



Home Office

DATED 9th FEBRUARY 2015

CONCESSION AGREEMENT

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

-and-

The IELTS SELT Consortium, an unincorporated joint venture comprised by:

THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE acting by **THE UNIVERSITY OF CAMBRIDGE LOCAL EXAMINATIONS SYNDICATE** being formed under the Statutes of the University of Cambridge of 1 Hills Road, Cambridge CB1 2EU, United Kingdom ("**UCLES**");

THE BRITISH COUNCIL, incorporated by Royal Charter and registered as a charity (under number 209131 in England and Wales and number SCO37733 in Scotland), with its principal office at 10 Spring Gardens, London, SW1A 2BN; and

IELTS AUSTRALIA PTY LTD, registered in Australia with company number ACN 008 664 766 and having its registered office at Level 8, 535 Bourke Street, Melbourne Victoria, 3000, Australia;

together the IELTS SELT Consortium (the "**Concessionaire**")

Home Office
2 Marsham Street
London
SW1P 4DF

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This **CONCESSION AGREEMENT** is made this [] of [] 2015 between:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** of 2 Marsham Street, London SW1P 4DF acting through UK Visas and Immigration (the “**Authority**”) and
- (2) IELTS SELT Consortium, whose registered office is at 1 Hills road, Cambridge, CB1 2EU, UK. (the “**Concessionaire**”).

WHEREAS:

- (A) The Authority is the Crown Body which has responsibility for immigration and passports, drugs policy, crime policy and counter-terrorism and works to ensure visible, responsive and accountable policing in the UK.
- (B) The Authority published a notice reference number 2014/5 195-344982 in the Official Journal of the European Union on 10th October 2014 in respect of its desire to award one or more concession agreements for the provision of Secure English Language Testing (SELT) Services in (a) the United Kingdom and (b) the Rest of the World (i.e. in countries other than the United Kingdom) (the “**Procurement Notice**”).
- (C) As a result of the competition launched by the Procurement Notice, the Authority has decided to award a concession agreement to the Concessionaire.
- (D) The Concessionaire represents to the Authority that it has the necessary skill and experience to carry on the Concession subject to and in accordance with this Concession Agreement.
- (E) The Authority has relied on the Concessionaire’s representations and agreed to grant the Concessionaire the right to carry on the Concession subject to and in accordance with this Concession Agreement.

IN CONSIDERATION OF THE AUTHORITY AGREEING TO GRANT VARIOUS RIGHTS TO THE CONCESSIONAIRE, TOGETHER WITH THE MUTUAL OBLIGATIONS CONTAINED HEREIN, THE FOLLOWING IS AGREED BY THE PARTIES:

GENERAL

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Concession Agreement, capitalised terms shall have the meanings assigned to them in Schedule 1 (Definitions).
- 1.2 The headings in these Clauses and the Index of Clauses are for ease of reference only and shall not affect the interpretation or construction of the Clauses.

- 1.3 Where the context permits, the use of the singular shall be construed to include the plural, and the use of plural the singular, and the use of any gender shall include all genders.
- 1.4 References to an Act of Parliament shall be deemed to include any subordinate legislation of any sort made from time to time under that Act.
- 1.5 References to any statute, enactment, order, regulation, code or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code or instrument as subsequently amended or re-enacted.
- 1.6 If there is any conflict between any of the Clauses, the Schedules, the Annexes and any other document referred to in this Concession Agreement, the following order of priority in interpretation applies:
 - 1.1.1. The Clauses;
 - 1.1.2. Schedule 2.1 (Authority's Requirements) to Schedule 2.3 (Service Levels, Performance and Liquidated Damages);
 - 1.1.3. all other Schedules except for Schedule 3 (Concessionaire's Solution);
 - 1.1.4. any other document referred to in this Concession Agreement or any other document attached to this Concession Agreement; and
 - 1.1.5. Schedule 3 (Concessionaire's Solution).

2. ENTIRE AGREEMENT

- 2.1 This Concession Agreement constitutes the entire agreement between the Parties relating to its subject matter. It replaces all previous negotiations, agreements, understandings and representations between the Parties, whether oral or in writing. However, nothing in this Concession Agreement shall limit or exclude any liability for fraud.

3. DURATION

- 3.1. This Concession Agreement shall commence on the Commencement Date and shall continue in force for a period of two years from the PTO Commencement Date, unless extended or terminated in accordance with its terms.
- 3.2. This Concession Agreement may be extended by the Authority, in its absolute discretion by giving the Concessionaire not less than three (3) months' notice, for a further period or periods of one year each, up to a maximum total extension period of three (3) years from the end of the two year period referred to in Clause 3.1 above.
- 3.3. In the event of an extension under Clause 3.2, such extension shall be on the same terms and conditions save that the revised "Expiry Date" shall be the last date of the extended Term.

PROVISION OF THE SELT SERVICES**4. NON-EXCLUSIVE AGREEMENT**

- 4.1. This Concession Agreement does not set up an exclusive arrangement with regard to the provision of the SELT Service in the relevant Region and the Authority shall be free to enter into similar agreements with third parties in that Region.

5. GRANT OF CONCESSION

- 5.1. The Concessionaire shall with effect from the PTO Commencement Date, have the right and obligation at its own cost and expense:

5.1.1. to promote the Chargeable Services at its Test Centres;

5.1.2. to provide the Chargeable Services to Candidates in accordance with Schedule 2.1 (Authority's Requirements); and

5.1.3. to collect and retain a Fee for the provision of the Chargeable Service as set out in Schedule 7.1 (Fees)

in each case, subject to and in accordance with the provisions of this Concession Agreement.

