
Dated [

] 201[*]

[INSERT NAME OF SUPPLIER]

- and -

THE BRITISH COUNCIL

PORTAL DEVELOPMENT AGREEMENT

THIS AGREEMENT is dated **[DATE]**.

PARTIES

- (1) **[Full company name]** incorporated and registered in **[Country of incorporation]** with company number **[Number]** whose registered office is at **[Registered office address]** (the "Supplier"); and
- (2) **[THE BRITISH COUNCIL]**, incorporated by Royal Charter and registered as a charity (under number 209131 in England and Wales and number SCO37733 in Scotland), with its principal office at 10 Spring Gardens, London, SW1A 2BN] **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 address and details]]** (the "British Council").

BACKGROUND

- (A) **[The Supplier submitted a tender on [Date] (reference: [Reference]) in response to the British Council's request for proposal issued on [Date] (reference: [Reference]).]**
- (B) The parties have agreed that the Supplier shall provide the British Council with website design and development and related services on the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"Acceptance" means the acceptance or deemed acceptance of the Site by the British Council pursuant to clause 3.

"Acceptance Certificate" means the form of certificate served on the Supplier by the British Council to acknowledge Acceptance.

"Acceptance Tests" means the tests to be carried out on the Site as set out in clause 3 **[and as described in Schedule 4]**.

"Background IPR" means any Intellectual Property Rights (other than Project IPR) belonging 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 Supplier in writing 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 Supplier from time to time (as such documents may be amended, updated or supplemented from time to time during the term of this Agreement).

"Change Control Procedures" means the procedures set out in Schedule 6.

"Charges" means the charges in respect of the Services set out in Schedule 5.

"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 Supplier (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).

"Defects" means has the meaning given in clause 3.4.

"Design Agency" means **[Name and address]**.

"Effective Date" means **[Date]**.

"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 Supplier provides 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" has the meaning given in clause 28.

"Information Disclosure Requirements" means the requirements to disclose information under:

- (a) the Code;

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

"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.

"Materials" means the content provided to the Supplier by the British Council from time to time for incorporation in the Site.

"Non-Supplier Defects" means those Defects described in clause 3.5.

"Phase" means in relation to the Project Plan, one of the **[three]** key phases of work identified in Schedule 1.

"Project" means the provision by the Supplier of the Services as set out in this Agreement.

"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 Plan" means the timetable within which the Supplier will implement the Project as set out in 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.

["Server" means a high-performance computer server administered by the Supplier, as more particularly defined in Schedule 3.]

"Services" means the design and development services to be provided pursuant to this Agreement as set out in Schedule 3.

"Site" means the website at ***[insert details of relevant Url] [to be hosted by the Supplier pursuant to this Agreement]***.

"Site Software" means the software for the Site commissioned by the British Council as specified in Schedule 2.

"Site Specification" means the specification for the Site set out in Schedule 2.

"Third Party IPR" means any Intellectual Property Rights not belonging to either party to this Agreement but used by the Supplier in the creation of the Site, the Site Software and the Site Specification and/or in the course of or in connection with the Project.

"Third Party Products" means those third party software products set out in Schedule 2.

"**Visitor**" means a visitor to the Site.

1.2 In this Agreement:

- 1.2.1 any headings in this Agreement shall not affect the interpretation of this Agreement;
- 1.2.2 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;
- 1.2.3 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;
- 1.2.4 without prejudice to clause 1.2.5, except where the context requires otherwise, references to:
 - (i) services being provided to, or other activities being provided for, the British Council;
 - (ii) any benefits, warranties, indemnities, rights and/or licences granted or provided to the British Council; and
 - (iii) 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; and
- 1.2.5 obligations of the British Council shall not be interpreted as obligations of any of the British Council Entities.

2. **Scope of the project**

2.1 The Supplier shall:

- 2.1.1 ***[liaise with the Design Agency in developing the [look and feel of the] Site;]***
- 2.1.2 design, develop and deliver the Site in ***[three]*** Phases in accordance with the Project Plan; and
- 2.1.3 provide the Services, and ***[host the Site from the Server in accordance with agreed service levels]***.

3. **Development and acceptance of site**

- 3.1 Once the Supplier has completed design and development of the Site in accordance with Phase ***[Relevant phase number]*** of the Project Plan, the Supplier shall invite the British Council to attend Acceptance Tests. The procedure set out in this clause 3 shall be repeated

in respect of Phase [**Relevant phase number**] and any further development works agreed by the parties from time to time.

