

Request for Proposal (RFP)

For: CC69 PRGREMU102017 English language teaching and learning in Pakistan: A situation analysis

Date: 9 October 2017

1 Overview of the British Council

1.1 The British Council is the United Kingdom's international organisation for cultural relations and educational opportunities. Its purpose is to build engagement and trust for the UK through the exchange of knowledge and ideas between people worldwide. It seeks to achieve its aims by working in education, science, governance, English and the arts. In 2013-14, its programmes reached a total audience of 600 million people worldwide and we engaged directly with 10.9 million. In 2013 to 2014, the British Council had a total turnover of £864million. Its income included a grant-aid of £165 million from the UK government, £573 million from fees and income from services such as English teaching, exams administration and £117 million from the management of client-funded contracts, and funding from a wide range of public and private sector partners.

1.2 The British Council was established in 1934 and incorporated by Royal Charter in 1940. It is registered as a charity in England and Wales (charity no. 209131) and Scotland (charity no. SC037733). It is also an executive non-departmental public body, with the Foreign and Commonwealth Office as its sponsoring department.

1.3 Its primary charitable objects are set out in the Charter and are stated to be to:

- Promote cultural relationships and the understanding of different cultures between people and peoples of the United Kingdom and other countries;
- Promote a wider knowledge of the United Kingdom;
- Develop a wider knowledge of the English language;
- Encourage cultural, scientific, technological and other educational co-operation between the United Kingdom and other countries; and
- Otherwise promote the advancement of education.

1.4 The British Council works in more than 110 countries around the world and employs over 7000 staff worldwide. It has its headquarters in the UK, with offices in London, Manchester, Belfast, Cardiff and Edinburgh. Further information can be viewed at www.britishcouncil.org.

2 Introduction and Background to the Project / Programme

2.1 Research, Evaluation, Monitoring Unit (REMU) at British Council Pakistan was created four years ago to elevate the British Council as a thought leader and to add depth, evidence, and thus credibility to the programme activities of its Strategic Business Units. REMU has published many successful research reports in line with the global trend of individual empowerment, including; ‘Pakistan’s Creative Industries’, ‘The Skill Disconnect in Sindh’, and ‘Mainstreaming Disability in Pakistan’.

Further information can be found at www.britishcouncil.org

2.2. With respect to the result area English, REMU aims to understand the current situation and develop possible choices for the future, which, in turn, shall inform British Council Pakistan’s programme and project level planning. For this purpose, REMU requires an analysis of existing knowledge. Further details are given in section five.

3 Tender Conditions and Contractual Requirements

This section of the RFP sets out the British Council’s contracting requirements, general policy requirements, and the general tender conditions relating to this procurement process (“**Procurement Process**”).

3.1 Contracting requirements

3.1.1 The contracting authority is the British Council which includes any subsidiary companies and other organisations that control or are controlled by the British Council from time to time (see: <http://www.britishcouncil.org/organisation/structure/status>).

3.1.2 The British Council’s contracting and commercial approach in respect of the required goods and/or services is set out at Annex [1] Terms and Conditions of contract “**Contract**”. By submitting a tender response, you are agreeing to be bound by the terms of this RFP and the Contract without further negotiation or amendment.

3.1.3 The Contract awarded will be for duration of four months.

3.1.4 In the event that you have any concerns or queries in relation to the Contract, you should submit a clarification request in accordance with the provisions of this RFP by the Clarification Deadline (as defined below in the Timescales section of this RFP). Following such clarification requests, the British Council may issue a clarification change to the Contract that will apply to all potential suppliers submitting a tender response.

3.1.5 The British Council is under no obligations to consider any clarifications / amendments to the Contract proposed following the Clarification Deadline, but before the Response Deadline (as defined

below in the Timescales section of this RFP). Any proposed amendments received from a potential supplier as part its tender response shall entitle the British Council to reject that tender response and to disqualify that potential supplier from this Procurement Process.

3.2 General Policy Requirements

3.2.1 By submitting a tender response in connection with this Procurement Process, potential suppliers confirm that they will, and that they shall ensure that any consortium members and/or subcontractors will, comply with all applicable laws, codes of practice, statutory guidance and applicable British Council policies relevant to the goods and/or services being supplied. All relevant British Council policies that suppliers are expected to comply with can be found on the British Council website (<http://www.britishcouncil.org/about/policies>). The list of relevant policies includes (but it is not limited to): Anti-Fraud and Corruption, Child Protection Policy, Equal Opportunities Policy, Fair Trading, Health and Safety Policy, Environmental Policy, Records Management, and Privacy.

General tender conditions (“Tender Conditions”)

3.1 Application of these Tender Conditions – In participating in this Procurement Process and/or by submitting a tender response it will be implied that you accept and will be bound by all the provisions of this RFP and its Annexes. Accordingly, tender responses should be on the basis of and strictly in accordance with the requirements of this RFP.

3.2 Third party verifications – Your tender response is submitted on the basis that you consent to the British Council carrying out all necessary actions to verify the information that you have provided; and the analysis of your tender response being undertaken by one or more third parties commissioned by the British Council for such purposes.

3.3 Information provided to potential suppliers – Information that is supplied to potential suppliers as part of this Procurement Process is supplied in good faith. The information contained in the RFP and the supporting documents and in any related written or oral communication is believed to be correct at the time of issue but the British Council will not accept any liability for its accuracy, adequacy or completeness and no warranty is given as such. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the British Council.

