

The British Council:

THE BRITISH COUNCIL, incorporated by Royal Charter and registered as a charity (under number 209131 in England and Wales and number SCO37733 in Scotland), with its principal office at 10 Spring Gardens, London, SW1A 2BN, operating through its local office at 275 Jan Smuts Avenue, Dunkeld West, 2196, Johannesburg, South Africa

The Service Provider:
Date:

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

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

Schedules

Schedule 1	Special Terms
Schedule 2	Terms of Reference
Schedule 3	Charges
Schedule 4	Standard Terms

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

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

Signed by the duly authorised representative of THE BRITISH COUNCIL

Name:	Signature:
Position:		

Signed by the duly authorised representative of

Name:	Signature:
Position:		

Schedule 1

Special Terms

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

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

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

1 Commencement Date and Term

- 1.1 This Agreement shall come into force on **01 March 2016** (the “**Commencement Date**”) and, subject to paragraph 1.2 below, shall continue in full force and effect until **31 October 2016**
- 1.2 Notwithstanding anything to the contrary elsewhere in this Agreement, the British Council shall be entitled to terminate this Agreement by serving not less than **30** days’ written notice on the Service Provider.

2 End Client

- 2.1 The Service Provider acknowledges that it is acting as a sub-contractor for the provision of consultancy services to the Department for Business, Innovation and Skills (BIS) and the Department of Basic Education, South Africa (the “**End Client**”).

3 Locations

- 3.1 The Service Provider will be required to provide the Services in **the United Kingdom and South Africa** and such other locations as may be agreed between the parties in writing from time to time (the “**Location(s)**”).

4 Key Personnel

- 4.1 The Service Provider shall deploy the following persons in the provision of the Services: **To be added** (the “**Key Personnel**”).

5 Service of notices

- 5.1 For the purposes of clause 31 of 0, notices are to be sent to the following addresses:

To the British Council	To the Service Provider
The British Council 10 Spring Gardens London SW1A 2BN	[Insert address] [Attention: <i>insert name and job title</i>]

Attention: Kevin Quinn	
Senior Project Manager	

6 **Insurance Requirements**

- 6.1 The Service Provider shall take out and maintain during the Term with a reputable insurance company the following cover types with the following indemnity limits:

Insurance Cover	Indemnity Limit
Employer's liability	£1,000,000 per claim
Public liability	£1,000,000 per occurrence and in the aggregate (annual total of all losses)
Professional indemnity	£1,000,000 per occurrence and in the aggregate (annual total of all losses)

or such other insurance cover types and indemnity limits as may be agreed between the parties in writing from time to time.

7 **Working Hours**

- 7.1 For the purposes of this Agreement "**Working Hours**" and "**Working Days**" shall mean **9 a.m. to 5 p.m. local time Monday to Friday** excluding English Bank Holidays.

Schedule 2

Terms of Reference

INTRODUCTION AND BACKGROUND

The Newton Fund

The Newton Fund is a five year, £375 million fund which will support science and innovation partnerships between the UK and emerging powers. It forms part of the UK's Official Development Assistance (ODA) commitment and its primary focus is to develop partner countries' research and innovation capacity for long-term sustainable growth and welfare. It is intended that partner countries will provide funding to match the investment made by the UK.

The fund covers 3 broad categories of activity:

- People: improving science and innovation expertise (known as 'capacity building'), student and researcher fellowships, mobility schemes and joint centres
- Programmes: research collaborations on development topics
- Translation: innovation partnerships and challenge funds to develop innovative solutions on development topics

The British Council delivers six programmes predominantly within the People area, with a primary focus on capacity building of systems, institutions and individuals; and establishing initial links between the UK and partner countries.

Throughout the five year programme, the British Council will use the strength and expertise of the UK to work towards the following high-level impacts:

- **Primary impact:** Economic development and improvements in social welfare of developing countries are promoted
- **Secondary impact:** Strong, sustainable and systemic relationships between the UK and partner countries are established and built upon, opportunities for wider collaboration are opened up

Although not the main focus of the programme, activity and partnership support will also result in benefits to the UK in terms of trust and relationship building. This has the potential to lead to greater social cohesion, economic and national stability and security, improved links to emerging economies; and the building of academic excellence through international partnerships.

The countries currently involved in the Newton Fund are:

China | India | Brazil | South Africa | Mexico | Colombia | Chile | Turkey | Malaysia Thailand | Vietnam | Indonesia | Philippines | Egypt | Kazakhstan

It is important to note that not all of the above countries will take part in all six of the Newton Programme strands. The offer will vary depending on the identified needs and requirements within each of the partner countries and whether matched funding is secured with suitable partners.

The British Council currently works with Newton colleagues in each country, as well as the key stakeholders in each country's education system to ensure:

- activity is demand-led,
- funds are dispersed in an open, competitive, and transparent manner,
- maximum benefit is achieved, and

- the impact on developing country research and innovation systems is long-lasting and sustainable.

