

MEMORANDUM OF UNDERSTANDING

AUTHORISED ECONOMIC OPERATORS SYSTEM

THIS MEMORANDUM OF UNDERSTANDING is established on the _____ day of _____, between _____ a company/individual incorporated under the laws of Jamaica with **registered office** at _____ in the **Parish of** _____

(hereinafter referred to as the Importer and more particularly described in the First Schedule) of the ONE PART and the Commissioner of Customs, on behalf of the Customs Department, with office located at Myers Wharf, Newport East, in the Parish of Kingston (hereinafter referred to as the Commissioner) of the OTHER PART.

NOTING that the Jamaica Customs Department, in an effort to facilitate trade and industry and perform its numerous agency functions in the collection of revenue and the enforcement of health and safety standards, has embarked on a programme entitled “Risk Management and Post Clearance Audit in Customs.”

RECOGNIZING that the Jamaica Customs Department considers that risk is equivalent to an exposure to non-compliance whether in terms of health and safety standards, trade or revenue. The element of risk is determined by an audit, as outlined in the First Schedule under the rubric, Compliance Assessment which quantifies an Importer’s level of non-compliance so that over time, Importers would have proven themselves to be high risk, moderate risk or low risk in terms of health and safety standards or revenue;

EMPHASISING that in an effort to maximize resources in order to achieve efficiency and accountability and to reward low risk Importers and thereby encourage voluntary compliance, the Jamaica Customs Department is promulgating the Authorized Economic Operators System, more particularly described in the First Schedule; and

RECOGNISING that an Importer, following a Compliance Assessment, has been proven to the satisfaction of the Commissioner to be a low risk Importer and that said Importer provides the documents listed in the Third Schedule when required by the Relevant Officer, the importer is hereby invited to enjoy the privileges associated with the Authorized Economic Operators System.

1.1 GENERAL PROVISIONS

The parties agree that the following processes shall apply in order for the Importer to continue to receive the privileges associated with the Authorized Economic Operators System:

1. The Importer is required to submit the entries for processing in the usual manner.
2. Following this, the Importer will then duty pay the entries and obtain validation of the Bill of Lading or Order by the Shipping Agent and Wharf Authorities. The Importer is then required to proceed to the Manifest Branch for notification of the manifest (striking of the manifest).
3. Subject to paragraph 1.3(i), the goods will not necessarily be subjected to pre-clearance examinations and will be released to the Importer or agent, provided that there are no discrepancies in relation to the documents submitted.

1.2 The Importer shall:

- i. Instruct its supplier(s) to exercise due diligence when dispatching shipments and to notify the Importer when goods are shipped below or in excess of the quantity stated on the documents required for importation.
- ii. Prepare and retain proper records (the prescribed documents are outlined in the Third Schedule) for a period of not less than three (3) years.
- iii. Make accurate declarations to the Jamaica Customs Department, ensuring that all information provided to the said department is truthful and complete.
- iv. Upon receipt of the relevant documentation, allow access to:
 - Premises;
 - Documents;
 - Records.
- v. Make full disclosure of any information received, before the goods are entered, which could reasonably impact in a negative manner on the Customs Laws, more particularly described in the First Schedule.
- vi. Make full disclosure, after the entries have been processed and before release, of any information which could reasonably impact in a negative manner on the Customs laws.

- vii. In accordance with Section 223 of the Customs Act, (more particularly described in the Second Schedule) produce for inspection, at the request of any officer, within the stipulated period, the invoices, books of account and answer such questions and subscribe to such declarations in accordance with the customs laws.
- viii. Not commit a breach of the Customs Act or any Health and safety Standards, Trade or Revenue or any other governmental agency Legislation.
- ix. Advise the Collector of Customs of any goods found to be in excess of those declared and entered after release and pay the additional Customs duties.
- x. Not be entitled to refund of duties paid as a result of short shipments and incorrect classification as goods were not examined by Customs.
- xi). In the event of a breach, as referred to in Clauses (i - ix), forthwith be denied the privileges associated with an Authorized Economic Operator. In addition, in respect of allegations pursuant to the Customs Act, the importer will be liable to prosecution and or incur civil liability. The Importer may however avail himself of the provisions of Section 219, more particularly described in the Second Schedule. In this regard, the Importer will be required to sign a Consent Form A or B, (more particularly described in the First Schedule) which operates to allow the Commissioner to exercise his discretion and determine what penalties, if any, should be attached in respect of the breach.

1.3 The Commissioner shall :

- i). Reserve the right to randomly select goods imported by an Authorized Economic Importer for examination;
- ii) Determine the audit period and the frequency of the audit;
- iii). By way of re-evaluation, conduct periodic reviews of the Importer's record and processes.
- iv). Inform the importer, in writing, of any changes under the Authorized Economic Operators System.
- v) Determine whether containerized goods are to be examined and in what quantities.

Duration

This Memorandum of Understanding is effective from the date signed until terminated by invoking Clause (viii) or by either party giving 30 days written notice of its termination.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written to this Memorandum of Understanding.