- 3.2 The Acceptance Tests shall test compliance of the Site with the Site Specification. The form and detail of such tests is set out in Schedule 4.
- 3.3 Acceptance of the Site shall occur when the Site has passed the Acceptance Tests. The British Council shall sign the Acceptance Certificate in respect of the Site and return it to the Supplier as soon as reasonably practicable following Acceptance.
- 3.4 In the event that any Acceptance Tests are not passed, the failures that cause the relevant tests to be failed ("**Defects**") shall be drawn up and documented by the Supplier and presented to the British Council for discussion as to how best to rectify such Defects.
- 3.5 If any failure to pass the Acceptance Tests results from a Defect which is caused by an act or omission of the British Council, or by one of the British Council's sub-contractors or agents for whom the Supplier has no responsibility ("**Non-Supplier Defect**"), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect, and the British Council shall sign and return the Acceptance Certificate to the Supplier within seven calendar days of Acceptance. The Supplier shall provide all assistance reasonably requested by the British Council in remedying any Non-Supplier Defect by supplying additional services or products. If such assistance is requested, the British Council shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.
- 3.6 The Supplier shall remedy any Defects promptly in order to ensure that the Site passes the Acceptance Tests on a retest.
- 3.7 If such a retest demonstrates that the Site is still not in accordance with the Site Specification, the British Council may, by written notice to the Supplier, elect at its sole option:
 - 3.7.1 to fix (without prejudice to its other rights and remedies) a new date for carrying out further tests on the Site on the same terms and conditions as the retest (except that all reasonable costs which the British Council may incur as a result of carrying out such tests shall be reimbursed by the Supplier). If the Site fails such further tests, the British Council shall be entitled to proceed under clause 3.7.2 or clause 3.7.3; or
 - 3.7.2 to accept the Site subject to an abatement of the Charges, such abatement to be an amount that is reasonable, taking into account the circumstances. In the absence of written agreement as to abatement within 14 days of the date of the notice given by the British Council pursuant to this clause 3.7, the British Council shall be entitled to reject the Site in accordance with clause 3.7.3; or
 - 3.7.3 to reject the Site as not being in conformity with this Agreement, in which event this Agreement shall automatically terminate and the Supplier shall (without prejudice to the British Council's other rights and remedies) forthwith refund to the British Council all sums already paid to the Supplier under this Agreement.

4. Third Party Products

The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Charges payable pursuant to clause 6.1.

5. Project management

5.1 Each party shall appoint a project manager who shall:

5.1.1 provide professional and prompt liaison with the other party; and

5.1.2 have the necessary expertise and authority to commit the relevant party.

6. Charges and payment

6.1 Following Acceptance, the Supplier shall issue a VAT invoice in respect of the Charges, and the British Council shall pay to the Supplier the Charges calculated correctly in accordance with Schedule 5 and set out in such invoice within 30 days of receipt of it, except for any amount in respect of which there is a genuine dispute.

6.2 All Charges are exclusive of VAT.

6.3 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 Supplier 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 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.

6.4 Where the Supplier enters into a Sub-Contract, the Supplier shall:

6.4.1 pay any valid invoice received from its subcontractor within 30 days following receipt of the relevant invoice payable under the Sub-Contract; and

6.4.2 include in that Sub-Contract a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 6.4.1 of this Agreement.

6.5 In clause 6.4, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the British Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

7. Warranties

7.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this Agreement.

7.2 The Supplier shall perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards.

- 7.3 The Supplier warrants that operation of the Site will be uninterrupted and free of errors, viruses and material defects and that the Site will perform in accordance with the Site Specification for a period of 12 months from Acceptance. If the Site does not so perform, the Supplier shall, for no additional charge, promptly ensure that the Site complies with the Site Specification.

8. Limitation of remedies and liability

- 8.1 Nothing in this Agreement shall operate to exclude or limit either party's liability for:
- 8.1.1 death or personal injury caused by its negligence; or
 - 8.1.2 any damage or liability incurred as a result of fraud or fraudulent misrepresentation by that party; or
 - 8.1.3 any other liability which cannot be excluded or limited under applicable law.
- 8.2 Neither party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 8.3 Subject to clause 8.1, each party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed £[Amount].

9. Intellectual Property Rights

- 9.1 Subject to clause 14, each party shall give full disclosure to the other of all Background IPR owned by it which is relevant to the Project (and the Supplier shall give the British Council full disclosure of any Third Party IPR it intends to use).
- 9.2 All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it.
- 9.3 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.
- 9.4 The Supplier 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.
- 9.5 The Supplier shall procure the waiver in favour of the British Council of all moral rights arising under the Copyright, Designs and Patents Act 1988, as amended and revised, or any similar provisions of law in any jurisdiction, relating to the Site, the Site Software and the Site Specification.
- 9.6 The British Council hereby grants to the Supplier 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.

