

Dated

SPEAR Access Agreement for Councils

Parties

State of Victoria

Party identified in Schedule 1

Contents

1.	Definitions and interpretation	2
2.	Access to SPEAR	8
3.	SPEAR	9
4.	Spear Process	10
5.	Council Users	11
6.	Administrator.....	12
7.	Certifying User.....	13
8.	Signing Users and Standard Users	14
9.	Username and Password.....	15
10.	Digital Certificate.....	16
11.	SPEAR Records	17
12.	Common Rules	17
13.	User manuals.....	18
14.	Application to Application Environment	18
15.	Term, Suspension and Termination	18
16.	Effect of Termination.....	19
17.	Trade Marks	21
18.	Intellectual property.....	21
19.	Privacy.....	22
20.	Confidential Information	22
21.	Warranties	23
22.	Compliance with laws	24
23.	Force Majeure.....	24
24.	Notices.....	25
25.	Co-operation.....	27
26.	Dispute Resolution.....	28
27.	Miscellaneous	30
	Schedule 1	33
	Schedule 2.....	34
	Schedule 3.....	36
	Schedule 4.....	38

Deed dated

Parties **THE CROWN IN RIGHT OF THE STATE OF VICTORIA**
THROUGH THE DEPARTMENT OF ENVIRONMENT, LAND,
WATER AND PLANNING
of Level 9, 2 Lonsdale Street Melbourne, 3000
(**Department**)

THE PARTY IDENTIFIED IN SCHEDULE 1
(**Council**)

Introduction

- A.** The Department has developed SPEAR to provide an electronic system for the lodgement, management and tracking of planning and development applications within the State of Victoria.
- B.** The Council is a Council within the meaning of Section 3 of the *Local Government Act 1989 (Vic)* and has responsibility for, and acts as a responsible authority (or similar authority) with respect to, Relevant Applications within its boundaries.
- C.** The Council wishes to make use of SPEAR to provide for the electronic lodgement, management and recording of Relevant Applications by the Council's constituents, including planners and residents.
- D.** The Council has requested that the Department provide the Council with access to SPEAR and other assistance to enable the Council to use SPEAR.
- E.** The Department has agreed to provide, and the Council has accepted, access to SPEAR on the terms and conditions contained in this Deed.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **API** means application programming interface which is the interface by which an Application accesses SPEAR;
- (2) **Access Method** means either a Digital Certificate or username and password or such other method of access to SPEAR as may be approved by the Department from time to time;
- (3) **Administrator** means a person appointed by the Council in accordance with clause 6 to act as administrator of SPEAR on the Council's behalf, including for the appointment of Users;
- (4) **Application** means any software application, other than an internet browser, used by the Council and through which the Council may access the functions and features of SPEAR as a result of a SPEAR Interface;
- (5) **Application to Application Environment** means any environment where an Application communicates directly with SPEAR and specifically excludes any communication with SPEAR through the Web Interface;
- (6) **Authorised Purpose** means the recording and the processing of Relevant Applications and all documentation and associated purposes (including recording for public access) and includes use in records of Responsible Authorities or Referral Authorities, the Land Registry, for Crown Land records and the digital map base as used and distributed by or on behalf of the State;
- (7) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (8) **Certifying User** means an appointed User under clause 7 who has been issued with a Digital Certificate by the Council and who has been delegated the authority by the Council to certify documents related to Relevant Applications on behalf of the Council;
- (9) **Common Rules** means the terms and conditions so identified and set out on the SPEAR Internet Site which bind all of the Customers of SPEAR and which apply to the Council and other Users in accordance with clause 12;

- (10) **Communication** includes any instruction, request, approval, certification, acceptance, confirmation, information, or document;
- (11) **Commencement Date** means the date specified in Item 4 of Schedule 1;
- (12) **Confidential Information** means:
- (a) information marked as confidential;
 - (b) information consisting of the operating systems and processes for SPEAR, and the policy and commercial documentation relevant to the delivery of SPEAR; and
 - (c) information that is, by its nature, confidential (including but not limited to information relating to the business or internal policies or affairs of the Department, the State of Victoria, or a Responsible Authority or Referral Authority);
- except to the extent that such information is in the public domain other than due to a breach of any obligation of confidentiality, and Confidential Information specifically includes:
- (d) any User Manuals or other documentation provided to the Council by, or on behalf of, the Department;
- (13) **Council Marks** means the registered and unregistered trademarks of the Council and such other trademarks as the Council may own or use;
- (14) **Council User** means any person authorised by or on behalf of the Council to access and use SPEAR and includes a Signing User and a Certifying User;
- (15) **Customer** means any person or body who enters into an agreement with the Department for access to and use of SPEAR and specifically includes the Council;
- (16) **Deed** means this document, including any schedule or annexure to it;
- (17) **Department** means the Department of Environment, Land, Water and Planning of the State and any reference to the Department is to be read and construed as a reference to the State;
- (18) **Department Marks** means the registered and unregistered trademarks of the Department and such other trademarks as the Department may own or use;

- (19) **Digital Certificate** means a token based certificate which meets the requirements of the Department as specified in writing from time to time;
- (20) **Electronic Transactions Act** means the *Electronic Transactions (Victoria) Act 2000*;
- (21) **Intellectual Property Rights** means any patents, trademarks or service marks, rights in designs, trade or business names, copyrights, domain names and data base rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature having equivalent or similar effect to any of these in any part of the world;
- (22) **Land Registry** means the Register established under the *Transfer of Land Act 1958 (Vic)*;
- (23) **Licensed Surveyor** has the same meaning as in the *Surveying Act 2004(Vic)*;
- (24) **Loss** means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person and includes:
- (a) the cost of any action taken by any person to protect itself from any loss or to preserve any right it has under this Deed;
 - (b) any taxes or duties payable by the person in connection with this Deed (excluding any tax on assessable income); and
 - (c) where applicable, all costs actually paid by the person to their own legal representative (whether or not under a costs agreement) and other expenses incurred by the person in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal).
- (25) **Modification** means any update or new release of, or modification or enhancement to SPEAR;
- (26) **Objector** means any person or body who lodges an objection to a Relevant Application;
- (27) **Personal Information** has the same meaning as that provided in Section 3 of the *Information Privacy Act 2000 (Vic)*;
- (28) **Prescribed Event** means any of the following events:

- (a) act of God;
- (b) war, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance; or
- (d) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;
- (e) quarantine or customs restriction; or
- (f) breakdown or damage to or confiscation of property;

where the event is beyond the reasonable control of the Affected Party;

- (29) **Referral Authority** has the same meaning as that in the *Subdivision Act 1988 (Vic)*;
- (30) **Related Body Corporate, Subsidiary and Holding Company** each has the meaning given in the *Corporations Act 2001*;
- (31) **Relevant Applicant** means the party responsible for lodging a SPEAR Application, and includes any agent of the actual applicant;
- (32) **Relevant Application** means an application made to a Responsible Authority or other authorised body and relating to:
 - (a) subdivision or consolidation of any land under the *Subdivision Act 1988 (Vic)*;
 - (b) approval of development or use of any land under the *Planning and Environment Act 1987 (Vic)*;
 - (c) the issue of permits under the Building Act 1993 Vic); and
 - (d) any other activity as notified to Users by the Department from time to time.
- (33) **Signing User** means a Council User appointed in accordance with clause 8;
- (34) **SPEAR** means the computerised system for Survey and Planning through Electronic Applications and Referrals developed by the Department as Modified from time to time;

- (35) **SPEAR A2A Deed** means a Deed entered into between a Customer and the Department for the development of a SPEAR Interface;
- (36) **SPEAR Application** means a Relevant Application as described in clause 4.3;
- (37) **SPEAR Interface** means any interface which allows an Application to communicate with SPEAR or SPEAR to communicate with an Application as specified in the SPEAR Interface Manual or otherwise by the Department in writing;
- (38) **SPEAR Interface Manual** means any document or information developed or provided by the Department which defines the procedures, functions, API's and any other items for the interaction with SPEAR in an Application to Application Environment;
- (39) **SPEAR Internet Site** means the URL specified by the Department from time to time as the location for accessing SPEAR through the Web Interface, which URL at the Commencement Date is specified in Item 5 of Schedule 1;
- (40) **SPEAR Standards** means the standards set out in Schedule 4;
- (41) **Standard User** means an appointed Council User other than a Signing or Certified User;
- (42) **SPEAR User Group** means the committee established as referred to in clause 3.5;
- (43) **State** means the Crown in right of the State of Victoria;
- (44) **Statutory Provision** means a statute, regulation or provision of a statute or regulation;
- (45) **Term** means the term defined in clause 15.1;
- (46) **User** means any person authorised to access and use SPEAR;
- (47) **User Manuals** means any instructions, procedures, guidelines, information and associated terms of use in any form (including materials in printed form, materials available online and oral instructions) provided by, or on behalf of, the Department (or its employees, agents or contractors) to the Council from time to time and in any way connected to the operation or use of SPEAR; and
- (48) **Web Interface** means the interface to SPEAR which is intended to be accessed by Customers of SPEAR using an internet browser and internet based communications.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) Statutory Provision includes:
 - (i) that Statutory Provision as amended or re-enacted;
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and
 - (f) money is to Australian dollars, unless otherwise stated.
- (2) Including and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 **Parties**

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

1.4 Precedence of documents

If there is any conflict between the provisions of clauses 1 to 27 of this Deed and the documents forming any schedules or annexures, the provisions of clauses 1 to 27 shall prevail to the extent of any inconsistency and in construing this Deed the inconsistent provisions of the schedule or annexure shall be severed accordingly.

2. Access to SPEAR

2.1 Right to access

The Department will, in accordance with the terms and conditions in this Deed, provide the Council with access to SPEAR for the purpose of the Council receiving and processing Relevant Applications.

2.2 Access via SPEAR Internet Site

Unless otherwise agreed between the Department and the Council under clause 14, access to SPEAR by the Council will be via the SPEAR Internet Site and using the Web Interface. The Council agrees that it will not use any program other than an internet browser to access the SPEAR Internet Site.

2.3 Compliance with terms and conditions

The access provided under clause 2.1 is subject to the Council complying, and ensuring that the Council Users comply with:

- (1) the terms and conditions in this Deed;
- (2) the Common Rules; (to the extent consistent with this Deed);
- (3) the User Manuals (to the extent consistent with this Deed);
- (4) all Statutory Provisions; and
- (5) any other terms and conditions agreed between the Department and Council from time to time.

2.4 Time of Access

Subject to availability, the Department will provide the Council with unlimited access to SPEAR and the Council may access SPEAR 24 hours a day for every day of the year but the Department does not warrant that access to SPEAR will be uninterrupted or available when required, at all times, on all days.

3. SPEAR

3.1 Warranty re Functionality

The Department will use its reasonable endeavours to provide such functionality and features as is required for the Council to receive and process Relevant Applications in accordance with any relevant Statutory Provisions. The Department does not warrant that the functionality or features of SPEAR will meet any specific requirements of the Council.

3.2 Availability

- (1) The Department will use its best endeavours to make SPEAR available 24 hours a day for every day of the year. However, the Department gives no warranty as to availability of SPEAR and accepts no liability for any Loss, suffered by the Council or any other Customer or Users which may arise as a result of any unavailability of SPEAR.
- (2) Subject to clause 21.2, the Department does not guarantee that access to SPEAR will be uninterrupted or that SPEAR is error or virus free.

