

## TERMS FOR SERVICES FOR INTERNATIONAL EDUCATION MARKETING

These Terms apply to the delivery by the British Council to the Client of the Services as detailed in the Quotation to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms and to the Contract:

“**Contract**” has the meaning given in the Quotation;

“**Deliverables**” means all documents, products and materials: (i) developed by the British Council or its agents, subcontractors, consultants and employees in relation to the Services in any form, or (ii) provided by the British Council relating to the Services which existed prior to the commencement of the Contract, including data, reports and specifications (including drafts) and any deliverables specified in the Quotation;

“**Effective Date**” has the meaning set out in the Quotation;

“**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“**Project Purpose**” has the meaning given in the Quotation;

“**Quotation**” means the quotation document issued by the British Council

to the Client and to which these Terms are attached;

“**Services**” means the services to be provided by the British Council under the Contract as set out in the Quotation, together with any other services which the British Council provides or agrees to provide to the Client; and

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

1.2 Any headings shall not affect the interpretation of these Terms.

1.3 A reference to a statute or statutory provision is a reference to it 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.

1.4 Where the words “include(s)”, “including” are used in these Terms and/or the Quotation, they are deemed to have the words “without limitation” following them. Where the context permits, the words “other” and “otherwise” are illustrative and shall not limit the sense of the words preceding them.

### 2. Commencement and duration

2.1 The British Council shall provide the Services to the Client on these Terms from the Effective Date until they are completed in accordance with the Quotation, unless otherwise stated in the Quotation or the Contract is cancelled in accordance with clause 11 or terminated in accordance with clause 12.

### 3. British Council's obligations

3.1 The British Council shall:

- 3.1.1 provide the Services, and deliver the Deliverables to the Client, in accordance with the Quotation in all material respects, save that any dates specified in the Quotation shall be estimates only and time for performance by the British Council shall not be of the essence of the Contract; and
- 3.1.2 observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under clause 4.1.2, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 4. Client's obligations**
- 4.1 The Client shall:
- 4.1.1 co-operate with the British Council in all matters relating to the Services;
- 4.1.2 inform the British Council of all health and safety rules and regulations and any other reasonable security requirements that apply at any relevant Client premises; and
- 4.1.3 ensure that any and all equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements.
- 4.2 If the British Council's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the British Council shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.
- 5. Charges and payment**
- 5.1 The Client shall pay the charges as set out in, and in accordance with, the Quotation. Unless otherwise stated, all charges set out in the Quotation are exclusive of VAT and the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the British Council engages in connection with the Services, which the British Council shall add to its invoices at the appropriate rate.
- 5.2 The Client shall pay each invoice submitted to it by the British Council, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the British Council.
- 5.3 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the British Council on the due date, the British Council may:
- 5.3.1 claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Client shall pay such interest immediately on demand; and
- 5.3.2 suspend all Services until payment has been made in full.
- 5.4 All sums payable to the British Council under the Contract shall become due immediately on its termination, despite any other provision. This clause 5.4 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 5.5 The British Council may, without prejudice to any other rights it may have, set off any liability of the Client to the British Council against any liability of the British Council to the Client.

- 6. Intellectual property rights**
- 6.1 Subject to clauses 5.1 and 6.2, the British Council grants the Client the right to use those Intellectual Property Rights owned or licensed by the British Council and used to provide the Services or existing in the Deliverables on a non-exclusive basis and solely to such extent as is strictly necessary to enable the Client to make use of the Deliverables and the Services for the Project Purpose. If the Contract is cancelled or terminated, this licence will automatically terminate.
- 6.2 The Client acknowledges that, where the British Council does not own any of the Intellectual Property Rights used to provide the Services or existing in the Deliverables, the Client's use of such Intellectual Property Rights is conditional on the British Council obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the British Council to license such rights to the Client.
- 7. Use of information**
- 7.1 All information provided by the British Council to the Client as part of the Services will be supplied for the Project Purpose and will be accepted by the Client on the basis that although the British Council has made reasonable efforts to ensure that such information will be helpful, the British Council gives no assurance as to its accuracy, completeness or adequacy for that purpose. The Client acknowledges and agrees that the British Council cannot and does not guarantee that the Services provided will result in any tangible benefit to the Client.
- 7.2 The Client shall keep in strict confidence all technical or commercial know-how, market intelligence, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the British Council, its employees, agents, consultants or subcontractors and any other confidential information concerning the British Council's business or its products which the Client may obtain ("**Confidential Information**").
- 7.3 The Client may disclose Confidential Information:
- 7.3.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Client's obligations under the Contract and/or for the Project Purpose; and
- 7.3.2 as may be required by law, court order or any governmental or regulatory authority.
- 7.4 The Client shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses Confidential Information comply with this clause 7.
- 7.5 The Client shall not use any Confidential Information for any purpose other than the Project Purpose.
- 8. British Council's property**
- 8.1 All materials, equipment and tools, drawings, specifications and data supplied by the British Council to the Client shall, at all times, be and remain, as between the British Council and the Client, the exclusive property of the British Council, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the British Council, and shall not be disposed of or used other than in accordance with the British Council's written instructions or authorisation.
- 9. Limitation of liability**
- 9.1 Nothing in the Contract shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be limited under any applicable law.
- 9.2 Subject to clause 9.1:
- 9.2.1 the British Council shall not be liable to the Client under

