

Dated [

] 201[*]

[INSERT NAME OF SUPPLIER]

- and -

THE BRITISH COUNCIL

SOFTWARE DEVELOPMENT AGREEMENT

THIS AGREEMENT is dated [DATE].

PARTIES

- (1) [Full company name] incorporated and registered in England and Wales with company number [Number] whose registered office is at [Registered office address] (the "**Supplier**"); and
- (2) **[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] **OR** *[insert name of appropriate local entity where relevant outside the UK] [where appropriate add the following wording:] [operating through its local office at [insert address and details]]* (the "**British Council**").

IT IS HEREBY AGREED

1. Interpretation

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

"**Acceptance Certificate**" means the certificate to be signed by the British Council under clause 8.1.1.

"**Acceptance Date**" means the date on which the Acceptance Certificate is issued by the British Council under clause 8.1.1.

"**Acceptance Tests**" means the tests of the Supplier Software after installation to be agreed in accordance with clause 7 and annexed as Annex 5.

"**Bespoke Software**" means software programs developed by the Supplier specifically for the British Council under this Agreement and listed in Part 4 of Part B of Schedule 1.

"**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 Hardware**" means the computers and other equipment to be used by the British Council in conjunction with the Supplier Software, as specified in Schedule 2.

"**British Council Representative**" means a person duly authorised by the British Council to act on its behalf for the purposes of this Agreement and identified to the Supplier by written notice from the British Council.

"**British Council Requirements**" means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents notified to the Supplier in writing or set out on the British Council's website at http://www.britishcouncil.org/new/about-us/jobs/folder_jobs/register-as-a-consultant/policies-for-consultants-and-associates/ or such other web address as may be notified to the Supplier from time to time (as such documents

may be amended, updated or supplemented from time to time during the term of this Agreement).

"Business" means the business of the British Council as specified in Schedule 5.

"Business Requirements Specification" means the specification agreed between the British Council and the Supplier which sets out the British Council's business requirements regarding the Supplier Software, contained in Annex 1.

"Change Agreement" means an agreement made under clause 11.3.

"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.

"Commencement Date" means the date on which this Agreement becomes effective, as specified in Schedule 3.

"Completion Date" means the estimated date specified in the Implementation Plan (which may be varied in accordance with clause 9) by which the Supplier is to provide the Supplier Software Ready for Service.

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

["Contract Year" means any 12-month period ending on any anniversary of the Commencement Date.]

"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).

"Defect" means an error in the Supported Software that causes it to fail to operate [substantially] in accordance with the relevant Documentation.

"Dispute Resolution Procedure" means the procedure for dealing with disputes under this Agreement as set out in clause 41.

"Documentation" means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Supplier as specified in Part 5 of Part B of Schedule 1.

"Environmental Information Regulations" means the Environmental Information Regulations 2004.

"Escrow" means the deposit with, and retention by, the Escrow Agent of the Source Code.

"Escrow Agent" means [Name of escrow agent].

"Escrow Agreement (1)" means an escrow agreement in the form annexed to this Agreement as Annex 6 which is to be entered into by the parties and the Escrow Agent in accordance with clause 13.3.1.

"Escrow Agreement (2)" means an escrow agreement in the form annexed to this Agreement as Annex 7 which is to be entered into by the British Council, the relevant Third-Party Software owner(s) and the Escrow Agent in accordance with clause 13.3.2.

"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.

"Generally Accepted Accounting Principles" means all generally accepted accounting principles including UK generally accepted accounting principles comprising the Financial Reporting Standards [and:]

- (a) [International Accounting Standards as adopted by the International Accounting Standards Board;]
- (b) ["International Accounting Standards" within the meaning of Council Regulation (EC) No 1606/2002 on the application of international accounting standards, adopted from time to time by the European Commission in accordance with that Regulation;]
- (c) [[Sas no 70].]

"Good Industry Practice" means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

"Information Disclosure Requirements" means the requirements to disclose information under:

- (a) the Code;
- (b) the FOIA; and
- (c) the Environmental Information Regulations.

"Implementation Plan" means the time schedule and sequence of events for the performance of this Agreement set out in Annex 3 which may be varied in accordance with clause 9.

"Installation Date" means the estimated date by which the Supplier will complete installation of a specified Software Module as specified in the Implementation Plan.

"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.

"Licence" means the software licence granted under clause 12.

"Licensed Purposes" has the meaning given in clause 12.8.

"Licensed Software", the Supplier Software as specified in Schedule 1 (except the Third-Party Software[, the Modified Software (Supplier)] and the Bespoke Software) and all subsequent amendments and updates to, or new versions of, such Supplier Software as may be provided under the Agreement.

"Licensed Users" means the employees and agents of the British Council who use the Licensed Software, up to the maximum number specified in Annex 5.

["Maintenance Agreement" means the form of maintenance agreement for the Supplier Software as annexed to this Agreement as Annex 8.]

"Modified Software" means the standard software programs proprietary to the Supplier and/or third parties listed in Part 3 of Part B of Schedule 1, modified or to be modified by the Supplier under this Agreement.

"Modified Software (Supplier)" means those elements of the Modified Software listed in Part 3 of Part B of Schedule 1 and identified as such.

"Modified Software (Third Party)" means those elements of the Modified Software listed in Part 3 of Part B of Schedule 1 and identified as such.

"New Release" means a new release of all or any part of the Supported Software suitable for use by the British Council in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

"New Version" means a new version of the Licensed Software released by the Supplier after the Acceptance Date which provides additional and/or improved functionality and/or performance.

"Normal Working Hours" means the hours [Time] am to [Time] pm GMT, Monday to Friday, except English Bank Holidays.

"Open-Source Software" means any software programs included in the Supplier Software which are licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>).

"Pre-Installation Test Plan" means the document prepared as provided in clause 5.2.1 and to be annexed as Annex 4.

"Pre-Installation Tests" means the tests to be carried out on the Modified Software and the Bespoke Software before delivery to the Site(s) as provided for in clause 5.

"Price" means the aggregate price for the Work (other than Training and any other Support Services) and the Licence, as specified in Schedule 4.

"Project Manager" means the Supplier employee who has overall responsibility for the Work.

"Ready for Service" means installed, tested and having passed or deemed to have passed the Acceptance Tests under clause 8.

"Relevant Price Index" means [the ... index published by the ... or its successor from time to time.]

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

["Security Breach Notification Procedures" means [British Council's specific procedures for customer to follow in the event of a data security breach].]

["Service Levels" means the levels of service to be provided by the Supplier in relation to [the Maintenance Agreement].]

"Services" means the services to be provided by the Supplier under this Agreement, including the Support Services.

"Site(s)" means the location(s) at which the Supplier Software is to be installed as specified in Schedule 3.

"Software Delivery Date" means the estimated delivery date specified in the Implementation Plan on which the Supplier will deliver a Software Module to the Site(s).

"Software Module" means any one of the individual software programs in the Supplier Software.

"Source Code" means the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the British Council's development personnel to understand, develop and maintain that software.

"Supplier Software" means the Supplier Standard Software, the Third-Party Software, the Modified Software and the Bespoke Software.

"Supplier Standard Software" means the software programs proprietary to the Supplier, listed in Part 1 of Part B of Schedule 1, which are to be provided to the British Council without modification.

"Support Charges" means the annual support charge as specified in Schedule 4.

"Support Commencement Date" means the Acceptance Date or such other date as may be specified in Part D of schedule 3.

"Support Services" means the services to be provided by the Supplier under this Agreement (including Schedule 3 and Schedule 4) and any data migration referred to in the Business Requirements Specification.

"Supported Software" means those Supplier Software programs listed as Supported Software in Part 6 of Part B of Schedule 1 and all subsequent amendments and updates to, and New Releases of, such programs.

"Support Staff" means those officers, employees, agents or subcontractors of the Supplier connected with this Agreement, including those individuals who perform the Supplier's obligations under this Agreement.

"Technical Specification" means the specification of the Supplier Software contained in Annex 2 and agreed between the Supplier and the British Council to meet the Business Requirements Specification.

"Third-Party Software" means the software programs proprietary to third parties, listed in Part 2 of Part B of Schedule 1, which are to be provided to the British Council without modification.

"Tools" means any tools and know-how developed and methods invented by the Supplier in the course of, or as a result of, carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work.

["Training" means the training as specified in Part 2 of Part A of Schedule 3, to be provided by the Supplier as part of the Services.]