6. MOBILISATION

- 6.1. In relation to Mobilisation, each Party shall perform those obligations which are placed on it by Schedule 6.1 (Mobilisation and Permit to Operate) and the Mobilisation Plan, to the timescales set out in the Mobilisation Plan, or as otherwise agreed by the Parties.

7. PERMIT TO OPERATE

- 7.1. The Authority shall issue the Permit to Operate if and when, the Concessionaire has complied satisfactorily with the requirements set out in Schedule 6.1 (Mobilisation and Permit To Operate) relating to the Mobilisation Services.

- 7.2. If the Authority has not issued the Permit to Operate in accordance with Clause 7.1 by the Cut-Off Date, the Authority shall have the right to either:

7.2.1. extend the Cut-Off Date for such additional time as may be specified by the Authority; or

7.2.2. terminate the Concession Agreement in accordance with Clause 36.1.2 (Termination on Default) on the grounds that the failure to obtain the Permit to Operate is a material Default, which is incapable of remedy.

- 7.3. Where the Authority has not still issued the Permit to Operate on the expiry of any extension of the Cut-Off Date under Clause 7.2.1, notwithstanding the extension of time, the Authority shall have the right to exercise either of the options set out in Clause 7.2.1 and 7.2.2.

8. THE SELT SERVICE

- 8.1. All elements of the SELT Service shall meet the Authority's Requirements as set out in Schedule 2.1 (Authority's Requirements).
- 8.2. As a separately enforceable obligation to that contained in Clause 8.1 above, the SELT Service shall meet any Legislative Requirements and comply with any applicable Law from time to time in force.
- 8.3. In procuring any goods in relation to or as part of the SELT Service, the Concessionaire shall not discriminate against any suppliers or potential suppliers on the grounds of that supplier's nationality.
- 8.4. The Concessionaire shall provide the SELT Service with reasonable care and diligence including but not limited to Good Industry Practice and in accordance with its own established internal procedures.
- 8.5. The Concessionaire warrants and represents that all Concessionaire Personnel assigned to the identification and provision of the SELT Service shall possess and exercise the skill and experience, qualifications and expertise necessary for the proper performance of their duties.
- 8.6. The Concessionaire warrants and represents that it has full capacity and authority and all necessary consents (including, where relevant, the consent of its Parent Company) to enter into and perform this Concession Agreement and that this Concession Agreement has been executed by a duly authorised representative of the Concessionaire.
- 8.7. In providing the SELT Service, the Concessionaire is committed to the process of continuous improvement. Accordingly, through processes including (but not limited to) the introduction of improvements in the delivery of the SELT Service, which may include adoption of changes to or new methodologies, tools and processes such as online testing), the Concessionaire shall keep the SELT Service under review.

9. TIMESCALES

- 9.1. In the event that the Concessionaire fails to comply with an obligation set out in this Concession Agreement by the relevant date including, without limitation, any date set out in the Mobilisation Plan for the completion of any Milestone, owing to its Default, the Concessionaire shall, at the request of the Authority and without prejudice to the Authority's other rights and remedies, arrange all such additional resources as are necessary to comply fulfil this obligation promptly and at no additional cost to the Authority.
- 9.2. In the event that the Concessionaire fails to fulfil an obligation by the relevant date as specified owing to the Default of the Authority, then:
 - 9.2.1. any timescales shall be extended by a period equal to the period of delay for which the Authority is responsible; and
 - 9.2.2. both Parties shall work together to mitigate the effect of the delay on the

provision of the SELT Service.

10. AUTHORITY'S PROPERTY

- 10.1. Any Authority's Property provided for the provision of SELT Service shall remain the property of the Authority and shall be used in the identification and provision of the Concessionaire's Solution and for no other purpose.
- 10.2. On the expiry or termination of this Concession Agreement, the Concessionaire shall indemnify the Authority in relation to any loss of or damage to the Authority's Property during the Term other than fair wear and tear resulting from normal and proper use.

11. NO INFORMATION WARRANTY

- 11.1. The Concessionaire confirms and declares that it has examined Schedule 2.1 (Authority's Requirements) and the terms of the Concession Agreement and agrees that no claim from the Concessionaire will be allowed on the grounds of misinterpretation by it of any matter relating to the Authority's Requirements, or the terms of this Concession Agreement.

12. CONCESSIONAIRE'S EQUIPMENT

- 12.1. The Concessionaire shall provide all Concessionaire Equipment necessary for the identification and provision of the SELT Service.
- 12.2. All Concessionaire Equipment shall be at the risk of the Concessionaire.
- 12.3. The Concessionaire shall be responsible for the safety of the Concessionaire Equipment and shall maintain all items of Concessionaire Equipment in good and serviceable condition and carry out regular safety checks.
- 12.4. The Concessionaire shall be responsible for all necessary repairs to and replacement and insurance costs of the Concessionaire Equipment.

13. SECURITY AND BCDR

- 13.1. The Concessionaire shall ensure the safety and security of the SELT Services in accordance with Schedule 2.1 (Authority's Requirements) and the provisions of Schedule 2.2 (Security).
- 13.2. The Parties shall comply with the provisions of the BCDR Plan and Schedule 8.5 (BCDR Plan).

14. TEST CENTRES

- 14.1. The Concessionaire shall:
 - 14.1.1. provide Test Centres within the relevant Region(s) in accordance with the terms of this Concession Agreement, in order to meet the demand for Chargeable Services in the relevant Region(s); and
 - 14.1.2. comply (and shall procure that its Sub-contractors comply) with all

relevant obligations under any lease or tenancy of each Test Centre.

