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ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON THE DEVELOPMENT OF TRADE
Working Party on the Facilitation of
International Trade Procedures

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of the Meeting of Experts on Data
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Fifty-second session, 20 September 1995

UN/ECE RECOMMENDATION No.26

THE COMMERCIAL USE OF INTERCHANGE AGREEMENTS
FOR ELECTRONIC DATA INTERCHANGE

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<u>Submitted by the Rapporteurs on Legal Questions</u> *

* The text of the Recommendation has been approved for publication at the forty-first session of the Working Party in March 1995.

GE.95-

UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE

THE COMMERCIAL USE OF INTERCHANGE AGREEMENTS
FOR ELECTRONIC DATA INTERCHANGE

RECOMMENDATION No.26, adopted by the Working Party on Facilitation of
International Trade Procedures

Geneva, March 1995

PREAMBLE

1.   At its thirty-third session in March 1991 the Working Party on Facilitation of International Trade Procedures (WP.4) adopted the Programme of work relating to legal issues. Among six projects, this programme contained the specific project on ensuring reasonable harmonisation of interchange agreements and the development of an internationally accepted version for optional use.

2.   The Working Party pointed out that any method of communication requires discipline in order to be effective. Such discipline is normally achieved by applying generally acceptable rules of conduct. In the EDI context, such rules have been developed as interchange agreements within a number of user groups, national organisations and regionally. These agreements generally apply only to the interchange of data and not to the underlying commercial contracts between the parties. They present in many instances different solutions with respect to the topics addressed and, as a result, by virtue of the number of agreements and the diversity of their terms, there is a possible barrier to international trade arising from the absence of an internationally acceptable form of agreement which may be adopted for use in commercial practice.

3.   At its forty-first session in March 1995 the Working Party, on the basis of the report of the joint session of the Meetings of Experts on Data Elements and Data Interchange (GE.1) and on Procedures and Documentation (GE.2), agreed to approve the draft Recommendation containing the Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange submitted by the WP.4/Legal Rapporteurs Team.

RECOMMENDATION

The Working Party on Facilitation of International Trade Procedures agreed to recommend that:

    1. The international community of EDI users, including commercial parties deciding to use Electronic Data Interchange in connection with international trade transactions, apply the Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange as set out below in order to increase the legal security of their trading relationship.

    2. United Nations member countries take into account the terms and provisions of the Model Interchange Agreement when introducing legislative and regulatory reforms, in order for these reforms to be consistent with the intentions and business practices which are the substance of the Model Interchange Agreement.

PARTICIPATION IN THE FORTY-FIRST SESSION OF THE WORKING PARTY

At the session representatives attended from:

Austria, Belarus, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Israel, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Romania, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland and the United States of America.   Representatives from Australia, Brazil, Gabon, Japan, Korea, Senegal and South Africa participated under Article 11 of the Commission's terms of reference.

        The session was also attended by representatives of the secretariat of the United Nations Conference on Trade and Development (UNCTAD), the United Nations Commission on International Trade Law (UNCITRAL), and the International Trade Centre UNCTAD/GATT (ITC), as well as by representatives of the following intergovernmental and non-governmental organizations: European Free Trade Association (EFTA), Central Office for International Railway Transport (OCTI), the World Customs Organization (WCO),International Air Transport

Association (IATA), International Article Numbering Association (EAN), International Chamber of Commerce (ICC), International Chamber of Shipping (ICS), International Express Carriers' Conference (IECC), International Organization for Standardization (ISO), International Union of Railways (UIC).

1.   This Recommendation has been developed under Project 4.1 of the Action Programme on the Commercial and Legal Aspects of Trade Facilitation adopted by the Working Party on Facilitation of International Trade Procedures, as set forth in TRADE/WP.4/R.697 and includes the Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange set forth in Annex A.

I. Background.

2.   In 1987, working in cooperation with the Working Party, the International Chamber of Commerce developed and produced the Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission (the UNCID Rules; ICC Publication no. 452). The UNCID Rules were aimed at facilitating the interchange of trade data effected by teletransmission, through the establishment of agreed rules of conduct between parties engaged in such transmission.

3.   The publication of the UNCID Rules confirmed the importance to international trade of having certain agreements in place among commercial parties regarding the use of automated data processing techniques.

4.   The UNCID Rules expressly provided that their provisions, if relied upon, were to be incorporated into definitive agreements among the commercial trading partners. As a result, national organisations, associations and public administrative bodies have developed a multiplicity of model interchange agreements.

5.   Originating within different cultural and legal environments, these existing model agreements often introduced different topics and different approaches to similar topics. The diversity of these interchange agreements, though they may address national or local business requirements, does not address an international focus, which is required by EDI users exchanging messages across boundaries.

6.   Efforts have started to produce more standardised interchange agreements, such as the recent recommendation by the European Commission for use of a European Model EDI Agreement. The development of a truly international model interchange agreement was provided as one of the main objectives of the Action Programme referred to above.

7.   Recent work by the United Nations Commission on International Trade Law to develop model statutory provisions on the use of EDI in international trade, which will be submitted to the Commission for review in July 1995, expressly contemplate that commercial parties may indeed wish to vary the effect of such provisions by agreement.

8.   As well, the progress of the Working Party in defining and understanding the international trade transaction (as reflected by TRADE/WP.4/R.971 and related documents) has emphasized the number of commercial relationships in which EDI can be employed, and, therefore, the circumstances in which an interchange agreement may be appropriate.

II. Preparation of the Model Agreement

9.   This recommendation has been produced with the input and cooperation of the Legal Rapporteurs Team in accordance with the Internal Organisation and Operating Procedures established for that organisation set forth in TRADE/WP.4/R.1071. International organisations, such as the ICC and UNCITRAL have been represented in the meetings during which the drafts of the Model Agreement were developed and circulated.

10.   More than 20 different existing model interchange agreements which have been developed were considered in the course of the preparation of the Model Agreement and close collaboration has been ensured with the technical experts associated with the development of UN/EDIFACT.

11.   Earlier Recommendations of the Working Party, as well as the recommendations or similar actions of other international organizations relating to the simplification and harmonization of international trade procedures, have been considered in order to ensure the consistency of this Recommendation with previous work. In submitting this Recommendation for approval, the Rapporteurs on Legal Questions believe it is consistent with, and furthers the objectives of, prior recommendations in the field.
12.   By offering to commercial parties engaged in international trade a model form of interchange agreement for global use in connection with the UN/EDIFACT standards, the Working Party advances the goals of harmonization, simplification and rationalisation with respect to the most essential procedure of international trade - the communications of the trading partners. However, though recommended, the terms of the model interchange agreement are not mandatory; trading parties are free to modify the terms of any interchange agreement to their mutual satisfaction, or to not enter into interchange agreements at all.