- 9.7 The Supplier hereby grants to the British Council an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Supplier's Background IPR in and in connection with the Site, the Site Software and the Site Specification.
- 9.8 The Supplier is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR required for use by the Supplier and the British Council of the Site, the Site Software and the Site Specification (such licences, permissions or consents to be in writing, copies of which the Supplier shall provide to the British Council on request). In addition, the Supplier warrants that the provision of the Services, the Site, the Site Software and the Site Specification does not and will not infringe any third party's Intellectual Property Rights.
- 9.9 The Supplier warrants that the provision of the Services and the Site does not and will not infringe any third party's Intellectual Property Rights.
- 9.10 The Supplier warrants that it has in place contractual arrangements with all individuals engaged by the Supplier in the performance of the Services assigning to the Supplier their Intellectual Property Rights and waiving their moral rights (if any) in the Site, the Site Software and the Site Specification such that the Supplier can enter into the assignments, licences and waivers set out in this clause 9.
- 9.11 The Supplier 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 9.
- 9.12 Subject to clause 9.13, nothing in this Agreement shall prevent the Supplier 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.
- 9.13 The Supplier shall not use or re-create the look and feel of the Site or anything substantially similar to it.
- 9.14 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.

10. Site content

- 10.1 ***[The Supplier shall update the Site with Materials provided from time to time by the British Council.]***
- 10.2 ***[The Supplier shall grant the British Council access to the Server in order to update information held on the Site.]***
- 10.3 ***[The Supplier shall include only Materials on the Site. The British Council acknowledges that the Supplier has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. The Supplier shall remove content from the Site where it reasonably suspects such content infringes any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite***

racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("Inappropriate Content"). The Supplier shall notify the British Council immediately if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.]

- 10.4 The Supplier shall indemnify the British Council against all damages, losses and expenses arising as a result of any action or claim that the content of the Site (other than the Materials) constitutes Inappropriate Content.

11. Data Processing

- 11.1 In this clause:

- 11.1.1 **"Controller"** means a "controller" for the purposes of the GDPR (as such legislation is applicable);
- 11.1.2 **"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);
- 11.1.3 **"Data Subject"** has the same meaning as in the Data Protection Legislation;
- 11.1.4 **"DPA"** means the UK Data Protection Act 2018;
- 11.1.5 **"GDPR"** means the General Data Protection Regulation (EU) 2016/679;
- 11.1.6 **"International Organisation"** has the same meaning as in the GDPR;
- 11.1.7 **"Personal Data"** means "personal data" (as defined in the Data Protection Legislation) that are Processed under this Agreement;
- 11.1.8 **"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;
- 11.1.9 **"Processing"** has the same meaning as in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly;
- 11.1.10 **"Processor"** means a "processor" for the purposes of the GDPR (as such legislation is applicable);
- 11.1.11 **"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; and

11.1.12 “**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.

11.2 For the purposes of the Data Protection Legislation, the British Council is the Controller and the Supplier is the Processor in respect of the Personal Data.

11.3 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 Schedule 7 to this Agreement.

11.4 The Supplier shall:

11.4.1 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 European Union laws or the laws of the European jurisdiction in which the Supplier Processes the Personal Data; or unless otherwise required by laws outside the European Union in which the Supplier Processes the Personal Data as referred to in 11.5.3);

11.4.2 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;

11.4.3 ensure it has taken all reasonable steps to ensure the reliability and integrity of any employees or other persons authorised to Process the Personal Data;

11.4.4 ensure that any employees or other persons authorised to Process the Personal Data are:

- (i) subject to appropriate obligations of confidentiality;
- (ii) subject to adequate training in the use, protection and handling of personal data;

11.4.5 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 Supplier 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 Supplier to support compliance with this clause 11.4.5 and the Supplier shall provide such evidence within three working days;

11.4.6 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 General Data Protection Regulation;
- (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

11.4.7 not Process or otherwise transfer any Personal Data outside the European Economic Area without prior written consent from the British Council and the Supplier 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 outside the European Economic Area provided that it meets the relevant requirements under Articles 44 to 50 of the GDPR.

11.5 The Supplier shall notify the British Council promptly:

11.5.1 if it becomes aware that in following the instructions of the British Council, it shall be breaching the Data Protection Legislation;

11.5.2 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;

11.5.3 if the Supplier 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;

11.5.4 (and in any event within 3 days) of:

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

and the Supplier 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 Supplier, a Sub-Processor or the British Council.

