

SPEAR Electronic Lodgement Network Participation Rules

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PARTICIPATION RULES

1. PRELIMINARY

These Participation Rules constitute the SPEAR Electronic Lodgment Network Participation Rules determined by the Registrar pursuant to section 23 of the ECNL.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

2.1.1 A term used in these Participation Rules and also in the ECNL has the same meaning in these Participation Rules as it has in that legislation (unless the term is defined in these Participation Rules).

2.1.2 In these Participation Rules capitalised terms have the meanings set out below:

ABN means an Australian Business Number and has the meaning given to it in the *A New Tax System (Australian Business Number) Act 1999 (Cth)*.

Access Credentials means a User identification and password, and any other details, required for a Person to access the SPEAR ELN.

ADI (authorised deposit-taking institution) has the meaning given to it in the *Banking Act 1959 (Cth)*.

Amendment to Participation Rules Procedure means the procedure set out in Schedule 2, as amended from time to time.

Application Law has the meaning given to it in the ECNL and in South Australia is the *Electronic Conveyancing National Law (South Australia) Act 2013 (SA)* and in Western Australia is the *Electronic Conveyancing Act 2014 (WA)*.

Approved Insurer means an insurer approved by APRA to offer general insurance in Australia.

APRA means the Australian Prudential Regulation Authority.

Australian Credit Licence has the meaning given to it in the NCCP Act.

Australian Legal Practitioner has the meaning given to it in the *Legal Profession Uniform Law (Victoria)* and in South Australia is a legal practitioner for the purposes of the *Legal Practitioners Act 1981 (SA)*.

Business Day has the meaning given to it in the ECNL.

Certification Authority means a Gatekeeper Accredited Service Provider that issues Digital Certificates that have been Digitally Signed using the Certification Authority's Private Key and provides certificate verification and revocation services for the Digital Certificates it issues.

Certification Rules means the rules set out in Schedule 3, as amended from time to time.

Certifier means the Subscriber providing the certifications set out in the Certification Rules.

Client means a Person who has, or Persons who have, appointed a Subscriber as their Representative pursuant to a Client Authorisation.

Client Agent means a Person authorised to act as the Client's agent but does not include the Subscriber acting solely as the Client's Representative.

Client Authorisation has the meaning given to it in the ECNL.

Client Authorisation Form means a form in substantial compliance with the form set out in Schedule 4, as amended from time to time.

Commonwealth has the meaning given to it in the ECNL.

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

Compliance Examination has the meaning given to it in the ECNL.

Compliance Examination Procedure means the obligations and procedures set out in Schedule 5, as amended from time to time.

Contact Details means a Subscriber's:

- (a) physical address, registered office or principal place of business (as applicable); and
- (b) postal address, phone number(s), fax number and email address, as recorded by the Registrar.

Conveyancing Transaction has the meaning given to it in the ECNL.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Costs include costs, charges and expenses, including those incurred in connection with advisers.

Crown means the government, a Minister of the Crown, a statutory corporation representing the Crown or another entity representing the Crown.

Department means the Department of Environment, Land, Water and Planning of the State of Victoria (and its successor under any machinery of government changes as may be implemented) and any reference to the Department shall be read and construed as a reference to the State of Victoria.

Digital Certificate means an electronic certificate Digitally Signed by the Certification Authority which:

- (a) identifies either a Key Holder and/or the business entity that he/she represents; or a device or application owned, operated or controlled by the business entity; and
- (b) binds the Key Holder to a Key Pair by specifying the Public Key of that Key Pair; and
- (c) contains the specification of the fields to be included in a Digital Certificate and the contents of each; and
- (d) meets the requirements of the Department or the Registrar as specified in writing from time to time.

Digitally Sign has the meaning given to it in the ECNL.

Digital Signature has the meaning given to it in the ECNL.

Document has the meaning given to it in the ECNL.

Duty means, for an electronic Registry Instrument or other electronic Document, any taxes, levies, imposts, charges and duties in connection with the electronic Registry Instrument or other electronic Document payable to the Duty Authority.

Duty Authority means the State Revenue Office of Victoria.

ECNL means the Electronic Conveyancing National Law (Victoria), as amended from time to time.

Electronic Workspace means an electronic workspace generated by the SPEAR ELN.

ELN has the meaning given to it in the ECNL.

ELN Administrator means the Person appointed by the Department or the Registrar from time to time to perform administrative functions within the SPEAR ELN.

Emergency Situation has the meaning given to it in the ECNL.

GST has the meaning given to it in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Gatekeeper means the Commonwealth government strategy to develop PKI to facilitate government online service delivery and e-procurement.

Gatekeeper Accredited Service Provider means a service provider accredited by the Gatekeeper Competent Authority.

Gatekeeper Competent Authority means the entity which approves an application for Gatekeeper accreditation. The Gatekeeper Competent Authority for PKI is the Australian Government Chief Information Officer, Australian Government Information Management Office, Department of Finance and Deregulation.

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 4.

Identity Agent means a Person who is an agent of a Subscriber and who:

- (a) the Subscriber reasonably believes is reputable, competent and insured in compliance with Insurance Rule 2; and
- (b) is authorised by the Subscriber to conduct verification of identity on behalf of the Subscriber in accordance with the Verification of Identity Standard.

Identity Agent Certification means a certification in substantial compliance with the certification set out in Schedule 9, as amended from time to time.

Identity Declarant means a Person providing an Identifier Declaration.

Identity Verifier means the Person conducting a verification of identity in accordance with the Verification of Identity Standard.

Individual has the meaning given to it in the ECNL.

Information Fees means fees for data provided by the Land Registry through the SPEAR ELN.

Input Tax Credit has the meaning given to it in the GST Act.

Insolvency Event means, in relation to a Person, any of the following events:

- (a) the Person is, or states that they are, unable to pay all the Person's debts, as and when they become due and payable; or
- (b) the entrance into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of the Person's creditors or members or a moratorium involving any of them; or
- (c) the appointment of a receiver, receiver and manager, controller, administrator, provisional liquidator or liquidator or the taking of any action to make such an appointment; or
- (d) an order is made for the winding up or dissolution of the Person or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution; or
- (e) something having a substantially similar effect to (a) to (d) happens in connection with the Person under the law of any Jurisdiction.

Insurance Rules means the rules set out in Schedule 6, as amended from time to time.

Intellectual Property Rights includes any:

- (a) copyright;
- (b) design, patent, trademark, semiconductor, or circuit layout (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name;
- (d) know-how, inventions, processes, confidential information (whether in writing or recorded in any form);

and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields.

Jurisdiction has the meaning given to it in the ECNL.

Key means a string of characters used with a cryptographic algorithm to encrypt and decrypt.

Key Holder means an individual who holds and uses Keys and Digital Certificates on behalf of a Subscriber, or in his/her own right in the case of a Key Holder who is also a Subscriber.

Key Pair means a pair of asymmetric cryptographic Keys (one decrypting messages which have been encrypted using the other) consisting of a Private Key and a Public Key.

Land Registry means the agency of a State or Territory responsible for maintaining the Jurisdiction's Titles Register.

Land Registry Fees means Information Fees and Lodgment Fees.

Land Titles Legislation has the meaning given to it in the ECNL.

Law Practice has the meaning given to it in the *Legal Profession Uniform Law (Victoria)*.

Licensed Conveyancer means a Person licensed or registered under the *Conveyancers Act 2006*.

Licensed Surveyor has the meaning given to it in the *Surveying Act 2004*.

Local Government Officer means an employee or officer of a Local Government Organisation.

Local Government Organisation means a local government council (however described) established under any Commonwealth, State or Territory Law.

Lodge has the meaning given to it in the ECNL.

Lodgment Case means a Registry Instrument or other electronic Document or related Registry Instruments or other electronic Documents which are or will be presented for Lodgment at the same time together with the relevant Lodgment Instructions.

Lodgment Fees means fees due to a Land Registry for Registry Instruments or other electronic Documents Lodged with the Land Registry.

Lodgment Instructions means a statement in electronic form which sets out the information required by the Registrar to accept an electronic Registry Instrument or other electronic Document for Lodgment.

Loss means any, liability, loss or Costs arising in contract, tort or otherwise, whether direct or consequential (including but not limited to loss of profits) or damage to persons or property.

Message means text displayed on a screen when a Subscriber has access to the SPEAR ELN.

NCCP Act means the National Consumer Credit Protection Act 2009 (Cth).

Outstanding Conveyancing Transaction means a Conveyancing Transaction for which an Electronic Workspace has been created in the SPEAR ELN but the Lodgment Case for which has not been Lodged.

Participating Subscriber means, for a Conveyancing Transaction, each Subscriber who is involved in the Conveyancing Transaction either directly because it is a Party or indirectly because it is a Representative of a Party.

Participation Rules, as amended from time to time, has the meaning given to it in the ECNL.

Party means each Person who is a party to an electronic Registry Instrument or other electronic Document in the Electronic Workspace for the Conveyancing Transaction, but does not include a Representative.

Person has the meaning given to it in the ECNL.

Person Being Identified means the Person whose identity is being verified.

Personal Information has the meaning given to it in the *Privacy Act 1988 (Cth)*.

PKI (Public Key Infrastructure) means Gatekeeper compliant technology, policies and procedures based on public key cryptography used to create, validate, manage, store, distribute and revoke Digital Certificates.

Prescribed Requirement means any Published requirement of the Registrar that Subscribers are required to comply with.

Privacy Laws means all legislation, principles and industry codes relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, including the *Privacy Act 1988 (Cth)* and any State or Territory privacy legislation.

Private Key means the Key in an asymmetric Key Pair that must be kept secret to ensure confidentiality, integrity, authenticity and non-repudiation.

Public Servant means an employee or officer of the Commonwealth, a State or a Territory.

Public Key means the Key in an asymmetric Key Pair which may be made public.

Publish means, for any information, to publish the information on the Department or the Registrar's website. Published, Publication and similar expressions have a corresponding meaning.

Record has the meaning given to it in the ECNL.

Registrar has the meaning given to it in the ECNL.

Registration Authority means a Gatekeeper Accredited Service Provider that:

- (a) is responsible for the registration of applicants for Digital Certificates by checking evidence of identity Documentation submitted by the applicant; and
- (b) is responsible for the provision of a completed and authorised application form including copies of the submitted evidence of identity Documents to the relevant Certification Authority; and
- (c) may be responsible for the secure distribution of signed Digital Certificates to Subscribers.

Registry Information means the data supplied in a Registry Information Supply.

Registry Information Supply means a service to supply data from the Titles Register or Land Registry.

Registry Instrument has the meaning given to it in the ECNL.

Representative means a Subscriber who acts on behalf of a Client.

Security Item means User Access Credentials, passphrases, Private Keys, Digital Certificates, Electronic Workspace identifiers and other items as specified from time to time.

Signer means a User authorised by the Subscriber to Digitally Sign Registry Instruments and other electronic Documents on behalf of the Subscriber.

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

SPEAR ELN means that part of SPEAR that is an ELN.

SPEAR ELN Participation Agreement means the contract between the Subscriber and the Registrar referred to in Participation Rule 3, as amended from time to time.

SPEAR Subscriber Security Policy means the policy set out in Schedule 10, as amended from time to time.

SPEAR User Security Policy means the policy set out in Schedule 11, as amended from time to time.

State means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Subscriber has the meaning given to it in the ECNL.

Subscriber Administrator means a User authorised by the Subscriber to make the changes permitted under Participation Rule 7.3.3 on behalf of the Subscriber.

Supply has the meaning given to it in the GST Act.

Suspension Event means any ground pursuant to which a Subscriber may be suspended as set out in Schedule 7, as amended from time to time.

Suspension and Termination Procedure means the procedure set out in Schedule 7, as amended from time to time.

System Details means, for a Subscriber, its System Name, Contact Details and any other information relating to the Subscriber held in the SPEAR ELN.

System Name means, for a Subscriber, the name selected by the Subscriber to identify it in the SPEAR ELN, for example, its name or its registered business name.

Termination Event means any ground pursuant to which a Subscriber may be terminated as set out in Schedule 7, as amended from time to time.

Territory means the Australian Capital Territory and the Northern Territory of Australia.

Title Activity Check means, for a Conveyancing Transaction, the notification of any change to the information in the Titles Register relating to the land the subject of the Conveyancing Transaction.

Titles Register has the meaning given to it in the ECNL.

Transaction Audit Records means a comprehensive Record of key transactions occurring in or associated with an Electronic Workspace or the SPEAR ELN including without limitation:

- (a) changes made in an Electronic Workspace and which Subscriber made which changes to an Electronic Workspace; and
- (b) administrative action taken by or for a Subscriber in relation to its use of the SPEAR ELN; and
- (c) other actions of Subscribers in an Electronic Workspace; and

- (d) changes in the status of an Electronic Workspace, Registry Instruments or other electronic Documents within the Electronic Workspace.

Unrelated Third Party means, for a Subscriber, a Person who is not a principal, an officer, director, employee, agent or contractor of the Subscriber.

User means an individual authorised by a Subscriber to access and use the SPEAR ELN on behalf of the Subscriber.

Verification of Identity Standard means the standard set out in Schedule 8, as amended from time to time.