3.3 Unavailability of SPEAR

- (1) Notwithstanding any other provision in this Deed, if SPEAR is unavailable for use by reason of outage, suspension or other reason, the Council may continue to process SPEAR Applications entered through SPEAR by way of hard copy documents.
- (2) Subject to clause 3.3(3), where the Council has processed any part of a SPEAR Application pursuant to the previous subclause, the Council warrants and agrees it will include within SPEAR all copies of any hardcopy documents so processed (but only where SPEAR provides for the processing of those records), as soon as reasonably practicable after SPEAR becomes available for use.
- (3) Where certification of a Plan which is the subject of a Relevant Application under Section 6 of the *Subdivision Act* 1988, is required before access to SPEAR is restored and the Council provides certification by way of a hard copy document, the processing of the Relevant Application must revert to the Council's hard copy system and SPEAR must not be used for the purposes of that Relevant Application.

3.4 Service Levels

The Department shall use its best endeavours to ensure that the availability of SPEAR and its support by the Department meets the service levels set out in Schedule 4.

3.5 **User Group**

In order to provide the Council with advance notice of proposed Modifications to SPEAR and in order for the Council to provide to the Department any input in relation to those proposed changes, the Department shall establish a SPEAR User Group. The SPEAR User Group shall consist of representatives of the Department, Responsible Authorities and other Government bodies which are users of SPEAR and which have a SPEAR Interface. The nature and scope of the activities of the SPEAR User Group and the process for its operation and notice of Modifications are set out in Schedule 3.

4. **Spear Process**

4.1 **Notification**

The Council agrees that:

- (1) SPEAR will not provide the Council with, or deliver or send to the Council, copies of any documents or information provided to SPEAR by a Customer; and
- (2) the electronic notification of the lodgement of any document or information in SPEAR is sufficient for the Council's requirements.

4.2 **Council to Check**

The Council acknowledges that it is responsible for the processing of Relevant Applications and for the checking of any documents or information notified by SPEAR in a timely and diligent fashion.

4.3 **Use for end-to-end Process**

Subject to clause 3.3, the Council agrees where any Relevant Application is commenced through, or entered into SPEAR (**SPEAR Application**) it will only use SPEAR, and not hard copy records, for processing of that SPEAR Application relevant to a function provided by SPEAR. Despite this requirement the Council may use hard copy documents for any Objector to a SPEAR Application where the Objector has not used SPEAR for the purpose of lodging an objection or where the functionality of SPEAR does not provide for any aspect of the processing of a Relevant Application. Nothing in this clause shall be construed as preventing the Council from maintaining hard copy records of any Relevant Application where SPEAR does not provide for the processing of those records.

4.4 **Customer Access**

The Council agrees and acknowledges that the information lodged within SPEAR may be accessible to other Customers (including Councils and

Referral Authorities) in accordance with the User Manual as varied by the Department from time to time.

5. Council Users

5.1 Council may appoint

The Council may appoint, through an Administrator, Council Users to access and use SPEAR for and on behalf of the Council strictly in accordance with the requirements in this Deed and any User Manual.

5.2 Process for appointment

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

5.3 Identification

Unless otherwise provided for in any User Manuals, the Council is fully and solely responsible for validating the identity of Council Users. The Council must, at the time of appointment of each Council User, take reasonable steps to confirm the identity of such Council User.

5.4 Compliance with any specific requirements

The Council must, at the time of appointment of each Council User, comply with any requirements notified to the Council by the Department for the appointment of Users of SPEAR.

5.5 Provision of Information

The Council must use reasonable endeavours to ensure that each Council User provides complete and accurate responses to all requests for information made during the application process including with respect to the identity of the Council User.

5.6 Authority to Act

The Council agrees that:

- (1) subject to any access levels specified by the Department for a particular user type, each Council User is authorised to fully access, operate and use SPEAR for and on behalf of the Council;
- (2) it is solely the responsibility of the Council (and not of the Department) to monitor use of an Access Method to access SPEAR and to grant or deny access to SPEAR.

5.7 Responsibility of Council

The Council accepts liability for, and the Department (and its employees, agents and contractors) are authorised to act upon, all instructions communicated through SPEAR by a Council User other than where the access of such User has been suspended or has been terminated and regardless of any contrary instructions. For the purposes of this Deed all actions and transactions will be deemed to have been communicated by the Council even if the Council User is appointed or actions or transactions are communicated by a person acting fraudulently or by an Access Method which is fraudulently used or is otherwise unauthorised.

6. Administrator

6.1 Initial Administrator(s) for SPEAR

Any person whose name appears in Schedule 1 and who is identified in accordance with the requirements contained in this Deed and any User Manual is deemed to be an administrator of the Council for SPEAR and may act fully on the Council's behalf in accordance with authorities specified in clause 6.5.

6.2 Appointment of Subsequent Administrator

The Council may appoint such additional or replacement Administrators as the Council requires by providing a notice in writing (specifically excluding email or other electronic communication) to the Department.

6.3 Removal of Administrators

The Council may remove an Administrator by providing a notice in writing (specifically excluding email or other electronic communication) to the Department.

6.4 Identity of Administrator

The Council must identify any Council User nominated to be an Administrator strictly in accordance with the requirements in any User Manual.

6.5 Authority of Administrator

The Council agrees that for the purposes of this Deed:

- (1) Administrators can individually appoint Council Users for SPEAR, as Certifying Users, Signing Users or Standard Users, subject at all times to compliance with this Deed and any User Manuals;
- (2) unless otherwise requested by the Council and agreed to specifically in writing by the Department, Administrators can individually appoint further Administrators who will have all of the

powers of an Administrator (including the power to appoint further Administrators);

- (3) the actions of an Administrator will be treated as the binding and duly authorised actions of the Council even if outside the Administrator's actual granted authority. Such actions include:
 - (a) giving any notice or instruction on behalf of the Council; and
 - (b) requesting that the Department provide access to new Council Users; and
- (4) the Administrator may exercise any of the powers and responsibilities, granted under this clause 6.5 or any User Manual, in writing signed by the Administrator. Unless otherwise agreed in writing by the Department the Administrator may not exercise any of these powers or responsibilities electronically, including via email.

