



Deacons

SPEAR Referral Authority Access Agreement

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This Agreement is made between the **Department of Sustainability and Environment** (Department) on behalf of the **State of Victoria** of 570 Bourke Street, Melbourne and the **Authority** identified in the Reference Schedule.

Introduction

- A.** The Authority is granted access to the SPEAR system on the conditions set out below and in the SPEAR Common Rules.
- B.** The Parties agree that in consideration of the access granted to SPEAR by the Department, the Authority is bound by the following conditions and the Common Rules.

It is agreed

1. SPEAR Access

The Department grants to the Authority a right of access to SPEAR for the purpose of the Authority receiving and dealing with referrals to it arising from Relevant Applications in its capacity as a Referral Authority.

2. Parties Bound

The Authority and the Department agree to be bound by these conditions and the Common Rules.

3. Web Interface

- 3.1** The Authority must only gain access to SPEAR via the SPEAR Internet Site using the Web Interface and must not use any program other than a standard internet browser to connect to SPEAR. The access granted is subject to compliance by the Authority and all Authority Users with this Agreement, the Common Rules, all User Manuals issued by the Department under clause 9 and all relevant Statutory Provisions.
- 3.2** Without limiting the foregoing, the Authority must not connect to SPEAR directly using any software application other than a standard internet browser unless such form of connection (commonly known as application to application environment) is approved in writing by the Department which approval may be withheld subject to satisfaction of appropriate standards.

3.3 The Department reserves the right to change the Web Interface or other aspects of SPEAR (including software required for access) from time to time.

4. **Access to SPEAR**

4.1 Subject to availability, the Authority may gain access to SPEAR 24 hours a day for every day of the year but the Department does not warrant that access to SPEAR will be uninterrupted or available when required.

4.2 The Department accepts no liability which may arise as a result of any unavailability of, or any interruption of access to, SPEAR and does not guarantee that SPEAR is or will remain error or virus free.

5. **Email Notification**

The Authority agrees that email notification of the lodgement of any document or information in SPEAR is sufficient and the Authority must check any documents or information notified by SPEAR in a timely and diligent manner.

6. **Authority Users**

6.1 The Authority must appoint at least one Authority User for SPEAR and is fully and solely responsible for validating the identity of Authority Users. It is the sole responsibility of the Authority (and not of the Department) to monitor the use of any Access Method used to access SPEAR and to grant or deny access to SPEAR for Authority Users.

6.2 The Authority may appoint Authority Users by the Administrator providing the Department with written notice (excluding email or other form of electronic communication) signed by the Administrator and containing such information as is reasonably required by the Department from time to time.

6.3 The Department will issue each Authority User with a user name and password which will be unique to that Authority User. The Authority and Authority User must keep all components of the user name and password and all Access Methods secure and not more than one person may use that user name and password or other Access Method. If the security of the user name and password or Access Method is compromised in any way, or is suspected of having been compromised, the Authority must immediately stop the use of such user name and password or Access method and immediately notify the Department.

6.4 The Department may take any action including cancelling or suspending a user name and password (or other Access Method) at any time without notice if the Department believes, on reasonable grounds, that the user

name and password or Access Method is being misused or has been compromised. The Authority may cancel any user name and password or Access Method by requesting the Department, in writing, to cancel it.

- 6.5 The Department is authorised by the Authority to act upon all instructions communicated through SPEAR by an Authority User.
- 6.6 The Authority User shall have authority to enter data and to have access to SPEAR on behalf of the Authority and the actions of the Authority User shall be binding actions of the Authority. The Authority must use its reasonable endeavours to ensure that each Authority User provides complete and accurate responses to all requests for information made during the application process including with respect to the identity of the Authority User.

7. **Responsibility of the Authority**

- (1) The Authority accepts liability for all instructions communicated through SPEAR by an Authority User other than where such Authority User has been suspended by the Department or the access by such Authority User has been terminated by the Department.
- (2) All actions and transactions will be deemed to have been communicated by the Authority if the correct Access Method is used and even if the Authority User is not appointed or actions or transactions are communicated by a person acting fraudulently or by fraudulent or unauthorised use of the Access Method.
- (3) Without limiting the foregoing, any use of SPEAR by any person using an Access Method issued to an Authority User is deemed to be use by that Authority User. The Authority indemnifies the Authority against any Loss arising from any use or misuse of Spear by any person using the Access Method of an Authority User.

8. **Common Rules**

- 8.1 The Authority agrees that the Common Rules apply to the Authority's use of SPEAR and shall bind the Authority for all dealings between that Authority and any other Customer or user. The Authority agrees that the terms and conditions contained in the Common Rules are for the benefit of and may be enforced by, or relied upon by, any other Customer against the Authority. To the extent that there is any inconsistency between the provisions of this Agreement and the Common Rules, the Common Rules shall prevail.
- 8.2 The Department may amend the Common Rules by not less than 60 days notice via email to the Authority. The Authority is deemed to accept the

amended Common Rules if it continues to use SPEAR after the expiration of the period of notice.

9. **User manuals**

The Department may, from time to time, issue the Authority with a User Manual relating to the use of SPEAR. The Authority and its Authority Users must strictly comply with the User Manual when using SPEAR.

