



THIS IS A LEGALLY BINDING AGREEMENT BETWEEN THE PARTIES.

The Agreement (as defined below) is written in English.

To the extent that any translated version of these Terms of Service or any other element of the Agreement conflict with the English versions, the English versions shall prevail.

Terms of Service

SEDEX INFORMATION EXCHANGE LIMITED

The terms and conditions in this document ("**Terms of Service**") set out the basis upon which the Service will be made available to you in your capacity as a Member or Auditor ("**you**" or "**your**").

Please read these Terms of Service carefully to be sure that you understand them. To proceed with your application once you have read and agreed to be bound by the Agreement, tick the checkbox on the "Join Now" page. Once you have completed our online registration and payment procedure and we have processed your application to become a Member or Auditor of Sedex, we will notify you via email that your registration is complete and that you have been accepted as a Member or Auditor. Your account will then be activated. On acceptance of these Terms of Service you will have entered into a legally binding contract with us for the provision of the Service.

We may change these Terms of Service from time to time without notice to you and will post any changes on the Information Exchange. By continuing to use the Service after we make any such changes to these Terms of Service, you are deemed to have accepted such changes.

1. Agreement and parties

- 1.1. The agreement made between Sedex and Member comprises these Terms of Service, the Membership Agreement and the Membership Rules (together the "**Agreement**").
- 1.2. The agreement made between Sedex and Auditor comprises these Terms of Service, the Membership Agreement and the Auditor Rules (together the "**Agreement**").
- 1.3. Depending on whether you are an Auditor or a Member, the definition of Agreement shall be construed accordingly.
- 1.4. You agree to these Terms of Service by registering with Sedex at the Information Exchange to use the Service.
- 1.5. Member shall ensure that Member Users and Member End Users comply with the Agreement.
- 1.6. Auditor shall ensure that Auditor Users and Auditor End Users comply with the Agreement.
- 1.7. You represent and warrant that all the information supplied when you registered for the Service is true, complete and accurate in all respects at the time of registration and you undertake to inform Sedex immediately if any of the information changes.

2. Definitions and interpretation

2.1. In these Terms of Service, except where the context requires otherwise:

"A (Purchaser) Member"	means any Member designated as such by the board of directors of Sedex in accordance with the Membership Rules
"AB (Supplier and Purchaser) Member"	means any Member designated as such by the board of directors of Sedex in accordance with the Membership Rules
"Agreement"	as defined at 1.1 or 1.2 above
"Applicable Clauses"	means any clauses approved by any government or regulator for the purposes of providing appropriate safeguards in relation international transfers of personal data under the applicable Data Protection Legislation. These may be in the form of the EU Model Clauses.
"Applicable UK Clauses"	means the clauses at Schedule 2 or any such clauses as the UK Information Commissioner (and any superseding regulator) and/or the UK government may approve from time to time to provide appropriate safeguards under Data Protection Legislation in respect of transfers of personal data transferred outside the European Economic Area.
"Auditor Fees"	means the fees as agreed between the Auditor and Member for the provision of services to the Member by the Auditor in accordance with the Auditor Rules
"Auditor Rules"	means the Affiliate Auditor Company rules of Sedex from time to time
"Auditor User"	means any natural person who is an employee, agent or contractor of Auditor and who is appointed and authorised by Auditor to use and administer the Service and the Auditor's Sedex account with high level access and editing rights on behalf of Auditor; there may be more than one Auditor User per Auditor
"Authorised Member"	means a Member who is specifically authorised by one Member and/or Member User or Member End User to access Data of another Member by that Member and/or Member User and/or Member End User
"Authorised Third Party"	has the meaning given to it at 3.29 below
"B (Supplier) Member"	means any Member designated as such by the board of directors of Sedex in accordance with the Membership Rules
"Confidential Information"	has the meaning given to it at 11.1 below
"Data"	means data in electronic format uploaded by a User to the Information Exchange or otherwise shared with Sedex or with Auditors for access and download by Auditors, Members and/or Users relating to the Standards at the Sites of Employment of Members, and in particular Members' self-assessments and any recent audits.
"Data Protection Legislation"	means all applicable legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic

	communications, including, without limitation, (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK)
"Dispute"	has the meaning given to it at 19.1 below
"EU Model Clauses"	means the clauses at Schedule 2, being the standard contract clauses (controller to controller) contained in the European COMMISSION DECISION of 27 December 2004 amending Decision 2001/497/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of personal data to third countries decision (2004/915/EC); or any similar standard contractual clauses approved by the European Commission which may contain modifications or supersede them.
"GDPR"	means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
"Information Exchange"	means the online depository and retrieval platform operated by Sedex, comprising the Sedex Accounts accessible on the website www.sedexglobal.com hosted and managed by Sedex, which allows Auditors, Members and Users to upload, display and access Data
"Main Login"	has the meaning given to it at 6.1 below
"Member" "you" and "your" shall be construed accordingly	means any A (Purchaser) Member, AB (Supplier and Purchaser) Member or B (Supplier) Member of Sedex
"Member End User"	means any natural person who is an employee, agent or contractor of Member and who is appointed and authorised by Member or Member User to use the Service and the Member's Sedex account with viewing access and limited editing rights on behalf of Member; there may be more than one Member End User per Member
"Membership Agreement"	an agreement between Sedex and Member or Auditor setting out type of membership
"Membership Fees"	means the membership fees as determined by Sedex in accordance with the Membership Rules and Auditor Rules
"Membership Rules"	means the membership rules of Sedex from time to time which can be accessed through the following link: https://www.sedexglobal.com/wp-content/uploads/2019/08/Sedex-Membership-Rules-2019.pdf
"Member Supplier"	as defined in the Membership Rules