3.4 Potential suppliers to make their own enquires – You are responsible for analysing and reviewing all information provided to you as part of this Procurement Process and for forming your own opinions and seeking advice as you consider appropriate. You should notify the British Council promptly of any perceived ambiguity, inconsistency or omission in this RFP and/or any in of its associated documents and/or in any information provided to you as part of this Procurement Process.

3.5 Amendments to the RFP – At any time prior to the Response Deadline, the British Council may amend the RFP. Any such amendment shall be issued to all potential suppliers, and if appropriate to ensure

potential suppliers have reasonable time in which to take such amendment into account, the Response Deadline shall, at the discretion of the British Council, be extended.

3.6 Compliance of tender response submission – Any goods and/or services offered should be on the basis of and strictly in accordance with the RFP (including, without limitation, any specification of the British Council's requirements, these Tender Conditions and the Contract) and all other documents and any clarifications or updates issued by the British Council as part of this Procurement Process.

3.7 Format of tender response submission – Tender responses must comprise the relevant documents specified by the British Council completed in all areas and in the format as detailed by the British Council. Any documents requested by the British Council must be completed in full. It is, therefore, important that you read the RFP carefully before completing and submitting your tender response.

3.8 Modifications to tender response documents once submitted – You may modify your tender response prior to the Response Deadline by giving written notice to the British Council. Any modification should be clear and submitted as a complete new tender response in accordance with British Council instructions to respond and these Tender Conditions.

3.9 Rejection of tender responses or other documents – A tender response or any other document requested by the British Council may be rejected which:

- contains gaps, omissions, misrepresentations, errors, uncompleted sections, or changes to the format of the tender documentation provided;
- contains hand written amendments which have not been initialled by the authorised signatory;
- does not reflect and confirm full and unconditional compliance with all of the documents issued by the British Council forming part of the RFP;
- contains any caveats or any other statements or assumptions qualifying the tender response that are not capable of evaluation in accordance with the evaluation model or requiring changes to any documents issued by the British Council in any way;
- is not submitted in a manner consistent with the provisions set out in this RFP;
- is received after the Response Deadline.

3.10 Disqualification – If you breach these Tender Conditions, if there are any errors, omissions or material adverse changes relating to any information supplied by you at any stage in this Procurement Process, if any other circumstances set out in this RFP, and/or in any supporting documents, entitling the British Council to reject a tender response apply and/or if you or your appointed advisers attempt:

- to inappropriately influence this Procurement Process;
- to fix or set the price for goods or services ;
- to enter into an arrangement with any other party that such party shall refrain from submitting a tender response;
- to enter into any arrangement with any other party (other than another party that forms part of your consortium bid or is your proposed sub-contractor) as to the prices submitted; or
- to collude in any other way

- to engage in direct or indirect bribery or canvassing by you or your appointed advisers in relation to this Procurement Process; or
- to obtain information from any of the employees, agents or advisors of the British Council concerning this Procurement Process (other than as set out in these Tender Conditions) or from another potential supplier or another tender response,

The British Council shall be entitled to reject your tender response in full and to disqualify you from this Procurement Process. Subject to the “Liability” Tender Condition below, by participating in this Procurement Process you accept that the British Council shall have no liability to a disqualified potential supplier in these circumstances.

3.11 Rights to cancel or vary this Procurement Process - By issuing this RFP, entering into clarification communications with potential suppliers or by having any other form of communication with potential suppliers, the British Council is not bound in any way to enter into any contractual or other arrangement with you or any other potential supplier. It is intended that the remainder of this Procurement Process will take place in accordance with the provisions of this RFP but the British Council reserves the right to terminate, amend or vary (to include, without limitation, in relation to any timescales or deadlines) this Procurement Process by notice to all potential supplier in writing. Subject to the “Liability” Tender Condition below, the British will have no liability for any losses, costs or expenses caused to you as a result of such termination, amendment or variation.

4 Tender Validity

4.1 Your tender response must remain open for acceptance by the British Council for a period of 90 days from the Response Deadline. A tender response not valid for this period may be rejected by the British Council.

5 Specification

Please read section two for a background and description to this research project before proceeding with this section.

Below is a description of the relevant result area:

- **English:** Good English teaching helps people to study and work and to develop careers, confidence and networks.

The impact statements related to the result area English are as follows:

- British Council and UK research and innovation contribute to a better understanding of ‘what works’ in English language teaching and learning.
- British Council thought leadership and advocacy contribute to the development of context-appropriate, equitable and resource-efficient English language policy.
- Learners of English achieve their goals more quickly.
- Education system change has a sustainable and positive impact.
- Teachers improve their students’ learning outcomes.

Suppliers are required to analyse existing knowledge to develop a report that includes the following:

- **Problem identification:** Identification of main or focal problems (i.e. negative conditions or realities) related to each of the impact statements given above. Each problem identified needs to be clearly defined. The definition of a problem needs to clearly show what is happening and to whom. Whilst the supplier must identify and define major or focal problems in British Council's existing strategies, it is necessary to identify and define additional problems as well.

Problems identified should not be limited to selected groups. However, problems related to young people (with particular emphasis on young people in education and young professionals), existing and emerging leaders, women and girls, and persons with disabilities should be included. Also, each group should be segmented in order to provide a clear understanding of what is happening to whom.

The problems identified need to be backed by strong evidence, including analysis of quantitative and/or qualitative data. Where possible, the data should be disaggregated by age, gender, disability, socio-economic group and other relevant variables.

