

Sedex Virtual Assessment Terms of Service

June 2020 v1.0

THIS IS A LEGALLY BINDING AGREEMENT BETWEEN THE PARTIES.

This Agreement (as defined below) is written in English. To the extent that any translated version of this Agreement, or any other element of the Agreement, conflict with the English versions, the English version shall prevail. This Agreement is entered into by and between your organisation and Sedex.

1. Definitions

AAC	means Sedex Accredited Audit Companies, recognised as such by Sedex and as published on the Sedex website from time to time.
Agreement	means the terms and conditions set out in this document, read in conjunction with the Sedex General Terms and Conditions and the Sedex Auditor Rules, both as published from time to time.
Auditors	shall have the meaning ascribed to it in the Sedex General Terms & Conditions.
Data	shall have the meaning ascribed to it in the Sedex General Terms and Conditions.
Information Exchange	means the online depository and retrieval platform operated by Sedex, comprising the Sedex Accounts accessible on the website www.sedex.com hosted and managed by Sedex, which allows Auditors, Members and Users to upload, display and access Data.
Sedex	means Sedex Information Exchange Ltd, a company limited by guarantee and registered in the UK with registered office at 24 Southwark Bridge road, London SE1 9HF.
Sedex Brand Guidelines	means the brand guidelines for the use of Sedex, SMETA or other Sedex-owned logos and branding, as published by Sedex from time to time, on the Sedex website.
Sedex General Terms and Conditions	means the Sedex Terms of Service, which include the Membership Rules and Membership

Legal/Audit function/VA T&Cs V1 June

 +44 (0)20 7902 2320  helpdesk@sedex.com  www.sedex.com

 Head Office, 5th Floor, 24 Southwark Bridge Road, London SE1 9HF

Agreement, and the Auditor Rules, as appropriate, as all such terms are defined in the Sedex Terms of Service, which can be accessed at <https://www.sedex.com/wp-content/uploads/2017/03/Sedex-Terms-of-Service-2019.pdf>.

Sedex Vetting Process

means the technological and other minimum criteria for suitability to either perform or procure a Virtual Assessment under these Terms of Service, as these are published on the Sedex website, from time to time.

Virtual Assessment

means the ethical trading assessment tool which is carried out remotely, whether online or using other distance working technology, and that is validated by authorised use of the Sedex brand and bearing a Unique Reference Number (URN) generated by Sedex for this purpose, having successfully passed the Sedex Vetting Process.

Sites of Employment

means physical sites where goods are grown, manufactured or assembled or, in the case of services, physical sites where significant labour is provided.

User

means any of:

(a) a natural person who is an employee, agent or contractor of an AAC and who is appointed and authorised by Auditor to use and administer the Virtual Assessment Service and the Auditor's Virtual Assessment Sedex Account, with high level access and editing rights on behalf of Auditor; whereby there may be more than one such person per Auditor; or

(b) a natural person who is an employee, agent or contractor of the AAC and who is appointed and authorised under (a) above, to use the Virtual Assessment Service and the Auditor's Virtual Assessment Sedex Account with viewing access and limited editing rights on behalf of the AAC, whereby there may be more than one such person per AAC.

2. General

2.1 The terms and conditions in this Agreement set out the basis upon which the Virtual Assessment Service will be made available to you ("you" or "your") in your capacity as Auditor. The Agreement shall be read in conjunction with and as part of the Sedex General Terms and Conditions. To the extent that this Agreement, and the Sedex General Terms and Conditions, conflict then this Agreement shall prevail. Capitalised terms in this document which are not otherwise defined above, shall have the meaning ascribed to them in the Sedex General Terms and Conditions.

2.2 Please read this Agreement carefully to be sure that you understand it. On acceptance of this Agreement you will have entered into a legally binding contract with us for the provision of the Virtual Assessment Service.

2.3 We may change this Agreement from time to time and will endeavour to provide at least 30 days' notice to you of such changes. We will post any changes on the Sedex website. By continuing to use the Virtual Assessment Service after we make any such changes to these Virtual Assessment terms and conditions, you are deemed to have accepted such changes.

3. Vetting process and grievance procedure

3.1 Please note that only Sedex' AACs who meet the following criteria will be granted access to the Virtual Assessment programme:

- (i) have been accepted as AACs and are registered on the Sedex website as such;
- (ii) meet the Sedex suitability criteria, as these are published on the Sedex website from time to time, and have passed the Sedex Vetting Process. AACs will only be permitted to apply to the Sedex Vetting Process once in any given continuous period of 6 (six) months, and
- (iii) have not applied and been rejected within the last 6 (six) months.