"Trigger Event (1)" means an event the occurrence of which will entitle the British Council to apply to the Escrow Agent for release of the Source Code of the Supplier Standard Software and of the Modified Software (Supplier) from Escrow in accordance with the Escrow Agreement (1).

"Trigger Event (2)" means an event the occurrence of which will entitle the British Council to apply to the Escrow Agent for release of the Source Code of the Third-Party Software and the Modified Software (Third Party) from Escrow in accordance with the Escrow Agreement (2).

"VAT" means value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

"Work" means all the works, duties and obligations to be carried out by the Supplier under this Agreement.

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. Scope

- 2.1 The Supplier grants the Licence and shall supply the Supplier Software, the Documentation and the Services to the British Council in accordance with this Agreement.
- 2.2 The supply under clause 2.1 and Price are subject to the terms and conditions set out in this Agreement[, including the country specific amendments to this Agreement set out in Schedule 5].

3. Software and documentation

- 3.1 The Supplier shall carry out the Work with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the Supplier Software to meet the Business Requirements Specification by the Completion Date.
- 3.2 The Supplier shall provide the Third-Party Software and any Modified Software (Third Party) to the British Council under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the British Council, and the British Council agrees to be bound by such licence terms.

- 3.3 The Supplier shall provide the Supplier Standard Software and any Modified Software (Supplier) under the terms of this Agreement.
- 3.4 The Supplier shall provide to the British Council from time to time copies of the Documentation containing sufficient up-to-date information for the proper use [and maintenance] of the Supplier Software. Such Documentation may be supplied in electronic form.
- 3.5 The British Council may make such further copies of the Documentation as are reasonably necessary for the use [and maintenance] of the Supplier Software [and for training the British Council's personnel in use of the Supplier Software]. The British Council shall ensure that all of the Supplier's proprietary notices are reproduced in any such copy.

4. Services

- 4.1 The Supplier shall develop the Bespoke Software and make the modifications to the Modified Software in accordance with the requirements of the Business Requirements Specification.
- 4.2 The Supplier agrees:
- 4.2.1 to deliver and install the Supplier Software at the Site(s);
 - 4.2.2 to carry out, in conjunction with the British Council, the Acceptance Tests; and
 - 4.2.3 to provide the Supplier Software Ready for Service by the Completion Date, on the terms and conditions set out in this Agreement.
- 4.3 [If requested to do so by the British Council, the Supplier shall:
- 4.3.1 [promptly enter into a software maintenance and support agreement in a form to be agreed between the parties **OR** provide maintenance and support in accordance with this Agreement including Schedule 3 **OR** Annex 9];
 - 4.3.2 [provide the training specified in the Implementation Plan at the rates provided for in that plan **OR** provide training in accordance with clause 15 and Schedule 3 and Schedule 4];
 - 4.3.3 make available to the British Council suitably qualified personnel to carry out [such tasks on a consultancy basis concerning the Work as the British Council may specify **OR** tasks on a consultancy basis concerning the Work in accordance with this Agreement and Schedule 3];
 - 4.3.4 provide the British Council with disaster recovery and business continuity services in accordance with this Agreement and Schedule 3 and Schedule 4.]
- 4.4 [Time shall be of the essence regarding any date for delivery by the Supplier of any good or service specified in this Agreement and the Completion Date under clause 3.1.]
- 4.5 In performing the Services, the Supplier shall comply with the British Council's reasonable instructions to ensure minimal disruption to the Business.

5. Pre-installation testing

- 5.1 Before delivering any item of Supplier Standard Software or Third-Party Software to the Site(s), the Supplier shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Business Requirements Specification once properly installed.
- 5.2 The Supplier shall carry out the Pre-Installation Tests on the Modified Software and Bespoke Software before delivery to the Site(s) in accordance with the following provisions:
 - 5.2.1 no later than [30] days from the date of signing this Agreement, the British Council shall deliver to the Supplier proposed user acceptance criteria and test data for the Pre-Installation Tests for each module of Modified Software and Bespoke Software. These criteria and data shall be such as are reasonably required to show that each module complies with the relevant parts of the Business Requirements Specification. The Supplier shall provide the British Council with assistance to prepare such user acceptance criteria and test data at the British Council's request at the Supplier's standard rates then in force. The parties shall use best endeavours to agree the Pre-Installation Test Plan containing the Pre-Installation Tests for each module within [ten] days from the date of delivery to the Supplier of the proposed criteria and data, and such Pre-Installation Test Plan shall be annexed to this Agreement as Annex 4;
 - 5.2.2 Within a reasonable time before the Software Delivery Date for each Software Module, the Supplier shall carry out the agreed Pre-Installation Tests for the appropriate Software Module. The Supplier shall give the British Council at least 24 hours' notice of the start of the Pre-Installation Tests and permit the British Council to observe all or any parts of the testing; and
 - 5.2.3 if the Software Module fails to pass the Pre-Installation Tests, the Supplier shall remedy the defects and deficiencies, and the relevant test(s) shall be repeated within a reasonable time.
- 5.3 If the Software Module fails, in some material respect, to pass the Pre-Installation Tests within [four weeks] from the date of its second submission to the Pre-Installation Tests, then the British Council may, by written notice to the Supplier, choose at its sole discretion to specify (without prejudice to the British Council's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions as are set out in clause 5.2. If the Software Module fails such further tests, then the British Council may:
 - 5.3.1 request a repeat test under this clause 5;
 - 5.3.2 permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Business Requirements Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
 - 5.3.3 if the Supplier is unable to correct material defects within a period of [six] months from the start of Pre-Installation Tests under clause 5.2.2, reject the Software

Module as not being in conformity with this Agreement, and terminate this Agreement.

6. Software delivery, installation and delays

- 6.1 The Supplier shall deliver each Software Module to the Site(s) by the applicable Software Delivery Date.
- 6.2 The Supplier shall supply to the British Council, within a reasonable time before any Software Delivery Date, such information and assistance as may be necessary to enable the British Council to prepare the Site(s) for the installation of the relevant Software Module.
- 6.3 The [Supplier **OR** British Council] shall, at its own expense, prepare the Site(s) in accordance with the information provided by the Supplier in advance of each Software Delivery Date. The [Supplier **OR** British Council] may request reasonable assistance from the [British Council **OR** Supplier] to carry out such preparation.
- 6.4 The Supplier shall deliver each Software Module to the Site(s) on or before the Delivery Date for that item.
- 6.5 The Supplier shall complete installation of each Software Module at the Site(s) by the Installation Date for that Software Module.
- 6.6 The British Council shall be responsible for ensuring that each item of British Council Hardware is installed and is in working order and available to the Supplier no later than the relevant date specified in the Implementation Plan.
- 6.7 If any delivery is delayed at the request of, or because of the acts or omissions of, the British Council, the Implementation Plan shall be amended to take account of such delay in accordance with clause 9.5. If the Supplier can demonstrate by documentary evidence that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under this Agreement, the Supplier may, at its discretion, notify the British Council that it wishes to increase the Price by an amount not exceeding any such demonstrable cost. No later than seven working days after receipt of such notification, the British Council shall notify the Supplier whether it agrees to such increase in the Price. If the British Council does not agree, the question of whether the Supplier is entitled to an increase in the Price and, if so, the amount of such increase, shall be determined under the Dispute Resolution Procedure.
- 6.8 If there is a delay regarding the date when the Supplier Software is scheduled to be Ready for Service and such delay is caused by the acts or omissions of the Supplier or any third party manufacturer, the Supplier shall [pay to the British Council for each day after the scheduled Ready for Service date until the date when the Supplier Software is Ready for Service the sum specified in Schedule 4 as liquidated damages, and the Supplier agrees that this sum is a genuine pre-estimate by the British Council of its loss caused by delay in provision of the Supplier Software Ready for Service **OR** be liable for any reasonable costs that the British Council can demonstrate it incurred as a direct result of such delay].