11.6 The Supplier shall:

11.6.1 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;

11.6.2 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

11.6.3 provide prompt assistance as requested by the British Council following the notification of an actual, suspected or threatened Personal Data Breach referred to in 11.6.1.

11.7 In the event of a notification under clause 11.6, the Supplier 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.

11.8 The Supplier 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 Supplier's compliance under Data Protection Legislation and the terms of this Agreement.

11.9 The Supplier 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 Supplier and its Sub-Processors to support the Supplier in their compliance of clause 11.8.

11.10 The Supplier 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.

11.11 The Supplier 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 Supplier (or any Sub-Processor) of (a) its data protection obligations under this Agreement;

or (b) the Supplier (or any Sub-Processor) acting outside or contrary to the lawful instruction of the British Council.

- 11.12 On termination or expiry of this Agreement, the Supplier (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 Supplier 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 Supplier shall provide confirmation of destruction of any other copies including details of the date, time and method of destruction.
- 11.13 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 11.1 to 11.4 above.

12. Term and termination

- 12.1 This Agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause 12) terminate automatically on ***[Acceptance of the Site and payment of all outstanding sums OR the first anniversary of the Effective Date, unless the British Council elects to extend the term of this Agreement by a further year.]***
- 12.2 Either party may terminate this Agreement immediately at any time by written notice to the other party if:
- 12.2.1 that other party commits any material breach of its obligations under this Agreement which (if remediable) is not remedied within 14 days after the service of written notice specifying the breach and requiring it to be remedied; or
- 12.2.2 that other party:
- (i) ceases to trade (either in whole, or as to any part or division involved in the performance of this Agreement); or
 - (ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
 - (iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or
 - (iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or

- (v) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction); or

12.2.3 that other party has been subject to a Force Majeure Event for a continuous period of more than 90 days.

12.3 The British Council may terminate this Agreement immediately by written notice to the Supplier if there is any change of Control of the Supplier.

12.4 On expiry or termination of this Agreement:

12.4.1 all licences granted to the Supplier under this Agreement shall terminate immediately;

12.4.2 the Supplier shall promptly return all Materials and all copies of the Site Specification to the British Council, and shall provide to the British Council an electronic copy of the Site (including all content on the Site). ***[The Supplier shall provide all such assistance as is reasonably requested by the British Council in transferring the hosting of the Site to the British Council or another service provider, subject to payment of the Supplier's expenses reasonably incurred];*** and

12.4.3 all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

13. Change control

Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedures.

14. Confidentiality

14.1 For the purposes of this clause 14:

14.1.1 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

14.1.2 the "**Receiving Party**" is the party which receives Confidential Information relating to the other party.

14.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Agreement:

14.2.1 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

- 14.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff or its professional advisors or associates otherwise than for the purposes of this Agreement.
- 14.3 The provisions of clause 14.2 shall not apply to any Confidential Information which:
- 14.3.1 is or becomes public knowledge (otherwise than by breach of this clause 14);
 - 14.3.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
 - 14.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 14.3.4 is independently developed without access to the Confidential Information; or
 - 14.3.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.
- 14.4 In the event that the Supplier fails to comply with this clause 14, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.
- 14.5 The provisions under this clause 14 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
- 14.6 The Supplier 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.
- 14.7 Where the British Council receives a Request for Information in relation to information that the Supplier 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 Supplier and the Supplier shall:
- 14.7.1 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
 - 14.7.2 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.
- 14.8 The Supplier 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 Supplier's Confidential Information in accordance with the Information Disclosure Requirements:

14.8.1 in certain circumstances without consulting the Supplier; or

14.8.2 following consultation with the Supplier and having taken its views into account,

provided always that where clause 14.8.1 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 Supplier after any such disclosure.

14.9 The provisions of this clause 14 shall survive the termination of this Agreement, however arising.

15. Audit

15.1 The British Council shall have the right to audit the Supplier's compliance with this Agreement on giving seven days' written notice to the Supplier. At the British Council's option, this audit may cover documents only or may include onsite audit, subject to the customer notifying the Supplier of the identity of any onsite auditors and giving confirmation that any external auditors have entered into appropriate confidentiality agreements.

16. Publicity

16.1 The Supplier 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.

17. Anti-Corruption and Collusion

17.1 The Supplier undertakes and warrants that it has not offered, given or agreed to give (and that it will not offer, give or agree to give) to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do anything in relation to the obtaining of this Agreement or the performance by the Supplier of its obligations under this Agreement.

17.2 The Supplier 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.

17.3 The Supplier warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party in any way in connection with this Agreement (including in respect of pricing under this Agreement). Nothing under this clause 17.3 is intended to prevent the Supplier from discussing the terms of this Agreement and the Supplier's pricing with the Supplier's professional advisors.