- 14.2. The Concessionaire shall apply for and obtain all necessary planning permissions and other consents, certificates and licences in respect of the Test Centre and all associated conversion and fit-out works.
- 14.3. The Concessionaire shall provide all fittings, furnishings, equipment, hardware and software necessary to carry on the Concession ("**Concession Infrastructure**").
- 14.4. The Concessionaire shall undertake and bear the cost of installing the Concession Infrastructure in the Test Centres and their maintenance, improvement and alteration.

15. CONCESSIONAIRE'S PERSONNEL

- 15.1. All Concessionaire Personnel shall:
 - 15.1.1. possess the qualifications, training and competence appropriate to the tasks for which they are employed; and
 - 15.1.2. within the UK Region only, be free of restrictions on their ability to take up paid employment in the UK which arise from their immigration status.
- 15.2. All Concessionaire Personnel involved with the set-up and provision of the SELT Service shall have the appropriate level of security clearance as advised by the Authority, and in accordance with the provisions of Schedule 9.3 (Personnel Clearance Procedure).
- 15.3. The Concessionaire shall be entirely responsible for all aspects, including costs, of the employment or engagement of the Concessionaire Personnel including, without limitation, for the termination of the contract of employment of any of the Concessionaire Personnel and of any contract for services relating to any of the Concessionaire Personnel (including without limitation any redundancy or other termination payment which may arise), whether such costs arise in relation to the expiry or termination of the Concession Agreement or otherwise.
- 15.4. The Concessionaire shall have in place and promote a 'whistle blowing' policy in accordance with UK or local legislation (as applicable). Such policy shall include provisions to protect Concessionaire Personnel from instances of bullying or harassment from either the employer or co-workers and encourage Concessionaire Personnel to notify the Authority of any matter where disclosure is in the public interest.

16. CONCESSIONAIRE'S STATUS

- 16.1. Nothing in this Concession Agreement shall be construed as creating a legal partnership, a joint venture, a contract of employment, nor a relationship of principal and agent between the Authority and Concessionaire.

MONITORING THE CONCESSIONAIRE'S PERFORMANCE**17. GOVERNANCE, MEETINGS AND MONITORING***Representatives*

- 17.1. The Parties have agreed to the appointment of the persons named in Schedule 8.1 (Governance and Contract Management) and Schedule 9.2 (Personnel and Key Representatives) as their Representatives. The Representatives shall have the authority to act on behalf of their respective Party on the matters set out in Schedule 8.1 (Governance and Contract Management).
- 17.2. Either Party may, by written notice to the other, revoke or amend the authority of its Representative or appoint a new Representative.

Governance

- 17.3. The Parties agree to manage this Concession Agreement through the governance structures detailed in Schedule 8.1 (Governance and Contract Management).
- 17.4. The Concessionaire's Representative shall attend any meetings requested by the Authority's Representative to discuss the SELT Service, the Concessionaire's performance thereof and any other issues which have arisen in relation to the Concession Agreement.

Management Information

- 17.5. The Concessionaire shall provide Management Information in accordance with the provisions of Schedule 2.3 (Service Levels, Performance and Liquidated Damages) and Schedule 8.7 (Management Information).

Audits

- 17.6. The Authority shall have the right to carry out Audits of the Concessionaire and any Sub-contractor in accordance with Schedule 8.4 (Audits, Records and Assurance).
- 17.7. The Concessionaire shall comply with the provisions set out in Schedule 8.4 (Audits, Records and Assurance) with regard to the conduct of Concessionaire Audits.
- 17.8. The Parties shall comply with the provisions Schedule 8.4 (Audits, Records and Assurance) in relation to the production, storage and maintenance of Records.

Action Plans

- 17.9. The Concessionaire shall notify the Authority as specified in Schedule 2.3 (Service Levels, Performance and Liquidated Damages) on each and every occasion that the Concessionaire fails to comply with one or more of the Authority Requirements.

- 17.10. As part of its notification under Clause 17.9, the Concessionaire shall also notify the Authority of its proposals for remedying the relevant failure including any timescales for resolution. This plan shall be referred to as an "Action Plan".
- 17.11. If the issues identified in the Action Plan cannot be rectified within the timescales specified by the Concessionaire, a new Action Plan shall be provided, which shall include further information about the delay and revised timescales for resolution.

Remedial Plan Process

- 17.12. The Action Plan process is intended to provide a methodology for identifying and resolving issues relating to the SELT Services in a timely, and relatively simple, manner. However, where the Action Plan process has failed, or where a material Default, occurs, the Remedial Plan Process shall apply instead.
- 17.13. The Remedial Plan Process is as follows:
- 17.13.1. The Authority shall notify the Concessionaire that it considers that the Concessionaire is in material Default and that it requires a Remedial Plan. This notice may specify the matters complained of in outline but must contain sufficient detail so that it is reasonably clear what the Concessionaire has to remedy.
- 17.13.2. The Concessionaire shall provide the Authority with a draft Remedial Plan within five (5) Working Days (or any other period agreed by the Parties) even if the Concessionaire disputes that it is responsible for the matters complained of.
- 17.13.3. The Concessionaire shall ensure that the draft Remedial Plan:
- (a) specifies the steps that the Concessionaire proposes to take to remedy that material Default (including actions and timings); and
 - (b) is in sufficient detail for the plan to be properly evaluated by the Authority.
- 17.13.4. If the Authority considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, or will take too long to complete, or will not remedy the matters complained of, then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Escalation Process.
- 17.13.5. If despite the measures taken under Clause 17.13.4 a Remedial Plan cannot be agreed within twenty (20) Working Days of the date of its submission, then the Authority may elect to end the Remedial Plan Process and serve a Termination Notice which shall take effect unless the Concessionaire remedies the Default within a period

specified in the Termination Notice which shall not be less than thirty (30) days from the date on which the Termination Notice is sent to the Concessionaire.

