

# Software Licence Agreement

BETWEEN

COMPUCOURT PTY LTD ACN 081 923 444  
ABN 62 081 923 444  
of 103A Gardenvale Road, Gardenvale, Victoria 3185  
["the Provider"]

AND

the User

## RECITAL

The User has requested that the Provider grant to the User a licence to use the software described in this agreement in accordance with the terms and conditions contained in this agreement.

## AGREEMENT

### 1. INTERPRETATION

- 1.1 In this agreement unless the context otherwise requires:
- "**Agreement**" means this agreement made on the date referred to in the Schedule;
  - "**Associated Material**" means any document, literature or manual in relation to the Software;
  - "**Business Day**" means the day on which trading banks in Melbourne are open for business during normal hours;
  - "**Court**" means any civil registry of the Magistrates' Court of Victoria;
  - "**Installation Site**" means the location of the User's Single Server and/or User Work Stations;
  - "**Licence**" means the personal, non-exclusive right of the User to do any and all of the following at any time and from time to time during the Term subject to the terms and conditions contained in this Agreement:
    - (a) use the Software on a Single Server and on the number of User Work Stations referred to in the Schedule at the Installation Site for the Purpose; and
    - (b) receive the Services for the Purpose;
  - "**Licence Fee**" means the amount referred to in the Schedule and payable by the User to the Provider in the manner referred to in the Schedule and/or being such other amount and/or such other manner of payment as is stipulated by the Provider from time to time by seven (7) days' notice in writing;
  - "**Principal Document**" means the Department of Justice "Electronic Data Interchange Trading Agreement (Compucourt Users)" in the form of and/or to the general effect of the sample document annexed to this Agreement and marked with the letter "A";
  - "**Purpose**" means the permitted use described in the Schedule but notwithstanding anything contained elsewhere in this Agreement specifically excludes:
    - (a) any use or activity which in the exercise from time to time of the Provider's absolute and unfettered discretion is deemed by the Provider to be an inappropriate use and/or activity; and/or
    - (b) any use and/or activity which is in breach of the Principal Document;
  - "**Schedule**" means the schedule annexed to this Agreement;
  - "**Server**" means a computer terminal in the exclusive control of the User made available by the User for installation of the Software;
  - "**Services**" means those services specifically referred to in the Schedule which the Provider may from time to time provide to the User;
  - "**Single Server**" means one only permitted Server;
  - "**Software**" means the Provider's software described in the Schedule and includes all programs, data and/or software of any kind which is or which is derived from any property of the Provider and/or in which the Provider has any proprietary interest at any time, all copies, reproductions, updates, modifications, alterations, derivatives and adaptations of any kind whether in full or in part by any person and the Associated Material;
  - "**Special Conditions**" means the special conditions referred to in the Schedule which apply to this Agreement notwithstanding any other provisions in this Agreement;
  - "**Term**" means the period commencing and ending on the dates referred to in the Schedule or such other period as is stipulated by the Provider from time to time by two (2) days' notice in writing;
  - "**Transmission Fee**" means the amount referred to in the Schedule and payable by the User to the Provider in the manner referred to in the Schedule and/or being such other amount and/or such other manner of payment as is stipulated by the Provider from time to time by seven (7) days' notice in writing;
  - "**User**" subject to sub-clause 1.3 means the party or parties to this Agreement other than the Provider which is or are described in the Schedule; and
  - "**User Work Stations**" means the number of Servers connected to a central processing unit or mainframe which is referred to in the Schedule.
- 1.2 Words importing the singular number include the plural and *vice versa* and reference to one gender shall include all genders.
- 1.3 Reference to the User is limited to the User and its servants and agents only and by this sub-clause expressly excludes any reference to any other person.
- 1.4 Reference to a person other than the User includes the heirs, executors, administrators, successors and assigns of that person and includes a reference to corporations and associations.
- 1.5 Clause headings are for convenient reference only and shall not affect the interpretation of this Agreement.
- 1.6 The Schedule and recital forms part of this Agreement.
- 1.7 A reference to a recital or clause is a reference to a recital or clause to or of this Agreement.

- 1.8 Where any party comprises more than one person then the liability of those persons under this Agreement shall be a joint liability of all of those persons and a liability of each of those persons severally.
- 1.9 Where any obligation under this Agreement falls to be performed on a day other than a Business Day this Agreement shall be construed as requiring that obligation to be performed on the next Business Day.
- 1.10 Where any time period is required to be calculated from a specified day that day shall be excluded from the calculation.

