

Toll Transport Pty Limited

SECURE DIGITAL EXCHANGE SERVICE

END USER AGREEMENT

Please read this agreement carefully. By clicking “I accept” you accept the following terms and conditions from Toll Transport Pty Limited, Level 7, 380 St Kilda Road, Melbourne, Victoria, 3004 (**Toll**) and agree to be bound by them.

If you do not agree to the terms of this agreement, do not click “I accept” and do not access or use the Services.

1. DEFINITIONS

“End User Data” means all End User data and files which are provided to the Service for encryption;

“Encrypted Data” means a package of encrypted data;

“Encryption Key” means a unique randomised string of letters, numbers and characters that may be used to decrypt and access the Encrypted Data, through the use of the Services;

“End User” means any person who uses an End User Account, including the individual employees and contractors of the Customer and Recipients of encrypted data;

“End User Account” means an account accessible using a username and password which is required to access and use the Services;

“Personal Information” shall have the same meaning as set out in the *Privacy Act 1988* (Cth);

“Recipient” means a person to whom Encrypted Data is sent;

“Services” means provision of access to and use of the Software Platform;

“Software Platform” means the proprietary software platform which facilitates the encryption of data for transmission to a Recipient and the decryption by a Recipient as required to receive the functionality of the Secure Email, Secure File Transfer, Secure Workspace and Secure Web Form modules offered by Toll through the Software Platform.

2. REGISTRATION OF END USER ACCOUNT

2.1 You must register an End User Account in order to access and use the Services.

2.2 You hereby warrant that the information you provide when registering is true, accurate and complete.

2.3 It is your responsibility to inform Toll of changes to that information. You may do this by contacting Toll at sdx@tollgroup.com

3. RESPONSIBILITY AND SECURITY FOR END USER ACCOUNT

3.1 You acknowledge and agree that:

3.1.1 your password is confidential; and

3.1.2 you will keep your password secure and not disclose it to any other person, nor will you permit your username and password to be given to or used by any other person.

3.2 You must not (nor permit a third party to) in any other manner whatsoever corrupt, degrade or disrupt the Services.

3.3 You must ensure that there is no unauthorised access to, or use of, the Services using your End User Account. In the event of any such unauthorised access or use:

3.3.1 you must promptly notify Toll in writing; and

3.3.2 you remain liable for any activities of the unauthorised user using your End User Account.

4. SERVICES

4.1 You acknowledge that the Services are provided for commercial use only and cannot be used by you for personal or private use.

4.2 You must comply with any reasonable instructions issued by Toll about the method for accessing the Services, and you acknowledge that if you fail to do so then you may be unable to decrypt Encrypted Data.

4.3 You must not, except as expressly permitted in this Agreement or by law (i) modify, translate, create or attempt to create derivative copies of or copy the Services in whole or in part or associated documentation, software or applications; (ii) reverse engineer, decompile, disassemble or otherwise reduce the object code of the Services to source code form; (iii) distribute, sub-licence, assign, share, timeshare, sell, rent, lease, transmit, grant a security interest in or otherwise transfer your right to use the Services; (iv) circumvent any usage or other restrictions imposed by Toll in connection with the Services; (v) create any derivative work based on the Services or associated documentation, software or applications; or (vi) use the Services or associated documentation, software or application for application development purposes.

4.7 Toll shall make any organisational, procedural, or target adjustments or changes to the Services which it deems necessary or advisable.

5. END USER WARRANTIES AND INDEMNITY

5.1 You hereby represent, undertake and warrant that:

5.1.1 you (or your licensors) own all rights in the End User Data and have obtained and will maintain all necessary licences, consents and permissions necessary for Toll and its third party providers to provide the Services and otherwise perform their obligations under this Agreement; and

5.1.2 the End User Data does not and shall not contravene or breach any applicable law, regulation, code of practice or directive including, without limitation, investment or financial services legislation or consumer or trade regulation or data protection legislation or regulation and that the use of the End User Data will not contravene any applicable law, regulation or industry standard; and

5.1.3 the End User Data does not and shall not infringe any intellectual property rights or other rights of any person, nor are they obscene, defamatory, libellous or slanderous, nor will it cause injury to, invade the privacy of or otherwise violate other rights of any person; and

5.1.4 You shall (i) comply with all applicable local and foreign laws and regulations which may govern the use of the Services, and (ii) use the Services only for lawful purposes and in accordance with the terms of this Agreement.

5.2 You indemnify Toll and its related bodies corporate, officers, directors, employees, agents, suppliers, successors and assigns (collectively, the "Indemnified Parties") against all loss, damage, cost or expense incurred by the Indemnified Parties to the extent arising from or relating to:

5.2.1 your use of any Service;

5.2.2 any negligent, fraudulent or wilful act or omission by you;

5.2.3 any access, use or operation of the Service using your End User Account, including to unauthorised use or modification of any code, equipment, components, software, or accessories by any person;

5.2.4 any assertion that data or content made available through the Service is inaccurate or incomplete;

5.2.5 any assertion that End User Data or other data (including Personal Information) or content provided to Toll or its third party providers under or in connection with this Agreement infringes, misappropriates, or otherwise violates any law, breach of confidentiality, intellectual property rights or privacy rights of a third party; or

5.2.6 a breach by you of the warranty in clause 5.1.

