

Appendix 3 to Schedule 25 – TRAS Dispute Arrangements

1 Introduction

- 1.1 This Appendix provides for the management of disputes raised by Supplier Parties against the TRAS Service Provider and of those disputes raised by the TRAS Service Provider against Supplier Parties.
- 1.2 In particular, paragraph 7.5 of Schedule 34 sets out certain requirements in respect of such disputes, and this Appendix sets out the processes to be followed in order to meet those requirements.
- 1.3 This Appendix only applies to disputes between Supplier Parties and the TRAS Service Provider (see the definitions of TRAS Provider Breach and TRAS User Breach). It does not apply to disputes between the Parties. It does not apply to disputes between the TRAS Service Provider and DCUSA Ltd.
- 1.4 This Appendix cannot (and does not) impose obligations on, or grant rights to, the TRAS Service Provider. The rights and obligations of the TRAS Service Provider in respect of disputes are set out in the TRAS Contract. In order for the process in this Appendix to work as set out, the provisions of this Appendix must remain consistent with the corresponding provisions of the TRAS Contract.
- 1.5 The SPAA contains an appendix equivalent to this Appendix which assigns duties to SPAA Ltd and the SPAA executive committee equivalent to the duties assigned under this Appendix to DCUSA Ltd and the Panel. The Panel will establish joint working arrangements with the SPAA executive committee in respect of such duties, which may include the same individual representing both DCUSA Ltd and SPAA Ltd on a committee which comprises both a TRAS Dispute Committee and its equivalent under the SPAA.

2 Definitions

- 2.1 In this Appendix, the following expressions shall have the following meanings (unless the context otherwise requires):

CEDR	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU.
Dispute Notice	has the meaning given to that expression in Paragraph 3.3 (or means a corresponding notice under the TRAS Contract).
Expedited Dispute Timetable	means the shortened timetable for disputes under the TRAS Contract set out in paragraph 2.5 of schedule 18 to the TRAS Contract (it being acknowledged that such timetable can only apply where agreed under the TRAS Contract).
Mediation Notice	has the meaning given to that expression in Paragraph 6.6 (or means a corresponding notice under the TRAS Contract).
Reporting Party	has the meaning given to that expression in Paragraph 3.1.
Responding Party	has the meaning given to that expression in Paragraph 4.1.
TRAS Contract Manager	means one or more persons appointed under contract from time to time by DCUSA Ltd (potentially jointly with SPAA Ltd) to administer and manage some or all of the TRAS Contract on behalf of DCUSA Ltd.
TRAS Dispute Committee	has the meaning given to that expression in Paragraph 5.1.
TRAS Provider Breach	means any claim, allegation or dispute raised by a Supplier Party in respect of a breach of the TRAS Contract by the TRAS Service Provider (and, where the context requires, may include an equivalent

claim, allegation or dispute raised under the SPAA).

TRAS User Breach

means any claim, allegation or dispute raised by the TRAS Service Provider in respect of a breach of Schedule 25 by a Supplier Party (and, where the context requires, may include an equivalent claim, allegation or dispute raised under the SPAA).

- 2.2 In this Appendix, references to Paragraphs are to the paragraphs of this Appendix.
- 2.3 Save as otherwise provided in this Paragraph 2, this Appendix shall be interpreted in accordance with Clause 1.1 (Definitions and Interpretation).

3 TRAS Provider Breach Disputes

Initial Notification

- 3.1 Where a Supplier Party is required to notify DCUSA Ltd of a TRAS Provider Breach under paragraph 7.5(a)(i) of Schedule 25, the Supplier Party (the "**Reporting Party**") shall:
- (a) provide that notification to the Panel;
 - (b) use any reporting proforma made available for such purpose on the Website; and
 - (c) provide reasonable details of the alleged breach.
- 3.2 Where the Panel receives such a notification of a TRAS Provider Breach, the Panel shall instruct the TRAS Contract Manager to (and the TRAS Contract Manager shall) as soon as is reasonably practicable:
- (a) notify the TRAS Service Provider of the breach; and
 - (b) initiate good faith negotiations to find a resolution to the dispute between the Reporting Party and the TRAS Service Provider.