7. Acceptance tests

- 7.1 No later than [30] days from the date of signature of this Agreement, the British Council shall deliver to the Supplier proposed user acceptance criteria and test data for the Acceptance Tests for the Supplier Software. These criteria and data shall be such as are reasonably required to show that the Supplier Software complies with the Technical Specification. The Supplier shall provide the British Council with reasonable assistance to prepare such user acceptance criteria and test data at the British Council's request. The parties shall use best endeavours to agree the Acceptance Tests for the Supplier Software within [ten] days from the date of delivery to the Supplier of the proposed criteria and data.
- 7.2 The Supplier shall carry out the agreed Acceptance Tests for each Software Module within [ten] days of its Installation Date. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Normal Working Hours. The Supplier shall carry out the agreed Acceptance Tests for each Software Module unless the British Council notifies the Supplier, not later than five days after the Installation Date, that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least 24 hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.
- 7.3 If any Software Module fails to pass the Acceptance Tests, the British Council shall, within [Number] days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 7.4 If any Software Module fails [in some material respect] to pass any repeated Acceptance Tests within [four weeks] from the date of its second submission to the Acceptance Tests, then the British Council may, by written notice to the Supplier, choose at its sole discretion:
- 7.4.1 to fix (without prejudice to the British Council's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions. If the Software Module fails such further tests then the British Council may request a repeat test under this clause 7 or to proceed under clause 7.4.2 or clause 7.4.3;
 - 7.4.2 to accept the Software Module subject to such change of acceptance criteria, amendment of the Business Requirements Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
 - 7.4.3 if the Supplier is unable to correct [material] defects within a period of [three] months from the commencement of Acceptance Tests under clause 7.2, to reject the Supplier Software as not being in conformity with the Agreement, in which event the British Council may terminate this Agreement.
- 7.5 On completion of all Acceptance Tests on the individual Software Modules as provided in clause 7.2, clause 7.3 and clause 7.4 above, the Supplier shall carry out the agreed Acceptance Tests for the installed Supplier Software as a whole to ensure that it meets the Business Requirements Specification. The relevant provisions of clause 7.2, clause 7.3 and

clause 7.4 above shall apply to these Acceptance Tests in the same way as they apply to Acceptance Tests for the individual Software Modules.

8. Acceptance

8.1 Acceptance of the Supplier Software shall be deemed to have occurred on whichever is the earliest of:

- 8.1.1 the signing by the British Council of an Acceptance Certificate for the Supplier Software following successful completion of the testing under clause 7.5;
- 8.1.2 the expiry of [five days] after the completion of all the Acceptance Tests, unless the British Council has given any written notice under clause 7.3; or
- 8.1.3 the use of the Supplier Software by the British Council in the normal course of its business.

9. Implementation plan and extension of time

9.1 Both parties shall perform their obligations under this Agreement in accordance with the Implementation Plan.

9.2 The Supplier shall complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 9.3.

9.3 The Supplier shall be given an extension of time for completion of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:

- 9.3.1 a variation to the Supplier Software is made at the British Council's request under the change control procedures set out in clause 11;
- 9.3.2 a Force Majeure Event occurs (as defined in clause 39); or
- 9.3.3 a delay is caused in whole or in part by an action or omission of the British Council or its employees, agents or third party contractors.

9.4 If the Supplier is entitled to an extension of time under clause 9.3, it shall give written notice to the British Council not later than seven days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a Force Majeure Event (as defined in clause 39), shall estimate the probable extent of the delay.

9.5 The British Council Representative and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

10. Payment

10.1 The Supplier shall submit invoices in accordance with Schedule 4. The British Council shall make payment of each such invoice by the due date stated in that invoice or within 30 days of receipt of the invoice, whichever is later, provided that the relevant invoice is an appropriate and properly issued invoice [in the form set out in Schedule 4].

- 10.2 The British Council shall pay the Support Charges on the Support Commencement Date and on each anniversary of that date. The Supplier shall invoice the British Council for the Support Charges no later than 30 days before any anniversary of the Support Commencement Date at the invoicing address specified in Schedule 4.
- 10.3 The Price, the Support Charges and all other payments stated in Schedule 4 are net of tax. The British Council shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT which the Supplier is obliged to pay and/or collect from the British Council in respect of any supply under the Agreement (other than tax on the Supplier's income).
- 10.4 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.
- 10.5 The Supplier may increase the Support Charges at any anniversary of the Support Commencement Date after the [first **OR** second] such anniversary by giving the British Council at least [three months'] notice before such anniversary.
- 10.6 Any such percentage increase shall not exceed:
- 10.6.1 that of the Relevant Price Index for the Contract Year (or the nearest publication dates to the commencement and expiry dates of the relevant Contract Year, spanning a 12 month period) and each subsequent Contract Year;
 - 10.6.2 the amount by which the Supplier has increased the comparable rates for its other commercial customers; and
 - 10.6.3 [Percentage]%,
- whichever is the lowest.
- 10.7 [The Supplier shall give the British Council a [further] discount on any sum payable under this Agreement, specified in any correctly prepared written invoice submitted to the British Council, at the rate of [Percentage]%, [Percentage]% and [Percentage]% where payment is made within [Number], [Number] and [Number] days, respectively, of the date of receipt of the relevant invoice.]
- 10.8 The British Council shall not be obliged to pay any charges or fees to the Supplier for any Services performed, unless the applicable charges and fees are either specified in this Agreement or have been approved in writing in advance by the British Council. Reasonable out-of-pocket expenses, agreed by the parties in writing in advance, may be charged by the Supplier on production of reasonable evidence of expenditure to the British Council.
- 10.9 All invoices issued by the Supplier under or in connection with this Agreement shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced [including

the details of time taken to perform services per individual] and any additional costs authorised under clause 10.8.

- 10.10 For the duration of this Agreement, and for a period of [seven] years from termination or expiry of this Agreement, the Supplier shall maintain full and accurate records, in accordance with Generally Accepted Accounting Principles, in a form to be approved in writing by the British Council, of:

10.10.1 all charges, prices, costs and expenses associated with and invoiced in respect of the Supplier Software and the Services; and

10.10.2 [its performance against the Service Levels,]

and shall, for the duration of this Agreement, ensure that monthly management accounts are produced in addition to its annual audited accounts and shall, if requested, promptly provide to the British Council copies of such records and accounts and any other financial information reasonably requested by the British Council.

- 10.11 At the British Council's request and its expense, the Supplier shall grant access to the British Council or its auditors to the premises, records and accounts of the Supplier, including its data processing facilities, and to such of its supporting documentation and explanations from Support Staff as is reasonable to ascertain compliance with this Agreement and the adequacy of the Supplier's financial standing [and to enable the British Council to comply with the US Sarbanes-Oxley Act of 2002, including the production of an SAS 70 Type II audit report].
- 10.12 Such access shall be granted during Normal Business Hours and subject to reasonable prior notice from the Supplier[, except to the extent that such access is required by the British Council's regulators outside of these parameters].
- 10.13 If, on such examination, the British Council determines that any charges, prices, costs or expenses exceed the amounts properly chargeable to, or recoverable from, the British Council, the Supplier shall promptly refund to the British Council the amount over-charged.
- 10.14 The British Council may withhold payment against any invoice not submitted in accordance with this Agreement and shall immediately notify the Supplier in writing of its reason for so doing. If the invoice is disputed in part only, the Supplier shall issue a credit note in respect of the original invoice and issue an invoice for the part not in dispute. On receipt of such an invoice the British Council shall pay that part of the original invoice which it accepts, while any query concerning a disputed sum is resolved.
- 10.15 [The Supplier warrants that the terms (including pricing) of this Agreement are comparable to, or better than, the terms (including pricing) offered by the Supplier to any of its commercial customers of equal or lesser size in a country covered by this Agreement for comparable goods or services. If the Supplier offers more favourable terms (including pricing) to such commercial customers during the term of this Agreement (or accepts such terms), such terms shall also be made available to the British Council regarding that country within 30 days from the signature of any such agreement. Without limitation, if the cost to the Supplier of providing the Supplier Software or the Services in a particular country covered by this Agreement is reduced owing to tariff reduction or any other reason, the Supplier shall

immediately offer the British Council a corresponding reduction in that part of the Price or the Support Charges relating to that country.]

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

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

10.16.2 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 10.16.1 of this Agreement.

10.17 In clause 10.16, "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.

11. Change control and technology substitution

11.1 The British Council may, by giving written notice to the Supplier at any time during the term of this Agreement, request a change to the Supplier Software or the Services.

11.2 Within [seven] working days of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the British Council a written [quote for **OR** estimate of] any increase or decrease in the Price, and of any effect that the requested change would have on the Implementation Plan and Completion Date.

11.3 Within [14] working days of receipt of the written [quote **OR** estimate] referred to in clause 11.2, the British Council shall inform the Supplier in writing of whether or not the British Council wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written agreement ("**Change Agreement**") specifying, in particular, any changes to the Implementation Plan and Price.

