



Australian Government
Australian Customs Service

USER AGREEMENT FOR: ELECTRONIC DEALINGS THROUGH THE CUSTOMS CONNECT FACILITY

CONDITIONS OF USE FOR ELECTRONIC DEALINGS THROUGH THE CUSTOMS CONNECT FACILITY

Between:

the Commonwealth of Australia, acting through and represented by the Australian Customs Service ("Customs")

and

_____ (ABN: _____)
"Communicator" (name of organisation) *If applicable*

1. **Definitions**

1.1 In these Conditions of Use, the following definitions shall apply unless the context requires otherwise:

- (a) **"the Act"** means the *Customs Act 1901*;
- (b) **"Associated User"** means, in relation to a Communicator, a person associated with the Communicator who accesses, or is able to access, the CCF by virtue of their relationship with the Communicator and who purports to communicate with Customs on behalf of the Communicator, whether or not the person's communication is authorised in fact by the Communicator and includes, without limitation:
 - (i) an agent of the Communicator (who has not separately registered to communicate with Customs through the CCF);
 - (ii) where the Communicator is a licensed broker, the Communicator's nominee (within the meaning of section 180(1) of the *Customs Act 1901*);
 - (iii) one of the Communicator's directors or officers (if the Communicator is a company);
 - (iv) one of the Communicator's partners (if the Communicator is a partnership);
 - (v) the Communicator's employee;
 - (vi) the Communicator's contractor or subcontractor;
 - (vii) an employee of the Communicator's contractor or of the Communicator's subcontractor;
 - (viii) the Communicator's consultant; or
 - (ix) an employee of the Communicator's consultant.
- (c) **"CCF"** means the Customs Connect Facility;
- (d) **"CCID"** means the Customs Client Identifier applying to a particular Communicator, which may be the same as the Communicator's Australian Business

Number or, if the Communicator does not have an Australian Business Number, will be a separate identifier issued by Customs;

- (e) **"Communicator"** means the legal entity (such as an individual, company or partnership) which is applying to register or which has registered with Customs to communicate through the CCF;
- (f) **"Customs "** means the Commonwealth of Australia as represented by the Chief Executive Officer of Customs;
- (g) **"Customs Legislation"** means all legislation, and any instruments made under such legislation, relating to:
 - (i) Customs; or
 - (ii) the importation or exportation of goods into or out of the Commonwealth of Australia,and includes, without limitation:
 - (iii) all "Customs Acts" and "Customs-related law" as those terms are defined in the *Customs Act 1901*; and
 - (iv) the *Quarantine Act 1908*;
- (h) **"Customs Connect Facility"** means the electronic gateway that will allow access to some information systems made available by Customs;
- (i) **"Personal Information"** has the same meaning as in the *Privacy Act 1988*;
- (j) **"Private Key"** means a private key associated with a digital certificate issued to the Communicator or an Associated User.

1.2 In these Conditions of Use, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.

2. **About these Conditions**

2.1 These Conditions of Use apply to all electronic communications between Communicators (including communications made by an Associated User) and Customs carried out through the CCF.

2.2 These Conditions of Use govern the methods used for the Communicator's electronic communications with Customs, and are primarily concerned with the process of those electronic communications. They do not override or alter any requirements for the relevant communications, such as deadlines, form and content requirements and the like. These differ according to the particular electronic communication in question, and it is the Communicator's responsibility to ensure that those requirements are still met.

2.3 The CEO of Customs has power under section 126DA of the Act to determine and publish information technology requirements with which the Communicator has to comply when communicating with Customs electronically. These requirements apply in addition to these Conditions of Use. The requirements published by the CEO can be found on the Customs website.