"Member User"	means any natural person who is an employee, agent or contractor of Member and who is appointed and authorised by Member to use and administer the Service and the Member's Sedex account with high level access and editing rights on behalf of Member; there may be more than one Member User per Member
"NDA"	a non-disclosure agreement between Sedex and Member or Auditor concerning the mutual disclosure of confidential information exchanged by the parties from time to time relating to the Member's or Auditor's membership of Sedex pursuant to the Agreement or otherwise
"Objects"	means the Objects of Sedex as set out in clause 3 of its memorandum of association
"Payment Systems"	means the internet payment systems including, but not limited to Alipay, Paypal, WorldPay and offline payment methods of BACS
"Sanction"	as defined in the Membership Rules
"Sedex" "we" and "our" shall be construed accordingly	means Sedex Information Exchange Limited (company no. 05015443) whose registered office is at 24 Southwark Bridge Road, London SE1 9HF
"Sedex Account"	as defined in the Membership Rules
"Sedex Account Data Forms"	Means any self-assessment and other data capture forms supplied by Sedex from time to time for the purpose of depositing Data on the Information Exchange
"Sedex IP"	has the meaning given to it at 7.5 below
"Service"	means the online storage, management and information exchange service operated by Sedex in relation to Data provided by Users on the Information Exchange, relating to the Users' social compliance issues, including indicatively, labour issues, health and safety policies and records, business ethics and environmental considerations
"Service Documentation"	means documentation including but not limited to manuals, documentation and other reference materials (whether in electronic or hard copy format) provided to Member or Auditor by Sedex in relation to the Service, as amended and in force from time to time
"Site of Employment"	as defined in the Membership Rules
"User"	means an Auditor User, Auditor End User, Member User or Member End User
"User Logins"	has the meaning given to it at 6.3 below

2.2. In these Terms of Service:

- clause headings are inserted for ease of reference only and do not affect construction;
- words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing bodies corporate, corporations, unincorporated associations and partnerships and vice-versa, words importing the singular shall be treated as importing the plural and vice-versa, and words importing whole shall be treated as including a reference to any part thereof;
- references to clauses are to the clauses of these Terms of Service.

3. Provision of the Service and use of Data

Access to Data

- 3.1. Members are not entitled to access the Data of another Member without the prior written or electronic approval of that Member.
- 3.2. Members granted access to the account of any other Member will not be able to input any data directly onto those accounts nor will they be able to amend, alter or remove any Data.
- 3.3. When a Member grants to other Members access to its Data as set out in these Terms of Service, Members will be able to use and analyse this Data for the sole purpose of assessing compliance with its labour and other standards and of promoting the Objects. Members must treat all information (including for the avoidance of doubt Historical Data) downloaded from the Sedex Accounts as confidential and (save to trading companies within their group with a legitimate need to know it) must not disclose such information to any other party. This does not preclude Members complaining to the Board about Member Suppliers pursuant to clauses 3.27 to 3.43 (Audits and Compliance) below.
- 3.4. Where a Member agrees to share Data with another Member, they are also authorising the viewing Member to contact the Auditor who has the source of the Data for further information in relation to the contents of the Data. Such Auditor will use its reasonable endeavours to provide such information.
- 3.5. Data may be in the form of (without limitation) questionnaires, audit reports, audit report summaries and action plans and Members will ensure that the source of the Data is clearly identified, for example, whether the Data is supplied by a Member Supplier, the Site of Employment or a third party.
- 3.6. The Board shall only have access to Sedex Accounts or the Data contained on Sedex Accounts if the Board requires it to consider a complaint against a Member, a Grievance, the possible Sanction of a Member or any appeal by a Member. If the Board does require access to view the Data provided, the members of the Board undertake to keep such Data confidential and not to use such Data for any purpose except that for which the access was granted.
- 3.7. Members agree that any persons acting in their capacity as Grievance Committee members or employees, consultants, professional advisers, sub-contractors or suppliers of Sedex and any third parties engaged by Sedex to perform obligations in connection with this Agreement will have automatic and continued access to the Sedex Accounts and the Data contained on the Sedex Accounts of all Members.

- 3.8. Sedex shall maintain and publish a directory of Members setting out their compliance records, to which all Members shall have access. Members may choose whether or not to appear in this directory and, if so, which compliance records to share by giving written or electronic notice to Sedex of their preference from time to time. New Members are deemed to agree to appear in and to share their compliance records with other Members on this directory.

Use of Data

- 3.9. Subject to you observing and performing the terms of the Agreement and continuing to be a Member or Auditor, Sedex shall provide the Service to Member or Auditor pursuant to the Agreement.
- 3.10. You shall use the Information Exchange solely for the proper use of the Service and in accordance with the Service Documentation.
- 3.11. You acknowledge that the Service consists of the storage and management of Data provided by Users and that Sedex is under no obligation to have any knowledge of, or exercise any control whatsoever over the content of Data (although it may, at its sole discretion, do so if it wishes).
- 3.12. Member or Auditor warrants and represents to Sedex that it will comply with the rules in relation to Data as set out in the Membership Rules or Auditor Rules.
- 3.13. Data created, uploaded via the Information Exchange by Users and stored and managed by Sedex is owned by you and you are solely responsible for the Data and the content thereof.
- 3.14. By submitting and sending Data through the Information Exchange to Sedex and uploading it to the Information Exchange, or otherwise sharing Data with Sedex, you grant Sedex permission to store, process and transmit the Data as is necessary to deliver the Service. This shall also apply to any Data not stored on the Information Exchange but which is stored on the platform of an Auditor, and you shall ensure that any relevant agreements with an Auditor permit such Data to be stored, processed and transmitted in accordance with the Agreement.
- 3.15. In order to deliver the Service, Sedex may need to modify the Data as necessary to meet any requirements or limitations of any network operators, devices, services or media.
- 3.16. You are responsible for the use of any Data (other than any use by Sedex in breach of these Terms of Service) and for any consequences thereof, although all Members acknowledge that access to any Data is granted on condition that (in the absence of fraud or misfeasance) the Member providing the Data or granting access thereto will have no liability (whether contractual or tortious) for inaccuracies, errors or omissions.
- 3.17. You represent and warrant that you have obtained all the necessary licences, permissions, consents, rights, and have the power and authority necessary to use, upload and publish the Data and any other material you have used and sent or uploaded via the Information Exchange and the Service and grant the rights granted herein to any Data and any other material you have used and sent via the Information Exchange and the Service.
- 3.18. You represent and warrant that any Data created or provided by Users, will not: infringe any third party intellectual property rights; be abusive; be unlawful; be pornographic; be libellous; racist or discriminatory in any way shall not constitute a criminal offence or give rise to a civil action against Member, Auditor or Sedex.