11.4 The Supplier undertakes to offer to the British Council, and the British Council may at any time before the relevant Software Delivery Date and at its sole discretion choose to obtain from the Supplier, any item of software in substitution for any corresponding item of Supplier Software where the substitute item contains new technology or has better performance characteristics than such Supplier Software. As part of the offer, the Supplier shall notify the British Council of any change in the Price which would result from such substitution. If the British Council chooses to obtain any such substitute item, the parties shall use best endeavours to agree and execute a Change Agreement.

12. Intellectual Property Rights

12.1 The parties agree that, except as expressly provided to the contrary, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in the Supplier Software or the Documentation.

- 12.2 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 Intellectual Property Rights in the Bespoke Software, the Tools [and the Modified Software (Supplier)].
- 12.3 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 12.
- 12.4 The Supplier shall:
- 12.4.1 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 Bespoke Software, the Tools [and the Modified Software (Supplier)], (and their corresponding Documentation); and
 - 12.4.2 ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the Bespoke Software, the Tools and the Modified Software (Supplier).
- 12.5 The Supplier warrants that it has in place contractual arrangements with all individuals engaged by the Supplier to develop the Supplier Software and deliver the Services assigning to the Supplier their Intellectual Property Rights and waiving their moral rights (if any) in the Supplier Software and Documentation such that the Supplier can enter into the assignments, licences and waivers set out in this clause 12.
- 12.6 [The Supplier agrees that it shall not grant a licence to use the Modified Software to any other party without the prior written permission of the British Council.]
- 12.7 [The British Council grants the Supplier an unlimited, paid up, non-exclusive licence, [inclusive **OR** exclusive] of sub-licensing rights, to use any Tools.]

Software licence

- 12.8 The Supplier grants, subject to the terms of this Agreement, the British Council the non-exclusive, non-transferable right to use the Licensed Software [on the British Council Hardware] and Documentation for the following purposes:
- 12.8.1 any activity in the course of the Business;
 - 12.8.2 the provision of hardware or software facilities management, support, maintenance, development, disaster recovery, back-up, information processing, network or other services relating to the Supplied Software;
 - 12.8.3 the use and storage of data within any database comprised in the Licensed Software and the extraction and re-utilisation of data therefrom, and the amendment or merging of the data or database; and
 - 12.8.4 use in connection with any associated or interconnected networks, including the internet or intranet,
- (together, "**Licensed Purposes**").

- 12.9 The Licensed Software may be used only by Licensed Users [at the Site[s]] except as follows:
- 12.9.1 the Licence may be extended to contractors employed by the British Council for any of the Licensed Purposes referred to in clause 12.8.2[, provided that each individual to whom this Licence is so extended signs a written confidentiality undertaking addressed to the Supplier to protect the Supplier's Confidential Information];
 - 12.9.2 the Licensed Software may be used on any replacement for all or any part of the British Council Hardware;
 - 12.9.3 [the Licence may, with the prior written consent of the Supplier, be extended to additional Licensed Users, and Schedule 5 may be amended accordingly, provided that any appropriate additional fee is paid to the Supplier before such use;]
 - 12.9.4 [If the British Council transfers its business permanently to another site, the Supplier Software may be used at the new site by the Licensed Users, provided that the Supplier is informed in writing of the change of site before use of the Supplier Software commences at the new site;]
 - 12.9.5 if the British Council Hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until the British Council Hardware is repaired, and the British Council may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while the British Council Hardware is inoperable; and
 - 12.9.6 if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Licensed Software may be used at an alternative site until the Site is again useable, provided that the British Council gives the Supplier notice of such alternative site. If the alternative site is managed by a third party, the third party must have signed a confidentiality undertaking addressed to the Supplier to protect the Supplier's Confidential Information before the Licensed Software is transferred to the alternative site.

Transfer or reproduction of licensed software

- 12.10 The British Council may make such copies of the Licensed Software as are reasonably necessary for use in accordance with this Licence and for the purposes of backup and security. The British Council has no right to make, or authorise the making of, any other copies of the Licensed Software.
- 12.11 The Supplier shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, the British Council shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is the property of the Supplier, and reproducing the Supplier's proprietary rights notice. For electronic copies, the British Council shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Licensed Software as supplied by the Supplier. The British Council shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.

- 12.12 Except as permitted under clause 12.9.1, the British Council shall not:
- 12.12.1 sub-license, rent, lend, assign or transfer in any other way the Licence or the Licensed Software to any person without the prior written consent of the Supplier; or
 - 12.12.2 give access to the Licensed Software through any network of computers to users who are not employees or agents of the British Council.

Use and adaptation of licensed software

- 12.13 The British Council may use the Licensed Software with other software.
- 12.14 The British Council may not make adaptations or variations of the Licensed Software without the prior consent of the Supplier.
- 12.15 The British Council may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software except as permitted by law.

13. Source code and escrow

- 13.1 Immediately after the Acceptance Date, the Supplier shall deliver to the British Council the updated and annotated version of the Bespoke Software [and the Modified Software (Supplier)] in Source Code and machine-readable form.
- 13.2 Any Source Code to be provided under this clause shall be provided [on CD-ROM, in duplicate, accompanied by a print out on paper of an index that allows access to each program or sub-program **OR** [Way in which source code is to be provided]].
- 13.3 Immediately after the Commencement Date, the Supplier shall:
- 13.3.1 enter into a three-party source code escrow agreement in the agreed form (incorporating such amendments as NCC Escrow International Limited ("**NCC**") may reasonably request) with the British Council and NCC in respect of the Supplier Standard Software and the Modified Software (Supplier); and
 - 13.3.2 ensure that the third-party owner(s) listed in Schedule 1 and the Escrow Agent enter into a three-party source code escrow agreement(s) in the agreed form (incorporating such amendments as NCC may reasonably request) with the British Council and NCC in respect of the Third-Party Software and the Modified Software (Third Party).
- 13.4 The Supplier and the British Council mutually undertake to sign the Escrow Agreement (1) promptly following signature of this Agreement. The Supplier additionally undertakes to procure that the Escrow Agent promptly signs the Escrow Agreement.
- 13.5 The British Council undertakes to sign the Escrow Agreement(s) (2) promptly following signature of this Agreement.
- 13.6 The Supplier and the British Council mutually undertake to abide by the terms of the Escrow Agreement (1) and acknowledge that for the purposes of the Escrow Agreement (1):

- 13.6.1 the Source Code in respect of the Supplier Standard Software and the Modified Software (Supplier) will constitute the "**Material**";
 - 13.6.2 the Licence, insofar that it relates to the Supplier Standard Software and the Modified Software (Supplier), will constitute the "**Licence Agreement**"; and
 - 13.6.3 the Supplier Standard Software and the Modified Software (Supplier) will constitute the "**Package**".
- 13.7 The Supplier and the British Council acknowledge that for the purposes of the Escrow Agreement(s) (2):
- 13.7.1 the Source Code of the Third-Party Software and the Modified Software (Third Party) will constitute the Material;
 - 13.7.2 this Agreement, insofar that it relates to the Third-Party Software and the Modified Software (Third Party) will constitute the Licence Agreement; and
 - 13.7.3 the Third-Party Software and the Modified Software (Third Party) will constitute the Package.
- 13.8 [The Trigger Events (1) are:
- 13.8.1 termination of:
 - (i) the Maintenance Agreement by the British Council under [clause 13.1 **OR** clause 14.1] of the same, insofar that it relates to the Supplier Standard Software or the Modified Software (Supplier); or
 - (ii) any agreement between the Supplier and the British Council concerning the maintenance and support of the Supplier Standard Software and the Modified Software (Supplier) due to the Supplier's material or persistent breach of such agreement.
 - 13.8.2 termination by the Escrow Agent of the Escrow Agreement (1), if such termination is occasioned by any breach or default by the Supplier of its obligations under the Escrow Agreement (1) including failure by the Supplier to pay any of the Escrow Agent's fees; or
 - 13.8.3 the insolvency of the Supplier.]
- 13.9 [The Trigger Events (2) are:
- 13.9.1 termination of:
 - (i) the Maintenance Agreement by the British Council under [clause 13.1 **OR** clause 14.1] of the same, insofar that it relates to the Third-Party Software or the Modified Software (Third Party); or
 - (ii) any agreement between the Supplier and the British Council concerning the maintenance and support of the Third-Party Software and the Modified

Software (Third Party) due to the Supplier's material or persistent breach of such agreement.