6.6 Minimum number of Administrators

The Council must maintain at all times at least one Administrator for SPEAR. If the Council does not at any time have an Administrator for SPEAR, then the Chief Executive Officer, or the person holding the most senior executive position within the Council, will be deemed to be an Administrator for SPEAR.

7. Certifying User

7.1 Appointment

The Council may appoint a Council User as a Certifying User. The appointment of a Council User as a Certifying User must be strictly in accordance with the processes detailed in the User Manuals.

7.2 Identity of Certifying User

The Council must identify the Council User appointed as a Certifying User in accordance with:

- (1) the requirements for a Digital Certificate; and
- (2) any other requirements specified by the Department in the User Manuals.

7.3 Authority of Certifying User

The Council agrees that for the purposes of this Deed:

- (1) any Certifying User is a duly appointed delegate of the Council who has the authority to certify documents for, and on behalf of, the Council;
- (2) the actions of a Certifying User will be treated as the binding and duly authorised actions of the Council even if outside the Certifying User's actual granted authority; and
- (3) the Certifying User may certify any document by either:
 - (a) Communicating with the Department using a Digital Certificate; or
 - (b) in writing signed by the Certifying User, and
 - (c) the Council agrees that either method is as equally binding upon the Council.

8. Signing Users and Standard Users

8.1 Appointment

The Council may appoint a Council User as a Signing User. The appointment of a Council User as a Signing User must be in accordance with the processes in the User Manuals. A Council User not appointed as either a Signing User or a Certified User will be a Standard User.

8.2 Identity of Signing User

The Council must identify the Council User appointed as a Signing User strictly in accordance with any User Manual.

8.3 Authority of Signing User

The Council agrees that for the purposes of this Deed:

- (1) any Signing Users have the authority to sign documents in their own right and for, and on behalf of, the Council;
- (2) the actions of a Signing User will be treated as the binding and duly authorised actions of the Council even if outside the Signing User's actual granted authority; and
- (3) the Signing User may sign any document in writing signed by the Signing User (but specifically excluding email or other form of electronic communication).

8.4 Authority of Standard User

The Council agrees that for the purposes of this Deed:

- (1) A Standard User shall have the authority to enter data and to access SPEAR for and on behalf of the Council in accordance with the User Manual;
- (2) the actions of a Standard User will be treated as the binding and duly authorised actions of the Council even if outside the Standard User's actual granted authority.

9. Username and Password

9.1 Issuance

In addition to any other Access Method, each Council User of SPEAR will be issued with a username and password. The username will be unique to each Council User and the username will be allocated to the Council User at the sole discretion of the Department.

9.2 Security of Username and Password

The Council agrees:

- (1) to keep secure all components or parts of a username and password;
- (2) not to:
 - (a) disclose the username and password to another person;
 - (b) permit more than one person to use a username and password;
 - (c) permit any other person to see the entry or provision of any components or parts of a username or password;
 - (d) record any passwords in or on any device or on any article;
and
- (3) to comply with any guidelines regarding the security of passwords published by the Department.

9.3 Notification of compromise

The Council agrees to:

- (1) notify the Department immediately upon the Council, or a Council User (or any other person), becoming aware that a password may be lost or stolen, or becoming aware or suspecting that another person knows a password or has used a password without the authority of the Council;

- (2) where clause 9.3(1) applies, cease using the username and associated password until such time as the password has been changed; and
- (3) take all necessary steps to change the components or parts of the username and password immediately upon the Council becoming aware of the circumstances in clause 9.3(1).

9.4 Compliance by Users

The Council agrees to use best endeavours to ensure that the Council's Users comply with the requirements in clauses 9.2 and 9.3.

9.5 Cancellation

The Customer may cancel a username by requesting the Department, in writing, to cancel the username.

9.6 Actions by the Department

The Council agrees that the Department may take any action it deems, at its sole discretion, necessary including cancelling or suspending a username or password code at any time without notice if the Department believes, on reasonable grounds, that a username or password is being misused.

10. Digital Certificate

10.1 Acquisition of Digital Certificate

The Council must acquire a Digital Certificate for any Certifying User which meets the requirements specified by the Department for such a Digital Certificate.

10.2 Council to provide details

Upon acquisition of a Digital Certificate for a Council User the Council must provide the Department with the full name of the User and the relevant ABN number of the User.

10.3 Obligations with respect to use of Certificate in SPEAR

The Council acknowledges and agrees that it is fully responsible for ensuring that the usage of the Digital Certificate is in accordance with any and all terms and conditions and for the due discharge and performance of all obligations placed upon the holder of the Digital Certificate under any such terms. The Council must, and must use best endeavours to ensure that any User with a Digital Certificate, complies with all obligations imposed by such terms with respect to the use of the Digital Certificate.

10.4 Notification of Suspension, Revocation etc

The Council agrees to:

- (1) notify the Digital Certificate issuer of any event which would require the suspension or revocation of the Digital Certificate immediately and in accordance with the requirements of any agreement between the Council and the issuer;
- (2) where clause 9.3(1) applies, cease using the Digital Certificate. For the avoidance of doubt the Council may start using the Digital Certificate following the Digital Certificate being re-instated after a suspension but in no other case.

10.5 Liability of Council

The Council is liable for, and indemnifies the Department against all Losses which result from, any and all acts and transactions communicated using a Digital Certificate acquired by the Council, otherwise than during a period that the Digital Certificate has been notified, recorded in any database checked by the Department, as suspended or revoked by the Digital Certificate issuer.

11. SPEAR Records

11.1 Council Documents

The Council acknowledges and agrees it is responsible for the accuracy and content of each document and all information it communicates to SPEAR in the same manner as if the document or information were held in its own records.

11.2 Access to Records

The Department will hold the information stored in SPEAR on behalf of the Council.

11.3 The Department to provide information or data

Upon termination of this Deed for any reason the Department will provide the Council with copies of all documents (in electronic form) relating to Relevant Applications submitted to the Council and retained in SPEAR.

