

**CustomsLink**  
**Terms and Conditions**

**1. INTERPRETATION**

1.1 These Terms govern:

1.1.1 your access to our platform in connection with the provision of the Declaration Services, at:

- [www.customs-link.com](http://www.customs-link.com)

or such other domains as are operated by us from time to time; and

- the "CustomsLink" mobile device application;

(where, the "**Platform**" means any or all of such access points to the Declaration Services we provide); or

1.1.2 our provision of the Declaration Services via media other than through the Platform, which shall include but not be limited to that via telephone, email, video calling or other tangible or electronic media.

By submitting your details to us for registration for an account to access the Platform, or by otherwise submitting a Declaration to us, you agree to be legally bound by these Terms. These Terms work together with our **Privacy Policy** (<https://www.customs-link.com/privacy>), **Terms of Use** (<https://www.customs-link.com/terms-use>) and **EULA** (<https://www.customs-link.co.uk/eula>) (as appropriate).

1.2 We reserve the right to amend these Terms at any time. All amendments to these Terms will be posted on the Platform. Continued use of the Platform will, be deemed to constitute acceptance of the new Terms. No other terms or changes to these Terms will be binding unless agreed in writing signed by us.

1.3 In these Terms:

1.3.1 the following terms shall have the following meanings:

**"Account"** an account that we allocate to our customers in order that they are able to access, and use, the Platform;

**"Additional Charges"** means any applicable sales, import or export duties, taxes, storage, inspection or handling fees or any other charges, costs, expenses, fees, fines or liabilities payable to or otherwise chargeable by a Transporter, HMRC or any applicable Competent Authority;

**"Agent"** means the entity which acts as the Direct Representative or Indirect Representative of the Declarant and appoints us as the sub-agent to act on a Direct Representative basis under these Terms;

**"Agreement"** means the legal and binding agreement that is in place between you and us, on the basis of these Terms and the Authority, for us to provide the Declaration Services;

**"Applicable Laws"** means any and all applicable laws, statutes, regulations and codes and any other applicable local, international or foreign law or regulation, or those issued by any Competent Authority including (without limitation), restrictions, national security controls, customs, trade, tax, export control, Sanctions and legislation from time to time and in each case in force in the United Kingdom, and which apply to the provision of the Declaration Services. **Applicable Law** shall be construed accordingly;

**"Authority"** means the letter of authority, in the form as may be required by us or prescribed by any Competent Authority for use appropriate to the circumstances or applicable jurisdiction from time to time, which the Declarant and/or the Agent must complete and execute prior to the Agreement coming into force;

**"BIFA Terms"** means the British International Freight Association Standard Trading Conditions from time to time applicable and which are available via <https://www.bifa.org>;

**"Breach of Duty"** the breach of any obligation arising from the express or implied terms of a contract or in tort (including negligence), statute, common law or otherwise including that to take reasonable care or exercise reasonable skill in the performance of the contract;

**"Brexit"** means the United Kingdom ceasing to be a member of the European Union and ceasing to be subject

to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the United Kingdom and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the United Kingdom's withdrawal from the European Union, regardless of which countries comprise the United Kingdom at such date;

**"Business Day"** any day other than a Saturday, Sunday or any day when the clearing banks in the City of London are not physically open for business;

**"Change in Law"** means any:

- a) Applicable Laws coming into force after the effective date of this Agreement;
- b) amendment, extension, replacement, repeal or revocation of any existing Applicable Laws;
- c) change in the interpretation, application or enforcement of any Applicable Laws by a Competent Authority or
- d) any existing Applicable Laws ceasing to apply to this Agreement,

including changes caused (directly or indirectly) by Brexit or any other steps taken by a Competent Authority in anticipation of or related to preparation for Brexit, in each case to the extent that such change affects the transfer, import, export, movement, clearance, delivery or regulatory treatment of the Products;

**"Charges"** means the charges payable by you to us in connection with the provision of the Declaration Services;

**"Charges Period"** has the meaning given in clause 7.2.1;

**"Competent Authority"** means any applicable customs, excise, border, legal, Sanctions Authority, law enforcement, taxation or revenue authority, administration, association, organisation or body with applicable jurisdiction and authority over and/or with the ability to apply the applicable legislation to the activity in question;

**"Cybersecurity Attack"** means any actual or threatened cybersecurity attack including but not limited to any attack launched via Malware (including but not limited to spyware, trojans, virus, worms and ransomware); Phishing; Denial-of service attacks; Man-in-the-middle attacks; SQL Injections; Zero-day Exploit; Password attacks; Cross-site Scripting; Rootkits; or IoT attacks conducted by you or any third party in an attempt to disable the Platform, any of our software and/or hardware, take, steal, store or manipulate data, or to use a breached data system for use of the same;

