

Schedule [X] – TRAS Dispute Arrangements

1 Introduction

- 1.1 This Schedule supplements Schedule 25 (Theft Risk Assessment Arrangements), and provides for the management of disputes raised by Suppliers against the TRAS Service Provider and of those disputes raised by the TRAS Service Provider against Suppliers.
- 1.2 In particular, paragraph 7.5 of Schedule 25 sets out certain requirements in respect of such disputes, and this Schedule sets out the processes to be followed in order to meet those requirements.
- 1.3 This Schedule only applies to disputes between Suppliers 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 Schedule 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 Schedule to work as set out, the provisions of this Schedule must remain consistent with the corresponding provisions of the TRAS Contract.

2 Definitions

- 2.1 In this Schedule, 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 Agent has the meaning given to that expression in Paragraph 5.1.

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 any shortened timetable for disputes under 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 Provider Breach	means any claim, allegation or dispute raised by a Supplier 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 (and, where the context requires, may include an equivalent claim, allegation or dispute raised under the SPAA).

2.2 In this Schedule, references to Paragraphs are to the paragraphs of this Schedule.

2.3 Save as otherwise provided in this Paragraph 2, this Schedule shall be interpreted in accordance with Clause 1.1 (Definitions and Interpretation).

3 TRAS Provider Breach Disputes

Initial Notification

- 3.1 Where a Supplier is required to notify DCUSA Ltd of a TRAS Provider Breach under paragraph 7.5(a)(i) of Schedule 25, the Supplier (the "**Reporting Party**") shall:
- (a) provide that notification to the DCUSA Panel;
 - (b) use any reporting proforma made available for such purpose on the DCUSA website; and
 - (c) provide reasonable details of the alleged breach.
- 3.2 Where the DCUSA Panel receives such a notification of a TRAS Provider Breach, the DCUSA Panel shall instruct the Secretariat to (and the Secretariat shall):
- (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 DCUSA Panel, which shall:
- (a) be in the format of any proforma made available for such purpose on the DCUSA 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 DCUSA Panel receives a Dispute Notice from the Reporting Party, the DCUSA Panel shall instruct the Secretariat to (and the Secretariat shall):
- (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 Dispute Agent 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 DCUSA Panel receives a Dispute Notice from the TRAS Service Provider, the DCUSA Panel shall instruct the Secretariat to (and the Secretariat shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a Dispute Agent 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 Suppliers (each a "**Responding Party**"), then the DCUSA Panel shall:

- (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 DCUSA 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 DCUSA Panel shall instruct the Secretariat to (and the Secretariat shall) 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 DCUSA Panel serves a Dispute Notice under the TRAS Contract (which the DCUSA Panel shall do where so requested).
- 4.5 On service of a Dispute Notice as referred to in Paragraph 4.4, the DCUSA Panel shall instruct the Secretariat to (and the Secretariat shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a Dispute Agent for the dispute.

5 Dispute Agents

- 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 "**Dispute Agent**").

5.2 Each Dispute Agent shall comprise:

- (a) such individual or individuals as the DCUSA Panel may determine (who shall act in accordance with the DCUSA 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).

5.3 Each:

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

shall have its own Dispute Agent unless that Supplier agrees that the dispute can be combined with a dispute raised by or against another Supplier (in which case the disputes shall be managed collectively by a single Dispute Agent including an individual or individuals determined by the relevant Suppliers).

5.4 Where a Dispute Agent is established for more than one dispute, any Supplier on behalf of which the Dispute Agent is acting may (by notice to the DCUSA Panel) require that a separate Dispute Agent is established for its dispute.

5.5 Each decision of a Dispute Agent shall require the unanimous agreement of the individuals comprising that Dispute Agent. No Dispute Agent is authorised to legally bind either or both of DCUSA Ltd and/or the Supplier(s) represented by the Dispute Agent without the written approval of the DCUSA Panel and/or those Supplier(s). The TRAS Service Provider is hereby given notice of this limitation of the Dispute Agent's authority.

5.6 Subject to Paragraph 5.5, each Dispute Agent shall regulate its conduct as it sees fit. Subject to Paragraph 5.5, each Dispute Agent shall have the power to negotiate and settle the dispute(s) in respect of which it was established, and to appoint advisers in respect of the same.

5.7 In the event of disagreement between the individuals comprising that Dispute Agent,

any of those individuals may refer a matter to be determined by the DCUSA Panel. Regardless of the decision of the DCUSA Panel, no Dispute Agent is authorised to legally bind the Supplier(s) represented by the Dispute Agent without the written approval of the Supplier(s).

- 5.8 Each Dispute Agent shall determine whether details of a dispute should be shared with Suppliers other than those Suppliers which the Dispute Agent represents. 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(s) represented by a Dispute Agent shall meet the costs of the Dispute Agent. Such costs shall include costs of the Secretariat relating exclusively to that Dispute Agent, mediation costs, expert advisor costs, arbitration costs, court costs, the cost of external legal or other professional advice, and the costs of any settlement payment to the TRAS Service Provider. The Supplier(s) shall pay such costs of the Secretariat to DCUSA Ltd (or as otherwise directed by the DCUSA Panel). All other such costs shall be paid directly by the Supplier(s).
- 5.10 Where a Dispute Agent represents more than one Supplier, the relevant Suppliers shall agree how the costs referred to in Paragraph 5.9 should be shared between themselves. The relevant Suppliers shall be jointly and severally liable for the relevant costs of the Secretariat to the extent not paid.
- 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(s).

6 Dispute Resolution Procedure

General

- 6.1 Following service of a Dispute Notice, the Dispute Agent 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 timetable specified in this Schedule would be unreasonable (including where a person would be materially disadvantaged by a delay in resolving the dispute), the Dispute Agent 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 timetable 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 Dispute Agent 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 Dispute Agent shall use reasonable endeavours to resolve the dispute as soon as possible, by commercial negotiation.

6.6 Either of the Dispute Agent 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 Dispute Agent 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 Dispute Agent 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 Dispute Agent 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 Dispute Agent 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 Dispute Agent (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 Dispute Agent and TRAS Service Provider may agree) and the dispute has not been resolved by mediation, then either of Dispute Agent 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 Dispute Agent 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 DCUSA Panel, the Dispute Agent, 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 Dispute Agent costs).

Arbitration

- 6.15 The Dispute Agent 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 Dispute Agent 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 Dispute Agent and the TRAS Service Provider unless otherwise agreed in accordance with the LCIA rules (see Paragraph 5 for Dispute Agent 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 Dispute Agent and the TRAS Service Provider fail to agree the appointment of the arbitrator within 10 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 Schedule, a Supplier 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 timetable prescribed by this Schedule may leave insufficient time for that Supplier to commence proceedings before the expiry of the limitation period.

- 7.2 Where Paragraph 7.1 applies, the Supplier will notify the DCUSA Panel of the TRAS Provider Breach, and the DCUSA Panel shall instruct the Secretariat to (and the Secretariat shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a Dispute Agent for the dispute. Pending the establishment of the Dispute Agent, the Supplier shall act as the Dispute Agent (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 DCUSA Panel shall notify the relevant Supplier of the TRAS User Breach, and the DCUSA Panel shall instruct the Secretariat to (and the Secretariat shall) follow the process in Paragraph 5 to establish whether the dispute should be joined with any other disputes, and to establish a Dispute Agent for the dispute. Pending the establishment of the Dispute Agent, the relevant Supplier shall act as the Dispute Agent (as DCUSA Ltd's delegate for the purposes of

paragraph 7.5(b) of Schedule 25).