- 2.4 Customs may vary these Conditions of Use at any time by posting the variation on the Customs website. Subsequent electronic communications between the Communicator (or an Associated User) and Customs carried out through the CCF after the posting of such a variation will be governed by the varied Conditions of Use, and such subsequent communications by the Communicator or an Associated User will signify acceptance of those varied Conditions of Use by the Communicator. Customs will also endeavour to make the Communicator aware of any such variations to the Conditions of Use by email. A failure by Customs to send or a Communicator to receive such an email will not prevent the variation applying to the Communicator. The Communicator agrees to maintain a current email address for this purpose and keep Customs advised of it.
- 2.5 Customs will make reasonable efforts to ensure that the CCF is available when Communicators need it. However given the nature of electronic communications networks including the Internet, the Communicator acknowledges that Customs cannot guarantee that the CCF will be continuously available or fault free. If Customs needs to shut down or suspend the availability of the CCF, or the CCF or information systems accessed through it are temporarily inoperative for any reason, Customs will attempt to notify the Communicator of the non-availability of services and of the contingency arrangements to be applied in the event of such non-availability in advance.
- 2.6 The obligations contained in, and liabilities arising under, these Conditions of Use are in addition to and, except as provided in clause 9, do not limit or otherwise affect any obligations and liabilities arising under legislation (including Customs Legislation).
- 3. The Customs Client Identifier**
- 3.1 Upon successful registration with the CCF, the Communicator may be issued with a Customs Client Identifier (CCID) for electronic communications with Customs. The Communicator must take reasonable steps to ensure that only the Communicator's properly authorised officers, employees or representatives use the Communicator's CCID in electronic communications with the CCF.
- 3.2 The Communicator must provide accurate, complete and current information when registering with the CCF and keep this information up to date. If the Communicator does not do so, Customs may not be able to send receipts and other communications to the Communicator.
- 3.3 Where the Communicator provides inaccurate, incomplete or out of date information and, as a result, a communication that was sent to the Communicator by Customs is not received by the Communicator, then Customs will not be responsible for any loss suffered by the Communicator, or any person on whose behalf the Communicator communicates to Customs, as a result of the Communicator's failure to receive the communication.
- 3.4 The Communicator must also ensure that individuals about whom the Communicator provides information to Customs as part of the registration process (such as employees whom the Communicator nominates) are aware that their information is being provided to Customs and may be used by Customs in accordance with these Conditions of Use and any relevant Customs Privacy Policy.
- 3.5 The Communicator must not use, or allow anyone else to use, a Private Key or the CCF, in any way or for any purpose which is unlawful or which violates the rights of Customs or of any third party.
- 3.6 Customs may at its discretion vary the Communicator's access to the CCF.

4. **Keys and Certificates**

- 4.1 Many communications with Customs will require the Communicator or an Associated User to use pairs of private and public keys and provide a digital certificate which is issued by a Certification Authority (CA). This may be required as part of establishing an authenticated session through the CCF, or by digitally signing a message using a Private Key. It is up to the Communicator to procure appropriate key pairs and digital certificates, subject to any requirements specified by Customs from time to time.
- 4.2 The Communicator must only allow Private Keys to be used in the manner and by the persons permitted by Customs and the issuing CA.
- 4.3 The Communicator must always comply with all relevant documents and agreements which govern the use of digital certificates and Private Keys by the Communicator and Associated Users, including the Certificate Practice Statement, Certificate Policy and Subscriber Agreement with the CA. In particular, the Communicator must ensure that the Communicator and Associated Users always handle certificates and associated keys and access mechanisms to those keys (such as PINs and passwords) securely, and promptly cease to use any Private Key, and request revocation of any associated certificate, if the Communicator or an Associated User suspects that a Private Key has been compromised.