12. Common Rules

12.1 Binding upon Council

The Council agrees that the Common Rules apply to the Council's use of SPEAR.

12.2 Amendment to Common Rules

Subject to clause 25.2, the Department may amend the Common Rules by not less than 60 days notice via email to the Administrator. The Council is deemed to accept the amended Common Rules if it continues to use SPEAR after the expiration of the period of the notice of amendment. If the Council does not accept the amendment it must cease use of SPEAR under this Deed on or prior to the expiration of the period of notice.

13. User manuals

13.1 Provision

The Department may, from time to time, issue the Council with a User Manual relating to the use of SPEAR. Updates of the User Manual shall be issued in accordance with the provisions of Schedule 3 and subject to clause 25.2.

13.2 Effect

The provisions of the User Manual shall not be binding upon the Council until a copy of the relevant provisions have been provided to the Council by the Department whether in electronic or other form.

13.3 Compliance with SPEAR Instructions

The Council and Council Users shall use SPEAR in accordance with the relevant provisions of the User Manual as appropriate.

14. Application to Application Environment

14.1 Application to Application Environment

The Council must not access SPEAR in an Application to Application Environment unless the Council uses a SPEAR Interface agreed to by the Department in accordance with the provisions of Schedule 2.

14.2 Approval by the Department

The process for approval and certification of a SPEAR Interface is outlined in Schedule 2. Any refusal of approval by the Department is subject to the requirements of clause 25.2.

15. Term, Suspension and Termination

15.1 Term

The Term of this Deed shall be from the Commencement Date until termination.

15.2 **Suspension for Cause**

The Department can suspend the Council's access to SPEAR immediately upon giving the Council written notice in the event of:

- (1) any misuse of SPEAR by the Council or its authorised Users;
- (2) any fraud by the Council or its Users related to the use of SPEAR; and
- (3) any significant adverse affect on SPEAR or its operation which is, in the reasonable opinion of the Department due to:
 - (a) access to SPEAR by the Council or any Council User; or
 - (b) any interface by the Council's systems with SPEAR.

15.3 **Termination by either party**

Either party may terminate this Deed by giving the other party 6 calendar months prior written notice of such termination.

15.4 **Termination on default**

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

- (1) the Defaulting Party fails to comply with any provision of this Deed and, to the extent that the breach is capable of being remedied, does not remedy to the satisfaction of the other party that failure within 15 Business Days after notice from the other party requiring it to be remedied;
- (2) the Department has suspended the Council's use of SPEAR pursuant to clause 15.2 and the Council has failed to rectify the cause of suspension to the reasonable satisfaction of the Department within 28 days of such suspension; or
- (3) it becomes unlawful for the Defaulting Party to perform its obligations under this Deed.

16. **Effect of Termination**

16.1 **Accrued rights unaffected**

Termination does not prejudice any right that either party may have arising prior to the time of termination.

16.2 No claim for loss of rights by Council

Termination of this Deed by the Department does not give the Council any right to claim, and the Council must not make any claim for, any compensation for any loss, cost, expense or damage arising, directly or indirectly, including for consequential loss or damage, from or in connection with loss of the rights flowing from termination of this Deed provided such termination was lawful.

16.3 No claim for loss of rights by the Department

Termination of this Deed by the Council does not give the Department any right to claim, and the Department must not make any claim for, any compensation for any loss, cost, expense or damage arising, directly or indirectly, including for consequential loss or damage, from or in connection with loss of the rights flowing from termination of this Deed provided such termination was lawful.

16.4 Cessation of Use

Upon termination of this Deed for any reason the Council must immediately cease to use SPEAR.

16.5 Return of Information

Upon the termination of this Deed, subject to any Statutory Provisions, the Council must immediately:

- (1) return or destroy, at the sole option of the Department, all copies of the:
 - (a) User Manuals; and
 - (b) Confidential Information,in the possession or control of the Council, its employees, contractors or agents;
- (2) deliver to the Department or destroy, at the Department's discretion, all material containing any Department Marks; and
- (3) do all things reasonably necessary or which the Council is obliged to do under this Deed to effect termination of this Deed efficiently.

16.6 Survival of obligations

The provisions of clauses 5.7, 10.5, 11, 16, 17, 18, 19, 20, 21, and 26 together with clauses 2.1, 2.4, 5.3, 5.4, 10, 11, 12, 13, 14, and 17 of the Common Rules survive the termination of this Deed.

17. Trade Marks

17.1 No use of Department Marks

The Council must not, and warrants that it will not, use any Department Marks for any purpose whatsoever, including in any marketing material or other material, except as authorised in writing by the Department.

17.2 No use of Council Marks

The Department must not, and warrants that it will not, use any Council Marks for any purpose whatsoever, including in any marketing material or other material, except as authorised in writing by the Council.

18. Intellectual property

18.1 System

The Council agrees that the Department owns all the Intellectual Property Rights in SPEAR and any User Manual and nothing in this Deed shall be read so as to transfer any rights, title or interest in SPEAR or the User Manuals to the Council.

18.2 Licence granted

The Department agrees that the Council, or third parties, own all Intellectual Property Rights in any information and documents submitted to SPEAR and the Council grants to the Department an irrevocable royalty free licence (including the right to sub-licence) to use, copy and provide all documents which it submits to SPEAR for the purpose of the operation of SPEAR and for all Authorised Purposes.

18.3 No other rights

The Council acknowledges that except as expressly provided in this Deed, it will not acquire any rights, including Intellectual Property Rights, in SPEAR or any materials supplied by the Department and that all such rights and goodwill whenever arising immediately vest in, and will remain vested in, the Department as appropriate. Except as provided in clause 17, the Council will have:

- (1) no rights in respect of any the Department Marks or trade names used by the Department in relation to SPEAR or any associated goodwill, or

- (2) in respect of any other Intellectual Property in any materials or information supplied by the Department.