- 3.19. You shall indemnify Sedex against all liabilities, costs, expenses, damages or losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Sedex arising out of or in connection with Data.
- 3.20. Sedex may remove Data that is stored or refuse to transmit Data without notice to you, at its sole discretion, and without liability to you.
- 3.21. Sedex is under no obligation to monitor, edit or remove any of the Data before it is transmitted as part of the Service and any transmission of the Data or other use of the Data in connection with the Service does not constitute acceptance by Sedex that the Data does not breach the Agreement.
- 3.22. Sedex reserves the right to review Data which has already been sent, whether in response to a complaint received by a third party or otherwise in accordance with its audit quality assurance procedures or where it otherwise considers it appropriate to do so.
- 3.23. Sedex reserves the right for any reason to access, read, preserve and disclose any of the Data whether or not it has been transmitted, where, in particular, Sedex believes it necessary to do so in order to do the following, which is not an exhaustive list:
- comply with any applicable laws, regulations, police, regulator, legal process or governmental request;
 - monitor compliance with and enforce the Agreement, including investigating any potential breach thereof;
 - detect, prevent or otherwise address fraud, security or technical issues;
 - respond to request or query from a third party who has received the Data in accordance with these Terms;
 - protect the rights, property or safety of Sedex, its users, its staff, its officers, its agents, its advisers and the public; and
 - if it believes the Data is incorrect and/or misleading.
- 3.24. You shall observe all relevant national and international laws and regulations in your use of the Information Exchange and the Service and shall not interfere with the use of the Information Exchange and the Service by other Members or Auditors.
- 3.25. You acknowledge that you must provide for your own access to the Internet, pay any service fees and telecommunication charges associated with such access and provide and maintain all hardware and software, including a compatible web browser, for Users to browse the Information Exchange and upload and download Data. You are responsible for ensuring that the configuration of hardware and software used by you to access the Service are compatible with the Service.
- 3.26. You agree that Sedex shall not be liable to you or any third party for any modifications, suspension, discontinuance, removal or disablement of the Service and Data carried out by Sedex pursuant to this Agreement to include but not be limited to in circumstances set out in this clause 3.

Audits and Compliance

- 3.27. Within three months of becoming a Member, Member Suppliers must undertake self-assessments of their compliance with their labour issues, health and safety policies and records, business ethics and environmental considerations and other standards and deposit and post such Data using the Sedex Account Data Forms in order to create the Data for their Sedex Accounts.
- 3.28. Member Suppliers will ensure that any self-assessment is carried out diligently and is substantially accurate. Member Suppliers must not complete any self-assessments for any Sites of Employment that they either do not own or control.
- 3.29. In undertaking a self-assessment pursuant to clause 3.27 above, a Member Supplier may permit an agent, co-operative representative or other appropriate third party (an "**Authorised Third Party**") to access its Sedex Account and/or the Data contained on its Sedex Account in order that such Authorised Third Party may assist the Member Supplier in undertaking the self-assessment and completing a Sedex Account Data Form pursuant to clause 3.27 above, provided that:
- such Member Supplier explicitly and in writing grants the Authorised Third Party access to its Sedex Account and the Data contained on its Sedex Account;
 - such written permission granting the Authorised Third Party access to the Member Supplier's Sedex Account and the Data contained on the Sedex Account is signed by the Member Supplier and the Authorised Third Party and a copy of such signed written permission is provided to Sedex;
 - the Member Supplier or an employee or authorised representative of the Member Supplier has at all times unrestricted access to the Sedex Account and the Data contained on the Sedex Account notwithstanding any access granted to an Authorised Third Party pursuant to this clause 3.29;
 - any A (Purchaser) Member or AB (Supplier and Purchaser) Member granted access to the Data of a Member Supplier in accordance with clause 3.4 shall continue to have such access to such Data of that Member Supplier notwithstanding any permissions granted to an Authorised Third Party by the Member Supplier pursuant to this clause 3.29; and
 - a Member Supplier may at any time and for any reason revoke any access or permissions granted to an Authorised Third Party pursuant to this clause 3.29 in respect of its Sedex Account and/or the Data contained on its Sedex Account following which the Authorised Third Party shall cease to have any access whatsoever to the Sedex Account of that Member Supplier and/or the Data contained on the Sedex Account of that Member Supplier.
- 3.30. Access granted by a Member Supplier to its Sedex Account and/or the Data contained on its Sedex Account for the reasons set out at clause 3.29 above shall under no circumstances be granted to an A (Purchaser) Member.
- 3.31. Members are expected to post any relevant updates and audits on their Sedex Accounts. Relevant audits will normally be the 3 most recent audits. Members undertake not to remove any audits from their Sedex Accounts unless they post a notice on the Sedex Account stating that an audit has been removed and where a copy of such audit can be obtained or reviewed.
- 3.32. Audits will be conducted by independent third parties or other parties (such as employees)

appointed by a Member Supplier. Member Suppliers undertake to cooperate fully with third party auditors and provide the auditors with such access and assistance that they reasonably require. Member Suppliers will use reasonable endeavours to ensure that any information provided to auditors is substantially accurate and up to date.

- 3.33. Member Suppliers may authorise third party auditors to enter Data on their Sedex Accounts but (without prejudice to clause 3.3 above) remain responsible to ensure that the Data has been properly uploaded to the Sedex Account.
- 3.34. Member Suppliers undertake that audit reports will not be altered or changed in any way. Member Suppliers may post their comments or explanations on the audits on their Sedex Accounts.
- 3.35. Member Suppliers undertake to keep the Data up to date in material respects by, among other things, reviewing the Data at least every 6 months and uploading any amendments to their Sedex Account.
- 3.36. If an A (Purchaser) Member or an AB (Supplier and Purchaser) Member has reasonable grounds to believe that a Member Supplier or anyone acting on its behalf has posted inaccurate, erroneous or misleading Data, has supplied insufficient Data or has removed Historical Data without justification (or notice in the case of clause 3.31 above), it shall try to resolve the matter with the Member Supplier. If the respective Members cannot resolve the matter, either Member may complain to the Board which shall appoint a person or committee to investigate the complaint and report to the Board.
- 3.37. On receiving a report pursuant to clause 3.36 above, the Board may make such further investigations as it determines to be necessary to resolve the complaint. Having completed its investigations, the Board may order any Member which is the subject of such a complaint to take whatever action the Board determines to be appropriate, provided such action is consistent with the Objects. Failure to take such action may result in the Board sending such Member a notice of intended Sanction pursuant to rule 6 of the Membership Rules.
- 3.38. Member Suppliers undertake to address any non-compliance identified by self-assessment, auditors or A (Purchaser) and AB (Supplier and Purchaser) Members within a reasonable timeframe.
- 3.39. A (Purchaser) Members and AB (Supplier and Purchaser) Members will endeavour to review the Data on the Sedex Accounts of their Member Suppliers regularly to identify any non-compliances. A (Purchaser) Members and AB (Supplier and Purchaser) Members will liaise with their Member Suppliers and agree with them such action as appropriate to the seriousness of the non-compliance identified (whether identified through the Data on the Information Exchange or by other means) with a view to furthering the Objects.
- 3.40. Members shall endeavour to reduce the cost burden of audit on the supply chain by minimising the duplication of audits.
- 3.41. A (Purchaser) Members and AB (Supplier and Purchaser) Members may from time to time request their Member Suppliers to provide further information or updates relating to their Data insofar as such requests are reasonable and consistent with the Objects. This may be in the form of third party audits, second party audits or other forms of verification to check the status of any non-compliance identified by the respective Member. Any such further information or updates relating to their Data must be uploaded by Member Suppliers to their Sedex Account as soon as reasonably practicable.

