Toll Transport Limited

SECURE DIGITAL EXCHANGE SERVICE

CUSTOMER AGREEMENT

Please read this agreement carefully. By clicking "I accept" you accept, for yourself or, where there is a company or other legal entity's details on the order confirmation, for and on behalf of such company or legal entity (the person or entity whose details on the order confirmation being hereinafter referred to as the "Customer", "you" or "your") the following terms and conditions from Toll Transport Limited, Level 7, 380 St Kilda Road, Melbourne, Victoria, 3004 (Toll). If you are not the Customer, you hereby confirm that you are authorised to enter into this agreement on behalf of the Customer.

The Customer agrees to be bound by all the terms and conditions of this agreement.

If the Customer does not agree to the terms of this agreement or if you are not authorised to enter into legally binding contracts on behalf of the Customer, do not click "I accept" and notify Toll at the address set out above of your non-acceptance of the terms.

1.   DEFINITIONS

"Account Activation" means that Toll has activated the Customer's account to permit use of the Services in accordance with the Order Confirmation and the terms of this Agreement;

"Confidential Information" means all data and information relating to a party's business provided to or acquired by the other party, the other party's employees, agents or sub-contractors pursuant to this Agreement. All Customer Data will be deemed to be Confidential Information of the Customer;

"Customer Data" means all Customer 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 a End User Account, including the individual employees and contractors of the Customer;

"End User Account" means the username and password allocated by the Customer to an End User in order to access and use the Services;

"EULA" means the end user licence agreement for the Software Platform.

"Initial Term" means the Initial Term of this Agreement as set out on the Order Confirmation, or in the absence of an Initial Term in the Order Confirmation, means one (1) year;

A person is "Insolvent" if:

(a)   it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)); or

(b)   it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller (as defined in the *Corporations Act 2001* (Cth)) appointed to its property; or

(c)   it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document); or

(d)   an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

(e)   it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or

(f)   it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this document reasonably deduces it is so subject); or

(g)   it is otherwise unable to pay its debts when they fall due; or

(h)   something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

 "Order Confirmation" means either: (i) the quote for the Services issued by Toll and accepted without amendment by the Customer by (a) email; or (b) the issuing of a purchase order for such Services; or (c) completion of an online registration/application for the Services on the Toll website; or (ii) in the absence of a quote issued by Toll, means the completion by the Customer of the online registration form on the Toll website;

"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;

"SDX Module" means each of Secure Email, Secure File Transfer, Secure Workspace and Secure Web Form modules and any other future modules that may be offered by Toll for use by the Customer under this Agreement;

"Services" means provision of access to and use of the Software Platform with the SDX Modules which Customer has elected to receive, as set out in an Order Confirmation;

"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 SDX Modules, as more particularly described in Annex A;

"Subscription Charges" means the amounts payable by the Customer for the Services, as set out in the Order Confirmation;

"Subscription Periods" means the periods for which the Services will be provided, as set out in the Order Confirmation;

 "Term" means the Initial Term and thereafter any additional Subscription Periods.

## 2.	REGISTRATION

2.1	The Customer consents to Toll conducting verification and security procedures in respect of the information provided in the Order Confirmation. Toll reserves the right at its sole discretion to accept or reject the Customer's application.

2.2	The Customer hereby warrants that the information provided to Toll is true, accurate and correct. The Customer further warrants that it shall promptly notify Toll in the event of any changes to such information.

2.3	Upon Account Activation, the Customer will select a login and password to facilitate its use of the Services, together with additional logins and passwords for each End User Account permitted by Toll to be allocated. The Customer shall keep the login(s) and password(s) confidential and secure.. The Customer:

	2.3.1 must ensure that all End Users comply with:

		2.3.1.1 the Customer's obligations under this Agreement; and

		2.3.1.2 the End User's obligations under the EULA; and

2.3.2 is responsible for all acts or omissions of each End user and any other person using an End User Account as if they were acts and omissions of the Customer.

3. SUSPENSION

Without prejudice to Toll's other rights and remedies under this Agreement, Toll may suspend, including by disabling the Customer's login and suspending the Customer's and any End User's access to, the Services if:

3.1 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 their networks, the Service or any customer networks; or

3.2 if reasonably believes that the Customer, an End User, or any person using an End User Account has breached this Agreement (including by failing to pay any Subscription Charges in accordance with this Agreement) or the terms of the EULA.