The importance of a problem identified needs to be clearly shown in terms of (a) its relevance to UK, global, regional, national or community priorities; (b) its relevance to Sustainable Development Goals or other major development priorities; and (c) the presence of regional, national or community ownership.

- **Cause-effect problem analysis:** Analysis of root causes and major direct and indirect effects for each problem identified. Whilst the supplier must analyse root causes and major direct and indirect effects of problems specified in British Council's existing strategies, it is imperative that the analysis considers additional causes and effects as well.

An exhaustive list of causes and sub-causes for each problem should be identified, with layers of causes of problems clear to see. Causes should be clearly categorised e.g. in terms of policy constraints, institutional constraints, capacity weaknesses, or social or cultural norms. This should include, where applicable, problems related to access and usage of technology such as the Internet.

Regarding effects, the analysis should clearly show how each problem is affecting Pakistan and the UK. It should show effects experienced by all groups. However, for each problem identified, the effects experienced by young people (with particular emphasis on young people in education and young professionals), existing and emerging leaders, women and girls, and persons with disabilities should be identified. Effects experienced by other marginalised groups should also be considered. Similar to causes, effects should also be clearly categorised e.g. in terms of policy constraints, institutional constraints, capacity weaknesses, or social or cultural norms.

The cause-effect problem analysis should also be backed by strong evidence, including analysis of quantitative and/or qualitative data. Where possible, the data should be disaggregated by age, gender, disability, socio-economic group and other relevant variables.

The cause-effect problem analysis should be summarised and illustrated using a problem tree.

- **A results tree:** A reverse of the problem tree in which each problem, cause and effect on the problem tree is reworded as a positive result. The reverse of main or focal problems identified shall be regarded as vision statements. The results should be specific, measurable, achievable, relevant and time-bound (SMART).
- **Identification of interventions required to achieve results:** Identification of short-, medium- and long-term interventions that may be necessary to achieve the results illustrated in the results map. While interventions relevant to all positive results should be identified, the focus of this analysis will be to identify interventions required to achieve the vision statements (i.e. reverse of the main or focal problems). Interventions should include those by the British Council and other organisations that are relevant to achieving the results identified.

The case for an intervention should be made in terms of the criteria for evaluating development assistance specified by Development Assistance Committee (DAC) at the Organisation for Economic Co-operation and Development (OECD)

(<http://www.oecd.org/dac/evaluation/daccriteriaforevaluatingdevelopmentassistance.htm>) i.e. relevance, effectiveness, efficiency, impact, and sustainability.

Interventions identified should include but not be limited to the following:

- Interventions that lead to positive results for UK, Pakistan, and the partnerships between the two. Regarding benefit to UK, this may include interventions that involve (a) the use of UK models, technical assistance, and service provision; (b) high numbers of UK participants, and (c) impact on UK's security and stability, prosperity and development, and influence and attraction.
- Interventions that are important in terms of (a) their relevance to UK, global, regional, national or community priorities; (b) their relevance to Sustainable Development Goals or other major development priorities; and (c) the presence of regional, national or community ownership.
- Interventions that benefit young people (with particular emphasis on young people in education and young professionals), existing and emerging leaders, women and girls, and persons with disabilities.
- Interventions that use technology in order to improve relevance, effectiveness, efficiency, impact, and/or sustainability. In particular, interventions that use technology to maximise scale and minimise costs are of interest.

The interventions identified should be both – successful interventions that have been previously implemented and interventions that in theory are relevant, effective, efficient, impactful, and sustainable. Where empirical evidence is available regarding an intervention's success, the evidence should be strong and it should include analysis of quantitative and/or qualitative data. Where possible, the data should be disaggregated by age, gender, disability, socio-economic group and other relevant variables.

Moreover, interventions need not be limited to any location as long as there is reason to believe that they can be replicated in UK and Pakistan in order to achieve the intended benefits for the two. However, the reason to believe that the intervention can be replicated in UK and Pakistan needs to be clearly specified.

A summary of each proposed intervention shall be provided in terms of title, countries, start date, end date, project value, funder, partners, brief description, project activities/services, outputs and immediate and long-term outcomes realised or planned. This shall be done according to a format provided by REMU.

- **Donor identification:** Identification of donors and their objectives with respect to the result are.
- **Identification of knowledge gaps:** Identification of gaps in knowledge that should be addressed in order to improve future problem identification, cause-and-effect problem analysis, and evidence of success of interventions.

The existing knowledge the suppliers shall analyse will include but not be limited to the following sources:

- British Council's existing knowledge, including research reports and evaluations.
- Research papers published in scholarly journals.
- Strategies, guidance, evaluations (including impact assessments), independent reports, policy papers, and research and analysis by relevant and reputable public and private sector institutions. This includes departments of the Government of the UK (including Department for International Development (DFID)) and the Government of Pakistan.
- Relevant digital content e.g. donor and OECD websites.

The supplier will be expected to produce the following outputs:

- Inception report: This should include a detailed plan of analysing existing knowledge. It should also provide additional guarantees of adherence to and interpretation of this RFP.
- Draft report, which will at least have separate chapters for problem identification, cause-effect problem analysis and the results tree, identification of interventions required to achieve results, and identification of knowledge gaps. (Maximum 25 pages)
- The final report along the same structure as the one suggested for the draft report (Maximum 25 pages.)
- A policy brief (maximum 2000 words).
- A PowerPoint presentation based on the findings of the final report.