**"Declarant"** means the person making a Declaration in his or her own name or the person in whose name such a Declaration is made;

**"Declaration"** the submission(s) to us of information by you in your capacity as the Declarant (or a User as the Declarant's authorised representative) or the Agent (doing the same in the name of the Declarant) in accordance with clause 1.1 so as to enable us to provide the Declaration Services, subject to this Agreement;

**"Declaration Services"** the service provided by us to you under which we shall act as the Direct Representative of the Declarant or the sub-agent of the Agent on a Direct Representative when dealing with HMRC or any other applicable Competent Authority, which may include but not be limited to creating and/or submitting Export Declarations, Exit Summary Declarations or Entry Summary Declaration, Transit accompanying document (T1 / T2), Certificate of Origin, ATA Carnet or Port Passes;

**"Defect"** an error in the Platform, Your Account or the Declaration Services (or any element thereof) that causes it to fail to operate properly;

**"Direct Representative"** means the role of acting in the name of and on behalf of the Declarant with HMRC or any other applicable Competent Authority;

**"EORI"** Economic Operator Registration and Identification;

**"Force Majeure Event"** has the meaning given in clause 18.1;

**"HMRC"** means His Majesty's Revenue and Customs;

**"Indirect Representative"** means the role of acting in one's own name but on behalf of the Declarant with HMRC or any other applicable Competent Authority;

**"Information"** means data, information, instructions or any other materials, in any form or media, whether tangible or intangible;

**"Intellectual Property Rights"** copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Liability"** liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "**this Agreement**" shall be deemed to include any collateral contract) and which shall include any Loss.

**"Loss"** means any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements and "**Losses**" shall be construed accordingly;

**"Material"** means the Information that you upload (or permit to be uploaded) onto our servers or which is otherwise provided to us as part of the Declaration from time to time so as to enable us to provide of the Declaration Services;

**"MRN"** Movement Reference Number;

**"Party"** either us or you, and "**Parties**" shall mean both of us and you;

**"Platform"** has the meaning given in clause 1.1.1 above;

**"Port Pass"** means the approval for a vehicle carrying the Products to enter into a port, following the completion of the associated processes and authorisations and which may include, without limitation, a Goods Vehicle Movement Services, Enveloppe Logistique Obligatoire, Pre-Boarding Notification or Portbase;

**"Products"** means the vehicle (whether empty, or partially or fully filled), goods and/or services which are the subject of the Declaration Services (and which shall include a lack of goods, i.e. where the vehicle in question is empty);

**"Sanctions"** means any laws or regulations relating to economic or financial sanctions, export control, trade embargoes or restrictive measures from time to time imposed, administered or enforced by a Sanctions Authority;

**"Sanctions Authority"** the UK and the United Nations, and in each case their respective governmental, judicial or regulatory institutions, agencies, departments and authorities, including (without limitation) the UN Security Council, His Majesty's Treasury and the UK's Office of Financial Sanctions Implementation and Department of International trade;

**"Sanctions List"** means any of the lists issued or maintained by a Sanctions Authority designating or identifying individuals or entities that are subject to Sanctions, in each case as amended, supplemented or substituted from time to time, including (without limitation) the UK Sanctions List, Consolidated List of Financial Sanctions Targets in the UK and the Consolidated United Nations Security Council Sanctions List;

**"Sanctions Target"** means a person or entity that is either listed on or controlled by or acting on behalf of a person listed on a Sanctions list; located, incorporated or organised under the laws of a Sanctioned Territory; or otherwise identified by a Sanctions Authority as being subject to Sanctions;

**"Sanctioned Territory"** means a country or territory that is subject to any general financial, trade, or investment restrictions or embargos under any Sanctions;

**"Terms"** means these terms and conditions, as may be amended in accordance with clause 1.2 from time to

time;

**"Third-Party Software"** software and applications proprietary to third parties and which is integrated in or otherwise forms part of or interacts with the Platform;

**"Third-Party Terms"** the terms and conditions applicable to the use of the Third-Party Software, available on request;

**"Transporters"** a third-party operator offering freight, haulage or such other services connected with or relating to the movement, delivery or transportation of goods, any tunnels, bridges or ports and any association or body controlling the movement of the Products from time to time including but not limited to the International Air Transport Association, International Civil Aviation Organisation or other government department or relevant organisation;