2.2 Interpretation

In these Participation Rules, unless a contrary intention is evident:

- 2.2.1 A reference to these Participation Rules is a reference to these Participation Rules as amended, varied or substituted from time to time.
- 2.2.2 A reference to any legislation or to any provision of any legislation includes:
- (a) all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
 - (b) any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision.
- 2.2.3 A word importing:
- (a) the singular includes the plural; and
 - (b) the plural includes the singular; and
 - (c) a gender includes every other gender.
- 2.2.4 A reference to a party includes that party's administrators, successors and permitted assigns.
- 2.2.5 If any act pursuant to these Participation Rules would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day, and when an action is required by a party within a specified period of Business Days, the period will be deemed to commence on the Business Day immediately following the day on which the obligation is incurred.
- 2.2.6 Where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.2.7 A reference to two or more Persons is a reference to those Persons jointly and severally.
- 2.2.8 A reference to a rule or schedule is a reference to a rule of, or a schedule to, these Participation Rules.
- 2.2.9 A reference to a Participation Rule includes a reference to all of its sub-rules.
- 2.2.10 Where general words are associated with specific words which define a class, the general words are not limited by reference to that class.
- 2.2.11 The rule headings are for convenience only and they do not form part of these Participation Rules.
- 2.2.12 The word "or" is not exclusive.
- 2.2.13 Where there is any inconsistency between the description of a Subscriber's obligations in a Participation Rule and in a schedule to these Participation Rules, the Participation Rule will prevail to the extent of the inconsistency.

3. SPEAR ELN PARTICIPATION AGREEMENT AND COMPLIANCE WITH PARTICIPATION RULES

3.1 Subscriber Application Form – offer

When a person (an **Applicant**) executes a “SPEAR ELN Subscriber Application Form” applying to become a Subscriber, it constitutes an offer from that Applicant to become a party to a SPEAR ELN Participation Agreement with the Registrar on the terms of the SPEAR ELN Subscriber Application Form and these SPEAR ELN Participation Rules.

3.2 Registration of Subscriber – acceptance of offer

The registration of an Applicant as a Subscriber constitutes acceptance of the Applicant’s offer by the Registrar, upon which a SPEAR ELN Participation Agreement is formed between the Applicant and the Registrar.

3.3 Effect of becoming a Subscriber

If an Applicant executes a SPEAR ELN Subscriber Application Form and is registered as a Subscriber, at and from the time it is registered, it is:

- (a) bound to perform any obligation imposed on a Subscriber; and
- (b) entitled to all the rights in these Participation Rules of a Subscriber; and
- (c) taken to first give all the representations and warranties in these Participation Rules of a Subscriber; and
- (d) taken to have represented and warranted to the Registrar that all information in its SPEAR ELN Subscriber Application Form is correct, complete and not false or misleading.

3.4 Compliance with Participation Rules

The Subscriber must:

- (a) be able to comply with these Participation Rules at the time of applying to be a Subscriber; and
- (b) comply with these Participation Rules whilst being a Subscriber; and
- (c) continue to comply with Participation Rules 6.1.2, 6.6, 6.7 (where compliance with the Participation Rules is limited to this sub-rule) 6.9, 6.10, 6.11, 9.5, 9.6, 10, 11, 13.2, 20, 21, 23 and 24 after ceasing to be a Subscriber,

unless the Registrar, in his or her absolute discretion, waives compliance by the Subscriber with any Participation Rule in accordance with section 27 of the ECNL.

4. ELIGIBILITY CRITERIA

4.1 ABN

The Subscriber must have an ABN.

4.2 Status

4.2.1 The Subscriber must be a Person or a partnership.

- 4.2.2 If the Subscriber is a body corporate, the Subscriber must;
- (a) be incorporated, formed or constituted under the *Corporations Act* or under any other legislation; and
 - (b) ensure that the constituting Documents of the Subscriber empower the Subscriber to assume the obligations set out in these Participation Rules and to do all things that it can reasonably contemplate will be required by these Participation Rules.

4.3 Character

4.3.1 The Subscriber must be of good character and reputation and, without limitation, must:

- (a) ensure that the Subscriber is not and has not been subject to any of the matters listed in (b)(i) to (v) below; and
- (b) take reasonable steps to ensure that the Subscriber's principals, directors, partners, officers and Subscriber Administrators are not and have not been subject to any of the matters listed in (i) to (v) below:
 - (i) an Insolvency Event within the last 5 years; or
 - (ii) a conviction for fraud or an indictable offence or any offence for dishonesty against any law in connection with business, professional or commercial activities; or
 - (iii) disqualification from managing a body corporate under the *Corporations Act*; or
 - (iv) any disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on that Person's conduct of a Conveyancing Transaction; or
 - (v) any refusal of an application to subscribe to an electronic Lodgment service.

4.3.2 Where the Subscriber is:

- (a) an ADI; or
- (b) an Australian Legal Practitioner or a Law Practice; or
- (c) a Licensed Conveyancer; or
- (d) the Crown in right of the Commonwealth, a State or a Territory; or
- (e) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or Territory; or
- (f) a holder of an Australian Credit Licence; or
- (g) a Local Government Organisation,

the Subscriber is deemed to comply with Participation Rule 4.3.1(a).

4.3.3 Where the Subscriber's principal, director, partner, officer or Subscriber Administrator is:

- (a) an officer or employee of an ADI; or
- (b) an Australian Legal Practitioner; or
- (c) a Licensed Conveyancer; or
- (d) a Licensed Surveyor; or
- (e) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or a Territory; or
- (f) a fit and proper Person for the purpose of performing duties in relation to the credit activities authorised by an Australian Credit Licence; or
- (g) a Local Government Officer acting on behalf of a Local Government Organisation,

the Subscriber is deemed to comply with Participation Rule 4.3.1(b) for that principal, director, partner, officer or Subscriber Administrator.

Note: For a body corporate registered under the Corporations Act, 'officer' has the meaning given to it in the Corporations Act.

4.4 Insurance

The Subscriber must comply with the Insurance Rules.

5. THE ROLE OF SUBSCRIBERS

5.1 Subscriber's roles

- 5.1.1 The Subscriber may act on its own behalf or, subject to Participation Rule 5.3, on behalf of Clients when accessing and using the SPEAR ELN.
- 5.1.2 To the extent that the Subscriber Digitally Signs electronic Documents on behalf of a Client, the Subscriber does so as agent for the Client.

5.2 Subscriber as principal

Subject to Participation Rule 5.1.2, the Subscriber incurs rights and obligations under these Participation Rules as principal despite any Client Authorisation or other agency relationship entered into by the Subscriber.

5.3 Subscriber who acts as Representative

A Representative must:

- (a) comply with the laws of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated regarding who can conduct a Conveyancing Transaction; and
- (b) take reasonable steps to ensure that a Signer complies with the laws of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated regarding who can conduct a Conveyancing Transaction and Digitally Sign Registry Instruments and other electronic Documents.

5.4 Responsible Subscribers

(Not used)

5.5 Subscriber as trustee and partnerships

- 5.5.1 If the Subscriber acts at any time in the capacity of a trustee, these Participation Rules bind the Subscriber in its personal capacity and in its capacity as trustee.
- 5.5.2 If the Subscriber is a partnership:
 - (a) these Participation Rules bind the partnership; and
 - (b) these Participation Rules bind the Subscriber and each Person who is a partner of the partnership at any time despite any changes to the partners and any reconstitution of the partnership (whether by the death, incapacity or retirement of any partner or the admission of any new partner or otherwise); and
 - (c) the Subscriber must do anything the Registrar requires (such as obtaining consents, signing and producing Documents and getting Documents completed and signed) to give full effect to this Participation Rule.

6. GENERAL OBLIGATIONS

6.1 Ensure User Compliance

- 6.1.1 The Subscriber must ensure that each of its Users is aware of the terms of these Participation Rules as appropriate to their use of the SPEAR ELN.
- 6.1.2 The Subscriber is responsible for all use of the SPEAR ELN by any of its Users.

6.2 Keep Subscriber System Details complete and up-to-date

If any of the information which forms part of a Subscriber's System Details changes, the Subscriber:

- (a) must promptly update its System Details accordingly; or
- (b) must, if the Subscriber does not have the level of access to the SPEAR ELN required to make the necessary updates to the System Details, promptly notify the ELN Administrator of the changes required; and
- (c) acknowledges that any list of Subscribers' names and their Contact Details Published by the Registrar or the Department may not be accurate at all times.

6.3 Client Authorisation

If the Subscriber is a Representative, the Subscriber must:

- (a) use the Client Authorisation Form for any Client Authorisation it enters into; and
- (b) enter into a Client Authorisation with its Client before the Subscriber Digitally Signs any Document in the SPEAR ELN; and
- (c) comply with the Client Authorisation and act in accordance with its terms; and
- (d) take reasonable steps to verify the authority of each Person entering into a Client Authorisation on behalf of a Client to both bind the Client to the Client Authorisation and to the Conveyancing Transaction(s) the subject of the Client Authorisation; and
- (e) take reasonable steps to ensure that any Client Authorisation is signed by the Subscriber's Client or their Client Agent.

6.4 Right to deal

Where the Subscriber is a Representative, for each Conveyancing Transaction, the Subscriber must take reasonable steps to verify that its Client is a legal Person and has the right to enter into the Conveyancing Transaction.

6.5 Verification of identity

6.5.1 The Subscriber must take reasonable steps to verify the identity of:

- (a) **Clients:** each Client or each of their Client Agents; and
- (b) **Persons to whom certificates of title are provided:**
 - (i) any Client or Client Agent, prior to the Subscriber providing a (duplicate/paper) Certificate of Title to that Client or Client Agent; and
 - (ii) any existing mortgagor, former mortgagor or their agent, prior to the Subscriber providing a (duplicate/paper) Certificate of Title to that existing mortgagor, former mortgagor or their agent - however, the Subscriber need not take reasonable steps to verify the identity of each mortgagor, former mortgagor or their agent if the Subscriber is reasonably satisfied that the mortgagee has taken reasonable steps to verify the identity of each mortgagor, former mortgagor or their agent; and

- (c) **Signers:** each of its Signers, prior to the initial allocation of a Digital Certificate to the Signer; and
 - (d) **Subscriber Administrators:** each of its Subscriber Administrators, prior to their appointment as a Subscriber Administrator.
- 6.5.2 For the purposes of complying with Participation Rule 6.5.1, the Subscriber can either:
- (a) apply the Verification of Identity Standard; or
 - (b) verify the identity of a Person in some other way that constitutes the taking of reasonable steps.
- 6.5.3 The Subscriber must undertake further steps to verify the identity of a Person Being Identified and/or any Identity Declarant where:
- (a) the Subscriber knows or ought reasonably to know that:
 - (i) any identity Document produced by the Person Being Identified and/or any Identity Declarant is not genuine; or
 - (ii) any photograph on an identity Document produced by the Person Being Identified and/or any Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
 - (iii) the Person Being Identified and/or any Identity Declarant does not appear to be the Person to which the identity Document(s) relate; or
 - (b) it would otherwise be reasonable to do so.
- 6.5.4 The Subscriber need not re-verify the identity of the Person Being Identified if:
- (a) the Subscriber complied with Participation Rule 6.5.1 within the previous 2 years; and
 - (b) the Subscriber takes reasonable steps to ensure that it is dealing with the Person Being Identified.
- 6.5.5 If the Verification of Identity Standard is used:
- (a) the Subscriber may use an Identity Agent; and
 - (b) where an Identity Agent is used, the Subscriber must direct the Identity Agent to use the Verification of Identity Standard; and
 - (c) the Identity Verifier must be the Subscriber and/or the Subscriber's Identity Agent; and
 - (d) the Subscriber must receive from any Identity Agent:
 - (i) copies of the Documents produced to verify the identity of the Person Being Identified and/or any Identity Declarant signed, dated and endorsed as a true copy of the original by the Identity Agent; and
 - (ii) an Identity Agent Certification.
- 6.5.6 Subject to Participation Rule 6.5.3, compliance with the Verification of Identity Standard by the Subscriber and/or its Identity Agent will be deemed to constitute taking reasonable steps for the purposes of Participation Rule 6.5.1.

6.6 Supporting evidence

The Subscriber must retain the evidence supporting an electronic Registry Instrument or other electronic Document for at least seven years from the date of Lodgment of the Registry Instrument or other electronic Document that is registered or recorded including:

- (a) any evidence required by the Duty Authority; and
- (b) any Client Authorisation and any evidence supporting that Client Authorisation; and

- (c) any evidence supporting a Party's right to enter into the Conveyancing Transaction; and
- (d) any evidence supporting verification of identity; and
- (e) any other evidence demonstrating compliance with Prescribed Requirements.

6.7 Compliance with laws and Participation Rules

- 6.7.1 The Subscriber must comply with any applicable laws (including any applicable Privacy Laws) for the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and these Participation Rules.
- 6.7.2 The Subscriber must notify the Registrar promptly if it becomes aware it is in default of these Participation Rules.

6.8 Compliance with directions

- 6.8.1 The Subscriber must comply with any reasonable direction of the Registrar.
- 6.8.2 The Subscriber must comply with any direction of the Registrar given in response to an Emergency Situation, in the manner and timing set out in the direction.

6.9 Assistance

The Subscriber must provide reasonable assistance to the Registrar and each other Subscriber to enable those parties to comply with the ECNL and the Land Titles Legislation in relation to a particular Conveyancing Transaction.

6.10 Protection of information

The Subscriber must take reasonable steps to ensure that information provided to the Subscriber by any other Subscriber, any Client or the Registrar is protected from unauthorised use, reproduction or disclosure.

6.11 Information

- 6.11.1 The Subscriber must take reasonable steps to ensure that:
 - (a) all the information it supplies in relation to a Conveyancing Transaction is to the Subscriber's knowledge, information and belief correct, complete and not false or misleading; and
 - (b) in providing information to the Department or the Registrar the Subscriber acknowledges that the information may be used for the purposes authorised under these Participation Rules.
- 6.11.2 The Subscriber is bound by the information privacy principles and any applicable code of practice under the *Privacy and Data Protection Act 2014* (Vic) in respect of all information provided to, collected by it or generated by it as a result of the performance or use of SPEAR as if it were the Registrar or the Department.
- 6.11.3 The Subscriber agrees that where any Document or information within SPEAR is required to be amended such amended information or Document must be changed within SPEAR as soon as reasonably practicable and consistent with all statutory requirements.
- 6.11.4 Where a Subscriber or its Users supply information or Documents to SPEAR and these include Personal Information, such information must only be supplied with the consent of the person to whom the information relates and the Subscriber (or other person supplying the information) warrants that such consent has been obtained.