5. **The Communicator's Responsibility for Communications to Customs**

- 5.1 The Communicator is responsible and liable for any electronic communication received by Customs (and the information in that communication) in respect of which Customs used a digital certificate issued to the Communicator or an Associated User (which certificate Customs believes, based on verification procedures available to Customs at the time, to be current and valid at the time it is used by Customs) to verify that:
- (a) the communication was digitally signed using the Private Key associated with the digital certificate; or
 - (b) the communications session with Customs during which the communication was made was established using the Private Key associated with the digital certificate.
- 5.2 Sub-clause 5.1 applies:
- (a) regardless of whether the communication was made through a third party service provider; and
 - (b) even if the Communicator or Authorised User to whom the digital certificate was issued did not actually make or authorise that communication unless the Communicator can provide evidence to the contrary.
- 5.3 Where the Communicator or an Associated User knows or suspects that a Private Key has been compromised, the Communicator will continue to be liable for communications made using that Private Key until Customs has received notice from the relevant issuing CA that the relevant digital certificate has been revoked.
- 5.4 Where Customs requires the Communicator to do so, the Communicator must ensure that information which the Communicator or an Associated User communicates electronically to Customs is encrypted. Customs will make its public key available through the CCF for this purpose.
- 5.5 Where the Communicator or an Associated User is required to provide to Customs the name, address or contact details for a person on whose behalf the Communicator or an Associated

User communicates to Customs, the Communicator or the Associated User must, when it next communicates to Customs on behalf of that person, advise any changes to that information to Customs to ensure that Customs' information is kept accurate and up to date. The Communicator indemnifies Customs for any loss suffered by Customs (including for duty, revenue, fees and penalties) where the loss is suffered as a result of the Communicator or an Associated User not updating contact information relating to the Communicator's clients with Customs.

- 5.6 If the Communicator or an Associated User communicates information to Customs and the communication uses a CCID or a digital signature or digital certificate to evidence the Communicator's, or an Associated User's, identity to Customs (for example as a digitally signed email message or as part of an authenticated session through the CCF) and Customs is unable to verify the CCID, digital signature or the information in a certificate, the communication will not be accepted by Customs. In these circumstances, Customs may issue no response to the Communicator or to any Associated User, and Customs may choose not to act on that communication. It is up to the Communicator to check that a communication has been received by Customs and that the CCID, digital signature or the information in a certificate has been verified by Customs. This is necessary to safeguard the security of Customs' systems. Customs will not be liable for any loss that the Communicator or an Associated User may suffer or any claim that another person may have against the Communicator or an Associated User because of Customs' failure to respond to or act upon a communication.
- 5.7 The Communicator must not transmit or attempt to transmit, or allow any person (including any Associated User) to transmit or attempt to transmit, any harmful code (such as viruses) to Customs.
- 5.8 Where Customs Legislation or an Act requires that a communication to Customs contain particular information, it is the Communicator's responsibility to provide to Customs all of the required information. The format of any Customs web page or other communication to the Communicator or to an Associated User shall not be construed as a representation to the Communicator or to an Associated User as to the content or quality of information that is required to be communicated to Customs.
- 5.9 Where the Communicator is a corporate customs broker within the meaning of section 180 of the *Customs Act* and the effect of Customs Legislation is that a nominee within the meaning of section 180 of the *Customs Act* must make a communication on behalf of the corporate customs broker:
- (a) only an Associated User who is a nominee of the Communicator can make such communications with Customs electronically;
 - (b) all such communications made on behalf of the Communicator must include the name or licence number of the Associated User who is acting as nominee of the Communicator under paragraph (a);
 - (c) the inclusion of the name or licence number of the nominee in the communication amounts to a representation by the Communicator that the identified nominee has authored the communication and is the nominee of the Communicator in relation to the goods which are the subject of the communication; and
 - (d) the Communicator must inform all its Associated Users who are nominees that Customs will treat the nominee identified in the communication as making a representation that he or she is the nominee of the Communicator in relation to the goods which are the subject of the communication.

6. **Retaining Records**

6.1 Pursuant to Customs Legislation (and subject to any other requirement in Customs Legislation), the Communicator must keep records verifying the content of any communication to Customs for at least one year after the communication was made. The Communicator must retain such records in a way which ensures their confidentiality, integrity and future availability. The Communicator may need to retain records for a longer period under Customs Legislation or other laws.

7. **Software**

7.1 It is the Communicator's responsibility to obtain, install and use all software and other tools required for the Communicator's electronic communications with Customs. These may include Internet browser software, email client software and digital signature creation and verification tools. Customs may make some of this software available to the Communicator.

7.2 Subject to clause 9, Customs makes no warranty to the Communicator in relation to:

- (a) any software which the Communicator sources from Customs or from a third party;
or
- (b) the adequacy or performance of software which Customs makes available to the Communicator.