- 3.42. A (Purchaser) Members and AB (Supplier and Purchaser) Members may specify to a Member Supplier a third party or a list of third parties to carry out an audit of labour and other practices at the Member Suppliers' Site of Employment. If a Member Supplier believes that a third party auditor or another credible route for verifying data has been unreasonably rejected by the A (Purchaser) Member or (as the case may be) AB (Supplier and Purchaser) Member, the Member Supplier may appeal against this. Appeals will be heard by the Grievance Committee who will recommend such action as it considers appropriate.
- 3.43. A (Purchaser) Members and AB (Supplier and Purchaser) Members must take appropriate action in response to serious abuses in the Sites of Employment of Member Suppliers which are inconsistent with the Objects and which are brought to the attention of Sedex, whether or not these abuses are identified through the Data on the Information Exchange.
- 3.44. Sedex may carry out, or commission a third party to carry out, initial and ongoing assessments of Auditors or applicants who wish to become auditors in accordance with the terms of the Auditor Rules, and you consent to such assessments and agree to cooperate with Sedex (or such third party, as the case may be) by offering reasonable assistance in relation to such assessments.

4. Payment

- 4.1. Member or Auditor shall pay to Sedex, or at Sedex's direction, to its nominated group entities, which will be good discharge of the relevant payment obligations, the applicable Membership Fees in accordance to its level of membership set out in the Membership Rules or Auditor Rules.
- 4.2. Member shall pay to Auditor the applicable Auditor Fees.
- 4.3. When the Member or Auditor registers for the Service at the Information Exchange, the Member or Auditor shall pay to Sedex the applicable Membership Fee using the Payment System as indicated at the Information Exchange.
- 4.4. All sums due pursuant to the Agreement are exclusive of "Value Added Tax" which Member or Auditor shall when applicable pay to Sedex at the prevailing rate in addition to and at the same time as payment of the Membership Fees.
- 4.5. Payment of all sums due to Sedex under the Agreement shall be made by Member or Auditor in full without any set-off, deduction or withholding whatsoever unless required by law. If any such set-off, deduction or withholding is required by law, such Member or Auditor shall discharge such legal obligations in full and shall, when making the payment to which the set-off, deduction or withholding relates, pay to Sedex such additional amount as will ensure that Sedex receives the same total amount that it would have received if no such set-off, deduction or withholding had been required by law.

5. Member and Auditor undertakings

- 5.1. You warrant and represent to Sedex that you shall observe and perform the terms of the Agreement at all times.
- 5.2. You warrant and represent to Sedex that you shall:
 - 5.2.1. not knowingly or recklessly post, link or transmit to the Information Exchange or upload any Data to the Information Exchange and/or when using the Service any material:

- that is unlawful, threatening, abusive, harmful, malicious, libellous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way;
 - containing a virus, trojan horse, worm or other hostile computer program;
 - that may constitute or encourage a criminal offence, give rise to civil liability or that violates or infringes any trade mark, copyright or other intellectual property right or similar right of any person under the laws of any jurisdiction.
- 5.2.2. ensure that at all times you maintain a current back-up of all Data uploaded by you to the Information Exchange and you acknowledge that Sedex shall not be responsible for any loss or corruption of Data during or after transfer;
 - 5.2.3. not in any way make any representation or warranty regarding the Information Exchange or the Service other than those from time to time agreed by Sedex in writing;
 - 5.2.4. not upload to the Information Exchange any Data which is protected by copyright, or other proprietary right, unless you are the copyright owner or right holder or have an appropriate licence from the copyright owner or right holder;
 - 5.2.5. comply with all requirements, procedures, policies and regulations of Sedex issued to User from time to time in relation to the use or operation of the Information Exchange and the Service;
 - 5.2.6. not use the Information Exchange or the Service for illegal purposes;
 - 5.2.7. not interfere with or disrupt the Information Exchange or operation of the Service;
 - 5.2.8. not offer in any manner, to a third party who is not a Member or Auditor or User, the Service or use of or access to the Information Exchange;
 - 5.2.9. not attempt to gain unauthorised access to any Data.
- 5.3. Member shall be responsible to Sedex for any act or omission on the part of any of Member User or Member End User as if it was the act or omission of Member.
 - 5.4. Auditor shall be responsible to Sedex for any act or omission on the part of any of Auditor User or Auditor End User as if it was the act or omission of Auditor.

6. Security

- 6.1. You will be able to choose a company administrator username and password when you register for the Service via the Information Exchange ("**Main Login**").
- 6.2. You shall allow access to the Main Login only to such Users who have a need to know it for the proper administration of the Service.
- 6.3. You will allocate individual usernames and passwords to each of your Users ("**User Logins**") who need one for the proper use of the Service.
- 6.4. Sedex reserves the right to de-activate the Main Login and any User Logins if any of the

circumstances arise set out in clause 3 of these Terms of Service which cause Sedex to suspend the Service.