6. TOLL WARRANTIES, EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 6.1 Save as expressly set out herein and to the maximum extent permitted by law, Toll expressly excludes all representations, warranties, statutory guarantees, obligations and liabilities in connection with the Services, including but not limited to warranties or guarantees of merchantability, non-infringement of intellectual property, accuracy, completeness, fitness for a particular purpose, and any warranties arising by statute or otherwise in law or from course of dealing, course of performance, or use of trade are hereby excluded and disclaimed. Toll's liability for breach of any statutory guarantee or term implied by statute which cannot be excluded is (to the extent permitted by law) limited to supplying the services again or (at Toll's option) payment of the cost of such resupply.
- 6.2 In no event shall Toll be liable for:
- 6.2.1 any special, indirect, incidental or consequential damages, loss of profits and goodwill, business or business benefit, or the cost of procurement of substitute products or services by you even if advised of the possibility of such damages;
 - 6.2.2 any delay or failure to provide the Services and that is due to third parties (other than third parties under Toll's direct control), including without limitation, internet service providers, data centres, server hosting companies and telecommunications companies;
 - 6.2.3 any loss, damage or liability that arises as a result of you making an Encryption Key available to a third party; and
 - 6.2.4 any computer viruses or other harmful code unless Toll is directly responsible for the inclusion of the virus or harmful code in the Services.
- 6.3 Toll does not guarantee that your access to the Services will be uninterrupted or error free. you acknowledge that the Services may be temporarily unavailable for scheduled maintenance, for unscheduled emergency maintenance, or because of other causes beyond Toll's reasonable control (including without limitation third party service providers, geographic or atmospheric conditions, local physical obstructions, software and hardware features or functionalities of personal operating systems, the number of other users or other problems inherent in the use of the internet and electronic communications services). Toll will not be liable to you as a result of these temporary service interruptions.
- 6.4 To the extent permitted by law, Toll's aggregate liability under this Agreement shall be limited to \$250 (two hundred and fifty dollars).

7. PRIVACY

You must ensure that your use of any Services is in accordance with the *Privacy Act 1988* (Cth), including ensuring you have all consents which are required to store,

transmit, use or disclose any Personal Information using the Services and to provide any Personal Information to Toll or its third party providers for use as contemplated by this Agreement. You will disclose to Toll and its third party providers only such Personal Information as you are authorised to disclose.

8. TERMINATION AND SUSPENSION

- 8.1 Toll may suspend (including by disabling your End User's login) or terminate your access to, the Services (including by terminating this Agreement) if:
- 8.1.1 You register or attempt to register more than one End User Account;
 - 8.1.2 if Toll reasonably believes that you, or any person using your End User Account has breached this Agreement;
 - 8.1.3 You open or attempt to open an End User Account using incomplete or falsified details, or otherwise in a fraudulent or illegal way; or
 - 8.1.4 there is an attack on the hosting environment for the Software Platform or another event which Toll (or if relevant, its third party providers) considers requires service suspension in order to protect its networks or the Service.
- 8.2 Clauses 1 (Definitions), 5.2, 6 (Toll Warranties, Exclusions and Limitations of Liability), and 9 (Intellectual property) and 10 (General) along with any other clause which by its nature is intended to survive termination of this Agreement, shall survive the termination of this Agreement.

9. INTELLECTUAL PROPERTY

- 9.1 Toll and its third party providers own all right, title and interest (including intellectual property rights) in and to the Services, the Software Platform, and any associated documentation, software and applications. All such rights are reserved by Toll and the relevant third party providers and you must not use any such rights except as expressly permitted under this Agreement.
- 9.2 To the extent that ownership of any right, title or interest to the Services, the Software Platform, or any associated documentation, software or applications does not automatically vest in Toll or its third party providers, you irrevocably assign to Toll or its third party providers all such right, title and interest, and agree to execute such further assignments and other documents as Toll or its third party providers may reasonably request to further evidence such assignment or to facilitate protection of intellectual property rights.
- 9.3 You (or your licensors) own all rights, title and interest (including intellectual property rights) in and to End User Data. Toll has no ownership interest in End User Data, and its rights to End User Data are limited to a non-exclusive, worldwide, royalty-free licence to disclose, modify, use, copy, cache, store and display, reproduce and process the End User Data (including all intellectual property rights therein) for the purposes of providing the Services and otherwise

fulfilling its obligations under this Agreement (including a right to sublicense for those purposes).

10. GENERAL

- 10.1 You may not assign this Agreement, in whole or in part, without the written consent of Toll.
- 10.2 This Agreement is governed by the law of the State of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State.
- 10.3 You agree that because of the unique nature of the Services and Toll's proprietary rights therein, a demonstrated breach of this Agreement by you would irreparably harm Toll and monetary damages would be inadequate compensation. Therefore, you agree that Toll shall be entitled to preliminary and permanent injunctive relief, as determined by any court of competent jurisdiction to enforce the provisions of this Agreement.
- 10.4 If any provision of this Agreement is declared void, illegal, or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.
- 10.5 Any failure by Toll to enforce its rights at any time under any term or condition under this Agreement shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.
- 10.6 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, oral and written, made with respect to the subject matter hereof.
- 10.7 Toll reserves the right to revise and amend this Agreement in our discretion, as follows:
- 10.7.1 if we consider that the change is likely to benefit you or have a neutral or minor detrimental impact on you, we may make any changes immediately without notifying you except by publishing the amended Agreement (as applicable) on the Software Platform;
- 10.7.2 if we consider that the change is likely to have a significant detrimental impact on you, we will make the change after we have notified you of the change (solely by using the email address you have provided) and will display a notice on the Software Platform describing the change.
- Your continued use of the Services after an amendment will mean that you agree to that amendment. You must stop using the Services if you do not agree to an amendment.

10.8 Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against Toll and such third parties shall not be entitled to enforce any term of this Agreement against Toll.