

Dated [

] 202[*]

THE BRITISH COUNCIL

- and -

[*THE SUPPLIER*]

Annex 1 – Terms and Condition of Contract

THIS AGREEMENT is dated [DATE].

PARTIES

- (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) [Full company name] incorporated and registered in England and Wales with company number [Number] whose registered office is at [Registered office address] (the "**Supplier**").

IT IS HEREBY AGREED

1. Interpretation

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

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

"British Council 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 <https://www.britishcouncil.org/partner/international-development/jobs/policies-consultants> or such other web address as may be notified to the Supplier from time to time (as such documents may be amended, updated or supplemented from time to time during the term of this Agreement).

"British Council's Project Manager" means the British Council's manager for the Project appointed in accordance with clause 3.1.1.

"British Council's Responsibilities" means the British Council's obligations set out in clause 3.

"Confidential Information" means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, finances, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of the British Council or the Sponsor (as the case may be) and all personal data and special categories of personal data within the meaning of the Data Protection Legislation.

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

“**Deliverables**” means all products and materials developed by the Supplier in relation to the Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts).

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

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

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

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

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

- (a) the FOIA;
- (b) the Environmental Information Regulations; and
- (c) any applicable codes of practice issued under the FOIA.

“**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.

“**Project**” means the project as described in the Project Plan.

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

“Project Plan”, the detailed plan describing the Project and setting out the timetable (including Project Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Project Specification, [attached to this Agreement as Annex 1 **OR** to be agreed with and delivered to the British Council and, on such agreement, to be attached to this Agreement as Annex 1 and form part of it].

“Project Milestone” means a date by which a part of the Project shall be completed, as specified in the Project Plan.

“Project Specification” means the specification for the Project [, attached to this Agreement as Annex 2 **OR** to be agreed with and delivered to the British Council and, on such agreement, to be attached to this Agreement as Annex 2 and form part of it.]

“Proposal” means the materials handed to the British Council supporting the Supplier's presentation to the British Council and describing how the Supplier proposes to carry out the Project.

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

“Services” means the consulting and related services to be supplied, and obligations to be performed, by the Supplier in connection with the Project.

“Supplier's Project Manager” means the Supplier's manager for the Project appointed in accordance with clause 2.4.

“Supplier's Project Team” has the meaning given in clause 2.5.

“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.

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

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 where this Agreement has been translated into a language other than the English language, the English language version shall prevail.

2. Supplier's responsibilities

- 2.1 If the Project Specification and Project Plan are not attached to this Agreement when it is made:
- 2.1.1 the Supplier shall diligently prepare the Project Specification and/or the Project Plan (as the case may be) and, within the time stipulated by the British Council, deliver the same to the British Council for approval;
 - 2.1.2 if the British Council approves the documents delivered under clause 2.1.1, the Supplier shall proceed with the rest of the Project at the British Council's direction, but such approval shall not affect the British Council in enforcing any other term of this Agreement;
 - 2.1.3 if the British Council does not approve any documents under clause 2.1.1, it shall notify the Supplier to that effect within [Number] of days after delivery (or the due date for delivery in the case of non-delivery), stating in reasonable detail the reason(s) for non-approval; and
 - 2.1.4 on receipt of notice under clause 2.1.3, the Supplier shall (without affecting any other rights or remedies of the British Council) promptly, and at its own cost, carry out all remedial work necessary to enable the British Council to give such approval.