The Newton Fund provides a great opportunity to make a step change in the UK's international scientific relations and in doing so improve the lives of the poorest and most disadvantaged people in developing countries.

STEM Education Programme | Supporting Science, Technology, Engineering and Maths Education

The STEM Education Programme under Newton aims at developing the capacity and improving the teaching of STEM subjects in the NEWTON Fund countries. The activities and the plans will be developed in-country by Newton partners and will be reflective of their specific educational and sectoral needs.

STEM will support knowledge exchange and partnership opportunities between the UK and partner countries on STEM education approaches and, in doing so, build the human resource capacity within a vital area of economic development and social well-being.

This programme strand aims to:

- Support dialogue and knowledge exchange between the UK and partner countries around STEM education approaches and curricula for primary, secondary and tertiary education.
- Support development of new teaching and learning resources, relevant to context and environment of the partner country and their development needs.
- Support centres of excellence for STEM education in partner countries through partnerships with UK experts.

SCOPE OF WORK, SPECIFICATION AND OUTPUTS

The plan calls for two itinerant teacher trainers to support 12 mathematics teachers (teachers of grade 10 learners, equivalent to "O" levels), in schools where the subject, formerly not taught, has been introduced in 2015, or is to be introduced at the beginning of the 2016 academic year.

Objective: To support teachers to re-introducing the subject Mathematics to learners in schools that ceased offering this subject at FET (Grades 10 – 12, Further Education and Training Phase) previously, thereby building the capacity of teachers and addressing the skills shortage in STEM.

Activities

- **07th- 09th March- Scoping visit**
- 15th- 31st March- Pre-training baseline assessment of needs and preparation of training support materials
- **Contact Session One** (3 weeks in duration at the start of South Africa's second school term)- 11th- 29th April 2016
- 2 UK trainers to work with 6 schools (each trainer spends 5 days at each of the 3 schools in their cluster). Trainers will work with a minimum of 2 teachers at each of the schools (12 teachers trained)
- 3 follow up sessions facilitated through remote observation and feedback- every fortnight (6th May, 20th May and 3rd June)
- **Contact Session Two**- 3 weeks from 18th July- 5th August

- 3 follow up sessions facilitated through remote observation and feedback- every fortnight (19th August, 26th August and 9th September)
- **PLC workshop in South Africa (3 days)** -Week of 10th October 2016 with all teachers and schools in the programme. This would form part of the evaluation of the programme.
- 28th October- Post training evaluation of programme and Final Report submitted by UK supplier

Outputs:

- 12 teachers (at 6 participating schools) supported with:
 - Improved content knowledge of mathematics
 - Improved understanding of how students learn mathematics (pedagogy)
 - Improved skills to assess student's understanding of mathematics
- Specific knowledge and skills gaps addressed (requires baseline assessment of teacher needs and learner performance)
- A system of classroom observation and culture of self-reflection and improved teaching practice developed
- A Maths focused Professional Learning Community established
- A monitoring and evaluation report, including lessons learned, suggestions for improvement and suggestions for expansion (applicability of model to other schools in South Africa)

Outcomes:

- Teachers will receive pedagogic content knowledge in Mathematics, particularly focussed on areas of weakness that were formerly poorly taught, if at all
- Classroom management improved

Charges

The Charges for the Services and/or Goods will be – to be added following the tender.

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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’s Manager” means the British Council’s manager for the Services appointed in accordance with clause 3.1.1 of these Standard Terms;

“British Council Requirements” means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents notified to the Service Provider in writing or set out on the British Council’s website at http://www.britishcouncil.org/new/about-us/jobs/folder_jobs/register-as-a-consultant/policies-for-consultants-and-associates/ or such other web address as may be notified to the Service Provider 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 Service Provider as set out in 0;

“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 Service Provider (as the case may be) and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

“Service Provider’s Equipment” means any equipment described as “Service Provider’s Equipment” in Schedule 1 and any other equipment, including tools, systems (including laptops), cabling or facilities provided by the Service Provider or its sub-contractors and used directly or indirectly in the supply of the Services or the Goods which are not the subject of a separate agreement between the parties under which title passes to the British Council;

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

“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 Documents, products and materials developed or provided by the Service Provider 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 including any web page, information portal, “blog”, online content or electronic file;

“End Client Agreement” means the agreement (if any) between the End Client (if any) and the British Council relating to the Project in connection with which the Service Provider is providing its Services as a sub-contractor;

“End Client Requirements” means the specific requirements of the End Client (if any), including the terms of the End Client Agreement, as set out in the Special Terms (Schedule 1), the Terms of Reference (Schedule 2) or as otherwise notified to the Service Provider 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 Service Provider provides the Services;

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

“Goods” means the goods or products (if any) to be supplied by the Service Provider under this Agreement as set out in the Special Terms (Schedule 1) and/or the Terms of Reference (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 Service Provider;

“Project” means the project in connection with which the Service Provider provides its Services as further described in the Special Terms (Schedule 1) and/or the Terms of Reference (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 Service Provider and involved in the provision of the Services, or any agent or contractor or sub-contractor of the Service Provider who is involved in the provision of the Services and includes 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 consultancy and related services to be provided by the Service Provider under this Agreement as set out in the Special Terms (Schedule 1) and/or the Terms of Reference (Schedule 2); and

“Third Party IPR” means any Intellectual Property Rights not belonging to either party to this Agreement but used by the Service Provider in the creation of the Deliverables and/or in the course of or in connection with the Project.

