

**The British Council:**            **[THE BRITISH COUNCIL**, incorporated by Royal Charter and registered as a charity (under number 209131 in England & Wales and number SC037733 in Scotland), with its principal office at 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 office address and details]]**

**The Supplier:**                    **[insert name and address details (and company number, if appropriate)]**

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

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

The Supplier shall supply to the British Council, and the British Council shall acquire and pay for, the services and / or goods (if any) described in Schedule 1 and / or Schedule 2 on the terms of this Agreement.

### Schedules

<b>Schedule 1</b>	Special Terms
<b>Schedule 2</b>	Specification
<b>Schedule 3</b>	Charges
<b>Schedule 4</b>	Standard Terms

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

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

**Signed by the duly authorised representative of THE BRITISH COUNCIL**

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

**Signed by [insert name of Supplier]**

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

## Schedule 1

### Special Terms

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

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

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

#### **1 Commencement Date and Term**

1.1 This Agreement shall come into force on **[insert date]** and, subject to paragraph 1.2 below, shall continue in full force and effect until **[insert date] OR [until all Services have been completed and all Goods and / or Deliverables have been delivered to the British Council's satisfaction as set out in Schedule 2 (Specification)]** (the "Term").

1.2 Notwithstanding anything to the contrary elsewhere in this Agreement, the British Council shall be entitled to terminate this Agreement by serving not less than **[insert number of days]** days' written notice on the Supplier.

#### **2 Key Personnel**

2.1 The Supplier shall deploy the following persons in the provision of the Services: **[insert list]** (the "Key Personnel").

#### **3 Working Hours**

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

#### **4 Supplier's Liability**

4.1 The Consultant shall take out and maintain during the Term of this Agreement appropriate Professional Indemnity, Employer's Liability and Public Liability 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.

4.2 The Consultant shall take out and maintain during the Term of this Agreement appropriate Medical and Travel insurance as advised by the Supplier's insurer and such other insurance cover types and indemnity limits as may be agreed between the parties in writing from time to time.

## **5 Transferred Deliverables**

- 5.1 For the purposes of this Agreement, the following shall be “**Transferred Deliverables**”: All documentation produced as a result of these Terms of Reference including but not limited to strategies, reports, application forms, report forms etc. are Transferred Deliverables and ownership of Intellectual Property Rights is to be assigned to the British Council without exception.

## **6 Publicity**

- 6.1 The Consultant authorises the End Client to publish its name and address, nationality, the purpose of the consultancy, duration and location as well as the maximum amount of the consultancy and the rate of funding of the Action's costs, as laid down in Article 3 of the Special Conditions of the British Council's contract with the End Client dated 23 June 2015. Derogation from publication of this information may be granted if it could endanger the Consultant or harm its interests.
- 6.2 Notwithstanding clause 18.1 of Schedule 4 (Standard Terms) requiring the British Council's prior written approval of any publicity or dealings with the media related to the project, the Consultant shall mention the European Union's financial contribution in any information given to the final recipients of the project, in its internal and annual reports, and in any dealings with the media. It shall display the European Union logo wherever appropriate.

## **7 Other obligations**

- 7.1 The Consultant shall promote the respect of human rights and respect applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards,
- 7.2 The Parties shall consult and work together to comply with the Communication and Visibility provisions from the End Client Agreement, and to implement the Communication and Visibility Plan detailed in Annex VI to the End Client Agreement.
- 7.3 The Consultant may be required to pay income tax in accordance with the local legislation. The Consultant shall comply with this requirement and shall inform the British Council in relation to such provisions. The British Council shall not adjust the charges and allowances to take account of such taxes.
- 7.4 The Consultant shall ensure that the charges and expenses covered by the fee mentioned in Schedule 3 are incurred during the Term and are eligible, reasonable, justified and comply with the End Client principles of Sound Financial management. The Consultant shall keep effective supportive evidence for all the expenses incurred during the Term (originals, as the case may be in electronic form). The British Council reserves the right to request the Consultant to submit the mentioned evidence or to provide access to British Council auditors or End Client auditors to the records kept in this respect.