III. Scope

13.   This Recommendation promotes the use of interchange agreements between commercial parties using Electronic Data Interchange in connection with international commercial transactions.

IV. Field of Application

14.   This Recommendation focuses upon commercial parties using Electronic Data Interchange in connection with international commercial transactions. It may also be relevant to administrative authorities, including for example statistics' offices, or trade facilitation bodies in their efforts to rationalise and harmonise electronic processes and procedures.

15.   Though designed for bi-lateral agreements between two trading partners, the Model Interchange Agreement, with adjustments, can easily be implemented in multi-lateral relationships such as in a trade community or association.

<u>ANNEX</u>

**THE UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE**

**MODEL INTERCHANGE AGREEMENT
FOR THE INTERNATIONAL
COMMERCIAL USE
OF ELECTRONIC DATA INTERCHANGE**

<u>TABLE OF CONTENTS</u>

PREFACE

The Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange has been developed as a part of a project under the Action Programme on the Legal and Commercial Aspects of Electronic Data Interchange adopted by the United Nations Economic Commission for Europe Working Party on Facilitation of International Trade Procedures ("WP.4") in 1991. That Programme is set forth in United Nations Document No. TRADE/WP.4/R.697. The Programme emphasizes legal issues which can be readily defined and aims at developing guidance on those legal issues, and recommending appropriate solutions in the form of legal instruments or tools or changes in commercial practices.

The Model Interchange Agreement is a product of one of the main projects of the Programme. Objectives of that project are to ensure the reasonable harmonisation of interchange agreements used in international trade and to develop an internationally accepted version for optional use. Under the operating procedures of WP.4, the Model Interchange Agreement is recommended for consideration by all commercial trading partners wishing to use Electronic Data Interchange in international trade.

The Model Interchange Agreement has been prepared by a group of international practitioners in law or related matters with knowledge and expertise in EDI and international trade. These practitioners, representing a number of countries all over the world, are convened regularly under the auspices of WP.4 through the Legal Rapporteurs Team, which is organised by two Rapporteurs on Legal Questions elected by the members of WP.4. This work, achieved also in close collaboration with other teams of experts on EDI, reflects a multidisciplinary approach, the relevance of which is essential in the area of EDI. It also takes into account the similarities and differences among the various legal systems.

[March, 1995]

AN INTRODUCTION TO INTERCHANGE AGREEMENTS

What is an interchange agreement?

An interchange agreement is made between trading partners setting out the rules they will adopt for using Electronic Data Interchange (EDI). Electronic Data Interchange is the electronic transfer from computer to computer of commercial or administrative transactions using an agreed standard to structure the transaction or message data. The agreement also details the individual roles and legal responsibilities of the trading partners for transmitting, receiving and storing electronic messages. Because of differences which are involved with the use of EDI in commerce, addressing these topics as they relate to a new electronic trading environment reduces the legal uncertainty that electronic trading might raise and enhances the confidence with which the technology is employed.

Why are Interchange Agreements developed and used?

EDI is developing rapidly as an effective business tool for international trade. The use of EDI for business and administration purposes is already well established within several major industries in Europe, North America, Australia/New Zealand and Asia.

The increasing use of EDI is fundamentally changing international trading practices by replacing traditional paper based trading with electronic alternatives. Instead of sending and receiving original written documents with handwritten signatures, traders transfer structured business data from one computer system to another by electronic means, including the increasing use of electronic signatures.

However, the extent to which national and international law accepts that an electronic message can perform the same function as a paper document differs considerably. Many of the conventions and agreements relating to international trade do not anticipate the possible use of EDI. This is largely because EDI simply did not exist when these international conventions and agreements were drafted and the necessary modifications to them have yet to be carried out. Many national laws also introduce uncertainty regarding the legal validity of EDI based transactions or are inconsistent in their treatment of the new technologies. As well, few courts have had the opportunity to rule on the validity of electronic documents, messages or signatures.

From early in the use of EDI, these types of legally focused agreements have been employed by businesses in different industries, in different economic or geographic regions and for different levels of technology sophistication.

Why should a company use an interchange agreement?

In the absence of clear governing legal rules and principles, an interchange agreement provides a company with a readily available solution for formalising the EDI relationship between it and its trading partners.

For example, the Model Agreement, when properly relied upon, seeks to provide EDI messages with a legal binding effect across different national legal systems. This goal is pursued by addressing all of the basic legal issues needing to be covered before a company uses EDI to communicate with its national or international trading partners. Thus, once a company decides it will use EDI, it will require agreement with its trading partners on at least the following issues, the priorities of which will vary based upon the specific needs of that company:

a)   selection of EDI messages, message standards and methods of communication;

b)   responsibilities for ensuring that the equipment, software and services are operated and maintained effectively;

c)   procedures for making any systems changes which may impair the ability of the trading partners to communicate;

d)   security procedures and services;

e)   the points at which EDI messages have legal effect;

f)   the roles and contracts of any third party service providers;

g)   procedures for dealing with technical errors;

h)   the needs (if any) for confidentiality;

i)   liabilities in the event of any delay or failure to meet agreed EDI communications requirements;

j)   the laws governing the interchange of EDI messages and the arrangements of the parties; and

k)   methods for resolving any possible disputes.

Interchange agreements between trading partners are an entirely voluntary arrangement. However, as the fairly extensive list above indicates, a company will need to consider a number of very important issues before starting to use EDI to communicate with trading partners. An interchange agreement gives a structured framework for considering and formalising these basic issues.

The failure to gain a reliable and binding agreement on the rules governing a business' EDI communications presents the risk for unnecessary and costly disputes among trading partners, and, in the worst case, may result in litigation.

What model interchange agreements exist?

A number of model interchange agreements have been developed for both national and regional use. These include interchange agreements published by national EDI organisations, professional bar

associations and public administrations. However, at the time of this publication, no global model exists other than the Model Interchange Agreement.

In the absence of an existing model for international commercial trade transactions, conflicts among the existing national or regional models were also believed to inhibit the deployment of EDI in international trade. The various models consulted by the Legal Rapporteur Team varied widely in length, substance and content; the Model Interchange Agreement seeks to reconcile and find common ground in order to enhance the ease of international trade use of EDI.

How does this Model Interchange Agreement differ from other model agreements?

