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Home Office

AUTHORITY: The Secretary of State for the Home Department

## **Schedule 8.4 – Audits, Records and Assurance**

Secure English Language Testing Services

Trinity College London

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## 1. INTRODUCTION

1.1 This Schedule sets out:

1.1.1 the requirements for the retention of proper records of processes and decisions taken relating to the performance and management of the Concession Agreement; and

1.1.2 the Authority's rights to audit the Concessionaire; and

1.1.3 the requirements for Concessionaire Audits.

## 2. RECORDS

2.1 The Concessionaire shall, during the Term and for a period of at least six (6) years following the expiry or termination of this Concession Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the operation of the Concession, including but not limited to all records (whether in electronic format or otherwise) referred to in Annex 8.4-1 to this Schedule (the "Records").

2.2 The Concessionaire shall retain and maintain the Records:

2.2.1 in accordance with the requirements of the Public Records Office ("PRO") and Good Industry Practice;

2.2.2 in chronological order;

2.2.3 in a form that is capable of audit; and

2.2.4 at its own expense.

2.3 The Concessionaire shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

2.4 Wherever practical, original records shall be retained and maintained in hard copy form. True copies of the original records may be kept by the Concessionaire where it is not practicable to retain original records.

## 3. RIGHT TO AUDIT

### AUDITS

3.1 The Authority may carry out or have carried out on its behalf:

3.1.1 one (1) Financial Audit (as further described in Paragraph 3.4 below) in each Concession Year;

3.1.2 one (1) Financial Audit in the twelve (12) months following the expiry or earlier termination of this Concession Agreement; and

3.1.3 one (1) Operational Audit, which shall consist of an announced and/or

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unannounced visit to each Test Centre across the Concessionaire's network, in each Concession Year.

- 3.2 In addition, the Authority may carry out such further Financial Audits and/or Operational Audits, as it deems appropriate.
- 3.3 To assist with all Audits—the Concessionaire shall ensure that its Personnel provide Authority's personnel, and those acting on behalf of the Authority, with immediate and full access to the relevant Test Centre, at all times on Working Days or in respect of ROW when the relevant Test Centre is expected to be in operation.
- 3.4 To assist with Financial Audits, the Concessionaire shall, upon the provision of reasonable notice, provide the Authority with:
  - 3.4.1 sufficient detail of the following costs incurred, or likely to be incurred, by the Concessionaire in performing the SELT Services including:
    - (a) Detailed labour costs;
    - (b) Accommodation costs (if applicable); and
    - (c) Sub-Contractor costs.
  - 3.4.2 such access as the Authority may reasonably require to the Concessionaire's accounts with respect to the calculation of the Fees.
  - 3.4.3 such other financial information as the Authority may from time to time reasonably require with respect to the calculation of the Fees.
- 3.5 The Concessionaire shall respond to any issues identified by the Authority as part of its Audits. The form of such response is to be agreed with the Authority following the relevant Audit.
- 3.6 Notwithstanding the provisions of Paragraph 3.1, where a Regulatory Body wishes to carry out, or requires the Authority to carry out an Audit, the Authority may comply with such request without affecting its other rights under this Paragraph.
- 3.7 The Authority shall use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Concessionaire or delay the provision of the SELT Service.

### **CONCESSIONAIRE AUDITS**

- 3.8 The Concessionaire, and those operating on its behalf, shall carry out audits of the delivery of the SELT Service to ensure that the Authority's Requirements continue to be met in each Test Centre and/ or in any business area involved in the delivery of the SELT Service.
- 3.9 The Concessionaire may elect to audit its own Test Centres or may use an independent authority-approved third party to carry out such Concessionaire Audits.
- 3.10 The findings of such Concessionaire Audits shall be documented by the Concessionaire and provided to the Authority at its request.

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- 3.11 The Concessionaire shall make the records of the Concessionaire Audits available for inspection by or on behalf of the Authority throughout the Term and for six (6) years thereafter.
- 3.12 Each Concessionaire Audit shall assess that the Authority Requirements are being met by each individual Test Centre. Concessionaire Audits are intended to provide assurance around security, customer service and the integrity of the Testing Process.
- 3.13 The Authority shall provide the Concessionaire with a template to be used when conducting Concessionaire Audits. This shall be annexed at Annex 8.4-2.

### **INDEPENDANT AUDIT**

- 3.14 The Concessionaire shall provide the Authority with an Independent Audit which shall be produced by an annual independent, regulated UK auditor, which shall provide independent assurance that the Concessionaire is meeting the Authority's Requirements. The first audit shall be provided 12 months after the commencement of service provision and every 12 months thereafter for the term of the Concession.