1.2 In this Agreement:

- 1.2.1 any headings in this Agreement shall not affect the interpretation of this Agreement;
- 1.2.2 a reference to a statute or statutory provision is (unless otherwise stated) a reference to the applicable UK statute as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 1.2.3 where the words “include(s)” or “including” are used in this Agreement, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them;
- 1.2.4 without prejudice to clause 1.2.5, except where the context requires otherwise, references to:

- (i) services being provided to, or other activities being provided for, the British Council;
- (ii) any benefits, warranties, indemnities, rights and/or licences granted or provided to the British Council; and
- (iii) the business, operations, customers, assets, Intellectual Property Rights, agreements or other property of the British Council,

shall be deemed to be references to such services, activities, benefits, warranties, indemnities, rights and/or licences being provided to, or property belonging to, each of the British Council and the British Council Entities and this Agreement is intended to be enforceable by each of the British Council Entities; and

1.2.5 obligations of the British Council shall not be interpreted as obligations of any of the British Council Entities.

2 Service Provider's Responsibilities

- 2.1 The Service Provider shall provide the Services and the Goods, and deliver the Deliverables to the British Council, with reasonable skill, care and ability in accordance with the terms of this Agreement (and, in particular, the Special Terms (Schedule 1) and the Terms of Reference (Schedule 2)), and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 2.2 To the extent the Service Provider is required to deliver any Goods under this Agreement, those Goods shall be of satisfactory quality, fit for purpose and shall comply with any applicable specification set out in this Agreement.
- 2.3 The Service Provider shall meet any dates related to the performance of the Services under this Agreement and time shall be of the essence in respect of such dates.
- 2.4 The Service Provider shall comply with, and complete and return any forms or reports from time to time required by, the British Council Requirements.
- 2.5 The Service Provider shall 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).
- 2.6 Where applicable, the Service Provider shall, subject to the prior written approval of the British Council, appoint or, at the written request of the British Council, replace without delay any member of the Service Provider's Team, each such member to be suitably skilled, experienced and qualified to carry out the Services. The Service Provider shall not, without the British Council's prior written consent (not to be unreasonably withheld or delayed), replace any of the Key Personnel. The British Council acknowledges that the Service Provider will have to replace a member of the Key Personnel where such person leaves the employment of the Service Provider, in which case the British Council shall have a right of approval over the proposed replacement (such approval not to be unreasonably withheld or delayed).

2.7 The Service Provider shall:

2.7.1 observe, and ensure that, where applicable, the Service Provider's Team observes, the British Council's Acceptable Usage Policy, Roam User Policy (where access to the relevant information technology systems has been granted), Information Security Policy and any applicable security policy or health and safety policy notified to the Service Provider (including such policies as may be applicable at the Premises) and any reasonable verbal or written instructions or policies issued to the Service Provider at any time and shall comply with the legal requirements of any country in which the Services are being provided and, if the Service Provider fails to do so, the British Council reserves the right to refuse the Service Provider's Team access to the Premises and/or to suspend the provision of the Services until such time as the Service Provider (and, where applicable, the Service Provider's Team) is compliant with such policies, instructions or requirements and the British Council shall not be required to pay the Charges in respect of the period of such suspension; and

2.7.2 before the date on which the Services are to start, obtain and at all times maintain and comply with all licences and consents required to enable the Service Provider to provide the Services (including in relation to the installation of the Service Provider's Equipment) and the Goods in accordance with this Agreement.

2.8 The Service Provider shall 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 (if any) or their respective officers, employees, agents or contractors.

2.9 If the Service Provider is unable to provide the Services due to its own illness or injury or the illness or injury of any Relevant Person, the Service Provider shall advise the British Council of that fact as soon as reasonably practicable and shall provide such evidence of any Relevant Person's or its own (as the case may be) illness or injury as the British Council may reasonably require. For the avoidance of doubt, no Charges shall be payable to the Service Provider in respect of any period during which the Services are not provided.

2.10 The Service Provider shall use all reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the British Council may require.

2.11 The Service Provider may use another person, firm, company or organisation to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that the British Council will not be liable to bear the cost of such functions.

2.12 Where the Service Provider 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 Service Provider 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 with regard to confidentiality and intellectual property.

- 2.13 Nothing in this Agreement shall prevent the Service Provider from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Term provided that such activity does not cause a breach of any of the Service Provider's obligations under this Agreement.
- 2.14 The Service Provider shall 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 Service Provider itself or any client of the Service Provider. The Service Provider 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.
- 2.15 The Service Provider warrants that the Service Provider's Equipment shall be of satisfactory quality and fit for the purpose of providing the Services in accordance with this Agreement.