13.9.2 termination by the Escrow Agent of the (relevant) Escrow Agreement (2), if such termination is occasioned by any breach or default by the Supplier of its obligations under the Escrow Agreement (2) including failure by the (or any) third party to pay any of the Escrow Agent's fees; or

13.9.3 the insolvency of the (relevant) third party.】

13.10 All relevant escrow fees in respect of the Escrow Agreement (1) shall be payable by the Supplier and the British Council in the proportions set out in [the NCC's Multi-Licensee Software Escrow Agreement **OR** [Title of NCC or other escrow agreement]].

13.11 All relevant escrow fees in respect of the Escrow Agreement(s) (2) shall be payable by the (relevant) third party or the Supplier on its behalf and the British Council in the proportions set out in [the NCC's Multi-Licensee Software Escrow Agreement **OR** [Title of NCC or other escrow agreement]].

14. [Support services

14.1 The Supplier shall supply the British Council with New Releases in machine-readable form together with related amendments to the Documentation. The Supplier may make such New Releases available for downloading over the internet and will promptly notify the British Council when such downloads are available.

14.2 The Supplier shall notify the British Council promptly in writing of the issue of any New Version, specifying the following:

14.2.1 the charge for delivery and installation of the New Version;

14.2.2 the licence fee payable for the New Version;

14.2.3 in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.

14.3 For the avoidance of doubt, nothing in this Agreement shall oblige the British Council to take any New Version.

14.4 [The Supplier shall ensure that support is available by telephone, e-mail and fax during Normal Working Hours to provide assistance to the British Council in respect of the following:

14.4.1 remedying Defects in the Supported Software; and

14.4.2 providing advice on the use of the Supported Software.】

14.5 [The Supplier shall use reasonable endeavours to correct Defects notified to it by the British Council in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:

- 14.5.1 the British Council shall promptly notify the Supplier of all Defects. Where such notification is made orally, the British Council shall provide written confirmation (which may be sent by fax or by e-mail) of the notification within [two] working days;
- 14.5.2 within [two] hours of such notification, the Supplier shall acknowledge receipt of the notification and shall determine, in consultation with the British Council, how seriously the Defect affects the British Council's operations;
- 14.5.3 if a notified Defect halts or substantially impairs the British Council's operations which use the Supported Software, the Supplier shall start work on correcting the Defect within [four] hours of receipt of such notification, shall use best efforts to correct the Defect as soon as possible and shall keep the British Council informed of progress towards correction of the Defect;
- 14.5.4 if a notified Defect, while not halting or substantially impairing the British Council's operations, causes those operations to become significantly slowed or causes substantial inconvenience, the Supplier shall commence work on correcting the Defect within [48] hours of receipt of such notification and shall use all reasonable efforts to correct the Defect as soon as possible; and
- 14.5.5 in the case of Defects other than those specified in clause 14.5.3 and clause 14.5.4, the Supplier shall start work on correcting the Defect as soon as the Supplier's workload allows and shall use commercially reasonable efforts to correct the Defect.]]

15. [Training]

- 15.1 The Supplier undertakes to provide the Training to the British Council [in consideration of the Training charges specified in Schedule 4].
- 15.2 Any additional training required by the British Council shall be provided by the Supplier at the Supplier's standard rates then in force.
- 15.3 Training shall be carried out at the [Site(s) **OR** Supplier's premises **OR** location(s) specified in Schedule 3], or as may otherwise be agreed by the British Council. Any special equipment necessary for the Training shall be provided by the Supplier.]

16. Supplier personnel: supplier software and support services

- 16.1 The Supplier undertakes that its employees and contractors, while on the Site(s) or any other premises of the British Council, will comply with all relevant rules and regulations laid down by the British Council from time to time for the behaviour of its own employees [and contractors], and any other reasonable requirements of the British Council. The Supplier shall remove any employee or contractor whom the British Council can demonstrate has failed to comply with such rules, regulations and requirements.
- 16.2 The Supplier shall indemnify the British Council for all loss and damage to the British Council's employees, contractors or property caused by the Supplier's personnel while they are on the British Council's premises.

- 16.3 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of [the Support Manager and] the Support Staff. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the British Council.
- 16.4 [During the term of this Agreement and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit the employment of any person who is employed by the other party in the course of developing, supplying, maintaining or supporting the Supplier Software or any part of it.]
- 17. Supplier software: project management**
- 17.1 No later than [five days] after the Commencement Date, the British Council shall notify the Supplier of the name and qualifications of the person appointed as the British Council Representative.
- 17.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Work and to whom all questions regarding this Agreement can be referred. The name and qualifications of the appointed individual shall be notified in writing to the British Council Representative.
- 17.3 The Project Manager shall co-operate with the British Council Representative and shall attend meetings scheduled by the British Council Representative at reasonable intervals not less than once a week to advise and assist the British Council on all matters relating to the Work.
- 17.4 The Supplier agrees that the Project Manager [and [Specify key staff]] shall not be replaced before the Acceptance Date without notice to the British Council, unless:
- 17.4.1 the individual to be replaced is prevented by ill-health from carrying out his or her duties in connection with the Agreement for a significant period;
 - 17.4.2 the individual resigns from employment with the Supplier;
 - 17.4.3 the contract of employment of the individual is terminated; or
 - 17.4.4 the British Council makes a reasonable written request to the Supplier to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Supplier's obligations under this Agreement.
- 17.5 If any such person is replaced, the Supplier shall consult with the British Council Representative about the identity of a suitable replacement.
- 17.6 The British Council agrees that the British Council Representative [and [Specify key staff]] shall not be replaced before the Acceptance Date without notice to the Supplier, unless:
- 17.6.1 the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the Agreement for a significant period;
 - 17.6.2 the individual resigns from employment with the British Council;

- 17.6.3 the contract of employment of the individual is terminated; or
- 17.6.4 the Supplier makes a reasonable written request to the British Council to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the British Council's obligations under this Agreement.
- 17.7 The British Council shall consult with the Project Manager about the identity of a suitable replacement.
- 17.8 The Supplier shall:
 - 17.8.1 take all reasonable steps to maintain continuity in relation to the Support Staff team; and
 - 17.8.2 to the extent possible, give the British Council reasonable written notice of any proposed holiday or leave of absence to be taken by the Support Manager.
- 18. Support services: customer's obligations**
- 18.1 During the term in which the Support Services are to be provided under clause 26.2, the British Council shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Supported Software.
- 18.2 The British Council shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to carry out the Work, including provision of information and data, making available suitably qualified employees and contractors of the British Council and, subject to the Supplier's compliance with the British Council's normal security requirements [as specified in Schedule 3]:
 - 18.2.1 provide access to the British Council's systems for the purpose of carrying out diagnostics and correction of Defects, provided that system access shall be direct or remote, at the British Council's option, and that, in the latter case, such access will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Supplier;
 - 18.2.2 provide such further access for the Support Staff to the Site(s) as is necessary to carry out the Supplier's obligations under this Agreement. The British Council shall obtain for the Supplier all permissions necessary to obtain such access;
 - 18.2.3 when the Support Staff are working on the Site(s), provide facilities and supplies reasonably required by the Supplier, such as power and computer consumables.
- 18.3 The British Council shall, at its own expense, provide the equipment necessary at the Site(s) to enable the access referred to in clause 18.2.1 in accordance with the specifications set out in the Business Requirements Specification, but all other costs and expenses for such access shall be borne by the Supplier.
- 18.4 The British Council may restrict access to certain areas of its premises or systems on security grounds.

- 18.5 The British Council shall appoint an individual to serve as primary contact with the Supplier for the purpose of the provision of the Support Services, and a deputy to that individual, and shall notify the Supplier of the names of those individuals promptly on their appointment.

19. Confidentiality

- 19.1 For the purposes of this clause 19:

19.1.1 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

19.1.2 the “**Receiving Party**” is the party which receives Confidential Information relating to the other party.

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

19.2.1 is given only to such of its staff and professional advisors or associates engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement; and

19.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff or its professional advisors or associates otherwise than for the purposes of this Agreement.

- 19.3 The provisions of clause 19.2 shall not apply to any Confidential Information which:

19.3.1 is or becomes public knowledge (otherwise than by breach of this clause 19);

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

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

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

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

- 19.4 In the event that the Supplier fails to comply with this clause 19, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.

- 19.5 The provisions under this clause 19 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.

- 19.6 The Supplier acknowledges that the British Council is subject to the Information Disclosure Requirements and shall assist and co-operate with the British Council to enable the British Council to comply with those requirements.