SIGNED on behalf of

affix Company stamp or seal

.....
Company name

.....
by a DIRECTOR (print name)

.....
DIRECTOR (signature)

.....
and the COMPANY SECRETARY
(print name)

.....
SECRETARY(signature)

in the presence of - :

.....
Justice of the Peace for
the Parish of

SIGNED by the
COMMISSIONER
OF CUSTOMS

.....

FIRST SCHEDULE

GLOSSARY OF TERMS

“Authorised Economic Operators System” is a preferred status enjoyed by low risk Importers, as determined by the compliance assessment technique. The system fosters a mutually beneficial relationship between the low risk Importer and the Jamaica Customs Department. The system lends itself to reductions in costs, fewer examinations of cargo and documents.

“Authorized Economic Operator” is defined as: “a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. Authorized Economic Operators include inter alia manufacturers, **importers**, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses and distributors.”

Source: http://en.wikipedia.org/wiki/Authorized_Economic_Operator

“Compliance Assessment” is an audit tool employed by the Jamaica Customs Department which tests and reports on the Importer’s level of compliance with the customs, and other revenue, trade, health and standards legislation.

“Consent Form” is an administrative document presented to an Importer, who has been alleged to be in breach of the Customs Act, and who elects to have the Commissioner exercise his quasi-judicial function in accordance with Section 219, and determine the matter. In so doing, the Importer acknowledges his liability, and presents a written explanation of the circumstances surrounding the breach, for the consideration of the Commissioner.

“Customs Laws” shall mean and include the **Customs Act** and any regulations or proclamations made hereunder and all other enactments relating to the Customs;” (**The Customs Act** - <http://www.jacustoms.gov.jm/docs/The%20Customs%20Act.pdf>)

“Importer” includes the owner or any other person for the time being possessed of or beneficially interested in any goods at and from the time of importation thereof until the same are duly delivered out of the charge of the officers, and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer.”

“Post Clearance Audit” refers to the review and/or investigation, of all shipments, books and records that relate to importations by an entity or Importer and includes shipping documents, customs entries, invoices, bills of lading and any other document required for such review or investigation.

“Records” include any information made or normally kept in the ordinary course of business which pertains to the following:

- Any importation, declaration or entry;
- The transportation or storage of merchandise carried or held under bond into or from the customs territory of Jamaica;
- Any information required for the entry of merchandise and other information pertaining to, or from which is derived, any information used in connection with an activity described above. The term includes, but is not limited to:
 - electronically generated or machine readable data;
 - electronically stored or transmitted information or data;
 - computer programs necessary to retrieve information in a useable form;
- Books, paper, correspondence, health Certificate in the case of Food Handling (provide valid copies) Establishments; Health Certification for staff involved in process (provide valid copies)
- Any other activity required to be undertaken pursuant to laws or regulations administered by the Jamaica Customs Department.

“Relevant Officer” means any person employed as an officer of the Jamaica Customs Department.

“Risk Management” is essentially a technique employed by the Jamaica Customs Department to address non-compliance by Importers of the relevant laws and procedures. It involves the collection of data and information and an assessment of the same. At this stage, an Importer would have proven himself to be high risk; moderate risk or low risk and this determination would serve as a guide to the Jamaica Customs Department in enforcement procedures. The technique is essentially pro-active, and as such it is constantly modified to adapt to changes in the business environment. However, it should be noted that the application of this technique is formal and systematic.

SECOND SCHEDULE

Pursuant to Clause 1.2 (vi), Section 223 of the Customs Act, provides that -:

- (1). The importer, exporter or any person concerned in the importation or exportation of any goods shall, on the request of any officer made at any time within three years of the date of importation or exportation, as the case may be, or of the date of delivery to the proper officer of an entry for such goods, if the same have been entered, produce for the inspection of such officer the invoices, books of account and any other documents of whatever nature relating to such goods which the officer shall require, and shall answer such questions and make and subscribe such declarations regarding the weight, measure, strength, value, cost, selling price, origin and destination of such goods, and the name of the place whence or where any imported goods were consigned or transferred from one aircraft or ship to another, as shall be put to him by the officer, and shall produce such evidence as the officer may consider necessary in support of any information so furnished; and if the importer or exporter or other person concerned as aforesaid shall neglect or refuse to carry out any of the provisions of this section, he shall incur a penalty not exceeding five hundred thousand dollars, and subject to Section 212 and the Commissioner may on such neglect or refusal, refuse entry, delivery or shipment of the goods, or may allow entry, delivery or shipment of the goods upon such terms and conditions, and upon deposit of such sum, pending the production of the proper documents and declarations, as he shall see fit to impose or require.
- (2). The deposit made in accordance with subsection (1) shall be forfeited unless within three months of the time of deposit, or such further period as the Commissioner may allow, the person making the deposit shall produce the required documents or declarations to the Commissioner.
- (3). In this section a reference to “any person concerned” or “other person concerned” includes a reference to –
 - (a) an insurance company which has issued a policy of insurance covering the goods in question; and
 - (b) any person referred to in section 17G (3) of the Revenue Administration Act.