3 The British Council's Obligations

- 3.1 The British Council shall:
- 3.1.1 co-operate with the Service Provider in all matters relating to the Services and the Goods and appoint the British Council's Manager in relation to the Services, who shall have the authority to represent the British Council on day-to-day matters relating to this Agreement; and
 - 3.1.2 inform the Service Provider of all health and safety rules and regulations and any other reasonable security requirements, policies and British Council instructions that apply at the Premises and/or in the country in which the Services are being provided from time to time during the Term.
- 3.2 The Service Provider acknowledges and agrees that if it considers that the British Council is not or may not be complying with any of the British Council's obligations, it shall only be entitled to rely on this as relieving the Service Provider's performance under this Agreement:
- 3.2.1 to the extent that it restricts or precludes performance of the Services or the provision of the Goods by the Service Provider; and
 - 3.2.2 if the Service Provider, promptly after the actual or potential non-compliance has come to its attention, has notified details to the British Council in writing.

4 Status

- 4.1 The relationship of the Service Provider to the British Council will be that of independent contractor and nothing in this Agreement shall render the Service Provider or any Relevant Person an employee, worker, agent or partner of the British Council and the Service Provider shall not hold itself out as such.

- 4.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Service Provider 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:
- 4.2.1 any income tax, national insurance and social security contributions and any other employment related liability, deduction, contribution, assessment or claim in any applicable jurisdiction arising from or made in connection with either the performance of the Services, or any payment or benefit received by the Service Provider (or, where applicable, any Relevant Person) in respect of the Services, where such recovery is not prohibited by law and the Service Provider shall further indemnify the British Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the British Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the British Council's negligence or wilful default; and
- 4.2.2 any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Service Provider (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.
- 4.3 The British Council may at its option satisfy the indemnities set out in clause 4.2 above (in whole or in part) by way of deduction from any outstanding Charges or other payments due to the Service Provider.
- 4.4 Where applicable, the Service Provider:
- 4.4.1 acknowledges and agrees that it is intended that all employees of the Service Provider (if any) shall remain employees of the Service Provider and that termination of this Agreement (or any part of it) shall not operate to transfer the contracts of employment of any employees to the British Council or any third party; and
- 4.4.2 shall use all reasonable endeavours to ensure that no member of its staff is deployed in the delivery of the Services to such an extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or any applicable equivalent legislation in any relevant jurisdiction, including in the European Union the Acquired Rights Directive (Council Directive 77/187 as amended) and any national legislation enacting to such Directive) may operate to transfer the employment of such member of staff to the British Council or any successor service provider upon termination of this Agreement.

5 Price and Payment

- 5.1 Unless stated otherwise, the Charges are exclusive of value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction, which, if properly chargeable, the British Council shall pay at the prevailing rate within 30 days following receipt from the Service Provider of a valid and accurate tax invoice. In the event that the British Council is required by

the laws or regulations of any applicable jurisdiction to deduct any withholding tax or similar taxes from the Charges, the British Council shall deduct and account for such taxes before paying the remainder of the Charges to the Service Provider and shall notify the Service Provider in writing of all such sums properly deducted.

- 5.2 Under current UK legislation it is the responsibility of a supplier to assess its VAT liability for the supply of services. Where UK VAT is applicable, the Service Provider's invoice should show all the necessary entries thereon to make it a valid tax invoice for VAT purposes; and in particular it must show the amount of VAT charged separately. However, the British Council may be of the opinion that the Services being supplied under this Agreement may not be subject to UK VAT, due to the place of supply not being the UK, and the charging of UK VAT would therefore be inappropriate. The British Council reserves the right to dispute payment of the UK VAT charged by the Service Provider until the issue has been resolved by a ruling in writing obtained from HM Revenue & Customs by the Service Provider, and that ruling shown to the British Council.
- 5.3 The Service Provider shall indemnify and keep indemnified the British Council from and against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the British Council at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under this Agreement. Any amounts due under this clause 5.3 shall be paid in cleared funds by the Service Provider to the British Council not less than seven calendar days before the date on which the tax or other liability is payable by the British Council. The British Council may grant the Service Provider further time to pay where this is deemed appropriate by the British Council taking account of the relevant circumstances.
- 5.4 Unless stated otherwise, the Service Provider 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 (including any timesheets or other information required by, and to be provided in the format set out in, the British Council Requirements).
- 5.5 Subject to clauses 5.6 to 5.8 below, the British Council shall, unless agreed otherwise by the parties in writing, pay each of the Service Provider's valid and accurate invoices by automated transfer into the Service Provider's nominated bank account no later than 30 days after the invoice is received.
- 5.6 Provided that it notifies the Service Provider in writing in advance, and works in good faith to resolve any issues or disputes, the British Council shall be entitled to withhold payment of any sums in respect of any Services or Deliverables which have not been provided by the Service Provider to the British Council's satisfaction and in accordance with the terms of this Agreement.
- 5.7 In the event that the British Council makes any overpayment in connection with this Agreement (or any other agreement between the parties), the British Council may, upon written notice to the Service Provider, deduct the amount of such overpayment from any future invoice or require repayment of such sum within 30 days after the date on which it serves written notice on the Service Provider.

