



Australian Government

Department of Home Affairs

**USER AGREEMENT FOR
ELECTRONIC DEALINGS THROUGH THE
COMMON CONNECT FACILITY**

Between:

**the Commonwealth of Australia, acting through and represented by the Department of Home Affairs (“the Department”)
and**

the communicator

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) “**Agreement**” means this user agreement between the Department and the Communicator including the Conditions of Use, as amended from time to time, and any schedule or attachment.
- (c) “**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 the Department 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 the Department through the CCF);
 - (ii) where the Communicator is a licensed broker, the Communicator’s nominee (within the meaning of section 180(1) of the Act);

- (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.
- (d) "**CCF**" means the Common Connect Facility;
- (e) "**CCID**" means a unique Customs Client Identifier applying to a particular communicator, which may be generated by the CCF or other Department information system, to identify that Communicator;
- (f) "**Comptroller-General of Customs**" has the same meaning as in the Act and includes his/her delegate under the Act or under the *Public Governance, Performance and Accountability Act 2013* (Cth);
- (g) "**Conditions of Use**" means the conditions of use forming part of this Agreement;
- (h) "**Customs Legislation**" means all legislation, and any instruments made under such legislation, relating to:
- (i) the Department;
 - (ii) the importation or exportation of goods into or out of the Commonwealth of Australia,
 - (iii) the movement of travellers and crew into or out of the Commonwealth of Australia; or
 - (iv) the movement of vessels or aircraft into or out of the Commonwealth of Australia,
- and includes, without limitation:
- (v) all "Customs Acts" and "Customs-related law" as those terms are defined in the Act; and
 - (vi) the *Quarantine Act 1908*;

(i) “**CommonConnect Facility**” means the electronic gateway that will allow access to some information systems made available by the Department;

(j) “**Department’s website**” means www.homeaffairs.gov.au or such other URL as the Department shall notify the Communicator;

(k) “**electronic**”, in relation to a communication, has the same meaning as in the Act;

(l) “**Personal Information**” has the same meaning as in the *Privacy Act 1988*;

(m) “**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 of Use

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

2.2 These Conditions of Use govern the methods used for the Communicator’s electronic communications with the Department, 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 Under section 126DA of the Customs Act, the Comptroller-General of must, after consulting with persons likely to be affected determine and publish information technology requirements which have to be met by person’s wishing to communicate with the Department electronically. These requirements apply in addition to these Conditions of Use. The requirements published by the Comptroller-General can be found on the Department website.

2.4 The Department may vary these Conditions of Use at any time by publishing the variation in the *Gazette* and on the Department’s website. Subsequent electronic communications between the Communicator (or an Associated User) and the Department carried out through the CCF after the publication of such a variation in the *Gazette* and on the Department’s website will be governed by the Conditions of Use as amended by the variation, and such subsequent communications by the Communicator or an Associated User will signify acceptance of those varied Conditions of Use by the Communicator(or Associated User). The Department will also endeavour but is not obliged to make the Communicator or (Associated User)aware of any such variations to the Conditions of Use by email. A failure by the Department to send or a Communicator (or Associated User) receive s uch an email will not prevent the variation to the Conditions of Use applying to the Communi cator or (Associated User) (as the case may be). The Communicator (or

Associated User) agrees to maintain a current email address for this purpose and keep the Department advised of it.

2.5 The Department will make reasonable efforts to ensure that the CCF is available for use by the Communicator. However, given the nature of electronic communications networks including the Internet, the Communicator acknowledges that the Department does not warrant and cannot guarantee that the CCF will be continuously available or fault free or that communications are instantaneous. The Department may in its absolute discretion temporarily shut down or suspend the availability of the CCF at any time and from time to time for the purpose of protecting the security of the Department's information systems, including the CCF, and for maintenance, upgrades, or changes to the Department's information systems, including the CCF. If for any reason the CCF or information systems accessed through it are temporarily inoperative, the Department will, as soon as practicable in the circumstances, notify the Communicator by posting a notice on the Department's website and, where practicable, by email, of the non-availability of services. Where practicable the Department will notify the Communicator in advance of the contingency arrangements to be applied in the event of the non-availability of the CCF.