This Model Interchange Agreement is particularly suitable for international trade. It has been developed taking into account the differing national legal systems and offers practical solutions for overcoming any difficulties these might cause. It is intended to be sufficiently flexible to meet the requirements of all of the business sectors involved in international trade. Users may also find it useful for preparing interchange agreements relating to purely national or regional EDI commercial activity.

If a company decides to use the international model set out in this Model Interchange Agreement as a basis for deciding the rules governing the use of EDI between it and its trading partners, one can be reasonably confident that a tool has been selected which:

-       addresses the recognized legal issues arising from the commercial use of EDI in international trade; and,

-       provides a strong legal and practical framework for considering and recording the necessary business decisions.

**THE MODEL INTERCHANGE AGREEMENT
FOR THE INTERNATIONAL COMMERCIAL USE
OF ELECTRONIC DATA INTERCHANGE**

This Model Interchange Agreement publication consists of three parts:

THE MODEL INTERCHANGE AGREEMENT.

THE COMMENTARY, WHICH PROVIDES CERTAIN EXPLANATIONS AND ADDITIONAL
GUIDANCE.

A CHECKLIST FOR TECHNICAL ANNEX, SUMMARIZING CERTAIN CONTENT
REQUIREMENTS FOR A TECHNICAL ANNEX TO BE ATTACHED TO ANY ACTUAL
AGREEMENT.

The Model Interchange Agreement has been prepared for use among commercial trading partners.
In order to be used with administrative or official agencies or for consumer transactions, appropriate
revisions will be required.

MODEL INTERCHANGE AGREEMENT

This Interchange Agreement (the "Agreement") is concluded by and among {insert names and addresses
of the parties} (hereinafter referred to as "the parties") as of _____, 19__.   By this agreement, the
parties, intending to be legally bound, hereby agree as follows:

SECTION 1: SCOPE AND STRUCTURE

1.1. Scope.
This Agreement governs any electronic transfer of Messages between the parties. Except as expressly
provided, this Agreement does not govern any other relationships, contractual or not, in the context of
which Messages are communicated. A Message means data structured in accordance with the
UN/EDIFACT Standards as provided in Section 2.

1.2. Technical Annex.
The attached Technical Annex sets forth the specifications agreed upon by the parties for certain technical
and procedural requirements. In the event of a conflict between the terms of this Agreement and the
Technical Annex, the terms of this Agreement shall prevail.

SECTION 2: COMMUNICATIONS AND OPERATIONS

The parties shall communicate Messages in accordance with the following :

2.1. Standards.

The "UN/EDIFACT Standards" are those standards established for Electronic Data Interchange (together with related recommendations), as approved and published in the United Nations Trade Data Interchange Directory (UN/TDID). The parties shall use those versions of the UN/EDIFACT Standards identified in the Technical Annex.

2.2. System Operations.
Each party shall test and maintain their respective equipment, software, and services necessary to effectively and reliably transmit and receive Messages.

2.3. System Changes.
No party shall make any changes in systems operations which impair the mutual capabilities of the parties to communicate as contemplated by this Agreement without providing prior notice of the intended change.

2.4. Communications.
The parties shall specify in the Technical Annex the methods of communication, including the requirements for telecommunication or the use of third party providers.

2.5. Security Procedures and Services.
Each party shall implement and maintain security procedures and services, including any specified in the Technical Annex, to protect Messages and their records against untoward events or misuse including improper access, alteration or loss.

2.6. Record Storage.
The parties shall store and retain records and the Messages communicated under this Agreement as may be specified in the Technical Annex.

SECTION 3: MESSAGE PROCESSING

3.1. Receipt.
Any Message transmitted in compliance with this Agreement shall be deemed received when accessible to the receiving party in the manner designated in the Technical Annex. Until so received, no transmitted Message shall have any legal effect unless applicable law mandates legal effect to such Message upon transmission, whether or not received.

3.2. Acknowledgement.

3.2.1. Unless otherwise designated in the Technical Annex, the receipt of a Message need not be acknowledged by the receiving party. A requirement for acknowledgement in the Technical Annex shall include the methods and types of acknowledgements (including any Messages or procedures) and the time periods, if any, in which acknowledgement must be received.

3.2.2. An acknowledgement will be prima facie evidence that the related Message was received. A party receiving a Message requiring acknowledgement shall not act upon that Message until the acknowledgement is sent. If a receiving party is not able to send the acknowledgement, it shall not act upon the Message without further instructions from the sender of the Message.The failure of a receiving party to acknowledge a Message will not deprive the Message of its

legal effect, except when the originating party is not identifiable from the Message.

3.2.3. In the event that the originating party has not received, for a properly transmitted Message, a required acknowledgement and no further instructions have been provided, the originating party may declare the Message null and void by so notifying the receiving party.

3.3. Technical Errors. A receiving party must give notice to the originating party of circumstances, including technical errors in a received transmission, which prevent the further processing of a Message.

SECTION 4: VALIDITY AND ENFORCEABILITY

4.1. Validity.
The parties agree that valid and enforceable obligations may be created by the communication of Messages in compliance with this Agreement. The parties expressly waive any rights to object to the validity of a transaction solely on the ground that communication between the parties occurred through the use of Electronic Data Interchange.

4.2. Evidence.
Without regard to the absence of any writings and written signatures, to the extent permitted by law, the records of Messages maintained by the parties shall be admissible and may be used as evidence of the information contained therein.

4.3. Contract Formation.
A contract concluded through the use of Electronic Data Interchange under this Agreement shall be deemed to be formed when the Message sent as acceptance of an offer has been received in accordance with Section 3.1.

SECTION 5: DATA CONTENT REQUIREMENTS

5.1. Confidential Status.
No information contained in any Message communicated under this Agreement shall be considered confidential unless by operation of law or by designation in the Technical Annex or the Message.

5.2. Legal Compliance.

5.2.1. Each party shall ensure that the content of any Message is transmitted, received or stored in compliance with all legal requirements to such party.

5.2.2. In the event that the receipt or the storage of any element of a Message would constitute a contravention of the applicable law, the receiver shall without undue delay give notice of such non-compliance.

5.2.3. Until the receiver is aware of non-compliance of the Message, its rights and obligations under this Agreement shall not be affected.

5.2.4. Upon giving notice of non-compliance to the sender, the receiver shall be under no obligation to respond to any further non-complying Message. Upon receipt of the notice the sender shall refrain from transmitting any further non-complying Message.

SECTION 6: LIABILITY

6.1. Force Majeure.
No party shall be liable for any delay or other failure in performing its obligations under this Agreement where such delay or failure is caused by any event beyond the party's control (a) which could not be reasonably expected to have been taken into account at the time this Agreement was signed or (b) the consequences of which could not be avoided or overcome.