- 5.8 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.
- 5.9 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 Service Provider may charge interest on the amount of any such late payment at the rate of 4% per annum above the official bank rate set from time to time by the Bank of England. Such interest will accrue from the date on which payment was due to the date on which payment is actually made. The parties hereby acknowledge and agree that this rate of interest is a substantial remedy for any late payment of any sum properly due and payable.

6 Quality and Performance

- 6.1 Any person authorised by the British Council and/or the End Client shall be entitled, subject to reasonable notice, to inspect work being undertaken in relation to the Services and the Goods at all reasonable times at the Service Provider's premises or at the premises of any sub-contractor or agent of the Service Provider.
- 6.2 The British Council reserves the right to reject any Goods and/or reject or require re-performance (at no additional cost to the British Council) of any Services which are defective or which are otherwise not in accordance with the requirements of this Agreement. Rejected Goods may be returned at the Service Provider's risk and expense and the Service Provider will refund any monies paid by the British Council in relation to such rejected Goods (or the British Council shall be entitled to deduct the amount of such monies from any future invoice payable by the British Council).
- 6.3 If at any time within 12 months following the date of provision of any Services or delivery of any Goods, any such Services or Goods (or any part thereof) are found to be defective or otherwise not in accordance with the requirements of this Agreement, the Service Provider shall promptly on request and without charge, remedy the deficiency by re-performing the Services, or repairing, or supplying replacements for, the Goods.
- 6.4 Risk in Goods shall pass when the Goods are delivered as specified in this Agreement. Unless otherwise specified, the Service Provider shall be responsible for all carriage, insurance and other costs incurred in delivering the Goods to the delivery location and, where requested, unloading Goods at that location.
- 6.5 Ownership of Goods shall pass to the British Council on delivery, payment or part payment, whichever is the first to occur.

7 Change Control

- 7.1 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 accordance with the remainder of this clause.
- 7.2 If the British Council requests a change to the scope or provision of the Services:

- 7.2.1 the Service Provider shall, within a reasonable time (and in any event not more than fourteen (14) calendar days after receipt of the British Council's request), provide a written estimate to the British Council of:
- (i) the likely time required to implement the change;
 - (ii) any reasonable variations to the Charges arising directly as a result of the proposed change; and
 - (iii) any other impact of the change on the terms of this Agreement.
- 7.2.2 if, following receipt of the Service Provider's written estimate submitted in accordance with clause 7.2.1, the British Council does not wish to proceed, there shall be no change to this Agreement; and
- 7.2.3 if the British Council wishes the Service Provider to proceed with the change, the Service Provider shall do so after agreement on the necessary variations to the Charges, the Services and any other relevant terms of this Agreement to take account of the change following which this Agreement shall be varied by the parties setting out in writing, and signing, the agreed changes in accordance with clause 25.

7.3 If the Service Provider requests a change to the scope or provision of the Services, it shall send such request to the British Council in writing, accompanied by a written statement of the matters referred to in clause 7.2.1, and the British Council shall withhold or give its consent to such change in its sole discretion. If the British Council wishes the Service Provider to proceed with the change, the Service Provider shall do so, following a variation of this Agreement in writing in accordance with clause 25.

8 The Equipment

- 8.1 The British Council Equipment shall remain the property of the British Council and shall be used by the Service Provider in the performance of the Services and for no other purposes.
- 8.2 The British Council shall be responsible for the repair or replacement of the British Council Equipment unless the need for repair or replacement is caused by the Service Provider's failure to comply with clause 8.3 or by the negligence or default of the Service Provider.
- 8.3 The Service Provider shall maintain all of the British Council Equipment in good and serviceable condition (fair wear and tear excepted) and shall only use the British Council Equipment in accordance with the British Council Equipment manufacturers' recommendations.
- 8.4 The Service Provider shall be liable for any loss of or damage to any of the British Council Equipment caused by the negligence or default of the Service Provider.
- 8.5 The Service Provider shall not in any circumstances have any right to refuse to return to the British Council any of the British Council Equipment and shall take steps necessary to ensure that the title of the British Council and the British Council's right to repossess the British Council Equipment are effectively brought to the attention of any third party dealing with any of the British Council Equipment.