- 2.2 The Supplier shall manage and complete the Project, and deliver the Deliverables, in accordance with the Project Plan. Without affecting the foregoing, the Supplier shall allocate sufficient resources to the Project to enable it to comply with this obligation.
- 2.3 Time is of the essence as to the performance of the Services. If the Supplier fails (in any case where clause 2.1 applies) to deliver the Project Specification and the Project Plan within the time stipulated for their delivery or to meet any performance dates specified in the Project Plan, the British Council shall be entitled to:
- 2.3.1 cancel this Agreement in whole or in part without liability to the Supplier;
 - 2.3.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 2.3.3 purchase substitute services elsewhere;
 - 2.3.4 hold the Supplier accountable for any loss and additional costs incurred; and
 - 2.3.5 have refunded by the Supplier all sums previously paid by the British Council to the Supplier under this Agreement.
- 2.4 The Supplier shall co-operate with the British Council in all matters relating to the Project and appoint a Project Manager, who shall have authority to commit the Supplier on all matters relating to the Project.
- 2.5 The British Council may for any reason decline to accept any persons (including replacements) proposed by the Supplier to work on the Project (together referred to as the "**Supplier's Project Team**"), and in such event the Supplier shall propose a replacement without delay. The Supplier shall ensure the continued availability of each member of the Supplier's Project Team during the Project. The Supplier shall promptly notify the British Council if any member of the Supplier's Project Team is unable to work due to illness.
- 2.6 If the Supplier wishes to replace a member of the Supplier's Project Team, it shall seek the prior written approval of the British Council, such approval not to be unreasonably withheld or delayed. If at any time the British Council considers that any member of the Supplier's Project Team is not suitable for the purpose of this Agreement, the British Council may require the Supplier to replace that person with a suitable alternative without delay.
- 2.7 The Supplier acknowledges and agrees that:
- 2.7.1 the British Council is entering into this Agreement on the basis of the Proposal and that the Proposal is accurate and complete in all material respects, and is not misleading; and
 - 2.7.2 if it considers that the British Council is not or may not be complying with any of the British Council's Responsibilities, it shall only be entitled to rely on this as relieving performance:
 - (a) to the extent that it restricts or precludes performance of the Services by the Supplier; and

- (b) if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the British Council in writing.

3. British Council's Responsibilities

3.1 The British Council shall:

- 3.1.1 co-operate with the Supplier in all matters relating to the Project and appoint a Project Manager, who shall have the authority to commit the British Council on all matters relating to the Project;
- 3.1.2 provide such access to the British Council's premises and data, and such office accommodation and other facilities, as may reasonably be required by the Supplier and agreed by the British Council in advance for the purposes of the Project; and
- 3.1.3 provide, in a timely manner, such information as the Supplier may request, and the British Council considers reasonably necessary, in order to carry out the Project and ensure that all information the British Council provides is accurate in all material respects.

4. Change control

4.1 The British Council's Project Manager and the Supplier's Project Manager shall meet at least once every [Period of time] to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other party in writing.

4.2 If the British Council requests a change to the scope of the Services:

- 4.2.1 the Supplier shall, within a reasonable time (and in any event not more than seven calendar days after receipt of the British Council's request), but without further charge to the British Council, provide a written estimate to the British Council of:
 - (a) the likely time required to implement the change;
 - (b) any necessary variations to the Supplier's charges as a result of the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on the terms of this Agreement;
- 4.2.2 if the British Council does not wish to proceed, there shall be no change to the Project Plan or this Agreement; and
- 4.2.3 if the British Council wishes the Supplier to proceed with the change, the Supplier shall do so after agreement on the necessary variations to its charges, the Project Plan and any other relevant terms of this Agreement to take account of the change.

4.3 If the Supplier requests a change to the scope of the Services, the British Council shall not unreasonably withhold or delay consent to it. If the British Council wishes the Supplier to proceed with the change, the Supplier shall do so. Unless the Supplier's request was attributable to the British Council's non-compliance with the British Council's Responsibilities,

neither the Supplier's charges, the Project Plan nor any other terms of this Agreement shall vary as a result of such change.

5. Charges and payment

5.1 Clause 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 5.3 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 5 shall apply in either case.