6.2. Excluded Damages.
No party shall be liable for any special, consequential, indirect or exemplary damages arising from any breach of this Agreement.

6.3. Provider Liability.

6.3.1. A party using the services of a third party provider in the communication or processing of Messages shall be responsible under this Agreement for any acts, failures or omissions of that provider in the provision of said services.

6.3.2. Any party instructing any other party to use a specified third party provider shall be responsible for any acts, failures or omissions of the provider.

SECTION 7: GENERAL PROVISIONS

7.1. Governing Law.
This Agreement shall be governed by the national laws of _____. In the event of a conflict in law between the laws governing a transaction and the laws governing this Agreement, the laws governing this Agreement shall prevail.

7.2. Severability.
Should any provision of this Agreement be invalid or unenforceable for any reason, all other provisions of the Agreement shall remain in full force and effect.

7.3. Termination.
Any party may terminate this Agreement upon not less than [30] days prior written notice of the termination. No termination shall affect any communications occurring prior to the termination, or the performance of any related transactions. The provisions of Sections 2.5, 2.6, 4, 5.1, 6, 7.1 and 7.5 shall expressly survive any termination and remain binding upon the parties.

7.4. Entire Agreement.
This Agreement, including the Technical Annex, constitutes the complete agreement of the parties on the subject matters of this Agreement and becomes effective when signed by the parties. The Technical Annex may be amended by the parties or by a person authorised by a party to sign on its behalf. Each

party shall provide to the other a written and signed record of every amendment agreed. Each amendment shall enter into force upon exchange of the written and signed records. The Technical Annex and each amendment then in force shall constitute the agreement between the parties.

7.5. Headings and Sub-headings.
The headings and sub-headings of this Agreement shall be read as part of the clause or sub clause in which it appears.

7.6. Notice.
Excluding acknowledgements and notices under Section 3, every notice required to be given under this Agreement or under the Technical Annex shall be treated as properly given if provided to the other party in writing and signed by an authorised person for the party giving notice or an electronic equivalent of which a record can be produced. Each notice shall have effect from the day following that upon which it is received to the above mentioned address of the other party.

7.7. Dispute Resolution.

Alternative 1: Arbitration Clause

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by the arbitration of a {or three} person[s] to be agreed by the parties, or failing agreement, to be nominated by _____ in accordance with and subject to the rules of procedure of _____.

Alternative 2: Jurisdiction Clause

Any dispute arising out of or in conjunction with this Agreement shall be referred to the courts of _____, which shall have sole jurisdiction.

The parties have signed this Agreement as of the date first above written.
Name of Party :

Authorized Officer :

Signature :

Name of Party :

Authorized Officer :

Signature :

THE COMMENTARY TO THE MODEL INTERCHANGE AGREEMENT

This Commentary is the second part of a United Nations recommendation relating to the Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange (the "Model Agreement"). The Commentary is intended to be used with the Model Agreement in the preparation of actual commercial agreements; the Commentary provides an explanation of the specific sections of the Model Agreement and guidance on how actual agreements should be prepared. Capitalized terms used in the Commentary have the same meanings provided in the Model Agreement.

I. General Presentation

The Interchange Agreement is comprised of seven sections:

Section 1. Scope and Structure
Section 2. Communications and Operations
Section 3. Message Processing
Section 4. Validity and Enforceability
Section 5. Data Content Requirements
Section 6. Liability
Section 7. General Provisions

In addition, the Agreement needs to be completed by a Technical Annex, which is to be attached to, and is considered an integral part of the Agreement.   Following the Commentary is a Technical Annex Checklist, which can be used in preparing a Technical Annex between the trading partners.

The Model Agreement contains a clear and unambiguous statement that it is the intention of the parties to be bound by the Agreement; this emphasizes that the trading partners desire to operate with, and not outside, a legal framework with respect to their use of Electronic Data Interchange. The Agreement is intended to provide a strong legal framework for ensuring that EDI communications will have a legally binding effect, subject to national laws or regulations which may be effective (see Section 7.1).

Though designed for use by two commercial trading partners, the Model Agreement may be readily adapted for a multi-lateral use among multiple commercial trading partners or in situations in which a trading community or association of EDI users decides upon or encourages the use of the same interchange agreement; the Model Agreement may be adapted for those purposes as well, with appropriate changes for establishing how multiple parties will become bound by the Agreement.

II. Specific Sections

Section 1. SCOPE AND STRUCTURE

Section 1.1 Scope.

The Agreement establishes certain governing rules with regard to the electronic communication between the parties of EDI messages in accordance with the UN/EDIFACT structures and standards ("Messages"). Section 2.1 (and the Commentary) provides further discussion of this aspect of the Agreement. The Agreement does not apply to other forms of electronic communications, such as facsimile transmissions, nor to electronic text transmissions (such as electronic mail) which are not structured and standardized messages.

It is important to emphasize the Agreement does not set forth rules governing the related commercial transactions for which EDI might be employed since those transactions involve their own bodies of applicable legal rules: for example, sales transactions, shipping contracts, insurance contracts, storage arrangements and similar relationships.

Section 1.2 Technical Annex.

The Technical Annex represents an integral part of the agreement among the trading partners (see Section 7.4); its terms are legally binding. The Technical Annex describes the detailed technical procedures which the parties will use in their EDI communications. The Interchange Agreement contemplates that certain topics will be addressed in the Technical Annex; those topics are listed in the Technical Annex Checklist at the end of this Commentary. Additional topics may be required according to the specific needs of trading partners; trading partners are encouraged to consult appropriate technical advisors as to those topics.

Although the Interchange Agreement and the Technical Annex represent the full agreement between the parties, technicians and legal counsel are encouraged to be aware of each other's requirements. Section 1.2 of the Agreement provides a rule that the provisions of the Agreement will control in the event a conflict does arise between the Agreement and the Technical Annex.

Section 2 COMMUNICATIONS AND OPERATIONS

This Section sets forth the rules governing the communications between the trading partners and the required methods of operations which each is to use in sending and receiving Messages. By doing so, the necessary agreements reached between the parties are given legal binding effect. Additional contracts with other participants (such as third party service providers; see Section 2.4) may be required and users are encouraged to have valid agreements with those
participants.

Section 2.1. Standards.