2.6 The Department may at its sole and absolute discretion from time to time change or otherwise update, edit, modify or redesign the design, layout, colour scheme, look and feel, and to reconfigure the means and methods of access to the CCF and the technical features and functions of the CCF to reflect what in the opinion of the Department is desirable. The Communicator may not complain about any altered feature of the CCF.

2.7 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. Communicator Registration

3.1 Upon successful registration with the CCF or other Department information system, a CCID may be assigned to the Communicator for electronic communications with the Department. 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, the Department 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 the Department is not received by the Communicator, then the Department will not be responsible for any loss suffered by the Communicator, or any person on whose behalf the Communicator communicates to the Department, 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 the Department as part of the registration process (such as employees whom the Communicator nominates) are aware that their information is being

provided to the Department and may be used by the Department in accordance with these Conditions of Use and any relevant Department 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 the Department or of any third party.

3.6 The Department may at its absolute and unfettered discretion vary the Communicator's access to the CCF.

4. Keys and Certificates

4.1 Many communications with the Department 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 the Department 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 the Department 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 the Department

5.1 The Communicator is responsible and liable for any electronic communication received by the Department (and the information in that communication) in respect of which the Department used a digital certificate issued to the Communicator or an Associated User (which certificate the Department believes, based on verification procedures available to the Department at the time, to be current and valid at the time it is used by the Department) to verify that:

- (a) the communication was digitally signed using the Private Key associated with the digital certificate; or
- (b) the communications session with the Department 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.

5.3 For the avoidance of doubt, the Communicator will continue to be liable for communications made using the Private Key associated with a digital certificate until the Department has received notice from the relevant issuing CA that the relevant digital certificate has been revoked.

5.4 Where the Department requires the Communicator to do so, the Communicator must ensure that information which the Communicator or an Associated User communicates electronically to the Department is encrypted. The Department's public key will be made available for this purpose.

5.5 Where the Communicator or an Associated User is required to provide to the Department the name, address or contact details for a person on whose behalf the Communicator or an Associated User communicates to the Department, it is the responsibility of the Communicator or Associated User to correctly identify the person or persons on whose behalf the Communicator or Associated User communicates with the Department. The Communicator or the Associated User must, when it next communicates to the Department on behalf of that person, advise the Department of any changes to that information to ensure that the Department's information is kept accurate and up to date. The Communicator indemnifies the Department for any loss suffered by the Department (including for duty, revenue, fees and penalties) where the loss is suffered as a result of the Communicator or an Associated User not providing correct and up-to-date information relating to the Communicator's clients or any other person on whose behalf the Communicator or an Associated User communicates with the Department.

5.6 If the Communicator or an Associated User communicates information to the Department 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 the Department (for example as a digitally signed email message or as part of an authenticated session through the CCF) and the Department is unable to verify the CCID, digital signature or the information in a certificate, the communication will not be accepted by the Department. In these circumstances, the Department may issue no response to the Communicator or to any Associated User, and the Department may choose not to act on that communication. The Communicator acknowledges that it has responsibility for checking that a communication has been received by the Department and that the CCID, digital signature or the information in a certificate has been verified by the Department and that this arrangement is necessary to safeguard the security of the Department's information systems. The Department 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 the Department's 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 the Department.

5.8 Where Customs Legislation or an Act requires that a communication to the Department contain particular information, it is the Communicator's responsibility to provide to the Department all of the required information. The format of any Department's 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 the Department.

5.9 Where the Communicator is a corporate customs broker within the meaning of section 180 of the Act and the effect of Customs Legislation is that a nominee within the meaning of section 180 of the 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 the Department 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 the Department 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 with the Department 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 the Department. These may include Internet browser software, email client software and digital signature creation and verification tools.