Formal Dispute Notice

- 3.3 Where the Reporting Party is not satisfied with progress in reaching a resolution to a TRAS Provider Breach within a reasonable period of time, the Reporting Party may send a formal dispute notice (a "**Dispute Notice**") to the Panel, which shall:
- (a) be in the format of any proforma made available for such purpose on the Website; and
 - (b) set out reasonable details of the alleged breach, reasonable evidence to support the allegation, and whether the Reporting Party would like the Expedited Dispute Timetable to be invoked.
- 3.4 Where the Panel receives a Dispute Notice from the Reporting Party, the Panel shall instruct the TRAS Contract Manager to (and the TRAS Contract Manager shall) as soon as is reasonably practicable:
- (a) serve a corresponding Dispute Notice on the TRAS Service Provider under the TRAS Contract;
 - (b) where requested by the Reporting Party, seek to invoke the Expedited Dispute Timetable; and
 - (c) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a TRAS Dispute Committee for the dispute.
- 3.5 It is also possible for the TRAS Service Provider to serve a Dispute Notice under the TRAS Contract in order to resolve a TRAS Provider Breach. Where the Panel receives a Dispute Notice from the TRAS Service Provider, the Panel shall instruct the TRAS Contract Manager to (and the TRAS Contract Manager shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a TRAS Dispute Committee for the dispute.

4 TRAS User Breach Disputes

Initial Notification

- 4.1 Where DCUSA Ltd is notified under the TRAS Contract of a TRAS User Breach by one or more Supplier Parties (each a "**Responding Party**"), then the Panel shall, as soon as is reasonably practicable:
- (a) notify the Responding Parties of the TRAS User Breach; and
 - (b) provide each Responding Party with a copy of the information provided by the TRAS Service Provider in respect of the TRAS User Breach and that Responding Party.
- 4.2 Where a Responding Party receives such a notification, it shall respond to the Panel within 15 Working Days after notification, setting out the following information:
- (a) a statement confirming or contesting that the Responding Party is or was in breach of the TRAS Contract;
 - (b) where the Responding Party is contesting the allegation, further information to support its position, including evidence (such as system screen shots, business processes or system design documentation, transcripts of recorded telephone conversations, or correspondence) and/or its interpretation of the relevant clauses of the TRAS Contract; and
 - (c) whether more time is required to compile a complete response and/or to collect further evidence.
- 4.3 Following receipt of the relevant information under Paragraph 4.2, the Panel shall instruct the TRAS Contract Manager to (and the TRAS Contract Manager shall), as soon as is reasonably practicable, send that information to the TRAS Service Provider, and initiate good faith negotiations to find a resolution to the dispute between the TRAS Service Provider and the Responding Party.

Formal Dispute Notice

- 4.4 Where the TRAS Service Provider is not satisfied with progress in reaching a resolution to a TRAS User Breach within a reasonable period of time, the TRAS Service Provider may serve a Dispute Notice under the TRAS Contract. Where a Responding Party is not satisfied with progress in reaching a resolution to a TRAS

User Breach within a reasonable period of time, the Responding Party may request that the Panel serves a Dispute Notice under the TRAS Contract (in which case, the Panel shall do so, as soon as is reasonably practicable).

- 4.5 On service of a Dispute Notice as referred to in Paragraph 4.4, the Panel shall instruct the TRAS Contract Manager to (and the TRAS Contract Manager shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a TRAS Dispute Committee for the dispute.