17.13.6. If a Remedial Plan is agreed between the Parties but the Concessionaire fails to implement the Remedial Plan the Authority may either give the Concessionaire a further opportunity to resume full implementation of the Remedial Plan or escalate any issues arising out of the failure to implement the Remedial Plan using the Escalation Process.

17.13.7. If the reasons for the Concessionaire's failure to implement the Remedial Plan have not been resolved despite the use of the Escalation Process, and the Concessionaire has not otherwise remedied the Default, then the Authority may serve a Termination Notice and the Agreement shall terminate on the last day of the period specified by the Authority in its notice, which shall not be less than thirty (30) days from the date on which the Termination Notice is sent to the Concessionaire.

17.13.8. The Authority shall not be obliged to follow the Remedial Plan Process if:

- (a) a Remedial Plan has previously been implemented in respect of the relevant Default but the Concessionaire failed to remedy the material Default by those means; or
- (b) there is an occurrence of substantially the same material Default within a period of three (3) months following the conclusion of the relevant Remedial Plan;
- (c) In either case the Authority may serve a Termination Notice and the Agreement shall terminate on the last day of the period specified by the Authority in its notice, which shall not be less than thirty (30) days from the date on which the Termination Notice is sent to the Concessionaire, unless the Concessionaire remedies the Default within that period.

PRICE AND PAYMENT

18. PAYMENT AND VAT

18.1. For the avoidance of doubt, the Authority shall not make any monetary payment to the Concessionaire in respect of the identification and provision of the SELT Service.

18.2. The Concessionaire shall be compensated for the provision of the SELT Service through collection of a Fee from each Candidate.

18.3. The Concessionaire shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Concessionaire's failure to account for or to pay any VAT relating to payments

made to the Concessionaire in accordance with this Concession Agreement. Any amounts due under this Clause 18.3 shall be paid in cleared funds by Concessionaire to the Authority within 30 days of receipt of a valid invoice therefore and not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

LIABILITIES

19. INDEMNITIES AND INSURANCE

- 19.1. The Concessionaire shall indemnify the Authority fully against all claims, proceedings, damages, expenses, legal costs (on a solicitor and client basis) and any other liabilities in respect of any death or personal injury or loss of or damage to property which is caused directly or indirectly by any act or omission of the Concessionaire, the Concessionaire Personnel or its Sub-contractors. This Clause shall not apply if and to the extent that the Concessionaire is able to demonstrate that such injury, death or loss or damage to property was not caused by its negligence or by the negligence of the Concessionaire Personnel or Sub-contractors.
- 19.2. The Concessionaire shall effect with a reputable insurance company a policy or policies of insurance providing cover in respect of all risks which may be incurred by the Concessionaire arising out of the performance of this Concession Agreement, The Concessionaire shall maintain such insurance in full force throughout the term of this Concession Agreement and shall pay all premiums and other sums due in respect of such insurance and shall not do anything which may vitiate the insurance in whole or in part.
- 19.3. The Concessionaire shall hold employer's liability insurance in respect of the Concessionaire Personnel in accordance with any legal requirement for the time being in force.
- 19.4. The Concessionaire shall produce to the Authority's Representative, on request, copies of all insurance policies referred to in this Clause or other evidence (such as a broker's letter of verification) confirming the existence and extent of the cover given by those policies together with any renewal certificates and evidence of payment of the latest premiums due under those policies. The Concessionaire shall inform the Authority immediately if any insurer issuing a policy to which this Clause relates amends, withdraws or extends cover or refuses a claim.
- 19.5. Neither the terms of any insurance policy, nor the amount of cover obtained, shall relieve the Concessionaire of any of its liabilities under this Concession Agreement.

20. LIMITS OF LIABILITY

- 20.1. Neither Party excludes or limits liability for:
- 20.1.1. death or personal injury caused by its negligence or that of its employees, agents or sub-contractors (as applicable); and
- 20.1.2. fraud or fraudulent misrepresentation.

- 20.2. Subject to Clauses 20.1 and 20.3, the Concessionaire's total aggregate liability in respect of any loss, whether arising from a Default of the Concessionaire, tort (including negligence), breach of statutory duty or otherwise under or in connection with this Concession Agreement shall not exceed ten million pounds (£10m) in any rolling twelve (12) month period during the Term.
- 20.3. Subject to 20.1 and Clause 20.4, neither Party shall be liable to the other for:
- 20.3.1. any indirect, special or consequential loss or damage;
 - 20.3.2. any loss of savings, profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 20.4. Subject to substantiation by reasonable evidence, the Authority may, amongst other things, recover as a direct loss:
- 20.4.1. any additional operational and/or administrative costs and expenses arising from a Default of the Concessionaire;
 - 20.4.2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from Default of the Concessionaire; and/or
 - 20.4.3. the additional cost of procuring another undertaking to carry on the Concession for the remainder of the Term.