6 Timescales

6.1 Subject to any changes notified to potential suppliers by the British Council in accordance with the Tender Conditions, the following timescales shall apply to this Procurement Process:

Activity	Date / time
RFP Issued to bidding suppliers	9 October 2017
Deadline for clarification questions (Clarification Deadline)	23 October 2017
British Council to respond to clarification questions	27 October 2017
Deadline for submission of RFP responses by potential suppliers (Response Deadline)	10 November 2017
Final Decision	15 November 2017
Contract concluded with winning supplier	20 November 2017
Contract start date	22 November 2017
Inception report submitted	6 December 2017
Draft report, policy brief, and presentation submitted	31 January 2018
Final report, policy brief, and presentation submitted	28 February 2018

7 Instructions for Responding

7.1 The proposal should include the following:

Knowledge and experience

- Please provide the details of any consultancy or research projects that have involved any engagement with UK and Pakistan or other South Asian countries
- Please provide details of any other projects recently undertaken that used similar methodology, and the outputs and effects of these projects.
- Please list the relevant qualifications and other experience of your team members

Methodology and approach

- Please provide a brief description of the methodology you propose to use.
- Please ensure that any links between the different stages of research are clear.

Timetable and staffing

- What timetable do you foresee for the project? When will different aspects of the research and what type of preliminary results do you foresee you will be to share when?
- What will the responsibilities of your different staff members be? How do these responsibilities relate to tasks they have previously performed?

Costing

- Please provide a detailed breakdown of all costs associated to the project that you foresee

7.2 Expertise required

The British Council is looking to appoint a reputable agency or individual with the following qualities:

- Strong research portfolio, evidenced by previous projects.
- Individual team with suitable experience and qualifications. This includes experience in similar studies that involve situation analysis and the identification of suitable interventions with respect to the relevant result area, UK, Pakistan or other South Asian countries.
- Understanding of the British Council's objectives

All documents required as part of your tender response should be submitted to arifa.javed@britishcouncil.org.pk by the Response Deadline, as set out in the Timescales section of this RFP.

7.3 The following requirements should be complied with when submitting your response to this RFP:

- Please ensure that you send your submission in good time to prevent issues with technology – late tender responses may be rejected by the British Council.
- Do not submit any additional supporting documentation with your RFP response except where specifically requested to do so as part of this RFP. PDF, JPG, PPT, Word and Excel formats can be used for any additional supporting documentation (other formats should not be used without the prior written approval of the British Council). Please note the capacity for emailing content is less than 10MB anything to be transferred beyond should be sent in the form of a link.
- All attachments/supporting documentation should be provided separately to your main tender response and clearly labelled to make it clear as to which part of your tender response it relates.
- If you submit a generic policy / document you must indicate the page and paragraph reference that is relevant to a particular part of your tender response.
- Unless otherwise stated as part of this RFP or its Annexes, all tender responses should be in the format of the relevant British Council requirement with your response to that requirement inserted underneath.
- Where supporting evidence is requested as 'or equivalent' you must demonstrate such equivalence as part of your tender response.
- Any deliberate alteration of a British Council requirement as part of your tender response will invalidate your tender response to that requirement and for evaluation purposes you shall be deemed not to have responded to that particular requirement.
- Responses should be concise, unambiguous, and should directly address the requirement stated.
- Your tender responses to the tender requirements and pricing will be incorporated into the Contract, as appropriate.

8 Clarification Requests

8.1 All clarification requests should be submitted to Hasnain Khalil (Hasnain.Khalil@britishcouncil.org.pk) by the Clarification Deadline, as set out in the Timescales section of

this RFP. The British Council is under no obligation to respond to clarification requests received after the Clarification Deadline.

8.2 Any clarification requests should clearly reference the appropriate paragraph in the RFP documentation and, to the extent possible, should be aggregated rather than sent individually.

8.3 The British Council reserves the right to issue any clarification request made by you, and the response, to all potential suppliers unless you expressly require it to be kept confidential at the time the request is made. If the British Council considers the contents of the request not to be confidential, it will inform you and you will have the opportunity to withdraw the clarification query prior to the British Council responding to all potential suppliers.

8.4 The British Council may at any time request further information from potential suppliers to verify or clarify any aspects of their tender response or other information they may have provided. Should you not provide supplementary information or clarifications to the British Council by any deadline notified to you, your tender response may be rejected in full and you may be disqualified from this Procurement Process.

9 Payment and Invoicing

9.1 The British Council will pay correctly addressed and undisputed invoices within 30 days in accordance with the requirements of the Contract. Suppliers to the British Council must ensure comparable payment provisions apply to the payment of their sub-contractors and the sub-contractors of their sub-contractors. General requirements for an invoice for the British Council include:

- A description of the good/services supplied is included.
- The British Council Purchase Order number is included.

10 Evaluation Criteria

10.1 You will have your tender response evaluated as set out below:

Stage 1: Tender responses will be checked to ensure that they have been completed correctly and all necessary information has been provided. Tenders responses correctly completed with all relevant information being provided will proceed to Stage 2. Any tender responses not correctly completed in accordance with the requirements of this RFP and/or containing omissions may be rejected at this point. Where a tender response is rejected at this point it will automatically be disqualified and will not be further evaluated.

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Stage 2: Potential suppliers that meet the qualification criteria will be invited to present the commercial proposal & Technical proposal at British Council office. Potential suppliers that do not meet the qualification criteria may be excluded from the Procurement Process at this point. Where a potential supplier is excluded at this point, its tender response will be rejected in full and not evaluated further and the supplier will automatically be disqualified from this Procurement Process.