- 6.5. You may also de-activate any User Logins where Users cease to be authorised to use the Service by you.
- 6.6. You are responsible for maintaining the confidentiality of the Main Login and User Logins and ensuring that all Users understand that they must and do maintain the confidentiality of the Main Login and User Logins.
- 6.7. You are fully responsible for all activities which occur under the Main Login and all User Logins.
- 6.8. You shall forthwith notify Sedex if you become aware of any unauthorised use of the Main Login or any User Logins or if any circumstances occur which give rise to a risk of such unauthorised use.
- 6.9. If Sedex has reason to believe that there has been or is likely to be a breach of security or misuse of the Service Sedex may change the Main Login and any User Logins and Sedex shall notify you of such changes as soon as is reasonably practicable.
- 6.10. Sedex will exercise reasonable care to implement the security facilities specified in the Service Documentation, but Sedex does not warrant that its procedures will prevent the loss of, alteration of, or improper access to Data. You are responsible for determining whether Sedex's security facilities meet your needs.

7. Intellectual property

- 7.1. All intellectual property rights in Data shall, as between you and Sedex, be and remain vested in you.
- 7.2. You warrant and represent to Sedex that Data uploaded by you are the intellectual property of you or your licensee and that Sedex's receipt, storage and transmission of Data in connection with the Service shall not infringe the intellectual property rights of any third party.
- 7.3. For the purpose of providing the Service, you grant to Sedex all necessary licence rights, including the licence to modify, load, store and copy for archival or backup purposes Data uploaded by Member or Auditor.
- 7.4. You grant Authorised Members all necessary licence rights, including the licence to download, store and copy for archival or backup purposes Data uploaded by Users.
- 7.5. All intellectual property rights in software, graphics, interfaces, tools, forms, data files, manuals, methods, procedures, concepts, ideas, creations, inventions, know-how, and other intellectual property in and in relation to the Information Exchange and the Service ("**Sedex IP**") are and will remain the exclusive property of Sedex.
- 7.6. Sedex grants to you a non-exclusive, royalty-free licence to use, reproduce, and display Sedex IP as required by you for the purpose of the proper use of the Service only.
- 7.7. You warrant and represent that you will only use the Sedex IP in compliance with the terms of the Agreement.

7.8. Any trade mark of Sedex now or in the future subsisting shall be and remain at all times the property of Sedex and you warrant and represent that you shall not use the same in any way without the prior written approval of Sedex (except in the performance of the Agreement) and shall not claim any right of property therein or register or cause to be registered or apply for a similar or imitation of the trade marks.

8. Sedex Warranty

8.1. Sedex warrants that the Service will be provided by Sedex with reasonable skill and care.

8.2. Sedex cannot guarantee fault-free and/or uninterrupted Service and from time to time faults and interruptions may occur. Sedex will repair faults and rectify interruptions as quickly as is reasonably possible.

8.3. Sedex shall not, in any event, be liable for interruptions or down time of the Service.

9. Liability

9.1. Nothing in these Terms of Service exclude or limit Sedex's liability for death or personal injury arising from its negligence, or fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.

9.2. To the extent permitted by law, Sedex excludes all conditions, warranties, representations or other terms which may apply to the Information Exchange or any content on it and to the Service, whether express or implied.

9.3. In addition to the limitations of liability set out elsewhere in these Terms of Service Sedex will not be liable to Member, Auditor or User for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:

- use of, or inability to use the Information Exchange and the Service;
- reliance on any information displayed on the Information Exchange.
- loss or destruction of Data or other information;
- claims made against Member, Auditor or User by third parties in relation to the Information Exchange and/or the Service and/or the Data;
- any advice given to you by Sedex whether oral or written;
- any of your devices not supporting the Service;
- loss of profits;
- loss of sales;
- loss of business;
- loss of revenue;
- business interruption;
- loss of anticipated savings;
- loss of business opportunity, goodwill or reputation; or
- any indirect or consequential loss or damage;

9.4. Sedex will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Information Exchange and the Service or to your downloading or uploading of any material (including but not limited to Data) on the

Information Exchange or on any website linked to it.

- 9.5. Any failure to provide the Service due to an event or continuing state of affairs beyond Sedex's reasonable control such as technical failure, lightning, flooding, exceptionally severe weather, fire or explosion, civil disorder, war, military operations, industrial disputes of any kind (including those involving Sedex employees), natural or local emergency, the acts or omissions of other providers of internet services.
- 9.6. Sedex's maximum aggregate liability arising out of or in connection with the Agreement in respect of one or a series of incidents, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused, including by negligence and/or arising from a breach of, or a failure to perform the Service or otherwise in relation to the Service or the Information Exchange or operation thereof will be limited to the Member's annual Membership Fee.

10. Indemnity

You shall indemnify Sedex, its parents, subsidiaries, affiliates, officers, directors, contractors and employees against all liabilities, costs, expenses, fines, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Sedex arising out of or in connection with:

- 10.1. any and all claims made against Sedex in connection with the Member or Auditor or User's use of the Service and the Information Exchange
- 10.2. any breach of warranty in the Agreement by Member or Auditor or User
- 10.3. any breach of Clause 12 by any Member, Auditor, User or End User
- 10.4. any and all claims made against Sedex (or such other persons) for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Data.

11. Confidentiality

- 11.1. Each of the parties agrees (subject to clauses 11.2 and 11.3) not to:
- disclose any information which it receives from the other party and which is identified as confidential or proprietary by the other party or the nature of which is clearly confidential or proprietary ("**Confidential Information**"); or
 - make any use of any such Confidential Information other than for the purposes of performance of the Agreement.
- 11.2. Each party may disclose Confidential Information received from the other to its responsible employees, consultants, sub-contractors or suppliers who need to receive the information in the course of performance of the Agreement and who have entered into an agreement containing appropriate confidentiality provisions.
- 11.3. The confidentiality obligations in this clause shall not apply to any information which:
- is or subsequently becomes available to the general public other than through a breach

by the receiving party;

- is already known to the receiving party before disclosure by the disclosing party;
- is required to be disclosed by law;
- is developed through the independent efforts of the receiving party; or
- the receiving party rightfully receives from a third party without restriction as to use.

11.4. Use of Data in accordance with these Terms of Service shall be permissible notwithstanding the entering into of the NDA or any similar document agreed between the parties and shall not constitute a breach of any such agreement.

12. Data protection

12.1. For the purposes of this clause 12, the terms "**controller**", "**data controller**", "**processor**", "**data processor**", "**data subject**", "**personal data**", "**processing**" and "**appropriate technical and organisational measures**" shall have the meanings given to them in the Data Protection Legislation in force at the relevant time.

