

## Annex 1 – Terms and Conditions of Contract

### 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 <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);

“**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 Legislation;

“**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;

**“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;

**“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;

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 The Supplier shall:

2.1.1 provide the Services and the Goods and deliver the Deliverables with (i) reasonable skill and care and to the highest professional standards (ii) in compliance at all times with the terms of this Agreement (and, in particular, the Special Terms (**Error! Reference source not found.**) and the Specification (Schedule 2)), the reasonable instructions of the British Council and all applicable regulations and legislation in force from time to time. The Supplier shall allocate sufficient resources to enable it to comply with its obligations under this Agreement;

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 Legislation (or any equivalent legislation in any applicable jurisdiction). The British Council and the Supplier agrees to any reasonable amendment to this Agreement in accordance with variation clause 18 in order to comply with any statutory amendments, re-enactment or revocation and replacement of current Data Protection Legislation and agree to execute any further documents required for compliance under the Data Protection Legislation in force at that time;

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 (and, in particular, the Supplier shall not use the British Council's logo or other branding without having previously obtained such prior written consent);

- 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, multiplication

of compensatory damages, punitive or exemplary damages, fines, penalties, fees 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 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); or
- 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.
- 9.6 The British Council shall pay the Charges up to the effective date of termination. In addition, if the Agreement is terminated by the British Council pursuant to paragraph **Error! Reference source not found.** of the Special Terms (Schedule 1) or by the Supplier pursuant to clause 9.2 above, the British Council shall reimburse the Supplier for the reasonable costs or expenses that the Supplier can demonstrate that it has properly incurred specifically for the purposes of the Project and which it cannot recover or which it cannot utilise in connection with another British Council project provided that the Supplier shall use its reasonable endeavours to mitigate the level of such costs and expenses.

## **10 Data Processing**

- 10.1 In this clause:
- 10.1.1 "**Controller**" means a "controller" for the purposes of the GDPR (as such legislation is applicable);
  - 10.1.2 "**Data Protection Legislation**" shall mean any applicable law relating to the processing, privacy and use of Personal Data, as applicable to either party or the Services under this Agreement, including the DPA and/or the GDPR, and/or any corresponding or equivalent national laws or regulations; and any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; all guidance, guidelines, codes of practice and codes of conduct issued by any relevant regulator, authority or body responsible for administering Data Protection Legislation (in each case whether or not legally binding);
  - 10.1.3 "**Data Subject**" has the same meaning as in the Data Protection Legislation;
  - 10.1.4 "**DPA**" means the UK Data Protection Act 2018;
  - 10.1.5 "**GDPR**" means, as applicable, the General Data Protection Regulation (EU) 2016/679 or the UK GDPR as defined in the DPA (as amended);
  - 10.1.6 "**Personal Data**" means "personal data" (as defined in the Data Protection Legislation) that are Processed under this Agreement;

- 10.1.7 “**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;
- 10.1.8 “**Processing**” has the same meaning as in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly;
- 10.1.9 “**Processor**” means a “processor” for the purposes of the GDPR (as such legislation is applicable);
- 10.1.10 “**Sub-Processor**” means a third party engaged by the Processor to carrying out Processing activities in respect of the Personal Data on behalf of the Processor;
- 10.1.11 “**Supervisory Authority**” means any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK or any other member state of the European Union; and
- 10.1.12 “**Third Country**” means a country or territory outside the UK.
- 10.2 For the purposes of the Data Protection Legislation, the British Council is the Controller and the Supplier is the Processor in respect of the Personal Data.
- 10.3 Details of the subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects whose Personal Data is being Processed in connection with this Agreement are set out in **Error! Reference source not found.** of this Agreement.
- 10.4 The Supplier shall comply with its obligations under the Data Protection Legislation and shall, in particular:
- 10.4.1 Process the Personal Data only to the extent, and in such manner, as is necessary for the purpose of carry out its duties under this Agreement and in accordance with the British Council’s written instructions and this clause (unless otherwise required by applicable laws as referred to in clause 10.9);
- 10.4.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
- 10.4.3 not Process or otherwise transfer the Personal Data to any Third Country without the prior written consent from the British Council and where such consent is given (whether in **Error! Reference source not found.** or separately), the Supplier shall comply with the following conditions;
- (i) provide appropriate safeguards in relation to the transfer;
- (ii) ensure the Data Subject has enforceable rights and effective legal remedies;