### 2. PRINCIPAL DOCUMENT

The terms and conditions of the Principal Document shall apply to this Agreement *mutatis mutandis* as though the Provider is the Department and the User is the other party or parties to the Principal Document.

### 3. LICENCE

- 3.1 Subject to the Special Conditions, the remaining provisions of this clause and clause 4 the Provider by this sub-clause grants the Licence to the User in consideration of the payment by the User of the Licence Fee and the User's acceptance of and strict compliance with the terms and conditions of this Agreement.
- 3.2 This Agreement does not convey to the User any ownership of the Software. The User acknowledges and agrees that this Agreement in no way shall be construed to provide the User with an express or implied licence to sub-licence or otherwise transfer any rights in the Software to any person. The User further acknowledges and agrees that the Provider retains all title and ownership in the Software and that no other rights in or to the Software not expressly referred to in this Agreement are granted to the User.
- 3.3 All rights of the User under this Agreement are contractual only and do not create in or confer on the User any other interest or rights of any kind in or over the Software. All rights of the User shall be those of a User at law only and do not comprise or include any further or other rights so that the User shall not by exercising any right under this Agreement have or be deemed to have any proprietary interest in or possession of the Software.
- 3.4 The User acknowledges and covenants that apart from the obligations of the Provider expressly referred to in this Agreement the Provider assumes no other liability of the User arising out of any act and/or omission of the User in the purported exercise of any and/or all of the User's rights under this Agreement and the User by this sub-clause indemnifies and holds the Provider harmless from and against any liability of any kind not being an obligation of the Provider expressly referred to in this Agreement.

### 4. LICENCE FEE

- 4.1 The User shall pay to the Provider the Licence Fee.

### 5. USER'S OBLIGATIONS

- 5.1 In addition to any and all other obligations of the User referred to in this Agreement the User shall do or cause to be done the following:
- (a) pay the Licence Fee, the Transmission fee, the Supplementary Fee and all other monies payable under this Agreement without deduction to the Provider in strict accordance with the requirements of this Agreement or as otherwise directed by or on behalf of the Provider by two (2) days' notice in writing;
  - (b) comply with any and all of the Provider's requirements with regard to the Services;
  - (c) comply with all laws, by-laws and codes relating to the use of the Software;
  - (d) maintain the Software in the same condition as at the commencement of the Term; and
  - (e) The User must allow the Provider reasonable access to the Software on 48 hours prior notice from the provider.
- 5.2 The User must not and must not let any other person:
- (a) use the Software for any purpose other than the Purpose;
  - (b) do anything which might cause nuisance, damage or disturbance to the Provider and/or to any other person;
  - (c) make any alteration or addition of any kind to the Software; and
  - (d) do anything which in the opinion of the Provider constitutes a breach by the User of any obligation referred to in this clause.

### 6. WARRANTIES

- 6.1 The Provider warrants and represents to the User that the Provider has all necessary power and authority to enter into this Agreement.
- 6.2 The User acknowledges and covenants that:
- (a) it shall use its best endeavors to comply with any and all of the Provider's reasonable requirements for the orderly carrying out of the User's obligations under this Agreement; and
  - (b) it has inspected and verified the Software and accepts the Software in its present condition and without limiting the generality of the foregoing shall not make any claim of any kind against the Provider and/or any other person for any damage, defect, want of merchantability, lack of fitness for purpose or any other reason.
- 6.3 The User covenants that it shall make no claim whatsoever against the Provider or any other person in any way associated with or representing or assisting or cooperating with the Provider in respect of any act or omission by any person in any way affecting the Licence which is not expressly the subject of a specific warranty in this clause by the

Provider and to the extent that by this Agreement the Provider is released by the User from any such claim this Agreement may be pleaded in bar of any such claim.

- 6.4 The User acknowledges and covenants that apart from the Provider's obligations expressly referred to in this Agreement the Provider assumes no liability of the User of any kind arising out of any act and/or omission in purported reliance on the Licence or any other fact, matter and/or thing and the User indemnifies and holds the Provider harmless from and against any and all such liability on and from the date of this Agreement.
- 6.5 The User expressly acknowledges and covenants that all other agreements and all previous negotiations, representations, promises, warranties, arrangements, undertakings and statements of any kind whether express or implied as to the subject matter of this Agreement and/or as to the Licence and/or as to the intentions of the Provider and/or as to any other fact, matter and/or thing are all merged herein and otherwise by this sub-clause are excluded and cancelled.

#### 7. DATA BACKUP

The loss of data and/or any other damage sustained to part of or all of the Software shall at all times be the responsibility of the User and the Provider shall never be under any obligation to replace the Software or any part of the Software.