10. **Application to Application Environment**

The Authority must not access SPEAR in an Application to Application environment unless the Authority uses a SPEAR Interface agreed to by the Department in accordance with the Department's standard Application to Application conditions for SPEAR.

11. **Term, Suspension and Termination**

11.1 The term of this Agreement shall be from the Commencement Date until termination. The Department can immediately suspend the Authority's access to SPEAR and provide notice of termination in the event of:

- (1) Any misuse of SPEAR or any fraud by the Authority or an Authority User.
- (2) Any significant adverse effect on SPEAR or its operation which is, in the reasonable opinion of the Department, due to access to SPEAR by the Authority or any Authority User.

The Department shall reinstate the Authority's access to SPEAR upon being reasonably satisfied that the cause of the suspension has been removed or resolved and that there is no reasonable likelihood of such cause re-occurring.

11.2 Either party may terminate this Agreement by giving the other party not less than 6 calendar months notice of such termination.

11.3 Either party may terminate this Agreement effective immediately by written notice to the other party ("**Defaulting Party**") only if any of the following apply:

- (1) the Defaulting Party fails to comply with any material provision of this Agreement and, to the extent that the breach is capable of being remedied, does not remedy that failure to the satisfaction of the other party within 15 Business Days after notice from the other party requiring it to be remedied;

- (2) the Department has suspended the Authority's use of SPEAR pursuant to clause 11.1 and the Authority has failed to rectify the cause of suspension to the reasonable satisfaction of the Department within 28 days of such suspension; or
- (3) it becomes unlawful for the Defaulting Party to perform its obligations under this Agreement.

11.4 Upon termination of this Agreement for any reason the Authority must immediately cease to use SPEAR.

12. **Privacy**

12.1 In providing information to the SPEAR system the Authority acknowledges that the information may be used for the Authorised Purposes. The Authority is bound by the information privacy principles and any applicable code of practice under the *Information Privacy Act 2000 (Vic)* for the purposes of information provided to it or generated by it as a result of the performance or use of the SPEAR system as if it were the Department.

13. **SPEAR Intellectual Property**

13.1 The Authority agrees that the Department owns all of the Intellectual Property Rights in SPEAR and nothing in this Agreement shall be read so as to transfer any rights, title or interest in SPEAR to the Authority.

13.2 The Authority acknowledges that except as expressly provided in this Agreement, it will not acquire any rights, including Intellectual Property Rights, in SPEAR or any materials supplied by the Department or through SPEAR and that all such rights and goodwill whenever arising immediately vest in, and will remain vested in, the Department.

14. **Department and Council Liability**

14.1 To the extent permitted by law the Department excludes all terms, representations or warranties with respect to SPEAR including as to its security or availability or as to any support information or materials. Subject to the following all statutory or implied conditions and warranties are excluded to the extent permitted by law. The liability of the Department and the Relevant Council under any condition or warranty which cannot be legally excluded is limited to (to the extent permitted by law):

In the case of goods;

- (1) The replacement of the goods or the supply of equivalent goods;
- (2) The repair of the goods;

(3) The payment of the cost of replacing the goods or of acquiring equivalent goods; or

(4) The payment of the cost of having the goods repaired; and

In the case of services;

(5) Supplying the services again; or

(6) Paying the cost of having the services supplied again.

14.2 To the extent permitted by law, the Department and each Relevant Council exclude liability for any Loss arising from or in connection with:

(1) Any inaccuracy or incompleteness of the information or document contained in or obtained through the use of SPEAR; or

(2) Use by the Authority or any person of SPEAR and the information that may be derived from the system

except to the extent caused or contributed by any negligent act or omission of the Department or the Relevant Council or their respective employees or agents.

14.3 To the extent permitted by the law, the Department shall under no circumstances be liable for any indirect or consequential Loss incurred or sustained by any person arising out of access to or use of information derived from SPEAR.

15. **Release**

The Authority hereby releases the Department and any relevant Responsible Authority, their employees and agents from any Loss suffered or incurred by the Authority including but not limited to indirect, special, or consequential damages (and in any event loss of anticipated revenue, business interruption and loss of business) in connection with or arising out of access to SPEAR, the use of SPEAR or the access to or use of information derived from SPEAR (including any lack of access or loss of data) except to the extent that any Loss arises from any wilful or negligent act or omission of the Department or the relevant Responsible Authority, their respective employees or agents.

16. **Statutory Obligations**

For the avoidance of doubt the parties agree that nothing in this Agreement is to be construed as changing the duties or functions of any party under the *Planning Environment Act 1987* or the *Subdivision Act 1988* or any other Statutory Provision. The Authority and the Department must comply with all Statutory Provisions in all matters relating to this Agreement and to any dealing with or use of SPEAR or information derived from it.

17. Survival of obligations

The provisions of clauses 7, 11.4, 12, 13, 14 and 15 of this document and clauses 10, 11, 12, 14 and 17 of the Common Rules survive the termination of this Agreement.

