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## **MRA Consultation**

# The Secure Data Exchange Portal Access Agreement

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Version: 1.0

## Contents Table

1	Executive Summary .....	3
2	Responding to the Consultation .....	3
3	Background.....	4
4	Purpose of the consultation.....	5
5	Structure of the SDEP Access Agreement .....	5
6	SDEP implementation timetable.....	6
7	Consultation questions .....	7

## 1 Executive Summary

- 1.1 The Secure Data Exchange Portal (SDEP) provides a secure way for parties to communicate and exchange data. This is a ‘dual fuel’ solution and applies to both MRA and SPAA users.
- 1.2 An MRA Change Proposal (MRA CP 0262<sup>1</sup>) was accepted by the MRA Development Board (MDB) on 29<sup>th</sup> August 2019 and is due to be implemented on 25<sup>th</sup> June 2020. This change requires that MEC procure the establishment, operation and maintenance of the SDEP and mandates MRA parties to use this when sending operational queries and escalations that contain personal data relating to a consumer. An equivalent SPAA Change Proposal (SCP 472<sup>2</sup>) was accepted by the SPAA Change Board on 10<sup>th</sup> September 2019 and is due to be implemented on 26<sup>th</sup> June 2020. This change requires SPAA Supplier parties to use the SDEP when sending operational queries and escalations for named SPAA Schedules<sup>3</sup>.
- 1.3 As part of the procurement of the service, an Access Agreement has been developed to detail the commercial terms required between MRASCo as the provider of the service, and users of the service. This will, as a minimum, include MRA Supplier and Distribution Business parties and SPAA Supplier parties, who will be mandated to use the service from the 25<sup>th</sup> June 2020 and 26<sup>th</sup> June 2020 respectively.
- 1.4 This consultation concerns a draft of that Access Agreement, which reflects comments received from some potential SDEP users to date, a legal review by MRASCo’s legal advisor’s and a review by MRASCo Board. Since MRA and SPAA parties will have obligations under the respective codes which require they use the SDEP (and therefore accede to the agreement), MRASCo are consulting as a way of ensuring all potential SDEP users have an opportunity to provide feedback on the agreement before it is finalised.

## 2 Responding to the Consultation

- 2.1 We invite responses by 17:00 on 29<sup>th</sup> November 2019. To provide a response, please email [Support.SDEP@gemserv.com](mailto:Support.SDEP@gemserv.com) with a response to the consultation questions detailed in section 7 of this document.
- 2.2 Please indicate clearly in your response if any aspects of the response are confidential.
- 2.3 If you have any questions about completing the consultation, you can contact us on [Support.SDEP@gemserv.com](mailto:Support.SDEP@gemserv.com) or 020 7090 1029.

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<sup>1</sup> MRA CP 0262 - Web based solution for sending customer information securely

<sup>2</sup> SCP 472 - Web Based Solution for Secure Info Sending

<sup>3</sup> SPAA Schedules 8, 9, 10, 11, 30, 31 and 43

### 3 Background

- 3.1 Since the GDPR regulations were introduced many MRA and SPAA parties have approached the protection of Customers' data differently, some have added guessable generic passwords which have been emailed across the industry to named Contract Managers, operational teams and interested Parties. Others have added passwords into the telephone number section of the Operational Contacts because the password sits under another level of encryption and is accessible to authorised users of the MRA (and SPAA) website. The various approaches have caused additional work for operational teams across MRA and SPAA parties and although the protection of customers' data is at the heart of these decisions, there needs to be consistency across parties and more robust security protocols introduced.
- 3.2 Using encryption via email attachments is not the most robust solution as it still does not eliminate security risks to customers' data because the generic passwords are still known by many Parties. It also does not remove the risk of sending it to an out of date Operational Contact, as it is well known that contacts move on (within organisations) and can still receive information even when they have no legitimate interest, so, sending an encrypted file when the password is easily known still doesn't remove the risks which are present.
- 3.3 The introduction of the SDEP will remove escalations and operational queries from being sent via email and instead provide a higher level of security by sending them via a web-based platform. Doing this increases the protection of the customer data parties are exchanging.
- 3.4 The SDEP will also introduce clear, consistent and codified customer data sharing processes which can be easily followed by new and existing market entrants in an interoperable manner.
- 3.5 The SDEP solution was chosen by MEC with input from the Secure Communications Working Group (SCWG), following a competitive tender process.
- 3.6 As well as an Access Agreement, a new MRA Agreed Procedure for the SDEP has been drafted, which explains the processes for the establishment, maintenance and operation of the SDEP and the requirements for provision of access to SDEP Users. The MRA Agreed Procedure is being progressed through the MRA Change Process and a Change Proposal will be submitted to the MRA Development Board at their November 2019 meeting. A User Requirements Specification will also be drafted, setting out the requirements for and resultant functionality of the SDEP solution. The User Requirements Specification will ultimately be approved by IREG<sup>4</sup>, who will be responsible for its change control.