12.2. This clause 12 sets out the framework for the sharing of personal data between the parties. For the purposes of this framework the parties (being in this context, Sedex, each of the Members and each Auditor) anticipate that they are data controllers in common (each a "**Data Controller**").

12.3. Each Data Controller acknowledges that it may disclose personal data of data subjects in the categories described in Schedule 1 ("**Shared Personal Data**"). Each Data Controller acknowledges and agrees that such Shared Personal Data shall be disclosed only to parties and Users ("**Data Recipients**") in the course of providing or receiving the Services and/or undertaking the Member and Auditor activities as set out in this Agreement and as more particularly described in Schedule 1 ("**Agreed Purposes**").

12.4. Each Data Controller shall comply with all the obligations imposed on a data controller under the Data Protection Legislation and shall:

- 12.4.1. ensure that all necessary notices are provided and consents obtained to enable lawful processing and sharing of any Shared Personal Data by and with the Data Recipients including, where necessary and appropriate, their responsible employees, consultants, professional advisers, sub-contractors or suppliers and any third parties engaged by them to perform obligations in connection with this Agreement ("**Permitted Recipients**");
- 12.4.2. ensure that Shared Personal Data are adequate, relevant and not excessive;
- 12.4.3. ensure that Shared Personal Data are accurate, and where necessary, kept up to date;
- 12.4.4. give all such notices (as may be required by the Data Protection Legislation from time to time) to any data subject whose personal data may be processed under this Agreement of the nature of such processing and such notices must be sufficient to permit the Data Controllers to process personal data respectively in order to exercise their rights and comply with their obligations under the Agreement. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors

and assignees;

- 12.4.5. process the Shared Personal Data only for the Agreed Purposes;
- 12.4.6. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients (other than as required by law);
- 12.4.7. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
- 12.4.8. unless prohibited by law, if it is obliged to make a disclosure by law of the Shared Personal Data, shall notify the other relevant Data Controller(s), such notification to be made in advance of such disclosure or, (if not reasonably practicable) immediately thereafter.
- 12.4.9. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- 12.4.10. subject to clause 12.5, not transfer any Shared Personal Data outside the European Economic Area unless the transferor, as Data Controller ensures that:
 - (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or
 - (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or
 - (iii) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.

12.5. In the event that the UK leaves the European Union, Sedex, each Member or Auditor as Data Controller will ensure that it complies with applicable Data Protection Legislation in respect of international transfers of personal data out of the UK.

12.6. Sedex, the Members and/or Auditors as Data Controllers acknowledge that in providing or using the Information Exchange, they may make international transfers of personal data or receive personal data as a result of such transfers. With the intention of meeting their compliance obligations under the Data Protection Legislation, Sedex, the Members and/or Auditors, having regard to the practicalities of the operation of the Information Exchange, as Data Controllers agree as follows:

- 12.6.1. For the purposes of clauses 12.6.2 and 12.6.3 a transfer means any transfer of personal data relevant to the Agreement from the European Economic Area (or from the UK, if the UK leaves the European Union) to outside the European Economic Area (each or any being a "**Transfer**");
- 12.6.2. In respect of any Transfer between Sedex, and any Member or Auditor entering into this Agreement, each as Data Controller agrees to be bound by the EU Model Clauses and/or any such Applicable UK Clauses as are relevant to the Transfer, and agrees to comply with those clauses at their own cost. For the purposes of the EU Model Clauses, and/or the Applicable UK Clauses, the transferor of the said personal data shall be the Data Exporter

and the transferee of any personal data shall be the Data Importer;

- 12.6.3. In respect of any Transfer between any Member or Auditor, and any other Member, or Auditor, each as Data Controller agrees that by agreeing to receive or access any data across the Information Exchange, they will be bound by the EU Model Clauses and/or any Applicable UK Clauses (as if they had executed them) as are relevant to the Transfer, and agrees to comply with those clauses at their own cost. For the purpose of such clauses, the Data Controller providing access to the personal data is the Data Exporter and the recipient of the personal data is the Data Importer;
 - 12.6.4. In respect of international transfers of personal data for which the EU Model Clauses or the Applicable UK Clauses may not provide appropriate safeguards or ensure compliance with the Data Protection Legislation, each Data Controller shall take any steps required to comply with Data Protection Legislation, which may include entering into Applicable Clauses;
 - 12.6.5. Any party shall timeously (at its own expense) do all such things, execute and deliver all such documents, and, or procure the doing of such things, execution of documents as are required to comply with the relevant Data Protection Legislation in respect of such international transfers of personal data.
 - 12.6.6. Notwithstanding the foregoing, each Member or Auditor as Data Controller acknowledges that it is responsible for ensuring compliance with Data Protection Legislation and has the right to make any further arrangements it deems appropriate to ensure compliance in respect of such Transfers or any other international transfers of personal data.
- 12.7. Each party shall assist the other party or parties in complying with all applicable requirements of the Data Protection Legislation in respect of the Agreement. In particular (without limitation), each Data Controller shall:
- consult with the other Data Controller(s) about any notices given to data subjects in relation to the Shared Personal Data;
 - promptly inform the other party about the receipt of any data subject access request in relation to the Shared Personal Data, unless prohibited by law;
 - provide the other party with reasonable assistance (at the cost of the other party) in complying with any data subject access request;
 - not disclose or release any Shared Personal Data in response to a data subject access request without (wherever possible or lawful to do so) first consulting the other party and reasonably taking into account their views;
 - in relation to the Shared Personal Data assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation including those relating to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - notify the other party promptly of any complaints received from data subjects or threatened proceedings relating to compliance with the Data Protection Legislation in respect of the Shared Personal Data.

- notify the other party without undue delay (and in the case of a data security breach within 48 hours) on becoming aware of any breach of the Data Protection Legislation concerning the Shared Personal Data;
- use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- maintain complete and accurate records and information to demonstrate its compliance with this clause 12; and
- provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

12.8. Members and Auditors hereby agree that:

- Sedex may use any data, information, statistics or other related information deduced from the Shared Personal Data which is anonymised or pseudonymised for its own purposes and at its sole discretion, provided such use is not in breach of Data Protection Legislation ("**Anonymised Data**"); and
- the Anonymised Data and any further information created, derived or generated from it shall be the sole and exclusive property of Sedex.

12.9. In accordance with the Membership Rules the parties agree that directors of the Board, Grievance Committee members, officers and employees of Sedex and the Members will have access to anonymous trend data covering, amongst other things, issues, countries, processes and sectors.

