

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

**BETWEEN**

- (1) **[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 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 address and details]] (the **"British Council"**); and
- (2) **[INSERT NAME OF CONTRIBUTOR COMPANY/ENTITY]** incorporated and registered in **[England & Wales]** with company number **[insert]** and whose registered office is at **[insert]** (the **"Provider"**).

**BACKGROUND:**

- (A) The British Council wishes to commission the Provider to provide the Work (as defined below) on the terms and conditions set out in this Agreement.

**IT IS AGREED:**

**1. Interpretation**

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

**"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 Provider 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 Provider from time to time (as such documents may be amended, updated or supplemented from time to time during the term of this Agreement).

**"Contributor"** means any individual employed or engaged or utilised by the Provider in connection with this Agreement, or any agent or contractor or sub-contractor engaged by the Provider in connection with this Agreement and including any Substitute Provider.

**"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).

**"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 Provider performs its obligations under this Agreement.

**“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.

**“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.

**“Substitute Provider”** has the meaning given in clause 13.3.

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:
  - (a) services being provided to, or other activities being provided for, the British Council;
  - (b) any benefits, warranties, indemnities, rights and/or licences granted or provided to the British Council; and
  - (c) 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;
- 1.2.5 obligations of the British Council shall not be interpreted as obligations of any of the British Council Entities; and
- 1.2.6 if this Agreement has been translated into a language other than the English language, the English language version shall prevail.

## **2. The Commission**

- 2.1 The Provider shall provide the work described in Schedule 1 (the “**Work**”) on the dates, and in accordance with any other requirements, specified in Schedule 1.
- 2.2 The Provider shall, and shall procure that any Contributor shall:
  - 2.2.1 use all reasonable skill, care and ability, and comply with all reasonable instructions of the British Council, in providing the Work;
  - 2.2.2 keep confidential the terms of this Agreement and any information of a confidential nature relating to the British Council; and
  - 2.2.3 not act in any way or provide the Work in any manner which may be derogatory or detrimental to the reputation, image or goodwill of the British Council.
- 2.3 Notwithstanding clauses 2.1 and 2.2, the parties acknowledge and agree that the Provider shall, in its absolute discretion, determine the manner in which the Work shall be performed, subject only to the terms of this Agreement and the requirements of Schedule 1. The British Council shall not have the right, nor shall it seek, to exercise direction, control or supervision over the Provider or any Contributor.
- 2.4 On termination of this Agreement, the British Council shall not be obliged to offer and the Provider shall not be obliged to accept any further work, contract, engagement or project. Neither party wishes to create or imply any mutuality of obligation between them either in the course of the performance of the Works or following termination of this Agreement.

## **3. Fees**

- 3.1 In consideration for the Provider providing the Work, the British Council shall pay the Provider the fees specified in Schedule 1 (the “**Fees**”), less any withholdings or deductions at source which may be required by law.
- 3.2 Subject to clause 3.3, the Fees are all-inclusive and cover all costs and expenses incurred by the Provider and any Contributor in providing the Work, unless otherwise specified in Schedule 1 or otherwise agreed in writing by the British Council.
- 3.3 Unless stated otherwise, the Fee is exclusive of value added tax (VAT), if applicable, or any equivalent sales tax in any applicable jurisdiction.
- 3.4 Subject to clauses 3.5 and 3.6 below, the British Council shall, unless agreed otherwise in writing, pay each of the Provider's valid and accurate invoices by automated transfer into the Provider's nominated bank account no later than 30 days after an undisputed and tax accurate invoice is received.
- 3.5 Provided that it notifies the Provider in writing in advance, and works in good faith to resolve any issues or disputes, the British Council shall be entitled to withhold payment of any sums in respect of any aspect of the Work which has not been provided by the Provider to the British Council's satisfaction and in accordance with the terms of this Agreement.
- 3.6 Should the British Council or any British Council Entity become required by law to deduct income tax, national insurance and social security contributions and any other similar levy or contribution from the Fees, the British Council or applicable British Council Entity shall inform the Provider of the deadline by which invoices must be submitted for inclusion in the next monthly payroll and payment shall not be made until the Provider has supplied to the British Council or applicable British Council Entity all information as the British Council or applicable

British Council Entity shall reasonably require for the purpose of making the relevant deductions.