21. SERVICE LEVELS

- 21.1. In providing the SELT Services, the Concessionaire shall at all times meet or exceed the Service Levels.
- 21.2. If a Service fails to meet the relevant Service Level or if the Concessionaire otherwise fails to comply with its obligations under this Concession Agreement (a "**Service Failure**") the Concessionaire shall notify the Authority in accordance with the Schedule 2.3 (Service Levels, Performance and Liquidated Damages).
- 21.3. In the event of any Service Failure, the Authority shall be entitled to apply Liquidated Damages and/or Sanctions in accordance with the provisions of Schedule 2.3 (Service Levels, Performance and Liquidated Damages).

PROTECTION OF INFORMATION AND INTELLECTUAL PROPERTY RIGHTS.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1. Each Party's rights and obligations in relation to the other's Intellectual Property Rights are set out in Schedule 5.1 (Intellectual Property Rights).
- 22.2. Neither Party has the right to use the other Party's trade marks, logos or branding, without the prior written consent of an authorised representative of that other Party.

23. PROMOTION OF THE CONCESSION

- 23.1. Each Party shall comply with the provisions of this Clause 23 when using the other Party's Licensed Marks and/or when making any advertisement, public statement or press announcement in relation to this Concession Agreement.
- 23.2. The Concessionaire shall, at its own expense, brand, advertise and promote the Concession.
- 23.3. The Concessionaire shall not use or make available to the public any branding and/or advertising materials with the Authority's Marks without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

24. CONFIDENTIAL INFORMATION

- 24.1. Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to Confidential Information, the Concessionaire acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents, is the property of the Crown.
- 24.2. Each Party shall:
 - 24.2.1. Ensure that any person employed or engaged by them shall use Confidential Information received from the other Party solely to the extent necessary for the purpose of this Concession Agreement;
 - 24.2.2. Ensure that Confidential Information received from the other Party is not disclosed to any third party without the prior written consent of the other Party; and
 - 24.2.3. Take all necessary precautions to ensure that Confidential Information is properly protected.
- 24.3. Nothing in this Clause shall apply to any information which:
 - 24.3.1. is or becomes public knowledge other than by breach of this Concession Agreement; and/or
 - 24.3.2. was legitimately in the possession of the Party concerned, without restriction as to its disclosure, before that Party received it from the other Party; and/or
 - 24.3.3. is received by either Party from a third party who acquired it lawfully and who is under no obligation restricting its disclosure; and/or
 - 24.3.4. a Party is obliged to disclose as part of its obligations in litigation or by an order of court.
- 24.4. Nothing in this Clause shall prevent the Authority:
 - 24.4.1. from disclosing such information relating to the outcome of the

procurement for this Concession Agreement as is required for publication in the Supplement to the Official Journal of the European Union or to satisfy any other legal obligations on the Authority or the requirements of government policy; and/or

24.4.2. disclosing such information as is necessary to comply with its obligations the Freedom of Information Act 2000; and/or

24.4.3. disclosing any information obtained from the Concessionaire to:

24.4.3.1 any other department, office or agency of the Crown; and/or

24.4.3.2 any person or organisation engaged in providing any services to the Authority for any purpose relating to or ancillary to the Concession Agreement,

provided that in disclosing information under Clause 24.4.3.1 or 24.4.3.2 the Authority discloses only such information as is necessary for the purpose concerned and then only with the Concessionaire's prior consent (not to be unreasonably withheld), provided that a confidentiality undertaking is given where appropriate.

25. PUBLICITY

25.1. The Concessionaire (and its Sub-contractors, the Concessionaire Personnel and consultants) shall not make any public statement relating to the Concession Agreement nor the identification and provision of the SELT Service without the prior written consent of the Authority, such consent not unreasonably to be withheld or delayed.

25.2. Nothing in this Clause 25 shall prevent the Concessionaire from complying with any legal obligation placed upon it or from making any announcement required by any securities exchange or regulatory authority or government body to which it subscribes including the London Stock Exchange or the Panel on Takeovers and Mergers.

26. DATA PROTECTION ACT

26.1. Both Parties warrant that they will duly observe all their obligations under the Data Protection Act 1998, Directive 95/46 EC and any other associated legislation or regulations (the "**Data Protection Requirements**"). Both Parties shall comply with any applicable codes of practice or other relevant guidance issued under or in connection with the Data Protection Requirements.

26.2. Where applicable, the Concessionaire shall ensure that it and any of its Sub-contractors involved in the provision of the identification and provision of the SELT Service shall be notified under the appropriate part of the Data Protection Act 1998.

26.3. Where the Concessionaire or any Sub-contractor processes personal data as part of the identification and provision of the SELT Service, the Concessionaire shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against

accidental loss or destruction of, or damage to, personal data.

26.4. The Authority may from time to time serve on the Concessionaire an information notice requiring the Concessionaire, within such time and in such form as is specified in the notice, to furnish the Authority with such information as the Authority shall reasonably require relating to:

26.4.1. compliance by the Concessionaire or its Sub-contractors with the Concessionaire's obligations under this Concession Agreement in connection with the processing of personal data; and/or

26.4.2. the Concessionaire or its Sub-contractor's handling of the rights of data subjects, including but not limited to subject access rights.

26.5. For the purposes of this Clause, "data controller", "data processor", "data subject", "personal data", "processing" and "subject access rights" shall have the meanings given to them in the Data Protection Act 1998.

26.6. Where the Concessionaire or any Sub-contractor as part of the identification and provision of the SELT Service processes personal data as a data controller, the Concessionaire warrants that it will obtain any personal data fairly and lawfully. Further, the Concessionaire warrants that it is able to disclose such data to the Authority and that it has designed the SELT Service in such a way as to ensure that the use by the Authority of the personal data obtained in connection with the identification and provision of the SELT Services does not breach any provisions of the Data Protection Act 1998 or any associated legislation or regulations.