3.2 In order to maintain the high standard of quality of the Virtual Assessment programme, Sedex retains the right to investigate complaints brought against Users or AACs, under the Grievance process set out in the Membership Rules or Auditor Rules, each as published from time to time on the Sedex website. Depending on the gravity of the allegation, and any findings of the Grievance Committee investigating the complaint, Sedex may impose any of the following:

- (i) sanctions or conditions for remaining an AAC under the Virtual Assessment programme;

- (ii) a warning that the account may be suspended or terminated if remedial action is not taken up promptly and to Sedex' satisfaction, acting reasonably; or
- (iii) termination of this Agreement and, potentially, of the Sedex membership account of the User.

4. Access to Virtual Assessment report templates and warranties

4.1 The Virtual Assessment report template and Virtual Assessment corrective action plan report ("CAPR") templates must be downloaded from the Information Exchange. The AAC will need to initiate the virtual assessment using the Information Exchange and capture the URN that the system generates and copy into the report template manually. A Virtual Assessment report must always display a unique reference number ("URN") to be verified as a Sedex compliant Virtual Assessment report.

4.2 To access and download the Virtual Assessment templates the target Site of Employment must be inputted into the system (the target Site must be the Site of Employment for which the Virtual Assessment is intended).

4.3 Each User, and any User in your organisation, warrants that:

(a) Each Virtual Assessment report and URN shall only be used once and may not be transferred to any other organisation or site;

(b) The Virtual Assessment report template shall not be altered. Any alterations will render the Virtual Assessment report as non-verified by Sedex. Only Virtual Assessments downloaded through their own AAC Virtual Assessment account can be conducted by AACs; and

(d) The Sedex Virtual Assessment logo and URN may only be applied in relation to Virtual Assessment Reports, in the proper form, and should be deleted if not utilised.

4.4 AACs will promote the fact that all Virtual Assessments conducted by them are uploaded onto the Information Exchange in order that Sedex is able to conduct Virtual Assessment report quality checks and administer its quality assurance programme.

5. Audits and compliance

5.1 Members choose which AAC to use to carry out their virtual assessments, from an AAC duly approved by Sedex to perform Virtual Assessments. Members engage directly with the AAC and pay the AAC for the virtual assessment work. As part of its engagement with the Member, the AAC must obtain confirmation in writing (which can be email) that it permits the AAC to upload and share the report on the Information Exchange.

5.2 All Virtual Assessment carried out by AACs for a Member must be uploaded to the relevant Sedex account for that Member/Site.

5.3 The Member decides which other Members will have permission to view the reports on the Information Exchange, from time to time.

5.4 Other Members may contact the AAC with queries on reports produced by and uploaded on the Information Exchange by them and the AAC shall use reasonable endeavours to answer all such queries within a reasonable period of time and in a reasonably helpful manner.

5.5 AACs undertake not to remove any Virtual Assessment reports from the Information Exchange unless they post a notice on the relevant area of the Information Exchange stating that a Virtual Assessment report has been removed and where a copy of such Virtual Assessment report can be obtained or reviewed.

5.6 Virtual Assessments can be used for initial audits, periodic audits and follow-up audits, but cannot be used for unplanned audits, due to the collaboration required between the AAC and Site of Employment concerned, during the planning stage and assessment of suitability of a Site, for conducting a Virtual Assessment.

5.7 AACs will not issue a certification of conformity in relation to the Sedex Virtual Assessment scheme, or any document that could reasonably be considered to be a Virtual Assessment certificate, as Virtual Assessment is not a certification scheme.

5.8 AACs shall use their best endeavours to reduce the cost burden of ethical labour audits on the supply chain, by minimising the duplication of Virtual Assessments.

6. Sedex logos and brand guidelines

6.1 AACs agree to adhere to the Sedex Brand Guidelines at all times, in relation to the Virtual Assessment scheme. AACs undertake to only use the Sedex and Virtual Assessment logos in relation to performing Virtual Assessments or uploading Virtual Assessment reports and related Data, as set out in this Agreement. AACs and their Users must not infringe the Sedex owned trade marks and brand rights, or any other intellectual property of Sedex. Failure to adhere to this undertaking will be considered a material breach of the Agreement and may result in the relevant AAC account being terminated. Termination of this Agreement shall not prevent Sedex from seeking damages for breach, including in relation to loss of reputation and goodwill, from the relevant AAC.