- 3.7 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 Provider may charge interest on the amount of any such late payment at the rate of 4% per annum above the official bank rate set from time to time by the Bank of England. Such interest will accrue 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.
- 3.8 Without prejudice to clause 13, where the Provider enters into a Sub-Contract, the Provider shall:
- 3.8.1 pay any valid invoice received from its subcontractor within 30 days following receipt of the relevant invoice payable under the Sub-Contract; and
- 3.8.2 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 3.8.1 of this Agreement.
- 3.9 In clause 3.8, "**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.

#### **4. Ownership of the Work**

- 4.1 [The Provider hereby assigns to the British Council with full title guarantee by way of present and future assignment all right, title and interest in the Work, Intellectual Property Rights existing in the Work, and any part thereof.]

**[OR]**

[The Provider hereby grants to the British Council [an exclusive **OR** a sole **OR** a non-exclusive] worldwide, perpetual and irrevocable licence to use the Work, Intellectual Property Rights existing in the Work, and any part thereof and this licence shall survive the expiry or termination of this Agreement.]

- 4.2 Subject to any provision varying this position in Schedule 1, the Provider shall procure the waiver from any Contributor 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 Work (and such waiver shall survive the expiry or termination of this Agreement).
- 4.3 The Provider warrants that it has in place contractual arrangements with its Contributors assigning to the Provider their Intellectual Property Rights in the Deliverables to the extent necessary to enable the Provider to enter into or grant the assignments or licences (as applicable) set out in this clause 4.
- 4.4 Without prejudice to clause 4.3, the Provider is responsible for obtaining any licences, permissions or consents in connection with any third party Intellectual Property Rights required by the Provider and the British Council for use of the Work (such licences, permissions or consents to be in writing, copies of which the Provider shall provide to the British Council on request). In addition, the Provider warrants that the Work, and the provision of the Work to the

British Council by the Provider or any Contributor, does not and will not infringe any third party's Intellectual Property Rights.

## **5. Duration and Termination**

- 5.1 This Agreement shall commence on the date specified in Schedule 1 and shall continue in force until the Work has been provided in full and to the satisfaction of the British Council, unless terminated in accordance with this clause 5.
- 5.2 Without prejudice to any other rights or remedies that the British Council may have, the British Council may terminate this Agreement:
  - 5.2.1 immediately on notice to the Provider if the provision of the Work is delayed, hindered or prevented by a Force Majeure Event for a period in excess of 30 days;
  - 5.2.2 immediately on notice to the Provider if the Provider or any Contributor commits any material breach of any of the terms of this Agreement and that breach (if capable of remedy) is not remedied within 30 days of notice being given requiring it to be remedied (and where such breach is not capable of remedy, the British Council shall be entitled to terminate this Agreement with immediate effect); or
  - 5.2.3 at any time by giving the Provider not less than seven days' written notice.
- 5.3 Upon termination, the Provider shall deliver to the British Council any element of the Work completed but not provided to the British Council prior to termination together with all the Provider's (or any Contributors') preparatory materials relating to the Work and where this Agreement is terminated under clause 5.2.1 or clause 5.2.3, the British Council will pay the Provider on a pro rata basis for any Work properly carried out in accordance with this Agreement up to the date of termination where such Work has not previously been paid for.