18. Safeguarding and Protecting Children and Vulnerable Adults

18.1 The Supplier 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 Child Protection Policy, as notified to the Supplier and amended from time to time.

19. Equality, Diversity and Inclusion

- 19.1 The Supplier 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.
- 19.2 The Supplier shall comply with any equality or diversity policies or guidelines included in the British Council Requirements.

20. Assignment

- 20.1 The Supplier 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.
- 20.2 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 Supplier 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 20.2.

21. Waiver

- 21.1 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.

22. Entire agreement

- 22.1 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.

23. Variation

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

24. Severance

- 24.1 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.

25. Counterparts

- 25.1 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.

26. Third party rights

- 26.1 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 20 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 26.2 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).

27. No partnership or agency

- 27.1 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.

28. Force Majeure

- 28.1 Subject to clauses 28.2 and 28.3, neither party shall be in breach of this Agreement if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control (a **"Force Majeure Event"**) 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, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 28.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 28.2.1 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;
- 28.2.2 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
- 28.2.3 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.

- 28.3 Nothing in this clause 28 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 any of the circumstances specifically listed in clause 28.1).

29. Notice

- 29.1 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) and shall be delivered:

29.1.1 personally, in which case the notice will be deemed to have been received at the time of delivery;

29.1.2 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; or

29.1.3 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.

- 29.2 To prove service of notice, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

30. Governing Law 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.

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 *[insert name of Supplier]*

Name:	Signature
Position:		

Signed by the duly authorised representative of THE BRITISH COUNCIL

Name:	Signature:
Position:		

Schedule 1- Project Plan

[Insert document here]

Schedule 2- Site Software and Site Specification

[Insert details here]

Schedule 3– Services

[Insert details here]

Schedule 4- Acceptance Tests

[Insert details here]

Schedule 5– Charges

[Insert details here]

Schedule 6- Change Control Procedures

1. The Supplier and the British Council shall discuss any change to this Agreement ("**Change**") proposed by the other and such a discussion shall result in either:
 - 1.1 a written request for a Change by the British Council; or
 - 1.2 a written recommendation for a Change by the Supplier,

or, if neither the British Council nor the Supplier wishes to submit a request or recommendation, the proposal for the Change will not proceed.
2. Where a written request for a Change is received from the British Council, the Supplier shall, unless otherwise agreed, submit a Change control note ("**CCN**") to the British Council within the period agreed between them or, if no such period is agreed, within seven calendar days from the date of receipt of such request for a Change[, ***or inform the British Council that the Supplier is not able to comply with such written request for a Change***].
3. A written recommendation for a Change by the Supplier shall be submitted as a CCN direct to the British Council at the time of such recommendation.
4. Each CCN shall contain:
 - 4.1 the title of the Change;
 - 4.2 the originator and the date of the request or recommendation for the Change;
 - 4.3 the reason for the Change;
 - 4.4 the full details of the Change, including any specifications and user facilities;
 - 4.5 the price, if any, of or associated with the Change;
 - 4.6 a timetable for implementation, together with any proposals for acceptance of the Change;
 - 4.7 the impact, if any, of the Change on other aspects of this Agreement, including:
 - 4.7.1 the Charges;
 - 4.7.2 the contractual documentation; and
 - 4.7.3 staff resources;
 - 4.8 the date of expiry of validity of the CCN (which shall not be less than [**Number**] calendar days); and
 - 4.9 provision for signature of the CCN by the British Council and the Supplier.
5. For each CCN submitted, the British Council shall, within the period of validity of the CCN as set out in paragraph 4.8 of this Schedule 6:
 - 5.1 allocate a sequential number to the CCN;

- 5.2 evaluate the CCN, and as appropriate either:
 - 5.2.1 request further information; or
 - 5.2.2 approve the CCN; or
 - 5.2.3 notify the Supplier of the rejection of the CCN; and
- 5.3 if approved, arrange for two copies of the approved CCN to be signed for and on behalf of the British Council and the Supplier. The signing of the CCN shall signify acceptance of a Change by both the British Council and the Supplier.
- 6. Once signed by the British Council and the Supplier in accordance with paragraph 5 of this Schedule 6, the Change shall be immediately effective and the British Council and the Supplier shall perform their respective obligations on the basis of the agreed amendment.

Schedule 7- Data Processing Schedule

Description	Details
Duration of Processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature/purpose of Processing	<i>[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]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, National identification number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subjects	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Countries or International Organisations Personal Data will be transferred to	<i>[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."]</i>
Sub-Processors	<i>[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]</i>