18.4 Enforceability of Intellectual Property Rights of the Department

The Council will at the expense of the Department take all steps the Department reasonably requires to assist the Department in maintaining the validity and enforceability of the Intellectual Property Rights of the Department as appropriate. The Council will not do or omit (or authorise any third party to do or omit) any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Department.

18.5 Notification of infringements

The Council must promptly notify the Department of any actual, threatened or suspected infringement of any Intellectual Property Rights of the Department which come to the Council's notice. Subject to clause 25, the Department may take whatever action (if any) it deems necessary in the circumstances and will have sole conduct of any resulting proceedings. The Council must at the request, and expense, of the Department do all such things as may be reasonably required to assist the Department in taking any action in relation to any such infringement. Costs incurred and damages recovered in any such proceedings will be for the account of the Department. The Council will not (save as permitted by law) have any right to initiate proceedings in relation to unauthorised use of any Intellectual Property of the Department without the prior written consent of the Department.

19. Privacy

19.1 Authorised Purpose

In providing information to the SPEAR system the Council acknowledges that it may be used for the Authorised Purposes.

19.2 Council bound by IPPs

The Council and the Department are bound by and agree to comply with the *IPPs* and any applicable code of practice under the *Information Privacy Act (Vic) 2000*.

20. Confidential Information

20.1 The Department

The Council must maintain the confidentiality of all Confidential Information of the Department and must ensure that its employees, contractors and agents only use such information as authorised for the

purpose of this Deed. All Confidential Information of the Department must be protected by the Council from unauthorised access or use.

20.2 Council Information

The Department must maintain the confidentiality of all Confidential Information of the Council and must ensure that its employees, contractors and agents only use such information as authorised for the purpose of this Deed. All Confidential Information of the Council must be protected by the Council from unauthorised access or use.

20.3 Release of Information

Nothing in this clause shall prevent a party from releasing Confidential Information where such release is authorised or required by law or with the consent of the other party.

21. Warranties

21.1 No Warranties

To the extent permitted by law and except as otherwise provided in this Deed the Department provides no warranties with respect to SPEAR, any User Manuals or any other information or materials. In addition, all statutory or implied conditions and warranties are excluded to the extent permitted by law.

21.2 Limitations

To the extent permitted by law, the liability of the Department and the Council with respect to access and use of SPEAR or any information from SPEAR, the liability under any condition or warranty which cannot legally be excluded is limited to:

- (1) in the case of goods:
 - (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (d) the payment of the cost of having the goods repaired; and
- (2) in the case of services:
 - (a) supplying the services again; or

- (b) paying the cost of having the services supplied again.

21.3 **Exclusion of Loss**

Except to the extent provided in this clause 21.2, the Department and the Council have no liability (including liability in negligence) to each other for:

- (1) any loss or damage consequential or otherwise suffered or incurred by the other party in relation to SPEAR, the SPEAR Standards or SPEAR Interface Manual; and
- (2) in particular without limiting clause 21.3(1) any loss or damage consequential or otherwise suffered or incurred by the other party caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in SPEAR (including any loss of access or data), the SPEAR Standards, SPEAR Interface Manual, or any advice, recommendations, information or services.

21.4 **Exclusion of loss for the Department**

To the extent permitted by law, the Department excludes liability for any Loss or damage arising from or in connection with:

- (1) any inaccuracy or incompleteness of the information or document contained in or obtained through use of SPEAR, or
- (2) use by the Council or any other person of SPEAR and the information that may be derived from the system.

22. **Compliance with laws**

The Council and the Department must comply with all Statutory Provisions in all matters relevant to this Deed and to any dealing with or use of SPEAR or information derived from it.

23. **Force Majeure**

23.1 **Operation of force majeure**

If a party (**Affected Party**):

- (1) is prevented from or delayed in performing an obligation (other than to pay money) by a Prescribed Event;
- (2) as soon as possible after the Prescribed Event occurs, notifies the other party of full particulars of:
 - (a) the Prescribed Event;

- (b) the effect of the Prescribed Event on performance of the Affected Party's obligations;
 - (c) the anticipated period of delay; and
 - (d) the action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; and
- (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect;

then:

- (4) the obligation is suspended during, but for no longer than, the period the Prescribed Event continues and such further period as is reasonable in the circumstances; and
- (5) if the Affected Party is prevented from or delayed in performing the obligation by the Prescribed Event for at least 30 Business Days, any party may by notice to the other party terminate this Deed.

23.2 Obligation to mitigate

The party which is not the Affected Party must use reasonable endeavours to remove or mitigate the Prescribed Event and its effects.

23.3 No obligation to settle industrial disputes

Nothing in clause 23.1(3) or clause 23.2 obliges either party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.

24. Notices

24.1 Requirement to be in writing

Except as otherwise expressly provided in this Deed, a notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing.

24.2 Address for Service

Each party's address for service, facsimile number and electronic mail address are as specified in the Schedule 1. A party may change its address for service, facsimile number or electronic mail address by giving Notice of that change to each other party.

24.3 Methods of service

In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid post to the address of the addressee set out in this Deed or subsequently notified;
- (2) sent by facsimile to the facsimile number of the addressee set out in this Deed or subsequently notified;
- (3) sent by electronic mail to the electronic mail address of the addressee; or
- (4) delivered at the address of the addressee set out in this Deed or subsequently notified.

24.4 Deemed receipt

If the Notice is sent or delivered in a manner provided by clause 24.3, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (2) if sent by facsimile before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

24.5 Facsimile and e-mail

Despite clause 24.4(2):

- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
- (2) an electronic mail message is not treated as given or received if the sender's computer reports that the message has not been delivered; and
- (3) a facsimile or electronic mail message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

24.6 Notice returned unclaimed etc

A Notice sent or delivered in a manner provided by clause 24.3 must be treated as validly given to and received by the party to which it is addressed even if:

- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
- (2) the Notice is returned unclaimed; or
- (3) in the case of a Notice sent by electronic mail, the electronic mail message is not delivered or opened (unless the sender's computer reports that it has not been delivered).