this Contract for: loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

9.2.2 the British Council's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

## 10. Data protection

10.1 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of the British Council in connection with the Services.

10.2 If any Personal Data are disclosed by the British Council to the Client as part of the Services, the Client shall, in relation to such Personal Data:

10.2.1 Process the Personal Data only in accordance with instructions from the British Council;

10.2.2 Process the Personal Data only to the extent, and in such a manner, as is necessary for the performance of the Client's obligations under the Contract or as is required by law;

10.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against

accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

10.2.4 not transfer the Personal Data to any country or territory outside the European Economic Area without the prior written consent of the British Council; and

10.2.5 take reasonable steps to ensure that such Personal Data are not unlawfully disclosed or Processed as a result of the Client's access to such Personal Data.

10.3 In this clause 10, "Personal Data", "Process" and "Processing" shall have the meanings ascribed to them in the Data Protection Act 1998.

## 11. Cancellation

11.1 The Client may cancel the Services, or any discrete part of the Services, prior to delivery of such Services where expressly permitted to do so in the Quotation by giving the British Council written notice and complying with any other relevant requirements set out in the Quotation.

11.2 If the Client cancels the Services, or any discrete part of the Services, then the Client shall pay to the British Council the applicable cancellation fee set out in the Quotation (which the parties acknowledge represents a genuine pre-estimate of the British Council's loss), or where no cancellation fees are specified in the Quotation, the Client shall pay to the British Council all costs reasonably incurred by the British Council in preparation of the cancelled Services up to receipt of the Client's notice of cancellation.

- 11.3 The Client shall make any payment due under clause 11.2 within 30 days of the date of its relevant notice of cancellation. shall be payable immediately on receipt;
- 11.4 If the Client cancels all the Services under this clause 11, then the Contract shall terminate upon receipt by the British Council of all sums due under clause 11.2.
- 12. Termination**
- 12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than three months' written notice or immediately on giving notice to the other if:
- 12.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- 12.1.2 the other party commits a material breach of any of these Terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 12.1.3 the other party becomes (or, in the reasonable opinion of the terminating party, is at serious risk of becoming) insolvent or unable to pay its debts as they fall due; or
- 12.1.4 there is a change of control of the other party.
- 12.2 On termination of the Contract for any reason:
- 12.2.1 the Client shall immediately pay to the British Council all of the British Council's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the British Council may submit an invoice, which
- 12.2.2 the Client shall, within a reasonable time, return all of the British Council's equipment. If the Client fails to do so, then the British Council may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
- 12.2.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 13. Force majeure**
- 13.1 Neither party shall be in breach of the Contract if it is prevented from or delayed in performing its obligations under the Contract by acts, events, omissions or accidents beyond its reasonable control.
- 14. Assignment**
- 14.1 The Client shall not, without the prior written consent of the British Council, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 The British Council may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15. Governing Law and Dispute Resolution Procedure**
- 15.1 The Contract 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.

- 15.2 Subject to the remainder of this clause 15, 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 the Contract or its subject matter.
- 15.3 In the event that any claim or dispute arises out of or in connection with the Contract, 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 10 working 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 15.3, either party may commence proceedings in accordance with clause 15.2.
- 15.4 Nothing in this clause 15 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 the Contract or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.
- 16. General**
- 16.1 No variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 16.2 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 16.3 Nothing in the Contract 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.
- 16.4 The Quotation and these Terms constitutes the whole agreement between the parties and supersede any previous agreement, understanding or agreement between them relating to the subject matter of the Contract.
- 16.5 The Contract does not create any rights or benefits enforceable by any person not a party to it.
- 16.6 Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address, set out in the Quotation (or such other address or person as the relevant party may notify to the other party) and shall be delivered either personally, by courier, by pre-paid, first-class post or by recorded delivery. A notice is deemed to have been received: if delivered personally, at the time of delivery; in the case of pre-paid first class post, recorded delivery or courier, 48 hours from the date of posting. If deemed receipt under this clause is not within the hours of 09:00 – 17:00 on a normal working day in the country specified in the recipient's address for notices under the Contract ("**Working Hours**"), the notice will be deemed to be received at the re-commencement of Working Hours. 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.