## **Schedule 2**

### **Specification**

#### **Services**

***[Insert here definition and specification of the Services. If these are consultancy services, this may include the terms of reference issued by the British Council and/or any end client.]***

#### **Goods**

***[Insert here definition and specification of the Goods.]***

### Schedule 3

#### Charges

The Charges for the Services and/or Goods will be ***[insert details] [e.g. monthly charge/fixed sum paid against an agreed payment schedule/daily or hourly rates/unit charges/price list for a range of products. If the Agreement is for the provision of consultancy on a daily basis, state the maximum number of days].***

***[NB: Include details of any agreed expenses].***

***[Note: The following is an example (relating to the supply of Services) only and can be deleted or adapted as necessary:]***

[The Charges set out above are an all inclusive fee except for those additional expenses specifically referred to below, and covers all preparation, report writing and all other work, which is carried out in [ ]. It is expected that the Supplier will meet all costs and expenses necessary to provide the Services under this Agreement, including, but not restricted to: the costs of salaries, bonuses, superannuation medical and travel insurance, insurance for personal possessions or of any fees payable to personnel employed, or engaged by the Supplier. The Charges are also deemed to cover the cost of personal equipment, non-Working Days and all other costs including but not limited to clothing, passports and vaccinations, travel to and from the airport, accommodation costs, overheads and expenses of whatsoever nature that may be incurred except those otherwise specifically provided for in this Agreement.

In addition to the Charges the British Council will reimburse the Supplier for the following expenses incurred as a direct consequence of the engagement, subject to such expenses being agreed with the British Council separately in advance:

Sums equivalent to a housing and subsistence allowance (to cover accommodation, meals, local travel etc) based on a rate of [ ] per month in [ ] for up to a maximum of [ ], not exceeding [ ].

Sums equivalent to a subsistence allowance (per diem) based on a rate of [ ] per night for each night (Note: EU contracts count nights spent, not 24 hour periods), spent away from the base of missions, assumed to be in [ ]. Costs or per diems will not be paid for any time spent outside [ ], unless agreed separately in writing.

Sums equivalent to a travel allowance to cover excess baggage, medical insurance, visa, international flights, domestic travel between the Supplier's full time place of residence (or that of any applicable Relevant Person) and the airport up to a maximum of [ ], based on the rate of [ ] per return Economy flight for up to a maximum of [ ] flights, over the life of the project from the Supplier's full time place of residence (or that of any applicable Relevant Person) to [ ]. All flights must be in economy class.

The Charges and allowances for the Supplier will be reimbursed by the British Council and are fixed for the duration of the Agreement].

## Schedule 4

### Standard Terms

#### **1** Interpretation

##### 1.1 In this Agreement:

“**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/](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);

“**Charges**” means the charges, fees and any other sums payable by the British Council to the Supplier as set out in Schedule 3;

“**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);

“**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, Goods/Services, 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 sensitive personal data within the meaning of the Data Protection Act 1998;

“**Deliverables**” means all Documents, products and materials developed or provided by the Supplier as part of providing the Services;

“**Document**” means (whether in hard copy or electronic format) any document, drawing, map, plan, diagram, design, picture or other image, tape, disk, or other device or record embodying information in any form;

**“End Client”** means the end client (if any) in respect of the project in connection with which the Supplier is providing its Services as a sub-contractor;

**“End Client Requirements”** means the specific requirements of the End Client, as notified to the Supplier in writing;

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004;

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

**“Goods”** means the goods or products (if any) to be supplied by the Supplier under this Agreement as set out in the Special Terms (Schedule 1) and/or the Specification (Schedule 2);

**“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;

**“Premises”** means, where applicable, the premises or location where the Services are to be provided, as notified by the British Council to the Supplier;

**“Project”** means the project in connection with which the Supplier provides its Services as further described in the Special Terms (Schedule 1) and/or the Specification (Schedule 2);

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

**“Relevant Person”** means any individual employed or engaged by the Supplier and involved in the provision of the Services, or any agent or contractor or sub-contractor of the Supplier

who is involved in the provision of the Services and includes, without limitation, the Key Personnel (if any);

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

**“Services”** means the services to be provided by the Supplier under this Agreement as set out in the Special Terms (Schedule 1) and/or the Specification (Schedule 2);

**“Supplier’s Team”** means the Supplier and, where applicable, any Relevant Person, and all other employees, consultants, agents and sub-contractors which the Supplier engages in any way in relation to the supply of the Services or the Goods; and

**“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 Deliverables and/or in the course of or in connection with the Project.