**"Users"** those of your employees and independent contractors (which may include any Transporters) who you authorise to access the Declaration Services through the Platform under this Agreement;

**"We", "us" or "our"** means CustomsLink Limited, a company registered in England and Wales with registered number 12743047 and whose registered office is at Quarry Bank Chorley Road, Walton-Le-Dale, Preston, Lancashire, PR5 4JN; and

**"you" or "your"** our customer user that submits a Declaration to us so as to enable us to provide the Declaration Services;

- 1.3.2 references to **"clauses"** are to the clauses of these Terms;
- 1.3.3 the headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.3.4 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral, and references to persons shall include an individual, company, corporation, firm or partnership;
- 1.3.5 reference to **"written"** or in **"writing"** includes email;
- 1.3.6 references to **"includes"** or **"including"** or like words shall mean without limitation; and
- 1.3.7 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

## **2. EFFECT**

- 2.1 This Agreement shall apply to all uses of an Account, the Platform and the Declaration Services. When you register for an Account (and each time any User subsequently accesses your Account) or otherwise submit a Declaration as a guest user through the Platform, this shall always constitute your unqualified acceptance of these Terms. Notwithstanding the foregoing, where required, the Parties agree and acknowledge that an individual Agreement for the provision of the Declaration Services shall not be formed until such time as the required form(s) of Authority has (or have) been executed in full and returned to us to our satisfaction. The Authority may require you to declare whether, in acting as your Agent you do not wish for us to automatically utilise Postponed VAT Accounting on your behalf, in the course of providing the applicable Declaration Services.
- 2.2 Notwithstanding that you may have provided a completed form of the Authority in such form as we previously provided to you, where we, HMRC or any other applicable Competent Authority require the Authority to take a revised form or additional versions of the Authority are required, we reserve the right to request the same to our complete satisfaction prior to and/or at any time following commencing with the provision of the Declaration Services.
- 2.3 To the extent that the Declaration Services constitute the provision of any products or services that fall within the scope of the BIFA Terms, the applicable elements of the BIFA Terms shall apply to such products and services. To the extent that the applicable elements of the BIFA Terms apply, those applicable elements of the BIFA Terms only shall prevail in the event and to the extent of any conflict with these Terms and where references to the Company shall be construed as references to us and references to the Customer shall be construed as references to you.

### **3. REGISTRATION FOR AN ACCOUNT AND USE OF THE PLATFORM**

- 3.1 Where you wish to receive the Declaration Services on a singular or an ongoing basis for multiple transactions, we require that you register for an Account.
- 3.2 You may request that we allocate an Account to you and subject to clause 3.3, you will be able to make use of the Account to access information and its functionality for use of the Declaration Services.
- 3.3 In order for us to allocate to you access to the Platform and/or an Account, you must provide such information as we may require from time to time and pass to our satisfaction any and all verification, credit and security checks that we impose. Information which we may require from you includes but is not limited to your registered company number, VAT number and EORI number and any Authority under which you wish to authorise us to act or are otherwise authorised to act in connection with the Declarant and appoint us as sub-agent, in each case as the case may be.
- 3.4 Once we have allocated access to the Platform to you, we will allocate to you a username and password to access your Account. You must keep the password confidential and immediately inform us if any unauthorised third party becomes aware of that password or if there is any unauthorised use of the Platform or any breach of security known to you; in such a case, you must request a new password from us. You agree that any person to whom your username or password is disclosed is authorised to act as your agent for the purposes of using the Platform. You are entirely responsible if you do not maintain the confidentiality of your password.
- 3.5 We recommend that you request a new password from us if you remove authorisation for any of your Users to access the Platform.
- 3.6 You may access the Platform only with a browser that is compatible with the Platform, including any security features that are part of the Platform.
- 3.7 In relation to the Platform:
  - 3.7.1 we hereby grant to you a non-exclusive, non-transferable licence to allow Users to access the Platform solely for your business purposes and any User which does so, warrants that they are authorised to act for and on your behalf and have full and unencumbered authority to bind you in all dealings with us via the Platform;
  - 3.7.2 the rights provided under this Agreement are granted to you only, and shall not be considered granted to any subsidiary or holding company of you; and
  - 3.7.3 you shall not:
    - a) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Platform except to the extent expressly set out in this Agreement or as may be required by any Applicable Law;
    - b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform, except as may be required by any Applicable Law;
    - c) launch any Cybersecurity Attack or facilitate the launching of a Cybersecurity Attack on us or any third party via the Platform or any associated software;
    - d) access all or any part of the Platform in order to build a product or service which competes with the Platform and/or the Declaration Services; or
    - e) use the Platform to provide services to third parties.
- 3.8 You agree and acknowledge that the Platform relies upon the use of Third-Party Software and in respect of which:
  - 3.8.1 the Third-Party Software shall be deemed to be incorporated within the Platform for the purposes of this Agreement (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Third-Party Terms;
  - 3.8.2 you shall indemnify and hold us harmless against any Liability which we may suffer or incur as a result of your breach of any Third-Party Terms howsoever arising; and
  - 3.8.3 we may treat your breach of any Third-Party Terms as a breach of this Agreement.
- 3.9 We do not warrant that the Declaration Services, your Account and/or the Platform will be uninterrupted, error-free or secure from unauthorised access, or that they will meet your individual requirements. Whilst we use our reasonable

