

## **Hurricane terms and conditions relating to Zephyr services contracted through the UPU Customs Declaration System.**

### **Contractual Framework**

These terms and conditions ("Terms") and the Contract Acceptance Form executed by the parties set forth the conditions of use by Postal Operator of Hurricane's Zephyr services accessible through Hurricane's Zephyr application programming interface ("API") which is incorporated into the Customs Declaration System ("CDS") of the Universal Postal Union.

Use of the Hurricane API via CDS shall constitute Postal Operator's agreement to these Terms.

### **Licence**

Subject to the Terms Hurricane hereby grants to Postal Operator a non-exclusive, non-transferable licence ("Licence") of the API through which it will have access to Hurricane's Zephyr services ("Services"). The Services shall consist of the automated creation or correction of product descriptions and HS6 codes (Zephyr). The Licence is restricted to the cross-border carriage of items accepted by Postal Operator for reward and will terminate automatically upon Postal Operator ceasing to use or have authorised access to CDS.

### **Restrictions on the Licence**

Postal Operator hereby agrees and undertakes (a) not to publish or share any API Key or information obtained from or relating to the Services; (b) not to translate, modify, lease, rent, loan, redistribute, sub-lease, sub-license or create derivative works from the API (including, but not limited to the creation of software which has materially the same functionality as the API); (c) not to export, extract, re-utilise or copy any of the information or data sets, or any part thereof, retrieved from the API for any purposes except for the purpose of providing product description information to customs authorities and its own customers to support individual cross-border shipment of items accepted by Postal Operator as part of its normal business; (d) to supervise and control use of the API in accordance with the terms of this Agreement; (e) not to display the API Key on a public bulletin board, file transfer protocol ('ftp') site, internet site, chat room, file sharing site, instant messaging service or by any other unauthorised means; (f) not to use the API for immoral, illegal or for any other purpose which may be determined threatening, abusive or harmful including but not limited to the creation or transmission of any virus, worms, Trojan horse, cancel-bot or any other destructive or contaminating program; (g) not to remove copyright notices or other forms of proprietary notice from the API or any other materials provided by Hurricane; (h) not to use or attempt to use or access the API other than as part of Postal Operator's use of CDS; (i) not to pre-fetch, cache, index, copy, re-utilise, extract or store any API Data, except in relation to a specific transaction or declaration for which it has been extracted.

## **Charges and Payment**

Hurricane will invoice Postal Operator monthly for the Services at the rate specified in the Contract Acceptance Form applying the consumption volumes determined from API usage records but subject to Postal Operator's right to audit and reconcile such information against its own CDS records. In the absence of Postal Operator notifying Hurricane of a discrepancy in any invoice within 10 days of receipt such invoice will be deemed to be accepted by Postal Operator and payable in full. Subject to the foregoing Postal Operator will pay the full amount of all invoices within 14 days of receipt without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax required by law). Hurricane shall have the right to modify the charges payable hereunder by providing 30 days' notice in writing to Postal Operator.

Hurricane will make available a Test API key for the testing of the Zephyr service by Postal Operator. This test key will be made available for a reasonable amount of API calls and a reasonable time frame.

## **Warranties and Liability**

Postal Operator acknowledges that all its contractual rights and remedies are limited to the Terms and that the API and Services are provided "as is" without any warranty of any kind either express or implied including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, accuracy, reliability, title, interference with quiet enjoyment and non-infringement. Hurricane does not warrant that either the API or the Services will be error-free. In particular, Postal Operator accepts and acknowledges that the information provided through the API is an estimation only and its accuracy is dependent upon the information (including SKUs, product descriptions and all other required information) provided to Hurricane by Postal Operator ("Input Information"). Postal Operator shall ensure that all Input Information is in the format specified by Hurricane.

In no circumstance will Hurricane act as the importer of record nor be liable in any way for the information provided in any customs declaration.

Without prejudice to the foregoing Hurricane shall not be liable in contract, tort (including, without limitation, negligence), pre-contract or other representations (except for fraudulent misrepresentations) or otherwise arising out of or in connection with the Services for (a) any loss of revenues, profits, contracts, business or anticipated savings; (b) any loss of goodwill or reputation; or (c) any special, indirect or consequential losses in any case, whether or not such losses were within Postal Operator's contemplation at the date of commencement of the Licence, suffered or incurred by the Postal Operator or Postal Operator's customer arising out of its use of the API.

Nothing in these Terms shall limit the liability of either party for death or personal injury arising from that party's negligence, or for fraud.

## **Intellectual Property**

The API and all other copyrights, trademarks and other intellectual property rights subsisting in or used in connection with the API (including but not limited to all images, documentation, content, text, code, calls or other identifiable material relating to the API) are and remain the sole and exclusive property of Hurricane, and Postal Operator acknowledges that no title to any rights is transferred to it or any third party. All rights not expressly granted in the Terms are reserved by Hurricane.

## **Confidentiality**

The API, each individual component of the API, any API documentation and all data or information generated by the API are confidential to the parties. During the term of the Licence and thereafter, Postal Operator undertakes to Hurricane that it will keep confidential and not use or disclose to any person, except to its professional representatives or as may be required by law or any legal or regulatory authority, any such confidential information.

## **Dispute resolution**

The formation, interpretation, and performance of these Terms and any disputes arising thereto shall be governed by the substantive and procedural laws of England without regard to its rules on conflicts or choice of law. The exclusive jurisdiction and venue for actions related to the subject matter hereof shall be the courts of England and Wales and User hereby submits to the personal jurisdiction of such courts.

## **Acceptance of these terms**

Postal Operator acknowledges that its duly authorised representative has read and understood these Terms. By using the API, User agrees to be bound by these Terms.

## **Contacting Hurricane**

If User has any questions about this Agreement, its authorised representative should contact us at [legal@hurricanecommerce.com](mailto:legal@hurricanecommerce.com).