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Home Office

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Schedule 2.3 – Service Levels and Liquidated Damages

Secure English Language Testing Services

Trinity College London

DOCUMENT LIST

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SCOPE

1. DOCUMENT STRUCTURE

- 1.1 This Schedule 2.3 sets out:
- 1.1.1. the Service Levels which the Concessionaire is required to achieve when delivering the SELT Service;
 - 1.1.2. the mechanisms by which Service Failures will be managed and remedied;
 - 1.1.3. the method by which the Concessionaire's performance of the SELT Services will be monitored; and
 - 1.1.4. the Liquidated Damages which will become payable in the event of certain Service Failures.
- 1.2 This Schedule comprises:
- 1.2.1 Part A: Service Levels;
 - 1.2.2 Part B: Liquidated Damages;
 - 1.2.3 Part C: Removal of the Authority to Operate
 - 1.2.4 Part D: Performance Monitoring and Reporting

PART A - SERVICE LEVELS

2. PRINCIPLES

- 2.1 The objectives of the Service Levels are to:
- 2.1.1 ensure that the SELT Services are delivered to a consistently high quality and meet the requirements of the Authority and the needs of Candidates;
 - 2.1.2 provide a mechanism whereby the Authority can attain meaningful recognition of inconvenience and/or be compensated for loss resulting from the Concessionaire's failure to deliver the level of SELT Service agreed;
 - 2.1.3 incentivise the Concessionaire to meet the Service Levels and to remedy any failure to meet the Service Levels and/or any Authority Requirement expeditiously; and
 - 2.1.4 provide a mechanism for the Authority to monitor the Concessionaire's performance; and
 - 2.1.5 enable the Parties quickly to identify and remedy failures that will, or could, impact on the security of the UK Border.
- 2.2 The Concessionaire shall, at all times, provide the SELT Services to meet or exceed the Service Levels set out in Annex 2.3-1.
- 2.3 The Concessionaire shall monitor its performance of the SELT Services against the Service Levels in Annex 2.3-1, and shall report such performance to the Authority through provisions of the Monthly Performance Report, as further described in

Schedule 8.7 (Management Information).

PART B – LIQUIDATED DAMAGES

3. APPLICATION OF LIQUIDATED DAMAGES

- 3.1 The Authority shall seek Liquidated Damages for specific Service Failures and where such actions require the implementation of an Action or Remedial Plan, as set out in this Paragraph and Annex 2.3-1, where such Service Failures result in the Authority incurring cost.
- 3.2 Liquidated Damages shall be applied from the PTO Commencement Date. Where a Partial Permit to Operate is awarded, Liquidated Damages shall only be applied to those parts of the SELT Service covered by the Partial Permit to Operate.
- 3.3 The Liquidated Damages have been calculated by the Authority as a genuine pre-estimate of the costs that the Authority shall incur in the event of certain Service Failures.
- 3.4 Liquidated Damages shall be calculated in accordance with the methodology specified in this Paragraph 3 and Annex 2.3-1. The Authority retains its rights to seek damages for Service Failures not covered by Liquidated Damages.
- 3.5 Where the Liquidated Damages relate to Authority Personnel’s time spent remedying a particular Service Failure, such Liquidated Damages shall be calculated using the formula:

$$LD = T \times N$$

Where:

LD = the relevant amount of Liquidated Damages

T = the cost to the Authority of the time spent by the relevant Authority Personnel and any appointed third parties (based on an agreed daily rate) in investigating and resolving the Service Failure; and

N = the number of days required to investigate and resolve the Service Failure and to reassure the Authority of the effectiveness of any Service Failure remedy.

- 3.6 When calculating “T” for the purposes of Paragraph 3.5 above, the Authority shall use such mix of personnel grades as it considers sufficient to investigate and resolve the relevant Service Failure(s).
- 3.7 The table below sets out the applicable rates which will be used for calculating the costs associate with different personnel grades:

Authority’s Personnel Grades	Daily Rate	Monthly Rate (Daily Rate x 20)
Administrative Assistant	<Redacted>	<Redacted>
SM2	<Redacted>	<Redacted>
Assistant Immigration	<Redacted>	<Redacted>

<Redacted>

Officer		
Administrative Office	<Redacted>	<Redacted>
Personal Secretary	<Redacted>	<Redacted>
Executive Officer	<Redacted>	<Redacted>
Higher Executive Officer	<Redacted>	<Redacted>
Immigration Officer	<Redacted>	<Redacted>
Senior Executive Officer	<Redacted>	<Redacted>
Chief Immigration Officer	<Redacted>	<Redacted>
Grade 7	<Redacted>	<Redacted>
Her Majesty's Inspector	<Redacted>	<Redacted>
Grade 6	<Redacted>	<Redacted>
Senior Civil Servant 1	<Redacted>	<Redacted>
Senior Civil Servant 2	<Redacted>	<Redacted>
Senior Civil Servant 3	<Redacted>	<Redacted>

These rates shall not be subject to annual indexation.