- 19.7 Where the British Council receives a Request for Information in relation to information that the Supplier or any of its sub-contractors is holding on behalf of the British Council and which the British Council does not hold itself, the British Council shall, as soon as reasonably practicable after receipt, forward the Request for Information to the Supplier and the Supplier shall:
- 19.7.1 provide the British Council with a copy of all such information in the form that the British Council requires as soon as practicable and in any event within 10 calendar days (or such other period as the British Council acting reasonably may specify) of the British Council's request; and
 - 19.7.2 provide all necessary assistance as reasonably requested by the British Council to enable the British Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, as applicable.
- 19.8 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the British Council may nevertheless be obliged to disclose the Supplier's Confidential Information in accordance with the Information Disclosure Requirements:
- 19.8.1 in certain circumstances without consulting the Supplier; or
 - 19.8.2 following consultation with the Supplier and having taken its views into account,
- provided always that where clause 19.8.1 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.
- 19.9 The provisions of this clause 19 shall survive the termination of this Agreement, however arising.

20. Data Processing

- 20.1 In this clause:
- 20.1.1 **"Controller"** means a "controller" for the purposes of the GDPR (as such legislation is applicable);
 - 20.1.2 **"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);
 - 20.1.3 **"Data Subject"** has the same meaning as in the Data Protection Legislation;

- 20.1.4 **"DPA"** means the UK Data Protection Act 2018;
- 20.1.5 **"GDPR"** means the General Data Protection Regulation (EU) 2016/679;
- 20.1.6 **"International Organisation"** has the same meaning as in the GDPR;
- 20.1.7 **"Personal Data"** means "personal data" (as defined in the Data Protection Legislation) that are Processed under this Agreement;
- 20.1.8 **"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;
- 20.1.9 **"Processing"** has the same meaning as in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly;
- 20.1.10 **"Processor"** means a "processor" for the purposes of the GDPR (as such legislation is applicable);
- 20.1.11 **"Sub-Processor"** means a third party engaged by the Processor for carrying out processing activities in respect of the Personal Data on behalf of the Processor; and
- 20.1.12 **"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.
- 20.2 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.
- 20.3 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 the Services are set out in Schedule 6 to this Agreement.
- 20.4 The Supplier shall:
 - 20.4.1 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 European Union laws or the laws of the European jurisdiction in which Supplier Processes the Personal Data; or unless otherwise required by laws outside the European Union in which Supplier Processes the Personal Data as referred to in 20.5.3);
 - 20.4.2 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;

- 20.4.3 ensure it has taken all reasonable steps to ensure the reliability and integrity of any employees or other persons authorised to Process the Personal Data;
- 20.4.4 ensure that any employees or other persons authorised to Process the Personal Data are:
 - (i) subject to appropriate obligations of confidentiality; and
 - (ii) subject to adequate training in the use, protection and handling of personal data;
- 20.4.5 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, Supplier 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. The British Council reserves the right during this Agreement to request evidence from the Supplier to support compliance with this clause 20.4.5 and the Supplier shall provide such evidence within three working days;
- 20.4.6 assist and co-operate with the British Council as requested to ensure the British Council's compliance with its obligations under the Data Protection Legislation with respect to:
 - (i) carrying out and/or reviewing data protection impact assessments where necessary in accordance with Article 35 of the General Data Protection Regulation;
 - (ii) implementing such technical and organisational measures to enable the British Council to respond to requests from Data Subjects exercising their rights under the Data Protection Legislation, which shall include but not be limited to:
 - (A) providing Personal Data and details of the Processing of Personal Data to the British Council in response to Data Subjects' exercising their rights of access; and
 - (B) deleting and/or rectifying Personal Data in response to a request from a Data Subject;
- 20.4.7 not Process or otherwise transfer any Personal Data outside the European Economic Area without prior written consent from the British Council and 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 outside the European Economic Area provided that it meets the relevant requirements under Articles 44 to 50 of the GDPR.

20.5 The Supplier shall notify the British Council promptly:

- 20.5.1 if it becomes aware that in following the instructions of the British Council, it shall be breaching the Data Protection Legislation;
- 20.5.2 on receipt of notice of any complaint made to a Supervisory Authority or any finding by a Supervisory Authority in relation to its Processing of Personal Data, whether it is Personal Data being Processed under this Agreement or otherwise;
- 20.5.3 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 and provide the British Council with details of such legal obligation, unless the law prohibits such information on important grounds of public interest;
- 20.5.4 (and in any event within 3 days) of:
 - (i) a request received by the Supplier or a Sub-Processor from a Data Subject for access to that person's Personal Data;
 - (ii) a complaint or request received by the Supplier or a Sub-Processor from a Data Subject relating to the British Council's obligations under the Data Protection Legislation;

and the Supplier shall provide the British Council with full co-operation and assistance in relation to any such complaint or request including where the complaint or request was received by the Supplier, a Sub-Processor or the British Council.

20.6 The Supplier shall:

- 20.6.1 notify the British Council promptly (and in any event within 24 hours) of becoming aware of any actual, suspected or threatened Personal Data Breach of any component of the Personal Data;
- 20.6.2 ensure that such notice includes details of the nature of the breach, including the categories and approximate number of Data Subjects and records concerned and the remediation measures being taken to mitigate and contain the breach; and
- 20.6.3 provide prompt assistance as requested by the British Council following the notification of an actual, suspected or threatened Personal Data Breach referred to in 20.6.1.

- 20.7 In the event of a notification under clause 20.6, 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.
- 20.8 The Supplier and its Sub-Processors shall 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.
- 20.9 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 20.8.
- 20.10 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.
- 20.11 The Supplier shall indemnify and keep indemnified the British Council and the British Council Entities against all Personal Data losses suffered or incurred by, awarded against or agreed to be paid by, the British Council or British Council Entities arising from a breach by the Supplier (or any Sub-Processor) of (a) its data protection obligations under this Agreement; or (b) the Supplier (or any Sub-Processor) acting outside or contrary to the lawful instruction of the British Council.
- 20.12 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 return the Personal Data in an open machine-readable format, via a secure agreed route at no cost to the British Council and the Supplier shall provide confirmation of destruction of any other copies including details of the date, time and method of destruction.
- 20.13 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 20.1 to 20.4 above.

21. Export

- 21.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 21.2 Each party undertakes:

- 21.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- 21.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

22. Warranties

- 22.1 The Supplier acknowledges that the British Council has entered into this Agreement in reliance upon the Supplier's expertise in selecting and supplying goods and services fit to meet the Business Requirements Specification.
- 22.2 The Supplier warrants and represents that:
 - 22.2.1 the Supplier Standard Software and Documentation are proprietary to the Supplier (except where otherwise stated in Schedule 1) and that it has the right to license all Intellectual Property Rights in and to the Supplier Software and Documentation to the British Council;
 - 22.2.2 none of the New Releases, New Versions and Documentation supplied by the Supplier during the provision of the Support Services infringes the Intellectual Property Rights of any third party;
 - 22.2.3 the Supplier Software will meet all the requirements of the Business Requirements Specification;
 - 22.2.4 the Supplier Software at the Acceptance Date, and for [24] months after that date, will perform in accordance with the Technical Specification;
 - 22.2.5 there has not been included or used any Open-Source Software or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>) or anything similar in, or in the development of, the Supplier Software nor does any Supplier Software operate in such a way that it is compiled with or linked to any of the foregoing;
 - 22.2.6 it will perform the Support Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent Support Staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements;
 - 22.2.7 it is in compliance with, and will perform the Support Services in compliance with, all applicable law and regulations;
 - 22.2.8 the British Council will receive good and valid title to all deliverables in connection with the Support Services, free and clear of all encumbrances and liens of any kind;
 - 22.2.9 in respect of New Releases:

- (i) no release issued by the Supplier in accordance with the Support Services will adversely and materially affect the performance or functionality of the Licensed Software;
- (ii) each release so issued will be compatible with the Computer Hardware, the Third-Party Software and any other hardware, software and equipment used by the British Council which needs to interface in any way with such release; and
- (iii) the implementation of each release will not necessitate the upgrading or replacement of any of the Computer Hardware, the Third-Party Software or such other hardware, software and equipment which at the date of issue of the release is interfacing with the earlier release.

22.2.10 the Third-Party Software, if installed by reasonably competent engineers, will:

- (i) be suitable for the British Council's requirements notified to the Supplier by the British Council in writing before the installation;
- (ii) be compatible with the Licensed Software such as to enable the Licensed Software to perform in accordance with the Documentation; and
- (iii) continue to be capable of being used with the Licensed Software for [three] years from the installation of each new version of Third-Party Software.