Toll will use all reasonable efforts to give the Customer advanced notice of any suspension unless Toll or its third party providers determines that suspension without notice is required to avoid any further risk, and in that case, Toll or its third party providers must provide the Customer with written notice of the suspension promptly after the decision to suspend is made

4. TERM AND TERMINATION

4.1   This Agreement shall commence on the date of Account Activation and, subject to the remainder of this clause 4, shall continue for the Initial Term unless this Agreement is otherwise terminated in accordance with its terms. Prior to expiry of the Initial Term or then current Subscription Period, Toll will issue the Customer with a renewal notice and an invoice in accordance with clause 6 for Subscription Charges for the next Subscription Period. Where Customer pays the Subscription Charges in accordance with the invoice, this Agreement shall extend for an additional Subscription Period. Where the Customer fails to pay the Subscription Charges in accordance with the invoice, the Agreement will terminate with effect on expiry of the then current Subscription Period.

4.2   Either party may terminate this Agreement with immediate effect by written notice to the other party in the event that the other party:

4.2.1   commits any material breach of its obligations under this Agreement and fails to remedy the same within twenty (20) working days of written notice to do so;

4.2.2   commits any material breach of its obligations under this Agreement, and that breach is not capable of being cured;

4.2.3   repeatedly commits any material breach of its obligations under this Agreement to an extent which shows that it does not intend, or that it is unable to comply, with this Agreement;

4.2.4   is Insolvent or otherwise terminates or suspends its business activities; or

4.2.5   fails to pay any amount due under this Agreement on the due date for payment.

4.3   Toll may terminate this Agreement upon written notice to the Customer where Toll no longer has the rights to provide the Services under this Agreement, in which case Toll will refund any amounts pre-paid by the Customer for Services not yet rendered.

4.4   Upon termination of this Agreement for any reason:

4.4.1 Toll shall cease provision of the Services to the Customer;

4.4.2 the Customer shall immediately cease all use of the Services;

4.4.3 the Customer must pay Toll all identified and undisputed amounts then due and owing under this Agreement within 30 days of termination or expiry of this Agreement;

4.4.4 in the event that this Agreement is terminated by Customer pursuant to clause 4.2, shall provide the Customer with an exported file containing the Encryption Keys necessary to enable the Customer to decrypt the Encrypted Data;

4.4.5 subject to the payment of all outstanding amounts and applicable laws, on written request from the Customer made within 30 days of termination, Toll will supply the Customer with an electronic copy of all Customer Data which is on the servers of Toll and its third party providers as a result of the Customer's access to and use of the Services, after which Toll will permanently delete the Customer Data (subject to ordinary archival and back up processes); and

4.4.6 if the Customer does not make a request for a copy of Customer Data in accordance with clause 4.4.5, Toll and its third party providers will delete all Customer Data on their servers as a result of the Customer's access to and use of the Services.

4.5   Clauses 1, 4.4, 6 (to the extent of any unpaid Subscription Charges), 7, 8, 10 and 11 along with any other clause which by its nature is intended to survive termination of this Agreement, shall survive the termination of this Agreement.

5.   SDX SERVICES AND SUPPORT

5.1   In consideration for payment of the Subscription Charges, Toll shall provide the Services to the Customer for the Term. The Customer acknowledges that the Services are provided for commercial use only and cannot be used by the Customer or any of its End Users for personal or private use.

5.2   Each Recipient must comply with any reasonable instructions issued by Toll about the method for accessing the Services, and the Customer acknowledges that if the Recipient fails to do so then the Recipient shall be unable to decrypt the Encrypted Data.

5.3   The Customer must (and must ensure that its End Users):

    5.3.1   comply with the EULA for the Services;

    5.3.2   not, except as expressly permitted in this Agreement (i) modify, translate, create or attempt to create derivative copies of or copy the Services in whole or in part; (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 the Services or the Customer's right to use the Services;

    5.3.3 not, except to the extent that these restrictions are void under applicable law:

        5.3.3.1   copy, print, alter, or translate any part of the Services and associated documentation, software or applications;

        5.3.3.2   circumvent any usage or other restrictions imposed by Toll in connection with the Services;

        5.3.3.3   create any derivative work based on the Services or associated documentation, software or applications; or

        5.3.3.4   use the Services or associated documentation, software or application for application development purposes.

5.4   Toll and its third party providers owns 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 the Customer must not use any such rights except as expressly permitted under this Agreement..

5.5   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, the Customer irrevocably assigns (and will cause its personnel and contractors to assign) to Toll or its third party providers all such right, title and interest, and agrees to execute (and to cause its personnel and contractors 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.

5.6   The Customer owns all right, title and interest (including intellectual property rights) in and to Customer Data. Toll has no ownership interest in Customer Data, and its rights to Customer Data are limited to the licence granted in this Agreement.