5.2 Where the Services are provided on a time-and-materials basis:

5.2.1 the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates in force for its Supplier's Project Team involved in the supply of the Services, details of which are set out in the Proposal;

5.2.2 the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);

5.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's Project Team unless it has the British Council's prior written consent to do so;

5.2.4 the Supplier shall ensure that the members of the Supplier's Project Team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 5.2.5; and

5.2.5 the Supplier shall invoice the British Council monthly in arrear for its charges for time, expenses and materials (together with VAT), where appropriate) for the month concerned, calculated as provided in this clause 5. Each invoice shall set out the time spent by each member of the Supplier's Project Team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

5.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid to the Supplier in instalments as set out in the Project Plan, with the payment of each instalment being conditional on the Supplier having achieved the appropriate Project Milestone as set out in the Project Plan. On achieving a Project Milestone, the Supplier shall invoice the British Council for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in this clause 5.

5.4 The Supplier's charges exclude:

5.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of the Supplier's Project Team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost

price. The Supplier shall obtain the British Council's approval before incurring any such expense, material or service exceeding [Amount]; and

5.4.2 VAT, which the Supplier shall add to its invoices at the appropriate rate.

5.5 The British Council shall pay each invoice properly due, issued and submitted by Supplier within 30 days of receipt.

5.6 Claims for payment in respect of materials purchased by or services provided to the Supplier, or for reimbursement of expenses, shall be payable by the British Council only if accompanied by relevant receipts.

5.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the British Council shall approve. The Supplier shall allow the British Council to inspect such records at all reasonable times on request.

5.8 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.

5.9 Without prejudice to any other right or remedy it may have, the British Council reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by the British Council to the Supplier under this Agreement.

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

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

5.10.2 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 5.10.1 of this Agreement.

5.11 In clause 5.10, "**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.

6. Quality of Services

6.1 The Supplier warrants to the British Council that:

6.1.1 the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;

- 6.1.2 the Services will conform with all descriptions and specifications provided to the British Council by the Supplier, including the Project Specification and Project Plan; and
- 6.1.3 the Services will be provided in accordance with all applicable legislation from time to time in force.

6.2 The British Council's rights under this Agreement are in addition to the statutory terms implied in favour of the British Council by the Supply of Goods and Services Act 1982 and any other statute.

6.3 The provisions of this clause 6 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by the Supplier.

7. Intellectual property rights

7.1 Subject to clause 9, 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).

7.2 All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 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, and the Deliverables does not and will not infringe any third party's Intellectual Property Rights.

7.9 The Supplier warrants that it has in place contractual arrangements with all members of the Supplier's Project 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 7.

- 7.10 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 7.
- 7.11 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.
- 7.12 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.

8. Indemnity

- 8.1 The Supplier shall indemnify and hold the British Council harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the British Council as a result of or in connection with:
- 8.1.1 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or
- 8.1.2 any claim made against the British Council in respect of any liability, loss, damage, injury, cost or expense sustained by the British Council's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.
- 8.2 During the term of this Agreement, the Supplier shall maintain in force with a reputable insurance company professional indemnity insurance in an amount not less than £[Amount] and shall, on the British Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

9. Confidentiality

- 9.1 For the purposes of this clause 9:
- 9.1.1 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
- 9.1.2 the "**Receiving Party**" is the party which receives Confidential Information relating to the other party.

- 9.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Agreement:
- 9.2.1 is given only to such of its staff and professional advisors or associates engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement; and
 - 9.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff or its professional advisors or associates otherwise than for the purposes of this Agreement.
- 9.3 The provisions of clause 9.2 shall not apply to any Confidential Information which:
- 9.3.1 is or becomes public knowledge (otherwise than by breach of this clause 9);
 - 9.3.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
 - 9.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 9.3.4 is independently developed without access to the Confidential Information; or
 - 9.3.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.
- 9.4 In the event that the Supplier fails to comply with this clause 9, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.
- 9.5 To the extent any provisions of the Official Secrets Act 1989 or the National Security Act 2023 are applicable to any Confidential Information, nothing in this clause 9 will change those provisions applicable under that legislation.
- 9.6 The Supplier acknowledges that the British Council is subject to the Information Disclosure Requirements and shall assist and co-operate with the British Council to enable the British Council to comply with those requirements.
- 9.7 Where the British Council receives a Request for Information in relation to information that the Supplier or any of its sub-contractors is holding on behalf of the British Council and which the British Council does not hold itself, the British Council shall, as soon as reasonably practicable after receipt, forward the Request for Information to the Supplier and the Supplier shall:
- 9.7.1 provide the British Council with a copy of all such information in the form that the British Council requires as soon as practicable and in any event within 10 calendar days (or such other period as the British Council acting reasonably may specify) of the British Council's request; and
 - 9.7.2 provide all necessary assistance as reasonably requested by the British Council to enable the British Council to respond to the Request for Information within the time