## 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 Supplier's Responsibilities**

### 2.1 The Supplier shall:

- 2.1.1 provide the Services and the Goods, and deliver the Deliverables to the British Council, with reasonable skill, care and ability in accordance with the terms of this Agreement (and, in particular, the Special Terms (Schedule 1) and the Specification (Schedule 2)), and with the reasonable instructions of the British Council, and shall allocate sufficient resources to the Services to enable it to comply with this obligation;
- 2.1.2 deliver the Goods to the delivery point and on the delivery date as notified to the Supplier (and time shall be of the essence for delivery);
- 2.1.3 comply with the End Client Requirements (if any) and shall do nothing to put the British Council in breach of the End Client Requirements (if any);
- 2.1.4 not at any time during the Term do or say anything which damages or which could reasonably be expected to damage the interests or reputation of the British Council or the End Client or their respective officers, employees, agents or contractors;
- 2.1.5 comply in all material respects with the Data Protection Act 1998 (or any equivalent legislation in any applicable jurisdiction);
- 2.1.6 maintain records relating to this Agreement for seven (7) years following the year in which this Agreement terminates or expires and allow the British Council and/or any end client access to those records on reasonable notice and at reasonable times for audit purposes;
- 2.1.7 obtain the British Council's prior written consent to all promotional activity or publicity and act at all times in accordance with the British Council's reasonable instructions relating to such activity or publicity;
- 2.1.8 comply with all applicable legislation and codes of practice relating to diversity, equality, non-discrimination and human rights in force in England and Wales and any other territory in which the Services and the Goods are to be provided;
- 2.1.9 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;
- 2.1.10 not, without the British Council's consent, assign or otherwise transfer any of its rights or obligations under this Agreement;
- 2.1.11 be entitled to use such parts of the Premises on a non-exclusive basis as the British Council may from time to time designate as are necessary for the performance of the Services provided that use of the Premises is strictly in accordance with the British Council's reasonable instructions and is to be solely for the purposes of providing the Services;

- 2.1.12 promptly notify the British Council of any health and safety hazards which may arise in connection with the performance of this Agreement, take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by the performance of the Services and notify the British Council of any incident occurring on the Premises or otherwise in connection with the provision of the Services which causes or could give rise to personal injury;
  - 2.1.13 comply with, and complete and return any forms or reports from time to time required by, the British Council Requirements; and
  - 2.1.14 use its reasonable endeavours to ensure that it does not become involved in any conflict of interests between the interests of the British Council and/or the End Client and the interests of the Supplier itself or any client of the Supplier, and shall notify the British Council in writing as soon as is practically possible of any potential conflict of interests and shall follow the British Council's reasonable instructions to avoid, or bring to an end, any conflict of interests. In the event that a conflict of interests does arise, the British Council shall be entitled to terminate this Agreement on immediate written notice.
- 2.2 Where the Supplier is not an individual, it shall provide one or more Relevant Person(s) to provide the Services and shall procure that such Relevant Person(s) comply with the terms of this Agreement to the extent that such terms are applicable to such Relevant Person(s). Notwithstanding the deployment of any such Relevant Person(s), the Supplier shall remain wholly liable to the British Council and shall be responsible for all acts and omissions (howsoever arising) in the performance of the Services. The British Council may, in its discretion, require the Relevant Person(s) to enter into direct undertakings with the British Council including, without limitation, with regard to confidentiality and intellectual property.
- 2.3 The Supplier warrants that the Goods shall: (a) conform to the Specification in Schedule 2; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the British Council; (c) be free from defects in design, material and workmanship and remain so for 12 months after delivery; and (d) comply with all applicable statutory and regulatory requirements.
- 2.4 Risk and title in the Goods delivered to the British Council shall pass to the British Council on delivery.

### **3 Status**

- 3.1 The relationship of the Supplier to the British Council will be that of independent contractor and nothing in this Agreement shall render the Supplier or any Relevant Person an employee, worker, agent or partner of the British Council and the Supplier shall not hold itself out as such.
- 3.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the British Council for and in respect of payment of the following within the prescribed time limits:

- 3.2.1 any tax (including, without limitation, VAT), National Insurance contributions or similar impost or payment of a fiscal nature arising from or made in connection with either the performance of the Services, or any payment or benefit received by the Supplier in respect of the Services; and
- 3.2.2 any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier (or, where applicable, any Relevant Person) against the British Council arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the British Council.