26.7. The Concessionaire will ensure that all its Sub-contractors shall:

26.7.1. take reasonable steps to ensure the reliability and integrity of any Concessionaire Personnel who have access to the Personal Data;

26.7.2. promptly notify the Authority if it receives:

26.7.3.1 a request from a Data Subject concerning access to any Personal Data relating to the SELT Concession;

26.7.3.2 a request from a Data Subject to rectify, block or erase any Personal Data relating to the Concession, to prevent the processing of Authority Data in connection with direct marketing and/or to require an explanation of any decision made by automated means in respect of such Data Subject's Authority Data; or

26.7.3.3 a complaint, communication or request relating to the Concessionaire's Processing of Personal Data relating to the Concession.

26.8. The Concessionaire shall not perform its obligations under this Concession Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

27. FREEDOM OF INFORMATION

27.1. For the purposes of this Clause:

27.1.1. "FOI Act" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act or any code issued pursuant to sections 45 or 46 of that Act or any guidance issued by the Information Commissioner;

27.1.2. "Information" means all records and information of any sort obtained, created, collected or held by the Concessionaire in relation to this Concession Agreement; and

27.1.3. "Information Request" means a request for Information within the meaning of section 8 of the FOI Act.

27.2. The Concessionaire acknowledges that the Authority is subject to the FOI Act and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Act.

27.3. The Concessionaire acknowledges that the Authority may be obliged to comply with its obligations under the FOI Act without informing or consulting the Concessionaire.

27.4. Without prejudice to the generality of Clause 27.2, the Concessionaire shall provide the Authority with any Information necessary to enable the Authority to respond to an Information Request within 5 working days of a corresponding request from the Authority (or such other period as the Authority may reasonably specify).

27.5. The Authority shall be responsible for determining whether and to what extent any of the exemption provisions in Part II of the FOI Act apply in relation to an Information Request. The Concessionaire shall comply with any such determination by the Authority.

27.6. If the Concessionaire receives an Information Request which ought to have been addressed to the Authority it shall not attempt to process the request itself but shall pass it to the Authority within 2 Working Days of receiving the request.

27.7. The Concessionaire shall ensure that any Sub-contract it enters into in relation to this Concession Agreement contains a condition in similar terms to this Clause 27 whereby the Sub-contractor acknowledges the Authority's responsibilities under the FOI Act and agrees to co-operate with the Authority so that these responsibilities can be discharged.

27.8. For the avoidance of doubt, the Parties confirm and agree that the Concessionaire has set out in Schedule 4.2 (Commercially Sensitive Information) a list of the information which on it considers to be "Commercially Sensitive Information" for the purposes of this Concession Agreement. However, the Parties acknowledge that, notwithstanding the contents of this Schedule, the Authority may nonetheless be obliged to disclose this

information as part of its legal obligations under the FOI Act 2000 (including, without limitation, where it is ordered to make sure disclosure by the Information Commissioner). In the event that the Authority is required to make such a disclosure, it shall use all reasonable endeavours to notify the Concessionaire in advance of such disclosure, so that the Concessionaire has the opportunity to make representations to interested third parties, as appropriate.

28. OFFICIAL SECRETS ACTS

- 28.1. The Concessionaire undertakes to abide by (and ensure that the Concessionaire Personnel and Sub-contractors abide by) the provisions of the Official Secrets Acts 1911 to 1989.
- 28.2. If the Authority's Representative requires it, the Concessionaire shall ensure that any Concessionaire Personnel nominated by the Authority sign a personal undertaking that they will comply with the provisions of the Official Secrets Acts 1911 to 1989.
- 28.3. In the event that the Concessionaire and/or the Concessionaire Personnel fail to comply with this Clause, the Authority reserves the right to terminate the Concession Agreement by giving notice in writing to the Concessionaire.

STATUTORY OBLIGATIONS AND REGULATIONS

29. HEALTH AND SAFETY

- 29.1. The Concessionaire shall comply with all relevant health and safety requirements which apply to the Concessionaire, the Concessionaire Personnel and other persons working on the provision of the Services and/or at the Test Centres in accordance with UK acts, orders, regulations and codes of practice relating to health and safety and/ or as applicable, in accordance with local legislation in each country, where the Test is undertaken.
- 29.2. Nothing in the Concession Agreement shall release either Party from their obligations under any requirements of Law in relation to health and safety.

30. UNLAWFUL DISCRIMINATION

- 30.1. The Concessionaire shall comply with any applicable anti-discrimination legislation relating to discrimination in employment or service provision (whether in relation to disability, gender, gender reassignment, race, colour, ethnic or national origin, sexual orientation, religion or belief or age or otherwise) as may be amended from time to time (the "**Discrimination Legislation**").
- 30.2. The Concessionaire shall take all reasonable steps to secure the observance of Clause 30.1 by all Concessionaire Personnel and any of its Sub-contractors who are engaged in the performance of the Services.

31. PREVENTION OF CORRUPTION

31.1. The Concessionaire shall not do (and warrants that in entering this Concession Agreement it has not done) any of the following:

31.1.1. offer, give or agree to give any employee or representative of the Authority or the Crown any gift or consideration of any kind as an inducement or reward for doing or refraining from doing (or having done or refrained to do) any act in relation to the obtaining or performance of this Concession Agreement or any other agreement with the Crown; or

31.1.2. enter into this Concession Agreement or any other agreement with the Crown in connection with which commission has been paid (or agreed to be paid) on the Concessionaire's behalf or with its knowledge unless, before the Concession Agreement was signed, particulars of the commission were disclosed in writing to the Authority.