Consistent with its international scope, the Model Interchange Agreement was prepared to be used on the basis of the UN/EDIFACT standards and recommendations developed within the United Nations

Economic Commission for Europe and approved for international use by the International Standards Organization (ISO). These standards include recommendations regarding message formats, syntax, directories of codes, data elements and segments. They are included in the United Nations Trade Data Interchange Directory (UN/TDID) referred to in the Agreement. The Technical Annex Checklist also references certain security services for which standards exist.

The Model Agreement is one of the recommendations included in the UN/TDID and users are strongly encouraged to consult UN/TDID and related United Nations publications in connection with their use of the Model Agreement. A selection of these publications (and information on how to obtain them) is included at the end of this Commentary.

Section 2.2 System Operations.

Consistent with prevailing commercial practices, Section 2.2 requires each trading partner to be individually responsible for testing and maintaining their respective systems, and for the related costs. By agreement, the parties can allocate their respective costs differently. The Agreement requires that the parties must assure that they will be able to communicate both effectively and reliably.

Section 2.3 System Changes.

Many changes in operating systems can impair the end-to-end ability to communicate which is desired between the parties, even when not directly involved with an EDI program or file; parties are encouraged to collaborate with trading partners whenever practicable to assure no disruption in communication occurs. The Section is intended to require trading partners to give notice of any proposed changes in the version release of selected standards to be employed.

Section 7.6 of the Agreement specifies the manner in which any notice of proposed changes under this Section 2.3 shall be given by the trading partners. The time period in advance of the proposed change during which notice must be given is not specified; trading partners are encouraged to anticipate the need for appropriate dialogue, testing and verification among technical experts before implementing any subject changes.

Section 2.4 Communications.

EDI business practices require the parties to determine and agree upon the methods by which the Messages will be communicated. These methods can vary; Messages are communicated (both sent and received) by telecommunications, through the delivery of magnetic tapes or diskettes, or the use of hard copy media. By stipulating these requirements should be specified, Section 2.4 assures compatibility in the respective operations of the trading partners. Technical aspects which might be specified are noted in the checklist for the Technical Annex at the end of this Commentary.

Trading partners are encouraged to specify in the Technical Annex not merely the requirements for end-to-end communications, but to also give regard to the other contractual relationships through which the EDI activities may be conducted. Section 6.3 also considers those relationships.

Section 2.5 Security Procedures and Services.

Establishing and maintaining an effectively secure environment for the use of EDI is an important business objective. As well, the management of security procedures and services can be decisive in determining the legal treatment of the records of Messages and their legal validity.

Trading partners should attempt to achieve the most acceptable end-to-end security, taking into account the nature of their messages, their relative sophistication, costs, available resources and changing technologies. Procedures and services may be used which confirm the authenticity of Messages sent and received and improve the continuing control parties may maintain on the integrity of their communications. The Technical Annex identifies, in summary form, the alternatives available for security services between trading partners and factors to be considered in establishing internal security procedures.

Section 2.6. Record Storage.

To ensure the validity and enforceability of transactions completed through the use of EDI, Section 2.6 requires trading partners to store and retain (a) the Messages communicated (both sent and received) and (b) records relating to those Messages. Those records may include histories or logs of the communications as well as databases containing extracts of certain portions of the Messages.

The record storage requirements which may be specified in the Technical Annex should be developed based upon the commercial or legal requirements under which each party conducts its affairs. The objective is to provide the necessary requirements which can best assure each trading partner that both required and desired records will exist when needed. National laws and regulations may differ considerably regarding the readability, durability or integrity of electronic records.

No specific time requirements or storage formats are indicated; however, trading partners are encouraged to specify details regarding both matters, in order that the appropriate records can be recovered for review in the event of any future disagreements or disputes. Otherwise, the Agreement imposes no restrictions on the internal procedures used by a party to comply with the requirements of Section 2.6.

Section 3. MESSAGE PROCESSING

Section 3.1. Receipt.

Under different national and international legal texts and instruments, the legal effect of a communication can be realized either when it is transmitted, when it is received or when it should have been reasonably received. The Agreement provides a structure for specifying when Messages which are communicated are to be considered received and when they are to be given legal effect. The structure is important for understanding the outcomes of certain communications.

Specifically, under Section 3.1 of the Agreement, a Message will have no legal effect until it becomes accessible to the receiving party as provided in the Technical Annex. This permits parties to designate at which step of the communication process a Message is received, whether in an electronic mailbox, transaction log, a specific machine or receipt by specific individuals or officers of the company. It is not required that a Message be actually accessed or reviewed; it must only be accessible.

The Agreement contemplates an important exception: under certain national commercial or administrative laws, the sending of a communication, whether or not in electronic form, is given certain legal effect, whether or not received in fact by the intended recipient. For example, a buyer sending a notice of defective goods preserves its rights, even if the seller does not receive the communication.

Section 3.2. Acknowledgement.

The UN/EDIFACT structures anticipate that, for both control and security purposes, trading partners may desire that the receipt of any Message be acknowledged by the receiving party. Specific Messages are available for that purpose; those Messages may confirm both the receipt event and that no errors have occurred in the syntax of the Message. Whether a particular type of Message is appropriate for acknowledgement is a decision solely within the control of the trading partners; trading partners may determine that there exists no need to acknowledge each Message transmitted. The cost of providing acknowledgements is often considered in making these decisions.

Section 3.2.1 requires parties to designate in the Technical Annex when a Message should be acknowledged. Since a transmitting party should be afforded the opportunity to determine a Message has been effectively received, the Technical Annex should be prepared with two situations in mind: (a) when acknowledgement is to be required in the ordinary course and (b) when acknowledgement is requested specifically in the Message which has been transmitted. As stated in Section 3.2.1, matters to be addressed include the methods and types of acknowledgements and the time periods, if any, in which acknowledgement must be received.

Section 3.2.2 permits an acknowledgement to be considered as prima facie evidence that a related Message has been received; under this rule, there would be an opportunity for contrary evidence to be submitted. Trading partners are cautioned that certain local rules of evidence may not recognize their efforts to control the acceptability of certain evidence into judicial proceedings.

When acknowledgements are required, Section 3.2.2 also defines additional responsibilities. First, the receiving party is not to act upon the Message until sending the acknowledgement. If acknowledgement cannot be transmitted, the receiving party will either so notify the sender of the subject Message or request further instructions. Until receiving further instructions from the originating party, the receiving party is not to act upon the Message pursuant to Section 3.2.2. Therefore, the parties remain, in most circumstances, in a neutral position until they have had an opportunity to communicate. The instructions might be given by phone, facsimile transmission or delivered paper documents.