- (iii) comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  - (iv) comply with reasonable instructions notified to it in advance by the British Council with respect to the Processing of the Personal Data; and
  - (v) only transfer Personal Data to the relevant Third Country where the relevant requirements under Articles 44 to 50 of the GDPR are met.
- 10.4.4 ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality;
- 10.4.5 not engage any Sub-Processor to carry out its Processing obligations under this Agreement without obtaining the prior written consent of the British Council and, where such consent is given, 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;
- 10.4.6 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;
- 10.4.7 notify the British Council immediately on becoming aware of a Personal Data Breach;
- 10.4.8 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
- 10.4.9 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 Supplier's compliance under Data Protection Legislation and the terms of this Agreement.
- 10.5 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 10.4.9.
- 10.6 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.
- 10.7 In the event of a notification under clause 10.4, 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.

- 10.8 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.
- 10.9 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;
- 10.10 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.
- 10.11 These clauses may be amended at any time by the British Council giving at least 30 days' written notice to the other stating that applicable controller to processor standard clauses laid down by the European Commission or adopted by the UK Information Commissioner's office or other Supervisory Authority are to be incorporated into this Agreement and replace clauses 10.1 to 10.4.9 above.

## **11 Anti-Corruption, Anti-Collusion and Tax Evasion**

- 11.1 The Supplier undertakes and warrants that it and any Relevant Person has not offered, given or agreed to give (and that it and any Relevant Person 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.
- 11.2 The Supplier acknowledges and agrees that British Council may, at any point during the term of this Agreement and on any number of occasions, carry out searches of relevant third party screening databases (each a "**Screening Database**") to ensure that neither the Supplier, any Relevant Person, nor the Supplier's and any Relevant Person's directors or shareholders (where applicable) are listed as being a politically exposed person, disqualified from being a company director, involved with terrorism, financial or other crime, subject to regulatory action or export, trade or procurement controls or otherwise representing a heightened risk of involvement in illegal activity (together, the "**Prohibited Entities**").
- 11.3 The Supplier warrants:
- 11.3.1 that it, and any Relevant Person, will not make payment to, transfer property to, or otherwise have dealings with, any Prohibited Entity;
- 11.3.2 that it, and any Relevant Person, has and will retain in place, and undertakes that it, and any Relevant Person, will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010), tax evasion (as set out in the Criminal Finances Act 2017) and fraud within its organisation and in connection with its dealings with other parties, whether in the UK or overseas; and

- 11.3.3 that it, and any Relevant Person, has not engaged and will not at any time engage, in any activity, practice or conduct which would constitute either:
- (i) a UK tax evasion facilitation offence under section 45 of the Criminal Finances Act 2017; or
  - (ii) a foreign tax evasion facilitation offence under section 46 of the Criminal Finances Act 2017; and
- 11.3.4 that it, and any Relevant Person, 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).
- 11.3.5 Nothing under this clause 11.3 is intended to prevent the Supplier from discussing the terms of this Agreement and the Supplier's pricing with its professional advisors.
- 11.4 If the Supplier, or any Relevant Person is listed in a Screening Database for any of the reasons set out in clause 11.2 or breaches any of its obligations set out in clause 11.3, it shall promptly notify the British Council of any such listing(s) or breach(es) and the British Council shall be entitled to take the steps set out at clause 11.5 below.
- 11.5 In the circumstances described at clause 11.4, and without prejudice to any other rights or remedies which the British Council may have, the British Council may:
- 11.5.1 terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier; and/or
  - 11.5.2 require the Supplier to take any steps the British Council reasonably considers necessary to manage the risk to the British Council of contracting with the Supplier (and the Supplier shall take all such steps and shall if required provide evidence of its compliance); and/or
  - 11.5.3 reduce, withhold or claim a repayment (in full or in part) of the charges payable under this Agreement; and/or
  - 11.5.4 share such information with third parties.
- 11.6 The Supplier shall provide the British Council with all information reasonably requested by the British Council to complete the screening searches described in clause 11.2.
- 11.7 Without limitation to clauses 11.1, 11.2, 11.3, 11.4, 11.5 and 11.6 above, the Supplier shall ensure that all Relevant Persons involved in providing the Services or otherwise in connection with this Agreement have been vetted and that due diligence is undertaken on a regular continuing basis to such standard or level of assurance as is reasonably necessary in relation to a person in that position in the relevant circumstances.
- 11.8 For the purposes of this clause 11, the expression "**Relevant Person**" shall mean all or any of the following: (a) Relevant Persons; and (b) any Relevant Person employed or engaged by a Relevant Person.