7.3 In relation to any software which Customs makes available to the Communicator, the ownership of any intellectual property rights in such software remains with Customs (or Customs' licensor) and the Communicator agrees to use, and to ensure that Associated Users use, such software in accordance with all instructions and restrictions which accompany the software or which may be issued by Customs from time to time.

7.4 Where required, the Communicator consents to Customs downloading (or otherwise providing) software to the Communicator's IT system. Customs is not liable for any loss that the Communicator may suffer as a result of Customs downloading (or otherwise providing) software to the Communicator's IT system.

7.5 Where the Communicator requests Customs to download any software onto the IT system of an Associated User or a third party, the Communicator indemnifies Customs for any loss suffered by that person, or any claim made against that person arising out of the downloading of the software by Customs.

8. **Security**

8.1 Communicating through electronic communications services (including public networks such as the Internet) carries risks. These include the risk that communications may be read by an unauthorised person or that a person may try to impersonate another person in order to send communications on that other person's behalf without their authority. Customs will design its electronic communications systems in a way which seeks to address those risks, but does not make any guarantees in this regard.

8.2 The Communicator must not do or attempt to do or allow anyone to do or attempt to do anything which negatively affects the security of Customs' systems. In particular, the Communicator must not and must not allow another person to circumvent, or attempt to circumvent, the security and authentication measures implemented by Customs. Similarly, the Communicator must not do or allow another person to do anything which negates or reduces the dependability of the relevant security and authentication measures, such as using a digital

certificate and Private Key to establish an authenticated session with the CCF and then leaving the relevant computer unattended during that session.

- 8.3 To minimise the risk of a security breach, the Communicator must regularly check the security of the Communicator's software and signing mechanisms (such as a Private Key and digital certificate and any passwords controlling access to them), and immediately notify Customs where the Communicator has reason to suspect that the security of any of these has been compromised. Where the Communicator suspects that the security of a Private Key has been compromised, the Communicator must also notify the relevant CA.

9. **Exclusion of liability**

- 9.1 To the extent permitted by law, Customs excludes all warranties, conditions and representations in relation to the subject matter of these Conditions of Use, except as expressly stated in these Conditions of Use. If a term is implied by law into these Conditions of Use and the law prohibits a provision in an agreement from excluding, restricting or modifying that term, then that term will be included in these Conditions of Use. However, to the extent permitted by law, Customs' liability for breach of that term will be limited, at Customs' option, to one or more of the following:

- (a) in relation to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (iv) payment of the cost of having the goods repaired, or
- (b) in relation to services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

- 9.2 Subject to clause 9.1, Customs will not be liable to the Communicator or to any other person for any loss or damage suffered in relation to the Communicator's or an Associated User's electronic communications with Customs, including (without limitation) any loss or damage related to or arising out of:

- (a) any software or other tools used in connection with the Communicator's electronic communications with Customs, whether these are made available by Customs or a third party;
- (b) the unavailability for any reason (including suspension or termination by Customs) of the CCF;
- (c) the transmission of any harmful code (such as viruses) to the Communicator or to an Associated User through any Customs communications service;
- (d) Customs' failure to notify the Communicator that Customs may have received any harmful code (such as viruses) from the Communicator or an Associated User;
- (e) any breach of confidence or interference with privacy caused by or arising in

connection with the distribution of information within the Communicator's organisation;

- (f) Customs' failure to respond to a communication that the Communicator (or an Associated User) makes to Customs; and
- (g) any breach of security that occurs in a Customs IT system or in the CCF.

10. **Termination**

10.1 These Conditions of Use are effective until terminated by either Customs or the Communicator.

10.2 The Communicator agrees that it will cease to have access to CCF immediately upon termination.

10.3 The Communicator may:

- (a) terminate these Conditions of Use upon 30 days' prior written notice to Customs; or
- (b) without prejudice to any other right, claim or action which the Communicator may have against Customs, terminate these Conditions of Use immediately upon delivery of written notice to that effect to Customs if Customs fails to comply with any of the terms of these Conditions of Use.