5.7   Toll shall make any organisational, procedural, or target adjustments or changes to the Services which it deems necessary or advisable provided that such adjustments or changes shall not have any material detrimental effect on the provision of the same to the Customer.

6.   SUBSCRIPTION CHARGES

6.1   In consideration for the provision of the Services the Customer shall pay to Toll the Subscription Charges which shall be invoiced on the date of Account Activation unless set out to the contrary in the Order Confirmation. All Subscription Charges are exclusive of GST (or any equivalent sales tax), which will be applied to the Subscription Charges and payable by the Customer, if applicable, at the standard rate.

6.2   Toll may increase the Subscription Charges upon thirty (30) days prior notice to the Customer, provided always that such increase in the Subscription Charges shall only be applicable to the Customer upon the completion of the Subscription Period for which the then current Subscription Charge has been paid.

7.   TOLL WARRANTIES, EXCLUSIONS AND LIMITATIONS OF LIABILITY

7.1   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.

7.2   Subject to clause 7.7, Toll's liability under this Agreement shall be limited in the aggregate to the monies paid to Toll by the Customer under this Agreement in the twelve (12) months preceding the date of the claim.

7.3   Subject to clause 7.7, in no event shall Toll be liable for:

7.3.1 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 the Customer even if advised of the possibility of such damages;

7.3.2 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;

7.3.3 any loss, damage or liability that arises as a result of the Customer making an Encryption Key available to a third party; and

7.3.4 any computer viruses or other harmful code unless Toll is directly responsible for the inclusion of the virus or harmful code in the Services.

7.4 Toll does not guarantee that the Customer's access to the Services will be uninterrupted or error free. The Customer acknowledges 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 the Customer as a result of these temporary service interruptions.

7.5 Toll shall indemnify Customer in respect of any claim by a third party that Customer's use of the Services infringes any third party intellectual property rights provided that:

7.5.1 Toll shall be granted control of the claim and Customer shall not settle or otherwise compromise the matter without Toll's prior written consent;

7.5.2 Customer shall, at Toll's cost, provide all assistance with respect to the claim reasonably required by Toll;

7.5.3 Customer shall mitigate all losses, damages and claims which are the subject matter of such indemnity; and

7.5.4 Toll may at its option replace or modify the Services in order to avoid or prevent the alleged infringement and, if Toll determines that replacement or modification is not practicable, may terminate the Services by written notice to the Customer and refund any amounts pre-paid by the Customer for Services not yet rendered.

7.6 For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of either party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraudulent misrepresentation.

8. CUSTOMER OBLIGATIONS AND WARRANTIES

8.1   The Customer hereby grants Toll (and its third party providers) a non-exclusive, worldwide, royalty-free licence to disclose, modify, use, copy, cache, store and display, reproduce and process the Customer Data (including all intellectual property rights therein) for the purposes of providing the Services and otherwise fulfilling its obligations under this Agreement.

8.2   The Customer must ensure that there is no unauthorised access to, or use of, the Services using the End User Accounts. In the event of any such unauthorised access or use:

    8.2.1   the Customer must promptly notify Toll in writing;

    8.2.2   the Customer remains liable for any activities of the unauthorised user using the End User Account.

8.3   The Customer hereby represents, undertakes and warrants that:

    8.3.1   the Customer owns all rights in the Customer Data and has 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

    8.3.2   the Customer 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 Customer Data will not contravene any applicable law, regulation or industry standard; and

    8.3.3   the Customer 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

    8.3.4   it 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;

8.4   The Customer must obtain and maintain any software, internet connectivity, equipment and other technology necessary to access the Services ("**Access Technology**"). The Customer must:

    8.4.1   ensure that its Access Technology meets Toll's reasonable technical requirements as notified from time to time; and

    8.4.2   ensure the security of its Access Technology. The Customer acknowledges that a failure to comply with this clause 8.4 shall mean that it

and/or Recipients may be unable to use the Services or may only be able to use them in a limited or restricted manner.

8.5   In relation to the End Users, the Customer warrants and represents that:

8.5.1   the maximum number of End Users that it authorises to access and use the Services shall not exceed the number of End User Accounts allocated to the Customer;

8.5.2   it will not allow any End User Account to be used by any individual End User other than the individual End User to which it was assigned. Subject to Toll's prior consent, where the End User Account has been reassigned in its entirety to another individual End User, the prior individual End User shall no longer have any right to access the End User Account or use the Services;

8.5.3   each End User shall keep a secure password for his use of the Services and keep his password confidential; and

8.5.4   it will ensure that each person who uses an End User Account will comply with this Agreement and the EULA.