Second, for the originating party, who expects a required acknowledgement, in the absence of the acknowledgement and having given no further instructions, the originating party may declare the Message to be null and void by giving notice. Such notice must comply with the requirements of Section 7.6. This right only arises for Messages which have been "properly transmitted" in the first instance.

Since certain types of Messages may have legal effects not favourable to a receiving party (for example, a notice of defective goods sent to a seller), Section 3.2.2 does not permit the receiving party to deprive a Message, when received, from having legal effect by failing to send a required acknowledgement.

Under Section 3.2.3, the receiving party is only excused from sending a required acknowledgement when the identity of the intended recipient cannot be determined from the original Message; to determine that identity, all of the components of a Message should be examined, but no further diligence is required.

Section 3.3. Technical Errors.

In the event circumstances exist which prevent the further processing of a Message, Section 3.3 requires a receiving party to give notice to the originating party. These circumstances may include system malfunctions, but also include technical errors in the received transmission. The obligation to notify an originating party under those circumstances exists even for Messages as to which acknowledgement has not been required.

Section 4. VALIDITY AND ENFORCEABILITY.

Section 4 declares that the trading partners signing the Agreement intend for valid and enforceable obligations to result from their EDI communications. It addresses the critical legal aspects of using EDI in international trade.

Section 4.1. Validity.

Certain national laws may permit a trading partner to object to the validity of certain communications on the basis that a writing or signed writing is otherwise required. Section 4.1 of the Agreement makes clear that the validity of a transaction may not be challenged by either party because it was EDI in nature. This provision may not always be enforceable under some legal systems; the choice of governing national law under Section 7.1 may be influenced by this consideration.

In considering that the use of EDI results in the elimination of written signatures, parties are encouraged to evaluate the security procedures and services which may be selected and used between the trading partners. Though electronic signatures may be acceptable between the parties and specified in the Technical Annex, no assurance can be given that all electronic signature services will perform all of the same functions (including legal functions) as traditional signatures used in similar contexts.

Section 4.2. Evidence.

Section 4.2 specifies the intent of the parties that the records of Messages maintained by the parties shall be admissible and may be used as evidence. The Agreement acknowledges that national laws may differ, however, as to the extent to which parties may specify for judicial proceedings the acceptability of certain types of evidence.

Section 4.3. Contract Formation.

Section 4.3 defines when a contract to be concluded through the use of EDI shall be deemed to be formed. Determining the time of formation is often important for legal purposes. Although rules have been generally defined for contracts concluded by mail or telephone, uncertainty exists as to contracts

concluded through the use of EDI. The rule established by the Agreement ensures the predictability and expectations of the trading partners.

Under Section 4.3, and consistent with Section 3.1, the Message sent as an acceptance of an offer forms the contract when received. This "reception rule" is consistent with the provisions of various national and regional model agreements in use and prevailing EDI commercial practices.

Section 5. DATA CONTENT REQUIREMENTS.

Section 5.1. Confidential Status.

The exchange of information in commercial transactions often requires the communication of confidential data relating to the business of trading partners. The underlying agreements will usually define the obligations of the parties with respect to how that data will be handled. The applicable national laws may also define certain responsibilities regarding the confidential treatment of information. Parties are encouraged to assure that their treatment of the confidentiality of information in electronic form is equivalent to the same information communicated pursuant to other media.

Under this Section, the content of Messages will not be considered as confidential in the absence of a different designation. The trading partners can identify the confidentiality of information included in their Messages through the Technical Annex or in a specific Message.

Section 5.2. Legal Compliance.

This Section provides guidance to the parties regarding how the parties should conduct their affairs in order to assure their compliance with national laws which may define or restrict the content of any Message. In addition, certain laws (such as data protection laws) restrict the communication of certain information across national boundaries.

Section 5.2.1 requires each party to ensure compliance by the content of a Message with all legal requirements relating to that party. The term "storage" relates to storage of the data contained in any Message, not the manner in which Messages may be stored.

The Section does not require one trading partner to assure compliance by its Messages with the laws regulating the other. However, the remaining sub-sections outline how the parties will conduct themselves if the Message from one trading partner, when received or stored, might cause the other to violate an applicable law.

Notice is required (as provided in Section 7.6) and then the originating party must refrain from recurring conduct which relates to the violation. An example might involve the sending of a message including personal data from a country with no data protection laws into a country with those laws in effect.

Section 6. LIABILITY

Section 6.1 Force Majeure.

This Section reinforces the mutual intentions of the parties to give effect to their electronic communications by removing the risk of unexpected liabilities that might arise in conducting that activity. Section 6.1 includes language customary to many commercial agreements which permits the parties to be excused for liability when a delay or failure to perform is caused by certain events beyond their respective control.

Of course, the parties may specify with greater detail events that they will consider as "force majeure" which are outside the party's control. Should certain events occur, such as a natural disaster, which can be contemplated, liability is still not imposed if the consequences of such a non-controllable event can not be avoided or overcome.

Section 6.2 Excluded Damages.

This Section states the mutual intent of the parties that their use of EDI under this Agreement does not expose them to the possibility of being liable for the types of damages which are specified. Different national legal structures may entitle commercial parties to collect damages (including, where applicable, special, consequential, indirect or exemplary damages) in the event a contractual obligation is breached. These types of damages are often awarded to compensate for lost profits or to sanction particularly inappropriate conduct.

The Section does not govern whether the specified kinds of damages might be imposed under the terms and conditions of other contractual obligations between the parties. Certain national laws may limit the enforceability of the Section.

Section 6.3 Provider Liability.

Many companies using EDI also obtain the services of a third party provider (often known as a value-added network) to assist in performing required communication or related functions (for example, maintaining an electronic mailbox to which Messages can be sent or the off-site storage of records relating to Messages).

The choice of which third party provider to engage, and the terms of the contract between a trading partner and its third party provider, are not within the control of the other trading partner. Accordingly, Section 6.3.1 requires a trading partner to be responsible for the acts, failures or omissions of its provider. (Section 6.3.1 applies both in the event that the trading partners engage different third party providers or voluntarily elect to use the same provider.)

In certain cases, one trading partner will require the use of a particular third party provider by its trading partner. Section 6.3.2, under those circumstances, shifts responsibility for the provider's conduct to the instructing trading partner.

Section 7. GENERAL PROVISIONS

Section 7 includes terms often found in many types of commercial agreements. These provisions are not an exclusive listing of general provisions, and the custom and practice in a particular industry or region may include other similar general provisions.

Section 7.1. Governing Law.

