

Electronic Data Interchange Deed

By

| | |
|------------|------------------|
| Name | <To be inserted> |
| ABN | <To be inserted> |
| Address | <To be inserted> |
| Email | <To be inserted> |
| Short name | User |

To

| | |
|------------|--|
| Name | Court Services Victoria |
| ABN | 63 392 984 660 |
| Address | PO Box 13193 Law Courts, Melbourne VIC 8010 |
| Email | <To be inserted> |
| Short name | CSV |

1. Definitions

In this deed, unless expressed or implied to the contrary:

authorised user has the meaning given to that term in the Rules.

Court means the Magistrates' Court of Victoria.

EDI means electronic data interchange.

EDIFACT means the United Nations rules for Electronic Data Interchange for Administration, Commerce and Transport as published from time to time.

electronic message has the meaning given to that term in the Rules.

Fees Regulations means the *Magistrates' Court (Fees) Regulations 2012 (Vic)*.

Message means an identified and structured set of data transmitted electronically between the User and the Court or CSV.

Rules means *Magistrates' Court General Civil Procedure Rules 2010 (Vic)*.

Third Party Supplier means the third party nominated by CSV from time to time and engaged by the User to facilitate the transmission of Messages.

Transaction Log means a chronological sequential log comprising, in relation to each Message, the following elements:

- (a) the time of despatch or receipt, as applicable;
- (b) the identity of the other party;
- (c) whether the Message was sent or received; and
- (d) the transaction type identified.

2. Messages

2.1 The User acknowledges that:

- 2.1.1 each Message it sends is an electronic message under the Rules; and
- 2.1.2 the requirements in this deed are in addition to (and do not replace) the requirements for electronic messages in the Rules.

2.2 The User undertakes to include in each Message it sends:

- 2.2.1 the electronic symbol, code or password that identifies the User (as notified by the User to CSV under clause 3 below);
- 2.2.2 the identity of the addressee;
- 2.2.3 the details of the type of transaction;
- 2.2.4 the criteria required by CSV or the Third Party Supplier to verify commencement of the Message and the conclusion of the Message for the purpose of verifying the integrity of the data transmitted; and
- 2.2.5 any other information required by CSV or the Third Party Supplier from time to time.

2.3 The User undertakes to use EDI documents conforming to EDIFACT when sending Messages.

2.4 The User acknowledges:

- 2.4.1 that it must enter into its own arrangements with a Third Party Supplier to facilitate the transmission of Messages; and
- 2.4.2 that CSV has no ability to control, and is not responsible or liable for, the performance (or lack of performance) of that Third Party Supplier or its goods and services.

3. Authentication

The User undertakes to:

- 3.1 notify CSV of any electronic symbol, code or password that CSV may rely on to authenticate a Message as being from the User; and
- 3.2 immediately notify CSV in writing of any change to the electronic symbol, code or password notified to CSV under clause 3.1.

4. Other obligations of the User

4.1 The User:

- 4.1.1 acknowledges that it must be an authorised user; and
 - 4.1.2 undertakes to comply at all times with the requirements in the Rules dealing with filing of court documents by electronic means.
- 4.2 The User undertakes that the data included in Messages it sends will not be modified in any way:
- 4.2.1 after the Message has been sent; and
 - 4.2.2 before the printing of any document which results from that Message that is intended to be served on a party to the relevant proceedings.
- 4.3 The User undertakes to provide to or procure for CSV all necessary intellectual property rights to enable CSV and the Court to hold and use the Messages sent by the User and associated documents.

5. Fees

5.1 The User:

- 5.1.1 acknowledges that the:
 - (a) Court fees for filing a document by electronic message applying under the Fee Regulations; and
 - (b) fees for lodging Messages by EDI (as notified by CSV or the Third Party Supplier from time to time),will be payable by it in respect of Messages; and
 - 5.1.2 undertakes to pay such fees to CSV or the Third Party Supplier (as directed by CSV) in respect of each Message.
- 5.2 The User acknowledges that, as at the date of this deed, the fees for lodging Messages by EDI apply for the purposes of clause 5.1.1(b) above are \$6.25 per Message.

5.3 To facilitate the payment of the fees referred to in clause 5.1 direct to CSV, the User undertakes:

- 5.3.1 where required by CSV, to enter into a direct debit agreement with CSV authorising CSV to debit such fees from a bank account nominated by the User; and
- 5.3.2 ensure that the nominated account at all times has sufficient funds available for payment of fees incurred by the User in relation to the Messages.

6. Security

The User undertakes to:

- 6.1 keep all access codes and identification passwords relating to the Messages and related systems secure;
- 6.2 develop and use security procedures to ensure that all equipment and transmissions of Messages are secure from unauthorised access and that all records and data are protected from loss, alteration or destruction.