- 3.8 The Authority shall upon request provide the Concessionaire with a running total of Liquidated Damages accrued whilst a Service Failure is being investigated and/or remedied, including the current daily rates and the time spent on remedial activities.
- 3.9 The Authority shall take all reasonable steps to mitigate the costs of investigating and remedying any Service Failures.
- 3.10 In the event that Liquidated Damages have been applied, the Authority will issue an invoice in respect of the applicable Liquidated Damages to the Concessionaire, and the relevant amount will be paid by the Concessionaire to the Authority via BACS within thirty (30) days of the date of issue of such invoice.
- 3.11 Invoices for any Liquidated Damages which apply will be issued to Concessionaire at the following address:

Address Line 1: Blue Fin Building.....
Address Line 2: 110 Southwark Street.....
Address line 3:.....London.....
Post Code: SE1 0TA.....

PART C – AUTHORITY TO OPERATE

4 APPLICATION OF THE AUTHORITY TO OPERATE

- 4.1 The Authority to Operate is defined as the permission given by the Authority to the Concessionaire to continually operate the SELT Service at a particular Test Centre. The Authority to Operate for a particular Test Centre is granted on the issue by the Authority of the Permit to Operate, following completion of all mobilisation activities in accordance with Paragraph 4, Schedule 6.1 (Mobilisation and Permit to Operate) or (if issued earlier) any applicable Partial Permit to Operate.
- 4.2 The process for removal of the Authority to Operate at a Test Centre as set out in this Paragraph is intended to limit the Authority's exposure to the consequences of any Service Failure.
- 4.3 In the event of a Service Failure at a particular Test Centre which is capable of remedy, the Concessionaire shall normally be given an opportunity to remedy the Service Failure, in accordance with the process set out at Paragraph 4.4 below. However, if in the Authority's opinion, the Service Failure is so severe that it is incapable of remedy within a reasonable timescale, and that as a result the integrity of SELT Testing at the relevant Test Centre(s) cannot be assured, the Authority may suspend the Authority to Operate immediately at the affected Test Centre(s) under this part C, upon giving the Concessionaire written notice.
- 4.4 The removal of Authority to Operate process is as follows:
- 4.4.1 Root cause analysis – The Concessionaire shall as soon as reasonably practicable provide the Authority with information about the relevant Service Failure(s) and liaise with the Authority to determine the scope, scale and root causes and the timescales required to remediate any such Service Failure(s);
- 4.4.2 Action or Remedial Plan – The scope, scale and severity of the relevant Service Failure(s) will determine whether the Action Plan or Remedial Plan process shall apply. During this period the Authority and the Concessionaire shall work collaboratively to monitor progress and ensure that the remedial action is being delivered in accordance with the relevant Action or Remedial Plan.
- 4.4.3 If the Service Failure cannot be remedied within the planned timescales agreed between the Authority and Concessionaire, or at all, the Authority shall have the right, depending on the seriousness of the relevant Service Failure, to remove the Authority to Operate for the relevant Test Centre(s) until such time as all relevant Service Failures are remedied.
- 4.4.4 The removal of the Authority to Operate may apply in respect of a single Service Failure, or multiple Service Failures.
- 4.4.5 Following the conclusion of a Service Failure and associated plans, the Authority shall meet with the Concessionaire and notify them whether or not the Authority to Operate will be reinstated and if so, the date of the reinstatement. The Authority shall inform the Concessionaire when an Authority to Operate will not be reinstated and where Termination of a Centre/s or Permit to Operate is to be implemented.

PART D – PERFORMANCE MONITORING & REPORTING

5 MONITORING AND REPORTING

GENERAL

- 5.1 The Parties shall monitor and report on performance by the Concessionaire of the SELT Service using the Monthly Performance Report, as further described in Schedule 8.7 (Management Information).
- 5.2 The Authority shall be entitled to reasonably require, and the Concessionaire shall comply with, requests for routine changes to the Performance Reporting regime.