## **6. Status**

- 6.1 For the purpose of this clause 6:

**"Deemed Employment"** means an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies; and

**"Tax Authority"** means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect tax in the United Kingdom or elsewhere.
- 6.2 The relationship of the Provider to the British Council will be that of independent contractor and nothing in this Agreement shall render it nor any Contributor or Substitute Provider an employee, worker, agent or partner of the British Council and the Provider shall not, and shall procure that no Contributor shall, hold itself out as such.
- 6.3 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly, the Provider shall and shall procure that any Contributor shall:
  - 6.3.1 co-operate fully and promptly with any request by the British Council relating to any matter arising in connection with the Provider's or the British Council's tax compliance procedures to the extent that it relates or may relate to the arrangements contemplated by this Agreement;
  - 6.3.2 promptly provide such information as the British Council shall require from time to time: (a) to enable the British Council to determine whether the performance of the

Works under or in connection with this Agreement is or will be Deemed Employment and to make any necessary status determinations as may be required by law; and (b) in order to ensure compliance with any obligation on the British Council or Provider to deduct tax or national insurance contributions from the Fees due under clause 3;

- 6.3.3 ensure any information provided to the British Council pursuant to this clause 6.3 is accurate and up to date and to promptly inform the British Council of any material change to any information or documentation previously provided in compliance with this clause; and
- 6.3.4 promptly provide any other information or documentation that it considers (or ought reasonably consider) to be materially relevant to enable the British Council to make any determinations and to comply with any of its legal obligations referred to in clause 6.3.2;
- 6.3.5 authorise, request or procure the disclosure of information from the relevant Tax Authority to the British Council as the British Council may request in the event of an enquiry by such a Tax Authority relating to or in connection with the arrangements contemplated by this Agreement including this clause 6;

and the Provider shall indemnify the British Council for and in respect of any and all liability, assessment or claim (including interest, fines, penalties, costs and expenses) incurred, paid or payable by the British Council as a result of any failure by the Provider to provide (or procure the provision of) such information, or failure to provide (or procure the provision of) accurate and up-to-date information, as may be requested by the British Council for the purposes set out in this clause 6.3, where such recovery is not prohibited by law.

- 6.4 The Provider shall be fully responsible for and shall indemnify the British Council for and in respect of the following:
  - 6.4.1 subject to clause 6.5, any income tax, National Insurance and social security contributions and any other similar levy or contribution in connection with the performance of the Works or any payment or benefit received by the Provider or any Contributor in respect of the Works, where such recovery is not prohibited by law;
  - 6.4.2 all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the British Council in connection with or in consequence of any such income tax, National Insurance and social security contributions or similar levy or contribution; and
  - 6.4.3 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any Contributor against the British Council arising out of or in connection with the Works, except where such claim is as a result of any act or omission of the British Council.
- 6.5 The indemnity in clause 6.4.1 does not apply to any income tax or National Insurance contributions deducted by the British Council if: (a) the performance of the Works under or in connection with this Agreement is determined by the British Council to be Deemed Employment; and (b) the British Council makes the deductions from the Fees under clause 3.1 of this Agreement prior to payment to the Provider.
- 6.6 The Provider warrants that it is not nor will it prior to the cessation of this Agreement, become a Managed Service Company (within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003). The Provider shall indemnify the British Council from and against any costs, liabilities or expenses arising (whether directly or indirectly) out of, or in connection

with, any breach of the warranty in this clause 6.6 or any determination or finding that the Provider is a Managed Service Company, where such recovery is not prohibited by law.

- 6.7 The British Council may at its option satisfy the indemnities in this clause 6 (in whole or in part) by way of deduction from payments due to the Provider.

## **7. Insurance**

- 7.1 The Provider shall take out and maintain during the term of this Agreement appropriate insurance cover in respect of its activities under this Agreement and, on request, provide the British Council with evidence that such insurance cover is in place.

## **8. Limitation of Liability**

- 8.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be limited under any applicable law.
- 8.2 Subject to clause 8.1 and 8.4, neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.
- 8.3 Subject to clauses 8.1 and 8.2, the British Council's liability to the Provider under this Agreement (whether in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed an amount equal to the sum of the Fees, plus any late payment interest properly chargeable under the terms of this Agreement.
- 8.4 Nothing in this Agreement shall exclude or restrict the liability of the Provider to the British Council under the indemnities in clause 6 (Status).
- 8.5 The provisions of this clause 8 shall survive the termination of this Agreement, however arising.