for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, as applicable.

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

9.8.1 in certain circumstances without consulting the Supplier; or

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

provided always that where clause 9.8.1 above applies, the British Council shall, in accordance with the recommendations of the applicable codes of practice issued under the FOIA, take reasonable steps to draw this to the attention of the Supplier after any such disclosure.

9.9 The provisions of this clause 9 shall survive the termination of this Agreement, however arising.

10. Termination

10.1 Without prejudice to any other rights or remedies to which the British Council may be entitled, the British Council may terminate this Agreement without liability to the Supplier if:

10.1.1 the performance of the Services is delayed, hindered or prevented for more than 90 days by a Force Majeure Event; or

10.1.2 the Supplier commits any breach of its obligations under this Agreement and fails to remedy that breach within 14 days of receiving written notice from the British Council requiring its remedy; or

10.1.3 an order is made or a resolution is passed for the winding up of the Supplier, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Supplier; or

10.1.4 an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Supplier, or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

10.1.5 a receiver is appointed of any of the Supplier's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier, or if any other person takes possession of or sells the Supplier's assets; or

10.1.6 the Supplier makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

10.1.7 the Supplier ceases, or threatens to cease, to trade; or

10.1.8 there is a change of Control of the Supplier; or

10.1.9 the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

10.2 On termination of this Agreement for any reason, the Supplier shall immediately deliver to the British Council all copies of information or data provided by the British Council to the Supplier for the purposes of the Agreement. The Supplier shall certify to the British Council that it has not retained any copies of such information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 9.

10.3 On termination of this Agreement by the British Council, the Supplier shall immediately deliver to the British Council all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the British Council (to the extent that they have not already done so by virtue of clause 7.4), who shall be entitled to enter the premises of the Supplier to take possession of them.

10.4 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.

11. Data Processing

11.1 Clauses 11.1 to 11.12 apply to the Processing of Personal Data within the United Kingdom (UK) or the European Economic Area or any country deemed to provide an adequate level of protection under Article 45 of the EU GDPR and Article 45 of the UK GDPR.

11.2 In this clause:

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

“**Data Protection Legislation**” shall mean any applicable law relating to the processing, privacy and use of Personal Data, as applicable to either party or the Services under this Agreement, including the DPA and/or the GDPR, and /or any corresponding or equivalent national laws or regulations; and any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; all guidance, guidelines, codes of practice and codes of conduct issued by any relevant regulator, authority or body responsible for administering Data Protection Legislation (in each case whether or not legally binding);

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

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

“**EU GDPR**” means the General Data Protection Regulation (EU) 2016/679;

“**GDPR**” means, as applicable, the EU GDPR or the UK GDPR;

“International Organisation” has the same meaning as in the GDPR;

“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 carry out Processing activities in respect of the Personal Data on behalf of the Processor;

“Supervisory Authority” means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK or any other member state of the European Union;

“Third Country” means a country or territory outside the UK; and

“UK GDPR” has the meaning given in section 3(10) of the DPA (as amended).