5 TRAS Dispute Committees

- 5.1 Where this Paragraph 5 applies to a TRAS Provider Breach or a TRAS User Breach (as set out in Paragraph 3, 4 or 7), DCUSA Ltd shall delegate its role under paragraph 7.5(a)(ii) or 7.5(b)(ii) (as applicable) of Schedule 25 (insofar as relating to the dispute) to a committee established for that purpose (such committee being, in respect of that dispute, the "**TRAS Dispute Committee**").

- 5.2 Each TRAS Dispute Committee shall comprise:

- (a) such individual or individuals as the Panel may determine (who shall act in accordance with the Panel terms of reference); and
- (b) such individual or individuals as the Reporting Party (for TRAS Provider Breaches) or Responding Party (for TRAS User Breaches) may determine (who shall act in accordance with the wishes of the relevant Supplier Party).

- 5.3 Each:

- (a) TRAS Provider Breach raised by a Supplier Party; and
- (b) TRAS User Breach raised against a Supplier Party,

shall have its own TRAS Dispute Committee, unless that Supplier Party agrees that the dispute can be combined with one or more other disputes raised by or against it or by or against another Supplier Party (in either which case the disputes shall be managed collectively by a single TRAS Dispute Committee including an individual or individuals determined by the relevant Supplier Parties). In agreeing to the joint

management of disputes, the relevant Supplier Parties should agree how the costs referred to in Paragraph 5.10 are to be shared.

- 5.4 Where a TRAS Dispute Committee is established for more than one dispute, any Supplier Party on behalf of which the TRAS Dispute Committee is acting may (by notice to the Panel) require that a separate TRAS Dispute Committee is established for its dispute.
- 5.5 Each decision of a TRAS Dispute Committee shall require the unanimous agreement of the individuals comprising that TRAS Dispute Committee. No TRAS Dispute Committee is authorised to legally bind DCUSA Ltd without the written approval of the Panel, and/or to bind the Supplier Party(ies) represented by the TRAS Dispute Committee without the written approval of those Supplier Party(ies). The TRAS Service Provider is hereby given notice of this limitation of the TRAS Dispute Committee's authority.
- 5.6 Subject to the requirements of this Appendix, each TRAS Dispute Committee shall regulate its conduct as it sees fit. Subject to the requirements of this Appendix, each TRAS Dispute Committee shall have the power to negotiate and settle the dispute(s) in respect of which it was established, and to appoint professional advisers in respect of the same.
- 5.7 In the event of disagreement between the individuals comprising that TRAS Dispute Committee, any of those individuals may refer a matter to be determined by the Panel. Regardless of the decision of the Panel, no TRAS Dispute Committee is authorised to legally bind the Supplier Party(ies) represented by the TRAS Dispute Committee without the written approval of the Supplier Party(ies).
- 5.8 Each TRAS Dispute Committee shall determine whether details of a dispute should be shared with Supplier Parties other than those Supplier Parties which the TRAS Dispute Committee represents (and no such details shall be shared with other Supplier Parties without the TRAS Dispute Committee's agreement). The Parties in any event agree to keep details of a TRAS Provider Breach or a TRAS User Breach confidential in accordance with paragraph 6 of Schedule 25.

- 5.9 The Supplier Party(ies) represented by a TRAS Dispute Committee shall meet the costs of the TRAS Dispute Committee. Such costs shall include costs of DCUSA Ltd and/or the TRAS Contract Manager relating exclusively to that TRAS Dispute Committee, and any mediation costs, expert advisor costs, arbitration costs, court costs, costs of external legal or other professional advisors, and costs of any settlement payment to the TRAS Service Provider. The Supplier Party(ies) shall pay such costs of DCUSA Ltd and/or the TRAS Contract Manager to DCUSA Ltd (or as otherwise directed by the Panel). All other such costs shall be paid directly by the Supplier Party(ies).
- 5.10 Where a TRAS Dispute Committee represents more than one Supplier Party, the relevant Supplier Parties shall agree how the costs referred to in Paragraph 5.9 should be shared between themselves. The relevant Supplier Parties shall be jointly and severally liable for the relevant costs of DCUSA Ltd and/or the TRAS Contract Manager to the extent not paid (and shall pay such costs where required by the Panel).
- 5.11 Any money that the TRAS Service Provider agrees or is required to pay in respect of a dispute shall be paid directly to the relevant Supplier Party(ies).