## **9. Anti-Corruption, Anti-Collusion and Tax Evasion**

- 9.1 The Provider undertakes and warrants that neither it, nor any Contributor have been offered, given or agreed to give (and that neither it nor any Contributor will 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 Provider of its obligations under this Agreement.
- 9.2 The Provider acknowledges and agrees that British Council may, at any point during the term of this Agreement and on any number of occasions, carry out searches of relevant third party screening databases (each a "**Screening Database**") to ensure that neither the Provider nor any Contributor, nor the Provider's or any Contributors' directors or shareholders (where applicable) are listed as being a politically exposed person, disqualified from being a company director, involved with terrorism, financial or other crime, subject to regulatory action or export, trade or procurement controls or otherwise representing a heightened risk of involvement in illegal activity (together, the "**Prohibited Entities**").
- 9.3 The Provider warrants:
- 9.3.1 that neither it nor any Contributor, will make payment to, transfer property to, or otherwise have dealings with, any Prohibited Entity;
- 9.3.2 that the Provider has and will retain in place, and undertakes that it and any Contributor, will comply with, policies and procedures to avoid the risk of bribery (as

set out in the Bribery Act 2010), tax evasion (as set out in the Criminal Finances Act 2017) and fraud within its organisation and in connection with its dealings with other parties, whether in the UK or overseas; and

9.3.3 that neither it nor any Contributor, have engaged and will not at any time engage, in any activity, practice or conduct which would constitute either:

(a) a UK tax evasion facilitation offence under section 45 of the Criminal Finances Act 2017; or

(b) a foreign tax evasion facilitation offence under section 46 of the Criminal Finances Act 2017; and

9.3.4 that neither it, nor any Contributor, have colluded, and undertakes that neither it, nor any Contributor, will at any time collude, with any third party in any way in connection with this Agreement (including in respect of pricing under this Agreement).

9.3.5 Nothing under this clause 9.3 is intended to prevent the Provider from discussing the terms of this Agreement with its professional advisors.

9.4 If the Provider or any Contributor is listed in a Screening Database for any of the reasons set out in clause 9.2, or breach any of the Provider's obligations set out in clause 9.3, the Provider shall promptly notify the British Council of any such listing(s) or breach(es) and the British Council shall be entitled to take the steps set out at clause 9.5 below.

9.5 In the circumstances described at clause 9.4, and without prejudice to any other rights or remedies which the British Council may have, the British Council may:

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

9.5.2 require the Provider to take any steps the British Council reasonably considers necessary to manage the risk to the British Council of contracting with the Provider (and the Provider shall take all such steps and shall if required provide evidence of its compliance); and/or

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

9.5.4 share such information with third parties.

9.6 The Provider shall provide the British Council with all information reasonably requested by the British Council to complete the screening searches described in clause 9.1.

9.7 Without limitation to clauses 9.1, 9.2, 9.3, 9.4, 9.5, and 9.6 above, the Provider shall ensure that any Contributors involved in creating the Work or otherwise in connection with this Agreement have been vetted and that due diligence is undertaken on a regular continuing basis to such standard or level of assurance as is reasonably necessary in relation to a person in that position in the relevant circumstances.

## **10. Safeguarding and Protecting Children and Vulnerable Adults**

10.1 The Provider will comply with all applicable legislation and codes of practice, including, where applicable, all legislation and statutory guidance relevant to the safeguarding and protection of children and vulnerable adults and with the British Council Safeguarding Policy included in the British Council Requirements as amended from time to time, which the Provider acknowledges



may include Contributors submitting to checks by the UK Disclosure & Barring Service (DBS) and/or equivalent local checks<sup>1</sup>.

- 10.2 The Provider must provide to the British Council, documentary evidence of the relevant disclosure and/or the criminal records checks in advance of undertaking any activities involving children and/or vulnerable adults in connection with the provision of the Work under this Agreement.
- 10.3 In addition, the Provider will ensure that, where it engages any other party (including any Contributor) to provide any of the Work under this Agreement, that party will also comply with the same requirements as if they were a party to this Agreement.