6.12 No assignment

The Subscriber must not assign, novate, transfer or otherwise deal with its subscription to the SPEAR ELN.

6.13 Mortgages

(Not used)

6.14 Signing of Client Authorisations

(Not used)

6.15 Participating Subscribers must pay fees

The Subscriber agrees to pay the Registrar any Land Registry Fees and any other fees required by the Department and the Registrar as being payable in relation to the SPEAR ELN.

6.16 Subscriber's acknowledgements about Conveyancing Transaction information

The Subscriber acknowledges that:

- (a) before Lodgment, the Registrar need not examine or check for accuracy or otherwise any information that any Subscriber enters into an Electronic Workspace or provides to the Department or the Registrar for Publication; and
- (b) any Registry Information Supply entered into an Electronic Workspace may not include all relevant data in the Register; and
- (c) any Registry Information Supply or Title Activity Check for a Conveyancing Transaction does not replace any searches of the Register that may be performed outside the SPEAR ELN; and
- (d) email notification to the Subscriber of the Lodgment of any Document or information in SPEAR by other persons is sufficient and the Subscriber must check any Documents or information notified by SPEAR in a timely and diligent manner; and
- (e) all Communication from the Department or the Registrar to the Subscriber relating to the SPEAR ELN will be sent by email or Message.

6.17 Obligations are independent

6.17.1 No particular provision in these Participation Rules which imposes an obligation on a Subscriber or provides an exception to an obligation is intended to limit or provide an exception (as the case may be) to other obligations the Subscriber has under:

- (a) these Participation Rules (such as the obligations in connection with the SPEAR Subscriber Security Policy and the SPEAR User Security Policy); or
- (b) law (such as duty of care under law relating to negligence).

6.17.2 The Subscriber must:

- (a) notify the Registrar if any representation or warranty made, or taken to be made, by or for the Subscriber in connection with the SPEAR ELN is found to have been incorrect, incomplete, false or misleading when made or taken to be made; and
- (b) access or join any Electronic Workspace only for a purpose permitted under these Participation Rules; and
- (c) maintain sufficient funds in any account to be used for direct debiting by the Department and the Registrar of any amounts relating to the SPEAR ELN to enable all amounts to be debited on request.

7. OBLIGATIONS REGARDING SYSTEM SECURITY AND INTEGRITY

7.1 Protection measures

The Subscriber must:

- (a) take reasonable steps to comply with the SPEAR Subscriber Security Policy and the SPEAR User Security Policy; and
- (b) provide a copy of the SPEAR Subscriber Security Policy to each of its Subscriber Administrators and each other person in the Subscriber's organisation with responsibility for the protection and security of the Subscriber's computer system and Security Items; and
- (c) provide a copy of the SPEAR User Security Policy to each of its Users before they become Users; and
- (d) take reasonable steps to ensure that all its Users comply with the SPEAR Subscriber Security Policy and the SPEAR User Security Policy.

7.2 Users

The Subscriber must:

- (a) take reasonable steps to ensure that only Users access the SPEAR ELN; and
- (b) ensure that each of its Users has received training appropriate to their use of the SPEAR ELN; and
- (c) take reasonable steps to ensure that its Users comply with these Participation Rules.

7.3 User access

7.3.1 The Subscriber must keep up to date within the SPEAR ELN:

- (a) its Users' Access Credentials; and
- (b) signing rights linked to those Access Credentials; and
- (c) administrative rights linked to those Access Credentials.

7.3.2 The Subscriber must ensure that, at all times, it has at least one Subscriber Administrator.

7.3.3 The Subscriber:

- (a) is taken to have made any change to the items described in Participation Rule 7.3.1. made by any Person (other than an Unrelated Third Party of the Subscriber) using Access Credentials that, at the time the change is requested, have linked to them the necessary signing rights and administrative rights to make the change; and
- (b) irrevocably and unconditionally waives any right it might otherwise have to claim that the Person does not have authority to make the change (other than any claim the Subscriber has against the Person).

7.4 Signers

7.4.1 The Subscriber must:

- (a) comply with Participation Rule 6.5.1(c); and
- (b) take reasonable steps to ensure that the Signer is not or has not been subject to:
 - (i) an Insolvency Event within the last 5 years; or

- (ii) a conviction of fraud or an indictable offence or any offence for dishonesty against any law in connection with business, professional or commercial activities, or
- (iii) disqualification from managing a body corporate under the Corporations Act; or
- (iv) any disciplinary action of any government or governmental authority or agency, or any regulatory authority of a financial market or a profession, which may impact on a Signer's conduct of a Conveyancing Transaction.

7.4.2 Where a Signer is:

- (a) an Australian Legal Practitioner; or
 - (b) a Licensed Conveyancer; or
 - (c) a Licensed Surveyor; or
 - (d) a Public Servant acting on behalf of the Crown in right of the Commonwealth, a State or Territory; or
 - (e) a Local Government Officer acting on behalf of a Local Government Organisation,
- the Subscriber is deemed to comply with Participation Rule 7.4.1(b).

7.4.3 The Subscriber must take reasonable steps to:

- (a) verify that the Person who received the Digital Certificate was the intended holder of that Digital Certificate; and
- (b) ensure that its Signers do not use a Digital Certificate unless:
 - (i) the Digital Certificate is a Digital Certificate that is issued to that User; and
 - (ii) that User is authorised to use the Digital Certificate to Digitally Sign that Registry Instrument or other electronic Document.

7.5 Digital Certificates

7.5.1 Electronic Documents to be Lodged through the SPEAR ELN must be Digitally Signed, where the electronic Document requires a Digital Signature, using a Private Key to create the Subscriber's Digital Signature.

7.5.2 The Subscriber must obtain and maintain valid at least one Digital Certificate.

7.5.3 The Subscriber must take reasonable steps to ensure that only Signers Digitally Sign electronic Registry Instruments or other electronic Documents.

7.5.4 The Subscriber must ensure that all information provided to any Certification Authority, or to any Registration Authority, is correct, complete and not false or misleading.

7.5.5 The Subscriber must store its Digital Certificates on hard tokens of a kind specifically and exclusively designed to store Digital Certificates.

7.5.6 The Subscriber may apply in writing to the Registrar to be exempted from storing Digital Certificates on hard tokens.

7.5.7 The Registrar must ensure that the SPEAR ELN does not permit an electronic Document in the SPEAR ELN to be Digitally Signed unless the SPEAR ELN has confirmed that the Digital Certificate used for the attempted Digital Signing is valid, has been verified and has not been revoked by the Certification Authority for that Digital Certificate.

7.5.8 The Registrar must ensure that the SPEAR ELN, before permitting an electronic Document to be Digitally Signed by a Subscriber with a Digital Certificate, checks that the Access Credentials for the Key Holder of the Digital Certificate have linked to them rights in the SPEAR ELN necessary to perform the Digital Signing at the time it is sought to be done.

7.5.9 A digital Signature on an electronic Document is final and irrevocable once the Registry Instrument or other Electronic Document is Digitally Signed.

7.6 Certification Authority

(Not used)

7.7 Notification of jeopardised Conveyancing Transactions

(Not used)

7.8 Revoking authority

(Not used)

7.9 Compromised Security Items

(Not used)

7.10 Certifications

The Subscriber must provide those of the certifications set out in the Certification Rules as are required when Digitally Signing an electronic Registry Instrument or other electronic Document.

8. AMENDMENT OF PARTICIPATION RULES

The Subscriber must comply with:

- (a) any amendment made to these Participation Rules by the Registrar to adopt the model participation rules referred to in section 24 of the ECNL; and
- (b) any other amendment made to these Participation Rules by the Registrar pursuant to the Amendment to Participation Rules Procedure.

9. RESIGNATION, RESTRICTION, SUSPENSION AND TERMINATION

9.1 Resignation of the Subscriber

9.1.1 The Subscriber may resign as a Subscriber by giving not less than 3 calendar months' notice to the Registrar. The Subscriber may nominate a time in the future from when it wants the resignation to be effective. The resignation takes effect when implemented by the Registrar.

9.1.2 Subject to Participation Rules 3.4(c) and 9.5, the Subscriber is bound by these Participation Rules until its resignation is effective.

9.1.3 The Registrar must notify the Subscriber when the Subscriber's resignation has been effected.

9.2 Comply with directions relating to restriction of access or use

The Subscriber must comply with any direction of the Registrar restricting access and use of the SPEAR ELN.

9.3 Suspension by Registrar

The Subscriber may be suspended by the Registrar at any time if a Suspension Event occurs.

9.4 Termination by Registrar

The Subscriber may be terminated by the Registrar:

- (a) at any time if a Termination Event occurs; or
- (b) by giving the Subscriber 3 calendar months' prior written notice.

9.5 Rights and obligations on suspension, termination or resignation

Suspension or termination of a Subscriber, or its resignation as a Subscriber, does not affect any right or liability of any party which:

- (a) has accrued at the time the suspension, termination or resignation takes effect; or
- (b) may arise, accrue or crystallise after that time out of, or by reason of, any facts or circumstances occurring or in existence at or before the time the suspension, termination or resignation takes effect.

9.6 Further steps by Subscriber

If the Subscriber is restricted, suspended or terminated or the Subscriber resigns, the Subscriber must, at its own expense:

- (a) take reasonable steps to ensure that any Outstanding Conveyancing Transaction for which the Subscriber is a Participating Subscriber is completed (such as facilitating another Subscriber taking over the Subscriber's role in the Outstanding Conveyancing Transaction) and do anything else in connection with the SPEAR ELN which it could reasonably be expected to do in order to minimise inconvenience to any other Person; and
- (b) do anything the Registrar considers reasonable to achieve the outcomes described in Participation Rule 9.6(a), such as entering into arrangements, obtaining consents, submitting electronic Documents, Digitally Signing electronic Documents where required, and producing Documents; and
- (c) notify its Client (if any), and each other Participating Subscriber, in each Outstanding Conveyancing Transaction for which the Subscriber is a Participating Subscriber, of the restriction, suspension, termination or resignation.

10. COMPLIANCE

The Subscriber must:

- (a) comply with Section 34 of the ECNL and the Compliance Examination Procedure; and
- (b) give written notice to the Registrar, as soon as practicable, if it becomes aware that it has breached or may in the future be no longer able to comply with these Participation Rules; and
- (c) remedy any non-compliance with these Participation Rules within 10 Business Days (or such longer time determined by the Registrar in his or her absolute discretion having regard to the nature of the breach) from when it becomes aware that it has breached these Participation Rules; and
- (d) take such action as is necessary in order to avoid a breach in circumstances where the Subscriber becomes aware that it may in the future be no longer able to comply with these Participation Rules.

11. PROHIBITIONS

The Subscriber must not:

- (a) modify or alter any Registry Information or Title Activity Check data for a Conveyancing Transaction or do anything that allows or causes another Person to do any of these things; or
- (b) use, reproduce or disclose, or allow another Person to use, reproduce or disclose, Registry Information or Title Activity Check data for a Conveyancing Transaction, except for the purpose of the Conveyancing Transaction or where required by law to do so; or
- (c) copy, alter or modify all or any part of the SPEAR ELN; or
- (d) reverse assemble, reverse compile, reverse engineer, recreate or in any other way derive the source code or object code for all or any part of the SPEAR ELN; or
- (e) use or participate in the SPEAR ELN other than in accordance with these Participation Rules; or
- (f) other than information which the Subscriber enters into the SPEAR ELN, use, reproduce or disclose any information passing into or out of the SPEAR ELN in connection with a Conveyancing Transaction except for the purpose of the Conveyancing Transaction or where required by law to do so.

12. ADDITIONAL PARTICIPATION RULES

(Not used)

13. SUBSCRIBERS' LIABILITY

13.1 Satisfaction of applicable regulatory requirements

The Subscriber warrants to the Registrar that to the best of its knowledge it will satisfy and continue to satisfy all applicable requirements (including regulatory requirements) to use and participate in the ELN (including those required to complete Conveyancing Transactions in Victoria).

13.2 Indemnity in respect of PDF Documents

The Subscriber indemnifies each of the Department and the Registrar (each an Indemnified Party) and holds each Indemnified Party harmless against each Loss (including on account of consequential loss or economic loss) directly or indirectly suffered or incurred by the Indemnified Party as a result of any error, fault, defect or omission in any PDF Documents uploaded by the Subscriber to the SPEAR ELN caused or contributed to by the Subscriber.

13.3 Exclusion of implied conditions and warranties

To the full extent permitted by law, all conditions and warranties provided by the Subscriber which would otherwise be implied in the SPEAR ELN Participation Agreement (by statute, general law, customs or otherwise) are expressly excluded.

14. REGISTRAR'S RIGHTS

14.1 General rights

In addition to any other rights conferred on the Registrar by these Participation Rules, the Registrar may give reasonable directions to the Subscriber where the Subscriber has breached, or appears likely to

breach, any provision of these Participation Rules or has otherwise engaged in conduct that the Registrar considers is contrary to the operation, security, integrity or stability of SPEAR. The Subscriber must comply with the directions.

14.2 Incomplete Electronic Workspaces

- 14.2.1 If no information or instruction is entered into an incomplete Electronic Workspace for a Conveyancing Transaction for a continuous period of 30 Business Days, the Department or the Registrar may notify the Participating Subscribers in the Conveyancing Transaction by giving them at least 5 Business Days' notice that the Registrar intends to close the Electronic Workspace to prevent Lodgment of Registry Instruments.
- 14.2.2 If no information or instruction is entered into the Electronic Workspace during the seven-day period notified to Participating Subscribers under this Participation Rule, the Registrar may close the Electronic Workspace at the end of the 5 Business Day period.