endeavours to make the Declaration Services, your Account and the Platform available, we shall not have any Liability (subject to clause 10.2) if for any reason the Declaration Services, your Account or the Platform are unavailable for any time or for any period. We make no warranty that your access to the Declaration Services, your Account or the Platform will be uninterrupted, timely or error-free. Due to the nature of the Internet, this cannot be guaranteed.

- 3.10 Subject to clause 10.2, we shall not be liable to you for any Defect, interruption or suspension of the Declaration Services, your Account or the Platform, or any Loss incurred by you (arising directly or indirectly) from any Cybersecurity Attack.
- 3.11 We may, at our absolute discretion, from time to time either host the Platform on our own servers or use third party suppliers to do so in whole or in part. You acknowledge that we may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements on users or reasonably restrict users' rights due to the requirements of the third party suppliers.
- 3.12 We reserve the right, at any time, to carry out repairs, maintenance or introduce new facilities and functions in respect of all or any part of the Declaration Services, your Account and the Platform.
- 3.13 We do not warrant that the Platform will be compatible with all Material.
- 3.14 Except where expressly stated in this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Platform.
- 3.15 Without prejudice to the above, we shall use reasonable endeavours to correct Defects which we in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:
  - 3.15.1 if a notified Defect halts or substantially impairs the operations of the Declaration Services, your Account or the Platform, we shall use our reasonable endeavours to start work on correcting the Defect within four hours of becoming aware of such Defect and shall use all reasonable efforts to correct the Defect as soon as possible thereafter;
  - 3.15.2 if a notified Defect, while not halting or substantially impairing the operations of the Declaration Services, your Account or the Platform, causes those operations to become significantly slowed or causes substantial inconvenience, we shall use our reasonable endeavours to start work on correcting the Defect within 48 hours of becoming aware of such Defect and shall use all reasonable efforts to correct the Defect as soon as possible thereafter; and
  - 3.15.3 in the case of Defects other than those specified in clauses 3.15.1 to 3.15.2 above, we shall start work on correcting the Defect as soon as our workload allows and shall use commercially reasonable efforts to correct the Defect.

#### **4. THE DECLARATION SERVICES**

- 4.1 We warrant that we:
  - 4.1.1 shall use our reasonable skill and care in providing the Declaration Services; and
  - 4.1.2 have (subject to your proper execution of the Authority and compliance with such other of our requirements in connection with the Authority and the requirements of HMRC or any other applicable Competent Authority) all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement.
- 4.2 In relation to the Declaration Services the rights provided under this Agreement are granted to you only, and shall not be considered granted to any subsidiary or holding company of you.
- 4.3 We do not warrant that the Declaration Services will meet your individual requirements or remain completely unaffected by Sanctions or a Change in Law.
- 4.4 Except as specifically stipulated in this Agreement, we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time.
- 4.5 Except where expressly stated in this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Declaration Services.

## 5. YOUR OBLIGATIONS

5.1 In order to place a Declaration, you must provide any and all Information (as Material) as we may require from time to time or is otherwise required for the effective provision of the Declaration Services to achieve the desired outcome. This may include requesting further Information from you following the Declaration being made.