Stage 3: If a bidder succeeds in passing Stages 1 and 2 of the evaluation, then it will have its detailed tender response to the British Council's requirements evaluated. Information provided as part tender responses may also be verified as part of this stage.

10.2 Award Criteria – Responses from potential suppliers will be assessed to determine the most economically advantages tender using the following criteria and weightings and will be assessed entirely on your response submitted:

Criteria	Weighting
Knowledge and experience	30%
Methodology and approach	20%
Timetable and staffing	20%
Costing and value for money	30%

10.3 Scoring Model – Tender responses will be subject to an initial review at the start of Stage 3 of the evaluation process. Any tender responses not meeting mandatory requirements or constraints (if any) will be rejected in full at this point and will not be assessed or scored further. Tender responses not so rejected will be scored by an evaluation panel appointed by the British Council for all criteria other than commercial using the following scoring model:

Points	Interpretation
10	Excellent – Overall the response demonstrates that the bidder meets all areas of the requirement and provides all of the areas evidence requested in the level of detail requested. This, therefore, is a detailed excellent response that meets all aspects of the requirement leaving no ambiguity as to whether the bidder can meet the requirement.
7	Good – Overall the response demonstrates that the bidder meets all areas of the requirement and provides all of the areas of evidence requested, but contains some trivial omissions in relation to the level of detail requested in terms of either the response or the evidence. This, therefore, is a good response that meets all aspects of the requirement with only a trivial level ambiguity due the bidders failure to provide all information at the level of detail requested.

5	Adequate – Overall the response demonstrates that the bidder meets all areas of the requirement, but not all of the areas of evidence requested have been provided. This, therefore, is an adequate response, but with some limited ambiguity as to whether the bidder can meet the requirement due to the bidder's failure to provide all of the evidence requested.
3	Poor – The response does not demonstrate that the bidder meets the requirement in one or more areas. This, therefore, is a poor response with significant ambiguity as to whether the bidder can meet the requirement due to the failure by the bidder to show that it meets one or more areas of the requirement.
0	Unacceptable – The response is non-compliant with the requirements of the RFP and/or no response has been provided.

10.4 Commercial Evaluation – Your “Overall Price” along with cost breakups for the goods and/or services will be evaluated by the evaluation panel for the purposes of the commercial evaluation. .

10.5 The winning tender response – The winning tender response shall be the tender response scoring the highest percentage score out of 100.

List of Annexes forming part of this RFP (issued as separate documents):

Annex 1 - Terms and Conditions of Contract

Annex 1 - Terms and Conditions of Contract:

Standard Terms

1 Interpretation

1.1 In this Agreement:

“**Background IPR**” means any Intellectual Property Rights (other than Project IPR) belonging to either party before the Commencement Date or not created in the course of or in connection with the Project;

“**British Council Entities**” means the subsidiary companies and other organisations Controlled by the British Council from time to time, and any organisation which Controls the British Council (the “**Controlling Entity**”) as well as any other organisations Controlled by the Controlling Entity from time to time;

“**British Council Requirements**” means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents notified to the Supplier in writing or set out on the British Council’s website at 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);

“**Charges**” means the charges, fees and any other sums payable by the British Council to the Supplier as set out in **Error! Reference source not found.**;

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

“**Code**” means the Department of Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the Freedom of Information Act 2000 (issued under section 45 of that Act) (November 2004) as may be updated or re-issued from time to time and any other relevant codes of practice published by the Department of Constitutional Affairs or its successor bodies;

“**Confidential Information**” means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, finances, properties, assets, trading practices, Goods/Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of the British Council or the Supplier (as the case may be) and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

“Deliverables” means all Documents, products and materials developed or provided by the Supplier as part of providing the Services;

“Document” means (whether in hard copy or electronic format) any document, drawing, map, plan, diagram, design, picture or other image, tape, disk, or other device or record embodying information in any form;

“End Client” means the end client (if any) in respect of the project in connection with which the Supplier is providing its Services as a sub-contractor;

“End Client Requirements” means the specific requirements of the End Client, as notified to the Supplier in writing;

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

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

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

“Goods” means the goods or products (if any) to be supplied by the Supplier under this Agreement as set out in the Special Terms (Schedule 1) and/or the Specification (Schedule 2);

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

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

“Intellectual Property Rights” means any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trade marks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Premises” means, where applicable, the premises or location where the Services are to be provided, as notified by the British Council to the Supplier;

“Project” means the project in connection with which the Supplier provides its Services as further described in the Special Terms (Schedule 1) and/or the Specification (Schedule 2);

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

“Relevant Person” means any individual employed or engaged by the Supplier and involved in the provision of the Services, or any agent or contractor or sub-contractor of the Supplier who is involved in the provision of the Services and includes, without limitation, the Key Personnel (if any);

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

“Services” means the services to be provided by the Supplier under this Agreement as set out in the Special Terms (Schedule 1) and/or the Specification (Schedule 2);

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

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

1.2 In this Agreement:

1.2.1 any headings in this Agreement shall not affect the interpretation of this Agreement;

1.2.2 a reference to a statute or statutory provision is (unless otherwise stated) a reference to the applicable UK statute as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;

1.2.3 where the words “include(s)” or “including” are used in this Agreement, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them;