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

- 12.1 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 Safeguarding Policy and Adults at Risk Policy included in the British Council Requirements as amended from time to time, which the Supplier acknowledges may include submitting checks by the UK Disclosure & Barring Service (DBS) and/or equivalent local checks<sup>1</sup>.
- 12.2 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.
- 12.3 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.

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

- 13.1 The Supplier shall:
- 13.1.1 ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain;
  - 13.1.2 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;
  - 13.1.3 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
  - 13.1.4 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.
- 13.2 If the Supplier fails to comply with any of its obligations under clause 13.1, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:
- 13.2.1 terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier; and/or
  - 13.2.2 reduce, withhold or claim a repayment (in full or in part) of the charges payable under this Agreement; and/or

---

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



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

#### **14 Equality, Diversity and Inclusion**

- 14.1 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.
- 14.2 The Supplier shall comply with any equality or diversity policies or guidelines included in the British Council Requirements.

#### **15 Assignment**

- 15.1 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.
- 15.2 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 15.2.

#### **16 Waiver**

- 16.1 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.

#### **17 Entire agreement**

- 17.1 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.

#### **18 Variation**

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

#### **19 Severance**

- 19.1 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.

## **20 Counterparts**

- 20.1 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.

## **21 Third party rights**

- 21.1 Subject to clause 1.2.4, this Agreement does not create any rights or benefits enforceable by any person not a party to it except that a person who under clause 15 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 21.2 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).

## **22 No partnership or agency**

- 22.1 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.

## **23 Force Majeure**

- 23.1 Subject to clauses 23.2 and 23.3, neither party shall be in breach of this Agreement if it is prevented from or delayed in carrying on its business and/or material obligations hereunder by a Force Majeure Event.
- 23.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 23.2.1 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;
  - 23.2.2 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
  - 23.2.3 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.
- 23.3 Nothing in this clause 23 shall excuse a party for non-performance (or other breach) of this Agreement if such non-performance (or other breach) results from the acts or omissions of any

of that party's consultants and/or sub-contractors (except where such acts or omissions are caused by a Force Majeure Event).

## **24 Notice**

- 24.1 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:
- 24.1.1 personally, in which case the notice will be deemed to have been received at the time of delivery;
  - 24.1.2 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;
  - 24.1.3 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
  - 24.1.4 by email to the relevant email address specified in clause **Error! Reference source not found.** of Schedule 1 (or such other email address as the relevant party may notify to the other party), in which case, the notice will be deemed to have been received at the time of transmission, or if this time falls outside of Working Hours, when Working Hours resume, in each case provided that no out of office auto-reply or error message is received by the sender in response within one hour after transmission of the notice. If an out of office auto-reply or error message is received by the sender in response within one hour after transmission of the notice, then no valid notice has been delivered and the notice must be sent by one of the alternative methods listed above.
- 24.2 To prove service of notice under clauses 24.1.1 to 24.1.3 above, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

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

- 25.1 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.
- 25.2 Subject to the remainder of this clause 25, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Agreement or its subject matter.
- 25.3 In the event that any claim or dispute arises out of or in connection with this Agreement, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 14 calendar days after such notice or by such

later date as the parties may otherwise agree in writing). If the parties are unable to resolve the dispute or claim in accordance with this clause 25.3, either party may commence proceedings in accordance with clause 25.2.

- 25.4 Nothing in this clause 25 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Agreement or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

DRAFT