14.3 Amendments to SPEAR ELN Participation Agreement

The Registrar may amend the SPEAR ELN Participation Agreement at any time by amending these Participation Rules in accordance with the Amendment to Participation Rules Procedure.

14.4 Registrar may modify or change the SPEAR ELN

- 14.4.1 If the Registrar modifies or changes the SPEAR ELN in a way which affects the processing of a Conveyancing Transaction, the Registrar must notify Subscribers of the modification or change at least 20 Business Days before he or she implements the modification or change.
- 14.4.2 However, notice need not be given if the Registrar determines in good faith that such a course is:
- (a) required by law; or
 - (b) necessary, appropriate or desirable because of PKI; or
 - (c) required to maintain the operation, security, integrity or stability of SPEAR; or
 - (d) appropriate because the modification or change will not have a material adverse impact on any Subscriber.

15. THE DEPARTMENT AND THE REGISTRAR'S OBLIGATIONS

15.1 Support services

The Registrar must provide the following support services to the Subscriber:

- (a) help topics in respect of the SPEAR ELN accessible on the Registrar's website; and
- (b) service desk support from 8:30 am to 4:30 pm on each Business Day, excluding any Business Day on which the Office of Titles is closed; and
- (c) a standard training package on acceptance as a Subscriber.

15.2 Data retention

The Registrar must:

- (a) for each Conveyancing Transaction for which a Registry Instrument has been Lodged using the SPEAR ELN, maintain the Transaction Audit Records for the Conveyancing Transaction for 7 years from the date of Lodgment; and

- (b) for each Subscriber, subject to Participation Rule 15.2(a), take reasonable steps to maintain each Document and record received or created by the Registrar in connection with the Subscriber's registration in the SPEAR ELN for 7 years from the date the record is first received or created by the Registrar.

15.3 Access to Transaction Audit Records

15.3.1 Subject to any applicable law, the Department or the Registrar must provide:

- (a) Participating Subscribers with reasonable access to Transaction Audit Records held by the Department or the Registrar in response to any reasonable request. However:
 - (i) a Participating Subscriber may access only Transaction Audit Records relating to information that it was entitled to access in the SPEAR ELN during processing of the Conveyancing Transaction in the SPEAR ELN; and
 - (ii) there is no particular format in which the Department or the Registrar is required to supply the Transaction Audit Records; and
 - (iii) the Department or the Registrar may charge a reasonable fee (as determined by the Department or the Registrar) for doing so; and
- (b) Subscribers with Documents and records received or created by the Department or the Registrar in connection with the Subscriber's registration in the SPEAR ELN. However:
 - (i) there is no particular format in which the Department or the Registrar is required to supply the Documents and records; and
 - (ii) the Department or the Registrar may charge a reasonable fee (as determined by the Department or the Registrar) for doing so.

15.3.2 Subscribers may copy (at their own expense) any Documents and records to which they are provided access under this Participation Rule 15.3.

15.4 The Department and the Registrar to establish appropriate security measures

The Department and the Registrar must maintain, operate and upgrade security measures to safeguard the SPEAR ELN from unauthorised access that are reasonable having regard to:

- (a) relevant Australian standards; and
- (b) the potential impact of unauthorised access to the SPEAR ELN.

15.5 SPEAR ELN maintenance

15.5.1 The Department or the Registrar must regularly review the computer and information technology used in the SPEAR ELN and assess performance of the technology against the criteria determined by the Registrar. In doing so, the Registrar must have regard to any submissions made by the Subscriber to the Registrar in respect of computer and other information technology-related matters.

15.5.2 On the basis of that assessment, the Department or the Registrar must:

- (a) determine whether any scheduled maintenance is required; and
- (b) take reasonable steps to notify the Subscriber in advance when scheduled maintenance is to be carried out; and
- (c) carry out the scheduled maintenance.

15.6 Training

The Department and the Registrar must ensure that all of the Registrar's officers, agents and contractors authorised by the Registrar to access the SPEAR ELN are adequately trained to access the SPEAR ELN in the manner authorised and are aware of the Registrar's obligations under these Participation Rules.

16. THE DEPARTMENT AND THE REGISTRAR'S LIABILITY

16.1 Exclusion of implied conditions and warranties

To the full extent permitted by law, all conditions and warranties provided by the Department or the Registrar which would otherwise be implied in the SPEAR ELN Participation Agreement (by statute, general law, customs or otherwise) are expressly excluded.

16.2 Liability excluded for use of the SPEAR ELN

To the maximum extent permitted by law, the Department and the Registrar have no liability for:

- (a) any failures or delays in availability or functioning of the SPEAR ELN due to failure of any communication network (including any internet service provider) or hardware or software used by the Department or the Registrar; or
- (b) any breakdown or interruption to any computer system; or
- (c) any error, corruption or loss of data which may be caused directly or indirectly through the use of the SPEAR ELN.

16.3 No liability in respect of information contained in the SPEAR ELN

Subject to Participation Rule 16.1, the Department and the Registrar do not warrant the accuracy or completeness of any data provided to the Registrar or the Department by any other government agency, State or Federal, or by a Subscriber or any other user of SPEAR.

16.4 Availability and security

- 16.4.1 Subject to Participation Rule 16.1 and any express warranties provided in any other terms, the Department and the Registrar do not warrant the security of any information transmitted to or from the Department and the Registrar or any other person using the SPEAR ELN and such transmission is at the Subscriber's risk.
- 16.4.2 As electronic services are subject to interruption or breakdown for a variety of reasons, access to SPEAR is offered on an 'as is, as available' basis only.
- 16.4.3 The Department or the Registrar may alter, suspend or withdraw the availability of the SPEAR ELN at any time if the continued provision of the SPEAR ELN will result in a breach of any law, government policy or any ruling or decision of a court, tribunal or other statutory body.
- 16.4.4 The Department and the Registrar have no responsibility for, and accept no liability for, any Loss which results from delays in processing any Communication by SPEAR.

16.5 Release

The Subscriber hereby releases the Department and the Registrar, their employees and agents from any Loss suffered or incurred by the Subscriber including but not limited to indirect, special, or consequential damages (including loss of anticipated revenue, business interruption and loss of business) in connection with or arising out of access to the SPEAR ELN, the use of the SPEAR ELN or the access to or use of

information derived from the SPEAR ELN (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 and the Registrar, their employees or agents.

16.6 Transfer of Land Act 1958 rights

For the avoidance of doubt any rights under the *Transfer of Land Act 1958* are unaffected by the SPEAR ELN Participation Agreement.

17. HOW INFORMATION IS PROVIDED BY SPEAR

The Subscriber agrees that where any Document or information is to be provided to or by SPEAR:

- (a) such Document or information will be provided by way of an electronic message to the relevant Subscribers, giving notice of the Document or information having been received into or made available in SPEAR, and providing the Subscriber with the Uniform Resource Locator (URL) to access the Document or information; and
- (b) the Subscriber accepts the electronic notification of the availability of the Document or information as provision of the relevant Document or information to them by SPEAR.

18. SPEAR RECORDS

18.1 Timing

Subject to any legislative requirement to the contrary, the Subscriber agrees that the time recorded in the Transaction Audit Records is the time of entry of a Document or information into the SPEAR ELN.

18.2 Conclusive proof

The Subscriber agrees that the records maintained by the Department and the Registrar are and will be conclusive evidence, without any further proof, of all actions and transactions communicated through SPEAR and of all information contained in such actions or transactions.

19. EMERGENCY SITUATIONS

19.1 Declaration of an Emergency Situation

The Registrar may declare an Emergency Situation.

19.2 Effect of a declaration

If the Registrar declares an Emergency Situation, the Registrar may suspend the whole or part of the operation of the SPEAR ELN while the Emergency Situation subsists and for any additional period the Registrar considers in his or her reasonable opinion necessary.

19.3 Implementation of emergency procedures

19.3.1 If the Registrar declares an Emergency Situation, the Registrar must:

- (a) implement appropriate emergency procedures; and

- (b) use reasonable endeavours to notify Subscribers of the Emergency Situation, the emergency procedures and any parts of the SPEAR ELN that have been suspended.
- 19.3.2 However, the Registrar is not obliged to take any action in relation to an Emergency Situation except as set out in this Participation Rule 19.

19.4 Minimum requirements for emergency procedures

Emergency procedures implemented under this Participation Rule must specify:

- (a) what parts of the SPEAR ELN (if any) are suspended; and
- (b) whether there are any restrictions on initiating or completing Conveyancing Transactions in the SPEAR ELN following declaration of the Emergency Situation.

19.5 End of an Emergency Situation

On completion of the emergency procedures implemented under this Participation Rule 19 and, if the Registrar is satisfied that the Emergency Situation no longer exists, the Registrar must use reasonable endeavours to:

- (a) declare that the Emergency Situation no longer exists; and
- (b) notify Subscribers that the Emergency Situation no longer exists; and
- (c) Lodge Registry Instruments and other electronic Documents in the Electronic Workspace for any Conveyancing Transaction initiated in the SPEAR ELN prior to declaration of the Emergency Situation.

19.6 Suspension of parties' obligations

- 19.6.1 Despite any other provision of these Participation Rules, if a party is unable to perform or is delayed in performing an obligation under these Participation Rules by reason of an Emergency Situation:
- (a) the obligation is suspended, but only so far and for so long as the party is unable to perform or is delayed in performing its obligations because of the Emergency Situation; and
 - (b) the party is not responsible for any Loss suffered or incurred by any person as a result of, and to the extent that, the party is unable to perform or is delayed in performing its obligations because of the Emergency Event.
- 19.6.2 However, nothing in this Participation Rule 19 affects any obligation of a Subscriber other than an obligation under these Participation Rules.

20. GOODS AND SERVICES TAX (GST)

- 20.1 Unless otherwise specifically stated, amounts payable under these Participation Rules are on a GST exclusive basis. If any Supply made by one party ("**supplier**") in connection with these Participation Rules is or becomes subject to GST, then the party receiving the Supply ("**recipient**") agrees to pay an additional amount to the supplier equal to the GST exclusive amount multiplied by the applicable GST rate. If the amount of GST recovered by the supplier from the recipient under this Participation Rules differs from the amount of GST payable at law by the supplier, the amount payable by the recipient to the supplier is to be adjusted accordingly.
- 20.2 Where one party ("**payer**") is liable to reimburse or indemnify another party ("**payee**") for any expenditure incurred by the payee ("**expenditure**"), the amount reimbursed or indemnified by the payer must be reduced by the amount of any Input Tax Credit to which the payee is entitled in respect of that expenditure ("**net amount**"). If the amount to be reimbursed or indemnified is consideration for a taxable supply, then the GST exclusive amount for the purposes of this Participation Rule is the net amount.

21. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

21.1 Intellectual property rights in the SPEAR ELN

- 21.1.1 The Registrar grants to the Subscriber a non-exclusive, non-transferable licence to use and to participate in the SPEAR ELN in accordance with these Participation Rules.
- 21.1.2 The licence granted to the Subscriber under this Participation Rule:
- (a) is suspended during any period in which the Subscriber's registration is suspended; and
 - (b) terminates when the Subscriber's registration is terminated or the Subscriber resigns under these Participation Rules or the SPEAR ELN Participation Agreement is terminated,
- except to the extent necessary for the Subscriber to enforce any of its rights in connection with these Participation Rules or access any information in accordance with these Participation Rules after that time.
- 21.1.3 The Subscriber does not own any Intellectual Property Rights in connection with SPEAR. The Subscriber agrees that, other than as provided in this Participation Rule, nothing in these Participation Rules transfers ownership to the Subscriber in, or otherwise grants any rights to the Subscriber in, any Intellectual Property Rights in SPEAR.

21.2 Intellectual property rights in information

- 21.2.1 To the extent that any Intellectual Property Rights subsist in any information entered into the SPEAR ELN in connection with a Conveyancing Transaction which is owned by one party, that party grants to the other party a non-exclusive, non-transferable licence to use the information, but only for the purposes of Lodgment of the Registry Instruments and other electronic Documents in the Electronic Workspace for the Conveyancing Transaction (or any purpose which is ancillary to these purposes).
- 21.2.2 Each party ("**Information Provider**") agrees that:
- (a) nothing in these Participation Rules transfers ownership to the other party of; and
 - (b) other than as provided in this Participation Rule 21.2, nothing in these Participation Rules grants any rights to the other party in,
- any Intellectual Property Rights in any information of the Information Provider passing into or out of the SPEAR ELN or held within the SPEAR ELN.
- 21.2.3 However, this Participation Rule 21.2 does not limit the Department or the Registrar's rights under any applicable law to use any information passing into or out of the SPEAR ELN or held within the SPEAR ELN.
- 21.3.4 The Subscriber agrees that where SPEAR creates Documents or compiles information (whether in electronic or any other form) by drawing information from Registry Instruments or other information provided to the SPEAR system, the Intellectual Property Rights in that Document or compilation of the information is owned by the Department and the Registrar.
- 21.3.5 The Subscriber may use the Documents and all information in SPEAR for the purposes authorised under these Participation Rules but not for any other purpose. The Subscriber acknowledges and agrees that the Documents and all information which it provides to SPEAR may be used and disclosed by the Registrar and the Department for the purposes authorised under these Participation Rules.

21.3 Subscribers' consents

- 21.3.1 Subject to Participation Rule 21.4, the Subscriber consents to:

- (a) distribution, disclosure and use of information by the Department or the Registrar in accordance with these Participation Rules; and
 - (b) Publication of any information, including its System Details, in accordance with these Participation Rules.
- 21.3.2 The Subscriber agrees that the Registrar is not liable to any Person in contract, tort or otherwise for any information that the Registrar Publishes or otherwise distributes, discloses or uses in accordance with these Participation Rules.