#### **4 Price and Payment**

- 4.1 Unless stated otherwise, the Charges are exclusive of value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction.
- 4.2 Unless stated otherwise, the Supplier shall invoice for the Charges monthly in arrears and all such invoices shall be accompanied by a statement setting out the Services and/or Goods supplied in the relevant month in sufficient detail to justify the Charges charged.
- 4.3 Subject to clause 4.4 below, the British Council shall, unless agreed otherwise by the parties in writing, pay each of the Supplier's valid and accurate invoices by automated transfer into the Supplier's nominated bank account no later than 30 days after the invoice is received.
- 4.4 Where there is an end client, the British Council shall not be obliged to pay any invoice to the extent that it has not received payment relating to that invoice from the end client.
- 4.5 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
- 4.6 Where the Supplier enters into a Sub-Contract, the Supplier shall:
  - 4.6.1 pay any valid invoice received from its subcontractor within 30 days following receipt of the relevant invoice payable under the Sub-Contract; and
  - 4.6.2 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 4.6.1 of this Agreement.
- 4.7 In clause 4.6, "**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.

## **5 Change Control**

- 5.1 If either party wishes to change the scope or provision of the Services, it shall submit details of the requested change to the other in writing and such change shall only be implemented if agreed in writing by both parties acting reasonably.

## **6 Intellectual Property Rights**

- 6.1 Subject to clause 7, each party shall give full disclosure to the other of all Background IPR owned by it which is relevant to the Project (and the Supplier shall give the British Council full disclosure of any Third Party IPR it intends to use).
- 6.2 All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it.
- 6.3 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.
- 6.4 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.
- 6.5 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 Deliverables.
- 6.6 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.
- 6.7 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 included in the Deliverables.
- 6.8 The Supplier is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR required by the Supplier and the British Council for use of the Deliverables (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 Deliverables and/or the Goods does not and will not infringe any third party's Intellectual Property Rights.
- 6.9 The Supplier warrants that it has in place contractual arrangements with all members of the Supplier's Team assigning to the Supplier their Intellectual Property Rights and waiving their moral rights (if any) in the Deliverables such that the Supplier can enter into the assignments, licences and waivers set out in this clause 6.
- 6.10 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 6.
- 6.11 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.

- 6.12 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.

## **7 Confidentiality**

- 7.1 For the purposes of this clause 7:

7.1.1 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

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

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

7.2.1 is given only to such of its staff (or, in the case of the Supplier, the Supplier's Team) and professional advisors or consultants 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

7.2.2 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, in the case of the Supplier, the Supplier's Team) or its professional advisors or consultants otherwise than for the purposes of this Agreement.

- 7.3 The Supplier shall ensure that all members of the Supplier's Team or professional advisors or consultants are aware of the Supplier's confidentiality obligations under this Agreement.

- 7.4 The provisions of clauses 7.2 and 7.3 shall not apply to any Confidential Information which:

7.4.1 is or becomes public knowledge (otherwise than by breach of this clause 7);

7.4.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;

7.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

7.4.4 is independently developed without access to the Confidential Information; or

7.4.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.

- 7.5 In the event that the Supplier fails to comply with this clause 7, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.

- 7.6 The provisions under this clause 7 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
- 7.7 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.
- 7.8 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 and in any event within five calendar days of receipt, forward the Request for Information to the Supplier and the Supplier shall:
- 7.8.1 provide the British Council with a copy of all such information in the form that the British Council requires as soon as practicable and in any event within 10 calendar days (or such other period as the British Council acting reasonably may specify) of the British Council's request; and
  - 7.8.2 provide all necessary assistance as reasonably requested by the British Council to enable the British Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, as applicable.
- 7.9 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:
- 7.9.1 in certain circumstances without consulting the Supplier; or
  - 7.9.2 following consultation with the Supplier and having taken its views into account,
- provided always that where clause 7.9.1 above applies, the British Council shall, in accordance with the recommendations of the Code, take reasonable steps to draw this to the attention of the Supplier after any such disclosure.
- 7.10 The provisions of this clause 7 shall survive the termination of this Agreement, however arising.

## **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, 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 Supplier in respect of any one claim or series of linked claims 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 Charges paid or properly invoiced and due to be paid under this Agreement, plus any late payment interest properly chargeable under the terms of this Agreement, in the twelve (12) month period immediately preceding the event which gives rise to the relevant claim or series of linked claims.