In accordance with Clause 1.2(vii), the following breaches under the Customs Act include:

Section 55A, stipulates that -:

- (1) A person commits an offence if, without lawful excuse or the permission of the proper officer, he interferes with any goods while those goods are in, or being conveyed between, any port, customs area, container station, inspection *site*, wharf or other place within the Island or the waters thereof.
- (2) For the purposes of subsection (1) a person interferes with goods if he –
 - (a) breaks into or opens any container, package, place or vehicle in which goods are kept or conveyed or to be conveyed;
 - (b) removes any goods from such container, package, place or vehicle or inserts therein any other goods;
 - (c) tampers with any lock, mark or seal on or affixed to any such container, package, place or vehicle.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars, and the Resident Magistrate may order that such goods be forfeited.

Section 209, states that -:

- (1) A person commits an offence if –
 - (a) in any matter relating to the customs, or under the control or management of the Commissioner, he-
 - (i) makes or subscribes or causes to be made or subscribed, any false declaration; or
 - (ii) makes or signs or causes to be made or signed, any declaration, certificate or other instrument, required to be verified by signature, which is false in a material particular;
 - (b) he makes or signs any declaration made for the consideration of the Commissioner, on any application presented to him, which is false in a material particular;
 - (c) where required by the customs laws to answer questions put to him by an officer acting in the execution of his duty-
 - (i) he refuses to answer such questions; or

(ii) he gives any answer which is false;

(d) he counterfeits or falsifies-

(i) any document required by the customs laws or by or under the directions of the Commissioner; and

(ii) any instrument used in the transaction of any business or matter relating to the customs;

(e) he willfully uses any such document which is counterfeited or falsified;

(f) he alters any document or instrument after it has been officially issued;

(g) he counterfeits the seal, signature, initials or other mark of or used by, any officer for any purpose in the conduct of business relating to the customs or under the control or management of the Commissioner; or

(h) on any document or instrument required for the purposes of the customs laws, he counterfeits or imitates the seal, signature, initials or other mark of or used by any other person, whether with or without the consent of that other person.

(2) A person who commits an offence under subsection (1) shall be liable to a penalty not exceeding five hundred thousand dollars or treble the value of the goods to which the offence relates, whichever is the greater.

Section 210 (1) provides that -:

Every person who shall import or bring, or be concerned in importing or bringing into the Island any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unloaded or not, or shall unload, or assist or be otherwise concerned in unloading any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession of or be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs, or of the laws and restrictions of the customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods, shall for each such offence incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods; and all goods in respect of which any such offence shall be committed shall be forfeited.

Section 211 provides -:

If any person shall import or export, or cause to be imported or exported, or attempt to import or export any goods concealed in any way, or packed in any package or parcel (whether there be any other goods in such package or parcel or not) in a manner calculated to deceive the officers of customs, or any package containing goods not corresponding with the entry thereof, such package and the goods therein shall be forfeited, and such person shall incur a penalty of not less than treble the import duties payable on the goods contained in such package nor more than treble the value of such goods.

In accordance with Clause 1.2(viii), Section 219 of the Customs Act provides that -:

Subject to the approval of the Minister (which approval may be signified by general directions to the Commissioner) and notwithstanding anything contained in section 217, the Commissioner may mitigate or remit any penalty or restore anything seized under the customs laws at any time prior to the commencement of proceedings in any court against any person for an offence against the customs laws or for the condemnation of any seizure.

THIRD SCHEDULE

The documents referred to in Clause 1.2(i) include:

Documents, Accounting Records and Reports Required for the Audit Process

A. Audited Financial Statements

These comprise:-

- Balance Sheets;
- Profit or Loss Accounts/ Income Statement;
- Cash Flow Statements.

B. Trial Balances

C. General Ledgers extracts :-

- Accounts Payable (with related suppliers' statements). This includes payables directly to the supplier, his agent and any other party in relation to the imported goods;
- Bank/Cash (with the bank statements and cheque stubs);
- Sales;
- Accounts Receivable (schedules);
- Inventory Accounts;
- Schedules of all foreign purchases;
- Schedules of all payments made to foreign suppliers, freight forwarders, and any other party in relation to imported goods.

(Supporting documents related to all accounting reports and records must be maintained and must be presented upon the request of the relevant officer.)

D. Bank Reconciliation Statements

E. Contracts giving Importers exclusive agency rights for specific product(s) or service(s).

F. Contracts relating to royalties and license fees;

G. Contracts and agreements between importer and freight forwarder/ consolidators in relation to the movement, packaging, consolidation and storage of imported goods.

H. Other Contracts and agreements between importer and suppliers related to imports.

I. Credit Card Statements (relating to overseas purchases for the business)

J. Suppliers Statements

K. Suppliers/Commercial Invoices

L. Freight Forwarders Files

M. Shipping Records

N. Purchase Orders

O. Delivery Notes

P. Journals & Ledgers

Q. Business Correspondences

R. Health Certificates and other relevant governmental licenses or documents.

(THE ABOVE LIST IS NOT EXHAUSTIVE, OTHER TYPES OF RECORDS MAY BE REQUIRED DEPENDENT ON THE NATURE OF THE AUDIT)