7. Liability

7.1 The User:

- 7.1.1 undertakes not to make a claim against CSV or the State of Victoria in respect of any loss or damage suffered by the User or its clients in connection with this deed, including if a Message or document is rejected or not filed for any reason (**Claim**);
 - 7.1.2 releases CSV and the State of Victoria from any Claim made in breach of clause 7.1.1; and
 - 7.1.3 indemnifies CSV and the State of Victoria against any loss or damage incurred by them in connection with any Claim.
- 7.2 The User acknowledges that it has the sole responsibility for the accuracy of Messages where data is transcribed from an existing paper document to a Message it sends.
- 7.3 The User indemnifies CSV and the State of Victoria against any loss or damage (including lost fees and the cost of re-work) which may be incurred by CSV or the State of Victoria due to:
- 7.3.1 the inaccurate input by or on behalf of the User of data in Messages;
 - 7.3.2 the inaccurate transmission of Messages;

- 7.3.3 any unauthorised access or transmissions which occur as a result of the User failing to secure the system as required under clause 6; and
- 7.3.4 any other failure of the User to comply with the deed.
- 7.4 The User acknowledges that it has the sole responsibility to ensure the accuracy of all Messages sent and that data is accurately converted to produce any documents for service upon any party or for filing in accordance with the relevant Rules.
- 7.5 The User acknowledges that CSV holds the benefit of this clause on trust for the State of Victoria.

8. Retention of Transaction Logs

Without limiting the User's obligations under the Rules to retain and provide copies of documents lodged with the Court using an electronic message, the User undertakes to:

- 8.1 maintain each entry in the Transaction Log in a form from which it can be retrieved in visible form on demand for a period of 7 years after its creation; and
- 8.2 make available for inspection by CSV or the Court a copy of the Transaction Log within a reasonable time (not to exceed 7 days) after a request.

9. Suspension, termination and amendment

- 9.1 The User agrees that CSV may decline to accept Messages from the User at any time and for any reason, including where the User fails to comply with the undertakings it has given in this deed and pay fees. The User acknowledges that CSV may also permanently suspend acceptance of Messages from the User, or terminate this deed, unilaterally for any reason.
- 9.2 This deed may be terminated:
- 9.2.1 immediately by the written agreement of the parties; or
- 9.2.2 on 30 days prior written notice by the User to CSV.
- 9.3 The User acknowledges that the termination of this deed does not, of itself, effect a termination of any other document between the parties.
- 9.4 No provision of this deed or any right conferred by it can be varied, except in writing signed by CSV and the User.

10. General

- 10.1 In this deed a reference to:
- 10.1.1 a statute includes regulations and rules under it and consolidations, amendments, re-enactments or replacements of any of them;
- 10.1.2 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 10.1.3 a person includes the legal personal representatives, successors and assigns of that person;
- 10.1.4 any body which no longer exists or has been reconstituted is a reference to a body which most closely serves the purposes or objects of the first-mentioned body;
- 10.1.5 this or other documents includes the document as varied or replaced regardless of any change in the identity of the parties;
- 10.1.6 the singular includes the plural and vice versa; and
- 10.1.7 the terms 'including' and 'includes' are not intended to be terms of limitation.
- 10.2 The User:
- 10.2.1 acknowledges that the *Electronic Transactions (Victoria) Act 2000* (Vic) applies to the Messages; and
- 10.2.2 gives the consent required under that Act to receiving the Messages by means of an electronic communication.
- 10.3 The User acknowledges that:
- 10.3.1 this deed will be governed and construed in accordance with the laws of the State of Victoria and undertakes to submit itself to the non-exclusive courts of the State of Victoria;
- 10.3.2 a single or partial exercise or waiver of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right;
- 10.3.3 no rule of construction applies to the disadvantage of CSV on the basis that it prepared or put forward this deed or any part of it;
- 10.3.4 each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the User and survives termination of this deed;
- 10.3.5 it is not necessary for a person to incur expense or make payment before

enforcing a right of indemnity conferred by this deed;

10.3.6 if any clause of this deed is held to be illegal, invalid, void, voidable or unenforceable, it is to be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable, or if that is not possible, part or all of that clause is to be severed from deed with all remaining provisions continuing in force;

10.3.7 headings and sub-headings are for ease of reference only and do not affect the interpretation of this deed;

10.3.8 the warranties, undertakings, covenants and continuing obligations in this deed do not merge on completion; and

10.3.9 if the User consists of 2 or more people or entities, an obligation of the User binds each of them jointly and severally.

10.4 The Supplier undertakes not to sell, transfer, novate, delegate, assign or licence any right or obligation under this deed to any person without the prior written consent of CSV.

Executed as a deed poll

Signed for an on behalf)
of **<insert name and**)
ABN of User> by an).....
authorised person in the Signature of authorised person
presence of:

.....
Name of authorised person

.....
Title of authorised person

.....
Signature of witness

.....
Name of witness

.....
Date