## 11. Data Processing

- 11.1 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 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, 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 to carrying out processing activities in respect of the Personal Data on behalf of the Processor;

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<sup>1</sup> 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)

**“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.

- 11.2 For the purposes of the Data Protection Legislation, the British Council is the Controller and the Provider 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 this Agreement are set out in Schedule 2 of this Agreement.
- 11.4 The Provider shall comply with its obligations under the Data Protection Legislation and shall, in particular:
  - 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 applicable laws as referred to in clause 11.9);
  - 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 not transfer the Personal Data to any Third Country without the prior written consent of the British Council and where such consent is given (whether in Schedule 2 or separately) the Provider shall:
    - (a) provide appropriate safeguards in relation to the transfer;
    - (b) ensure the Data Subject has enforceable rights and effective legal remedies;
    - (c) comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
    - (d) comply with reasonable instructions notified to the Provider in advance by the British Council with respect to the Processing of the Personal Data; and
    - (e) only transfer Personal Data to the relevant Third Country where the relevant requirements under Articles 44 to 50 of the GDPR are met;
  - 11.4.4 ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality;
  - 11.4.5 not engage any Sub-Processor to carry out the Provider's Processing obligations under this Agreement without obtaining the prior written consent of the British Council and, where such consent is given, 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 and may upon request provide evidence of the same to the British Council within three working Days;

- 11.4.6 notify the British Council, as soon as reasonably practicable, about any request or complaint received by the Provider or a Sub-Processor from Data Subjects without responding to that request (unless authorised to do so by the British Council) and assist the British Council by technical and organisational measures, insofar as possible, for the fulfilment of the British Council's obligations in respect of such requests and complaints including where the requests and/or complaint was received by the Provider, a Sub-Processor or the British Council;
- 11.4.7 notify the British Council immediately on becoming aware of a Personal Data Breach;
- 11.4.8 assist the British Council in ensuring compliance with the Provider's obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 11.4.9 maintain accurate written records of the Processing the Provider carries out in connection with this Agreement and on request by the British Council, make available all information necessary to demonstrate the Provider's compliance under Data Protection Legislation and the terms of this Agreement.
- 11.5 The Provider and its Sub-Processors shall allow for and contribute to audits, including inspections, by the British Council (or its authorised representative) in relation to the Processing of the British Council's Personal Data by the Provider and its Sub-Processors to support the Provider in its compliance with clause 11.4.9.
- 11.6 On termination or expiry of this Agreement, the Provider (or any Sub-Processor) shall, except to the extent it is required to retain a copy by law, stop Processing the Personal Data and return and/or destroy it at the request of the British Council. The Provider shall provide confirmation of destruction of any other copies including details of the date, time and method of destruction.
- 11.7 In the event of a notification under clause 11.4, the Provider shall not notify the Data Subject or any third party unless such disclosure is required by Data Protection Legislation or other law or is otherwise approved by the British Council.
- 11.8 The Provider warrants that in carrying out its obligations under this Agreement it will not breach the Data Protection Legislation or do or omit to do anything that might cause the British Council to be in breach of the Data Protection Legislation.
- 11.9 If the Provider believes it is under a legal obligation to Process the Personal Data other than in accordance with the British Council's instructions, the Provider will provide the British Council with details of such legal obligation, unless the law prohibits such information on important grounds of public interest.
- 11.10 The Provider shall indemnify and keep indemnified the British Council and the British Council Entities against all Personal Data losses suffered or incurred by, awarded against or agreed to be paid by, the British Council or British Council Entities arising from a breach by the Provider (or any Sub-Processor) of (a) the Provider's data protection obligations under this Agreement; or (b) the Provider (or any Sub-Processor acting on its behalf) acting outside or contrary to the lawful instruction of the British Council.
- 11.11 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 11.4.9 above.

## **12. Equality, Diversity and Inclusion**

- 12.1 The Provider shall not, and shall ensure that no Contributor shall, whether as an employer or provider of services and/or goods, discriminate within the meaning of the Equality Legislation.
- 12.2 The Provider shall comply with (and shall procure compliance by any Contributor with) any equality or diversity policies or guidelines included in the British Council Requirements.