22.2.11 the Computer Hardware recommended or supplied by the Supplier on or after the date of this Agreement, if installed by reasonably competent engineers and if comprising products of satisfactory quality, will:

- (i) comply with the Business Requirements Specification;
- (ii) be compatible with the Licensed Software such as to enable the Licensed Software to perform in accordance with the Documentation;
- (iii) continue to be capable of being used with the Licensed Software for [Number] years from the installation of the Computer Hardware, assuming usage and transaction levels remain constant with those at the date on which the Computer Hardware is installed.

22.3 The sole remedies for breach of the warranties in clause 22.2.1 and clause 22.2.2 are set out in clause 23.

22.4 The warranties set out in clause 22.2 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement.

22.5 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the British Council's personnel or third parties without the permission of the Supplier, unless the Supplier has failed to respond within any relevant time period provided for in clause 14.5.

- 22.6 The Supplier shall not be liable under the warranties in clause 22.2.3 and clause 22.2.4 if it can demonstrate that any failure of the Supplier Software to comply with such warranties was wholly caused by unauthorised modifications made to the Supplier Software by, or on behalf of, the British Council.
- 22.7 The Supplier's obligations in respect of the Support Services shall not cover any part of the Supported Software which has been materially modified by anyone other than the Supplier, except with the Supplier's express prior written permission.
- 22.8 [The British Council acknowledges that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party) or the supply thereof are those contained in the licence from the third party supplier(s) of the same, and that to the extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the British Council.]
- 22.9 The British Council has relied on the Supplier's recommendations in deciding to acquire the Third-Party Software and the Modified Software (Third Party) and, accordingly, if the Licensed Software does not function in accordance with the Documentation as a result of acquisition of the same and requires replacement, the Supplier shall be deemed to be in breach of the warranties under clause 22.2 and shall indemnify the British Council against the cost of acquiring any appropriate replacement product and any related services required.
- 22.10 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Agreement and that those signing this Agreement are duly authorised to bind the party for whom they sign.

23. Intellectual Property Rights indemnity

- 23.1 The Supplier shall indemnify the British Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the British Council arising out of or in connection with any claim made against the British Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Supplier Software, any New Release, New Version or Documentation, or receipt of the benefit of the Services.
- 23.2 If any third party makes a claim, or notifies an intention to make a claim, against the British Council which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), the British Council shall:
- 23.2.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 23.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 23.2.3 give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts,

documents and records within the power or control of the British Council, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

23.2.4 subject to the Supplier providing security to the British Council to the British Council's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

23.3 The Supplier shall have no liability for any claim of infringement of Intellectual Property Rights:

23.3.1 caused solely by the British Council's use of the Supplier Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any Computer Hardware, provided that the Supplier was notified of the identity of this operating system before this Agreement was entered into); or

23.3.2 resulting solely from any unauthorised modification of the Supplier Software or any New Release (as the case may be) made by, or on behalf of, the British Council.

23.4 If use of the Supplier Software or receipt of the benefit of the Services becomes or, in the opinion of qualified legal counsel, is likely to become, the subject of any such claim, the Supplier may:

23.4.1 replace all or part of the Supplier Software or the New Releases (as the case may be) with functionally equivalent software or documentation without any charge to the British Council;

23.4.2 modify the Supplier Software or the New Releases (as the case may be) as necessary to avoid such claim, provided that the Supplier Software (as amended) functions in substantially the same way as the Supplier Software or the New Releases (as the case may be) before modification;

23.4.3 procure for the British Council a licence from the relevant claimant to continue using the Supplier Software or the New Releases (as the case may be);

and in the case of clause 23.4.1 or clause 23.4.2 only, the Supplier shall reimburse the British Council all reasonable additional costs and expenses that they are required to incur in order to obtain software and hardware required to interact with such modified or replaced software and documentation, and additional services from third parties, all of which would not have been incurred if the Licensed Software and/or Documentation had been non-infringing.

23.5 If:

23.5.1 the Supplier Software or any New Release (as the case may be) is determined in a court of law to be infringing;

23.5.2 the Supplier is advised by a barrister of at least ten years' call that use or possession by the British Council of the Licensed Software and/or the

Documentation in accordance with this Agreement is likely to constitute infringement of a third party's rights; or

- 23.5.3 if an injunction or similar order is granted in connection with any claim within the scope of clause 23.1 which prevents or restricts the use or possession by the British Council of the Licensed Software and/or the Documentation in accordance with this Agreement;

and the Supplier is unable, after best efforts, to procure for the British Council the right to continue using the Supplier Software or the New Release, or to provide the British Council with functionally equivalent non-infringing software, this Agreement and the Licence will be terminated without prejudice to the British Council's right to seek further remedies, including damages, for any loss or damage arising out of such termination.

- 23.6 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the British Council shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the British Council in respect of the payment is the same as it would have been were the payment not subject to tax.

24. Limitation of liability

- 24.1 [Subject to any express contractual terms of this Agreement, in no event shall the British Council or the Supplier be liable to the other party for:

- 24.1.1 loss of profits;
- 24.1.2 loss of business;
- 24.1.3 depletion of goodwill or similar losses;
- 24.1.4 loss of anticipated savings;
- 24.1.5 loss of goods; or
- 24.1.6 loss of use,

provided that this clause 24.1 shall not prevent claims for direct financial loss that are not excluded by any of the categories set out in clauses 24.1.1 to 24.1.6.]

- 24.2 Except for any liability under the indemnities given under clause 16.2, clause 20.11, clause 22.9 and clause 23.1 and except for any liability under clause 19 and clause 21 (which shall not be limited) and subject to clause 24.4, the Supplier's entire liability:

- 24.2.1 under this Agreement (other than in relation to the provision of the Support Services), including in connection with any cause of action related to the Supplier Software, shall be limited to [Multiple] times the amount of the Price; and
- 24.2.2 in connection with any cause of action related to the provision of Support Services shall be limited to [Multiple] times the amount paid for such Support Services in the [calendar year **OR** Contract Year] in which such cause of action arises.

24.3 Subject to clause 24.4, the total liability of the British Council, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to £[Amount].

24.4 Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, or any other liability which cannot be excluded or limited under applicable law.

25. Insurance

25.1 The Supplier shall, during the term of this Agreement and for [seven] years thereafter and at its own cost:

25.1.1 effect and maintain in force with reputable insurers approved by the British Council the following insurance policies [on terms and conditions approved by the British Council] for the payment of a sum up to the amount stated for any claim and in accordance with Good Industry Practice:

- (i) public liability insurance policy: £[Amount] million;
- (ii) professional indemnity insurance: £[Amount] million;
- (iii) property damage: £[Amount] million;
- (iv) business interruption insurance: £[Amount] million;
- (v) provide evidence of such insurance to the British Council on request;

25.1.2 administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for the British Council set out in this Agreement;

25.1.3 do nothing to invalidate any such insurance policy or to prejudice the entitlement of the British Council under this Agreement;

25.1.4 procure that the terms of such policy shall not be altered in such a way as to diminish the benefit to the British Council of the policies as provided at the date of this Agreement.

26. Duration

26.1 This Agreement shall, subject to clause 26.2, commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 27, until the Work has been completed.

26.2 The Support Services shall commence on the Support Commencement Date and shall continue until the Support Services are terminated in accordance with clause 27.3.2, unless terminated earlier in accordance with any of the other provisions of clause 27.