#### 8. COMPATIBILITY

- 8.1 The Provider does not warrant that the Software will perform correctly when used in conjunction with any software, any hardware and/or any other products provided in whole or in part to the User by any person other than the Provider.
- 8.2 The Provider does not warrant that any software, any hardware and/or any other product provided by any person other than the Provider will be compatible with the Software. The User expressly releases the Provider from and indemnifies the Provider against all liability for loss or damage sustained by the User and/or by any other person as a result of the failure of the Software to perform properly where such failure can be traced to any software, any hardware and/or any product provided by any person other than the Provider.

#### 9. LIMITATION ON USE

- 9.1 The User may only install the Software on the Single Server and if applicable the User Work Stations and may only use the Software for the User's own internal use.
- 9.2 The User shall not copy, reproduce, modify, improve, re-manufacture, create derivative works from or disassemble any portion of the Software or in any way duplicate all or any portion of the Software including translating it into another software language, except as expressly permitted in writing by the Provider.

#### 10. CONFIDENTIALITY

- 10.1 The User shall not disclose any portion of the Software to any person except duly authorised servants and/or agents of the User who are necessarily involved in using the Software for the Purpose.
- 10.2 The User shall keep the Software in a secure place and shall restrict access to and use of the Software in such manner as is approved by the Provider and in a manner no less strict than is or should be applied to the User's most valuable business and proprietary information.
- 10.3 The User shall instruct all of its servants and agents not to disclose the Software to any other person and shall ensure that all reasonable measures are taken to prevent such disclosure.
- 10.4 The User shall notify the Provider immediately after becoming aware that an unauthorised person has used, viewed, copied and/or come into possession of part or all of the Software and the User shall promptly furnish the Provider with full details regarding any such occurrence and shall cooperate with the Provider by doing anything deemed necessary by the Provider to protect the Provider's rights.
- 10.5 The User shall keep the Software free and clear of all claims, liens and encumbrances (except those of the Provider) and any act and/or omission of the User which has the effect of creating a claim, lien, or encumbrance shall be void.

#### 11. FURTHER ASSURANCES

The parties shall do and execute all acts and documents required by this Agreement to be done or executed by the parties at such time as may be necessary or is reasonably required by any of the parties for the fulfillment by the parties of their respective rights and/or obligations under this Agreement.

#### 12. COSTS

Each party to this Agreement shall bear and shall be responsible for its and/or their own costs and disbursements in connection with the preparation, execution and carrying into effect of this Agreement.

#### 13. TERMINATION AND DEFAULT

- 13.1 The User may terminate the Licence at any time by forthwith returning the Software to the Provider and by forthwith notifying the Provider in writing that the User has taken all necessary steps to immediately and permanently deprive the User (and any person in any way connected with the User) of any and all access to the Software.
- 13.2 The following are events of default for the purposes of sub-clause 13.3:  
(a) the User becoming bankrupt, taking a step which results in the calling of a creditors' meeting for the purposes of Part X of the *Bankruptcy Act 1966*, making an assignment or entering into a composition or

arrangement with creditors and/or being unable to pay debts as and when they fall due;

- (b) the User being the subject of a winding-up application and/or winding-up order, being placed under official management, having a controller (as defined in the *Corporations Law*) or administrator appointed or having an inspector appointed under the *Australian Securities Commission Act*;
- (c) where the User is a company having a different person in effective control without the Provider's prior written consent;
- (d) the User failing to satisfy a warrant issued to enforce a judgment against the User in any court; and
- (e) the User failing to pay any money due to the Provider under this Agreement.
- 13.3 If the User commits an act of default as defined in sub-clause 13.2 the Provider may sue for any unpaid money immediately, without mediating, without giving notice and without affecting any other right and the Provider shall also be entitled to claim from the User:  
(a) reimbursement of all expenses of any kind actually incurred as a consequence of the default; and  
(b) interest pursuant to clause 14.
- 13.4 Subject to sub-clause 13.3 the Provider shall first serve on the User a notice which:  
(a) specifies the default, expenses attributable to the default and the rate of any interest;  
(b) says that this Agreement will be terminated without further notice unless the default is remedied and expenses and any interest are paid; and  
(c) allows not less than two (2) days for the remedy of the default and payment.
- 13.5 If the notice referred to in sub-clause 13.4 is not complied with this Agreement shall from that moment terminate and no further notice will be necessary.
- 13.6 If the Provider terminates this Agreement pursuant to this clause all money payable by the User under this Agreement shall become immediately due and payable.
- 13.7 Any and all money paid to the Provider pursuant to this clause shall be applied first in reduction of the Provider's expenses, second in reduction of any interest and lastly in reduction of the balance of the Provider's claim.
- 13.8 In the event of termination by the Provider the User shall immediately return to the Provider the Software and the User shall also take all necessary steps to immediately and permanently deprive the User (and any person in any way connected with the User) of any and all access to the Software.