## **13. Assignment**

- 13.1 The Provider shall not, without the prior written consent of the British Council (not to be unreasonably withheld), assign, transfer, subcontract, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 13.2 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 Provider 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 13.2.
- 13.3 Where consent is granted by the British Council pursuant to clause 13.1 and the Provider proceeds to exercise the rights in respect of which such consent is granted by employing, engaging or otherwise utilising another provider to perform all or any part of the Works ("**Substitute Provider**"), the Provider shall:
  - 13.3.1 continue to invoice the British Council in accordance with clause 3 and be responsible for the remuneration of the Substitute Provider;
  - 13.3.2 remain responsible for all acts and omissions of the Substitute Provider as if they were its own. Any obligations on the Provider to do, or to refrain from doing, any act or thing shall include an obligation on the Provider to procure that any Substitute Provider, also does, or refrains from doing, such act or thing;
  - 13.3.3 the Provider shall ensure that the Provider have in place a written agreement with any such Substitute Provider which reflects the provisions of clause 13.3.2 and which requires compliance by the Substitute Provider with the applicable British Council Requirements; includes terms and conditions which are substantially similar to those set out in clauses 9, 10 and 12; and includes no less stringent obligations of confidentiality as are provided for in this Agreement; and
  - 13.3.4 where any Substitute Provider appointed by the Provider is processing personal data in connection with the provision of the Works, the Substitute Provider will be a third-party processor under this Agreement. The Provider's written agreement with any such Substitute Provider shall incorporate terms which are substantially similar to those set out in clause 11.

## **14. Waiver**

- 14.1 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.

## **15. Entire agreement**

- 15.1 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.

## **16. Variation**

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

## **17. Severance**

- 17.1 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.

## **18. Counterparts**

- 18.1 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.

## **19. Third party rights**

- 19.1 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 13 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 19.2 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).

## **20. No partnership or agency**

- 20.1 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.

## **21. Force Majeure**

- 21.1 Subject to clauses 21.2 and 21.3, 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.

- 21.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 21.2.1 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;
  - 21.2.2 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
  - 21.2.3 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.
- 21.3 Nothing in this clause 21 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).

## **22. Notice**

- 22.1 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:
- 22.1.1 personally, in which case the notice will be deemed to have been received at the time of delivery;
  - 22.1.2 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;
  - 22.1.3 by international standard post if being sent to an address outside the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the seventh (7th) normal working day in the country specified in the recipient's address for notices after the date of posting; or
  - 22.1.4 by email to **[insert email address]** for the British Council and to **[insert email address]** for the Provider (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 normal working hours in the United Kingdom (or such other country as has been specified by the receiving party), when normal 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.
- 22.2 To prove service of notice under clauses 22.1.1 to 22.1.3 above, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

## 23. Governing Law and Dispute Resolution Procedure

- 23.1 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.
- 23.2 Subject to the remainder of this clause 23, 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.
- 23.3 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 23.3, either party may commence proceedings in accordance with clause 23.2.
- 23.4 Nothing in this clause 23 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 THE BRITISH COUNCIL**

Name:	.....	Signature:	.....
Position:	.....		

**Signed for and on behalf of [insert name of Provider]**

Name:	.....	Signature	.....
Position:	.....		

## Schedule 1

### Commissioning a photographer

#### The Work

***[insert details of the photographs the Provider is expected to produce. Some example wording is set out below but this section should be adapted to suit the specific commission]***

[The Provider will provide a series of photographs from ***[insert where photographs are to be taken e.g. schools in the UK, Nigeria, Bangladesh, Japan, Taiwan and Ethiopia]***. A selection of these images (up to a maximum of ***[insert number]***) will then be used to create an exhibition which will take place in ***[insert venue]***, commencing in ***[insert month and year]***.]