6 Dispute Resolution Procedure

General

- 6.1 Following service of a Dispute Notice, the TRAS Dispute Committee shall seek to resolve the dispute:
- (a) first by commercial negotiation;
 - (b) then by mediation; and
 - (c) lastly by recourse to arbitration or litigation.
- 6.2 Specific issues may be referred or expert determination as set out below.
- 6.3 Where the use of the timescales specified in this Appendix would be unreasonable (including where a person would be materially disadvantaged by a delay in resolving the dispute), the TRAS Dispute Committee and the TRAS Service Provider may agree

to use the Expedited Dispute Timetable. Where use of the Expedited Dispute Timetable is not agreed within 5 Working Days after the issue of the Dispute Notice under the TRAS Contract, the normal timescales shall apply. This Paragraph 6.3 is without prejudice to Paragraph 7.

- 6.4 If at any point it becomes clear that a deadline cannot be met or has passed, the TRAS Dispute Committee and the TRAS Service Provider may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

Commercial Negotiation

- 6.5 Following the service of a Dispute Notice, the TRAS Dispute Committee shall use reasonable endeavours to resolve the dispute as soon as possible, by commercial negotiation.
- 6.6 Either of the TRAS Dispute Committee or the TRAS Service Provider may serve a written notice (a "**Mediation Notice**") to proceed to mediation, if:
- (a) either of them is of the reasonable opinion that the resolution of the dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - (b) they have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations; or
 - (c) they have not settled the dispute within 30 Working Days after service of the Dispute Notice (or 10 Working Days where the Expedited Dispute Timetable applies).

Mediation

- 6.7 If a Mediation Notice is served, the TRAS Dispute Committee shall attempt to resolve the dispute in accordance with the CEDR model mediation agreement, which shall be deemed to be incorporated by reference into this Paragraph 6.7.

- 6.8 The TRAS Dispute Committee shall seek to agree with the TRAS Service Provider on the joint appointment of a mediator within 30 Working Days after service of the Mediation Notice (or 10 Working Days where the Expedited Dispute Timetable applies). If they cannot agree on a mediator, then either of them may apply to CEDR to nominate the mediator.
- 6.9 If the TRAS Dispute Committee is unable to reach a settlement of the dispute with the TRAS Service Provider at the mediation, then (where they and the mediator agree) the mediator shall produce a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the mediator suggests are appropriate settlement terms in all of the circumstances.
- 6.10 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the TRAS Dispute Committee and the TRAS Service Provider. The mediator shall assist in recording the outcome of the mediation.
- 6.11 Any fees arising from the mediation shall be shared equally between the TRAS Dispute Committee (see Paragraph 5) and the TRAS Service Provider.

Expert Determination

- 6.12 If a dispute relates to any aspect of the technology underlying the provision of the service under the TRAS Contract or otherwise relates to an IT technical, financial technical or other aspect of a technical nature (as the TRAS Dispute Committee and TRAS Service Provider may agree) and the dispute has not been resolved by mediation, then either of TRAS Dispute Committee or the TRAS Service Provider may request by written notice to the other that the dispute is referred to an expert for determination (agreement to such request not to be unreasonably withheld or delayed).
- 6.13 Where expert determination is agreed, the TRAS Dispute Committee and the TRAS Service Provider shall seek to agree the identity of the expert to be appointed within 10 Working Days (or 5 Working Days in the case of an Expedited Dispute Timetable). If they cannot agree (or the chosen person is unable or unwilling to act),