9 Intellectual Property Rights

- 9.1 Subject to clause 11, each party shall give full disclosure to the other of all Background IPR owned by it which is relevant to the Project (and the Service Provider shall give the British Council full disclosure of any Third Party IPR it intends to use).
- 9.2 All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it.
- 9.3 Each party warrants to the other party that its Background IPR does not, so far as it is aware, infringe the rights of any third party and none of its Background IPR is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.
- 9.4 The Service Provider hereby assigns to the British Council with full title guarantee by way of present and future assignment all its right, title and interest in and to the Project IPR.
- 9.5 The Service Provider 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 or revised, or any similar provisions of law in any jurisdiction, relating to the Deliverables.
- 9.6 The British Council hereby grants to the Service Provider an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Project IPR and the British Council's Background IPR in, and to the extent necessary for, the performance of the Services.
- 9.7 The Service Provider hereby grants to the British Council an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Service Provider's Background IPR included in the Deliverables.
- 9.8 The Service Provider is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR required by the Service Provider and the British Council for use of the Deliverables (such licences, permissions or consents to be in writing, copies of which the Service Provider shall provide to the British Council on request). In addition, the Service Provider 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.
- 9.9 The Service Provider warrants that it has in place contractual arrangements with all members of the Service Provider's Team assigning to the Service Provider their Intellectual Property Rights and waiving their moral rights (if any) in the Deliverables such that the Service Provider can enter into the assignments, licences and waivers set out in this clause 9.
- 9.10 The Service Provider undertakes at the British Council's request and expense to execute all deeds and documents which may reasonably be required to give effect to this clause 9.
- 9.11 Nothing in this Agreement shall prevent the Service Provider from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that it does not result in a disclosure of the British Council's Confidential Information or an infringement of Intellectual Property Rights.
- 9.12 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.

10 Limitation of Liability

- 10.1 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.
- 10.2 Subject to clauses 10.1 and 10.3, neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.
- 10.3 Nothing in this Agreement shall exclude or restrict the liability of the Service Provider to the British Council for any breach by the Service Provider of clause 11 (Confidentiality) or clause 15 (Data Protection).
- 10.4 The Service Provider shall take out and maintain adequate insurance cover at least to the level described in the Special Terms (Schedule 1). The Service Provider shall provide to the British Council forthwith upon request copies of the relevant certificates and details of any of the insurance cover that it is obliged to have under this clause 10.4.
- 10.5 Subject to clauses 10.1 and 10.2, the British Council's liability to the Service Provider 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.
- 10.6 The Service Provider shall indemnify the British Council from and against all loss or liability in connection with physical damage to property, death or personal injury caused by or arising out of the negligence of, or breach of this Agreement by, the Service Provider or any member of the Service Provider's Team.
- 10.7 The provisions of this clause 10 shall survive the termination of this Agreement, however arising.

11 Confidentiality

- 11.1 For the purposes of this clause 11:
- 11.1.1 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
- 11.1.2 the "**Receiving Party**" is the party which receives Confidential Information relating to the other party.
- 11.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Agreement:
- 11.2.1 is given only to such of its staff (or, in the case of the Service Provider, the Service Provider'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

- 11.2.2 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 Service Provider, the Service Provider's Team) or its professional advisors or consultants otherwise than for the purposes of this Agreement.
- 11.3 The Service Provider shall ensure that all members of the Service Provider's Team or professional advisors or consultants are aware of the Service Provider's confidentiality obligations under this Agreement.
- 11.4 The provisions of clauses 11.2 and 11.3 shall not apply to any Confidential Information which:
 - 11.4.1 is or becomes public knowledge (otherwise than by breach of this clause 11);
 - 11.4.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
 - 11.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 11.4.4 is independently developed without access to the Confidential Information; or
 - 11.4.5 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Receiving Party.
- 11.5 In the event that the Service Provider fails to comply with this clause 11, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.
- 11.6 The provisions under this clause 11 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
- 11.7 The Service Provider 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.
- 11.8 Where the British Council receives a Request for Information in relation to information that the Service Provider 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 Service Provider and the Service Provider shall:
 - 11.8.1 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
 - 11.8.2 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.

- 11.9 The Service Provider 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 Service Provider's Confidential Information in accordance with the Information Disclosure Requirements:

11.9.1 in certain circumstances without consulting the Service Provider; or

11.9.2 following consultation with the Service Provider and having taken its views into account,

provided always that where clause 11.9.1 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 Service Provider after any such disclosure.

- 11.10 The provisions of this clause 11 shall survive the termination of this Agreement, however arising.

12 Termination

- 12.1 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 Service Provider immediately on giving notice to the Service Provider if:

12.1.1 the performance of the Services is delayed, hindered or prevented by a Force Majeure Event (as defined in clause 30.1) for a period in excess of 28 days;

12.1.2 where either funding body withdraws the overall funding for the project

12.1.3 where the Service Provider is a company, there is a change of Control of the Service Provider; or

12.1.4 the Service Provider or any Relevant Person:

(i) is 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) is 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); or

(iii) is in the reasonable opinion of the British Council or the End Client (if any) negligent and incompetent in the performance of the Services.