[The Provider will deliver to the British Council by ***[insert date]*** ***[insert what must be delivered e.g. a set of photographs and a set of A4 work prints, negatives, digital copies in JPEG format]*** (the “Deliverables”) from which the British Council will select appropriate images for exhibition.]

[The British Council will use reasonable endeavours to ensure that [the Provider and the Contributor] are credited when the British Council makes use of, or reproduces, the Work but making it clear that the Provider and Contributor are independent of and not part of the British Council.]

#### Production of the Work

***[Drafting note: This section to be used where the photographs are required in connection with a specific event]***: The British Council requires the photographs to be taken in connection with the event detailed below during the hours and at the location as follows:

Event	Event Date	Hours of event	Location	
[insert name of event]	[insert date]	[insert times]	[insert location]	

***[Drafting note: This section to be used where photographs are required at a particular location (eg a school) where access may be restricted except on the dates/times specified]***: The Provider will be granted access to the relevant locations at which the photographs are to be taken during the following periods (or as otherwise agreed in writing between the Provider and the British Council):

Date of access to the location	Hours of access to the location	Location
	[insert times]	[insert location]
	[insert times]	[insert location]

[The Provider, in producing the Works, should [visit] no more than ***[insert number]*** schools and to produce in each school a maximum of ***[insert number]*** and a minimum of ***[insert number]*** photographs suitable for inclusion in the exhibition.]

***[Please refer to the guidelines that accompany this agreement prior to completing the following paragraphs:]***

[The Provider is to responsible for supplying its own cameras and film stock[, ***although film costs and processing will be reimbursed by the British Council on production of relevant receipts]***.]

[The British Council will provide ***[insert details of any equipment the British Council will provide,***



***e.g. lighting and camera tripods and an assistant (who will also act as an interpreter) will also be made available in each country to be visited by the Provider under this Agreement].]***

### **Fees**

In consideration for the provision of the Work, the British Council shall (subject to clause 3 and the provision of this section of Schedule 1 relating to Fees) pay to the Provider the fee of £[**amount**] in the sums and on the dates set out below:

<b>Sum due</b>	<b>Date due</b>
£[ <b>insert amount</b> ]	[ <b>insert date</b> ]
£[ <b>insert amount</b> ]	[ <b>insert date</b> ]

If for any reason the British Council is dissatisfied with the photographs the Provider produces, or any aspect of the Provider's performance under this Agreement, the British Council may withhold an appropriate part of the above fees until the issue has been resolved to the British Council's reasonable satisfaction.

### **Commencement date**

This Agreement shall come into force on [**insert date**].

## Schedule 1

### Commissioning a film-maker

#### The Work

***[insert details of the film the Provider is expected to deliver. Some example wording is set out below but this section should be adapted to suit the specific commission]***

[The Provider shall deliver to the British Council by **[insert date]** a film about **[insert subject matter of the film and any particular filming locations required]** with a running time of between **[insert number]** and **[insert number]** ("Film").]

[The Provider shall ensure that the Film will qualify with the British Board of Film Classification for an **"[insert rating level e.g. U]"** or less restrictive rating.]

**[Drafting note: This section to be used where filming is required in connection with a specific event:** The British Council requires the Film to be recorded in connection with an event detailed below during the hours and at the location as follows:

Event	Event Date	Hours of event	Location
[insert name of event]	[insert date]	[insert times]	[insert location]

**[Drafting note: This section to be used where filming is required at a particular location where access may be restricted except on the dates/times specified:** The Provider will be granted access to the relevant locations at which the Film is to be recorded during the following periods (or as otherwise agreed in writing between the Provider and the British Council):

Date of access to the location	Hours of access to the location	Location
	[insert times]	[insert location]
	[insert times]	[insert location]

#### Delivery of the Work

[The Provider shall provide the British Council with [a copy of the final script for the Work, a music cue sheet with details of all musical work included in the Work, details of all clearances obtained in respect of third party rights in the Work, and a copy of the Work in [insert details of format]] (the **"Deliverables"**).]