7. Fees for the use of Virtual Assessment

7.1 The fees for access and the use of a Sedex Virtual Assessment are published on the Sedex website from time to time. In order to encourage take up of the Virtual Assessments, to improve the ethical standards of trading in the marketplace, Sedex will make reasonable efforts to maintain the cost of accessing its Virtual Assessment toolkit, and downloading the templates, competitive and less than the cost of a full SMETA audit. However, Sedex reserves the right to increase, decrease or otherwise modify its

Legal/Audit function/VA T&Cs V1 June

 +44 (0)20 7902 2320  helpdesk@sedex.com  www.sedex.com

 Head Office, 5th Floor, 24 Southwark Bridge Road, London SE1 9HF

Virtual Assessment toolkit and fees in such way as it sees fit, including by offering it as part of a broader commercial offering.

7.2 The fee for each Virtual Assessment will be chargeable once the Virtual Assessment is in the 'Accepted' status, on the Information Exchange portal.

7.3 AACs will be fully transparent with Members and Sites, in relation to their fees for carrying out Virtual Assessments, by agreement in writing (which shall include email), before accepting to perform a Virtual Assessment.

8. Payment terms

8.1 Invoices are issued monthly in arrears and Sedex will issue VAT invoices therefor within thirty (30) days from the end of each calendar month during the Term of this Agreement, unless there are no fees due for a relevant monthly period, in which case Sedex may not issue an invoice for the relevant month. Payment terms are thirty (30) days from receipt of Sedex invoice. Each invoice will be supported by a report for the relevant period, justifying fees due under this Agreement. A relevant AAC will have 10 (ten) business days to dispute any invoice, where discrepancies may have occurred.

8.2 All sums due pursuant to the Agreement are expressed as exclusive of Value Added Tax which the AAC shall, when applicable, pay to Sedex at the prevailing rate. Virtual Assessment fees arise in addition to any AAC's annual subscription fee.

8.3 Payment of all sums due to Sedex under this Agreement shall be made by the AAC in full without any set-off, deduction or withholding whatsoever.

9. Term and Termination

9.1 This Agreement shall commence on acceptance of this Agreement by you and (subject to clause 6.1) shall continue until terminated in accordance with this clause 9.1:

- (i) Sedex may, by written or electronic notice to you, terminate the Agreement with immediate effect if for any reason you cease to be an AAC;
- (ii) Either Party may terminate the Agreement by giving at least 30 days' or one calendar month's written notice (whichever is longer) to the other, for convenience;
- (iii) Either Party may, by written notice to the other, terminate the Agreement with immediate effect if any of the following events occurs:
 - i. the other breaches any term of this Agreement and such breach is incapable of remedy or, if the breach is remediable, it continues for a period of thirty (30) days after written notice requiring it to be remedied has been given to the Party in breach; or

- ii. the other Party gives notice to its creditors or any of them that it has suspended or is about to suspend payment or if the other Party 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 Party (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; and
- (iv) If Sedex ceases to allow an auditor to be a Sedex AAC, due to breach of the Sedex General Terms and Conditions, this Agreement shall automatically terminate at the same time and without any liability for Sedex, whether direct or indirect and including in relation to loss of profit or damage to goodwill or reputation.

9.2 Upon termination of this Agreement for any reason:

- (i) your right to access the Information Exchange and use the Virtual Assessment service shall cease without further action of the Parties;
- (ii) Sedex may remove any and all Data uploaded to the Information Exchange, in relation to Virtual Assessments performed by your organisation, save that Sedex shall retain a copy of the Data for archival and quality assurance, purposes for a period of 6 years following termination; and
- (iii) you 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.

10. Dispute Resolution

10.1 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.

10.1.1 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 documentation or data.

10.1.2 On service of the Dispute Notice, the Parties shall attempt in good faith to resolve the Dispute, including by escalating it to their respective Chief Executive Officers (or as delegated to another function). If the Parties are unable to resolve the Dispute within thirty (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 and the Parties will share the cost equally.

- 10.1.3 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 20 (twenty) business days after the date of the ADR notice and, if a physical meeting is impracticable, may be carried out online using the video conferencing platform which CEDR offer.
- 10.1.4 The Parties shall not commence litigation proceedings in relation to the Dispute until the stepped dispute resolution process outlined in this clause has been implemented, or has failed to resolve the Dispute, other than in relation to a breach of clause 6 (Sedex Intellectual Property) or clause 9.1(iii) (insolvency), where termination without notice will be permitted.

11. General

- 11.1 Subject as provided above, 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, save in relation to the Sedex General Terms and Conditions.
- 11.2 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. 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 Virtual Assessment Terms of Service.
- 11.3 Any amendment to the Agreement shall be in writing, signed by the Parties and expressed to be for the purpose of such amendment.
- 11.4 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.
- 11.5 If any clause or part 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.

- 11.6 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 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 if in the UK and on the fifth business day if outside the UK. Notice served by 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.
- 11.7 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.

ends