21.4 Confidentiality

- 21.4.1 Each party agrees not to disclose or use information provided by the other party that is not publicly available except:
- (a) for the purposes of Lodgment or any purpose which is ancillary to these purposes or as otherwise contemplated by these Participation Rules; or
 - (b) with the consent of the party who provided the information; or
 - (c) in the case of statistics, on a basis which does not identify that provider of the information; or
 - (d) as allowed by any law.
- 21.4.2 Each party consents to disclosures made in accordance with these Participation Rules.

22. NOTICES

22.1 Form

Unless expressly stated otherwise in these Participation Rules and except for all Registry Instruments and other electronic Documents capable of Lodgment with the Registrar, all notices, directions, certificates, consents, approvals, waivers and other communications in connection with these Participation Rules between the Registrar and any Subscriber (collectively “Notices”) must be:

- (a) if sent by the Subscriber, in writing or by email or, if sent by the Registrar, in writing, by email or in a Message; and
- (b) if sent by the Subscriber, signed by the Subscriber or an authorised representative of the Subscriber.

22.2 Delivery

Notices must be:

- (a) for a Subscriber, left at the Subscriber’s address in its System Details; or
- (b) sent by prepaid priority post (airmail, if appropriate) and, for a Subscriber, to the Subscriber’s address in its System Details and, for the Registrar, to the Registrar’s address as Published; or
- (c) sent by DX to the recipient’s DX address; or
- (d) sent by email and, for a Subscriber, to the Subscriber Administrator’s email address and, for the Registrar, sent by email to the SPEAR service desk’s email address as Published; or
- (e) in circumstances where the Registrar is permitted under these Participation Rules to include communications in a Message, by including them in a Message.

22.3 When effective

Notices given under this Participation Rule take effect from the time they are received or taken to be received under Participation Rule 22.4 (whichever happens first) unless a later time is specified.

22.4 When taken to be received

Notices are taken to be received:

- (a) if sent by post, four days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by DX, on the Business Day after it is deposited in the DX System; or
- (c) if sent by email, at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*; or
- (d) if included in a Message, the day they are included in the Message.

22.5 Receipt outside business hours

Despite Participation Rules 22.3 and 22.4, if a Notice is received or taken to be received after 5 pm in the place of receipt or on a non-Business Day, it is taken to be received at 9 am on the next Business Day and takes effect from that time unless a later time is specified.

22.6 Waiver of notice period

The Registrar may waive a period of notice required to be given by a Subscriber under these Participation Rules.

22.7 Publications

Publications by the Registrar or the Department need not comply with any of the requirements in this Participation Rule 22.

23. DISPUTE RESOLUTION

- 23.1 If a dispute arises in connection with the SPEAR ELN Participation Agreement, a party to the dispute may give to the other party or parties to the dispute notice specifying the nature of the dispute and requiring its resolution under this Participation Rule ("Notice of Dispute").
- 23.2 A representative of the Registrar and the Subscriber must confer within 3 Business Days after the Notice of Dispute is given to try to resolve the dispute.
- 23.3 If the dispute is not resolved within 5 Business Days after the Notice of Dispute is given to the other party ("First Period"), the dispute is by this Participation Rule 23 submitted to mediation. The mediation must be conducted in Melbourne. The Institute of Arbitrators and Mediators Australia, rules for the mediation and conciliation, as amended by this Participation Rule 23 apply to the mediation, except where they conflict with this Participation Rule 23.
- 23.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 5 Business Days after the First Period:
 - (a) the mediator is the person appointed by; and
 - (b) the remuneration of the mediator is the amount or rate determined by;the President of the Law Institute of Victoria ("**President**"), or the President's nominee, acting on the request of any party to the dispute.
- 23.5 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
- 23.6 If the dispute is not resolved within 10 Business Days after the appointment of the mediator, either party may refer the dispute for resolution by expert determination ("Expert Determination") before a person nominated by the President ("Expert") with the agreement of the other party, such agreement not to be unreasonably withheld.

- 23.7 If the dispute is referred to Expert Determination under Participation Rule 23.6 the dispute must be resolved in accordance with the procedure contained in this Participation Rule 23.7:
- (a) the Expert may conduct the Expert Determination in the manner he or she thinks fit and may direct that:
 - (i) there be no pleadings; and/or
 - (ii) there be limited pleadings; and/or
 - (iii) there be limited discovery; and/or
 - (iv) there be no opening address by the parties or that opening address be limited in time; and/or
 - (v) there be no final addresses or that final addresses be limited in time; and/or
 - (vi) pre-hearing submissions be lodged by the parties accompanied by sworn statements and documentation upon which the parties wish to rely with the parties having a right of reply and require that any deponent of a sworn statement attend for cross examination; and/or
 - (vii) there be no oral evidence; and/or
 - (viii) the above steps be taken within strict time limits; and/or
 - (ix) costs be awarded in an amount the Expert considers appropriate; and
 - (b) unless the parties otherwise agree in writing, any questions arising for determination by the Expert must be determined according to law; and
 - (c) once a dispute has been referred to an Expert under Participation Rule 23.6 the parties each agree that until the determination of the dispute by the Expert they must not refer the dispute to litigation; and
 - (d) if the Expert has given notice of his or her determination as to a matter or claim in dispute to either party and within 20 Business Days after receipt by both parties of the Expert's determination:
 - (i) no written notice of intention to commence litigation as to the matter or claim has been given by either party; and
 - (ii) the parties have not otherwise settled the matter or claim,the determination is final and binding on each of the parties.
- 23.8 Except to the extent that they are inconsistent with the provisions in the SPEAR ELN Participation Agreement the provisions of the Expert Determination Rules as published by The Institute of Arbitrators and Mediators Australia from time to time apply to any dispute referred for determination by an Expert under the SPEAR ELN Participation Agreement.
- 23.9 If the dispute is not resolved within 10 Business Days after the appointment of the mediator and neither party refers the dispute for Expert Determination, either party may pursue court proceedings.
- 23.10 This Participation Rule 23 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.
- 23.11 Each party must continue to perform its obligations under the terms of the SPEAR ELN Participation Agreement during the period of mediation, Expert Determination or court proceedings.

24. GENERAL

24.1 Governing law

These Participation Rules are governed by the law in force in Victoria. The Registrar and the Subscriber submit to the non-exclusive jurisdiction of the courts of Victoria.

24.2 Serving Documents

Without preventing any other method of service, any Document in a court action may be served on the Subscriber by being delivered or left at the Subscriber's address in its System Details.

24.3 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

24.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the approval or consent.

24.5 Remedies cumulative

The rights and remedies provided in these Participation Rules are in addition to other rights and remedies given by law independently of these Participation Rules.

24.6 Rights and obligations are unaffected

Rights given to the parties under these Participation Rules and the parties' liabilities under them are not affected by anything which might otherwise affect them by law.

24.7 Waiver

A provision of these Participation Rules, or a right created under them, may not be waived except in writing by the party or parties to be bound.

24.8 Prompt performance

If these Participation Rules specify when a party agrees to perform an obligation, the party must perform it by the time specified. Each party must perform all other obligations promptly.

24.9 Inconsistent law

To the extent permitted by law, these Participation Rules prevail to the extent they are inconsistent with any law.

24.10 No fiduciary relationship

Nothing in these Participation Rules is to be construed as giving rise to a fiduciary relationship between the Department or the Registrar and the Subscriber or the Department or the Registrar and any other person.

SCHEDULE 1 – ADDITIONAL PARTICPATION RULES

(Not used)

SCHEDULE 2 – AMENDMENT TO PARTICIPATION RULES PROCEDURE

1 Amendments with prior consultation

- 1.1 Any amendment to these Participation Rules must be the subject of good faith consultation by the Registrar with a representative group of Subscribers and, where relevant, Subscribers' local and national professional associations, regulators and insurers (as reasonably determined by the Registrar) before the amendment comes into effect.
- 1.2 Each amendment must be notified to all Subscribers at least 20 Business Days before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

2 Amendments without prior consultation

- 2.1 The Registrar may determine that an amendment to these Participation Rules need not be the subject of prior consultation or notification in accordance with paragraph 1 before the amendment comes into effect if the Registrar determines in good faith that:
 - (a) such a course is required by law; or
 - (b) an Emergency Situation exists.
- 2.2 Notwithstanding paragraph 2.1, each amendment must be notified to all Subscribers as soon as reasonably practicable before the amendment comes into effect. The notification must contain the date the amendment comes into effect.

SCHEDULE 3 – CERTIFICATION RULES

Either:

1. The Subscriber has taken reasonable steps to verify the identity of the applicant.
2. The Subscriber holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Subscriber has retained the evidence supporting this Registry Instrument or Document.
4. The Subscriber has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. (Not used)
6. The Subscriber has:
 - (a) retrieved; and
 - (b) either securely destroyed or made invalidthe (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or Document.

Or:

1. The Certifier has taken reasonable steps to verify the identity of the applicant.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
5. (Not used)
6. The Certifier has:
 - (a) retrieved; and
 - (b) either securely destroyed or made invalidthe (duplicate) certificate(s) of title for the folio(s) of the Register listed in this Registry Instrument or Document.

SCHEDULE 4 – CLIENT AUTHORISATION FORM

CLIENT AUTHORISATION				
When this form is signed, the Representative is authorised to act for the Client in a Conveyancing Transaction(s).				
Privacy Collection Statement: The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.				
Representative Reference: _____				
CLIENT DETAILS	CLIENT 1	CLIENT 2		
NAME				
ACN/ARBN				
ADDRESS				
TRANSACTION DETAILS	AUTHORITY TYPE <input type="checkbox"/> SPECIFIC AUTHORITY <input type="checkbox"/> STANDING AUTHORITY <input type="checkbox"/> BATCH AUTHORITY <small>(set out conveyancing transaction details below)</small> <small>ends on revocation or expiration date: ___/___/___</small> <small>(attach details of conveyancing transaction(s))</small> <small>(tick relevant conveyancing transaction(s) below)</small>			
	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2		
PROPERTY ADDRESS				
LAND TITLE REFERENCE(S) <small>(and/or property description)</small>				
CONVEYANCING TRANSACTION(S)	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/ SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER	<input type="checkbox"/> TRANSFER <input type="checkbox"/> MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> PRIORITY/ SETTLEMENT NOTICE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER		
ADDITIONAL INSTRUCTIONS				
CLIENT AUTHORISATION AND SIGNING	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2		
	I CERTIFY that: (a) I am the Client or Client Agent; and (b) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and (c) If I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client. I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to: (a) sign Documents on my behalf as required for the Conveyancing Transaction(s); and (b) submit or authorise submission of Documents for lodgment with the relevant Land Registry; and (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and (d) do anything else necessary to complete the Conveyancing Transaction(s).			
	_____ DATE / / CLIENT/CLIENT AGENT NAME CAPACITY _____ AUSTRALIAN CONSULAR OFFICE WITNESS (if applicable) NAME _____ DATE _____	_____ DATE / / CLIENT/CLIENT AGENT NAME CAPACITY _____ AUSTRALIAN CONSULAR OFFICE WITNESS (if applicable) NAME _____ DATE _____	SIGN HERE	SIGN HERE

REPRESENTATIVE DETAILS AND SIGNING	REPRESENTATIVE	REPRESENTATIVE AGENT (if applicable)	
	NAME	_____	_____
	ACN/ARBN	_____	_____
	ADDRESS	_____	_____
<p>I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the Persons named above as Client or Client Agent.</p> <p>SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT IF APPLICABLE:</p>			
	DATE / /	DATE / /	
	SIGN HERE	SIGN HERE	
SIGNATORY NAME:	_____	SIGNATORY NAME: _____	
CAPACITY:	_____	CAPACITY: _____	

Terms of this Client Authorisation

1 What is Authorised

The Client authorises the Representative to act on behalf of the Client in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:

- (a) sign Documents on the Client's behalf as required for the Conveyancing Transaction(s); and
- (b) submit or authorise submission of Documents for lodgment with the relevant Land Registry; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and
- (d) do anything else necessary to complete the Conveyancing Transaction(s).

The Client acknowledges that the Client is bound by any Documents required in connection with a Conveyancing Transaction that the Representative signs on the Client's behalf in accordance with this Client Authorisation.

2 Mortgagees

Where:

- (a) the Representative represents the Client in the Client's capacity as mortgagee; and
- (b) the Client represents to the Representative that the Client has taken reasonable steps to verify the identity of the mortgagor,

the Client indemnifies the Representative for any loss resulting from the Client's failure to take reasonable steps to verify the identity of the mortgagor.

3 Revocation

This Client Authorisation may be revoked by either the Client or the Representative giving notice in writing to the other that they wish to end this Client Authorisation.

4 Privacy and Client Information

The Client acknowledges that information relating to the Client that is required to complete a Conveyancing Transaction, including the Client's Personal Information, may be collected by and disclosed to the Duty

Authority, the ELNO, the Land Registry, the Registrar and third parties (who may be located overseas) involved in the completion of the Conveyancing Transaction or the processing of it, and consents to the collection and disclosure of that information to any of those recipients, including to those who are overseas. For further information about the collection and disclosure of your Personal Information, refer to the relevant party's privacy policy.

5 Applicable Law

This Client Authorisation is governed by the law in force in the Jurisdiction in which the Property is situated. The Client and the Representative submit to the non-exclusive jurisdiction of the courts of that place.

6 Meaning of Words Used in this Client Authorisation

In this Client Authorisation, capitalised terms have the meaning set out below:

Australian Legal Practitioner has the meaning given to it in the relevant legislation of the Jurisdiction in which the property is situated and in South Australia is a legal practitioner for the purposes of the *Legal Practitioners Act 1981 (SA)*.