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

12.2.1 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);

- 12.2.2 an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action (in any jurisdiction) in consequence of debt; or
- 12.2.3 the other party ceases, or threatens to cease, to carry on business.
- 12.3 The British Council shall be entitled to terminate this Agreement at any time by serving written notice on the Service Provider if the End Client Agreement terminates or if the funding for the Project is otherwise withdrawn or ceases.
- 12.4 The British Council may at any time by notice in writing terminate this Agreement with immediate effect if the Service Provider is in persistent breach of any of its obligations under this Agreement, whether or not such breach is capable of remedy. For the purposes of this clause 12.4, three or more non-material breaches of the terms of this Agreement may together constitute a persistent breach.
- 12.5 In any circumstances where the British Council has the right to terminate this Agreement it may instead, by serving written notice on the Service Provider, opt to suspend the provision of the Services for a reasonable period and the British Council shall not be required to pay any Charges in respect of such period of suspension.
- 12.6 On termination of this Agreement for any reason the Service Provider shall immediately deliver to the British Council:
 - 12.6.1 all copies of information and data provided by the British Council to the Service Provider for the purposes of this Agreement and the Service Provider shall certify to the British Council that it has not retained any copies of such information or data, except for one copy which the Service Provider may use for audit purposes only and subject to the confidentiality obligations in clause 11; and
 - 12.6.2 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 and 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 9.4).
- 12.7 If the Service Provider fails to fulfil its obligations under clause 12.6, the British Council may enter the Service Provider's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Service Provider shall be solely responsible for their safe keeping.

- 12.8 During the period between service of a notice of termination and the effective date of termination, the Service Provider shall provide the British Council with all reasonable assistance and information to enable an efficient handover to a new service provider (or to the British Council).
- 12.9 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.
- 12.10 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 1.2 of the Special Terms (Schedule 1) or by the Service Provider pursuant to clause 12.2 above, the British Council shall reimburse the Service Provider for the reasonable costs or expenses that the Service Provider 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 Service Provider shall use its reasonable endeavours to mitigate the level of such costs and expenses.

13 Sub-Contracting

- 13.1 The Service Provider may not sub-contract the provision of any material part of the Services without the prior written consent of the British Council, such consent not to be unreasonably withheld or delayed.
- 13.2 Notwithstanding any sub-contracting permitted under clause 13.1, the Service Provider shall remain wholly liable and responsible for all acts and omissions (howsoever arising) of its sub-contractors in the performance of the Services and the supply of the Goods.
- 13.3 Where the Service Provider enters into a Sub-Contract, the Service Provider shall:
- 13.3.1 pay any valid invoice received from its subcontractor within 30 days following receipt of the relevant invoice payable under the Sub-Contract; and
 - 13.3.2 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 14.3.1 of this Agreement.
- 13.4 In clause 14.3, "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.
- 13.5 The British Council reserves the right to request the replacement of any approved sub-contractor on reasonable grounds.

14 Anti-Corruption and Collusion

- 14.1 The Service Provider 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 Service Provider of its obligations under this Agreement.

- 14.2 The Service Provider 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.
- 14.3 The Service Provider 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 14.3 is intended to prevent the Service Provider from discussing the terms of this Agreement and the Service Provider's pricing with the Service Provider's professional advisors.
- 14.4 The Service Provider acknowledges and agrees that British Council may, at any point during the Term and on any number of occasions, carry out searches of relevant third party screening databases (each a "**Screening Database**") to ensure that neither the Service Provider nor any of the Service Provider's suppliers, directors, shareholders or employees (where applicable) is listed:
 - 14.4.1 as an individual or entity with whom national or supranational bodies have decreed organisations should not have financial dealings;
 - 14.4.2 as being wanted by Interpol or any national law enforcement body in connection with crime;
 - 14.4.3 as being subject to regulatory action by a national or international enforcement body;
 - 14.4.4 as being subject to export, trade or procurement controls or (in the case of an individual) as being disqualified from being a company director; and/or
 - 14.4.5 as being a heightened risk individual or organisation, or (in the case of an individual) a politically exposed person.
- 14.5 If the Service Provider or any of the Service Provider's suppliers, directors, shareholders or employees (where applicable) is listed in a Screening Database for any of the reasons set out in clause 15.4, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:
 - 14.5.1 terminate this Agreement without liability to the Service Provider immediately on giving notice to the Service Provider; and/or
 - 14.5.2 require the Service Provider to take any steps the British Council reasonably considers necessary to manage the risk to the British Council of contracting with the Service Provider (and the Service Provider shall take all such steps); and/or
 - 14.5.3 reduce, withhold or claim a repayment (in full or in part) of the charges payable under this Agreement; and/or
 - 14.5.4 share such information with third parties.

- 14.6 The Service Provider shall provide the British Council with all information reasonably requested by the British Council to complete the screening searches described in clause 15.4.