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<sup>4</sup> MRA and SPAA parties will be entitled to attend and make representations on SDEP related matters at IREG.

## 4 Purpose of the consultation

- 4.1 The consultation is an opportunity for MRA and SPAA parties, as future SDEP users to provide views on the content of the SDEP access agreement, for MRASCo Board review before the agreement is finalised. It is also an opportunity for SDEP users to comment on the proposed timetable for finalising the access agreement and users acceding to the agreement, as part of the wider implementation plan for the SDEP.

## 5 Structure of the SDEP Access Agreement

- 5.1 The SDEP Access Agreement contains 22 sections and 3 Schedules. The sections set out the standard terms of service. The Schedules set out more detailed information about the intended use of the service and expectations on SDEP users. We have not explained the content of each section and schedule of the agreement below. Instead, we have provided context on sections which have been highlighted during previous user engagement and the MRASCo legal review to highlight important elements of the drafting and provide rationale for their current form. Please note this is not an exhaustive guide and respondents should fully review the Access Agreement when considering their response to this consultation.

### MRASCo obligations and exclusion of liability

- 5.2 Section 4 of the agreement sets out MRASCo's obligations and the exclusions on MRASCo liability. There is a specific exclusion on MRASCo liability for losses or damages suffered by SDEP users as a result of omissions or inaccuracies in SDEP data. This exclusion of liability applies irrespective of the cause of the omission or inaccuracy and reflects that SDEP users will provide the data that is present on SDEP, therefore MRASCo's cannot be held liable for the accuracy of this data as a result of provision of the service.

### Use of SDEP and SDEP Data

- 5.3 Section 6 of the agreement sets out provisions for MRASCo to investigate suspected misuse of the service and to audit SDEP users to ensure the service is being used only in ways permitted by the agreement. The drafting provides for the SDEP user being investigated or audited to reimburse MRASCo for its costs if the user is found to be misusing the service. This is not intended to be a routine audit requirement and would only be required in the event of suspected misuse of the service. Therefore, it is not appropriate to include an estimate of MRASCo costs which can be recovered, but it is noted that they must be reasonable.

In the event that an investigation or audit does not uncover misuse, the costs will be paid by MRASCo, but ultimately recovered through Supplier funding of SDEP as set out in Clause 58<sup>5</sup> of the MRA. This reflects that an investigation required as a result of the proven misuse of the service by a user is not considered standard maintenance and operation of the service, and the reasonable costs of an investigation or audit should be recovered from that user rather than socialising those costs across Suppliers.

## SDEP user acting as a Data Processor

- 5.4 The draft Access Agreement previously presented to industry included a section on SDEP users acting as Data Processors for other SDEP users. This is not expected to be the case with the initial set of users, however was originally included to cover any future scenarios where this may be the case. Following the legal review, it was advised that these terms should be removed from the agreement as in this event the Data Controller will need to have these terms set out in a separate contract with the relevant Data Processor(s). An example of this would be if a Supplier Agent became an SDEP user, the Data Protection requirements for the exchange of data between the Supplier and Supplier Agent would be set out in their contract, not the user access agreement of this service. This has therefore been removed this from the agreement.

## Liability

- 5.5 Section 12 of the agreement excludes MRASCo from liability to SDEP users for a variety of losses and limits MRASCo's total liability to any SDEP user. As MRASCo operates on a cost recovery basis on behalf of industry, and is restricted from incurring Profit or Loss, this limits its ability to offset commercial risk through profit made on the service. This is reflective of similar commercial arrangements with MRASCo that reflect the position of MRASCo as a contracting vehicle on behalf of the industry.

## 6 SDEP implementation timetable

6.1 The proposed timetable for implementing the Access Agreement is as follows:

- (a) 11<sup>th</sup> to 29<sup>th</sup> November 2019 – MRA Consultation on SDEP Access Agreement
- (b) 17<sup>th</sup> December 2019 – MRASCo Board consider consultation responses and finalise the Access Agreement

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<sup>5</sup> Clause 58 to be introduced as part of MRA CP 0262 on 25th June 2020

- (c) February 2020 – Associated MRA and SPAA Change Proposals complete their respective change processes.
- (d) March to April 2020 – SDEP Access Agreement issued to MRA and SPAA parties, and completed forms returned to MRASCo for SDEP onboarding.
- (e) May 2020 - User testing of the SDEP (participation in user testing requires users to have completed the accession process)
- (f) Early to mid-June 2020 – User onboarding to the SDEP complete, prior to obligatory use.
- (g) 25<sup>th</sup> June 2020 and 26<sup>th</sup> June 2020 – MRA and SPAA changes and obligation to use SDEP go live respectively.

## 7 Consultation questions

7.1 We are asking respondents to answer two questions:

- (i) Do you have any comments on the proposed drafting of the SDEP Access Agreement?
- (ii) Do you have any comments on the proposed next steps for the access agreement in Section 6 of this consultation?