25. Co-operation

25.1 Cooperation in development

The parties agree to work co-operatively for the development and implementation of SPEAR.

25.2 Exercise of rights and obligations

The parties agree that where any act is to be taken, any decision is to be made or any discretion is to be exercised in relation to any rights or obligations of the parties under this Deed such decision shall be made or discretion exercised reasonably by the relevant party after allowing the other party to make a submission in relation to the issues relevant to the decision or the exercise of the discretion and taking reasonable account of the matters raised in that submission.

25.3 Hard Copy Records

The parties acknowledge that SPEAR is primarily only a method of communication for the purposes of processing Relevant Applications and until such time as they agree otherwise nothing in this Deed shall be construed as preventing the Council from maintaining a hard copy record of any matter that has been communicated to or transacted through SPEAR.

25.4 Suspension or termination

Should notice of termination of this Deed be given by either party, the parties agree to work co-operatively (in anticipation of termination) to ensure a smooth transition of all Relevant Applications already in the SPEAR system in order that the processing of such applications (and the rights of relevant Customers) will not be adversely affected.

25.5 Suspension

Should the Department suspend the Council's access to SPEAR under clause 15, the parties agree to work co-operatively in order to minimise any adverse effect on the processing of Relevant Applications already in the SPEAR system (and the rights of relevant customers).

26. Dispute Resolution

- 26.1 If a dispute arises in connection with this Deed, 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 clause ("Notice of Dispute").
- 26.2 A representative of the Department and the Council must confer within 3 Business Days after the Notice of Dispute is given to try to resolve the dispute.
- 26.3 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 clause 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 clause 26 apply to the mediation, except where they conflict with this clause 26.
- 26.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 5 Business Days after the First Period:
- (1) the mediator is the person appointed by; and
 - (2) 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.
- 26.5 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
- 26.6 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").
- 26.7 Unless resolved within the time period referred to under clause 26.6 the dispute must be resolved in accordance with the procedure contained in this clause 26.7.
- (1) The Expert may conduct the Expert Determination in the manner he or she thinks fit and may direct that:
 - (a) there be no pleadings;

- (b) there be limited pleadings;
 - (c) there be limited discovery;
 - (d) there be no opening address by the parties or that opening address be limited in time;
 - (e) there be no final addresses or that final addresses be limited in time;
 - (f) 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;
 - (g) there be no oral evidence;
 - (h) the above steps be taken within strict time limits; and/or
 - (i) costs be awarded in an amount the Expert considers appropriate.
- (2) Unless the parties otherwise agree in writing, any questions arising for determination by the Expert must be determined according to law.
- (3) Once a dispute has been referred to an Expert under clause 26.6 the parties each agree that until the determination of the dispute by the Expert they must not refer the dispute to litigation.
- (4) 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:
- (a) no written notice of intention to commence litigation as to the matter or claim has been given by either party; and
 - (b) the parties have not otherwise settled the matter or claim,
- the determination is final and binding on each of the parties.

26.8 Except to the extent that they are inconsistent with the provisions in this Deed the provisions of the Expert Determination Rules 2001 as published by The Institute of Arbitrators and Mediators Australia apply to any dispute referred for determination by an Expert under this Deed,

26.9 This clause 26 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

26.10 Each party must continue to perform its obligations under the terms of this Deed during the period of mediation or Expert Determination.

27. Miscellaneous

27.1 Assignment

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

27.2 No Partnership

This Deed does not create or evidence a partnership or joint venture.

27.3 Further assurance

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

27.4 Severability

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

27.5 Entire understanding

This Deed:

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

27.6 Variation

Subject to clause 12, an amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

27.7 Waiver

The parties agree that:

- (1) a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right;
- (2) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right;

- (3) a waiver is not effective unless it is in writing; and
- (4) a waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

27.8 Costs and outlays

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Deed.

27.9 Governing law and jurisdiction

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

Executed as a deed.

Signed Sealed and Delivered for and on behalf of the **Department of Environment, Land, Water and Planning** by

in the presence of:

.....
Witness

.....
Signature of Delegate

Signed Sealed and Delivered for and
on behalf of:

by

in the presence of

.....
Witness Signature

.....
Delegate Signature

.....
Witness Name

.....
Delegate Name

***[ALTERNATE SIGNATURE BLOCK IS BELOW WHERE COUNCIL IS TO
EXECUTE UNDER THE COUNCIL SEAL]***

The **Common Seal** of

is hereto affixed by authority of the
Council in the presence of:

.....
Signature

.....
Signature

.....
Name of signatory
(BLOCK LETTERS)

.....
Name of signatory
(BLOCK LETTERS)

Schedule 1

Contract Details

Item 1 **Council Name and ABN**

Item 2 **Council Address for Service**

Facsimile []

Email []

Item 3 **The Department's Address for Service**

SPEAR - Land Use Victoria
Department of Environment, Water and Planning
Level 9, 2 Lonsdale Street, Melbourne.

Email: spear.info@delwp.vic.gov.au

Item 4 **Commencement Date**

Item 5 **SPEAR Internet Site:**

www.spear.land.vic.gov.au

Item 6 **Initial Administrator**

Schedule 2

Application to Application Conditions

1. Application to Application Environment

1.1 SPEAR Interface

The Council must not access SPEAR in an Application to Application environment unless the Council uses a SPEAR Interface developed in accordance with, and compliant with all requirements in, the SPEAR Interface Manual and a relevant executed A2A Deed which interface has been approved by the Department in accordance with the requirements in the SPEAR A2A Deed.

1.2 Development Agreement

If the Council wishes to develop or have developed its own Application to Application SPEAR Interface it must enter into the Department's standard SPEAR A2A Deed.