Batch Authority means an authority for the Representative to act for the Client in a batch of Conveyancing Transactions details of which are attached to this Client Authorisation.

Capacity means the role of the signatory (for example an attorney or a director of a company).

Caveat means a Document giving notice of a claim to an interest in land that may have the effect of an injunction to stop the registration of a Registry Instrument or other Document in the Titles Register.

Client means the Person or Persons named in this Client Authorisation.

Client Agent means a Person authorised to act as the Client's agent but does not include the Representative acting solely in this role.

Conveyancing Transaction has the meaning given to it in the ECNL.

Discharge/Release of Mortgage means a Document that discharges or releases a Mortgage.

Document has the meaning given to it in the ECNL.

Duty Authority means the State Revenue Office of the Jurisdiction in which the property is situated.

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the application law, as amended from time to time.

ELNO means Electronic Lodgment Network Operator and has the meaning given to it in the ECNL.

Identity Agent means a Person who is an agent of either a Representative, or a mortgagee represented by a Representative, and who:

- (a) the Representative or mortgagee reasonably believes is reputable, competent and appropriately insured; and
- (b) is authorised by the Representative or mortgagee to conduct verification of identity on behalf of the Representative or mortgagee in accordance with the Verification of Identity Standard.

Jurisdiction means an Australian State or Territory.

Land Registry means the agency of a State or Territory responsible for maintaining the Jurisdiction's Titles Register.

Land Title Reference means the relevant Land Registry's unique identifier(s) for the property.

Law Practice has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

Licensed Conveyancer means a Person licensed or registered under the relevant legislation of the Jurisdiction in which the property is situated and in Western Australia is a real estate settlement agent for the purposes of the *Settlement Agents Act 1981 (WA)*.

Mortgage means a Document by which a Person charges an estate or interest in land as security.

Participation Rules, as amended from time to time, has the meaning given to it in the ECNL.

Person has the meaning given to it in the ECNL.

Personal Information has the meaning given to it in the *Privacy Act 1988 (Cth)*.

Prescribed Requirement means any Published requirement of the Registrar that Representatives are required to comply with.

Priority/Settlement Notice means a notice (other than a Caveat) which prevents (subject to specified exceptions) registration or recording in the Titles Register of a Registry Instrument or other Document affecting land or an interest in land until the notice lapses or is withdrawn, removed or cancelled.

Publish means, for any information, to publish the information on the Registrar's website.

Registrar has the meaning given to it in the ECNL.

Registry Instrument has the meaning given to it in the ECNL.

Representative is the Australian Legal Practitioner, Law Practice or Licensed Conveyancer named in this Client Authorisation who acts on behalf of the Client and under the relevant legislation of the Jurisdiction in which the property is situated can conduct a Conveyancing Transaction.

Representative Agent means a Person authorised by a Representative to act as the Representative's agent. For the avoidance of doubt this can include an Identity Agent.

Specific Authority means an authority for the Representative to act for the Client in completing the Conveyancing Transactions described in this Client Authorisation.

Standing Authority means an authority for the Representative to act for the Client as described in this Client Authorisation for the period of time set out in this Client Authorisation.

Titles Register has the meaning given to it in the ECNL.

Transfer includes the preparation of all Documents required to effect a purchase or sale of land or any other transfer of land, and the liaison with, where relevant, any mortgagee or proposed mortgagee.

Withdrawal of Caveat means a Document which removes a Caveat.

SCHEDULE 5 – COMPLIANCE EXAMINATION PROCEDURE

1 Power to request information and Documents

- 1.1 The Registrar or the Registrar's delegate must provide notice to the Subscriber.
- 1.2 The notice must state:
- (a) the time within which the information must be furnished and/or the Document must be produced (which must be not less than 10 Business Days after the giving of the notice); and
 - (b) how information is to be furnished and/or the Document is to be produced.
- 1.3 A notice under paragraph 1.2 may be given in writing or by any electronic means that the Registrar or the Registrar's delegate considers appropriate.
- 1.4 The Subscriber to whom a notice is given under paragraph 1.2 must comply with the requirements set out in the notice within the period specified in the notice.
- 1.5 (Not used).

2 Inspection and retention of Documents

- 2.1 If an original Document is produced in accordance with a notice given under paragraph 1.2, the Registrar or the Registrar's delegate may do one or more of the following:
- (a) inspect the Document; or
 - (b) make a copy of, or take an extract from, the Document; or
 - (c) retain the Document for as long as is reasonably necessary for the purposes of the Compliance Examination to which the Document is relevant.
- 2.2 If requested by the Subscriber, as soon as practicable after the Registrar or the Registrar's delegate retains a Document under paragraph 2.1, the Registrar or the Registrar's delegate must give a receipt for it to the Person who produced it. The receipt must identify in general terms the Document retained.

3 Return of retained Documents

- 3.1 The Registrar or the Registrar's delegate must as soon as reasonably practicable return an original Document retained under paragraph 2.1 to the Subscriber, if the Registrar or the Registrar's delegate is satisfied that its continued retention is no longer necessary.
- 3.2 The Registrar or the Registrar's delegate is not bound to return any Document where the Document has been provided to any police authority or anyone else entitled to the Document pursuant to any law or court order.

4 Access to retained Documents

- 4.1 Until an original Document retained under paragraph 2.1 is returned to its owner, the Registrar or the Registrar's delegate must allow a Person otherwise entitled to possession of the Document to inspect, make a copy of, or take an extract from, the Document at a reasonable time and place decided by the Registrar or the Registrar's delegate.
- 4.2 Paragraph 4.1 does not apply if it is impracticable or it would be reasonable not to allow the Document to be inspected or copied or an extract from the Document to be taken.

5 Costs

- 5.1 If the Subscriber is found to be in material breach of the Participation Rules, the Subscriber must, if required by the Registrar, pay all reasonable fees and Costs incurred as a direct result of the Registrar or the Registrar's delegate carrying out the Compliance Examination. If the Subscriber is not found to be in material breach, such fees and Costs will not be recoverable from the Subscriber.

- 5.2 The Cost of all actions required to be taken by the Subscriber to remedy any breach of these Participation Rules identified by the Registrar or the Registrar's delegate is to be paid by the Subscriber.

SCHEDULE 6 – INSURANCE RULES

1 Subscriber insurance

- 1.1 Each Subscriber must maintain professional indemnity insurance:
- (a) which specifically names the Subscriber as being insured; and
 - (b) with an Approved Insurer; and
 - (c) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
 - (d) having an excess per claim of no greater than \$20,000; and
 - (e) having an annual aggregate amount of not less than \$20,000,000; and
 - (f) which includes coverage for Conveyancing Transactions; and
 - (g) the terms of which do not limit compliance with Insurance Rules 1.1(a) to (f).
- 1.2 Each Subscriber must maintain fidelity insurance:
- (a) which specifically names the Subscriber as being insured; and
 - (b) with an Approved Insurer; and
 - (c) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
 - (d) having an excess per claim of no greater than \$20,000; and
 - (e) having an annual aggregate amount of not less than \$20,000,000; and
 - (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
 - (g) which includes coverage for Conveyancing Transactions; and
 - (h) the terms of which do not limit compliance with Insurance Rules 1.2(a) to (g).
- 1.3 If a Subscriber does not comply with Insurance Rules 1.1 and 1.2, the Subscriber must maintain professional indemnity insurance:
- (a) which specifically names the Subscriber as being insured; and
 - (b) with an Approved Insurer; and
 - (c) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
 - (d) having an excess per claim of no greater than \$20,000; and
 - (e) having an annual aggregate amount of not less than \$20,000,000; and
 - (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
 - (g) which includes coverage for Conveyancing Transactions; and
 - (h) the terms of which do not limit compliance with Insurance Rules 1.3(a) to (g).
- 1.4 A Subscriber may maintain fidelity insurance held through a mutual fund by paying a levy or contribution rather than an annual insurance premium. The insurance must otherwise comply with Insurance Rule 1.2.

2 Identity Agent insurance

- 2.1 Each Identity Agent must maintain professional indemnity insurance:
- (a) which specifically names the Identity Agent as being insured; and
 - (b) with an Approved Insurer; and
 - (c) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
 - (d) having an excess per claim of no greater than \$20,000, and
 - (e) having an annual aggregate amount of not less than \$20,000,000; and
 - (f) which includes coverage for verification of identity for the purposes of these Participation Rules; and

- (g) the terms of which do not limit compliance with Insurance Rules 2.1(a) to (f).
- 2.2 Each Identity Agent must maintain fidelity insurance:
- (a) which specifically names the Identity Agent as being insured; and
 - (b) with an Approved Insurer; and
 - (c) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
 - (d) having an excess per claim of no greater than \$20,000, and
 - (e) having an annual aggregate amount of not less than \$20,000,000; and
 - (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
 - (g) which includes coverage for verification of identity for the purposes of these Participation Rules; and
 - (h) the terms of which do not limit compliance with Insurance Rules 2.2(a) to (g).
- 2.3 If an Identity Agent does not comply with Insurance Rules 2.1 and 2.2, the Identity Agent must maintain professional indemnity insurance:
- (a) which specifically names the Identity Agent as being insured; and
 - (b) with an Approved Insurer; and
 - (c) for an insured amount of at least \$1.5 million per claim (including legal Costs); and
 - (d) having an excess per claim of no greater than \$20,000; and
 - (e) having an annual aggregate amount of not less than \$20,000,000; and
 - (f) which provides coverage for third party claims arising from dishonest and fraudulent acts; and
 - (g) which includes coverage for verification of identity for the purposes of these Participation Rules; and
 - (h) the terms of which do not limit compliance with Insurance Rules 2.3(a) to (g).
- 2.4 An Identity Agent may maintain fidelity insurance held through a mutual fund by paying a levy or contribution rather than an annual insurance premium. The insurance must otherwise comply with Insurance Rule 2.2.

3 Self-insuring Subscribers and Identity Agents

Despite Insurance Rules 1 and 2, the following Persons need not take out any insurance to become or remain a Subscriber or an Identity Agent:

- (a) an ADI; or
- (b) the Crown in right of the Commonwealth, a State or a Territory.

4 Deemed compliance with these Insurance Rules

The following are deemed to comply with Insurance Rules 1 and 2:

- (a) an Australian Legal Practitioner or a Law Practice who holds or is covered by professional indemnity insurance and either holds fidelity insurance or contributes to, or on whose behalf a contribution is made to, a fidelity fund operated pursuant to legislative requirements; and
- (b) a Licensed Conveyancer who holds or is covered by professional indemnity insurance and either holds fidelity insurance or contributes to, or on whose behalf a contribution is made to, a fidelity fund operated pursuant to legislative requirements; and
- (c) A Local Government Organisation is deemed to comply with Insurance Rule 1 if pursuant to legislative requirements, either it holds or is covered by:
 - (i) professional indemnity insurance and fidelity insurance, or

- (ii) professional indemnity insurance which provides cover for third party claims arising from dishonest and fraudulent acts.

5 Compliance

The Subscriber or an Identity Agent must comply with any requirements set by its insurer.

6 Proof of insurance

- 6.1 The Subscriber must provide evidence of insurance to the Registrar as required by the Registrar.
- 6.2 This may be satisfied by:
 - (a) a notification to the Registrar; or
 - (b) producing a certificate of currency to the Registrar.
- 6.3 A notification is permissible if a Subscriber is a member of a:
 - (a) mutual fund offering the required insurance; or
 - (b) professional body (membership of which requires the required insurance).
- 6.4 A satisfactory notification is provided if an entity referred to in paragraph 6.3:
 - (a) provides evidence satisfactory to the Registrar that the Subscriber is:
 - (i) a member of the applicable mutual fund or professional body; and
 - (ii) covered for the required insurances; and
 - (b) agrees to notify the Registrar immediately the Subscriber ceases to be one of their members or is otherwise no longer covered for the required insurances.
- 6.5 If proof of insurance is not satisfied by a notification as referred to in paragraphs 6.3 and 6.4, a Subscriber must provide the Registrar with certificates of currency, in a form acceptable to the Registrar, as specified in Requirement 6.6.
- 6.6 Certificates of currency must be provided:
 - (a) as a condition precedent to becoming a Subscriber; and
 - (b) at least 10 Business Days before an existing certificate of currency expires, for the next period of coverage.

SCHEDULE 7 – SUSPENSION EVENTS, TERMINATION EVENTS AND SUSPENSION AND TERMINATION PROCEDURE

1 Suspension Events

The following are Suspension Events:

- (a) the Registrar knows or has reasonable grounds to suspect that the Subscriber:
 - (i) is in material breach of any of the Subscriber's obligations under the Participation Rules; or
 - (ii) a representation or warranty made or taken to be made by the Subscriber in connection with these Participation Rules which the Registrar considers to be material proves to have been incorrect, incomplete, false or misleading when made or taken to be made; or
 - (iii) has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
 - (iv) has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
 - (v) poses a threat to the operation, security, integrity or stability of the SPEAR ELN; or
 - (vi) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction; or
- (b) the Subscriber's purported payment of any Land Registry Fees is unpaid or dishonoured and the Subscriber fails to remedy the non-payment promptly; or
- (c) the Subscriber fails, without reasonable excuse, to comply with a notice served under the Compliance Examination Procedure: or
- (d) the Subscriber fails, without reasonable excuse, to produce Documents within a time specified in a written request from the Registrar; or
- (e) the Subscriber fails, without reasonable excuse, to comply with a written direction of the Registrar given to the Subscriber or to a class of Subscribers to which the Subscriber belongs.