7.2 The Department may make software available to the Communicator to support electronic communication between the Communicator and the Department.

7.3 Subject to clause 9, the Department makes no warranty to the Communicator in relation to:

(a) any software which the Communicator sources from the Department or from a third party; or

(b) the adequacy or performance of any software which the Department makes available to the Communicator.

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

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

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

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. The Department 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 adversely affects the security of the Department's information 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 the Department.

8.3 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.

8.4 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 the Department 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, the Department 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. The Department makes no representation or warranty as to the suitability, timeliness, availability, accuracy, completeness or reliability of the service provided by the Department through the CCF. 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. To the extent permitted by law, the Department will not be liable for any loss or damages of any kind whatever (including, without limitation, consequential loss or damages) in respect of the services to be supplied by the Department in accordance with this Agreement whether arising from any act or omission (and whether negligent or not) of the Department or any of its employees, agents or independent contractors or otherwise and the Department's liability for breach of that term will be limited, at the Department's 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, the Department 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 the Department, 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 the Department, whether these are made available by the Department or a third party;
- (b) the unavailability for any reason (including suspension or termination by the Department) of the CCF;
- (c) the transmission of any harmful code (such as viruses and disabling or harmful devices) to the Communicator or to an Associated User through any Department communications service or any loss of data, programs or breaches of security that the Communicator may experience as a result of the use of the CCF;
- (d) The Department's failure to notify the Communicator that the Department 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) The Department's failure to respond to a communication that the Communicator (or an Associated User) makes to the Department.

10. Termination

10.1 These Conditions of Use are effective until the Agreement is terminated by either the Department 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 without prejudice to any other right, claim or action which the Communicator may have against the Department terminate this Agreement:

- (a) on 30 days written notice to the Department without any requirement to provide a reason for the termination; or
- (b) immediately upon delivery to the Department of written notice to that effect if the Department fails to comply with any of the material terms of these Conditions of Use.

10.4 The Department may, without prejudice to any other right claim or action which the Department may have against the Communicator, terminate this Agreement:

- (a) on 30 days written notice to the Communicator without any requirement to provide a reason for the termination; or
- (b) immediately upon delivery to the Communicator of written notice to that effect if the Communicator fails to comply with any of the Conditions of Use after being given 7 days written notice to do so; or
- (c) with immediate effect on the delivery to the Communicator of a written notice:
 - (i) for any material breach by the Communicator of its obligations under this Agreement and without limiting the foregoing including clause 8.2 of this Agreement;
 - (ii) if the Communicator voluntarily or involuntarily is dissolved or declared bankrupt, insolvent, or commit an act of bankruptcy or if an order is made or resolution is passed or a notice is issued convening a meeting for the purpose of passing a resolution or any analogous proceedings are taken for the appointment of an administrator, administrative receiver, receiver or manager of or the winding up of the Communicator, other than a members' voluntary liquidation solely for the purpose of a bona fide amalgamation or reconstruction;

(iii) if the Communicator compounds with its creditors or has a receiver appointed over all or any part of the Communicator's assets or an administrator, administrative receiver, receiver or manager is appointed in respect of the Communicator;

(iv) if the Communicator ceases to carry on business; or

(v) if the Communicator's financial position deteriorates to such an extent that in the Department's opinion the capability of the Communicator to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

10.5 Termination of the Agreement shall not affect any pre-existing rights of the Department or any obligations to be performed by the Communicator under this Agreement on or before the date of termination. The obligations of the Communicator and the rights of the Department under clauses 4, 5, 6, 7, 8 and 9 continue after the termination of these Conditions of Use.

11. Indemnity by Communicator

11.1 The Communicator indemnifies and will keep indemnified and saved harmless the Department against all Losses sustained or incurred by the Department directly or indirectly as the result of:

(a) a claim made or threatened by a third party arising out of or in connection with any negligent, unlawful or wilfully wrong act or omission of the Communicator or Associated User; or

(b) any breach of any of the provisions of this Agreement by the Communicator or Associated User or any other person acting on behalf of the Communicator.