#### Final cut

[The Provider shall prepare and deliver to the British Council an assembly of the Film in sequence (**"First Cut"**). After the British Council has viewed the First Cut, where it feels it is appropriate to do so, the British Council may provide the Provider with any suggested alterations and the Provider shall then, having good faith regard to the British Council's suggestions, prepare and deliver to the British Council a fine cut of the Film. Thereafter, the British Council shall, following consultation with the Provider, have the right to make such additional cuts as it may in its absolute discretion deem necessary.]

[The British Council will provide the Provider with a copy of the completed Film on DVD for the Provider's private, non-commercial use only.]

### **Advertising and publicity**

[The British Council shall consult with the Provider regarding any advertising and publicity campaign for the Film, including in connection with the preparation of a trailer for the Film.]

### **Personnel**

[Provided the Provider is not in breach of any term of this Agreement and subject to clause 13, the Provider may, at its own cost, have the right to designate any personnel to assist the Provider with the preparation of the Film.]

### **Fees**

In consideration for the provision of the Work, the British Council shall (subject to clause 3 and the provisions of this section of Schedule 1 relating to Fees) pay the Provider the fee of £[**amount**] in the sums and on the dates set out below:

<b>Sum due</b>	<b>Date due</b>
£[ <b>insert amount</b> ]	[ <b>insert date</b> ]
£[ <b>insert amount</b> ]	[ <b>insert date</b> ]

[The Provider shall be entitled to a bonus of £[**amount**] if the Film wins any of the following awards:

- [**insert appropriate awards**]

If for any reason the British Council is dissatisfied with the Film the Provider delivers, or any aspect of the Provider's performance under this Agreement, the British Council may withhold an appropriate part of the above fees until the issue has been resolved to the British Council's reasonable satisfaction.

### **Commencement date**

This Agreement shall come into force on [**insert date**].

## **Schedule 1**

### **Commissioning a designer**

#### **The Work**

***[insert details of the designs the Provider is expected to deliver. Some example wording is set out below but this section should be adapted to suit the specific commission]***

[The Provider will produce designs of ***[insert details of what is to be designed, e.g. a poster, invitation card and press pack cover image]*** for the ***[insert name of the relevant festival/event]*** and deliver these designs in ***[insert format e.g. PDF format]*** (the “**Deliverables**”) to the British Council for approval by ***[insert date]***.]

[After the British Council has reviewed the designs the Provider delivers, where it feels it is appropriate to do so, the British Council may provide the Provider with suggested alterations and in such instance the Provider shall then prepare and deliver to the British Council (at no extra cost to the British Council) a final set of designs incorporating the British Council's suggested alterations.]

#### **Fees**

In consideration for the provision of the Work, the British Council shall (subject to clause 3 and the provision of this section of Schedule 1 relating to Fees) pay the Provider the fee of £***[amount]*** in the sums and on the dates set out below:

<b>Sum due</b>	<b>Date due</b>
<b>£<i>[insert amount]</i></b>	<b><i>[insert date]</i></b>
<b>£<i>[insert amount]</i></b>	<b><i>[insert date]</i></b>

If for any reason the British Council is dissatisfied with the designs the Provider delivers, or any aspect of the Provider's performance under this Agreement, the British Council may withhold an appropriate part of the above fees until the issue has been resolved to the British Council's reasonable satisfaction.

#### **Commencement date**

This Agreement shall come into force on ***[insert date]***.

## Schedule 2

### Data Processing Schedule

<b>Description</b>	<b>Details</b>
<b>Duration of Processing</b>	<i>[Clearly set out the duration of the processing including dates]</i>
<b>Nature/purpose of Processing</b>	<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>
<b>Type of Personal Data</b>	<i>[Examples here include: name, address, date of birth, National identification number, telephone number, pay, images, biometric data etc]</i>
<b>Categories of Data Subjects</b>	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, students / pupils, members of the public, users of a particular website etc]</i>
<b>Countries or International Organisations Personal Data will be transferred to</b>	<i>[name the countries and International Organisations (where applicable) Where not applicable state N/A. NB: “<b>International Organisation</b>” 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>
<b>Sub-Processors</b>	<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>