#### 14. INTEREST

If default is made by the User in the due payment of the Licence Fee or if default is made by the User in the due payment of any other moneys payable under this Agreement then although no demand for payment may have been made the amount in respect of which such default is made or so much thereof as shall from time to time remain unpaid shall bear simple interest at the rate per annum which is 2% higher than the rate for the time being prescribed by section 2 of the *Penalties Interest Rates Act 1983* (Vic) calculated from the date of the earliest default and such interest shall accrue and be recoverable from day to day.

#### 15. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria and the parties irrevocably submit to the jurisdiction of the courts of that State.

#### 16. NOTICES

Any notice which any party shall desire to give or which pursuant to this Agreement is required to be given by any party to any other party may be signed by such firstmentioned party (and if any party consists of more than one person then by any one of them) or for and on behalf of such firstmentioned party by a director or the secretary, manager or solicitor of such firstmentioned party and may be served on any other party (and if any party consists of more than one person then on any one of them) by delivering the same or by sending the same through the post or by registered or certified mail in an envelope addressed to any other party (and if any party consists of more than one person then to any one of them) as follows:

- 16.1 (in the case of the Provider) to CompuCourt Pty Ltd, 103A Gardenvale Road, Gardenvale, Victoria 3185 (or at such other address as the Provider may advise by notice in writing given in accordance with the provisions of this clause); and
- 16.2 (in the case of the User) to the respective address(es) given in this Agreement (or at such other address(es) as the User may advise by notice in writing given in accordance with the provisions of this clause) -
- and the notice shall in the case of posting be deemed to have been served on the second Business Day following the day on which it was posted.

#### 17. GENERAL

- 17.1 Time is of the essence in this Agreement.
- 17.2 The failure or omission by any of the parties at any time and from time to time to enforce or require strict compliance with any provision of this Agreement shall not affect or impair such provision in any way or the rights of such party to avail themselves or itself of such remedies as they or it may have in respect of any breach or breaches of any such provisions.
- 17.3 No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any party therefrom shall be of any force or effect unless the same shall be confirmed in writing and signed by the parties and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.
- 17.4 This Agreement constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms or conditions of whatsoever nature not contained and recorded in this Agreement shall be of any force or effect.
- 17.5 If any provision of this Agreement shall be invalid or not enforceable in accordance with its terms all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable provision(s) shall be and continue to be valid and enforceable in accordance with their terms.
- 17.6 This Agreement may be executed in any separate number of counterparts which when executed shall together be deemed to constitute the one and the same instrument.



## SCHEDULE

**Date of this Agreement:** the \_\_\_\_\_ day of \_\_\_\_\_ 20

**User :** \_\_\_\_\_  
\_\_\_\_\_ [A.C.N.] \_\_\_\_\_  
Of [address of User] \_\_\_\_\_  
\_\_\_\_\_ [Postcode] \_\_\_\_\_

**Licence Fee :** \$ 825.00 on exchange of this Agreement plus the Transmission Fee.  
(Licence Fee includes \$75.00 Goods and Services Tax)

**Purpose :** Issuing legal documentation pursuant to the Principal Document.

**Services :**

- Supply and installation of the Software;
- 1 day initial training (*to a maximum of 8 hours and 4 people*);
- 15 hours support in the first month of use;
- 10 hours support in the second month; and
- 5 hours support in the third month.

**Software :** **Compucourt Microsoft® Access 95/97/2000 Database and Transmission software**

**Term :** From the date of this Agreement until this Agreement is terminated pursuant to clause 13.

**Transmission Fee :**

- The sum of \$5.94 (includes 50 cents GST and 44 cents Court Transmission Fee) for each and every document issued by the Court on the application of the User - payable within seven (7) days of the issue date; and
- the sum of \$0.44 (includes 4 cents GST) for each and every document rejected by the Court on the application of the User - payable within seven (7) days of the rejection date.

**User Work Stations :** Permitted number : **1**

**Special Conditions :** Nil.

## **ANNEXURE SHEET**

This is the annexure marked with the letter "A" which is referred to in the definition of "Principal Document" set out in sub-clause 1.1 of the Agreement.