11.2 "Loss" and "Losses" means liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

12. Other issues

12.1 The Department 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 at its absolute discretion at any time and from time to time, for any reason, including where:

(a) the Department considers that there is a risk to the Department's information systems (for example where a communication contains a harmful code, such as 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) the Department has reason to suspect that a Private Key, the Communicator's CCID or digital certificate are being used without the Communicator's authority;

(d) the Department has reason to suspect that the Communicator is engaging in unlawful activity.

12.2 The Communicator consents, and agrees to procure the consent:

- (a) of all Associated Users and any other individual who carries out electronic communications with the Department on the Communicator's behalf; and
- (b) of any other person about whom the Communicator provides Personal Information to the Department;
- (c) to the Department collecting, using and disclosing Personal Information about the Communicator or about such individuals (including information which the Department already holds) for the following purposes:
 - (i) administering Customs Legislation;
 - (ii) providing the Communicator and Associated User with unsolicited information relevant to Department business;
 - (iii) checking and verifying the identity of the Communicator or other entity or individual.

12.3 Pursuant to Customs Legislation, the Department is required to collect certain personal information about individuals. In some circumstances, the failure to disclose such personal information to the Department will prevent the Department 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 the Department is made aware of the disclosure to the Department.

12.4 The Communicator must promptly inform the Department if any Communicator details change after the Communicator has registered through the CCF.

12.5 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.

12.6 The Communicator must abide by, and ensure that Associated Users abide by, all applicable laws, whether in Customs Legislation, or otherwise.

12.7 The Communicator must not restrict or attempt to restrict any person who has a right to do so, from accessing the CCF.

13. Publication of any notice on the Department's website

13.1 Publication of a notice on the Department's website is deemed receipt by the Communicator of the said notice.

14. Trustee Communicator

14.1 If the Contractor acts as trustee of a trust, in relation to this Agreement:

- (a) it is liable both personally and in its capacity as trustee of that trust;
- (b) it will not assign, transfer, mortgage, charge, release, waive, encumber or compromise, its right of indemnity out of the assets of that trust, but will retain and apply such indemnity only towards meeting its obligations under this Agreement;
- (c) it will not retire, resign or by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- (d) it represents and warrants that:
 - (i) such trust has been duly established and currently exists;
 - (ii) it is the duly appointed, current and only trustee of that trust;
 - (iii) as such trustee it has the power to enter into and perform its obligations under this Contract;
 - (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (v) conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, OR otherwise is overcome by the terms of the relevant trust deed; and
 - (vi) no breach of the relevant trust deed exists or would arise.

15. Dispute Resolution and applicable law

15.1 A dispute arising under this Agreement will be dealt with as follows:

- (a) the party claiming that there is a dispute will discuss the matter with the other party;
- (b) if unresolved, the party claiming the dispute will send to the other party a notice setting out the nature of the dispute, the party receiving the notice will respond within seven (7) days;
- (c) if the dispute remains unresolved, within seven (7) days each party will nominate a representative who does not have any prior involvement in the dispute;
- (d) the representatives will seek to settle the dispute by direct negotiation;
- (e) in the event that the representatives are unable to resolve the dispute, the parties to the dispute may proceed to litigation;

- (f) a party seeking urgent interlocutory relief is not obliged to comply with clauses 12.1 (a) to (d).

15.2 This Agreement shall be governed and construed according to the law of the Australian Capital Territory and the parties irrevocably and unconditionally agree to submit to the jurisdiction of the courts of that Territory.

16. Assignment

16.1 The Communicator may not assign or transfer any rights, benefits or obligations under this Agreement without the Department's prior written consent, which may be refused without assigning a reason for the refusal.

FOR THE 'COMMUNICATOR'

To be digitally signed by either:
an individual who is applying to register with the Department to
communicate through the CCF

OR

in the case of a business entity applying to register with the
Department to communicate through the CCF, a person with the authority to bind
the business to these terms and conditions.

Digital Signature