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Home Office

AUTHORITY: The Secretary of State for the Home Department

## **Schedule 8.3 – Dispute Resolution Procedure**

Secure English Language Testing Services

Trinity College London

## DOCUMENT LIST

Volume	Title
	Concession Agreement
Schedules to Concession Agreement	SCHEDULE 1 Definitions
	SCHEDULE 2 Concession Requirement 2.1 Authority's Requirements 2.2 Security 2.3 Service Levels, Performance and Liquidated Damages
	SCHEDULE 3 Concessionaire's Solution
	SCHEDULE 4 Concessionaire Matters 4.1 Sub-Contractors 4.2 Commercially Sensitive Information
	SCHEDULE 5 IPR 5.1 Intellectual Property Rights
	SCHEDULE 6 Mobilisation 6.1 Mobilisation and Permit to Operate
	SCHEDULE 7 Financial Matters 7.1 Fees 7.2 Form of Guarantee
	SCHEDULE 8 Governance & Process 8.1 Governance and Contract Management 8.2 Change Control Procedure <b>8.3 Dispute Resolution Procedure</b> 8.4 Audits, Records and Assurance 8.5 BCDR Plan 8.6 Exit Management 8.7 Management Information
	SCHEDULE 9 Personnel Matters 9.1 Personnel Transfer 9.2 Personnel and Key Representatives 9.3 Personnel Clearance Procedure

## CONTENTS

1. INTRODUCTION .....	4
2. ESCALATION PROCESS.....	4
3. REFERRAL TO MEDIATION.....	5
4. SUB-CONTRACTORS .....	6
5. CONTINUED PERFORMANCE.....	6
6. COURT PROCEEDINGS .....	6

## 1. INTRODUCTION

- 1.1 The Purpose of this Schedule 8.3 is to set out the procedures to be followed by the Parties to resolve any Dispute which arises under the Concession Agreement.

## 2. ESCALATION PROCESS

- 2.1 In the first instance, the Parties shall use all reasonable endeavours to resolve all Disputes at the level at which such Dispute originates, as soon as practically possible.
- 2.2 Where the Dispute cannot be resolved at the level at which the Dispute originates, the Authority or the Concessionaire may refer the Dispute to the Authority Concession Manager and the Concessionaire Concession Manager for resolution.
- 2.3 Where the Authority Concession Manager and the Concessionaire Concession Manager are unable to resolve the Dispute within five (5) Working Days, the Authority or the Concessionaire Concession Manager may refer the Dispute to the Parties' authorised representatives at the first level in the Escalation Process. The Parties' authorised representatives at the next level of the Escalation Process are:

LEVEL	AUTHORITY	CONCESSIONAIRE
FIRST LEVEL	CONCESSION MANAGER	CONCESSION MANAGER
SECOND LEVEL	<b>Senior Representative</b>	<b>Senior Representative</b>

- 2.4 Except where an issue requires rapid resolution, where either Party's operations are or could be adversely affected or where either Party could incur significant costs as a result of non-resolution of the Dispute, escalation of a Dispute will be accompanied by a written report ('**Dispute Resolution Report**') prepared by the Party who served the Notice of Dispute. The Dispute Resolution Report will contain at least the following information:
- the date the Dispute was first raised;
  - a description of the Dispute, including any history of similar problems;
  - the implications of the Dispute, its severity and the degree of urgency involved;
  - an estimate of the current and potential cost of the Dispute; and
  - the names and addresses of others involved who may need to be consulted.

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- 2.5 Within ten (10) Working Days of a decision to escalate a Dispute to the next highest level in the Escalation Process, the Dispute Resolution Report will be produced by the Authority Concession Manager or the Concessionaire Concession Manager (as the case may require) and agreed with his or her counterpart. Where the Dispute Resolution Report cannot be agreed by the Authority Concession Manager and Concessionaire Concession Manager, any comments of the other person will be appended to the Dispute Resolution Report.
- 2.6 Once a Dispute Resolution Report has been submitted, the relevant individuals at the relevant level of the Escalation Process will endeavour to resolve the Dispute within a further period of ten (10) Working Days, failing which the procedures set out in Paragraph 3 and 4 below shall apply as appropriate.
- 2.7 The Escalation Process is intended to be a guide for the Parties to resolve issues rapidly as they arise. It is not intended that this Escalation Process should operate inflexibly or so as to prevent an issue being resolved at the most appropriate level as quickly as possible.
- 2.8 Any settlement reached in the Escalation Process will not be legally binding until it has been reduced to writing and signed by the Parties' authorised representatives.

### **3. REFERRAL TO MEDIATION**

- 3.1 If a Dispute between the Parties is not resolved pursuant to the Escalation Process set out in Paragraph 2 above, the Parties shall attempt to resolve the Dispute in accordance with the Centre for Effective Dispute Resolution (CEDR) model mediation procedure.
- 3.2 If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within ten (10) Working Days from the date of referral to mediation, CEDR, will at the request of either party, decide that point for the Parties, having consulted with them.
- 3.3 Mediation shall commence no later than twenty (20) Working Days after the date of referral to mediation and unless the Parties agree otherwise shall finish no later than thirty (30) Working Days after the date on which the mediation commences.
- 3.4 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by the Parties' authorised representatives.
- 3.5 CEDR's fees (which include the mediator's fees) and the other expenses of the mediation shall be borne equally by the Parties.
- 3.6 Each Party will bear its own costs and expenses of its participation in the mediation.

## 4. SUB-CONTRACTORS

- 4.1 The Concessionaire shall procure that any Sub-contractor involved in Services which are the subject of a Dispute shall, at the request of either Party, provide any assistance required in order to resolve the relevant Dispute, including the provision of any information, data or documentation and the attendance at any meetings or hearings.
- 4.2 The Authority shall not be responsible for any costs incurred by any Sub-contractor participating in the resolution of a Dispute.

## 5. CONTINUED PERFORMANCE

- 5.1 The Parties shall continue to comply with their respective obligations under this Agreement pending the resolution of the Dispute.

## 6. COURT PROCEEDINGS

- 6.1 Nothing in this Schedule shall prevent either Party from seeking from a court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.