13. Suspension of service

- 13.1. From time to time Sedex may need to update the Information Exchange and the Service in an effort to ensure it provides the most up to date and efficient Service; this may involve varying the technical specifications set out on the Information Exchange or otherwise communicated to you, therefore, Sedex reserves the suspend access to the Information Exchange or the Service for a period of time for such reasons and in addition for operational reasons such as standard or emergency repairs and maintenance, upgrading the functionality of the Information Exchange and/or the Service.
- 13.2. Sedex shall endeavour to limit the frequency of disruptions described in 13.1 above and to carry out any standard and planned repairs and maintenance outside of working hours within the UK.
- 13.3. Sedex reserves the right to suspend or discontinue the Service in whole or in part and to remove or disable access to any Data uploaded to the Information Exchange if Sedex considers that continued provision of the Service and access to the Data would violate any applicable law, rule or regulation including but not limited to circumstances where Sedex believes that the Data may be abusive; be unlawful; be pornographic; be libellous; racist or discriminatory in any way and constitutes a criminal offence or gives rise to a civil action against you or Sedex.
- 13.4. Sedex also reserves the right upon Sedex obtaining actual knowledge of the fact that a court or an administrative authority has ordered such suspension, discontinuance, removal or disablement

or of any allegation of unlawful activity in relation to such Data to suspend or discontinue the Service in whole or in part and to remove or disable access to any Data.

- 13.5. Sedex may at its sole discretion forthwith suspend provision of the Service in whole or in part until further notice if Member, Auditor or User is in material breach of any other warranty, undertaking or obligation under the Agreement.
- 13.6. Any exercise by Sedex of its right of suspension in respect of an event referred to in this Agreement shall not exclude Sedex's right subsequently to terminate the Agreement.

14. Term and termination

- 14.1. The Agreement shall commence on acceptance of these Terms of Service by you and (subject to clause 14.2) shall continue until terminated in accordance with this clause.
- 14.2. Sedex may, by written or electronic notice to you, terminate the Agreement with immediate effect if for any reason Member or Auditor ceases to be a Member or Auditor.
- 14.3. Either party may, terminate the Agreement by giving at least 30 days' or one month's written notice to the other.
- 14.4. Either party may, by written notice to the other, terminate the Agreement with immediate effect if any of the following events occurs:
 - the other breaches any term of the Agreement and such breach is incapable of remedy or, if the breach is remediable, it continues for a period of 30 days after written notice requiring it to be remedied has been given to the party in breach; or
 - the other gives notice to its creditors or any of them that it has suspended or is about to suspend payment or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if an order shall be made or resolution passed for the winding up of the other (otherwise than for the purpose of and followed by a reconstruction or amalgamation) or if an administration order shall be made in respect of the other or if the other shall become insolvent or shall make any assignment for the benefit of creditors or has a receiver appointed of all or any part of its assets or takes or suffers any similar action in consequence of debt.
- 14.4. Upon termination of the Agreement for any reason:
 - your right to access the Information Exchange and use the Service shall cease without further action of the parties;
 - Sedex may remove any and all Data uploaded to the Information Exchange save that Sedex shall retain a copy of the Data for archival purposes for a period of 6 years following termination;
 - Member shall not be entitled to any return or rebate of any of the fees or charges paid under the Agreement and shall remain liable for all outstanding and overdue fees or charges.
- 14.5. Termination shall be in addition to, rather than a waiver of, any remedy at law or equity under the Agreement.

14.6. The provisions of clauses 7 (Intellectual Property), 9 (Liability), 10 (Indemnity), 11 (Confidentiality), 12 (Data Protection), 15 (Publicity), 17 (Force Majeure) and 19 (Dispute Resolution), as well as this clause 14.6, shall survive termination of the Agreement for any reason.

15. Publicity

Neither party may issue any news release, public announcement, advertisement or other form of publicity concerning the Agreement or the Service without the prior approval of the other party. Neither party may use any trademark, service mark, trade name, logo, symbol, trade dress, or other indicia of origin that serves to identify the other party without the other party's prior written consent.

16. Government Approvals

The parties acknowledge that the Service may be subject to regulation in any country where the Service is accessed. If any applicable present or future regulation or law requires a modification or waiver of any term of the Agreement, the parties will promptly and in good faith undertake negotiations concerning the actions required by such regulation or law.

17. Assignment

17.1. Neither party shall assign (in whole or in part) or otherwise transfer the Agreement or any of its rights and obligations under the Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

17.2. Sedex may sub-contract the performance of any of its obligations under the Agreement to any third party, but such sub-contracting shall not relieve Sedex of any liability under the Agreement.

18. Force Majeure

Notwithstanding anything contained in the Agreement Sedex shall not be liable if it fails, interrupts, or delays in performing any of its obligations under the Agreement because of any cause beyond its reasonable control (including but not limited to (a) decision of any court or other judicial body of competent jurisdiction, (b) unavailability of equipment, power or other commodity, (c) failure or non-availability of Internet or telecommunications facilities, computer hardware or software, (d) act of God, war, riot, terrorist attack, civil commotion, malicious damage, fires, flood or storm (e) strikes or other industrial disputes (whether involving Sedex's workforce or of any other party) or (e) acts of government or other prevailing authorities or default of suppliers, sub-contractors or other third parties).

19. Dispute Resolution

19.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then the parties shall follow the procedure set out in this clause:

- either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute.
- if the parties are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure in force as at the date the Dispute arises. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the

mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

- 19.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 20.8 which clause shall apply at all times.
- 19.3. If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 20.8

Inadequacy of damages

- 19.4. Without prejudice to any other rights or remedies that Sedex may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of the terms of the Agreement by you. Accordingly, Sedex shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

20. General

- 20.1. The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.
- 20.3. Any amendment to the Agreement shall be in writing, signed by the parties and expressed to be for the purpose of such amendment.
- 20.4. Each party acknowledges that in entering into the Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly set out in these Terms of Service.
- 20.5. All rights, remedies and powers conferred upon the parties are cumulative and shall not be deemed or construed to be exclusive of any other rights, remedies or powers now or hereafter conferred upon the parties by law or otherwise and any failure at any time to insist upon or enforce any such right, remedy or power shall not be construed as a waiver thereof.
- 20.6. If any clause or part thereof of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other clause or part thereof all of which shall remain in full force and effect.
- 20.7. Any notice to be given under the Agreement may be delivered or be sent by prepaid registered post sent first class addressed to the registered office or principal place of business for the time

being of the party to be served or may be transmitted by fax or email to the fax number or email address for the party to be served last known to the party giving the notice. Notice served by post shall be deemed served on the second business day after the date of posting. Notice served by fax or email shall be deemed served on the next business day after the date of transmission. For this purpose, "business day" means any day other than a Saturday, Sunday or a day which is a public holiday in the place both of despatch and of address of the notice. This clause shall not preclude the giving of notice by other methods of communication.