- 11.3 For the purposes of the Data Protection Legislation, the British Council is the Controller and the Supplier is the Processor in respect of the Personal Data.
- 11.4 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 1 of this Agreement.
- 11.5 The Supplier shall comply with its obligations under the Data Protection Legislation and shall, in particular:
- 11.5.1 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 11.10);
 - 11.5.2 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;

- 11.5.3 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 1 or separately) the Supplier 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 it 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.
 - 11.5.4 ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality;
 - 11.5.5 not engage any Sub-Processor to carry out its Processing obligations under this Agreement without obtaining the prior written consent of the British Council and, where such consent is given, 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;
 - 11.5.6 notify the British Council, as soon as reasonably practicable, about any request or complaint received by the Supplier 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 Supplier, a Sub-Processor or the British Council;
 - 11.5.7 notify the British Council immediately on becoming aware of a Personal Data Breach;
 - 11.5.8 assist the British Council in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, impact assessments and consultations with supervisory authorities or regulators; and
 - 11.5.9 maintain accurate written records of the Processing it carries out in connection with this Agreement and on request by the British Council, make available all information necessary to demonstrate the Supplier's compliance under Data Protection Legislation and the terms of this Agreement.
- 11.6 The Supplier and its Sub-Processors shall allow for and contribute to audits, including inspections, by the British Council (or its authorised representative) in relation to the Processing of the British Council's Personal Data by the Supplier and its Sub-Processors to support the Supplier in their compliance of clause 11.5.9.

- 11.7 On termination or expiry of this Agreement, the Supplier (or any Sub-Processor) shall, except to the extent it is required to retain a copy by law, stop Processing the Personal Data and return and/or destroy it at the request of the British Council. The Supplier shall provide confirmation of destruction of any other copies including details of the date, time and method of destruction.
- 11.8 In the event of a notification under clause 11.5, the Supplier shall not notify the Data Subject or any third party unless such disclosure is required by Data Protection Legislation or other law or is otherwise approved by the British Council.
- 11.9 The Supplier warrants that in carrying out its obligations under this Agreement it will not breach the Data Protection Legislation or do or omit to do anything that might cause the British Council to be in breach of the Data Protection Legislation.
- 11.10 If the Supplier believes it is under a legal obligation to Process the Personal Data other than in accordance with the British Council's instructions it will provide the British Council with details of such legal obligation, unless the law prohibits such information on important grounds of public interest.
- 11.11 The Supplier shall indemnify and keep indemnified the British Council and the British Council Entities against all Personal Data losses suffered or incurred by, awarded against or agreed to be paid by, the British Council or British Council Entities arising from a breach by the Supplier (or any Sub-Processor) of (a) its data protection obligations under this Agreement; or (b) the Supplier (or any Sub-Processor acting on its behalf) acting outside or contrary to the lawful instruction of the British Council.
- 11.12 These clauses may be amended at any time by the British Council giving at least 30 days' written notice to the other party 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 11.2 to 11.5.9 above.

12. Publicity

- 12.1 The Supplier shall not publicise the terms of this Agreement or use the name of the British Council or any trade name or trade mark used by the British Council or refer to the British Council in any other way in any press release, promotional literature, publications or advertising material, including any website, "blogs", social media or other online services, without the prior written consent of the British Council.

13. Anti-Corruption and Collusion

- 13.1 The Supplier undertakes and warrants that it has not offered, given or agreed to give (and that it will not offer, give or agree to give) to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do anything in relation to the obtaining of this Agreement or the performance by the Supplier of its obligations under this Agreement.
- 13.2 The Supplier warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with other parties.

13.3 The Supplier warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party in any way in connection with this Agreement (including in respect of pricing under this Agreement). Nothing under this clause 13.3 is intended to prevent the Supplier from discussing the terms of this Agreement and the Supplier's pricing with the Supplier's professional advisors.

14. Safeguarding and Protecting Children and Vulnerable Adults

14.1 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 Safeguarding Policy included in the British Council Requirements as amended from time to time, which the Supplier acknowledges may include submitting checks by the UK Disclosure & Barring Service (DBS) and/or equivalent local checks¹.