then the expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

6.14 The expert shall act on the following basis:

- (a) the expert shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Reporting Party(ies) or the Responding Party(ies) (as applicable);
- (c) the expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his/her appointment (or as soon as reasonably practicable thereafter), and the Reporting Party(ies) or the Responding Party(ies) (as applicable) shall assist and provide the documentation that the expert requires for the purpose of the determination;
- (d) any amount payable by or to Reporting Party(ies) or the Responding Party(ies) (as applicable) as a result of the expert's determination shall be due and payable within 20 Working Days of the expert's determination;
- (e) the process shall be conducted in private and shall be confidential to the Panel, the TRAS Dispute Committee, the TRAS Service Provider and the Reporting Party(ies) or the Responding Party(ies) (as applicable); and
- (f) the expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid (see Paragraph 5 for TRAS Dispute Committee costs).

Arbitration

6.15 The TRAS Dispute Committee may, at any time before court proceedings are commenced in respect of a dispute, refer the dispute to arbitration in accordance with the provisions in the TRAS Contract.

- 6.16 The TRAS Contract requires the TRAS Service Provider to provide notice before it commences court proceedings or arbitration. The TRAS Dispute Committee shall determine the response to be given in respect of such a notice (it being acknowledged that the TRAS Contract allows the TRAS Service Provider to choose either arbitration or court proceedings in the absence of a response).
- 6.17 In the event that any arbitration proceedings are commenced in accordance with the TRAS Contract:
- (a) the dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“LCIA”);
 - (b) any fees arising from arbitration shall be shared equally between the TRAS Dispute Committee and the TRAS Service Provider unless otherwise agreed in accordance with the LCIA rules (see Paragraph 5 for TRAS Dispute Committee costs);
 - (c) the arbitration shall be administered by the LCIA;
 - (d) the LCIA procedural rules in force at the date that the dispute was referred to arbitration shall be applied and the decision of the arbitrator shall (in the absence of any material failure to comply with such rules) be binding on the Reporting Party(ies) or the Responding Party(ies) (as applicable);
 - (e) if the TRAS Dispute Committee and the TRAS Service Provider fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced (or if the person appointed is unable or unwilling to act), the arbitrator shall be appointed by the LCIA;
 - (f) the arbitration proceedings shall take place in London and in the English language; and
 - (g) the seat of the arbitration shall be London.

Courts

- 6.18 Where arbitration does not apply in accordance with the TRAS Contract, the courts of

England and Wales shall have exclusive jurisdiction in respect of the dispute.

7 Urgent Relief

- 7.1 Notwithstanding any other provision of this Appendix, a Supplier Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction in respect of a TRAS Provider Breach:
- (a) for interim or interlocutory remedies or infringement of Intellectual Property Rights; and/or
 - (b) where compliance with the timescales prescribed by this Appendix may leave insufficient time for that Supplier Party to commence proceedings before the expiry of the limitation period.
- 7.2 Where Paragraph 7.1 applies, the Supplier Party will notify the Panel of the TRAS Provider Breach, and the Panel shall instruct the TRAS Contract Manager to (and the TRAS Contract Manager shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a TRAS Dispute Committee for the dispute. Pending the establishment of the TRAS Dispute Committee, the Supplier Party shall act as the TRAS Dispute Committee (as DCUSA Ltd's delegate for the purposes of paragraph 7.5(a) of Schedule 25).
- 7.3 It is acknowledged that the TRAS Contract contains a provision equivalent to Paragraph 7.1 in favour of the TRAS Service Provider, which the TRAS Service Provider may seek to rely upon.
- 7.4 Where Paragraph 7.3 applies, the Panel shall notify the relevant Supplier Party of the TRAS User Breach, and the Panel shall instruct the TRAS Contract Manager to (and the TRAS Contract Manager shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a TRAS Dispute Committee for the dispute. Pending the establishment of the TRAS Dispute Committee, the relevant Supplier Party shall act as the TRAS Dispute Committee (as DCUSA Ltd's delegate for the purposes of paragraph 7.5(b) of Schedule 25).