1.2.4 without prejudice to clause 1.2.5, except where the context requires otherwise, references to:

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

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

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

2 Supplier's Responsibilities

2.1 The Supplier shall:

- 2.1.1 provide the Services and the Goods, and deliver the Deliverables to the British Council, with reasonable skill, care and ability in accordance with the terms of this Agreement (and, in particular, the Special Terms (Schedule 1) and the Specification (Schedule 2)), and with the reasonable instructions of the British Council, and shall allocate sufficient resources to the Services to enable it to comply with this obligation;
- 2.1.2 deliver the Goods to the delivery point and on the delivery date as notified to the Supplier (and time shall be of the essence for delivery);
- 2.1.3 comply with the End Client Requirements (if any) and shall do nothing to put the British Council in breach of the End Client Requirements (if any);
- 2.1.4 not at any time during the Term do or say anything which damages or which could reasonably be expected to damage the interests or reputation of the British Council or the End Client or their respective officers, employees, agents or contractors;
- 2.1.5 comply in all material respects with the Data Protection Act 1998 (or any equivalent legislation in any applicable jurisdiction);
- 2.1.6 maintain records relating to this Agreement for seven (7) years following the year in which this Agreement terminates or expires and allow the British Council and/or any end client access to those records on reasonable notice and at reasonable times for audit purposes;

- 2.1.7 obtain the British Council's prior written consent to all promotional activity or publicity and act at all times in accordance with the British Council's reasonable instructions relating to such activity or publicity;
 - 2.1.8 comply with all applicable legislation and codes of practice relating to diversity, equality, non-discrimination and human rights in force in England and Wales and any other territory in which the Services and the Goods are to be provided;
 - 2.1.9 take out and maintain during the term of this Agreement appropriate insurance cover in respect of its activities under this Agreement and, on request, provide the British Council with evidence that such insurance cover is in place;
 - 2.1.10 not, without the British Council's consent, assign or otherwise transfer any of its rights or obligations under this Agreement;
 - 2.1.11 be entitled to use such parts of the Premises on a non-exclusive basis as the British Council may from time to time designate as are necessary for the performance of the Services provided that use of the Premises is strictly in accordance with the British Council's reasonable instructions and is to be solely for the purposes of providing the Services;
 - 2.1.12 promptly notify the British Council of any health and safety hazards which may arise in connection with the performance of this Agreement, take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by the performance of the Services and notify the British Council of any incident occurring on the Premises or otherwise in connection with the provision of the Services which causes or could give rise to personal injury;
 - 2.1.13 comply with, and complete and return any forms or reports from time to time required by, the British Council Requirements; and
 - 2.1.14 use its reasonable endeavours to ensure that it does not become involved in any conflict of interests between the interests of the British Council and/or the End Client and the interests of the Supplier itself or any client of the Supplier, and shall notify the British Council in writing as soon as is practically possible of any potential conflict of interests and shall follow the British Council's reasonable instructions to avoid, or bring to an end, any conflict of interests. In the event that a conflict of interests does arise, the British Council shall be entitled to terminate this Agreement on immediate written notice.
- 2.2 Where the Supplier is not an individual, it shall provide one or more Relevant Person(s) to provide the Services and shall procure that such Relevant Person(s) comply with the terms of this Agreement to the extent that such terms are applicable to such Relevant Person(s).

Notwithstanding the deployment of any such Relevant Person(s), the Supplier shall remain wholly liable to the British Council and shall be responsible for all acts and omissions (howsoever arising) in the performance of the Services. The British Council may, in its discretion, require the Relevant Person(s) to enter into direct undertakings with the British Council including, without limitation, with regard to confidentiality and intellectual property.

- 2.3 The Supplier warrants that the Goods shall: (a) conform to the Specification in Schedule 2; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the British Council; (c) be free from defects in design, material and workmanship and remain so for 12 months after delivery; and (d) comply with all applicable statutory and regulatory requirements.
- 2.4 Risk and title in the Goods delivered to the British Council shall pass to the British Council on delivery.

3 Status

- 3.1 The relationship of the Supplier to the British Council will be that of independent contractor and nothing in this Agreement shall render the Supplier or any Relevant Person an employee, worker, agent or partner of the British Council and the Supplier shall not hold itself out as such.
- 3.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the British Council for and in respect of payment of the following within the prescribed time limits:
- 3.2.1 any tax (including, without limitation, VAT), National Insurance contributions or similar impost or payment of a fiscal nature arising from or made in connection with either the performance of the Services, or any payment or benefit received by the Supplier in respect of the Services; and
- 3.2.2 any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier (or, where applicable, any Relevant Person) against the British Council arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the British Council.

4 Price and Payment

- 4.1 Unless stated otherwise, the Charges are exclusive of value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction.
- 4.2 Unless stated otherwise, the Supplier shall invoice for the Charges monthly in arrears and all such invoices shall be accompanied by a statement setting out the Services and/or Goods supplied in the relevant month in sufficient detail to justify the Charges charged.