- 20.8. The Agreement shall be governed by and construed in accordance with English Law. It is agreed that legal action relating to the Agreement may only be dealt with by the Courts of England and Wales, save that Sedex may take legal action against Member or Auditor in any country where Member or Auditor may have a place of business.

SCHEDULE 1

SHARED PERSONAL DATA – Categories of Data Subjects

- Named user of the Sedex Advance platform
- Named contact for a Member or Auditor
- Named contact for a site or facility to be assessed or audited
- Named auditor, verifier, assistant or other individual involved in conducting an assessment, audit or verification
- Individual identified in an audit report
- Individual identified in a Self Assessment Questionnaire (SAQ) module
- Any other individuals about whom data is provided to Sedex by the Member or Auditor for use in conjunction with the Service

AGREED PURPOSES

- To deliver, operate or receive the Service
- To provide notifications, reminders and operational communications
- To provide newsletters, product announcements, briefings and other relevant communications
- To allow a Member to assess compliance with its labour, health and safety, business ethics, environmental and other standards
- To allow a Member to assess its suppliers, and its suppliers' sites and facilities
- To allow an Auditor to conduct audits and manage the audit process
- To validate the certification and accreditation held by an auditor, verifier, assistant or other individual involved in conducting an assessment, audit or verification
- To monitor, evaluate and improve the quality of data processed by the Sedex Advance Platform

SCHEDULE 2

EU MODEL CLAUSES/APPLICABLE UK CLAUSES

Commission Decision C(2004)5721

SET II

**Standard contractual clauses for the transfer of personal data from the Community to third countries
(controller to controller transfers)**

Data transfer agreement

between

.....(name)

.....(address and country of establishment)

hereinafter "data exporter"

and

.....(name)

.....(address and country of establishment)

hereinafter "data importer"

each a "party"; together "the parties".

Definitions

For the purposes of the clauses:

- a) "personal data", "special categories of data/sensitive data", "process/processing", "controller", "processor", "data subject" and "supervisory authority/authority" shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby "the authority" shall mean the competent data protection authority in the territory in which the data exporter is established);
- b) "the data exporter" shall mean the controller who transfers the personal data;
- c) "the data importer" shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country's system ensuring adequate protection;
- d) "clauses" shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

I. Obligations of the data exporter

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

II. Obligations of the data importer

The data importer warrants and undertakes that:

- a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data

exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).

- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h) It will process the personal data, [at its option], in accordance with:
 - i. the data protection laws of the country in which the data exporter is established, or
 - ii. the relevant provisions¹ of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data², or
 - iii. the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: (iii)

Initials of data importer:
- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
 - i. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
 - ii. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
 - iii. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
 - iv. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

III. Liability and third party rights

¹ "Relevant provisions" means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).

² However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected.

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

V. Resolution of disputes with data subjects or the authority

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

VI. Termination

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b) In the event that:
 - i. the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
 - ii. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;

- iii. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
- iv. a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
- v. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.
- e) In the event of termination of these clauses, the data importer must return all personal data and all copies of the personal data subject to these clauses to the data exporter forthwith or, at the data exporter's choice, will destroy all copies of the same and certify to the data exporter that it has done so, unless the data importer is prevented by its national law or local regulator from destroying or returning all or part of such data, in which event the data will be kept confidential and will not be actively processed for any purpose. The data importer agrees that, if so requested by the data exporter, it will allow the data exporter, or an inspection agent selected by the data exporter and not reasonably objected to by the data importer, access to its establishment to verify that this has been done, with reasonable notice and during business hours."

VII. Variation of these clauses

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

VIII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated:

Signed by:

Authorised Signatory, for and on behalf of the
Data Importer

Signed by:

Authorised Signatory, for and on behalf of the
Data Exporter

.....

ANNEX A

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to "opt-out" from having his data used for such purposes.
8. Automated decisions: For purposes hereof "automated decision" shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
 - a) i. such decisions are made by the data importer in entering into or performing a contract with the data subject, and

ii. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties; or

b) where otherwise provided by the law of the data exporter.

ANNEX B

DESCRIPTION OF THE TRANSFER

Data subjects

The personal data transferred concern the following categories of data subjects:

- Named user of the Sedex Advance platform
- Named contact for a Member or Auditor
- Named contact for a site or facility to be assessed or audited
- Named auditor, verifier, assistant or other individual involved in conducting an assessment, audit or verification
- Individual identified in an audit report
- Individual identified in a Self Assessment Questionnaire (SAQ) module
- Any other individuals about whom data is provided to Sedex by the Member or Auditor for use in conjunction with the Service

Purposes of the transfer(s)

The transfer is made for the following purposes:

- To deliver, operate or receive the Service
- To provide notifications, reminders and operational communications
- To provide newsletters, product announcements, briefings and other relevant communications
- To allow a Member to assess compliance with its labour, health and safety, business ethics, environmental and other standards
- To allow a Member to assess its suppliers, and its suppliers' sites and facilities
- To allow an Auditor to conduct audits and manage the audit process
- To validate the certification and accreditation held by an auditor, verifier, assistant or other individual involved in conducting an assessment, audit or verification
- To monitor, evaluate and improve the quality of data processed by the Sedex Advance Platform

Categories of data

The personal data transferred concern the following categories of data:

- Personal data relating to the Data Subjects, including title, name, business email address, business telephone number and business address

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

- To the Data Importer's responsible employees, consultants, professional advisers, sub-contractors or suppliers and any third parties engaged by the Data Importer to perform obligations in connection with this Agreement

Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

- None

Data protection registration information of data exporter (where applicable)

Additional useful information (storage limits and other relevant information)

Contact points for data protection enquiries

Data importer

.....

Data exporter

.....