8.6 The Customer indemnifies 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:

8.6.1   the Customer's use of any Service;

8.6.2 any negligent, fraudulent or wilful act or omission of the Customer or and End User;

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

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

8.6.5   any assertion that Customer 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

8.6.6   a breach by Customer of the warranty in clause 8.3.

9.   **PRIVACY**

9.1   The Customer must ensure that its use of any Services is in accordance with the *Privacy Act 1988* (Cth), including ensuring it has 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. The Customer will disclose to Toll and its third party providers only such Personal Information as the Customer is authorised to disclose.

9.2   Toll will take reasonable steps to protect any Personal Information provided to it in connection with this Agreement against misuse, interference and loss, as well as unauthorised access, modification or disclosure.

10.   CONFIDENTIALITY AND DATA SECURITY

10.1   Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

10.1.1   treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

10.1.2   not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement;

10.1.3   not use the other parties Confidential Information other than for the purposes of this Agreement;

10.2   The provisions of Clause 10.1 shall not apply to the extent that:

10.2.1   such disclosure is required by law or a court of competent jurisdiction;

10.2.2   such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

10.2.3   such information was obtained from a third party without obligation of confidentiality;

10.2.4   such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

10.2.5   it is independently developed without access to the other Party's Confidential Information.

10.3   Toll will immediately notify the Customer of any breach of security in relation to Customer Confidential Information. Toll will co-operate with the Customer

in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Customer Confidential Information.

10.4   Toll shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by Toll of its obligations under this Agreement or as otherwise expressly approved by the Customer.

10.5   To the extent that Customer Data is held and/or processed by Toll, Toll shall use all reasonable endeavours to preserve the integrity of Customer Data and preventing the corruption or loss of Customer Data and Toll shall ensure that any system on which Toll holds any Customer Data, including back-up data, is a secure system that complies with Toll's own security policy.

10.6   If at any time Toll suspects or has reason to believe that the Customer Data has or may become corrupted, lost or degraded in any way for any reason, then Toll shall notify the Customer immediately and inform the Customer of the remedial action Toll proposes to take.

11.   GENERAL

11.1   The Customer may not assign this Agreement, in whole or in part, without the written consent of Toll.

11.2   The Customer consents to the use by Toll of such the Customer's name in Customer lists and other publicity, including interviews, case studies, and conference discussions, provided that such publicity accurately describes the nature of the services being provided by Toll to the Customer.

11.3   Notices to be served on Toll under this Agreement may be served at Toll Transport Limited, Level 7, 380 St Kilda Road, Melbourne, Victoria, 3004. Notices may be served on the Customer at the address given in the Order Confirmation.

11.4   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.

11.5   The Customer agrees that because of the unique nature of the Services and Toll's proprietary rights therein, a demonstrated breach of this Agreement by the Customer would irreparably harm Toll and monetary damages would be inadequate compensation. Therefore, the Customer agrees 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.

11.6   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.

11.7   Any failure by any party to this Agreement to enforce at any time 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.

11.8   Neither party shall be responsible for delays resulting from circumstances beyond the reasonable control of such party, provided that the non-performing party uses reasonable efforts to avoid or remove such causes of non-performance and continues performance hereunder with reasonable dispatch whenever such causes are removed. This clause does not apply to the obligation to pay money under this Agreement.

11.9   This Agreement (i) constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes (a) all prior agreements, oral and written, made with respect to the subject matter hereof; and (b) all "click thru" terms and conditions which the Customer may be required to click-accept in order to access or use the Services; and (ii) cannot be altered except by agreement in writing executed by an authorised representative of each party. No purchase order and/or standard terms of purchase provided by the Customer shall supersede this Agreement.

11.10   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.

11.11 Toll may subcontract any of its obligations under this Agreement.

Annex A

Service details

1. The Service is an email & file encryption service that enables users to encrypt, share, and remotely manage secure information that is distributed using a variety of transfer mechanisms including email, CD/DVD, USB Flash, USB Hard Drives, FTP Servers, HTTP Servers, and hosted Cloud Servers.

2.The Service enables small or large organisations in the Public and Private sector to share information securely by enforcing policy centrally and integrating information security into existing workflow processes. Additionally, comprehensive real-time auditing ensures that information owners know precisely who, when, and where confidential data is being accessed. This new approach to secure information sharing enables users to maintain visibility and control wherever the data resides.

3. The Service is a fully hosted service which leverages the Toll's infrastructure for complete delivery of encryption services, key management, and user management.