5.2 In submitting the Declaration, you warrant that:

5.2.1 you have and shall (and where you are acting as an Agent, that additionally the Declarant has and shall) comply with any and all applicable laws, statutes, regulations and bye-laws and Sanctions in relation to your provision of the Information (including any Material), activities connected with the sale, purchase, transportation, import and/or export (as the case may be) and receipt of the Declaration Services and which to the extent applicable shall include but not be limited to:

- a) registering with and complying with the requirements of any Competent Authority from time to time;
- b) ensuring that you have an EORI number, MRN and Entry Number;
- c) registering for Transitional Simplified Procedures;
- d) providing the haulier with a MRN or Entry Number; and
- e) meeting any and all Additional Charges;

5.2.2 any and all Information (including any Material) including but not limited to the commodity codes, customs procedure codes, quantities, descriptions, specifications, reference numbers, values and other information applicable to the Products (and required by us in order to provide the Declarations Services or otherwise), contained in the Declaration and the Declaration itself is true, clear, complete and accurate in every respect dependent on:

- a) the Products, which are the subject of the Declaration Services;
- b) its purpose of achieving the import or export of the Products and which for these purposes; and/or
- c) the requirements of any Competent Authority or any of its criteria for applicable authorisations, consents or licences;

5.2.3 there is no Information (including that which we require in order to provide the Declarations Services) that you have not withheld or otherwise not provided to us, whether or not intentionally;

5.2.4 the Products are acceptable for transportation and may be deemed unacceptable by the Transporter, HMRC or any other applicable Competent Authority where:

- a) it is classified as hazardous, dangerous, prohibited or restricted;
- b) the Declaration Services do not meet your requirements as a consequence of any issue with the Declaration or the Material contained therein;
- c) it contains counterfeit goods, animal, bullion, currency, banderols/tax stickers, bearer form negotiable instruments, precious metals and stones, real or imitation firearm or parts thereof, weapons, explosives and ammunition, human remains, pornography, drugs or any other unsafe or illegal goods;
- d) it contains goods which are subject to any Sanctions (whether in part or whole); and
- e) it is not packaged correctly or adequately or otherwise contains the incorrect documentation or declarations; and

5.2.5 the Information (including any Material) does not breach the Intellectual Property Rights of any third party, and agree and acknowledge that you shall be wholly responsible for any issues arising out of the provision of the Declaration Services where and to the extent that any of the above warranties are incorrect, incomplete, untrue or otherwise breached.

5.3 Unless it is agreed between the parties that you shall make use of our deferment account, as between us and you, you shall remain responsible for the payment of any customs, duties, levies and taxes associated with the movement of the Products in connection with the Declaration Services.

5.4 You must:

- 5.4.1 report any faults or suspected faults with or in the Declaration Services and/or the Platform to us immediately upon discovery;
- 5.4.2 report to us any abuse of the Internet (including spam, hacking and phishing) that you consider to have taken place through the use of the Platform by any person, and you must include in such report as much information as you are able to provide to us relating to the type of abuse that you have witnessed;
- 5.4.3 ensure that you fully co-operate with, and make yourself available at all reasonable times for discussion and meetings with, us, including in order to enable us to carry out fully, accurately and promptly our obligations under this Agreement;
- 5.4.4 not submit to us anything which in any respect may infringe the Intellectual Property Rights or privacy or other rights of us or any third party;
- 5.4.5 promptly provide us with such information, data and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement;
- 5.4.6 have all necessary rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and
- 5.4.7 comply with all applicable laws, statutes, regulations, Sanctions and by-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.

5.5 You must not in any way use the Platform, provide or withhold any Information, or submit to us or require us to provide the Declaration Services in a way which, or in connection with, anything which in any respect:

- 5.5.1 is in breach of any law, statute, regulation, Sanction or byelaw of any applicable jurisdiction;
- 5.5.2 is fraudulent, criminal or unlawful;
- 5.5.3 is inaccurate or out-of-date;
- 5.5.4 is obscene, indecent, vulgar, discriminatory, offensive, threatening, defamatory or untrue;
- 5.5.5 is in contravention of any applicable law, nor allow or assist any third party in doing so;
- 5.5.6 impersonates any other person or body or misrepresents a relationship with any person or body;
- 5.5.7 may infringe or breach the copy or Intellectual Property Rights of any third party;
- 5.5.8 may be contrary to our interests;
- 5.5.9 is contrary to any specific rule or requirement that we may stipulate for the Declaration Services;
- 5.5.10 is associated with any Sanctioned Territory;
- 5.5.11 commits or attempts to commit any Cybersecurity Attack on us or any third party; or
- 5.5.12 involves your use, delivery or transmission of any viruses, unsolicited communications, Trojan horses, trap doors, cancelbots, back doors, worms, Easter eggs, time bombs or computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any data, personal information or system,

and you agree and acknowledge that where we reasonably suspect any such infringement of this or any other clause of these Terms or are otherwise contacted in connection with an investigation into the same, we may in accordance with applicable law, disclose to third parties (including HMRC, Transporters and applicable Competent Authorities) any Information provided to or withheld from us in the course of the provision of the Declaration Services or such other Information as we may be required to provide. You agree and acknowledge that we are not required to notify you of any such disclosure and that this may result in enforcement action, penalties, refused movement of the Products or their entry into a specific territory and/or Liabilities being suffered or incurred by you.

