant email address specified in clause 0 of Schedule 1 (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.
	2. To prove service of notice under clauses 24.1.1 to 24.1.3 above, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.
3. Governing Law and Dispute Resolution Procedure
	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.
	2. Subject to the remainder of this clause 25, 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.
	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 25.3, either party may commence proceedings in accordance with clause 25.2.
	4. Nothing in this clause 25 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 5

Data Processing Schedule [to be completed by British Council]

|  |  |
| --- | --- |
| **Description** | **Details** |
| **Duration of Processing** | *[Clearly set out the duration of the processing including dates]* |
| **Nature/purpose of Processing** | *[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]*  |
| **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, suppliers, 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]* |
| **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]* |

1. 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) [↑](#footnote-ref-1)