### **MYSTERY SHOPPER EVENTS**

- 3.15 The Concessionaire shall engage at its own expense a qualified Third Party who shall carry out independent Mystery Shopper Events at least:
  - 3.15.1 once (1) per annum for UK Test Centres and
  - 3.15.2 once every two (2) years for Rest of World Test Centres.
- 3.16 The Mystery Shopper Events shall (without limitation) test whether:
  - 3.16.1 Test day photographs (and biometrics in-UK) of Candidates are being taken;
  - 3.16.2 signature samples are being taken from Candidates and compared with the identification provided;
  - 3.16.3 any attempt to register for a Test without identification/using non photographic identification/using fraudulent documentation is successful; and
  - 3.16.4 any attempt to ask the invigilator/examiner/registration personnel questions, or for help with questions and whether the request for help is successful.
- 3.17 The Mystery Shopper Events shall (without limitation) also check to ascertain whether any one or more of the following is successfully attempted by any Candidate:
  - 3.17.1 An attempt to enter the Test room after the Test has begun;
  - 3.17.2 An attempt to enter the Test room with any communications device (such as a mobile phone/laptop/wireless technology device);
  - 3.17.3 An attempt to enter the Test room with clothing partially covering the face;
  - 3.17.4 An attempt by any Candidate to leave the Test room and re-enter without having that Candidate's identity reconfirmed;

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3.17.5 An attempt to remove Test papers (for paper-based Tests only) from the Test room at the end of the Test.

- 3.18 The Concessionaire shall, procure that the relevant Third Party shall, within ten (10) Working Days of a Mystery Shopper Event taking place, produce a report outlining the outcome of that Mystery Shopping Event.
- 3.19 The Concessionaire shall instruct the relevant Third Party that undertakes each Mystery Shopper Event, to provide a copy of this to the Authority at the same time as it is provided to the Concessionaire, in full and unabridged form, and the Concessionaire shall procure compliance by the Third Party with this requirement.
- 3.20 Where required, and as highlighted by a Mystery Shopper Event report, the Concessionaire shall put into place appropriate action plans to remedy any problems identified during that Mystery Shopper Event and shall monitor and report regularly to the Authority on progress against the same.
- 3.21 The Concessionaire shall immediately alert the Authority via the Compromised Testing Notification where one or more issues have been identified as a result of a Mystery Shopper Event or a Concessionaire Audit.

## **4. NOTICE REQUIREMENTS**

- 4.1 The Authority shall devise a schedule of announced Audits based on the Test dates provided to it by the Concessionaire. This will be shared with the Concessionaire.
- 4.2 The Authority shall use its reasonable endeavours to give the Concessionaire:
  - 4.2.1 at least ten (10) Working Days' notice of when an Audit shall be conducted; and
  - 4.2.2 an estimate of the Audit's duration.
- 4.3 The Authority shall not be required to give the Concessionaire any prior notice of unannounced Audits to Test Centres,

## **5. AUDIT ASSISTANCE**

- 5.1 The Concessionaire shall ensure that it and its Sub-contractors provide all reasonable assistance to and co-operate with the Auditors and Audits, including providing full access to:
  - 5.1.1 the Test Centres and to any equipment used (whether exclusively or non-exclusively) in the performance of the SELT Service;
  - 5.1.2 the Concessionaire Personnel;
  - 5.1.3 the Records and Reports; and
  - 5.1.4 any other information reasonably required by the Auditor.

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5.2 In connection with any Audit, the Concessionaire shall give the Authority (and / or its agents or representatives) access for as long as necessary to:

5.2.1 those parts of the Concessionaire facilities where any Concessionaire Personnel, Audit Records, Concessionaire Materials, Sub-contractors are located; and

5.2.2 any of the Concessionaire's data, records and systems relating to the fulfilment of the Authority's Requirements and the provision of the SELT Service.

## 6. COSTS

6.1 Each Party shall bear its own costs of any audit undertaken, except where an auditor finds that the Concessionaire:

6.1.1 is in material Default; and/or

6.1.2 has not complied with its obligations under Paragraph 5.1

in which case, the Concessionaire shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of, or in relation to the audit.

6.2 If an audit identifies that the Concessionaire has failed to perform its obligations under this Concession Agreement in any material manner, the Parties shall, at the Authority's option agree and implement a Remedial Plan.

## 7. ADDITIONAL AUDITS

7.1 If the Authority wishes to conduct further audits in addition to those permitted by Paragraph 3.1 above, then the Authority may do so.

## ANNEX 8.4-1 RECORDS TO BE KEPT BY THE CONCESSIONAIRE

In accordance with the provisions of Paragraph 2 of this Schedule 8.4, the Concessionaire shall maintain the following records:

1. This Concession Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Concession Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Concessionaire's Representative(s).
4. All operation and maintenance manuals prepared by the Concessionaire for the purpose of maintaining the provision of the SELT Service and the Test Centres.
5. Documents prepared by the Concessionaire or received by the Concessionaire from a third party relating to a Force Majeure Event.
6. All formal notices, reports or submissions issued by the Concessionaire to the Authority Representative in connection with this Concession Agreement.
7. All certificates, licences, registrations or warranties in each case obtained by the Concessionaire in relation to the operation of the Concession.
8. Documents submitted by the Concessionaire in accordance with the Change Control Procedure.
9. Documents submitted by the Concessionaire pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
10. Documents evidencing any change in ownership or any interest in any or all of the shares in the Concessionaire and/or the Guarantor.
11. Financial records, including audited and un-audited accounts of the Guarantor and the Concessionaire.
12. Records required to be retained by the Concessionaire by Law, including in relation to health and safety matters and health and safety files and all consents.

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13. All documents relating to the insurances to be maintained under this Concession Agreement and any claims made in respect of them.
14. All other records, notices or certificates required to be produced and/or maintained by the Concessionaire pursuant to this Concession Agreement.

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## ANNEX 8.4-2 TEMPLATE FOR CONCESSIONAIRE AUDITS

*[Drafting Note: To be provided before the Concession Agreement is awarded.]*