- 4.3 Subject to clause 4.4 below, the British Council shall, unless agreed otherwise by the parties in writing, pay each of the Supplier's valid and accurate invoices by automated transfer into the Supplier's nominated bank account no later than 30 days after the invoice is received.
- 4.4 Where there is an end client, the British Council shall not be obliged to pay any invoice to the extent that it has not received payment relating to that invoice from the end client.
- 4.5 If the British Council fails to pay any sum properly due and payable (other than any sum disputed in good faith) by the due date for payment, the Supplier may charge interest on the amount of any such late payment at the rate of 4% per annum above the official bank rate set from time to time by the Bank of England. Such interest will accrue from the date on which payment was due to the date on which payment is actually made. The parties hereby acknowledge and agree that this rate of interest is a substantial remedy for any late payment of any sum properly due and payable
- 4.6 Where the Supplier enters into a Sub-Contract, the Supplier shall:
- 4.6.1 pay any valid invoice received from its subcontractor within 30 days following receipt of the relevant invoice payable under the Sub-Contract; and
 - 4.6.2 include in that Sub-Contract a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 4.6.1 of this Agreement.
- 4.7 In clause 4.6, "**Sub-Contract**" means a contract between two or more suppliers, at any stage of remoteness from the British Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

5 Change Control

- 5.1 If either party wishes to change the scope or provision of the Services, it shall submit details of the requested change to the other in writing and such change shall only be implemented if agreed in writing by both parties acting reasonably.

6 Intellectual Property Rights

- 6.1 Subject to clause 7, each party shall give full disclosure to the other of all Background IPR owned by it which is relevant to the Project (and the Supplier shall give the British Council full disclosure of any Third Party IPR it intends to use).
- 6.2 All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it.

- 6.3 Each party warrants to the other party that its Background IPR does not, so far as it is aware, infringe the rights of any third party and none of its Background IPR is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.
- 6.4 The Supplier hereby assigns to the British Council with full title guarantee by way of present and future assignment all its right, title and interest in and to the Project IPR.
- 6.5 The Supplier shall procure the waiver in favour of the British Council of all moral rights arising under the Copyright, Designs and Patents Act 1988, as amended and revised, or any similar provisions of law in any jurisdiction, relating to the Deliverables.
- 6.6 The British Council hereby grants to the Supplier an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Project IPR and the British Council's Background IPR in, and to the extent necessary for, the performance of the Services.
- 6.7 The Supplier hereby grants to the British Council an irrevocable, royalty-free, non-exclusive, worldwide right and licence to use the Supplier's Background IPR included in the Deliverables.
- 6.8 The Supplier is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR required by the Supplier and the British Council for use of the Deliverables (such licences, permissions or consents to be in writing, copies of which the Supplier shall provide to the British Council on request). In addition, the Supplier warrants that the provision of the Services, the Deliverables and/or the Goods does not and will not infringe any third party's Intellectual Property Rights.
- 6.9 The Supplier warrants that it has in place contractual arrangements with all members of the Supplier's Team assigning to the Supplier their Intellectual Property Rights and waiving their moral rights (if any) in the Deliverables such that the Supplier can enter into the assignments, licences and waivers set out in this clause 6.
- 6.10 The Supplier undertakes at the British Council's request and expense to execute all deeds and documents which may reasonably be required to give effect to this clause 6.
- 6.11 Nothing in this Agreement shall prevent the Supplier from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that it does not result in a disclosure of the British Council's Confidential Information or an infringement of Intellectual Property Rights.
- 6.12 Each party shall promptly give written notice to the other party of any actual, threatened or suspected infringement of the Project IPR or the other party's Background IPR of which it becomes aware.

7 Confidentiality

7.1 For the purposes of this clause 7:

7.1.1 the “**Disclosing Party**” is the party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other party; and

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

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

7.2.1 is given only to such of its staff (or, in the case of the Supplier, the Supplier’s Team) and professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement; and

7.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff (or, in the case of the Supplier, the Supplier’s Team) or its professional advisors or consultants otherwise than for the purposes of this Agreement.

7.3 The Supplier shall ensure that all members of the Supplier’s Team or professional advisors or consultants are aware of the Supplier’s confidentiality obligations under this Agreement.

7.4 The provisions of clauses 7.2 and 7.3 shall not apply to any Confidential Information which:

7.4.1 is or becomes public knowledge (otherwise than by breach of this clause 7);

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

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

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

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

7.5 In the event that the Supplier fails to comply with this clause 7, the British Council reserves the right to terminate this Agreement by notice in writing with immediate effect.

- 7.6 The provisions under this clause 7 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.
- 7.7 The Supplier acknowledges that the British Council is subject to the Information Disclosure Requirements and shall assist and co-operate with the British Council to enable the British Council to comply with those requirements.
- 7.8 Where the British Council receives a Request for Information in relation to information that the Supplier or any of its sub-contractors is holding on behalf of the British Council and which the British Council does not hold itself, the British Council shall as soon as reasonably practicable after receipt and in any event within five calendar days of receipt, forward the Request for Information to the Supplier and the Supplier shall:
- 7.8.1 provide the British Council with a copy of all such information in the form that the British Council requires as soon as practicable and in any event within 10 calendar days (or such other period as the British Council acting reasonably may specify) of the British Council's request; and
 - 7.8.2 provide all necessary assistance as reasonably requested by the British Council to enable the British Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, as applicable.
- 7.9 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the British Council may nevertheless be obliged to disclose the Supplier's Confidential Information in accordance with the Information Disclosure Requirements:
- 7.9.1 in certain circumstances without consulting the Supplier; or
 - 7.9.2 following consultation with the Supplier and having taken its views into account,
- provided always that where clause 7.9.1 above applies, the British Council shall, in accordance with the recommendations of the Code, take reasonable steps to draw this to the attention of the Supplier after any such disclosure.
- 7.10 The provisions of this clause 7 shall survive the termination of this Agreement, however arising.