14.2 The Supplier must provide to the British Council, documentary evidence of the relevant disclosure and/or the criminal records checks in advance of undertaking any activities involving children and/or vulnerable adults in connection with the Project under this Agreement.

14.3 In addition, the Supplier will ensure that, where it engages any other party to supply any of the Services under this Agreement, that party will also comply with the same requirements as if they were a party to this Agreement.

15. Equality, Diversity and Inclusion

15.1 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.

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

16. Assignment

16.1 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.

16.2 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 16.2.

¹ Equivalent local checks include, but are not limited to, the ACRO Criminal Records Office, 'International Child Protection Certificate' online criminal records checks and Code of Good Conduct' or any other services as detailed at the following link: <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants> (when/if link does not work contact the British Council Project manager)

17. Waiver

17.1 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.

18. Entire agreement

18.1 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.

19. Variation

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

20. Severance

20.1 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.

21. Counterparts

21.1 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.

22. Third party rights

22.1 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 16 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.

22.2 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).

23. No partnership or agency

23.1 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.

24. Force Majeure

24.1 Subject to clauses 24.2 and 24.3, neither party shall be in breach of this Agreement if it is prevented from or delayed in carrying on its business and/or material obligations hereunder by a Force Majeure Event.

24.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:

24.2.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;

24.2.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

24.2.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

24.3 Nothing in this clause 24 shall excuse a party for non-performance (or other breach) of this Agreement if such non-performance (or other breach) results from the acts or omissions of any of that party's consultants and/or sub-contractors (except where such acts or omissions are caused by a Force Majeure Event).

25. Notice

25.1 Notice given under this Agreement shall be in writing, sent for the attention of the person signing this Agreement on behalf of the recipient party and to the address given on the front page of this Agreement (or such other address or person as the relevant party may notify to the other party), or by email, and shall be delivered:

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

25.1.2 by pre-paid, first-class post if the notice is being sent to an address within the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the second (2nd) normal working day in the country specified in the recipient's address for notices after the date of posting;

25.1.3 by international standard post if being sent to an address outside the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the seventh (7th) normal working day in the country specified in the recipient's address for notices after the date of posting; or

25.1.4 by email to **[insert email address]** for the British Council and to **[insert email address]** for the Supplier (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.

25.2 To prove service of notice under clauses 25.1.1 to 25.1.3 above, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

26. Governing Law and Dispute Resolution Procedure

26.1 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.

26.2 Subject to the remainder of this clause 26, 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.

26.3 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 26.3, either party may commence proceedings in accordance with clause 26.2.

26.4 Nothing in this clause 26 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Agreement or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

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

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

Name:	Signature
Position:		

Signed by the duly authorised representative of THE BRITISH COUNCIL

Name:	Signature:
Position:		

Schedule 1 - Data Processing

Part A

Description	Details
Duration of Processing	<i>[Clearly set out the duration of the processing including dates]</i>
The frequency of the transfer	<i>[Clearly set out if the data is transferred on a one-off or continuous basis]</i>
Nature and purpose of Processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, marketing, statutory obligation, grant distribution and management, event management recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, National identification number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subjects	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, students / pupils, members of the public, users of a particular website etc]</i>
Sensitive data transferred (if applicable) and applied restrictions or safeguards	<i>[The restrictions and safeguards fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures]</i>
Countries or International Organisations Personal Data will be transferred to	<i>[name the countries and International Organisations (where applicable). Where not applicable state N/A. NB: "International Organisation" is defined in the GDPR as "an organisation and its subordinate bodies governed by public international law, or any other body which is set up</i>

	<i>by, or on the basis of, an agreement between two or more countries.”]</i>
Sub-Processors	<i>[name and contact address of Sub-Processor(s) (where applicable) and brief description of the nature of processing of personal data that they are undertaking under this agreement, where not applicable state N/A]</i>