The Agreement is prepared, in the absence of applicable statutes or regulations governing the use of EDI, to best assure the parties of the validity and enforceability of their EDI communications. This result is intended to be possible under a variety of legal systems. Trading partners are encouraged to specify the national laws under which the Agreement will be governed. Their choice may be affected by differences in national laws relating to computer privacy, data protection, transborder data movements or similar issues. However, under most legal systems, the choice must bear some relationship to the parties.

Since certain legal rules may conflict in seeking to resolve disputes arising on transactions based on the use of EDI under the Agreement, the Agreement specifies how those conflicts are to be resolved.

The reference to national laws may not appropriately specify certain regional agreements or regulations which parties may desire to apply to the Agreement. In that case, parties are encouraged to add appropriate wording.

Section 7.2. Severability.

Section 7.2 reinforces the intentions of trading partners to give full force and effect to their obligations. Since, for a particular legal reason, one or more portions of the Agreement may be held invalid or unenforceable, this Section assures that the entire contract is not set aside under those circumstances.

Section 7.3. Termination.

The Agreement only controls when Messages are being communicated between the parties; it does not require the use of EDI at all times or for all business communications. Section 7.3 assures trading partners the freedom of contract, permitting a trading partner to end the Agreement's applicability at any time. The non-terminating party is assured an appropriate time period to establish alternative procedures for communication. The 30 day period reflects prevailing commercial practice; however, it may be adjusted based on the agreement of the parties. The required notice must be given in writing, despite the language of Section 7.6.

Termination will not permit a trading partner to avoid the binding effect of certain sections, notably Sections 2.5 (Security Procedures and Services), 2.6 (Record Storage), 4 (Validity and Enforceability), 5.1 (Confidential Status), 6 (Liability) and 7.1 (Governing Law).

Section 7.4. Entire Agreement.

This Section provides that the Technical Annex is expressly included as a part of the Agreement. Of course, in the event of a dispute, certain national laws will permit other aspects of the relationship of the parties to be considered in interpreting the Agreement.

In addition, Section 7.4 emphasizes that amendments must be signed and in writing; electronic messages will not be sufficient. Since amendments to the Technical Annex may most likely be considered by those with technical expertise, a party is allowed to authorize such persons to sign those amendments on its behalf.

Section 7.5. Headings and Sub-headings.

This Section provides a customary rule of interpretation regarding how the Agreement is to be construed, permitting the full content of the Agreement to be considered. Parties may also, as appropriate, exclude the headings from being read as part of the Agreement.

Section 7.6. Notice.

Section 7.6 provides the flexibility for trading partners to employ electronic equivalents of writings for the required notices, provided a record can be produced which is equivalent to the required signed writing. Certain technological solutions exist which will permit this result.

However, many national legal systems fail to explicitly recognize electronic communications as "writings"; trading partners should use care in employing electronic notices and are encouraged, as well, to remain aware of new developments in the related laws.

Parties are advised that the provisions of Section 7.6 do not relate to communications under Section 3.2, Acknowledgements.

Section 7.7. Dispute Resolution.

Since those seeking to use electronic communications are most likely attracted to the benefits of speed and efficiency which the technology provides, they may also favour adopting a similar method of dispute resolution, i.e. arbitration (Alternative 1). This Alternative requires additional decisions by the parties with regard to the procedures to be employed, such as the location of the procedure, the panel of arbitrators, the method for their selection and applicable governing rules.

For those desiring a more traditional forum, Alternative 2 permits the parties to specify the court to have jurisdiction over any possible dispute. Since certainty on this matter is strongly favoured, the Agreement provides for exclusive jurisdiction.

In addition, trading partners may wish to consider specifying the use of alternative dispute resolution facilities which are emerging in various markets or industries.

TECHNICAL ANNEX CHECKLIST

The following checklist is provided as a part of the Model Interchange Agreement to indicate a list of items for which details and specifications are recommended to be developed by the parties to an Interchange Agreement.

The list is not intended to be a complete list of all possible topics which might be addressed in a Technical Annex. The items included result directly from references in the Model Interchange Agreement to the Technical Annex; those items may be completed as required by the trading partners, with the level of detail which they determine to be necessary.

Users are strongly encouraged to consider and address other items which they believe relevant to assuring a full understanding exists between trading partners on the technical and procedural requirements which relate to implementing EDI. As noted in Section 1.2 of the Model Interchange Agreement:

"The attached Technical Annex sets forth the specifications agreed upon by the parties for certain technical and procedural requirements."

For ease of use, the following checklist presents the text of the relevant sections of the Model Interchange Agreement:

Section 2. Communications and Operations
2.1 Standards.

"The parties shall use those versions of the UN/EDIFACT Standards identified in the Technical Annex."

The parties should agree upon the version release of the UN/EDIFACT standards which they intend to use. Parties may also wish to specify the manner in which they will consider for use new version releases of the UN/EDIFACT standards.

The parties should also designate in practical detail the necessary related technical specifications and details. Items which should be considered include identifying directories, code lists, message implementation guidelines and other items directly connection with specified standards and the related versions.

2.2 System Operations.

"Each party shall test and maintain their respective equipment, software and services necessary to effectively and reliably transmit and receive Messages."

The parties should describe the methods and procedures for testing their system operations, the effectiveness and the reliability of the message interchange processes, the times when such testing should occur and the intended results that need to be obtained. The parties should adopt a method for clearly indicating the availability of their EDI systems for transmitting and receiving Messages.

2.4 Communications.

"The parties shall specify in the Technical Annex the methods of communication, including the requirements for telecommunication or the use of third party providers."

The details and specifications with regard to the method of communication should describe:

- the chosen communication method(s);

- the applicable communication protocols which the parties will use, in addition to the UN/EDIFACT standards (such as X.25 or X.400, etc.);

- where required, the information details relating to third party(ies) provider(s) to be used, including the appropriate address and contact information and other related details.

Parties may also consider specifying recovery procedures to either retrieve Messages in case of loss or failure or to provide alternate routing and procedures in case of a failure of the selected method of communication.

2.5 Security Procedures and Services.

"Each party shall implement and maintain security procedures and services, including any specified in the Technical Annex, to protect Messages and their records against untoward events or misuse including improper access, alteration or loss."

Parties may elect to specify in detail the security procedures and services which they may require to be implemented in connection with their use of EDI. Different means exist for improving the reliability of EDI interchanges between business partners; the general objective is to get as many messages effectively and correctly transmitted and processed as possible, without increasing the cost to an unreasonable level.

The selection and use of safety/security measures are typically based on an evaluation of the threats and - not the least - legal implications. This may result in the implementation of various safety measures, which are all independent of the UN/EDIFACT message structure, but nevertheless may contribute to the legal confidence arising from the records.