2 Termination Events

The following are Termination Events:

- (a) the Registrar knows or has reasonable grounds to believe that the Subscriber:
 - (i) is in material breach of any of the Subscriber's obligations under the Participation Rules; or
 - (ii) a representation or warranty made or taken to be made by the Subscriber in connection with these Participation Rules which the Registrar considers to be material proves to have been incorrect, incomplete, false or misleading when made or taken to be made; or
 - (iii) has or may have acted fraudulently in a way which may impact on a Conveyancing Transaction; or
 - (iv) has or may have acted negligently in a way which may impact on a Conveyancing Transaction; or
 - (v) poses a threat to the operation, security, integrity or stability of the SPEAR ELN; or
 - (vi) has otherwise engaged in conduct contrary to the interests of other Subscribers or the Registrar, which may impact on a Conveyancing Transaction; or
- (b) the Subscriber is subject to an order or directions of a court, tribunal, professional regulator or disciplinary body, which may impact on a Conveyancing Transaction; or
- (c) the Subscriber is not reinstated within a reasonable time following a suspension of the Subscriber.

3 Suspension and Termination Procedure

3.1 Show Cause Notice procedure

- (a) Subject to paragraph 3.2, the Registrar may suspend or terminate the Subscriber only if the Registrar first gives the Subscriber a "Show Cause Notice". A "Show Cause Notice" must:
- (i) be in writing; and
 - (ii) request the Subscriber to show cause, within 15 Business Days of the date of the Show Cause Notice, why the Subscriber should not be suspended or terminated, as the case may be; and
 - (iii) set out in detail the Registrar's reasons for issuing the request.
- (b) After the expiry of the 15 Business Days from the date of the Show Cause Notice, the Registrar, after considering any further information or steps taken by the Subscriber, must, within a reasonable time, determine whether to suspend or terminate the Subscriber.

3.2 Urgent decisions to suspend or terminate

- (a) If the Registrar becomes aware that a Suspension Event or Termination Event has or may have occurred in respect of the Subscriber and believes that it is necessary to take urgent action to protect the operation, security, integrity or stability of the SPEAR ELN, the Registrar may immediately suspend or terminate, the Subscriber without first providing a Show Cause Notice under paragraph 3.1.
- (b) However, the Registrar must then issue to the Subscriber a "Show Cause Notice" within 15 Business Days. A "Show Cause Notice" must:
- (i) be in writing; and
 - (ii) request the Subscriber to show cause within 15 Business Days of the date of the Show Cause Notice, why the Subscriber should be reinstated; and
 - (iii) specify the reasons for the suspension or termination.
- (c) If the Registrar does not issue a Show Cause Notice in accordance with this paragraph 3.2 within 15 Business Days of a suspension or termination taking effect following a determination by the Registrar to suspend or terminate the Subscriber under this paragraph 3.2, the Registrar must reinstate the Subscriber.
- (d) After the expiry of the 15 Business Days following the date of the Show Cause Notice under this paragraph 3.2, the Registrar, after considering any further information or steps taken by the Subscriber must, within a reasonable time, determine whether to reinstate the Subscriber.

3.3 Notice of suspension and termination decisions

After making a final determination under paragraph 3.1 or paragraph 3.2, the Registrar must notify the Subscriber promptly of the determination. If the determination:

- (a) is made under paragraph 3.1, the notice must specify the reasons for the determination and the time and date the suspension or termination is to take effect; or
- (b) is made under paragraph 3.2, the notice must specify the reasons for the determination and the time and date the suspension or termination took effect.

3.4 Suspension or termination – reinstatement

If the Registrar suspends or terminates the Subscriber, the Registrar may reinstate the Subscriber at any time if the Registrar determines that the Subscriber's access to the SPEAR ELN does not pose a threat to the operation, security, integrity or stability of the SPEAR ELN.

3.5 Registrar's determinations

A determination by the Registrar to suspend or terminate a Subscriber, does not affect any other determination the Registrar has made previously or may make subsequently.

SCHEDULE 8 – VERIFICATION OF IDENTITY STANDARD

1 Definitions

In this Verification of Identity Standard capitalised terms have the meanings set out below:

ADI (authorised deposit-taking institution) has the meaning given to it in the *Banking Act 1959* (Cth).

Adult has the meaning given to it in the ECNL.

Application Law has the meaning given to it in the ECNL.

Australian Legal Practitioner has the meaning given to it in the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and in South Australia is a legal practitioner for the purposes of the *Legal Practitioners Act 1981* (SA).

Australian Passport means a passport issued by the Australian Commonwealth government.

Bank Manager means a Person appointed to be in charge of the head office or any branch office of an ADI carrying on business in Australia under the *Banking Act 1959* (Cth).

Category means the categories of identification Documents set out in the table in this Verification of Identity Standard paragraph 3, as amended from time to time.

Commonwealth has the meaning given to it in the ECNL.

Community Leader means, in relation to an Aboriginal or Torres Strait Islander community:

- (a) a Person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community, an elected member of the council; or
- (c) a member, or a member of staff, of a Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (d) a member of the board, or a member of staff, of Indigenous Business Australia established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (e) a member of the board, or a member of staff, of an Indigenous Land Corporation established under the *Aboriginal and Torres Strait Islander Commission Act 2005* (Cth); or
- (f) a member, or a member of staff, of an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

Court Officer means a judge, master, magistrate, registrar, clerk or the chief executive officer of any court in Australia.

Doctor means a Person who is registered under any Commonwealth, State or Territory law as a practitioner in the medical profession.

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the Application Law, as amended from time to time.

Identifier Declaration means the declaration set out in Verification of Identity Standard paragraph 4.

Identity Declarant means a Person providing an Identifier Declaration.

Identity Verifier means the Person conducting the verification of identity in accordance with this Verification of Identity Standard.

Individual has the meaning given to it in the ECNL.

Land Council Officeholder means a chairperson or deputy chairperson (however described) of an Australian land council or land and sea council established under any Commonwealth, State or Territory law.

Land Titles Legislation has the meaning given to it in the ECNL.

Licensed Conveyancer means a Person licensed or registered under the relevant legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated and in Western Australia is a real estate settlement agent for the purposes of the *Settlement Agents Act 1981* (WA).

Local Government Officeholder means a chief executive officer or deputy chief executive officer (however described) of a Local Government Organisation.

Local Government Organisation means a local government council (however described) established under any Commonwealth, State or Territory Law.

Nurse means a Person registered under any Commonwealth, State or Territory law as a practitioner in the nursing and midwifery profession.

Person has the meaning given to it in the ECNL.

Person Being Identified means the Persons whose identity is being verified.

Photo Card is a card issued by the Commonwealth or any State or Territory showing a photograph of the holder and enabling the holder to evidence their age and/or their identity.

Police Officer means an officer of any Commonwealth, State or Territory police service.

Priority/Settlement Notice has the meaning given to it in the Land Titles Legislation of the Jurisdiction in which the land the subject of the Conveyancing Transaction is situated.

Public Servant means an employee or officer of the Commonwealth, a State or a Territory.

Record has the meaning given to it in the ECNL.

Relative means a Person's spouse or domestic partner or a child, grandchild, sibling, parent or grandparent of the Person or of the Person's spouse or domestic partner.

State means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Statutory Declaration has the meaning given to it in the ECNL.

Territory means the Australian Capital Territory and the Northern Territory of Australia.

Verification of Identity Standard means this verification of identity standard, as amended from time to time.

2 Face-to-face regime

- 2.1 The verification of identity must be conducted during a face-to-face in-person interview between the Identity Verifier and the Person Being Identified.
- 2.2 Where Documents containing photographs are produced by the Person Being Identified, the Identity Verifier must be satisfied that the Person Being Identified is a reasonable likeness (for example the shape of his or her mouth, nose, eyes and the position of his or her cheek bones) to the Person depicted in those photographs.

3 Categories of identification Documents and evidence retention

- 3.1 At the face-to-face in-person interview described in paragraph 2.1, the Identity Verifier must ensure that the Person Being Identified produces original Documents in one of the Categories in the following table, starting with Category 1.
- 3.2 The Identity Verifier must be reasonably satisfied that a prior Category cannot be met before using a subsequent Category.
- 3.3 The Identity Verifier must:
 - (a) sight the originals of all Documents from Categories 1, 2, 3, 4, 5 or 6 produced by the Person Being Identified; and
 - (b) retain copies of all Documents produced by the Person Being Identified and any Identity Declarant.
- 3.4 The Documents produced must be current, except for an expired Australian Passport which has not been cancelled and was current within the preceding 2 years.

Category	Minimum Document Requirements
	For Persons who are Australian citizens or residents:
1	Australian Passport or foreign passport <u>plus</u> Australian drivers licence or Photo Card <u>plus</u> change of name or marriage certificate if necessary
2	Australian Passport or foreign passport <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
3	Australian drivers licence or Photo Card <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary
4	(a) Australian Passport or foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary (b) Australian Passport or foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary
5	(a) Identifier Declaration <u>plus</u> full birth certificate or citizenship certificate or descent certificate <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary. (b) Identifier Declaration by a Person specified in Verification of Identity Standard paragraph 4.4(e) <u>plus</u> Medicare or Centrelink or Department of Veterans' Affairs card <u>plus</u> change of name or marriage certificate if necessary. <i>Note: Refer to Verification of Identity Standard paragraph 4.</i>
	For Persons who are not Australian citizens or residents:
6	(a) Foreign passport <u>plus</u> another form of government issued photographic identity Document <u>plus</u> change of name or marriage certificate if necessary (b) Foreign passport <u>plus</u> full birth certificate <u>plus</u> another form of government issued identity Document <u>plus</u> change of name or marriage certificate if necessary.

4 The Identifier Declaration

4.1 Where the requirements of:

- (a) Categories 1 to 4 cannot be met, Category 5(a) may be used; and
 - (b) Category 5(a) cannot be met, Category 5(b) may be used,
- including the provision of an Identifier Declaration in accordance with this paragraph.

- 4.2 The Identity Verifier must ensure that both the Person Being Identified and the Identity Declarant attend the same face-to-face in-person interview described in paragraph 2.1.
- 4.3 The Identity Verifier must verify the identity of the Identity Declarant in accordance with this Verification of Identity Standard except that the Identity Verifier cannot utilise Category 5.
- 4.4 The Identity Verifier must undertake reasonable enquiries to satisfy themselves that the Identity Declarant is:
- (a) an Adult; and
 - (b) an Individual who has known the Person Being Identified for more than 12 months; and
 - (c) not a Relative of the Person Being Identified; and
 - (d) not a party to the Conveyancing Transaction(s) the Person Being Identified has or is entering into; and
 - (e) where Category 5(b) is used, an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Police Officer or Public Servant.
- 4.5 The Identity Verifier must ensure that the Identity Declarant provides a Statutory Declaration detailing the following:
- (a) the Identity Declarant's name and address; and
 - (b) the Identity Declarant's occupation; and
 - (c) the Identity Declarant's date of birth; and
 - (d) the nature of the Identity Declarant's relationship with the Person Being Identified; and
 - (e) that the Identity Declarant is not a relative of the Person Being Identified; and
 - (f) that the Identity Declarant is not a party to the Conveyancing Transaction(s) the Person Being Identified has or is entering into; and
 - (g) the length of time that the Identity Declarant has known the Person Being Identified; and
 - (h) that to the Identity Declarant's knowledge, information and belief the Person Being Identified is who they purport to be; and
 - (i) where Category 5(b) is used, that the Identity Declarant is an Australian Legal Practitioner, a Bank Manager, Community Leader, Court Officer, Doctor, Land Council Officeholder, Licensed Conveyancer, Local Government Officeholder, Nurse, Police Officer or Public Servant.

5 Body Corporate

The Identity Verifier must:

- (a) confirm the existence and identity of the body corporate by conducting a search of the Records of the Australian Securities and Investments Commission or other regulatory body with whom the body corporate is required to be registered; and
- (b) take reasonable steps to establish who is authorised to sign or witness the affixing of the seal on behalf of the body corporate; and
- (c) verify the identity of the Individual or Individuals signing or witnessing the affixing of the seal on behalf of the body corporate in accordance with the Verification of Identity Standard.

[Note: *body corporate* includes an incorporated association.]

6 Individual as attorney

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) verify the identity of the attorney in accordance with the Verification of Identity Standard.

7 Body Corporate as attorney

The Identity Verifier must:

- (a) confirm from the [registered] power of attorney the details of the attorney and the donor; and
- (b) take reasonable steps to establish that the Conveyancing Transaction(s) is authorised by the power of attorney; and
- (c) comply with Verification of Identity Standard paragraph 5.

[Note: *body corporate* includes an incorporated association.]

8 (Deleted)

9 (Deleted)

10 Further checks

The Identity Verifier must undertake further steps to verify the identity of the Person Being Identified and/or the Identity Declarant where:

- (a) the Identity Verifier knows or ought reasonably to know that:
 - (i) any identity Document produced by the Person Being Identified and/or the Identity Declarant is not genuine; or
 - (ii) any photograph on an identity Document produced by the Person Being Identified and/or the Identity Declarant is not a reasonable likeness of the Person Being Identified or the Identity Declarant; or
 - (iii) the Person Being Identified and/or the Identity Declarant does not appear to be the Person to which the identity Document(s) relate; or
- (b) it would otherwise be reasonable to do so.

SCHEDULE 9 – IDENTITY AGENT CERTIFICATION

“I, [full name of the Person undertaking the verification of identity], of [full name of Identity Agent] of [address of the Identity Agent] being a [occupation of the Identity Agent] and having been directed to use the Verification of Identity Standard by [Subscriber name] hereby certify that:

- (a) the identification relates to [full name of the Person Being Identified or the Identity Declarant]; and
- (b) the identification was carried out on [date]; and
- (c) the original identification Documents as listed below were produced to me and copies of these Documents signed, dated and endorsed by me as true copies are attached to this certification; and
- (d) the verification of identity was conducted in accordance with the Verification of Identity Standard[; and
- (e) I witnessed [full name of the Person Being Identified] execute the completed Client Authorisation or grant the mortgage].**”

.....
Date:

.....
Signature of Identity Agent

List of identification Documents produced (see (c) above):

Description of identity Documents produced and endorsed
e.g. Australian Passport

* Delete where Identity Agent not requested to witness or is not legally entitled to witness the document.