1.3 Third Party SPEAR Interfaces

The Council may use any third party developed and provided SPEAR Interface which has previously been notified to the Department and certified under the relevant SPEAR A2A Deed as having been developed in accordance with, and compliant with, all of the requirements in the SPEAR Interface Manual and the SPEAR A2A Deed. The Council agrees that any indication of compliance provided by the Department does not represent a warranty that the SPEAR Interface complies with the SPEAR Interface Manual or meets the requirements of the SPEAR A2A Deed.

1.4 Request from Council

The Council may request in writing that the Department allow the Council to access SPEAR using a SPEAR Interface which has been certified as set out in the SPEAR A2A Deed and the Department must reasonably consider any such request.

1.5 The Department may approve

The Department may allow the Council to access SPEAR through an Application to Application Environment, subject to the Council agreeing to all terms and conditions reasonably required by the Department. If the Department refuses a request it shall notify the Council in writing and such notice shall include the grounds for the refusal. Any refusal must be based upon reasonable grounds.

1.6 **Suspension**

The Department may suspend the Council's right to use the Application to Application environment immediately without notice to the Council upon the Department determining that the Council's continued right to use the Application to Application environment might unreasonably impact upon the Department, SPEAR or other Customers due to:

- (1) the Council's Application ceasing to be compliant with the SPEAR Interface Manual or any requirements of the SPEAR A2A Deed;
- (2) any virus, Trojan, or other attack to SPEAR resulting from the Council's Application; or
- (3) the Council's application imposing greater than reasonable loads on SPEAR.

The Department shall provide notice of the grounds of such suspension to the Council, in writing, as soon as is reasonably practicable.

2. **Intellectual Property in Council's Application**

- 2.1 The Department and the Council agree that the Council or third parties retain all of the Intellectual Property Rights in the Council's Application to Application Environment.
- 2.2 Despite clause 2.1, neither the Council nor any third party gains interest in any Intellectual Property Rights of the Department, including any information provided in the SPEAR Interface Manual.
- 2.3 To the extent that the Council's Application to Application Environment includes any Intellectual Property Rights of the Department, the Department grants the Council a non-exclusive, irrevocable licence to use such Intellectual Property Rights for the purpose of the development, operation and maintenance of the SPEAR Interface.

Schedule 3 SPEAR User Group

1. Purpose

1.1 The purpose of the SPEAR User Group is to provide a mechanism and forum for the communication of information about SPEAR including:

- ⇒ Proposed Modifications;
- ⇒ Related procedural issues for the operation of SPEAR;
- ⇒ Issues affecting SPEAR A2A Interfaces;
- ⇒ Customer feedback on system issues and SPEAR procedures.

2. Membership

2.1 Membership of the User Group shall consist of representatives from:

- ⇒ Councils;
- ⇒ Referral Authorities;
- ⇒ Surveyors;
- ⇒ Other Customers.

3. Meetings

3.1 Meetings of the User Group shall be held in line with scheduled system releases in order to provide a forum for review of Modifications and for the identification of problems with SPEAR or related processing issues. The total number of attendees at such User Group meetings shall be limited by the Department but all Councils shall have an entitlement to attend.

4. Circularised information

4.1 All Customers including the members of the User Group will receive circularised information in relation to changes to SPEAR and matters raised with the User Group. Information arising from User Group meetings will be provided within 14 days of that meeting.

5. Modifications to SPEAR

5.1 Planned Modifications

Not less than six months notice will be given of all planned Modifications to SPEAR. Notice will be given to all Councils, A2A Customers, Referral Authorities and Surveyors who are Customers.

5.2 Urgent Changes

Where changes are urgent notice of the changes implemented or to be implemented shall be provided to Customers as early as is practicable.

6. User Manuals

6.1 The Department shall update User Manuals as required from time to time and these will be made available to Customers by email.

6.2 Where SPEAR is modified or process changes occur regular updates of the manual shall be issued.

6.3 Changes to the User Manual are not binding until notice of the changes have been given to the Customer.

Schedule 4 Service Standards

1. Support

1.1 Telephone contact

The Department will maintain a dedicated telephone number and email address to which difficulties with SPEAR may be reported. Where any report relates to a complete failure of access to the system or of the processing of applications through the system the matter will be addressed:

- (a) During normal business hours within one hour of the logged time of the report; and
- (b) Outside business hours within one hour of resumption of business on the next business day.

1.2 Matters involving a lesser level of disruption to service shall be dealt with by the end of the business day which next follows the day of report.

1.3 For the purpose of this Schedule normal business hours means 8.00am to 6.00pm and a business day is any day other than a Saturday or Sunday or any public holiday in Melbourne.

1.4 Problem Tracking

All requests for assistance will be logged and the response time to the request recorded together with details of resolution of the problem.

2. Preventative Maintenance

The Department shall ensure that a reasonable level of preventative maintenance is undertaken with respect to the SPEAR System in order to prevent defects in the system occurring including hardware failure.

3. Availability

3.1 Planned Outages

The Department shall use all reasonable endeavours to ensure that any planned outages occur outside business hours. Notice of not less than one business day of all planned outages will be given to Customers and such outages shall be limited.

3.2 Unplanned Outages

Where an interruption to service occurs within normal business hours which is unplanned, the service will be restored within one hour. Customers will be advised of any unplanned outage which does occur as soon as practicable including an indication of the probable time of resumption of services.

3.3 Data Recovery

Data in the SPEAR System will be fully backed up every 24 hours

4. Reports

- 4.1 Reports of the service standards shall be made available to the regular SPEAR User Group Meetings.

5. Disaster Recovery Plan

- 5.1 The Department will develop and provide to relevant Councils (on request) a copy of a Disaster Recovery Plan providing for issues such as:

- (1) The level of hardware redundancy available for SPEAR
- (2) Maximum outage periods that will apply in the event of major hardware or software failure
- (3) The process for re-establishing the operation of SPEAR in the event of complete loss of server and data, including the method of storage of back up data and the availability of data and suitable hardware to re-establish normal SPEAR operation.