5.6 You must not use any automated means to access the Platform or collect any information from it unless we explicitly agree in writing to allow you to do so.

5.7 It is your responsibility to ensure that the Platform and the Declaration Services are sufficient and suitable for your purposes and meets your individual requirements (or where you are the Agent, those of the Declarant additionally). It is your responsibility to ensure that your use of the Platform and the use of the Declaration Services is in your best

interests (or where you are the Agent, those of the Declarant additionally), and you bear sole responsibility and Liability (subject to clause 10.2) for the consequences of your use of the Platform and the use of the Declaration Services.

- 5.8 It is your responsibility to ensure that you provide us with the information required to enable us to properly make the Platform available to you and to perform our obligations under this Agreement. We shall not be responsible or have any Liability (subject to clause 10.2) for any failure to make the Platform available or to perform our obligations under this Agreement to the extent caused by your failure to properly ensure the provision of the relevant information to us.
- 5.9 Access to the Declaration Services, an Account and/or the Platform may be suspended or withdrawn to or from you or all Users temporarily or permanently at any time without notice. We may also impose restrictions on the length and manner of usage of any part of the Platform and/or the Declaration Services or access for any reason. If we impose restrictions on you, you must not attempt to use the Declaration Services, your Account or the Platform under any other name or user.
- 5.10 Whilst we endeavour to ensure that information and materials on the Platform (including information about Transporters' Services) are correct, no warranty or representation, express or implied, is given that they are complete, accurate, up-to-date, fit for a particular purpose and, to the extent permitted by law and we shall not have any Liability (subject to clause 10.2) for any errors or omissions.
- 5.11 You agree and acknowledge that as between you and us, you are fully responsible for the actions and omissions of any Transporter that you engage in connection with the movement of the Products, where applicable.

## **6. INDEMNITY**

You shall indemnify, keep indemnified and hold us harmless in full and on demand from and against any and all Liabilities (including any Liabilities of a direct, indirect or consequential nature, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis), disbursements (including those deriving from inspections of the Products carried out by or at the direction of a Competent Authority or any other third party) and all other professional costs and expenses) suffered or incurred by us arising out of or in connection with:

- 6.1.1 any of the warranties in these Terms being breached including any additional Declaration Services which become necessary;
- 6.1.2 any breach of your obligations under this Agreement;
- 6.1.3 your provision of any Information to us and our use of that under this Agreement;
- 6.1.4 any breach of clause 11;
- 6.1.5 our provision of and/or your receipt of the Declaration Services;
- 6.1.6 your use of your Account or the Platform; and
- 6.1.7 any other matter in connection with this Agreement,

whether in contract, tort (including negligence), breach of statutory duty or otherwise and which Liabilities shall include without limitation, any and all Liabilities due to third parties (including without limitation the Declarant, a Transporter, HMRC or any other applicable Competent Authority, in each case as applicable).

## **7. CHANGES IN LAWS**

If a Change in Law:

- 7.1.1 affects our ability to perform our obligations under this Agreement; or
- 7.1.2 increases the cost or administrative burden of such performance,

we shall notify you in writing and discuss in good faith the steps required to comply with the Change in Law and any adjustment to the Charges which you agree to settle in full. We shall not be required to continue performance to the extent prohibited by any Applicable Laws.

## **8. CHARGES**

- 8.1 Whilst access to the Platform and registration for an Account, is currently free of charge, if you place a Declaration, you must pay the amount of the Charges to us.
- 8.2 The Charges payable to us shall be dependent on whether you have been granted a credit account by us or receive the

Declaration Services on an ad hoc basis. Where you:

- 8.2.1 have a credit account, the Charges shall be calculated per the volume package which you selected as displayed on the Platform, dependent on the nature, extent and quantity of Declaration Services required during a specified time period ("Charges Period") but chargeable based on the actual nature, extent and quantity of Declaration Services received during that Charges Period; or
- 8.2.2 receive the Declaration Services on an ad hoc basis, the Charges shall be calculated with reference to the Products at the time you place your Declaration or (if later) the date on which the Authority is issued.
- 8.3 All Charges are exclusive of:
  - 8.3.1 VAT, which shall be payable to us in addition at the same time as payment of any sums due; and
  - 8.3.2 any applicable Additional Charges, which shall be payable to HMRC or the applicable Competent Authority.
- 8.4 If you wish to amend any Declaration, you must request any such amendments in prior to the date on which the Declaration Services were commenced. We shall notify you of any change in the Charges attributable to the requested amendment and which shall be agreed between the Parties in advance of the continuance of the Declaration Services.
- 8.5 The Charges shall be payable, where you:
  - 8.5.1 have a credit account, immediately upon receipt of our invoice at the end of the applicable Charges Period; or
  - 8.5.2 receive the Declaration Services on an ad hoc basis, upon making the Declaration.
- 8.6 In addition to the Charges, you agree that you shall also pay to us any and all costs, disbursements, fees, expenses and other charges suffered or incurred by us whether deriving from the inspection of the Products by or at the direction of a Competent Authority or other applicable third party or otherwise in connection with or arising out of the Declaration Services.
- 8.7 If you pay for any Charges using credit/debit card, we are able to rely on "Continuous Payment Authority" to process any recurring transactions where monies may be due or any other sums which may become due to us under this Agreement. Where we have processed your payment successfully using your credit or debit card details, we can process any future Charges via the recurring transaction authority.
- 8.8 We reserve the right to amend the Charges listed on the Platform arising out of or connection with Sanctions and shall notify you upon doing so. If you:
  - 8.8.1 accept the increase, we shall process such payment under clause 7.7; or
  - 8.8.2 reject the increase, we may terminate the Agreement without further liability to you.

## **9. INTELLECTUAL PROPERTY RIGHTS**

You acknowledge that we own all Intellectual Property Rights in the Platform, the Account and the Declaration Services, and any rights (including any Intellectual Property Rights) arising out of any goods, services or works undertaken in connection with them.

## **10. TERMINATION**

- 10.1 This Agreement will continue in force until we close your Account, or, if you have not registered for an Account or in any event where later than the closing of your Account, until the later of the date on which:
  - 10.1.1 the Declaration Services; or
  - 10.1.2 the customs procedures connected with or arising out of the provision of the Declaration Services, have been completed.
- 10.2 We may terminate this Agreement with immediate effect at any time by giving notice to you, except where you are in breach of this Agreement, in which instance we may terminate this Agreement at any time without notice.
- 10.3 In the event that this Agreement is terminated:
  - 10.3.1 you will cease to have access to the Declaration Services, your Account and the Platform; and
  - 10.3.2 the accrued rights, remedies, obligations and liabilities of us and you as at cancellation or termination shall not be affected, including the right to claim damages for any breach of this Agreement which existed at or before

the date of cancellation or termination.

10.4 Termination of the Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

## **11. LIMITATION OF LIABILITY**

11.1 This clause 10 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:

- 11.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services in connection with this Agreement; or
- 11.1.2 otherwise in relation to this Agreement or entering into a contract under this Agreement.

11.2 Neither Party excludes or limits its Liability for:

- 11.2.1 its fraud; or
- 11.2.2 death or personal injury caused by its Breach of Duty; or
- 11.2.3 any other Liability which cannot be excluded or limited by applicable law.

11.3 Subject to clause 10.2, we shall not have any Liability in respect of any:

- 11.3.1 of your actions, errors or omissions, including any breach of clause 5 (in particular where any Information (including any Material) applicable to the Products (disclosed or failed to be disclosed) is untrue, misleading, incomplete or inaccurate in any respect;

- 11.3.2 indirect, special or consequential Liabilities;

- 11.3.3 loss of actual or anticipated profits;

- 11.3.4 loss of contracts;

- 11.3.5 loss of use of money;

- 11.3.6 loss of anticipated savings;

- 11.3.7 loss of revenue;

- 11.3.8 loss of goodwill;

- 11.3.9 loss of reputation;

- 11.3.10 loss of business;

- 11.3.11 ex gratia payments;

- 11.3.12 loss of operation time;

- 11.3.13 loss of opportunity;

- 11.3.14 loss caused by the diminution in value of any asset; or

- 11.3.15 loss of, damage to, or corruption of, data,

whether or not such Liabilities were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, clauses 10.3.3 to 10.3.15 (inclusive) of this clause 10.3 apply whether such Liabilities are direct, indirect, special, consequential or otherwise.