SCHEDULE 10 – SPEAR SUBSCRIBER SECURITY POLICY

(Version 1 – 27 May 2017)

ABOUT THIS POLICY

This Document has been prepared to assist Subscribers to better understand their obligations to ensure the integrity of SPEAR.

All Subscribers and their Users must comply with this policy at all times.

Definitions

Access Credentials means a User identification and password, and any other details, required for a Person to access the SPEAR ELN.

Certification Authority means a Gatekeeper Accredited Service Provider that issues Digital Certificates that have been Digitally Signed using the Certification Authority's Private Key and provides certificate verification and revocation services for the Digital Certificates it issues.

Client means a Person who has or Persons who have appointed a Subscriber as their Representative pursuant to a Client Authorisation.

Client Authorisation has the meaning given to it in the ECNL.

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

Compromised means lost or stolen, or reproduced, modified, disclosed or used without proper authority.

Department means the Department of Environment, Land, Water and Planning of the State of Victoria (and its successor under any machinery of government changes as may be implemented) and any reference to the Department shall be read and construed as a reference to the State of Victoria.

Digital Certificate means an electronic certificate Digitally Signed by the Certification Authority which:

- (a) identifies either a Key Holder and/or the business entity that he/she represents; or a device or application owned, operated or controlled by the business entity; and
- (b) binds the Key Holder to a Key Pair by specifying the Public Key of that Key Pair; and
- (c) contains the specification of the fields to be included in a Digital Certificate and the contents of each; and
- (d) meets the requirements of the Department or the Registrar as specified in writing from time to time.

Digitally Sign has the meaning given to it in the ECNL.

Document has the meaning given to it in the ECNL.

ECNL means the Electronic Conveyancing National Law (Victoria), as amended from time to time.

ELN has the meaning given to it in the ECNL.

Electronic Workspace means an electronic workspace generated by the SPEAR ELN.

Gatekeeper means the Commonwealth government strategy to develop PKI to facilitate government online service delivery and e-procurement.

Gatekeeper Accredited Service Provider means a service provider accredited by the Gatekeeper Competent Authority.

Gatekeeper Competent Authority means the entity which approves an application for Gatekeeper accreditation. The Gatekeeper Competent Authority for PKI is the Australian Government Chief Information Officer, Australian Government Information Management Office, Department of Finance and Deregulation.

Jeopardised means put at risk the integrity of a Registry Instrument or other Document by fraud or other means.

Key means a string of characters used with a cryptographic algorithm to encrypt and decrypt.

Key Holder means an individual who holds and uses Keys and Digital Certificates on behalf of a Subscriber, or in his/her own right in the case of a Key Holder who is also a Subscriber.

Key Pair means a pair of asymmetric cryptographic Keys (one decrypting messages which have been encrypted using the other) consisting of a Private Key and a Public Key.

Participation Rules, as amended from time to time, has the meaning given to it in the ECNL.

Person has the meaning given to it in the ECNL.

PKI or Public Key Infrastructure means Gatekeeper compliant technology, policies and procedures based on public key cryptography used to create, validate, manage, store, distribute and revoke Digital Certificates.

Private Key means the Key in an asymmetric Key Pair that must be kept secret to ensure confidentiality, integrity, authenticity and non-repudiation.

Public Key means the Key in an asymmetric Key Pair which may be made public.

Registrar has the meaning given to it in the ECNL.

Registry Instrument has the meaning given to it in the ECNL.

Representative means a Subscriber who acts on behalf of a Client.

Security Item means User Access Credentials, passphrases, Private Keys, Digital Certificates, Electronic Workspace identifiers and other items as specified from time to time.

Signer means a User authorised by the Subscriber to Digitally Sign and, where it is required, certify Registry Instruments and other electronic Documents on behalf of the Subscriber.

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

SPEAR ELN means that part of SPEAR that is an ELN.

SPEAR ELN Participation Agreement means the contract between the Subscriber and the Registrar referred to in SPEAR ELN Participation Rule 3, as amended from time to time.

SPEAR ELN Participation Rules means the Participation Rules for the SPEAR ELN, as amended from time to time.

SPEAR Subscriber Security Policy means this policy, as amended from time to time.

SPEAR User Security Policy means the policy set out in Schedule 11 of the SPEAR ELN Participation Rules, as amended from time to time.

Subscriber has the meaning given to it in the ECNL.

Subscriber Administrator means a User authorised by the Subscriber to make the changes permitted under SPEAR ELN Participation Rule 7.3.3 on behalf of the Subscriber.

User means an individual authorised by a Subscriber to access and use the SPEAR ELN on behalf of the Subscriber.

1. Training

Each Subscriber must ensure that each of its Users has received training appropriate to their use of SPEAR and are aware of their obligations to protect User Security Items.

Each Subscriber must:

- (a) provide a copy of the SPEAR User Security Policy to each of its Users before they become Users; and
- (b) take reasonable steps to ensure that it and all its Users comply with the SPEAR User Security Policy; and
- (c) take reasonable steps to ensure that it and all its Users comply with the terms of the SPEAR ELN Participation Agreement, policies and practice statements of the Certification Authority relating to the allocation, use and protection of its Digital Certificates which are applicable to them.

2. General protection measures

Each Subscriber's User details are part of SPEAR. Therefore, SPEAR's integrity is, in part, reliant on the integrity of each Subscriber's User details and the systems and facilities used to access SPEAR for the Subscriber.

Each Subscriber must take reasonable steps to:

- (a) establish and maintain appropriate measures to safeguard SPEAR from unauthorised access; and
- (b) monitor, and take appropriate action after receiving security alerts from the Department or the Registrar; and
- (c) prevent damage or interference to SPEAR by any person employed or engaged by the Subscriber; and
- (d) ensure that its Users access SPEAR only by using computers over which the Subscriber has sufficient control to ensure compliance with the terms of the SPEAR ELN Participation Agreement; and
- (e) ensure that it implements reasonable measures to monitor use of SPEAR and Security Items, including to ensure the Subscriber becomes aware if any of its Security Items have been lost or stolen or reproduced, modified, disclosed or used without proper authority; and
- (f) ensure that it adequately protects its computers and other facilities used to access and store its Digital Certificates from unauthorised use or access; and
- (g) ensure that it mitigates any loss arising in connection with the theft, loss, unauthorised disclosure or improper use of any of its Security Items.

Each Subscriber must notify the Department if it becomes aware of anything that is likely to have an adverse effect on the operation, security, integrity or stability of SPEAR.

3. Specific protection measures

The following are specific protection measures that each Subscriber is required to take. However, these obligations do not limit the obligations set out in clause 2 of this SPEAR Subscriber Security Policy.

Each Subscriber must take reasonable steps to ensure that:

- (a) any computer used by its Users to access SPEAR does not have caching enabled that would remove the need for the Users to enter passwords or passphrases in accordance with the normal operation of SPEAR; and
- (b) the security of its computer systems are kept up to date, including the installation of patches and operating system updates; and
- (c) all computers used to access SPEAR are protected at all times by up-to-date security software that provides protection from viruses, spyware, key-logging and other security threats.

Each Subscriber must ensure that its security software has, at a minimum:

- (a) the ability to identify and remove viruses; and

- (b) the ability to identify and remove other types of harmful computer software, generally referred to as malware (or malicious software); and
- (c) the ability to automatically receive anti-virus updates from the relevant anti-virus software vendors; and
- (d) the ability to automatically scan for viruses and malware, for example, scanning a document as it is opened; and
- (e) the ability to provide firewall protection.

4. Protection of Access Credentials

Access Credentials allow a User to access SPEAR for the Subscriber. A failure to properly protect Access Credentials may result in unauthorised access to SPEAR.

Each Subscriber must take reasonable steps to ensure that:

- (a) none of its Users' Access Credentials are easily associated with its User or the Subscriber (such as a birthday or telephone number); and
- (b) each of its Users' Access Credentials are different from any other existing or former User's past or current Access Credentials; and
- (c) its Users' Access Credentials are changed at least every 180 days; and
- (d) only the User to whom a particular password or passphrase is allocated uses the password or passphrase and that the User does not share them with any other person; and
- (e) each of their Users protects its Access Credentials, including by not permitting any other person to see the entry of their Access Credentials into any computer.

5. Digital Certificates

A Subscriber's Digital Certificate enables the Subscriber's Signers to Digitally Sign relevant Communications, Registry Instruments and other Documents on behalf of the Subscriber. A failure to properly protect Digital Certificates may result in Documents and Communications being signed without authority.

Each Subscriber must take reasonable steps to protect its Digital Certificates. The obligations of Users in relation to Digital Certificates are contained in the SPEAR User Security Policy. Subscribers must take reasonable steps to ensure that all of their Users comply with the policy.

6. Form of Digital Certificates

Subscribers must ensure that they and their Users use Digital Certificates only in that form specified in writing by the Department or the Registrar from time to time.

7. Settings of Digital Certificates

Subscribers must ensure that their:

- (a) Digital Certificates are issued in accordance with Gatekeeper rules; and
- (b) Digital Certificates are stored on a hard token unless the Department or Registrar has permitted otherwise; and
- (c) Digital Certificates are not backed up unless the Department or Registrar has permitted otherwise.

8. Jeopardised relevant Communications, Registry Instruments or other Documents

Where to the Subscriber's knowledge, information or belief a relevant Communication, Registry Instrument or other Document has been Jeopardised:

- (a) where it is possible to do so, the Subscriber must immediately create and Digitally Sign a new version of the relevant Communication, Registry Instrument or other Document; or
- (b) where it is not possible to create and Digitally Sign a new version of the relevant Communication, Registry Instrument or other Document, the Subscriber must immediately notify the Department of the situation.

9. Compromised Security Items

If a Subscriber becomes aware that any of the Security Items of any of its Users has been or is likely to be Compromised, the Subscriber must:

- (a) immediately revoke the User's authority to access and use SPEAR and prevent the User from accessing and using SPEAR; and
- (b) for a Digital Certificate:
 - (i) immediately check SPEAR for any relevant Communications, Registry Instruments or other Documents which have been Digitally Signed using the User's Private Key and comply with clause 8 of this SPEAR Subscriber Security Policy; and
 - (ii) promptly notify the Certification Authority and revoke or cancel the Digital Certificate (including doing everything reasonably necessary to cause the Certification Authority to revoke or cancel it); and
 - (iii) promptly notify the Department.

10. Compromised Signatures

If a Subscriber becomes aware or suspects that any of its or its Users' Private Keys have been used to Digitally Sign any relevant Communication, Registry Instrument or other Document without its authorisation or the authorisation of any Client on whose behalf the relevant Communication, Registry Instrument or other Document is purported to be Digitally Signed:

- (a) where it is possible to do so, the Subscriber must immediately create and Digitally Sign a new version of the relevant Communication, Registry Instrument or other Document; or
- (b) where it is not possible to create and Digitally Sign a new version of the relevant Communication, Registry Instrument or other Document, the Subscriber must immediately notify the Department of the situation.

11. Revoking authority

- (a) If a Subscriber no longer intends:
 - (i) a person to be its User, the Subscriber must promptly revoke the User's access to and use of SPEAR; or
 - (ii) a person to be a Signer, the Subscriber must promptly revoke the User's signing rights within SPEAR and, where appropriate, request the Certification Authority to revoke the Signer's Digital Certificate; or
 - (iii) a person to be Subscriber Administrator, the Subscriber must promptly request the Department to revoke the User's administrative rights within SPEAR.
- (b) When any User, Signer or Subscriber Administrator ceases to be the employee, agent or contractor of the Subscriber, the Subscriber must:
 - (i) for a User, the Subscriber must immediately revoke the User's access to and use of SPEAR; and
 - (ii) for a Signer, the Subscriber must immediately revoke that User's signing rights within SPEAR and, where appropriate, request the Certification Authority to revoke the Signer's Digital Certificate
 - (iii) for a Subscriber Administrator, the Subscriber must immediately request the Department to revoke the User's administrative rights within SPEAR.

SCHEDULE 11 – SPEAR USER SECURITY POLICY

(Version 1 – 27 May 2017)

ABOUT THIS POLICY

This document has been prepared to assist Users to better understand their obligations to ensure the integrity of SPEAR.

All Users must comply with this policy at all times.

Passwords and passphrases

Users must ensure that:

- (a) they do not use any facility that enables caching of their SPEAR passwords or Digital Certificate passphrases; and
- (b) their passwords and passphrases are not easily associated with them (such as a birth date or telephone number); and
- (c) their passwords and passphrases are changed at least every 180 days; and
- (d) they do not share their passwords or passphrases with anyone else; and
- (e) they do not permit any other person to use their passwords or passphrases; and
- (f) they do not permit any other person to see the entry of their passwords and passphrases into any computer; and
- (g) their passwords are different from their passphrases.

Protecting Digital Certificates

Users must ensure that:

- (a) their Digital Certificate is set to a security level of 'high', which requires entry of a password; and
- (b) where the Department or Registrar has permitted a backup of their Digital Certificate to be made, the backup is protected by a password and stored in a secure location.

Users must ensure that any hard token used to store their Digital Certificate is:

- (a) connected to a computer only when the User is using the computer to Digitally Sign in SPEAR; and
- (b) stored in a secure location when not in use.

Compromised Digital Certificates

Users must notify a Subscriber Administrator immediately if they know or suspect that their Digital Certificate has or may have been lost or stolen, or reproduced, modified, disclosed or used without proper authority.

Ask if in doubt

Contact a Subscriber Administrator if you are uncertain about your obligations under, or terminology used in, this SPEAR User Security Policy.

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