10.4 Subject to the Act, Customs may:

- (a) terminate these Conditions of Use upon 30 days prior written notice to the Communicator; or
- (b) without prejudice to any other right, claim or action which Customs may have against the Communicator, terminate these Conditions of Use immediately upon delivery of written notice to that effect to the Communicator if the Communicator fails to comply with any of the terms and conditions of these Conditions of Use after being given 7 days written notice to do so.

10.5 Termination of the Conditions of Use shall not affect any rights of Customs or obligations owed by the Communicator to Customs under this Agreement. The obligations of the Communicator and the rights of Customs under clauses 4, 5, 6, 7, 8 and 9 continue after the termination of these Conditions of Use.

11. **Other issues**

11.1 Customs may refuse to process or respond to a communication from the Communicator or an Associated User or it may suspend or terminate a session with the Communicator or an Associated User for any reason, including where:

- (a) Customs considers that there is a risk to Customs' systems (for example where a communication contains a virus) or a risk to the revenue or ensuring compliance with Customs Legislation in processing or responding to the communication;
- (b) a Private Key, the Communicator's CCID or digital certificate have expired or been revoked;
- (c) Customs has reason to suspect that a Private Key, the Communicator's CCID or digital certificate are being used without the Communicator's authority;

- (d) Customs has reason to suspect that the Communicator is engaging in unlawful activity.
- 11.2 The Communicator consents , and agrees to procure the consent of:
- (a) all Associated Users and any other individual who carries out electronic communications with Customs on the Communicator's behalf; and
 - (b) any other person about whom the Communicator provides Personal Information to Customs;
- to Customs collecting, using and disclosing Personal Information about the Communicator or about such individuals (including information which Customs already holds) for the following purposes:
- (c) administering Customs Legislation;
 - (d) providing the communicator and associated user with unsolicited information relevant to Customs business
 - (e) checking and verifying the identity of the Communicator or other entity or individual.
- 11.3 Pursuant to Customs Legislation, Customs is required to collect certain personal information about individuals. In some circumstances, the failure to disclose such personal information to Customs will prevent Customs from being able to provide services. The Communicator must ensure that all Associated Users and any other person about whom the Communicator discloses information to Customs is made aware of the disclosure to Customs.
- 11.4 The Communicator must promptly inform Customs if any Communicator details change after the Communicator has registered through the CCF.
- 11.5 These Conditions of Use are to be interpreted, as far as possible, to have an operation consistent with Customs Legislation. If any provision of these Conditions of Use is held invalid, unenforceable or illegal for any reason, that provision shall be deemed deleted and the other provisions of these Conditions of Use shall remain in full force.
- 11.6 The Communicator must abide by, and ensure that Associated Users abide by, all applicable laws, whether in Customs Legislation, or otherwise.
- 11.7 The Communicator must not restrict or attempt to restrict any person who has a right to do so, from accessing the CCF.
- 11.8 These Conditions of Use shall be governed and construed according to the law of the Australian Capital Territory and the parties agree to submit to the jurisdiction of the courts of that Territory.

FOR THE 'COMMUNICATOR'

To be completed by either:

- an individual who is applying to register with Customs to communicate through the C CF
OR
- in the case of a business entity applying to register with Customs to communicate through the CCF, a person with the authority to bind the business to these terms and conditions:

Executed by: _____
(name of organisation)

ABN: _____
(If applicable)

in accordance with the Corporations Act:

Signature of Authorised Officer

Signature of Witness

Name and title of Authorised Officer in full

Name and title of Witness in full

Dated:...../...../.....

Dated:...../...../.....

Contact details: Phone:
Email:

FOR AUSTRALIAN CUSTOMS SERVICE

To be signed by the Customs Representative only:

Executed by the Commonwealth of Australia (acting through and represented by the Australian Customs Service) by a duly authorised officer in the presence of:

Signature of Authorised Officer

Signature of Witness

Name of Authorised Officer in full

Name of Witness in full

Dated:...../...../.....

Dated:...../...../.....