31.2. The Concessionaire shall:

31.2.1. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010;

31.2.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

31.2.3. have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, and shall enforce them where appropriate; and

31.2.4. promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Concessionaire in connection with the performance of this Concession Agreement.

31.3. Where the Concessionaire (or a Sub-contractor or member of the Concessionaire's Personnel or anyone acting on its behalf) commits or has committed any act or omission referred to in Clause 31.1 or Clause 31.2 in relation to this or any other agreement which the Concessionaire has with the Crown, the Authority has the right to:

31.3.1. terminate the Concession Agreement and recover from the Concessionaire the amount of any loss resulting from the termination; or

31.3.2. recover from the Concessionaire any other loss sustained in consequence of any breach of this Clause whether or not the Concession Agreement has been terminated.

31.4. Notwithstanding Clause 48 (Dispute Resolution and Mediation), any dispute, difference or question arising in relation to the interpretation of Clauses 31.2 and 31.3 or the right of the Authority to terminate this Concession Agreement under Clause 31.3.1 or the amount or value of any such gift, consideration or commission, the decision of the Authority shall be final.

32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

No person who is not a Party to this Concession Agreement (including, without limitation, any Sub-contractor, member of the Concessionaire's Personnel or anyone else acting on the Concessionaire's behalf) shall have any right to enforce any term of this Concession Agreement which expressly or by implication confers a benefit on him without the prior written agreement of both Parties. Any agreement made under this Clause shall expressly refer to this Clause in its terms.

EXIT PROVISIONS**33. EXIT AND CO-OPERATION WITH HANDOVER**

The Parties shall comply with their respective obligations set out in Schedule 8.6 (Exit Management Plan) in relation to the termination or expiry of the Concession Agreement.

34. TUPE OBLIGATIONS

In relation to the termination or expiry of this Concession Agreement, the Parties shall comply with their respective obligations set out in Schedule 9.1 (Personnel Transfer).

DEFAULT, DISRUPTION AND TERMINATION**35. TERMINATION ON CHANGE OF CONTROL OR INSOLVENCY OR OTHER OPERATIONAL ISSUES**

35.1. The Authority may terminate the Concession Agreement by written notice having immediate effect if:

35.1.1. The Concessionaire undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Concession Agreement; and/or

35.1.2. The Concessionaire, if a company, passes a resolution (or the court makes an order) that the Concessionaire be wound up otherwise than for the purpose of solvent amalgamation or reconstruction or if a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Concessionaire's business or any part of it or if the Concessionaire is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; and/or

35.1.3. The Concessionaire, if an individual or firm, or in the case of a firm any partner in that firm, is the subject of a bankruptcy petition or bankruptcy order or has a receiving order or administration order made against him or makes any compromise or arrangement with or for the benefit of its creditors or appears unable to pay a debt or has no reasonable prospects of doing so within the meaning of sections 267 and 268 of the

Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

36. TERMINATION ON DEFAULT

36.1. The Authority may terminate the Concession Agreement or terminate the provision of any part of the SELT Service, by giving written notice to the Concessionaire with immediate effect if the Concessionaire is in fundamental breach of any obligation under the Concession Agreement and:

36.1.1. the Concessionaire has not remedied the breach to the satisfaction of the Authority within thirty (30) Days, or such other period as may be specified by the Authority, after service of a written notice specifying the breach and requiring it to be remedied;

36.1.2. the breach is not capable of remedy; or

36.1.3. the breach is a fundamental breach of the Concession Agreement.

37. BREAK

The Authority shall have the right to terminate the Concession Agreement, or to terminate the provision of any part of the SELT Services, at any time by giving not less than six (6) Months' written notice to the Concessionaire. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of SELT Services to be provided by the Concessionaire during the period of extension.

38. CONSEQUENCES OF TERMINATION

If the Authority terminates the Concession Agreement under Clauses 36 (Termination on Default) or 37 (Break), or terminates any part of the English Language Testing Services under those Clauses then the Parties shall comply with their respective obligations set out in Schedule 9 (Personnel Matters) and Schedule 8.6 (Exit Management Plan).

39. SURVIVAL OF OBLIGATIONS

The expiry or termination of this Concession Agreement however caused shall not affect any right or remedy which has accrued to the Concessionaire or the Authority or which accrues to the Concessionaire or Authority thereafter. Without prejudice to the generality of the previous sentence, the following Clauses of this Concession Agreement shall survive expiry or termination: Clause 19 (Indemnities and Insurance); Clause 22 (Intellectual Property Rights); Clause 24 (Confidential Information); Clause 25 (Publicity); Clause 27 (Freedom of Information); Clause 17 (Governance, Meetings and Monitoring); Clause 28 (Official Secrets Acts); Clause 31 (Prevention of Corruption); Clause 33 (Exit and Co-operation with Handover); Clause 48 (Dispute Resolution or Mediation), together with any provisions of any Schedule which expressly or by implication will survive such expiry or termination.

CONTROL OF THE CONCESSION AGREEMENT**40. SERVICE OF NOTICES AND COMMUNICATIONS**

- 40.1. All notices, invoices and other communications relating to this Concession Agreement shall be in writing and shall be deemed to be duly given when sent by prepaid first class post, by facsimile, by electronic mail or by hand delivery to the other Party at the number or address set out below:

If to the Concessionaire:

Address and Electronic mail address:

Address: For the attention of Victoria Sellar, Cambridge English Language Assessment, The University of Cambridge Local Examinations Syndicate, 1 Hills Road, Cambridge CB1 2EU, United Kingdom.