## **9 Termination**

9.1 Without prejudice to any other rights or remedies which the British Council may have, the British Council may terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier if:

9.1.1 the performance of the Services is delayed, hindered or prevented by a Force Majeure Event (as defined in clause 22) for a period in excess of 28 days;

9.1.2 where the Supplier is a company, there is a change of Control of the Supplier; or

9.1.3 the Supplier or any Relevant Person is:

(i) incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of five (5) Working Days in any two (2) week consecutive period;

(ii) convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

(iii) in the reasonable opinion of the British Council or the End Client, negligent and incompetent in the performance of the Services; or

(iv) guilty of any fraud, dishonesty or serious misconduct.

9.2 Either party may give notice in writing to the other terminating this Agreement with immediate effect if:

9.2.1 the other party 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 terminating party shall be entitled to terminate the Agreement with immediate effect);

9.2.2 the other party becomes (or, in the reasonable opinion of the terminating party, is at serious risk of becoming) insolvent or unable to pay its debts as they fall due.

9.3 The British Council shall be entitled to terminate this Agreement at any time by serving not less than 30 days' written notice on the Supplier.

9.4 The British Council shall be entitled to terminate this Agreement at any time with immediate effect (or with effect from such time as the British Council specifies in its notice of termination) by serving written notice on the Supplier if:

- 9.4.1 the British Council's agreement with the End Client relating to the Services terminates;
  - 9.4.2 the End Client or a provider of funding to the British Council for the Services instructs the British Council in writing to terminate this Agreement; or
  - 9.4.3 if the funding for the Services is otherwise withdrawn or ceases.
- 9.5 Termination of this Agreement, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

## **10 Anti-corruption**

- 10.1 The Supplier acknowledges and agrees that British Council may, at any point during the Term and on any number of occasions, carry out searches of relevant third party screening databases (each a "**Screening Database**") to ensure that neither the Supplier nor any of the Supplier's Team, directors, or shareholders (where applicable) is 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**").
- 10.2 The Supplier warrants that it will not make payment to, transfer property to, or otherwise have dealings with, any Prohibited Entity.
- 10.3 If the Supplier or any of the Supplier's Team, directors, or shareholders (where applicable) is listed in a Screening Database for any of the reasons set out in clause 10.1, or if the Supplier breaches the warranty in clause 10.2, then, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:
- 10.3.1 terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier; and/or
  - 10.3.2 reduce, withhold or claim a repayment (in full or in part) of the Charges payable under this Agreement; and/or
  - 10.3.3 share such information with third parties.
- 10.4 The Supplier shall provide the British Council with all information reasonably requested by the British Council to complete the screening searches described in clause 10.1.

## **11 Safeguarding and Protecting Children and Vulnerable Adults**

- 11.1 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, which the Supplier acknowledges may include submitting to a check by the UK Disclosure & Barring Service (DBS) or the equivalent local service; in addition, the Supplier will ensure that, where it engages any other party to supply



any of the Services under this Agreement, that that party will also comply with the same requirements as if they were a party to this Agreement.

## **12 Anti-slavery and human trafficking**

12.1 The Supplier shall:

12.1.1 ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain;

12.1.2 implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains;

12.1.3 respond promptly to all slavery and human trafficking due diligence questionnaires issued to it by the British Council from time to time and ensure that its responses to all such questionnaires are complete and accurate; and

12.1.4 notify the British Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in any part of its business or in a supply chain which has a connection with this Agreement.

12.2 If the Supplier fails to comply with any of its obligations under clause 12.1, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:

12.2.1 terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier; and/or

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

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

## **13 Equality, Diversity and Inclusion**

13.1 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.

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

## **14 Assignment**

14.1 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.

14.2 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 14.2.

## **15 Waiver**

15.1 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.

## **16 Entire agreement**

16.1 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.

## **17 Variation**

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

## **18 Severance**

18.1 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.

## **19 Counterparts**

19.1 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.

## **20 Third party rights**

20.1 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 14 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.

20.2 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).

## **21 No partnership or agency**

- 21.1 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.

## **22 Force Majeure**

- 22.1 Subject to clauses 22.2 and 22.3, 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.
- 22.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 22.2.1 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;
  - 22.2.2 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
  - 22.2.3 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.
- 22.3 Nothing in this clause 22 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 22.1).

## **23 Notice**

- 23.1 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:
- 23.1.1 personally, in which case the notice will be deemed to have been received at the time of delivery;

23.1.2 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

23.1.3 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.

23.2 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.

## **24 Governing Law and Dispute Resolution Procedure**

24.1 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.

24.2 Subject to the remainder of this clause 24, 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.

24.3 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 24.3, either party may commence proceedings in accordance with clause 24.2.

24.4 Nothing in this clause 24 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.