11.4 Subject to clause 10.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and Liabilities relating to the breach of warranty) shall be limited to the greater of:

- 11.4.1 £50,000 and the total Charges paid by you to us for the provision of the Declaration Services in the previous 3 months, where you have registered for Account to receive the Declaration Services on an ongoing basis for multiple transactions; or

- 11.4.2 £50,000 or the Charges paid or payable by you to us for the provision of the Declaration Services, which are the subject of the Liability where you have registered for an Account to receive the Declaration Services on a singular basis or have otherwise not registered for an Account.

- 11.5 The limitation of Liability under clause 10.4 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 11.6 You acknowledge and accept that we only make the Platform and the Declaration Services available on the express condition that we will not be responsible, nor, subject to clause 10.2, shall we have any Liability, directly or indirectly, for any act or omission of you, your affiliates or your or their employees, agents, contractors or customers, or any third party.

## **12. SANCTIONS**

- 12.1 You hereby warrant that:
  - 12.1.1 the Products are not in breach of any Sanctions;
  - 12.1.2 you have not operating in or have any dealings in a sanctioned Territory, where such operations or dealings contravene applicable Sanctions;
  - 12.1.3 you, or any respective directors, officers, employees or agents is or has been engaged or involved with or otherwise subject to any Sanctions proceedings in relation to, or in connection with any actual or alleged contravention of applicable Sanctions (Sanctions Proceedings);
  - 12.1.4 no Sanctions Proceedings have been threatened or are pending against you, and that there are no circumstances under this Agreement or which are likely to give rise to any such Sanctions Proceedings;
  - 12.1.5 you are not a Sanctions Target, and that you are not engaging, or have been engaged in any conduct, operations, transactions or dealings that could result in becoming a Sanctions Target; and
  - 12.1.6 you have implemented, maintain and enforce adequate policies, procedures, training programmes, systems and control designed to ensure compliance with applicable Sanctions by you and any respective directors, officers, employees or agents (as appropriate).

- 12.2 In the event of any breach of clause 11.1 above, we may at all times and without liability to you:

- 12.2.1 reserve the right to suspend all or part of the Declaration Services; and
  - 12.2.2 invoice you in full for any Loss incurred by us or any third party for any delay in transport, storage, insurance or courier costs (whether directly or indirectly) associated with any Sanction breach under this Agreement.

- 12.3 Without limiting any of our rights or remedies under this Agreement, we may terminate this Agreement with immediate effect at any time without notice, for any breach of you under this clause 11.

## **13. NOTICES**

- 13.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 13.2 A notice shall be deemed to have been received if:
  - 13.2.1 delivered personally, when left at the address referred to in clause 12.1;
  - 13.2.2 sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
  - 13.2.3 delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.3 The provisions of this clause 12 shall not apply to the service of any proceedings or other documents in any legal action.

## **14. ASSIGNMENT**

You must not assign, transfer, charge, mortgage, delegate, or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

## **15. SEVERANCE**

- 15.1 If any court or Competent Authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the

validity and enforceability of the other provisions of this Agreement shall not be affected.

15.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **16. WAIVER**

16.1 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.2 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **17. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## **18. THIRD PARTY RIGHTS**

A person who is not a Party shall not have any rights under or in connection with this Agreement. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **19. FORCE MAJEURE**

19.1 Neither Party shall be in breach of this Agreement or otherwise liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused by any event beyond a Party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, pandemics or similar events, natural disasters or extreme adverse weather conditions, or (strictly in the case of us) default of our suppliers or subcontractors or any matter arising out of or in connection with Sanctions ("Force Majeure Event").

19.2 The time for performance of such obligations shall be extended by the period of time during which a Party's performance is prevented or delayed by the Force Majeure Event.

## **20. NO PARTNERSHIP**

Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or employment or agency relationship between the Parties, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.

## **21. ENTIRE AGREEMENT**

21.1 Save as expressly provided in this Agreement, this Agreement (and any document referred to in it) shall operate to the entire exclusion of any other agreement, understandings or arrangements of any kind between the Parties and in any way relating to the subject matter of this Agreement, to the exclusion of any representations not expressly stated in this Agreement, except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter.

21.2 You acknowledge that you have not accepted these Terms based on a reliance on, and you shall have no remedies in respect of any representation, statement, assurance or warranty (whether made innocently or negligently) that is not expressly incorporated into these Terms. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Agreement.

21.3 Subject to any Declaration (which shall in any event be submitted in accordance with and subject to these Terms), this Agreement constitutes the whole agreement and supersedes and extinguishes all previous agreements, promises,

assurances, warranties, representations and understandings of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.

**22. GOVERNING LAW AND JURISDICTION**

- 22.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 22.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.