Trading partners utilizing UN/EDIFACT may select among a variety of security procedures and services, some of which are available within UN/EDIFACT and others which are generally available.

Security Services in UN/EDIFACT. Trading partners may elect security services which consist of some of the security services available within UN/EDIFACT, as listed below, in order to meet the legal requirements or thwart the identified threats. Each of these security services requires the use of cryptographic techniques. Thus any message (which is nothing but a sequence of digits) transferred from one computer to another can be protected by calculating digital mathematical functions (known as cryptographic techniques) on the message, before and after the transmission. This provides the

tools to detect any unintended change not only during transit, but also during storage at either end, thus achieving the desired security service.

The UN/EDIFACT documents identified in the listing following this Technical Annex Checklist include specific materials explaining the security services and key management techniques mentioned below in detail, and should be consulted by a user searching for information.

Message content integrity protects against the modification of data in a message of any kind. This may further be extended to message sequence integrity, which establishes the order in which the messages appeared. Message integrity in itself is typically not achieved unless some key is involved to generate what is known as a Message Authentication Code (MAC). This is a cryptographic fingerprint of the message, which is created by means of a secret key. Normally, anyone in possession of that secret key may generate the MAC-value, unless specially protected hardware is used.

If there is a further need to distinguish between the sender of the message and the recipient (e.g. for legal purposes), the correct security service to apply is non-repudiation of origin, which requires appending time stamps for timeliness and subsequently the calculation of digital signatures based on public key algorithms.

Thus non-repudiation of origin implies message authentication, which in turn implies message integrity.

Corresponding to non-repudiation of origin, the recipient may return a message, secured by a digital signature, which provides non-repudiation of receipt. Of a different nature is the service confidentiality, which protects against disclosure of the content of a message during transit over some network.

UN/EDIFACT security is concerned with the protection of the EDIFACT messages only, and not the internal security related to the end-user applications, where the messages are being generated or processed. In conclusion, the use of security in UN/EDIFACT requires the use of cryptographic techniques, which in turn require the use of cryptographic keys. Thus key management is implied by the use of security in UN/EDIFACT.

For all security purposes, keys (which in fact are large numbers) must be treated with care. Algorithms are in general public knowledge, and only give the desired security if combined with keys. The users may have a common key which is used for cryptographic purposes, or they may each have a pair of matching keys (one private and one public key). Common to all systems are that keys must be distributed in a secure manner. This may either be handled on a bilateral basis, or by involving a third party. The third party is trusted to handle certain procedures regarding registration, certification and distribution of keys. These third parties are often called Trusted Third Parties (TTPs). Under all circumstances there must be agreed rules and procedures for key management between the involved parties.

Additional Security Procedures and Services. To respond fully to the various risks associated with electronic data interchange, parties may wish to consider, as to some of the following risks,

implementing some of the following procedures and services, which are independent of the UN/EDIFACT structure:

- the use of additional identification codes, unique sequence codes or similar non-encrypted tracing and labelling schemes;

- employing value-added third party service providers to record message transaction logs or similarly archive or verify transaction activity;

- using protected automatic storage on local work stations within a company's computer network; and

- monitoring the availability and integrity of communication facilities.

2.6 Record Storage.

"The parties shall store and retain records and the Messages communicated under this Agreement as may be specified in the Technical Annex."

Relevant details and specifications regarding the storage and retention of records and the Messages might include:

- the range of records to be maintained

- the format(s) in which storage is to made

- time periods for which records are to be retained

- the media to be used for the storage and retention

- the rights of access to the records to be provided

- the manner in which storage will be maintained (including testing, environmental conditions and the like)

- requirements for integrity and irreversibility of the records

- the rules relating to the availability of the records.

Parties are encouraged to consider, in responding to this item, the details specified in response to Section 2.5, Security Procedures and Services.

Section 3: Message Processing.

3.1 Receipt.

"Any Message transmitted in compliance with this Agreement shall be deemed received when accessible to the receiving party in the manner designated in the Technical Annex."

Designation of the manner of accessibility could include:
- accessibility through a service provider acting on behalf of the receiver

- accessibility by the receiver to the Message as stored by a service provider (in an electronic mailbox, for example)

- accessibility through the internal computer system of the receiver.

3.2.1 Acknowledgement

"Unless otherwise designated in the Technical Annex, the receipt of a Message need not be acknowledged by the receiving party. A requirement for acknowledgement in the Technical Annex shall include the methods and types of acknowledgements (including any Messages or procedures) and the time periods, if any, in which acknowledgement must be received."

Parties may designate when acknowledgement is to be required in more than one manner. Messages to be acknowledged may be specified by message type (for example, by using the UN/EDIFACT Message names) or by specifying the circumstances in which transmitted Messages require acknowledgement. Parties may wish to specify that acknowledgement is required when requested in the Message that has been transmitted.

When acknowledgement is to be required, the parties should also specify the details regarding how the acknowledgement is to be provided, including:

- the method of acknowledgement (re-sending the Message received; sending another Message, such as a CONTRL Message; the use of other media, such as facsimile transmissions)

- the time periods during which an acknowledgement must be received

- the relevant security procedures and services to be used (such as the AUTACK Message).

Section 5: Data Content Requirements

5.1 Confidential Status

"No information contained in any Message communicated under this Agreement shall be considered confidential unless by operation of law or by designation in the Technical Annex or the Message."

Parties may wish to designate in the Technical Annex that particular types of Messages (e.g. PAXLST, used to communicate passenger lists) or specific information contained in Messages (such as price lists or personal data) are to be considered confidential.

In addition, parties may wish to specify the details regarding the manner in which, within any Message, the transmitting party may request the confidentiality of the Message or specific information contained in that Message.

In any event when confidentiality is required, parties are encouraged to assure that the Technical Annex or the related commercial agreements specify the respective obligations regarding how confidentiality is to be maintained.

Section 7: General Provisions

7.6 Notice

"Excluding acknowledgements and notices under Section 3, every notice required to be given under this Agreement or under the Technical Annex shall be treated as properly given if provided to the other party in writing and signed by an authorized person for the party giving notice or an electronic equivalent of which a record can be produced. Each notice shall have effect from the day following that upon which it is received to the above mentioned address of the other party."

In addition to notices that may be appropriate under preceding sections of the Technical Annex, parties may wish to specify other circumstances in which notices should be given in connection with their use of Electronic Data Interchange. For example, Section 2.3 requires notice of changes in systems operations; parties may wish to specify in the Technical Annex any special requirements for such a notice.