27. Termination

- 27.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement and/or the Support Services with immediate effect by giving written notice to the other party if:
- 27.1.1 the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 27.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - 27.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 27.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 27.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 27.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
 - 27.1.7 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 27.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 27.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 27.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 27.1.3 to clause 27.1.9 (inclusive);

- 27.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 27.1.12 any warranty given in clause 22 is found to be untrue or misleading; or
- 27.1.13 the other party has been subject to a Force Majeure Event (as defined in clause 39) for a continuous period of more than 90 days.
- 27.2 The parties acknowledge and agree that any breach of clauses [Insert] shall constitute a material breach of a term for the purposes of this clause.
- 27.3 The British Council may terminate:
- 27.3.1 this Agreement immediately by written notice to the Supplier if there is any change of Control of the Supplier or under clause 5.3.3 or clause 7.4.3;
- 27.3.2 the Support Services at or after the expiry of [three] year[s] from the Support Commencement Date by giving at least 90 days' prior written notice.
- 27.4 The British Council may terminate the Licence at any time by giving written notice to the Supplier and by complying with clause 27.5.
- 27.5 On termination of the Licence, the British Council shall either return to the Supplier or, at the Supplier's option, destroy all material copies of the Licensed Software and Documentation, and shall ensure that any copies of the Licensed Software on hard discs or other storage means associated with any computer equipment owned or controlled by the British Council are permanently deleted.
- 27.6 This Agreement shall automatically terminate on termination or expiry of the Licence, but expiry or any termination of this Agreement (however caused) shall have no effect on the Licence.
- 27.7 If any of the events referred to in paragraph [6.1] of Annex 7 or in paragraph [6.1] of Annex 8 occurs, the Licence shall automatically become a perpetual licence which survives termination of this Agreement.
- 27.8 Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.
- 27.9 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including clause 1, clause 12, clause 19 to clause 25, and clause 27 shall remain in full force and effect.
- 27.10 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 27.11 Notwithstanding its obligations in this clause 27, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

27.12 On termination of this Agreement for any reason, each party shall as soon as reasonably practicable:

27.12.1 return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by its [Insert title of relevant officer]) no later than [Number] days after termination of this Agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 19), provided that the British Council may retain copies of any Supplier Confidential Information incorporated into the Supplier Software or to the extent necessary to allow it to make full use of the Services and any Supplier Software;

27.12.2 permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation (in the form of a letter signed by its [Insert title of relevant officer]) no later than [Number] days after termination of this Agreement that this software has been deleted;

27.12.3 subject to clause 27.13.3, return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, [the party in possession] shall be solely responsible for their safe-keeping.

27.13 On termination of this Agreement for any reason, the Supplier shall:

27.13.1 promptly refund such portion of the Price or Support Charges (as the case may be) as relates to the period after expiry or termination on a pro rata basis;

27.13.2 as soon as reasonably practicable, deliver to the British Council all drawings, designs, plans, specifications, programs (including source codes) or other documentation, goods and supplies that it has agreed to supply under this Agreement and which exist at the date of termination, whether or not complete, and the Supplier hereby assigns to the British Council ownership of any Intellectual Property Rights in such materials to the extent these have not already been assigned to the British Council in accordance with clause 12. If the Supplier fails to deliver these materials in accordance with this clause 27.13 the British Council may enter the premises of the Supplier to take possession of them. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe-keeping;

27.13.3 as soon as reasonably practicable, vacate the British Council's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it. Any goods, materials or equipment that have not been removed after [Number]

days after termination of this Agreement may be disposed of by the British Council as it thinks fit;

27.13.4 assist the British Council and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration of the services to the British Council or the replacement supplier. If termination is by the British Council in accordance with clause 27.1 or clause 27.3.1 such co-operation and assistance shall be provided at no cost to the British Council. In all other cases, the Supplier may charge a reasonable sum to cover the cost of providing such co-operation and assistance;

27.13.5 during Normal Working Hours, provide access to the British Council and any replacement supplier for up to [Number] months after termination of this Agreement to such information relating to [Insert details] that remains in the possession or control of the Supplier;

27.13.6 the Supplier shall use all reasonable endeavours, at the British Council's request, to assign or novate, whether in favour of the British Council or any alternative supplier, any contract for services between the Supplier and any third party performing any part of the Services and the Supplier shall use its reasonable endeavours to ensure that the contract for services of any individual performing any part of the Services will include a novation or assignment clause allowing the novation or assignment of the contract to the British Council or an alternative supplier;

27.13.7 the Supplier shall procure that a written record of all Tools shall be delivered promptly to British Council; and

27.13.8 the Supplier shall verify in writing to the British Council that it has complied with the requirements of clause 27.13.

27.14 The British Council shall not be liable to the Supplier for redundancy payments and staff termination costs arising from termination or expiry of this Agreement.

28. Anti-Corruption and Collusion

28.1 The Supplier undertakes and warrants that it has not offered, given or agreed to give (and that it will not offer, give or agree to give) to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do anything in relation to the obtaining of this Agreement or the performance by the Supplier of its obligations under this Agreement.

28.2 The Supplier warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with other parties.

28.3 The Supplier warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party in any way in connection with this Agreement (including in respect of pricing under this Agreement). Nothing under this clause 28.3 is intended to prevent the Supplier from discussing the terms of this Agreement and the Supplier's pricing with the Supplier's professional advisors.

29. Safeguarding and Protecting Children and Vulnerable Adults

- 29.1 The Supplier will comply with all applicable legislation and codes of practice, including, where applicable, all legislation and statutory guidance relevant to the safeguarding and protection of children and vulnerable adults and with the British Council's Child Protection Policy, as notified to the Supplier and amended from time to time.

30. Equality, Diversity and Inclusion

- 30.1 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.
- 30.2 The Supplier shall comply with any equality or diversity policies or guidelines included in the British Council Requirements.

31. Assignment

- 31.1 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.
- 31.2 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 31.2.

32. Waiver

- 32.1 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.

33. Entire agreement

- 33.1 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.

34. Variation

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

35. Severance

- 35.1 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.

36. Counterparts

- 36.1 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.

37. Third party rights

- 37.1 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 31 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 37.2 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).

38. No partnership or agency

- 38.1 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.

39. Force Majeure

- 39.1 Subject to clauses 39.2 and 39.3, 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.
- 39.2 A party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 39.2.1 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;

39.2.2 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

39.2.3 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.

39.3 Nothing in this clause 39 shall excuse a party for non-performance (or other breach) of this Agreement if such non-performance (or other breach) results from the acts or omissions of any of that party's consultants and/or sub-contractors (except where such acts or omissions are caused by any of the circumstances specifically listed in clause 39.1).

40. Notice

40.1 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:

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

40.1.2 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

40.1.3 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.

40.2 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.

41. Governing Law and Dispute Resolution Procedure

41.1 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.

41.2 Subject to the remainder of this clause 41, 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.

41.3 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 41.3, either party may commence proceedings in accordance with clause 41.2.

- 41.4 Nothing in this clause 41 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Agreement or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

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

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

Name:	Signature
Position:		

Signed by the duly authorised representative of THE BRITISH COUNCIL

Name:	Signature:
Position:		

Schedule 1- Supplier Hardware and Software

Part A: Supplier Hardware

Part B: Supplier Software

Part 1 - Supplier Standard Software

Part 2 - Third-Party Software

Part 3 - Modified Software

(a)

(b)

Part 4 - Bespoke Software

Part 5 - Documentation

Part 6 - Supported Software

Draft

Schedule 2- British Council Hardware and Software

Part A: British Council Hardware

Part B: British Council Software

Draft

Schedule 3- Services, site and commencement

Part A: Services

Part 1 - Maintenance and support

Part 2 - Training

Part 3 - Consultancy

Part 4 - Disaster recovery/business continuity

Part B: Site(s)

Part C: Commencement date

Part D: Support Commencement date

Part E: British Council's security requirements

Draft

Schedule 4- Price, payment, interest and address for notices

Part A: Price

Part B: Payment Schedule (including Scheduled invoice dates) and address for invoices

Part C: Annual support charge

Part D: Training Charge

Part E: Consultancy Charge

Part F: Charge for business continuity / disaster recovery services

Part G: Address for notices

Part H: Interest rate on overdue sums

[Part I: Liquidated Damages]

Draft

Schedule 5- Licence details

Part A: British Council's Business

Part B: Number of Licensed Users

[Part C: Country specific amendments]

[Part D: Data Protection Compliance]

Draft

Schedule 6 – Data Processing

Description	Details
Duration of Processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature/purpose of Processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, marketing, statutory obligation, grant distribution and management, event management recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, National identification number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subjects	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Countries or International Organisations Personal Data will be transferred to	<i>[name the countries and International Organisations (where applicable). Where not applicable state N/A. NB: “International Organisation” is defined in the GDPR as “an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.”]</i>
Sub-Processors	<i>[name and contact address of Sub-Processor(s) (where applicable) and brief description of the nature of processing of personal data that they are undertaking under this agreement, where not applicable state N/A]</i>

ANNEX 1

Business Requirement Specification

Draft

ANNEX 2

Technical Specification

Draft

ANNEX 3

Implementation Plan

Draft

ANNEX 4

Pre-installation test plan

Draft

ANNEX 5

Acceptance tests

Draft

ANNEX 6

Licence agreement

Draft

ANNEX 7

Escrow agreement (1)

Draft

ANNEX 8

Escrow agreement (2)

Draft

ANNEX 9

Maintenance and support agreement

Draft

ANNEX 10

British Council's health and safety regulations for employees [and contractors]

Draft