8 Limitation of Liability

- 8.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be limited under any applicable law.

- 8.2 Subject to clause 8.1, neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.
- 8.3 Subject to clauses 8.1 and 8.2, the British Council's liability to the Supplier in respect of any one claim or series of linked claims under this Agreement (whether in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed an amount equal to the sum of the Charges paid or properly invoiced and due to be paid under this Agreement, plus any late payment interest properly chargeable under the terms of this Agreement, in the twelve (12) month period immediately preceding the event which gives rise to the relevant claim or series of linked claims.

9 Termination

- 9.1 Without prejudice to any other rights or remedies which the British Council may have, the British Council may terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier if:
- 9.1.1 the performance of the Services is delayed, hindered or prevented by a Force Majeure Event (as defined in clause 22) for a period in excess of 28 days;
 - 9.1.2 where the Supplier is a company, there is a change of Control of the Supplier; or
 - 9.1.3 the Supplier or any Relevant Person is:
 - (i) incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of five (5) Working Days in any two (2) week consecutive period;
 - (ii) convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - (iii) in the reasonable opinion of the British Council or the End Client, negligent and incompetent in the performance of the Services; or
 - (iv) guilty of any fraud, dishonesty or serious misconduct.
- 9.2 Either party may give notice in writing to the other terminating this Agreement with immediate effect if:
- 9.2.1 the other party commits any material breach of any of the terms of this Agreement and that breach (if capable of remedy) is not remedied within 30 days of notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate the Agreement with immediate effect);

- 9.2.2 the other party becomes (or, in the reasonable opinion of the terminating party, is at serious risk of becoming) insolvent or unable to pay its debts as they fall due.
- 9.3 The British Council shall be entitled to terminate this Agreement at any time by serving not less than 30 days' written notice on the Supplier.
- 9.4 The British Council shall be entitled to terminate this Agreement at any time with immediate effect (or with effect from such time as the British Council specifies in its notice of termination) by serving written notice on the Supplier if:
- 9.4.1 the British Council's agreement with the End Client relating to the Services terminates;
- 9.4.2 the End Client or a provider of funding to the British Council for the Services instructs the British Council in writing to terminate this Agreement; or
- 9.4.3 if the funding for the Services is otherwise withdrawn or ceases.
- 9.5 Termination of this Agreement, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

10 Anti-corruption

- 10.1 The Supplier acknowledges and agrees that British Council may, at any point during the Term and on any number of occasions, carry out searches of relevant third party screening databases (each a "**Screening Database**") to ensure that neither the Supplier nor any of the Supplier's suppliers, directors, shareholders or employees (where applicable) is listed as being a politically exposed person, disqualified from being a company director, involved with terrorism, financial or other crime, subject to regulatory action or export, trade or procurement controls or otherwise representing a heightened risk of involvement in illegal activity.
- 10.2 If the Supplier or any of the Supplier's suppliers, directors, shareholders or employees (where applicable) is listed in a Screening Database for any of the reasons set out in clause 10.1, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:
- 10.2.1 terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier; and/or
- 10.2.2 reduce, withhold or claim a repayment (in full or in part) of the Charges payable under this Agreement; and/or
- 10.2.3 share such information with third parties.

- 10.3 The Supplier shall provide the British Council with all information reasonably requested by the British Council to complete the screening searches described in clause 10.1.

11 Safeguarding and Protecting Children and Vulnerable Adults

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

12 Anti-slavery and human trafficking

- 12.1 The Supplier shall:
- 12.1.1 ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain;
 - 12.1.2 implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains;
 - 12.1.3 respond promptly to all slavery and human trafficking due diligence questionnaires issued to it by the British Council from time to time and ensure that its responses to all such questionnaires are complete and accurate; and
 - 12.1.4 notify the British Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in any part of its business or in a supply chain which has a connection with this Agreement.
- 12.2 If the Supplier fails to comply with any of its obligations under clause 12.1, without prejudice to any other rights or remedies which the British Council may have, the British Council shall be entitled to:
- 12.2.1 terminate this Agreement without liability to the Supplier immediately on giving notice to the Supplier; and/or
 - 12.2.2 reduce, withhold or claim a repayment (in full or in part) of the charges payable under this Agreement; and/or
 - 12.2.3 share with third parties information about such non-compliance.

13 Equality, Diversity and Inclusion

- 13.1 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.
- 13.2 The Supplier shall comply with any equality or diversity policies or guidelines included in the British Council Requirements.

14 Assignment

- 14.1 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.
- 14.2 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 14.2.

15 Waiver

- 15.1 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.

16 Entire agreement

- 16.1 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.

17 Variation

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

18 Severance

- 18.1 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.

19 Counterparts

- 19.1 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.

20 Third party rights

- 20.1 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 14 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 20.2 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).

21 No partnership or agency

- 21.1 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.

22 Force Majeure

- 22.1 Subject to clauses 22.2 and 22.3, 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.

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

22.2.1 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;

22.2.2 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

22.2.3 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.

22.3 Nothing in this clause 22 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 22.1).

23 Notice

23.1 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:

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

23.1.2 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

23.1.3 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.

- 23.2 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.

24 Governing Law and Dispute Resolution Procedure

- 24.1 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.
- 24.2 Subject to the remainder of this clause 24, 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.
- 24.3 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 24.3, either party may commence proceedings in accordance with clause 24.2.
- 24.4 Nothing in this clause 24 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.