REPORTING OF SERVICE FAILURES

- 5.3 The Concessionaire shall report all Service Failures to the Authority using the Action Plan template provided by the Authority.
- 5.4 The Concessionaire shall also ensure that all Service Failures are logged immediately, on receipt of notification, on a Service Failure Log.
- 5.5 The Concessionaire shall ensure that, as a minimum, the following details are recorded by the Concessionaire in the Service Failure Log in respect of each Service Failure:
 - 5.5.1 A unique report number (report numbers shall be applied sequentially);
 - 5.5.1 The date and time the report is received;
 - 5.5.2 The nature and location of the Service Failure;
 - 5.5.3 The person/organisation making the report;
 - 5.5.4 An estimate (produced with all due care and diligence) of the number of Candidates/ Test Centres affected by the Service Failure;
 - 5.5.5 The action intended to be taken or which has been taken to rectify the Service Failure;
 - 5.5.6 Details of any communication with the Authority's Representative in connection with the Service Failure;
 - 5.5.7 Notes/comments regarding any mitigating circumstances with regard to the Service Failure;
 - 5.5.8 The Concessionaire's plans for remedying the Service Failure and/or for preventing the Service Failure from re-occurring including details where applicable of the estimated time within which such Service Failure will be remedied; and
 - 5.5.9 The reasons for any inability of the Concessionaire to meet the relevant Service Level so as to resolve the Service Failure.
- 5.6 The Concessionaire shall provide to the Authority with a copy of the entry in the Service Failure Log in respect of a Service Failure, immediately where a material Service Failure occurs.

SATISFACTION SURVEYS

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- 5.7 In order to assess the level of Service Performance of the Concessionaire, the Authority may request that Candidates to complete a Satisfaction Survey. This survey shall consider:
- 5.7.1 The assessment of the Concessionaire's performance by reference to availability of Test Centre and booking arrangements; and the "on the day" Test experience; and
 - 5.7.2 other suggestions for improvements to the SELT Services.
- 5.8 The Authority shall be entitled to notify the Concessionaire of any aspects of its performance of the SELT Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Authority's Requirements.
- 5.9 The Concessionaire shall, as soon as reasonably practicable, after notification from the Authority in accordance with this Part D, ensure that such reasonable measures are taken by it as are appropriate to achieve such improvements, as soon as is reasonably practicable.
- 5.10 All other suggestions for improvement to the Services shall be dealt with through the monthly Performance Meetings.

ANNEX 2.3-1 – EXPLANATION OF SERVICE PERFORMANCE AND LIQUIDATED DAMAGES

Introduction

The Service Performance and Liquidated Damages model at table 2.3-1 below is designed to incentivise the Concessionaire to delivery a SELT Service that is robust and secure, as a compromise to the security or operations of the SELT Service may have significant impact on the Authority's reputation and may also cause the Authority to incur financial loss.

The mechanisms within the Concession Agreement are intended to encourage the Concessionaire to provide early warning to the Authority of Service Failures. This approach is will help to mitigate events of Service Failure, and the need for the Authority to implement remedies.

The Authority has designed its approach to remedies to avoid, where possible, the application of Liquidated Damages in the event of Service Failure in the first instance, unless the Service Failure is significant.

In addition to the Liquidated Damages and Authority to Operate suspension processes described in Parts B and C above, the Authority has introduced the concept of "Action Plans" and "Remedial Plans". A process map at Annex 2.3-2 describes the processes for each of these.

Action Plan Process

The Concessionaire shall notify the Authority on every occasion where one or more of the Authority Requirement is not met. On each occasion, the Concessionaire shall notify the Authority immediately and outline how the issue will be remedied, together with the associated timescales. This process, which is intended to be simple and quick to operate, shall be referred to as the "Action Plan" process.

Where the Authority identifies a failure to meet any of the Authority Requirements, it shall inform the Concessionaire immediately and the Concessionaire shall provide an Action Plan as described above.

Remedial Plan Process

The Remedial Plan process applies where there is a material breach of the terms of the Concession Agreement. It is further described in Clause 17 of the Concession Agreement.

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TABLE 2.3-1 SERVICE PERFORMANCE AND LIQUIDATED DAMAGES

Rqmts Ref.	Service Level Description	Target Service Level Metric	How Measured	Frequency of Measure	Authority Remedy Options in the event of a Service Failure
<REDACTED>					

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ANNEX 2.3 - 2, PART C – ACTION AND REMEDIATION PLAN PROCESS