15 Data Protection

- 15.1 For the purposes of this clause 15, where terms and expressions used are not defined in this Agreement, they shall have the meaning assigned to them in the Data Protection Act 1998.
- 15.2 The Service Provider shall, in performing its obligations under this Agreement, comply in all respects with the Data Protection Act 1998 (or any equivalent legislation in any applicable jurisdiction) and with the requirements of this clause 15.
- 15.3 Where the Service Provider acts as data processor under this Agreement it shall:
- 15.3.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of the personal data and against actual loss or destruction of, or damage to, the personal data, having regard to the state of technological development and the cost of implementing any measures, and the measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data;
 - 15.3.2 process the personal data only in accordance with this Agreement, the British Council's instructions and having regard to the provisions of the Data Protection Act 1998 (or any equivalent legislation in any applicable jurisdiction), or as is required by law or any relevant regulatory body;
 - 15.3.3 refrain from disclosing the personal data to any third party or transferring the personal data outside the EEA except in accordance with the instructions of the British Council;
 - 15.3.4 notify the British Council in the event that it receives a request or notice from a data subject exercising its rights under the Data Protection Act 1998 and comply with the British Council's instructions with respect to the request or notice; and
 - 15.3.5 not disclose the personal data to a third party to process on its behalf unless and until it has:
 - (i) entered into a written agreement with such third party containing provisions equivalent to this clause 15; and
 - (ii) received the express written consent of the British Council to such disclosure.

16 Audit

- 16.1 The Service Provider will fully co-operate with and assist the British Council in meeting its audit and regulatory requirements by providing access for the British Council, the End Client, their internal auditors (which shall include, for the purposes of this Agreement the British Council's internal audit, security and operational risk functions), their external auditors or any agents appointed by the British Council and/or the End Client or their regulators (or any

person appointed by such body) to conduct appropriate reviews and inspections of the activities and records of the Service Provider (and to take copies of records and documents and interview members of the Service Provider's Team) relating to the performance of the Services and to the accuracy of the Charges. The Service Provider shall maintain all records relating to this Agreement (including the provision of the Services and the payment of all Charges and expenses) for a period of seven (7) years following the year in which the provision of the Services and/or Goods under this Agreement is completed or such longer period as the British Council may notify to the Service Provider in writing from time to time.

- 16.2 The Service Provider shall bear its own cost in relation to any reasonable number of audits carried out by the British Council and/or the End Client. Where any audit reveals any breach or non-compliance by the Service Provider, the Service Provider shall also bear the costs of the British Council and/or the End Client carrying out such audit.

17 Publicity

- 17.1 The Service Provider 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.

18 Health and Safety

- 18.1 The Service Provider shall 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.
- 18.2 The Service Provider shall take all necessary measures to comply with the requirements of the Health & Safety at Work Etc Act 1974 (or any equivalent legislation in any applicable jurisdiction) and any other acts, orders, regulations and codes of practice (including any approved codes of practice) relating to health and safety, which may apply to the performance of this Agreement.

19 Employees

- 19.1 The Service Provider agrees that it will not, without the prior written consent of the British Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person during the Term or for a period of six (6) months following termination, solicit or entice, or endeavour to solicit or entice away from the British Council any person employed by the British Council and involved directly in the receipt or use of the Services.

20 Safeguarding and Protecting Children and Vulnerable Adults

- 20.1 The Service Provider will comply with all applicable legislation and codes of practice, including, where applicable, all legislation and statutory guidance relevant to the safeguarding and protection of children and vulnerable adults and with the British Council's Child Protection

Policy, as notified to the Service Provider and amended from time to time, which the Service Provider acknowledges may include submitting to a check by the UK Disclosure & Barring Service (DBS) or the equivalent local service; in addition, the Service Provider will ensure that, where it engages any other party to supply any of the Services under this Agreement, that that party will also comply with the same requirements as if they were a party to this Agreement.

21 Equality, Diversity and Inclusion

- 21.1 The Service Provider 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.
- 21.2 The Service Provider shall comply with any equality or diversity policies or guidelines included in the British Council Requirements.

22 Assignment

- 22.1 The Service Provider 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.
- 22.2 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 Service Provider warrants and represents that it will (at the British Council's reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 22.2.

23 Waiver

- 23.1 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.

24 Entire agreement

- 24.1 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.

25 Variation

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

26 Severance

- 26.1 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.

27 Counterparts

- 27.1 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.

28 Third party rights

- 28.1 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 22 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 28.2 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).

29 No partnership or agency

- 29.1 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.

30 Force Majeure

- 30.1 Subject to clauses 30.2 and 30.3, neither party shall be in breach of this Agreement if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control (a “**Force Majeure Event**”) including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 30.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 30.2.1 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;

- 30.2.2 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
- 30.2.3 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.

30.3 Nothing in this clause 30 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 Service Providers and/or sub-contractors (except where such acts or omissions are caused by any of the circumstances specifically listed in clause 30.1).

31 Notice

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

- 31.1.1 personally, in which case the notice will be deemed to have been received at the time of delivery;
- 31.1.2 by pre-paid, first-class post if the notice is being sent to an address within the country of posting, in which case the notice will be deemed to have been received at 09:00 in the country of receipt on the second (2nd) normal working day in the country specified in the recipient's address for notices after the date of posting; or
- 31.1.3 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.

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

32 Governing Law and Dispute Resolution Procedure

32.1 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.

32.2 Subject to the remainder of this clause 32, 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.

32.3 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 32.3, either party may commence proceedings in accordance with clause 32.2.

- 32.4 Nothing in this clause 32 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.

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