18. Notices

- 18.1 Notice or any other communication connected with this Agreement may be given in writing by prepaid ordinary post or by electronic mail to the addresses of the party as set out in the Reference Schedule.
- 18.2 A notice sent by post is deemed to have been received on the 2nd Business Day (at the address to which it is posted) after posting. A notice sent by electronic mail before 5pm on a Business Day at the place of receipt, is deemed to have been received on the day it is sent and otherwise on the next Business Day at the place of receipt. An electronic mail message is not treated as given or received if the sender's computer reports that the message has not been delivered.

19. Miscellaneous

19.1 Assignment

The Authority may not assign or otherwise deal with this Agreement without the prior written consent of the Department.

19.2 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

19.3 Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

19.4 Entire understanding

This Agreement (including the Common Rules):

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

19.5 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

19.6 Waiver

The parties agree that:

- (1) a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right;
- (2) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right;
- (3) a waiver is not effective unless it is in writing; and
- (4) a waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

19.7 Governing law and jurisdiction

The law of the State of Victoria governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and of the Commonwealth of Australia.

19.8 Delegate to execute

If the Authority executes this Agreement by its delegate (**Delegate**), in executing this Agreement, the Delegate warrants that he or she is duly authorised to do so and acts within the scope of his or her appointment in executing this Agreement.

20. Definitions and Interpretation

20.1 The following definitions shall apply in these conditions.

Agreement means this document including any annexures and the Common Rules

Access Method means either a Digital Certificate or username and password or such other method of access to SPEAR as may be approved by the Department from time to time.

Administrator means a person or persons nominated in writing (excluding email or other form of electronic communication) by the Authority to the Department from time to time and approved by the Department as authorised to nominate Authority Users.

Authorised Purpose means the recording and the processing of applications under the *Planning and Environment Act 1987* for the development of land, applications for the subdivision or consolidation of land under the *Subdivision Act 1988*, applications for permits under the *Building Act 1993* and all documentation and associated purposes (including recording for public access) and includes use in records of Responsible Authorities or Referral Authorities, the Land Registry, Crown land records and the digital map base as used and distributed by or on behalf of the State.

Authority means the party so identified in the Reference Schedule.

Authority User means any User appointed to act on behalf of the Authority in accordance with this Agreement.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Common Rules means the terms and conditions so identified and set out on the SPEAR web site at www.landexchange.vic.gov.au/spear which bind all Customers of SPEAR.

Communication includes any instruction, request, approval, certification, acceptance, confirmation, information, or document.

Council means a Council as defined in the Local Government Act 1989.

Customer means any person or body who enters into an agreement with the Department for access to and use of SPEAR and specifically includes the Authority and the Relevant Council.

Intellectual Property Rights means any patents, trade marks or service marks, rights in designs, trade or business names, copyrights, domain names and data base rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature having equivalent or similar effect to any of these in any part of the world.

Loss means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person and includes:

- (1) the cost of any action taken by any person to protect itself from any loss or to preserve any right it has under this Agreement;
- (2) any taxes or duties payable by the person in connection with this Agreement (excluding any tax on assessable income); and
- (3) where applicable, all costs actually paid by the person to their own legal representative (whether or not under a costs agreement) and other expenses incurred by the person in connection with a

demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal).

Personal Information has the same meaning as that provided in Section 3 of the *Information Privacy Act 2000 (Vic)*.

Referral Authority has the same meaning as in the *Subdivision Act 1988 (Vic)*.

Relevant Application means an application made to a Responsible Authority and relating to:

- (1) subdivision or consolidation of any land under the *Subdivision Act 1988 (Vic)*;
- (2) approval of the development of any land under the *Planning and Environment Act 1987 (Vic)*) to the extent that it requires subdivision or consolidation as referred to in (a) above; and
- (3) any other activity through which an application may be received through SPEAR, as the Responsible Authorities and the Department may agree from time to time.

Relevant Council means the Council responsible for processing the Relevant Application.

Responsible Authority has the same meaning as in the *Planning and Environment Act 1987 (Vic)*.

SPEAR means the computerised system for Streamlined Planning through Electronic Applications and Referrals developed by the Department as modified from time to time.

SPEAR Application means a Relevant Application lodged in SPEAR.

SPEAR Internet Site means the URL specified by the Department from time to time as the online location for accessing SPEAR through the Web Interface, which URL at the Commencement Date is specified in the Reference Schedule.

State means the Crown in right of the State of Victoria.

Statutory Provision means a statute, regulation or provision of a statute or regulation.

User means any person authorised to access and use SPEAR.

Web Interface means the interface to SPEAR (as modified from time to time) which is intended to be accessed by Customers of SPEAR using a standard internet browser over internet based communications.

20.2 Interpretation

- (1) In this Agreement reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate; and
 - (d) a party includes the party's executors, administrators, successors and permitted assigns.
- (2) Including and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

Reference Schedule

21. **Authority** [name and ABN]
22. **Authority Address**
Postal address:
Email:
23. **Department's Address**
Postal address:
Email:
24. **Commencement Date**
25. **SPEAR Internet Site**
26. **Authority User(s) nominated**

Executed for and on behalf of the Authority

[]

Date

Executed for and on behalf of the Department

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Date