Electronic mail address: selt@cambridgeenglish.org

With copies of all notices etc served on UCLES to be sent to:

Address: For the attention of the Secretary to the British Council, British Council, 10 Spring Gardens, London, SW1A 2BN.

Electronic mail address: secretary@britishcouncil.org; and

Address: For the attention of the Company Secretary, IELTS Australia PTY Ltd, Level 8, 535 Bourke Street, Melbourne Victoria, 3000, Australia.

Electronic mail address: SELT.notices@idp.com

If to the Authority:

Address: TBA

Electronic mail address: TBA

- 40.2. Provided the notice or communication is not returned as undelivered (or, in the case of an electronic mail, provided there is no notice of failed transmission), the notice or communication shall be deemed to have been given or made three (3) working Days after posting if sent by post or at the time of delivery if delivered by hand or sent by electronic mail.
- 40.3. In proving that a notice or communication was given or made it shall be sufficient to prove that:
- 40.3.1. in the case of posting to prove that the envelope containing the notice or communication was properly stamped, addressed and posted;
- 40.3.2. in the case of a hand delivered letter to provide a statement from the person who delivered it indicating that it was hand delivered to the correct address; and

40.3.3. in the case of electronic mail to prove that it was sent to the correct electronic mail address or that it was acknowledged.

40.4. Either Party may change the addresses and details for delivery of notices under this Clause by notifying the other Party in writing.

41. SUB-CONTRACTING AND TRANSFER

41.1. The Concessionaire shall not assign, sub-contract or in any other way dispose of the Concession Agreement or any part of it without prior written approval of the Authority.

41.2. The Concessionaire shall be responsible for the errors and omissions of its Sub-contractors as if they were its own.

41.3. The details of any approved Sub-contractors are recorded in Schedule 4.1 (Sub-Contractors).

41.4. The Concessionaire shall not use self-employed individuals in the provision of the Services without the Authority's prior written approval.

42. FURTHER ASSURANCES

42.1. Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Concession Agreement.

43. WAIVER

43.1. The failure of either Party to exercise a right or remedy under this Concession Agreement shall not constitute a waiver of that right or remedy.

43.2. No waiver shall be effective unless it is communicated to the other Party in writing.

43.3. A waiver of any right or remedy arising from a breach of this Concession Agreement shall not constitute a waiver of any right or remedy arising from any separate breach.

44. SEVERABILITY

44.1. If any provision or Clause of this Concession Agreement is held to be invalid, illegal or unenforceable by any court, such provision shall be severed and the remainder of the provisions of the Concession Agreement shall continue in full force and effect as if the Concession Agreement had executed without the provision or Clause in question.

44.2. In the event that a court holds a provision or Clause to be invalid, illegal and unenforceable and the provision is so fundamental that its removal would prevent the accomplishment of the purpose of the Concession Agreement, the Parties shall immediately commence negotiations in good faith to ensure that the purpose of the Concession Agreement is achieved in the absence of the provision or Clause in question.

45. VARIATION

45.1. The Concession Agreement shall not be varied unless such variation is made in writing and signed and dated by an authorised representative of both Parties.

45.2. Changes shall be dealt with through Schedule 8.2 (Change Control Procedure).

46. GUARANTEE

46.1. Not used.

47. FORCE MAJEURE

47.1. Subject to the remaining provisions of this Clause 47, to the extent that either Party is prevented from performing its obligations under this Concession Agreement for reasons beyond the Party in question's reasonable power to control (a "**Force Majeure Event**") then that Party's duty to perform its obligations under this Concession Agreement will (during the continuation of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Force Majeure Event.

47.2. Notwithstanding Clause 47.1, the following shall not be deemed to constitute a Force Majeure Event for the purposes of this Concession Agreement:

47.2.1. industrial action, strikes or lock-outs by employees of either Party or its sub-contractors (save where such affects the relevant Party's industry or, as appropriate, that of its sub-contractors generally and, in the case of a sub-contractor, where no substitute sub-contractor is reasonably available);

47.2.2. deliberate sabotage of, or malicious damage to, equipment or data where the sabotage is attributable to the relevant Party, its employees or sub-contractors;

47.2.3. an event which is attributable to a Party's wilful act, neglect or failure to take reasonable precautions against the Force Majeure Event; or

47.2.4. an event arising due to failure or delay by any other person in the performance of that other person's obligations to the affected Party (unless that person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

DISPUTES AND LAW**48. DISPUTE RESOLUTION AND MEDIATION**

The Parties shall attempt to resolve all Disputes in accordance with Schedule 8.3 (Dispute Resolution Procedure).

49. **GOVERNING LAW**

49.1. This Concession Agreement shall be governed by, and interpreted in accordance with, English law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

This Concession Agreement has been duly signed by the Parties.

SIGNED for and on behalf of **The Secretary of State for the Home Department**

SIGNED for and on behalf of **the Concessionaire** by:

Signed for and on behalf of the IELTS SELT Consortium as Concessionaire by THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE acting by THE UNIVERSITY OF CAMBRIDGE LOCAL EXAMINATIONS SYNDICAT".

Signature.....

Signature.....

Name.....D M TAYLOR.....

Name: Simon Lebus,.....

Position.....Commercial Director.....

Position:Group Chief Executive.....

Date.....9-2-2015.....

Date:12.2.2015.....